

PANEL: Equal Opportunity, Excellence and Affirmative Action: Is There a Conflict?

Howard F. Gillette, Moderator

Clarence Mitchell

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MODERATOR: Howard F. Gillette, Assistant to the Vice President for Alumni Affairs and Development, Harvard University

GILLETTE: My name is Howard Gillette. One of my functions at the university is to communicate with the alumni and the public, and so perhaps it is pertinent for me to announce that at Hanover, at the end of the third quarter, the score was Harvard 14, Dartmouth 7.

My job here this afternoon though is to welcome you to the last session of this conference. You may remember is the old days of vaudeville that the last act was always either acrobats or performing animals. The purpose being primarily to keep the lights on while everybody went slowly out of the theater bemused, or bewitched as the case may be by the headliner that came on just before. But it does seem to me that Walter Leonard, with his usual fine hand, in this case has saved almost the best for the last. Because it seems to me that the question before the house in this session really goes right to the heart of the whole problem. I think it was very pertinent in Mr. Bok's address yesterday, where he indicated in talking to this, that while it was terribly important that affirmative action programs not dilute the quality of the institution—because after all excellence is really what an institution is all about—at the same time a properly managed affirmative action program would contribute to the promotion of excellence in the institution by enlarging the pool of available talent.

Of course, one of the problems when you are talking about excellence, is the difficulty in measuring it. There are all sorts of ways to measure different things. There is the thermometer to tell you how healthy you are. There is the tachometer to tell how fast the engine is going around. There is even a pedometer to tell you how far you are walking, in case you want to know. But nobody so far has ever figured out an excellentmeter. So there is just no way of measuring it. But I do think the two speakers we have here this afternoon will help us come to some perimeter on that subject, both in themselves and in what they have to say.

Our first speaker is Clarence Mitchell. Mr. Mitchell graduated from Lincoln University in Pennsylvania. Got his law degree from the University of Maryland and took his graduate studies at the University of Minnesota. Since 1950 he has headed the Washington Bureau of the National Association for the Advancement of Colored People. I can't think, in these days, of a more important job in that organization. I can't think of a more important job in Washington. I mentioned that it's hard to measure excellence, but there are two benchmarks. One are marks and the other is recognition by one's peers. I think it is obvious from Mr. Mitchell's track

record that he racked up steady straight A's in what might be called the University of Washington, D. C., and second that he got recognition from his peers when he was given the Spingarn Medal by the Association. We are very grateful to Mr. Mitchell for being with us and we are indebted to TWA for getting him here from Cincinnati where he had a somewhat similar panel last night. Mr. Mitchell.

MITCHELL: I have been trying to figure out what kind of animal I ought to be if this is one of those animal acts in those vaudeville shows. But I can assure you that it wouldn't be a bull.

Well, you know you never can tell when you are going to be surprised. I looked up there in the audience and there is my wife. Would you stand up since you are here? She is a very distinguished lawyer in the city of Baltimore; graduate of the University of Pennsylvania, M.A. degree from the same institution, and has won a number of very important cases. My principal job in the area of sex equality is to try to keep up with her standards and be equal to her. So I think it is possible to achieve equality between the sexes because if I didn't I would be in a bad way having to catch up with her all of the time. I am delighted you came. I came here from Cincinnati. I had a suspicion when she was carefully perusing all of these documents that I got from Walter that maybe she might arrive.

I was interested in the exchange in the previous panel concerning the way the women's factor got into the equal employment opportunity legislation and I thought maybe I had better give a little bit of perspective on it for fear that maybe it hadn't been treated in the past. I did have the advantage of being there when it was done, so what I am saying is sort of out of the horse's mouth. That's the kind of animal—I'll be a horse.

My little grandson, one of them, I have seven grandchildren, some girls and some boys—this little boy was talking to me the other day on October 12, and I said, "Mike, do you know what day this is?" He said, "yes, I know it is Columbus' birthday." and I said, "No, it is Columbus Day. What was it Columbus did that was so important?" He said, "He discovered America." I said, "When did he discover America?" Now he is a six-year old, and he said "well I am not sure but I think it was in the 1950's he discovered it." As I listen to replays of things that are going on I think it is important to document history so people at least will have the real version of what was taking place.

The idea of fair employment came into focus as a matter of national policy in 1941. This was when A. Philip Randolph was still active, a great statesman, and incidentally the first person who decided to have the 1963 march on Washington. He was for having a march on Washington in 1941 because we were gearing up for war. We said we needed a whole lot of people to do jobs, and Blacks as usual were being consigned to the janitor squad and things of that sort. And as a result of the fear of the government that they would be embarrassed—after all they were supposed to be fighting racism over in Germany, and it would be kind of embarrassing if the Blacks had to march down there and stop them from discriminating—an Executive Order was issued which prohibited discrimination because of race, religion, national origin, etc. That Order because it was an Executive Order was

eventually knocked out by parliamentary maneuvering in Congress, and it was kept alive by issuance of Executive Orders from all Presidents from Truman forward to Johnson and Nixon. And of course in 1964 there came a time when we tried to get added to the package of civil rights two very important titles. One was Title VII dealing with employment discrimination, establishing the Equal Employment Opportunity Commission; as well as Title VI, which prohibited the expenditure of government money for any discriminatory purpose. In 1972 we had the Title VII amended to extend to Federal, State and Local government entities; and also added other things which helped to strengthen it by giving to the agency the power to institute court action to implement decisions that it had reached.

