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The Naval Academy Should Jettison Race-Conscious Admissions

by R. Lawrence Purdy

As we await the anticipated rollout of formal orders from the recently inaugurated Commander-in-Chief to end the Department of Defense's (DoD) divisive Diversity, Equity, and Inclusion (DEI) policies,[1] active-duty military personnel and veterans of all races across the nation are welcoming the promised return to individual meritocratic standards that will no longer consider one's race, color, creed or national origin. It places our military firmly back on the path towards Dr. Martin Luther King, Jr.'s color-blind ideal.[2]

The history of our nation's struggle with race explains why this demand for a color-blind meritocracy matters particularly when it comes to our military; and why it is fully consistent with our country's Constitutional ethos.

Of course, there have been numerous starting points steering us in the direction of Dr. King's 1963 vision, beginning with our Declaration of Independence; and, regrettably, far too many diversions including decades of human slavery followed by Jim Crow.

But let's consider the following:

Almost 75 years ago, the man who eventually would become our nation's first black Supreme Court justice, filed a legal brief with the United States Supreme Court while serving as counsel for the Petitioners in the landmark case of *Brown v. Board of Education*. In *Brown*, Mr. Thurgood Marshall made the simple argument that the defendant school districts had no power under the Fourteenth Amendment of the U. S. Constitution to use race as a factor in affording educational opportunities to its citizens. It eventually led to the Court's unanimous adoption of this bedrock principle: "[R]acial discrimination in public education is unconstitutional. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle."[3]

Nearly seventy-five years later, in *Students for Fair Admissions, Inc. v. Pres-*

ident and Fellows of Harvard College, 600 U. S. 181 (2023) ("*SFFA*"), the race-conscious admissions policies at Harvard College and the University of North Carolina were separately challenged on the basis that they, too, were unconstitutional. In the eyes of this commentator, the majority opinion in *SFFA* authored by Chief Justice John Roberts provides an expanded—and powerful—restatement of *Brown*'s principle:

> Eliminating racial discrimination means eliminating all of it ... [T]he Equal Protection Clause . . . applies "without regard to any differences of race, or color, or of nationality"—it is universal in [its] application ... [T]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, it is not equal. (*SFFA*, 600 U. S. 181, at 206.)

But the Court's statement in *SFFA* is more than just a twenty-first century iteration of the landmark ruling in *Brown.* It also incorporates the spirit and purpose behind the powerful legislative language found in Title VI of the Civil Rights Act of 1964.[4] And, of course, both *Brown* and *SFFA* rely on the "Equal Protection" and "Due Process" clauses found in the Fifth and Fourteenth Amendments to the U. S. Constitution.[5]

Yet, the ruling in *SFFA* notwithstanding, our nation's service academies (including my alma mater, the U. S. Naval Academy) stubbornly persisted in retaining their race-based admissions policies. (As of this writing, all three major service academies, West Point, Annapolis, and the U. S. Air Force Academy, have been sued by parties seeking to end these racially discriminatory policies.)

Students for Fair Admissions v. The United States Naval Academy, et al.

The first and thus far only case to go to trial involved the Naval Academy. Following a nine-day bench trial, Senior United States District Court Judge Richard D. Bennett issued a 179-page decision upholding the Academy's use of race in admissions.[6] What is both striking and disappointing is that Judge Bennett's conclusion (issued before the inauguration of the new Commander-in-Chief) is fundamentally at odds with the principle announced in *SFFA*. Instead of (1) adhering to the Constitution in seeking an answer to the question before him (i.e., did the Naval Academy meet the extraordinarily high bar necessary to justify adopting policies that involve the use of suspect racial classifications against innocent individuals); and (2) rather than following the plain language emanating from both *Brown* and *SFFA*, Judge Bennett regrettably accepted without any serious challenge the Biden (and the earlier Obama) administration's argument that race-based decision making was justified for the following reason: "Over many years, military and civilian leaders have determined that a racially diverse officer corps is a national security interest ... based [in part] on ... a 2009

diversity commission mandated by the United States Congress."[7]

Of course, no one argues that national security is other than a compelling—and, indeed, a perpetual, never ending—governmental interest. But there is no connection between our nation's national security and the racial demographics of our nation's military, including the racial demographics of its professional officer corps. Even more disappointing is that Judge Bennett ignored that the patently ideological "2009 diversity commission" he references quite literally promoted unequal treatment of individuals based on race. For example, one of the commission's shocking conclusions was the following:

> [A]lthough good diversity management rests on a foundation of fair treatment, it is not about treating everyone the same. This can be a difficult concept to grasp, especially for leaders who grew up with the [Equal Opportunity]-inspired mandate to be ... color blind ... [Colorblindness], however, can lead to a culture of assimilation in which differences are suppressed rather than leveraged.[8]

Equally disturbing was Judge Bennett's wholesale acceptance of the Biden administration's argument that the use of suspect racial classifications is required in order to overcome "an endemically segregated society where race has always mattered and continues to matter."[9] The cure, according to Judge Bennett, and despite the universal principle announced in *SFFA*, is to permit the Naval Academy to reject certain innocent individual applicants solely because of their skin color. But both *Brown* and *SFFA* demonstrate that is not, and cannot be, the law.

