

Politicized external review panels as unguided “diversity” missiles

California university administrators remain ultra-slow learners

By Stuart H. Hurlbert

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Center for Equal Opportunity, Falls Church VA, September 12, 2017

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Distinctions by race are so evil, so arbitrary and insidious that a state bound to defend the equal protection of the laws must not allow them in any public sphere.

– Thurgood Marshall

Lead Attorney in Brown vs. Board of Education, Supreme Court of the United States, 1954

[It] is neither race nor racism that bedevils American society, but rather that racial classification enjoys a privileged status in social studies. American society is being tied in painful knots by virtue of legislative, social scientific, and media practices of racially classifying persons...

– Yehudi O. Webster

Professor of Pan-African Studies, California State University, Los Angeles, 1991

Politicians like to say that diversity is our greatest strength. That is b.s. Diversity simply is. The core question is: How do we extract its assets while minimizing its liabilities?

– Ron Wakabayashi

Executive Director, Los Angeles County Commission on Human Relations, 1998

“Diversity” is probably the most powerful concept on American college campuses today; it is certainly the most pervasive. ... Part of the oddity of the situation is that “diversity” seemed to gain its lofty perch without the help of any great mind, any prestigious philosopher or social theorist, or any major book. ... It arrived unparented, as a kind of collective emanation of ponderous academic silliness.

– Peter Wood

President, National Association of Scholars & Author of Diversity: The Invention of a Concept, 2003

INTRODUCTION

University academics tend to be a fractious, independent, and stubborn lot, accustomed to having much freedom in what they teach, in what types of research or other scholarship they engage in, and in what types of contributions they make to university governance and to the wider society. Coordinating and riding herd on them and detecting opportunities for positive institutional change require skillful administrators. In many universities, faculties and administrators are assisted by periodic review by accreditation agencies and by review of individual academic departments and programs by panels of external examiners.

However, there is potential for all of these processes to become politicized and dysfunctional. That potential is high when administrators, accreditation agencies, and review panels go beyond core academic and administrative matters in order to promote social engineering based on narrow ideological perspectives. Often those perspectives are neither acknowledged explicitly by administrators nor accepted by the university community as a whole. In no area has this problem become more severe over recent decades than academia’s strong favoring of identity politics and the racialization of society under the guise of civil rights. American academic institutions have been among the most powerful supporters of using governmental racial categorization schemes for data gathering, in using sex and race preferences in faculty hiring and student admissions, in

encouraging race-based student organizations, and in creating entire departments defined in racial or ethnic terms. The general situation has been exposed in many excellent books (1).

My interest in these matters derives largely from my participation during the last three decades in movements to eliminate government- and university-imposed racial categorization schemes and use of race and sex as factors in affirmative action programs. This has included my experiences as a contrarian faculty member in a university which has pretty much “run with the herd” on these issues. On multiple occasions I have urged the parade of chairmen, deans, and presidents who’ve filed past me since 1970 that they look at the big picture, drop out of the herd, and aspire to make San Diego State University [SDSU] a leader rather than a follower in these matters. I’ve been told at times that I’d “made dents” in our institution’s political correctness. As a public lightning rod on these issues I’ve been happy to receive private support from a few students, staff members, faculty members and administrators. I suspect, however, that all those “dents” have been popped back out as new generations of administrators have replaced old in the various campus “body shops,” and as “political correctness” has become more ensconced and aggressively enforced.

In any case, I follow the model of Sisyphus. My most concrete, public contribution to this battle to date was a 2003 report (2) I prepared analyzing the results of the SDSU Department of Biology’s hiring processes during 1988-2002 and the attacks on us and other departments by the SDSU central administration for our ‘diversity deficiencies.’ Privately and widely circulated for years, that report is now publicly available.

Officially retired since 2006, I have not been privy to the detailed course of “diversity” politics at San Diego State University since then. That has been, of course, something of a relief. But during the past two years, our Department of Biology has undergone two external reviews, one of the department as a whole and another of one of our doctoral programs. Reports of the two examining committees have become available to me. Their conclusions and recommendations on “diversity” matters are uninformed, regressive, and reflective, I believe, of how academia as a whole continues to fail society in these matters driven by its own sense of moral superiority. And if it’s this bad on the sciences side of a campus, you can imagine the situation on the “left side” of campus.

