ANCORE Remarks – W. B. Allen
December 8, 2006

We gather today to organize a defense of the equal opportunity regime. We do so, however, with a deep sense of the immensity of the challenge we face. For at no time since the founding of the United States has the foundational moral equality which is its inner spring ever prevailed without confronting major challenges. And today the challenge comes in the form of a denial that equality is sufficient for constructing a society in which men and women can freely develop and move toward that human flourishing which is the true goal of our political association.

The challenges to equality come from the extreme ends of the political spectrum, to be sure, the one end rejecting the very notion of common society on the basis of conceded humanity and the other end denying that "equal opportunity is enough." But we must not imagine that it is only political extremes that challenge the value of equality. For much in the way of so-called centrist opinion is especially confused about this question, and in no case so much confused as in the conversation about race and ethnicity. For it is in that conversation that the principle has arisen by which many believe that a person's race or ethnicity is more fundamental than his or her humanity, and that in the name of cultural identity it is appropriate to qualify our commitment to human rights in general. This has produced perverse consequences, none more threatening to equality than the "badge of inferiority" that subject races are assigned to wear in the presence of self-identified rulers from the dominant personalities.

The American people profoundly and sincerely believe in the inferior abilities of black people. When I speak of the "American people" I speak carefully, meaning all of them, black, white, liberal, conservative, and otherwise, though I am certainly aware of individuals who are not subject to that handicap. What I say about the American people is probably not unique to them, since abundant evidence exists that the same belief, no less profound but perhaps not so sincere, pervades peoples around the world. However, the American people uniquely believe in black inferiority in such a way as to pre-determine central dynamics in the entire society in an extraordinary way. That makes it a special problem; those central dynamics are uniformly dysfunctional and corrosive of social bonds.

We find this reality at work in the current public and academic debate about the consequences for black professionals that derive from preferential law school admissions and appointment in high prestige law firms. UCLA Professor Richard Sander has credibly documented a dramatic mismatch between the numbers of preferential appointees and their progress, whether in law school or after law school in practice in high prestige firms. The current debate notes that black law graduates with high grades make up just 1 to 2 percent of law school graduates with high grades, but among lawyers hired at high prestige firms, where high grades are the uniform rule, black hires account for 8 percent of hires. Sander concluded, therefore, that it is no surprise that black lawyers in such firms achieve professional success (become partners) at only 25% of the rate of non-black hires. This study is important, because this mismatching does not seem to occur in small firms, and the success rates for black lawyers there are higher.

However, the telling response to the Sander study by Duke University Professors James Coleman and Mitu Gulati reveals that the true problem is an underlying conviction of black inferiority. They have been quoted as saying the Sander study "will contribute to the stereotyping that already undermines the success of black associates in elite corporate law firms." In other words, they defend so-called diversity practices based on winking at different levels of qualification, and then demand discreet silence about the effect of making decisions on that basis. This, in turn, strongly suggests that they believe any evidence of black underperformance is indicative of what blacks actually can do, but that there is a social good in accommodating inferior abilities in spite of their comparative disadvantage. That is a very sophisticated belief in inferiority, but it is still a belief in inferiority.

Now that account, much like any broad review of social science studies that would convey this understanding, is perhaps a bit abstract. I can recount an experience that will make the point more immediate, for I have presented an account of this form of thinking to an audience highly sympathetic to equal opportunity. Their ho-hum reaction to a palpable case of racial preference discrimination in hiring (an audience whose sentiments would naturally pre-dispose them to be horrified by it) reveals with stunning clarity that it struck them as "nothing out of the ordinary" and perhaps "only what is to be expected." Even though most members of that audience opposed race and gender preferences, when they heard the story I am going to share with you as well, their response suggested that the main question was only whether people of inferior abilities were being advanced above people of better qualifications. But that is not the question, as you will see; equal opportunity should trump decisions based on race even where the result would be to advance persons of superior qualifications!

Therefore, a main task for us is to reflect deeply upon the question, what can we do to alter the fundamental assumptions that operate in this conversation about race and ethnicity? In particular, what steps can we take to demonstrate that the wrong in the practice of race or gender preferences is not the advancement of persons of inferior abilities beyond persons of higher abilities, but the very use of race or gender itself to make decisions that should be made, instead, on the basis of meaningful evaluation of individual qualifications?

