

consider a routine filibuster. Maybe if this nominee had ethical problems or serious personal problems, that would justify a filibuster, but not a nominee who is rated well-qualified by the bar, who has the support of virtually everyone with whom he has worked, who demonstrated by his testimony extraordinary skill and intelligence. I respect him. I believe he should be given a vote. I hope and believe that somehow we will avoid this and we will get an up-or-down vote on him.

That is my request to my friends across the aisle, and it would be a mistake if that does not occur.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

UNIVERSITY OF MICHIGAN

Mr. LEVIN. Mr. President, George Washington was nearing the end of his Presidency. He dreamed of a national university for the United States to be located in Washington. This university was going to bring together all the different people of this great country into one educational setting to learn together, to learn from each other, to get to know each other, to overcome prejudices and intolerance.

President Washington actually planned to include his vision of such a university in his now famous and historic Farewell Address. It was not included in that Farewell Address. Apparently, one of the people who was working with him on that Farewell Address was Alexander Hamilton who urged, as he was writing the address, drafting it:

The idea of the university is one of those which I think will be most properly reserved for your speech at the opening of the session. A general suggestion respecting education will very fitly come into the address.

In other words, what Hamilton was saying is this vision of yours, Mr. President, about a national university, where people can come to shed their prejudices from various parts of the country, to live and work with each other should be saved for a different address. Leave it out of the Farewell Address.

In fact, President Washington ended up leaving it out of his Farewell Address, but he included it in a letter. It is a letter which has come down through the generations, and that vision of a national university was outwardly reflected in this letter.

He stated his belief that this country would be stronger if the children from different parts of the country could come together in an educational setting to learn from each other and about each other.

I want to read a few parts of this letter of George Washington because I think it has an application to the University of Michigan case which is currently pending in the Supreme Court.

I come from the State of Michigan. I am proud of it, and I am proud of our university and its effort to promote diversity, and not just racial diversity, but geographic diversity, economic di-

versity, gender diversity—diversity in general which has been promoted by not just the University of Michigan but by most universities in this country, and it seems to me is to be encouraged.

What George Washington sensed 205 years ago was that a university had a special ability to bring together different people to help them learn about each other, drop their fears of each other and make us one Nation.

This is what he wrote:

I have regretted that another subject (which in my estimation is of interesting concern to the well-being of this country) was not touched upon also: I mean Education generally as one of the surest means of enlightening and giving just ways of thinking to our Citizens, but particularly the establishment of a University; where the Youth from all parts of the United States might receive the polish of Erudition in the Arts, Sciences and Belle Letters; and where those who were disposed to run a political course, might not only be instructed in the theory and the principles, but (this Seminary—

Referring to the university—

being at the Seat of the General Government) where the Legislature wd. be in Session half the year, and the Interests and politics of the Nation of course would be discussed, they would lay the surest foundation for the practical part also.

But that which would render it of the highest importance, in my opinion, is, that the Juvenile period of life, when friendships are formed, and habits established that will stick by one; the youth . . . from different parts of the United States would be assembled together, and would by degrees discover there was not that cause for those jealousies and prejudices which one part of the Union had imbibed against another part; of course, sentiments of more liberality in the general policy of the Country would result from it. What, but the mixing of people from different parts of the United States during the War rubbed off these impressions? A century in the ordinary discourse, would not have accomplished what the Seven years association in Arms did; but that ceasing, prejudices are beginning to revive again, and never will be eradicated so effectually by any other means as the intimate intercourse of characters in early life, who, in all probability, will be at the head of the councils of this country in a more advanced stage of it.

He went on:

To shew that this is no new idea of mine, I may appeal to my early communications to Congress; and to prove how seriously I have reflected on it since, and how well disposed I have been, and still am, to contribute my aid towards carrying the measure into effect, I enclose you the extract of a letter from me to the Governor of Virginia on this Subject, and a copy of the resolves of the Legislature of that State in consequence thereof.

I have not the smallest doubt that this donation (when the Navigation is in complete operation, which it certainly will be in less than two years), will amount to twelve or 1500 pounds Sterling a year, and become a rapidly increasing fund. The Proprietors of the Federal City have talked of doing something handsome towards it likewise; and if Congress would appropriate some of the Western lands to the same uses, funds sufficient, and of the most permanent and increasing sort might be so established as to invite the ablest Professors . . . to conduct. . . .

