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Race-Minority Enrollment [3]

UC May Drop SAT Entry Requirement

California System Fears Sharp Decline in Black, Latino Enrollment

By Michael A. Fletcher
Washington Post Staff Writer

The University of California, one of the nation's largest public university systems, is considering dropping the SAT as an admission requirement in the face of dramatic evidence that its decision to eliminate race as a factor in picking students will produce steep declines in Latino and black enrollment.

The university task force charged with examining the issue recommended that the test be dropped after the group's projections showed that continued use of standardized tests would cause Hispanic enrollment to plummet as much as 70 percent at the system's flagship campuses, even as the state's Hispanic population continues to grow. Similar enrollment declines are predicted for African Americans.

The California system, with 166,000 students spread over nine campuses, became the center of a national debate over affirmative action in higher education after its board of regents two years ago voted to ban racial preferences in student admissions. That decision was reinforced last fall when California voters approved a statewide ban on government affirmative action programs.

But university officials faced renewed criticism after the first class of students admitted under those policies was far less diverse than in past years. In the current school year, the ban on racial preferences affects only students at the university system's law and professional schools. Next year, undergraduate students will be admitted to the UC system as well, based mostly on their high school grades and standardized test scores.

"How can we be effectively training the leaders of tomorrow when so many in this state are being denied access to a high-quality education?" said Eugene Garcia, dean of the University of California Berkeley School of Education and chairman of the Latino Eligibility Task Force.

Blacks and Latinos score far below the national average on the SAT. The national average on the SAT is 1016, according to the College Board, which administers the test. But the average score for Mexican Americans is 107 points lower. For African Americans, the average is 857, 159 points below the national average. Asians, meanwhile, average 1056; whites, 1052.

Yet a chorus of critics argues that

the tests do not accurately predict how students will perform in college.

"We did a study of Latino students in the UC system and we found there was very little correlation between academic success and SAT scores," said Raymond Paredes, a task force member and a UCLA vice chancellor.

A survey of several hundred Latino students found virtually no correlation between SAT scores and academic success at the university, Paredes said.

Others, however, say that the test provides a uniform measure for assessing students who graduate from

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—UC Dean Eugene Garcia

vastly different high schools with disparate means of evaluating students.

"The test is not biased. The test is measuring what is out there," said Gretchen W. Rigol, an executive director at the College Board. "Unfortunately, all students don't get an equal education. Not all students are taking the same rigorous academic regimen."

In Texas this year, a new law went into effect requiring students who graduate in the top 10 percent of their high school classes to be admitted to the state university of their choice. Those students will not be required to provide standardized test scores. In addition, such scores would be de-emphasized for other students applying to state universities in Texas. As in California, the use of race as a factor in university admissions was outlawed in Texas schools beginning this year.

Currently, about 15 percent of the nation's four-year schools do not require standardized tests as part of the admissions process, a number advocates say is growing.

The test screens out a lot of black, Latino and some Asian kids who do

well in school," said Robert Schaeffer, public education director for Fair Test, a group that advocates against the mandatory use of the SAT.

The College Board's Rigol argues that racial gaps in SAT performance reflect differences in academic performance rather than any racial or class bias. Moreover, she said, the SAT gives colleges a way of hedging against grade inflation. Last spring, for instance, 37 percent of the 1.1 million students who took the test prior to graduating in June had high school averages of A- or above.

Although no final decision has been made, school officials said the university is weighing the use of SAT scores closely and could make a decision sometime next spring.

The regents expressed some interest in looking at the proposal as part of a larger look at overall admissions criteria," said Terry Colvin, a spokesman for University of California President Richard Atkinson.

California Gov. Pete Wilson (R) strongly denounced the task force recommendation to drop the test, calling it a step in the wrong direction.

The task force found that eliminating the SAT would increase the pool of Latinos eligible for admission by 59 percent, far more than it would increase the overall pool of eligible students.

FOR MORE INFORMATION
To see average SAT scores in the Washington area, click on the down symbol on the front page of The Post's Web site at www.washingtonpost.com

CORRECTION

Tickets for "UMabatha: The Zulu Macbeth" are being sold by Protix, 703-218-6500. The phone number was incorrect in yesterday's Weekend section.

CLARIFICATION

A story in Thursday's Business section said that Gannett Co.'s new Tysons Corner headquarters complex will include production facilities for USA Today. That newspaper's local printing operation will remain in Springfield.

Race-minority enrollment

LOCAL

13. San Francisco Chronicle

August 18, 1997

How UC Admissions Have Been Reshaped Recruiting without affirmative action

Pamela Burdman
Chronicle Staff Writer, page A1

Stark numbers have the power to galvanize, and in the debate over minority admissions at the University of California, nothing seems starker than Boalt Hall School of Law's revelation that none of the 14 African Americans admitted this year would be enrolling.

As the fall semester gets under way today, the Boalt numbers stand as a rallying point — both for those who fear a depletion of minorities in society's professional ranks and for those who applaud the return of merit-based admissions.

But elsewhere around the UC system, the situation is hardly as straightforward. As the university enters a new era of color-blind admissions, its law, business and medical schools are resorting to a wide array of strategies to keep up minority enrollment, with varying degrees of success.

While some schools, like Boalt, are fastidiously keeping ethnicity out of admissions decisions, some are aggressively recruiting minority applicants with fellowships and poolside barbecues, while others have devised creative formulas that give an edge to poor candidates with the right zip codes.

A close look at enrollment figures reveals no neat pattern. The UC Davis medical school expects a fivefold increase in "underrepresented minorities" — blacks, Latinos and American Indians — who benefited under the old system. Yet at Berkeley's Haas School of Business, the number of minorities will drop by more than half.

"We're in the middle of an ideological dispute about what is illicit discrimination and what is permissible consideration of race," said Boalt professor Rachel Moran, member of a faculty committee studying law school admissions. "We're in a period of uncertainty. That's reflected in the variance among schools in the results."

As debate over affirmative action

continues nationwide, UC has emerged as case study number one. Two years ago, UC regents voted to dismantle affirmative action in admissions. The changes won't affect undergraduates until next year, but graduate students entering this fall were the first to apply under the new rules.

With the nation's top professional schools under pressure to boost student diversity, competition for qualified applicants is keen. Without affirmative action, UC admissions officers now find themselves lacking a tool that most others are still using.

ONE BLACK IN NEW CLASS

At Boalt, the number of underrepresented minority candidates admitted dropped from 167 to 55. All but seven — including all 14 African Americans — chose to enroll elsewhere. The new class will have only one African American — a student who was admitted last year but deferred.

"It feels strange to be part of this class," said another incoming student, Alex Huneus of San Francisco, who is Chilean. "It must be one of the first classes since the 1950s that is so lacking in diversity."

Huneus, 29, turned down Yale to attend Boalt. "Part of my decision to go to Boalt was because it was a state school, and I thought there would be more diversity," she said. "I was pretty shocked and disappointed when I found out there wouldn't."

Minority enrollment is also way down at Berkeley's Haas School of Business. Last year, 54 blacks and Latinos were admitted, and 26 enrolled. This year, only 30 got in, and 11 plan to attend, according to preliminary figures.

As at Boalt, Haas officials said the minority applicants who are admitted without affirmative action are naturally the ones most aggressively courted by other schools.

"We're one of the five most selective

programs in the country," said Fran Hill, MBA admissions director at Haas. "The people we are admitting are so strong, they have a ticket to any business school in the country."

CAUTIOUS APPROACH

At UC's medical schools, minority enrollment was eroding well before the regents' vote, falling from a peak of 117 in 1992 to an expected 69 in this year's entering class.

Administrators say that intense public scrutiny had already forced them to become more careful about affirmative action in the admissions office. Davis, San Diego and Irvine, for example, used to review all affirmative action candidates in a separate pool — until a few years ago, lawyers advised them to stop.

This year, despite a 22 percent drop in minority applicants, the five medical schools expect to enroll almost as many minority students as last year — 69, as compared with 73.

Law schools tend to place considerable emphasis on applicants' test scores, and because average scores of African Americans and Latinos are lower, affirmative action played a greater role in admitting them. Medical schools, on the other hand, tend to conduct a more holistic review of their applicants — including interviews evaluating the personal qualities of these potential physicians.

"Those of us who are in medical education realize that test scores are not the sine qua non of a good physician," said Ernest Lewis, an associate dean at UC Davis' medical school. "Beyond that are drive, humanitarianism, the need and desire to help other people. Those are the kinds of things we look for."

ALTERNATIVE STRATEGIES

The number of first-year minority students at Davis plummeted from 31 in 1993 to 2 in 1996, and despite the regents' vote, Lewis was determined to

reverse that trend.

Although race was now off-limits, the regents had encouraged the use of socioeconomic considerations in admissions decisions. So Lewis and his team decided to take into consideration applicants' home zip codes, giving extra points to those from "medical service shortage areas," which tend to be poorer neighborhoods.

The number of minority candidates admitted dropped from 36 last year to 31, but while only two enrolled last year, 10 plan to enroll this year. "When we found ourselves having accepted some minority students through the new process," Lewis said, "we recruited hard."

Aggressive recruitment also seems to be making a difference at UCLA's Anderson Graduate School of Management. "We had to work very hard on the yield, because of the chilling effect of (the regents' policy)," said admissions director Linda Baldwin.

POOLSIDE BARBECUE

Last spring, faculty and alumni launched an energetic drive to recruit minority students — sweetening the deal with corporate money for minority fellowships and holding special recruitment events.

A poolside barbecue at the home of Henry Brandon, a wealthy black alumnus who lives in Los Angeles' Ladera Heights, an affluent African American neighborhood, apparently helped. "We felt it was a culturally specific way to get the candidates," said Baldwin.

Although UCLA admitted fewer underrepresented minorities — 49, down from 61 last year — the number who

decided to enroll barely dropped — from 31 to 28. One student turned down Harvard, Stanford, and Northwestern to come to UCLA.

WARM WELCOME

The UCSF School of Medicine has also managed to keep minority enrollment from falling, despite a significant drop in the number of applicants.

Michael Drake, associate dean for admissions, said he places a high priority on making minority applicants feel that they are welcome. For instance, when they visit the campus, they are interviewed by a fellow minority.

"I don't think they (the regents) told us we couldn't do that," said Drake.

Regent Ward Connerly, author of UC's new race-blind policy, disagrees. "That smacks of a form of racism," he said. "We don't do that with white students. It says that the people who are applying . . . somehow think of themselves first and foremost as blacks and Latinos. I don't buy that group-think mentality."

Connerly does not oppose other efforts to land qualified applicants who have already been accepted. "You're letting some of those who won the competition know that you want them to attend," he said. "I don't have any problem with that."

FOCUS ON BOALT

At Boalt, some students and faculty fault the school for not doing enough minority recruitment. "We've never needed to do that before," said Dean Herma Hill Kay. "Obviously we will have to try to find ways to do it."

But the future of minority recruitment efforts could hinge on Proposition 209, the anti-affirmative action measure passed last year, which is currently held up in the courts. If 209 is upheld, some legal experts say, minority-targeted recruitment could become illegal.

In the near term, most of the attention is likely to remain focused on Boalt, where declining minority enrollment is attracting federal scrutiny. The U.S. Office of Education is investigating the matter in response to a complaint from civil rights groups.

Some at the university see the falling minority numbers as proof that the old system was admitting less-qualified students simply because of their race. Martin Trow, an emeritus professor of public policy, said the drop in minorities at Boalt reveals "the true face of affirmative action — a pattern of gross racial and ethnic discrimination."

But some alumni and local lawyers plan to mark the start of school today with a polite protest against what they describe as the "resegregation" of the legal profession.

"I graduated in 1967 from a segregated high school in Mississippi," said Peter Benvenuti, a Boalt graduate and a partner at Heller, Ehrman, White & McAuliffe in San Francisco.

"It never occurred to me . . . that there would be any chance that my children, were they to go to the same law school, would complete that unfortunate cycle and end up in a racially segregated law school run by the state of California," Benvenuti said. "The prospect of that happening is shocking beyond words." ■

14. The State, Columbia SC

August 18, 1997

Court settles issue: Students may pray away — in silence

By JAMES J. KILPATRICK

Special to The State

If one legal issue in the whole field of "church and state" may now be regarded as settled, it is this: Public schools are free to mandate a minute of silence before classes begin each day, and during that minute of silence pupils are free to pray inaudibly to their hearts' content.

The issue never should have been in doubt, but for the past 12 years it has

kept bobbing up in the federal courts. Now, with an opinion by Circuit Judge R. Lanier Anderson in a Georgia case, the question may be put to rest.

In 1994, the Georgia General Assembly adopted its Moment of Silence in Schools Act. These were the three key provisions:

(1) In each public school classroom, the teacher shall conduct a brief period of quiet reflection for not more than 60

seconds.

(2) The moment of quiet reflection is not intended to be and shall not be conducted as a religious exercise, but shall be considered as an opportunity for silent reflection on the anticipated activities of the day.

(3) The foregoing provisions shall not prevent student-initiated voluntary prayers at schools or school-related events that are nonsectarian and

Race - minority enrollment

9/29 Mtg w/ Shalala on Ed Affirm Action

Privates // publics

abil to v. move away from #s

never spent that kind of \$. All done by #s - ACT/SAT + grades Calif very similar.

some flexibility for kids w/ special skills, etc

discretionary school progs - use program for low-income students - direct proxy for race scholarship program - helped recruit minority students.

Undergraduate insts will never be a problem - big schools can go after min kids - recruit like mad - give \$.

Don't fret the syst enough - brighter min student could always be admitted / given \$

Higher ed very experienced in recruiting / giving \$.

On IVs - That's difference between USF Med School + Boalt Law School.

Invest in admissions process.

Distinguish btw culture + science of admissions.

Handel Shapiro - both public + priv.

Ask him to organize for us

Mike Heyman - Smithson
John H. Hall -
John Wylie -
Pamela Wincour

Stan Aikenberry - Pres of ACE

ask reps of higher ed comm in ask them what he can do to be helpful.

Dick Atkinson - Pres of Cal inst

Calit will adjust - politically They have to go to

most will say:
invest in primary/
secondary ed.

centralized pool - admissions system.

Role of not-for-profits??
Ford Foundation -

This community is as sophisticated as can be in how
to do this. And all want to - despite faculty!

Array of econ incentives sit right away? (e.g. all
go to law school now - not to science PhDs)
↳ partnership - ivies/HBCUs etc/
Hispanic-ed

What counts is the shrewdness of the investments to
get you the best pool.

Q Mr. President, your scholarship proposal notwithstanding, there is still an assault on affirmative action in this country. In my home state of California in the wake of Proposition 209 and last year's vote by the University of California Board of Regents, minority applications and enrollment in the UC system this year are down. There will be not one new black student enrolled at the prestigious Bolt Hall School of Law at the University of California this fall. What specific programs, scholarship program notwithstanding, do you propose to stem this tide and make sure that there is diversity in higher education in this country? (Applause.)

THE PRESIDENT: First of all, I think we need to make sure that we continue to use federal law to the maximum extent we can to promote an integrated educational environment -- (applause) -- so that we have to review, whether in the Education Department, in the Justice Department, whether there are any further actions we can take legally to promote an integrated educational environment in higher education in the states where these actions have been taken.

Secondly, I think we need to look at whether there is some way by indirection to achieve the same result. I know that the legislature in Texas, in an attempt to overcome the impact of the Hopwood decision in Texas, just passed what they call the "Ten Percent Solution," which would be to guarantee admissions to any Texas public institution of higher education to the top 10 percent of the graduating class of any high school in Texas. And because of the way the African Americans and Hispanics living patterns are in Texas, that may solve the problem. Whether that would work in California, I don't know. I haven't studied the way the school districts are organized enough. But I think we have to come up with some new and fairly innovative ways to do that.

Thirdly, I think, on the professional schools, my own view -- I'm a little stumped here. We have to really -- we're going to have to reexamine what we can do. I don't know why the people who promoted this in California think it's a good thing to have a segregated set of professional schools. It would seem to me that, since these professionals are going to be operating in the most ethnically-diverse state in the country, they would want them to be educated in an environment like they're going to operate. I don't understand that. (Applause.)

But there may be some ways to get around it, and we're looking at it and working on it. But I think it's going to be easier to stop it from happening at the undergraduate level than at the professional school level. And we're going to have to really think about whether there is some way around it,

whether it would be some sort of economic designation or something else. But we're working on that.

And finally, let me say, I think we need to continue to provide more resources, because one of the real problems we have is, even in the last five years, when we've had economic recovery, the college enrollment rates of minorities in America have not gone up in an appropriate way. And in this budget that I'm trying to get passed through Congress, we've got the biggest increase in education funding in 32 years, the biggest increase in Pell Grant scholarships in 20 years, another huge increase in work-study funds, and the tax proposal, as we structured them, would, in effect, guarantee two years of college to virtually everyone in America and help people with two more years of college.

We've got a huge dropout problem in higher education among minorities that I think is having an impact on then what happens in the graduate schools and in the professional schools. I don't think there is a simple answer. And I think, frankly, the way 209 is worded, it's a bigger problem even than the Hopwood case in Texas. But I can tell you we're working on it: first, is there anything the Justice Department or the Civil Rights Office of the Education Department can do? We're examining that. Second, is there a specific solution like the Texas "Ten Percent Solution" that would overcome it at least in a specific state. Third, come up with some more funds and some more specific scholarship programs to try to overcome it.

It's a great concern to me, and I think it is moving the country in exactly the wrong direction. And I might say, if you look at the performance of affirmative action students, it doesn't justify the action that was taken. That's another point that ought to be made.

So the one thing that I believe is, I believe that the rather shocking consequences in the professional schools in both Texas and California will have a deterrent impact on other

actions like that in other states. And I believe you will see more efforts now to avoid this. I think a lot of people who even voted for 209 have been pretty shocked at what happened and I don't believe the people of California wanted that to occur. And I think the rhetoric sounded better than the reality to a lot of voters.

So I can tell you that, while I'm very concerned about it, I think if we all work on it, we can reverse it in a matter of a couple of years. And we just have to hope we don't lose too many people who would otherwise have had good opportunities because of it. But it is an urgent matter of concern to me. (Applause.)

Race Initiative -
Minority enrollment

MEMORANDUM

TO: ELENA KAGAN
FROM: TOM FREEDMAN, MARY L. SMITH, BILL KINCAID, JULIE MIKUTA
RE: RECOMMENDATIONS FOR HOPWOOD/PROPOSITION 209
DATE: AUGUST 5, 1997

SUMMARY

The Administration is investigating options to ensure diversity in higher education in light of some of the effects of the Hopwood decision and the University of California Board of Regents' decision to exclude race as a factor in admissions. Two approaches to the problem are being pursued simultaneously: (1) litigation to reverse the decision and/or law and (2) policy initiatives to improve diversity in higher education. This memo is not concerned with the litigation strategy, but rather with some possible policy initiatives that could be implemented both long-term and short-term.

This memo first lists some of the actions already being taken in California and Texas to combat the Board of Regents' decision and the Hopwood case. These actions are excerpted from a memorandum from Leslie Thornton at the Department of Education dated July 18, 1997. We also plan to set up a meeting with Leslie Thornton, DOE, and DOJ this week.

Following the section on actions being taken in California and Texas, this memo outlines a universal set of possible proposals to investigate further, grouped in the following categories: (1) pre-kindergarten; (2) kindergarten through eighth grade; (3) high school; and (4) access opportunities, regardless of age.

Following the outline of policy proposals, this memo lists some possible participants in a planning meeting and proposes a tentative time line for planning and implementation.

I. ACTIONS BEING TAKEN IN CALIFORNIA AND TEXAS

A. CALIFORNIA

- Forming "school-centered partnerships" among each UC campus and public schools chosen for their poor academic performance, to establish standards and to improve student achievement. Yes
- Expanding academic outreach programs for K-12 students. Yes

- Creating an "information outreach" program to help students and their families prepare for college. yes
- **Alternative admissions strategies.** A June 24, 1997 article in the Sacramento Bee set out how each of UC's nine campuses will "experiment" with different admissions policies in an effort to achieve diversity. **UC-Davis:** in filling 40% of the places in its 1998 freshman class, UC-Davis will give weight to factors other than grades and test scores such as extracurricular leadership experience; attendance at a high school that is economically disadvantaged and has a historically low level of UC attendance; residence in the three counties closest to the university; military service; and marked academic improvement in the 11th grade. The new policy is only triggered, however, by students who meet UC minimum eligibility requirements of a combined 1000 on the SAT and a high school grade-point average of 2.82 in designated college preparatory courses. **UCLA:** will give an advantage to applicants from disadvantaged urban and rural neighborhoods. **UC Irvine:** will look at an applicant's entire profile, not just grades and scores, including personal essays and extracurricular activities. **UC San Diego:** will look at "special circumstances and personal challenges" which could include whether an applicant is trying to become the first in his or her family to attend college.
- A July 9, 1997 Education Daily article says that the UC Task Force's \$60 million dollar plan to increase minority enrollment at UC would make training and retaining teachers in disadvantaged schools a priority. The Task Force estimates the total cost of professional development at \$18.5 million annually or about \$370,00 at each of 450 schools --the disadvantaged high schools, plus 400 "feeder" elementary and middle schools. On July 17, 1997, a Board of Regents committee approved the plan to double UC's annual spending on outreach efforts--which seek to increase minority enrollment without using affirmative action--from \$60 million to \$120 million. The \$60-million additional cost projection for the program includes \$27.2 million for school outreach efforts, \$17.9 million for expanding academic programs that target black and Latino students but are open to all, and \$7.9 million for contacting students, families and schools about UC admissions requirements. yes

B. TEXAS

- The Texas legislature passed a bill that automatically admits the top 10% of all Texas high schools students to the state's university system.
- Ethnic Recruitment Program in which Texas residents may apply for grants up to \$1,000. Applicants must have a 2.75 GPA and 900 SATs. The awards may be used at any school in which their minority group constitutes yes

less than 40% of total enrollment. [The Big Book of Minority Opportunities]

II. POSSIBLE FUTURE ACTIONS THAT CAN BE TAKEN ACROSS THE COUNTRY

A. PRE-KINDERGARTEN

- Revamp HeadStart to become more focused on school readiness and reading skills. Yes
- Child care initiatives.

B. KINDERGARTEN THROUGH GRADE 8

- Math and reading strategies
 - Pass/fund America Reads
 - Push aggressively to sign-up college-work study tutors, esp. in TX and CA
 - Encourage business community and others to recruit tutors in CA and TX
 - Establish additional ED-organized reading pilot sites in TX and CA for next summer
 - Organize regional meetings and target other information on best practices in reading and math in TX and CA
 - Increase funding for ED and NSF programs targeted on improving middle school math in urban areas per math strategy
 - Possible math partnership with private sector and other agencies, with challenging math problems, and encourage "coaching" activities in high need areas, esp. CA and TX
- Urban testing initiative which signed up 15 urban schools systems to participate in national tests and to form a network with the Department of Education and NSF to share information about promising practices and resources to prepare students to meet the standards.
- Urban systemic reform which builds on the Department of Education's 1996 proposed urban initiative (ACE) which focused on accountability, choice and excellence through an urban grants program.
- Teacher Recruitment and Preparation initiative proposed under Title V of HEA.
- Community Schools Program in Department of Education's FY 1998 budget.

- After School Programs in proposed amendment to Juvenile Justice bill.
- School Construction (action needed depends upon outcome of budget reconciliation).
- Summerbridge is a national program in which high school and college students teach summer school to middle school students. Summerbridge is in 36 cities. Students who teach the course have a high rate of college attendance, and many go into education.
- Technology
 - Press private sector to complete job of outfitting and connecting up schools in poor areas in TX and CA
 - Possible initiative on teacher professional development re: technology?

NO
NO
NO

C. **HIGH SCHOOL**

Initiatives in California

- The University of California system has created a partnership with the 50 low-performing high schools that will help students achieve better test scores and grades in order to help qualify for university admissions on academic merit.
- SCORE is a program at Buena Park High School, CA, which was established in 1991. Students take field trips to various university campuses, attend classes, have lunch and get an overview of the programs offered. College students visit the high school and discuss their experiences. [Orange County Register, 1/23/97]
- Advancement via Determination is a program in which 47 schools in the Colton Unified School District participate. This program focuses on study skills and goal-setting with minority and low-income students.
- Cal Grants :
 - Grant A: from \$600 to \$4,500 to help low-income residents of the state cover tuition and fees at colleges-- renewable for up to 3 years.
 - Grant B: from \$600 to \$1,200 as a living allowance to low-income students.
 - Grant C: to help vocationally-oriented students obtain marketable job skills.

Initiatives in Texas

- Automatically admit the 10% of all seniors to attend any state university (proposed in Texas).
- Ethnic Recruitment Program in which Texas residents may apply for grants up to \$1,000. Applicants must have a 2.75 GPA and 900 SATs. The awards may be used

at any school in which their minority group constitutes less than 40% of total enrollment. [The Big Book of Minority Opportunities]

Other Initiatives

- Courses to help prepare for the college admissions tests like the SAT.
- Expand grants to pay for Advanced Placement (AP) testing (this was in our budget proposal).
- Urban systemic reform which builds on the Department of Education's 1996 proposed urban initiative (ACE) which focused on accountability, choice and excellence through an urban grants program.
- Teacher Recruitment and Preparation initiative proposed under Title V of HEA.
- Community Schools Program in Department of Education's FY 1998 budget.
- After School Programs in proposed amendment to Juvenile Justice bill.
- School Construction (action needed depends upon outcome of budget reconciliation).
- Upward Bound is a federally funded program for low-income high school students which was started in 1965 under the Higher Education Act. Through the program, students attend summer courses and after-school or Saturday classes throughout the year either at their school site or at a college. Some Upward Bound programs also give the students financial assistance for college preparatory activities such as paying for the SAT processing fee.
- Aid with processing of forms associated with going to college -- Some for-profit companies target minorities with programs that will identify scholarships available to them, assist them in their completion of forms and even college entrance essays.

D. ACCESS OPPORTUNITIES

- Insert a proposal in the higher education reauthorization bill that would create a one-stop shopping approach to make future students aware of all the possible financial aid that is available.
- Aggressively promote, in California, Texas-like legislation on admissions to upper-tier

universities for students graduating in the top percentage of their class.

- Issue of early Pell grant proposal (Rep. Chaka Fattah).
- Bully pulpit and Department of Education activity to promote HOPE scholarship and federal student financial aid, especially with students and parents in CA and TX.
- Creation of an interactive Website that would provide a customized list of financial aid available.
- Using existing resources and programs (Title I, Safe and Drug Free Schools, Technology Literacy Challenge, e-rate, Goals 2000, School-to-Work, Vocational Education) to more effectively support the improvement of urban education, by:
 - greater targeting of resources to urban areas through appropriations requests, formula changes, or regulatory changes;
 - increased flexibility in the use of formula funds to support local improvement strategies;
 - better information on effective practices for addressing urban issues with federal program funds;
 - targeted technical assistance to help small number of districts use program funds and R&D to strengthen reforms, with a special emphasis on reading and math standards;
 - accessing resources in EZ's/EC's to support education improvement; and
 - targeting funds for National Board for Professional Teaching Standards to provide support to urban and rural teachers preparing for board certification and/or incentives for board-certified teachers to teach in high poverty urban and rural schools.
- Programs to improve the scores of minorities on the SAT
 - Organizations, businesses, schools and colleges across the country are sponsoring SAT study groups for disadvantaged students. For example, in Atlanta, the local chapter of an African-American fraternity, the NAACP, and the school board run a course that costs \$75 instead of the \$700 fee of a commercial course. Prince George's County schools work with Maryland's Bowie State University. The program offers an intensive, 14-week SAT-preparation course for 150 high school students, with the goal of increasing college-entrance rates. The university and private businesses are paying for the program; the school system is picking up the tab for transportation.
 - Kaplan works with volunteer organizations to train SAT tutors. It also goes into high schools with needy students to offer services for free or at a reduced charge

to the youths. Financial aid for disadvantaged students is also available.

- The Princeton Review Foundation, the nonprofit arm of the Princeton Review, runs reduced-cost programs in conjunction with local foundations for about 1,500 students nationwide and has distributed books and trained tutors in local groups.
- Stanford Testing Systems makes SAT-test preparation materials available at a relatively low cost. Some of their test-prep programs are free on the Internet.
- The University of California at Riverside recently started a two-week program to raise the SAT scores of black high school students. Students receive individual tutoring, two hours of computer work each day, and an hour of group instruction each day.
- Hispanic Education Initiative (NEC is leading the effort on this).
- Racially Identifiable Schools (busing, integration)
- Tribal Schools with reforms to come.
- Historically Black Colleges and Universities (HBCU)
- Outreach to minority students generally.
- Fixing failing schools.
- Support on-going research on alternative admissions policies for gaining a diverse student body.
- Retention at college: Several colleges run programs designed to increase the retention of economically disadvantaged and under represented students.

POSSIBLE PARTICIPANTS FOR PLANNING MEETING

- Leslie Thornton, Department of Education
- other participants from the Department of Education
- DOJ
- Dawn Chirwa, White House Counsel's office

POSSIBLE TIME TABLE

1. Initial planning meeting in early August.
2. Proposals from all participants by early September.
3. Implementation of certain selected initiatives by December 1997 so that they can be used during the next college admission cycle.

Initiatives to Help More Disadvantage Students Prepare and Apply for College

1. Urban School, College and University Partnerships
2. New Early Intervention Program, in addition to TRIO, Talent Search, Upward Bound
3. Think College Early outreach campaign
4. Title V Teacher Preparation and Recruitment programs
5. Possible Fattah-like proposal
6. Possible urban K-12 schools initiative

*Race - minority enrollment***AGENDA****MINORITY ENROLLMENT
IN HIGHER EDUCATION MEETING****AUGUST 13, 1997**

SUMMARY

The Administration is investigating options to ensure diversity in higher education in light of some of the effects of the Hopwood decision and the University of California Board of Regents' decision to exclude race as a factor in admissions. Two approaches to the problem are being pursued simultaneously: (1) litigation to reverse the decision and/or law and (2) policy initiatives to improve diversity in higher education. This meeting is not concerned with the litigation strategy, but rather with some possible policy initiatives that could be implemented both long-term and short-term.

I. ACTIONS BEING TAKEN IN CALIFORNIA AND TEXAS**A. CALIFORNIA**

- Forming "school-centered partnerships" among each UC campus and public schools chosen for their poor academic performance, to establish standards and to improve student achievement.
- Expanding academic outreach programs for K-12 students.
- Creating an "information outreach" program to help students and their families prepare for college.
- **Alternative admissions strategies.** A June 24, 1997 article in the Sacramento Bee set out how each of UC's nine campuses will "experiment" with different admissions policies in an effort to achieve diversity. **UC-Davis:** in filling 40% of the places in its 1998 freshman class, UC-Davis will give weight to factors other than grades and test scores such as extracurricular leadership experience; attendance at a high school that is economically disadvantaged and has a historically low level of UC attendance; residence in the three counties closest to the university; military service; and marked academic improvement in the 11th grade. The new policy is only triggered, however, by

students who meet UC minimum eligibility requirements of a combined 1000 on the SAT and a high school grade-point average of 2.82 in designated college preparatory courses. **UCLA:** will give an advantage to applicants from disadvantaged urban and rural neighborhoods. **UC Irvine:** will look at an applicant's entire profile, not just grades and scores, including personal essays and extracurricular activities. **UC San Diego:** will look at "special circumstances and personal challenges" which could include whether an applicant is trying to become the first in his or her family to attend college.

