Legal Norms in Law School Admissions: An Essay on Parallel Universes

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To read the titles of recent books on colleges, one would think this is the worst of times for higher education in the United States. One book, Profscam, excoriates professors, accuses most of featherbedding, and chastises faculty for emphasizing research over teaching.¹ Another, Tenured Radicals, chronicles the rise to academic power of 1960's student activists, who, now that they control the academy, are foisting their liberal views upon the canon and the curriculum.² Allen Bloom's The Closing of the American Mind decries the assaults upon traditional scholarship and the resultant politicization of the curriculum.³ Linda Chavez, in Out of the Barrio, criticizes affirmative action in higher educa-
tion for lowering standards and for doling out "only a chimera of accomplishment." Dozens of similar articles and reports have been issued in the last few years, virtually all of them decrying affirmative action in higher education as a sop to minorities, a political spoils system, and an affront to meritocratic standards.

Dinesh D'Souza's best seller *Illiberal Education* is the quintessential screed in this literature. He takes us through a harrowing campus tour, and the vision he paints for his readers is horrific. Minorities have elected themselves to victim status; deserving white students at Berkeley are shunted aside for less-deserving blacks and Latinos; Stanford has capitulated to the know-nothings; Howard students have staged a coup to remove the misunderstood Lee Atwater from their board of trustees; Duke has
given the keys to the store to postmodernist faculty; and Harvard has seen fit to hold sensitivity sessions for its staff. This is a sulphury vision into higher education Hell, or at the least, a portrait of the fall from Eden.  

Professor Lino Graglia, like D’Souza, lays the blame for this ignominious fall upon affirmative action. His recent article, "Race-Norming in Law School Admissions" is in the genre of affirmative action horror stories, and like other genre stories, has a predictable plot, rounds up the usual suspects, and inveighs against the same villains. Like most genre reading, whether it be romance novels, science fiction, or murder mystery thrillers, it requires a suspension of belief to curl up with the work, and one has to buy into the conventions of the genre and its permutations.
In this fashion, one can appreciate Hercule Poirot even though each parlor-murder is highly stylized and predictable, and I love Columbo, even knowing full well that his criminals are never Mirandaized and that the proofs would never hold up to parol evidence rules. However, I buy into both by suspending logic and by treating them as the clever, nuanced entertainments they are. Seen as a genre piece in this tradition, "Race-Norming" has all the elements of Poirot's parlor tricks or Columbo's seeming-disorganization. Ultimately, though, if you step outside the genre, the story falls flat, lacking the self-sustaining ring of truth found in classic literature. Moreover, it is not a fresh or reflective tale, as Professor Graglia has a long record of opposing affirmative action, and this newest page in his book essentially
recapitulates his earlier objections without taking into account judicial developments in the field.8

In Part I, I will summarize Graglia's objections to affirmative action in law school admissions and flesh these out with similar recent controversies at several U.S. law schools; I also analyze several recent college admissions controversies alleging discrimination against white applicants, to show how far disgruntled Anglo admissions-seekers and other white commentators have tried to discredit affirmative action.

In Part II, I will summarize a line of cases since the early 1950's, when Professor Graglia attended law school, to show how the playing field for students of color has historically never been level and remains uneven. This history will provide an alternative
version to Graglia's higher education admissions vision, one more consistent with law and practice. In addition, I review current admissions practices to show how they work in practice and in accordance with Supreme Court jurisprudence. I call this a parallel universe, as my version of reality does not intersect with Graglia's world view. This essay, then, is a counternarrative to Graglia's story and to those storytellers such as D'Souza who are attempting to rewrite the history of racial admissions: in my view, those institutions that are concerned about being accused of liberalism or of wrongly accommodating minority victims need not worry, as it is a patently false bum rap.
I. Professor Graglia's Arguments Against Affirmative Action in Law School Admissions: The World According to Graglia

Professor Lino Graglia employs a widely publicized recent incident at Georgetown University Law Center (GULC) as the centerpiece of his article: GULC student Timothy Maguire's posting of inter-group Law School Admission Test (LSAT) scores by race.9

Mr. Maguire had been a student clerk in the GULC Admissions office, and based upon scores he observed while in this position, he wrote an article in the student newspaper, revealing that his analysis had shown median white scores to be 43 (on a 10-48 scale, at the 94th percentile) and black scores to be 36 (70th percentile). As Graglia notes, this disclosure was "met with a swift, severe, and typically disingenuous response."10
The responses included those by GULC Dean Judy Areen, the New York Times editors, and legal organizations, including the Association of American Law Schools (AALS), the American Bar Association Section on Legal Education and Admission to the Bar (ABA), and the Law School Admission Council (LSAC).  Dean Areen's response, according to Graglia, was "simply and boldly to deny that Georgetown had a dual standard based upon race. She insisted that 'five factors' are considered in admission decisions: GPA, LSAT, scores, recommendations, school activities or work experience, and an essay on why the applicant wants to attend Georgetown." Citing a New York Times article on the controversy, he noted, "While acknowledging that the law schools has a firm affirmative action policy, Dean Areen said there was no dual standard to help foster
racial, sex and geographical diversity on campus." He also pointed out that Maguire’s expulsion over the incident was in GULC’s "range of possibilities." Concerning "poor Maguire," Graglia was particularly scornful of what he termed the "paradigmatically politically correct New York Times," which was critical of Maguire’s actions. He noted, not entirely rhetorically, "Which would be more discouraging, if the New York Times’s editorial accurately reflected its editors’ understanding of the racial policies or our institutions of higher education or if it did not?"

