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Power, Merit, and the Imitations of the Black and White Binary in the Affirmative Action Debate: The Case of Asian Americans at Whitney High School

Deana K. Chuang†

"The real risk [of affirmative action] to Asian Americans is that they will be squeezed out to provide proportionate representation to whites, not due to the marginal impact of setting aside a few spaces for African Americans." – Professor Frank Wu

In an era of backlash against increasing racial diversity on school campuses, the number of Asian Americans admitted to highly selective schools is on the rise. As selective universities report decreasing numbers of Blacks and Latinos, the presence of Asian Americans remains strongly felt. As selective universities report decreasing numbers of Blacks and Latinos, the presence of Asian Americans remains strongly felt. Asian Americans comprise approximately 15 percent of the students at many Ivy League universities, topping at approximately 20 percent at the University of Pennsylvania and Harvard. At some of the University of California campuses, Asian Americans already constitute the majority. As the number of Asian Americans surpasses that of Whites, White students threaten to become underrepresented minorities, leaving communities to grapple with the meaning and purpose of affirmative action.

At Whitney and Lowell High Schools, two nationally-recognized magnet schools in California, Asian Americans have constituted the racial


† J.D., University of Pennsylvania; B.A., Pomona College. I thank Jolynn Asato, Tammi Chun, Anne Manalili, Mira Pak, Anita Revilla, Praveeni de Silva, and the editors of the Asian Law Journal for their substantive and editorial contributions to this article. Special thanks to the Whitney High School community and the residents of Cerritos for openly sharing their experiences with me so that I may tell our story. I am indebted to the University of Pennsylvania’s Fall 1996 Critical Perspectives on the Law class for inspiring this topic and especially to Professor Susan Sturm whose guidance, wisdom, and commitment to social justice gave me the motivation and courage to undertake this project. This paper is dedicated to my family, Mom, Dad, and Rita, for their love and encouragement.

5. In this paper, I capitalize the racial categories of “White” and “Black” because I use these terms as descriptive of a culture and background and not of skin color.
plurality for over a decade. Due to the disproportionately large numbers of Asian American students at these high schools, Whites do not occupy the traditional positions of power. Rather, the numerical standards for admission of White students are lower than those of Asian American students. Whitney High School, for example, classifies White students as underrepresented and accordingly, Whites benefit from the school’s diversity policy. Similarly, at Lowell High School, Chinese Americans must have a higher minimum test score than Whites and students of other Asian ethnicities in order to gain admittance. In a situation specific to these two prestigious schools, Whites are the beneficiaries of affirmative action.

This paper will examine the ways in which students, a school, and a community replay the affirmative action debate when White students are the beneficiaries of diversity programs. Since the implementation of affirmative action policies, the public has viewed Blacks and, to a lesser extent, Latinos as their primary beneficiaries. When opponents of affirmative action speak against attempts to increase diversity, they imagine a black or brown face. As a result, the affirmative action debate focuses on the historical and cultural context of Blacks and Latinos. The relative success of certain groups of Asian Americans at Whitney and Lowell and the resulting diversity policies that benefit Whites upset this notion. By examining the case of Asian Americans and their specific context in the affirmative action debate, the inadequacies of the current Black and White dichotomy emerge. Specifically, the inclusion of Asian Americans provides a rare opportunity to strip the debate of racial stereotyping and reveal the centrality of power in the argument for merit-based criteria.

The sentiments that emerge when policies benefit Whites demonstrate the centrality of racial privilege in affirmative action discussions. More specifically, the role reversal reveals that the often-articulated concerns about merit and stigma often serve as a pretext for maintaining a traditional power hierarchy. Understanding the stories of the two prestigious high schools — a rare occasion whereby Whites occupy the position of the beneficiary — exposes the real issues of the affirmative action debate in a way that abstract discussion or theories cannot. The situation at Whitney strips the customary actors of their traditional roles in the affirmative action debate — Whites as victims and Blacks as recipients of handouts. The role reversal whereby a racial group other than White is identified as the victim of affirmative action and Whites are identified as the beneficiaries requires the community to question the value of diversity when its own positions are at stake. The resulting conversation brings to the surface the importance of


contextual and historically rooted notions of race and ethnicity in interpreting the meaning of racial and ethnic diversity.

Part I will examine the history of school desegregation and affirmative action. Examining the historical context of these two movements situate Blacks as the leaders and consequently, the holders of the privileged victim status in anti-racist policies. The leadership role of African Americans in the desegregation process placed them at the forefront of the debate and positioned them as both the spokespeople and the primary beneficiaries of the policies, a pattern of hierarchy with a long history in the civil rights struggle. As a result, the Black and White binary emerged and the identities of other racial groups became subsumed under one of the two groups: Black or White. This section will situate the binary in its historical context and show how such a narrow approach can inadvertently reinforce a zero sum notion of power.

Part II will focus on Asian Americans’ experience with affirmative action in higher education. Specifically, it will describe deliberate attempts in the 1980s to limit growing Asian American enrollment at elite universities. This section will highlight the invisibility of Asian Americans in the discussion and the problems of their model minority status. Specifically, it will stress the importance of contextual and historically rooted notions of race and ethnicity in interpreting the legitimacy of affirmative action.

Part III will describe the well-publicized diversity policy at Lowell High School, where students of certain Asian ethnicities must score higher on the admissions test than White students. At Lowell, Chinese American students sued the school for discrimination as a result of the school’s race-conscious admissions policy, thereby positioning themselves as the victims in the Black and White binary. When the case settled in July 1999, it effectively ended the school’s 16-year-old diversity plan, most severely affecting Black and Latino students due to the elimination of racial caps on Chinese American enrollment. By increasing their numbers at the school at the expense of Blacks and Latinos, Chinese Americans bypassed the opportunity to challenge the Black and White binary. The controversy highlighted the centrality of issues of merit, fairness, and racial privilege in the affirmative action discussion and set the stage for the similar, albeit less contentious, environment at Whitney High School.

Finally, Part IV will specifically focus on the diversity policy and its effects at Whitney High School. To research this issue, I spoke with principals, teachers, students, and community members in order to gauge their perceptions of the policy and their interpretation of the meaning of affirmative action. By adopting the Black and White binary, many in the community responded similarly to their counterparts at Lowell. The community’s attempts to situate Asian Americans within the confines of

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8. It remains difficult for any category of people of color to perceive themselves as privileged in any way. In putting forth the notion that African Americans have a privileged victim status, I do not question their legitimacy in the anti-racist movement, but merely attempt to highlight their elevated position in our common struggle.
the Black and White binary, however, brought to light the limitations of such duality and its inapplicability to Asian Americans. As a graduate of Whitney, I have long believed that my story—the story of the school—best illuminates the role of power and privilege in discussing the value of diversity. During my six years at the school, the role reversal forced me to experience affirmative action from the position of power and, more importantly, to see the White community and its reactions from the position of the beneficiary. It is my hope that the understanding I gained as a result of this role reversal would be shared with others to move the current conversation on affirmative action away from the false notion of merit.


A. Desegregation and the Introduction of the Black and White Binary

Issues of affirmative action are closely linked to the historical importance of desegregation and the recognition of the value of diversity in schools. Despite Chinese American9 and Latino10 desegregation challenges in the early twentieth century, non-Black people of color have been virtually invisible in popular understandings of the desegregation movement. Rather, African Americans have held the unspoken title of the privileged victim due, in part, to the ultimately successful Black challenges against segregation in the 1950s and its byproduct of powerful vignettes of Black children in southern schools. The popular media validated the notion of desegregation as an African American struggle, thereby solidifying their position. Having served as the model for desegregation, African American experiences similarly shaped the mainstream understanding of affirmative action policies decades later.

School desegregation cases centered round the importance of integrating African American students into White schools. In the landmark 1954 case, Brown v. Board of Education,11 the Supreme Court held that public education that classifies students by race constitutes segregation. The Court rejected the “separate but equal” doctrine of Brown’s predecessor, Plessy v. Ferguson,12 and reasoned that segregation by race gives students of color “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.”13 The Court implemented Brown in Brown II,14 giving the

12. 163 U.S. 537 (1896).
13. 347 U.S. at 494.
federal district courts primary responsibility for supervising desegregation, using general "equitable principles" and with "all deliberate speed." By suggesting that entirely non-White schools stigmatized students of color, Brown established the importance of having a diverse racial composition on school campuses, thereby paving the way for affirmative action programs.

In Brown, the court specifically dealt with challenges to state statutes segregating "Negro children" and White children in Kansas, South Carolina, Virginia, and Delaware. Black children challenged the state statutes in all four cases. Although separate facilities were classified as "Negro Schools", non-Black students of color also attended these schools. In Gong Lum v. Rice, Martha Lum, a Chinese American child, unsuccessfully argued that her racial classification entitled her to attend a "white or Caucasian" school rather than a "colored" school. In affirming the decision of Mississippi's highest court, the Supreme Court reasoned, "Most of the cases cited arose, it is true, over the establishment of separate schools as between white pupils and black pupils, but we cannot think that the question is any different or that any different result can be reached, assuming the cases above cited to be rightfully decided, where the issue is as between white pupils and pupils of the yellow races." Gong Lum and other such cases of non-Black challenges of segregation policies, however, have been largely overshadowed by the landmark decision in Brown.

After initially taking an aggressive approach to desegregation, the Court has since adopted a tone of restraint and withdrawal. In Swann v. Charlotte-Mecklenburg, the Court provided guidance to the district courts and school boards on methods of implementing desegregation plans. The Court held that de jure segregation must exist in order for federal courts to order a school to adjust its racial imbalances and that later unintentional imbalances caused by changing residential patterns could not trigger federal court involvement. Thus, while the Court prohibited deliberate segregation by state action, it did not mandate racial diversity on school campuses.

15. Id. at 300-301.
16. 347 U.S. at 486.
17. Id.
19. Id. at 87.
22. See also Pasadena City Board of Education v. Spangler, 427 U.S. 424 (1976) (holding that year-by-year adjustments in the racial composition of schools would not be permitted to be made by district courts if the changes had nothing to do with official segregation but only population movements); Board of Education v. Dowell, 498 U.S. 237 (1991) (holding that federal supervision of local school systems could be dissolved when authorities complied with the desegregation decree for a reasonable amount of time); Freeman v. Pitts, 503 U.S. 467 (1992) (holding that the district court could relinquish control over schools in increments before the school had fully complied with desegregation decrees).
B. Furthering the Goals of Desegregation Through Affirmative Action and the Reinforcement of the Black and White Binary

As the government began integrating schools, similar measures were visible in the workplace. The victory in Brown successfully transformed segregation into a symbol of racism and social ill. As a result, Executive Order 11246, the document that established affirmative action for racial minorities, was issued on September 24, 1965. Gender-based affirmative action would be added a few years later. The Labor Department oversaw the new affirmative action policy, thereby assuring its continuation despite political turnover in the White House. Swept in with the momentous changes brought on by Civil Rights Act of 1964, Executive Order 11246 was hardly noticed and many years passed before the controversy surrounding affirmative action ensued. Thus, affirmative action has helped broaden the face of the American workplace as five million people of color and six million women now hold higher occupational classifications than if power in the workplace were distributed in the same pattern as it had been in the 1960s.

