

BY DAVID HECHLER

Just Call Him Mr. Diversity

The GC of Rutgers is on a personal mission: to spread the word that diversity isn't just a nice concept, but today's reality. Employers, take heed.

IT'S SEPTEMBER, AND JONATHAN ALGER glances around the room at the 17 students in his freshman seminar on Diversity and the University. Alger, who is vice president and general counsel at Rutgers University, and a national leader on affirmative action, has asked the class to talk about their own experiences with diversity in high school.

A tall young man raises his hand. He grew up in Rutherford, he says, which was a nice town, "but not diverse." The all-white community was quite different from the one he's in now, he says. A young woman across the room says she was one of the only Latinas in a school almost entirely African American. A boy wearing a yarmulke confides that this is his first experience in a school not all Jewish.

Finally, a white girl in the middle of the horseshoe raises her hand. She attended two schools. The first was Hightstown High School, the second Princeton High. Overall, the schools were both pretty diverse, but the classes at Princeton were much more homogeneous. Which was a shame, she says: "You learn a lot from the people around you." That's why she's glad to be at Rutgers, she adds, where the student body "mirrors the workforce we're going to see."

Bingo. Give that young woman a gold star. Whether by luck or by dint of advanced reading, she happened to hit on one of the strongest arguments the University of Michigan mustered when it successfully defended its affirmative action admissions policy before the U.S. Supreme Court in 2003. And Alger played a significant role as an assistant general counsel there. According to the syllabus, the class will read several Supreme Court decisions, with special attention to the Michigan case, as well as articles by authors who favor schools' efforts to diversify student bodies, and others who oppose any hint of race in the admissions process.

In the five years since Michigan, Alger has built a national reputation as a legal expert on affirmative action, and an ardent champion of the benefits of diversity. Kathleen Santora, CEO of the National Association of College and University Attorneys (NACUA), says: "He's very well-known and highly regarded in this area."

But diversity is not the only subject the 44-year-old lawyer focuses on, though talk show host Don Imus ensured that the race of the women's basketball team would attract notice when he referred to the players as "nappy-headed ho's." As general counsel of a university with three campuses, 50,000 students, 10,000 employees, and literally hundreds of construction projects, he can hardly afford to limit his field of vision. As it happens, however, he has a long-standing interest in employment law, and has

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Jonathan Alger, GC of Rutgers, doesn't hole himself up in his office. He teaches a course in diversity and the law.

valuable advice for companies on this subject. Just as his students can expect to join a diverse workforce when they leave campus, so should their future employers anticipate the claims they're likely to bring with them when they arrive.

As Alger recently told a gathering of in-house lawyers at a Manhattan seminar hosted by Littler Mendelson, their companies' new employees may request accommodations on a smorgasbord of issues: mental conditions (like Attention Deficit Disorder); religious beliefs (the right to wear veils in photo IDs);

entrenched with white Protestants that Catholics were the minorities to them. "For us," he says, "that was diversity."

His first taste of a heterogeneous community was Swarthmore College, where he learned a lesson on race in a course in which the subject was never mentioned. It was an art history class taught by four professors who took turns lecturing on their specialties. On the day they began talking about Asian art, Alger assumed the speaker would be the professor who was Asian American. But to his surprise, that turned out

cally disagreed. "I saw that you could not equate somebody's race or ethnicity with a particular point of view," he says. "And that, of course, is the argument that was the centerpiece of the University of Michigan litigation." Diversity, the argument goes, benefits everyone on campus—majority and minority students alike.

Three years at Morgan, Lewis & Bockius in Washington, D.C., honed his knowledge of employment law and helped pay off student loans. But it was his next job, at the U.S. Department of

Alger's own high school in the suburbs of Rochester, New York, was dominated by white Protestants. "For us," he says of the few Catholics in the neighborhood, "that was diversity."

sexual orientation (transgender's right to use the bathroom of their choice); and emotional well-being (the right to a bully-free workplace). "These are the claims that are coming your way," he warned, "if they haven't already."

HOW DID a middle-class white kid get to be a mover and shaker on race? Improbably. As he told his class at Rutgers, his own high school in the suburbs outside of Rochester, New York, was so

to be the specialty of one of her colleagues. He realized his assumption was nothing more than a stereotype. "It was an incredibly powerful learning experience," he recalls.

His next stop was Harvard Law School. He was attracted to labor and employment law because "it seemed to have a real impact on people's lives." But he has vivid memories of a class discussion on affirmative action in which African American classmates emphati-

Education, Office for Civil Rights, that gave him his first taste of training a staff on diversity—and encountering resentment in the process.

It was 1994, and Alger was explaining when the department could award minority scholarships. He'd helped develop the policy, but an African American department investigator wondered what gave a white man standing to speak. One of Alger's supervisors, who was also African American, answered before he could. "Everyone has something to contribute," she said, "and no one is off the hook."

He felt very self-conscious when it happened, he says. It reminded him of the summer he spent in Japan when he was 17. For the first time in his life, he was the minority. He remembers how acutely uncomfortable he felt when he was stared at in Nagasaki on Remembrance Day. It was only much later that he understood the valuable lesson he'd learned.

At the Education Department he realized his primary interest was higher

Jonathan Alger engaging his young students. He's become one of the nation's preeminent experts on affirmative action.



education, and, following four years at the American Association of University Professors, he was hired by the University of Michigan in 2000.

