

# U Mich Affirmative Action: A Case for Psychological Science

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It was not quite the equivalent of the Scopes Monkey Trial of 1925, when evolutionary science was itself in the dock, but psychological science's credentials were in a sense on trial when scientists went to court as part of a University of Michigan affirmative action case a few months ago. Using evidence from research, they made their case, and they won.

The ultimate winners, according to those who lived through it, are not only social scientists but society at large.

At issue was the University of Michigan's admissions procedures. The conservative Center for Individual Rights (CIR) in Washington, D.C., had sued the university on behalf of unsuccessful white applicants for undergraduate admission in 1995 and 1997 and law school admission in 1997 (*Gratz, et al. v. Bollinger, et al.* – the undergraduate suit – and *Grutter, et al. v. Bollinger, et al.* – the law school suit). The class action lawsuits charged that the university had unconstitutionally discriminated against them by using race as a factor in deciding which students to admit.

Last December, in federal court, Judge Patrick Duggan ruled in favor of the university's current undergraduate affirmative action program (although he did rule unconstitutional its earlier system, saying in essence that it wasn't narrowly tailored enough).

In late March, a different federal judge, Judge Bruce Friedman, ruled against virtually the same race-conscious admission policy as it is applied in the law school admission process, although not against the underlying expert testimony from psychologists.

The University of Michigan immediately announced that the decision in the law school case would also be appealed. The undergraduate suit already is making its way to the appellate circuit court.

For psychological science, the December decision was a milestone of particular significance.

Gurin

"We brought to bear a body of theoretical and empirical work on an important social policy," says Patricia Gurin, former psychology department chair and now interim dean of the College of Literature, Sciences, and the Arts at the University of Michigan. "I don't think this has been done before, at least not in affirmative action in higher education.

"Until now," Gurin said, "arguments were based on speculation that diversity was good, or on anecdotes, and that's not enough. It's not enough to have an educational policy based on gut hunches."

## Payton

The university's lead attorney, John Payton of the Washington, D.C., firm Wilmer, Cutler & Pickering, says psychological arguments have played a major role in other litigation, dating at least as far back as the landmark 1954 school desegregation case, *Brown v. Board of Education*, but this is "the first time that this type of social science research has been used to prove diversity really matters to educational value."

"For 30 years, maybe longer," explains Payton, one of the nation's top civil rights attorneys, "a lot of social science has been premised on the assumption that the value of having a diverse education did not need to be proved. People went off and did studies that assumed a diverse student body was a good thing and that we never had to go back to that premise."

"When these challenges are lodged," Payton said, "they don't come out and say that diversity is a bad thing, but they require that supporters reexamine the assumption that having a diverse student body is a good thing. That required me as a lawyer to tell social scientists, 'Go to work. As a lawyer in court I have to prove everything.'"

That's what Payton told scientists like Gurin. And they delivered. Their research was at the core of the defense in both lawsuits. In the end, not only were the affirmative action policies validated, but so was the notion that the evidence social scientists develop is the strongest available weapon in support of social policies.

## EDUCATIONAL EFFECTS OF DIVERSITY

Gurin started studying the effects of student diversity in 1990. "I was interested in developing both a theoretical and empirical understanding of the impact of diversity on education," she said. "Many of the arguments in defense of diversity until then were based on moral and political rationales, and much of the evidence was anecdotal."

She teamed up with colleagues Sylvia Hurtado, Eric L. Dey, and husband Gerald, all of the Michigan School of Education.

During the summer of 1998, Gurin was approached by the university's defense team to "tell us why you think diversity is important for students," she recalls. "I thought we were just having a conversation, that I could be helpful to them. Then later, they came back and said they'd like me to consider being an expert witness and needed me to provide both the theoretical and empirical support."

She and her colleagues revisited their work of the past decade with new analyses and delivered expert reports to demonstrate to the court that students on a culturally diverse campus, minority and non-minority alike, are more successful than those not exposed to such diversity. They examined data from both Michigan campus studies as well as a national study, and concluded in their report that was prepared for the case:

- Students who are exposed to diversity in and out of class are "more intellectually engaged and motivated, more engaged with intellectual and academic skills, and more engaged in citizenship"

in the post-college world.”

- Students active in a Michigan campus diversity initiative “showed greater growth over four years in active thinking (as opposed to ‘group think’), stronger citizenship engagement as seniors, greater acceptance of difference as compatible with societal unity, greater growth in perspective taking, greater mutuality in orientations toward their own groups and toward other groups, and greater understanding of conflict as a normal, indeed healthy, aspect of social life.”

“A racially and ethnically diverse university student body has far-ranging and significant benefits for all students,” Gurin summarizes. “In fact, patterns of racial segregation and separation historically rooted in our national life can be brokered by diversity experiences in higher education.”