The sex aspect of this came in an effort on the part of our enemies to do us in. Everytime we have had a civil rights bill that we have tried to get through Congress, our opponents would take some good cause and try to use it to hit us over the head. There was a lady named Miss Mae Craig who worked for the Maine newspaper syndicate down in Washington who had a lot of influence, a lot of contact. She had a friend named Howard Smith who was a Congressman from the State of Virginia, a kind of obstreperous and crochety old guy. He had a farm down in Virginia and he would go down to his farm whenever he didn't want to help us get any administrative action on civil rights. But they were on a program called, I guess it was called "Meet the Press," and Miss Craig said to Howard Smith, "What are you going to do for women with this legislation." And he said, "Well, Miss Craig, I am going to fix things up for you, I am going to put an amendment on there which will prohibit discrimination against women on the basis of sex." Sure enough when the time came for action on the legislation, we were not unaware of what was going to happen. And to the surprise of our opponents, we of course, embraced the ladies, as is natural, and we accepted the amendment so that it became a part of the law. To me it would be incredible that anybody would think that because women win in cases, that this is harmful in some way to males. It is incredible to me that anybody would think that you can divide women up into categories of white, Black, Chinese, anything like that because in all of the victories that have been won with respect to sex discrimination under this statute, two things have happened, Black women have benefited.

One of the most famous cases involved Lorillard Tobacco Company which was involved in upgrading and payment of back wages and a whole lot of things that involved primarily Black women. And in the telephone industry, in aircraft, in air transportation, the victories that have been won there, of course, have been in favor of everybody. The second thing which is important is that they set legal precedents.

In our organization we don't always act effectively in court because we have a precedent which affects Black people. We have a precedent which establishes a legal principle and on that legal principle we achieve a result which is desirable. I think what we must remember—it comes from my lexicon of useful statements made by my good friends over the years—you know we have a lot of trouble with the Irish down in South Boston right now, but there are plenty of Irish that we haven't had trouble with, had a lot of cooperation from. One of them is my friend, Monsignor Francis Gilligan

who comes from Fall River. He and I used to work together in Minnesota against discrimination. One of his favorite statements was "Divide et Empera" which he said means "Divide and Conquer". That is what is done by those who don't want to have progress in this field.

I used to have charge of a big area of industry down in Pennsylvania, Delaware and New Jersey and every time I went into one of these big plants they would say you know we would like to put your people in, but these damn labor unions will not let us do it. Then of course nowadays if you go in to talk about something constructive, they say yes, well we would do it, but we have got too many Black men and they don't want these white women in or they got the white women in and they don't want the Blacks in or they have the Blacks in and they won't let the Mexican-Americans in. So that what we must make up our minds about is that propaganda which is designed to divide us usually takes the form of making it appear that the have-nots aren't getting something because other have-nots are benefiting, which is not the case.

I was amused when I heard someone there talking about all these numerous women. I think it was Mr. Lester they were talking about, all these women going in on college faculties. I think the increase in the Black faculty member is something like five-tenths, or seven-tenths of one percent and the increases of white women was about nine-tenths of one percent. Miniscule and ridiculous for anybody to write the kind of stuff he wrote in that book about how the women and Blacks are elbowing everybody out. Now I will get down to my prepared statement which is brief, and I hope will be finished before you get bored.

My response to the question of whether there is conflict between equal opportunity, excellence and affirmative action is an emphatic, no! There is no conflict.

On the contrary, my experience in dealing with government, industry, labor unions, educational institutions and other segments of our society over the half century of my life has convinced me that without equal opportunity and affirmative action we do not get the best available or potentially available in almost any field that I have observed closely.

The most obvious support for what I have just said are top notch Black baseball players because of the affirmative action program that started when the late Jackie Robinson joined the Brooklyn Dodgers. Equally apparent is the affirmative action of the voters in this state that gave the nation one of its most capable and effective members of the United States Senate—Edward Brooke.

Less well known, but the dominant part of the total picture are the Black skilled workers in shipyards, in factories and offices. Also, the supporting evidence includes women who hold executive posts and by November 6, 1974, may be accepting congratulations as a Governor-elect or new members of Congress. It is only conscientious search that has brought most of the persons of Spanish ancestry or American Indian heritage into some of the most important jobs that they now hold in our society. Without affirmative action, most of these people would today be buried in crypts of frustration and the nation would be the poorer for it.

To understand why affirmative action is important, one must understand the system of selection that prevails in our country.

During World War II I talked with the manager of a Cleveland, Ohio, company that makes some of the world's finest pneumatic machine tools. I asked how it was that, although the plant was in a Black residential area, almost one hundred percent of the workers were white. He said this was because most of the employees were hired when friends and relatives working in the plant told them about openings before the general public heard about the jobs that were available.

That pattern still prevails widely in training, hiring practices and promotions in Federal, State and Local government, in industry, in labor organizations, in hospitals, in educational institutions and almost all fields of employment.

As a defense for exclusionary policies our society has developed deadly devices which are supposed to determine the persons best qualified for a place in a professional school classroom, for a job in a factory or for promotion to a post in a government agency.