Affirmative action policies sparked controversies as they began to affect admission into higher education. To date, Regents of the University of California v. Bakke represents the only affirmative action case decided by the Supreme Court involving racial categories for admission in higher education. The Plaintiff, a White male, challenged U.C. Davis Medical School’s special admissions program that reserved sixteen seats in each class for “disadvantaged” minorities. In a divided opinion, the Court held that race may be a factor in admissions program, although the U.C. Davis program which specifically reserved seats for minorities violated the Equal Protection Clause.

The confusion about the placement of Asian Americans in Bakke echoed the Gong Lum question of half a century earlier. The Court struggled with the position of Asian Americans and classified them with different groups depending on the context. In Bakke, U.C. Davis’ special admissions program included Asian Americans as part of the “economically and/or educationally disadvantaged” minority groups warranting special consideration. The rest of the decision, however, ignored their presence or relegated their mention to two footnotes. First, the Court rejected the speculative leap that the school purported to make: but for the discrimination encountered by “Negro applicants [and] nothing is said about Asians,” Blacks would have received better scores than the White plaintiff. In the second mention of Asian Americans, Justice Powell wrote, “The inclusion of [Asian Americans] is especially curious in light of

23. The concept originated from Vice President Lyndon B. Johnson, who endeavored to create an executive order for President John F. Kennedy’s signature that would ban discrimination in the hiring practices of federal contractors
27. Id. at 2736.
the substantial numbers of Asians admitted through the regular admissions process.” Finally, Justice Marshall’s dissent focused exclusively on the experience of African Americans, at one point writing, “[t]he experience of Negroes in America has been different in kind, not just in degree, from that of other ethnic groups.” Justice Marshall placed Blacks in the center of the controversy, solidifying their privileged victim status in the affirmative action debate and reinforcing the Black and White binary. Overall, Asian American inclusion in the landmark decision was indeed minimal.

Twenty years later in *Hopwood v. Texas,* the court ignored Asian Americans again. It described the special admissions program of the University of Texas Law School as benefiting Blacks and Mexican Americans to the detriment of Whites and “non-preferred minorities.” The invisibility of Asian Americans was most blatantly demonstrated in the court’s classification of the parties: “For the sake of simplicity and readability, however, we sometimes will refer to two broad categories: ‘whites’ (meaning Texas residents who were whites and non-preferred minorities) and ‘minorities’ (meaning Mexican Americans and Black Americans).” The court appears to either ignore Asian Americans or add them as sidekicks without considering their unique experiences. The fact that Asian Americans were classified as “whites” further suggests that the court cannot operate outside of a Black and White binary and if they are even mentioned at all, that all racial groups must fall in either of these two groups.

Both the histories of school desegregation and affirmative action primarily involve African Americans. African Americans occupied the center of the school desegregation cases and their experiences have defined the discussion accordingly. While Latino voices have since been added to the affirmative action debate, the experiences and history of African Americans in this country have often served as the focal point for any discussions or arguments on the topic. African American plaintiffs successfully paved the way to integration in *Brown,* resulting in an affirmative action debate similarly focused on African Americans and other groups that can be subsumed under their identity. Consequently, the debate moved away from abstract ideals of fairness to ideas of fairness with the African American model in mind, a situation that has forced African Americans to assume the brunt of White resentment. Affirmative action has a face—a black face—and resentment towards affirmative action policies became intertwined with resentment against African Americans.

28. 78 F.3d 932 (5th Cir. 1996).
II. FUNGIBLE PAWNS IN THE AFFIRMATIVE ACTION DEBATE: ASIAN AMERICANS AS THE MODEL MINORITY, PROXIES FOR WHITE RESENTMENT, AND A THREAT OF ENCROACHMENT

A. The Model Minority: Difficulties With Positioning Asian Americans in the Black and White Binary

The affirmative action debate frames the issue primarily in a Black and White binary. Occasionally, token attention is given to Latino concerns, but the identity of Latinos tend to be subsumed by the African American experience. Discussions about affirmative action rarely include Asian Americans, as their presence often draws attention to the inadequacy of the Black and White binary in addressing the ways in which diversity issues affect non-Black people of color. Many of the same arguments, particularly those involving a lack of representation in certain areas of occupational or scholastic achievement, do not work when Asian Americans enter the conversation. This exclusion, invisibility, or neglect is compounded by confusion when Asian Americans themselves align with both Blacks and Whites when choosing sides of the binary. In one popular understanding of the issue, those who earn their position are White and those who receive preferential treatment are Black or Latino. Asian Americans comprise an amorphous category that many people, including Asian Americans themselves, do not know how to position in the dichotomy. If Asian Americans choose to use this binary, as many do, they may align themselves or be aligned with African Americans because of their status as people of color who experience discrimination due to their skin color and encounter barriers to achieving their potential in the form of the “glass ceiling.” Asian Americans, however, may also be aligned with or choose to align themselves with Whites as “victims” of affirmative action, particularly in higher education. The confusion about the placement of Asian Americans in this binary becomes apparent in caselaw, as described earlier in the Bakke and Hopwood cases.

Different group histories account for the preponderance of Asian Americans in higher education and the stereotype of the “model minority” that follows. African Americans continue to be hindered by the stigma and legacy of slavery and the legally sanctioned segregation that ensued for nearly a century after the Civil War. Post 1965 Latino and Mexican immigration comprised of primarily unskilled, migrant workers who came from conditions of poverty in their homeland. While immigration patterns of Latinos mirror those of Asian immigrants of the nineteenth-century, the bulk of Asian immigration occurred after the 1960s. During the second wave of Asian immigration in the 1960s, many of the

31. See id. at 886.
32. See RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE 423 (1989).
newcomers were from professional classes or arrived with student visas. These newcomers arrived in the United States with dreams of a better life. Their offspring – children of the middle class and educational privilege – often represent the model minority success portrayed in the media. A number of perceptions have arisen to explain this scholastic success. These perceptions include less stigma about Asian Americans’ intellectual inferiority in contrast to certain other racial groups, perceptions of hidden wealth from their homelands, supreme importance placed on education, close-knit families and communities that police this value, emphasis on harmony and non-confrontation for which the dominant culture looks in the subordinate cultures, and strong desires to assimilate.

Notions of an essentialistic proclivity in all Asian Americans overlook the fact that the Asian American community is not monolithic and that many deserving Asian Americans should and do benefit from affirmative action in higher education. In certain fields of study, such as psychology and education, Asian American enrollment remains disproportionately low. In these fields, Asian Americans benefit from affirmative action in recruitment and diversity policies in hiring. Furthermore, Southeast Asian refugees from Vietnam, Laos, Cambodia, and Hmong communities experience economic, educational, and cultural hardships, debunking the model minority myth that all Asian Americans are successful and wealthy. In fact, 35 and approximately 70 percent of Vietnamese and Laotian Americans, respectively, live below the poverty level. The two groups, moreover, fall below the national average in both employment rate and level of education. For other Asian American groups, such as Chinese, Pakistani, Korean, Thai, and Indonesian, a greater percentage lives below the poverty level than the general U.S. population. These groups represent ideal beneficiaries of diversity policies when these policies rely on factors such as historical underrepresentation and economic hardship. These groups, however, cannot benefit from current affirmative action programs that are based on broad categories of race or the misperceptions that Asian Americans are all successful model minorities.

Asian Americans often enter affirmative action debates as proxies for White resentment towards underrepresented groups who benefit from affirmative action policies. Critics of affirmative action cite the successes of Asian Americans as proof that other people of color do not succeed because of their inability. When Asian American enrollment reached a plateau at selective universities despite the increasing number of qualified

33. Id.
34. These factors are perceptions as no essentialisitic Asian American identity exists.
36. See id. at 28.
37. See id.
38. See id.
39. See id.
applicants, the conservative right embraced the group and used it as a symbol of the harms of affirmative action.\textsuperscript{41} Then-President George Bush described Asian Americans as victims of the resulting discrimination spurned by preferential treatment: "Now, as always, we must commit ourselves to promoting equal rights for all Americans, not preferential treatment for some. . . . It means fighting quotas that harm talented Americans like the thousands of Asian students in our universities. You know the awful toll: Quotas penalize achievers, and they slam shut opportunity's door."\textsuperscript{42} Former House Speaker Newt Gingrich echoed this concern of Asian Americans as the victims of affirmative action, "Asian Americans are facing a very real danger of being discriminated against."\textsuperscript{43} Former California Governor Pete Wilson, an advocate of Proposition 209 that ended affirmative action in California, often employs model minority examples of Asian American success when he speaks against affirmative action.\textsuperscript{44} By aligning themselves with a group of people of color, the New Right can avoid charges of racism and deflect attention away from their own privileges and fears.

\textbf{B. Fearing the Model Minority: Responses to Asian American Success in a "Meritocracy"}

The public has historically held contrasting attitudes toward the model minority characterization of Asian Americans. The dominant culture both celebrated and feared the Asian American success. In the nineteenth century, plantation owners praised Chinese laborers for their diligence and obedience. In a strategy similar to that of today's affirmative action debate, Chinese laborers' industriousness was positively compared to that of Black slaves. As one plantation owner of Chinese and Black laborers put it: "First, they work much more steady, without the loss of half-Saturday; and second, they do not run over their work: What they do is done well."\textsuperscript{45} As the economy slumped, however, the once-celebrated Chinese became a threat to their former White bosses: "[T]he hapless Mongolian . . . that presumptuous individual, having faithfully served out the period for which he contracted, now wishes to turn his skill to account by engaging in the manufacturing of goods for his own benefit."\textsuperscript{46} Similarly, before World War II, Whites praised Japanese Americans for their agricultural feats along the west coast, as well as for their loyalty. During the war, however, the United States government questioned this loyalty and detained Japanese Americans in internment camps.\textsuperscript{47} Historically, the dominant culture has felt increasingly threatened as Asian Americans continued to succeed.

\begin{itemize}
  \item \textsuperscript{41} See Wu, supra note 1, at 270.
  \item \textsuperscript{42} Howard S. Gantman, Bush Presses Attack on Racial Quotas and Defends China Trade, SAN DIEGO UNION & TRIB., June 17, 1991, at A3.
  \item \textsuperscript{43} Wu, supra note 1, at 238-39.
  \item \textsuperscript{44} Clarence Page, Asians Weigh In on Affirmative Action, CHI. TRIB., May 21, 1995, at 3.
  \item \textsuperscript{46} See Wu, supra note 1, at 233 (quoting New York Times editorial).
  \item \textsuperscript{47} See id.
\end{itemize}
The threatening success of Asian Americans in the educational sphere led fearful admissions offices to limit Asian American enrollment through deliberate policies of exclusion. In the 1980s, highly selective schools such as Harvard, Yale, Stanford, Princeton, Brown, U.C. Berkeley, and UCLA, faced charges of bias against Asian American applicants. At U.C. Berkeley, White applicants to the schools were more likely to be admitted than Asian American applicants with higher test scores and better grades. Although the numbers of qualified applicants increased at selective universities, Asian American enrollment remained constant or even declined at some institutions. This pattern prompted many in the Asian American community to suggest that the schools instituted a cap on their enrollment. At Brown, the admissions office denied entrance to Asian American applicants despite their qualifications after the group’s enrollment reached a certain quota. U.C. Berkeley increased the minimum grade point average of automatic admits but not the minimum test score; a decision that disproportionately affected Asian Americans who, as a group, tend to be automatic admits based on grades. Additionally, the university instituted a minimum score of 400 on the verbal portion of the Scholastic Aptitude Test, a practice that resulted in a 20.9 percent drop in Asian American enrollment over a period of one year. As revealed in a confidential UCLA memo, “The campus will endeavor to curb the decline of Caucasian students ... A rising concern will come from Asian students and Asians in general as the number and proportion of Asian students entering at the freshmen level decline – however small the decline may be.” At Harvard and Brown, admission offices evaluated “non-academic” qualifications in a manner that negatively impacted Asian Americans. Admissions officers at Harvard unfairly concluded that Asian Americans were not well-rounded and tended to characterize them as “science/math oriented, quiet, shy, reserved, self-contained, and soft-spoken.” Investigations by the Office of Civil Rights and the U.S. Department of Education attributed Harvard’s limits on Asian American enrollment to be the result of legally permissible preferences given to athletes and children of alumni, groups that overwhelmingly consisted of Whites. The concrete steps taken to limit the enrollment of Asian Americans suggest that the loss of a “meritocracy” did not fuel the

50. See Tsuang, supra note 48, at 661; Wu, supra note 1, at 268.
51. See Chew, supra note 35, at 63.
52. See id. at 63.
53. See Tsuang, supra note 48, at 673-74.
56. See Chang, supra note 54, at 1126.
resentment against affirmative action in higher education as much as the relinquishment of power.