- A July 9, 1997 Education Daily article says that the UC Task Force's \$60 million dollar plan to increase minority enrollment at UC would make training and retaining teachers in disadvantaged schools a priority. The Task Force estimates the total cost of professional development at \$18.5 million annually) or about \$370,00 at each of 450 schools --the disadvantaged high schools, plus 400 "feeder" elementary and middle schools. On July 17, 1997, a Board of Regents committee approved the plan to double UC's annual spending on outreach efforts--which seek to increase minority enrollment without using affirmative action--from \$60 million to \$120 million. The \$60-million additional cost projection for the program includes \$27.2 million for school outreach efforts, \$17.9 million for expanding academic programs that target black and Latino students but are open to all, and \$7.9 million for contacting students, families and schools about UC admissions requirements.

B. TEXAS

- The Texas legislature passed a bill that automatically admits the top 10% of all Texas high schools students to the state's university system.
 - Ethnic Recruitment Program in which Texas residents may apply for grants up to \$1,000. Applicants must have a 2.75 GPA and 900 SATs. The awards may be used at any school in which their minority group constitutes less than 40% of total enrollment. [The Big Book of Minority Opportunities]

II. POSSIBLE FUTURE ACTIONS THAT CAN BE TAKEN ACROSS THE COUNTRY

A. PRE-KINDERGARTEN

- Revamp HeadStart to become more focused on school readiness and reading skills.

B. KINDERGARTEN THROUGH GRADE 8

- Teacher Recruitment and Preparation initiative proposed under Title V of HEA.

C. HIGH SCHOOL

D. ACCESS OPPORTUNITIES

POSSIBLE TIME TABLE

Race-minority enrollment

Incoming ABA President Reaffirms Association Commitment To Diversity In Law Schools, Urges Pilot Program Experiments - News Release
San Francisco, Aug. 4

The loss of diversity in this year's law school classes in California and Texas is tragic, and the American Bar Association stands ready to help schools find ways to restore minority enrollment that comply with court rulings, said incoming ABA President Jerome J. Shestack.

Speaking in a news conference today, Shestack reaffirmed the association's commitment to diversity, represented in Standard 211 of the ABA's Standards for Approval of Law Schools.

He commended the ABA Section for Legal Education and Admissions to the Bar for a

commitment it adopted Friday to continue diversity initiatives, and its proposal of a cooperative pilot project with the Law School Admission Council to test, with law schools, the success of new admissions procedures in restoring minority enrollment levels.

"Recent rulings by federal courts have thrown the validity of affirmative action programs into question. The ban on affirmative action adopted by the Regents of the University of California has demonstrated with frightening clarity the risk to our nation of assuming that the effects of past racism have disappeared from American culture. They have not," said Shestack.

"We must invest our hearts and souls in efforts to bring more minority persons into law, and fight with all our energy the effect of developments tossing them out of pathways to our profession, or that make the pathways too inhospitable for minorities to make the journey," he said.

The ABA Legal Education Section on Friday proposed changing the way in which student scores on the Law School Admission Test are used in the admission process, to reduce the test's disparate impact on minorities. Presently, schools combine LSAT scores and grade point averages from undergraduate school in a formula to produce an index number that is then weighed with other factors to select students from an applicant pool.

Under the proposed pilot project, participating schools would use a minimum LSAT test scores alone to produce an applicant pool. All persons testing above the threshold

score would
be considered qualified and go into the pool. Grade point averages and other
factors then would
be weighed to select an incoming class from the pool.

"This may help restore minority participation in our law schools, and entry into the profession," said Shestack. "But there may be other ways that we can assure equal opportunity for qualified minority persons, and we must continue looking for them."

Shestack encouraged the Legal Education Section to work with other ABA entities to seek additional options that might boost minority enrollment. "If our nation is to thrive and prosper, all of its citizens must have the opportunity to thrive and prosper with it. If our nation is to be just, all of its citizens must have a role in developing and delivering justice," Shestack said.

"If we do not assure that these opportunities and shared roles exist, it is not just minorities who will lose in the long run. It is all of us. We need to finally understand that a rising tide has got to lift all boats, or the armada will flounder and fail," he said.

REPORT TO COUNCIL, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO
THE BAR, FROM SECTION DIVERSITY COMMITTEE, WITH RESOLUTION
ADOPTED
BY SECTION COUNCIL FRIDAY, AUG. 1, 1997

isn't serving the kids well." ■

COMMENTARY

48. San Diego Union-Tribune

August 20, 1997

Solution for admissions: modified lottery system

By Jerry Cook

This year, not a single African-American earned admission to UC San Diego's medical school. In response, those wanting race-based admissions claim that race must be taken into account, or we'll become bereft of minority doctors. Can anything be done?

Yes, there is an alternative to preferences. One that is fair, practical, and would yield capable physicians as well as insure participation of "under-represented" minorities. Before I outline my proposal, however, look at the harm that has been done by preferences. Take this year's graduating class at UCSD medical school.

There were 324 UCSD undergraduates who applied to enter UCSD Medical School in the Fall of 1993. These applicants took the same prerequisite courses and were applying to the same medical school at the same point in time, an "apples to apples" comparison. Nearly 10 percent of these applicants qualified for racial preferences. However, a whopping 42 percent of the UCSD applicants accepted were "under-represented" minorities.

This pattern was repeated year after year. In fact, one is 20 times more likely to draw four aces in a poker hand than to accept as many "under-represented" minority applicants as UCSD did over the preceding six years. Clearly a stacked deck! At the same time, UCSD medical school was rejecting as many as 50 UCSD graduates in a single year whose academic qualifications were better than the best "under-represented" minority applicant admitted.

Quality of medical care must also be questioned under such a racial-preference system. Look at U.S. Medical License Exam Step 1. This is a measure of a minimum level of competency not unlike the granting of a driver's license — not an endorsement that you will win the Indy 500, but rather a belief that you won't kill someone on the highway. On

the Medical License Exam, well-prepared students score significantly above the minimum cut-off.

At UCSD medical school, over a six-year period, the "under-represented" minorities pass rate has averaged 75 percent and been as low as 64 percent vs. an average 98 percent and low of 95 percent for the other accepted students. Moreover, nearly 25 percent of the "under-represented" minorities hadn't even attempted the exam. UCSD claims that most the students will eventually pass. Would you trust the care of someone you love to a physician whom you suspect only passed the minimum threshold of competence on the second or third try?

Racial preference was not the only preference active in UC Medical School admissions. Other preferences still remain, including which undergraduate school one attended and how well connected one might be.

The UC professional schools routinely adjust applicants' grades up or down, depending on which school was attended. We can see the effect in the UCSD medical school class of 1997, where over 45 percent enrolled were from private colleges. For example, in 1993, 217 Stanford graduates applied to the UCSD Medical School and 62 were accepted (29 percent). Of the 324 UCSD graduates applying to UCSD, only 26 were accepted (8 percent). Contrast this with the fact that of the 174 UCSD graduates applying to Stanford Medical School, only 2 were accepted (1 percent).

Another form of preference is the role that influence plays in obtaining admission. When Allan Bakke applied to UC Davis, the dean of the med school selected as many as five students in each year's class. He stated that he had "intervened hundreds of times" in the admission process. In this way the daughter-in-law of a former chancellor of the Davis campus; the son of the former

president of the Yolo County Medical Society; and the sons of the state senator and assemblyman who headed the finance committees responsible for the Davis medical school budget, were admitted. At UCSD, the daughter of Medical School Associate Dean for Admissions Robert Resnik graduated in the class of 1997. She was one of those accepted in 1993.

Given this background, we can see the need for a better method of medical school admissions, one which is not dependent on preferences and which accomplishes the goal of providing Californians with skilled physicians. What I suggest is a modified lottery system.

In any group of applicants, there are those whose personal accomplishments and academic qualifications are so outstanding that it is clear they should be admitted. Also in any group are those who are so poorly prepared that they should be denied.

However, there are also many applicants who are well-prepared both academically and in terms of commitment and character, and among whom it is virtually impossible to distinguish. I propose that acceptance of these applicants be based on a lottery.

Using lotteries is not a new idea. In Holland, there are more applicants to medical schools than there are positions. A lottery is used among all applicants who exceed a defined set of prerequisites. Applicants are allowed to participate in the pool for three years.

In the United States, the majority of the nearly 8 million men who served in the Vietnam War were drafted using a lottery based upon their birthdays. Surely a system that is used to determine whether one may live or die in a war is at least adequate to help decide who attends a medical school.

A lottery system has definite advantages. It is an honest and fair

method of allocation of "life chances." A lottery will also open the door to many now shut out from the study of medicine, while retaining high-quality standards. Here's why.

Statistically, if 20 percent of those in the lottery are "under-represented," poor, handicapped, bilingual, or whatever other characteristic is desired, then the chances are that 20 percent of those selected for

admission will also be of this group. That is, a poor minority applicant will not have to overcome the almost insurmountable obstacles of competing with a Yale graduate whose father is an M.D. and the Associate Dean for Admissions.

To have a fair chance, the applicant need only rise above the far-more

attainable hurdle of proving qualified to participate in the lottery. Likewise, admission committees will not be trying to differentiate among applicants who differ in inconsequential ways. A lottery assures that each qualified applicant has an equal opportunity.

COOK has studied UC admissions for more than five years. ■

49. The Washington Post

August 20, 1997

Let's Open the Schools On Time

By Ted Gest and Kathy Gest, page A25

As parents and longtime supporters of the D.C. public schools, we were outraged when the officials running the system abruptly announced that it would open three weeks late because of their inability to complete roof repairs by the Sept. 2 scheduled opening of the school year.

If D.C. officials act immediately and responsibly, they can open most if not all of the public schools on time. Not only would this provide 70,000 students with the education to which they are entitled, it would show the nation that the District can act decisively to defuse a major governmental crisis.

Here is a four-point plan:

(1) Stop the backbiting and act positively. There will be time later to determine why the roofs on about 45 schools were not repaired as of mid-August. The point now is to get the doors open. School officials should announce today that they will do everything in their power to open the schools by Sept. 2 and to make alternative arrangements for those assigned to buildings that cannot safely be occupied.

A positive attitude rather than the defeatist one on display during the past week of accusation and litigation could

do wonders to rally the community behind a constructive solution.

(2) Expedite construction in any way possible. By most accounts only about 20 schools need work that may go past Sept. 2. Tell the public which schools they are and what needs to be done. Use overtime or enlist volunteer help from contractors or parents, as has been done on other school projects in the past.

(3) Settle the legal and safety issues fast. School officials and Parents United believe that most schools can be occupied safely while roof work is going on; Maryland allows such work during the school year. The D.C. Court of Appeals is weighing the question, but in the meantime, officials should pursue whatever creative ideas they can muster to minimize any conceivable safety risks, school by school.

(4) Make contingency plans. If Judge Kaye Christian's ruling is upheld — or if conditions in a handful of schools remain unsafe after Sept. 2 despite expedited construction — arrangements should be made to house the affected students in unoccupied schools, community centers, churches or whatever other facilities are available. Meanwhile, the public should be given a day-to-day status report on

construction.

As many D.C. parents said during the Aug. 12 public meeting on the schools, the current mess is unacceptable to taxpayers on many levels. Whoever is at fault, there are no grounds for closing the entire school system when most school buildings are perfectly habitable.

And the failure of school officials to tell us how they would make up 14 lost school days is irresponsible at best. As any parent knows, longer school days (the plan now being put forward) would put a great strain on sports and other extracurricular activities, jobs, religious commitments and homework responsibilities, not to mention personal and family time.

The fiasco threatens to undermine the fragile support for the overhaul of the schools. Many citizens have little faith that the unwieldy structure of the control board, the emergency school board of trustees, Julius Becton, the elected school board and groups such as Parents United can straighten out the school system.

If these leaders can get together and get the schools open on time, some of that faith will be restored.

The writers are parents of a Woodrow Wilson High School student. ■

can he attempt before he has to reload?

Jose has 2 ounces of cocaine and he sells an 8 ball to Jackson for \$320.00 and 2 grams to Billy for \$85.00 per gram. What is the street value of the balance of the cocaine if he doesn't cut it?

Raoul is in prison for 6 years for murder. He got \$10,000.00 for the hit. If his common-law wife is spending \$100.00 per month, how much money will be left when he gets out of prison?

If the average spray can covers 22

square feet and the average letter is 3 square feet, how many letters can a tagger spray with 3 cans of paint?

SOURCE: Lancaster Independent School District

24. Houston Chronicle

August 20, 1997

UT freshmen face dormitory squeeze

AUSTIN (AP) — More than 2,000 freshmen on dorm waiting lists at the University of Texas were told to look for housing off-campus this fall.

This is a familiar problem at UT, which has 7,000 incoming students — its largest freshman class since 1988.

The lucky ones are moving into campus dorms this week, while the rest try to find last-minute housing

off-campus in Austin's already tight rental market. School starts Aug. 27.

UT, unlike most Big 12 schools, doesn't require freshmen to live on campus their first semester and offers housing to only 10 percent of its students. That is compared to an average of 23 percent at other Big 12 schools, like the University of Nebraska, where freshmen must live on campus.

"Freshmen just ought to live on campus. It should be a directive from God," said Doug Zatechka, director of student housing at the University of Nebraska.

"Statistically, they just do better. They make more friends. They get more involved in campus activities. These things help them adjust faster to college life."

25. Houston Chronicle

August 20, 1997

Sharp drop in minorities at UT Law

By CLAY ROBISON

Houston Chronicle Austin Bureau

AUSTIN — Only four blacks and 25 Hispanics have indicated their intent to enroll in the University of Texas' first-year law class of about 470 students, school officials reported.

Some 31 blacks and 42 Hispanics were in the first-year law class of 488 students a year ago.

Enrollment of blacks and Hispanics had been expected to drop sharply in the wake of legal rulings that banned admissions preferences for minority students. State Sen. Rodney Ellis, D-Houston and a strong supporter of affirmative action, called the preliminary enrollment figures announced Tuesday a "national embarrassment" for Texas.

"It's clearly a throwback to the Jim Crow era," he said.

Law school Dean M. Michael Sharlot said final enrollment figures won't be known until after classes begin next week.

This year's entering class is the first since Attorney General Dan Morales, in a far-reaching opinion issued earlier this year, ruled that Texas universities could

not use race as a preference in admissions, scholarships and other student programs.

Morales acted in response to a federal court order striking down a previous law school admissions policy that had given preference to minorities.

In the so-called Hopwood case, four white students sued after not being admitted into the UT law school. The 5th U.S. Circuit Court of Appeals in New Orleans held the law school's race-based admissions policy unconstitutional in a ruling last year, and the U.S. Supreme Court let the appellate court's decision stand.

Ellis and other critics argued that the attorney general's interpretation of the ruling, which applies only to Texas, was too broad.

But Morales urged state legislators and university officials to redouble their efforts to recruit disadvantaged students of all races.

The Legislature enacted a new admissions law designed to assist minority applicants. It will guarantee automatic admission to state universities for high school seniors who graduate in

the top 10 percent of their classes — regardless of their standardized test scores.

But Sharlot said the new law applies only to undergraduates, not to students in graduate or professional schools.

Sharlot blamed the dropoff in minority enrollment at the UT law school on the Hopwood decision and Morales' interpretation of it.

"I can't imagine any other (reason)," he said. "There's very little extra that we can do."

He said the change was "very, very close to what we anticipated."

Sharlot said many minority students from Texas will be admitted to law schools in other states that still use affirmative-action programs. Three of the four blacks who plan to enter the UT School of Law are on Harvard Law School's waiting list, he said.

Sharlot said minority enrollment could perhaps be boosted in Texas if private funds were raised to help tutor minority students taking the Law School Aptitude Test, a major admissions factor.

He said he has written the Ford Foundation for possible help but has not

received a response.

Ellis, a UT law school graduate, said there were at least 15 blacks, including

himself, in his entering class in 1977. He said the anti-affirmative-action rulings came at a particularly inopportune time.

with blacks and Hispanics expected to account for a majority of the Texas population within the next generation. ■

26. Denver Post

August 20, 1997

Sign up sponsors, get stuff

By Janet Bingham
Denver Post Education Writer

US West has committed \$2 million. Pepsi has offered an additional \$2.1 million.

Other corporate sponsors are waiting in the wings. And the Jefferson County Schools are well on the way toward getting a new \$5.1 million football stadium, paid for with private funds.

In fact, the district is doing so well drawing corporate sponsors that it is now considering using private money to build not one, but two new \$5.1 million football stadiums - in the north and south parts of the district. Until recently, district officials figured they'd have to fund at least one stadium with tax dollars.

"Our goal is to raise \$10 million," said purchasing director Mike Mitchell. "We have additional sponsors that we're ready to announce to the board soon." The fund drive puts Jeffco in the forefront of the national trend toward corporate sponsorships for schools, already widely accepted on university campuses where the Nike swoosh is as prevalent as the graduation tassel.

The school board will vote Thursday to allow officials to negotiate a contract with Pepsi. Approval is expected. The board has already given the go ahead to work out a final deal with US West.

US West would get to put its name on a new stadium at West 68th Avenue and Ward Road. It would also become a "preferred provider" of telephone service to the district - if its prices and service remain in line with competitors. And it could sell telephone calling cards with school emblems for fund-raising.

Pepsi, in addition to its \$2.1 million stadium contribution, will give the district a 50 percent commission on sales of its products districtwide - an estimated \$700,000 a year. It will also establish a scholarship fund estimated at \$48,000 a

year. Overall, the district expects to collect \$7.3 million over the seven-year term of the agreement.

In return, Pepsi gets exclusive rights to sell its soft drinks in the district's 140 schools, serving 88,000 students. It could also advertise in district stadiums, gymnasiums and baseball fields. Coca-Cola, which bid unsuccessfully against Pepsi, could not advertise.

Other potential sponsors - newspapers, fast-food franchises, banks, grocery stores, hospitals, athletic equipment suppliers - are lined up or are being courted by Major League Marketing, a firm hired by the district.

"We're breaking new ground. We're doing something that we believe has never been done before - going to vendors and asking them to partner with the school district."

said Tom Manoogian of Major League Marketing.

If the district reaches its \$10 million goal, it would have three stadiums. Trailblazer Stadium in the central part of the district opened about a year ago, built with money from a 1992 bond issue.

The deals put Jefferson County at the front of a national movement toward corporate sponsorship, said Anne Bryant, executive director of the National Association of School Boards.

A Massachusetts district sells advertising space on textbook covers which it hands out in schools. In another district, a company has paid to print its name on a school roof. In Colorado Springs and Cherry Creek, advertisers can buy space on school buses.

"Partnerships can be terrific. We need more businesses thinking about how they can help our public schools," Bryant said. But districts must look closely at both the benefits and the risks.

"Obviously they are not doing it

totally for philanthropic reasons. They are also doing it because they have access to kids - a chance to introduce their products to the current generation of buyers and to a future generation of buyers. Districts need to look carefully and make sure that the district is accepting only those offers and products and programs that will really increase student achievement." A Jeffco policy requires school board approval of advertising, said purchasing director Murphy. Pepsi and US West will not be permitted to advertise in classrooms.

The Jeffco deals reflect an evolution in the sponsorship movement, said Randy Quinn, executive director of the Colorado Association of School Boards.

"It started on the university level," he said. "Nobody blinks an eye when Nike arranges for a contract with university football teams, or someone sponsors a scoreboard in university stadiums. The next logical progression in that movement would be the public schools. "There was a time when we would have said, 'No, that's commercialization. We need to keep it out of the schoolhouse.' But given the reality of economics and the scramble for dollars, it just seems to reflect reality.

"But I have a couple of cautions: This will not be the ultimate solution to school financing problems. Whatever is forthcoming from corporate sponsorships in a normal school district would cover only a small portion of the needs. Although these dollars will help, they won't substitute for a long-term solution to financial challenges.

"The other caution is that it is easier for big districts, more visible districts, like Jefferson County and Colorado Springs to arrange for this kind of thing than the smaller more rural districts." ■

56. The State (Columbia S.C.)

August 20, 1997

College fuels economy

A good economy and a good higher-education system go hand-in-hand.

The Southern Regional Education Board argues that "the region's colleges and universities are prized assets during an era when technological change and an increasingly global economy make higher education more essential than ever to the South's prosperity."

Scientific research on university campuses changes our lives daily, says the paper. Bolstering that statement was a list of Southern colleges earning millions in royalties on inventions and

discoveries. Nearby colleges earning more than a million include the universities of Georgia and Florida, as well as Clemson, Emory, Duke, Florida State and North Carolina State universities.

However, appropriations and long-range decisions show that higher education is not a top priority in this region, claims the commission. To bolster why higher education should be leading the list, the commission cites Utah, recently selected for a Micron computer chip factory. Why? Because of

the first-rate higher education system, according to Micron executives.

Thirty percent of Utah's population has a bachelor's or professional degree. In South Carolina, 16.6 percent of our population has earned a bachelor's degree or higher. Is it any wonder then that Utah's poverty rate is 11 percent, while ours is 20 percent?

It's so obvious: Better public schools and stellar higher education are the way to get this state and its people out of poverty. That requires investments of time, attention and money. ■

57. San Francisco Chronicle

August 20, 1997

Why Boalt Hall Failed And Others Succeeded

THE FIRST DAY of classes at UC Berkeley's Boalt Hall School of Law this week had little of the excited anticipation or the giddy fear that usually comes with embarking on a grand and portentous educational adventure.

Instead, old and new students — one with a "Little Rock Had Nine" placard — talked of the palpable tension, of the feeling of betrayal, of a move backward in time to "de facto segregation" with only one African American first-year law student.

"I was greatly surprised and disappointed when I learned that I was the only African American matriculating into the program this year," reluctant celebrity law student Eric Brooks read from a statement. "When choosing a law school, I placed a high value on the diversity of the student body and contemplated going to school elsewhere after hearing the news."

The "news" was the University of California Board of Regents' 1995 decision to ban affirmative action. No matter how much Ward Connerly and other supporters of the ban deny it, one of the strongest messages of the vote to blacks, Latinos and American Indians was that they were no longer welcome at UC.

That message is distressingly but sharply illustrated by the fact that 14 star African American college graduates were admitted to Boalt this year, but not one chose to enroll. Brooks deferred his enrollment from a 1996 acceptance.

If UC schools are to live up to their stated commitments to diversity on campus, they must find ways around the limitations of the affirmative action ban.

Fortunately, there are ways. As Chronicle staff writer Pamela Burdman wrote in an article about the reshaping of UC admissions policies, UC medical

schools came close to enrolling as many minority students as the year before by considering a range of characteristics that make good physicians, such as drive, humanitarianism and the desire to help other people.

They also considered socioeconomic status and zip codes, giving extra points to those from "medical service shortage areas," which tend to be poorer neighborhoods. They were not as narrow as the law schools, which tend to focus on grades and test scores.

Unprecedented recruitment of students after they were sent their acceptance announcements also paid off. Vigorous efforts to ensure that minority students know they are welcome can mean the difference between classes with a healthy representation of underrepresented minorities and those with a shameful few. ■

EDITORIAL

53. Orange County Register

August 19, 1997 Category: Editorial

Subverting Prop. 209

Is the Clinton administration seeking to subvert the decision of California voters when they adopted Proposition 209, which bans quotas and other forms of racial and gender discrimination by state agencies?

Some such aim is hard not to infer from the Department of Education's launching of an investigation into admissions policies of three University of California law schools.

The department's Office for Civil Rights has "sufficient information" to justify a probe of possible racial and ethnic discrimination in law-school admissions at Berkeley, UC-Davis and UCLA, according to a letter that the Education Department sent to the university last month.

What is this "evidence"? It involves a "disparity" between the numbers of racial and ethnic minorities admitted and the representation of those groups in some larger sampling of the population, department spokesman Roger Murphy told us on Thursday.

Classes began yesterday at the Boalt Hall school of law in Berkeley, where 14 blacks were admitted, down 81 percent from 1996, and 39 Hispanics, down 50 percent. The incoming Boalt class of 271 students has only one black, Eric Brooks.

The reasons cited for the admissions declines at UC law schools include the new admissions process, better offers from private universities, student concerns that they weren't welcome and fear of isolation.

But the mere fact that admissions policies don't yield a freshman class that mirrors the ethnic composition of the community, or even of the applicant pool, does not signal discrimination — and clearly doesn't automatically violate law or the Constitution. As long as an admissions or evaluation test is aimed at

measuring a legitimate criterion — such as probable success in law school — and is structured so that it does indeed "measure what it purports to measure," then it passes legal muster, as UCLA Constitutional Law Professor Eugene Volokh reminded us.

Performance by applicants on the Law School Admissions Test (LSAT), on which the UC law schools heavily rely in admissions decisions, "has been carefully studied, and (LSAT performance) has shown to correlate well with subsequent law-school student achievement," he said. If some ethnic or racial minorities aren't scoring as well on average, the problem "reflects a failure in the public schools systems," he said, "and it is that failure that needs to be addressed."

Strategies to improve inner-city education, such as school choice, are preferable to evading the root problem by selectively lowering admissions criteria later in life. Set rigorous, but reasonable standards — and then give everyone the groundwork that allows them, through determined effort, to aim to meet them — that's a policy that honors people of all colors.

It's important to note, also, that even now, every intelligent and academically diligent candidate, of any color, can find a number of credible law schools with admissions policies that will accommodate him or her. There are many institutions with criteria less demanding than that of Berkeley or UCLA.

But the government has no business — and no legal warrant — to suggest that because academic criteria are demanding, they are discriminatory. "The Department of Education is going to end up with egg on its face if it goes through with this investigation," Professor Volokh predicted. Why? Again, because valid academic standards, applied

without reference to race or gender, are legitimate admissions tools.

It is the timing of the investigation that stirs suspicions about the administration's motivations. The probe comes only months after the enactment of Prop. 209, which cemented in place an earlier UC Regents' decision to abandon racial classifications in admissions.

"Yes, this is politically, ideologically inspired — targeted at Prop. 209 and the state that enacted it," said Professor Volokh. "The Clinton administration is on record, after all, supporting race preferences. And if their claim is that the LSAT is discriminatory, then why are they investigating its use only in California?"

"The fact is, even the most left-wing law schools, all around the country, schools whose faculty are supporters of quotas and preferences as a general public policy tool, employ the LSAT in admissions because of its success in predicting law-school performance."

Even if that assumption about the LSAT's effectiveness might deserve scrutiny, an honest investigation should focus not on racial implications and outcomes, as the Department of Education seems to be doing, but rather on the LSAT's accuracy as a predictive tool for students of any color or background.

The country will be healthier when obsessions with race are supplanted by a focus on standards — standards equally applied, across racial and gender lines, with no quotas or preferences to weaken their integrity; standards held up for people of all races as a challenge, a goal, an inspiration to hard work and accomplishment. That was the principle behind Prop. 209, and ought to be the ideal embraced by the Clinton administration. ■

Race - minority
enrollment

United States Senate

WASHINGTON, DC 20510

July 31, 1997

Honorable Richard Riley
Secretary
U.S. Department of Education
600 Independence Avenue SW
Washington, DC 20202

Dear Mr. Secretary:

As you are aware, the University of California has implemented a policy for its graduate schools that grants admission to applicants regardless of race, ethnicity, or national origin. This race-neutral policy has recently come under the attack of your Assistant Secretary, Norma V. Cantu, who has initiated a formal investigation of the University of California and implicitly threatens to cut over \$1 billion of federal funds. We are writing to urge that you order Ms. Cantu to terminate this politically-motivated investigation.

Unfortunately, it appears that Ms. Cantu has developed a pattern and practice of threatening to cut-off federal funds for higher-education institutions that implement policies to end discriminatory racial preferences. To make matters more egregious, Ms. Cantu's threats fly in the face of clear decisions by the courts.

As you will recall, last year, the Fifth Circuit in *Hopwood v. Texas* concluded that public universities generally are prohibited from considering the race of its applicants. The Supreme Court denied certiorari in that case. In March of this year, Ms. Cantu, undeterred by the *Hopwood* ruling, ordered Texas colleges and universities to ignore the Fifth Circuit's decision and to begin reinstating race-based admissions programs. Ultimately Ms. Cantu reversed her policy position, but only after public outrage and letters from public officials, including a letter to the Department of Education from Acting Solicitor General Walter Dellinger.

Now, Ms. Cantu is using taxpayer dollars to attack the University of California's decision to end racial preferences in graduate admissions. The *Los Angeles Times* recently reported that Judith Winston, the Education Department's general counsel, is asserting that "the University of California may have violated federal civil rights law by dropping its affirmative action rules and relying on test scores and grades as a basis for selecting new students."

We respectfully suggest that it is absolutely wrong to use federal tax dollars to investigate whether schools are discriminating by refusing to discriminate. The University's decision is right as a matter of law and policy. The decision has been validated by the Ninth Circuit Court of Appeals in *Coalition for Economic Equity v. Wilson*, which upheld Proposition 209. With the adoption of Proposition 209, the University's race-neutral policy is clearly consistent with the Constitution of California. Further, as the Ninth Circuit has affirmed, this policy is consistent with the Constitution of the United States.

Honorable Richard Riley
July 31, 1997
Page 2

Moreover, Ms. Cantu's investigation turns Title VI's nondiscrimination principle on its head by threatening schools that use race-blind admissions policies and objective measures of merit, such as grades and test scores. This investigation has provoked criticism even from those who typically defend race preferences. For example, University of Texas Law School professor Samuel Issacharoff, recently stated that "[Ms. Winston] is voicing a theory that does not have support in the courts." Professor Issacharoff went on to explain that he was "not aware of any legal support for the idea that would say the Harvard Law School, for example, cannot accept only the cream of the crop if doing so would have an impact on a minority group."

And in an editorial yesterday, *The Sacramento Bee*, also a supporter of race preferences, referred to the Administration's legal theory as "an Orwellian misreading of the law." "Equally important," the *Bee* concludes, "the investigation is an abuse of federal power, designed to punish California and its citizens for [its] decision on affirmative action"

We urge that you order Ms. Cantu to cease and desist her investigation of and threats against the University of California for its decision to implement nondiscriminatory admissions policies. We firmly believe that the federal government should take the lead in ensuring that all persons are guaranteed equal protection of the law—regardless of race, ethnicity, or national origin. Neither Ms. Cantu nor the Department of Education can ride roughshod over the nondiscrimination principle firmly established by the will of the people, the courts, and the Constitution.

Additionally, we request that you provide us with an explanation of the legal and constitutional analysis underlying Ms. Cantu's decision to commence an investigation of the University of California. Also, please provide us with all documents pertaining to any complaint or complaints regarding the 1995 decision by the UC Board of Regents to terminate racial preference programs, including but not limited to: correspondence with third parties, memoranda or other internal communications assessing or discussing legal or other aspects of the UC decision, documents regarding the decision to investigate UC, and documents pertaining to that investigation to date.

