STANDING ON THE PROMISE OF *BROWN* AND BUILDING A NEW CIVIL RIGHTS MOVEMENT: THE STUDENT INTERVENTION IN *GRUTTER V. BOLLINGER*[*]

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I want to thank the *Albany Law Review* for a very lively symposium, devoted to what I think is the most important subject in America—and that is race and racism and what we do about them.

I am going to break my remarks up into three short chunks. First, I want to provide a historical framework for the significance of these issues. Second, I want to tell you something about the arguments that we have been making in *Grutter v. Bollinger*;[1] the University of Michigan affirmative action case. Third, I will talk a little bit about what the students that I work with in several organizations, including the Coalition to Defend Affirmative Action and Integration and Fight for Equality By Any Means Necessary, have been doing to rebuild the Civil Rights Movement that, in my view, is what brought us affirmative action in the first place and what will allow us to sustain and improve our progress toward equality in the future. It is not arguments about different levels of scrutiny, not legal tests, but rather, what all of us in this room can

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[1] 288 F.3d 732 (6th Cir. 2002), *cert. granted*, 71 U.S.L.W 3154 (U.S. Dec. 2, 2002) (No. 02-241).

do to educate our fellow citizens about what equality demands, where we have been, and how far there is left to go. That is what will really change things.

So first, the *Grutter* case was brought by the Center for Individual Rights (CIR) to challenge the constitutionality of the University of Michigan Law School's admissions policy. The people I represent anticipated that the University would rely largely on the diversity argument made in *Bakke,*[2] and we wanted to make equality arguments for affirmative action because to us, equality is what affirmative action is all about.

Now with that said, I do not think you can separate diversity and affirmative action. I do not think that Justice Powell's view of diversity can be separated from his understanding of racial inequality in America and the need to continue making progress toward integration.[3] Another way of putting that is that you cannot understand this case outside of the framework of *Brown v. Board of Education of Topeka*,[4] and if we lose this case, the principle of *Brown*—that separate can never be equal—will be a principle that we will have essentially abandoned in practice. It will be a principle that we honor only in the breach and that is very easy to show through the post–affirmative action figures in various jurisdictions.

I will give you some numbers on that, but I encourage you to look them up on websites of the University of Texas and the University of California.[5] It is information accessible to the public showing that when we have lost affirmative action, our schools have been resegregated. I will give you just one example now, and I will get more into this later.

One year after the school's affirmative action program was discontinued in admissions at Boalt Hall, U.C. Berkeley Law School, there was one Black student enrolled in a class of nearly 300 students.[6] Turn the clock back sixty years—to the days before

[2] Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 311–15 (1978) (discussing the validity of racial classification in the petitioner's program, that petitioners claim was necessary to attain diversity in the student body).

[3] *See id.* at 315 (noting that an admissions policy factoring in race would promote diversity, whereas a policy "focused *solely* on ethnic diversity" would discourage it). Justice Powell continues on to note that the former is permissible and that the latter is unconstitutional. *See id.* at 319–20.

[4] 347 U.S. 483 (1954).

[5] *See* UNIVERSITY OF TEXAS, AN ONGOING COMMITMENT, *available at* http://www.utexas.edu/law/depts/admissions/minorityissues/commit.html (last visited Feb.3, 2003); *see also* SCHOOL OF LAW–UNIVERSITY OF CALIFORNIA, BERKELEY, PROSPECTIVE STUDENTS: WELCOME: FACTS & FIGURES, ENTERING J.D. CLASS PROFILE, *available at* http://www.law.berkeley.edu/perspectives/welcome/profile.html (last visited Feb. 3, 2003).

[6] *See* UNIVERSITY OF CALIFORNIA, BERKELEY, BOALT HALL, ADMISSIONS AT BOALT,

Brown—and there was only one Black student at Boalt Hall. That is to say, if you turn the clock back to the days before the end of legal segregation you get the same result as you do today. The only way that we have moved forward in this nation—which is defined by the maintenance of a caste system in which White people get preferences and privileges every day based only on the fact that they are White—is because of the progress of the Civil Rights Movement. We have democratic aspirations to be a nation in which there is true equality and in which we have real democracy—not just formal democracy—and that is our foundational tension. It has been built into the Constitution, and it has been built into our moments of historical progress and regress.