While he was critical of what he termed the "disingenuousness" of the GULC and New York Times responses, he noted that the combined AALS/ABA/LSAC response was particularly pernicious.
Their jointly-sponsored press release, in Graglia's judgment, "might well be distributed to all beginning law students as a model of how to mount a rigorous and indignant defense of an untenable position by techniques of argumentation to be studied further in their law school career."¹⁸ The press release had been written in support of "equal opportunity" and "diversity," which Graglia defined as "unequal opportunity (the application of much lower admission standards to some applicants than to others)" and "the current newspeak designed to obfuscate the issue of racial discrimination [against whites]."¹⁹

The press release "fully adopt[ed] the Dean Areen approach," and enumerated the additional qualitative measures that law schools should take into account, including ("innocently enough," according
to Graglia) "a student's motivation, willingness to work hard, integrity, and genuine interest in law as an intellectual discipline and profession,"\textsuperscript{20} as well as "a probing curiosity, an ability to appreciate all sides of an issue, a tolerance for uncertainty, and an aptitude for problem solving."\textsuperscript{21} The three organizations, which included the LSAC -- the monopolistic law testing service that administers the LSAT exam required for law admissions -- downplayed the quantitative measures of college grade point averages (GPA) and LSAT scores, and noted that law school admissions committees also consider "personal statements from applicants, letters of recommendations, work experience, and the applicant's prior success in overcoming personal disadvantage."\textsuperscript{22} Graglia summarized these by noting that these qualitative criteria
"of course . . . are and should be considered in making law school admissions decisions" but he objected that there was "[not] a word about race in those lists; indeed, one must wonder how those strange ideas about racial preferences ever arose." As he saw the matter, the only serious "point of contention" in the Maguire case was "whether it is appropriate and desirable to grant preference to some applicants and, therefore, dispreferrenee to others solely on the basis of race and, if so, to what extreme."  

However serious his reservations about the (mis)use of admissions criteria and factors to be considered in admissions, Professor Graglia reserves his strongest criticism for the hammer of accreditation held over law schools by the ABA and the AALS: "they have made the practice of discrimination in favor of members
of certain racial minorities and against whites a de facto condition of accreditation."\textsuperscript{25} AALS member schools are required to "seek to have a faculty, staff, and student body which are diverse with regard to race, color, and sex,"\textsuperscript{26} while the ABA requires "by covert action, a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups (notably racially and ethnic minorities) which have been victims of discrimination in various forms."\textsuperscript{27} Failure to meet these requirements "risk[s] loss of ABA approval and AALS membership."\textsuperscript{28}

Graglia believes that, without discrimination, law schools would not be able to recruit the requisite diversity in their student bodies, and without these accreditation standards, would
not be required to do so. He notes, "extremely few black applicants meet the ordinary admission requirements of highly selective law schools such as Georgetown. [The ABA and AALS] know that there is no way law schools can obtain a student body highly 'diverse with respect to . . . race' -- specifically, that is more than about 1 percent black -- except by applying to blacks different and very much lower admission standards than are applied to whites."²⁹ He considers this the "central, intractable fact" of the issue, one he traces back to Green v. New Kent County, a K-12 school busing case.³⁰

Graglia contends that in order to avoid sanction, law schools must have a minimum of 5% black student enrollment: this is "probably the minimum necessary to escape harassment or worse by
the AALS and ABA."31 He contends that the schools accomplish this
by "a system of race norming. That is, Texas [his law school, by
way of example] admits the best blacks -- enough to make the class
at least 6 or 7 percent and preferably 8 to 10 percent black -- and
the best whites it can get, but black applicants compete only with
other blacks, not with whites."32 In his view, this "race norming"
produce[s] an entering class with two separate
student bodies, identifiable by race,
especially in different academic ballparks.
Everyone realizes that if the blacks were the
academic equals of the whites, they would not
require lower standards of admission and that
if they are not the academic equals of whites,
they cannot be expected to compete with them academically. A racially preferential admissions policy is therefore a prescription for a loss rather than a gain by blacks in self-respect and the respect of others. Inevitable effects are heightened racial consciousness and frustration, resentment, and self-segregation on the part of blacks. It is the source of demands for 'multiculturalism' (we can't play this game, so let's play a different one), sensitivity training, and suppression of criticism ('racial harassment'). Which is why 'affirmative
action' is a disastrous policy in higher education and why, when practiced, it is practiced largely by stealth and when defended, it is defended by documents such as the press release.\textsuperscript{33}

He is scornful of the justifications for the accreditation requirements, which rationalize affirmative action on the grounds of diversity, by exposing law students "to a wide range of perspectives concerning the impact of law or various segments of our population."\textsuperscript{34} Even while he sees this as an inappropriate end, he critiques the means:

The AALS and ABA requirement, however, is not a student body with a wide range of
perspectives; it is a student body with a
minimum percentage of blacks, regardless of
their perspective. Race is obviously not an
accurate, much less a suitable, proxy for an
applicant's perspective; the economic and
educational background of the applicant's
family for example, would undoubtedly be a
better proxy.

Similarly, that 'the applicant's prior
success in overcoming personal disadvantage'
is relevant to admission decisions, does not
explain or justify the actual AALS and ABA
requirement that preferential admission be
granted to blacks.\textsuperscript{35}

He also avers that accreditation committees, themselves "usually nicely 'balanced' by race and sex" do not even investigate measures of disadvantage, "they [only] inquire as to what percentage is black. It is not the case, of course, that all or only black law school applicants have overcome disadvantage. On the contrary, black applicants from unusually advantaged economic and educational backgrounds are preferentially admitted to law schools while higher-scoring whites from relatively disadvantaged backgrounds are denied admission."\textsuperscript{36}

This situation is compounded by law school financial aid policies that offer no-need scholarships to blacks by taxing white students in the form of higher tuition. Graglia sharply criticizes
this practice: "Blacks are simply selling what the AALS and ABA require the law schools to have for accreditation, black faces. Because the demand is high and the supply limited, it is not to be expected that the need can be met cheaply."\(^{37}\)

As a final matter, Graglia criticized the ABA/AALS/LSAC press release in its call for law schools to make admissions decisions by seeking students "who will become conscientious, responsible, ethical, and highly professional lawyers reflect positively on their schools and their profession."\(^{38}\) He pointedly noted that these "undoubtedly highly desirable characteristics" were not "correlated with race."\(^{39}\) He concluded:

The actual requirement of the AALS and the ABA is simply the admission of more blacks to law
schools than would be admitted if racial
discrimination were not practiced. Talk of
unusual perspective, overcoming disadvantage,
and likelihood of ethical behavior serves only
as a smokescreen. To achieve the percentage
of blacks that is in fact required by the AALS
and ABA, it is necessary that the ordinary
admission criteria be not merely bent or
shaded, but virtually abandoned, that blacks
be admitted who would not be given a moment's
consideration if they were white. Perhaps it
is arguable that race-norming in law school
admissions is a defensible social policy, but
the severity of the attack on Maguire for pointing it out and the extreme lack of candor by its proponents is very strong evidence that it is not.\textsuperscript{40}

As noted earlier, Graglia's vision of the process, if accurate, should give pause to all legal educators. The process, as he describes it, has undermined merit as a consideration, employed race as a proxy for other meritorious criteria, treated blacks as if they were a commodity in the academic marketplace, and caused whites to question the achievements of all minorities. Many other whites believe his version of law admissions, and several formal rear-guard actions against affirmative action have been mounted.
Perhaps the best example of others influenced by Graglia's thinking is an article published by two of his University of Texas Law School students, Edmund Daniels and Michael Weiss. They analyze the UT admissions process and conclude that lesser-qualified Black and Mexican American applicants are admitted over more-qualified white applicants. They also criticize the law school for its financial aid policies, which established a variety of scholarship funds, including minority programs. They conclude that this practice violates Title VI of the Civil Rights Act and "automatically excludes 80 percent of the admitted students from consideration."

