Percent Plans, Prediction, and High Stakes Testing

IHELG Monograph
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University of Houston Law Center/Institute for Higher Education Law and Governance (IHELG)

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The persistent attack on the legitimacy of affirmative action in higher education and elsewhere has led to the development of what have come to be called percent plans. These plans are race-blind alternatives to affirmative action in admissions that advocates say will permit state schools to continue to enroll a diverse class. Their mechanism is pleasingly simple, perhaps even elegant. A set percentage of high school graduates will be guaranteed admission to the states’ colleges and universities. Advocates say the plans not only have the virtue of simplicity, but they reward hard work in context rather than rewarding congealed privilege. Yet, not all percent plans are the same. Each deserves to be analyzed on its to its own merits and against the background of the specific demographics within which it is operating. Moreover, each has to be understood within the context of existing distributions of educational advantage and opportunity. What is especially important to pay attention to is the role that specific educational institutions play in the longitudinal distribution of power and access to other institutions of leadership in each state. So while percentage plans may present a profile in elegant simplicity, without attention to these kinds of details, among others, that simplicity might just be simple-mindedness or worse, velvet gloved animus.

Percent plans are not a panacea for the problem of persistent under-representation
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of Latinos and African-Americans in higher education. They are currently fashionable because they seem to allow policy makers to avoid addressing the hard questions surrounding the unequal distribution of higher educational resources. Yet, despite their vogue, each percent plan should be evaluated solely within the context of the problem it is designed to address. In a place like Texas, where there is stubbornly inveterate racially segregated housing and where racially conscious remedial social policy is illegal, a percent plan makes sense both as policy and as politics. But generalizing from the experience in Texas should be done with caution and should be done to illuminate both why it works there and what it tell us about race and educational policy more generally.

In order to say anything sensible about percent plans, they have to be understood within the specific context in which they arose and in relation to the specific problem they were being asked to solve. Categorical statements about percent plans either positive or negative are generally untrustworthy. Although the context for the adoption of a percent plan in Texas was the required elimination of traditional affirmative action, those of us who worked on the 10% plan and its alternatives are persuaded that percent plans can be used together with affirmative action to maximize the considerable benefits of both strategies.

In Texas, the Hopwood case, the resulting opinions of the Fifth Circuit Court of Appeals, and the interpretation of our Democratic Attorney General did two things.\(^1\) First,

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\(^1\)Hopwood v. State of Tex. 78 F.3d 932 (5th Cir. 1996); Rehearing and Suggestion for Rehearing en
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they required the immediate elimination of any race-conscious admissions program, no matter how carefully tailored or limited. Second, they put the case onto a peculiar procedural footing so that a quick review by a superior court, in this case, either the entire Fifth circuit sitting en banc or the U.S. Supreme Court, would be extremely difficult. In short, we at the University had instructions we were bound to follow under penalty of personal and institutional jeopardy, yet we had no order we could appeal. The 1996 opinion by the Fifth Circuit attempted to bind the university’s behavior. They did so without issuing an injunction or declaratory judgment, thus depriving the law school and the university of a square and swift opportunity for Supreme Court review and leaving the case in an unprecedented and difficult procedural posture that continues to this day.

Because everyone generally conceded that doing nothing in the face of the Fifth Circuit’s action would result in the resegregation of the flagship campuses of the state, the pressure to act was great.² There was an important point made at the time that bears


² Professor Michael Olivas recounts the history of the 10% Plan in his article, Higher Education Admissions and the Search for One important Thing, 21 U. Ark. Little Rock L. Rev. 993 (1999) at footnote 33: “...In September, 1996, a Texas state senator convened a forum in Austin to formulate policy as a response to Hopwood. Many Latinos and other educators were present, where several legislative plans were drafted. As it was in conflict with my UHLC teaching obligations, I was unable to attend, although I spoke with several persons who would be in attendance, and reacted to some of the ideas that were going to be advanced. At that point, the 10% Plan had not surfaced. I did not speak with any of the participants after
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repeating here. Attendance at the flagship schools (and especially the law school) is an historically important path to positions of influence and power in the state. While not universally true, most of the leaders in business, politics and the professions had come through the University of Texas at Austin or Texas A&M at College Station. By cutting off access to the flagship schools, the beginning of desegregation within a variety of social institutions that in Texas was barely a generation old would also be retarded.

