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Testimony of Eugene E. Garcia†

Direct Examination by George B. Washington, Counsel for Intervening Defendants

Q: Is there -- is [the University of California] charged in some way to provide education for the entire State of California?
A: It is. Constitutionally, it was given the charge of educating all students in California.

Q: And does the constitution speak in terms of representation?
A: Yes, it does, specifically, right.

Q: Can you tell me what in general the charge of the University of California was?
A: The charge is to make sure that the University of California in fact does serve all the citizens of the State and the children of those citizens, and is intended to be inclusive....

Q: So the University of California is supposed to represent the people of the State of California?
A: Correct, correct.

Q: We have heard a lot of talk about it. Can you tell us, just break down for us the racial and ethnic background of the people of the State of California today?
A: Sure, sure... California has actually become overall a minority/majority state; that is, there are no majority in California in terms of ethnic, racial or typical ways of identifying groups in the state and in the nation. In the K [through] twelve sector, we have become a minority/majority the K [through] twelve sector about seven years ago, in which, again, within the public school system there is no one group of students that serve as a majority. The fastest growing population in California is the Latino population. That population is growing at approximately five to six percent per year, and again, if we do the projections, probably in somewhere around 2015 we will likely be a state in which the the K [through] twelve public schools will be predominantly Latino.1

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Q: And Dr. Garcia, as I understand it, at this point the white population of California is less than 50 percent of the population as of today?
A: That's correct.2

† Mr. Garcia is the Dean of the Graduate School of Education at the University of California, Berkeley. He appeared as a witness for the Intervening Defendants (Student Intervenors) on February 8, 2001. His testimony was excerpted from Trial Transcript, Grutter v. Bollinger, 137 F. Supp. 2d 821 (E.D. Mich. March 27, 2001) (No. 97-75928), http://www.umich.edu/~urel/admissions/legal/grutter/gru.trans/ gru2.08.01a.html and http://www.umich.edu/~urel/admissions/legal/grutter/gru.trans/gru2.08.01b.html. Mr. Garcia's expert report on behalf of the Student Intervenors is reprinted in 12 LA RAZA L.J. 371 (2001).


2. Id. at 141.
Q: What does it mean to be eligible for the University of California?
A: Very specifically, there are several ways to be eligible. The predominant way is to actually take the required courses in the high schools that one is attending, and those courses are prescribed by the University of California. There are so many units in mathematics, so many units in social studies, so many units in science, foreign language, two years of a foreign language, et cetera. . . . The second indicator or qualifier of eligibility is a 3.2 grade point average in those courses, so that if you have taken those courses and have obtained a 3.2, then you become eligible, you become part of that twelve and-a-half percent [of students who are eligible for admission]. . . .

Q: Dr. Garcia, before [Proposition] 209, can you tell me of the various ethnic and racial minorities in California, were twelve and-a-half percent of all of those various populations eligible for admission to the University of California?
A: No. Approximately three percent of Latino students were eligible to the University of California, 3.8 percent or close to that amount, and blacks, too, about 3.2 percent.3

Q: [I]n addition to being selective, would it be fair to say that the University of California at Berkeley and UCLA are world renowned as educational institutions?
A: Yes, yes, they are.4

Q: And how did -- I still want to stick on the before-209 period. How did one go about applying to University of California at Berkeley or the University of California at Los Angeles?
A: One could identify three campuses in the application and you would list your preference, one, two, three, and most students would essentially go right on down the line, Berkeley, UCLA, San Diego, for preferential or selective activity.
Q: And what were the criteria for selection prior to 209?
A: We used race, we used affirmative action as one factor. Keep in mind that the students still needed to be eligible. They met the eligibility requirements, so they were in the top twelve and-a-half percent. In addition to that, they used SATs and GPAs, in some cases, very formulaic, to determine admissions.5
Q: What effect did the use of the GPAs have on the admissions for Latino and black students in particular?

A: Then, as today, access to courses first that are college level and acceptable courses at UC are differently distributed amongst high schools. We find Latino students in particular and African American students, as well, are in those high schools where there are less of those courses, so their GPA with regard to those courses could, in fact, be affected because of access to those courses, so both their eligibility and their admissions could be affected. Secondly, the GPA is allowed to float above a 4.0, an A equaling 4.0, because honors courses and AP courses are given up to 4.8 in grade level, so that a student taking many, many AP courses or many honors courses could, in fact, have an inflated -- what we're going to call a floated, floating grade point average. If you happen to be in a school in which there were no AP courses, or had limited access to them, or where there were limited numbers of honors courses, then you essentially, GPA could have a tremendous effect in a decision that might be made with regard to your admissions.