Professor Graglia's students are not the only persons who believe that minority scholarships may run afoul of Title VI. In
a widely-reported incident, Office for Civil Rights Assistant Secretary Michael Williams wrote on December 4, 1990 to the 1991 Fiesta Bowl officials, expressing his concern that a portion of the proceeds from the lucrative athletic event were to be donated to minority scholarship programs.45

A Department of Education press release, distributed on newswires the same day, indicated that failure to reconstitute the program would violate Title VI and would "place schools at risk of losing all federal funding."46 Even though Williams acknowledged that Title VI and its regulations did not apply to the Fiesta Bowl, "universities that those students [recipients of the scholarships] attend may not directly, or through contractual or other arrangements, assist the Fiesta Bowl in the award of those
scholarships unless they are subject to a desegregation plan that mandates such scholarships."⁴⁷ Williams went on to counsel Fiesta Bowl officials that they could provide University of Louisville or University of Alabama students with race-exclusive scholarships or other financial aid, but the universities "could not receive or dispense such scholarships or otherwise assist the Fiesta Board sponsors unless subject to a desegregation plan that includes such scholarships."⁴⁸

The Assistant Secretary advised the universities that they could reconstitute the scholarship fund into one in which "race is considered a positive factor amongst similarly qualified individuals if the institution is one where there has been limited participation of a particular race" or they could recast the
program into one that "utilizes race-neutral criteria." Finally, he indicated that a staff attorney would contact the Fiesta Bowl officials "to provide ... assistance in designing and implementing" the program.

The predictable firestorm of controversy erupted, causing OCR and Secretary-designate of the Department of Education Lamar Alexander to regroup. Two weeks later, the Department announced that its reconsideration of scholarship policies was on hold while a more thorough review was being undertaken. On December 18, 1990, DOE issued a second press release, a "six-point plan" designed to quell the outpouring of criticism:

1. The Administration fully endorses voluntary affirmative action in higher education, and encourages educational opportunities for minority and disadvantaged students.

2. The Department of Education has decided that the Title VI regulations will be
enforced in such a way as to permit universities receiving federal funds to administer scholarships established and funded entirely by private persons or entities where the donor restricts eligibility for such scholarships to minority students. Under Title VI, however, private universities receiving federal funds may not fund race-exclusive scholarships with their own funds.

3. Race-exclusive scholarships funded by state and local governments are covered by the Supreme Court's decisions construing the Constitution and thus cannot be addressed administratively.

4. Given the evident confusion among the universities on the preceding point, ED will provide universities a four-year transition period in order to permit universities to review their programs under Title VI, and to assure that any students under scholarship, or being evaluated for scholarship, do not suffer. ED is eager to provide technical assistance to any institution during this four-year period. Such technical assistance has already helped universities administer their scholarship programs in full compliance with Title VI.

5. During the four-year transition period, the Administration will not pursue a broad compliance review with respect to minority scholarships but will fulfill its statutory obligation to investigate any complaints received.

6. The Administration will encourage state legislatures, local governments, and private universities receiving federal funds to carefully review and analyze the legal restrictions on minority scholarship programs imposed by the courts, so that these entities may continue to the fullest extent possible to provide scholarship assistance to minorities and other persons in need.52

By March, 1991, Congress had begun hearings to find out
exactly what the Administration’s policy was and to press Secretary Alexander for clarification.\textsuperscript{53} At the same time, the Secretary’s public assurances were that the OCR policy was being reviewed and that the Williams policy should be considered "irrelevant."\textsuperscript{54} He published a series of questions in the Federal Register in order to receive public comments, and undertook several research questions, including seeking information on how extensive minority scholarships actually were.\textsuperscript{55} In the meantime, despite Secretary Alexander’s disavowals, OCR continued to consider minority programs illegal in its internal documents and enforcement recordkeeping.\textsuperscript{56}

Exactly by one year after the original Williams press release,

Secretary Alexander issued his own take on the subject:

\textit{For seven months the Department of Education has reviewed in public this question: can colleges make special efforts to grant scholarships to minority students}
without violating Federal antidiscrimination laws?

The answer is yes. A college president with a warm heart, some common sense and a minimum amount of good legal advice can provide minority students with financial aid and may use financial aid to create campus diversity without violating Federal laws. Some race-exclusive scholarships are legal, and in other cases, race may be a positive factor in awarding scholarships.⁵⁷

In addition, he issued a set of findings and principles, and called again for a public response to the proposals. The December 10, 1991 Federal Register printed the call for comments, which are at present being reviewed.⁵⁸

Another reconsideration of Title VI was undertaken due to a suit filed by white students in several institutions, challenging the constitutionality of financial aid distributed on the basis of race.⁵⁹ The students, aided by the Washington Legal Foundation, sought a declaratory judgment, an order to require the Department to prohibit all race-based scholarships, and wide ranging court
supervision of the Department's civil rights enforcement over colleges. The judge dismissed the suit, citing the Department's policy review and concluding the students had presented no cognizable claim, either under Title VI or the Administrative Procedure Act.60

Another federal court, though, saw the issue differently. In May, 1991 a federal district court had found the University of Maryland's minority scholarship program was an appropriate remedy to the conceded "lingering effects of historic discrimination."61 The State of Maryland had entered into a consent agreement to settle the Adams62 case and agreed to provide programs, including scholarships for attracting black students to predominantly white institutions (such as the flagship University of Maryland, College
Park) and white students to historically black colleges. The Fourth Circuit reversed and remanded for further findings on "whether present effects of past discrimination exist and whether the remedy is a narrowly tailored response to such effects."63

Ironically, the original challenge to the financial aid program was not to its fundamental legality, but to its reach: an Hispanic student brought the suit against the black-only Banneker Scholarships, arguing that he should also be eligible. In its remand, the Appeals Court did not decide this issue: "The program may be valuable as a recruitment tool, but the value of the much-expanded program, as opposed to the program in its more limited form or other non-race-based remedies is not clear."64

These challenges to widespread admissions and financial aid
practices can be seen to lend credibility to Professor Graglia's view that the pendulum has swung too far in favor of minorities. Many white students feel this is true, and federal officials such as Michael Williams -- a black lawyer -- clearly have reached this judgment. In an action brought by a Latino student, one Circuit has ruled that minority scholarships can only be awarded upon a showing of current discrimination or the present effect of past discrimination.  