What we have seen recently is more regress than progress because social movements have been on the wane. But there have been moments in which we have seen progress and have been provided with occasions that we want to tell our children about. The 1963 march on Washington is one example. These are moments when we come together to stand for progress in matters of race and to say that we reject our legacy of segregation, inequality, and racism that is directed at all non White people in the United States. First and foremost at Black people in the United States but also at Latinos, Native Americans, Asian Americans and at every group of minorities. The only way we have ever been able to offset those problems is by taking account of the problem itself—which stands to reason since turning a blind eye to a problem cannot solve it. We need to confront it in a way that is honest, rigorous, serious, and not pessimistic. We should be profoundly optimistic about our capacity to move forward together.

If we know the legacy of racism, and its current existence, then we can move forward. Today, name an important area of American life: health care, mortgage rates, how much you pay for a car, whether your doctor will give you the treatment you need, or standardized test scores. Then name something that matters for opportunity and quality of life in America today, and race is the one thing that correlates most with it.

Somebody give me a counter example—there is not one. Race is a huge factor in our society, and race is not just a matter of skin color. If we were on Mars, and some of us were purple and some of us were green, and we had a wholly different society—and a wholly

(providing questions and answers regarding the first-year class at Boalt Hall for Fall 1997), *available at* http://www.berkeley.edu/news/berkeleyan/1997/0820/boalt.html (last visited Feb. 3, 2003).

different history—then yes, it might be intellectually honest to use the phrase *skin color* as shorthand for talking about race, racism, and racial discrimination. But that is not so, and everyone in this room knows it.

Race is about experience, opportunity, community, and a whole bunch of other socially defined categories. It is not simply a matter of skin color. There is nobody that can tell me that they genuinely believe that it is.

Because racism has been so fundamental to defining the character of American democracy—both when we have made progress and when we have not made progress—when we have made progress it has been extended to other areas. So, for example, you cannot imagine the movement for women's suffrage without the abolitionist movement because all the women, and a small number of men, who stood for women's suffrage were veterans of the abolitionist movement. The same thing is true of second-wave feminists coming out of the Civil Rights movement. All of the leaders of the feminist movement were veterans of the Civil Rights struggles. We would not have gay rights, we would not have rights for people with disabilities, and we would not have an age discrimination statute enacted by Congress if we had not had struggles for progress toward racial equality.

So had there never been affirmative action, this room would be full of White men only with maybe an exception or two. I would not be a lawyer. We would not have any kind of opportunity for women of any race in the professions. We would not have any kind of opportunity for non-elite White men. Because the other thing about affirmative action is that it opened up the doors to lower income White people to go to colleges and universities. The University of Michigan, prior to the adoption of affirmative action policies, had no systematic way of dealing with financial aid. It relied only on so-called merit measures that, as I will talk about in a minute, are completely shot through with racial bias, inequality, and privilege—which do not measure merit at all. But those measures discriminate on the basis of class and gender as well, so moving away from rigid and mechanical use of those criteria has only helped everyone in our society as a whole.

There are some extraordinarily elite White male students who have, if you want to take a narrow view, not benefited from affirmative action. Though of course, I think that the important point to remember is that we have all benefited from the progress that we made toward integration as a society. You cannot divorce

arguments about diversity from arguments for equality. But essentially, affirmative action democraticizes higher education. It was the second great thing after the G.I. bill that made it possible for millions and millions of Americans to contemplate the chance to go to college after high school. I do not think one can dispute the historical record on this point.

Our case basically has two main lines. I will tell you a little bit about some of the factual things that we laid out, particularly on the question of meritocracy, because that has already come up in the panel. The two main lines of our case are, first, that integration is the most compelling state interest that could possibly be in this country, given its history. That is what affirmative action is all about. It is about creating integration in higher education, which absolutely would not exist but for affirmative action.

Second, it is about offsetting the racism that would otherwise completely infect the higher education admissions process because of the numerical criteria that all colleges use to one extent or another in determining who will be admitted. In the case of law school admissions, those criteria are undergraduate GPA and LSAT scores. Those measures discriminate against women, Black, Latino, Native American, and Asian American applicants to law school. They give White people and male applicants a privilege that is not earned. I am not blaming the individual White people or the individual men, but it is not an earned privilege. If you act like affirmative action is a preference that operates on what otherwise would be a level playing field and unfairly benefits minority students, that, in my view, is not intellectually honest at all. It disregards the reality that the measures are themselves shot through with bias. They are shot through with race-bias and race-privilege.