Moreover, within the context of addressing the historical record of Jim Crow at the law school, the University of Texas had become a major producer of Mexican-American and African-American lawyers. In fact, at the time of the Hopwood lawsuit, the University of

the meeting, as I knew that other forums would be arranged before the 75th State Legislature would convene in January, 1997. In the fall of 1996, I was asked by persons with the Association for the Study of Higher Education (ASHE) to respond to a paper by UC-B's Carol T. Christ, where she reported on the crush of applications at the UC's flagship campus, and the problems that were appearing in the implementation of the Regents Policy that eliminated race as a modest "plus-factor" in UC admissions. Reading from her paper, sent to me in October, that a disproportionate number of UC-B and UCLA applicants came from no more than 30 California high schools, I suggested in my public response to the Christ paper that a "small frogpond" plan could be put into effect, where the top 5%-10% of all high school graduates could be made U.C.-eligible, and that this would be both efficacious and more broadly-representative, while still preserving the quality inherent in such a competitive process. In response to questions, I likened it to the Olympics, where each country can only send three athletes per event to the Games, even though Kenya may have more than three marathoners who could qualify. I did not, however, suggest that the others be ineligible, only that they not be given automatic admission. This talk, given at the ASHE conference in November, 1996, was my own remarks, assisted by Ed Apodaca, UH Associate Vice President for Enrollment Management, and Manuel Gomez, Vice Chancellor for Student Affairs, UC-Irvine...."

Professor David Montejano's essay Hopwood: The Continuing Challenge, in Neil Foley, Reflexiones 1997, 133 (1998) is an excellent recapitulation of the actions of a variety of people who were dealing with the crisis in admissions to the University of Texas posed by the Hopwood decision(s). In his discussion he captures the way in which the Mexican-American community, in particular, but the minority communities in general were galvanized into action by the prospect of a resegregated campus at the University of Texas at Austin. Moreover, the efforts of these communities found widespread support for maintaining an admissions policy that both generated excellence and that served the entire state.
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Texas had graduated more African-American and Mexican-American lawyers than any other non-historically black American law school. To this day, one out of every eleven Mexican-American lawyers is a graduate of the University of Texas.

Thus the context for the development of the 10% plan was one of both anger and crisis. In addition to the widespread outrage and sense of emergency, there were several other critically important factors. First, there was the presence of a self-confident caucus of Mexican-American and African-American legislators who were both skilled in the politics of Texas and in a position to influence the legislative agenda. Second, and perhaps most important in the context of evaluating other percent plans that have emerged around the country, the leadership for change came from the Mexican-American and African-American communities. When comparing plans, this difference is critical. The plan was not a top-down imposed solutions, but reflected the thinking and activism of the potentially affected communities. It was not a gift, but a hard fought for remedy.

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3 See Testimony of UTLS Dean Michael Sharlot before Texas House of Representatives, Committee on Higher Education (Sept. 24, 1998).

4 What has come to be called the 10% Plan is actually part of a more comprehensive bill authored by Representative Irma Rangel in H.B. 588. Virtually everyone in Texas refers to H.B. 588 and the Texas Plan when talking about the 10% Plan. As will become clear, the “Texas Plan” involves much more than a simple-minded percentage admissions program.

5 See the discussion in footnote 2 and in the sources cited therein.

6 See Professor David Montejano Hopwood: The Continuing Challenge, in Neil Foley, Reflexione 1997, 133 (1998). In that essay Professor Montejano recounts the special efforts of a variety of community activists and academic leaders as well as the political leadership of Senator Gonzalo Barrientos and Representative Irma Rangel. Of particular importance was the leadership and tenancy of MALDEF and its Executive Director Al Kaufman.
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The third factor was that an alliance was forged with conservative rural whites who were also historically disadvantaged by the admissions process at the flagship schools.\(^7\)

Finally, the governor, who was running for President, didn’t really care about higher education and mainly wanted a legislative session that did not distract his legislative allies from his priorities.