Many commentators hew to this view, and are accorded much attention. Campus regulations concerning racial harassment have been struck down by two district courts, and a mood of "racial neutrality" has settled in on much of academe. Notwithstanding his acerbic worldview, Professor Graglia can rest content that many see the world as he does and as he believes it
Part II. A Parallel Universe

As in any good scrap, there is another side to this story, and there always has been. The rebuttals called for in response to Professor Graglia's view include both traditional legal analysis and examination of data, as well as counter narrative to dispute the race-neutral paradigm that animates his approach. In order to cut to the heart of the matter, I stipulate that I believe his view to be incorrect and unfortunate. In this essay, I will argue that Graglia simply gets it wrong; further, I believe he gets it wrong for all the wrong reasons, including a stubborn insistence that the history of discrimination plays no present role in the status of minorities and that the small gains made by minorities in legal
education and the legal profession have come at the expense of whites. A premise of white privilege underpins his view, and a sense of mean spiritedness flows from this premise. I will demonstrate the flawed sense of history that allows Professor Graglia to critique the present without reference to the past, even the recent past. Second, I argue that Professor Graglia, for all his experience in higher education, seriously misunderstands or misrepresents the admissions process, in part due to this unwillingness to see how ostensibly neutral practices have often masked discriminatory intent. Finally, I conclude that Graglia is unwilling to concede white privilege or recognize minority merit. At bottom is a bitter defense of the status quo ante, a return to bucolic, simpler times when things were, for lack of a clearer
adjective, black and white.

Modern day opponents of affirmative action in the admissions process trace their objections to the case of *DeFunis v. Odegard*, the first modern admissions backlash case where a white applicant denied admission to higher education sued because he believed less-qualified minority students were favored over more deserving white applicants. Although the Supreme Court denied certiorari because *DeFunis*, admitted pending resolution of the case, was scheduled to graduate, Justice William Douglas fired off an angry and widely-cited dissent:

> The State . . . may not proceed by racial classification to force strict population equivalencies for every group in every
occupation, overriding individual preferences.

The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. The purpose of the University of Washington cannot be to produce black lawyers for blacks, Polish lawyers for Poles, Jewish lawyers for Jews, Irish lawyers for Irish. It should be to produce good lawyers for Americans and not to place First Amendment barriers against anyone.

That is the point at the heart of all our school desegregation cases, from Brown v.
Board of Education through Swann v. Charlotte-Mecklenburg Board of Education. A segregated admissions process creates suggestions of stigma and caste no less than a segregated classroom, and in the end it may produce that result despite its contrary intentions. One other assumption must be clearly disapproved: that blacks or browns cannot make it on their individual merit. That is a stamp of inferiority that a State is not permitted to place on any lawyer.

If discrimination based on race is constitutionally permissible when those who
hold the reins can come up with "compelling"
reasons to justify it, then constitutional

guarantees acquire an accordionlike quality. 69

That Douglas -- long considered a friend to minority interests --
would be so vehement in his view that special admissions violated
white rights suggested that a sensitive nerve had been struck.

Although Marco DeFunis was eventually enrolled and graduated,
it was not long until a ripe case appeared, in the form of Bakke v.
University of California Regents. 70 The fact pattern is well-known:
Allan Bakke applied unsuccessfully to the University of California-
David Medical School, and was not admitted either through the
regular screening process or through a special admission program
only for minorities, one that reserved 16 spaces (of the 100 member
class). In a series of opinions, the Supreme Court splayed itself
over the different issues. Four members of the court joined with
Justice Powell in finding that the particular Davis program was
unconstitutional and ordering that Bakke be admitted; another four justices sided with Powell in upholding racial criteria for the purpose of increasing diversity, although Powell did not countenance the quota program employed by Davis.

In the years since Bakke was decided, it has been widely cited, both for its institutional right-to-choose-applicants holding, and for its striking-down-quotas result. Thus, the University of Michigan was allowed to dismiss Scott Ewing after he failed his medical exams, while the University of North Carolina’s practice of setting aside places in the student government for black students was struck down, both citing Bakke.

Bakke has not quieted the legal claims of disappointed white applicants, either. In McDonald v. Hogness, Frederick McDonald, an unsuccessful white applicant charged the University of Washington Medical School with unconstitutionally denying him admission by admitting lesser qualified minority students. He presented a set of credentials that included an undergraduate grade point average of 3.58 (on a 4.0 scale) and Medical College Admissions Test (MCAT)
exam scores in the 95th percentile. Like the law schools Graglia castigated, the medical school used additional admissions criteria: "Candidates are considered comparatively on the basis of academic performance, medical aptitude, motivation, maturity, and demonstrated humanitarian qualities. Extenuating background circumstances are considered as they relate to these selection factors." 76

McDonald argued that the "published criteria [did] not provide a standard for admission or rejection, [singling] out for criticism the subjective factors, motivation, maturity and demonstrated humanitarian qualities; he argue[d] these are not definable, meaningful concepts which can be reasonably applied." 77 He also argued that six minority applicants with lower GPA and MCAT scores were admitted ahead of him. Although he did not win his case, other white applicants alleging preferential treatment of minorities in the application process have been able to prevail in court since Bakke.

In Davis v. Halpern, a white law school applicant denied
admission eight times to the City University of New York Law School at Queens College (CUNY) was able to raise fact questions concerning the admissions process sufficient to survive a summary judgment.\textsuperscript{78} The district judge, in reviewing the CUNY admissions practices, held that such processes that include race as a consideration are permissible if they make possible "a university’s obtaining the benefits which flow from enrolling an ethnically diverse student body,"\textsuperscript{79} citing \textit{Bakke}. However, citing \textit{Wygant},\textsuperscript{80} \textit{Croson},\textsuperscript{81} and Justice Powell’s other holdings in \textit{Bakke},\textsuperscript{82} he found that a college could not invoke general purpose justifications for affirmative action plans, but would need to show specific evidence of its own prior discrimination. Invoking the need for more minority attorneys to serve minority communities, for diversifying the bar at large, or for generally countering discrimination will not provide a sufficient basis for administering affirmative action.