A careful reading of the case of *DeFunis v. Odegaard*¹ reveals that the persons setting standards for admission to the Washington state university law school were not selecting unqualified people over qualified. They were selecting from among over one thousand applicants—all of whom were qualified. Those making the selection knew that mere reliance upon a test score would not necessarily assure that the persons most capable of being successful lawyers would be admitted. Therefore, they included other objective and relevant factors as they sought to implement affirmative action. The result was that not only Blacks but also whites who otherwise would have been excluded, were able to gain admission to the Law School at the University of Washington.

One of the most farcical uses of a test as means of excluding qualified workers is found in the pages of the Supreme Court's opinion in *Griggs v. Duke Power Company*.² In that case, when past practices of confining Blacks to certain low paid jobs on the basis of race became unlawful, the company began using a qualifying test. This test was so difficult that about 50 percent of high school students, for whom it was supposedly intended, could not pass it. In addition, it had no real relevance to the jobs to be performed. Fortunately, it's use was struck down by the Supreme Court.

In the Washington Bureau of the NAACP we have been having numerous discussions about how to validate tests to determine whether they are suitable in deciding whether an applicant for a job is qualified. During these discussions one government official told of a test that is used by a major retail company that has outlets all over the United States.

This company has found that Blacks usually make a test score of five to ten percent below whites but when they get on the job the whites and Blacks have equal performance for the most part. In some instances, Blacks who score below the whites actually do better than the whites when they begin working. Of course, the question arises, why have such an unreliable test?

1. 416 U.S. 312 (1974).

2. 401 U.S. 424 (1971).

The answer given is "we do not have anything better."

We are also handling the case of a Black woman university professor who is being denied a promotion at a leading state institution of higher learning. The investigation reveals that she has written and published more articles in her field than her white colleagues, she has a broader work experience in the profession and has excellent rapport with the students who take her courses. The university is currently resisting giving her the promotion on the ground that it would be reverse discrimination.

That's one of those code words, you know. Anybody who is as old as I am, and nobody in this room is that old, knows that there used to be a term in the country called "social equality." And if you believed in social equality it meant you believed there should be inter-racial marriage and of course that was inflammatory. Then of course we got the word "forced busing" which also stirred up a lot of trouble in this country. Law and order and all those different kinds of things.

Well, now those wordsmiths have come up with a new term which is this one of "reverse discrimination." Just poppycock, trying to make it appear when you given an eyedropper full of opportunity to people who have been discriminated against, namely women, Blacks and other minorities, this means that you are suddenly engaging in reverse discrimination.

Well I don't know about any of you, but I have heard all of the terms that anybody used and I am not fooled by any of them. As far as I am concerned there should be more jobs for women, more jobs for Blacks, less obstruction and don't come up with any of that bull (which is another animal) about keeping things confused because they are trying to get more women in and they really aren't qualified. There is absolutely no difference between Mr. Lester, who wrote that book and some of these professors—I bet a plenty of them up here at Harvard—and the racists down South who said Blacks would never be able to make it if you let them vote. Now Blacks are voting and the same racists are trying to get them to vote for them.

Don't pay any attention to that crowd that says well we oughtn't have affirmative action because it will mean first, that we don't have enough of them, and second, that it would mean that you put out whites.

It should also be noted that the promotion, this young lady I was talking about, is from assistant professor to associate. If made, it would not deprive any white person of a job but it would help to change the pattern of token hiring of Black faculty members that now exists at that school. Further, it should be noted that this particular institution admitted Black students to its various components only after the NAACP won cases against its law school, against its school of nursing, against its graduate school. We had to take them into court every time to win. And we did, of course.

We have another active case against the federal government. In this case a highly qualified Black woman lawyer met and surpassed the requirements for promotion to the position of vice chairman of a hearing board. She did not get the position when the post first became vacant. A white man was appointed. After he left the position and a replacement was needed, then the job qualifications were changed in a manner that exactly fitted those of the white official who does not have the same experience and

training as this Black lady. Needless to say, we have that case on the line too.

One could multiply these illustrations many times, but that is not necessary for those who are familiar with the inner workings of government, industry, educational institutions and the whole spectrum of admission, hiring, and promotion policies that prevail in our country.

Unfortunately, those who have carved out little enclaves for themselves are now defending these positions by saying that affirmative action programs are really quotas and by branding productive action as reverse discrimination.

These are the same people who have an endless chain of contacts for filling vacancies on college and university faculties. About 95 percent of those in the chain are white and a great many of them are neither inspirational nor able to communicate when dealing with the students. These are the same people who want to keep the number of apprentices in trades at a low level because they fear competition. These are the same people who want to get a lion's share of the tax money collected from all of our citizens for research projects, business ventures, construction programs and hospitals but want to use a fine mesh selection screen that eliminates women and various minorities on the job.

I think there is some reference in Mr. Lester's book about Mr. Bunzel who is out at San Jose College. He came into one of these committees testifying against affirmative action the other day and it was so bad that even the guys who were against us said well you know you are going too far. We can't agree with you. He was trying to say that there is a big difference between the kind of selection process that you would use in industry and the kind of selection process that you would use in an academic institution. In other words, elitism. He figures that the academic people are so close to God that you have to have a kind of divine selection process in getting in where with the poor jerks working in factories you can just put them in a selection machine and come out and get a good selection.

Well, it so happened that the man he was testifying before was a labor-oriented Congressman and although that Congressman had called Mr. Bunzel down there to help him say that we shouldn't have affirmative action, even he had to say now wait a minute that's going a little too far, I don't make that same distinction between the selection process in fact in colleges and the selection process in industry.