The affirmative action cases had nothing to do with his taking the job. The Supreme Court didn't grant cert until after he'd arrived, and even then he only got involved when another lawyer left. The two lawsuits were brought by students who claimed they were rejected by the law school and the College of Literature, Science, and the Arts, respectively, because the university's admissions policies favored racial minorities, which violated their own Fourteenth Amendment right to equal protection. The justices held that the law school's policy properly used race as one of several factors, while the undergraduate policy was the unconstitutional equivalent of a quota.

Alger worked closely with outside counsel developing the briefs and oral arguments. Addressing the court of public opinion, he gave speeches and media interviews. But his largest contribution was coordinating the amici briefs, which were prominently cited by Justice Sandra Day O'Connor in the opinion that approved the law school's approach. Citing briefs from General Motors Corp. and a consortium of 65 prominent companies, she wrote that the benefits of a diverse student body "are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints."

ALGER LEFT MICHIGAN because he wanted to be the general counsel of a major research university. The jobs don't turn over very often, he says, and when the one at Rutgers opened, he was immediately interested. Richard McCormick, Rutgers's president, says Alger's expertise in diversity isn't why the school hired him in 2005. With an undergraduate student body that is 45 percent minority, Rutgers cares a great deal about

Alger left Michigan because, he says, he wanted to be the GC of a major research university like Rutgers.

diversity, McCormick adds, and Alger's expertise was a big plus. But the search committee was looking for a GC who could handle it all. And that's what they got, he says.

One of Alger's first acts, the president recalls, was visiting the schools and colleges, introducing himself to the deans, and telling them how he could help: "I think that was an eye-opener for people who were accustomed to talking to a lawyer only when they encountered trouble."

There's plenty to keep him busy. There have been questions and complaints about the football coach's contract. The administration and board of governors have been criticized by the media for shrouding too many of their discussions and decisions in secrecy. (Good governance requires confidential discussions as well as open meetings, the GC responds.)

Alger seems to relish most the problems that are cutting-edge. Within the past year, several Muslim students objected to being photographed without their veils, and having to wear an ID that displayed their faces. The key to finding a solution, he says, is often communication. In this instance, the women were willing to be photographed by females with no men present, he says. And the school agreed they could display the image only when necessary.

He brought up a tricky employment issue at the Littler conference in Manhattan. Alger sits on the governing board of his church, where a couple came from out of town to interview for two pastor positions. They'd brought their infant in tow, and the wife excused herself to feed the baby. "Why did you have to do that?" the committee asked when she returned. "Couldn't you have



brought a bottle?" As a lawyer, Alger told the conference, "I was cringing." It turned out fine: The couple got the jobs. But he advised the church committee to avoid future comments that could be construed as discriminatory.

The latest developments on campus, Alger continues, are transgender's use of bathrooms (the kids get it, but older employees freak out), and claims against bullying in the workplace. "We see it all," Alger tells the audience. "And it's coming your way."

DIVERSITY REMAINS a driving force in Alger's career, and the battles continue. The victory in Michigan did not go unchallenged. Ward Connerly, founder and president of the American Civil Rights Institute in Sacramento, engineered a ballot initiative in the state similar to the one he'd introduced in California (Proposition 209), which in 1996 banned race-based preferences in admissions. The Michigan initiative passed in 2006 with 58 percent of the vote. Roger Clegg, president and GC of the Center for Equal Opportunity in Falls Church, Virginia, supported the effort and says it shows that the most important court—public opinion—rejects affirmative action. "Justice O'Connor may have been persuaded that this was a good idea," says Clegg, "but most of the people in Michigan—a very blue state—were not." Washington State has also adopted the measure, and at press time voters in Nebraska and Colorado were set to vote on initiatives in the November election.

For Alger, there's been plenty on the diversity front closer to home. One of the biggest stories involving racial issues on campus was Imus's on-air comment last year about the basketball team. During the uproar that followed, which received widespread media coverage, Alger met with the coach and team. He talked about their rights and responsibilities, but explained that he was the university's lawyer, not theirs.

One player filed a complaint that she quickly withdrew. That was the only legal action. The administration remained in the background in a supporting role. "We felt it was important for the voice of the coach and the student athletes themselves to take center stage," Alger says. They handled the situation "with grace and dignity," he adds, "while making some very important points that not just our entire university but our entire society needed to hear about discrimination." Imus was fired from his job at CBS, though he was hired eight months later by ABC, and returned to the air last December.

It all proved a "teachable moment," Alger says. He talked about it with his students in the higher education class he

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teaches to upperclassmen in the spring. Opportunities to grapple with issues of the day are one reason he enjoys teaching so much, he says.

A former student declares that the feeling is mutual. Sharo Atmeh, who graduated in 2007, took Alger's higher education class as a senior. He'd been thinking of a career in the law, he says, "but I had no idea of what a lawyer

really did." Alger was the first person who gave him a sense. Atmeh is now at Harvard, where he's pursuing a combined J.D. and master's in public policy from the Kennedy School of Government. Raised in both the United States and Lebanon, he's the first person in his family to attend college.

In December, Rutgers will host a three-day conference on diversity. Alger is one of the organizers. It's cosponsored by the College Board and Columbia University, and five college presidents will be among the speakers. So will Alger. Charlotte Westerhaus, a lawyer who is VP of diversity and inclusion at the National Collegiate Athletic Association, has often teamed with him for presentations. They're from very different backgrounds, notes Westerhaus, who is African American, and she was apprehensive the first time. "You would expect a dissonance," she explains. But she says Alger never let ego get in the way. And the audience got to see diversity in action. "In reality," she says, "it enhanced our presentation." ■



Alger poses with his class—who represent the future of the nation's labor force in all of its diversity.