First, on the question of integration as a compelling state interest, I will take the University of Michigan between 1960 and 1968, which graduated 3,000 applicants of whom four were Black.[7] Not one was Latino, Asian American, or Native American. I would guess there were a handful of women, but not many, and they didn't even keep the numbers. Then the school adopted affirmative action and it has become a moderately integrated and diverse school—which does not signify that affirmative action achieves equality in a full blown way. There was a question from the audience earlier

[7] Response to the Petition for Certiorari to the United States Supreme Court by Respondents Kimberly James et al., at 8, Grutter v. Bollinger (2002) [hereinafter Response to Petition for cert.] (on file with the author).

today about whether affirmative action is absolutely necessary. It is, but that doesn't means it is sufficient. It is one thing that we need to do to move our society toward true racial equality. It is not going to get us there on its own, but it is certainly a necessary part of the equation. Now before affirmative action, we had all White schools and all male schools. After affirmative action in California and Texas, we have the re-segregation of legal education.

Let me focus on Texas for a second since I said a little bit about California before. In Texas, people know that one of the great precursor cases to *Brown* was the *Sweatt* case in which the Supreme Court said that the University of Texas Law School could not set up a separate and inferior law school for Black students.[8]

In the year following the *Sweatt* decision, there was a higher percentage of Black students in each of the enrolling classes than there has been on average since affirmative action has been eliminated by Fifth Circuit in 1996.[9] We are worse now than we were in the days immediately following the elimination of the Jim Crow laws. It is astounding to me that anybody could defend this as movement toward equality. It turns the world on its head. We're re-segregating legal education in the name of some formal conception of equality that means the law cannot encompass the truth of the world around us, and instead, has to float above it disconnected from what we all know to be true. If that is true, then the law will lose its legitimacy in the eyes of the people.

Let me talk about undergraduate education for a second. The University of California system is the largest public university system in the country. The effect on legal education has been much worse than on undergraduate education in all of these jurisdictions, in part because all of these jurisdictions have adopted programs like Texas's Top Ten Percent Plan.[10] According to this plan, the students in the top ten percent of every high school get admitted to the University of Texas.[11] Now, because K–12 education is so dramatically segregated, this plan guarantees some measure of minority representation at U.T. in the undergraduate program. We have to ask ourselves if we want to try to fulfill integration of higher education on the back of increasing levels of segregation in K–12 education. That cannot make sense as a matter of social policy, and if the law is going to insist on that, again, the law loses its

[8] Sweatt v. Painter, 339 U.S. 629, 634–35 (1950).
[9] Hopwood v. State of Texas 78 F.3d 932, 962 (5th Cir. 1996).
[10] TEX. EDUC. CODE ANN. § 51.803 (Supp. 2003).
[11] *Id.*

legitimacy.

In the California undergraduate system, what you have is seven or eight different campuses that are very different in terms of the resources to which the students have access, their job prospects, and the credentials of the professors.[12] In the U.C. system there is a distribution of Black, Latino, and Native American students into the less elite campuses. So there are literally two separate and unequal tracks in the largest public university system in our country. This is supposed to be a step forward toward equality. The campuses are separate and they are unequal. Nobody can contest either one of those things. It is bi-racial, that is clear, and it is in the name of the principle of non-discrimination. Dishonest is a polite word to use for that circumstance.

Legal education at U.C. Berkeley and U.C.L.A. both tried to overcome the devastating impact of losing affirmative action in admissions policies. Berkeley did it by saying "Oh, we are not going to pay much attention to tests and grades. We are going to do a whole-person review and see how that ends up." Inventing discretion in order to abuse it would be Professor Cohen's interpretation, but the fact is that they were not able to abuse it very much because they have not been able to regain minority admissions at all using that method.[13] Under constant threat of litigation, by anti-affirmative action forces, they have not been able at U.C.L.A. to regain minority admissions. What they did was substitute socio-economic measures for the consideration of race. That didn't work at all. One of the most compelling witnesses that we presented at trial, in my view, was a young woman named Chrystal James who was one of two Black students in her post-affirmative action class at U.C.L.A..[14] She talked about how anti-affirmative action people are always talking about how affirmative action creates a stigma of inferiority. She said that while she was at Stanford as an undergraduate student, as a working class, first-generation college student—at a school that had a very robust affirmative action plan—she was never made to feel like she was an affirmative action admitee, that she didn't belong there, or that she was inferior. It took going to U.C.L.A. after affirmative action had

[12] Response to Petition for cert., *supra* note 8, at 12.

