

## Kent Wong & Cruz Reynoso dispel myths and state the facts at CFA Equity Conference

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Now, I want to talk for a minute about this issue of affirmative action, because this is a very serious issue that we are confronting within higher education and in organized labor.

I've been at UCLA for 12 years. Since the gutting of affirmative action, we have watched an appalling decline in the number of African-American and Latino students at UCLA and at UC Berkeley. I'm teaching a class at UCLA this quarter on work, labor, and social justice. I have 120 students in the class, not one African-American student and a handful of Latino students in this class on work, labor, and social justice. What is wrong with this picture?

Without affirmative action, without conscious and deliberate steps to correct patterns of discrimination and injustice there will be no progress. Our educational institutions, work places, and leadership bodies will never reflect the rich diversity of this country without affirmative action. And we must understand that [affirmative action] was very much an outgrowth of the civil rights movement. Now, the reality is that racial and gender discrimination is alive and well. And the need for affirmative action remains.

If you look at the US Senate today, if you look at the Fortune 500 CEOs, if you look at the corporate board rooms, if you look at the exclusive country clubs, you will know that racial and gender discrimination is alive and well. White males make up 40 percent of our work force and hold about 95 percent of the top corporate jobs in this country. And now George Bush wants the University of Michigan to end its policy of considering an applicant's race, among other factors, in admitting students.

According to George Bush, this approach amounts to a quota system that unfairly rewards or penalizes prospective students based

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*These selections from the keynote presentations at CFA's Equity Conference focus on affirmative action in higher education.*



**Cruz Reynoso**



**Kent Wong**

About the same time the Civil Rights Movement was going on, the late '60s, early '70s, [when I was in school], my law school was admitting a grand average of one or two [minorities] a year. I was, the only Latino. We had one Asian-American, three women; that was diversity in my class. But, suddenly, in the late '60s, they went from admitting one person one year, to admitting six Latinos the next year.

The next year it was 12, the following year it was 18. And yet, I'm sure, that the character of the graduating [college] seniors had not changed that much. What had changed? What had changed was the determination of that institution that we needed greater diversity in the bar and, of course, among law students. So something had changed, not the applicants, I don't think. Something internal, within the institution, said we've got to do things differently. Once determined that they needed to do things differently, things were done differently.

[Yet,] I [recently] chatted with a professor at a CSU campus who said the following, "Cruz, I'm very concerned. I and some other minority professors were hired, actually in the late '60s, —'67, '68 — and the early '70s. We're now reaching retirement age. And I don't see that we're even being replaced. Several Latino and African-American professors who were hired at that time have since retired and we're going down in the number of minority professors in our institution."

He said, practically nothing has happened since those late '60s, early '70s, when a whole group of African-American and Latino professors came into the work force in that institution. Since that time, for about 20 years, very few, if any, had been hired.

How come? We were still graduating pursuantly. Figures indicate the law school created a number of Ph.D.s and so on among

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on their race. Bull. George Bush himself is a beneficiary of affirmative action. It's an affirmative action for the wealthy white elite. George Bush was admitted to Yale in 1964 under an affirmative action policy for children of alumni, what colleges call a legacy system. Bush scored 566 on his verbal SAT, 640 on his math SAT, 180 points below the median score for his Yale classmates.

At that time, Yale made virtually no effort to recruit minorities. There were only 28 African-American students out of 4,093 undergraduates at Yale back in 1964. If they had implemented an affirmative action program, you could have bet that George Bush would have been the first in line to oppose it. Bush was a mediocre student, never made the honor roll. When he was at Yale, he was a C-average student.

And yet he got into Harvard Business School, the nation's premiere training ground for corporate executives. Bush himself when he addressed the commencement speech at Yale's 2001 ceremony said, "To the C students, I say you too can be president of the United States." Bush got particularly poor

grades in political science and economics. In his freshman year, he was in the 21st percentile of his class, meaning that 79 percent of the students had better grades than he did.

And yet how do you think he got into Harvard Business School? It was through connections with his family, through the power and wealth of his family, that he got in through the back door. Now, let's think what would have happened if George Bush had not gone to Yale. Let's think what would have happened if he had not gone to Harvard. Perhaps we wouldn't be at war today. Perhaps he could have bought another failing baseball team in Texas.

But the University Of Michigan's affirmative action program seeks to help qualified students without the types of connections of George Bush and his family, indeed to help students who have had to cope with economic and social disadvantage, something George Bush would never, ever understand. And it is the height of hypocrisy for George Bush, after all the affirmative action that he benefited from, namely, from coming from a family of the wealthy, white elite in this country that that's perfectly OK.

