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TEXAS ADVISORY COMMITTEE TO THE
UNITED STATES COMMISSION ON CIVIL RIGHTS
Admissions Policies, Practices, and Procedures in
Texas Institutions of Higher Education
Post-Hopwood v. Texas

Saturday, April 5, 1997
The University of Texas at Austin
School of Law
Townes Hall Auditorium, Room 2.114
Austin, Texas

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1 CHAIRMAN CANALES: Good morning. This
2 is a meeting of the Texas Advisory Committee to the
3 United States Commission on Civil Rights. The
4 meeting will now come to order.

5 I'm Adolph Canales, the chairperson of
6 the Texas Advisory Committee to the United States
7 Commission on Civil Rights. I'm going to have the
8 panel introduce themselves and very briefly let
9 them tell you a little bit about themselves,
10 starting with Professor Graglia.

11 MR. GRAGLIA: All right. I'm Lino
12 Graglia. I teach here at the University of Texas
13 Law School.

14 MS. BERRIOZABLE: My name is Maria
15 Berriozable. I'm from San Antonio, Texas. I am a
16 graduate of the University of Texas at San Antonio,
17 and very proud of that. I served on the
18 San Antonio City Council for ten years and have a
19 background in elected public service and also
20 community activism, community organizing,
21 particularly with women, and particularly with
22 women of color. I'm very happy to be here and that
23 you are here with us today.

24 CHAIRMAN CANALES: Dr. Burke.

25 DR. BURKE: My name is Denzer Burke.

1 I'm from Texarkana. I'm a practicing dentist. I
2 have tenure on the city council and various other
3 boards, hospital boards, in Texarkana. I've been
4 with this committee since the Kelly Air Force
5 hearing in San Antonio, which was some time ago.

6 MS. ZAMORA: My name is Michele Guess
7 Zamora. I'm from Houston, Texas. I have a special
8 interest in matters relating to equal opportunity
9 and education and disability issues.

10 MR. WEST: I'm Tom West. I teach
11 politics at the University of Dallas.

12 CHAIRMAN CANALES: Thank you.

13 My background, I'm a state district
14 judge in Dallas County, Texas in the 298th District
15 Court.

16 Ladies and gentlemen, the United States
17 Commission on Civil Rights is an independent,
18 bipartisan, fact-finding agency first established
19 under the Civil Rights Act of 1957 and is directed
20 to the following:

21 To investigate complaints alleging that
22 citizens are being deprived of their right to vote
23 by reason of their race, color, religion, sex, age,
24 handicap, or national origin, or by reason of
25 fraudulent practices;

1 Also to study and collect information
2 concerning legal developments constituting
3 discrimination or denial of equal protection of the
4 laws under the Constitution because of race, color,
5 religion, sex, age, handicap, or national origin,
6 or in the administration of justice;

7 Also to appraise federal laws and
8 policies with respect to discrimination or denials
9 of equal protection under the laws;

10 To serve as a national clearinghouse for
11 information about discrimination; and submit
12 reports, findings, and recommendations to the
13 President and Congress of the United States.

14 State advisory committees, such as this
15 one, were established in each state and the
16 District of Columbia in accordance with the
17 enabling legislation and the Federal Advisory
18 Committee Act, to advise the Commission on matters
19 pertaining to the areas indicated previously, and
20 to aid the Commission in its statutory obligation
21 to serve as a national clearinghouse for
22 information on those subjects.

23 In addition to those duties, Commission
24 regulations call for each Advisory Committee to:

25 Initiate and forward advice and

1 recommendations to the Commission about matters
2 that the Advisory Committee has studied;

3 Receive reports, suggestions, and
4 recommendations from individuals, public and
5 private organizations, and public officials about
6 matters pertinent to inquiries conducted by the
7 state advisory committee; and advise the Commission
8 upon matters of mutual concern and the preparation
9 of reports of the Commission to the President and
10 the Congress.

11 The purpose of the meeting today is to
12 obtain information and views relating to the impact
13 of the 5th Circuit decision in Hopwood versus
14 Texas, its impact on admission policies, practices
15 and procedures in Texas institutions of higher
16 education. Participants in today's forum have been
17 requested to address the following issues:

18 What is the precise meaning of the 5th
19 Circuit's decision on Hopwood and how far-reaching
20 is the scope of the decision?

21 What has been the response of Texas
22 institutions of higher education - particularly law
23 schools, medical schools and graduate schools - to
24 the Hopwood decision. How have they amended
25 admissions policies to comply with the Court's

1 ruling?

2 What guidance, if any, has been provided
3 to school administrators and admissions officials
4 by federal and state officials to aid in following
5 the Court's ruling? And what has been the response
6 of the legislative community to the Hopwood
7 decision? And also, what response, if any, has
8 there been in the professional community to the
9 Court's ruling?

10 Among those who have been invited to
11 address the advisory committee today are
12 representatives of both public and private
13 institutions of higher education in the state of
14 Texas, elected officials, scholars, students,
15 members of the professional community -- of the
16 professional community. Invitations were also
17 extended to the office of Dan Morales, Attorney
18 General of the State of Texas, and the Office of
19 Civil Rights, United States Department of
20 Education. Regrettably, these offices -- both of
21 which could have provided clarification to recent
22 positions each office has taken on this issue --
23 declined our invitation to attend today.

24 A transcript of this proceeding will be
25 taken. Based upon the information collected at

1 this meeting, a summary report will be prepared for
2 the United States Commission on Civil Rights.

3 Members of this advisory committee in
4 attendance during this meeting -- and I have
5 already asked them to introduce themselves to you.

6 This meeting is being held pursuant to
7 federal rules applicable to State Advisory
8 Committees and regulations promulgated by the
9 United States Commission on Civil Rights. All
10 inquiries regarding these provisions should be
11 directed to commission staff.

12 I have -- is Art here or Stella? Can we
13 catch them? They'll be in and out throughout the
14 day. If you have any questions, you can address
15 them to staff members.

16 I would like to emphasize to the
17 audience, and forum participants, and advisory
18 committee members, that this is a public forum and
19 not an adversarial proceeding. Individuals have
20 been invited to come and share with this Committee
21 information relevant to the subject of today's
22 inquiry. Each person that will participate has
23 voluntarily agreed to meet with the committee and
24 shall be treated with courtesy and respect.

25 Since this is a public meeting, the

1 press, radio and television, as well as
2 individuals, are welcome. Persons meeting with the
3 committee, however, may specifically request that
4 they not be televised. In this case, we will
5 comply with their wishes. I don't see the cameras
6 here.

7 We are concerned that no defamatory
8 material be presented at this meeting. In the
9 unlikely event that this situation should develop,
10 it will be necessary for me to call this to the
11 attention of the persons making these statements
12 and request that they desist in their action. Such
13 information will be stricken from the record if
14 necessary.

15 Every effort has been made to invite
16 persons who are knowledgeable in the area to be
17 dealt with here today. In addition, we have
18 allocated time between 5:00 and 6:00 p.m. this
19 evening to hear from anyone who wishes to share
20 information with the Committee about the specific
21 issues under consideration today. At that time,
22 each person or organization will be afforded the
23 brief opportunity to address the Committee and may
24 submit additional information in writing. Those
25 wishing to participate in the open session must

1 contact commission staff and sign a register before
2 3:00 p.m. this afternoon.

3 In addition, the record of this meeting
4 will remain open for a period of 30 days following
5 its conclusion. The Advisory Committee welcomes
6 additional written statements and exhibits for
7 inclusion in the record. These should be submitted
8 to the Western Regional Division, United States
9 Commission on Civil Rights. And the staff people
10 will tell you more about that at the end.

11 Art Palacios, you have introduced
12 yourself, so there is one staff member. Stella
13 will be here in a minute?

14 MR. PALACIOS: Stella just stepped out.

15 CHAIRMAN CANALES: Stella Youngblood is
16 the other staff member. They are from the regional
17 office in Los Angeles.

18 At this time we will begin with the
19 first panel: What Hopwood means. And I'll ask the
20 participants to please come forward and have a seat
21 in front.

22 Samuel Issacharoff. Is that correct?
23 Professor of law, University of Texas Law School;
24 Joseph Horn, Ph.D., professor of psychology,
25 University of Texas at Austin; Alonzo Jones,

1 director of Upward Bound, Southwest Texas State
2 University. Geoff Henley, graduate from the
3 University of Texas at Austin; Mono Aguilar,
4 president of Chicano/Chicana Students' Union,
5 University of Texas at San Antonio.

6 Is everyone here?

7 All right. At this time we'll begin
8 with Professor Issacharoff.

9 MR. ISSACHAROFF: I thought it would be
10 most useful to direct my comments to the rival
11 interpretations of the implications of Hopwood that
12 are being put forward at present, most notably
13 between the Attorney General's office of the State
14 of Texas and the Office of Civil Rights of the
15 Department of Education. In order to address this
16 issue, I think we need to go back a little ways,
17 particularly to 1983, when, as a result of
18 litigation in the District of Columbia District
19 Court, known generally as the Adams litigation, a
20 judge in Washington issued an order that the
21 Department of Education begin termination
22 proceedings for federal funding against all higher
23 education institutions in the State of Texas unless
24 Texas was brought into conformity with the
25 requirements of Title VI, that we begin a

1 systematic practice of desegregating our
2 institutions of higher education.

3 A consent decree was worked out in the
4 next 30 days to negotiate between the Governor's
5 office and the State of Texas and the Department of
6 Education, whose principal negotiator at that time
7 was one of its assistant secretaries of education,
8 Clarence Thomas. That negotiation resulted in a
9 decree, which required the State of Texas to do
10 everything it could to not decrease the educational
11 opportunity provided to minority students from the
12 graduate -- from the undergraduate level to the
13 graduate level, and specifically it set targets for
14 admission of Black and Mexican-American students to
15 institutions of higher education that were
16 triggered by the institutions immediately below.
17 So, for example, in the professional schools, the
18 targets were set at the percentage of minority
19 students graduating from Texas' four-year
20 colleges.

21 That decree was implemented by the State
22 of Texas in a series of higher education plans
23 called the Texas Plans, Texas Plan One, Texas Plan
24 Two, and now we're on Texas Plan Three. And each
25 of those obligated its institutions of higher

1 education to do what they could in order to
2 overcome a past of exclusion and, in some
3 instances, segregation. And, in any event, a
4 denial of equal educational opportunities for
5 minorities in the public education system in the
6 State of Texas beginning at the K through 12 level
7 and continuing up above.

8 The program required us to do what was
9 possible in order to increase minority
10 participation in higher education, including
11 professional education and that quite notably in
12 light of the Sweat versus Painter opinion, included
13 in the University of Texas School of Law. We were
14 doing that.

15 In 1992 we were sued by four rejected
16 White applicants in what is now known as the
17 Hopwood decision. And they charged that our
18 affirmative action program constituted reverse
19 discrimination. We basically prevailed in the
20 district court level and we lost in the Court of
21 Appeals. The United States Supreme Court denied
22 certiorari.

23 Now, that opinion is a radical change in
24 the way institutions of higher education approach
25 the question of affirmative action, but that

1 opinion is all the more significant with regard to
2 this institution and this state.

3 One of our claims in the defense of the
4 Hopwood case was that we were operating not under
5 an affirmative action program but as a part of an
6 ongoing obligation to desegregate higher education
7 in Texas and that we were acting in conformity with
8 Federal enforcement requirements.

9 The Hopwood decision was well known
10 around the country as it was coming -- the Hopwood
11 case was well known as it was coming down the
12 pipeline, primarily because it was the first case
13 since Bakke in which the issue of standing had been
14 resolved favorably to the plaintiffs and there was
15 the likelihood of a trial on the merits on
16 affirmative action programs, something which had
17 not occurred since the Bakke opinion.

18 The Office of Civil Rights or the
19 Department of Education, for whatever reason, chose
20 not to participate in any capacity at the district
21 court level. It chose not to participate in any
22 capacity in the Court of Appeals level, so that it
23 was left to the State of Texas to argue to the
24 district court and then to the Court of Appeals
25 that a primary factor in determining our

1 affirmative action policy was our ongoing
2 obligation under our consent decree with the
3 Department of Education, and that we were required
4 to do this in order not to be terminated for
5 Federal funding, not to have our Federal funding
6 terminated, which was the sanction that the Office
7 of Civil Rights, Department of Education wields
8 under Title VI of the Civil Rights Act - Federal
9 Civil Rights Act.

10 Now, the significance of this cannot be
11 overstated, because under the Bakke decision there
12 is no question that the use of racial
13 classifications in educational decisions is subject
14 to strict scrutiny. And what that means is that
15 any time you give a preference based on race - and
16 that's what affirmative action means - any time you
17 give a preference based on race, you are required
18 to justify it to a very exacting level of judicial
19 scrutiny.

20 The Bakke opinion allows for two -- two
21 rival justifications for affirmative action, and
22 basically only two. The first is, that it is
23 necessary to overcome some background of
24 segregation, that it remedies the past effects --
25 the present effects of past discrimination; and the

1 second is that it is indented to enhance the
2 academic product of the education of the higher
3 institution. That is the diversity rationale, that
4 it yields a better educational environment.

5 We argued both of these to the district
6 court, although we said that basically we were in
7 the far extreme of the desegregation side because
8 of the ongoing obligation under our decree with the
9 Department of Education.

10 And let's put this -- I think it's best
11 to understand this in extremely concrete terms. In
12 1992 the district court found that the University
13 of Texas School of Law had 41 Blacks in its
14 incoming class. Absent affirmative action, it
15 would have had none. And that means that 32 scarce
16 places were taken up by beneficiaries of
17 affirmative action. They would not have been here
18 had the affirmative action not been in place.
19 Other people - we don't know whom - but other
20 people would have been here had there been no
21 affirmative action. And the question that is posed
22 -- the simple question that is posed under the
23 laws -- to the institution of law today is, is this
24 change in the composition of the 1992 incoming
25 class of the University of Texas something that is

1 compelled by our obligations under Federal law? Is
2 it something that is permissible under the
3 standards of Bakke? Or is it something that is
4 simply prohibited?

5 The 5th Circuit took the view that this
6 is a prohibited outcome. The 5th Circuit
7 categorically rejected in application any
8 conceivable justification for affirmative action
9 program in higher education. The 5th Circuit said
10 in order to remedy past discrimination -- in order
11 to remedy present effects of past discrimination,
12 an institution of higher education had to do two
13 things. It had to be actively discriminating at
14 present, and it had to direct its -- the benefits
15 of its program to those who had actually suffered
16 the discrimination of that institution.

17 Now, the effect of that is to end
18 affirmative action. Because affirmative action is
19 not a compensatory make-whole system of relief for
20 individuals who have personally suffered
21 discrimination. That is a standard remedy under
22 the law. Affirmative action is an additional step
23 taken because of some overriding societal concern
24 that there is a general disadvantage in the -- in
25 certain populations that can be attributed to the

1 act of discrimination in the past of the society.
2 That rationality was rejected by the Court of
3 Appeals and basically the Court of Appeals says
4 that not since the 1960s has there been anything in
5 the State of Texas that would trigger a concern for
6 continued segregated effects in education. And the
7 only thing that I can think of that happened in the
8 1960s that would trigger that target date is that
9 in the 1960s the Texas Constitution was amended so
10 as to take up the formal requirements for Blacks
11 and Whites not to attend the same schools.

12 With regard to the diversity rationale,
13 the Court of Appeals said that diversity is not a
14 compelling interest under any circumstance; that
15 there is no justification for the use of race that
16 can be grounded in an argument for diversity of the
17 educational experience, diversity of the incoming
18 class or product enhancement, if you will, in the
19 provision of educational resources.

20 Now, what does that mean? That means
21 that any institution of higher education that's in
22 the 5th Circuit that gets sued and is not operating
23 under a direct district court consent - I'm sorry -
24 remedial order issued within the 5th Circuit, such
25 an institution of higher education now has to

1 justify its affirmative action program with the two
2 recognized defenses from the Bakke case being taken
3 away as a matter of law.