[13] For more information, see Professor Cohen's article in this edition of the *Albany Law Review*: 66 ALB. L. REV. No. 2.

[14] *See* Grutter v. Bollinger, *Trial Outline* (indicating that James "testified with immense force and energy about her struggle to acquire a legal education under re-segregated conditions), *available at* http://www.bamn.com/doc/2001/0103-trial-outline.asp (last visited Feb. 3, 2003)

been eliminated and after her race was not a factor for her to be made to feel like she was a racial interloper on the campus and that she did not belong there.

The racist stigma of intellectual inferiority is increased when you eliminate affirmative action and that is the exact stigma that the *Brown* court focused on.[15] It is the baseless, racist idea that we are born different in intellectual terms that affirmative action acts against, as the *Brown* court was acting against.

Well, that has been hard. That has been harder than that court or its most sincere members might have thought in 1954 because we have a long history to overcome. But we can, if we continue to keep our eyes open and our heads up instead of poking them in the sand and pretending there is no problem—instead of bluntly telling somebody who has gone to a completely segregated school in Detroit, "You have been totally screwed over up until now, for reasons that are not your fault at all, and we are going to use that as a basis for continuing to screw you over." Just like that.

Let me say a little about the LSAT. There is no question that the LSAT has a loose correlation with your first-year GPA in law school when you combine it with college grades.[16] The first question that I would like to pose is, who really cares about a person's first-year GPA in law school? Why is that a relevant criterion? I have never had a satisfactory explanation. I do not understand what the beauty of being able to predict somebody's first-year GPA is. But that said, at the University of Michigan, when you combine undergraduate grades and LSAT scores, what you get is the ability to predict twenty-seven percent of the variation in first year grades.[17] Try selling tires or coffee makers with those numbers. That is a preposterously low correlation to try to base something as life-altering as an admissions decision on.

There has been a follow-up study done at the University of Michigan that shows that LSAT scores and the grades of the students who actually graduated law school had absolutely no

[15] Brown v. Board of Educ. of Topeka, 347 U.S 483, 494 (stating that separating children "from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone").

[16] *See* Ian Weinstein, *Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam*, 8 CLINICAL L. REV. 247, 248 (2001) (noting that while the LSAT can validly predict statistical information, it is limited to predicting only a variation in grades).

[17] *See* Defendant-Intervenors' Appeal Brief, at 5, Grutter v. Bollinger, (6th Cir. 2001) (No. 01-1516) [hereinafter Appeal Brief] (discussing the discriminatory impact of considering of LSAT scores as a factor for admissions), *available at* http://www.bamn.com/doc/2001/0107-intervenors-appeal-brief.pdf (last visited Jan. 17, 2003).

relationship to their professional success, however measured.[18] In fact, minority students who are admitted under affirmative action, and who have lower index scores on average, engaged in more political leadership activities, more public service, and more mentoring of younger attorneys, which are some of the things that most admissions policies say they seek in order to select candidates on that basis.[19]

So the first thing is that it does not predict much and it does not predict that which needs predicting. The second thing is that both of these measures capture a tremendous amount of racial discrimination, inequality, and privilege.

Let me start with what may be the more controversial claim, which is the claim about undergraduate grades. Undergraduate grades are earned for the most part—not for all Black and Latino students—but for the most part on White campuses on which the hostile environment that minority students face exerts a constant downward pressure on their ability to achieve academically.[20] This has been shown by a large number of broad sociological studies. We also commissioned for litigation a focus-group study that was based on four of the top ten feeder schools to the University of Michigan Law School to show that the hostile environment on that campus does depress GPAs for Black, Latino, and Native American students.[21] These four schools include Berkeley, Harvard, Michigan State, and the University of Michigan.[22] There is not any question about this. The gap is a lot smaller than for the LSAT because the LSAT is a magnifier of discrimination, not just an encapsulation of it. But there is tremendous discrimination expressed in those grades.

When you add in correlations with how much more frequently Black and Latino students have to work a lot of hours in college and socio-economic factors that correlate with race, it is obvious that grades and race are not a race-neutral measure of merit.