This article quotes portions of these two recent external reviews, and gives verbatim my response to them in email messages sent to SDSU faculty members, administrators and external examiners. It also gives the opinions of a few outside legal experts on the recommendations of the examining committees.

2015 DEPARTMENTAL REVIEW

As are most academic departments at SDSU, our Department of Biology is reviewed every five years by an examining committee consisting of highly regarded academics not in our own department. Such a review was conducted in 2015 by the panel listed below, along with their charge and their conclusions on our “diversity problem,” taken verbatim from their report.

Academic Review

Department of Biology, San Diego State University, November 4-5, 2015

Brandon S. Gaut, University of California, Irvine

Fred W. Kolkhorst, San Diego State University

Kenneth B. Marcu, State University of New York, Stony Brook

George K. Roderick, University of California, Berkeley

Charge. The review panel was charged with evaluating the Department of Biology’s academic programs. The SDSU Senate Policy File (July 2015) stipulates the review: “... (a) shall assist a department, school, or program in improving its instructional, research, and professional programs,

(b) shall review how the faculty have used their resources, (c) shall evaluate the quality of degree programs, (d) shall chart the direction of growth, (e) shall elucidate need for further support, and (f) shall examine the academic health of the unit. The review shall assist in department, school, or program planning and in requests for new degrees and programs. The contents and format of the academic review shall be aligned with those for academic plans." The panel was given surprising latitude in structuring the review. The only specific guidance in the review provided by University administration was to "not compare the Department with other California State University (CSU) biology programs."

Excerpt on "Diversity": We were surprised by the lack of discussion of faculty diversity during our on campus visit. While the campus is known for its undergraduate diversity, the department has a less sterling record at the faculty level, with a male:female gender ratio of ~36:9 (based on the Departmental webpage). While diversity of other underserved groups is represented on the faculty, there is also room for improvement, particularly given the diversity of peoples in Southern California. We strongly suggest that any discussion of growth or faculty replacement encompass diversity explicitly.

Defending Biology, Part II

Title of this section is based on the idea that "Part I" in this series was my 2003 report to the SDSU administration (2).

This letter went to the SDSU Biology faculty, our dean, two vice-presidents, the president, and the examining committee or review panel. Attachment of my 2003 report was at least highly informative, as, apart from about two-thirds of the Biology faculty, none of the other recipients had seen it previously.

From: Stuart Hurlbert <hurlbert@mail.sdsu.edu>

Date: Fri, Dec 18, 2015 at 5:14 PM

Subject: In defense of Biology, SDSU

To: biofac <biofac@sunstroke.sdsu.edu>

Cc: MaloyStanley <smaloy@sciences.sdsu.edu>, Stephen Welter <swelter@mail.sdsu.edu>, Chukuka Enwemeka <enwemeka@mail.sdsu.edu>, HirshmanElliot <ellieth@mail.sdsu.edu>, bgaut@uci.edu, red.kolkhorst@sdsu.edu, kenneth.marcu@stonybrook.edu, roderick@berkeley.edu

This is my Christmas present to the Department of Biology at SDSU as I finish packing up my things after residing here for 46 years, the last 9 as a happy emeritus prof with a big office!

It is wonderful that we have received such a favorable overall Academic Review from the four external reviewers.

They malign our department, however, in this paragraph on p. 4: [now given above]

They surely are innocent of bad intent. But they don't know the history of our department in such matters and they perhaps suffer from a possibly overweening political correctness in their own universities and its contagiousness.

There is no basis for the insult that we have "less than a sterling record", and we should reject out of hand their implication that we should start using racial or sex preferences in faculty hiring.

The solid basis for that conclusion is my report to the Biology faculty of October 2003 (attached) [1]. We are possibly the only department in the entire California system of higher education that, at least for a time (1988-2002), kept complete records on the racial and sex composition of applicant pools. In

the past, doing that has kept at bay those administrators who would have us engage in unethical and illegal practices. I urge the departmental Policy and Planning Committee to seriously consider the recommendations given at the end of my 2003 report.

The reviewers criticize us for women making up only 20 percent of our faculty, a percentage that has not changed much for several decades. Yet for the 30 faculty searches conducted during 1988-2002, women constituted, on average, only 22 percent of the applicant pool. I doubt that has changed much since then. But if the department doesn't keep accurate records (no one else does), then it will be vulnerable to pressure from the 'diversitocrats.' They will assume women constitute about the same percentage in applicant pools as they do among recent Ph.D.s in biology (ca. 45 percent) and imply there's some sort of cryptic sexism going on if you don't have women making up half the department.