We look forward to your prompt response. If this matter is not satisfactorily resolved, we will consider all legislative options, including hearings and an amendment to prohibit the use of Department of Education funds to investigate race-neutral policies.

Sincerely,


Mitch McConnell


Orrin G. Hatch

LOCAL**13. San Francisco Chronicle**

August 18, 1997

How UC Admissions Have Been Reshaped
Recruiting without affirmative action

Pamela Burdman

Chronicle Staff Writer, page A1

Stark numbers have the power to galvanize, and in the debate over minority admissions at the University of California, nothing seems starker than Boalt Hall School of Law's revelation that none of the 14 African Americans admitted this year would be enrolling.

As the fall semester gets under way today, the Boalt numbers stand as a rallying point — both for those who fear a depletion of minorities in society's professional ranks and for those who applaud the return of merit-based admissions.

But elsewhere around the UC system, the situation is hardly as straightforward. As the university enters a new era of color-blind admissions, its law, business and medical schools are resorting to a wide array of strategies to keep up minority enrollment, with varying degrees of success.

While some schools, like Boalt, are fastidiously keeping ethnicity out of admissions decisions, some are aggressively recruiting minority applicants with fellowships and poolside barbecues, while others have devised creative formulas that give an edge to poor candidates with the right zip codes.

A close look at enrollment figures reveals no neat pattern. The UC Davis medical school expects a fivefold increase in "underrepresented minorities" — blacks, Latinos and American Indians — who benefited under the old system. Yet at Berkeley's Haas School of Business, the number of minorities will drop by more than half.

"We're in the middle of an ideological dispute about what is illicit discrimination and what is permissible consideration of race," said Boalt professor Rachel Moran, member of a faculty committee studying law school admissions. "We're in a period of uncertainty. That's reflected in the variance among schools in the results."

As debate over affirmative action

continues nationwide, UC has emerged as case study number one. Two years ago, UC regents voted to dismantle affirmative action in admissions. The changes won't affect undergraduates until next year, but graduate students entering this fall were the first to apply under the new rules.

With the nation's top professional schools under pressure to boost student diversity, competition for qualified applicants is keen. Without affirmative action, UC admissions officers now find themselves lacking a tool that most others are still using.

ONE BLACK IN NEW CLASS

At Boalt, the number of underrepresented minority candidates admitted dropped from 167 to 55. All but seven — including all 14 African Americans — chose to enroll elsewhere. The new class will have only one African American — a student who was admitted last year but deferred.

"It feels strange to be part of this class," said another incoming student, Alex Huneus of San Francisco, who is Chilean. "It must be one of the first classes since the 1950s that is so lacking in diversity."

Huneus, 29, turned down Yale to attend Boalt. "Part of my decision to go to Boalt was because it was a state school, and I thought there would be more diversity," she said. "I was pretty shocked and disappointed when I found out there wouldn't."

Minority enrollment is also way down at Berkeley's Haas School of Business. Last year, 54 blacks and Latinos were admitted, and 26 enrolled. This year, only 30 got in, and 11 plan to attend, according to preliminary figures.

As at Boalt, Haas officials said the minority applicants who are admitted without affirmative action are naturally the ones most aggressively courted by other schools.

"We're one of the five most selective

programs in the country," said Fran Hill, MBA admissions director at Haas. "The people we are admitting are so strong, they have a ticket to any business school in the country."

CAUTIOUS APPROACH

At UC's medical schools, minority enrollment was eroding well before the regents' vote, falling from a peak of 117 in 1992 to an expected 69 in this year's entering class.

Administrators say that intense public scrutiny had already forced them to become more careful about affirmative action in the admissions office. Davis, San Diego and Irvine, for example, used to review all affirmative action candidates in a separate pool — until a few years ago, lawyers advised them to stop.

This year, despite a 22 percent drop in minority applicants, the five medical schools expect to enroll almost as many minority students as last year — 69, as compared with 73.

Law schools tend to place considerable emphasis on applicants' test scores, and because average scores of African Americans and Latinos are lower, affirmative action played a greater role in admitting them. Medical schools, on the other hand, tend to conduct a more holistic review of their applicants — including interviews evaluating the personal qualities of these potential physicians.

"Those of us who are in medical education realize that test scores are not the sine qua non of a good physician," said Ernest Lewis, an associate dean at UC Davis' medical school. "Beyond that are drive, humanitarianism, the need and desire to help other people. Those are the kinds of things we look for."

ALTERNATIVE STRATEGIES

The number of first-year minority students at Davis plummeted from 31 in 1993 to 2 in 1996, and despite the regents' vote, Lewis was determined to

reverse that trend.

Although race was now off-limits, the regents had encouraged the use of socioeconomic considerations in admissions decisions. So Lewis and his team decided to take into consideration applicants' home zip codes, giving extra points to those from "medical service shortage areas," which tend to be poorer neighborhoods.

The number of minority candidates admitted dropped from 36 last year to 31, but while only two enrolled last year, 10 plan to enroll this year. "When we found ourselves having accepted some minority students through the new process," Lewis said, "we recruited hard."

Aggressive recruitment also seems to be making a difference at UCLA's Anderson Graduate School of Management. "We had to work very hard on the yield, because of the chilling effect of (the regents' policy)," said admissions director Linda Baldwin.

POOLSIDE BARBECUE

Last spring, faculty and alumni launched an energetic drive to recruit minority students — sweetening the deal with corporate money for minority fellowships and holding special recruitment events.

A poolside barbecue at the home of Henry Brandon, a wealthy black alumnus who lives in Los Angeles' Ladera Heights, an affluent African American neighborhood, apparently helped. "We felt it was a culturally specific way to get the candidates," said Baldwin.

Although UCLA admitted fewer underrepresented minorities — 49, down from 61 last year — the number who

decided to enroll barely dropped — from 31 to 28. One student turned down Harvard, Stanford, and Northwestern to come to UCLA.

WARM WELCOME

The UCSF School of Medicine has also managed to keep minority enrollment from falling, despite a significant drop in the number of applicants.

Michael Drake, associate dean for admissions, said he places a high priority on making minority applicants feel that they are welcome. For instance, when they visit the campus, they are interviewed by a fellow minority.

"I don't think they (the regents) told us we couldn't do that," said Drake.

Regent Ward Connerly, author of UC's new race-blind policy, disagrees. "That smacks of a form of racism," he said. "We don't do that with white students. It says that the people who are applying . . . somehow think of themselves first and foremost as blacks and Latinos. I don't buy that group-think mentality."

Connerly does not oppose other efforts to land qualified applicants who have already been accepted. "You're letting some of those who won the competition know that you want them to attend," he said. "I don't have any problem with that."

FOCUS ON BOALT

At Boalt, some students and faculty fault the school for not doing enough minority recruitment. "We've never needed to do that before," said Dean Herma Hill Kay. "Obviously we will have to try to find ways to do it."

But the future of minority recruitment efforts could hinge on Proposition 209, the anti-affirmative action measure passed last year, which is currently held up in the courts. If 209 is upheld, some legal experts say, minority-targeted recruitment could become illegal.

In the near term, most of the attention is likely to remain focused on Boalt, where declining minority enrollment is attracting federal scrutiny. The U.S. Office of Education is investigating the matter in response to a complaint from civil rights groups.

Some at the university see the falling minority numbers as proof that the old system was admitting less-qualified students simply because of their race. Martin Trow, an emeritus professor of public policy, said the drop in minorities at Boalt reveals "the true face of affirmative action — a pattern of gross racial and ethnic discrimination."

But some alumni and local lawyers plan to mark the start of school today with a polite protest against what they describe as the "resegregation" of the legal profession.

"I graduated in 1967 from a segregated high school in Mississippi," said Peter Benvenuti, a Boalt graduate and a partner at Heller, Ehrman, White & McAuliffe in San Francisco.

"It never occurred to me . . . that there would be any chance that my children, were they to go to the same law school, would complete that unfortunate cycle and end up in a racially segregated law school run by the state of California," Benvenuti said. "The prospect of that happening is shocking beyond words." ■

14. The State, Columbia SC

August 18, 1997

Court settles issue: Students may pray away — in silence

By JAMES J. KILPATRICK
Special to The State

If one legal issue in the whole field of "church and state" may now be regarded as settled, it is this: Public schools are free to mandate a minute of silence before classes begin each day, and during that minute of silence pupils are free to pray inaudibly to their hearts' content.

The issue never should have been in doubt, but for the past 12 years it has

kept bobbing up in the federal courts. Now, with an opinion by Circuit Judge R. Lanier Anderson in a Georgia case, the question may be put to rest.

In 1994, the Georgia General Assembly adopted its Moment of Silence in Schools Act. These were the three key provisions:

(1) In each public school classroom, the teacher shall conduct a brief period of quiet reflection for not more than 60

seconds.

(2) The moment of quiet reflection is not intended to be and shall not be conducted as a religious exercise, but shall be considered as an opportunity for silent reflection on the anticipated activities of the day.

(3) The foregoing provisions shall not prevent student-initiated voluntary prayers at schools or school-related events that are nonsectarian and

Race-minority enrollment

26

27. San Francisco Chronicle

August 19, 1997

Boalt Hall Alumni Blast UC Policy
Race-blind admissions hurts diversity, they sayPamela Burdman
Chronicle Staff Writer

Dozens of Boalt Hall alumni came back to campus yesterday to decry their alma mater's loss of ethnic diversity, while the lone African American first-year student said he is not giving up on diversity at Boalt.

Some 300 students, faculty, and alumni packed a sunny courtyard on the first day of classes at the University of California at Berkeley's prestigious law school — the latest flash point in the nationwide battle over affirmative action.

The regents two years ago outlawed race-conscious admissions, claiming such policies constituted reverse discrimination. But yesterday, no one showed up to defend the regents' decision.

"We're talking about de facto segregation in a public institution here in California," said Maria Blanco, a Boalt graduate and associate law professor at Golden Gate University in San Francisco. Fourteen African Americans were admitted to this fall's first-year class, but all of them chose other schools.

One African American, Eric Brooks, a 1992 graduate of Indiana University, was admitted last year under the old system and deferred enrolling until this fall. Yesterday, he had to contend with dozens of reporters as he began his law school studies.

After refusing several interview requests, Brooks reluctantly called a news conference at lunchtime, delivering a one-page statement in a lecture room filled with network TV news cameras.

Brooks said he was "greatly surprised and disappointed" to discover he would spend the next three years as the only African American in his class. After hearing the news, he contemplated

choosing another school, he said, but in the end decided he would still get a good education at Boalt.

"Much of the reason why I decided to become a lawyer was to effect change in our society and to fight for those things in which I believe," said Brooks. "I believe that by attending Boalt this fall, I have been given a unique opportunity to work to make needed changes and improvements for future students of color at Berkeley."

He left the lecture hall immediately after he finished his prepared comments, declining to take any questions.

Moments later, speakers gathered in a courtyard to take their alma mater to task. They included some of the Bay Area's most prominent civil rights attorneys — who said they would not have been able to attend Boalt under the new policies.

Eva Jefferson Paterson, executive director of the Lawyers' Committee for Civil Rights, called the opening of Boalt "a sad and disgraceful day for the University of California, for the state of California and for America."

Paterson, a 1975 graduate, said the knowledge that just seven underrepresented minority students enrolled this year — compared with 52 in the 1996 first-year class — made her hesitate on the sidewalk for several minutes before stepping into the Boalt courtyard.

"There was almost a force field outside the university saying, 'Latinos and blacks not welcome,'" she said.

Just 55 black, Latino and American Indian law students — the "underrepresented" groups who benefited from affirmative action in the

past — were admitted to UC, compared with 167 last year.

Professor Marjorie Schultz, a 1976 Boalt graduate, said that diversity in the classroom is essential for discussion of such legal topics as immigration policy and criminal procedure.

Len Weiss, partner with Steefel, Levin & Weiss of San Francisco, said a depletion of minorities at Boalt could pose problems for law firms' hiring.

"We cannot survive without a diverse group of lawyers working in our law firm," he said.

Boalt's dean, Herma Hill Kay, said she remains committed to diversity despite the disappointing figures this year. She said she plans to work with professors to consider changes in the school's admissions criteria.

She will also try to raise private money in order to compete with the minority scholarships offered by private schools. But, she added, "I don't think we can hope to get the kind of representation we had when we were able to use affirmative action measures."

Members of the first-year class received a letter from the dean a few weeks ago warning them of the controversy surrounding the school.

Many said they have mixed feelings.

"It creates a conflict for me," said one 27-year-old white student who requested anonymity. "I support affirmative action. But the fact is that maybe the change has opened up a spot for me here."

Said another student, Ron Dor, who is also white, "I'm not going to say affirmative action has taken us where we need to go, but this isn't a solution either." ■

grades this year. Wilson proudly pointed out that per-pupil spending has reached \$5,144 in California, a \$240, or 4.9 percent, increase over the last budget.

Eastin, however, said California still lags well behind much of the nation. California ranked 37th nationally in per-student spending last year. Per student funding averaged \$5,652 in the United States during the 1995-96 fiscal year, according to a spokesman for the National Education Association.

Overall, the budget reflects a general fund increase of 7.6 percent, counting a \$1.3 billion, court-ordered repayment to the Public Employees' Retirement System.

Wilson's late vetoes boost the reserve to \$112 million, but that is expected to swell by perhaps as much as another \$450 million thanks to the recent cut in the federal capital gains tax. As Californians cash in investments to take advantage of the lower federal rate, they will continue to pay state taxes on those transactions.

In an unusual move, Wilson cut a total of nearly \$1.5 million that lawmakers sought for audits of the California Youth Authority and the departments of transportation, social services and corrections.

"There's some real concerns about social services and corrections

(departments)," said Assemblywoman Denise Moreno Ducheny, a San Diego Democrat who served on the two-house budget panel.

"We'll try again, I think," she said. "The Legislature doesn't go away on these kinds of things."

Elsewhere, the budget apparently sounds the death knell for the Industrial Welfare Commission, a panel of gubernatorial appointees that angered Democrats when it abolished overtime rules involving the eight-hour day.

The Legislature eliminated all but \$50,000 of the commission's funding. Then Wilson cut that. ■

26. San Diego Union-Tribune

August 19, 1997

Post-affirmative action era begins at Berkeley

Law student sees chance to help 'future students of color'

By Michelle Locke
ASSOCIATED PRESS

BERKELEY — The only black student in the first law school class since the University of California dropped affirmative action said yesterday he's been "given a unique opportunity" to improve the campus for minority students.

Surrounded by news cameras, Eric Brooks of Bloomington, Ind., acknowledged he has been thrust to the forefront of the race debate, but he said he expects to be treated as "an individual who has earned the right to attend this prestigious university."

"Much of the reason why I decided to become a lawyer was to effect change in our society and fight for those things in which I believe," Brooks said, reading from a statement.

"I believe that . . . I have been given a unique opportunity to work to make needed changes and improvements for future students of color here at Berkeley."

Other first-year students said they had been pondering the challenges their classmate likely will face.

"It's really gutsy for him to come here. That's honorable, I think, to stick it out,"

said first-year student Joshua Irwin, 24.

Overall, Irwin said, having only one black student in a class of 271 is a disappointment. "There's not going to be as many views represented in this class," he said.

This is the first semester that a university policy banning race and gender preferences in graduate admissions has been in effect.

It was approved two years ago after residents voted to dismantle California's affirmative action policies. The university system went ahead with its ban, while the measure continues to be contested in court.

The fallout began at the university's Boalt Hall law school this spring, when officials announced that 27 percent fewer blacks had applied (304, down from 414) and 24 percent fewer Hispanics (355, down from 467).

Of those, 14 blacks, down 81 percent from 1996, and 39 Hispanics, down 50 percent, were admitted.

Then, surprisingly, all 14 blacks admitted declined to enroll, leaving only Brooks, who had been admitted in 1996

and had postponed enrollment.

Officials said some students may have gotten better offers from other universities or worried that they wouldn't be welcome or would be isolated at Berkeley.

Similar but less dramatic declines were seen at two other major law schools that dropped affirmative action this year: the University of Texas and the University of California at Los Angeles. As of last month, Texas was expecting four black students compared with last year's 31, and UCLA was expecting 10, down from 19.

Hispanic enrollment dropped from 42 to 21 at Texas and from 45 to 41 at UCLA.

"It's going to be a somewhat difficult year," said Marvin Peguese, a black third-year student at Boalt Hall.

Gov. Pete Wilson, a strong supporter of the new policy, told reporters he thinks things will work out over time.

"There's no question about it. I think that what we will see is high achievers in every ethnic group will display their abilities," he said. ■

vanished, and Clinton's most prominent education initiatives — a new lending program for college students and Goals 2000 grants for school reform — are largely intact.

But the emerging debate over the national tests may be the most sensitive

yet, because they would expand the federal government's role in education.

Republican alarm about that change, particularly if it comes without congressional approval, is growing. One lawmaker, Rep. Robert W. Schaffer

(R-Colo.), recently sent a letter to his House colleagues that denounced Clinton's plan as "the first step to a top-down, national curriculum" — exactly the image the White House does not want of the new tests. ■

2. Los Angeles Times

August 19, 1997

Lone Black in Boalt Hall Class Urges Change

By AMY WALLACE
Times Education Writer

BERKELEY — On an emotional first day of classes at UC Berkeley's Boalt Hall School of Law, the lone black member of the 270-student incoming class revealed himself Monday to be a Bloomington, Ind., native who values diversity and was "surprised and disappointed" to learn of his solitary status.

At a news conference in a cavernous lecture hall, first-year student Eric Brooks, a 1992 graduate of Indiana University whose identity had been kept secret, walked through a swarm of photographers before taking the podium and reading a short statement.

"When choosing a law school, I placed a high value on the diversity of the student body and contemplated going to school elsewhere after learning the news," Brooks said, his voice firm.

Brooks said he ultimately decided, however, that Boalt was where he would best be able "to effect change in our society and to fight for those things in which I believe."

He vowed "to work to make needed changes and improvements for future students of color at Berkeley."

Minutes later, in a courtyard outside, 200 students, faculty and graduates gathered for an "alumni speak-out" at which Boalt-trained lawyers rose one by one to condemn the University of California regents' rollback of affirmative action — a ban that has resulted in sharp declines in the enrollment of blacks, Latinos and Native Americans at some UC professional schools.

Some alumni said they would withhold donations from UC, hire fewer Boalt graduates to join their firms and lobby legislators to repeal the regents' 1995 decision.

"We need to send the message loud

and clear that our dollars will not go to a university that does not value diversity among its students," said Rene Saucedo, a 1990 graduate who is executive director of the Northern California Coalition for Immigrant Rights.

"I feel ashamed of this institution."

Leo Brazil, a 1974 graduate who said he has his own law practice, wore a T-shirt that said, "Danger: Educated Black Man." He exhorted the faculty and students to go on strike, saying, "You going to tell me you're going to take our tax dollars and make this an elitist institution?"

The rally was an attempt, organizers said, to spotlight what was lost when the regents banned consideration of race and gender in graduate and professional school admissions. The same ban will go into effect for undergraduate admissions next year, so the professional school enrollment numbers have been closely monitored.

In June, UC officials revealed that not one of the 14 black students admitted to Boalt this year had decided to enroll. In addition to its one black student, Brooks — who had been admitted to the school last year but delayed starting — the entering class has 18 Latinos. There are no Native Americans. A year ago, the entering class included 20 black students, 28 Latinos and four Native Americans.

UCLA's law school also reported a drastic drop in the number of "underrepresented minorities."

Then, earlier this month, UC San Diego's School of Medicine revealed that it had accepted not one of its 196 black applicants. According to preliminary tallies, the number of blacks, Latinos and Native Americans accepted at two other UC medical schools also dropped.

Opponents of affirmative action have

said that the decrease in the number of blacks, Latinos and Native Americans who are being accepted and enrolling in UC's professional schools this year is evidence of how large a factor race had become in admissions. Groups like the American Civil Rights Institute, which was co-founded this year by UC Regent Ward Connerly to promote the elimination of racial preferences, have rejected the idea that diversity is an essential part of a good education. They call instead for educators to work harder to make sure every student can compete.

But on Monday, speaker after speaker said Boalt will not be excellent unless it is diverse.

Lenard Weiss, a 1962 graduate, recalled that his class included just three women and two blacks. The partner in the San Francisco firm of Steffel Levitt & Weiss said diversity made economic as well as moral sense. "We must have a diverse body of lawyers serving our diverse clients," Weiss said of his firm. "If we can't get it from Boalt Hall, we'll go elsewhere."

Marjorie Shultz, a Boalt professor and 1976 graduate, said the quality of education would suffer. "What do lawyers do? Lawyers resolve conflicts . . . and monitor standards of conduct in this society, like justice, equity, fairness and reasonableness," she said.

While Boalt's new students are very accomplished, she said, "How can [they] be excellent collectively if [they] have experiences that are narrower than the experiences of this population?"

Shultz was one of many who stressed that all Boalt students will suffer from increasing homogeneity. With fewer points of view represented, intellectual debate will inevitably become less rigorous, they argued.

Herma Hill Kay, Boalt's dean, did not participate in the rally Monday. But at the earlier news conference, she said she was worried about maintaining the quality of instruction. Without diversity, she said. "It is more difficult to have a classroom discussion: It's like the old days, when we didn't have any women. When we talked about alimony, it was only from the men's point of view."

Kay also shed more light on the 14 black students who rejected Boalt's offer

of admission. She acknowledged that the school had been slow to release their names to current black students, who had hoped to recruit them.

Because of the way the application was worded, Kay said, Boalt officials were advised that they could not lawfully release the students' names. By the time this mix-up was resolved, all but three had chosen to attend law schools elsewhere: Four of the 14 went to

Harvard, two to Stanford and two to Yale, Kay said.

Asked if she had intentionally been less aggressive to create a worst-case scenario, as Connerly has alleged, Kay was adamant.

"I categorically deny that I have attempted to sabotage the regents' resolution," she said.

But next year, she vowed, "we will do a better job of recruiting." ■

3. The Washington Times

August 19, 1997

Activists prompted probes at University of California

By Carol Innerst

THE WASHINGTON TIMES

A federal investigation of admissions practices at University of California graduate schools was launched without a single applicant charging that he or she was discriminated against, the Department of Education's top civil rights official acknowledged over the weekend.

Appearing on the Court TV program "Washington Watch," hosted by Fred Graham, Norma V. Cantu, head of the Education Department's Office for Civil Rights (OCR), declined to specify what actions by the university are being investigated, but said "the entire admissions practices" would be looked at to determine "if any racial bias had snuck into" the process.

The interview with Miss Cantu aired Friday and was repeated Saturday and Sunday evenings.

The rights office a month ago confirmed that in response to a dramatic drop in minority admissions to the University of California's law schools, it was probing the system's new "colorblind" admission policy to find out if it is discriminatory.

University officials said in May the number of minority applicants admitted to Berkeley, Davis and Los Angeles law schools for the fall term dropped from 946 to 685. This is the first academic year in which race, ethnicity and sex considerations have been excluded in the admissions process for graduate and professional schools.

At Berkeley's Boalt Hall Law School, where the new semester began yesterday, only 304 blacks had applied for fall

classes, compared with 414 last year. Of the 304 blacks who applied, 14 were offered admission, down from 1996, when 75 blacks were accepted. None of the 14 blacks chose to attend Boalt. The sole black student in the class was accepted last year but had deferred admission until this year.

The OCR probe was triggered by a March 19 complaint filed by the Mexican American Legal Defense and Education Fund, an organization with close ties to Miss Cantu, and five other groups that support affirmative action. Miss Cantu is former regional counsel for MALDEF in San Antonio.

The other complainants were the Asian Pacific American Legal Center of Southern California, Equal Rights Advocates of San Francisco, the NAACP Legal Defense and Educational Fund of Los Angeles, La Raza Centro Legal of San Francisco and the California Women's Law Center based in Los Angeles.

The six organizations that filed the complaint with the OCR did not act on behalf of any individual minorities denied admissions. Joseph E. Jaramillo, a lawyer in MALDEF's San Francisco office, said at the time.

"My understanding is that the complainants are aware of students, and we will collect facts," Miss Cantu said in the televised interview.

"Why are you doing this?" Mr. Graham asked Miss Cantu. "The officials out there say 'It's bureaucratic bullying.'"

Miss Cantu denied that OCR was investigating whether the law school

admissions test is racially biased or whether using grades and tests as primary criteria results in discrimination.

"Not at all. Not at all," she said.

"Well then, I don't know what you're going to investigate," Mr. Graham said.

Responded Miss Cantu: "We begin first by asking, 'What is the purpose of the admissions program — what types of students is the campus looking for?' We understand that that will require interviewing people. ... First we inquire, 'What is your purpose in admissions?' Secondly, we inquire, 'What do you at the admissions committee look for ... how do you implement your purpose?' And we interview witnesses to find out if any racial bias has snuck into. ..."

The groups' complaint charges that the regents' July 1995 resolution banning preferences created the perception of a "chilly climate" that has deterred women and minorities from applying to University of California graduate programs. The impetus for the complaint was a series of projections showing a sharp decline in black and Hispanic admissions.

"We are not investigating the withdrawal of affirmative action," Miss Cantu said. "We are investigating whether the current policies of practices have within them any kind of racial bias. We are not assuming that we will find racial bias. ... The complainants specified that there were programs and policies in place which had discriminatory effect in excluding racial minorities ..."

California could lose its \$1.1 billion in federal education funds, she said, but

Title V - Urban Partnerships Program

"PART C -- URBAN SCHOOL, COLLEGE AND UNIVERSITY PARTNERSHIPS

"FINDINGS; PURPOSE; PROGRAM AUTHORIZED

"Sec. 531. (a) FINDINGS.--The Congress finds that--

"(1) The Nation's urban schools are facing substantial ^{demands} ^{challenges} ~~problems~~ and needs in such areas as inadequate academic preparation of students and low levels of educational aspirations, low levels of parental involvement, and other urban social problems that impinge upon the school environment.

"(2) The Nation's urban institutions of postsecondary education have available resources that by virtue of the institutions' close relationship with their urban communities, are uniquely situated to help ~~ameliorate the problems described in paragraph (1).~~
urban schools address these challenges

"(3) The skills, knowledge and experience in these urban institutions, if applied in a systematic and sustained manner, and augmented as needed by other urban community-based organizations, working with urban elementary and secondary schools can make a significant contribution to the solution of such problems confronting these schools.

"(4) The application of such skills, knowledge and experience is hindered by the limited funds available to redirect attention to such problems of urban education.

" (b) PURPOSE.--It is the purpose of this part to improve the performance of urban elementary and secondary schools with a high percentage of under-performing students by promoting partnerships among these urban schools and school districts, institutions of higher education, and other public and private groups in order to assist these schools to address the barriers they face in successfully carrying out their educational mission. Institutions of higher education are encouraged to use the full range of their institutional, faculty, and student resources, to help these urban schools to improve their students' performance in such areas as retention and graduation rates, scores on standardized tests of achievement in mathematics, science and reading, and the rate at which their students enroll at institutions of postsecondary education.

"(c) PROGRAM AUTHORIZED.--(1) The Secretary is authorized to make grants to eligible institutions on behalf of partnerships to enable them to solve problems faced by elementary and secondary schools in urban areas which limit their educational effectiveness.

"(2) Grants under this part shall not exceed 5 years.

"(3) To the extent practicable, the Secretary shall ensure equitable geographic distribution of grants under this part.

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"PARTNERSHIP AGREEMENT

"SEC. 532. (a) AGREEMENT.--To be eligible for a grant under this part, an eligible institution shall enter into a written partnership agreement with a one or more local educational agencies in an urban area that focuses on improving urban schools and eliminating the barriers these schools face in preparing their students for postsecondary education or careers. Such partnerships may also include businesses, community-based organizations, civic organizations, and other public or private organizations or agencies.

"(b) CONTENTS OF AGREEMENT.--The written agreement shall include.

"(1) a list of one or more urban schools that are the focus of the partnership agreement;

"(2) a list of all partnership participants and their official representative, including the representative for each of the urban schools;

"(3) a description of the responsibilities of each partnership participant; and

"(4) a list of the resources to be contributed by each partnership participant.

"APPLICATIONS

"SEC. 533. (a) IN GENERAL.--An eligible institution desiring to receive a grant under this part on behalf of a partnership shall submit an application to the Secretary at such time, in such form, and providing such information as the Secretary may reasonably require.

"(b) CONTENTS.--Each application shall include--

"(1) the partnership agreement described in section 532;

"(2) a needs assessment documenting, through quantifiable data, the basis for selecting each participating urban school, and including information on student performance and other educational problems or barriers to success that the urban schools face and that will be targeted by the program;

"(3) a description of the programs and activities to be developed and carried out by the partnership; and

"(4) assurances satisfactory to the Secretary that --

"(A) the partnership will establish a governing board, including one representative of each participant in the partnership;

"(B) federal funds will provide no more than 70 percent of the total cost of the

project in the first year, 60 percent of such costs in the second year, and 50 percent of such costs in the third and any subsequent year;

"(C) no local educational agency or institution of higher education participating in a partnership under this part will reduce its combined fiscal effort per student or its aggregate expenditure on education from non-Federal resources; and

"(D) each local educational agency or institution of higher education participating in a partnership under this part will use funds under this part to supplement, and to the extent practicable, increase the resources that would, in the absence of such funds, be made available from non-Federal sources for the education of students and, in no case, to supplant non-Federal funds that would otherwise be available.

"(c) SPECIAL RULE.—The non-federal share of grants awarded under this part may be in cash or in kind fairly evaluated, including services, supplies or equipment.

"USE OF FUNDS

"SEC. 534.(a) IN GENERAL.—(1) Funds under this part, to the extent practicable, shall be used to assist elementary and secondary schools in urban areas that serve a high percentage of under-performing students to eliminate the barriers these schools face in helping their students' achieve their academic potential and prepare for and pursue a postsecondary education.

"(2) Activities described under paragraph (1) may include program design and development, training, improving the use of technology, sharing of resources, and other services and activities designed to assist urban schools meet and address their educational problems.

"(3) Funds under this part may not be used for programs whose primary purpose is to meet postsecondary education degree requirements, such as student teaching or practica.

"(b) STUDENT PARTICIPATION.—Institutions of higher education are encouraged to place students receiving funds under Title IV, Part C in grant-supported projects.

"PEER REVIEW

"SEC. 535. The Secretary shall use a peer review process to review applications submitted under this part and make recommendations for funding. The Secretary shall ensure, to the extent practicable, that the panel is geographically balanced and is composed of persons with expertise in the area of urban education and the problems confronting urban schools.

"DEFINITIONS

"Sec. 536. As used in this part--

"(1) The term "urban area" means a metropolitan statistical area having a population

of not less than 350,000.

"(2) The term "eligible institution" means an institution of higher education, or a consortium of such institutions any one of which meets all of the requirements of this paragraph, which—

"(i) is located in an urban area;

"(ii) draws at least 50 percent of its undergraduate students from the urban area in which such institution is located, or from contiguous areas;

"(iii) carries out programs to make postsecondary educational opportunities more accessible to residents of such urban areas, or contiguous area;

"(iv) has a range of institutional, faculty, and other resources available that are relevant to the needs of urban schools; and

"(v) has a record of service to the local community, including partnerships with organizations the purpose of which is to address the needs and priorities of the community.