As I have listened to testimony presented by some of these people before the committees of Congress I have yet to hear any of them say that they are in favor of discrimination. Usually, they use such terms as "we oppose discrimination either for or against people, etc.," or they say "when Congress passed the equal employment opportunity law it strictly forbade quotas," the use of quotas, which it did. But Congress also, not only in the beginning sanctioned the use of affirmative action, but when we got the law amended in 1972, it incorporated the various court decisions on that point, and thereby made the case law, the statutory law by so doing.

The first of those statements which I referred to, we oppose discrimination either for or against, is meaningless rhetoric. The second is true as I

said. Congress did distinguish between quotas which means of course you impose a ceiling, and affirmative action which means you establish a floor and a goal by which you can correct past discrimination. It is a fact that those of us who worked for the passage of Title VII in 1964 and for amendments to that law then and now are opposed to quotas because they impose a ceiling on opportunity. We, the Congress and the courts support affirmative action because that approach establishes a reasonable floor upon which one can erect and build a kind of equitable system in this country.

Now, having said that it exhausts my written statement. But, I will say to you that I think we live in a period of time when it is terribly important for us to deal with the facts. I hear people make all kinds of glib statements about what is happening with women, what's happening with minorities and so forth. If I were in a poolroom of course, I could understand that, but in a college I think everybody who will say something about these various laws, their impact and what is happening in this field, ought to have a basis, a factual basis on which these assertions are made.

I considered it important to be here because I assumed that is what you have in mind. It wasn't easy. I had a meeting with the President yesterday and scooted on a plane to get out to Cincinnati and made a speech last night. Got up, I guess 5 o'clock this morning, I don't know, it was dark, to get up here and maybe I haven't been so good. But in any event, I have tried to share with you some of my knowledge and look forward to a discussion of what we have been talking about.

GILLETTE: Thank you very much, Mr. Mitchell. The next speaker is Henry Rosovsky, Dean of the faculty of Arts and Sciences and Frank W. Pelsic Professor of Economics at Harvard. A graduate of William and Mary, he received his A.M. and Ph.D. from Harvard. He then submitted to the lure of the West and taught at Berkeley from 1958 to 1965. He returned to Harvard in 1965 as a professor of economics and since then has had a variety of administrative and committee responsibilities, including the chairing of that all-important committee that initiated the Department of Afro-American Studies. As frequently happens at Harvard, after one chairs an important committee, one is tapped as Dean—a position he has held since July, 1973. When Henry Rosovsky is not deaning, he is a leading expert on the economy of Japan. He is also very fluent in that language. He has graciously agreed not to deliver his remarks in that language. He has also reserved the right to answer questions in that language if it is desirable. Dean Rosovsky.

ROSOVSKY: I think it probably would be advisable for me to speak in Japanese, but I will attempt English. I do not have a prepared speech because I really took Walter Leonard at his word and thought that this was going to be a panel discussion. But I did prepare a very few remarks so I think I can be a little bit briefer than Mr. Mitchell and perhaps we can have discussions at that time.

I wanted to talk really, to say a few things about the subject, Affirmative Action and Quality, and to say at the beginning that I can really talk with knowledge only about Harvard University and in fact not even about all of Harvard University, but mainly about the faculty of arts and

sciences. But we do constitute about 55% of the University so that it seems to me that what is happening and what has been happening with us is probably significant. I don't really know what has been happening at the professional schools. Our faculty includes everything except the professional schools at Harvard.

Let me begin by saying that I became Dean of this faculty about a year and a half ago—sometimes it seems like 10,000 years ago, but it was actually only about a year and a half ago—and I know a fair amount about the negative views concerning affirmative action that prevailed at other universities. I had very soon after becoming Dean had a visit from a gentleman whose names seems to be very popular here, Mr. Lester. But he visited me and I gave him what I thought was very short shrift. I thought he was kind of hysterical and I didn't really know what concerned him that much. I might tell you that a former provost at Yale also called me a fool because of my attitude in this matter.

To make a long story short, I understood that there were problems for any university with affirmative action. I don't fully agree. I enjoyed Mr. Mitchell's speech and I can subscribe to a great deal of it. I think he has a kind of weakness that I would ascribe to making speeches to many different kinds of audiences. I think one can recognize the difference without making a caricature of the universities. I think we have got to admit it, there are problems. I am going to go into these in just a moment. But, I was never scared of the process and I thought in fact, from the very beginning, that we should cooperate as fully as possible with the affirmative action program.

So, for example, in our faculty we agreed, as soon as I became Dean, to implement departmental goals. Many people thought that that was the end of the university. But I didn't quite see it that way and I am happy to tell you that as far as I can tell, departmental goals have come and the university is still standing, and I think we have some small progress in the affirmative action area as well.

Now the issue of affirmative action and quality seems to me to always open up three possibilities. Either it can raise quality, or it can lower quality, or it can make no difference. I think in terms of what has happened at Harvard, it seems to me that we can reject immediately the argument that it has lowered quality, and I think that in itself is very important. Because there are many enemies of affirmative action who will try and use every sign, every adverse sign, for future purposes. I think with us it is perfectly clear that the talk about the lowering of quality as a result of affirmative action, can be rejected out of hand. How could this indeed happen unless somehow departments were forced to select individuals of less than average quality? This has not happened, it will not happen, and I see no connection between affirmative action and lowering of quality at all.