Payton says one of Gurin’s most surprising findings for many people is that “students who go to college where there is sufficient diversity are far more likely to live in diverse neighborhoods when they graduate” and break the cycle of racial separation that dominates in much of the nation.

## Cantor

### A BIG DAY

Nancy Cantor, the university’s Provost and Executive Vice President for Academic Affairs, says there is “no question” that the Michigan cases exemplify “very effective use of psychological science.”

“It is absolutely a big day for the legitimacy of psychological science,” according to Cantor. “The evidence very nicely illustrates the power that universities and colleges can have. I think that it effectively shows how you can use data to illustrate the impact of an educational process on personal development and, by implication, societal behavior.”

“The basic questions that were being addressed, concerned society and education and social structure and inter-group relations, all questions that social sciences have been addressing,” she said. “It is natural that this would be an arena where social science data would be relevant.”

Former Harvard President and Law School Dean Derek Bok and William G. Bowen, the president of the Andrew W. Mellon Foundation and former president of Princeton University, also gave expert evidence, based largely on their examination of the college experiences of more than 60,000 students – about 3,500 of them black – at 28 selective colleges and universities in 1976 and 1989. Their research is published in their book *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*.

That research, Bowen says, demonstrates that a university’s task “is to assemble a total class of students, all of whom will possess the basic qualifications, but who will also represent, in their totality, an interesting and diverse amalgam of individuals who will contribute through their diversity to the quality and vitality of the overall educational environment.”

Testified Bok, “The data in our study prove what I have observed for years through experience – that diversity is valued and that ‘learning through diversity’ actually occurs. Our study indicates that diversity is a benefit for all students, minorities and non-minorities alike. Moreover, the data

overwhelmingly demonstrate that minority students admitted to selective schools had strong academic credentials, graduated in large numbers and did very well after leaving college,” thereby dispelling the myth that affirmative action lowers academic standards.

Steele

#### TESTS NOT RACIALLY BLIND

However, to prove the university’s case, it was also necessary to show that admitting students based solely on test scores was itself not truly “racially blind.” Enter APS Fellow Claude Steele, chair of psychology at Stanford University, who was deposed for 10 hours about his 12 years of research on standardized tests.

“Experiences tied to one’s racial and ethnic identity can artificially depress standardized test performance,” Steele testified. “Importantly, these effects go beyond any effects of socioeconomic disadvantage, affecting even the best prepared, most invested students from these groups.... Relying on these tests too extensively in the admissions process will preempt the admission of a significant portion of highly qualified minority students.”

Standard aptitude tests, Steele said, do not measure mental capacity, nor are they achievement tests: “They are not constructed to test how much one has learned from a specifiable curriculum. Rather, they are described by their makers as ‘aptitude’ tests.... [It is difficult] to conceptually define the ‘aptitude’ they measure other than to say that it is a measure of test-taking aptitude.”

#### JUDGE RELIES ON RESEARCH IN RULING

So convincing was the evidence from these and other social scientists that even the plaintiffs could find no witnesses to counter it. “At the end of all this,” observed Payton, “the plaintiffs in both cases agreed that having a diverse student body is a good thing. No witness could say, ‘We think this is a bad thing.’”

Judge Duggan of the Federal District Court for Eastern Michigan was impressed enough to cite copiously from the research in his December ruling on the undergraduate admissions case. “The university defendants have presented this court with solid evidence regarding the educational benefits that flow from a racially and ethnically diverse student body,” he wrote. “This court is persuaded, based upon the record before it, that a racially and ethnically diverse student body produces significant educational benefits such that diversity, in the context of higher education, constitutes a compelling governmental interest under strict scrutiny.”

Duggan’s finding of a “compelling governmental interest” – key language in an earlier U.S. Supreme Court case – places him squarely at odds with Judge Bruce Friedman’s ruling in the law school case, a stand-off the appellate courts will have to resolve.

“If you look at Judge Duggan’s opinion,” says Payton, “it’s pretty clear that he paid a lot of attention to the psychological testimony.”

Payton sees a continuing, and even growing, need for social sciences research in the courtroom. “There are a number of situations in which people are challenging the underlying premises of things, and that

means you have to go back and prove the premise. For example, the basic notion: is integration a good thing? The anti-busing campaigns were based on the contention that it is not.”

Of course, busing opponents won’t say so, he acknowledges, “but if you think about it, that is what they are saying. Kids get bused all the time for reasons unrelated to integration. If you don’t like busing when it is designed to support integration, then you must think integration is a bad thing. So we have to prove the basic premise that integration is a good thing.”

Cantor also sees a growing public-policy role for psychological scientists. “Social science data can be brought constructively to bear on many other issues that will face both the political and legal arenas,” the Michigan Provost points out. “We certainly have a history of social science involvement in the public interest. We should keep pushing that.”