AUTHORIZATION OF APPROPRIATIONS

"SEC. 537. There are authorized to be appropriated such sums as may be necessary for each of fiscal year 1998 through 2002 to carry out this part.

###

Urban Community Partnership Program

The existing Urban Community Service Program will be reauthorized as the Urban Community Partnership Program. The new program will establish partnerships between urban institutions of higher education and urban elementary and secondary schools to improve the performance of these schools. The inclusion of additional partners such as businesses, community-based organizations, etc. will be encouraged.

This partnership program recognizes the important role that urban postsecondary institutions can play in their community to improve the performance of elementary and secondary schools and help students better prepare for postsecondary education and successful careers.

> Partnerships

A written partnership agreement will be included as part of an application under this program. This agreement will identify not only the individual partners, but the rationale for choosing the particular urban schools with which to work, as well as the educational issues the partnership will address.

> Activities supported under this program

Unlike the current Urban Community Service Program, this new partnership program will focus exclusively on addressing problems of urban education. Funds will be used to assist urban elementary and secondary schools having a high percentage of under-performing students to eliminate the barriers these schools face in achieving their educational mission.

Grantees will have considerable flexibility in the activities of the funded partnerships, such as program design and development, training, improving the use of technology, sharing resources, etc.

> Cost-sharing; grant duration

Federal funds will provide no more than 70 percent of the total costs of the project in the first year; 60 percent in the second year, and 50 percent in subsequent years. Partnerships may be funded for up to five years.

> Urban area; eligible urban institution

"Urban area" means a metropolitan statistical area having a population of not less than 350,000. To be eligible, institutions must be located in an urban area, draw a significant percentage of their students from the area, and demonstrate a clear commitment to the community.

MEMORANDUM

TO: TOM FREEDMAN, MARY SMITH
FROM: JULIE MIKUTA
RE: UPWARD BOUND
DATE: AUGUST 18, 1997

Ek-
Here is some
background on Upward
Bound.
Tom

SUMMARY

This memo gives background information on Upward Bound, a program that is regarded as successful in encouraging minority and low-income students to attend college. Upward Bound is one of the TRIO programs authorized under the Higher Education Act of 1965. The TRIO programs are described in the second part of this memo.

Upward Bound:

- Upward Bound helps low-income students prepare for higher education. Students receive academic instruction as well as counseling, mentoring and other support services throughout the school year and in an intensive five to eight week residential summer program.
- Upward Bound programs are funded under Title IV of the Higher Education Act of 1965 and are one of the TRIO Programs.
- Average grant award: \$285,967 (The minimum grant award amount is \$190,000).
- Number of grants (1997): 601
- Number of participants: 44740 students.
- Average cost per participant: \$3,838
- Funding for FY 1997: \$178,805,194
- Upward Bound projects are generally operated by two or four-year colleges.
- Students in the Upward Bound program are 4 times more likely to earn an undergraduate degree than those students from similar backgrounds who did not participate.
- Two-thirds of the students involved in Upward Bound programs are from families with low income (150% of poverty), and where neither parent graduated from college. The remaining students are either from low income families or are potential first-generation college students.

- Currently, there are 681 Upward Bound programs ~~was~~ throughout the United States serving over 42,000 students.
- A 1997 Department of Education report (based on surveys done in 1992 and 1994) of Upward Bound freshmen and sophomores found that participants and parents of participants had higher educational expectations than members of the control group. The Upward Bound students earned significantly more academic credits, particularly in English, social studies, science and math. The average participant was exposed to approximately 17% more academic instruction than the control group.

TRIO PROGRAMS

General Information

- TRIO Programs were established in 1965 to aid students from low-income families who needed "special services" to successfully finish high school and prepare for college.
- TRIO Programs are direct grant programs funded in rank order on the basis of competitive proposals. There is one federal employee for every 28,000 TRIO students served. Despite substantial increases in the number of TRIO students and programs, fewer federal employees are working with TRIO today than 20 years ago.
- Although 11 million Americans are eligible for TRIO Programs, there is federal funding for fewer than 5% of eligible youth and adults to be served.
- Over 1,900 TRIO Programs currently serve nearly 700,000 low-income Americans between the ages of 11 and 27. Many programs serve students in grades six through 12.
- 39% of TRIO students are White; 36 % are African-American; 16 % are Hispanic; 5 % are Native American and 4 % are Asian-American. 16,000 TRIO students are disabled.
- Over 1,200 colleges, universities, community colleges and agencies now offer TRIO Programs. TRIO funds are distributed to institutions through competitive grants.
- Since 1965 an estimated two million students have graduated from college with the assistance of TRIO Programs. The Ronald E. McNair Post-Baccalaureate Achievement Program is one of only a few programs in America that encourages low-income and minority undergraduates to prepare for doctoral study.

TRIO programs in addition to Upward Bound

Student Support Services:

- These programs help people from low-income families to stay in college until they earn their baccalaureate degree.
- Participants receive tutoring, counseling and remedial instruction.
- Over 707 colleges and universities nationwide participate.

- Students who participate in this program are more than twice as likely to remain in college than those students from similar backgrounds who did not participate in the program.

Talent Search

- These programs help young people in grades 6 through 12 better understand options in higher educational, and available financial assistance.
- Over 302,000 Americans are enrolled in 319 Talent Search TRIO programs.

Educational Opportunity Centers

- The Centers help workers from low-income families-- often women on welfare and displaced workers-- to choose a college and find financial aid.
- There are 74 Educational Opportunity Centers in America.

Ronald E. McNair Post-Baccalaureate Achievement

- Faculty mentors and research opportunities encourage people from low-income families and minority undergraduates to pursue college teaching careers or post-graduate education.

Race-minority enrollment

Hopwood/209 mtg

Texas investigation - Dec/Jan complete invs.
Then: decide what to do w/ info
what sort of remedies - race neutral or
race based

California - complaint of current discrimination
issue related to race (disproportionate fund)
next - what's causing it.
End of yr for invs.

Hatch letter to Fey.
asked to cease + desist.
Hatch/McDonnell.

9c
Lighthizer - - Eubank - This month possibly.

Monitoring Wash DC/GA cases
law school

Hard to see how to bring Hopwood

ministry -
not yet
light pt
to jump in
each up

Calif Report - split decision - minority report w/ more recs.

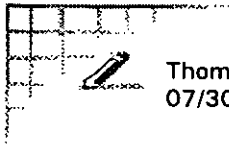
Partnership programs

miss say not enough \$

should be 10% rule
(use CA campuses - adopt diff shds)

\$20 m - 40 grants at 1/2 m apiece

Race-minority enrollment



Thomas L. Freedman
07/30/97 05:10:42 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: Re: civil rights etc.

Thank you. We've meet with Bill K. now and here are the steps I would propose on Hopwood/209.

The problem bifurcates between litigation (overturning the decision/law) and substance, ensuring actual diversity in higher education. The litigation peice is going forward. We set ourselves the task of figuring out ways to promote diversity in higher education-- no matter the strict legal requirement.

This issue seems to break down into parts: longer term-- preparing students to be ready for college and graduate school, and more immediate-- making sure they have access to those college/grad programs.

Thus, our urban/race agenda is very applicable to this problem as part of our long-term solution. Listing changes to make sure students get the preparation to be ready to take advantage, and compete in higher education. We break this down to programs for pre-K, K-8, and high school. (inner city teachers, head start, pell grants for 6th graders, etc.)

For the access issue we are creating a laundry list of possible reforms (reaching out to talented minority students, universities partnering with urban high schools, free AP tests, automatic admission if you are in the top 10% of your H.S. class, etc) we can start looking at.

We'll put together a memo we hope to get to you by Friday, it should include a very preliminary list of programs along the lines of above and a suggested process: who we invite to our first meeting, what we are looking for from them and by when.

This seems like a useful way to start the effort.

Regards, Tom

Race-affirmative action

and

Race-minority
enrollment



Bruce -
FYI.
Elena

July 30, 1997

The Honorable William Jefferson Clinton
President
United States of America
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Clinton:

When you delivered your "race relations" speech at the University of California (UC) on June 14, 1997, I, like most Americans, listened with an open mind to your message. You rightfully pointed to race relations as one of America's greatest challenges. While you and I do not agree about how to heal race tensions, I believed that our goals for our nation and its people were shared ones.

When you announced the appointment of your Presidential Advisory Panel on Race, although I was deeply concerned about the one-sided composition of that panel, I essentially reserved public comment because of your assurance that the panel would "listen to Americans from all races" and "promote a dialogue in every community" as well as "help educate Americans about the facts surrounding the issues of race."

Yet, in the weeks following your San Diego speech, you, your panelists, and members of your administration, have given speeches and made public remarks which demonstrate that this endeavor is anything but open-minded and objective.

Let me give you some examples. First, during your San Diego speech and your recent appearances before the National Association for the Advancement of Colored People (NAACP) and the National Association of Black Journalists (NABJ), you made highly critical remarks about California's Proposition 209, as well as about the proponents of that Initiative.

Those of us who voted for Prop. 209 know why we supported this measure. For you to tell the nation that the vast majority of Californians voted for the measure "with a conviction that discrimination and isolation are no longer barriers to achievement"

is just plain wrong. Your statement to the NABJ -- "I don't know why the people who promoted 209 in California think it's a good thing to have a segregated set of professional schools"- is just plain irresponsible.

No one "promoted" 209 more than I, so I believe it is fair to assume that you are characterizing me as a proponent of racial segregation. This is not my position nor that of anyone I know who was involved in the Prop. 209 campaign. We do not believe a segregated set of professional schools is a "good thing"; that is why we are the ones in this debate who are fighting to unify Americans by having our government treat everyone as equals regardless of race--as the U.S. Civil Rights Act of 1964 intended. We acknowledge that discrimination still exists and we call on you to strengthen the enforcement of those anti-discrimination laws that are on the books.

No one of goodwill wants our public institutions segregated. Yet, under your leadership the federal government continues to give financial support to historically black colleges. Are you not offended by government supporting the segregation manifested in these schools? Wouldn't your leadership be better demonstrated by encouraging those black students who were admitted to Boalt Hall, but who chose not to attend, to enroll at Boalt.

You know as well as I that few public institutions -- even those with a prestigious reputation like Boalt -- can compete with the financial packages offered by Yale, Harvard, Columbia, Duke and the other private schools which most of those fourteen black students admitted to Boalt will be attending. The only way we can come close to matching such packages is to provide massive race-based scholarships -- and, this we will not do.

Instead of making inflammatory statements about "resegregation," why aren't you talking about what America needs to do to make black and Latino students competitively admissible without the need for "bonus" points based on race, or without our having to lower or change the academic standards for students based on race? Wouldn't it be more productive to engage the nation in a discussion on school reform -- including the benefits of magnet schools, charter schools and school choice?

You went on to say, in speaking to the NABJ, "It would seem to me that, since these professionals are going to be operating in the most ethnically diverse state in the country, they would want them to be educated in an environment like they're going to operate." Of course, we do. But, we are not prepared to abandon our commitment to the moral principle of equal treatment under the law in order to achieve that diversity.

I am including in this transmittal a paper written by one of the most preeminent political science professors at the UC Berkeley

Graduate School of Public Policy, Martin Trow. Trow's paper - Racial and Ethnic Preferences in Admissions to the Law School of the University of California, Berkeley (Boalt Hall) in 1996 and 1997 - should dispel any doubt about the extent of the discrimination against Asians and whites which has been occurring at Boalt Hall in the name of "diversity."

If after reading this report you are still inclined to blast Prop. 209 - which hasn't even taken effect, due to efforts on the part of your administration to thwart implementation of the measure - then I can only assume that you are, indeed, a proponent of preferences and discrimination.

In your speech to the NAJB, You said that "...a lot of people who even voted for Proposition 209 have been pretty shocked at what happened, and I don't believe the people of California wanted that to occur. I think the rhetoric sounded better than the reality to a lot of people."

What "shocks" us, Mr. President, is finding out that the magnitude of the preferences has been so obscene. What "shocks" us is that you and others are so content to allow so many black and Latino students suffer the illusion that they were academically competitive when they were not. What "shocks" us is the predisposition of some, led by you, to maintain this fraud without honestly confronting the problem.

What "shocks" me is that the President of the United States and his Education Department believe that race-neutral criteria (such as grade point averages and standardized tests) are discriminatory solely against blacks and Latinos - a position which the Sacramento Bee characterizes as "an Orwellian misreading of the law." I am "shocked" that your administration would foster the notion that black and Latino high school and college graduates should not have academic criteria applied to them, and that they are incapable of competing in an open academic competition against Asians and white applicants?

As the dean of admissions at UCLA law school, Michael Rappaport, said, "I hope ... the federal government is not suggesting an academic institution can't use academic criteria when evaluating candidates for its academic programs?" And, yet, that is precisely what you are suggesting, and it is truly "shocking."

Yes, I am "shocked" that an American President would say that he is looking for "ways to get around" a vote of the electorate (Prop. 209) and a decision of a Circuit Court (Hopwood).

Which brings me to my concern about your race panel. Recent statements by the panel, including "one of America's greatest scholars, Dr. John Hope Franklin," give an indication that this panel is not, in fact, approaching its task with open minds.

For example, Dr. Franklin, upon learning of your scheduled appearance at the NAACP conference, said, "The white side (emphasis added) has been in control of everything, so they're the ones who need educating on what justice and equality mean." Do you seriously think comments like this will inspire all Americans -- including white Americans -- to join in this "great and unprecedented conversation about race?" I think not.

I am not the only one who is recognizing a bias on the part of your race panel. Ronald Brownstein of the Los Angeles Times reported last week that the message coming from the first meeting of the race panel was that "America is a racist country. Deeply, broadly racist. Perhaps irredeemably racist."

Angela Oh, the only Californian on the panel - and one whose views do not represent the mainstream of her state on this subject - commented that the panel should not waste its time documenting the extent of discrimination because, in Brownstein's words, "it is so widespread." Oh herself said, "I don't need the data. I don't think any of us need the data; we know it's there." How does that square with your statement that this panel will help "educate Americans about the facts surrounding issues of race?" Clearly, at least one member of your advisory board is not interested in facts.

Dr. Franklin then described American culture as pervasively racist. "Our whole country, our whole practices are suffused with it," he said. "...Wherever you go, you are going to see this." I and the majority of Americans take great issue with this comment. America is not a racist nation. We surely have people--of all colors--who are racists, but our nation is not racist.

These statements confirm that you and your panel seem to be less concerned with improving race relations than you are with derailing the national movement to eliminate affirmative action preferences. This has to be what you meant when you called on the NAACP to help you "turn this thing around."

On the day that you told the NABJ and the NAACP that you were trying to get around Prop. 209, the UC Regents approved a plan, developed by a Task Force which my resolution (SP-1) created, to improve the academic performance of black and Latino students so that they won't need preferences based on their skin color and ethnic background. Why can't you applaud our efforts to engender diversity at UC the right way instead of complicating them?

I sent you a letter before your speech in San Diego which articulated a perspective shared by the supporters of Prop. 209. It is clear from your comments of late that either you did not read the letter or that you simply chose to ignore the alternative perspective presented (a perspective, I might add, that is shared by a majority of Americans).

One paragraph from that letter bears repeating: "If your legacy is to be that of a president who provides leadership in improving race relations among our people, I respectfully submit, Mr. President, that it must be as one who smoothed the transition from race matters ideology to a less race- and color-conscious America, and eventually to a nation where race and skin color are as irrelevant as our blood type in American life and law."


Until now, I have been hopeful that your 11th-hour entry into the debate about race in America would advance the issue and move us forward toward one nation, as you profess. Now, I pray that at the end of this year-long project that matters will not be worse as a result of your efforts. To accuse a majority of the people in the state which represents one-eighth of the nation's population of promoting racial segregation is not my idea of improving race relations. To describe this nation as a racist nation is neither productive nor true. To the contrary, it is a sure-fire formula for heightening resentment, bitterness and polarization.

From the beginning, many have said that your panel is not balanced enough to reflect the different American perspectives on this issue. If you are truly interested in having this panel's work taken seriously, I strongly suggest that you expand the panel to include an equal number of those with views different from those presently represented. People like Shelby Steele, Linda Chavez, William Bennett, Anita Blair of the Independent Women's Forum, Sally Pipes of Pacific Research Institute, Abigail Thernstrom, and Ed Koch, a former Mayor of New York come to mind.

Further, if you want to advance the dialogue about race relations, and if you want to know what prompted the people of California to approve Prop. 209, I invite you to come to California to an audience of my choosing and make your NAACP/NABJ speech, and I will go to one of your choosing and make the case for Prop. 209. It is no act of courage for any of us to appear before crowds that are selected for their affection toward our respective positions and tell them what they want to hear.

Above all, for the good of the nation, I plead with you and your advisors to discontinue using inflammatory rhetoric suggesting that the proponents of 209 want to "re-segregate" America. This most assuredly will divide us into separate camps that will be more polarized at the end of this dialogue than we were at the beginning.

Sincerely,


Ward Connerly
Chairman

Racial and Ethnic Preferences in Admissions to the Law School of the University of California, Berkeley (Boalt Hall) in 1996 and 1997

Martin Trow
Graduate School of Public Policy
U.C. Berkeley, 94720

Affirmative Action and Discrimination at Boalt

In all the talk about affirmative action we hear a good deal more rhetoric than facts. There were very few facts during the President's speech in San Diego on June 8, but he, along with many others, have made reference to Berkeley's Law School (as well as to the Law School at the University of Texas) as evidence of the bad effects of the abolition there of what is called "affirmative action." What almost no one has talked about are the effects of the old ethnic and racial preferences in admissions on those excluded as well as on those admitted. But it might be useful to actually look at the patterns of racial and ethnic preference based on information about the applications and admissions to Boalt Hall in 1996 provided by the School itself, that is, the patterns in place before the new policies passed by UC's Regents in July 1995 were put into effect there.¹ What we see in these figures is a pattern of discrimination based on racial and ethnic preferences that far exceeds almost everyone's notions about the nature and effects of affirmative action, which most of its supporters have imagined to refer to a marginal advantage given to members of some groups over others of roughly equal ability and qualification. What we see in these data are not marginal advantages to disadvantaged social groups, but gross preferences that can only reflect a pattern of racial and ethnic bias.

Admissions to Boalt has been organized around placing applicants into one of four ability Ranges, A through D, from the highest scores to the lowest, defined by a combination of the student's grade point average and scores on the LSAT.² In 1996 only 855 students were admitted to Boalt out of 4684 who applied.³ But the proportions admitted were very different among the different ethnic and racial groups and in the different ranges.

¹ These data were obtained by Mr. Dan Guhr, a graduate student at Oxford University doing his dissertation on comparative patterns of access to higher education in several advanced societies. We want to thank the Office of Admissions at Boalt Hall for making these data available to us.

² For example, the chart for California residents defines Range A as including stepped combinations of GPAs from 4.00 to 3.80 and LSATs from 167 to 178. So a GPA of 4.00 and LSATs of 167 to 171 are included, as are a GPA of 3.80 and a LSAT score of 178.

³ In both 1996 and 1997 fewer than 1 applicant out of every 5 were admitted by Boalt, (18.2% in 1996 and 19.9% in 1997).

Let us first look at those students whom we can call "Asian," made up of those who identified themselves as of Chinese, Japanese, Korean, Vietnamese, East Indian and Pacific Island origins; then at students in four groups -- Blacks, Chicanos, Puerto Ricans and Native Americans -- whom we can refer to as "Affirmative Action," or A.A., groups, who were the objects and beneficiaries of racial and ethnic preferences before the Regents' action of July 1995; and then at the group of applicants who are "Caucasians."⁴ Each cell in Table 1 shows the numbers in a specific ethnic and ability Range group who were admitted to Boalt as a fraction of the number from that group who applied, with the ratio of those numbers in percent below.

Table 1
Ratio of Applications to Admissions, UC Berkeley Law School, by
Ethnic or Racial Group and Ranges, 1996

ethnic group	Ability Range			
	A (high)	B	C	D (Low)
	admit/app ratio	admit/app ratio	admit/app ratio	admit/app ratio
Asian	36/37 = 97%	59/85 = 69%	24/127 = 19%	2/492 = .4%
A.A. group	2/2 = 100%	15/16 = 94%	27/35 = 77%	100/696 = 14%
White	157/166 = 95%	182/295 = 62%	101/607 = 17%	19/1223 = 1.5%

⁴ Five applicant groups reported by Boalt are omitted from these tables and discussion. Students classified as "Foreign," "Other," and "Declined to Answer" were clearly treated in 1996 as not eligible for affirmative action preferences -- with admission/applications ratios much like Caucasians and Asians. We also omit the small groups of "Pilipino" and "Latino" applicants, who were admitted at slightly higher rates than Caucasians and Asians, but were not accorded the same affirmative action preferences as were the four groups that we include in that category. The key is in the proportions admitted from Range D applicants: in 1996 only 4 out of 111 Latinos and 2 out of 64 Pilipinos who were Range D applicants were admitted.

A glance at this table shows dramatically the workings of affirmative action as it was exercised at Boalt Hall before the application of the new Regents' policies, a pattern of very large differences between these groups in the ratios of admissions to applicants within the three of the four ability ranges. Only 18 applicants from the AA groups fell into the top two ability Ranges, and all but 1 of them were accepted. And that is true for the other two groups: almost all applicants from Range A were admitted. But substantial differences in admission rates begin to appear among applicants from Range B (69% and 62% for Asians and Whites respectively, versus 94% for AA groups), and are very large in the lower two ability Ranges C and D. Of the 124 Asian applicants in Range C, only 24, or 19%, were admitted; and of the 607 whites in that range, 101, or 17%, were admitted. But of the 35 members of Affirmative Action groups in that Range, 27 or fully 77% were admitted. And in the lowest ability Range D, only 2 out of 492 Asian applicants were admitted (.4%), as compared with 100 out of 696 (14%) Affirmative Action applicants. The proportion of Whites admitted from that ability Range, 19 out of 1223, or 1.5%, was almost as low as among the Asians.

When we look at specific ethnic groups, not shown in this table, the differences are even more striking. In ability Range C, 10 students of Japanese origins applied; an equal number of Blacks applied for admission in that same Range. All 10 Black applicants in that Range were accepted, not one of those of Japanese origins. Of the 384 Black applicants in Range D, 62 were admitted. By contrast, of the 174 applicants of Chinese origins in that same ability Range, not one was admitted to Boalt Hall.

Changing Patterns in 1997

The application of the new Regental rules had a noticeable effect on these discriminatory patterns of admissions. In 1997, the corresponding numbers and ratios for these groups look as follows (Ranges A and B are combined for simplicity) in Table 2:

Table 2
Ratio of Applications to Admissions, UC Berkeley Law School,
by Ethnic or Racial Group and Ability Ranges, 1997

ethnic group	Ability Range		
	A + B(high) admit/app ratio	C admit/app ratio	D(low) admit/app ratio
Asian	75 / 79= 95%	35 / 81= 43%	4 / 282= 1.4%
A.A. group	15 / 14= 100% ⁵	9 / 20= 45%	26 / 461= 5.6%
White	326 / 380= 86%	134 / 515= 26%	23 / 978= 2.3%

While in 1997 traces of racial/ethnic preference are still to be seen in the admissions patterns – the distinctly lower proportions of Whites admitted in Ranges A through C than of the other two groups, and the higher proportions of A.A. groups admitted in Range D – still the contrast with the patterns of 1996 is clear: the inequities in admissions ratios among the several groups are greatly reduced. The impact of the Regents' policies abolishing race and ethnic preferences is visible in the figures, and take on added significance when we see what inequities they were addressing in Table 1.

On the decline in minority admissions between 1996 and 1997

Various observers of the changes in the pattern of admissions to Boalt Hall between 1996 and 1997, including the President of the United States, have noted that when the new rules were put into effect in UC, Black and Chicano enrollments in Boalt fell dramatically. And that is in fact the case. We might ask how that decline came about, and in what portion of the applicant pool it was most pronounced?

Between 1996 and 1997 the applications to Boalt by Blacks fell from 401 to 254, a drop of over a third (37%). The number of Blacks admitted to Boalt in those years fell from 77 to 18, an even bigger decline of over three-quarters

⁵ This anomaly exists in the original data; we have just treated the ratio as 100%.

(77%). Similarly the number of Chicano applicants to Boalt fell from 283 to 195, a drop of nearly a third (31%), and of admits from 53 to 27, a drop of nearly half (49%).

Where did these declines come from -- among the ablest or least highly qualified applicants?

First, let us look at the changes in applications and admissions of Blacks in the three higher ability Ranges between 1996 and 1997. In 1996 15 Black students in those Ranges applied, and 15 were admitted. In 1997 11 applied and 7 were admitted. So there were only 4 fewer Black applicants between those years, and 8 fewer admits in those higher Ranges. However, in Range D, where almost no Asian or Whites are admitted (see Tables 1 and 2), the sharpest declines in both Black and Chicano applications and admissions occurred. Between 1996 and 1997 there was a decline in Range D Black applications from 384 to 239, and of admissions from that Range of from 62 to 11. Thus, of the total decline of 59 in the number of Blacks admitted to Boalt between 1996 and 1997, 51, or 86% were from the ability Range D, where few non-AA students were admitted in either year. One can at least raise the question of whether so many of those students should have been admitted on affirmative action preferences in 1996.

Among Chicanos in Range D, the decline in applications between 1996 and 1997 was from 250 to 175, a drop of nearly a third (31%), and of admits from 53 to 27, a fall of nearly half. But again, the decline came largely though not entirely from Range D candidates. Of the whole decline of 26 Chicano admits between those years, 12 were in Ranges A through C, and 14 in Range D. So a little over half (54%) of the decline in Chicano admits came from applicants in Range D.

If we were to add in the smaller AA categories, Native Americans and Puerto Ricans, the figures do not change much. In 1996 18 applicants from these two groups were admitted as compared with only 4 in 1997. Of the difference of 14 applicants, 5 came from the higher three Ranges, and 9 from Range D, nearly two-thirds (64%) of the total decline in admits from those groups between those years.

If we combine these AA groups, as we did in the Tables 1 and 2, we see that there was a decline of 99 persons from these four AA groups admitted to Boalt between 1996 and 1997. Of these, 74 represented a decline in admissions of applicants from ability Range D, or almost exactly three-quarters (74.7%). These were applicants who probably would not have been admitted in 1996 if they had been Caucasian or Asian, or had "Declined to Answer" the question about their ethnicity, or in fact in any other than the four AA categories.

Conclusion

After all the talk about diversity and excellence, we see in the 1996 figures the true face of "affirmative action," a pattern of gross racial and ethnic discrimination that reminds us of past patterns of academic discrimination against Blacks and Asians, Jews and Irish, and others. No rhetoric can justify these patterns; and the Regents were right to abolish those practices, as also were the California voters who passed Proposition 209 in November 1996. Much of the justification for racial and ethnic preferences has pointed to its supposed advantages for the preferred groups – "advantages" which may include the stigmatizing of all the members of those groups, including those who gain admissions to universities on their own merits. But almost nothing is said about the costs to the non-preferred groups, many of whom also suffered discrimination in the past and who now suffer the new forms of discrimination that "affirmative action" has institutionalized.

OPINION

Tuesday, July 29, 1997

Racial cynicism

Clinton probe of UC admissions ignores the law

Judith Winston, general counsel of the U.S. Department of Education, apparently believes that federal civil rights law requires the University of California to do what the U.S. Supreme Court and the law barely permit: Grant racial preferences in admissions. Alarmed that black and Hispanic enrollment at University of California law schools is falling in the wake of the university's decision to end racial preferences in admission, her department's Office of Civil Rights is now investigating UC on the theory that using academic standards in admissions is a form of racial discrimination.

That is an Orwellian misreading of the law. Equally important, the investigation is an abuse of federal power, designed to punish California and its citizens for making a decision on affirmative action that, however overboard it may have been as a matter of policy, is plainly within the scope of the Constitution.

In comments to the Los Angeles Times, Winston said that, in dropping racial preferences and relying on individual grades and test scores, California may have broken the law. She implied that if UC's use of academic standards in admissions worked to exclude minorities, the burden would fall to the university to prove "those are the best measures" for selecting students and "no other nondiscriminatory alternatives" are available.

What next? Will the Clinton administration also decide to investigate Cal and UCLA because their use of such criteria as scoring averages and rebounding prowess, which have worked to exclude whites, Asians and Hispanics from their basketball teams,

are also racial discrimination?

In cases involving employment, the Supreme Court has indeed held that employment standards that have a disparate impact on minorities and women must be justified. That has properly allowed job-seekers to challenge job requirements, such as minimum height requirements for firefighters, that aren't relevant to the job and were used to exclude women.

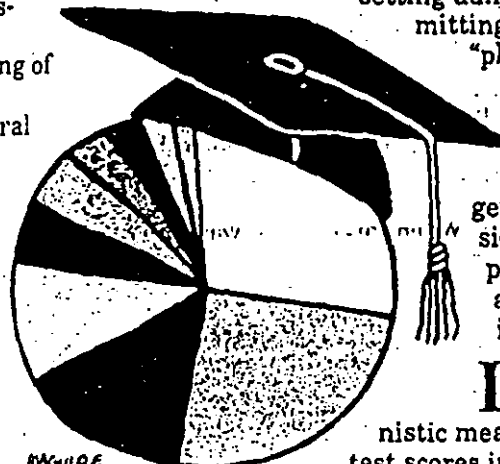
But in the 1978 Bakke case, which upheld affirmative action at UC, the U.S. Supreme Court gave broad deference to universities in setting admission policies, even permitting the use of race as a

"plus" factor. The theory

behind the Clinton administration investigation turns Bakke on its head: Universities get no deference in admissions, an always subjective process, and racial criteria are mandatory. And peace is war and love is hate.

It would be wrong for UC to rely entirely on mechanistic measures such as grades and test scores in admissions. Grades mean different things at different schools and tests cannot measure personal qualities such as initiative, empathy, leadership and creativity. And in fact, the UC law schools correctly used other criteria, including giving preferences to students from disadvantaged backgrounds, in picking their next class.

But the Clinton administration ignores that fact as blithely as it ignores the law. With its investigation, it courts minority voters by holding out the false hope of restoring affirmative action at UC. How does that kind of cynical politics lead to the racial healing the president, says he seeks?



MAGUIRE

Maguire + Special
to The Bee

JUL 21 1997 12:18PM

OFFICE OF SECRETARY

NO. 2290 P. 7/7

Race-minority enrollment 16

12. Education Daily

July 10, 1997

NEWSMAKER

Arthur Coleman has been named a deputy assistant secretary in the Education Department's Office

for Civil Rights, a newly created position. Coleman has served as the senior policy advisor to the assistant secretary

for civil rights for three-and-a-half years. ■

Tom F
FYI
Elene

13. Education Daily

July 9, 1997

TO RAISE MINORITY ADMISSIONS, TASK FORCE LOOKS TO TEACHERS

A task force's \$60 million plan to increase minority enrollment at the University of California (UC) would make training and retaining teachers in disadvantaged schools a priority.