These cases reveal that a public or private law school can construct and administer an acceptable admissions program that will
pass muster. Depending upon the racial history of the state, the institution, and the individual group, a law school should justify its admissions process by specific reference to institutional goals of diversity and interest in determining a heterogenous student body. Simply amassing statistics will not do, although gathering historical data should certainly be a first step in any self study. Trustee policy, institutional goal-setting, principles of academic freedom, legislative findings, and other evidence of a college’s culture can be developed and used to undergird admissions policy, considered to be one of the four "essential freedoms" of traditional academic freedom jurisprudence. Nearly one third of the states have either been found to have operated dual, racially separate public systems of higher education or have entered into consent decrees with the federal government; these constitute substantial evidence of "the formulation of any legislative policy[,]... legislative mandates or legislatively determined criteria."

Neglecting the racial history of higher education allows
affirmative action critics to wipe the slate clean and to ground their objections in the recent past, beginning with DeFunis; this historical amnesia not only enables such critics to deracinate a race-drenched process, but convinces them that non-racial measures of merit were always fairly defined or administered. This stubborn conviction holds that admissions practices always produced fair results until recently when they have been used against whites. This extraordinary view of the world ignores the widespread historical evidence that the admissions process was the means by which minority disadvantage and white privilege were maintained.

While nearly every school child knows of the 1954 case Brown v. Board of Education, which banned segregated public schooling, few people know that the road to Brown was essentially paved with cases involving colleges and universities, beginning nearly 20 years before 1954. In the legal fights to ban segregation, colleges made a perfect target, relying as they did upon race rather than merit.

In 1936, Charles Houston and Thurgood Marshall successfully
challenged the exclusion of blacks from the University of Maryland law school. This success must have been sweet for Marshall, who, as an undergraduate and law student, had been ineligible for admission to the public white institutions of his home state.

In 1938 the Supreme Court invalidated a Missouri plan that barred black residents from the University of Missouri law school but paid their tuition at schools outside the state: Georgia, Maryland, Virginia, and several other states had similar plans, which were pathetically underfunded. In 1936, for example, Maryland's program had nearly 400 applications for 50 out-of-state "scholarships."

In 1948 the Supreme Court required Oklahoma to enroll a black law student at its law school or create a black law school; the state did the latter, rather than admit black students to the existing school. In 1949, Marshall had to contend with Maryland again, when the state argued that its obligation to enroll black students at the University of Maryland, imposed a dozen years earlier, extended only to the law school, not to its nursing
Oklahoma decided it could not afford to create separate programs for all the black students who wanted to attend specialized graduate programs, so it admitted G.W. McLaurin to a doctoral program at the University of Oklahoma, but with a twist. The New York Times ran a story on October 14, 1948, about "the first class ever attended by a Negro at the University of Oklahoma," reporting that the University also had assigned Mr. McLaurin "a special desk in the library and a special room in the student union building where he can eat meals." The photograph accompanying the story is deceptive: At first it appears that Mr. McLaurin is seated in a classroom, but when you look closer you see he is in the "anteroom," or foyer to the room. And his special desk and lunch room were actually ramshackle facilities designed to keep him separated from his white classmates. In 1950, in McLaurin v. Oklahoma State Regents, the Supreme Court ruled this shameful practice unconstitutional.

In Texas, the state went so far as to establish a separate
black law school--Texas State University (later, "Texas Southern University"--) to keep blacks from enrolling in the University of Texas at Austin. But, in another 1950 case, the Supreme Court ruled that there were such substantial differences between the resources of the two schools that the practice of creating a separate but clearly unequal school could not be countenanced.95

Like Texas, South Carolina established a black law school rather than enroll black students in its public institutions.96 Marshall argued this and more than a dozen other higher-education cases using the precedents that he and his colleague Charles Houston had been carving out since 1936.

States proved intransigent--delaying, dragging their heels, promising to build new programs or fund scholarships, and, in each instance, conceding nothing. When Georgia, under fire, was forced to admit Charlayne Hunter, now a well-known journalist, into the University of Georgia, the state was back in court in a week, arguing that the state did not have to let her into the student-union building to eat.97 The registrar of the University of
was required under a court order in 1955 to admit black students, but his successor went to court in 1963, saying that he was not bound by the earlier judgment. This disingenuity also led Southern states to argue, albeit unsuccessfully in most instances, that Brown v. Board of Education was limited to public elementary and secondary schools, inasmuch as its facts arose in an elementary-secondary setting.

The extent to which states would go to thwart minority admissions is, even in context, quite extraordinary for its boldness. In Mississippi, following Brown, the University trustees began an "alumni voucher requirement," necessitating five letters from graduates who were willing to attest to the good moral character of any applicants to the institution. Needless to say, this race-neutral requirement was a thinly-guised racial tool, as no white graduates of Ole Miss were going to vouchsafe for the character or admission of a black applicant in 1954. When James Meredith applied to the University of Mississippi in 1962, and was ordered admitted, the practice was discontinued.
next year, the State's white institutions initiated a new requirement, that all college applicants present standardized exam scores. To close any potential loophole, the minimum admission score was set at 15, below the white median of 18 and well above the black score of 9.  

Nor were these the only such instances of official state resistance to integration, as racism's poisonous legacy remains a matter in present day courts, where black and Latino plaintiffs continue to press for resources to predominantly minority institutions and communities. Of course, the fact that such overt racial discrimination occurred should not sanction its repeat, this time aimed at whites. But white critics such as Professor Graglia, who graduated from law school in 1954, should know better than to begin their inquiry at the DeFunis and Bakke cases. The white beneficiaries of racial practices often assume that they reached their stations in life upon their merits, and that minority communities advanced only through bending the rules. Such proponents of "racial neutrality" do not take this recent
history into account, nor do they appreciate the extent to which the admissions process of today is much more fairly and conscientiously administered than its historical counterpart ever was.

Moreover, both Professor Graglia and other white critics of law school affirmative action have become convinced that higher scores translate into more meritorious applications, and that the reliance upon a mechanistic set of measures would constitute a fairer, race-neutral process. The evidence for this proposition, though, is exceedingly thin, while a substantial body of research literature and academic common practice refute this premise. The heavy reliance upon test scores and the near-magical properties accorded them inflate the narrow and modest use to which any standardized scores should be put. Accepted psychometric principles, testing industry norms of good practice, and research on the efficacy of testing all suggest modest claims for test scores, whether standing alone or combined with other proxy measures. First, test scores are at best imperfect measures that
modestly predict first year grades. The Law School Admissions Council, for example, cautions:

The accuracy of test scores is best described by the use of two related statistical terms, reliability and standard error of measurement.