The policies limiting Asian American enrollment recalls the experience of Jews in the United States in the 1920s, exposing historical attempts to keep the number of non-White students below that of Whites. After public protest about Jewish quotas, Harvard began giving preference to children of alumni as a de facto way to limit Jewish presence on campus. The Ivy Leagues and other selective institutions soon followed, as they did not want to be a “dumping ground for Jews.” In 1922, Harvard President Abbot Lawrence Lowell argued that the ceiling on enrollment would benefit Jews by reducing resentment on campus.

C. Broad Racial Classifications and Their Inadequacy In the Asian American Community

Current attempts to reformulate race-based preferences fall short of considering the position of Asian Americans, further denying their importance in the affirmative action debate. An examination of the raw number of admitted Asian American students alone does not account for the fact that Asian Americans apply to highly selective schools in large numbers, far exceeding their proportion in the population. Some proponents of affirmative action, for example, argue that preferential treatment programs should reflect the population of the surrounding community or society at large. Asian Americans, however, account for only 4 percent of the population in the United States and 13 percent in California, but account for over 40 percent of the population at UCLA. This numerical formulation, apparently meant to increase the numbers of African American and Latino students, would actually hurt Asian Americans. For example, Asian Americans were considered over represented when they comprised 20 percent of the entering class at Berkeley in 1987. This number does seem proportionately high until one looks at the applicant pool – 30.8 percent of which were Asian American. Current formulations that look only at numbers in relation to the population do so for the benefit of African Americans and Latinos. This method further alienates Asian Americans.

A better measure of student diversity would consider the applicant pool and the fact that certain groups may refrain from applying to the institution due to a number of factors. These include a low percentage of people of color, a reputation for a hostile or racist environment, and a lack of faculty diversity. While admission processes can limit student admits by gender and class, the disparate impact often lacks discriminatory intent and

58. See Chang, supra note 54, at 1125.
59. Id.
60. See Kang, supra note 57, at 40 n.188.
62. See id.
results from societal discrimination and preferences that admissions cannot control. For example, women may not feel as comfortable or entitled to applying to schools such as the Massachusetts Institute of Technology because of negative feedback they might have received while excelling in math or science. Similarly, working class students may not see Harvard or Yale as being within their range of possibilities because their high schools tracked them into vocational occupations, such as auto mechanics, carpentry or cosmetology. Asian Americans, on the other hand, applied in large numbers to the prestigious schools—apparently feeling confident about their chances for admission—but were limited by the schools’ admissions policies rather than self-selecting factors.

Many of those opposed to race-based affirmative action but sympathetic to increasing diversity argue for a student’s socioeconomic status as the measure of disadvantage. This social class-based formulation also has its limits and would still produce a disproportionate number of Asian American admits, to the disadvantage of other people of color. Studies show that Asian Americans receive the highest numbers in terms of standardized tests and grade point average when controlled for socioeconomic status. More significantly, this measure ignores the racism and stereotyping that people of color encounter based on their skin color and places all disadvantage under the single rubric of social class. Race, while inadequate by itself, can serve as an approximate proxy for disadvantage, as seen by the practice of admission offices in using race as a criterion to limit the number of admits from certain racial groups. For example, admissions offices, influenced by racial and cultural bias, blatantly capped the numbers of Asian Americans and their Jewish predecessors. The fact that selective universities allowed their fears of Asian American over representation take priority over issues of merit suggest that race, in conjunction with class, ethnicity, and other background information, serve as an adequate proxy for disadvantage.

Current courts apply strict scrutiny to any racial classification, whether it affects Whites or other races. The Court draws no distinction between Whites and “discrete and insular minorit[ies]” when drawing analogies between cases. In Bakke, Powell, the deciding justice in this controversial decision, held that any racial or ethnic classification must be subject to strict scrutiny. He reasoned that White males must be given the benefit of heightened scrutiny, as other non-Black groups have in the past, citing the experiences of the Chinese in Yick Wo v. Hopkins, the Japanese in Korematsu v. U.S., and the Mexican Americans in Hernandez v. Texas. The decision in Hopwood agreed that strict scrutiny must be the standard in any case involving racial preferences. Quoting Powell’s opinion, the court argued that “preferring members of any one group for no

63. See Moran, supra note 29.
65. 118 U.S. 356 (1886).
reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids.68 The Court then cited other cases to support this reasoning, such as Loving v. Virginia69 and Brown v. Board of Education,70 where it overturned discriminatory statutes enforced by Whites against Blacks.

Courts seem to merely consider the race of the parties as portrayed by the color of their skin without factoring in the political and historical context of a group. Rather than strict colorblind notions of justice that can lead to the application of strict scrutiny to all racial classifications, an affirmative action standard that addresses the experiences of all people of color must take into consideration their respective historical contexts. By assuming that all racial groups are similarly situated, colorblind notions of justice in effect reproduces White societal advantage by forcing people of color to compete with Whites as equals when enormous power differentials continue to exist.71 Professor Neil Gotanda argues for a more nuanced approach that takes into consideration the history of racial subordination. Such an approach would prevent programs designed to benefit people of color from being struck down by the very standard that, ironically, was designed to protect them. Gotanda states: "If race is simply a description, without subordinating implications, it is a criterion insufficiently important to require strict scrutiny."72

The experiences of Asian Americans in higher education dramatically expose the insufficiencies of many of the traditional arguments against affirmative action and the centrality of historically rooted power in issues of race and ethnicity. In discussions of the affirmative action issue, Asian Americans range from being invisible, to being praised for their success as proxies for White resentment, to being a dangerous threat of encroachment to the White power structure. A contextualized understanding of Asian American experiences and the historical reactions to their successes reveals the pretextual goal of merit in abolishing affirmative action programs. Similarly, the diversity of the Asian American community and the relative success of some Asian Americans in what some might consider a "meritocracy" further expose the inadequacy of the Black and White binary in addressing Asian American experiences. This history creates the framework for understanding the reactions of a predominantly Asian American community when White students become beneficiaries of a diversity program.

68. Hopwood v. Texas, 78 F.3d 932, 940 (5th Cir. 1996).
69. 388 U.S. 1 (1967) (holding that a Virginia statute prohibiting marriages between Whites and non-Whites violated equal protection and was enacted to preserve the racial purity of Whites).
70. 347 U.S. 483 (1954) (holding that separate educational facilities for Blacks and Whites were unconstitutional).
72. Id. at 52.
III. CHINESE AMERICANS AT LOWELL HIGH SCHOOL: THE LIMITS OF THE AFFIRMATIVE ACTION JARGON IN ADDRESSING RACIAL PRIVILEGE

The experiences of Chinese Americans at Lowell High School best illustrates the uncertain status of Asian Americans in the affirmative action discussion by questioning the role of racial privilege in enacting diversity programs. Chinese Americans at the school cannot entirely adopt either the Black or White perspective in the binary that typically frames the debate. They experience discrimination based on their status as people of color outside the context of Lowell, but they also feel the brunt of affirmative action policies at Lowell that benefit other people of color and, more problematically, Whites—a group that subordinates them in the larger social context. The need to outscore White students on the entrance exam, moreover, may seem particularly problematic to Chinese Americans in light of the pattern of exclusion of Asian Americans by Whites from elite universities as discussed in the previous section.

Lowell High School in San Francisco, California, is one of the most prestigious public high schools in the country. Competition is fierce for many who wish to attend the magnet school that count amongst its graduates a governor, two Nobel laureates, and a Supreme Court Justice.73 In 1983, the San Francisco School District signed a desegregation consent decree in which alternative schools, such as Lowell, agreed to enroll students from at least four ethnic or racial groups and to limit the percentage of enrollment of any group to 40 percent of the school’s population.74 This requirement led to different standards of admission based on race.

In compliance with the consent decree, Lowell’s admission criteria took into consideration grades and test scores, giving each applicant a composite score on a 69-point scale. Due to the school district’s “under 40 percent” enrollment constriction for any given ethnic group, Chinese Americans must score higher than Whites and other students of color in order to be admitted. Chinese Americans must score a minimum of 62, while Whites and other Asian Americans only need a 58 and Black and Latinos a score of 53.75 Critics have labeled this higher standard for Chinese Americans as “affirmative action for whites.”76

From the perspective of some Chinese Americans, Lowell’s pre-suit admissions criteria benefited other ethnic groups and unfairly punished the success of Chinese Americans. Lower admissions standards for Whites seemed particularly egregious and contrary to public perception of the goals of affirmative action— to increase the numbers of minorities whose credentials or preparation may be impeded by various forms of discrimination. Whites presumably have not experienced race-based discrimination, whereas the Chinese American students in San Francisco

73. See Shin, supra note 20, at 183.
75. See Shin, supra note 20, at 184.
76. See Dong, supra note 6.
presumably have had such experiences. As a response to this perceived unfairness, many Chinese Americans embraced the jargon of merit and objective standards in testing and admissions, a shortsighted strategy of making sense of their situation.77

Accordingly, the parents of Chinese American applicants filed a class action lawsuit in 1994, arguing that the ethnic caps of the consent decree were unconstitutional. In Ho v. San Francisco Unified School District, the Chinese American plaintiffs sought to dissolve the consent decree because, they argued, the school district was no longer segregated and therefore race-based classifications violated their Fourteenth Amendment right to equal protection.78

In an effort to quell the controversy, the San Francisco Unified School District unanimously approved and implemented a hybrid plan for the entering class in the fall of 1996. Under this plan, Lowell admitted 80 percent of its class on a single, numerical criterion-based standard. The school distributed the remaining admits using a “value-added” index, taking into consideration economic class issues, course load, extracurricular activities, and other special challenges. African American, Latino, and Native Americans received special consideration due to their underrepresentation at the school.79

On July 2, 1999, Judge William Orrick signed and approved a settlement ending the five-year court battle. The new consent decree abolished the ethnic caps set in the 1983 decree officially due to expire in 2002.80 The following table documents the changing ethnic percentages at Lowell as a result of the recent court battle.