For the university system's outreach program to improve academic achievement at 50 poor-performing high schools, the task force says in a recent report, spending "must focus particularly" on improving the teaching of subjects required for UC admission.

While the task force acknowledged that factors such as poverty and parents' education level contribute to poor achievement, its report said teaching in the bottom fifth of "educationally disadvantaged" schools can be improved.

Among students who take the SAT, the average score in the bottom fifth of schools is 715, compared to 1007 in the top fifth.

The task force estimates the total cost of professional development at \$18.5 million annually, or about \$370,000 at each of 450 schools — the disadvantaged high schools, plus 400 "feeder" elementary and middle schools.

The governor's office and the state legislature committed about \$4 million annually for the university system's

outreach programs before the task force made its recommendations. The task force says the rest must be raised through a massive campaign by parents, schools and industry.

The UC board of regents is to vote next week on the proposal, which is a response to the university eliminating affirmative action in undergraduate admissions beginning this fall (ED, July 24, 1995).

The 35-member task force has outlined an ambitious program of "school-centered partnerships" between UC campuses and the disadvantaged secondary schools, where 80 percent of the students are minorities (ED, May 22).

Turnover Terrible And the group's spending guidelines unveiled last week emphasize the need for better-trained teachers in college preparatory subjects.

The report said the need for new teachers in disadvantaged schools is "especially acute" because of high turnover rates.

"Teachers in these schools are much more likely to be young and inexperienced and much more frequently teach outside their area of training," the report said. "Mathematics and science teachers are in especially short supply for disadvantaged schools."

The task force urges intensive four-week summer training for teachers, as well as school-based inservice training.

Expanding teacher training and retention programs would double the number of K-12 students who participate in outreach, the report says, by making better use of the university system's resources and passing along that information to students.

The plan also calls for \$7.9 million annually in informational outreach to families, and \$7.55 million per year for technology.

California voters last fall approved Proposition 209, which outlawed racial preferences in state hiring and state university admissions (ED, Nov. 7, 1996).

A three-judge federal appeals court panel upheld the ban because it treats all races neutrally, but supporters of affirmative action have appealed that ruling to the full U.S. Ninth Circuit Court of Appeals (ED, April 9).

To view the University of California outreach task force's draft report, visit the group's Web site at <http://www.ucop.edu/acadaff/out/cover1.html> — Dave Boyer ■

62. Sacramento Bee

June 24, 1997

Beyond the numbers: UC admissions to consider human qualities, too

Following the University of California regents' decision to abolish race- and gender-based affirmative action programs, UC's nine campuses are actively searching for other ways to compose student bodies that reflect the state's growing diversity. The task is key not only for the university system but for the entire state, whose economic and social well being will depend on UC's ability to keep its doors open to a broad swath of capable students from all corners of the state and all backgrounds.

Sensibly, the nine campuses will each experiment with different admissions policies in an effort to achieve that diversity. In considering students for admission, each will examine a variety of personal circumstances and accomplishments in addition to grades and scores. It's a refreshing departure from the prior myopic focus on numbers and, in some instances, skin color.

UC Davis, for example, will offer 60 percent of the 3,700 places in its 1998 freshman class to applicants with the highest grades and test scores. But in filling the remaining 40 percent of the class, the admissions office will give

weight to other factors, including extracurricular leadership experience; attendance at a high school that is economically disadvantaged and has a historically low level of UC attendance; residence in the three counties — Sacramento, Solano and Yolo — closest to the university; military service; and marked academic improvement in the 11th grade.

Though this gives UC Davis some flexibility, the new policy calls for consideration only of students who meet UC minimum eligibility requirements: a combined 1,000 on the SAT and a high school grade-point average of 2.82 in designated college-preparatory courses.

UCLA will give an advantage to applicants from disadvantaged urban and rural neighborhoods. UC Irvine will look at an applicant's whole profile: not just grades and test scores, which the campuses in the past have relied upon so heavily, but also personal essays and extracurricular activities. UC San Diego will look at "special circumstances and personal challenges," which could include whether an applicant is trying to become the first in his or her family to

attend college.

These new efforts promise to make the admissions process much more complicated and, where the special considerations are concerned, subjective. In a public university system financed with taxpayer dollars, it could lend itself to controversy. But human factors can tell as much or more as numbers about a student's potential, and UC is right to weigh them.

There may need to be tuning. UC Davis may find that its special consideration of students from the three surrounding counties draws too small a circle. UCLA will probably discover that finding qualified candidates from the poorest high schools will require assisting those schools in preparing students for the UC workload — a task the university system has already identified as key to the success of maintaining a diverse student body without race preferences in admissions.

And with the future of the proposed Merced campus uncertain, the rest of the system must ensure that students from the Central Valley and the state's far reaches are given a fair shot. ■

Race-minority enrollment

After affirmative action, what happens?

UNC Greensboro professor Linda Wightman has the data on diversity in decline

By **FOON RHEE**
Staff Writer

It made national headlines when the top public law schools in California and Texas said they would enroll virtually no new black students this fall because of new bans on affirmative action.

It didn't surprise UNC Greensboro's Linda Wightman.

In fact, she predicted it in a study getting lots of national attention in the race preference debate.



Wightman

And she says the same thing would happen in the Carolinas and other states if racial preferences ended in admissions. "Absolutely," Wightman says. "The student body would look dramatically different than it does now."

The bottom line: While black law school students graduate and pass the bar exam, many just don't have the highest test scores and grades to get in if race is entirely removed as an admissions factor.

That decline in diversity would be a great loss, she says — to black students who would lose opportunities, to white students who would lose different views in class, to the legal profession and to the country.

"We are increasingly a multicultural society," Wightman says. "Any steps we take that make higher education institutions mostly white is a result under which everyone loses."

Wightman is looking for a "surrogate" for race in admissions — another factor that could be used to create a diverse student body.

To her dismay, she hasn't found one. In her study, she looked at giving added weight to:

■ **Socioeconomic background.** Many pundits and policy analysts argue that nearly the same number of black students and other minorities would be admitted if schools gave preference to those who overcome poverty and other hurdles.

"It does not," at least for law school applicants, Wightman says.

She found that black students with higher

grades and test scores come from the upper-middle class as well. She also found that there are poor white students who would also get a leg up.

And she found that giving enough weight to socioeconomic status to create a diverse student body would mean admitting students who are less well-prepared, widening the academic gap between white and black students.

■ **Undergraduate major.** Another theory is that black students are concentrated in certain majors, such as education. So they would get admitted more often if schools gave more credit for those majors.

But Wightman found that black students and other minorities applying to law school are scattered throughout lots of majors. "That didn't work either," she says.

■ **Selectivity of the undergraduate school.** Another idea: Give more weight to the selectivity of the applicant's college.

But she found that black applicants are scattered through all kinds of schools.

LAW SCHOOL ADMISSIONS

Here's what happened to the number of black students after affirmative action policies ended at two top public law schools, and comparable figures for the Carolinas.

University of California, Berkeley	1996	20
	1997	1
University of Texas, Austin	1996	31
	1997	3
UNC Chapel Hill	1996	38
	1997	30
USC, Columbia	1996	21
	1997	15

Note: Figures are for students who enrolled in 1996 and those expected to enroll this fall.

SOURCES: The universities

Staff graphic

Please see **LAW SCHOOL** / page 4C

Bill - doesn't your get hold of this article? Thanks. Steve cc: Bruce

... the reversal of two pioneers in the reversal of two decades of affirmative action. The University of California's hopes to continue bringing hard data to the raging affirmative action debate. "It's very much my role now," she says.

Tom F... FYI Steve

After affirmative action, what happens? Professor's prediction is playing out

LAW SCHOOL

Continued from page 1C

"None of these factors showed promise for helping to identify an ethnically diverse group of qualified students," her study says.

She says it's "very difficult" and subjective to find factors other than pure numbers — test scores and grade point averages — to use for admission decisions.

Wightman, 52, brought a wealth of experience from her job as vice president at the Law School Admissions Council, which administers the Law School Admissions Test. She joined UNCG in January as an associate professor of education research methodology, doing her studies and teaching graduate students in education and other fields.

The last few weeks, she and her study have won mention in national magazines such as *Newsweek*, *Time* and *U.S. News and World Report*. She's appeared on cable TV's *CNBC* and *MSNBC*, and on National Public Radio.

Her study, "The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a

Factor in Law School Admission Decisions," appeared in the *New York University Law Review* in April.

Looking at all law school applicants nationwide in 1990-91, it found that if test scores and grades alone decides who gets in, law schools would look like the largely white ones of 30 years ago. Only 10 percent of black applicants admitted under affirmative action would get in, she estimates.

Reality is proving even more dramatic than her prediction.

Two weeks ago, the University of California at Berkeley announced that it expects only one black student in this fall's new law school class of 270. That's down from 20 black students in last year's entering class.

The University of Texas at Austin said it expects three black students among 500 first-year students this fall — down from 31 in the class that started last year.

They are the top public law schools that provide many legal, business and political leaders in the nation's two biggest states.

Now, they're the pioneers in the reversal of two decades of affirmative action.

The University of California's

governing board voted in 1995 to eliminate race and gender as factors in admissions, a policy that takes effect with graduate students starting this fall and with undergraduates next year.

The U.S. Supreme Court last year upheld a ruling barring public colleges and universities in Texas, Louisiana and Mississippi from considering race in admissions.

So far, the Carolinas and other states haven't followed suit, though some politicians are pushing for race-neutral policies. Meanwhile, the number of black law school students isn't declining nearly as drastically.

Of 268 students accepted and considering attending UNC Chapel Hill's law school in the fall, 30 are black, compared to 38 in the class that started last fall. USC's law school in Columbia expects 15 black students to enroll in the fall, compared to 21 last year.

Wightman plans to continue her research into diversity in the legal profession. She's now looking at national bar exam results.

And she hopes to continue bringing hard data to the raging affirmative action debate.

"It's very much my role now," she says.

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THE THREAT TO DIVERSITY IN LEGAL EDUCATION: AN EMPIRICAL ANALYSIS OF THE CONSEQUENCES OF ABANDONING RACE AS A FACTOR IN LAW SCHOOL ADMISSION DECISIONS

LINDA F. WIGHTMAN*

The use of affirmative action policies in school admissions has been a continuing source of controversy. In the wake of Hopwood, it is unclear if their continued use will even be possible. In an effort to inform the debate, Professor Wightman has engaged in a comprehensive empirical analysis to examine the impact of abandoning considerations of race and ethnicity in the law school admission process. Using data obtained from students who applied to law schools in 1990-1991 and from Fall 1991 first-year law students, she examined the likely effects of an admission policy that relied exclusively on LSAT scores and undergraduate grade-point averages. Countering arguments that affirmative action policies merely reallocate minority students among schools, Professor Wightman's study indicates that such a "numbers only" policy would result in a sharp increase in the number of minority applicants who would be denied access to a legal education, not just at the schools to which they applied, but to any of the law schools included in the study. In striking contrast to the decline in admission rates, Professor Wightman found

* Associate Professor, Department of Educational Research Methodology, University of North Carolina at Greensboro. Ed.D., 1982, Rutgers University. At the time this research was conducted, Professor Wightman was Vice President for Testing, Operations, and Research, Law School Admission Council, Inc. The opinions expressed in this Article are those of the author and do not necessarily reflect those of the University of North Carolina or of Law School Admission Council, Inc. The review and critical comments provided by Lloyd Bond, George Dawson, Charles Daye, and Leigh Taylor are gratefully acknowledged.

no significant differences in the graduation rates and bar passage rates between those minority students who would have been accepted to law schools and those who would not. Thus a "numbers only" policy would deny a legal education to many minority applicants who were fully capable of the rigors of legal education and of entering the legal profession. Professor Wightman also examined whether any of several factors, such as socioeconomic status, could serve as an effective proxy for race and ethnicity in order to achieve a diverse student body. None of the factors she studied indicated satisfactory results. In short, Professor Wightman's study shows that affirmative action policies are likely a necessary prerequisite to maintaining a diverse yet capable law school student body.

INTRODUCTION

Questions about what role, if any, race should play in a variety of decisions ranging from awarding government contracts to offering admission to undergraduate, graduate, or professional school programs have attracted considerable public attention and debate in recent years.¹ This study focuses on empirical data related to only one of those questions—the role of race as a factor in the law school admission process. In order to bring forward current data and statistical and psychometric models that can inform the discussion, this study examines, first, statistical evidence that law school admission practices provide preference to applicants of color and, second, the potential effect on the ethnic makeup of legal education today if those practices are abandoned. The results reported here sometimes support—and other times refute—assertions about the applicant pool, the Law School Admission Test (LSAT), and the admission process that frequently are incorporated into the competing legal and social arguments put forth during discussion of affirmative action issues.

The debate over the role of affirmative action in the law school admission process is closely linked to the difference in opinions about the role of the two most commonly used quantitative predictors of future academic performance—undergraduate grade-point averages (UGPAs) and scores on the LSAT, a standardized multiple-choice test

¹ See, e.g., Stephen L. Carter, *Reflections of an Affirmative Action Baby* (1991) (discussing case for and against affirmative action from author's perspective as black professional in era of affirmative action); Cornel West, *Race Matters* 63-67 (1993) (supporting affirmative action as necessary to redistributive measures in America); Stephanie M. Wildman, *The Dream of Diversity and the Cycle of Exclusion*, in *Privilege Revealed: How Invisible Preference Undermines America* 103, 103-37 (1996) (discussing obstacles to attainment of nondiscrimination in area of law school faculty hiring).

of acquired reading and reasoning skills.² The disagreement is fueled, in part, by a perceived tension between two approaches to admissions. On the one hand, there is support for achieving diversity in student enrollment through consideration of the race of applicants as one of the numerous factors evaluated. On the other, there is support for limiting consideration strictly to competitive indicia of an applicant's individual academic achievement by relying heavily on quantifiable factors such as LSAT score and UGPA.³

In the world of high stakes, competitive law school admissions, the LSAT score and UGPA provide readily available, quantifiable, and apparently objective aids to admission decisionmaking. Partly at issue in the debate is the proper role of grades and test scores in the admission process.⁴ Should their role be limited to providing evidence that the applicant is likely able to meet the academic rigors of the legal education program to which she is applying? Or should comparatively higher test scores and grades alone warrant being preferred in all cases for a seat in a particular law school over all applicants with lower test scores or grades? Data are available to inform this debate, and this study analyzes and summarizes some of those data.

Part I examines data from law school applicants and matriculated law school students to empirically evaluate several assertions about affirmative action practices and outcomes in legal education. First, the analyses presented in this study address the question of whether aggressive affirmative action admission practices are still necessary in legal education. Results from data analyses are presented to demonstrate both the extent to which affirmative action appears to play a role in law school admission decisions and the overall consequences, in terms of ethnic makeup of law school classes, of abandoning consideration of race in admission decisionmaking. In Part II, the appropriate role for numerical indicators is scrutinized. Data about the validity of using the quantitative measures for law school admission in general, and for minority applicants in particular, are presented and discussed. In addition, data about law school graduation and bar passage for law students who might not have gained admission absent

² See, e.g., James Q. Wilson, *Sins of Admission*, *The New Republic*, July 8, 1996, at 12-16 (discussing affirmative action in undergraduate and graduate admissions). See generally Paul M. Sniderman et al., *The New Racism*, 35 *Am. J. Pol. Sci.* 423 (1991) (discussing tension between affirmative action and negative images of blacks as lazy and irresponsible).

³ See Leigh H. Taylor, *A Faulty and Narrow Understanding of Merit and Qualification in University Admissions*, *Chron. Higher Educ.*, Sept. 15, 1995, at B3 (criticizing overreliance on standardized test scores and grades in law school admission process and emphasizing importance of nonnumerical factors).

⁴ See *id.*

some consideration of race in the admission process are compared with similar data for students who would have been admitted strictly on numerical indicators. The first part of the discussion addresses the question of appropriate use from the perspective of whether the LSAT score and UGPA are valid for the purpose for which they are intended. The second part focusses on the ability of those who would be systematically excluded from legal education by these two factors to complete law school successfully and gain entry to the profession. Part III of this study then examines several nonnumerical factors to evaluate whether they might be useful alternatives to considerations of race in order to achieve an ethnically diverse law school class.

I

THE ROLE OF AFFIRMATIVE ACTION IN LAW SCHOOL
ADMISSION DECISIONS

A. Methodologies

1. The Samples

Two samples were used in this study. The first includes applicants to 173 law schools approved by the American Bar Association (ABA).⁵ This study examined application and decision data for 90,335 applicants from the 1990-1991 application year, each of whom completed LSDAS,⁶ had reports sent to one or more law schools, and had at least one admission decision reported by a law school.⁷ These 90,335 applicants generated 416,005 applications to multiple schools. More than half of these applicants (57%) received an offer of admission to at least one law school.

The second sample includes Fall 1991 first-year students, from 163 ABA-approved law schools located in the United States, who

⁵ Although the ABA approves law schools located in Puerto Rico, those schools were excluded from this study.

⁶ The Law School Data Assembly Service (LSDAS) is offered by the Law School Admission Council (LSAC) to organize and summarize the biographic and academic information of law school applicants. Almost all LSAC-member law schools in the United States require applicants to subscribe to this service. Through LSDAS, law schools are provided with a report containing standardized summaries of academic work, copies of college transcripts, LSAT scores, and writing samples.

⁷ More than 99,000 applicants are reported for the 1990-1991 application year in Law School Admission Council, National Statistical Report, 1986-87 through 1990-91, at 18 (1992). The smaller number of applicants included in this study results primarily from the exclusion of applicants for whom LSAT score, UGPA, or both were missing. There were approximately 6600 applicants with missing data. In addition, applicants who applied only to law schools located in Puerto Rico were also excluded. A final source of the discrepancy is some incomplete reporting of decision data by individual law schools. With regard to the last source, the amount of missing data is too small to affect the aggregate statistical findings based on data from so large a sample.

agreed to participate in the *LSAC Bar Passage Study*.⁸ The overwhelming majority of students who entered law school in Fall 1991 are found in the 1990-1991 applicant pool.⁹ Thus, the second sample is essentially a subset of the first sample. Indeed, the 1990-1991 applicants were selected for analyses in this study primarily because the *LSAC Bar Passage Study* provides extensive data about the Fall 1991 entering class, including socioeconomic status (SES) data, law school graduation data, and bar examination data.¹⁰ These students represent approximately 70% of the Fall 1991 first-year students at ABA-approved law schools in the United States (excluding Puerto Rico and Hawaii), and by every indication are an unbiased representative sample of that entering class.¹¹

2. Developing a Model

In order to test the several assertions about affirmative action practices and outcomes, a model was built of an admission process that relies exclusively on LSAT scores and/or UGPAs.¹² Two different

⁸ The *LSAC Bar Passage Study* is a national longitudinal study on legal education and entry into the profession that is being sponsored by the Law School Admission Council. The study has followed a sample from the class that entered law school in the fall of 1991 through graduation and entry to the bar. Entering credentials; extensive background data gathered at the time they entered law school (including information about their goals, aspirations, self-concepts, and perceptions, as well as their extracurricular activities, personal responsibilities, and employment aspirations); law school performance data; and bar examination data are available for the sample, which includes approximately 70% of the Fall 1991 entering class. The students from the sample remain in the active bar passage study file for three years after graduation (six bar examination administrations) or until they pass a bar exam, whichever comes first. See generally Linda F. Wightman, Law Sch. Admission Council, *LSAC Bar Passage Study: Study Design* (Mar. 1991) (providing basic description of original design; note, however, that study has changed considerably from this design). The study is ongoing and will produce a series of reports. For the first two reports published using this data, see infra notes 11, 51.

⁹ A small and nonsignificant number of first-year students did not go through the LSDAS process for some reason or went through it at an earlier time and deferred their date of entry until Fall 1991.

¹⁰ Participants in the *LSAC Bar Passage Study* agreed to the release of their law school performance data and their bar examination performance data for research purposes.

¹¹ See Linda F. Wightman, *Legal Education at the Close of the Twentieth Century: Descriptions and Analyses of Students, Financing, and Professional Expectations and Attitudes* 18 n.11 (Law Sch. Admission Council Research Report Series 1995) (noting that data in this report can be generalized to entire Fall 1991 entering class, due to large participation rate among law schools and wide distribution among clusters).

¹² The statistical models used in this study do not suggest that law schools rely exclusively and solely on LSAT scores and UGPAs (or a combination of these measures) in admitting either white students or students of color. In fact, as will be discussed later, the results demonstrate that in the admission of law students, law schools do consider factors that are not numeric and that, therefore, cannot be accounted for by the models developed for this study. The purpose of the models is to evaluate differences in admission practices between and among applicants from selected ethnic groups, as well as to estimate the im-

methodological approaches were utilized to build the model. One method, the Logistic Regression Model, mimicked the relationship between the two predictor variables and the actual admission decision uniquely for each school by using each school's applicant and admission decision data. Thus, 173 regression models were developed, one for each of the 173 schools included in the study. The second method, called the Law School Grid Model, collapsed applicant and decision data across all schools to obtain a more conservative estimate of the impact of an admission process that does not take race into consideration. This second method was also used to test the claim that eliminating affirmative action admission practices would not reduce the number of law students of color overall, but rather would reallocate them to less selective law schools.¹³

a. *The Logistic Regression Model.* For the first method, logistic regression models were employed. The logistic procedure used in this study fits linear logistic regression models for binary data by the method of maximum likelihood for the purposes of (1) investigating the relationship between the admission decision (translated to a binary response of admitted or not admitted)¹⁴ and the LSAT score and UGPA (the explanatory variables) and (2) determining whether the same admission model could be used to predict admission decisions for applicants of color as accurately as it predicts for white applicants. In order to test for comparable prediction accuracy among applicants of color, the logistic regression models predicting admission decisions (admitted/not admitted) from LSAT score alone (model 1), UGPA alone (model 2), and LSAT score and UGPA in combination (LSAT/UGPA-combined) (model 3) were developed separately for each law school using only application and admission data for white applicants to that school.¹⁵

fact of discontinuing consideration of the race of applicants on admission decision outcomes. And, as will be shown, such factors do account for a significant amount of the variance in the admission decisions.

¹³ See Clyde W. Summers, *Preferential Admissions: An Unreal Solution to a Real Problem*, 1970 U. Tol. L. Rev. 377, 384-86 (concluding that preferential admission standards do not increase total number of minority law students, but rather have effect of shifting minority students from law schools whose normal standards they meet to law schools whose normal standards they do not meet).

¹⁴ For a more complete discussion of binary-response model methodology, see generally D.R. Cox & E.J. Snell, *Analysis of Binary Data* (2d ed. 1989).

¹⁵ A probability-of-admission model was produced for each law school using a binary-response model logistic regression procedure. That is, the response variable was allowed to take on only one of two possible values—admitted or not admitted. For the data analyzed in this study, $Y = 1$ if the applicant is admitted and $Y = 2$ if the applicant is not admitted. The linear logistic model has the form:

Before results from these analyses were used to address the questions posed, the fit of each of the three models was evaluated to determine the adequacy of a model based on these variables to predict admission decisions. A likelihood-ratio chi-square test statistic was used to test the joint significance of the predictor variables used in each model separately for each school. Additionally, the overall correlations between the predicted admission decisions based on each logistic regression model and the actual decision were calculated.¹⁶

After it was established that the models fit the observed data reasonably well,¹⁷ the next step was to determine whether applicants with the same LSAT score and UGPA who were members of a different ethnic group had the same probability of admission as did the white applicants upon whom the model was built. This was accomplished by identifying an ethnic group of applicants (e.g., all black applicants) for evaluation. The likelihood that each individual in that group would be admitted to law school was estimated using the logistic function calculated for each law school to which she or he applied. The likelihood estimates were summed to obtain the proportion of the group that would be expected to be admitted based exclusively on LSAT scores and UGPAs. This sum of the probabilities provides an estimate from the model of the proportion of applicants who would be admitted. The estimated proportion can be compared with the proportion of applications in the studied group that actually was admitted. The extent to which the predicted proportion differed from the actual proportion provides information about the prevalence of affirmative action admission practices in legal education. For that reason, the statistic of primary interest is the residual selection rate. The residual selection rate is calculated by subtracting the proportion predicted to be admitted from the proportion actually admitted. If the proportion actually

$$\text{logit}(p) = \log(p/(1-p)) = \alpha + \beta'x$$

where, for the model examined in this study,

x is a vector of LSAT scores for model 1, UGPAs for model 2, and LSAT scores and UGPAs for model 3;

p is the probability that the applicant is admitted given his or her LSAT score and/or UGPA ($\Pr(Y = 1|x)$);

α is the intercept parameter;

β' is the vector of slope parameters.

Using the logit estimate produced by the logistic model described above, the probability of each individual applicant being accepted is calculated as follows:

$$p = e^{\text{logit}(p)} / (1 + e^{\text{logit}(p)})$$

¹⁶ The correlation coefficient is a measure of the degree of relationship between the predictor variables (e.g., LSAT score and UGPA) and the criterion (e.g., admission decision). A correlation coefficient of 0 indicates no relationship, while a value of ± 1 indicates a perfect positive or negative relationship.

¹⁷ See discussion *infra* Part I.B.1 (Evaluating the Logistic Regression Model).

admitted exceeds the proportion predicted to be admitted, the residual is positive. A statistically significant positive residual for a studied group would suggest affirmative action admission practice for applicants in that group.

The logistic regression procedures described above developed separate regression weights for each school using applicant data for that school, but then summed actual decisions and probabilities across schools to obtain summary data. Many applicants submitted more than one law school application. Those applicants were counted once within each school to which they applied and, thus, more than once in the across-school summary data. These data are appropriate for estimating and analyzing residuals but are inadequate to approximate the actual number of individual students from different ethnic groups who would be admitted to at least one law school by these models. Thus, the final step was to determine whether each individual applicant would have been admitted to the schools to which they applied if only LSAT score and/or UGPA were used to make the admission decision. This was accomplished by first determining the number of admission offers made by each law school in the 1990-1991 application year. Applicants were then ranked in descending order with respect to their probability of admission to each school to which they applied. Within each law school, the applicant whose rank order equaled the number of admission offers made by that law school in 1990-1991 defined the probability value that separated admitted from not admitted applicants. That is, all applicants whose probability met or exceeded that of the defining applicant were identified as predicted to be admitted "on the numbers" and those with a lower probability as predicted not to be admitted "on the numbers." For example, if a school offered admission to 400 applicants, applicants with a probability of admission, based on the school's logistic regression model, equal to or higher than that of the 400th ranked applicant were identified as predicted to be admitted and those with a lower probability as predicted not to be admitted.

As noted previously, three different models (LSAT only, UGPA only, and LSAT/UGPA-combined) were considered. Using different models provided information about the impact on applicants of color of including the LSAT in the numerical models of the admission process given that, on average, the discrepancy between applicants of color and white applicants is larger for LSAT scores than for UGPAs. In fact, frequently the LSAT is seen by applicants of color as the major barrier to admission to law school. For that reason, even though the data demonstrate that the LSAT/UGPA-combined model produced the most accurate prediction of admission decisions, a model

that relied only on UGPA for admission decisions was also evaluated. That is, analyses were undertaken to determine whether eliminating LSAT scores from consideration and relying only on UGPA (the UGPA-only model) would eliminate the impact on racial diversity among admitted applicants.

b. The Law School Grid Model. The second method to model the admission process uses a mathematically and conceptually simpler model that collapses the data nationally. Again, LSAT score and UGPA were the only factors included in the model. The model was built under the assumption that if race were not a factor in the decisions, patterns of admission decisions observed for white applicants would also hold for applicants of color.¹⁸ The first step was to represent the LSAT scores and UGPAs of the 1990-1991 white applicants in a two-way table similar to the admission grids provided by many law schools in *The Official Guide to U.S. Law Schools*.¹⁹ For the data reported in this study, UGPAs were divided into nine groups and LSAT scores into eight groups. For example, LSAT scores greater than or equal to 45²⁰ defined one LSAT score group; scores from 40 to 44 inclusive, the second group. This produced an LSAT/UGPA grid with seventy-two cells. To build the model, the number of white applicants in each LSAT/UGPA cell who were admitted to at least one of any of the law schools included in the study was summed. The probability of gaining admission for applicants in a given LSAT/UGPA range, as defined by each cell, was estimated by dividing the number of admitted white applicants in the cell by the total number of white applicants with scores and grades in the range of that cell. Next, the number of applicants who fell into each LSAT/UGPA cell was counted separately for each nonwhite group, resulting in a separate nine-by-eight grid of applicants for each group. The final step was to multiply each cell of the nonwhite-applicant grids by the proportion observed in the corresponding cell of the white-applicant grid. Summing these products produced an alternative estimate of the consequences of an admission model that depends on the LSAT score and UGPA independent of the race of the applicants. The reasonableness of the

¹⁸ The second method used in this study is similar to and based on one used by Frank Evans. See Franklin R. Evans, Applications and Admissions to ABA Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976, in Reports of LSAC Sponsored Research: Volume III, 1975-1977, at 551, 579-85 (Law Sch. Admission Council Report No. LSAC-77-1, 1977).

¹⁹ See, e.g., Law Sch. Admission Council, *The Official Guide to U.S. Law Schools* 97, 351 (1997 ed. 1996) [hereinafter *Official Guide*].

²⁰ The LSAT scores used in this study were reported on a scale that ranged from 10 to 48. That scale was set in 1982 to a mean of 30 and a standard deviation of 10.

assumptions underlying this model is discussed later in this Article when the results from these analyses are presented.²¹

B. Results

The first questions of interest are (1) to what extent does consideration of race impact law school admission decisions, and (2) what would be the consequences, in terms of ethnic diversity in legal education, of abandoning the use of race as a factor. Results from analyses of a within-school logistic regression admission model are provided as one method to evaluate relevant data.²² Sound statistical practice dictates that the adequacy of a proposed model be evaluated before the consequences of applying it to the questions of interest are examined.

1. Evaluating the Logistic Regression Model

The first evaluation task is to determine how well the data fit the model. Results presented in this section show that the data used in this study fit the model very well when LSAT score and UGPA are used in combination. They fit less well when UGPA is used alone, and they do not fit at all when LSAT score is used alone.

A model that uses LSAT score and/or UGPA to predict admission decisions is reasonable only if there is a relationship between each of the variables and actual admission decisions. For the data from white applicants, the correlation between LSAT scores and actual admission decisions is .33;²³ the correlation between UGPAs and actual admission decisions is .28. Correlations of data for white applicants are relevant because those are the data that were used to build the models.²⁴ Comparison with other admission-test data helps put these correlations in perspective. In a study to evaluate admission de-

²¹ See *infra* Part I.B.5 (countering assumption that students of color would, in fact, attend any school to which they were admitted).

²² See *supra* notes 14-17 and accompanying text (describing logistic regression models developed for this study).

²³ Note that while the magnitudes of these correlation coefficients demonstrate the reasonableness of using them in a model of law school admission practices, they do not determine which of these variables will fit the logistic regression model better, nor that either one alone or in combination will provide a satisfactory model fit. This is a consequence of the fundamental differences between a logistic regression model and a linear least-squares regression model. In the linear model, the regression coefficients are those that produce the smallest sums of squared distances between the observed and the predicted values of the dependent variable. In contrast, the logistic regression model is nonlinear. Therefore, an iterative algorithm is used to identify the coefficients that would make the actual admission decisions the most probable or "likely."