4 The law of the 5th Circuit now is that
5 there is nothing in the history of the State of
6 Texas that would justify affirmative action after
7 the 1960s and that diversity is not a compelling
8 justification for affirmative action. Under those
9 circumstances, any institution looking at an
10 affirmative action program has to conclude that if
11 they were challenged in the 5th Circuit today, they
12 would lose. There is no defense available at law
13 that can justify an affirmative action program.

14 Now, does that mean that it's a done
15 deal? That it's all over? That the legal agenda
16 has been set? Not necessarily. The 5th Circuit is
17 an outline. The 5th Circuit is acting in
18 disconformity with the Bakke opinion. The 5th
19 Circuit is acting in disconformity with the 6th
20 Circuit. The 3rd and 4th Circuits have lined up
21 pretty much along the lines of the 5th Circuit, so
22 we have a split in authority in the Circuits. We
23 have new cases going forward in the 11th Circuit.
24 There is a case against the University of
25 Washington Law School that is going forward in the

1 9th Circuit. This will yield some greater legal
2 clarification of the uncertain status of
3 affirmative action in higher education right now.
4 What cannot be disputed is that the law of the 5th
5 Circuit right now prohibits affirmative action as
6 it has been carried forward by institutions of
7 higher education. I consider that a tragic
8 result. I consider that a terrible result for our
9 institutions and for other institutions in the 5th
10 Circuit, particularly when we are playing on an
11 unlevel playing field and we are at a disadvantage
12 relative to other institutions of higher education
13 in other parts of the country that are not bound by
14 an opinion as restrictive as that of the 5th
15 Circuit. Nonetheless, that is the law of the 5th
16 Circuit. We are institutions of the State of
17 Texas. We will comply with the legal rulings of
18 courts of proper jurisdictions. The 5th Circuit is
19 such a court.

20 My final comment is that it is a tragic
21 admonition of this institution -- made to this
22 institution or to any other institution of higher
23 education in the 5th Circuit, that it simply
24 disregard the 5th Circuit, that it act in
25 disconformity with what any prudent lawyer knows to

1 be the only fair reading of what the 5th Circuit
2 has done. That is the path of massive resistance.
3 That is path that institutions across the South
4 took in response to Brown versus Board of Education
5 decision, as well. Because Brown, after all, if
6 you read it applies only to the city of Topeka and
7 three, four, five other jurisdictions around the
8 country. But that's not what Brown meant. Brown
9 meant it was all over for segregated institutions
10 -- segregated education in public institutions
11 throughout the United States. Unfortunately, what
12 Hopwood means, until it is overturned or modified
13 by a court of greater authority, is that there is
14 no longer a basis for affirmative action as it has
15 been carried out in the past in -- throughout
16 institutions of higher education all over the
17 country, and that opinion applies in the 5th
18 Circuit.

19 The final word I would say is that the
20 implications of this are disastrous for us. There
21 is a reason that we had an affirmative action
22 program. There is a reason that virtually every
23 institution of higher education has one. And the
24 reality is, if you want us to conform with the OCR
25 decree, if you want us to have to train the next

1 generation of African American/Latino leaders, if
2 you want us to continue playing the public mission
3 that we must play in this state, there is no other
4 recruitment mechanism out there that has proved
5 effective in significantly increasing minority
6 participation in higher education. Affirmative
7 action is it. If we cannot engage in affirmative
8 action, we can look at class; we can look at areas
9 of geographic representation; we can do away with
10 many of our selective criteria, and what you will
11 end up with is a less qualified class with no
12 significant representation or a lower
13 representation of the minorities that we have been
14 very proud to graduate over the past 10, 15 years.

15 Thank you.

16 CHAIRMAN CANALES: Thank you,
17 Professor. We'll reserve questions until we've
18 heard from all the panel members.

19 The second presenter is Dr. Joseph
20 Horn.

21 MR. HORN: Thank you very much for
22 having me here today. I'm president of the Texas
23 Association of Scholars and Vice-President of the
24 National Association of Scholars. And our views on
25 the matters before this hearing panel are very

1 different than you just heard from one of the
2 lawyers participating in the Hopwood decision.

3 From our perspective, the Hopwood
4 decision is one that ought to be appreciated by all
5 civil libertarians. For no longer in college
6 admissions can the laws be used to segregate,
7 divide and mistreat the citizens of the State of
8 Texas.

9 Prior to Hopwood, race itself had become
10 a qualification with members of one ethnic group
11 securing automatic admission with qualifications
12 that were rejected as inadequate for members of
13 another group. Citizens of the State of Texas are
14 entitled to expect and receive fair treatment from
15 the institutions of the state.

16 In college admissions, fairness requires
17 that people with equal chances of success have
18 equal chances of being chosen. And this
19 fundamental rule of fair play had been set aside in
20 system -- in favor of a system of race
21 preferences. Affirmative action is essentially a
22 system of race preferences. And I think what the
23 5th Circuit Court of Appeals stated was that equal
24 protection of the laws precludes the kind of
25 treatment that citizens applying to schools had

1 been receiving at the hands of the admissions
2 offices.

3 The Hopwood decision -- the Hopwood
4 decision says simply, all of our citizens are
5 entitled to equal protection of the laws against
6 discriminatory treatment, not just some of our
7 citizens, but that all of our citizens should be
8 treated fairly.

9 Viewed in the light of fairness and
10 equal protection, the Hopwood decision seems to be
11 an important reaffirmation of sound principles of
12 democratic government. And it is encouraging that
13 the public recognizes this and rejects the idea of
14 race preferences. This rejection of race
15 preferences is thoroughgoing and long-standing.
16 And I want to cite some instances and provide
17 documentation, if you receive documentation in this
18 hearing.

19 CHAIRMAN CANALES: Yes, we do.

20 MR. HORN: Since 1977, the Gallup Poll
21 has routinely asked citizens of the United States
22 what they think of race preferences. And since
23 1977, the Gallup Polls have shown that the American
24 public rejects preferences in favor of test scores
25 and ability by a ratio of 8 to 1. Eight to one.

1 These are very profound differences that started in
2 1977 when they began this polling, and it has
3 continued to this present day. Now, Texans are no
4 different. Texans show the same aversion to race
5 preferences. A Texas poll done just last year of
6 1,000 Texans indicates that 82 percent of Texans
7 reject race as a proper factor to consider in
8 college admission. Eight-two percent. Faculty
9 members also reject race preferences in hiring and
10 admissions.

11 The National Association of Scholars
12 commissioned the Roper Organization last year to
13 conduct a nationwide poll. And they found that the
14 nation's faculty reject race preferences by 2 to 1
15 in hiring and by 1.8 to 1 in admissions.

16 Students at the University of Texas also
17 agree with everybody else in rejecting race
18 preferences. In 1993 my students, here at U.T.,
19 conducted a poll of 481 U.T. Austin students and
20 found out that 76 percent agreed that preferential
21 treatment should be rejected in favor of test
22 scores and ability. I used the very same question
23 that the Gallup Poll had used since 1977 to make
24 that determination.

25 Even when it came to a question of

1 approving a law school admissions process designed
2 specifically to give them an advantage, a majority
3 of minority students declined to give such
4 approval. Even minority students specifically
5 targeted to gain from U.T. admissions policies
6 rejected the notion that race should be the
7 determining factor, a majority of them.

8 So it's not just the popularity of this
9 aversion to race preferences that's important.

10 It's the fact that an aversion to race preferences
11 is appropriate and is good law. It's good for us
12 to reject the idea that a citizen ought to have one
13 set of laws that applies to him if he's a member of
14 this race and you can have another set if they're a
15 member of a different racial categorization.

16 So equal protection of the laws seems to
17 us, in the National Association of Scholars, as the
18 key finding in the Hopwood decision. And if
19 affirmative action as it has been administered in
20 the past, if it was employing race preferences that
21 involve a violation of the principle of the equal
22 protection of the laws, then that kind of
23 affirmative action deserves to be continued.

24 Now, affirmative action can be done in
25 other ways. It doesn't have to be done in the way

1 that it evolved after the Bakke decision. You
2 don't have to use race preferences in order to do
3 affirmative action. You can use recruitment. You
4 can use policies that require the widest possible
5 dissemination of information concerning the
6 programs that the students are applying to. This
7 is the way affirmative action started out, as a
8 matter of fact. It did not involve race
9 preferences at the very beginning, but it evolved
10 to become a system of race preferences. That's
11 what the 5th Circuit Court of Appeals has decided
12 is inappropriate. And we believe and the citizens
13 of the United States, the citizens of Texas,
14 faculty members and students agree, that race
15 preferences are not appropriate.

16 Now, as I understand it, this panel is
17 just concerning the meaning of Hopwood?

18 CHAIRMAN CANALES: Well, many other
19 things, but this particular panel, yes, is what
20 Hopwood means.

21 MR. HORN: So it would not be
22 appropriate for me to comment on what has happened
23 to the admissions process in this panel?

24 CHAIRMAN CANALES: If you want to use
25 part of your time for that, you can.

1 MR. HORN: Well, I don't want to take up
2 anybody else's time for something that's not
3 appropriate for this particular panel.

4 CHAIRMAN CANALES: I tell you what,
5 we'll finish with all the presenters, and if there
6 is time we'll come back to you. Is that all
7 right?

8 MR. HORN: Okay.

9 CHAIRMAN CANALES: Have you finished
10 your main statement?

11 MR. HORN: Well, concerning the
12 admissions process, one of the -- one of the
13 problems that institutions of higher education are
14 having in the State of Texas now is the pressure
15 that's being put on institutions to maintain the
16 results of a previous system of race preferences.
17 The system of race preferences has been declared
18 inappropriate, but there's all kinds of pressure to
19 continue to produce the results of a system of race
20 preferences. And this has motivated administrators
21 and staff people at universities to try to come up
22 with surrogate measures other than race that will
23 produce the same outcomes. And I'm afraid this is
24 going to end up putting us back in federal court.

25 The admissions systems that are being

1 offered to colleges and universities, instead of a
2 system of race preferences, involve things that are
3 very, very questionable from an admissions point of
4 view. The new admissions -- the new admissions
5 procedure here at the University of Texas involves
6 selecting, perhaps even a majority of the class,
7 according to a system of personal characteristics
8 in addition to test scores and ability measures.
9 And this system of personal characteristics is one
10 that lacks validity. The research does not
11 demonstrate that when you select students for
12 admission to higher education on the basis of their
13 personal characteristics measured through essays,
14 measured through facts submitted by the applicant
15 on the application form, that -- that predicts
16 future success in the institution.

17 Now, that's a serious problem when an
18 admissions procedure involves measures that have
19 not demonstrated their validity. So I won't
20 continue with this, because I know that that's
21 stretching the purpose of this panel. But I think
22 these are reasonable concerns that everybody ought
23 to have concerning the pressure being put on
24 institutions of higher education to maintain the
25 result of a system of race preferences through

1 other means. And I think the 5th Circuit Court of
2 Appeals would take a long, hard look at any such
3 substitute system, particularly if measures that do
4 not have demonstrated validity are employed in the
5 new process.

6 Thank you very much.

7 CHAIRMAN CANALES: Thank you, sir.
8 We'll get back with questions to you, sir.

9 The third presenter is Alonzo Jones,
10 director of Upward Bound, Southwest Texas.

11 MR. JONES: Good morning. I would like
12 to thank the Texas Advisory Committee and the U.S.
13 Commission on Civil Rights and particularly the
14 invitation extended by Ms. Stella Youngblood for
15 allowing me to come and share on this particular
16 morning. Before doing that, I would like to
17 preface my words by saying that I'm here by an
18 indirect invitation by the NAACP president,
19 Mr. Kief Tatum, who forwarded my name to
20 Ms. Youngblood. And I, by no means, present myself
21 as a spokesperson for any person or institution;
22 that my sentiments are my own and may not
23 necessarily reflect that of my institution.

24 Having said that, let me introduce
25 myself. Beyond the director of Upward Bound, I am

1 also a -- currently a former instructor for ethnic
2 studies, a course offered at Southwest Texas State
3 University, as well as a direct recipient of an
4 affirmative action fellowship program sponsored by
5 Southwest Texas State University known as the Texas
6 Minority Graduate Fellowship, which has since
7 changed its scope to be renamed the Texas
8 Opportunity Graduate Fellowship Program. And
9 perhaps more pertinent to this discussion is what
10 I -- prior to becoming the director of Upward
11 Bound, I was the assistant director for the Office
12 of Multi-cultural Student Affairs at Southwest
13 Texas State University. And in that capacity --
14 although we -- our doors were open to everyone, we
15 primarily served just African-American and Hispanic
16 students in one or two ways: either through
17 leadership development or a sundry of retention
18 efforts, anywhere from financial aid to housing
19 issues, scholarships, campus adjustment, racial
20 issues, and the like.

21 In addition, we have a program available
22 to our office which deals with programs, deals with
23 contemporary issues, deals with pluralism,
24 diversity and race, which is a mecca of different
25 cultures are able to participate in that dialogue,

1 to come -- to come to a better understanding.

2 To let you know about my position, we
3 are a comprehensive university with about 21,000
4 students. Six percent of that population is
5 African-American; 17 percent are Hispanic; roughly
6 about 25 percent -- or one out of four identify
7 themselves, quote, unquote, under the minority
8 classification.

9 The thrust of our African-American
10 students come from the Houston and Dallas
11 Metroplex. The Hispanic, Chicano, Latino
12 population come from the Valley, the gulf coast
13 area or the Central Texas regions.

14 SWT is strategically located off the
15 I-35 corridor, in between the Austin and
16 San Antonio area. Just to let you know about some
17 of our academic reputation real quickly. A look at
18 test transactions back in 1995 where students were
19 indicating where they wanted their ACTs or SATs
20 sent first choice, we ranked fourth behind the
21 University of Texas, behind Texas A&M and Texas
22 Tech.

23 Our admissions policy, because we are a
24 university that -- that is not atop of the
25 selective criteria, we have -- we don't cap

1 enrollment, so we can accommodate whatever number
2 of students -- you know, admissions policy decides
3 to matriculate to our university.

4 Our admissions policy will not be, in my
5 opinion, negatively effected by the current
6 admissions -- or the current Hopwood case. Just to
7 let you know, our admissions policy operates under
8 a teetor-totter scale. The higher your class rank
9 in your senior class, the lower of the test score
10 that's required. The higher your test score, SAT
11 or ACT, the lower of the class rank that's
12 required. The only affirmative action policy that
13 we really had in our admission's criteria is that
14 prior to Hopwood, minority students in the third
15 quartile of their class that did not meet general
16 admissions criteria were automatically extended an
17 individual review.

18 What we have since done on the
19 post-Hopwood era is that we have automatically
20 extended this to any student that's in the third
21 quartile that does not meet the general admissions
22 criteria.

23 A quick look at our enrollment figures
24 right now compared to last year, we show a 13
25 percent increase in Hispanic students. We're about

1 average or about consistent with last year with
2 regard to African-American students.

3 The challenge to us, as to many
4 institutions, how to take these enrolled
5 percentages and transfer those to actually -- I'm
6 sorry -- how we take admitted students and transfer
7 those into enrolled students. Historically, our
8 ability to do that has been heavily grounded in
9 race-based scholarships, and especially something
10 that is particularly under challenge now --

11 COURT REPORTER: Excuse me. You need to
12 slow down a bit.

13 MR. JONES: I'm sorry.

14 -- (continued) and especially the
15 challenge to recruit students under specific racial
16 categories. And that's the challenge that we're
17 faced with right now.

18 Other challenges are in our scholarship
19 criteria and in our recruitment programs as they
20 existed prior to Hopwood -- are now being simply
21 revised because of the guidance given by the
22 Attorney General, that not only is race no longer
23 applicable to admission or scholarship criteria,
24 but now it also has implications for recruitment
25 and even some retention figures in some of the

1 readings that I've been doing.