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77. Some Chinese American groups, such as the Chinese for Affirmative Action, Chinese Progressive Association, and Chinatown Youth Center, supported the NAACP against the Chinese American plaintiffs. See Joyce Nishioka, Judge Gives Final OK to Ending Racial Caps: But Huge Questions About Funding and Diversity Remain Unanswered, ASIANWEEK, Apr. 28, 1999, at 12.
78. See Shim, supra note 20, at 183.
Table 1. Ethnic Breakdown By Percentage At Lowell H.S., 1999-2000

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Latino</td>
<td>4.5</td>
<td>10.4</td>
<td>9.8</td>
<td>12.2</td>
</tr>
<tr>
<td>White</td>
<td>19.8</td>
<td>15.9</td>
<td>18.1</td>
<td>17.5</td>
</tr>
<tr>
<td>Black</td>
<td>3.8</td>
<td>3.6</td>
<td>2.3</td>
<td>6.3</td>
</tr>
<tr>
<td>Chinese</td>
<td>51.9</td>
<td>47.6</td>
<td>49.1</td>
<td>40.0</td>
</tr>
<tr>
<td>Japanese</td>
<td>1.3</td>
<td>2.3</td>
<td>1.6</td>
<td>1.0</td>
</tr>
<tr>
<td>Korean</td>
<td>2.5</td>
<td>2.2</td>
<td>2.7</td>
<td>2.5</td>
</tr>
<tr>
<td>Asian Indian</td>
<td>0.0</td>
<td>0.5</td>
<td>0.7</td>
<td>0.3</td>
</tr>
<tr>
<td>Filipino</td>
<td>3.5</td>
<td>4.5</td>
<td>4.1</td>
<td>6.3</td>
</tr>
<tr>
<td>Other/Non-White</td>
<td>12.8</td>
<td>12.9</td>
<td>11.7</td>
<td>14.0</td>
</tr>
</tbody>
</table>

The class that entered in 1996 represents the last class admitted under the 1983 consent decree, while the classes that entered in 1997 and 1998 represent the student population admitted under the hybrid plan. The 1999 entering class represents the student population admitted under the 1999 settlement abolishing the racial caps. When comparing the effects of the 1983 decree with the 1999 settlement, the number of Black and Latino students dropped 2.5 and 7.7 percent, respectively. While the numbers may appear low, the new consent decree effectively cut the Black student population by nearly one-half and the Latino population by two-thirds. At the same time, the number of White and Chinese American students increased by 2.3 and 11.9 percent, respectively.

While the settlement dramatically increased the number of Chinese Americans at Lowell, it did so at the expense of Black and Latino students. An African American student at Lowell, Jamaal Marshal, poignantly stated, "Chinese American families feel their sons and daughters are mistreated? Come walk in our shoes. Try being the only African American in your classes. Try being the only African American when you walk down the halls." Chinese Americans outside of San Francisco and other major cities presumably understand this alienation described by Marshall. In a rare position of power, the Chinese American families of Lowell applicants chose to adopt the position of Whites in the Black and White binary.

The controversy highlighted the underinclusive construction of race in our understanding of affirmative action. The difficulties in positioning Asian Americans in affirmative action policies stemmed from the fact that the policies were written with the Black and White binary in mind. To many Asian Americans, the caps at Lowell may have seemed reminiscent of the caps on the enrollment of Asian Americans at elite universities in the

82. See Nishioka, supra note 77, at 34.
1980s. The outrage expressed by the Chinese American community may have been the culmination of outrage stemming from years of perceived and actual attempts by Whites to limit Asian American achievement. Unlike their reticent Asian American predecessors in the 1980s, this new group skillfully used the legal system to make their challenges. While their sense of entitlement to power is laudatory, the Chinese Americans adopted the language of the binary in order to present their legal challenge to the caps at Lowell. In doing so they bypassed the opportunity to transform the terms of the debate and instead recast it in the traditional binary of Black and White.

IV. WHITNEY HIGH SCHOOL

A. The Use of Storytelling in Legal Scholarship

In this study, I employ narratives to tell the stories of the community in framing the affirmative action discussion. The use of narrative in legal scholarship remains an unsettled area that traditional legal scholars tend to view suspiciously. As a methodology, it developed in response to the exclusion of voices of the ‘Other’ from mainstream scholarship and in recognition of the inability of rule-based and evidentiary modes of proof to adequately address the experiences of marginalized groups.83

Legal scholars often rely on caselaw, statistics, and political theory to support their arguments in the affirmative action debate. However, the stories of the people involved often serve as the best method of understanding the meaning of such elusive terms as diversity, exclusion, or tokenism. The story of Whitney High School’s diversity plan vividly illustrates these terms in the words of its community members — a process exposing the limitations of the Black and White binary and giving voice to the silenced Asian American community. In retelling their stories, I do not purport to claim the neutrality and objectivity that academia demands of its scholars. At the same time, I hope to displace the notion of the “I” that I write as being merely personal. Rather, this I is framed by history, power, politics, and other social factors with implications on a larger scale.

B. The Setting: Cerritos, California

In the past 40 years, the city of Cerritos has dramatically transformed into a sprawling community. In the 1960s, the land called Dairy Valley served as home to one of the largest milk-producing industries in the world housing more than 100,000 cows and a population of only 3,500. The city was incorporated in 1956 and, by 1967, the dairy producers agreed to sell the land to developers. Dairy Valley then assumed the new name of Cerritos which has since become one of the fastest growing cities in California.84

83. See CHANG, supra note 9, at 61.
Asian Americans are the fastest growing racial group in California. They comprise slightly over a tenth of the state’s population and it is estimated that their numbers will nearly triple by the year 2020. While working class Asian American families tend to settle in such Los Angeles neighborhoods as Chinatown or Koreatown, more affluent Asian American families gravitate towards suburbs with the best public schools. As word spread about the excellent schools in Cerritos, many Asian American families purchased homes and settled down in the area. Real estate agents report that houses in Cerritos sell very easily; one agent even has clients from Asian countries waiting to be notified when a property is up for sale.

Since the opening of Whitney High School in the late 1970s, Cerritos has experienced dramatic population shifts. The following table documents the rise in Asian Americans and the proportionate decline of Whites.

Table 2. Ethnic Composition of Cerritos, CA By Percentage

<table>
<thead>
<tr>
<th>Group</th>
<th>1980</th>
<th>1986</th>
<th>1990</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Hispanic Whites</td>
<td>55.2</td>
<td>42.0</td>
<td>32.8</td>
</tr>
<tr>
<td>Asian</td>
<td>23.2</td>
<td>19.9</td>
<td>23.6</td>
</tr>
<tr>
<td>Mexican/Latino</td>
<td>13.0</td>
<td>14.5</td>
<td>15.6</td>
</tr>
<tr>
<td>Black</td>
<td>8.0</td>
<td>10.4</td>
<td>12.1</td>
</tr>
<tr>
<td>Native American</td>
<td>0.6</td>
<td>0.4</td>
<td>0.3</td>
</tr>
</tbody>
</table>

A 1988 study by two California State University at Northridge geography professors named Cerritos the most “ethnically diverse” city in the country, drawing on data from the 1980 census information on over 2,000 communities in the United States. While many speak of Cerritos as a harmonious mix of cultures, the changing ethnic and racial demographics over a relatively short time has created a degree of tension between the residents who first settled in Cerritos over 20 years ago and the predominantly Asian newcomers who moved into the city in the past few years. Former Planning Commission Chair Perry N. Barrit, a Filipino, lamented about his inability to increase interaction between different groups: “If you’re talking about voluntary interaction, there isn’t much. There’s still the feeling that white is white and Asian is Asian.”

85. Seo, supra note 7.
86. Id.
88. See Dunn, supra note 84.
89. Id.
90. Id.
C. Whitney High School

Asian Americans comprised the largest racial group at 77 California schools in 1981 and today, they predominate in 367 California schools. Cerritos joins many other Southern California cities with predominantly Asian American student bodies, such as Fullerton, Garden Grove, South Pasadena, Torrance, Long Beach and Palos Verdes. This same trend occurred in other parts California, including Sacramento, Fresno, Cupertino, and San Francisco. In the 1997-1998 school year, the ABC Unified School District (“ABCUSD”), which includes the cities of Artesia, Cerritos, Hawaiian Gardens, and south Lakewood, consisted of the following racial breakdown: 37 percent Asian, 29 percent Latino, 24 percent White, 8 percent Black, and 2 percent Portuguese.

In the late 1970s, Gretchen A. Whitney Community Learning Center opened as a semi-communal gathering place offering a variety of classes and workshops and specializing in cooking instruction. Gradually, the school transformed into an alternative school, offering college preparatory courses and, in 1982, the school, a once sprawling warehouse divided into classrooms with moveable walls, changed its name to Whitney High School. Over the years, Whitney High School has amassed a large number of awards, including three California Distinguished School awards, an award only given nationally to 210 schools and which only a dozen public schools have received more than once. Whitney also boasts a zero percent dropout rate, 100 percent college attendance, highest average score on the mathematics and verbal portions of the Scholastic Aptitude Test, and a ranking as the top high school in the state for two years on the California Assessment Program tests. While students who reside in the ABCUSD attend neighborhood schools, all students in the high-school grade levels who reside in the school district may take the entrance examination to attend Whitney.

As with cities, racial tensions naturally develop in schools that have experienced dramatic demographic changes over a short period of time. The ethnic composition of Whitney and its community has dramatically changed in the past 10 years. Due to the increased recognition of Whitney and subsequent migration of Asian American families into the city of Cerritos, the numbers of Asian American students at Whitney have dramatically increased, while the number of White students has declined.

91. Seo, supra note 7.
92. Id.
95. Id.
96. See 1997 WHITNEY HIGH SCH. ANN. REP.
98. Seo, supra note 7.
Table 3. Racial Composition Of Whitney H.S. By Percentage

<table>
<thead>
<tr>
<th>Year</th>
<th>1987</th>
<th>1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian</td>
<td>45</td>
<td>69.8</td>
</tr>
<tr>
<td>White</td>
<td>29</td>
<td>16.7</td>
</tr>
<tr>
<td>Latino</td>
<td>11</td>
<td>8.4</td>
</tr>
<tr>
<td>Black</td>
<td>4</td>
<td>3</td>
</tr>
</tbody>
</table>

The largely Asian American population in the city and school has affected the academic offerings and social supports at the school. Ten years ago, Whitney offered no Asian languages. Currently the school offers Japanese language classes and allows students to earn credit for taking Chinese and Korean language classes at local language centers. In addition to the traditional Parent-Teacher Association, separate parent groups exist for Chinese and Korean parents of Whitney students. The clubs at Whitney include a celebration of many cultures: the Chinese Club, Club Kaibigan (Filipino), Essence Club (African American), European Culture Club, French Club, Hispanidad (Spanish), Kokoro Kara (Japanese), Nirvana (Hindu), Pardesi (Indian), Thai-Laotian Alliance, and the Vietnamese Club. Each year the school celebrates “International Day,” a day in which students from various organizations wear ethnic clothes and sell ethnic foods. Whitney appears to have adapted to its increasing Asian American population by embracing a multicultural approach.