²⁴ The correlation between actual admission decision and LSAT score and between actual decision and UGPA differs slightly within other ethnic groups, as follows. The differences are not of sufficient magnitude or in a direction to suggest that these variables are not appropriate to include in the admission decision model.

cisions for undergraduate schools, Warren Willingham reports a correlation of .37 between Scholastic Aptitude Test (SAT) score and undergraduate admission decisions, and .36 between high school grade-point average and undergraduate admission decisions.²⁵ These data suggest a slightly stronger relationship between high school grades and undergraduate admission decisions than between college grades and law school admission decisions, although the lower correlation might be a consequence of more severe restriction of range in the UGPAs of law school applicants.²⁶ Regardless, the law school data support the contention that the LSAT score and UGPA are useful measures to include in a model designed to predict admission decisions. Additionally, for the LSAT/UGPA-combined model, the likelihood-ratio chi-square test statistics were significant ($p < .001$) for each individual school, attesting to the joint significance of LSAT score and UGPA to predict admission decisions.

The final statistic used to evaluate the model is the correlation between the predicted and actual admission decisions made by the school. For the LSAT/UGPA-combined model, the correlation for white students is .78. This correlation is very high, indicating that these two variables account for approximately 60% of the variance in admission decisions for white students. Another way to think about these correlations is that the higher the composite of LSAT and UGPA, the greater the probability of gaining admission.

Neither of the other models—LSAT-only and UGPA-only—fit the data as well as the LSAT/UGPA-combined model. The correlation between decisions predicted by the LSAT-only model and actual decisions is .07 for white applicants, and the model diagnostics confirm a lack of fit.²⁷ For the UGPA-only model, the correlation for white applicants is .49, suggesting a far better fit than the LSAT-only

TABLE NI
CORRELATION OF ACTUAL ADMISSION DECISION WITH LSAT AND UGPA

Ethnic Group	LSAT Score	UGPA
American Indian	0.28	0.18
Asian American	0.29	0.25
Black	0.45	0.30
Hispanic	0.34	0.29
Mexican American	0.45	0.34
Puerto Rican	0.34	0.30
White	0.33	0.28

²⁵ See Warren W. Willingham, Admissions Decisions, in *Testing Handicapped People* 71, 71-81 (Warren W. Willingham et al. eds., 1988).

²⁶ See *infra* text accompanying notes 73-74 (explanation of restriction of range).

²⁷ The likelihood-ratio chi-square statistic is not significant for any school. Examining the measures of association of predicted probabilities and observed responses reveals that

model, but not nearly so good a fit as the LSAT/UGPA-combined model.

Because the LSAT-only model simply does not fit the data, predicted admission decisions based on that model are not estimated and that model is not considered in any further analyses. Additionally, because the fit of the LSAT/UGPA-combined model is so superior to the fit of the UGPA-only model, results from the majority of the analyses reported in this study include only the estimates provided by the LSAT/UGPA-combined model.

2. *Evaluating the Prevalence of Affirmative Action Admission Practices in Legal Education*

The 1990-1991 law school application and admission data suggest widespread use of affirmative action admission practices in legal education. Results from analyses of data that support this conclusion are presented next.

The first goal of the logistic regression analyses was to determine whether the admission model developed from data from white applicants fit the data from applicants of color equally well. If affirmative action admission practices are prevalent, the proportion of actual admission offers would be expected to exceed the proportion predicted by the model, and the data for applicants of color would not fit the model as well. One way to evaluate the data is to compare the correlation between predicted and actual admission decisions for applicants of color when decisions are predicted from the models developed using data from white applicants. The correlations are not nearly as high for any group of nonwhite applicants as they are for white applicants. When the LSAT/UGPA-combined model is used to predict, the correlations range from a low of .34 for black applicants to a high of .67 for Asian American applicants. These substantially lower correlations support the assertion that factors other than LSAT and UGPA play a more important role in admission decisions for applicants of color than for white applicants. The correlation between actual and predicted admission decisions is also higher for white applicants than for any group other than Asian Americans when the UGPA-only model is used.²⁸

The residual selection rate is another important statistic for evaluating the prevalence of affirmative action admission practices in legal

the percentage of concordant pairs is approximately equal to the percentage of discordant pairs consistently across schools.

²⁸ The correlations of actual admission decisions with predicted admission for selected ethnic groups using the combined model and the UGPA-only model are as follows:

education.²⁹ As a statistical consequence of the regression model, the proportion of applications from white applicants that are predicted to be admitted equals the proportion actually admitted. As noted previously, the data reported in Table 1 represent the number of applications, not the number of individual applicants. Thus, individual applicants who made more than one application are counted more than once. If the model fits data from applicants of color equally well, the proportion predicted would be approximately equal to the proportion actually accepted for each of the ethnic application groups. Table 1 shows the proportion of applications predicted to be admitted, the proportion actually admitted, and the residual selection rate for different ethnic groups. These data show that actual admission decisions result in approximately equal proportions of admission offers across ethnic groups. Specifically, approximately 26% of the applications from white applicants result in offers of admission. Among the other groups, offers vary from 24% of the applications from Puerto Rican applicants to 32% of the applications from Mexican American applicants.³⁰ This is in stark contrast to the proportions predicted by the model, under which predicted admission offers to members of various ethnic groups would range from a high of 15% of the applications from Asian Americans to a low of 3% of applications from blacks, compared with 26% of those from whites. The residual selection rate among the applications submitted by nonwhite applicants is positive, large, and statistically significant for every group. The magnitude and direction of the residuals strongly support the claim that law schools

TABLE N2
CORRELATION OF ACTUAL ADMISSION DECISION WITH PREDICTED DECISION

Ethnic Group	LSAT/UGPA-Combined Model	UGPA-Only Model
American Indian	0.49	0.34
Asian American	0.67	0.48
Black	0.34	0.32
Hispanic	0.58	0.45
Mexican American	0.46	0.37
Puerto Rican	0.49	0.41
White	0.78	0.49

²⁹ See *supra* text following note 17 (explanation of residual selection rate).

³⁰ These relatively small proportions partly reflect the multiple applications that are submitted and the practice by many applicants of making application to one or more schools at which their chances of gaining admission are uncertain. See, e.g., Linda F. Wightman, *Analysis of LSAT Performance and Patterns of Application for Male and Female Law School Applicants 45 & tbl.21* (Law Sch. Admission Council Research Report Series No. 94-02, Dec. 1994). As reported later in this study, the proportion of individual applicants receiving at least one offer of admission is substantially larger than the proportion of applications that result in an offer of admission. See *infra* text accompanying notes 40-41 & Table 5 at p. 22.

use different criteria or additional factors or information for making admission decisions about applicants of color than they do for making decisions about white applicants. When LSAT and UGPA are modeled as the only factors used to make decisions, not only do they predict actual decisions far more accurately for white applicants than for applicants of color, but the number of applicants of color predicted to be admitted under the model is statistically significantly lower than the number actually admitted.

TABLE 1
PREDICTED ADMISSION RATES, ACTUAL ADMISSION RATES,
AND RESIDUALS FOR 1990-1991 LAW SCHOOL APPLICANTS
BY ETHNIC GROUP

Ethnic Group	Number of Applications	Proportion* Predicted Admitted	Proportion Actually Admitted	Residual (Actual-Predicted)
American Indian	2,113	0.12	0.30	0.18*
Asian American	23,317	0.15	0.26	0.11*
Black	29,362	0.03	0.26	0.23*
Hispanic	11,320	0.12	0.27	0.15*
Mexican American	5,383	0.09	0.32	0.23*
Puerto Rican	3,078	0.06	0.24	0.18*
White	329,864	0.26	0.26	0

*p < .001

*Admission was predicted using the LSAT score and UGPA combined logistic regression model.

3. *The Consequence of Abandoning Consideration of Race as Estimated by the Logistic Regression Models*

The next step in the analyses is to determine the effect of abandoning consideration of race on the number of individual applicants who might be admitted to law school (as opposed to the previous analyses, which were based on the number of applications). The analyses reported in this section show that if admission decisionmakers had used a process modeled by either of the logistic regression models (i.e., the UGPA-only or the LSAT/UGPA-combined models),³¹ the consequence would have been a substantial reduction in the overall number of applicants of color who were offered admission to ABA-approved law schools. Predicted admission decisions were calculated separately for the UGPA-only and for the LSAT/UGPA-combined

³¹ See discussion *supra* notes 14-17 and accompanying text (explaining logistic regression models).

prediction models,³² and the results, comparing the number of applicants who actually were admitted to at least one law school to which he or she applied with the number predicted to be admitted, are presented in this section.

The distribution of actual admission decisions and predicted decisions for individual applicants, based on the two logistic regression models, is shown separately by ethnic group in Table 2. These data count an individual as admitted (or predicted to be admitted) if she or he was admitted (or predicted to be admitted) to at least one law school to which she or he applied. The first column in Table 2 identifies the ethnic group, the second divides the group into two actual-admission-decision groups—accepted or not accepted—and the third divides each actual decision group into two—those predicted by the model to be admitted or not admitted. Although somewhat complex in format, the layout of Table 2 provides an opportunity to examine how many applicants in each ethnic group who were actually accepted to at least one law school were also predicted to have been accepted or not accepted by the UGPA-only and the LSAT/UGPA-combined prediction models. The table provides the same information for applicants who were not actually accepted to any law school.

Overall, the data in Table 2 confirm that the impact of either of the tested models on the ethnic diversity of the admitted students would be devastating. Among the 3435 black applicants who were accepted to at least one law school to which they applied, only 687 would have been accepted if the LSAT/UGPA-combined model had been used as the sole means of making admission decisions. Although the LSAT frequently has been targeted as the primary obstacle to law school admission for students of color, the data in Table 2 show that even if it is eliminated from consideration, only 945 of those black applicants who were offered admission in 1990-1991 would have been offered admission using a UGPA-only selection model. These data also show that an additional 391 black applicants who were not offered admission would have been accepted if a UGPA-only model were used. Ignoring for the moment the issue of whether something in the applicants' records or other application materials eliminated them from consideration despite their academic performance records, these data suggest that even a model that relies only on UGPA as an arbiter of relative merit would result in reducing the number of admitted black applicants to approximately a third of what it was in the

³² The LSAT-only model is not included because analyses show that the data do not fit that model. See *supra* text accompanying note 27 (explaining that results show data fit LSAT/UGPA-combined model, but not LSAT-only model).

TABLE 2
DISTRIBUTION OF 1990-1991 APPLICANTS BY ETHNIC GROUP,
ACTUAL ACCEPTANCE, AND ACCEPTANCE PREDICTED BY
UGPA ALONE, AND LSAT/UGPA-COMBINED LOGISTIC
REGRESSION MODELS

Ethnic Group	Actual Decision	Predicted Decision	Number Predicted by UGPA	Number Predicted by Combined	Actual Number Admitted
American Indian	Accepted	Yes	115	137	302
		No	187	165	
	Not Accepted	Yes	35	16	
		No	152	171	
Asian American	Accepted	Yes	1,199	1,449	2,312
		No	1,113	863	
	Not Accepted	Yes	277	44	
		No	1,122	1,355	
Black	Accepted	Yes	945	687	3,435
		No	2,490	2,748	
	Not Accepted	Yes	391	24	
		No	3,257	3,624	
Hispanic	Accepted	Yes	652	667	1,351
		No	699	684	
	Not Accepted	Yes	150	33	
		No	803	920	
Mexican American	Accepted	Yes	238	252	629
		No	391	377	
	Not Accepted	Yes	63	8	
		No	417	472	
Puerto Rican	Accepted	Yes	127	100	324
		No	197	224	
	Not Accepted	Yes	32	2	
		No	272	302	
White	Accepted	Yes	26,744	35,966	42,287
		No	15,543	6,321	
	Not Accepted	Yes	7,283	4,392	
		No	23,172	26,063	

1990-1991 application year. Similar patterns are evidenced for each of the other ethnic minority groups, although the impact appears more severe for black applicants than for any other group.

The data for white applicants also provide an interesting insight. These data demonstrate that although one result of affirmative action admission practices might be to offer admission to some applicants of color who have LSAT scores and UGPAs that are lower than those of white applicants who are denied, lower-scoring applicants of color are not the only ones who are given special admission consideration. Specifically, the data in Table 2 show that the number of white applicants who were not admitted, but would have been if decisions were based entirely on numerical indicators, is not so large as the number of white students who were admitted, but would not have been based on LSAT and UGPA alone. For example, the LSAT/UGPA-combined model

identified 4392 white applicants who were not accepted to any school although they were predicted to be admitted based on their LSAT scores and UGPAs alone. But the model also identified 6321 white students who were admitted who were predicted not to be admitted to any school.

It is also important to note that in all ethnic groups there were some applicants who were not admitted, but who would have been if the decision were based exclusively on the two quantitative predictors. These data suggest either that some information in these students' files other than academic performance excluded them from admission or that they were not so strong on some additional factors valued by the law schools to which they applied as were students with lower grades and LSAT scores. Thus, the data do not support an assumption that every white student with higher quantitative predictors who was denied admission would necessarily have been admitted but for affirmative action. This conclusion is supported further by the analysis of model fit presented earlier.³³ That is, although the LSAT/UGPA-combined model fits the data very well, there still is a substantial amount of unexplained variance in the model. Information obtained from sources such as misconduct files, letters of recommendation, and personal statements is identified by most law schools as important for consideration in admission decisions. Among many publicly supported schools, state of residence may also be a relevant factor, with in-state residents receiving some preference over out-of-state residents.

Unfortunately, although a substantial number of data elements were available for this study, no additional factors were found among them that improved the model fit (i.e., resulted in more accurate prediction of actual admission decisions). For example, an expanded logistic regression model that included state of residence as a dichotomous variable was tested using data from each of the public law schools to determine the impact of that factor on prediction. When state of residence was added to the model already containing LSAT and UGPA, no improvement in prediction was observed. The correlation between actual and predicted admission decisions was .79 when the state of residency was added to the two-predictor model for public institutions, compared with .78 when only LSAT and UGPA were included. Although no improvement in model fit was found among the data available about the applicants included in this study, the amount of variance still unaccounted for in the two-factor model supports the assertion by the law schools that other factors play a role

³³ See *supra* Part I.B.1 (evaluating how well data fit logistic regression model).

in the admission decision process for all students.³⁴ Future research should attempt to capture and quantify the additional factors that are used.

4. *The Consequence of Abandoning Consideration of Race as Estimated by the Law School Grid Model*

The Law School Grid Model is more conservative, and arguably less realistic in its assumptions,³⁵ than the logistic regression models, and its estimate of the consequence of abandoning consideration of race is less severe than the estimates obtained from either of the logistic regression models. Even so, the results presented in this section show that the estimated number of applicants of color who would have been offered admission to law school based on this model is still substantially lower than the actual number admitted.

One reason for interest in the Law School Grid Model is that it is a simple method to evaluate national law school admission possibilities for applicants of color without regard for the schools to which they actually applied. Determining whether there is any ABA-approved law school to which applicants of color might be admitted

using an LSAT/UGPA-based quantitative admission model provides one conservative approach to evaluating the long-term consequences of an admission process that relies exclusively on competitive evaluation based on quantifiable indicators of individual achievement and, therefore, does not consider the race of the applicant.

A related reason for exploring the Law School Grid Model is to test the proposition that admission programs that take race into account do not necessarily result in a net increase in the total number of minority law students. For example, Professor Clyde Summers suggests that affirmative action admission programs do not increase the total number of minority law school students.³⁶ Rather, he argues, such programs simply shift minority students from those law schools popularly perceived as less prestigious to those perceived as more prestigious.³⁷ He further contends that minority applicants who were admitted to one or more highly selective schools as a result of an affirmative action admission practice most likely would have gained admission to a less selective school without need for affirmative action programs.³⁸ The data from the 1990-1991 application year do not support Summers's hypothesis. At the simplest level, as shown in Table 3, the means on both LSAT score and UGPA are significantly lower for applicants of color than for white applicants for every group except Asian American applicants. The differences are both statistically and practically significant.³⁹ These data suggest that if these quantitative measures of prior academic attainment are used as the only input to an admission model, students of color as a group are likely to be systematically excluded from law school admission opportunities.

As noted previously, the Law School Grid Model provides a vehicle to examine the probability of admission independent of the law schools to which applications were made. This ability is necessary to test the assertion that affirmative action admission programs do not necessarily result in a net increase in the total number of minority law students. The first step was to calculate the proportion of admitted white applicants to total white applicants within each of the seventy-two cells in the LSAT/UGPA grid developed for this study. The results from this calculation are shown in Table 4. These data demonstrate that the proportion of admitted applicants is higher within cells

³⁴ Such assertions are commonplace in law school recruiting. Each year, the Law School Admission Council publishes a law school guidebook for applicants. See Official Guide, *supra* note 19 (providing admission profiles of each U.S. LSAC-member school submitted by the schools themselves). In the most recent edition, all but 17 of the 178 schools represented state that some factors other than grades and LSAT are considered in the admission process for some, if not all, applicants. See, e.g., *id.* at 133 (discussing admission policy at Cornell University Law School). Further, those schools that do not make such a statement do not necessarily state that LSAT and grades are the only factors considered—they simply do not address the issue. The discussion by New York University of this issue, while lengthier than most, is typical in spirit:

An applicant's undergraduate record and LSAT, while important, are not the sole determinants for admission. No index or cut-off is used in reviewing applications. An applicant's transcripts are analyzed for breadth and depth of course work, trend in grades, and rank; the competitiveness of the school and major are taken into account, as are special honors and awards. A strong undergraduate record and LSAT score are most important for those applying to law school directly after graduating from college. In all cases, however, other aspects of the application significantly influence the decision. Letters of recommendation, activities, and work experience are reviewed for evidence of significant nonacademic or professional achievement, and for qualities including rigor of thought, maturity, judgment, motivation, leadership, imagination, and social commitment. Factors beyond the undergraduate record are particularly important for older applicants, for international students, for those who have experienced educational or socioeconomic disadvantage, and for those who have racial or ethnic identities that are underrepresented in the student body and legal profession.

Id. at 262-63.

³⁵ See *supra* notes 18-21 and accompanying text (explaining Law School Grid Model); *infra* Part I.B.5 (questioning assumption of this model).

³⁶ See Summers, *supra* note 13, at 384-86 (asserting that practice of preferential admissions does not add substantially to total number of minority law students).

³⁷ See *id.*

³⁸ See *id.*

³⁹ Practical significance is measured using Cohen's *d*. A *d* value of .20 is a small effect size; a *d* of .50 is a medium effect size. See Jacob Cohen, *Statistical Power Analysis for the Behavioral Sciences* 20-27 (2d ed. 1988) (explaining effect size index for variable *d*).

TABLE 3
LSAT AND UGPA MEANS AND STANDARD DEVIATIONS BY
ETHNIC GROUP FOR 1990-1991 LAW SCHOOL APPLICANTS

	Ethnic Group						
	American Indian	Asian American	Black	Hispanic	Mexican American	Puerto Rican	White
N	489	3,711	7,083	2,304	1,109	628	72,742
LSAT							
Mean	30.27	33.22	25.00	30.13	29.70	27.56	34.35
Standard Deviation	7.09	7.32	7.07	7.19	7.18	7.88	6.29
UGPA							
Mean	2.87	3.07	2.70	2.95	2.90	2.89	3.09
Standard Deviation	0.47	0.51	0.46	0.45	0.44	0.45	0.46
LSAT difference*	-0.58	-0.16	-0.33	-0.60	-0.66	-0.97	
UGPA difference*	-0.44	-0.03	-0.82	-0.28	-0.39	-0.41	

* The mean difference is in d units (Cohen, 1988): (ethnic group mean - white mean)/total group standard deviation. A minimum d value of ± 2 is required to be considered a practically significant effect.

representing high LSAT scores and high UGPAs than in cells representing low LSAT scores and low UGPAs. In general, the proportions also decrease within a given UGPA range as the LSAT ranges go from higher to lower. Likewise, there is a decrease in proportion within a given LSAT range as the UGPA ranges go from higher to lower. As an example, look at the column representing LSAT scores in the 40-44 range: As the UGPA range decreases from greater than or equal to 3.75 to less than 2.00, the proportion of admitted applicants decreases from .96 to .48. The few exceptions are attributable partially to additional factors considered in the admission process and partially to the small sample sizes found in some cells. For example, the number of white applicants with an LSAT score greater than or equal to 45 and a UGPA less than 2.00 is only four.

The Law School Grid Model functions under the assumption that in an admission environment that does not take race into consideration, ethnic and white applicants would be admitted in the same proportions within the same LSAT/UGPA grids. The data in Table 5 show the estimated number and percentage of applicants from each ethnic group who would have been admitted to at least one law school using this model, as well as the number who actually were admitted and the number who would have been admitted using the LSAT/UGPA-combined logistic regression model. For example, the table shows that among 1109 Mexican American law school applicants in 1990-1991, 629, or 57%, were offered admission to at least one school. If admission decisionmakers had used LSAT score and UGPA exclusively in the way modeled by the Law School Grid Model, only 439

TABLE 4
PROBABILITY OF LAW SCHOOL ADMISSION OBTAINED BY DIVIDING
THE NUMBER OF WHITE 1990-1991 ADMITTED APPLICANTS BY THE
TOTAL NUMBER OF WHITE APPLICANTS IN EACH CELL

UGPA	LSAT Scores								Total
	GE45	40-44	35-39	30-34	25-29	20-24	15-19	LT15	
GE 3.75	0.98	0.96	0.92	0.78	0.49	0.34	0.14	0.00	0.88
3.5-3.74	0.98	0.93	0.88	0.71	0.43	0.21	0.24	0.00	0.81
3.25-3.49	0.93	0.90	0.84	0.61	0.32	0.19	0.13	0.00	0.71
3.00-3.24	0.89	0.87	0.77	0.51	0.26	0.21	0.16	0.00	0.60
2.75-2.99	0.90	0.80	0.68	0.36	0.22	0.17	0.05	0.00	0.47
2.50-2.74	0.78	0.73	0.53	0.30	0.22	0.14	0.03	0.00	0.37
2.25-2.49	0.73	0.54	0.45	0.25	0.21	0.08	0.04	0.00	0.29
2.00-2.24	0.68	0.55	0.37	0.24	0.14	0.03	0.02	0.00	0.23
LT 2.00	0.75	0.48	0.36	0.20	0.07	0.04	0.00	0.00	0.20
Total	0.93	0.87	0.74	0.47	0.26	0.15	0.07	0.00	0.58

(40%) would have received at least one offer to a law school—but not necessarily a law school to which they applied or desired to attend due to factors such as cost or geographic location. The table also shows that only 260 (23%) are predicted by the logistic regression model to have received an offer to at least one school to which they applied. The results of the analyses using the Law School Grid Model, on their face, are somewhat more encouraging than the results obtained using the logistic regression models. Even so, the data show that the overall effect of using a decision process that relies only on LSAT scores and UGPA without consideration of race would be to reduce substantially the proportion of applicants of color who obtained offers of admission to law school. The number of students of color who would be admitted to at least one law school is 66% of the number actually admitted if Asian American applicants are included, and 57% if they are excluded. Most severely affected would be black applicants. In the 1990-1991 application year, nearly half of the black applicants were admitted to at least one school to which they applied. The LSAT/UGPA-combined model predicts that only 10% of them would have been admitted to at least one school to which they applied. The Law School Grid Model suggests that only 23% would have qualified for admission to at least one law school in the study.⁴⁰

⁴⁰ An alternative way to think about the impact of the two LSAT/UGPA models of admission decisions is in terms of the proportional representation from selected ethnic groups that would result from their application. The percentage distribution of 1990-1991 admitted students, as well as the percentage distribution predicted under each of the LSAT/UGPA models is as follows:

TABLE 5

NUMBER AND PERCENTAGE OF STUDENTS ADMITTED COMPARED WITH THOSE PREDICTED TO BE ADMITTED TO LAW SCHOOL FROM TWO MODELS FOR ESTIMATING THE IMPACT OF ADMISSION DECISIONS BASED ON LSAT SCORE AND UGPA WITHOUT CONSIDERATION OF RACE

Ethnic Group		Number of Applicants	Number Admitted	Predicted Law School Grid Model	Predicted Combined Logistic Regression Model
American Indian	Number	489	302	201	153
	Percent*		61.76	41.06	31.29
Asian American	Number	3,711	2,312	2,026	1,493
	Percent		62.30	54.60	40.23
Black	Number	7,083	3,435	1,631	711
	Percent		48.50	23.02	10.04
Hispanic	Number	2,304	1,351	974	700
	Percent		58.64	42.26	30.38
Mexican American	Number	1,109	629	439	260
	Percent		56.72	39.60	23.44
Puerto Rican	Number	628	324	213	102
	Percent		51.59	33.91	16.24
White	Number	72,742	42,287	42,287	40,358
	Percent		58.13	58.13	55.48
Total	Number	88,066	50,640	47,771	43,777

* Percent shows the percentage of the total number of applicants in each ethnic group who were actually admitted or predicted to be admitted by the models.

5. Questioning the Assumptions of the Law School Grid Model

A necessary assumption underlying the suggestion that affirmative action admission programs simply reallocate students of color to

TABLE N3

	Percent Applicants	Percent Law School Grid Model	Percent Logistic Regression Model	Percent Actual
American Indian	0.56	0.42	0.35	0.60
Asian American	4.21	4.24	3.41	4.57
Black	8.04	3.41	1.62	6.78
Hispanic	2.62	2.04	1.60	2.67
Mexican American	1.26	0.92	0.59	1.24
Puerto Rican	0.71	0.45	0.23	0.64
White	82.60	88.52	92.19	83.51

These data show, for example, that black applicants make up approximately 8% of the total applicant pool and just under 7% of the pool of 1990-1991 admitted applicants. Under the Law School Grid Model they are predicted to make up 3.4% of the admitted applicants, and under the logistic regression model, 1.6%.

more selective schools⁴¹ is that students of color would, in fact, attend any school to which they were admitted. The data and analyses reported in this study counter such an assumption.

The grid data for black applicants show that more than half of the applicants who would have been admitted to some school fall in approximately the lower right quadrant of that table.⁴² These are applicants with LSAT scores less than 35 and UGPAs less than 3.25. In order to examine the kinds of schools that accepted students with scores and grades in these ranges in 1990-1991, results from a cluster analysis study of law schools were revisited.⁴³ The purpose of the cluster analysis study was to "determine whether a discrete and stable grouping of law schools exists when a variety of characteristics of the schools and their students are considered simultaneously."⁴⁴ In the study, the seven characteristics of size, cost, selectivity of the school, faculty/student ratio, percent of students who are minority, median LSAT score, and median UGPA were identified as ones on which law schools might differ in ways that are important to the outcomes of many research studies about legal education.⁴⁵ The results from the study suggest six groupings of law schools, with the number of schools per group ranging from fifty-three to eight.⁴⁶ Although there was no inherent rank order to the groupings or "clusters" as they were developed, the six clusters are sorted for purposes of this study by median LSAT and median UGPA of their entering class, with the highest median cluster designated Cluster 1 and the lowest median cluster designated Cluster 6.⁴⁷

The Fall 1991 entering students with LSAT scores less than 35 and UGPA less than 3.25 were identified for the purpose of learning where they were attending law school. The number of these students attending each law school was then summarized by cluster rather than by individual school. The data reveal that 74% of the white students in that LSAT/UGPA group attended Cluster 4 or Cluster 5 schools. An examination of both the overall distribution of students across

⁴¹ See Summers, *supra* note 13, at 384 ("[E]ach law school, by its preferential admission, simply takes minority students away from other schools whose admissions standards are further down the scale.")

⁴² See, e.g., Table 4, *supra* p. 21.

⁴³ See Linda F. Wightman, *Clustering U.S. Law Schools Using Variables that Describe Size, Cost, Selectivity, and Student Body Characteristics* (Law Sch. Admission Council Research Report No. 93-04, Dec. 1993). Cluster analysis is an empirical classification methodology.

⁴⁴ *Id.* at 1.

⁴⁵ See *id.* at 5.

⁴⁶ See *id.* at 25-26.

⁴⁷ The average scores on each of the clustering variables for schools in each cluster are as follows:

clusters and the ethnic distribution of students across clusters suggests that finding 74% of the white students from that score range in Clusters 4 and 5 schools is disproportionate in that just under 45% of all Fall 1991 first-year students and 47% of all white students attended Cluster 4 or Cluster 5 schools. The question of interest is whether the same high proportion of applicants of color might be willing and able to attend schools in these clusters if they were the only schools to which the applicants were accepted. There are two characteristics in particular about the schools that make up Clusters 4 and 5 that place doubt on the assumption that students of color would have either made application to those schools or attended them. First, the schools in these two clusters enroll the lowest proportion of minority students of any of the clusters.⁴⁸ Second, the schools in Cluster 4 are primarily private (98%) and are among the most costly of the schools—being exceeded only by the eighteen schools included in Cluster 1.⁴⁹

The cost issues appear even more compelling when socioeconomic status (SES) data⁵⁰ are taken into account. The relationship between SES and ethnicity is statistically significant for the entire Fall 1991 entering class,⁵¹ but it is even stronger within the particular sub-

TABLE N4

Variable	Cluster					
	1	2	3	4	5	6
Tuition	13,659.89	11,153.92	3,481.18	11,428.94	6,141.97	3,136.92
Enrollment	704.06	1,466.68	606.54	797.67	516.08	347.63
Selectivity	0.17	0.26	0.28	0.34	0.50	0.33
Percent minority	20	19	15	12	8	58
Faculty/student ratio	22.04	28.14	21.14	24.73	21.64	17.77
LSAT	42.06	39.53	37.65	35.51	32.29	29.25
GPA	3.50	3.34	3.29	3.09	3.05	2.86
Percent private	88	60	4	98	56	29
Number of schools in the cluster	18	19	52	53	21	8

⁴⁸ See Table N4, *supra* note 47 (listing percent of minority enrollment).

⁴⁹ See *id.* (listing tuition figures and proportion of private institutions).

⁵⁰ A description of methodology used to define SES categories is found *infra* notes 96-99 and accompanying text.

⁵¹ Data show that SES is not independent of ethnic group for the longitudinal sample of 1991 first-year law students participating in the *LSAC Bar Passage Study*. See Linda F. Wightman, *Women in Legal Education: A Comparison of the Law School Performance and Law School Experiences of Women and Men* 115 n.3 (Law Sch. Admission Council Research Report Series 1996) (showing distribution of sample by SES and ethnicity). For a description of the bar passage study, see *supra* note 8. Note that in the study from which these data are extracted, Mexican American, Puerto Rican, and Hispanic student data are collapsed into a single category labeled "Hispanic." See Wightman, *supra*, at 6 (noting composition of group identified as "Hispanic"). The distribution by SES and ethnicity is shown below:

set of students who fall in the less-than-35 LSAT score, less-than-3.25 UGPA cells on the LSAT/UGPA grids. That is, only 24% of the white students in the group who had LSAT scores and UGPAs within the less-than-35 and less-than-3.25 range are classified as lower-middle SES compared with 53% of the black students, 58% of the Puerto Rican students, and 63% of the Mexican American students.⁵² These data suggest that students of color from lower SES groups are less likely to attend high-tuition Cluster 4 schools.