Law Services reports an internal consistency measure of reliability for every test form. The reliability coefficient can vary from 0.00 to 1.00. In the past, reliability coefficients for LSAT forms have ranged from .90 to .95, indicating a very reliable test. The standard error of measurement provides an estimate of the error that is present in a test score because of the imperfect reliability of the test. The standard error of measurement for the LSAT is reported to score users following each administration of the test. The chances are approximately two out of three that a score obtained by a test taker will lie within a range from one standard error of measurement below to one standard error of measurement above his or her true score; true score is the score that a test taker would have obtained if the test were perfectly reliable. About 95 percent of the test takers will have test scores that fall within two standard errors of measurement of their true scores.103

Even with these cautions, first year grades -- if they were perfectly predicted--are only a small part of the aptitude for law study; in most law schools, only a small number of students fail due to academic performance.104 More importantly, the same score
means different things for different populations. Careful studies of predictive validity consistently show that scores from standardized tests are less predictive of Hispanic students' first year grade point averages (both under-predicting and over-predicting) than are those of Anglo students. In a review of psychometric studies on group differences, Maria Pennock-Roman notes,

[Test] scores are more ambiguous as predictors of college performance of Hispanics. When dealing with mental measurements, one often forgets that, unlike physical measurements, they do not necessarily measure the same underlying dimensions (constructs) in all persons. Since differential prediction does exist by ethnic and by gender groups, the same score, say a 500 on the verbal Scholastic Aptitude Test (SAT-V), has a different meaning for various groups in terms of its relationship to college grades. For Hispanics, it predicts a wider range of possible grade-point averages than it does for whites. For women, it implies a systematically higher grade-point average than it does for males. For example, other things being equal, females with SAT-V scores of 500 as a group are more "able" in the sense of latent criterion performance than are males with scores of 500.
If research consistently shows that test scores predict differently and less well for different populations, including men and women, this finding weakens substantially the claim by affirmative action critics that the the LSAT or other standardized tests should be given more weight in the admissions process. Georgetown's Timothy McGuire, whose crude and incomplete study of GULC test scores so moved Professor Graglia, found himself at a 39 LSAT, halfway been what he claimed was the black median (36) and the white median (43). Not only did his analysis misrepresent the concept of a median (the point in a group where half the scores are higher and half lower), but he failed to apprehend that a 36 represents the 70th percentile of all testtakers and a substantially higher percentile for all black LSAT testtakers. Students whose
LSAT scores are in the 70th percentile certainly can be admitted to a selective law school with little fear that they will fail, particularly if their scores predict grades less well than do white student scores. But white students have become convinced that their higher scores warrant automatic deference and privilege. One white applicant to Duke filed an official complaint with the Office for Civil Rights because she was denied admission on her high school record (11th in a class of 114 and an SAT of 1180 of 1600), while her black classmate was admitted to Duke with a class rank of 18th and an SAT score of 1130. On this virtually indistinguishable difference in records, federal action was undertaken.

These students and Professor Graglia have all failed to
perceive that the numbers beyond a certain point (a point that will differ for each institution) do not make any statistical difference. Even when combined with grade point averages, which themselves mean different things for different applicants, who vary widely by major, institution, and other factors, their predictive validity is still weak and varies among groups. Richard Duran concluded, after reviewing the research literature on grades and test scores, that "combining information about high school ethnic specific regression equations leads to less accurate prediction of Hispanics' college grades. In terms of the variance accounted for, Hispanics' college grades were predicted 9 to 10 percent less accurately than were whites' grades."

If the research shows that even combining quantative measures does not improve the predictive
predictive power of the resultant score, these scores (often used in law school admissions to formulate an algorithmic single "index") would best be used with the array of other qualitative information available to law schools. Critics who understand the proper use of scores and who apprehend that the process is an art rather than a science should be less enamored of citing LSAT scores and grade point averages as the gold standard.

As a final matter, Graglia and other critics suggest that a massive dislocation of deserving whites has occurred, in which a great many underserving students of color have taken these whites' rightful places. The data simply contradict this view. The number of white law students in 1990-91 is at an all time high: 115,110, or 85% of the total enrollment in the 50 states and District of
Blacks constitute 6.3%, and other minorities an even smaller percentage. For Mexican Americans and Puerto Ricans, among the fastest growing ethnic minority groups in the country, these enrollments represent an actual numerical and percentage decline from the early 1980’s. In 1990, white students took 79% of all the LSAT exams administered, and 58% of all the whites who applied to law schools were admitted; they constitute 85% of all law students. Of all groups, only Asians were admitted in a higher percentage (61%). There is no evidence of slippage here, and no hint of unfairness. Individual schools may have variable records, but no law schools can afford to admit unqualified students, as its spaces are too precious and competitive.

Nor is it true that accreditation requirements have forced law
schools to admit disproportionate numbers of black students.

Professor Graglia fumes that the wrath of accreditation bodies will be visited upon law schools not enrolling at least 5% black student bodies: he states that this quota is "probably the minimum necessary to escape harassment or worse by the AALS and ABA." Yet enrollment data show more than 71 schools reporting fewer than 5% black enrollments in 1990, even in institutions with substantial black recruiting populations. If decertification is a sword hanging over schools' heads, it has not moved them to action. Like so many of the claims advanced by affirmative action opponents, this assertion of accreditation blackmail does not withstand more careful scrutiny.
Conclusion

Nonetheless, these criticisms will continue, not because they have a basis in fact, but because the transition to a more meritorious and heterogeneous legal profession will inevitably lead to a loss of white privilege, particularly white male privilege. This powerful mythology of displacement seems particularly striking to affirmative action critics, even younger critics who grew up during the more modern era of affirmative action. A law school class of 1954, such as Professor Graglia's at Columbia, certainly was different than most classes today which will have proportionately more white women and people of color. But a class in 1954 was reserved only for white men, and few others, and admissions were not doled out by grades and test scores. A return
to those simpler times is not in order, and we are better for the change.