President Washington saw that the two strongest ways to unite a country are when people go to war together

against the common enemy and when they go to school together with a common goal, to learn. While we would all like to avoid the need to fight together, we all know we can strengthen our ties to democracy and to our country when we learn together about the world and each other.

Learning together allows us to strip away the prejudices that would otherwise keep us apart. The hope of George Washington was later joined by the dream of Martin Luther King and by the promise and the potential of *Brown v. Board of Education* a half century ago, and they are now hanging in the balance because of the issues that are raised in the University of Michigan affirmative action cases before the Supreme Court.

In April, the U.S. Supreme Court is going to hear two oral arguments in two separate lawsuits challenging the University of Michigan's diversity admissions policy. The Court's decision in these cases will result in the most far-reaching affirmative action ruling since the *Bakke* decision in 1978. The Court will decide the critical issue of whether *Bakke* still remains the law of the land and whether racial or ethnic diversity has a value at a university which can be considered in admissions of higher education.

In the *Bakke* decision, the Court ruled against rigid quotas or set-asides based on race but found that higher education could consider race or ethnicity as a factor in a properly considered competitive admissions process to achieve the educational benefits of diversity.

If the Court overturns *Bakke*, it could outlaw any consideration of race or ethnicity in admissions to colleges and universities.

There is a national security factor to this issue as well. There are going to be a number of military officers and people connected with national security and defense who will be filing an amicus brief in support of the University of Michigan because universities run ROTC programs. Those programs, where there is diversity at the universities that have them, produce officers for the military, who in turn are diverse and reflect our population. The failure to have officers who reflect our population in terms of race and ethnicity and gender, the failure to have diversity in our officer corps, led to huge problems of morale in the military for decades, until just about 20 years ago when we reached out and made great efforts to have diversity in our officer corps. That is going to be a part of the issue in an amicus brief filed in the University of Michigan case.

I am not going to spend a lot of time on that aspect, but I do want to at least comment on the fact that a significant number of very significant military officers, retired officers, who have been connected at the highest levels with our Nation's military and its schools, are going to be filing a brief

with the Supreme Court relative to this issue.

I want to comment on the more fundamental issue, which is the value of diversity in a university and whether it is conceivable in this country that we will say to universities that they can give additional points for geography, which many universities do, including the University of Michigan. In other words, they can reach out to students in different parts of their State who have been underrepresented and try to get better representation from those underrepresented parts. They can give additional points for that. They can give additional points for gender. If the law school has not had women students, they can give additional points for that in order to overcome the problems which were created when women were discriminated against. They can have an affirmative action program for that. They can give additional points to alumni, kids—and they all do—and athletes—and they all do—and the children of public officials—and many of them do.

Geography alone, which George Washington talked about—I went to a college out east which I know for a fact reached out geographically in this country to try to have good representation from various parts of the country. I come from the Midwest. My SAT scores were not as high as some of the kids' in the East, but the college I went to decided it was important to those kids from the East that they have kids from the Midwest, kids from the Far West, kids from the South, kids from the Southwest, kids from Alaska, kids from Hawaii, kids from Africa—it is important to the education of our students that they go to school with a diverse group of students. So they gave out geographic points. I got points. I do not think I would have gotten into my college, my beloved college, Swarthmore, but for the fact that I came from the Midwest and I was given some additional points. I do not know for sure, but that is my belief, and that is the likelihood, I have no doubt. I know they have geographical affirmative action. Is it conceivable that points can be given for everything but race to achieve diversity, that race is singled out as the one area where we cannot reach out to achieve diversity in our universities? Is it possible that is what we are going to come to in this country, that the equal protection clause will be turned right on its head? The 14th amendment, which was designed, at least in significant measure, to end the scourge of the remnants of slavery, is going to be used to prevent diversity from being achieved in one area where it is most important that we have a diverse university, and that is the area of race. It is the one area where we have had the most difficulty in overcoming the kind of prejudices and obstacles President Washington talked about and for which he said a university was the most suited, other than going to war together.