And where's the logic of the reviewers' implication that the composition of the faculty should roughly reflect "the diversity of peoples in Southern California"?

Our faculty come from around the world. You want the faculty to reflect the racial composition of the US more closely, then only hire US citizens! You want to hire more multiculturally literate faculty? Only allow on the shortlists those persons who've demonstrated moderate competence in two foreign languages. This was a requirement in most fields for a Ph.D., until academia wimped out in the cultural revolution of the 1960s and never recovered its moxie.

Race deserves no more consideration in hiring decisions that do religion, political party, sex, sexual orientation, etc. Since passage of Proposition 209, the California Constitution is crystal clear that racial preferences may not be used in faculty hiring.

Don't buckle to the bean counters. Keep your powder dry and your eyes open.

2016 DOCTORAL PROGRAM REVIEW

Campuses in the California State University system are allowed to offer doctoral degree programs jointly with a campus in the University of California system. One of the earliest and more successful such programs is that currently operated by the Ecology Program at SDSU and the University of California at Davis, the latter having one of the strongest graduate programs in ecology in the U.S. This joint program underwent an external review in 2016. The examining committee is listed below, along with, verbatim, its recommendations on "diversity" matters.

Program Review Committee Report

on the Joint Doctoral Program in Ecology at San Diego State University
and the Graduate Group in Ecology at the University of California, Davis,

February 11 and 12, 2016, by

Committee Members

John C. Wingfield, University of California, Davis

James Ehleringer, University of Utah

William Tong, San Diego State University

Verbatim excerpts concerning "Diversity" (bolding by S. Hurlbert):

Faculty. By all metrics highlighted in the self-evaluation document, readily available external review rankings, and faculty interviews, the SDSU JDPE faculty is world-class with strong and vigorous research programs. The faculty has well respected publication records in well-regarded international journals. As ecological science and environmental sciences nationwide have become more interdisciplinary, the ability of the JDPE to continue to attract future, outstanding faculty may be diminished if the JDPE does not expand its scope. **Expansion of the JDPE**

faculty does not seem justified in the absence of expansion of JDPE breadth and **without an increase in the diversity of JDPE faculty**, especially given that SDSU is a Hispanic Serving Institution (HSI).

Students. The quality of JDPE students is outstanding and compares very favorably with similar graduate students at other Tier-1 research universities. The review committee was pleased to meet and talk with exceptionally mature, articulate, driven, engaging, and inquisitive JDPE students at both SDSU and UCD. Clear guidelines, adequate information exchange, a **diverse student population**, and sufficient stipend support are four **key aspects of any successful graduate program** that students commented on during our interviews. **[T]he lack of diversity in the JDPE student population is alarming**, especially given that SDSU is a HSI and given the strong international connections with Baja California.

2.3 Recommendations

[2] There is a need for new faculty hires (**especially diversity hires**) to expand the breadth of the JDPE faculty to include broader interdisciplinary efforts that are reflective of how similar ecological science and environmental science programs are developing nationally.

[3] There is a need for new faculty hires (**especially diversity hires**) to expand the breadth of the JDPE faculty to include more international engagement, especially with opportunities in Baja California.

[4] **There is a need to immediately increase the diversity of JDPE students.**

Defending Biology, Part III

Given the general non-transparency of these processes, it took a while to get a copy of this committee's report. Once seen, disappointment was again great at how aggressively some academics are still willing to advocate illegal and unethical actions and solely for the purpose of advancing only "skin color" diversity and equal representation of the sexes ("gender equity," in the jargon *du jour*).

So again like a true democrat and subversive, I drafted the uninvited email message below. It was sent to our Biology faculty, a dean, three vice-presidents and a president at SDSU, the chancellor and coordinator of the Graduate Program in Ecology at UC Davis, members of the review committee, as well as members of the review panel that a year earlier had evaluated the entire SDSU Department of Biology.

