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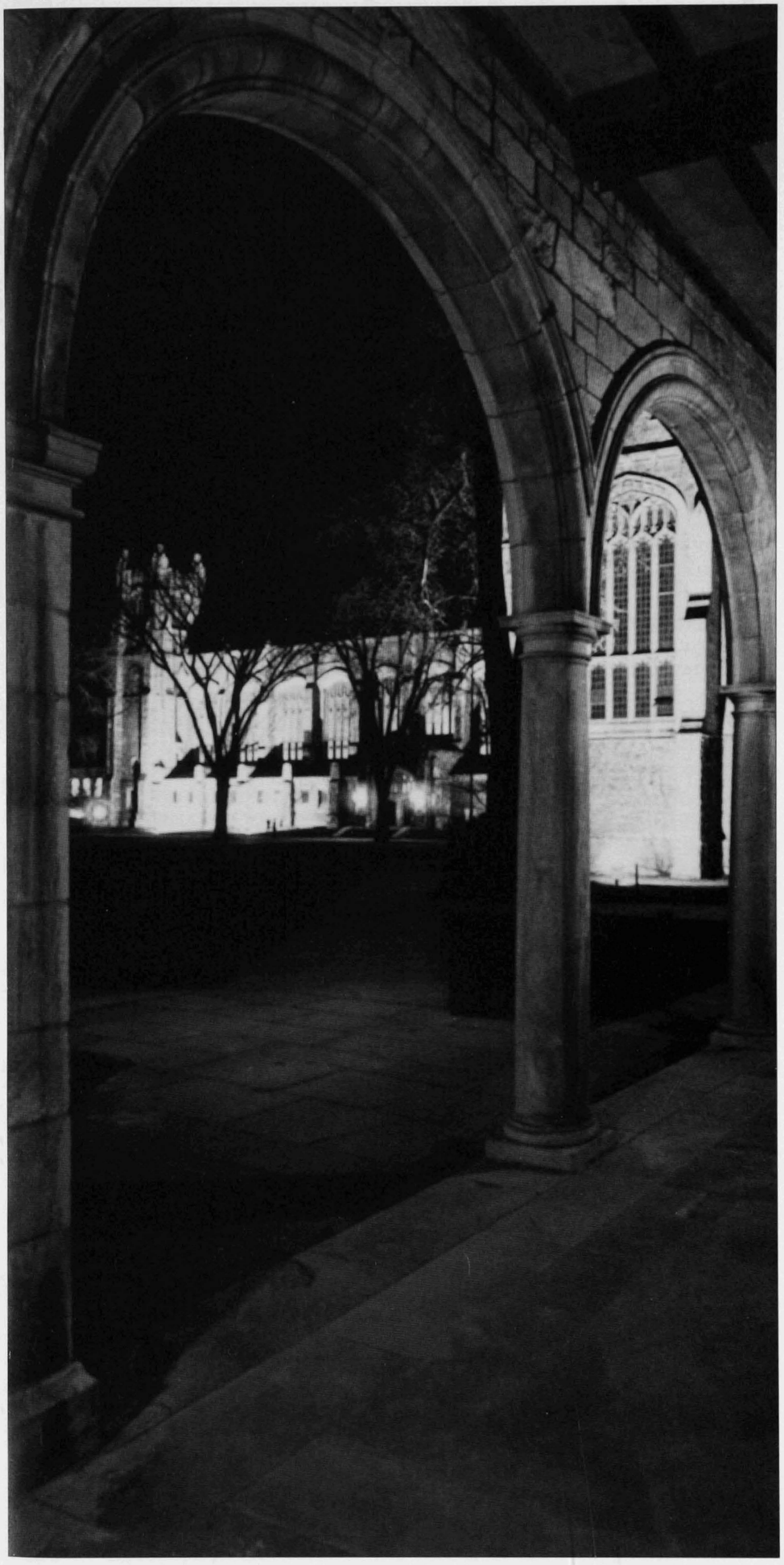
Statement from the Dean

Jeffrey S. Lehman
University of Michigan Law School



A Statement from the Dean

From Dean Jeffrey S. Lehman, '81:

As this issue of *Law Quadrangle Notes* goes to press, the United States District Court for the Eastern District of Michigan is considering cross-motions for summary judgment in *Grutter v. Bollinger et al.* Should the Court deny the motions, a bench trial will begin on August 30, 1999.

The lawsuit is a class action challenge to the constitutionality of our admissions process. It was brought by the Center for Individual Rights (CIR), a Washington, D.C., advocacy group. (CIR also brought a separate lawsuit challenging *undergraduate* admissions at the University of Michigan; that suit will go to trial later this fall.)

The question of affirmative action in university admissions is one of the most widely debated public issues of our time, an issue where people of good will are found on both sides. Because of this litigation, Michigan has, over the course of the past year, assumed a prominent role in the discussion. In this statement, I would like to share with you my thinking about our policies.

First, I believe that the Constitution permits us the discretion to use the admissions process that we have in place. I was a member of the 1992 committee that drafted the current policy. I am confident that our work satisfies the requirements of the Fourteenth Amendment as set forth in *Regents of the University of California v. Bakke*.

In *Bakke*, the California Supreme Court enjoined the University of California from considering an applicant's race in the admissions process. The United States Supreme Court reversed that judgment and lifted the injunction. Part V.C. of Justice Powell's opinion, joined by a clear majority of the Court, held that such an injunction cannot be sustained against "a properly devised admissions program involving the competitive consideration of race and ethnic origin."