Without seriously examining the Academy's evidence and subjecting it to the *strict scrutiny* the law demands, Judge Bennett simply deferred to the government's argument.[10] But the Constitution is not that fickle. Indeed, not only the law but our common sense along with our full appreciation of our nation's past history when it comes to race, all demonstrate that race-based policies do not advance our military's ability to defend our national security.[11] This is true whether these policies are practiced by our service academies or by the civilian colleges and universities which, in fact, produce significantly more commissioned military officers than do the academies. Because civilian institutions like Harvard and UNC (both of which maintain ROTC units on their respective campuses) are now forbidden by the Constitution from employing race-conscious admissions policies, there is no logical or legitimate reason for the service academies to be exempt from *SFFA*'s ruling.

"Diversity Is Our Strength": Accurate in the Military Context?

To listen to the diversity ideologues who have populated the immense DoD bureaucracy for at least the past two decades, one heard the endless refrain that "diversity is our strength." But, of course, whenever uttering that phrase,

the ideologues generally refused to define precisely what they mean by "diversity."

For example, as illustrated by social commentator Jeffrey Tucker, ideological diversity[12] can be a strength. But contrary to those situations in which the gathering together of diverse viewpoints might be beneficial (e.g., in engineering, science, and medicine), both the definition and the context of the "diversity" in question matter. And while our nation's military is undeniably racially diverse,[13] it is not a debating society. Nor, despite the efforts of several previous commanders-in-chief (most notably Presidents Barack Obama and Joe Biden), should our military be converted into a laboratory for social experimentation. When it comes to our military's cohesion, effectiveness and lethality, i.e., the sole *raisons d' etre* for its existence, what is clear to every soldier, sailor, airman, and Marine is that the skin colors of his fellow warriors fighting next to him are irrelevant.

> *There Is No Credible Evidence that the Demographic Makeup of Our Naval and Marine Officer Corps Makes These Institutions Stronger and More Effective.*[14]

The above statement is particularly true in the context of a combat unit (e.g., a Navy SEAL platoon, an airwing, or a Marine Corps infantry platoon) comprised of individuals, each of whom expects only one thing, i.e., that he and his brothers-in-arms have qualified to serve next to one another when measured against the same colorblind meritocratic standards.[15] The most important criterion is that each individual is confident he has been provided an equal opportunity to serve irrespective of his skin color (rather than granted a racial preference pursuant to corrosive DEI policies).

What the "diversity" ideologues in our military rarely, if ever, admit—even though many of them viscerally know it to be true—is that "unity," our *e pluribus unum* irrespective of our racial diversity, is our strength. It is to acknowledge the obvious, to wit: Dividing individuals into racial and ethnic blocs and awarding benefits or penalties based on these immutable differences is a recipe for divisiveness.[16] No one knows better than African Americans that race-based policies have historically caused immense pain and injustice. These policies are the potential destroyer of unity. And yet it is inarguable that our unity, despite our diverse racial and ethnic differences, is what maximizes our military strength.

This leads to this inescapable truism: Any policy that discriminates based on immutable racial and ethnic differences is anathema to achieving unity.

Do most senior military leaders in the government know that? Of course they do. In fact, even among the handful of retired senior officers who for years have disappointingly supported the service academies' use of race as a factor in admissions, they admit to the critical importance of insuring non-discriminatory policies are in place and followed; and acknowledge the corrosive impact of policies that contravene

the guarantee of equal treatment without regard to race. Here are examples of their own words:

> *Policies combating [racial] discrimination* are essential to good order, combat readiness, and military effectiveness.[17]
>
> *[E]qual opportunity* [without regard to race] is absolutely indispensable to unit cohesion, and therefore critical to military effectiveness and our national security.[18]

The admittedly race-based admissions policies at the U. S. Naval Academy are precisely the sorts of racially discriminatory policies that result in the denial of equal treatment and equal opportunity to certain Naval Academy applicants based solely on their skin color or ethnicity. It is wrong; and the proponents of these policies know it is wrong. So why does the Naval Academy persist in maintaining them? Why do certain senior officers, aided and abetted by federal judges wedded to "woke" ideology rather than to the Constitution, remain proponents for these divisive policies? Why do they ignore the hard-earned lessons from the past?