Let me say, of course in my remarks I am talking primarily about faculty. We could if you wanted to, talk about the admissions process—about students. I think that that is far less of an interesting issue today. Probably a much more important issue is employment—that is non-faculty employees, non-teaching employees. I don't know an enormous amount about that. I notice that Mr. Butler is sitting in the last row and perhaps he has already talked about that. What I wanted to talk about is the issue of

faculty quality that seems to me to be a key matter.

Has it raised quality? Well, I think here the answer is yes. And I think that that is a very important aspect. I understand that President Bok said it should be used for raising quality. Well, he is the President, he is the King of this institution and whether he sees it on a daily level as I do, I do not know. But I can tell you for a fact that it has raised quality.

How has it raised quality? Very simply, by forcing departments, sometimes against their will, sometimes with great difficulties, to examine a much larger pool of candidates than they used to examine before—in other words, to force departments out of the mold of the “old boy network.” That, certainly. (The “old person network” perhaps is what one should say today.) No doubt this network has been largely white, it has been largely male. Lots and lots of people have been excluded.

Now I think one of the happy things—and I think I say that especially to Mr. Mitchell—is the fact that departments in many universities, especially in the better universities, are really interested in excellence and will use the opportunity to improve their quality when in fact they can do so. And I have noticed that in Harvard departments, and I can name quite a few instances, that people have been hired, women have been hired, minorities have been hired, when in a sense they have been brought into the pool and properly examined. I do not think that the average department at Harvard has resisted the opportunities when they were presented with them, and I think that is very much to their credit. That is exactly what they should be doing. We have always claimed that we are interested in excellence and here is a case where we can prove it. So I think that quite clearly, there has been an improvement in quality as a result of the procedures that the affirmative action program now requires.

Now there have also been costs and many of you must be university administrators and you know that the amount of paper work, the amount of time, the amount of effort that has gone into it has been quite considerable. For me, as an economist, it is a matter of cost benefit. I would not want to go through these procedures if there weren't benefits associated with them. But I happen to think that the benefits are quite considerable, and therefore, I have always been happy to pay these costs.

I think that in talking about raising quality, we should also recognize that the smallest influence—in other words, I said the possibility of improving quality or lowering quality or leaving it the same—the least influence has clearly been at the senior level, that is at the tenure level. Here I think that the answer lies in part because the pools at the senior levels are not as full as they are at the junior levels and I think that a certain amount of time is needed before a far larger number of likely candidates exists.

I think there is, if I can use economics for a moment, something that I would call a stock and flow problem. I was recently talking to the Harvard and Radcliffe Clubs of Southern Connecticut when the question of tenured women at Harvard came up. There are not many, there are three. This woman said to me, well you know you have 800 professors, what is three women?

Of course, we have 800 professors, but 800 professors and a large number of males, that is our stock. You cannot change a stock overnight. You cannot fire the tenured people and I would not do it if I could. You cannot even change the non-tenured people very quickly. And so, when you have a large organization and a large stock, to change it in a very short period of time becomes really a very difficult academic, intellectual and social problem. What one has to look at is the flow—the flow is the margin and the margin is where the changes are going to occur. I think that I could examine any university today and I would look at what is happening to new appointments, and to the flow and what would be the proper index of whether or not affirmative action has any impact or not.

Now, since I have no prepared text, I jotted down a few things. Let me comment on some things that were said. Let me say something to my friend, Walter Leonard, for whom I have great admiration especially because of the excellence of this program, at least until 3:30 this afternoon. It has been said that there is no excellence meter. I don't agree with that. I think there is an excellence meter and again, I don't think that we should make light of these problems.

To say that to be a professor in a university is not the same thing as to be a factory worker does not mean that you denigrate the factory worker. All it means is that you recognize that various professions have different qualifications, have different requirements. It doesn't mean that the professor is better than anybody else. Believe me any dean knows how lousy the professors really are.

But I also do know that to be a bio-chemist or even to be an economist, not the highest profession in esteem at this moment, requires reference to complex and judgmental issues and there are excellent meters that one can apply. I think to say anything else is deluding ourselves. The point is not the excellent meter. At Harvard we have spent a long time developing procedures to judge people. We are very concerned about the kinds of people that come. We have a very intricate set of personnel procedures in which we try and find out whether people are good, whether they will be good in the future, what their records look like and so forth and so on. The point is that this excellence meter has not been applied to enough people. I think the people that have been excluded can stand up to these standards. I think that is the point and that is why affirmative action is really so important because it has forced us really to cast our net much more widely.

That is what we learned very early in the admissions process. I think the record on admissions in most universities is far better than the record on employment. But the point is that we did not introduce minorities or women. The minorities of various types and stripes and colors waited for hundreds of years already. By changing the nature of our excellence meter we just really started looking at these people and we recognize that there was excellence not only in Boston, Massachusetts, and in the prep schools of New England, but all over this country for people of all religions and of all colors and I think there is no reason really to change the standard from that point of view.

Somebody mentioned economic problems. Let me say that they worry me most of all. They are the greatest threat to affirmative action, it seems to

me at this point because what is happening in American universities at the moment is that we are all being strangled financially. Particularly of course, the Arts and Sciences parts of universities. Don't be misled by the opulence of the Business School, it is unrepresentative. The Business School is making a hell of a lot of money. So is the law school. But you cannot make money by teaching people bio-chemistry or Mongolian or even English. In other words you can't make money by giving people a liberal education.