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[18] Richard O. Lempert et al., *Michigan's Minority Graduates In Practice: The River Runs Through Law School*, 25 LAW & SOC. INQUIRY 395 (2000) (claiming that while an admissions policy that considers undergraduate GPA along with LSAT scores may predict first year grades, that policy will not guarantee or predict overall career success).

[19] *See id.* at 396.

[20] *See* William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving "Elite" College Students*, 89 CAL. L. REV. 1055, 1113 (2001) (noting that African American students that attend "historically Black colleges" fare better socially, academically, and career-wise compared to African American students that attend predominately White colleges).

[21] *See* Appeal Brief, *supra* note 15, at 4–5.

[22] *See* Appeal Brief, *supra* note 15, at 4–5.

The LSAT is far worse. Everybody imagine a White student at Yale with a GPA of 3.6 in math. That student's Black counterpart gets an LSAT score, on average, 9.2 points lower than the White student despite the identical prior academic achievement in the identical major at the identical school.[23] There is a huge gap for Latino applicants as well, 6.8 points, as well as a large gap for Asian American immigrants and Native American applicants.[24]

A 9.2 point gap, and this is true even if you are talking about an easy major and a lousy GPA at a non competitive school. That is the national average when people are matched for school, major, and GPA. The LSAT essentially gives the White applicant 9.2 White-privilege points that do not have anything to do with four years of work at his undergraduate school or any accumulated achievement that the person has been able to accomplish. Again, bear in mind that the accumulated achievement itself isn't even race neutral. So, you're taking a Black student who has already had to overcome more obstacles than the White student to earn that GPA in that major at that school, and you're saying, "You go to the LSAT for four hours and you will end up with a nine point disadvantage." That is a huge difference and disadvantage, as most people in this room know. It could mean the difference between getting into Harvard Law School and not getting into any law school because of how LSAT-focused and competitive the admissions process is. That is what you are talking about if you go to a strict merit-based system.

It is not a system of merit—it is a system of privilege. Overwhelmingly, it is a race privilege but also a class and gender privilege. On the question of class privilege, and how much it can explain, consider that even the poorest White LSAT takers score higher on the LSAT than the wealthiest Black LSAT taker.[25] This is a question of racial bias in the test itself and in the way the test is taken. It is not that the people who write the LSAT are out to perpetuate discrimination, or that they want to segregate higher education or anything like that, but frankly, they could do a lot more than they have in the past to work in the opposite direction. Leaving that aside, it is not about a conscious racist intent—that is not it. What it is, is several different factors. First the LSAT, like

[23] Grutter v. Bollinger, 137 F. Supp. 2d 821, 861 (E.D. Mich. 2001), *rev'd on other grounds by*, 288 F. 3d 732 (6th Cir. 2002); *see also* Response to Petition for cert., *supra* note 8, at 13.

[24] *Grutter*, 137 F. Supp. 2d at 861; *see also* Response to Petition for cert., *supra* note 8, at 18.

[25] Appeal Brief, *supra* note 15, at 6.

the SAT, is a child of eugenics. It is an intellectual off-spring of the eugenics movement—that is when the tests were first written.[26] They were written as general intelligence tests, and the content has not changed very much since then. When it has changed, it is only been changed in a way that allows for the same statistical outcomes to be obtained.

In other words, there could be a question that was introduced fifteen years ago to an elite all-White male group that in the last test administration was adjudged to be offensive to women students. This is because there have been problems raised with a number of questions in which women who stand up for women's rights are displeased by the answer required to get the question correct. There are questions in which that kind of bias is built in, but the administrators have gone back and eliminated most of them. Unfortunately they have to replace them in order for their test to be statistically balanced. They have to replace them with questions that reproduce the same social breakdown in who answers what right.

So, you have a system of statistically validating the test and statistical normalizing the procedures that reproduce the biases that the test has had since it was designed to prove that Northern and Western European immigrant recruits in the U.S. Army during World War I were intellectually superior to Southern and Eastern European immigrant recruits.[27] That is the basic kind of framework of these tests. There are other factors too. The test prep classes, which on average increase people's scores and the current grid score by seven points, are overwhelmingly taken only by White people in large part for reasons of socio-economic class.[28] It tremendously skews the national averages.