And yet affirmative action designed to help the underserved, the underrepresented,

that is what should be eliminated. That is the hypocrisy of George Bush. You know, I have two good friends I went to law school with—Antonio Villaraigosa, who just won a city council race here in Los Angeles on Tuesday, and Gilbert Cedillo, who was with the Service Employees International Union and is now a member of the California State Senate.

Both of them were admitted to UCLA under the affirmative action program at UCLA. It is not because they admit unqualified people. Gilbert Cedillo and Antonio Villaraigosa are not unqualified. It is because they came from places that George Bush never dreamed about, never experienced, never knew about. They came from working class families. Antonio Villaraigosa from a single mother.

And he worked and struggled and made it into UCLA, and I guarantee you that Antonio and Gilbert would not be where they are today without affirmative action. They will tell you that themselves. And so to gut affirmative action is to deny us the opportunity of the future Antonio Villaraigosas and Gilbert Cedillos who this society and this country desperately need....



*Kent Wong, back row, center with participants in CFA's Equity Conference March 7*

Latinos and African-Americans, but somehow nothing was happening in that institution. The *umph*, the sense that things needed to be done differently the better to train those college students, apparently had left that institution.

And, yet, we saw so many incidents in those days of the late-'60s to early-'70s, when institutions were concerned about diversity and they wanted to do something about it. That once they decided that they wanted to do something about it, they could do something about it.

I talked to a then-young African-American professor, an instructor at Fresno Community College. He was very young. I said, Hey, how come you're such a young guy is teaching at a community college? He said, "I went to the community college here in Fresno. I did very well. They said, look, if you go on and graduate from a four-year institution, do a little bit of graduate training,— we know you, we have confidence in you, we'll hire you." Then he said, "I went out, I got my degrees, I came back and they hired me." This was doing something affirmative. They identified somebody they knew would be a great teacher.

I ask you how many examples have you

heard in recent years of any of the institutions you're associated with having done what Fresno City College did in those days? I'd be very surprised. Nowadays, they say, well, we've got to be fair. We can't identify people earlier; everybody's gotta go through the same process. [I reply,] "Affirmative action is doing something affirmative."

But is affirmative action a preference? So often, it's designated as a preference. I served on the board, and as president of the board, for a group called Council On Legal Education Opportunities. That group was trying to get more poor people and minorities into law schools. And one of the ways they did it was to have some programs very much like a program set up for American Indians by the University of New Mexico.

I was then teaching at the University of New Mexico. They had a program to test whether or not these young people had the ability to be good law students and good lawyers. They understood that the standardized tests, the law school admissions tests, did not always check out whether or not those youngsters would be good law students and good lawyers. So, another way of doing it—this is rather novel—was to try them out. See if they could be good students. Based on that experience, they would recommend or not recommend and they used to

end up recommending practically all of them for admission to various law schools.

But all these youngsters were minorities and most of them were poor. When I went before them I would say, you're in this program not because we love you. It's true that we love you, but you're not here because we love you. You're here because society needs you. And it's not gonna be an easy road for you. It's no preference. The reality is that you're here because you have lower standardized test scores. Sometimes even lower grades. It means that you're going to have to work twice as hard to be able to do well in law school and to go on and pass the bar.

It was no easy life for them. They were there because the law schools, like my law school at Berkeley, had become convinced that you couldn't have an administration of justice system that did not include within it women and minorities...I believe, that to have a proper administration of justice, you need people in the law from all walks of life. Still, I would tell them you're in for a tough road.

These issues are not easy as this story will indicate to you. There was a young man at the field program admitted to New Mexico. All of the students who came for the law school who didn't have really high LSAT

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## The tug-of-war over affirmative action returns to the ballot cloaked as an initiative for 'racial privacy'

**A**nother assault on affirmative action will appear on the ballot next March in the guise of the Racial Privacy Act, an initiative that would make it illegal for the state to make classifications on race, ethnicity, color or national origin in public education, public contracting or public employment.

The initiative's author is Ward Connerly, the UC regent whose Proposition 209 repealed affirmative action in California seven years ago.

"He's nothing if not consistent," said CFA President Susan Meisenhelder of Connerly. "I think most faculty think that he's utterly misguided."

In public education, the Racial Privacy Act would make it more difficult for educators to assess academic achievement and educational opportunities among a specific group of students. It also would make it more difficult to hold schools accountable for their students' academic standards, including whether there are disparities in standards as they apply to various groups of students.