2 To give you a picture prior to
3 pre-Hopwood, we had several minority or race-based
4 scholarships sponsored through the Austin
5 Multi-cultural Student Affairs. The criteria was
6 such: Identify as either African-American or an
7 Hispanic, ranked in the top 25 percent of your high
8 school class or have an SAT of 1100 or an ACT of
9 2400. What we have done in the post-Hopwood era,
10 we have kept the academic criteria, but we have
11 eliminated the race-based criteria for the
12 substitute of prior -- prior Trio participation.
13 So we have replaced the African-American and
14 Hispanic qualification and made the scholarship
15 only available to those students that can
16 demonstrate through prior Trio participation.

17 Trio is a program, an educational
18 attainment program from high school to college
19 program known as Upward Bound. Students perform
20 services, talent search. All sponsored through the
21 Trio program, which was founded back in the 1965
22 legislature.

23 The implications of this -- that for
24 Texas we have -- because of geography, we have a
25 number of students that are in Trio that are also

1 minority. What it does do is if every school in
2 Texas would assume a Trio posture -- that you had
3 to be a Trio lineage in order to receive these
4 scholarships, you would eventually run out of Trio
5 seniors in order to give your scholarships. So it
6 solves the problem for us, but it doesn't
7 necessarily solve the problem if all institutions
8 were to take on this particular status. It
9 strengthens our relationship with Trio but it
10 weakens our ability to blanketly attract
11 African-American and Hispanic students under the
12 assumption of scholarship.

13 So what African-American students and
14 Hispanics must do now is compete in the general
15 scholarship pool as any other student must do.
16 It's important to note that on the surface there is
17 nothing really wrong with that. But what it does
18 is it puts the student in a position of potential
19 vulnerability.

20 We must understand that in a
21 post-Hopwood era, Texas and in American history,
22 with the exception of a brief period under the
23 Reconstruction era, that the inclusiveness of
24 African-American and Hispanic students will be in
25 the hands of persons that are no longer guided by

1 any affirmative action initiative. And I must pose
2 a question. When in our history as Americans have
3 we demonstrated fairness to our citizens of color
4 without the threat of law? We can only
5 anticipate. Again, our students will be placed in
6 scholarship pools, where historically they may not
7 have been represented. What race-based
8 scholarships have done is that they have at least
9 ensured a piece of the scholarship pool to those
10 applicants.

11 The other area that we're -- the other
12 option we have is simply first-generation,
13 low-income criteria and coupled with some
14 extenuating circumstances may be determined through
15 an essay or through some other kind of probing
16 measurements. If we were to do that, we would just
17 have a pure saturation of equally qualified,
18 low-income, first-generation White applicants.
19 What that would do is, it would create -- in the
20 new era, it would create an opportunity for
21 first-generation, low-income Anglo students. And
22 by virtue of limited dollars - we don't anticipate
23 any increase in dollars - you would then have a
24 decrease in opportunity for your minority
25 applicants.

1 We also have the problem as an
2 institution that if we aren't able to offer
3 race-based scholarships that students can possibly
4 be taken away from the State of Texas through a
5 brain drain policy and be attracted elsewhere by
6 other institutions offering minority scholarships.
7 The other implication to us is that we may
8 potentially create a tone to people that are very
9 -- I mean, surfacely knowledgeable about Hopwood,
10 that Texas as a state is not really concerned about
11 the welfare of minority students and we could
12 possibly create a hostile tone. And maybe that's
13 what's being reflected in some of the institutions
14 in California, maybe even the University of Texas,
15 that are beginning to see drops in their number
16 because they are being associated with
17 anti-minority rhetoric.

18 The other issue is with retention
19 programs. Previously we had several programs where
20 we would specifically invite African-American and
21 Hispanic academically competent students. We're no
22 longer able to do that. What we do now is open it
23 up to first-generation and low-income students.
24 What this does is it creates a diversity in our
25 recruitment efforts. And really on the surface,

1 there is nothing wrong with that, because
2 first-generation, low-income students need to be
3 made aware of our respective services.

4 What it does do, indirectly, it no
5 longer allows us the opportunity to speak openly
6 and candidly about the pressing issues facing
7 Blacks in America or Chicanos in America, because
8 in a mixed environment your dialogue tends to be
9 shifted. It forces the presenter, as well as the
10 audience, to somehow taper their remarks so -- in
11 order not to incite the emotional or offensive
12 rhetoric that just exploring cultural implications
13 has the potential to bring up. Or that when you
14 have mixed company, you -- it tends to be attacking
15 when you talk about diversity issues, so then you
16 have to devote significant time to defensive
17 rebuttal as opposed to dealing with the issues that
18 minorities may bring to the campus. And I'll cite
19 an example for you. A minority being on a
20 predominately White campus brings up issues of
21 isolation, potential issues of implied covert
22 hostility and a sense of voicelessness. Because
23 our LBJ scholarship in pre-Hopwood was minority
24 based, we built scholarship retention programs
25 exclusively for those students.

1 In a survey -- in an evaluation when we
2 were working with that group, I specifically asked
3 them -- I said, Had this group been mixed, would
4 you have felt open and honest enough to go to the
5 level of deep disclosure that you did? And the
6 response was from all the participants was
7 unanimately no. There is something about being
8 with your like culture that allows you to open up
9 and explore issues in a way that -- by way of
10 exploration for self-advancement. That does not --
11 it's not to the point of exclusion of
12 multi-cultural rhetoric. It's something that's in
13 addition to. Hopwood no longer allows us to do
14 that in a university sanctioned way. What it does
15 is it forces the Black Coalition to do some things,
16 the Hispanic Policy Network to do some things. It
17 forces other individuals to go beyond the call of
18 duty in order to address the needs in a very
19 centered dialogue.

20 The other issue is -- and the one that
21 perhaps is most relevant here is, what are the
22 students' sentiments? What are the students
23 feeling with regard to Hopwood? If I could be --
24 just elaborate a little bit on that. It somewhat
25 saddens me to say that when I talk to high school

1 students, in particularly -- even when I talk to
2 students on my own campus, they are somewhat
3 indifferent about Hopwood. Many of them vaguely
4 understand Hopwood as something that occurred at
5 the University of Texas. They really can't offer
6 any more insight to that. That is an alarmingly
7 significant number of students that are not aware
8 of Hopwood and its implication. They're not even
9 informed at what point they agree or disagree.

10 Many of the other students are concerned
11 about their ability to go from undergraduate to
12 graduate programs with professional degrees.
13 They're concerned about funding. They're concerned
14 about financial opportunities. And particularly at
15 the graduate level, I do believe it makes more of a
16 difference at the graduate level that students
17 choose to go to school based upon the ability to
18 get funding, because they can ensue a number of
19 loan opportunities at the undergraduate level and
20 may not be willing to incur those additional
21 expenses. So they may be opting not to go to
22 graduate school if funding resources are not there,
23 more so than the freshman student coming in. Many
24 of them are also feeling somewhat disillusioned by
25 America's rhetoric of inclusiveness when they see

1 other kinds of things going on in the community.
2 They're becoming increasingly aware of the
3 potential hypocrisy in nature of verbal diversity
4 versus applied diversity. In our mission decree we
5 talk about diversity all throughout our literature
6 and whatnot, but yet our political/legal forces are
7 clearly making that more and more increasingly
8 difficult.

9 And understand they haven't read the
10 text. They don't know the details of it. They
11 simply see it as a reduction and redistribution of
12 funds that were initially set aside to provide for
13 their educational advancement. At the same time,
14 it's almost a Catch 22, there incensed about the
15 implications that their academic status is somehow
16 predicated upon an affirmative action base.
17 They're somewhat insulted or angered by the
18 assumption that their academic presence has only
19 been because of an affirmative action policy.

20 The other thing -- perhaps, by way of
21 closing, I'll simply say that many of them are
22 insulted, but not surprisingly so, that somehow
23 Hopwood is presenting this image that 400 years of
24 legal, outright racism can somehow be rectified
25 over a 30-year period. Well, at least a social

1 remedy program that is offered can somehow only
2 have a life span of 30 years and somehow suggest
3 that it's lived its course. And that they're
4 incensed that maybe affirmative action does need to
5 be revised, but there is nothing being offered in
6 its place. And then particularly go on to state
7 that even though they find themselves continually
8 under-represented in education, over-represented in
9 crime, under-represented in health care, at the
10 lower stratification, economically speaking, that
11 we cannot prove current effects of past
12 discrimination or ongoing discrimination practices
13 even though they find themselves assigned to these
14 -- overwhelmingly to some of these lower
15 classifications.

16 So their heart is heavy. America is
17 trying to move forward toward pluralism, but our
18 actions and laws are making that somewhat
19 difficult, so they're having inconsistent
20 messages. And just to close it out, I had a
21 conversation with a group of students from the Fort
22 Worth Talent Search Program yesterday, and I was
23 sharing it with a colleague of mine. And I had
24 asked how -- I'm very much in support of
25 affirmative action. We were talking about it in

1 the context of being at the college level. And she
2 had mentioned the fact that for a student to go to
3 the college level to be unprepared is really too
4 late. She said we need to have affirmative action
5 programs in the kindergarten class, so that when
6 they get to college, we're not having to deal with
7 the issue of programs that provide diversity, and
8 whatnot. She said affirmative action is misplaced
9 at the college level. It should be more in the
10 kindergarten, so that when they become mature
11 adults, 18 to 24 years of age, we're no longer
12 having to justify these practices, because we've
13 dealt with it from the womb and in early elementary
14 school. And I concur with her.

15 Thank you.

16 CHAIRMAN CANALES: Thank you,
17 Mr. Jones.

18 We'll go to our fourth presenter,
19 Mr. Geoff Henley.

20 MR. HENLEY: Good morning. I'm Geoff
21 Henley. I'm an Austin resident, graduate of the
22 University of Texas School of Law, as well as a
23 graduate from the undergraduate school here.
24 Graduated in December. Took the bar in February.
25 I should pass in May, knock on wood.

1 I have worked at the Daily Texan as an
2 undergraduate since '91. I wrote many articles. I
3 also wrote when I was in law school. I was
4 eventually editor in chief in '93. And I wrote
5 many articles about multi-culturalism and
6 affirmative action in undergraduate school at the
7 University of Texas, as well as many on the law
8 school, both before litigation and during and
9 after.

10 Hopwood means only one thing, and that's
11 openness. It is openness for all races. And in
12 the aftermath is the openness of the publication of
13 exactly what we were doing here at the University
14 of Texas School of Law. Just how much we were
15 discriminating and how much we were violating for
16 the protection of laws.

17 I'd like to augment a few of the things
18 that Professor Issacharoff mentioned earlier about
19 the history of the law school, both in the findings
20 of fact in the district court, as well as the
21 appellate court -- as well.

22 It's true the plaintiffs didn't fare
23 very well at the district court. But, in fact, Sam
24 Sparks -- Judge Sam Sparks had said that the law
25 school did have a program that was violating the

1 Constitution. The law school was taking piles of
2 applications and segregating them and saying we're
3 not going to have competition between the races,
4 plain and simple. And in the process, hundreds of
5 White applicants had to be denied admission before
6 even one or two minorities could be admitted, as
7 Footnote 9 in Hopwood bears out. It was
8 widespread. It wasn't tied though to a -- it
9 wasn't a close race. It was a distant one. And I
10 think we really need to come back to how much the
11 magnitude -- the vast disparities in qualifications
12 that the law school was employing in order to
13 administer the program.

14 Judge Sam Sparks said, you know, You can
15 have a factor -- plus factor. And, of course, the
16 law school appealed - pardon me - the plaintiffs
17 appealed.

18 Now, Jerry Smith's opinion has been
19 mischaracterized throughout the United States in a
20 lot of different publications as some sort of
21 radical view, sort of a Lone Ranger view that
22 nobody has ever heard before, which is -- nothing
23 could be further from the truth. Opinions by the
24 Supreme Court in Croson and Adarand and Wygant,
25 opinions in the 4th Circuit for Podberesky for

1 scholarships, have shown that the 14th Amendment
2 applies in employment, scholarships, admissions,
3 and applies to everybody. And moreover, in
4 admissions that -- Justice -- Justice Powell's
5 opinion in Bakke -- nobody had come up with a
6 notion that it could be used as a factor for the
7 purposes of diversity, that was only held by him.
8 He didn't even have the views of Justice Brennan or
9 Justice Stevens. The whole notion of diversity as
10 a compelling argument is something that I think
11 that law schools and other higher institutions of
12 education have relied upon. But they haven't been
13 relying upon the law. They have been relying upon
14 the will and the whim of one particular justice.
15 And I guess in the aftermath of Hopwood, people
16 were saying if that's what we're doing -- the 5th
17 Circuit, that one lone justice, Jerry Smith,
18 created everything that's counteracting Bakke.

19 Well, ironically that's just not --
20 that's just not the law. And I guess what I think
21 we have to say -- what Hopwood does mean is, it
22 means we can't discriminate in admissions -- in
23 admissions in at least three states.

24 Attorney General Dan Morales extends it
25 to financial aid. Doesn't seem terribly unfair,

1 because after all Bakke wasn't about financial
2 aid. And yet law schools and medical schools and
3 graduate schools and undergraduate institutions
4 extended financial aid and everything beyond that.
5 So if we're over-relying upon -- if we're -- it's
6 broadly interpreting Hopwood, then arguably the
7 same thing took place under Bakke. So Hopwood
8 certainly means you can't do this in admission.
9 And justifiably, the way institutions have
10 interpreted Bakke you can't do it in scholarships
11 either.

12 This is not a bad thing. This is a very
13 good thing. I think that we see the sort of ration
14 -- rationalization and the hand twisting and the
15 hand ringing that we had to do. Seen the law
16 school do it -- you know, a bit of trouble. It's
17 not good. It creates -- it creates false images.
18 I think we would all be a lot happier if we -- even
19 if they openly discriminated and told us exactly
20 what they were doing. But no one likes that. It
21 cuts against the grain. We like the notion of
22 equal opportunity. But telling somebody that we're
23 doing something openly and the results are in --
24 it's based entirely on race. It cuts against the
25 grain. It's unattractive because it's wrong. And

1 because it's wrong, we hide and conceal and
2 dissemble what we've been doing.

3 Affirmative action creates windfalls.
4 This -- the problem is it's like the mass court
5 problem. Any time you have a plane crash or a
6 chemical spill, parties are affected differently.
7 People who are living five miles out from a toxic
8 waste dump are hurt a lot more than the people who
9 are living 25 or 30 miles out. But if you're
10 forming a remedy that gives the same thing to
11 everybody, invariably some people get far more than
12 they deserve. And that's exactly what happens in
13 affirmative action in graduate school because the
14 beneficiaries are typically people from the middle
15 class. People who had all the benefits of private
16 schools. People who had all the benefits of
17 parents who are professionals. People who are not
18 from the barrios. People who are not from the
19 ghettos.

20 Couple of dear friends of mine have
21 fared quite well in terms of the scholarships
22 they've made. And I didn't even know they were
23 Hispanic until they told me.

24 As Professor Horn suggested earlier, the
25 overwhelming population is against these programs

1 and yet we persist. Our sympathies have to go out
2 to higher education institutions because they are
3 getting mixed signals from the legislature, from
4 the Attorney General and now from the Department of
5 Education. But I think what Hopwood really means
6 is that we can now go forward and say openly that
7 the equal protection clause applies to everybody.
8 And that's not a bad thing. And it's not a novel
9 thing either.

10 CHAIRMAN CANALES: Thank you very much.

11 Mono Aguilar, president of the
12 Chicano/Chicana Students' Union, University of
13 Texas at San Antonio.

14 MR. AGUILAR: Besides being president of
15 the Chicano/Chicana Students' Union at UTSA, I'm
16 also a graduate student of English and a past
17 recruiter for the office of admission at Rice
18 University.