Next, consider the logistic regression models, which focus only on decisions made by schools to which the students actually made application, as a means of questioning the assumptions of the Law School Grid Model. These data provide an alternative means for evaluating the overall reallocation of nonwhite students across law schools that would occur from use of a strictly quantitative admission model. Overall, the 1990-1991 law school applicants made an average of 4.9

TABLE N5

Socioeconomic Group	Ethnic Group				Total
	Asian American	Black	Hispanic	White	
Upper					
Number	209	396	150	750	1,505
Percent	25.43	27.75	16.45	24.75	24.31
Upper-middle					
Number	239	115	140	759	1,253
Percent	29.08	8.06	15.35	25.05	20.24
Middle					
Number	172	202	178	844	1,396
Percent	20.92	14.16	19.52	27.85	22.55
Lower-middle					
Number	202	714	444	677	2,037
Percent	24.57	50.04	48.68	22.34	32.90
Total					
Number	822	1427	912	3,030	6,191
Percent	100.00	100.00	100.00	100.00	100.00

Id. at 115 n.3.

⁵² The relationship between ethnicity and SES for the group of students who fall in the less-than-35 LSAT score, less-than-3.25 UGPA cells on the LSAT/UGPA grids is both statistically and practically significant. Due to the fact that small differences may be statistically significant when sample sizes are large, measures of effect size frequently are reported to serve as a measure of practical significance. The effect size for these data is .33. The effect size is measured using Cohen's w , which is $w =$

$$\sqrt{\chi^2/N}$$

Values for w of .1 are typically considered to be small effect sizes; values of .3 are considered medium effect sizes. See generally Cohen, *supra* note 39, at 216-26 (discussing effect size index of Cohen's w).

applications⁵³ each (only Asian American students applied to significantly more schools than white students—6.7 compared with 4.8). Most students applied to a range of schools. Further, the number of students who were accepted to at least one school to which they applied greatly exceeds the number who matriculated.⁵⁴ This is true for both students of color and for white students. These data do not suggest that applicants of color would attend any school that offered them admission.

Another important fact is that all first-year seats in the law schools reported herein were filled in Fall 1991. Although some students who failed to gain admission might readily lower their aspirations and accept admission at a less selective institution, they could do so only with the consequence of displacing another student at that institution. It does not necessarily follow that open seats in the less selective schools would become available for applicants of color as a result of white students at those schools gaining a place in the more selective schools. Rather, some of the seats at the more highly selective schools could be taken by white applicants who made no application to the less selective schools, or who did not choose to attend the less selective school. Thus, some of the white students who lost a seat at a less selective school might not have been admitted to any school.

The assumptions of Summers's argument (i.e., that applicants would lower their expectations and apply to and attend less selective schools if there were no affirmative action admission practices)⁵⁵ are questionable, as suggested in the previous discussion. Even if those assumptions were not questionable and applicants indeed would apply to and attend less selective schools, questions about how applicants of color would be allocated across different law schools are of interest.

This interest results partly from the belief that career opportunities and social mobility are not independent of the reputation of the law school attended. A second issue of concern related to allocation of applicants, and thus students, across law schools is the benefits to the educational experiences of all law students that are a consequence of interaction with a diverse student body. Previous research, using data from Fall 1991 first-year students, has examined the allocation of stu-

⁵³ This average is based on all applications made by all 1990-1991 applicants, including applications to non-U.S. law schools. See *supra* note 7.

⁵⁴ For example, the data in Table 2, *supra* p. 16, identify 50,640 admitted applicants, while the ABA reports 44,050 Fall 1991 first-year students. See American Bar Ass'n Section of Legal Educ. and Admissions to the Bar, *A Review of Legal Education in the United States: Fall 1992*, at 67 (1993) (providing legal education and bar admission statistics).

⁵⁵ See Summers, *supra* note 13, at 384 (arguing that preferential admission policies merely reallocate minority law students to more prestigious schools).

dents of color across law schools categorized by various definitions of prestige or similarity.⁵⁶ A distinguishing feature of one of these clusters, Cluster 6, was the high percentage of minority students in attendance. Approximately 19% of black students attended a school in Cluster 6. The data show that with the exception of Cluster 6, which is partly distinguished by the high proportion of minority students,⁵⁷ students of color were proportionally better represented among the three clusters with the highest median LSAT scores and UGPAs than among the other clusters, and they were fairly evenly represented among the three highest LSAT/UGPA clusters.⁵⁸ For example, 6% of the students attending Cluster 1 schools are black, as are 6% of those attending Cluster 2 schools and 7% of those attending Cluster 3 schools. Analyses were undertaken to sort the admission prediction data reported in Table 2 to identify the school in the highest cluster to which each student was accepted (using only LSAT score and UGPA to define relative positions). An earlier study of students' application and decision patterns demonstrated that among schools to which they were accepted, applicants were most likely to choose to attend the school with the highest median LSAT score and UGPA.⁵⁹ Consistent with the findings of Braun and Szatrowski,⁶⁰ Table 6 was built using the assumption that applicants would choose to attend a school in the highest LSAT/UGPA cluster to which they were accepted. There are obvious exceptions to this assumption for individual applicants, but it is useful for illustrating the overall impact on the demographic distribution of students across law schools of an admission model that uses only LSAT score and UGPA. The data in Table 6 illustrate a dramatic reallocation of applicants of color across law school clusters. The percent columns show the percentage of the total applicants accepted or predicted to be accepted within each cluster. For example, white applicants make up 78.6% of the total applicants actually accepted to Cluster 1 schools and 87.76% of the applicants predicted to be ac-

⁵⁶ See Wightman, *supra* note 11, at 25-28 (showing distribution of entering students among law schools based upon stratum and cluster of schools). The clusters given in that study are numbered differently such that Clusters 5, 4, 1, 3, 2, and 6 correspond respectively with Clusters 1, 2, 3, 4, 5, and 6 in this study. See *id.* at 21.

⁵⁷ See *id.* at 28 (showing that white students comprised only 42% of students in Cluster 6).

⁵⁸ See *id.* (showing general distribution of law students based on ethnicity for each law school cluster).

⁵⁹ See Henry I. Braun & Ted H. Szatrowski, *Development of a Universal Grade Scale for American Law Schools and the Reconstruction of Ideal Validity Experiments*, in *Reports of LSAC Sponsored Research: Volume IV, 1978-1983*, at 457, 478 (Law Sch. Admission Council Report No. LSAC-82-3, 1984) (discussing tendency of students to attend best schools to which admitted as explanation of results).

⁶⁰ See *id.*

cepted based on the LSAT/UGPA logistic regression model. The least affected group was Asian American applicants, particularly among Cluster 1 and Cluster 2 schools. As is true for all the analyses reported in this study, the greatest impact was observed among black applicants. Approximately 7% of the accepted applicants in each of Clusters 1, 2, and 3 were black in the 1990-1991 application year. The model predicted percentages reduced to between a low of 0.4% (Cluster 1) and a high of 1% (Cluster 2) among the schools in those three clusters. This table also shows that among the 711 black applicants predicted to be admitted to all ABA-approved schools, approximately 40% (284) would be admitted only to Cluster 6 schools—schools with predominately minority student populations. These figures are astounding when compared with law school enrollment figures for 1965, when affirmative action admission practices were not yet widespread in law schools. The Association of American Law Schools (AALS) reported that there were only 700 black law students in that year and almost half were attending the five predominately black law schools.⁶¹ The AALS also noted that black enrollment was 1.3% of total enrollment, and well below 1% in the 145 law schools that were not predominately black.⁶² For the data reported in Table 5, black applicants are predicted to make up 1.6% of the total admitted pool and less than 1% of the applicants admitted to one of the 163 schools not included in Cluster 6.

Using the Law School Grid Model instead of the logistic regression model resulted in a predicted reduction in representation of non-white students that is somewhat less dramatic (black applicants were predicted to make up 3.4% of the total admitted pool compared to 1.6% under the logistic regression model). Even so, the Law School Grid Model predictions are substantially lower than the observed proportions (black applicants made up 6.8% of the actual admitted pool). More important, the discussion and analyses presented in this section demonstrated that the distribution across schools of admitted non-white applicants would be altered dramatically and the assumption that applicants of color would, in fact, attend any school to which they were accepted is unsupported. These data illustrating the effects of an admission model that relies exclusively on LSAT score and UGPA necessitate a critical evaluation of the validity of these two variables

⁶¹ See Brief for the President and Fellows of Harvard College as Amicus Curiae at 36, *DeFunis v. Odegaard*, 416 U.S. 312 (1974) (No. 73-235) (citing 1965 Proceedings of the Association of American Law Schools 112). There is substantial, but not complete, overlap between Cluster 6 schools and the predominantly black law schools referenced by the AALS.

⁶² See *id.*

for use in the admission process. Validity issues are addressed in the next section.

II

THE APPROPRIATE ROLE OF NUMERICAL INDICATORS

The tension between commitment to the principles of racial and ethnic diversity and of competitive evaluation based on quantifiable indicators of individual achievement frequently results in questions about the appropriateness of the use of numerical indicators, especially the LSAT, in the admission process. These questions typically are raised by questioning the validity of the test, particularly the validity of its use with applicants of color. However, one does not need to argue that the test is invalid or a biased predictor against members of certain groups in order to substantiate the negative consequences of misuse or overuse of the test in the admission process. The LSAT is valid for a limited use⁶³ and has a clearly defined, narrow focus: it is a test of acquired reading and verbal reasoning skills that have been shown to correlate with academic successes in the first year of law school. When it is used for a different and/or far broader purpose, not only is the use inappropriate, but calling on the test to do more than it was intended to do damages its validity. This distinction is important to keep in mind because misunderstanding it can detract from the more central issue. Specifically, several studies support the test as a valid measure for the limited purpose for which it was designed and indicate that it is as valid for applicants of color as it is for white applicants.⁶⁴ However, a test that does a very good job of measuring a

⁶³ See, e.g., Franklin R. Evans, Recent Trends in Law School Validity Studies, in Reports of LSAC Sponsored Research: Volume IV, 1978-1983, at 347, 359 (Law Sch. Admission Council Report No. LSAC-82-1, May 1984) (observing that LSAT is better predictor of first-year performance than UGPA); Robert L. Linn & C. Nicholas Hastings, A Meta Analysis of the Validity of Predictors of Performance in Law School, in Reports of LSAC Sponsored Research: Volume IV, 1978-1983, at 507, 512 (Law Sch. Admission Council Report No. LSAC-83-1, May 1984) (noting overwhelming evidence that LSAT and UGPA have useful degree of predictive validity); W.B. Schrader, Summary of Law School Validity Studies, 1948-1975, in Reports of LSAC Sponsored Research: Volume III, 1975-1977, at 519, 532 (Law Sch. Admission Council Report No. LSAC-76-8, Dec. 1977) (noting that LSAT and UGPA have been found to be substantial predictors in nearly every study); Linda F. Wightman, Predictive Validity of the LSAT: A National Summary of the 1990-1992 Correlation Studies 23 (Law Sch. Admission Council Research Report No. 93-05, Dec. 1993) (finding that LSAT and UGPA are useful predictors of first-year performance and that LSAT is better predictor than UGPA).

⁶⁴ See, e.g., Robert L. Linn & C. Nicholas Hastings, Group Differentiated Prediction, 8 *Applied Psychol. Measurement* 165, 165-66 (1984) (noting that most studies show that LSAT and UGPA tend to overpredict minority group performance rather than underpredict); Donald E. Powers, Comparing Predictions of Law School Performance for Black, Chicano, and White Law Students, in Reports of LSAC Sponsored Research: Volume III,

TABLE 6
DISTRIBUTION OF 1990-1991 APPLICANTS BY CLUSTER, ETHNIC GROUP, AND ACTUAL AND PREDICTED LAW SCHOOL ADMISSION USING LSAT AND UGPA IN A LOGISTIC REGRESSION MODEL*

	Cluster	Actual Number Admitted	Predicted Number	Actual Percent of Applicants Admitted	Predicted Percent of Applicants
American Indian	1	29	9	0.45	0.17
Asian American	1	471	360	7.30	6.61
Black	1	420	24	6.51	0.44
Hispanic	1	137	78	2.12	1.43
Mexican American	1	93	27	1.44	0.50
Puerto Rican	1	53	10	0.82	0.18
White	1	5,072	4,783	78.60	87.76
Total		6,453	5,450		
American Indian	2	40	20	0.40	0.24
Asian American	2	592	394	5.94	4.68
Black	2	618	88	6.21	1.05
Hispanic	2	367	224	3.69	2.66
Mexican American	2	129	43	1.30	0.51
Puerto Rican	2	94	37	0.94	0.44
White	2	7,897	7,414	79.30	88.09
Total		9,958	8,416		
American Indian	3	81	21	0.72	0.22
Asian American	3	359	179	3.18	1.88
Black	3	809	58	7.16	0.61
Hispanic	3	247	79	2.18	0.83
Mexican American	3	135	33	1.19	0.35
Puerto Rican	3	52	10	0.46	0.11
White	3	9,513	8,996	84.14	94.48
Total		11,306	9,522		
American Indian	4	75	49	0.48	0.35
Asian American	4	684	399	4.33	2.88
Black	4	746	132	4.73	0.95
Hispanic	4	420	207	2.66	1.49
Mexican American	4	194	107	1.23	0.77
Puerto Rican	4	98	33	0.62	0.24
White	4	13,251	12,648	83.93	91.29
Total		15,788	13,854		
American Indian	5	63	43	1.47	1.08
Asian American	5	58	38	1.35	0.96
Black	5	233	74	5.42	1.86
Hispanic	5	79	44	1.84	1.11
Mexican American	5	20	11	0.47	0.28
Puerto Rican	5	12	3	0.28	0.08
White	5	3,814	3,725	88.74	93.83
Total		4,298	3,970		
American Indian	6	11	4	0.96	0.43
Asian American	6	36	27	3.16	2.89
Black	6	556	284	48.73	30.37
Hispanic	6	61	28	5.35	2.99
Mexican American	6	45	27	3.94	2.89
Puerto Rican	6	12	7	1.05	0.75
White	6	397	540	34.79	57.75
Total		1,141	935		

* Applicants whose ethnic identity was listed as "other" or not reported are included in the total number admitted within each cluster in order to accurately show the distribution. Additionally, two schools in the study are not included in any cluster.

narrow, albeit important, range of acquired academic skills cannot serve as a sole determinant in the allocation of limited educational opportunity. Neither can it serve that purpose when coupled with UGPA. UGPA carries its own set of limitations, including the influence of factors such as leniency of graders, rigor of the curriculum represented by the grades, and students' motivation and application. In addition, the LSAT score and UGPA of law school applicants are correlated .38 with one another. Thus, there is some redundancy in these measures.⁶⁵

Concerns about validity of the LSAT or the LSAT and UGPA used in combination are often the result of misunderstanding or confusion between the scientific definition of validity in test theory and the lay interpretation of validity. Within the psychometric field, the general concept of validity is a broad one, encompassing the accumulation of data to support a particular use of a test. First, however, it is important to understand the scope and limitations of the test itself. It is only in the context of that limited use that validity data are meaningful.

A. Evaluating Validity Evidence

The usual procedure for establishing validity with regard to the LSAT is to obtain evidence that there is a relationship between it and the outcome of interest—usually academic performance in law school or, more specifically, performance in the first year of law school. There has been and continues to be substantial statistical support for the claim of validity of the LSAT for use in this limited sense in the admission process.⁶⁶

Typically, this evidence is in the form of a correlation between LSAT and first-year grade-point average in law school (FYA), or be-

1975-1977, at 721, 747 (Law Sch. Admission Council Report No. LSAC-77-3, Dec. 1977) (finding that LSAT scores are as valid and successful a predictor for minority students as for white students); Linda F. Wightman & David G. Muller, An Analysis of Differential Validity and Differential Prediction for Black, Mexican American, Hispanic, and White Law School Students I (Law Sch. Admission Council Research Report Series No. 90-03, June 1990) (noting that validity data does not indicate LSAT scores are less valid for minorities than for whites).

⁶⁵ The correlation coefficient provides a measure of the strength of the association between two variables. The stronger the association, the higher the correlation. When two correlated variables such as LSAT and UGPA are used jointly to predict a criterion such as first-year grade-point average in law school (FYA), the amount of variance in the criterion that they jointly explain is not so large as the sum of the amount of variance that each explains alone. This is so because some of the variance in FYA that is accounted for by LSAT is also accounted for by UGPA.

⁶⁶ See sources cited supra note 63 (noting value of LSAT as predictor of first-year performance).

tween LSAT/UGPA-combined and FYA.⁶⁷ The correlation coefficient provides some information about how useful a predictor is—but there is no clear answer as to how large the coefficient should be in order for the predictor to be useful.⁶⁸ National validity data for U.S. and Canadian law schools during the period 1990-1992 show that the LSAT is a substantially better predictor of first-year performance in law school than is the UGPA.⁶⁹ During that time period, the median correlation coefficient for the LSAT alone is .41, compared with .26 for UGPA alone.⁷⁰ The data also show that the combination of LSAT and UGPA provides better prediction than either predictor alone.⁷¹ The average multiple correlation across 167 schools for whom three years of data are available is .49.⁷² These results are consistent with findings from earlier LSAT validity summary reports.⁷³

The magnitudes of the correlation coefficients reported above are often the subject of criticism, particularly when considering that the square of the correlation coefficient is an indicator of the amount of the variation in the criterion that is accounted for by the predictors. Squaring the median validity coefficient for LSAT score and UGPA shows that these two variables account for approximately 25% of the variance in first-year law school grades. However, it is important to understand the restrictions imposed on the magnitude of the coefficients by the design of the validity studies that are undertaken. Validity coefficients are most likely an underestimate of the true validity of the LSAT alone or the LSAT and UGPA combined, primarily because the correlations are based only on the LSAT scores, UGPAs, and FYAs of those applicants who were accepted to and attended the studied law school and received an FYA. Most applicants with low LSAT

⁶⁷ See sources cited *supra* note 63.

⁶⁸ See *supra* notes 16, 65 (explaining correlation coefficients).

⁶⁹ See Wightman, *supra* note 63, at 23 (noting that LSAT is better predictor than UGPA).

⁷⁰ See *id.*

⁷¹ See *id.*

⁷² See *id.* Although the most recently published validity summary report is dated 1993, within-school correlation data are produced annually by the Law School Admission Council for U.S. and Canadian law schools and the results are monitored annually. So long as results remain stable, as they have for the LSAT, there is little need to update national summary data more frequently than every five to ten years. An updated summary report is anticipated following the 1997 correlation studies. That report will summarize the first available three-year data for students admitted with scores on the revised 120-to-180 LSAT score scale. The annual analyses of these data for 1994 first-year students suggest that the correlation study results essentially parallel the results found in the 1993 summary report.

⁷³ See, e.g., Evans, *supra* note 63, at 359 (finding median validity of LSAT/UGPA-combined predictor to be .47); Linn & Hastings, *supra* note 63, at 516 (finding mean observed validity of LSAT/UGPA-combined predictor to be .46); Schrader, *supra* note 63, at 531 (finding median validity of LSAT/UGPA-combined to be .45).

scores and low UGPAs are not admitted and, thus, there are no first-year grades for them. As a consequence, they cannot be included in the study. Also, students attending a particular law school tend to have LSAT scores within a fairly small range relative to the range of scores among all applicants to that school, as well as among all applicants to all schools. Each of these factors leads to a phenomenon known as "restriction of range"—a reduction in the variability of the predictors within the data available for analyses. Because there is less variability in the scores of admitted students than in the scores of all applicants, correlations are smaller than they would have been had the class been admitted randomly from the total applicant pool. In addition to the problem of reduced variability, matriculated students include some who are admitted as a result of special consideration. That is, some students with low test scores or low UGPAs are admitted to law school, but they are usually not typical of the low-scoring applicants who are rejected. Instead, they are admitted because the school has some other evidence of their ability to do well in law school. Frequently these applicants show a discrepancy between LSAT score and UGPA, and the admitting school allows a high score on one predictor to compensate for a low score on the other. Employing a compensatory model in the admission process has the effect of reducing the validity estimates. All of this supports the claim that the validity coefficients reported for the LSAT tend to be underestimates. Even so, they are the best information available, and even as underestimates, they are quite reputable, particularly when compared with the validity coefficients reported for other higher-education admission tests.⁷⁴

Questions about the overall validity of the LSAT often are raised in conjunction with concerns about its validity for racial or ethnic minority group applicants.⁷⁵ Research into questions of differential va-

⁷⁴ For example, the correlation of the Graduate Management Admission Test (GMAT) total score with first-year MBA grades is .38. See Educational Testing Serv., *The GMAC Validity Study Service: A Three-Year Summary, 1988-89 through 1990-91*, at 5 (Oct. 14, 1994) (unpublished manuscript, on file with the *New York University Law Review*). For the GRE, the correlations between verbal test scores and graduate first-year grade-point average is .30; for quantitative scores, .29; for analytical, .28. For the three scores combined, the correlation is .34, and when UGPA is added the correlation increases to .46. See Educational Testing Serv., *GRE 1995-96 Guide to the Use of the Graduate Record Examinations Program* 31 (1995).

⁷⁵ See, e.g., Edward Rincon, *Tests Put a Bias in College Admissions*, *The Dallas Morning News*, Apr. 7, 1996, at 6J (arguing that test scores of African Americans and Hispanics have traditionally been negatively influenced by variety of factors having little to do with intelligence); Roberto Rodriguez, *Life After Hopwood, Black Issues in Higher Educ.*, Aug. 8, 1996, at 8 (noting experts who consider standardized tests as major cause of discrimination against people of color and women).

lidity of the LSAT have repeatedly demonstrated that LSAT scores used either alone or in combination with UGPA are as valid or more valid predictors of first-year grades in law school for black, Hispanic, and Mexican American students as they are for white students.⁷⁶ The research also shows that, contrary to popular belief, when UGPA is used alone as a predictor, it is less correlated with first-year grades for black students than for white students.⁷⁷ Concern about the magnitude of the validity coefficients for applicants of color is based on concern about how to most fairly evaluate test scores and undergraduate grades in making admission decisions. The research has shown consistently that when a regression equation is developed using combined data from white and minority students the equation tends, on average, to overpredict law school performance for minority students.⁷⁸

The data presented in Tables 1, 5, and 6 of this study provide evidence of the consequences of extreme or complete reliance on LSAT score and UGPA when making admission decisions. The data also demonstrate that, although the models fit well, they do not fully describe the admission process even for white students. Other factors, though perhaps less objective and more difficult to quantify, play a part in admission decisions. The data also show unequivocally that overreliance will lead to predictable and systematic exclusion of a large number of minority applicants from legal education. Discussion of other consequences of overreliance on LSAT and UGPA appear in the next section of this study. It confirms that a large proportion of those applicants who would be excluded are qualified to undertake the academic rigor of a legal education.

B. Law School Graduation and Bar Passage Data to Evaluate Test Use Questions

The data analyzed in this section illustrate substantial law school graduation rates and bar examination passage rates among Fall 1991 first-year students who would not have been admitted under the LSAT/UGPA-combined logistic regression model. A statistical test did not find a significant difference within any ethnic group between the law school graduation rates for those predicted to be admitted and those predicted not to be admitted. Some significant relationships are observed between predicted admission decision and bar passage, but for all groups for whom the relationship is significant, the effect size is

⁷⁶ See sources cited supra note 64 (finding that LSAT and UGPA are no less valid predictors for minorities than for whites).

⁷⁷ See id.

⁷⁸ See id.

small.⁷⁹ A logistic regression equation to predict bar passage from LSAT score and UGPA fits the data but the correlation between actual and predicted bar passage does not approach the magnitude of the correlation observed between actual and predicted admission decisions.

1. Results: Law School Graduation Data

The LSAC Bar Passage Study⁸⁰ longitudinal database of information about students who entered law school in Fall 1991 provides a unique opportunity to examine law school completion rates for students who would not have been admitted to law school if a model based only on LSAT score and UGPA were used. These data are compared with similar data for students who would have been admitted under that model. The data in Table 7 show a cross-tabulation of the number and percentage of students in seven ethnic groups who would and would not have been admitted to the school they attended and the number and percentage from each group who did and did not graduate from law school. These data complement the previous discussion about the role of LSAT score and UGPA as sole determinants of who is most qualified to attend law school.⁸¹ While the correlation of LSAT score and UGPA with first-year grades in law school is sufficient to support the validity of their use as part of the admission process,⁸² the data in Table 7 suggest that they are not significant predictors of graduation from law school. Within several ethnic groups, the proportion of students who would have been admitted by the model and who graduated slightly exceeds the proportion who would not have been admitted and who graduated. For Mexican American and white students, however, the proportion who would not have been accepted and who graduated slightly exceeds the proportion of graduates among those who would have been accepted. Regardless, the differences are not significant in either direction for any group. Specifically, a chi-square test of independence supports that predicted admission decision is independent of graduation within every ethnic group.

More important than the identification of the limitation of the utility of LSAT score and UGPA in predicting graduation, however, are the actual graduation rates reported in Table 7. The graduation rates among those students who would not have been provided an

⁷⁹ See supra note 52 (explaining effect size).

⁸⁰ See supra note 8.

⁸¹ See supra Part I.

⁸² See supra Part II.A.

TABLE 7
DISTRIBUTION OF FALL 1991 FIRST-YEAR LAW STUDENTS BY
ETHNIC GROUP, PREDICTED ADMISSION DECISION, AND LAW
SCHOOL GRADUATION

Ethnic Group	Predicted Admission Decision		Law School Graduation	
			No	Yes
American Indian	Yes	Number	5	30
		Percent*	14.29	85.71
	No	Number	23	84
		Percent	21.50	78.50
Asian American	Yes	Number	41	394
		Percent	9.43	90.57
	No	Number	76	574
		Percent	11.69	88.31
Black	Yes	Number	32	132
		Percent	19.51	80.49
	No	Number	372	1,311
		Percent	22.10	77.90
Hispanic	Yes	Number	25	198
		Percent	11.21	88.79
	No	Number	46	342
		Percent	11.86	88.14
Mexican American	Yes	Number	14	53
		Percent	20.90	79.10
	No	Number	82	362
		Percent	18.47	81.53
Puerto Rican	Yes	Number	2	23
		Percent	8.00	92.00
	No	Number	25	115
		Percent	17.86	82.14
White	Yes	Number	1,772	16,141
		Percent	9.89	90.11
	No	Number	408	1,115
		Percent	9.02	90.98

* Percent shows row percentages.

opportunity to enter law school under the regression model is impressive, strongly supporting the claim by legal education administrators that law schools offer admission to only those students of color who are qualified to meet the demands of law school academic work.⁸³ The black students in this sample came to law school with UGPAs that are, on average, nearly one standard deviation below those of the white students and LSAT scores that average more than one-and-a-half standard deviations below.⁸⁴ Even so, 78% of those who would not have been granted admission if the decision rested entirely on those numerical indicators attained graduation. This rate is not signif-

⁸³ See, e.g., Taylor, *supra* note 3, at B3 (arguing that number of applicants allows schools to fill classes with qualified students while also considering diversity factors).

⁸⁴ The LSAT and UGPA means and standard deviations for these Fall 1991 first-year students are:

icantly below the graduation rate attained by those black students whose admission status would have remained unchanged by the regression model.

In interpreting these data, it is important to keep in mind that not only were a higher proportion of students of color at some academic risk, but students of color also represented a higher proportion of students from lower SES backgrounds.⁸⁵ Academic difficulty is not the only reason that some students failed to graduate from law school. Data from the *First Follow-up Questionnaire* distributed as part of the *LSAC Bar Passage Study* suggest that financial considerations are among the most common reasons provided by students who dropped out during their first year of law school.⁸⁶

2. Bar Examination Passage Rate Analyses

The *LSAC Bar Passage Study* longitudinal database also carries data about bar examination performance for participants.⁸⁷ The graduation data provided in Table 7 is only partial evidence of positive outcomes associated with affirmative action admission practices. Bar passage rates provide another outcome variable against which those who would not have been accepted by the model can be compared with those who would have been accepted.

With few exceptions,⁸⁸ graduation is not sufficient for entry to the profession; graduates must also take the bar examination. In order to evaluate the additional outcome of entry to the profession, bar examination results data were examined. Table 8 shows the proportion of students who passed and failed the bar examination separately by ethnic group and by whether or not they would have been admitted to law school by the LSAT/UGPA-combined model. Note that the data in this table represent only those students who graduated from law school and for whom bar examination data were available.⁸⁹

	White	Black
Number of students	22,436	1,847
LSAT Mean	37.36	28.68
Standard deviation	5.09	6.00
UGPA Mean	3.26	2.86
Standard deviation	.40	.43

⁸⁵ See *supra* note 51.

⁸⁶ See Wightman, *supra* note 51, at 106-07.

⁸⁷ See *supra* note 8.

⁸⁸ See Admission to Bar by States—1991, 1992, 1993, 1994, and 1995, The Bar Examiner, May 1996, at 32, 32 (showing that Wisconsin still offers diploma privilege to select schools).

⁸⁹ At the time the data for this study were analyzed, 24,235 of the 27,135 Fall 1991 first-year students who agreed to the release of their law school and bar performance data were

The bar passage rates among those students who would not have gained admission using the LSAT/UGPA-combined regression model are compelling. Across all ethnic groups, for those students who were predicted *not* to be admitted, the bar passage rates range from 72.5 to 93.3%. Among those who were predicted to be admitted, the pass rates range from 85.2 to 96.6%.⁹⁰

TABLE 8
DISTRIBUTION OF FALL 1991 FIRST-YEAR LAW STUDENTS BY
ETHNIC GROUP, PREDICTED ADMISSION DECISION, AND BAR
EXAMINATION STATUS

Ethnic Group	Predicted Admission Decision	Bar Examination Status	
		Fail	Pass
American Indian	Yes	4 14.81*	23 85.19
	No	17 23.61	55 76.39
Asian American	Yes	21 5.80	341 94.20
	No	61 11.84	454 88.16
Black	Yes	12 9.76	111 90.24
	No	320 27.14	859 72.86
Hispanic	Yes	13 6.95	174 93.05
	No	52 17.16	251 82.84
Mexican American	Yes	4 8.00	46 92.00
	No	44 12.98	295 87.02
Puerto Rican	Yes	1 4.55	21 95.45
	No	27 27.55	71 72.45
White	Yes	507 3.40	14,397 96.60
	No	249 6.67	3,482 93.33

* Percent shows row percentages.

For completeness, a logistic regression model was constructed to evaluate the relationship between-LSAT score, UGPA, and bar examination pass/fail status. The statistical indicators confirm that these

known to have graduated. Among these graduates, bar examination data are available for 22,239.