Yet, having said that categorical statements about percent plans are generally untrustworthy, the experience at the University of Texas at Austin suggests that there are two things that percent plans do accomplish. First, they eliminate the role of high-stakes testing as a bar to admission (but not, unfortunately, as a bar to high school graduation) and lead those in higher education to focus on college readiness.\(^8\) A corollary of this effect is that it leads to a greater focus by those who are concerned with public higher education on the system of public education from top to bottom.

This change in focus means that entire sets of relationships are up for reevaluation. The K-12 link has generated the most obvious attention (there are close to 248 projects at the University that are concerned with some aspect of K-12 education). Those projects represent a considerable commitment of University resources to the

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7 One of the things that made this alliance possible was the evidence that poor and rural white school children were also disadvantaged in the contest for admission to the flagship campuses. See, David Montejano, Access to the University of Texas at Austin and the Ten Percent Plan: A Three Year Assessment (available on line at www.utexas.edu/student/research/reports/admissions/ResearchHome.htm).

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improvement of primary and secondary education.\(^9\) By increasing access to the flagship campus, the University has had to concern itself with the quality of primary and secondary education in order to defend its traditional commitments as a major research university that competes in a national and global higher educational environment.

Beyond highschool, the leadership within the university is increasingly concerned with creating a clearer articulation between community colleges and four-year institutions. Thus the role of community colleges is also under interrogation. The effort to reassess this relationship takes into account the various functions played by community colleges, but concentrates on making the academic curricula more consistent to ensure ease in moving from the community college to the university. The advent of computer technology has given these experiments new life. A student who begins at a community college, but intends to take the academic route can begin planning his or her program so that all of the time spent in course work pays off.\(^10\) In addition, another cautious discussion has begun in which the various parts of the University of Texas system and their functions are evaluated in the light of the imperatives of the state.

Second, at least as implemented at the University of Texas at Austin, the 10%

\(^9\) Many of these projects have service or research components in the public schools themselves. They are also part of a system-wide re-evaluation of the relationship between the university and other segments of the public educational system.

\(^10\) For those of you not familiar with the roles of community colleges, it is important to remember that they serve both academic and non-academic functions as they prepare students for the economy. Their success is measured by their success in both categories.
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plan give us a framework to assess what we know about the admissions process in
general and the elements admissions officials need to understand to fully appreciate what
kind of preparation is critical to student success in the University. This is an important
effect. Just as the first effect suggests the transformative potential of percent plans on the
external concerns of the University, the second important impact is on the internal
functioning of the university. Remember that I am not suggesting here a general deviation
from the essential role of a major research university. Without making a fundamental
change in mission, the impact of the 10% plan has led to new attention on undergraduate
education in ways that promise to improve the overall functioning of the university.

In terms of admission, even though Texas high schools remain segregated to a
remarkable degree, the 10% plan enables integration to occur at the university level. In
some ways this is not a big change either for Texas or those states that continue to use
affirmative action. For many students, their first experience of life in an integrated setting
happens when they go to college. The 10% plan did represent a distinct change from the
historic process of admitting an integrated class. According to a report from the Office of
Admission:

During the years immediately preceding Hopwood, The University of Texas used
what has been described as the “Classic Model” for making admissions decisions.
The model included factors which allowed for the processing of very large
numbers of applications: a heavy reliance on SAT scores and high school class
rank, a required high school curriculum, and a consideration of the extent to
which students exceeded high school curriculum requirements. For a variety of
reasons, strict adherence to such a policy could not, in and of itself, produce
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diverse classes. Equations for predicting freshmen GPAs, for example, rely heavily on the use of SATs. The SAT, like virtually all standardized tests, has well-documented history of differential performance gaps among socio-economic, gender, and racial-ethnic groups. To meet its long-cherished diversity goals, the University used affirmative action. This policy was in place until Hopwood forced its removal. The last freshman class admitted under the classic model was the fall of 1996. (Lavergne and Walker, Implementation and results of HB 588 at the University of Texas at Austin, Report Number 3)11

Taking 1996 as the baseline, what have the changes in admissions policies meant for the composition of the subsequent freshman classes? Perhaps more important, what has the change in admissions policies meant for the performance of undergraduates at the University of Texas at Austin? Answering this second question is hazardous because of the dearth of data points. Nonetheless, observations suggest that the effects are complex.