D: The Official Admissions Policy

In 1992, Whitney revised its entrance exam with the desire to create “an environment designed to maintain a racial/ethnic mix of students who are capable of functioning at the highest academic levels.” A committee formed to devise the following seventh grade admission standards:

1) A pool of 300 sixth grade students who scored at or above the 75 percentile on a junior high placement test will be eligible to apply for admission;

2) Thirty students from each junior high school geographic attendance area will be selected (150 students) based on test scores and a writing sample and the remaining vacancies will be filled by applicants from private schools and children of district employees;

3) In phase I, twenty students from each junior high school area (100 total) will be selected based solely on their composite score;

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100. Telephone Interview with Carey Lin, Guidance Administrator Intern, Whitney High Sch. (Feb. 22, 2001).


4) After the first 100 students are identified, the racial/ethnic percentage of those students will be compared to the percentage of the total district student population and groups falling below their proportion of the district will be selected to fill the remaining ten vacancies in each junior high school area.104

Lowell’s 1996 hybrid plan is very similar to Whitney’s policy; both schools based admittance primarily on raw scores but set a few spaces aside to increase the diversity of the student population.

**E: The Drafters of the Admissions Policy**

The changes in the entrance criteria were the result of work and negotiation of the Whitney Entrance Criteria Community Advisory Board (WECCAB). Members of WECCAB were selected among parents and students who responded to the School Board’s invitations to all sixth grade students and the parents of current Whitney students who reside in the district, as well as personal solicitations to active community members. A group of teachers also served on the committee, as well as the Whitney principal and the ABCUSD Assistant Superintendent of Educational Services.105

Dr. Pauline Ferris, then principal of Whitney and the current Director of Educational Services at the Placentia-Yorba Linda School District, initiated the committee because the school had no official guidelines for admissions. As admissions standards increased due to the increased number of student applicants, Ferris wanted to develop a written admissions policy to increase the perception of a systematic, objective manner of selection to replace the unwritten admissions system of the founding principal. “[The written policy] gave me, as principal, concrete guidelines that I could publish so parents knew the guidelines and criteria for admission,” explained Ferris. “It removed speculation and made [the admissions policy] objective.” Ferris served as a non-voting member of the committee and provided information on statistics that the committee requested. “I was there to clarify so they could best make a decision,” she explained. She described the goal of the committee as “develop[ing] a policy that reflected the demography of the community more accurately.”106

Charlotte Tomooka, a Japanese American math teacher at Whitney, was asked to serve on WECCAB because she worked with seventh grade students. She was concerned about the standard used for admissions and wanted to know the details of its implementation. Ferris, Whitney’s principal, formed the committee because she was concerned about the high dropout rates of Black and Latino students and wanted to get rid of grade point averages as a criterion due to their lack of uniformity. Describing her role on the committee, Tomooka explained, “I didn’t have much say and

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104. See id. at Regulation 5118.2(a).
basically was there to agree with Dr. Ferris,” whose position was that written criteria were needed. Others on the committee, according to Tomooka, were “concerned about losing top students” to Whitney. The other schools in the district did not want to lose all their Asian students to Whitney and, if no measures were taken, district officials feared Whitney would become an “Asian school.” Based on the scores alone, she explained, all the students were coming from the Carmenita Junior High School geographic area, a school with a 69 percent Asian American population.

The School Board asked, Joe Woodward, the father of a 1990 graduate of Whitney who worked on other School Board committees, to serve on the WECCAB. Members of the Board told Woodward, who is African American, that the school “wanted a more balanced student body to appeal to a larger group of students,” as most of the current students came from same elementary schools. He believed that he could help “provide a broader based opportunity” for deserving students from other schools who had no opportunity to attend Whitney. Woodward attempted “to determine why disparity existed” in the acceptance and enrollment of underrepresented minorities. He favored a “broader based” criterion that considered extracurricular activities, jobs, writing, and oral presentation skills. “I looked at different schools and different standards that would give students more opportunity. We felt in order to have well-rounded students, we need to look at other criteria [rather than solely at test scores and grades].” Woodward expressed satisfaction with the new entrance criteria, as it provided “a good mix of students across the district.” He also noted that the high Asian American population can lead to feelings of isolation among other non-Asian American groups, causing them to transfer to other high schools in the area in order “to go to school with their friends.” Woodward’s comments highlighted how the diversity of the school can increase the comfort level of underrepresented minorities and possibly improve their scholastic performance. As such, he valued increased diversity in the new entrance criteria for its possible contribution to the retention of minority students.

Jan Jensen, a math teacher at Whitney, volunteered to serve on the WECCAB because she felt that diversity issues were important. She took a special interest in helping to shape the future of the school, since she has been at Whitney since it first opened in 1976 and helped plan it. According to Jensen, the committee formed because they felt that teachers were teaching the entrance exam to their students. Therefore, a disproportionate number of Asian American students from the Carmenita Junior High School region were being accepted although their less test savvy peers from other schools may have been equally qualified. While Jensen “would like

107. Interview with Charlotte Tomooka, Teacher, Whitney High Sch., in Cerritos, Cal. (May 15, 1997). See also, Increased, supra note 6.
108. Telephone Interview with Joe Woodward, Member, Whitney Entrance Criteria Cmty. Advisory Bd., in Cerritos, Cal. (July 28, 1997).
109. Id.
to see more diversity” and likes the ethnic part of the new criteria, she expressed concern that it “get[s] people in who aren’t successful. Those who primarily flunk out of Whitney are White, Black, and Latino.” Jensen expressed concern that “real smart White kids don’t want to come [to Whitney],” including her own children, because the school has “no social life” and has the perception of being an “Asian school.” “People learn from each other,” Jensen said, “and I want to see Whitney reflect real life.” While she likes the new entrance criteria, she “doesn’t see results” in terms of more racial and ethnic diversity.'

Judith Dutko, a teacher at Tetzlaff Junior High School at the time and the mother of two Whitney graduates, served on the WECCAB as the representative from the teacher’s union. She volunteered in order to quell the “hard, left liberal push to get rid of Whitney because certain racial groups do not excel.” As former president of the Cerritos Women’s Republican Federation, Dutko did not shy away from expressing her political views, namely her dislike of any consideration of race in the admissions process. “We should take the best of the best. Don’t dumb down the school.” She repeatedly described herself as “the lone voice on the committee” or “the long ranger,” and described her experience as “me against ten” – the “ten” being “socialists,” “communists,” and “sheep.” “They wanted consensus [regarding the perceived need for a diverse student population], and I would stand out” she said.'

Throughout the interview, Dutko expressed a strong belief in a meritocracy. “Fair is not the same as just; fair means equal and everyone has the same opportunity. Not everyone has the same opportunity, so they have to work harder . . . Saying to people that they can’t do it because of their skin color – that’s not right.” She lamented that the committee refused “to recognize choice and free will.” Downplaying the presence of discrimination against students of color, she chided leaders of the National Association for the Advancement of Colored People and Mexican American Legal Defense and Education Fund for their efforts to promote affirmative action. “These leaders don’t feel like [their constituents] are smart enough. They want to keep people back on the plantation mentality . . . No matter what you look like, you should all have equal criteria.” Dutko’s language echoed the critics of affirmative action in her unfailing belief that hard work can overcome unequal opportunity. She further emphasized the belief that affirmative action hurt the recipients by questioning their ability and stated that meritocracy allowed recipients of affirmative action to compete fairly with Whites.

Dutko often conflated patriotism with colorblindness in her language, a strategy that taps into the deeply held American ideals of colorblindness, equal opportunity, and the Horatio Alger myth of “the self made man.” “I’m a real believer in democracy; it doesn’t matter what your last name,
color, or background is.” She continued, “Our constitutional rights are being taken away by people who don’t want America to be what it is. I love America and what it means and stands for . . . Whitney is the epitome of good and what Americans want to achieve.” Dutko’s ideal criteria for Whitney would only consider the entrance exam score, as she considers grades too subjective. “I would never ever take into consideration race; that’s racist and not what America is about.”

In her adamant opposition to affirmative action, Dutko often championed Asian American concerns. “Whites and Asians don’t get squat, we get penalized,” she exhorted. When asked if she found it ironic that White students benefited from affirmative action at Whitney, she responded, “White America is going to be left in the dust [if they continue to receive the benefits of affirmative action at Whitney].” She related an anecdote of a meeting she attended with elementary school teachers, one of whom was concerned that Asian American parents’ academic expectations for their children may be too high and that the children may become upset. In response to this concern, Dutko matter-of-factly retorted, “I call those kids a success in life. We’re all capable of a lot more.”

The language of the members of the WECCAB appeared to mirror the general debate about affirmative action, and the presence of White students as beneficiaries did not appear to change the language or content of the arguments. Supporters of the diversity policy valued the importance of a multicultural campus that included Blacks and Latinos, as well as Whites. Similarly, the lone detractor among the four interviewees used the same language as the opponents of affirmative action, drawing on her strong belief in meritocracy, equal opportunity, and self-help. Overall, the terms of the discussion focused on abstract ideals and the members of the WECCAB historically applied the same arguments for or against affirmative action to White students.

F. Voices of Dissent: The Use of Charges of Elitism and Racial Bias

In 1987, a group of ABCUSD high school teachers circulated a petition signed by a reported two-thirds of all secondary instructors in the district, charging Whitney High School with racism and elitism. One of the charges involved the large Asian American population at the school and the under-representation of Blacks and Latinos. At the time of the petition, ABCUSD reported the following enrollment rates listed in Table 4.

113. Id.
114. Id.
Table 4. ABC School District, 1987\textsuperscript{115}

<table>
<thead>
<tr>
<th></th>
<th>% White</th>
<th>% Asian</th>
<th>% Latino</th>
<th>% Black</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABC District</td>
<td>36</td>
<td>22</td>
<td>27</td>
<td>6</td>
</tr>
<tr>
<td>Artesia H.S.</td>
<td>36</td>
<td>19</td>
<td>43</td>
<td>5</td>
</tr>
<tr>
<td>Cerritos H.S.</td>
<td>44</td>
<td>24</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>Gahr H.S.</td>
<td>35</td>
<td>17</td>
<td>25</td>
<td>9</td>
</tr>
<tr>
<td>Whitney H.S.</td>
<td>29</td>
<td>45</td>
<td>11</td>
<td>4</td>
</tr>
</tbody>
</table>

One Whitney teacher wryly noted that the use of race in the petition served as a proxy for ability: “[The supporters of the petition to close Whitney] claimed that there were too many Asians because they were losing their best students.”\textsuperscript{116} The detractors, led by Cerritos High School teacher Richard Neville and former Gahr High School teacher Steve Murray, unsuccessfully urged the School Board to form a fact-finding committee to investigate their charges.

