TRANSCRIPT

ELIZABETH BRACKETT: About one-quarter of last year's graduating class at the University of Michigan's law school are minorities, and about the same or a slightly higher number of minorities will be starting school this semester as the fall class of 2001. The law school's dean, Jeffrey Lehman, is proud of the school's effort to create a diverse student body. To do that, he says race must be taken into consideration during the admissions process.

JEFFREY LEHMAN: The fact is that society today is not a race-neutral society. It's not a color-blind society. Opportunity is not distributed without regard to race, and therefore, in order to have a racially integrated student body, it is necessary to pay attention to race in the admissions process.

ELIZABETH BRACKETT: But that policy is now under serious court challenge. In March, federal court Judge Bernard Friedman ruled that using race as a factor in making admissions decisions is

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unconstitutional. For Barbara Grutter, the decision meant vindication in her four-year battle to be admitted to Michigan's law school. Grutter sued the university in 1997 after she was denied admission. She says she had the right qualifications: A 3.8 grade average, high scores on the law school admissions test, the LSAT; and as a mother with a career as a health care consultant, she says she would have brought diversity to the class. She says she did not get in because she is white.

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BARBARA GRUTTER, Plaintiff: I think that I was discriminated against in the admission process, very specifically, because I believe they have different criteria based on race.

ELIZABETH BRACKETT: The federal judge agreed and said Grutter's civil rights had been violated under the 14th Amendment. Grutter was thrilled with the opinion. She related it to some of her earlier struggles when she was one of the few women on the job.

BARBARA GRUTTER: You know, I certainly saw my share of sexist behavior there, and then I never dreamed that 20 years later… 20 to 30 years later, I'd find myself discriminated against now on the basis of race. And, you know, I certainly didn't think it was acceptable that… To say that, "you're not allowed to discriminate on because… You know, on the basis that you're a woman, but it is okay on the basis of race." I certainly didn't accept that. So, you know, I went through a real struggle about whether to proceed with this, but came to the conclusion that it was the right thing to do.

ELIZABETH BRACKETT: But Liz Barry, the university's

lawyer in the case, says race was not the reason Grutter was not accepted.

LIZ BARRY, Deputy General Counsel, University of Michigan: Our opponents in this case want to paint Barbara Grutter as some sort of victim; a victim of race discrimination. And that's simply not the case. There are plenty of white students with grades and test scores lower than Miss Grutter's who got into the law school, and that's because we look at people as individuals. We look at all of their life experience and we're making individual judgments in order to assemble the best class that we can.

ELIZABETH BRACKETT: Barry admits that the university uses race as a factor to assemble that class, although she says it is far from the only factor. But testimony at the trial showed when whites and minorities with the same test scores apply to the school, the relative odds of minorities being accepted are significantly higher. Statistical analysis done by the plaintiffs on the entering class of 2000 found that the relative odds of an African American student being admitted were 443 times the relative odds of a white student being admitted; for Puerto Ricans, the relative odds for admittance were 29 times the odds for a white student; for a native American 25; and for a Mexican American, the relative odds were 17.

The university challenged the statistical analysis saying the use of relative odds is meaningless. A more important statistic in analyzing admissions policy is to look at who was offered admission, says the university. In the class of 2000, the law school offered admission to 38 percent of Caucasian applicants, 35 percent of African American applicants, 48 percent of Native American applicants, and 32 percent of Latino applicants. And the defense claimed that if the university had used a race- blind admissions policy, minority enrollment would have dropped from 35 percent to 10 percent in the class of 2000.

LIZ BARRY: We simply can't have race- neutral admissions because we need a diverse student body. And we know what

the effects have been of race neutrality in California and Texas. Their top law schools are practically all white.

ELIZABETH BRACKETT: Terry Pell, the senior counsel for the Center for Individual Rights, the organization that filed the case against the university, says the statistical analysis by both the plaintiffs and the defense show that race is the overwhelming factor in admissions.

TERRY PELL, Center for Individual Rights: I think it's quite fair to say that what this admission system is, is a quota system. It's a deliberate attempt to engineer a certain percentage, racial mix of students, year after year after year.

ELIZABETH BRACKETT: Judge Friedman agreed that the university's admission system amounted to a quota system, but the university strongly denies that quotas are used.

DEAN JEFFREY LEHMAN: A quota system means that in advance, you know how many students of a particular race are going to be enrolled in any given year, and you set aside a particular number of seats, and there's no competition. At our school, every seat is open to competition. We have no idea at the beginning of the application season how many students of any given race are going to be enrolled the following year because we have to wait and see who applies.

ELIZABETH BRACKETT: Quotas were determined to be illegal in the case of Allan Bakke versus the University of California in the case that went to the Supreme Court in 1977, but in that same landmark decision, Justice Lewis Powell found that the need for diversity gave the state a compelling reason to use race in the admissions process. Court decisions since then have only made the question of using race in the admissions process even more confusing. In 1997, when the Center for Individual Rights, or CIR, sued the University of Texas over its affirmative action programs, a federal appeals court ruled against affirmative action, and the Supreme Court refused to review the case. Minority enrollment plummeted. But just last December, in a separate suit brought by CIR against the University of Michigan's

undergraduate school, a district court found its admissions policies that use race as a factor constitutional.

LIZ BARRY: That's the opinion of Judge Duggan. In our undergraduate case, Judge Duggan said that diversity, that bringing together of students across racial lines, is a compelling state interest. It means a lot to the state that we have a place in our democracy where students can come together like that. And we think Judge Friedman got that wrong. We think Judge Duggan got that right.

ELIZABETH BRACKETT: Students tend to agree with the university that bringing students together across racial lines has value.

MARIELA OLIVARES, Student: I feel it's essential to the law school to have a diverse class. This is one of the best law schools in the nation and without the representation of everybody, of all of our population, then we would be even more surreal than law school already is.

ELIZABETH KRONK, Student: I think it's an absolutely fabulous admission policy and that a school couldn't have a better one. The fact that the school is willing to take into consideration all factors that an individual may have, including race and everything that the school takes into consideration, it's the best way to create a good law school environment, and also to make sure that the best law students are here at the law school.

ELIZABETH BRACKETT: But not all students favor the policy.

DAVID AVILA, Student: Well, I have a lot of problems with it, but basically I feel that it's wrong to admit somebody who otherwise would not be admitted based on a factor that's, to my opinion, largely irrelevant, such as race.

ELIZABETH BRACKETT: The university has filed an appeal in the law school case, and with conflicting opinions in the two University of Michigan cases, the question of using race in admissions is very likely to wind up in the

nation’s top court.

TERRY PELL: So we believe it’s important for the Supreme Court to take that issue up and resolve once and for all that schools may not take into account the race of applicants simply and solely to engineer a particular racial mix of students. We don’t see any constitutional purpose that’s served by that kind of racial engineering, and the sooner the Supreme Court takes that issue up and clarifies it, the better off we will all be.

JEFFREY LEHMAN: I’m confident that the Supreme Court will ultimately reaffirm the holding in Bakke. We have 22 years of experience now in higher education with this kind of moderate form of affirmative action; the kind that says no quotas, fair competition for all seats, in which race is a factor, but not the overwhelming factor; one of many factors in admission. It’s the right policy for our country at this time and I’m confident that the Supreme Court will continue to keep it as the law of the land.

ELIZABETH BRACKETT: The university will not immediately have to redesign its admissions policies without using race as a factor because it won a stay until the appeals are complete. So acceptances for the 350 spots in this fall’s law school class were mailed as planned.