19 As we discuss the idea of equal
20 protection and equal opportunities here today, I
21 want to put this in context. Today 25 percent of
22 Black men my age are either incarcerated or have
23 been incarcerated. Today in the southern part of
24 this state in las colonias, which would make Shacky
25 Town look like mansions, Mexican-Americans live

1 without electricity, without running water, without
2 irrigation.

3 In my barrio in San Antonio, of the
4 1,000 students entering Lanier High School -- by
5 their senior year there are only 250 left. Of
6 those 250, 20 will go to a four-year college. Of
7 that 20, perhaps two will pursue a masters degree.

8 In UTSA, which boasts that it is one of
9 the highest institutions of higher learning, as far
10 as Hispanic enrollment is concerned, there is a
11 seven -- 78 percent attrition rate. That means
12 that freshman entering in 1990, only 22 percent
13 have remained in school or have graduated. It's in
14 this context that opponents of affirmative action
15 declare that we now have a level playing field and
16 affirmative action's time is done. In this
17 context, Dan Morales says we must impress upon
18 young Texans the reality that in this country, one
19 is capable of rising as high as his or her
20 individual talents, abilities and hard work will
21 take them. Morales says, It's a time for our
22 leaders to demonstrate to our young Texans how any
23 obstacle, however difficult, can be confronted and
24 overcome with quiet determination, with steadfast
25 commitment and unrelenting optimism about the

1 importance (phonetic) of our mission.

2 The tragic irony is that these words
3 from this man, more than the disgruntled Cheryl
4 Hopwood, more than the 5th Circuit Court of Appeals
5 with illusions of grandeur, more than the Supreme
6 Court, which shirks it's duties, these words from
7 this man, Attorney General Dan Morales, a
8 Mexican-American, are the greatest enemy to
9 Mexican-Americans, African-Americans and Native
10 Americans in the United States of America today.

11 We talk about irony. Today we're
12 fighting to preserve programs, which we know to be
13 wholly inadequate to meet the needs of minority
14 students in this country. Talk about irony. We're
15 using the Bakke decision, which struck us like a
16 lightening bolt 20 years ago, to defend affirmative
17 action. Irony. Our primary opponent is a
18 Mexican-American who has declared affirmative
19 action nullified in this state. But affirmative
20 action still exists in employment across the United
21 States, including Texas. Affirmative action, as
22 far as gender is concerned, still exists for
23 education in this state. And affirmative action in
24 the 5th Circuit Court of Appeals, except for Texas,
25 is still (inaudible).

1 I'd like for us to consider this context
2 as we discuss issues such as equal protection and
3 equal opportunity. Yes, there is a brain drain in
4 this state, and there is going to be. I mentioned
5 that I was once a recruiter for Rice University.
6 When Rice University decided to follow the Attorney
7 General's opinion and cease affirmative action
8 policies, I resigned as a recruiter and as an
9 interviewer, because I will not send minority
10 students to a school which does not want them.

11 When students come to me and ask for
12 advice -- because as a leader of Chicano/Chicana
13 students of UTSA, I am intimately involved with
14 minority students in San Antonio. I tell them to
15 get out of Texas and don't go to California. I
16 send them to Wisconsin. I send them to Michigan.
17 I send them to Colorado and New Mexico. But this
18 state, we all know now, to be unfriendly to its
19 minority students.

20 UTSA, like Southwest Texas, has no cap
21 on enrollment, so you will not see a decline in
22 admissions because of affirmative action changes.
23 But what you will see is an even more atrocious
24 retention drop at UTSA, because we can no longer
25 have retention programs under the Attorney

1 General's wide-sweeping interpretation of the
2 Hopwood decision. We will see less and less
3 minority students graduating. We will see less and
4 less minority leaders stepping up to the plate.

5 Mr. Jones was very correct when he said,
6 We cannot solve 400 years of legal and outright
7 racism in 30 years.

8 Now, this panel today will be discussing
9 and considering the ramifications of the Hopwood
10 decision and it's effects, but one thing that we
11 cannot question is the fact that we still live,
12 unfortunately, in a discriminatory country and a
13 country which does not give equal opportunity to
14 students and in a state which faces in the next 20
15 years consequences of apocalyptic proportions.

16 Thank you.

17 CHAIRMAN CANALES: Thank you very much,
18 Mr. Aguilar.

19 At this time, we're going to open it up
20 for questions from the panel members. And as
21 chairman, I usually reserve the right to ask the
22 first question. I assure you it's not the most
23 significant question. I'd like to direct the first
24 one to Mr. Issacharoff.

25 There are two things that are --

1 THE COURT REPORTER: I'm sorry. I can't
2 hear you.

3 CHAIRMAN CANALES: One is, why you think
4 or do you have a notion of why the Supreme Court
5 denied certiorari in Hopwood. That's one
6 question. The another part, will you tell us about
7 the 6th Circuit decision, which goes against the
8 5th Circuit, and how it differs in its reason from
9 Hopwood.

10 MR. ISSACHAROFF: One never knows
11 exactly why the Supreme Court denied certiorari.
12 The plaintiffs presented to the district court --
13 to the Supreme Court -- lodged with the Supreme
14 Court, is a technical term, a press statement by
15 Attorney General Morales issued on the same date
16 the cert petition was filed, which seemed to
17 distance the State of Texas from the position taken
18 in the litigation. That, and some comments in our
19 reply brief that was filed were cited by Justice
20 Ginsburg and Justice Souter to say that they were
21 not persuaded that there was a fully ripe
22 controversy before the Court. That's technical
23 language. But basically what it means is that they
24 weren't sure that this was the case in which they
25 wanted to hear it. And they suggest that perhaps

1 the way to test that was to get a final order. And
2 technically the 5th Circuit's opinion was a
3 reversal and remand so that the final order issue
4 telling us exactly how to implement the 5th
5 Circuit's opinion had not yet issued and presumably
6 appeals would run from that. So that's perhaps one
7 reason why the Supreme Court didn't take it.

8 It certainly was a curious decision by
9 the Court, the Supreme Court, given the striking
10 departure between the 5th Circuit's opinion and the
11 way that Bakke had been interpreted by other
12 courts, and including by the Supreme Court in cases
13 such as Wygant. And even in cases, such as
14 Adarand, the most recent case, in which Justice
15 O'Connor repeated that the spirit's scrutiny was
16 not supposed to be strictly in theory but in fact.

17 With regard to the -- the short answer
18 to your question, Judge, is I don't know. Nobody
19 knows what goes on in the conference, but the
20 opinion by Justice Ginsburg -- the rather unusual
21 opinion of laying out the procedural reasons why,
22 certainly not yet been proper, suggested that the
23 Court thought that the issue had been preserved and
24 that they could take it up if the Hopwood case came
25 back up to the Court from further appeals. And, as

1 you may be aware, the remedy phase of the trial was
2 -- the Hopwood case was tried this week before
3 Judge Sparks here in Austin.

4 With regard to the interpretations in
5 the circuits, basically the -- the four leading
6 opinions at this point, I would say on this issue,
7 are the Taxman versus Piscataway case out of the
8 3rd Circuit, the Podberesky versus University of
9 Maryland case, out of the 4th Circuit, the Geier
10 case, G-e-i-e-r case, out of the 6th Circuit and
11 the Hopwood case out of the 5th Circuit.

12 The Geier case took the position that
13 with regard to Tennessee Higher Education, there
14 was an ongoing obligation from the past that could
15 not be remedied simply by ceasing race
16 discriminatory mechanisms. That is, that the
17 effects of the past do not go away overnight. They
18 do not go away in number of a handful of years.
19 This is essentially the same reasoning that Judge
20 Sparks used in the district court opinion in which
21 he relied on the evidence that we put forward of
22 second-generation effects, the denial of equal
23 education opportunity. So we presented a lot of
24 evidence at trial in the Hopwood case about how the
25 parents of the children who are the applicants who

1 are coming in the 1990s were the generation that
2 were denied professional -- opportunities of
3 professional advancement. And that's basically the
4 rationale that the 6th Circuit adopted in the Geier
5 case.

6 In the 3rd Circuit, however, in the
7 Taxman versus Piscataway case, because I thought
8 that was a rather extreme fact situation --
9 nonetheless, the language in the 3rd Circuit
10 opinion suggests that there is no warrant to use
11 race conscious mechanisms absent a direct
12 make-whole benefit to a direct victim of past
13 discrimination. That would undercut the rationale
14 of affirmative action. That was the 3rd Circuit on
15 that.

16 Piscataway is P-i-s-c-a-t-a-w-a-y. I
17 don't hold myself out as an expert on New Jersey
18 spellings.

19 In the Podberesky versus University of
20 Maryland case, you have a situation in which the
21 University of Maryland had race-exclusive
22 scholarships, that is, not race preferences, which
23 have been found in, for example, the fact pattern
24 in the Hopwood case, but race exclusivity, a
25 scholarship of -- Amaker (phonetic) scholarship

1 that was available only to Blacks. And in that
2 circumstance, the 4th Circuit used some rather
3 sweeping language. But the direct object of it's
4 -- of it's opinion was race exclusivity rather
5 than race preferences. So there are three opinions
6 that really go to the issue of race preferences
7 right now -- are Taxman versus Piscataway, where
8 there was no record of past discrimination by the
9 agency -- and it was a hiring employment case or
10 promotions employment case -- the Geier case, which
11 basically endorsed the theory of ongoing
12 obligations, and the Hopwood case, which rejected
13 that theory categorically.

14 CHAIRMAN CANALES: Thanks.

15 Mr. West.

16 MR. WEST: I have a question for Joe
17 Horn. It's a question of clarification.

18 Did I understand you to be saying that
19 the Texas and America cases, something like this
20 choice -- first of all, that we either return to
21 the principles of the founding -- principles of the
22 Declaration of Independence, with the idea that all
23 men are created equal; they all have the same
24 rights; that some citizens should not be given
25 special privileges at the expense of other

1 citizens? Or two, that we continue to pursue our
2 present policy dating from the 1960s of systematic,
3 nationwide discrimination against Whites, Asians,
4 male and other groups disfavored by the
5 government?

6 MR. HORN: Yes, I think your
7 interpretation to my remarks is correct. That
8 equal protection of the laws is equal protection of
9 the laws for everyone. And I don't think many
10 people are aware of the fact that through the
11 evolution of affirmative action policies we have
12 actually arrived at a situation where one set of
13 rules and procedures apply to you if you were of
14 this race, and a completely different set of rules
15 and procedures apply to you if you were of a
16 different race.

17 And I think the benefit to this country
18 in the long run of the Hopwood decision is pointing
19 out just how far that evolution had proceeded, that
20 institutions, tax-supported institutions, were
21 using affirmative action policies to treat citizens
22 differently on the basis of race. And the 5th
23 Circuit discovered just how dramatically different
24 that treatment was and decided that this was a very
25 inappropriate governmental procedure. So, yes, I

1 think equal protection of laws is the key here.
2 And I think before too long we'll recognize just
3 how important this decision is in keeping us to, as
4 you pointed out, the original principles.

5 CHAIRMAN CANALES: Mr. Bledsoe.

6 MR. BLEDSOE: Judge, I have a couple of
7 questions here. I guess I'll start out with
8 Professor Issacharoff and then Dr. Horn.

9 First, Professor, what have you gleaned
10 in terms of the position that the Department of
11 Justice has taken in reference to the viability of
12 affirmative action and admissions? You know that's
13 a big dispute right now where we have the
14 Department of Education saying one thing, the State
15 Attorney General saying another, and there has been
16 some reference to the position taken by the
17 Department of Justice. And are you familiar with
18 those?

19 MR. ISSACHAROFF: Yes. There's two
20 issues implicated. One is -- first of all, a
21 federalism's primacy clause question. There have
22 been many efforts taken at the legislative level or
23 State of Texas or discussions at the legislative
24 level about somehow fixing Hopwood legislatively.
25 And the fact is that we live under a Constitution

1 that has a supremacy clause and the Federal
2 Constitution is supreme. And then the question
3 becomes who is the authoritative interpreter of the
4 requirements of the Constitution. And, you know,
5 it's basically a question that the Department of
6 Education is threatening with enforcement actions
7 against us if we do not bring our policies in
8 conformity with what they understand our
9 responsibilities are under the 1983 consent decree
10 with them. But we live under a nation of laws, and
11 the binding law upon us is the law of the 5th
12 Circuit. It is the highest court with jurisdiction
13 over us. And until and unless its interpretations
14 of the application of equal protection to us is
15 changed, we have, in my view, no choice but to
16 conform with it.

17 MR. BLEDSOE: What I'm asking you about,
18 though, are you familiar with the Department of
19 Justice actually taking the position in reference
20 to --

21 MR. ISSACHAROFF: Well, the Department
22 of Justice filed a brief that is cited by the
23 Department of Education, which seems to take the
24 position that Hopwood is -- that the scope -- that
25 the effectiveness of Hopwood is a question. To be

1 quite honest with you, I do not understand the
2 basis for that position.

3 I think that the 5th Circuit has spoken,
4 and it has spoken. You know, you can reason as a
5 lawyer narrowly and say, It has spoken and rendered
6 a judgment only as to the facts before it. But
7 what lawyers do is they try to understand what the
8 causative law is from past similar cases. That's
9 the heart of the legal method. And if you ask me
10 whether, you know, Texas A&M, which was not under
11 review, can have an affirmative action program, I
12 would say they can have one. If they get sued, if
13 they try to rely on either of the two
14 justifications that was struck down by the 5th
15 Circuit, they will lose, as well. So to do so,
16 knowing that there is causative law out there that
17 requires you to lose, is simply irresponsible and
18 improper.

19 Now, an institution can decide that we
20 want to set ourselves up as a test case for the
21 Supreme Court. And if they want to do that, they
22 can engage in a limited -- a limited program and
23 just create a case of controversy. But I think the
24 position that these -- that the case was simply --
25 doesn't apply beyond the narrow facts of the

1 University of Texas School of Law in 1992 is
2 unsustainable.

3 MR. BLEDSOE: But you actually haven't
4 seen any of your positions taken by DOJ out of
5 Washington?

6 MR. ISSACHAROFF: I've seen citations in
7 quotes from one brief that was taken. If I'm not
8 mistaken, that is the extent of their activities
9 thus far.

10 MR. BLEDSOE: Dr. Horn, I want to ask
11 you a couple of things in reference to your
12 opinion. Do you think it is essential that
13 criteria adopted by universities to determine
14 admissions to it should be nondiscriminatory?

15 MR. HORN: I believe the essential
16 requirement should be that admissions
17 qualifications should be chosen on the basis of
18 whether or not they're actually valid. That is,
19 the institution should establish its admissions
20 policies and procedures on the basis of
21 qualifications, test scores, et cetera. This could
22 be any set of measurements that people want today.
23 But the essential step is that these measurements,
24 these qualifications, need to be valid in the sense
25 that they predict success in the institution.

1 Now comes the issue of
2 nondiscriminatory. Valid predictors being the key
3 to successful admissions may not produce population
4 proportions in terms of those people who meet the
5 qualifications. The fact that the qualifications
6 don't yield population proportions for acceptance
7 at an institution is not evidence in and of itself
8 that that standard is nondiscriminatory.

9 MR. BLEDSOE: But in terms of being
10 discriminatory in fact, you would be against that
11 if it were shown that some of the criteria might be
12 discriminatory in fact as opposed to being
13 discriminatory in terms of yield?

14 MR. HORN: Well, I would like to know
15 what you mean by "discriminatory."

16 MR. BLEDSOE: Let me ask you this: Is
17 it important in your mind that if you are
18 determining validity, that if something is shown
19 not to be valid that it not be a criteria used to
20 determine admissions?