Are people familiar with the work of Claude Steele at all? Claude Steele is a brilliant psychologist who has done work on how people respond to stereotypes when they are taking high stakes tests.[29]

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[26] *See* Daria Roithmayr, *Deconstructing the Distinction Between Bias & Merit*, 85 CAL. L. REV. 1449, 1487–88 (1997) (offering a discussion of the development of the LSAT, particularly as it evolved from scholarship and Navy tests, both of which had racist foundations); *see also* Richard Delgado, *Official Elitism or Institutional Self Interest? 10 Reasons Why UC-Davis Should Abandon the LSAT (and Why Other Good Law Schools Should Follow Suit)*, 34 U.C. DAVIS L. REV. 593, 595 (2001) (explaining that eugenics theorists, considering non-Whites a "contamination to the precious human gene pool," pioneered mass tests to exclude those they thought to be unfit or inferior).

[27] *See* Roithmayr, *Bias and Merit*, *supra* note 26, at 1489.

[28] *See, e.g.,* Frances A. McMorris, *Legal Beat: Test-Prep Fees Deter Black Law Applicants*, WALL ST. J., Mar. 23, 1998, at B1.

[29] *See* Expert Report of Claude M. Steele, *Gratz v. Bollinger*, No. 97-75321 (E.D. Mich.);

Here is what he did: He put a bunch of Stanford students—Black and White—in a room, all very academically motivated, gave them a difficult section of the GRE verbal test, and told them that it was a test of their verbal ability.[30] He found a massive gap in the White students' and the Black students' score—the White students scoring much higher. Then he took a different group of Stanford undergrad English majors, who were statistically the same as the first group, and said, by the way, as they were handing out the test, this isn't a test of your verbal ability, this is just a test of testing new skills.[31] Once the Black students taking the test had been told and internalized the idea that the test that would neither prove nor disprove the racist stereotype of intellectual inferiority they face every day on campus, and they did just as well as the White students.[32] Essentially, this altered scenario erased the performance gap. This has been reproduced for women in math, for older people in memory tests, for English as a Second Language (ESL) students, and for Chicanos in Texas on English tests.[33] It has been reproduced for all different kinds of groups who face different stereotypes.

The problem, as Claude Steele points out, is that is that in real life, and on the real LSAT, you cannot just walk in and say that it is not a test of your ability and that it does not matter at all because everybody knows it determines the rest of your life. It determines whether you are going to have a second-class life or a life as an equal citizen among peers. You cannot erase the weight of a stereotype threat in real life, but you can show the effect that it has in real life by conducting these laboratory tests, and that alone, for me, is enough of a basis for totally disregarding any kind of claim that the LSAT is a race-neutral measure of merit.

Let me make one other smaller point on that—not only are these things not a race-neutral measure of merit, it follows that they are not race-neutral measures of a so-called reverse discrimination.

In the *Grutter* case, the only proof that there is discrimination against White people is the difference in both LSAT scores and in grades.[34] What have you proved when the measures that you are

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Grutter v. Bollinger, No. 97-75928 (E.D. Mich.), *at* http://www.umich.edu/~urel/admissions /legal/expert/steele.html (last updated Dec. 17, 2002).

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] Grutter v. Bollinger, 288 F. 3d 732, 767 (6th Cir. 2002) *cert granted*, 71 U.S.L.W. 3154 (U.S. Dec. 2, 2002) (No. 02-241).

using to show that there is discrimination against the White applicants are themselves completely shot through with racism, racial bias, and privilege for White applicants? Nothing—you have not made your basic factual case.

As a last point, I just want to emphasize how much the students I work with have done to rebuild the Civil Rights Movement. I really want to encourage everybody who is a supporter of affirmative action to get as involved as possible. We are going to have an enormous march to the Supreme Court, and a march on Washington on the day of the hearing.[35] We are marching because we need to make it clear to the Justices, and to everyone, that this question is the question of whether *Brown* lives or dies in our society—whether we continue to move forward or whether we fall back. There is absolutely nothing that my colleagues and I can do, or that the University's lawyers can do, to achieve what the impact of the people in this room marching in Washington would show. We stand together for progress and for equality, and we know that the only way to reach equality is integration. That has always been true. There never has been separate, but equal—that has always been a lie and it is a lie today. We stand together for progress, for integration, and for equality.

[35] For more information about the Civil Rights March to the Supreme Court and similar events, see http://www.bamn.com (last visited Feb. 24, 2003).