In the same year, Neville said in an interview, “Ultimately, I see no need for Whitney to exist. It is wrong.” Murray charged that the “elitism” of Whitney created “undesirable results,” such as the rejected students “build[ing] up a lot of anger against the elite group.”\textsuperscript{117} Both Neville and Murray opposed to the diversion of money for the establishment of a school for the district’s best test takers. This “elite” group, they contended, receive more money and resources than students at the other high schools in the district. Charges of racial bias coexisted with charges of elitism. In a recent interview, Neville rhetorically asked, “If the shoe were on the other foot, how long would it be before you saw a suit against a school that was mostly White?” He charged that Black, Latino, and even Filipino students do not stay at Whitney because of “discrimination” due to their minuscule representation. “The aura around the school creates a feeling of inequality.” These feelings, he explained, have changed the community for the worse. He approached the American Civil Liberties Union (ACLU) about the problem of creating a school in a district that is different from the district population. Although the ACLU thought there was merit in the case, it did not choose to pursue it. Neville described the appeal to the ACLU as his “last hope” and, although he still feels very strongly about the issue, he is currently not involved in it.\textsuperscript{118}

Murray described the “disproportionate number of Asians at Whitney” as an issue in his opposition to Whitney, but not a “central issue.” “In society in general, there is a conflict between diversity and excellence. Whitney wants both, but it cannot have both. . . . When you’re successful at diversity, you undermine excellence.” Murray concluded that the entrance

\textsuperscript{115} See Harris, \textit{supra} note 99.
\textsuperscript{116} Interview with Anonymous, Teacher, Whitney High Sch. Teacher, in Cerritos, Cal. (May 15, 1997).
\textsuperscript{117} See Harris, \textit{supra} note 99.
\textsuperscript{118} Telephone Interview with Richard Neville, Teacher, Cerritos High Sch., in Cerritos, Cal. (June 16, 1997).
criteria teach a "bad lesson to Asians; that you need to score higher than Black or White students to get in." He also noted that such standardized entrance criteria do not necessarily measure excellence. "Asian students do well on paper/pencil exams but not all Asian students are excellent."\textsuperscript{119}

He described the effect of Whitney on other schools in the district as the lack of role models: "The best students from high schools and junior highs are taken away. . . . The best Black and Hispanic students at Gahr or Artesia are now recruited at Whitney." Murray suggested that institutions primarily consisting of one race create hostility in the community and lead non-majority group members to drop out. He rhetorically asks, "How would you feel at a school that's 90 percent Black?\textsuperscript{120}

Both Neville and Murray used the predominantly Asian American student body at Whitney as a source of opposition to the existence of the school. In 1987, the year they made the charges, Whitney had an Asian American population of only 45 percent, roughly 15 percentage points more than White students. When White students are the majority in a similar ratio, however, elite institutions are lauded for their diversity.\textsuperscript{121} Apparently, demographics are interpreted differently when non-Whites are the most numerous, even if they are not the majority.\textsuperscript{122} Curiously, the two detractors framed the racism charges primarily in terms of the interests of Black and Latino students being subsumed by the interests of the large Asian American population, a strategy recalling images of a kind of Yellow Peril.\textsuperscript{123} They made little or no mention of the interests of White students, the group most noticeably affected by the large Asian American growth in the past ten years.

\textbf{G. Diversity Narratives and the Replication of Traditional Power Dynamics}

During interviews, nearly all the teachers raised the need for diversity. When the committee revised the entrance criteria in 1992, Joe Woodward said, they intended to increase the numbers of Blacks, Latinos, and Native Americans. "At the time, I didn't think of Whites and Asians because I thought they were well represented."\textsuperscript{124} Whitney math teacher Sandra Bruesch said in an interview with the school paper, "People often find shelter in what they feel comfortable [with]. I think many students get too

\textsuperscript{119}. Telephone Interview with Steve Murray, former teacher, Gahr High Sch., in Cerritos, Cal. (June 21, 1997).

\textsuperscript{120}. \textit{Id.}

\textsuperscript{121}. I was drawn to my undergraduate institution, Pomona College, due to its proud, often repeated, record of student diversity. My class, the class of 1994, consisted of a 15.4 percent Asian American student population and a 32.1 percent total students of color population. \textit{See Speaking of Freshmen, POMONA COLLEGE MAGAZINE}, Fall 1990.

\textsuperscript{122}. This fear appears consistent with a recent \textit{New York Times} poll that revealed that Whites believe that greater numbers of non-Whites exist than they really do. According to the poll, Whites believed that 49.3 percent of the national population comprised of non-Whites and 49.9 percent comprised of Whites. The actual numbers were 24.4 percent and 74 percent, respectively. \textit{See Priscilla Labovitz, Immigration -Just the Facts, N.Y. TIMES}, Mar. 25, 1996, at A19.

\textsuperscript{123}. \textit{See Wu, supra note 1, at 226.}

\textsuperscript{124}. Woodward, \textit{supra} note 108.
used to our little microcosm of Cerritos and college is a real shock for them when they find out that they are now the minority. This school has so much to offer its students, but the make-up if [sic] the population alone is an obvious impediment. Similarly, Jan Jensen stated, “I would like to see more diversity... For doctors, you need only the best. For other things, you need to leave a few spots for everyone. People learn from each other.” Recalling her tenure at Whitney, Dr. Pauline Ferris spoke of the benefits of a school with a non-White majority: “We learned so much by being there. We appreciated each other’s culture. [The racial diversity] brought a richness and willingness to share.” She continued, “When you’re in an environment like that, you don’t need classes on tolerance. We lived and breathed diversity everyday we were there. It was as natural as breathing.” Like Ferris, Jansen and Woodward, most teachers I interviewed raised diversity as an important part of education.

However, a few teachers openly expressed their distaste for policies to increase diversity. WECCAB member Judith Dutko expressed a strong desire “to keep Whitney the way it is, even if everyone looks alike.” She continued, “It doesn’t matter if the school is 100% Asian or Asian and White... If Black and Mexican students are failing, they should get extra tutoring and mentoring. They want us to give them everything.” When asked about the value of diversity, Dutko responded, “At each school, you can do well if you apply yourself. You can switch Whitney with a school in Watts and students would be fabulous. It’s the parents, students and environment [that make the difference].”

History teacher Steve Rosenberg added, “For any magnet school to succeed, you need the best. A quota sends the wrong message. Kids who come in that way don’t succeed.”

Some Asian American students at Whitney struggled with the idea of a diverse student population and the method of achieving that goal. Sara, a Korean American seventh grader said, “I’m kind of in the middle. It’s wrong to pick only certain numbers of each group, but it’s also kind of wrong to have a school of only Asians.” A Filipino American in the eleventh grade added, “I see both sides. [The entrance criteria] should not be based on race, but the school should model society and [Whitney] isn’t representative [of society]. We have a school that’s all Asian, but society isn’t all Asians.” These Asian Americans appeared to recognize the need for diversity in a larger context, perhaps drawing on their own experiences as minorities outside of Cerritos.

125. Referring to the largely Asian American population of the city.
126. See Mihir Upadhyaya, Brinesch Definitely Teaching for Fulfillment and Not the Money, ASPECTS (Whitney High Sch. student newspaper), May 1997, at 6.
127. Jensen, supra note 110.
128. Ferris, supra note 106.
129. Dutko, supra note 111.
130. Interview with Steve Rosenberg, Teacher, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
131. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
132. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
This recognition, however, quickly faded when the concept of diversity translated into concrete admissions policies. Asian American students almost uniformly rejected a plan that considers the race of the applicant. A Chinese American senior said to The Los Angeles Times in 1995, "Because of affirmative action, they’re letting people in without the highest scores. Everyone is saying Whitney is not going to be No. 1 anymore." Many argued for a colorblind criterion. "It’s crazy to accept people on the basis of race. It should be based on grades and scores," said one South Asian junior. "What are they trying to teach us? You can get in on your race and color? Nothing should be based on race." A Korean American tenth grader echoed, "I don’t like quotas. It’s not fair." Many students related anecdotes of students from underrepresented groups who gained admittance despite having a lower score than an Asian American student. After an article was written on Whitney in The Los Angeles Times, the paper published a letter to the editor from Jae Ahn, a Whitney seventh grader: "Whitney does not discriminate against African Americans or Latinos; it discriminates against Asian Americans. As an extreme example, my friend who is Chinese, scored 183 out of a possible 194 and a writing sample of 4 and was not admitted. Another kid who is half-Asian and half-White scored 150 and 4 and was admitted. There may be other factors involved, but when one person scores 40 points above another and the lower score gets in, that is unfair." A Thai American seventh grader related a similar story with a "Mexican" beneficiary, adding, "They should base [the test] on grades, not because you’re a minority."

Non-Asian Americans students, on the other hand, openly expressed a need and desire for diversity at Whitney. "I don’t fit in," said an African American seventh grader. Another African American seventh grader described her experience as "kind of uncomfortable" because the school is "not diverse." A White ninth grade student said, "We still have to learn a lot when we go out to the real world and [Whitney] doesn’t prepare you socially." Said another White senior, "Because of diversity, everyone can be the way they are. Everyone is different, so you can just be you." Sometimes I wish there were more White students here," she continued. "But if a White student has a 95 and an Asian has a 98 but the Asian didn’t get in, it’s not right because the Asian is more capable."

Even the beneficiaries of the entrance criteria expressed similar sentiments on the importance of a meritocracy. When I asked a White tenth grader if it was difficult to gain admittance into Whitney, he replied "It’s easy to get it, especially for me." He described how a Korean girl

133. Seo, supra note 7.
134. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
135. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
137. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
138. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
139. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
140. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
141. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
gained admittance to Whitney when she scored only one point less than he did, but that he received early admission, presumably because of a lower threshold score for Whites. A White ninth grader described knowing a "really smart Korean girl who didn't get in" but "[he] got 30 points lower and still got in." "[Affirmative action] got me in this school," he continued, "but it's not really fair, so I don't really like it." He described the racial criteria as "unfair." "[The school] shouldn't ask about race; they should just take the [student with the] highest score." Another White senior felt that the "quotas" are "compromising the level of the students." "Some people didn't understand why I'm here -- a White girl and blonde," she continued, "I had to prove myself grades-wise." A White student summed up the sentiment expressed by a majority of students, "The reason why [students] want to go to Whitney is because of the academic standard. A quota would change that."

When I asked an African American senior if it was difficult for her to gain admittance into Whitney, she was quick to point out that she scored "really high on the test" and gained admittance based on "merit." "At first, I had to prove myself. I was put in a lower science class like all the other African Americans," she said. "After ninth and tenth grade, students knew I had the right to be here." Curiously, the young woman gained admittance based on her test scores alone, but still felt as though she had to prove herself to others as if she had received the benefits of affirmative action. "Merit is a big deal," she explained, and she was "against the quota system." "It's not fair to let people in when other people are capable of doing the work. The caliber of students is going down." The young woman eventually graduated valedictorian of her class.

"Lots of students know [about the diversity criteria]," said math teacher Charlotte Tomooka. "If White students are strong academically, then they know they made it on their own. The less capable [White students] are very much aware of it." Cliques form on the basis of race and ability and students know each other's ability very early in the seventh grade. White, as well as Black and Latino, students did not perform academically as well as the Asian American students, she explained. Tomooka, who teaches seventh graders, said that the non-Asian Americans were "academically not up to par." Jan Jensen added, "Those who primarily flunk out are White, Black, and Latino." Spanish teacher Marli Shoop, however, asserted, "Whites hold their own, but I teach tenth, eleventh, and twelfth graders"
Asian American students stigmatized White students and White students themselves recognized their status as beneficiaries of the diversity policy. Like many current debates about affirmative action, students of all races recalled anecdotes of beneficiaries scoring lower than other, supposedly more deserving students. It did not appear to matter that the beneficiaries were White, instead of Black or Latino. White students, very much aware of their own status as beneficiaries, also shared anecdotes of others scoring higher than them.