Graglia and others who critique today's situation cannot carry their burden of persuasion. Current admissions programs, as practiced at nearly all law schools, are more thorough and better administered than at any point in legal education. Most admissions officers and financial aid administrators are highly capable and dedicated professionals, who sift through thousands of papers and files and attempt to assemble as accomplished and diverse a class as they are able. The sheer crush of applicants -- Georgetown receives over 13,000 applications a year -- means that these officers can choose from among many exceptionally qualified persons. This is a key point. When choosing from among
thousands, all of whom have the credentials to do the work, admissions committees are doing in exactly what they are charged to do: assemble a qualified, diverse student body.

Bakke sanctions this approach, common sense dictates this, and no anecdotal horror stories or isolated allegations can change this central fact. In light of applicable law, research, and reasonable observation, I can only assume that affirmative action detractors are cursing the darkness. Grieving the loss of white male privilege does not become thoughtful observers, and I urge an end to this mourning period and yearning for a more romantic and innocent past. We all have more serious work to do in the present.
FOOTNOTES

1. CHARLES J. SYKES, PROFSCAM: PROFESSORS AND THE DEMISE OF HIGHER


4. LINDA CHAVEZ, OUT OF THE BARRIO: TOWARD A NEW POLITICS OF HISPANIC
ASSIMILATION 120 (1991) ("Shortcuts to genuine educational achievement -
like those of affirmative action programs that substitute lower
standards -- will produce only a chimera of accomplishment.")


6. Michael A. Olivas, A Sulphury Vision of Higher Education Hell, CHANGE,
Sept./Oct. 1991, at 58 (review of DINESH D'SOUZA, ILLIBERAL EDUCATION
(1990)).

7. Lino A. Graglia, Race-Norming in Law School Admissions, ___ J. LEGAL

8. Lino A. Graglia, Special Admission of the "Culturally Deprived" to Law
School, 119 U. PA. L. REV. 351 (1970) (criticizing the use of non-
academic subjective criteria to admit "unqualified or unprepared" black
applicants to law school). But see Derrick A. Bell, Jr., In Defense of Minority Admissions Programs: A Response to Professor Graglia, 119 U. PA. L. REV. 364 (1970) (characterizing Professor Graglia's position as outdated, incorrect, and misguided, and arguing that LSAT scores and undergraduate grades do not necessarily identify the best and most qualified candidates).

9. Graglia, supra note 7, at ___.

10. Id. at ___.

11. Id. at ___.

12. Id. at ___.

13. Id. at ___.

14. Id. at ___.

15. Id. at ___.

16. Id. at ___.

17. Id. at ___.

18. Id. at ___.

19. Id. at ___.

20. Id. at ___.
21. Id. at __.
22. Id. at __.
23. Id. at __.
24. Id. at __.
25. Id. at __.
26. Id. at __.
27. Id. at __.
28. Id. at __.
29. Id. at __.
30. See id. at __ (citing Green v. County Sch. Bd., 391 U.S. 430 (1968)).
31. Id. at __.
32. Id. at __.
33. Id. at __.
34. Id. at __.
35. Id. at __.
36. Id. at __.
37. Id. at __.
38. Id. at __.
39. Id. at __.

40. Id. at __.


42. See id. at 45 (stating that "[t]he admissions system pits racial and ethnic groups against each other in competition for seats in the law school"). Interestingly, neither they nor Professor Graglia mention the nine applicants admitted without presenting LSAT scores, three of whom also did not present a GPA. See infra note 103, at 353-54.

43. See id. at 45 (stating that "[t]he systematic discrimination against nonminority students extends to financial assistance as well.")

44. Id. In this article, the students also are critical of UT's faculty hiring policy, and reveal the details of a recent hiring vote, including vote totals. Unsurprisingly, they were critical of the law faculty's decision to hire a Mexican American woman. But see Michael A. Olivas, Latino Faculty at the Border, CHANGE, May/June 1988, at 6 (providing a different critical view of law faculty hiring practices); Todd Ackerman, 2 Texas Law Schools Taken off Hispanic 'Dirty Dozen' List, HOUS. CHRON.,
Oct. 2, 1991, at 20A (reviewing efforts by the Hispanic National Bar Association to pressure schools into hiring Hispanic law faculty).


46. PRESS RELEASE #1, supra note 45, at 2.

47. Williams, supra note 45, at 1.

48. Id. at 2.

49. Id.

50. Id.

51. See, e.g. Michael A. Olivas, The Federal Attack on Minority Scholarships is Mean Spirited and Legally Unwarranted, CHRON. OF HIGHER EDUC., Dec. 19, 1990, at B1; James Michael Brodie and Joye Mercer, U. of Louisville, Community Ponder Consequences of Decision to Accept Fiesta Bowl
Invitation, BLACK ISSUES IN HIGHER EDUC., Dec. 6, 1991, at 1; Charles
Myers, White House Studies New Policy Barring Aid Based on Race, CHRON.

52. UNITED STATES DEP'T OF EDUC. PRESS RELEASE, Dec. 18, 1990 at 1-2
[hereinafter PRESS RELEASE #2] (copy on file with author).

53. Hearings Before the Human Resources and Intergovernmental Relations
Subcommittee of the Committee on Government Operations, 102d Cong., 1st
Sess. (March 20, 21, 1991) [hereinafter Hearings].

54. D. S. Onley and David Baumann, Minority Scholarship Decision
' Irrelevant,' Williams Says, EDUC. DAILY, Feb. 21, 1991, at 1. See also
Hearings, supra note 53, at 9 (testimony of Michael Williams stating
that he was "roundly criticized for having appeared to have made a
decision without consulting the higher education community and the civil
rights community").

Office Seeks Public Response to Questions About Minority Scholarships,

56. See Scott Jaschik, New Questions Arise About U.S. Policy on Aid to
Minorities, CHRON. OF HIGHER EDUC., June 26, 1991, at A1 (stating that Congress discovered OCR continuing to use internal codes to designate scholarships as illegal).

57. PRESS RELEASE #2, supra note 52, at 1.


60. Id.


63. Podberesky, ___ F.2d at 9.

64. Id. at 9 n. 7.

65. Id.

66. See notes 1-8, 43 supra and accompanying text.


69. Id. at 342-43 (Douglas, J., dissenting) (citations omitted).


71. See id. at 408 (opinion of Stevens, J.).

72. See id. at 324 (opinion of Brennan, White, Marshall, and Blackmun, JJ.).

73. Regents v. Ewing, 474 U.S. 214 (1985) (institutions have right to determine who remains in good academic standing).


75. 598 P.2d 707 (Wash. 1979)

76. Id. at __.

77. Id. at __.


79. Id. at 975 (citation omitted).
discrimination can not justify racial layoff plan).

81. 488 U.S. 469 (1989) (affirmative action plans required to have
particularized findings of discrimination).