21 MR. HORN: Yes. I think validity is the
22 essential feature of a qualification system for
23 admissions, yes.

24 MR. BLEDSOE: And if something such as a
25 grade point average is shown to be valid, the most

1 valid indicator of the success of the student,
2 would you suggest that that should be given great
3 weight?

4 MR. HORN: It should be given some
5 weight. Exactly how much would depend on how much
6 grade point -- or how successful grade point
7 average is in predicting success. We know that
8 grade point average predicts success to a
9 significant degree, but that other predictors also
10 are important.

11 MR. BLEDSOE: And if the empirical data
12 suggested that standardized exams that were being
13 used were not valid in terms of predicting the
14 performance of students or particularly minority
15 students, would you suggest that maybe an
16 alternative be looked for?

17 MR. HORN: Absolutely, absolutely.
18 Validity is the key step. That is correct.

19 There are -- there are a number of
20 pitfalls here that need to be taken into
21 consideration. You know, it's commonly assumed
22 that you can take a group of students in college
23 and correlate their test scores with measures of
24 success in college and find that those correlations
25 are significant, oftentimes they're not. The

1 reason they're not comes more from what's called
2 restriction of range than from any lack of
3 validity. When you are looking at test scores for
4 students who are admitted, you are looking at
5 students who have been selected because their test
6 scores are relatively high, therefore, the range of
7 scores is vastly diminished. And when you then
8 correlate this restricted range of scores with a
9 measure of success, you're likely to find a very
10 low correlation. That low correlation is not to be
11 taken as evidence of the lack of validity, though,
12 of that measure, because what you find is when you
13 look at samples selected without restriction -- let
14 us say through an open admissions policy, or
15 something like that, what you then find is that
16 indeed these test scores are valid. So my point
17 here is, within the limits of restriction of range
18 and taking that into account, yes, you do want to
19 look for validity, and measures that are not valid,
20 certainly from my point of view, and I think the
21 point of view of other people involved from
22 personal selection, should not be used for purposes
23 of selection.

24 MR. BLEDSOE: So what you're suggesting
25 is -- for example, would be that if on the LSAT it

1 was shown that a score of 35 was the best indicator
2 of whether or not a student could succeed, that
3 would be a more relevant way of using that as an
4 admissions criterion rather than saying that a 57
5 should get in over a 45? You're saying if there is
6 a minimum range and there is more credibility to
7 that, that should be the better standard?

8 MR. HORN: Yes, I believe that one ought
9 to look for the optimal way of selecting students,
10 according to multiple measures of qualifications.
11 Again, a pitfall is -- it's not appropriate to
12 assume that a particular cutoff yields everyone
13 above that cutoff with equal qualifications. A
14 test like the LSAT and most measures of academic
15 aptitude are continuous variables and you don't
16 just take a slice and say above the score of 45
17 everybody is equally qualified. A 57 is more
18 qualified than a 45. And a 45 is more qualified
19 than a 35. So reducing continuous variables to
20 dichotomize the variables is always very hazardous
21 and usually inappropriate and does not produce the
22 optimal kind of prediction that is desirable. So
23 I'm sorry for keeping -- for introducing all these
24 statistical pitfalls, but they are necessary when
25 you talk about choosing qualifications and

1 identifying how to proceed in admitting students.

2 MR. BLEDSOE: So you're suggesting then
3 that if you use it as a basic cutoff or entry-level
4 criterion, it would be necessary to have a
5 complement of other valid criteria to distinguish
6 better qualification as to other qualifications?

7 MR. HORN: Well, what I intended to say
8 there was that it's probably not wise to use a
9 single cutoff. It's better to combine these
10 variables in a multivaried sense, but to keep them
11 as continuous variables. So you can simultaneously
12 look at a student's high school rank along with
13 their grade point average, along with their SAT
14 scores, along with other factors that one might
15 want to consider. But it would be better to keep
16 these continuous variables and not to say, hey,
17 everybody above this point is going to be selected
18 this way.

19 MR. BLEDSOE: Is it appropriate to look
20 at discrimination through grade school as a
21 relevant factor in determining qualifications of
22 schools?

23 MR. HORN: It would depend on the -- on
24 whether or not this was done in a race-specific
25 way. A lot of people are discriminated against. A

1 lot of people have problems. A lot of people are
2 poor. I think what we're learning here from the
3 5th Circuit is that if you look at people through
4 the lens of race, you're doing something that is
5 inappropriate. And if you're concerned with
6 discrimination, if you're concerned with
7 unfairness, if you're concerned with disadvantage,
8 you should focus on that, and not use race as
9 the -- as the focus.

10 CHAIRMAN CANALES: I think our time
11 limitations -- we've run out of time. One more
12 question from Dr. West.

13 MR. WEST: I'd like to ask Joseph Horn
14 to go back to the topic that he said he wanted to
15 address and didn't really have time to. And that
16 is, how is it that you understand that the
17 University of Texas has adjusted its admissions
18 procedures in ways that you think will continue to
19 be discriminatory?

20 MR. HORN: Well, I have to say --

21 MR. WEST: Your personal
22 characteristics --

23 MR. HORN: Yes.

24 MR. WEST: -- for example. I don't know
25 what that means. Can you give us a little more --

1 a fuller picture of what is going on now?

2 MR. HORN: Yeah. Well, I -- what I want
3 to say is, I think we're in danger of continuing to
4 be discriminatory in violation of Hopwood. I do
5 not know that this is going to happen, because this
6 is the first year that we have this new admissions
7 procedure. But what we're seeing -- what -- or
8 what we've been told on the admissions committee is
9 that we are going to admit students -- the top
10 third of the people applying to U.T. Austin will be
11 admitted essentially on the basis of test scores
12 and high school standing. But then the students
13 below that sort of cutoff, which, again, I'm not --
14 I don't argue that these cutoffs are the best way
15 to do things, but people below that cutoff are
16 going to be examined for their personal
17 characteristics. And those will be considered
18 along with their academic characteristics.

19 Now, personal characteristics are going
20 to be measured by reading essays that the students
21 submit. And these essays will be read for what
22 they tell us about a student's ability to persist
23 in other tasks. Persistence happens to be a
24 variable I think is important, but I'm not sure you
25 can get at it through essays, particularly when it

1 isn't clear that applicant actually writes the
2 essay. The essay procedure that we have adopted
3 does not contain any assurance that the applicant
4 actually wrote the essay. To me that's a fatal
5 flaw.

6 CHAIRMAN CANALES: I'm sorry. We're
7 pretty much out of time. Thank you all very, very
8 much Mr. Jones, Mr. Issacharoff, Mr. Horn,
9 Mr. Henley, Mr. Aguilar. Thank you very much for
10 coming and speaking with us today.

11 If you have anything you wish to submit
12 later, please do so.

13 MR. HORN: Do I submit these documents
14 now?

15 CHAIRMAN CANALES: You can give them to
16 a staff member.

17 Thank you very much. We'll take a
18 five-minute break.

19

20 (RECESS)

21

22 CHAIRMAN CANALES: The meeting will come
23 to order. Now, if all the panel members will take
24 their seats.

25 I will now ask that Dean and Professor

1 of Law at St. Mary's Law School --

2 UNIDENTIFIED PERSON: She's outside.
3 Just a second.

4 CHAIRMAN CANALES: Will the panel
5 members please take their seats.

6 I apologize to our panel.

7 THE COURT REPORTER: I can't hear you.

8 CHAIRMAN CANALES: It's hard to convene
9 the meeting without the panel members all up here.
10 We have one more. Dr. Burke.

11 Here is Dr. Burke. We'll start this
12 time.

13 The presenter is Barbara Bader Aldave.

14 MS. ALDAVE: That's correct.

15 CHAIRMAN CANALES: You're welcomed here
16 to the forum.

17 Again, we're going to save questions
18 until we hear from all presenters. Thank you.

19 MS. ALDAVE: Thank you. My task today
20 is, as I understand it, is to describe the actual
21 projected impact of Hopwood versus Texas on my
22 institution, St. Mary's University School of law.
23 In fact, Hopwood will not have any deleterious
24 effects at our law school. Why not? We are
25 ignoring Hopwood. I am proud to report that

1 St. Mary's enrolls more Mexican-Americans than any
2 other law school in the United States, and that 41
3 percent of the students in our first year of class
4 are members of racial and ethnic minority groups.
5 We are continuing to recruit and admit a highly
6 qualified and diverse group of students and we are
7 doing so lawfully, by following the guidance given
8 us by the United States Supreme Court.

9 More than a year has passed since March
10 18, 1996 when Hopwood versus Texas was decided by
11 the United States Court of Appeals for the 5th
12 Circuit. Most of us who had followed the Hopwood
13 case through the trial proceedings were sure that
14 we knew what the result would be in the Court of
15 Appeals. After all, the plaintiffs had presented
16 no issues that had not already been adjudicated and
17 decided by the Supreme Court some 18 years earlier,
18 in the famous case of Regents of the University of
19 California versus Bakke.

20 In Bakke, the plaintiff, a White male
21 who had been denied admission to the Medical School
22 of the University of California at Davis, argued
23 that the school's admissions system violated both
24 Title VI of the Civil Rights Act of 1964 and the
25 United States Constitution. The system in question

1 was a bifurcated one, under which 16 seats in the
2 entering class were reserved for designated
3 minorities, who were chosen by a special committee,
4 while the other 84 seats were awarded to the
5 persons deemed best qualified of all the applicants
6 for admission. Ultimately, the United States
7 Supreme Court reached two conclusions in the Bakke
8 case, each of which is still good law. First, by a
9 vote of five to four that Court held that the Davis
10 admissions program was unlawful under Title VI,
11 because it excluded Anglos from consideration for
12 the 16 seats that were reserved for minority
13 admittees; and, second, the Court held, by a vote
14 of five to zero, that a state institution may take
15 account of race or ethnicity in a properly designed
16 admissions process -- a process which gives all of
17 the applicants a chance to compete, under a variety
18 of objective and subjective criteria, for all of
19 the available seats. Justice Powell, who wrote the
20 pivotal opinion, that is the controlling precedent,
21 reasoned that a school may take race into account
22 in order to produce a diverse student body.

23 Before the Bakke case was decided, a
24 Special Admissions Committee, which I chaired,
25 screened minority applicants at the University of

1 Texas School of Law. Immediately after the Bakke
2 decision, the law school converted its admissions
3 system to a unitary one that complied with the
4 directives of the United States Supreme Court.
5 Sometime during the 1980's, however, the school
6 changed its admissions system again, and adopted
7 one that bore a striking resemblance to the system
8 that had been held unlawful in Bakke. A few years
9 later, Cheryl Hopwood and three other White
10 candidates who were denied admission to the school
11 in 1992 sued the State of Texas for damages and
12 other relief.

13 Not surprisingly, the federal district
14 court that tried the Hopwood case held that the
15 admissions system that was in effect at the
16 University of Texas in 1992 was unconstitutional,
17 because it flouted the Bakke guidelines. And, not
18 surprisingly, the three-judge panel of the 5th
19 Circuit that heard the case on appeal agreed: The
20 admissions system which had been in effect in 1992,
21 but which had been replaced before the Hopwood
22 trial, had denied the four plaintiffs equal
23 protection of the laws. Thus, they were entitled
24 to an appropriate remedy.

25 So far, so good. But then the bad

1 emerged. Two of the three members of the 5th
2 Circuit panel -- Judges Jerry E. Smith and Harold
3 R. DeMoss, Jr. -- went far beyond the necessity of
4 the case before them and held, in direct
5 contradiction of the decision of the Supreme Court
6 in Bakke, that, quote, The law school may not use
7 race as a factor in law school admissions,
8 unquote. Then having arrogated to themselves the
9 power to overrule the Supreme Court, these two
10 judges added a brass-knuckled threat: Quote, If
11 the law school continues to operate a disguised or
12 overt racial classification --

13 THE COURT REPORTER: I'm sorry, you need
14 to go slower.

15 MS. ALDAVE: I'll give you a copy. I
16 was told I had a 10-minute limit, so I'm speaking a
17 little bit faster than usual.

18 Quote, If the law school continues to
19 operate a disguised or overt racial classification
20 system in the future, its actors could be subject
21 to actual and punitive damages, unquote.

22 Neither the plaintiffs nor the State of
23 Texas has asked for a rehearing by the full 5th
24 Circuit Court of Appeals. Instead, the State of
25 Texas sought a review of the panel's decision in

1 the United States Supreme Court. Predictably,
2 however, our highest court refused to take the
3 case, with Justice Ginsburg explaining that no one
4 was challenging the judgement in Hopwood -- the
5 judgment of the 1992 admission system at the
6 University of Texas School of Law had been
7 unconstitutional. The Supreme Court only has power
8 to review judgements. It cannot review an opinion
9 which offers advice in the abstract, like the
10 two-judge opinion in Hopwood, which gratuitously
11 asserted that any admissions system that took race
12 into account would be unconstitutional.

13 The Supreme Court's refusal to review
14 Hopwood means nothing, as a legal matter. I am
15 convinced that if the Court were to decide another
16 case like Bakke or Hopwood, it would do again what
17 it did in 1978. That is, I believe that a majority
18 of the justices would reaffirm the basic holding of
19 Bakke, which declared that, quote, The State has a
20 substantial interest that legitimately may be
21 served by a properly devised admissions program
22 involving the competitive consideration of race and
23 ethnic origin, unquote.

24 Now, here comes the punchline. Whether
25 or not the Supreme Court eventually repudiates the

1 two-judge opinion in Hopwood, that opinion is not
2 now and never has been the law, not even within the
3 5th Judicial Circuit. Why not? The answer is
4 simple. An inferior court, like a Court of
5 Appeals, cannot overrule a superior court,
6 like the Supreme Court of the United States. Just
7 imagine that you are a judge, perhaps in the State
8 of Texas, who is asked to decide whether a
9 single-track admissions system that takes race into
10 account as one factor among many, in an effort to
11 produce a diverse student body, is lawful. The
12 Bakke case, decided by the United States Supreme
13 Court says yes. The Hopwood case decided by a
14 panel of the 5th Circuit Court of Appeals says no.
15 Which of the two is authoritative? The Supreme
16 Court is supreme, and thus Bakke is the law of our
17 land -- our entire land. And Bakke says that race
18 may be taken into account in a properly devised
19 admissions system.

20 Unfortunately, many of our public
21 officials, and a number of college and university
22 administrators and their counsel, failed to think
23 before they spoke in reaction to the Hopwood
24 decision. They failed to recognize that while the
25 5th Circuit had the power to determine the rights

1 and responsibilities of the parties before it, as
2 among themselves, it did not have the power to
3 change the general law as previously announced by
4 the United States Supreme Court. The Attorney
5 General of Texas, in particular, rushed to declare
6 that Hopwood barred all consideration of race or
7 ethnicity in a university's admissions process.
8 Once challenged, and asked to explain how Hopwood
9 could overrule Bakke, General Morales did not
10 retreat from his original, ill-considered position,
11 but instead reaffirmed and greatly expanded it in
12 an official opinion. That opinion, issued on
13 February 5th, 1997, exemplifies the meat-ax
14 approach to legal analysis. It insist,
15 erroneously, that the Hopwood decision is binding
16 both on public institutions and on private
17 institutions that receive federal financial
18 assistance. It insists, erroneously, that
19 educational diversity is not a compelling interest
20 within the 5th Circuit. And it insists,
21 erroneously that, quote, Hopwood's restrictions
22 would generally apply to all internal institutional
23 policies, including admissions, financial aid,
24 scholarships, fellowships, recruitment and
25 retention, among others, unquote.

1 Despite the obviously defects of the
2 Attorney General's opinion, many public and private
3 universities in Texas announced their intention to
4 comply with it. There was every indication that
5 the consequences, especially in our more elite
6 colleges and universities and in our professional
7 schools, would be devastating. Some law schools, I
8 feared, again would look the way the University of
9 Texas School of Law looked when I arrived here in
10 1974, when about 1 percent of the students were
11 members of minority groups. Then, suddenly the
12 tide appeared to be turning.