We are, even we at Harvard, in great financial difficulty. Once we are in financial difficulties, what do we do? We try and rationalize, we try and save money. We hire fewer people. We are not going to promote many people. We are going to have fewer assistant professors; we are going to have fewer laboratory technicians, fewer secretaries, and so forth. That is of course, always where the problem arises.

I think that all of us interested in affirmative action or interested in equality, have an enormous stake in economic growth. That is why I am always so saddened when I read all this stuff about ZPG (Zero Population Growth), and to some extent, I think even a lot of the ecological talk is—I am not in favor of pollution, please don't misinterpret me; invariably somebody will think so—but let me say that a lot of ecological stuff is middle-class growth. And I think that it is a trade-off. I mean you can have the cleanest society in the world particularly if you have no people in it. So I think that we have a very great stake in continued economic progress and I think that this is a great danger to affirmative action.

One final word now is the matter of minorities versus women because I came for the very end of your last session. I don't know if there is a conflict. I certainly don't want to step into that one. But, I think I can tell you my own prognosis about where I think the problems lie. I think on the matter of women I am extremely optimistic. That is, I think that women are making very rapid progress, at least in the academic sphere, and I think that some of the women in this room may not believe me or it may look as if it is very slow to them, but in my view, you will look back 10 years from now and you will be astonished at the transformation. Because in a sense, I think—we could argue about one's psychology here—but I think women don't present the same problem as minorities do. I will come to that in a moment.

I think that many males are going to be perfectly willing to allow women to come in if indeed they resisted. And I think I share the point that Walter made, why is it that institutions headed by women exhibit some of the same discrimination patterns that institutions headed by white men do? I think that women come in all shapes and sizes, from all cultures, from all backgrounds, from all economic levels, and it is going to be very comfortable for our society to absorb these women in rather large numbers. Also, when you think of the fact that after all, not all women are going to wish to be professional women or have professional careers, even in the numbers sense the problem is diminished by that.

I am much more concerned about the matter of minorities and I think that 10 years from now I am afraid that it is perfectly possible that we will look back and see far less progress than has been made by women. Because I think the problem of minorities as far as positions in higher education is

concerned, and that is really what I am talking about—and I guess I don't know why I keep saying minorities, what I really mean is the Black population in the United States—is one of bringing more people into the graduate schools. That is the only way in which we are going to get a larger flow of Black professors and I do not see this flow coming into the graduate schools at this point. In fact the graduate schools don't seem particularly attractive at this point to many people.

Jobs are hard to get, the economy is against it, and therefore, where will we be a decade from now unless the flow increases, the stock is not going to change? And I think that is another very serious problem and I think much remains to be done in the recruitment of Black graduate students. I think at Harvard we have not done enough. I don't think other universities have done enough either. But I am very concerned because I have the feeling that it is going to be very difficult to find people especially in the market as it exists today. Thank you very much.

GILLETTE: Thank you very much for your always thoughtful and candid remarks, Dean Rosovsky. We have a few minutes for questions. I ask when you ask a question that you please identify the school or agency which you represent and address your question to one of the two members of the panel.

MITCHELL: Before anybody asks a question I would just like to say I didn't regard what Mr. Rosovsky described as my weakness, a weakness, that is one of my strengths. You see, it shows you the difference between the kind of world in which I live and the kind of world in which he is talking about. For example, I have got these little publications before me—one of which points out that there are 2,500 out of 3,000 institutions of higher learning, higher education it says in the book, that receive nearly \$1,500,000,000 in government contract money mainly for research. Now all of these had their hands out when it was a question of getting government money, but they raise a hue and cry when the government comes in and says that as a condition to getting this money you have got to have an affirmative action program.

I was looking over further at another part which talks about the different schools which were having problems in complying and were in danger of losing money, and I found that people like Columbia and Harvard and others were in that bind because they hadn't moved rapidly enough in having affirmative action programs. Then I look over here at Mr. Lester's little literary gem, in which he says, "The preceding chapters have presented an analysis of the federal government's program of antibias regulation as it has been applied to the faculties of universities. They have shown that the federal government has been flawed by two misconceptions, inappropriate methods of analysis and erroneous conclusions based on faulty analysis. The main defects of the program (that is, affirmative action program as required by the government) can be summarized as follows (and here comes the elitism that I was talking about): 1. Failure to recognize and take into account the fact that demand for tenured faculty is highly individualistic and selective, based on personal achievement of the highest quality as a teacher-scholar and stimulated by competition of

excellence of faculty.”³ Such a wonderful society. Then he says, “government application of the industry model of authority and personnel management to university and faculty operations, with the consequent threat to the faculty system of collegial (that’s a hard word) system decision making, based on professional assessment of merit.”⁴

In other words, what I said about him is true. He sees the system of selecting people to teach in college as being so unique that you have to have a crystal ball, an astrology course, a lot of other stuff, to be sure that you are getting the elite people; whereas the poor guys who are in the factories making chairs that we are sitting in, or building buildings like this, or make it possible to have a communications systems so you can hear me, these guys have to be treated in a different way and can be sort of shredded out. And I say that is a dangerous thing in this country when people in academia think that they are so much better than the other humans that you have to have a different standard of selection so that only those close to God can get in the inner circle.