83. Sweezy v. New Hampshire, 354 U.S. 234 (1957) (Frankfurter & Harlan,
J.J., concurring in the result) (citing THE OPEN UNIVERSITIES IN SOUTH
AFRICA). I do not comment here upon the exquisite irony of academic
freedom's leading case relying in part upon a South Africa higher
education model.

84. See supra note 62.

University of Cal. v. Bakke, 438 U.S. 265, 309-10 (1978)).

86. 347 U.S. 483 (1954); see also Brown v. Board of Educ., 349 U.S. 294
(1955) (duty to proceed with "all deliberate speed").


88. Missouri ex rel. Gaines v. Canada, 305 U.S. 377 (1938). See also State
ex rel. Gaines v. Canada, 344 Mo. 1238, 131 S.W. 2d 217 (1939).


93. This photograph is reprinted in OLIVAS, *supra* note 62, at 908.


and the Transformation of Education Law, 5 REV. OF LITIG. 3 (1986); JEAN
PREER, LAWYERS v. EDUCATORS: BLACK COLLEGES AND DESEGREGATION IN PUBLIC
HIGHER EDUCATION (1982).

as television commentator Charlayne Hunter Gault.

98. Lucy v. Adams, 224 F. Supp. 79 (N.D. Ala. 1963). This case followed the
earlier version, Lucy v. Adams, 134 F. Supp. 235 (N.D. Ala.), aff'd, 228
F.2d 619 (5th Cir. 1955), cert. denied, 351 U.S. 931 (1956).

99. Meredith v. Fair, 298 F.2d 696 (5th Cir.), cert. denied, 371 U.S. 828
(1962), dismissed on remand, 202 F. Supp. 224 (S.D. Miss.), rev'd, 305
F.2d 341; 305 F.2d 343 (5th Cir. 1962). The facts of this important
case are also recounted in a case currently before the U.S. Supreme
F.2d 732 (5th Cir. 1990), aff'd en banc, 914 F.2d 675 (5th Cir. 1990),
See generally, Wendy Brown, The Convergence of Neutrality and Choice:
The Limits of State Duty to Desegregate (1991) (unpublished paper on
file with author).
100. Meredith, supra note 99.


102. This case was argued by Alvin Chambliss, Jr., counsel for Northern Mississippi Rural Legal Services, and Legal Defense Fund attorneys. In a case brought by the Mexican American Legal Defense and Educational Fund, LULAC v. Richards, a state district judge found the state of Texas to have discriminated against Mexican origin plaintiffs by its policy of establishing and providing resources to colleges located in North and Central Texas rather than South Texas. Final Judgment No. 12-87-5242-A (Cameron County Dist. Ct. 107th Jud. Dist. Jan. 20, 1992) (copy on file with author). See also James Pinkerton, Judge Rules for Changes in Higher Ed, HOUS. CHRON., Jan. 12, 1992, at A1; Clay Robinson, Higher Education is Unfair, Morales Says, HOUS. CHRON., Jan. 22, 1992, at 20A.


104. As an example, in 1990-91, the University of Houston Law Center lost only 12 students by academic probation, fewer than 1% of the total J.D. program. Discussions with colleagues as other law schools suggest
similar low rates. Even so, a variety of schools have instituted tutorial and other support programs to provide academic assistance. See, e.g., David P. Leonard, *Personal and Institutional Benefits of Offering Tutorial Experiences to Students Experiencing Academic Difficulty*, 37 J. LEGAL EDUC. 91 (1987).


109. Duran, in LATINO COLLEGE STUDENTS, supra note 105, at 237. Studies of minorities' performance in law school relative to their LSAT scores should give additional pause. LSAT predictive validity coefficients are dramatically lower when correlated with third year grades, both for women and for minorities. In lay terms, LSAT scores predict medium well for first year grades, and substantially less well for third year grade point averages. See, e.g., James C. Hathaway, The Mythical Meritocracy of Law School Admissions, 34 J. LEGAL EDUC. 86 (1984) (finding substantial differences) and DONALD POWERS, DIFFERENTIAL TRENDS IN LAW SCHOOL GRADES OF MINORITY AND NON-MINORITY LAW STUDENTS (Educational Testing Service Research Rept. RR-82-1) 15-16 (1982) ("differential improvements of minority students [over second and third years] would seem to provide further justification to admitting minority and other
disadvantaged students with lower admissions credentials"). But see DONALD POWERS, LSAC, REPORTS OF LSAC-SPONSORED RESEARCH: VOL. IV 261 (1984) (section entitled Predicting Law School Grades for Minority and Non-Minority Students: Beyond the First-Year Average which states that the coefficient differences change over three years for racial groups and women, but not by a statistically significant amount).

110. ABA enrollment data for 1989-90 show 129,698 students, 15,720 of whom are minority (113,978 whites); the 1990-91 data show 132,433 students, of whom 17,330 are minority (115,103 whites). Data supplied from ABA Office of Legal Consultant (copy on file with author). See also, Kenneth Myers, Studies Suggest That Minorities Still Lag in Admissions, Tests, NAT'L L. J., Feb. 24, 1992, at 4.

111. Id. Of course, many of these students are enrolled in the four historically black law schools (Texas Southern University, Southern University, North Carolina Central University, and Howard University).

112. Id. Although there appears to have been a surge of Mexican American law students in 1990-91, in 1989-90 there were fewer law students (1663) than there had been in 1981 (1755); for Puerto Ricans, the 1989-90 data
showed a slight (483) increase from the 1980 figure of 442, but a smaller percentage of total enrollments. There are more Cubans and other Latinos in law school than Mexicans and Puerto Ricans, which together constitute nearly 85% of the U.S. Latino population. See generally Jorge Chapa, The Myth of Hispanic Progress: Trends in the Educational and Economic Attainment of Mexican Americans, 4 HARV. J. HISP. POL'Y 17 (1989-90).

113. LSAC 1990 Testtaker data (on file with author); see also Myers, supra note 110.

114. LSAC, id. at Table 1.

115. Graglia, supra note 7 at ____.

116. LSAC, OFFICIAL GUIDE, supra note 103 at 53-60 ("Key Facts for Minority Law School Applicants").