While Asian American students appeared to oppose the use of racial criteria the most, traditional beneficiaries surprisingly spoke in favor of a strict meritocracy as well. White and Black students alike exhorted the unfairness of using any racial criteria in the admissions process. At the same time, they poignantly recalled feelings of discomfort or alienation as racial minorities, wishing that the school enrolled more non-Asian Americans. Two White students curiously prefaced their disparagement of the use of racial criteria with the acknowledgment that they may not have gained admittance to Whitney if the criteria did not consider race. In contrast, Black and Latino students did not make similar prefacing statements as did these White students.

In traditional power dynamics, beneficiaries of diversity programs are usually quite eager to avoid discussions on the impact of affirmative action on their presence at the school. One Black student whom I interviewed quickly and defensively informed me that she gained admittance to the school based on her own merit when I merely mentioned the school’s diversity policy. Perhaps the absence of a history of stigma among White students made the impact of suspicions of academic inferiority less significant than that faced by students of color. White students may also recognize that they will not benefit from race-based affirmative action policies when they leave Whitney and hence, they do not see its goals as necessary to society as a whole. The openness with which White students discussed their status further suggests that diversity programs do not necessarily cripple a beneficiary with a brand of inferiority, as some critics argue. In the absence of debilitating stereotypes and historically rooted suspicions about ability, perhaps Blacks and Latinos may also speak of their presence in elite institutions with frankness and openness as their White counterparts at Whitney.

The feelings for and against affirmative action ran strong on both sides, and students and community members alike spoke openly about race and merit. The words used by the community reflected the inescapability of language in framing the affirmative action debate. For instance, I never used the term “quota” in any of the questions I asked and called the new entrance criteria the “affirmative action policy” or “diversity plan.” Still, few students mirrored my language and immediately used the term “quota.”

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which I interpreted as pejorative. The most common term used by the many who opposed the diversity plan involved variations of the concept of fairness. Critics often spoke of the unfairness of using racial criteria in the admissions policy and predicted that the high standards of the school would soon plummet as a result. Many students did not reconcile their belief in a strict meritocracy and the same principle that would put their own positions at stake. The ideals of hard work and equal opportunity appeared to overpower any feelings of alienation or tokenism. I found it both curious and ironic that non-Asian American students would speak poignantly about their isolation and then immediately lament about the school's attempts to diversify the school. They seemed unable or unwilling to question the notion that test scores accurately measure a student's ability and those with the highest scores should be admitted, regardless of other factors. The lack of diversity took a visible toll on the non-Asian American students with whom I spoke, as evidenced by the angry manner in which they spoke of their many experiences of alienation. Notwithstanding this pain of exclusion, students held firm to their unfailing belief in the need for meritocratic standards, a testament to the power of the concept of equal opportunity.

I. Whitney High School and Federal Desegregation Money

Whitney faced a challenge in deciding at the end of the 1997 school year of whether or not to join in the ABC Unified School District's application for the Magnet Schools Assistance Program (MSAP) grant. The federal grant, which provides support to magnet schools that are part of an approved desegregation plan, was designed to bring students from different social, economic, ethnic, and racial backgrounds together and to eliminate, reduce, and prevent minority group isolation in public secondary schools with substantial proportions of minority students. If the grant is funded, Whitney could receive a maximum of $3,060,000 over a three-year period. Whitney currently falls short on racial diversity with regard to non-minorities and receipt of the grant would require Whitney to raise the percentage of White students from 16.4 percent (167 students) to 18.7 percent (190 students), roughly the equivalent of the White population of the district.¹⁵¹

When weighing the decision to apply for the grant, administrators and faculty at Whitney considered possible strategies for increasing the number of White students at the school. The grant required Whitney to create a school within the school open only to White students since the purpose of the grant is to increase the numbers of Whites at minority schools. In one strategy, the school would require an alternative set of entrance criteria such as an audition, portfolio, or proposal. Possible themes for the grant included visual/performing arts, law-related education, science/mathematics/engineering, environmental studies, international

¹⁵¹ Telephone Interview with Mary Sieu, Dir. of Special Projects and Services, ABC Unified Sch. Dist. in Cerritos, Cal. (Jan. 2, 1998).
studies, humanities, business and finance, health-related science, technology, or aerospace schools. Many at Whitney felt that a performing arts program would attract White students since many Asian American students tend to shy away from the performing arts because participation in such activities receives lower status in many Asian cultures. The decision sparked a heated debate in the school about whether or not to join the grant application – a debate that gauged the community’s perception of the value of diversity outside of the Black and White binary.

Teachers were mixed in their desire to apply for the grant. Some felt the grant money would benefit the entire school and would be a good opportunity for the school to secure additional funds. "Whitney is at the bottom of the totem pole when it comes to money for academics," Debra Logan, an African American teacher, said, "This is the only way to get big bucks." Jan Jensen expressed enthusiasm for the possibility of increasing the number of White students at Whitney, "It would be good to get thirty White kids and they could hang out with each other." She liked the idea of a performing arts program and notes that "the federal money would be good if it were handled right."

Many teachers, however, expressed fear that the additional students would bring down the academic caliber of the school. "A performing arts school would lower the standard of the school because the students would not be up to par [because students would be admitted on alternative criteria]," said Charlotte Tomooka. History teacher, David Bohannon, added, "I'm worried that we'll have to compromise our academic standards to get money. Is money worth it?" Chemistry teacher Paul Bender echoed this sentiment, "It's like we're being bought. It seems like we could be opening a can of worms for a one-time money deal."

A survey of the faculty conducted by the school paper published the following results:

1. Do you favor the proposed grant?
   33 percent said "yes"
   67 percent said "no"

2. How do you think the grant will affect the quality of education at Whitney?
   14 percent answered "not at all"
   14 percent answered "significantly"
   72 percent answered "dramatically"

3. Do you think that a diverse student population is an important factor in a comprehensive education?
   57 percent said "yes"

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152. Interview with Debra Logan, Teacher, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
153. Jensen, supra note 110.
154. Tomooka, supra note 107.
156. Id. at 3.
43 percent said “no.”

Like the students, most teachers appeared to recognize the need for a diverse environment, but rejected the idea of increasing diversity through quotas or alternative admission standards. The increase of White students under a completely separate admissions criteria appeared the most objectionable to dissenters, as seventy-two percent believed that the additional 23 White students would “dramatically” affect the quality of education at the school. Members of the Whitney community will, for the most part, oppose blatant attempts at increasing the presence of any group based solely on race, even if the group is White. Many dissenters spoke of the grant money in terms of meritocracy and lowering academic standards—the standard argument against affirmative action and its traditional beneficiaries. Surprisingly, nobody spoke of the irony of White beneficiaries as users of federal grant money in an attempt to increase the school’s diversity. Nor did anyone speak about whether the grant’s purpose of reducing minority group isolation intended to target isolation in an Asian American, upper middle class suburb.

Whitney eventually decided not to join the grant application. According to Dr. Mary Sieu, the ABCUSD Director of Special Projects and Services, the application required “schools that clearly qualify for the grant. Whitney was at the borderline with a White population of 16.4 percent when the district’s population was only two percentage points higher, at 18.7 percent. Other schools had a non-minority population of two to ten percent.” Sieu explained, “Whitney did not strengthen the application.” In the end, Superintendent Tom Riley discouraged the involvement of Whitney in the grant application, and Whitney’s Principal Walling also decided against it, after consulting with her staff, school board members, and other members of the community.

The controversy sparked by the MSAP grant further demonstrated the inadequacy of general race-based classifications in addressing the experiences of Asian Americans. Whitney struggled with and eventually rejected the concept of opening a school solely for White students. The grant aimed to desegregate magnet schools dominated by people of color in order to reduce minority group isolation, a problem that the federal government deemed important enough to address. The large Asian American population at Whitney, however, stemmed from the migration of Asian Americans into the area for the opportunity to attend the school. This voluntary relocation resulted in the large Asian American population in Cerritos and the Asian American majority at Whitney. Attempts to infuse White students into the school appeared contrary to the spirit of the grant, which presumably hoped to remedy White flight from Black and

158. Sieu, supra note 151.
159. Id.
160. See id.
Latino communities. The decontextualized language of MSAP did not apply to Asian Americans at Whitney and revealed another failure to fit Asian Americans in the Black and White binary.

J. "Why do they all hang out together?": Issues of Self-Segregation

Like most schools with racial and ethnic minorities, a great deal of self-segregation occurs among the students at Whitney. Every person with whom I spoke at the school described “cliques” based on race or ethnicity. Like traditional minority groups, White students usually did not socialize with the majority group, Asian Americans in this case, and chose friends of the same group as they. When I attended Whitney from 1984 to 1990, the majority of Black, Latino, and White students segregated themselves from the majority of Asian American students. Students from these ethnic groups formed their own groups, which often included more than one ethnicity because their numbers were not large enough to form a separate group. When I was a student at Whitney, I recall hearing Asian American students comment, “Why do all those White kids hang out together?” or “Why don’t they just hang out with everyone else?” The few non-Asian American students who did socialize in Asian American groups were considered “good.” Having lived in an Asian American community, many of us did not realize how minority groups were affected by living in an environment dominated by one race. Nor did we understand the irony of what we were saying. In 1988, a disaffected group of primarily White students formed the “All-American Club,” presumably in response to the large number of clubs celebrating Asian ethnicities. I happened to overhear some of my White classmates talking about forming the club and recall that they somewhat jokingly refer to it as “the White people’s club.” Apparently, the lack of ethnic diversity in the school adversely affected White students despite their dominant presence outside of Cerritos. This suggests that all minority groups, even Whites in this case, need and benefit from supportive social networks.

It is difficult to write about the legitimacy of a diversity policy without observing the school itself and talking to students. After spending two days at Whitney, it appeared that many of the same segregation issues still existed as they did when I was a student ten years ago. When I was in high school, there were enough non-Asian students to form their own large groups. Today, the groups of non-Asian American students were fewer in number, more noticeable, and more dispersed, a possible result of the growing Asian American migration into the city and into the high school.

Feelings of segregation seemed more pronounced in the lower grades. Lekeisha, an African American seventh grader, said, “You walk up to a group of Asians and they don’t want to talk to you. Or when you sit with them, they start speaking another language and they’ll say our name every

161. See Monique H. Henderson, Seeking to Attract White Pupils: Moreno Valley Magnet Schools Hope Federal Grant Will Help, PRESS-ENTERPRISE, Mar. 16, 2000, at B1; see also Christy Watson, City Schools To Seek Grant Funding Would Help Magnet School Switch, DAILY OKLAHOMAN, Dec. 16, 2000, at 4A.
one second [while speaking the other language].” Her friend, Kristen, who is also African American, described Whitney as “kind of different [from her more diverse elementary school] because there are so many Asians.” African American Brandi Petway said to The Los Angeles Times in 1995, “Sometimes, it’s easy to feel resentful because there’s a whole bunch of Asians and not a lot of anyone else.” Jeff, a White student in the ninth grade who describes his friends as two Whites and one Taiwanese American, said that he received “different treatment in seventh grade, but now it’s okay.” “Sometimes I don’t feel welcome,” he explained, and Asian American students “talk different to me.” A White Senior angrily recounted an experience in the seventh grade when she was placed in a small group with another White girl and two Korean Americans. The Korean American girls assigned one part of the assignment to her and the other White girl and the rest to themselves, a separation that she attributed to a segregationist desire on the part of Korean American girls. While she likes Whitney and has had “no problems with the school,” she says, “The [Korean] majority formed little cliques and has stayed like that through Senior year.”