Which returns us to the principle announced in *SFFA*.

With *SFFA's* fundamental principle firmly in mind, one needs to read no further than page 3 of Judge Bennett's opinion to recognize the first error in his analysis. He opens with this observation: "During the [Naval Academy's] admissions procedure, which is distinct from that of a civilian university,[19] race or ethnicity [of an applicant] may be one of several *non-determinative* factors considered."[20]

The simple logical flaw in Judge Bennett's analysis is that whenever the race or ethnicity of any given applicant is "one of several ... factors considered," it unavoidably leads to situations where race (just like a candidate's SAT score, or one's extraordinary extracurricular activities, including an applicant's athletic prowess) can prove to be "determinative." It is both illogical as well as flatly false to suggest otherwise. For example, in the case of a successful underrepresented minority candidate, his preferred minority status may undeniably be the factor that is determinative in his admission. Conversely, in the case of a rejected candidate of a different race, her *non-preferred* skin color or ethnicity may be the factor that results in her rejection. This surely is an injustice to the person who is rejected because of his or her race, a point succinctly made by two prominent American leaders.

The first is late retired Army General, former Chairman of the Joint Chiefs of Staff, and former Secretary of State, Colin Powell; the second is former United States Senator and Democratic candidate for Vice-President in 2000, Joseph Lieberman. As General Powell wrote in his 1995 autobiography, "Discrimination 'for' one group means, inevitably, discrimination 'against' another; and *all discrimination is offensive*."[21] Senator Lieberman fully concurred: "You can't defend policies that are based on group preferences as opposed to individual opportunities ... *[t]hey're patently*

unfair .... Not only should we not discriminate against anybody, [but] we shouldn't discriminate in favor of somebody based on the group they represent."[22]

Though their observations were made long ago, both Powell's and Lieberman's views are fully consistent with the constitutional principle that is at the core of Chief Justice Roberts' opinion in *SFFA*.

Consistent with that principle, and the legal and legislative precedents upon which it is based, it should be the Naval Academy's mission to recruit, enroll, train, educate, and graduate individuals committed to protecting and defending the United States Constitution and the fundamental Constitutionally guaranteed rights of all of our nation's citizens, and to do so without considering any applicant's race, color, creed or national origin.

Judge Bennett's lengthy opinion clearly and erroneously deviates from *SFFA*'s principle.[23]

Conclusion

The presence of race-based policies and overt racial discrimination during the early decades of our Nation's history should have been warning enough for our current political and military leaders to recognize the damage and injustices these policies create.

Because common sense Americans instinctively understand that racially discriminatory policies are not required in order to protect and defend our national security, the Naval Academy should immediately commit to the principle announced in *SFFA*, to wit: that every potential applicant shall be evaluated for admission based solely on a *colorblind* meritocratic process. Discrimination in favor of, or against, any individual based on an applicant's race, color, creed or national origin should never again be tolerated in our military. Our long-standing constitutional. legislative, and legal precedents—as most recently expressed in *SFFA*—do not support the continuation of these policies. Notwithstanding the distorted—even if, at times, good faith—reasoning of proponents for their continuation, there no longer can be any excuse for continuing them. That is what the principle announced in *SFFA* tells us.

The Naval Academy should immediately adopt *SFFA*'s fundamental principle as its own.

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1. "I will . . . end the government policy of trying to socially engineer race and gender into every aspect of public . . . life. We will forge a society that is color-blind and merit based," Transcript of remarks by President Donald J. Trump (Jan. 20,

2025) (emphasis added); and from the *Wall Street Journal*, January 21, 2025: "In an order ending Diversity, Equity and Inclusion programs, Trump directed the Office of Management and Budget and Office of Personnel Management to help agencies eliminate any programs that hire or promote people based on characteristics including race."

2. Ironically, the goal of a color-blind military was first announced almost two decades prior to Dr. King's prescription for a society where one's character rather than one's skin color was what mattered. See President Truman's Exec. Order No. 9981 (July 26, 2948) (seeking to desegregate the United States armed forces). However, the burgeoning acceptance of "colorblindness," especially in the U.S. military, was expressly rejected during both the Obama and Biden administrations. *See* text and *infra* note 8.

3. *Brown v. Board of Education*, 349 U. S. 294, 298 (1955) ("Brown II") (emphasis added.)

4. 42 U.S.C. §2000d (2006) ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.").

5. For a detailed discussion of why the military academies' race-conscious admissions policies must be ended, see R. Lawrence Purdy, "We All Wear Green We All Bleed Red, There Is No Difference: Race-Conscious Admissions Policies Have No Place at Our Military Academies," (Oct. 15, 2024) (forthcoming *St. Mary's Law Journal*) (available at https://ssrn.com/abstract=4988319 or http://dx.doi.org/10.2139/ssrn.4988319), hereinafter "SSRN 4988319".