"The negative effects of it, as in the case of 209, are very visible," Meisenhelder said. "One of the dangerous things about it is that to some people it's going to sound progressive and being racially blind about issues."

While CFA has not taken an official stance on the measure, Meisenhelder said the Delegate's Assembly on April 5-6 discussed it and expressed strong opposition.

"The faculty at the Assembly certainly saw that if you don't track and keep that kind of data you will never know if there were differential impacts on some groups. You'd never know if children of color were being left behind if you weren't tracking racial and ethnic data," Meisenhelder said.

CFA pulled out all the stops against Prop. 209 in 1996, spending considerable effort in opposition. Meisenhelder expects CFA to make similar push against this act. "Politics gets realer and realer for us every day, and I think the faculty are beginning to understand that," she remarked.

## Reynoso

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(law school admissions test scores) were asked to take a certain course. They weren't required to take it; it was a sort of introduction course to the law and to the study of law. He came to me and he said, "Professor Reynoso, am I supposed to take this course?" And I said, I don't know, I don't teach that course, go ask so and so. He said, "Oh, that's all right, I got this note saying I should sign up. And I guess I'll sign up. If I have any pride in this whole process, it's already been kicked out of me," he said. I'm quoting him. What he was saying was that speeches like mine get repeated a little bit too often. Saying, we know you don't have the high LSAT scores. And he started saying, gee, all these people think I don't have a high [enough] LSAT score; maybe I, maybe I shouldn't be here. So, you know, life is not perfect. Nonetheless, by the end of his school career, he graduated No. 2 in our class. And he's gone on to do great work. This is a student who probably wouldn't have gone into law but for the field program.

I've never viewed affirmative action as a preference. It's what we're doing because society needs those young people in the law, in education, etc. It's not because we're preferring them simply because of who they are. It's because society needs them. It's no favor.

I remember early on having a discussion with a professor at Arizona State. He said, "Gee, it's too bad that we don't have more American Indians in the law school." He said, "They're really needed. The tribes need them, others need them. But, we had a couple of them a couple of years ago and they both flunked out."

In New Mexico, a special program was established for American Indians. They had a summer program, they had an extensive recruiting effort and so on. And most of those youngsters got admitted to law schools throughout the country. Slowly, you went from just a handful of Indian lawyers to dozens, now hundreds.

And interesting things started happening. Once they got their own lawyers, they went into court and they said, remember, we signed a treaty. [We've] got rights to water. And the court said, yeah, it's pretty plain you got rights to water. And so now, with that sort of representation these folks, in fact, are having their day in court and having a bit of equity, fairness, that would not have happened but for programs like the programs put together in New Mexico. That was affirmative action. Was it preference? No. Those lawyers were needed to make sure that we have a bit more

equity in our country.

Now we're dealing with [Proposition] 209, and plus. I think that we, as educators, have been involved in self-selection. Let's put it that way. You often hear about students not applying to law school, particularly the better law schools, because they self-select themselves. Gee, I don't have the grades. I don't have the LSAT. I won't even bother applying to UC Davis. And that's a real problem because we wanna hear from those folks. Regarding affirmative action, I have seen over and over again, institutions interpret a court ruling or an initiative like 209 far more restrictively than it needs to be applied or should be applied.

For example, when the Bakke decision came down many years ago, I was then a Court of Appeal judge and a person in the CSU system sent me an internal memo that a CSU lawyer had put together. An extensive



*Cruz Reynoso with CFA Equity Conference co-coordinators Sally Hurtado and Cecil Canton*

memo, five or six pages, single spaced, that said the California Supreme Court has now said in Bakke that you can't have affirmative action, we now have to dismantle all programs that we have to help minorities. We can't give them scholarships. We can't do anything that has to do with race. Out the window. This memo literally, I kid you not, came to me a day or two after the opinion came down. I thought to myself, this lawyer has been thinking about these things for a long time. That lawyer could not have been able to put together that type of memo in that short a time. Finally, he or she, saw the green light to let everybody know how she or he read that opinion. The person was saying, away we're gonna do with anything having to do with affirmative action, having to do with scholarships for minorities and so on. Later it got reversed by the US Supreme Court. But I was

stunned to get that sort of memo so quickly. As I read Bakke, it didn't say anything of that sort. It said, you can't have quotas. Most affirmative action plans don't have quotas, like the ones I've just described to you.

And yet, that lawyer wrote this long memo saying, you've gotta do away with everything. So clearly, if that had been accepted we would have done away with any efforts to bring greater equity to the educational system.