The current freshman class is as racially and ethnically diverse as the one enrolled during the last year of affirmative action. African-American enrollment has remained at 4%, which is the same percentage as the 1996 class. Similarly, Hispanic enrollment has fluctuated between 13-14% between 1996 and 2000. Yet, because the classes are bigger as University of Texas at Austin has grown to be the largest University in the country, the number of African-Americans and Hispanics has gone up. For African-Americans their number has increased from 266 to 296 and for Hispanics their number has gone from 932 to 1011. Significantly, this overall increase is reflected in greater racial diversity in the

11 Most of the research reports are available online at www.utexas.edu/student/research/reports/admissions/ResearchHome.htm and I encourage you to review them. I have not recounted them in depth here. I have merely tried to capture the highlights.
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most coveted majors, like business, engineering and the natural sciences.

As the numbers of students rebounded, the mean SAT scores have declined by 30 points among those freshmen admitted from the top 10% between 1996 and 2000. This might reflect many factors, but one question that it does raise, especially given the “classic” admissions model outlined above, is how is this decline reflected in the performance of those students admitted under the 10% plan?

Performance data shows that students admitted under the 10% plan have surpassed their classmates in academic performance.\textsuperscript{12} Even those top 10% students with the lowest SAT scores, who undoubtedly would have previously been denied admission, are succeeding. When analyzed according to SAT score, top 10% students outperformed their relevant 1996 cohort. Minority students who were admitted under the 10% plan have improved GPAs across all majors, including those considered the most challenging, business, engineering and natural sciences. In these majors, the GPA of top 10% students is as high as the class admitted in 1996 despite demonstrably lower SAT scores.\textsuperscript{13}

The 10% plan has also made the admissions process smarter. The legislation diminished the importance of standardized tests, which provide a one-dimensional picture of student potential and have often overlooked those aspects of leadership and character.

\textsuperscript{12} See, Lavergne and Walker, Implementation and results of HB 588 at the University of Texas at Austin, Report Number 3 www.utexas.edu/student/research/reports/admissions/ResearchHome.htm

\textsuperscript{13} Id.
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the University values.\textsuperscript{14} For those not in the top 10 percent, the admissions process now considers the complete high school record, including class rank, courses and number of units taken, as well as standardized test scores, two essays and evidence of leadership, work experience, extra-curricular activities and public service. This has resulted in a class that has -- across all racial groups -- exceeded the academic performance of the classes admitted before 1996. Measured either by GPA or by what education experts call “persistence” -- the number of students who return after their first year-- the classes that entered under the 10% plan are doing better. In fact, the rate of return by African-Americans who came in as top 10% students is up to 98.5% compared to just 87.8% of non-top 10% students overall.\textsuperscript{15}

The high achievement of minority top 10% students shatters the stereotype that students from poor and segregated schools are not university material. There was profound skepticism about the capacity of these admittees to weather the rigors of competition at a flagship university. In fact, the data shows that minority top 10% students are outperforming their white, non-top 10% counterparts at every SAT score level.

\textsuperscript{14} That said, a recent report by Laverne and Hargett, Perceptions and Opinions of University of Texas Entering Freshmen: The impact of the Texas Top 10% Automatic Admissions Law, [www.utexas.edu/student/research/reports/admissions/ResearchHome.htm](http://www.utexas.edu/student/research/reports/admissions/ResearchHome.htm) suggests that students are unhappy being judged regardless of the admissions process used.

\textsuperscript{15} See, Laverne and Walker, Implementation and results of HB 588 at the University of Texas at Austin, Report Number 3 [www.utexas.edu/student/research/reports/admissions/ResearchHome.htm](http://www.utexas.edu/student/research/reports/admissions/ResearchHome.htm)
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Before the 10% Plan, only about 150 of the more than 1,500 Texas high schools filled 75 percent of all seats in each year’s entering class. Most of these feeder schools, both public and private, are in wealthy suburban districts with high per-pupil expenditures, state-of-the-art facilities and many advanced classes. In contrast, many students of all races across Texas struggle in racially segregated, inadequately funded schools that offer few amenities and fewer advanced classes. By improving access, the 10% plan has made the admissions process fairer for all students by opening up flagship campuses to students from parts of Texas that have not traditionally sent graduates to those parts of the university systems. In this year’s entering class there are now close to seven hundred high schools now represented.\(^{16}\)