Four other Justices joined Justice Powell to reject the notion that the Constitution requires a university to blind itself to the role that race plays in American society. At Michigan, we give race the careful, appropriate consideration that the Court has authorized. We consider each applicant as an individual. We look at indicators of likely aptitude for law school, such as grades, test scores, undergraduate institution, difficulty of undergraduate curriculum, essays, and letters of recommendation. We receive applications from many more students qualified for enrollment than we can admit. From among the qualified applicants, we try to select a class whose diversity has the potential to enrich everyone's education.

"It is important to recognize that, within our admissions policy, racial diversity is a secondary interest, subordinated to our primary interest in admitting only students who promise to be excellent lawyers, who will bring honor to the school and the profession."

PHOTO BY BOB KALMBACH

Second, I believe that we have applied the policy with sensitive, case-by-case judgments, exactly as intended, giving attention to race as an important but not overriding consideration. Over the years, the racial composition of our entering class has varied. This past year, we had an entering class of 341 students. The vast majority of first-year students (263) were Caucasian. Another 31 were Asian American. And whereas the plaintiffs' lawyers contend that thousands of applicants were injured by our admissions policies, in fact only 24 students in this past year's entering class were African American, 16 were Latino, and 7 were Native American.

While a class that is almost 80 percent Caucasian might not seem racially diverse, the class would have been even less heterogeneous if race had not been taken into account. Mandatory colorblindness in California and Texas resulted in an enormous, highly publicized plunge in minority enrollment at those states' most competitive universities. Recently the *New York Times* suggested that the first-year drop was counteracted by a "jump" in minority enrollment the following year. The truth is, even after that "jump," undergraduate enrollment of underrepresented minorities at U-C Berkeley remained 44 percent below what it had been two years earlier. And Berkeley's Law School, Boalt Hall, included only nine African Americans in this past year's entering class.

Third, I believe that the considerations that justified the 1992 policy remain pertinent today. Indeed, in the course of preparing for the litigation, we assembled an outstanding set of expert reports that explore those considerations with great

care. I would be happy to send interested graduates a copy of the reports, or they may be reviewed on the World Wide Web, at www.umich.edu/~newsinfo/Admission /Expert/toc.html.

I speak often about the lawsuit, and even our most sympathetic supporters sometimes wonder whether it is still necessary to consider race in order to have an integrated, racially diverse law school community. The unfortunate fact is that, in America at the end of the twentieth century, race still matters. Housing remains segregated, and opportunity, including the 22 years of educational opportunity that prepare students for law school, remains unequally distributed. While the gap in academic preparation has narrowed over time, it is nowhere near the point where the most selective law schools can be well integrated without trying to be so.

Why does having an integrated classroom matter? In America in 1999, race remains a uniquely salient social force. Americans of different races have different experiences that predictably lead them to bring different insights to the study of legal issues as diverse as property law, contract law, criminal justice, social welfare policy, civil rights law, voting rights law, and the First Amendment. At the same time, racial background does not preordain one's views. When a class includes a critical mass of minority students, they may express themselves without feeling personally responsible for defining and defending the views of "their" race or culture. A diverse student body allows all students to appreciate better the complex social reality that there are differences between races and differences among races.

Students at the University of Michigan Law School cultivate an essential intellectual quality: the ability to understand an issue from many perspectives at the same time. They do so through their interactions with the faculty and with one another, inside the classroom and outside it. Racial integration nourishes those interactions in a vitally important way.

Each year, the Law School receives many more applications from well-qualified students than we have room for in the entering class. In the end, we are required to turn away literally thousands of applications from students of all races who enroll at other law schools and become successful attorneys. I appreciate the genuine sense of disappointment that Ms.Grutter and the many others who are like her must feel in not being admitted to our law school.

The ultimate measure of our success, however, is not the large group of students to whom we must deny admission, but the small group whom we enroll. Every member of that group is extraordinarily talented. It is important to recognize that, within our admissions policy, racial diversity is a secondary interest, subordinated to our primary interest in admitting only students who promise to be excellent lawyers, who will bring honor to the school and the profession. We reject the vast majority of applicants, minority as well as majority. Each student who is admitted is highly talented and eagerly sought after by other law schools.

The judgment we exercise in Law School admissions is vindicated by the achievements and contributions of graduates of all races, after they leave Ann Arbor. Michigan graduates have achieved renown throughout society, as holders of federal and state elective office, judges and justices, senior business executives, and partners in major law firms. A study just completed by Professors David Chambers and Richard Lempert, and Research Scientist Terry Adams (see page 60) confirms that these accomplishments extend to graduates of all races. Data from that study corroborate that there is no statistically significant difference by race in bar passage rates, income, and satisfaction with the profession.

I share the desire to imagine a world in which an individual's race would have no impact on his or her opportunities, academic preparation, life experiences, or institutional relationships. I believe, however, that construing the Constitution to prohibit a law school such as Michigan from using its discretion to select its own racially diverse classes in 1999 would significantly undermine or reverse progress towards such a world.

In defending this lawsuit, the University of Michigan Law School will defend the ability of law schools to make appropriate use of racial diversity as one of many factors in admissions. In doing so, we shall defend our goal of providing our society with lawyers who are fully equipped to serve as reflective and completely educated leaders.