And I see the same thing at the law school. Peter [Nguyen] and I were just talking about it last night. When 209 came down, the dean, a good dean, appointed our constitutional professors to write a memo about what we could do after 209. It basically said, we can't do anything. We can't even recruit on the basis of gender, ethnicity, race, etc. Ironically, at the same time, the University of California system, as a whole, said one of the things we can do is recruit. And I asked my colleagues how they came down with their decision. I think what happened is there was a great man, a great colleague of mine, by the name of Jerry Lopez, who was very much against 209. And he argued that if 209 passed, we wouldn't be able to do anything. And he became intellectually convinced that that was true. 209 passed. I think intellectually, he couldn't divorce himself from his prior opinion. I looked at 209 and all it said was you can't have preferences. I never looked at affirmative action as a preference. I said, great. I never liked preferences. I think you ought take a look at each individual individually. This isn't to say you can't have affirmative action; [it's that] you can't have preferences. We ought to be able to continue doing every darn thing we've been doing.

My colleagues disagreed. They were so tied to their prior opinion. I told them they were being bad lawyers. A lawyer looks at what's happened, a statute and so on, then asks himself or herself how can I interpret this to the best interest of my clients. And I can tell you that judges are very reluctant to interfere with the professional judgment of educators. You always read about judges interfering with law school, with schools. Not true. You read most of those opinions—if it's a professional judgment by an educator, normally the courts will respect it.

I know what the courts would have done if we had interpreted 209, as educators, differently than we did. We started interpreting 209 far more restrictively than we should have. And so we've done away, on so many of the campuses, with many programs that were

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meant to help poor and minority communities of all sorts. And, and you hear folks saying, oh, well, you can't even know what the race of a person is. Not true.

An example. I'm on the admissions committee of UC Davis, this year. We have three categories: Some students are admitted "automatically." Somebody reviews that, but it's sort of assumed that they have really high LSAT scores and really high grades [and are] to be admitted. Another group, they're presumptively denied. Again, a faculty member will review it and will sometimes say we ought to take a second look.

And there is a big group in the middle, all of those highly qualified. We look at them from their personal statements. We know whether they came from a poverty background, if they came from the Sierras that are so poorly represented in the UC system, for example. Whether they came from the Valley, which is also poorly represented. Or whether they came from the coastal areas. We know whether they're poor. We know whether they're black, whether they're Latino, whether Asian, or so on.

Do we simply blind ourselves to that? I say, no. In fact, most of my colleagues agreed with the question we ought to ask ourselves, because those seats are so precious. Does this person have something special to add to the law school, as a student, and to the legal profession? And sometimes, the fact that they're black, or Latino or grew up in a tiny town, or grew up in the Sierras, it's important in that regard. What is their undergraduate degree? We take all of that into account.

We're using our professional judgment. And I'll bet you dollars to doughnuts that a judge will uphold my discretion as a member of a three-person committee making those decisions. There's a lot that we can do. Even within 209. We can recruit. We can make sure that the students are not self-selecting themselves out of the process. We can have programs like the one that I described.

We can be mentors, of course, to individual students. We can be on committees on our campuses that deal with those issues. We can try to be careful in terms of who gets appointed to be the administrators, the deans, and so on, of our schools. Because so often, it is important who they appoint to those committees.

But, you also have to have a dream, an ideal of what our campus should look like, in terms of diversity, by race, ethnicity, geography, in terms of our workers, in terms of students, in terms of our faculty.

Then ask, if there's a union—and you folks are a union, you can get together and



*CFA student interns at the Equity Conference*

decide what your worth is. You know, I'm teaching labor law this semester, for the first time in over a quarter of a century. I used to teach labor law when I was in Mexico before I became a judge. And it's sort of fun now to go back and read some of those early labor law opinions. Early on the statute, particularly before Taft Hartley, was an affirmative policy by this country to encourage unions. It changed with Taft Hartley, so the government now sounds more neutral. But you read about the intent of letting people being able to unionize. And how they're meant to be able to work collectively. And how the law recognized that before being able to work collectively, they can't have the same power in dealing with the administration, the administration of private companies, the administration of public enterprises, if you will. And the import of having people be able to do that for their self protection and for the protection of society. The ideals of those unions early on, not just as the Samuel Gompers, but as the UAW used to say, we're worried, not just about our union members but about society as a whole. Because if society does well, we will do well. You've got that power and you can sit down and figure out what you're own priorities are. And to pursue those priorities,

As educators, I continue to think that we've gotta do the things that educators should do. When I was at UCLA, I argued that most of the affirmative action plans that we had, the programs should continue, and then if we're challenged, OK, we're challenged. But, we'll have done what we think is right as educators. Not what other folks, including judges, are telling us. Then if somehow there's a ruling that's not quite the way we would do it, OK.