On campus, I noticed a large group of White students, sprinkled with a few African Americans and one Asian American. They appeared to be the only sizable group of non-Asian Americans on campus among the many cliques of Asian American students. Of this group of tenth graders, neither of the African American girls expressed any problems with the small numbers of non-Asian Americans. One said, “I don’t have a problem with [the small number of Blacks at Whitney]”. The other came from a Christian school where it was “a lot worse.” Still, she conceded that “there are some Asians that you can talk with and others you can’t.” A White boy in the group added, “I just don’t hang around with people who treat me differently. Our group [of friends] is stronger because we’re more diverse; stronger because we’re not trying to be the same.” He said that “it was worse in seventh grade.” The only Asian American in the group elaborated, “Our group just kind of accepts each other. When you hang around a more multicultural group, there are no expectations.” She described Whitney as being 40 percent Korean American, and as a Korean American herself, she spent the last three years “trying to hang out with them [but] you have to be a certain way to fit in with Asian groups.”

Many of the Asian Americans experience pride and confidence with regard to their Asian background. In an interview with The Los Angeles Times in 1995, senior class president Susan Park said, “Asian students feel really comfortable here, while White students kind of hang out by

162. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 16, 1997).
163. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 16, 1997).
164. See, supra note 7.
165. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 16, 1997).
166. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 16, 1997).
167. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 16, 1997).
168. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 16, 1997).
169. Interview with Student, Whitney High Sch., in Cerritos, Cal. (May 16, 1997).
themselves. The roles are reversed.” In fact, in 1996-97, only one White person held a leadership position in the school’s student government. The school’s homecoming queen for the same year was half Filipino and half Persian. Park continued, “I’m not sure if I would have the same confidence if I had gone to a school where Asians were a minority. I have Asian friends at other schools, and they don’t feel they can get involved. But here, it’s so comfortable for me to go out for everything.”17 The 1997-98 student body president, who is Filipino, said that he “doesn’t notice segregation, but [he’s] starting to.” Some students, he explained, derisively called this confidence “Asian superiority complex” and liken the power of the Korean majority to a “Korean Mafia.”

Non-Asian American students look to clubs to celebrate their ethnicities. The European Culture Club observes European holidays, such as Guy Fawkes Day, and does not appear to have the same focus as the All American Club. Founder and President of the European Culture Club Michelle Reynolds said that “European culture is underrepresented, so me and my friends decided to start the club.” Reynolds said that at first, she had problems finding an advisor for the club because the “teachers were afraid of what would happen if we started a club like that.” Eventually, one teacher agreed to advise the organization, but “we just had to be careful of how we phrased things and what kinds of activities we had.”173 The Essence Club, which formed in 1987, celebrates Black culture. “The club is not all Black,” said President Maya Mitchell, “because obviously there aren’t enough Blacks.” The goal of the organization is to “promote African American awareness because of their small population [at Whitney].” A lot of African Americans participate in the club, said Mitchell, but are not interested in “doing things for the school.”174

The teachers and administrators also mentioned this segregation. Guidance Administrator Theora Goodrich lamented on the difficulty of attracting White students to Whitney because the school has “a reputation of segregation.”175 Dr. Tom Brock, a psychology teacher and practitioner, said that a great deal of mixing between the races occurs, although “African American and White students are most underrepresented and sometimes made to feel dumb.”176 Charlotte Tomooka said that non-Asian Americans are “very aware that they’re minorities” and sometimes uncomfortable in the social environment so they choose to leave. As a teacher of seventh graders, she observed that groups form by race and by ability.177 Debra

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170. Seo, supra note 7.
171. Id.
172. Interview with Joel Sangria, 1997-98 Student Body President, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
173. Telephone Interview with Michelle Reynolds, 1997-98 President, Whitney High Sch. European Culture Club, in Cerritos, Cal. (June 15, 1997).
175. Interview with Theora Goodrich, Guidance Administrator, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
176. Interview with Tom Brock, Teacher, Whitney High Sch., in Cerritos, Cal. (May 15, 1997).
177. Tomooka, supra note 107.
Logan, an African American teacher of English, has noticed an increase in segregation over the last ten years. Now, she said, non-Asian Americans "do not feel welcome." Black students, however, do not seek her out because "they don't want to stand out and would rather blend."\textsuperscript{178} Jan Jensen frankly put it that Whitney has the reputation of being an "Asian school" – a reputation that prevents non-Asian Americans from applying or attending the school.\textsuperscript{179} The teachers and administrators echoed many of the students' sentiments regarding segregation. Similarly, just as people of color avoid schools with a hostile or uncomfortable environment for minorities, White students in Cerritos appeared to avoid or drop out of Whitney in favor of more diverse environments.

Whitney also has separate Chinese, Korean, and South Asian parent groups. The separate ethnic parent groups work with the Whitney High School Foundation for Education Excellence to raise money for the school and encourage involvement in school activities. Founded in 1993, the Association of Chinese Parents for Whitney Excellence (ACPWE) promotes the participation of Chinese parents at Whitney and raises money for the school. President Y.T. Chung describes the relationship between ACPWE and other ethnic organizations with the Foundation as a "tree structure": the Foundation is the main group and the ethnic organizations are tentacles to their particular communities. The ACPWE works with the 250 Chinese families of the school to raise approximately $7,000 a year for the entire school. Chung stated that a common language enabled the Chinese parents to sponsor effective fundraisers among a smaller group. In 1997, the fundraising success of the Korean parent group enabled them to donate a piano to the school's gymnasium.\textsuperscript{180} Some critics have raised questions about the purpose of separate groups. Alva Petway, an active parent of a Whitney High School student, said in an interview with \textit{The Los Angeles Times}, "I don't particularly care for having separate groups. I can somewhat understand the comfort level people feel being around their own, but it's disconcerting because it seems as though their own children will be looked out for at the exclusion of other people's kids."\textsuperscript{181}

Overall, the large numbers of Asian Americans translated into social status and power at the school. The dynamics of segregation reflected the tyranny of the majority when one race dominates a setting. The voices of the non-Asian American students spoke of alienation, isolation and differential treatment by the majority race, sentiments often heard by people of color at elite, White majority institutions. The social power that allowed the Asian American students to dominate the environment at the school also allowed them to freely voice their opinions regarding the unfairness of race-based considerations, require suspected beneficiaries of affirmative action to prove themselves, and use pejorative language to

\textsuperscript{178}. Logan, \textit{supra} note 152.  
\textsuperscript{179}. Jensen, \textit{supra} note 110.  
\textsuperscript{180}. Telephone Interview with Y.T. Chung, President, Association of Chinese Parents for Whitney Excellence, in Cerritos, Cal. (Jan. 1, 1998).  
\textsuperscript{181}. Seo, \textit{supra} note 101.
describe affirmative action programs. High dropout rates of non-Asian American students may be attributed to feelings of alienation rather than an inability to compete — an argument that bolsters the need for greater attempts to diversify the campus.

V. CONCLUSION

Race relations and policies at Whitney High School suggest that many of the same issues of self-segregation and self-doubt exist when White students benefit from affirmative action as when people of color do. The positioning of White students as the beneficiaries of diversity programs, however, did not appear to impact them as negatively as traditional beneficiaries. White students openly spoke about their status as beneficiaries of affirmative action without fear and championed the importance of a strict meritocracy as if they held the positions of power that Whites hold in the U.S. When Asian American students held the dominant position at Whitney, they adopted many of the same strong beliefs in meritocracy that traditional holders of power tend to assume, even though many appeared to be sympathetic to the importance of a diverse campus.

Unlike Lowell High School, the diversity plan at Whitney did not give strict numerical guidelines for each racial group or subgroup within Asian ethnicities. These differences in policy may lead Whitney down a less contentious path than their counterparts at Lowell. Without many of the same sensitive issues that White dominance brings to the affirmative action debate, such as charges of racism against Whites or accusations of inferiority against Blacks and Latinos, the Whitney community spoke openly about issues of race, diversity, and merit. In this special situation, Asian American students assume the temporary position of dominance — a position many will soon discover is unique to their school when they enter the harsh world in which they belong to a racial minority, as I did upon leaving Whitney.

The Ninth Circuit ruling upholding the constitutionality of the California Civil Rights Initiative, the state ban on affirmative action programs, can potentially propel Asian Americans to the forefront of the controversial debates. Currently, Asian Americans account for 37 percent of all undergraduates in the University of California system. As their numbers increase, the campuses report a rise in anti-Asian sentiments surfacing in the form of virulent telephone calls, graffiti, and e-mail threats purporting to “find and kill every one of you [Asian Americans] personally” and commenting on diminutive Asian male genital size. Aside from this blatant aggression, students also report a rise in “latent resentment” towards Asian American presence on campus. After the implementation of the California Civil Rights Initiative, some project that

182. See Sarah Lubman, As the Proportion of Asian and Asian-American Students on UC Campuses Mushrooms, There Are Signs of a Backlash, But At University Headquarters the Subject is Not an Issue. Asian Equation Troubles UC, SAN JOSE MERCURY NEWS, Feb. 28, 1998, at 1A.
183. See id.
184. Id.
the University of California system will become 50 to 60 percent Asian American when Asian Americans comprise only 13 percent of the state's population and 4 percent of the country's population.185 Already, the numbers indicate that the California ban on the use of any racial criteria has led to an increase in the number of Asian Americans and a decrease in the number of Blacks, Latinos, and Whites.186 The trends suggest that the changing demographics of the campuses will force Whites to understand the value of diversity as a minority on a large scale and when the stakes are higher. The ways in which the high schools have handled the issue may foreshadow how the state will handle the displacement of White students from the prestigious University of California system in the coming years. If the situation at the high schools hasn't made the limitations of the binary clear, perhaps the large number of Asian Americans in our universities will force a recognition of a contextualized, historically rooted construction of affirmative action.

The challenges for Asian Americans in the new millennium involve positioning themselves in the affirmative action debate in a manner that transcends the Black and White binary. Asian Americans must actively work to displace this binary or they may fall into the shortsighted strategy of adopting the White position, as did their cohorts at Whitney and Lowell High Schools. By showing their solidarity with other people of color, the Asian Americans who have achieved success can demonstrate a commitment to justice that recognizes the historically sedimented notions of race and power that pervade society. This recognition of the underinclusive construction of race and the need for power sharing can create trust and collaboration between ethnic groups in our common struggle for social justice. The unity will ultimately displace the Black and White binary and move the affirmative action debate forward and away from the pretextual notion of merit.

185. See Seo, supra note 4; John Fetto, Power Trip, AM. DEMOGRAPHICS, Feb. 1, 1999, at 45.
186. See Linda Chen Einsiedler & Todd A. DeMitchell, Affirmative Action and the Model Minority in Higher Education Admissions: A Conundrum for Asian Americans, 131 ED. LAW REP. 887, 878 (1999) (citing statistics that first-year undergraduate admissions for Asian Americans increased from 9,529 in 1997 to 9,711 in 1998; African American admissions declined from 998 to 758; Latino admissions declined from 3,394 to 3,206; and the Whites/Other category declined from 10,772 to 9,690 during the same time period).