ROSOVSKY: Mr. Mitchell, I would like to reply to that because I disagree. You are doing a dangerous disservice to affirmative action it seems to me. I think you have to make up your mind—you can always beat the universities over the head, it’s the easiest thing in the world to do—and I think that may not be a good thing either. You can hold us up to ridicule, call us elitists. I said precisely that I do not say that we are better, I have never said that we are better, I do not feel superior. All I said is let us be realistic. You cannot compress everything into the same mold. I think that an affirmative action program that is really directed at the universities and that takes into account conditions that exist in the universities might have far better results than one that, let us say, is based on a particular industrial model. You may have some particular set of labor relations existing in an automobile factory, another at Macy’s, and a third in a laboratory at Harvard University. And the point is that when it is designed for a specific purpose it gets results. I am less interested in the rhetoric. I am interested in achieving results for affirmative action. And I think that the program might do better if it was fine tuned. That I think is all that we are saying. If we are after the same result maybe we might agree that a certain amount of fine tuning is a good thing.

MITCHELL: Well you see, I agree with the fine tuning as long as it is striking the right note. And it just happens in this situation as I listened to you in the beginning, I was in agreement with you—when you said sure, we have got to do something to bring about an affirmative action program. But where you turned me off was when you got to the point about whether in the next 10 years we were going to look back and see a worse situation than now exists. If that happens it means that the schools have fallen down on the job. Because 10 years ago when I was working with some of these industries and they said, oh those Blacks are too dumb to get in there and be telephone operators, or stenographers, and things of that sort, and they aren’t trained anyway, there is no supply. Well, today as I look at those

3. LESTER, *ANTIBIAS REGULATION OF UNIVERSITIES* 155.

4. *Id.*

same places, from somewhere the industrial ingenuity has gotten a larger supply of Blacks. So I would say in the universities if they, after 10 years find that (making the point that the Blacks wouldn't be keeping up with the women coming in) then there is something wrong with the university's method of operating.

ROSOVSKY: Mr. Mitchell, if I turned you off it's because I don't think you listened to what I said. I specifically did not look back with pleasure and say that there would not be sufficient progress. I thought that I condemned it, and I tried to indicate what the problem was. The problem is not only the university living in a vacuum, but a university living in American society; a country in which economic growth may be inadequate, in which Black youth may prefer to go to medical school, or law school, or to all sorts of other education. What I said to you was this and you may be far more influential in that than any university—unless there are more Black graduate students going into our graduate schools you will not have the supply of Black professors 10 years hence. I didn't say that that was a good thing. In fact, I thought I made it clear that I thought that that was a bad thing.

MITCHELL: You did, and I am not saying that you said it was a good thing. I just say it was the wrong thing to say, because the best way to get more Blacks into these institutions is to let people like that little girl that we are representing down—I don't want to call the name of the university—let her get on the faculty, she has got all of the qualifications to become an associate professor.

ROSOVSKY: I have nothing, I can't comment on that case.

MITCHELL: For these kids here at Harvard or Radcliffe or wherever else they discriminate—it seems to me if you set the example of having people in and these kids can see that there are flesh and blood occupants of these jobs, then more of them will come in. But as long as you just say well it's too bad, and we have got to increase the supply, you never will get an adequate representation. That's an experience I have learned over the decades that I have been operating in this field. You have got to start the flow by showing people that it is possible, and when you have the possible obvious, that is when the supply increases.

ROSOVSKY: I don't disagree with that.

COMMENT: For some time now we have been talking about an assumption—and accepted as an assumption that if economic conditions worsen that automatically women's retrogression, or Blacks and other minorities will take place. I would like someone at the desk there to comment on the basic implications of that assumption.

ROSOVSKY: I don't think anybody said that. What I said was, when there is an economic recession, fewer people will get hired. That is not a matter of Black or white or male or female.

COMMENT: But you said that economic conditions will threaten affirmative action.

ROSOVSKY: That's right. Yes, let me try and explain why I mean that,

why that arises. Fewer people will get hired. For example, I have placed in effect for next year a kind of a freeze on tenure appointments at Harvard because we are running a deficit of two and a half million dollars a year and we simply can't sustain that. One way for us to try and reduce that deficit is to simply hire fewer people. Now, how does affirmative action operate? It operates by making sure that among the new hires there are a representative, and hopefully larger, number of Blacks and minorities. Well, if there are not going to be any new hires, that is going to work against everybody. But of course, it is going to work especially against people who are under-represented, and those are the minority groups. Does that answer the question?

MITCHELL: I would like to comment on that because you see here is another example of the difference between the academic approach to fairness and the labor unions' approach. There would be the biggest picket line in the world outside of your office if you had a contract with the UAW or somebody and said what you just said, which is, I have decided that I will limit the number of tenure appointments. These are the best appointments in the academic world. By what authority does anybody have the right unilaterally to decide that they are only going to have a certain number of tenure appointments? By what right does anybody unilaterally decide that the disadvantaged people who have a hard time getting in are going to have a worse time when you cut back on the tenure appointments? It seems to me that—and incidentally this is the law—the law will say if you are going to have 10, only 10 tenured appointments, you can't make them all white, that's the law. Of course, this is my problem. Incidentally, I am not being hard on the academic field because I have any special disregard. I don't discriminate when I am talking about these different people who do the wrong thing. It just happens that I am in an academic atmosphere and I am trying to get you to see yourselves as you are. Whereas I would say the same thing if I were at General Motors.

ROSOVSKY: Yes. Well, why did the automobile companies just announce extensive layoffs?

MITCHELL: Automobile companies wouldn't dare do what you just said you would do.