From: Stuart Hurlbert <hurlbert@mail.sdsu.edu>

Date: Mon, May 22, 2017 at 11:40 AM

Subject: Comments on the politics in last year's review of the SDSU-UCD JDPE

To: biofac <biofac@mail.sdsu.edu>

Cc: MaloyStanley <smaloy@sciences.sdsu.edu>, Stephen Welter <swelter@mail.sdsu.edu>, Chukuka Enwemeka <enwemeka@mail.sdsu.edu>, bgaut@uci.edu, red.kolkhorst@sdsu.edu, kenneth.marcu@stonybrook.edu, roderick@berkeley.edu, erivera@mail.sdsu.edu, HirshmanElliot <ellioth@mail.sdsu.edu>, chancellor@ucdavis.edu, Edwin Grosholz <tedgrosholz@ucdavis.edu>, jim.ehleringer@utah.edu, william.tong@sdsu.edu, jcwingfield@ucdavis.edu

Ecology colleagues and others,

After hearing for more than a year rumors about the report by the external committee that reviewed our Joint Doctoral Program in Ecology with UC Davis, I have seen a copy of it only just now.

It was a pleasure to see how highly regarded the SDSU program faculty and students were by the review committee, and to see that the few problems found were of an administrative nature.

It was a disappointment, however, to see yet another committee dunning SDSU faculty and administrators for supposed "diversity" deficiencies and recommending, not all that subtly, that illegal and unethical actions be taken. Below I quote the relevant sections of the committee report [These are now given above]. In them, I have bolded those phrases that seem especially troublesome.

For most receiving this message, this will be, as Yogi Berra used to say, deja vu all over again. You've seen my 2003 defense of the Biology after it had been criticized as "diversity" deficient by the SDSU central administration and my 2015 response to similar criticism from another poorly guided external review of the whole Department of Biology. For persons new to these matters, copies of those defenses of our department can be supplied on request.

Now we have a JDPE review committee praising highly the SDSU faculty and students in the program on the one hand and then implying that both groups would be better with a different sex ratio or different racial composition. But who can know exactly which dimensions of diversity the committee was talking about. No data are given. Probably unbeknownst to the committee, the official, brief and very platitudinous SDSU Statement on Diversity recognizes eight dimensions of diversity additional to those of race and sex that are implied to be relevant to hiring decisions.

Note in the JDPE review, the implicit recommendation to SDSU administrators that they condition the giving of more faculty positions to the SDSU Ecology Program only if the hiring process utilizes discrimination on the basis of race and/or sex. And only if the same discriminatory criteria are applied to admission of students into the JDPE.

Note the apparent claim by some JDPE students, seemingly approved by the committee, that a graduate program cannot be truly "successful" if, by some unspecified criteria it does not have a sufficiently "diverse student population." There simply is no factual basis for that idea if it is educational or pedagogical "success" that is the criterion.

Note the implication that more "international engagement, especially with opportunities in Baja California" is implied to require use of racial or ethnic criteria in hiring. Not so. It only requires hiring faculty members a little more imaginative and adventurous than the norm. Our status as "non-diverse hires" in no way hindered the extensive collaborations and engagement that Walt Oechel, I and a few other SDSU ecologists developed with scientists and students not only in Mexico, but also in Latin America generally, and in other countries, starting in the early 1970s.

In 1996 the California Constitution was amended to include: " The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

Administrators overseeing the JDPE review process perhaps were remiss in not reminding the committee at the outset that sex- or race-based "diversity hires" or "diversity" student admissions would be in violation of the Constitution and that advice on them was neither wanted or appropriate.

Now that such advice has been formalized, faculty members involved with the JDPE, indeed every faculty member in the SDSU Department of Biology, will understand that this report can be used as a cudgel by administrators to punish the department if it does not move to engage in the illegal behavior recommended. The best way to remove this sword of Damocles from over the head of the SDSU faculty may be for a dean or higher level administrator to send to all parties an MOU stating that the advice in question was not solicited, is not appropriate, and is rejected by the SDSU administration.

Failing that, and considering how widespread such identity politics shenanigans and worse are in the CSU and UC systems, the faculty could have recourse to the CSU Board of Trustees and the UC Board of Regents.

For perspective, all involved might review the reports documenting how former UC president Richard Atkinson buckled under to claims in the 1980s and 1990s that the UC system was discriminating against women both in pay and in hiring processes, even after an expensive five-year, system-wide study showed both claims to be bogus. At least initially, aggressive promotion of the statistically naive complaints was primarily the work of a few UC Davis professors.

I'd appreciate receiving a copy of the MOU when it is distributed!