⁹⁰ For students who took the bar examination more than one time, status is reported as pass if they passed at least one bar examination.

data fit the model, but the correlation between actual pass and predicted pass is only .30—considerably lower than the correlation between actual and predicted admission decisions reported earlier in this study.⁹¹ This low correlation is partly attributable to the overall 93.8% pass rate among this sample.⁹² Thus, even though the regression model suggests a relationship between the predictor variables and the pass/fail criterion measure, it is not a strong one. A chi-square test of independence between predicted admission decision (yes/no) and bar passage status (pass/fail) confirms this conclusion. That is, the data show a statistically significant relationship and a small effect size for Asian American, black, Hispanic, and Puerto Rican students, a statistically but not practically significant one for white students, but no relationship between the two variables for American Indian and Mexican American students.⁹³ Thus, the data suggest little to no difference in the likelihood of passing the bar examination between students predicted to be admitted to law school and those predicted *not* to be admitted by a model that depends only on LSAT score and UGPA.

III

ALTERNATIVES TO RACE OR ETHNICITY AS ADMISSION FACTORS TO ACHIEVE DIVERSITY

Advocating an admission process that does not take race into consideration is not necessarily to advocate a process that relies solely on numeric indicators of individual academic achievement. Some commentators suggest that there are a variety of factors that should be used in the admission process that might identify diversity contributions or evidence of lack of educational opportunity.⁹⁴ Such factors

⁹¹ See *supra* notes 23-27 and accompanying text (discussing logistic regression admission model fit).

⁹² The pass rate for this sample appears to be reasonably representative of the 1994 graduating class. For the majority of those who entered law school in Fall 1991, the first opportunity to take the bar examination was July 1994. Following that administration, the National Conference of Bar Examiners (NCBE) announced an overall pass rate among first-time takers of 84.7%. See National Conference of Bar Exam'rs, 1994 Statistics, *The Bar Examiner*, May 1995, at 12-14 (providing state-by-state bar passage numbers). Considering that LSAC data include repeater data, they were consistent with the national results reported by the NCBE, suggesting that this sample is representative of the population from which it was drawn.

⁹³ The statistically significant chi-square for white students is a consequence of the large sample size. The *w* is .07, not large enough to be considered even a small effect. See *supra* note 52 (explaining effect size).

⁹⁴ See, e.g., Chris Klein, *With Diversity Under Attack, Private Schools Seek Alternatives*, *Nat'l L.J.*, Apr. 29, 1996, at A18 (describing law school dean's intention to "prob[e] the economic, social and geographic traits of the applicants"); Regent Softens Stance on

could result in a student body that would be diverse along a variety of dimensions, including race. Based on the data from the samples used in this study, three of the often-identified factors that might foster diversity—socioeconomic status, selectivity of undergraduate school, and undergraduate major—were evaluated. None of these factors produced a highly qualified, ethnically diverse student body when considered in the admission process without simultaneous consideration of race.

The final analyses of this study focus on the apparent impact on the ethnic diversity of the admitted class if these factors, rather than race, are taken into consideration systematically in making admission decisions. These analyses fail to provide evidence that any of the three factors, when used independent of or without knowledge of race, would result in an admitted-student pool that mirrors the ethnic diversity achieved under current admission practice.

A. Socioeconomic Status Analyses

Some commentators have suggested using SES as an appropriate diversity factor.⁹⁵ Rather than focus on the broader question of whether it should be an additional factor in law school admission decisions, the analyses undertaken here focus on whether SES could function as a surrogate for ethnicity or otherwise ensure an ethnically diverse student body without the use of ethnicity as a specific factor at all.

There is no universally accepted index of SES, but parents' or father's occupation or education and family income are among the most frequently used surrogates. For these analyses, an SES index generated from five standard indicators of SES—mother's occupation, father's occupation, mother's education, father's education, and approximate level of family income at the time the respondent was in high school—were used. The data were self-reported by Fall 1991 first-year students who participated in the *LSAC Bar Passage Study*.⁹⁶ The index was generated using a cluster analysis methodology.⁹⁷ The goal of the cluster analysis was to develop an index that would classify each responding student into a definable, homogeneous SES category. Four SES clusters of approximately equal size were found, and are defined as follows:

Affirmative Action, N.Y. Times, June 21, 1995, at A14 (describing suggestion of University of California regent to use "poverty and 'life experiences'" as factors).

⁹⁵ See sources cited supra note 94.

⁹⁶ See supra note 8.

⁹⁷ For a technical description of the statistical methodology used to develop this SES index, see Wightman, supra note 11, at 10 n.14.

Upper. Both mothers and fathers of students in this group had graduate or professional training and held professional jobs. The level of education and the level of occupation are virtually identical for both the parents of these students.

Upper-Middle. Fathers in this group tend to be professional workers, but mothers are white-collar workers or homemakers. Fathers of these students are also likely to hold graduate or professional degrees, while mothers tend to have associate or bachelor's degrees, but no graduate or professional training.

Middle. Fathers of students in this group tend to hold white-collar nonprofessional jobs, while mothers tend to hold a mix of blue-collar and white-collar nonprofessional jobs. Additionally, fathers of students in this group have some college experience, with many holding an associate's degree. Mothers tend to have less education than fathers, but at least a high school diploma. Students in this and each of the higher SES groups reported average to above average family income when they were in high school.

Lower-Middle. Both mothers and fathers of students in this group tend to be blue-collar workers and are not college educated. Many have less than a high school education. Additionally, students in this group described their family income when they were in high school as below average.

One limitation of the analyses presented here is that SES data are available only for the admitted students, not for all applicants. Thus, SES cannot be added as a variable to the mathematical models of law school admission, which were developed using data from all applicants. As alternatives, the SES distribution by ethnic group, the mean LSAT scores and UGPAs by SES group within ethnic group, and the impact of weighting SES factors on the predicted admission status of the Fall 1991 first-year students were examined.

The SES breakdown by ethnic group and predicted admission status is shown in Table 9. These data do not show statistically significant differences between predicted "Admit? Yes" and "Admit? No" categories across SES group for any ethnic group.⁹⁸ For example, the data show that 90% of upper-SES black students would not have been admitted compared with 92% of lower-middle-SES black students. Although the percentages are dramatically different, the pattern is the same for white students. That is, 20% of upper-SES white students would not have been admitted compared with 19% of lower-middle-SES students. These data suggest that schools are not currently plac-

⁹⁸ The χ^2 value for white students is statistically significant as a consequence of the large sample size, but the effect size $w = .03$, suggesting no practical significance. See supra note 52 (explaining effect size).

ing special consideration or weight on SES factors in the admission process.

Mean LSAT score and mean UGPA by SES and ethnic group, shown in Table 10,⁹⁹ add complexity to the question of what role SES might play as a factor in admission decisions. For each ethnic group except Puerto Rican, the data tend to show a steady decline in LSAT score across SES groups.

This same trend is not present within UGPA data. It is tempting to interpret a linear relationship between SES and test scores, like the one evidenced in Table 10, as evidence of cultural bias in standardized admission tests. There are alternative explanations for the observed relationship. One such explanation is the statistically significant relationship that exists between selectivity of undergraduate school and SES,¹⁰⁰ which suggests that the observed differences in test scores may reflect differences in educational opportunity. Untangling these explanations is beyond the scope of this study and needs to be the subject of separate research efforts. The relevant issue for the purpose of this study is that the differences exist consistently within each ethnic

⁹⁹ The standard deviations for the means shown in Table 10 are as follows:

TABLE N6

Ethnic Group	<i>SD UGPA</i>				<i>SD LSAT</i>			
	SES Group		SES Group		SES Group		SES Group	
	Upper	Middle	Middle	Lower-Middle	Upper	Middle	Middle	Lower-Middle
American Indian	0.42	0.48	0.40	0.51	5.80	5.41	5.25	6.74
Asian American	0.40	0.43	0.41	0.40	5.75	5.68	5.45	5.23
Black	0.43	0.38	0.45	0.43	6.00	6.33	5.51	5.76
Hispanic	0.44	0.41	0.42	0.40	5.55	5.79	5.80	6.56
Mexican American	0.40	0.40	0.42	0.38	4.71	5.54	4.90	5.77
Puerto Rican	0.39	0.47	0.39	0.39	4.11	7.42	6.73	6.17
White	0.39	0.40	0.40	0.41	5.00	5.12	4.95	5.06

The sample sizes for the means shown in Table 10 are as follows:

TABLE N7

Ethnic Group	SES Group			
	Upper	Upper-Middle	Middle	Lower-Middle
American Indian	32	16	25	69
Asian American	277	322	239	247
Black	488	142	280	937
Hispanic	114	123	133	241
Mexican American	74	57	96	284
Puerto Rican	24	27	35	79
White	5,424	5,762	6,247	5,002

¹⁰⁰ See Wightman, *supra* note 30, at 16 & 19 n.17.

TABLE 9
DISTRIBUTION OF FALL 1991 FIRST-YEAR LAW STUDENTS BY
ETHNIC GROUP, PREDICTED ADMISSION DECISION, AND SES

Ethnic Group	Predicted Admission Decision	SES			
		Upper	Upper-Middle	Middle	Lower-Middle
American Indian	Yes	8	4	6	17
	No	25.00*	25.00	24.00	24.64
Asian American	Yes	24	12	19	52
	No	75.00	75.00	76.00	75.36
Black	Yes	109	147	91	88
	No	39.35	45.65	38.08	35.63
Hispanic	Yes	168	175	148	159
	No	60.65	54.35	61.92	64.37
Mexican American	Yes	50	14	21	79
	No	10.25	9.86	7.50	8.43
Puerto Rican	Yes	438	128	259	858
	No	89.75	90.14	92.50	91.57
White	Yes	41	53	56	73
	No	35.96	43.09	42.11	30.29
American Indian	Yes	73	70	77	168
	No	64.04	56.91	57.89	69.71
Asian American	Yes	10	8	19	30
	No	13.51	14.04	19.79	10.56
Black	Yes	64	49	77	254
	No	86.49	85.96	80.21	89.44
Hispanic	Yes	3	5	10	7
	No	12.50	18.52	28.57	8.86
Mexican American	Yes	21	22	25	72
	No	87.50	81.48	71.43	91.14
Puerto Rican	Yes	4,342	4,455	5,054	4,061
	No	80.05	77.32	80.90	81.19
White	Yes	1,082	1,307	1,193	941
	No	19.95	22.68	19.10	18.81

* Percent shows within group column percentages.

group, suggesting that, to the extent that SES receives weight as an admission factor, the applicants within each ethnic group who would be the beneficiaries of the extra consideration would be those who demonstrate less of the acquired skills measured by the test when compared with applicants from higher SES groups within the same ethnic group.

A second striking feature of the data presented in Table 10 is the difference in both LSAT score and UGPA among ethnic groups within the same SES group. The pattern among the ethnic groups is similar within each SES group. Among upper-SES students, for example, white students earned the highest mean LSAT score and black students the lowest. The data also show that the mean LSAT for upper-SES black students is more than one standard deviation below the mean for lower-middle-SES white students. In combination, these observations suggest that use of SES as a quantified factor in the admis-

TABLE 10
LSAT AND UGPA MEANS BY ETHNIC GROUP AND SES FOR FALL
1991 FIRST-YEAR LAW SCHOOL STUDENTS¹

Ethnic Group	Mean UGPA				Mean LSAT			
	SES Group				SES Group			
	Upper	Upper-Middle	Middle	Lower-Middle	Upper	Upper-Middle	Middle	Lower-Middle
American Indian	2.86	2.93	3.00	2.94	34.70	31.76	31.17	31.72
Asian American	3.26	3.21	3.19	3.16	37.16	37.09	35.60	34.17
Black	2.87	2.79	2.87	2.87	30.62	30.66	28.20	27.51
Hispanic	3.16	3.14	3.09	3.14	34.95	34.55	34.16	31.63
Mexican American	3.08	2.99	3.02	3.02	34.78	33.80	33.78	31.24
Puerto Rican	3.00	3.01	3.10	3.01	32.15	32.94	33.93	29.91
White	3.27	3.24	3.23	3.29	38.31	37.90	36.95	36.24

sion process without consideration of ethnicity has the potential of giving preference to applicants who are likely to be at higher risk in terms of minimum academic credentials. If SES is quantified and then weighted, it has the potential to foster admission decisions that would result in a disparity in LSAT scores between admitted white applicants and admitted applicants of color that is even wider than the disparity reported in Table 10. Limited empirical evaluation of these possibilities was conducted using the Fall-1991 first-year law student data.

In order to evaluate the impact on both the number of students for whom the admission decision would change and the relative strength of their application credentials, various weights for SES were added to the admission probability estimates generated for the Fall 1991 first-year students. The weighted probability for each student was then compared to the original minimum admission criterion, and revised admission decisions were simulated. More specifically, if the SES category were upper or upper-middle, no additional weight was added to the probability generated by the model. For those students, probability of admission was a function only of LSAT and UGPA in combination, using the logistic regression parameters developed for the school that each attended. As before, the simulated admission decision was a result of comparing the probability calculated for the student to the lowest probability for that school among applicants defined as admitted by the model. Weighted values were added to the probabilities for students classified as middle and lower-middle SES before the simulated admission comparison was made. Even after applying weights that had the effect of adding a value as large as .075 to the probability of middle-class applicants and .1 to the probability of

lower-middle-class applicants,¹⁰¹ only 57 applicants from all ethnic groups were added to the predicted-to-be-accepted category. Among those, 82% (47 students) were black, and this group included black students with significantly lower LSAT scores and lower UGPAs than those of black students not admitted under the model. Doubling the weight would increase the number of black students predicted to be admitted to 103, and the number of other students of color predicted to be admitted to 27. Within each group, those students predicted to be admitted solely as a result of applying these extreme SES weights had mean LSAT scores and UGPAs significantly lower than the scores of those students from the same ethnic group whose decision status did not change. Specifically, the mean LSAT score for those black students whose predicted admission status would change from not admitted to admitted is 23.64 compared with a mean of 28.54 for those who remain classified as not admitted. The mean UGPAs for those same groups of black students are 2.75 and 2.85 respectively. These data serve as a stark reminder that there is still much about the interrelationships among cultural diversity, SES status, educational opportunity, and performance on standardized tests that is not understood. More importantly, the data demonstrate the importance of carefully evaluating the impact of formulaically including alternative admission factors. Such an evaluation should include measures of overall consequences, particularly with regard to the overall academic preparedness of the affected applicants and the apparent fairness among applicants within the same ethnic or other targeted diversity group.

B. Undergraduate School Selectivity Analyses

Another factor that can be included in a law school admission model is the quality of the degree-granting undergraduate school. Some of the characteristics of the applicants' undergraduate schools may be related to both LSAT score and UGPA. For example, a lower UGPA from a more selective or more competitive undergraduate school might reflect a higher level of achievement than a higher UGPA from a less selective school. There are anecdotal suggestions that, among the factors they consider, some law schools currently include an estimate of the quality of undergraduate school based on the mean LSAT of test takers from that school, but the exact procedures

¹⁰¹ For example, a middle-class applicant whose probability of admission was .40 before weighting had a probability of .475 after weighting. Likewise, a lower-middle-class applicant whose probability of admission was .40 before weighting had a probability of .50 after weighting.

that they use are not publicly available.¹⁰² For this study, undergraduate school selectivity was classified as very high, high, medium, and low using the selectivity categorization assigned by Alexander Astin, Eric Dey, William Korn, and Ellyne Riggs.¹⁰³ The selectivity index they developed to define strata for four-year colleges and universities is an estimate of the mean score of entering freshmen on the verbal and quantitative portions of the SAT, or the converted equivalents of the American College Test (ACT) composite.

The undergraduate school selectivity analyses conducted for this study were based on the 1990-1991 applicant data, in contrast to the SES analyses that were, by necessity, based on the Fall 1991 entering class data. Data from the 1990-1991 applicants suggest that selectivity of undergraduate school is not independent of ethnic group. The statistical significance is attributable primarily to the attendance patterns of Asian American students, who attended very-high- and high-selectivity undergraduate schools in a significantly higher proportion than students in any other group. The data also show that within each undergraduate school selectivity group, ethnic group is statistically independent of actual admission decision, but is not independent of the decision predicted by the LSAT/UGPA-combined logistic regression model.¹⁰⁴ The distribution of the 1990-1991 applicants by ethnic group, predicted admission decision, and undergraduate school selectivity is shown in Table 11. Specifically, within each selectivity index group, Table 11 shows that the proportion of white applicants predicted by the regression model to be admitted is significantly greater than the proportion predicted for any other ethnic group. These findings are consistent with the data reported previously by showing that the mean LSAT and UGPA for white applicants is significantly higher than the means for any other ethnic group except Asian Americans. These data also show that in actual admission decisions within each ethnic group, applicants from more highly selective undergraduate schools are no more likely to gain admission to law school than are applicants from less selective schools. In contrast, when the predicted admission decisions derived from the logistic regression model are considered (again within ethnic group), applicants from the more

¹⁰² See, e.g., *supra* note 34 (quote stating NYU's policy to consider competitiveness of undergraduate school).

¹⁰³ See Alexander W. Astin et al., *American Council on Educ., The American Freshman: National Norms for Fall 1991*, at 94-95 (1991) (presenting statistical portraits of students entering college).

¹⁰⁴ A chi-square test of independence shows the relationship between ethnic group and predicted admission decision to be both statistically ($p < .001$) and practically significant for each undergraduate-school-selectivity index category. The effect size w ranges between .25 and .29 among the four categories examined. See *supra* note 52 (explaining effect size).

highly selective undergraduate schools are predicted to be admitted in greater numbers than applicants from less selective schools.

Two conclusions can be drawn from these analyses. First, the data suggest that undergraduate school selectivity is not an important factor in current admission practice. That is, undergraduate school selectivity is statistically independent of actual admission decisions. Second, the data do not support using undergraduate school selectivity as an additional quantitative factor to increase the ethnic diversity of the admitted applicants in an admission model that relies exclusively on LSAT score and UGPA. Support is absent partly because, within each ethnic group, the proportion predicted to be admitted already is higher among the higher selectivity schools than among the middle or lower selectivity schools and partly because, within each selectivity group, the mean LSAT scores and UGPAs of white applicants predicted not to be admitted exceed those of the applicants of color. The most frequently observed consequence of adding undergraduate school selectivity to the admission model is to advantage white applicants from higher selectivity schools over any applicants from lower selectivity schools.

C. Undergraduate Major Analyses

The final potential admission factor examined was undergraduate major area. These data analyses were undertaken to examine whether members of different ethnic groups are more likely to be clustered in specific major groups, whether ethnic group members might be differentially admitted from different major areas, and finally, whether the difference in probability of admission between white applicants and applicants of color diminishes after controlling for undergraduate major area. Seven major areas were identified from undergraduate major information self-reported by law school applicants: arts/humanities, computer science, natural science, health professions, business/management, engineering, and social science. Again, these analyses were based on the full 1990-1991 applicant pool. The results indicate that ethnic group membership is independent of undergraduate major category. Thus, there is no support for the hypothesis that members of certain ethnic groups tend to be clustered in specific undergraduate major areas.

Within each undergraduate major category, ethnic group is independent of actual admission decision, but not independent of predicted admission decision.¹⁰⁵ Table 12 shows the distribution of 1990-

¹⁰⁵ A chi-square test of independence shows the relationship between ethnic group and predicted admission decision to be both statistically ($p < .001$) and practically significant.

TABLE 11
DISTRIBUTION OF 1990-1991 LAW SCHOOL APPLICANTS BY ETHNIC GROUP, PREDICTED ADMISSION DECISION, AND UNDERGRADUATE SCHOOL SELECTIVITY

Ethnic Group	Predicted Admission Decision	Undergraduate School Selectivity			
		Very High	High	Middle	Low
American Indian	Yes	17	39	27	63
	No	33.33*	38.24	27.84	29.03
Asian American	Yes	34	63	70	154
	No	66.67	61.76	72.16	70.97
Black	Yes	448	496	261	240
	No	51.44	40.69	34.80	34.88
Hispanic	Yes	423	723	489	448
	No	48.56	59.31	65.20	65.12
Mexican American	Yes	115	124	127	329
	No	14.50	10.10	8.28	10.08
Puerto Rican	Yes	678	1,104	1,406	2,935
	No	85.50	89.90	91.72	89.92
White	Yes	97	239	148	191
	No	44.91	34.79	28.14	23.82
American Indian	Yes	119	448	378	611
	No	55.09	65.21	71.86	76.18
Asian American	Yes	35	82	60	75
	No	32.71	24.77	24.79	19.04
Black	Yes	72	249	182	319
	No	67.29	75.23	75.21	80.96
Hispanic	Yes	24	26	23	28
	No	21.62	19.55	14.65	13.86
Mexican American	Yes	87	107	134	174
	No	78.38	80.45	85.35	86.14
Puerto Rican	Yes	6,798	10,948	10,862	10,726
	No	64.95	58.81	53.20	51.15
White	Yes	3,669	7,668	9,554	10,244
	No	35.05	41.19	46.80	48.85

* Percent shows within group column percentages.

1991 applicants by ethnic group, predicted admission decision, and undergraduate major category. As was the case for the undergraduate-school-selectivity index groups, within each undergraduate major area group, the proportion of white students predicted to gain admission was significantly greater than the proportion in any other ethnic group. For example, 56% of white applicants who were social science majors are predicted to be admitted, compared to 9% of black social science major applicants. This finding is not independent of the significantly higher LSAT scores and UGPAs earned by white students in each of these groups. Thus, these analyses suggest that targeting specific undergraduate major areas in the admission process will not significantly increase the number of potential students from any specific

for each undergraduate major area. The effect size w ranges between .19 and .29 among the seven major areas examined. See *supra* note 52 (explaining effect size).

ethnic group. Additionally, the data show that even when undergraduate major area is held constant, the proportion predicted to be admitted to law school is significantly higher for white applicants than it is for applicants of color.

TABLE 12
DISTRIBUTION OF 1990-1991 LAW SCHOOL APPLICANTS BY ETHNIC GROUP, PREDICTED ADMISSION DECISION, AND UNDERGRADUATE MAJOR

Ethnic Group	Predicted Admission Decision	Undergraduate Major						
		Arts/ Humanities	Computer Science	Natural Science	Health Professions	Business/ Management	Engineering	Social Science
American Indian	Yes	32	1	7	3	31	7	68
	No	34.41*	100.00	43.75	25.00	28.44	43.75	29.96
Asian American	Yes	61	0	9	9	78	9	159
	No	65.59	0.00	56.25	75.00	71.56	56.25	70.04
Black	Yes	264	27	84	14	419	91	563
	No	40.06	46.55	39.07	35.00	45.89	33.33	39.10
Hispanic	Yes	395	31	131	26	494	182	877
	No	59.94	53.45	60.93	65.00	54.11	66.67	60.90
Mexican American	Yes	140	8	31	8	163	25	312
	No	10.91	11.27	15.35	5.19	10.77	13.23	9.28
Puerto Rican	Yes	1,143	63	171	146	1,351	164	3,050
	No	89.09	88.73	84.65	94.81	89.23	86.77	90.72
White	Yes	133	2	21	4	195	26	299
	No	33.93	16.67	45.65	28.57	33.39	35.62	27.06
American Indian	Yes	259	10	25	10	389	47	806
	No	66.07	83.33	54.35	71.43	66.61	64.38	72.94
Asian American	Yes	56	1	9	1	54	6	127
	No	26.05	16.67	30.00	14.29	25.12	24.00	22.32
Black	Yes	159	5	21	6	161	19	442
	No	73.95	83.33	70.00	85.71	74.88	76.00	77.68
Hispanic	Yes	24	1	8	0	20	2	46
	No	21.62	25.00	38.10	0.00	15.50	18.18	14.38
Mexican American	Yes	87	3	13	6	109	9	274
	No	78.38	75.00	61.90	100.00	84.50	81.82	85.63
Puerto Rican	Yes	8,274	223	1,748	476	10,077	1,309	17,335
	No	57.20	54.00	54.29	40.51	56.14	50.58	55.80
White	Yes	6,190	190	1,472	699	7,872	1,279	13,731
	No	42.80	46.00	45.71	59.49	43.86	49.42	44.20

* Percent shows within group column percentages.

SUMMARY AND CONCLUSIONS

This study used a variety of statistical methods and law school application, admission, and performance data as well as bar examination performance data to empirically evaluate inquiries and assertions about affirmative action admission practices and outcomes in legal education. First, two models that use LSAT score and UGPA as

predictors of law school admission were developed.¹⁰⁶ These models were used to examine whether there continues to be a need for affirmative action admission practices in legal education to assure a qualified, ethnically diverse student body. The outcomes from these analyses confirmed that an admission model that relied on LSAT and UGPA (which captured quite accurately the admission decisions for white applicants made by law schools in 1990-1991) would result in a law school student body that mirrored the ethnic makeup of law schools of thirty years ago.¹⁰⁷

This study posits that a realistic admission model is one that evaluates probability of admission for each applicant separately for each of the schools to which applications were submitted. The procedure followed was to first model the data for white applicants and then, if the data fit the model, determine whether the model predicted decisions for applicants of color equally well. Logistic regression methods were used to build such a model. A separate regression model was developed for each law school using its own applicant data and admission decisions. This resulted in a weight that could be applied either to the LSAT score and UGPA used in combination or to the UGPA alone for each applicant such that the model would maximally predict the school's admission decisions. Evaluation of the models revealed that a two-variable prediction model fits the law school admission data very well. The correlation between actual and predicted admission decisions using the two-variable model for white applicants was .78 across all the law schools. Using the UGPA as the only predictor does not fit quite so well as the two-variable model; the correlation between actual and predicted admission was .49. The correlations between actual admission decisions and decisions predicted by the models were considerably lower for each nonwhite group of applicants, suggesting that factors other than LSAT and UGPA were included in admission decisions for applicants of color. Even more persuasive is the finding that the number of predicted admissions for each nonwhite group is significantly lower than the number of actual admissions. Applying these models produced an elegiac picture of predicted ethnic diversity in legal education. Results showed that only 41% of the students of color who were offered admission to law school during the 1990-1991 application year were predicted to be admitted by the two-variable logistic regression model. When Asian American applicants were excluded, the predicted admissions dropped to 32% of the actual admissions. The most adversely affected group of applicants would be

¹⁰⁶ See *supra* Part I.A.

¹⁰⁷ See *supra* Part I.B.

black applicants. Only 10% of those applicants who gained an offer of admission were predicted to have been admitted under this model.

The impact of a race-blind admission model was also evaluated using an alternative model that is conceptually and mathematically simpler. The alternative model collapses data across law schools and estimates the number of applicants from each ethnic group who would have been offered admission to at least one, but any one, of the 173 law schools included in the study. This model required the calculation of the proportion of admitted white applicants to total white applicants observed within various ranges of LSAT scores and UGPAs. These proportions were then applied to applicants of color within the same ranges of scores and grades. The LSAT and UGPA ranges were placed into a nine-by-eight grid, thus the method is referred to as the "Law School Grid Model." The results paralleled the data for the logistic regression model and showed that approximately 65% of the students of color who were offered admission to law school during the 1990-1991 application year were predicted to be admitted under the Law School Grid Model. When Asian American applicants (whose mean LSAT scores and UGPAs approximately equalled those of white applicants) were excluded, the predicted admissions dropped to 57% of the actual admissions. Once again, black applicants were the most severely affected. Only 23% of black applicants who gained an offer of admission were predicted to be admitted under this model.

The Law School Grid Model was developed primarily to evaluate the claim that affirmative action admission practices do not increase the overall number of minority law students, but simply allocate students of color differently among the law schools.¹⁰⁸ One limitation of the Law School Grid Model, as well as of the claim of differential allocation, is the assumption that students of color would be willing and able to attend the schools that are most likely to offer them admission. More than half of the black applicants in this study had LSAT scores lower than 35 and UGPAs less than 3.25. The data suggest that approximately three quarters of the white applicants with academic credentials in those ranges attended law schools that are among the more expensive and have the lowest percentages of minority students. These data cast doubt on the assumption that applicants of color could simply be reallocated to these law schools. The other group of schools that most frequently accepts students in those ranges reports minority enrollments of 50% or more. Given that no seats in these schools were left empty, and that the number of seats would be unlikely to increase, the lowest scoring applicants to these schools

¹⁰⁸ See Summers, *supra* note 13, at 384.

would likely lose their opportunity to attend law school if higher scoring applicants of color were reallocated. The net result remains the likely reduction of a substantial proportion of students of color in legal education.

The study next examined the issue of the appropriate use of the LSAT score and UGPA in the admission process.¹⁰⁹ Frequently, objections to the use of these measures in the admission process are raised within the context of validity, particularly validity of the LSAT. This study reviews available data to explain the purpose for which the test is valid and the substantial evidence that exists to support that validity. The study also presents data to support the validity of the test specifically for black, Hispanic, and Mexican American applicants. The final discussion of inappropriate use and overreliance on these measures focuses on data from the *LSAC Bar Passage Study*.¹¹⁰ These data are used to illustrate some outcomes of current law school admission practices and to compare them with admission practices that would result from relying solely on LSAT and UGPA. Analyses of the *LSAC Bar Passage Study* data show first that law school graduation is statistically independent of admission predicted from LSAT and UGPA for every ethnic group. They also show that when a separate logistic regression model is built for each law school (i.e., LSAT and UGPA are used to predict whether graduation will or will not occur) these two variables are not significant predictors of graduation. Additionally, analyses of these bar passage data demonstrate that a logistic regression model that predicts bar passage from LSAT score and UGPA does not fit the data nearly as well as the model to predict law school admission does. The correlation between predicted and actual bar passage is .30. The same data also show that for most, but not all, ethnic groups, there is a statistically significant relationship between passing a bar examination and predicted admission to law school.

The final section of the study examines other factors that might be included in an admission model to analyze the impact including such factors might have on the ethnic distribution of the admitted applicants.¹¹¹ Three factors are examined: socioeconomic status, selectivity of the degree-granting undergraduate school, and undergraduate major. None of these factors showed promise for helping to identify an ethnically diverse group of qualified students. Evaluation of the SES data, in particular, highlights the dilemma of

employing a surrogate for race in the admission process. When students were separated by SES group, using self-reported measures of SES, the data showed that the lowest SES students within each ethnic group reported the lowest LSAT scores. One consequence of applying sufficient weight to SES to change the predicted admission decision for some students is that the students who would be admitted under an SES-weighted model would have LSAT scores and UGPAs that are statistically significantly lower than the scores and grades of other students in the same ethnic group who would not be admitted. This practice would have the effect both of admitting students of higher academic risk and of widening the gap in academic preparation between admitted white students and admitted students of color.

In summary, the data presented in this study provide bleak prospects for continued ethnic diversity in legal education if admission decisions depend on a model defined exclusively by LSAT score and UGPA or, by extension, an admission practice that yields results that parallel those predicted by an LSAT/UGPA model. The inappropriateness of relying on those two quantitative indicators of acquired academic skills is not a consequence of their overall lack of validity for the purpose for which they are intended, and, in fact, data are reported and cited herein to unequivocally support that validity. The issue rather rises from an inappropriate use of those measures that results not only in a loss of validity but systematic and predictable discriminatory selection in our nation's law schools. Neither LSAC, as the developer of the LSAT, nor the law schools, as users of the scores and gatekeepers of the profession, should tolerate such abuse.

¹⁰⁹ See discussion *supra* Part II.

¹¹⁰ See *supra* note 8 and accompanying text.

¹¹¹ See discussion *supra* Part III.