ROSOVSKY: Tenure doesn't exist in the automobile industry.

MITCHELL: Oh, but seniority does, and seniority would say that if you are going to lay off 5,000 people—as General Motors said it was going to do—you better not lay them off in a discriminatory manner.

ROSOVSKY: But we don't lay off anybody.

MITCHELL: Or if you have any openings, you better not have those openings handed out on a discriminatory basis, you will be faced with a picket line and an extensive attack on what you are trying to do.

ROSOVSKY: No, no, no, Mr. Mitchell, you are going much too quickly. We don't lay off anybody. I said we were not going to hire.

MITCHELL: That's what I just said. I said two things, I said first, if

General Motors had a system where they fired people without regard to seniority and on a discriminatory basis, they would be in trouble. Then the second thing I said was if General Motors announced that in spite of its layoff it would still hire a few people, but then said now because some segment of the population hasn't shown up in the statistics like another segment, it's unlikely that that segment will get in. They would be in trouble there too.

ROSOVSKY: We don't say that. All I said is—why is economic growth important? Because it gives people an opportunity for various kinds of jobs. When there is a contraction fewer people are going to have these opportunities. I think that's all I tried to say.

MITCHELL: All we are saying is that among the few let's make sure that we have everybody without regard to race, creed, sex or anything else.

ROSOVSKY: I have no problem with that at all.

COMMENT: Disproportionate effect of a particular employment practice on a protected group has been struck down by the Supreme Court to my understanding of the finding in *Griggs v. Duke Power Company*.

ROSOVSKY: Could you explain this to a layman?

MITCHELL: Oh, I think I understand what you are saying and that is that in *Griggs v. Duke Power Company*, as I said in my statement, the Company had been discriminating against Blacks by keeping them in laboring jobs and did not give any kind of a test to get in other jobs. When the Equal Employment statute was passed, the Company then said as a condition of getting into these jobs, other than labor jobs, you have got to pass a test, which is a test given to people who are in high school. As I said in my statement, about 50% of the high school students couldn't pass it. The Supreme Court said, this is discriminatory because the test has no relevance whatsoever to the job that is to be performed. And therefore it was struck down and Blacks were permitted to go on jobs other than in the labor category.

It seems to me this is analagous to what happens in academia. The people who have been responsible for the "old boy" or "old person" concept in which buddies who went to school together talked to other buddies and got them on the faculty, that concept has set up really artificial standards of selection. So then when times get hard, they say now we are going to continue to apply these artificial and irrelevant standards that we have set up for purpose of taking care of fraternity and sorority and this automatically will mean that people who aren't now in the inner circle will not get in. The Supreme Court has said in *Griggs v. Duke Power Company*, you can't do that. You can't have an "old boy," "old girl," "old person," whatever you call it, irrelevant standard by which you select people. You have got to have a standard that is objective and fair. That doesn't exist now in faculty selections for universities.

GILLETTE: I think we are going to have to cut this off. I am going to take the privilege of the chair if I may just to make one or two comments because I think they are needed.

I have had three jobs, Mr. Mitchell, one in business, one in government, and one at the university. I am not faculty, I am not intellectual. But I must say since I have worked at the university there is a fragility, I think that is a difference in how you handle people in a university and in government and in business, and I have been in people business in all three of them.

First I would like to say something about Professor Rosovsky. Since he became Dean he has brought an air of candor and realism I think into the faculty, not just in this thing but in everything else . . .

MITCHELL: Excuse me just a minute. If you are going to put me in the position of having to defend myself, I am going to have to ask for equal time now.

GILLETTE: I'll just go on now if I may. I think in today's time, that's very needed. The other thing is we have done a lot of musical talk here about notes and tone, but it just seems to me we might remember the old saying of W.C. Fields, when you are trying to build a better orchestra, you don't shoot the piano player. Well, I think that with a Derek Bok and a Henry Rosovsky and a Walter Leonard, Harvard University has a trio that is knocking themselves out to try and put through an affirmative action program. I think this should be recognized by everybody here.

MITCHELL: Now, I am going to ask for equal time because I have not said that there is anything that Harvard University is doing that would merit being shot while they are playing the piano. All I am saying is that—and I know a lot about industry in this country and you can't name a major industry that I haven't been in and haven't worked at the top and throughout and know about its operation—I believe you told me you knew about insurance. That's about one of the worse places of discrimination in the United States. But, be that as it may, all I am saying is that in universities we ought to face up to the truth and the truth is that by a system of elitism, colored by racism, we have gotten ourselves into a predicament in the country where we have got largely white males doing all the things from being President down through faculty, Dean, and janitor and what not. I am saying that if we in good faith recognize that we are in that predicament, we have got to have some system of getting out of it.

I would say that with respect to what you said a minute ago, Mr. Gillette, about a difference, of course, there is a difference. You use a difference of selecting atomic scientists from what you would use in selecting plumbers. All I am saying is that if there is going to be a different system of selection in colleges, it ought to have the same impact on white Anglo-Saxons as it has on Blacks or Indians, or women, or what not.

GILLETTE: I don't think there is anybody in the university who realizes more than I do, that a meeting of this complexity and this size just doesn't come off. I do an awful lot of this sort of thing. I know the terrible trouble you have to go through, the nitty-gritties, who is coming, when, all the things that are needed to put on a show like this. And I would like to say on behalf of the university and behalf of all the participants in this conference, many thanks to Walter and his very hard-working staff.