13 One year to the day after the Hopwood
14 decision, Norma Cantu, the head of the office for
15 Civil Rights of the United States Department of
16 Education, wrote to two Texas legislators; and one
17 week later she wrote to the Honorable Dan Morales.
18 Her letters described the Hopwood decision as,
19 Limited to its facts. They asserted that,
20 pursuant to Bakke, quote, Universities and colleges
21 may, in appropriate circumstances, consider race
22 and national origin in making admissions decisions
23 and granting financial aid, unquote. Ms. Cantu's
24 letters to the legislators included the advice that
25 an educational system which failed to take

1 appropriate measures to remedy any continuing
2 effects of past discrimination could lose its
3 federal funds.

4 That advice was greeted with
5 consternation by public officials and university
6 administrators who saw themselves caught in a
7 crossfire between the Texas Attorney General and
8 the U.S. Department of Education. Then, under
9 pressure from Senator Phil Gramm, Education
10 Secretary Richard Riley issued a statement
11 reassuring Texas colleges and universities that
12 they would not lose their federal funding if they
13 abandoned racial preferences. So where are we
14 now?

15 Ms. Cantu's letters no longer have much
16 intimidation value, but their legal analysis is
17 still on target. That is, when Ms. Cantu asserted
18 that Bakke remains the law of our land, she got it
19 right. Sooner or later our courts, our public
20 officials, and the administrators of our colleges
21 and universities will get it right, too. Sooner or
22 later, Hopwood will be repudiated. And sooner or
23 later we will return to the business of educating
24 all our people.

25 CHAIRMAN CANALES: Thank you very much.

1 Our next speaker is Laura Rothstein.

2 MS. ROTHSTEIN: Thank you. I appreciate
3 being asked here today. I bring several
4 perspectives. I have chaired the admissions
5 committee at the University of Houston Law Center
6 for nine of the twelve years that I have been
7 there. I have also served on the admissions
8 committee for five years at West Virginia
9 University and three years at Ohio Northern
10 University, so I have a lot of experience in
11 reading admissions files. I also currently serve
12 on the law school admission council board of
13 trustees and have served for five years in
14 different terms. And I bring that perspective of
15 the organization that administers the LSAT. And I
16 would caution that the LSAC is the most strong
17 voice in the use of the LSAT and how it can be
18 abused. They have always said it should only be
19 one factor that is used in an admissions process.
20 And there are serious dangers in overusing it and
21 making statements that because one has a 160 versus
22 a 159 that someone is better qualified to go to law
23 school. It's also important to point out that the
24 LSAT has only been validated for first-year
25 performance in law school. It has not been

1 validated for success in the profession, and I'll
2 come back to that in a moment.

3 And, finally, I also bring the
4 perspective of someone who has taught and written
5 in the area of disability rights. And I find the
6 discussions relating to race are very interesting
7 and paralleling some of the disability issues that
8 I deal with, because one of the requirements we
9 must deal with is what is an essential function and
10 what does it mean to be otherwise qualified. And
11 some of the debates on disability issues become
12 very similar to those involving race.

13 The background -- when the Hopwood case
14 came down, I was very disappointed and disturbed
15 and concerned about the implications of that
16 decision. But I did see it as having an
17 opportunity to discuss an issue or put back on the
18 table an issue that I had wanted to have discussed
19 and had brought to the faculty before, four years
20 before, and that was really the issue of, what do
21 we need to be qualified? Qualified for what? Is
22 it to get the highest grades in the class? Is it
23 to graduate from law school? Is it to pass the bar
24 exam? Is it to be a good attorney? And I don't
25 really think that in the legal education we've done

1 a very good discussion of what we need to be
2 qualified. I don't think most of the professions
3 have. They just assume, because you get a high
4 score in the LSAT, that you're qualified to be a
5 good attorney. And I think that there are a number
6 of other factors that need to be discussed. And
7 the Hopwood decision provided the opportunity to
8 get that issue back on the table.

9 Prior to the decision, contrary to my
10 advocacy, we had a policy that admitted 70 percent
11 of our class based on an index score, which was an
12 LSAT and a grade point average. I had tried four
13 years prior to the Hopwood decision to get that
14 changed, and was -- succeeded in changing it from
15 75 percent to 70 percent. I've always been
16 troubled by having that much of a public -- any
17 institution, but particularly a public urban
18 university based on two sole criteria, particularly
19 because I know the limitations of those criteria.
20 It was a very difficult discussion, but it was a
21 healthy debate in many ways.

22 I think part of what is clouding some of
23 the discussion, unfortunately, is the U.S. News and
24 World Report rankings that use the LSAT score as
25 such a strong indication of whether a law school is

1 more -- is a better law school than another law
2 school. And so we have within our ranks, at all
3 law schools, this concern that we want to have a
4 high LSAT median because then we will rank better
5 and then we will attract more students, and so on.
6 And that is very disturbing to me, but I think it
7 is part of the discussion.

8 We did change -- we did come up with
9 some more specific agreed-upon factors that we
10 think are relevant to including -- to admitting law
11 students. And in addition to LSAT and GPA as a
12 criteria, but only at the very high end for more
13 presumptive admit and also at the low end for
14 presumptive deny, we expanded dramatically the mid
15 range of who we would look at for all factors. And
16 these factors include community service. Lawyers
17 are suppose to serve their community. I think we
18 should be evaluating that at the front end.

19 Overcoming hardships, including family
20 responsibilities, health problems, socioeconomic
21 disadvantage or disability. Maturity, reliability,
22 communication skills. Many students who are
23 successful in moot court competitions throughout
24 the country are not necessarily the number one
25 students in the class. And yet they are very

1 effective lawyers in many ways. Responsibility,
2 leadership, having good judgment, honesty, being
3 ethical, work performance, service in the military
4 or law enforcement, other personal talents and
5 accomplishments. And these were some of the
6 criteria that were added as being factors to be
7 considered in the admissions process.

8 I think it has been healthy to change
9 the balance of consideration of those factors, but
10 I do not believe that it will compensate for what
11 we were able to do in the past, which was to use
12 race as a factor. It will make it less onerous,
13 but it will not -- we will not end up with the same
14 racial diversity that we had when we could consider
15 race as a factor. It was never the sole criterion
16 for admission.

17 Other areas where we have been affected
18 and are still struggling with how to deal with this
19 are in the areas of scholarships and our outreach
20 efforts. Attorney General Morales' statement that
21 we could no longer use race as a factor in
22 recruitment was somewhat shocking to me, because I
23 don't think most people interpreted Hopwood to
24 include that. And some of our race-specific
25 outreach efforts such as use of candidate referral

1 service, which is used by every law school or was
2 used by every law school in the country, to target
3 minority applicants to invite them to apply to law
4 school is now being called into question. And so
5 we're having virtually every activity of that sort
6 evaluated by our university counsel to determine
7 what we can and cannot continue to do.

8 I don't think it takes very much -- you
9 don't have to be a mathematician to see the impact
10 of this case and this decision and the Morales
11 interpretation of the decision.

12 I looked at our current entering class,
13 our full-time class. We also have an evening
14 division. But our first entering class of 250
15 students -- the current first-year students, there
16 are only six Black students. If we are limited in
17 our ability to do race-specific outreach, to invite
18 people to apply, we are likely to have fewer
19 applicants. We already know that our Black
20 applicant pool is down 39 percent while our overall
21 applicant pool is down only 19 percent. This
22 parallels the downturn nationally for all
23 applicants.

24 If we're limited in our use of race in
25 selecting applicants, we are likely to have fewer

1 selected applicants. If we're limited in our use
2 of race as a factor in scholarships, particularly
3 when law schools outside the 5th Circuit are not
4 similarly constrained, we are likely to have fewer
5 accepted applicants choose to attend our school.
6 It doesn't take very much to figure out that six
7 will quickly be reduced to one or two.

8 And I would finally say that if -- if
9 people ask, Well, what are you doing? What are you
10 able to do to counter this? I still think the
11 University of Houston Law Center is, at least in
12 terms of attracting people to apply, is an
13 outstanding, excellent university and law school.
14 I point to Houston as a diverse metropolitan area
15 with a diverse population. Our programs are
16 outstanding. We have very many specialized
17 programs that are nationally recognized. And I
18 point to the success of all of our students, but
19 particularly to our minority students. Stella
20 Youngblood is one of our graduates, and we're very
21 proud of that.

22 And, finally, I would just say in
23 closing, I've already seen, firsthand, the impact
24 of Hopwood. In addition to all the other things I
25 do, I teach first-year property. And this year

1 when we were discussing housing discrimination, I
2 only had two Black students in my property class.
3 Last year there were six. That's not a lot, but
4 it's a different critical mass. The discussions in
5 the two years were dramatically different. The
6 issue of race was barely discussed because there
7 was not a critical mass of students to bring that
8 point to the classroom. And I think this is one of
9 -- the impact of Hopwood was not discussed as
10 much; I think all of the students in my class were
11 harmed by the fact that that was not on the table.
12 And so it isn't just that affirmative action
13 benefits minority applicants, it benefits all
14 students.

15 Thank you.

16 CHAIRMAN CANALES: Thank you very much.

17 And now we move on to Susan Bradshaw,
18 Section manager, general law group and senior
19 attorney, Office of the General Counsel, the
20 University of Texas System.

21 MS. BRADSHAW: Good morning. My remarks
22 are going to be necessarily brief and necessarily
23 general because the major impact of Hopwood on the
24 University of Texas at Austin and the law school
25 has been a series of lawsuits related, not just to

1 the 1992 class, but the '94 admissions process for
2 the University of Texas Law School plus related
3 lawsuits seeking more information for other years
4 admission. We were recently sued again, this time
5 by a group of Hispanics or an Hispanic woman who
6 was not admitted who is alleging reverse reverse
7 discrimination in a '94 class. It has become a
8 battleground, a civil rights battleground. And the
9 major impact has been, in essence, to divert time
10 and energy from attempting to deal with some real
11 issues related to Hopwood to the defense of every
12 single decision that's made.

13 This past week officials of the law
14 school have been in federal court testifying in the
15 damages phase of the original Hopwood lawsuit,
16 where some \$8 million is being requested by the
17 plaintiffs, which will probably be outstripped only
18 by the amount asked for in attorneys' fees by the
19 host of people who have become involved in that
20 lawsuit.

21 The impact of the Hopwood decision
22 obviously was that the University of Texas System
23 advised all of its institutions to remove race as a
24 factor in the admissions process, and that has been
25 done. The issue of what is now used is still

1 evolving to some extent, because it -- it's
2 something -- admission processes are like big,
3 slow-moving animals. They don't change very
4 rapidly and move very quickly, very gracefully.
5 Things need to be worked out. And, therefore, the
6 System, last fall or summer, at some point in time,
7 sent out to all of the component institutions a
8 list of factors that they believe could be used in
9 the admissions -- in the evaluation process that
10 were race neutral.

11 The other specter of Hopwood in addition
12 to personal liability for the state officials or
13 the school officials if they continue to use race
14 as an overt factor is that the 5th Circuit -- and
15 Judge Smith's opinion was very, very unusual in its
16 heavy-handedness with regard to prospective --
17 possible prospective violations of it, in that he
18 suggested that anything that was used as a pretext
19 to try to -- a pretext for race in the admissions
20 process would also be considered problematic.

21 I would like to point out and make clear
22 that, however, when you're looking at substituted
23 criteria or criteria now that we're thinking to use
24 in the admissions processes, that the 5th Circuit
25 very, very explicitly indicated that factors that

1 could have a disparate impact, that is, show more
2 effect in certain racial groups than others, would
3 not be violative of the order, assuming that they
4 were not pretextual in nature. So that certain
5 factors that we might use might have a greater
6 impact on certain minority groups that will not
7 make that particular factor invalid, as far as we
8 could tell.

9 In any event, the law school has been in
10 litigation since 1992. The impact is that race has
11 been eliminated as a factor in admissions in
12 scholarships. And what's clear is that the number
13 of applications are down across the country for all
14 law schools this past year, down 12 percent. The
15 law school is consistent with that nationwide drop.
16 What is also clear is that the number of applicants
17 from the African-American pool is down 41 percent
18 and the number of applicants from the
19 Mexican-American pool or to that pool is down
20 approximately 15 percent.

21 MR. WEST: Fifteen or 50?

22 MS. BRADSHAW: Fifteen.

23 There is no way to scientifically say --
24 empirically give a reason why those numbers exist.
25 The cause and effect probably can be argued a lot.

1 People have argued economy and a lot of other
2 things, but they are simply there for you to do
3 with as you will. The admissions season for the
4 law school is not closed, so we don't really know
5 the final score for this first year of using a
6 race-neutral process in evaluating applicants to
7 the law school.

8 I think what has become problematic, and
9 in a sense, excruciating for those of us who deal
10 with this legally, not only for the law school, but
11 for all of the components of the University of
12 Texas System, is the fact that it is, of course, as
13 anything, highly politicized. And the latest
14 movements from the Office of Civil Rights are very
15 disconcerting to most of us. I must respectfully
16 disagree with Norma Cantu and, I guess, Dr. Aldave
17 in the sense that I do believe that -- well, the
18 university, of course, is a public institution and
19 they have different obligations than private
20 institutions with regard to the Constitution. But
21 I don't think that Ms. Cantu's reading of Hopwood
22 is appropriate. I think that it places university
23 officials in an untenable position with regard to
24 their obligations, both to respect the law of the
25 land and to attempt to do what they need to do

1 pursuant to the laws of the United States.

2 The Office of Civil Rights has
3 participated in one lawsuit, not involving the law
4 school, that is currently in litigation and involve
5 the graduate school. And the Office of Civil
6 Rights -- well, it wasn't OCR - I'm sorry - it was
7 the Department of Justice that intervened in that
8 lawsuit or filed an amicus brief. The major point
9 was that they wanted the district court to avoid a
10 constitutional question it felt didn't have to be
11 reached. And, in fact, that question was not
12 reached in that case, which is now -- the
13 plaintiffs in that lawsuit that involve graduate
14 school have filed a motion for rehearing in front
15 of a district court here in Austin in the Federal
16 District Court.

17 The law school's case is quite different
18 from the graduate school because of the number of
19 applicants that apply to specific graduate school
20 programs and the way the evaluation process is
21 performed.

22 I think that the lawsuit -- I have
23 struggled for a year now to try to find silver
24 linings in what was a very difficult -- has been an
25 extremely difficult situation.

1 I believe that the questions that have
2 been raised by the Hopwood case are valuable. I
3 agree with Dr. Rothstein. I believe that they have
4 forced us to take a look at admissions processes
5 and try to figure out what really are we about.
6 And I think it makes the whole admissions process
7 much more arduous, much more labor intensive and
8 much more conscious. And the institutions are
9 going to -- not only going to, they're going to
10 have to decide what is their purpose and what are
11 they about and how are they going to determine what
12 is a valid criteria for their entering class.

13 The law school does not look at what
14 people want to do with their degree. That's a
15 choice that they make. They look at whether you
16 can succeed in law school. Other institutions,
17 other schools, rather, and other professions look
18 much more carefully at what you are going to do
19 when you get out of here with this degree. How are
20 you going to use it? Where are you going to
21 practice? What are the indicia -- the indicators
22 of success in actual practice?

23 The business school at the University of
24 Texas at Austin for its graduate program has gone
25 to the industry and asked the industry to define

1 for it the characteristics that make for a
2 successful practitioner with an MBA. In our
3 reevaluating, trying to determine if it's possible
4 to determine the valid indicators of success as a
5 practitioner, the law school may or may not do
6 that. I am not privy, nor do I wish to be privy
7 to, nor would I disclose at this point in time,
8 given litigation, what I think the law school is
9 doing specifically. But this whole process has
10 caused us to reevaluate the whole admission -- the
11 reason for the admissions process, to understand
12 that we have to take more time. The difficulty is
13 when you're in a situation or an institution that
14 has a highly competitive application process.