Q: Were the honors courses equally distributed between schools which were white and schools which were Latino and schools which were black?

A: No. Our empirical work in the early '90s and then into the mid '90s indicated that what we called the A to E courses, the required courses, were not distributed equally, honors courses were not distributed equally, nor were AP courses. Honors and AP were significantly not available in those places where we had highly segregated high schools, particularly serving Latino students.6

* * *

THE COURT: I'm also hearing what you're saying to me is that in certain areas, that they don't have the curriculum that they need in order to even become eligible?

THE WITNESS: That's correct. They don't have the curriculum, right.7

* * *

Q: Dr. Garcia, could you describe for us what the California K through twelve educational system is now?

A: . . . Relevant to the situation that we're discussing here is that many of the schools that fall in that lower decile or quintile in terms of resources, achievement, et cetera, are also highly segregated with Latino and African-American students, and are also underresourced in terms of expenditures per student.

Q: You have mentioned some of the things that it means to be underresourced. Can you tell me more about what that means?

A: . . . I would say it is the overall tenor of the place where the school is and that usually, and in very impoverished locales, urban sectors or rural sectors, for

6. Id. at 145-47.

7. Id. at 148-49.
Latinos, tend to be economically depressed, high in unemployment rates, high in incarceration rates, and all these things, I think, would characterize the environment of a Latino student in California.

Q: And if you know, what is the graduation rate for Latino students in California, high school graduation rate?

A: We have now -- depending on how you measure it, but if you look at it longitudinally over a period of time that the student is actually in school, we're probably losing about 40 percent of students who begin in the K through twelve sector, but never finish, so we're completing about 60 percent of Latino students.

Q: Now, Dr. Garcia, could you describe for a moment the situation for black students in the State of California and K through twelve?

A: Very similar picture. Highly segregated schools, similar kinds of neighborhoods. In some cases, where the neighborhoods are transitioning from highly black concentrated populations to Latino populations coming in.

Q: ... Would it be fair to characterize the California K through twelve system, in general, as separate and unequal systems?

A: I think many people have characterized it that way. I would at least be willing to do so, yes. 8

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Q: Let me return then to Berkeley in the pre 209 days or actually [the] UC system. You had mentioned that there was the use of grade point averages as one of the ways of selecting among that group of people who were eligible for admission, who it was who was going to be able to go to UC. What was the other criteria on the normal admissions system?

A: Typically the use of the SAT ones and SAT twos and threes required all three examination types. And then, of course, the full transcripts and essays were considered in the admissions process. 9

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Q: What discriminatory impact, if any, did [using the SAT as a selected factor in admissions] have on either Latino or Black applicants to the University of California?

A: It had two general effects, and we documented both of these. One is that it precluded admissions at the most competitive or selective institutions, at Berkeley, UCLA, and San Diego at which time during -- even until most recently again indices of SAT one scores and GPA are used to make fifty percent and up to seventy-five percent of the admissions decisions. So that if your SAT score was low, if you came from a school that didn't have the honors courses or whatever, it would just exacerbate the discriminatory decision-making process at these select universities. The other effect found is that many.

8. *Id.* at 152-55.

of the students wouldn't apply to any of the universities that they have to take the SAT scores. Keep in mind that many Latino students have begun school speaking a language other than English. They knew as we did that English is a very important aspect of the SAT or any standardized achievement measure developed in the United States. That is, these tests not only measure what they're intended to measure, content and other material, they measure how you understand the test.10

* * *

Q: What relevance, if any, does it have to a student's score on an SAT if his or her parents were trained in academic English?
A: It's a tremendous advantage, and it's the kind of advantage that one doesn't really realize unless one does linguist or psycholinguist observations of what's going on middle class, upper middle class educated homes where there are discussions, there's developed vocabulary. There are a whole set of interactions that build this academic English.