Skyline High School in Dallas is a good example of how the 10% plan opens the University of Texas at Austin to students from diverse backgrounds who previously would not have aspired to the flagship university. Skyline is a predominantly African-American. In the entering class of 1998-99, Skyline sent nine students to the University of Texas. The Longhorn Opportunity Scholarships plan reached into Skyline and increased enrollment for this fall to 21 students. Highlands High School in San Antonio is another example. Before the 10% plan and the Longhorn Opportunity Scholarship program, Highlands High had sent one student to the University of Texas at Austin. This

\(^{16}\) See, David Montejano, Access to the University of Texas at Austin and the Ten Percent Plan: A Three Year Assessment, www.utexas.edu/student/research/reports/admissions/ResearchHome.htm.
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year, 14 Highlands graduates have enrolled at the University of Texas. This is a phenomenon that is being seen across the 64 Longhorn Opportunity Scholarship Schools that have been identified in the first two years of the program. More schools are being added each year. A Longhorn Opportunity Scholarship school is one that is poor and one that traditionally sends few, if any, applicants to the University of Texas. The Longhorn Opportunity Scholarship Plan and the 10% plan has had a halo effect, sending a powerful signal to the top students at schools like Skyline and Highlands they, too, could succeed at the University of Texas.

In addition to the scholarship program, the University has developed a program called Connexus that is focused on Longhorn Scholars and provides a variety of services to these students. Perhaps most important is that Connexus is creating increased opportunities for small groups experiences and more direct faculty contact in a way that makes an otherwise large and impersonal university more intimate and human scale. The result of these experiments is an increase in small class opportunities for all freshmen through the use of Freshman Interest Groups, Freshman Seminars and other innovations. Thus the 10% plan on the University has been a net good for all students. By focusing attention on the undergraduate experience, the 10% plan has pushed the university in the direction of improving the experience for all undergraduates.

Elements of Successful Percent Plans.

Both Florida’s Twenty Percent Plan and California’s Four Percent Plan suffer
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from a critical deficiency: they guarantee admission only to the university system at large, not to the system’s elite campuses. In California, this defect is helping to create and perpetuate a second-tier educational system. Increases in minority enrollment at Florida’s flagship university though touted as a result of the “One Florida Plan” appear more likely to have resulted from their affirmative action program and from aggressive recruitment, rather than the State’s Twenty Percent Plan.

We have seen in Texas that certain features, particularly access to flagship campuses, enhance the prospects of success for percent plans. Indeed, once affirmative action was outlawed in Texas, the Mexican-American and African-American legislators played a crucial leadership role in ensuring that the flagship campuses -- the traditional route to leadership in the state -- remained open to a wide cross section of the population. This, of course, also highlights another critical difference between Texas and Florida. There the plan was the result of political response by the governor to the actions of Ward Connerly rather than a reflection of the leadership of people of color or a response to the elimination of affirmative action.

It is dismaying to see efforts to use percent plans as a rationale for discarding affirmative action. As Texas has shown, properly designed and implemented percent plans have inherent value beyond increased racial and geographic diversity, especially when coupled with a narrowly tailored plan of affirmative action. Percent plans can be used with affirmative action, giving colleges and universities the considerable benefits of
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both strategies. The 10% plan ought to help in the struggle to defend affirmative action. For only by challenging the barriers to access for disadvantaged students of all colors will we be able to safeguard affirmative action by making clear the rationale for its use.

I return here to my earlier caution: all percent plans are not alike; just as all states are not alike. Admissions systems that incorporate a percent plan or similar concept need to be attuned to the specific needs of the state. In addition, it is starting to become clear that certain elements are needed to make percent plans successful, including:

* Participation by stakeholders in the design of the plan;
* Targeted scholarship assistance for the students;
* Aggressive outreach to encourage qualified students to enroll;
* Automatic admission to any campus, including the flagship.