15 The U.T. Austin undergraduate school
16 gets 20,000 plus applications for 7,000 places.
17 The law school has 500 places. And they get 5,000
18 applications. The kind of intensive personal
19 evaluations of each one of those applications that
20 has been promulgated or proposed in the Hopwood
21 case is almost an impossibility, given the
22 circumstances of public institutions to deal with
23 that. But an attempt is being made to personalize
24 and remove stereotypical decisions from the
25 admissions process. Whether that will result in --

1 whether that will cause us to have an -- a student
2 body that is racially diverse -- or less racially
3 diverse, I think, is a foregone conclusion. Yes,
4 it will.

5 But the answer to me seems to be -- and
6 this is my own personal statement. It is not in a
7 representative capacity. But I believe that
8 attempts to quickly fix a system that is broken at
9 the very beginning will not result in anything but
10 a very superficial approach or superficial and non
11 -- non-palliative effort. The problem, as is
12 pointed out in the university's attempt to defend
13 the law school case, is a pipeline problem. And
14 the issue is, to try to increase from the very --
15 starting at the very beginning of the system, the
16 pool of qualified applicants who are coming to the
17 professional level. And in the past year, watching
18 all of this, one of the things that has caused me
19 the most personal sense of loss and consternation
20 is that if the time and the effort and the money
21 and the interest that had been devoted to these
22 relatively few spots in professional schools, if
23 that had been directed to preschool and elementary
24 school systems, we would be living in a much
25 different situation. But the focus has become --

1 has come and the spotlight has focused on the very,
2 very, very end of an educational process where the
3 remedial efforts are very difficult to make. Now,
4 that's not to say that at some point in time we
5 cannot identify factors that clearly show that a
6 person's scores on a test were negatively effected
7 by something in their background are not -- those
8 test scores are not truly predictive. I believe
9 that the upshot of all of this, really in the end,
10 is going to have to be a serious examination of
11 some of the premises put forward by the people who
12 use test scores as the single most important
13 indicator of whether you can get into a law school
14 program or any professional program.

15 We are schizophrenic about those tests.
16 We disagree with them, we're critical of them and
17 we're dependent upon them. And the pressure being
18 put on those tests is enormous from both sides.
19 And that is going to have to be an issue that we
20 look at much more carefully and scientifically and
21 find what our valid predictors -- and predictors in
22 what? Success in law school? Success as a
23 lawyer? Those are policy questions that each
24 institution needs to determine on its own. How
25 they're going to figure that out. But the bottom

1 line is this: That placing schools, institutions
2 of higher education under untenable demands,
3 untenable and conflicting demands, promotes nothing
4 that will help that school. And the unfortunate
5 politicalization of this whole situation that has
6 evolved creates even more duress. It makes it
7 difficult for the University of Texas at Austin to
8 go out and recruit a new president. It makes it
9 difficult for officials in these schools to
10 adequately discharge their primary obligation,
11 which is the education of the students. And it's
12 extremely sad and extremely unfortunate that we
13 have these kinds of battles going on. There has
14 been -- we're now in the midst of a current
15 legislative session. Attempts to legislatively
16 undo Hopwood or to zero out Hopwood have the same
17 impact and effect that the Office of Civil Rights
18 -- their -- Ms. Cantu's letter has on officials
19 attempting to do what they're doing.

20 I think that if the status quo remains
21 intact, if Hopwood remains the law of the land, if
22 the Supremes -- they're going to have a chance to
23 rule on diversity as a compelling state interest in
24 this Taxman versus Piscataway case, because that
25 case went up on the issue of whether diversity was

1 a justifiable reason for engaging in affirmative
2 action in an employment setting. But if the 5th
3 Circuit decision stands and things remain as they
4 are, then I think one of the other issues that has
5 to be looked at extremely deeply is how can we
6 engage in mentoring programs and reach more deeply
7 back into the colleges in order to attempt to
8 create circumstances that allow individuals --
9 disadvantaged, however they might be, to understand
10 how to deal with money involved with professional
11 schools and how to deal with those tests, and those
12 would be the most helpful things.

13 Thank you.

14 CHAIRMAN CANALES: Thank you very much.
15 We'll open it up for question at this time.

16 MS. BERRIOZABLE: Dr. Bradshaw, you
17 mentioned that Hopwood, towards the end, is the law
18 of the land. And Dean Aldave had mentioned earlier
19 in her testimony that Bakke is the law of the
20 land. I'm trying to understand what the problem is
21 there. And, perhaps, all three of you could
22 explain to me so that I could explain to families
23 back home, you know. What's -- what's the answer?

24 MS. BRADSHAW: Well, in part the answer
25 may be that Dean Aldave doesn't work for a public

1 institution of higher education, so she's not
2 subject to personal liability under the 14th
3 Amendment of the United States Constitution. She's
4 in a private institution and may or may not be
5 subject to having money withdrawn. But --

6 MS. BERRIOZABLE: Excuse me. I guess
7 that's where my concern is, because Ms. Cantu's
8 letter indicated that the universities would be
9 liable to lose funding, federal funding.

10 MS. BRADSHAW: Right.

11 MS. BERRIOZABLE: But then Secretary
12 Riley indicated that that was not the issue. So to
13 me, given that that is not there, then what is the
14 issue?

15 MS. BRADSHAW: Well, if they're not
16 going to withdraw funding, then the issue is, with
17 federally funded -- well, the issue is, who's
18 right, is what you're asking? Dr. -- Dean Aldave
19 or General Morales.

20 MS. BERRIOZABLE: No, I just want each
21 of your opinions.

22 MS. BRADSHAW: On what the law of the
23 land is? I think the law of the land is what the
24 5th Circuit has promulgated in its opinion. I
25 think that it is -- I would be remiss in my

1 professional obligations to advise someone that
2 they could -- someone other than -- well, I don't
3 think that the holding is limited to the law
4 school. I do not believe that the Hopwood decision
5 was fact driven, in the sense that it is so limited
6 to admissions in the U.T. Law School. I think the
7 fact that drives the opinion of the 5th Circuit is
8 that the State conferred benefits on the basis of
9 race.

10 MS. ROTHSTEIN: From the perspective of
11 someone who is at the grass roots, the chair of the
12 admissions committee, the law of the land to me is
13 what Dan Morales says, because when the 5th Circuit
14 says that there will be punitive damages if we
15 violate it, and the Attorney General says he will
16 not represent those of us who disagree with that --
17 it's just inconceivable that I, as an individual,
18 would fly in the face of that. I disagree terribly
19 with the result in that decision, but I have to
20 implement what those who are going to represent me
21 tell me I have to do. And if I were to do
22 otherwise, I would probably be removed from my
23 position as chair of the admissions committee.

24 MS. BERRIOZABLE: You mentioned again
25 the funding, didn't you?

1 (Ms. Berriozable and Ms. Rothstein
2 talking at the same time.)

3 MS. ROTHSTEIN: -- financial
4 assistance. I'm talking about the funding -- the
5 punitive damages that would be ordered against me
6 personally and whether I would have to hire my own
7 attorney, if I wanted to do that.

8 MS. BRADSHAW: Let me -- I want to
9 expand one thing on this federal funding thing,
10 because there are two ways you can look at it. The
11 threat would be that all federal monies would be
12 withdrawn for violating Title VI. I don't consider
13 -- and certainly Riley's letter removes that as a
14 problem. We do have a problem, however, with
15 certain federal -- federally funded programs that
16 have in them racial preferences. And some of those
17 programs involve providing significant benefits on
18 the basis of race to individuals. We have been
19 informed, or it has been told to us, If you don't
20 follow our guidelines, we're going to New Mexico
21 with our money, because they don't have these same
22 kind of problems.

23 My understanding of federally funded
24 affirmative action plans is that all of the
25 agencies were supposed to perform something called

1 a post-Adarand review of their programs after the
2 '95 decision by the Supremes that made federal
3 programs subject to the same strict scrutiny
4 standards that state action -- state affirmative
5 action has been.

6 Our efforts to obtain the post-Adarand
7 reviews, the findings that were supposed to support
8 taking this type of action, has -- we have had a
9 very difficult time attempting to get that out of
10 the agencies or to even determine whether they
11 have, in fact, completed their post-Adarand
12 reviews. So you're talking about having two
13 different levels of federal funding that are at
14 issue here. I'm not too concerned about the gross
15 kind of funding. I am concerned about the
16 program-specific funding. Texas A&M has been sued
17 one more time over a federal program that was --
18 had racial preferences in it. And, at this point,
19 the feds have actually been sued also and are going
20 to be brought in. And perhaps there will be some
21 determination whether they have sufficiently
22 created the factual basis needed to justify taking
23 remedial action. But then as Professor Issacharoff
24 told you, the next issue is, well, who do we follow
25 here? Do we follow the 5th Circuit or do we follow

1 a federal agency? There are lots of questions that
2 are on the table about this.

3 CHAIRMAN CANALES: Any questions?

4 Mr. Bledsoe.

5 MS. BERRIOZABLE: I had asked all
6 three.

7 CHAIRMAN CANALES: A response?

8 MS. ALDAVE: Yes, sir. I think it's
9 clear. It's not an argument. It almost a truism
10 that Bakke is still the law of the land. The
11 federal court system is hierarchical. And the
12 Supreme Court is at the top of the hierarchy. No
13 Circuit Court of Appeals can change the general law
14 as announced by the United States Supreme Court.

15 When the Supreme Court denied
16 certiorari, the Hopwood decision became final as to
17 the four plaintiffs and the University of Texas
18 School of Law and as to the ruling that the system
19 in effect in -- at this school in 1992 was
20 unlawful, as I advised the dean at the time that
21 system was implemented. But it is unthinkable that
22 the rules announced by the United States Supreme
23 Court apply all over the United States except
24 within the states of Mississippi, Louisiana and
25 Texas, or everywhere except in Texas. It's just

1 fundamental, constitutional and procedural, an
2 inferior court cannot overrule the Superior Court.

3 To use an analogy, I have been speaking
4 about Hopwood verse Texas all over the United
5 States for most of the last year. And I didn't do
6 that simply because I thought the decision was
7 tragically wrong nor because I had nothing else in
8 which to fill up my schedule, but primarily because
9 I was trying to establish my credibility on my home
10 campus. I was afraid that the president of my
11 university or more likely the trustees might, out
12 of aversion to litigation, say we ought to stop
13 taking race and ethnicity into account in
14 admissions in our law school. I had my response
15 all prepared for the president should he declare
16 that the university would no longer take race and
17 ethnicity in account, and he has made no such
18 declaration to date. And, of course, if he did, I
19 would have to be obliged to follow his instructions
20 or resign from my position. But I had my response
21 all prepared and it would be, Reverend Moder, I
22 think the law school's relationship to the
23 University is quite clearly analogous to the
24 relationship to the 5th Circuit Court of Appeals to
25 the United States Supreme Court. You can establish

1 whatever rule you want for the university. But I'm
2 carving one out that's a different rule for my
3 immediate jurisdiction. And, of course, I think
4 that clarifies why we cannot have a 5th Circuit
5 Court of Appeals ruling on an issue of federal
6 constitutional law that has been squarely decided
7 by the United States Supreme Court and have the 5th
8 Circuit opinion effectively overrule the Supreme
9 Court.

10 The first time Attorney General Morales
11 wrote a letter about the effects of Hopwood, that
12 letter had footnoted and said, in effect, the 5th
13 Circuit Court of Appeals overruled the Supreme
14 Court. Upon reflection, I think, the Attorney
15 General recognized that it was an absurdity to say
16 that the Court of Appeals had overruled the Supreme
17 Court. So the second opinion, the official
18 opinion, he no longer follows that position. What
19 his new position is is, to me, not only a muddle,
20 but wholly misguided.

21 HONORABLE CANALES: Mr. Bledsole first
22 and then Professor Graglia.

23 MR. BLEDSOE: Thank you.

24 I have a couple of questions. First of
25 all, I would like to ask Dean Aldave, there has

1 been a lot of litigation around the nation relating
2 to this issue and in particular, I think, we look
3 at Prop 209 out in California and the way that
4 issue was joined relating to how refusing to take
5 race into consideration actually discriminates
6 against the individual who is a member of that
7 racial group. And if we look at the Hopwood
8 opinion, they talk about the ability to make a down
9 field attack (phonetic) level, and things of that
10 nature, being legitimate considerations. Do you
11 think, in your mind, that going beyond whether or
12 not Hopwood conflicts with Bakke -- are there some
13 constitutional concerns raised by the university's
14 refusal to take race into consideration?

15 MS. ALDAVE: I do not think there are
16 constitutional difficulties with the refusal of the
17 university to take race into account. I think that
18 there are problems under Title VI of the Civil
19 Rights Act of 1964. In fact -- although the
20 plaintiffs in Hopwood originally cited both Title
21 VI and the 14th Amendment as provisions that were
22 violated by the 1992 admissions system, the
23 judgment has rested squarely on the 14th
24 Amendment. However, there is a great deal of
25 discussion, both at the district court and the

1 circuit court level, of Title VI. Why? Because
2 the Thurgood Marshall Legal Society - I believe you
3 were once the president of that society here - and
4 the NAACP Legal Defense Fund both wanted to
5 intervene in the Hopwood case in order to argue
6 that the use of the Texas index -- this criterion
7 which combines LSAT score, undergraduate grade
8 point average as the principal determinate of
9 admission violated Title VI, because it had a
10 disproportionately unfavorable impact on minority
11 students. That's an issue that's still alive out
12 there. There is a case, for example, in the 9th
13 Circuit that invalidates the use of IQ tests to
14 send children to remedial education classes because
15 of the use of IQ test that -- has disproportionate
16 impact on Black children. So that issue has not
17 yet been litigated. But I think the potential
18 challenge to the failure of an institution that
19 receives federal funds to adopt policies that opens
20 the doors to minorities is a challenge based
21 squarely on Title VI.

22 MR. BLEDSOE: And the other question I
23 would have would be for the whole panel, and that
24 would relate to -- kind of like a two-pronged
25 question. One is, from my understanding of data on

1 the SAT, LSAT, et cetera, even when you say there's
2 validity as to first year's success, that's only
3 limited to a certain cutoff score. And that there
4 is not a continued progression of saying, if you
5 make a higher LSAT you will be better in the first
6 year of law school, that's my understanding. But
7 what is your opinion about the use of these tests
8 which ironically were not adopted at the University
9 of Texas until Brown versus Board was implemented.
10 And secondly, do you feel that following Adarand or
11 Croson in determining that there is current
12 discrimination that would impact minority students,
13 would that be a justification for utilizing race as
14 a consideration, depending upon the findings of
15 such a study?

16 MS. ALDAVE: With respect to the first,
17 which was what?

18 MR. BLEDSOE: The first question relates
19 to --

20 MS. ALDAVE: Oh, the use of standardized
21 test, yes.

22 Yes, there is a new article that just
23 appeared, even though it has a 1996 date on it, in
24 the California Law Review by Professors Lani
25 Guinier and Susan Thurman (phonetic) from the

1 University of Pennsylvania, that I think is the
2 most thoroughgoing study to date of the impact of
3 the use of standardized tests, particularly the SAT
4 and the LSAT, on different racial, ethnic and
5 economic classes of people.