Our military has done a spectacular job in terms of diversity. It has been a huge factor in the promotion of democracy in this country. Hopefully, we do not have to go to war to promote coming together and learning to overcome prejudices and differences. Hopefully, our universities can be allowed to reach out, as they are with geography, to overcome the fact that some parts of our States are totally underrepresented in our educational institutions, to say, yes, we are going to reach out to that part of the State and we are going to try to get more students from there; they may not have done quite as well on their SATs, because of various historic factors or whatever, but they are highly qualified students, so we are going to give some additional points to those students. But not race? Race would be singled out for not being permitted to be given additional consideration to achieve diversity which is so valuable in education? That would be an unthinkable, unconscionable result, and a distortion of the very purpose of the equal protection clause.

Of all the areas where we have the most hurdles to overcome, most barriers to overcome, more attitudes to overcome, more prejudices to overcome, with all the progress we have made—and we have made a lot—we have a long way to go in the area of race. The idea that somehow or another all that other diversity, all those other additional points can be given—alumni kids, you can get 10 points; athletes, you can be given 20 points; gender, you can be given points; economic, you can be given points—but not race, that would be, it seems to me, singling out race for discriminatory treatment when it comes to promoting diversity at a university.

The law school's current policies have been upheld by the Sixth Circuit as being consistent with Bakke. The Sixth Circuit has explicitly rejected the plaintiff's contention that the system used by the University of Michigan was the functional equivalent of a quota. The Sixth Circuit found that the law school's admissions program is "virtually indistinguishable" from the Harvard man, which Justice Powell held out in the Bakke decision as the appropriate model.

In the University of Michigan's undergraduate admissions program, 110 points out of 150 are given for academic factors, including grades, test scores, and curriculum. The greatest weight, up to 80 points, goes to high school grade point average. Applicants can earn up to 12 points for SAT or ACT scores, up to 10 points for attending a competitive high school, 8 points for taking the most challenging curriculum, and 3 points for SAT quality. Other factors can be considered, including geography, athletics, relationship to alumnus, economic disadvantage. Points can be added for students from various parts of the State which have been underrepresented at the university. Students who have athletic schol-

arships get additional points, children of alumni get additional points, students from economically disadvantaged backgrounds get additional points. And at the University of Michigan, students from an underrepresented racial or ethnic minority or attending a high school serving a predominantly minority population can receive additional points. And the provost can award additional points to applicants at his or her discretion.

The idea it is all right for colleges and universities to give special consideration to all the other groups—children of alumni, large donors' children—how is that one? It is OK to give special consideration to the children of large donors for whatever university purpose that serves—but it is not OK to give additional points to underrepresented minorities for the obvious university purpose that serves, which is a diverse student population, which our first President, the Father of our Country, pointed out in this letter is absolutely essential if this country is going to be one, if this country is going to be unified.

Indeed, he saw that 200-plus years ago. I hope the Supreme Court will have the wisdom of reading that letter and seeing how important it is that President Washington's dream to bring people from different parts of the country, that people of different backgrounds, which is the University of Michigan program, can, in fact, be realized. That is what some of the stakes are in the University of Michigan case.

Since we are talking judicial matters this evening, I wanted to raise that issue, as well.

Mr. SESSIONS. Is the Senator going to another subject for long?

Mr. LEVIN. It will be lengthy.

Mr. SESSIONS. I would like to speak on the Estrada nomination.

Mr. LEVIN. You can talk for quite some time on that. You have talked longer, I believe, than I have on this evening.

Mr. SESSIONS. Not as long as some of the other Members over there.

Mr. LEVIN. Let me try to limit this to about 10 minutes.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

NATIONAL SECURITY

Mr. LEVIN. I will keep the floor and try to keep this down to 10 minutes.

Earlier today we had a hearing in the Armed Services Committee where we received testimony from the intelligence community on worldwide threats to our national security. I gave an opening statement at that hearing, parts of which I want to share with the Senate tonight because of the importance of the subject of Iraq. We have a lot of work ahead of us. We have threats of all kinds, threats which are more immediate, more personal, more imminent, than Iraq, particularly the al-Qaida terrorist network, even though that network has been weakened, it has been deprived of its safe haven in Afghanistan.