She says one need look no further than the Human Capital Initiative (HCI) to understand the range of provocative and important social concerns on which psychological scientists can expect to be called upon to provide empirical evidence. (The HCI which was organized under the auspices of APS, proposes a research agenda to help federal policy makers set funding priorities for psychological and related sciences, targets six problem areas facing the nation, communities, and families: aging, literacy, productivity, substance abuse, health, and violence. [Visit the APS web site for details.](#))

**A ROLE FOR SCIENCE IN PUBLIC POLICY** Gurin agrees the demand is there for scientists’ involvement, but wonders whether the scientific community is prepared to deliver. “It’s going to be hard to get psychologists to agree to provide such testimony,” she says. “There’s a quest and a need for psychological science to be brought into these issues in service of the law, but many are still reluctant to get involved.”

Part of the problem, she says, is testimony-for-hire. Most experts testify in court as paid consultants. “I don’t think that’s appealing to many psychologists,” says Gurin. “Most of us are suspicious about being pulled into the courtroom for hire. Also, in some sense we are worried that in court we have to be far more assertive (about findings) than the conditionality of psychological science allows us to be.”

Richard Lempert, who testified in the law school case, sees another potential problem: “A lot of scientists don’t like being cross-examined and putting their credentials and science on the line. Still, a lot of them do appreciate an opportunity to have their work considered in discussions of important public issues.”

Gurin sees many public policy arenas in which she says psychological scientists’ should overcome any reticence and agree to help judges and juries make judgements – issues of child abuse and repressed memory; the changing complexion of the U.S. population resulting from altered patterns of immigration and birth rates; and the “enormous challenge” that schools improve both the cognitive and motivational aspects of learning.

“I tell my colleagues that they should be ready to use their science in legal cases, including the use of your science to support a position,” Gurin says. “For that, you need to be aware of your values.”

Stanford’s Steele agrees. “We should be willing, when our research is relevant, to present it in legal

forums, to speak as scientists about its relevance to these kinds of policy issues.”

Of his first-ever experience discussing his science in a legal arena, Steele said he found it “a very interesting experience, how the law responds to social science research. It’s not like presenting it to a set of colleagues. The lawyers are interested in the implications, the generalizability of the findings, and that’s something that we scientists are not as used to, I suppose.”

“I found that very stimulating, and even scientifically useful in the sense of identifying what the important questions are,” Steele said. “It does help the scientist to have these kinds of engagements.”

## KNOW YOUR VALUES

When she was first asked to be an expert witness in the Michigan case, Gurin says, many looked askance because she was well known as an advocate of diversity on campus and might not be scientifically objective, “but it is important that you do know your values” and act on them, she says. “What you think your science should promote in society is terribly important. Science is not value-free. It does require that you face up to the value question.”

Would she do it again? “I would, certainly, if I were asked to do so, around much the same issue, if I felt I had something to offer. As a social scientist, I’d be happy to make a contribution. I learned an enormous amount and the lawyers were extraordinarily respectful of social science. Once you’ve done some of this, you learn what kind of evidence is crucially important, what is compelling in the eyes of the law. Many things I would have measured [earlier] if I’d known then what I do now,” she said.

Gurin and her Michigan colleagues are continuing their research into the effects of diversity, focusing now on the cognitive outcomes of being educated in a diverse environment, “where I can tie down the process of multiple perspectives being offered from a more diverse student body.”

“Another very interesting aspect,” Gurin says, “is that many of the campuses that have diverse student bodies have ethnic solidarity groups, and to outside perspectives it might look like the campuses are balkanized. But the ethnic solidarity groups are incredibly interconnected. I very much want to see an organizational study done – what these groups and the individuals in them are getting out of it.”

In the law school case, Judge Friedman said in his ruling: “The court does not doubt that racial diversity, in the law school population, may provide ... educational and societal benefits.” Nevertheless, he ruled, that doesn’t turn it into a “compelling” government interest, and “the practical effect of the law school’s policy is indistinguishable from a straight quota system.” University officials vigorously deny the “quota system” label.

Commenting on the law school case, Cantor said “We have documented with empirical evidence that racial and ethnic diversity enhance learning and the preparation of our students to work and participate as citizens in our increasingly diverse society.”

“Judge Friedman’s ruling interprets our Constitution so narrowly as to ignore these profound implications for our democracy,” said Cantor, an APS Fellow and past member of the APS Board. “Our policies have been supported by virtually every sector of society including business, higher education, labor and government. We are confident that we will prevail in a higher court.”

For more information, and for the expert reports prepared by Patricia Gurin, Claude Steele and others, visit the University of Michigan web site at [www.umich.edu/~urel/admissions/](http://www.umich.edu/~urel/admissions/).