Financial assistance for top 10% students is probably the most critical feature. As described above in the context of Dallas and San Antonio, the University of Texas has inaugurated a scholarship program that targets poor and working class schools and promises their top graduates four-year scholarships, public recognition of their successes and academic support programs when they are needed. This year, the university awarded 235 Longhorn Opportunity Scholarships, which provide $4000 per year to students from 64 schools that had been the opposite of feeder schools. The money is not the only thing that comes with the scholarship, however. The Longhorn Opportunity Scholarship students are guaranteed housing, access to small classes and academic assistance if they
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need it. They are welcomed to the campus.

Targeted outreach and recruitment also are highly important. High school guidance counselors must be made aware of the program and trained to promote it. The first year of the 10% plan did not produce a significant increase in minority enrollment, probably because the plan was implemented under very tight time deadlines, the availability of the automatic admission option was not well publicized and many high school guidance counselors discouraged top students from taking advantage of the opportunity.¹⁷

Two other factors that have contributed to success in Texas are broad community input and creative, multi-disciplinary research and analysis focused on the State’s history and circumstances. The 10% plan was developed after detailed analysis of the State’s demographics, its patterns of “feeder schools” to the flagship universities, the State’s culture, and other local factors.

Finally, in addition to Connexus, the University of Texas has a nationally recognized program that provides support and guidance for students who can use a little extra help in adjusting to a large, competitive university. This assistance is open to all students and most top 10% students have not needed it.

Graduate and Professional School Admissions

I have been discussion percent plans within the context of undergraduate

¹⁷ Id.
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education. In the long run programs like the Texas 10% plan promise to keep the elite schools in Texas integrated and to provide a source for graduate and professional students. What about the short run? Is there any use for something like the 10% plan for graduate or professional students within the context of a major research university? The short answer is that the percent plan cannot be replicated at the graduate and professional school level. Nonetheless, the principle that animates the 10% plan provides a way to think about the problem. For example, the law school at the University of Texas occupies an interesting historical role in the state as a gatekeeper institution to positions of power. One thing we noticed is that among applicants from the University of Texas system, most of them came, not surprisingly, from the University of Texas at Austin. Why shouldn’t students at the component campuses have as good a shot at as those who are already in Austin? We began an experiment at the University of Texas El Paso (UTEP) in an effort to increase the number of successful applicants to the law school from UTEP. Unlike the University of California system, the University of Texas system was largely constructed out of the detritus of the dual system that historically characterized southern universities. Thus the system reflects the segregation of that era. UTEP, for example is over 70% minority.

With the leadership of President Diana Natalicio and Robert Webking we at the law school helped create a law school prep program. The program uses off the shelf courses that contain the analytic content and skills necessary for a student to succeed in
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law school. By combining these courses into a 19 credit hour package that is available to anyone in any major we created a course of study that results in “A Certificate of Legal Reasoning.” Successful completion of this course of study entitles the student to participate in a highly intensive summer program that combines advanced analytic training with LSAT prep. The course is serious: eight hours a day, six days a week with no more than two excused absences permitted. The University of Texas Law School has agreed to automatically accept the top four graduates who have a minimum 150 LSAT score. (That is at the bottom range of acceptable scores at the law school.) Of the 37 students who have gone through the program and applied to law school all have been accepted. Thirteen of these students have come to the University of Texas and nineteen have been accepted to a top-50 law school.\textsuperscript{18} The program is expanding slowly at UTEP and we are attempting to expand it to other component schools.\textsuperscript{19} We are also working with the Health Sciences Center in Houston to devise a similar program for all of the allied medical professions in addition to medical school.

Is this a percent plan? No, but it was guided by a similar insight and by a careful demographic analysis. Would this work for graduate school? Graduate school is substantially different from professional school and those differences would have to be

\textsuperscript{18} Elements of the program can be examined online at www.UTEP.edu/law

\textsuperscript{19} The leadership at University of Texas, San Antonio and the University of Texas at Brownsville are also initiating similar programs.
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taken into account. Because the imperatives of graduate training are distinct, we need to assess the structure of graduate admissions and to ask whether it is time to experiment. Those of you who train graduate students know their importance to your work and to the quality of the department. Improving the selection and support for graduate students would be a net benefit to the overall mission of a major research university and to the state. We need to ask whether we are doing it right and how all of the values we serve are integrated. These are complex questions, but they cannot be answered outside of the context that brings us here today.