Now, the way that I ask you to think about this question is to provide, by the end of the day, suggestions for responding to the specific challenge contained in the example I am going to share with you now. First, I will describe the situation which we can take as our problem statement, and then I will add a few comments regarding how we need to look at the example. We will not take up the discussion immediately. We will rather return to it in our final session of the day, after we have had time to familiarize ourselves with the range of issues and alternatives that surround the practice of affirmative action in our society.

CASE STUDY: RACE PREFERENCES AT WORK

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The following scenario is taking place at a highly reputed private, east coast university that receives substantial federal funding.

The political science department met to deliberate on candidates for an American politics position. The search committee reported ten candidates from a large pool, all of whom were "qualified" for the position and at least six of whom were very good fits. Practice called for the department at large to select three of the candidates for on-campus interviews. The department decided to employ its usual method of deciding by vote, using what political scientists call "the Borda method." This entails a secret ballot, on which voters rank all candidates from 1 (top choice) to 10 (last choice). That produces a numerical tally in which the lowest number reveals the highest rank and so on to the end. The top three candidates are invited to campus. The Department favored this scheme over the "Australian preference" ballot, which calls for extended repeat balloting.

The tally produced the following results:

1. White Female (Degree in hand, top 50 school)
2. White Male (Degree expected imminently, top 50 school)
3. White Male (Degree in hand, top 50 school)
4. White Male (apparently Jewish) (Degree in hand, top 50 school)
5. Black Female (Degree expected intermediate range, top 50 school)

At this point the chair moved to send the results to the approving dean to extend invitations. A faculty member moved, however, that the department invite candidate number five plus the three additional candidates by rank. Some faculty favored the motion for affirmative action/diversity reasons and noted that candidate number 4 would not be invited anyway and so was not being "harmed." At least one faculty member objected to using race to move one candidate ahead of a higher ranked candidate after the fact.

This is a real case, presently unfolding. We do not know, therefore, what the results will be. The point, however, is to observe several notable dynamics in play here. To take the least obvious first: candidate number five will have no idea of what has happened, unless she actually gets the job and exercises the reasonable prudence of catching up with her new colleagues by reading department minutes for the past year (what I have reported comes directly from departmental minutes). Should she do that, she will then confront the now conceded stigma effect of race and gender preferences; she will wear the assigned "badge of inferiority."

Secondly, these faculty are all political scientists, whom we may be sure are fully informed about the legal requirements of what they are doing and who know, therefore, that they have just violated the law on a number of grounds. To take only the most obvious, the 2003 Grutter-Gratz decisions resulted in a two-fold test of racial considerations. When they involve "extra points" for race, they are illegal; when race is legitimately referenced it is only in a holistic assessment, which has to mean that it comes

in before the fact of summary evaluation. That the files were weighed, assessed, and judged before the race move was made places this case on the Gratz side of the scale.

Thirdly, it is important to observe that the supposed beneficiary of preference in this case is not only doubtlessly qualified for the position, but, more importantly, this is certainly someone who, on someone else's list in some other institution, will certainly come in number one instead of number five. (However, she will not be aware of the distinction as she interviews for the jobs, and could well end up "mismatched" with colleagues who believe her to be "inferior" rather joining colleagues who have the highest expectations for her.) In other words, what the ratings signify is only the best judgment of the faculty involved and not anything at all objective concerning the candidates themselves. Accordingly, to think of candidate #5 as inferior in ability is a mistake, even though it is precisely what the faculty in this case happen to think. This makes perfectly clear that stereotypical thinking about black people does not happen only in the case of supposed "rednecks." Indeed, it is even more current today among supposed "progressives."

Now this case illustrates perfectly what I called embedded social practice. The society has dallied so long with racial preferences, that certain constituencies habitually employ them as if by right, even when they know they act against the law. Such behavior cannot change independent of university and other corporate or administrative hierarchies deliberately undertaking to clean up this rat's nest of illegitimate motives for decision making. If that does not happen, we as a society will be processing the fruit of this kind of racism for far longer than the twenty-five years to which Justice Sandra Day O'Connor sentenced the country.

It is clear that constitutional amendments such as Proposal 2 are inadequate to reach the level of social depth required to correct this kind of activity. Your assignment, therefore, if you choose to accept it, is to tell us what more needs to be done. Specifically, how shall we address the problem I have described, knowing full well that the same thing is going on in some of our institutions right here in Michigan and not merely in the institution of which I have provided the example. Please use your notepads to make notes to yourselves during the course of the day, and we will collect your solutions at the end.