Q: And would it be fair to say then that the SAT test is a system that disadvantages both Latino and Black students and advantages White students?
A: At the present time that's the case, yes.11

* * *

Q: Dr. Garcia, I want to come back the post affirmative action era and what works and what doesn't. But first, if you would, could you describe for us before the passage of the SP 201 and Proposition 209, what was the affirmative action program at the University of California?
A: The affirmative action program, first of all, did not accept students who were not eligible. . . . [T]here is a mechanism in the University of California that allows accepting students that are not eligible. Remember earlier I described eligibility. [The mechanism is] usually left for athletes and tuba players or special individuals who did not meet [the eligibility] requirement. The affirmative action process in the University of California first required admitting students that were eligible. . . . The affirmative action program essentially allowed campuses to use race, ethnicity, gender as one of several variables in determining admissions. So there was never any of decision made on the basis of a student not being eligible and being of a certain race or a certain gender or a certain ethnicity. The idea was to provide a more comprehensive overview of a student including race and gender, and ethnicity of the student, along with all the other indicators.12

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10. Id. at 163-64.
11. Id. at 170.
12. Id. at 172-73.
Q: When you looked at those students [from primarily Black & Latino high schools], did you look at their race or their national background?
A: We did consider that in the admissions process, pre 209.
Q: Why did you do that?
A: We felt it was an important way to meet the goals of the University of California, that is, to have a diverse student body, to meet and serve children of the state of California. We felt also that having a diverse class in the University of California, an integrated class, was important. So that's why we used those measures.
Q: Okay. What was there about the question of race and educational opportunity that made you look at the question of race?
A: First of all, we understood very much that the opportunity was distributed differentially across the state based on race and ethnicity, particularly with African Americans, Latinos and American Indian students. And we were attempting to be sure to take the very best students that were doing well under the conditions which they were being educated.13

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Q: When 209 went into effect, what effect, if any, did that have on the admission of under-represented minorities in the University of California?
A: In the University of California there were two effects that we can -- sort of major effects, there may have been many others, but in terms of numerical effects on the entering freshman class, at the three selected universities we saw tremendous decreases in the number of applications, enrollments and eventually admissions . . . So we lost since the implementation of 209 at places at Berkeley, UCLA and San Diego, anywhere between thirty to fifty percent of Chicano and Latino and African-American. So it is a tremendous decrease. What's frustrating is that we were making gains up until that time. So we were increasing enrollments of these individuals by about one to two percent on each of these campuses per year. So projecting that out over the five years we've had a minus -- even a further negative loss because we haven't been gaining, we've been losing. So we have been -- we were making very small but important gains and now have tremendous losses.14

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Q: . . . Dean Garcia, I assume you are extremely -- personally, are extremely disturbed about this fall in numbers.
A: Probably the best way to put it is frustrated. We have this demographic reality. There is a substantive commitment on the part of the University of California, and I believe the citizens of California to have a diverse student body in the University of California. I think the Board of Regents did pass SP1 but they also passed SP2 which was that the University of California will, in fact, be diverse. So what we have is a situation which we have tried as best we can to

13. Id. at 175.
14. Id. at 179-80.
move the university in a partnership mode to help assist the K-12 sector, but recognizing the tremendous challenges that students have in the K-12 sector, and in moving that sector in ways that will enhance achievement of those students and therefore, their competitiveness in the present process. We are highly frustrated. We do not see light at the end of the tunnel. We continue to perceive that there will be more decreases, not only at Berkeley but at -- across the system even though we are expanding our outreach activities, our partnership activities, everything we can and acknowledging that it will be quite some time before we have the right prepared teachers, the right curriculum, the right resources, the kinds of resources that are necessary to move students to a competitive level under the present system.\(^{15}\)

* * *

Q: Doctor Garcia, it's been said that the University of California is being resegregated; is that true?
A: Yes, it is.
Q: In what way would you say it's becoming resegregated?
A: Clearly you've seen the increases in the classes, the numbers of under-represented students at the less selective UCs. What we are fearful of is that we will essentially have three to four universities, because Irvine [is] now becoming much like San Diego, so we will have three or four universities that will be primarily White and Asian, and four universities that will be primarily Black and Brown.
Q: Do you think there's a double standard in the University of California in terms of its admissions system at this point?
A: I think it's a situation in which we are not making the right decisions with regard to the information we have about students that we know will allow them to be successful at the most selective as well as unselective campuses.
Q: At the current time persons are being admitted across the state of California which I think is larger than all but ten countries in the world on the basis of the criteria that favor people who go to white schools -- well, who have parents who speak academic English?
A: That's correct.
Q: A system that, in effect, is favoring whites and Asians . . . ?
A: Right.
Q: Would you call that a race neutral system?
A: It's anything but that.\(^{16}\)

\(^{15}\) * Id. at 185-86.*

\(^{16}\) * Id. at 187-88.*