But, we have, in the first instance, the obligation to act as educators and to do what we think is right by education. Then, if it can't

be done, you look at other ways of doing it. At UCLA, for example, we had a study, what to do because of 209? And we decided to have many different programs. For example, a combined program of the law and, and a Ph.D. program with ethnic subjects. [There was] a slightly higher number of minorities, than white, because of that program. A few more minorities have come in through that program. This was not set up just to have minorities. This was set up to have full coverage of the law school, with different interests, different backgrounds.

At UC Davis, we have a joint program with MBA and a law degree, and you'd be surprised that quite a few minorities like to go into business and pick up an MBA degree. So, all of that combination has succeeded in slowly, not dramatically, but slowly increasing the number of the minorities.

The year before 209 came into effect, we had the first-ever graduating class at UCLA law where no ethnic or racial group was a majority. We had a true representation of California. As soon as 209 came into effect, those numbers went down, particularly blacks and African-Americans went down and down and down. We finally got to the point where we had between one and two African-Americans in the incoming class. In the middle of Los Angeles, of Southern California, with an incoming class of 350, we had maybe two African-Americans. I say maybe two, because one of the African-Americans was Latina. She said, you know, I could have put myself down as Latina. But I hated to see that we have only one black. So I put myself down as black, thereby, increasing the numbers by 100 percent.

But, slowly, the numbers have gone up by the determination of the faculty and of the

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deans to do what they could to make sure that happened. I must say, that to a certain extent, I think it happened out of potential embarrassment. I think UCLA thought they might be the next Berkeley. Remember when Berkeley had only one African-American and hit the headlines all over the country? I think UCLA was afraid that it might end up hitting the headlines in that same fashion. Nonetheless, one can do a lot, even within 209.

So, let me just mention one other thing, and that's politics. There's so much that can be done.... When we think politically we have to think about the numbers of minorities in California. And the increasing numbers in the legislature....

Which brings me to something that's current—the racial privacy initiative. I'm on the U.S. Commission on Civil Rights. We have eight members—four appointed by the President, two by the Senate, two by the House. All of the Democratically appointed members are rather traditional civil rights people. All of the Republican appointees are like George Bush. They believe in a very narrow view of civil rights. If I tell you, I'm not hiring you because you're a woman, then that's a civil rights problem. If my institution, with a thousand professors, has no women, that's not a civil rights issue. That's an education issue. Nonetheless, this initiative came up and the commission voted unanimously to urge the people of California to vote against it. Because, they said, how can we even know that Bush's program of No Child Left Behind can be working or not if we don't know who's being left behind. It's certainly a bad, bad idea. So clearly, this is something in which we should be involved.

Secondly, I met with some gentlemen who are convinced that the Master Plan [on Higher Education] put into effect in the 1960s has little *umph* behind it now. [They feel] that we have this rush of hundreds of thousands of young people hitting the the age of university life, and that Sacramento, they feel, has given up on them. [The state legislature] seems not particularly concerned when a campus says, sorry, we're at capacity. We've gotta have that oomph in Sacramento to ensure the promise of the Master Plan which says there'll be a spot for every youngster in California that wants higher education to get higher education. And [these gentlemen] don't see that happening. So they're trying to organize...to get the people of California to start mustering those muscles. They know nothing will happen for two or three years during this [budget] crunch. But they see this as a five or 10-year program. And I suggest

that we ought to get behind that sort of effort. When all is said and done, I've got to tell you, that my faith continues to be in the public, in the residents and citizens of California and this country.

I've learned from past experience, that just because you get a legislator that's good philosophically, just because you get a Latino or an African-American in there, once they get there, their constituency expands. They've got other interests. They're worried about the next chairmanship of a juicy committee, etc., etc. and you can't depend on them. I can't depend on my best friends in Sacramento without their knowing that

we're back in the communities, watching what they're doing and they're gonna be held accountable [by] the civil rights groups, the labor unions, the community groups, the citizens, the residents of this state who say, we've got these high ideals, we have this interest in our children having a higher education. We want you to do it. You're a legislator, whether you're an Anglo, Latino, male, or female, we know you have other pressures. But this is our pressure. With that sort of pressure, we, in fact, can be optimistic about what will happen in the future for the education of our children. Thank you very much.