LEGAL OPINION

While U.S. and California laws have seemed clear enough to me, they obviously aren't to many other academics and administrators. So the opinions of a few experts in this area of law were sought out. To each I sent only the two report excerpts given in the sections above, with the query, "What would be the legal and ethical implications were the university to implement the recommendations to increase 'diversity' implicit in these reports?"

Their responses are given below:

Clearly the recommendations indicate that race and ethnicity are to be weighed in selecting students and faculty. But, as a matter state law, this would be flatly illegal. That is the end of the matter. But there's more. Federal law would be violated, too, since Title VII of the 1964 Civil Rights Act makes it illegal to discriminate on the basis of race or ethnicity in employment (with narrow exceptions not applicable or cited here); such faculty discrimination also has no recognized justification as a matter of federal constitutional law. While federal law has allowed the limited use of racial preferences in student admissions, it is unlikely that a federal court would defer to an external review's recommendation of such discrimination.

– Roger Clegg, J.D.

President and General Counsel, Center for Equal Opportunity, Falls Church VA

These reports can only be read to advocate diversity for its own sake and they make no attempt to link increased diversity to any educational objective. Implementation of the diversity recommendations would necessarily require race preferences in hiring and admissions that blatantly violate the California Constitution and the equal protection clause of the US Constitution. When race or sex becomes a sine qua non of selection, the rights of those who would have been hired/admitted but for race preference are infringed and the law will give them a remedy.

– Bert W. Rein, LLB

Founding Partner of WileyRein LLP, Washington DC

Counsel to Abigail Fisher in *Fisher v. University of Texas*, before the U.S. Supreme Court

The American Civil Rights Institute, as the principal monitor of Proposition 209 in California, is shocked to see such overt suggestions of using race, ethnicity, and/or gender as criteria for either faculty hiring or student selections. In 1996 the people of California passed Prop 209 stating: "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." Consideration of race or sex in education is prohibited. Should SDSU choose to violate the Constitution of California, ACRI will consider legal action to stop this practice.

– Diane Schachterle

Vice President, American Civil Rights Institute, Sacramento CA

CONCLUSIONS

These antics at SDSU are a drop in the bucket compared to what goes on in the rest of the California State University and University of California systems. Too many university academics and administrators have such strong beliefs in their own moral superiority they do not hesitate to put themselves above the law. Solid documentation of their malfeasance as provided in this report and my earlier one (2) is not likely to have much effect until the higher authorities, like the CSU Board of Trustees and the UC Board of Regents, step in, learn to deal with the many sorts of bogus statistical and other claims they are fed, and hold presidents and chancellors more accountable.

By coincidence, a new (interim) president at SDSU and a new chancellor at UC Davis were just installed, in August 2017. For a short period of time, they will be in a position to halt the ongoing use of race and sex preferences on their campuses without any personal loss of face. With a tad more moxie they could become leaders within their respective systems to lead them back to legality and higher ethical standards.

Recourse may also be had, at least in principle, to the California legislature and the general citizenry. The former is unlikely to help as it is dominated by politicians who have been trying aggressively for the last two decades to undo

the 1996 change in the California constitution outlawing race and sex preferences. Most citizens oppose the reinstitution of these but they are not easily organized for action.

REFERENCES

(1) Key books include: *Reflections of an Affirmative Action Baby*, S.L. Carter, Basic Books, 1991; *Affirmative Action and Racial Preference: A Debate*, C. Cohen & J.P. Sterba, Oxford, 2003; *Creating Equal: My Fight Against Race Preferences*, W. Connerly, Encounter Books, 2001; *Illiberal Education: The Politics of Race and Sex on Campus*, D. D'Souza, Free Press, 1991; *The End of Racism*, D. D'Souza, Simon & Schuster, 1995; *Ending Affirmative Action: The Case for Colorblind Justice*, T. Eastland, Basic Books, 1996; *The Disuniting of America*, A.M. Schlesinger, Norton, 1992; *The Racialization of America*, Y.O. Webster, St. Martin's Press, 1992; *Diversity: The Invention of a Concept*, P. Wood, Encounter Books, 2003;

(2) Hurlbert, S.H. 2003. Race, sex, and faculty searches, Department of Biology, SDSU, 1988-2002, with commentary on policies and actions of the SDSU administration. San Diego State University, San Diego CA. 16 pp. (Now available as: NAS Article, National Association of Scholars, New York NY, September 11, 2017 : https://www.nas.org/articles/race_sex_and_faculty_searches_department_of_biology_sdsu_1988_2002