6. *Students for Fair Admissions v. The United States Naval Academy, et al.,* Civil Action No. RDB-23-2699, Trial Findings of Fact and Conclusions of Law (12/06/2024) (hereinafter "*Annapolis*"), at 3 (emphasis added).

7. This "diversity commission" was known as the Military Leadership Diversity Commission ("MLDC"). *Id*. at 6, note 2.

8. *See* MLDC Final Report delivered to President Barack Obama on March 15, 2011, at 18.

9. *Annapolis*, *supra* note 6, at 177, citing Justice Sonia Sotomayor's dissent in *SFFA* (600 U. S., at 318). Sadly, her words reflect the cynical views held by those who insist our Nation was founded on, and remains driven by, systemic racism and "white supremacy."

10. As explained in an excellent companion piece authored by noted military law expert, William A. Woodruff, the Court wrongly "deferred" to the alleged "military judgment" that race-based admissions were essential to maintaining our national security. *See* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5100933

11. Among the thousands of honorable senior military veterans who believe race-based admissions policies harm our national security interest is former Air Force Chief of Staff, General Ronald Fogleman. See Fogleman & McQuarrie, "No, Affirmative Action in the Military Doesn't Boost National Security, It Erodes It," *The Federalist,* Oct. 25, 2022.

12. Jeffrey Tucker, "In Ideology, Diversity Is Strength," *The Epoch Times*, Jan. 12, 2025.

13. The U. S. military is arguably the most racially diverse large organization to be found anywhere in the world. *See*, e.g., Demographics of the U. S. Military, Council on Foreign Relations.

14. *See*, e.g., Philip J. Kuehlen, "Diversity Is Not Our Strength," *RealClearDefense*, Sept. 6, 2024; See references to numerous additional articles by, among others, retired Army General Ernie Audino; Army Colonel William F. Prince; and retired Navy Captain Brent Ramsey, all cited in SSRN 4988319, *supra* note 5, at 118 note 76.

15. *See*, DoD Instruction 1350.02, Rev. 1 issued on December 20, 2022, which defines Military Equal Opportunity (MEO) as "[t]he right to serve, advance, and be evaluated based on only individual merit, fitness, capability, and performance in an environment free of prohibited discrimination on the basis of race, color . . . [or] national origin."

16. *See*, e.g., OPNAV Instruction 5354.1F (2007), §4(a): "Acts of unlawful discrimination . . . are contrary to our Core Values of honor, courage and commitment. Sailors and civilians who model Navy Core Values do not engage in negative behaviors nor condone these actions in others. *Additionally, these practices adversely affect*

good order and discipline, unit cohesion, mission readiness and prevent our Navy from attaining the highest level of operational readiness." (Emphasis added.)

17. Consolidated Brief for Lt.Gen. Julius W. Becton, Jr., et al., ad *Amici Curiae* in *Gratz v. Bollinger* and in *Grutter v. Bollinger* ("retired officers' brief") at 12.

18. *Ibid*., at 17.

19. While the Naval Academy considers several factors civilian universities routinely do not consider (e.g., strict medical and physical requirements), there are common sense reasons for this that have nothing to do with race. E.g., the failure of a Naval Academy applicant to meet objective physical and/or medical requirements can most certainly be determinative.

20. *See*, *Annapolis*, *supra* note 6, at 3 (emphasis added).

21. Collin Powell, *My American Journey* (Ballantine, 2003), 591-592, (emphasis added).

22. Stuart Taylor, "Gore-Lieberman: Racial Preferences Forever?" *The National Journal*, Sept. 4, 2000, (emphasis added).

23. For an extraordinarily detailed account of Judge Bennett's numerous errors, see the three-part series authored by retired Navy Captain and eminent lawyer Charles D. Stimson: Part 1: https://www.dailysignal.com/2024/09/25/u-s-naval-academy-trial-unconstitutional-use-race-admissions-legal-arguments-part-1-3/

24. Part 2: https://www.dailysignal.com/2024/11/26/u-s-naval-academy-trial-unconstitutional-use-race-admissions-part-2-3-witnesses/

25. Part 3: https://www.dailysignal.com/2024/12/20/when-a-judge-incorrectly-rules-race-as-legit-in-naval academy-admissions-part-3-of-3/; *See* Paul J. Larkin, Charles D. Stimson, and Thomas Spoehr, *Military Necessity and Racial Discrimination, Georgetown Journal of Law and Public Policy,* 22, no. 2 (2022).