6 I had heard that the material that the
7 Legal Defense and Education Fund wanted to
8 introduce into Hopwood consisted primarily of
9 expert testimony alleging that the LSAT score was
10 only 9 percent better than random selection as a
11 means of choosing students as a predictor of first
12 year grade point averages. The data that
13 Professors Thurman and Guinier have collected, and
14 they're all set out in one graphic page, I believe
15 it's Page 889, show ethnic group by ethnic group
16 what are the SAT scores at different levels of
17 income, beginning under \$10,000 and going over
18 \$70,000. And, of course, what is shown
19 unmistakably is that there is virtually a
20 straight-line relationship that the standardized
21 tests, the SAT in this instance, are almost perfect
22 indicators or reflectors of past economic
23 circumstances while they are poor predictors of
24 future academic performance. And the data also
25 shows graphically and dramatically that using

1 economic deprivation as a substitute for racial and
2 ethnic identity will not work if those tests are
3 still relied upon heavily in the admissions
4 process. Because even by the time one gets to the
5 highest income level for African-American groups,
6 the Anglos in the lowest economic group still have
7 higher SAT scores on the average. So I just
8 recommend to everybody to look at that one page, if
9 nothing else, in what I think is a very thoughtful
10 and important law review article.

11 With respect -- incidentally, Linda
12 Wightman who was vice-president for research at law
13 school admission services, but I'm not sure why,
14 recently resigned, had been on the circuit saying
15 that according to her data, which included all of
16 the data in the computers at the law school
17 admission services -- if law schools admitted
18 students in the future solely on the basis of other
19 criteria, grade point average and law school
20 admission test score, then across the 180 ABA
21 accredited law schools in the United States 2
22 percent of the students would be members of
23 identifiable racial and ethnic majority group.

24 CHAIRMAN CANALES: Before any others
25 answer let me - along those lines - state that we

1 have a graph from Linda Whightman's paper.

2 MS. ALDAVE: Good. From the New York
3 University Law Review.

4 CHAIRMAN CANALES: Published in 72, New
5 York versus Law Review One. It's entitled, The
6 Threat to Diversity in Legal Education, an
7 Empirical Analysis and Consequences of Banning Race
8 as a Factor to Law School Admission Decisions.

9 I will let you all finish answering his
10 question. We have two more, and then I'd like to
11 get back to this article.

12 MS. ALDAVE: And, again, Ms. Wightman
13 stated -- showed theory that there would be an 88
14 percent drop in Black enrollment in law schools, if
15 -- only if those two criteria were taken into
16 account.

17 With regard to the second question, I
18 haven't thought at great length about how one could
19 make a case on -- giving the Adarand and Croson for
20 taking past discrimination into account in
21 continuing to engage in affirmative action. I do
22 not think Adarand and Croson, in any way, undermine
23 Bakke. And, of course, it's only -- the United
24 States Supreme Court can eventually reassure us
25 that I'm correct in thinking that Bakke still would

1 have received a majority of the votes in the
2 court. Lisa Holds predicts minority members of the
3 court would adhere to the basic holding in Bakke,
4 that race and ethnicity may be taken into account
5 in a narrowly tailored, properly designed
6 admissions system.

7 CHAIRMAN CANALES: Thank you.

8 MS. ROTHSTEIN: In answer to your
9 question about the appropriate use of the LSAT,
10 since I'm on the LSAC board -- you know, we're
11 fearful we may go out of business if we don't think
12 there is some appropriate use of it, sort of tongue
13 in cheek, but I have always thought that it is
14 useful as a gross sorting mechanism, and I still
15 think it is useful for that purpose. When you're a
16 -- particularly when you're a large law school and
17 you have thousands of applications, it is helpful
18 for you to have some information that helps you
19 sort out from 5,000 applications which of them need
20 to have a full committee review and which only need
21 to have one person review them. And that's pretty
22 much what most law schools do with it. I think the
23 question is where they draw the lines and how --
24 reputable the presumptions are and how many people
25 look at them. So I think it is still appropriate.

1 It is a better indicator in combination with the
2 grades than grades alone or LSAT alone. I think
3 that any school that uses it as a sole criterion
4 for anything is in a very dangerous position, and I
5 think that's where the vulnerability would come,
6 but I don't think most schools do; although the
7 state of Ohio has made funding of law school spaces
8 contingent on the LSAT scores at those law schools,
9 which I find amazing.

10 I do have a copy of -- I was reading
11 Lani Guinier's article this morning on the plane
12 and I have a copy of it, and if you're nice to me,
13 I'll give you my copy and I'll get another one
14 somewhere else, because it is very interesting.
15 And I think I did answer your second question,
16 which is in terms of a reverse reverse
17 discrimination by using the criteria of LSAT. I'm
18 not sure.

19 MR. BLEDSOE: The other one related to a
20 disparity study similar to what is requested --

21 MS. ROTHSTEIN: I think the disparity
22 studies could be the basis of litigation if you
23 have a law school or institution that overuses and
24 abuses any standardized test. If they use it as a
25 sole criterion rule and they're not careful how to

1 use it, I think there is some vulnerability there
2 for a disparate impact.

3 MS. BRADSHAW: I don't really have a
4 comment on the use of the test other than it is
5 under a lot of pressure and there will have to be
6 some sort of question, fundamental question,
7 decided about how valid is this as a predictor of
8 what we want and can it be used.

9 The disparity studies. My own judgment
10 about using simple statistics for disparity studies
11 is that I'm not sure that they would sufficiently
12 meet the required specificity that the Supreme
13 Court seems to want in order to craft the narrow
14 remedy. That is, if I have a statistical disparity
15 between X and Y and the inference that is posited
16 is that it's because of race discrimination, I
17 really have to, as a part of that study, in order
18 to make it valid, I think, go in and eliminate
19 race-neutral reasons for that disparity. And if
20 that were done and done carefully, that might be
21 fine.

22 MR. BLEDSOE: And just very briefly
23 here, does the 11th Amendment somewhat undermine
24 General Morales' position about the prospect of
25 liability of state officials? It seems like that

1 office is always taking the position that the 11th
2 Amendment --

3 MS. BRADSHAW: Well, the 11th Amendment
4 really doesn't get you too far when you're an
5 official sued in your individual capacity. You
6 don't -- you really -- if you're sued personally,
7 they can sue you and the 11th Amendment is not
8 going to be applicable. It's not bringing a claim
9 against the State and it will be against you as the
10 official making up your mind that you don't think
11 that that's the law and you're not going to follow
12 it, then I don't think the 11th Amendment will
13 work, no.

14 MR. BLEDSOE: But if you follow the
15 university policy, you're acting in your official
16 capacity. Are you not?

17 MS. BRADSHAW: Well, yes. But if you
18 were acting in good faith, then the question is, if
19 you know what the law of the land is and have been
20 advised of what the law of the land is and decide
21 you don't agree with that or the university decides
22 that that's not going to be its policy, then I'm
23 not sure you would have the same protection that
24 the 11th Amendment might ordinarily give.

25 HONORABLE CANALES: Thank you. We're

1 going to proceed with Professor Graglia.

2 MR. GRAGLIA: Dean Aldave, you assure us
3 with confidence, everything else you can ignore,
4 the statement simply, ignore the Hopwood decision.
5 Although you recognize, of course, that that's a
6 minority position. And other people with
7 qualifications also as good as yours, perhaps,
8 would take the other position, so necessarily give
9 you support. But you say there are problems as a
10 matter of pure and simple logic, everyone has to
11 agree, that the 5th Circuit can't overrule the
12 Supreme Court, the essence of your position, with
13 which there is no dispute. No one is contesting
14 that. The issue is, is it not, that the 5th
15 Circuit doesn't maintain that it's overruling the
16 Supreme Court. The 5th Court said -- the first
17 thing, Bakke took place 17, 18 years ago and there
18 have been decisions since then. And it's our
19 function to attempt to determine, as best we can,
20 with the law is now. This diversity point is one
21 that appeared only in the single judge's opinion,
22 although a pivotal opinion. Since then there have
23 been other opinions, which seem to be strongly
24 indicating that racial preferences are permissible
25 only in a very narrow and remedial context.

1 As you say now, those decisions require
2 interpretations. The 5th Circuit has interpreted
3 them one way, so this is now the law as we
4 understand the decision of the Supreme Court. Are
5 you not saying -- no, my -- your personal
6 understanding of the Supreme Court should trump the
7 5th Circuit's? We can go ahead and ignore the 5th
8 Circuit and say, Well, we're relying on the Aldave
9 interpretation. And that does seem to be directly
10 in conflict with the idea that we have to obey the
11 law. Does it not?

12 MS. ALDAVE: No, it does not, because we
13 have to obey the law as pronounced by the
14 authoritative body that has pronounced the law. I
15 assume, Professor Graglia, that you are familiar,
16 for example, with Marks Versus United States, the
17 case in which the court made it unmistakably clear
18 that an opinion like Justice Powell's opinion in
19 Bakke is the controlling precedent. And also, that
20 you know of cases like Rodriguez, De Quijas versus
21 Shearson/American Express, in which nine to zero
22 the United States Supreme Court said that the Court
23 of Appeals should not overrule any decision of the
24 United States Supreme Court that is directly on
25 point even if it's unmistakably clear that the

1 opinion in question has been thoroughly
2 discredited.

3 And if you read the opinion, Rodriguez,
4 De Quijas versus Shearson/American Express, which
5 involved two identical statutes under the
6 Securities Act of 1933 and Securities Exchange Act
7 of 1934, I think you cannot come away with any
8 conclusion other than that which was reached first
9 by seven members of the 5th Circuit Court of
10 Appeals when they, on their own motion, decided to
11 revisit the question if Hopwood could effectively
12 overrule Bakke. And the second one, which is made
13 very explicitly in the Rodriguez case itself --
14 again, I'm not sure I cited it. That's 490 U.S.
15 477. So it's a truism almost, that when there is a
16 controlling precedent of the United States Supreme
17 Court that is directly on point that says that
18 diversity is a compelling state interest, the 5th
19 Circuit has no authority to say in this circuit
20 that diversity is not a compelling state interest.
21 Incidentally that's Footnote 11 of the opinion -- on
22 the suggestion -- rehearing involved in the Hopwood
23 case.

24 CHAIRMAN CANALES: The time is running
25 out, so we can have one more question.

1 Dr. West.

2 MR. WEST: Yes. I've heard -- I've been
3 troubled by some years by the impression I've had
4 about the character of administrators in major
5 institutions in Texas and elsewhere in the nation,
6 that there is kind of a lock-step mentally among
7 the administrators. And what I heard on this panel
8 makes me want to ask each of you a question about
9 that.

10 The reason I'm troubled -- this is not
11 an issue of a legal debate. I don't want to get
12 into that. But it troubles me that all of the
13 representatives here, in one way or another,
14 believe that it would have been better if Hopwood
15 hadn't come down. In other words, that you all
16 agree that 80 percent of the American people are
17 wrong in thinking that race should not be used as a
18 criterion in admissions or other -- in respect to
19 higher education. And so the question I have is,
20 could you tell me, in your own institution, what
21 percentage of administrators who are dealing in an
22 important way with the admissions process would
23 agree with the American people that race should not
24 be a factor. And what percentage of you would
25 agree that race is an appropriate factor?

1 MS. ALDAVE: First, if I may respond
2 with a question. It's supposed to be the
3 prerogative of all future and present and past law
4 professors. What study ever showed that the
5 majority of the American people disapprove of the
6 use of race or ethnicity in a properly devised
7 admissions program at a university or professional
8 school?

9 MR. WEST: Were you here for the first
10 panel --

11 MS. ALDAVE: No, I was not.

12 MR. WEST: It was presented by one of
13 the panelists.

14 MS. ALDAVE: I know that there is
15 general --

16 (Ms. Aldave and Mr. West were
17 speaking at the same time.)

18 THE COURT REPORTER: Wait.

19 MR. WEST: -- going back, I believe,
20 about 20 years.

21 MS. ALDAVE: I would just be very
22 skeptical of that, because -- just on the basis of
23 my own everyday experiences, I encounter a great
24 deal of opposition to affirmative action in the
25 form of, for example, contractual set-asides; mixed

1 feelings on affirmative action in the context of
2 employment and virtually no opposition once the
3 situation is explained about opening the doors of
4 opportunity to our institutions of higher
5 education. I think it's a difference between
6 redistributing the prizes after the game has been
7 played in the case of contractual set-asides.

8 MR. WEST: We already know your
9 opinions, if you could give me an answer to my
10 question.

11 MS. ALDAVE: The answer to "my question"
12 is, all the administrators of institutions of
13 higher education with whom I deal regularly believe
14 that it is appropriate, morally and legally and
15 ethically to take race and ethnicity into account
16 in admissions decisions.

17 CHAIRMAN CANALES: Our time is up now.
18 We have --

19 MR. WEST: All right. Can I ask for the
20 other two panelist to respond to the questions,
21 Judge?

22 CHAIRMAN CANALES: Well, we only have 35
23 minutes for lunch. You're welcome to discuss it
24 with them during the lunch hour. At this time we
25 will reconvene at 12:30.

1 We thank you all very much for coming
2 here.

3
4 (LUNCH RECESS)

5
6 CHAIRMAN CANALES: Good afternoon. It's
7 time for the meeting to begin, the committee
8 meeting to come back to order again. We're on
9 Panel Number Three. And we have Ed Apodaca,
10 associate vice president for enrollment management
11 at the University of Houston. Susan Bradshaw
12 again. Good to see you again.

13 MS. BRADSHAW: Good to see you again.

14 CHAIRMAN CANALES: And Dan Robertson.
15 Dr. Robertson, director, Office of Graduate
16 Studies, Texas A&M. And we also have Troy Johnson,
17 Texas Tech University graduate school, assistant
18 dean. And glad to have you with us today, and
19 we'll start with Mr. Apodaca.

20 MR. APODACA: I appreciate the
21 opportunity to be here and address some concerns
22 that you have. I think they're concerns that we've
23 all had for many, many years.

24 Let me start first by indicating that I
25 am not a lawyer. My expertise is not the Hopwood

1 case. I am an administrator. I'm, I feel, an
2 expert in enrollment management. I've been doing
3 it for about 30 years, including 18 years at the
4 University of California before and after the Bakke
5 decision, and very much responsible for the current
6 admission practices, which I felt were very, very
7 effective in bringing in minorities that were more
8 than qualified, which are now being challenged by
9 Richard Connerly and Proposition 209.

10 The point that I want to take --
11 especially hearing some of the earlier testimony,
12 was to again focus our attention, not on the legal
13 aspect, but what can we do as institutions and how
14 can we approach the Hopwood case. After all, the
15 Hopwood case has already been tried; we can't
16 change it. There may be something else that comes
17 down the line, but that's not going to change.

18 I'll start by -- in my opinion, making
19 it very clear that neither the Hopwood nor Morales
20 has indicated that affirmative action is illegal.
21 It's illegal to use ethnic and race factors, but
22 they support affirmative action. I've heard
23 Morales many, many times say that he supports
24 affirmative action except that you cannot use
25 race. Just this week, Wednesday, he spoke before

1 the Senate -- one of the Senate committees on
2 Senate Bill 1419, which is trying to repair some of
3 the damage done by the Hopwood decision, which
4 allows 50 percent of the selection based on GPA
5 test scores, class ranking, or the traditional --
6 40 percent are using -- there's ten other factors
7 that can be taken to account: School attendance,
8 bilingual, the economic background of students.
9 And then there is another 10 percent that was set
10 aside for what we call "special action."

11 Morales did appear before the committee
12 and testified that he agreed with it fully, that it
13 was not illegal, that he was very supportive, that
14 it was exactly what he had intended, he had made
15 the ruling. So it does provide a different
16 direction. It makes it very clear that as
17 institutions that want to increase the number of
18 the representations of students, that we can do
19 that.

20 I find in my view that there are four
21 things that have kind of hindered our efforts after
22 the Hopwood case. One was the increased
23 possibility of lawsuits, especially once they find
24 out how much the Hopwood case is going to generate,
25 I think you're going to have every attorney trying

1 to see how they can get into a lawsuit, so there is
2 the danger. The liability that was assigned to
3 individuals, which is unprecedented in any another
4 case that I have been aware of -- but it's very,
5 very discouraging to those that are in the field or
6 working the day-to-day functions of admissions.
7 But more important, I think the willingness of
8 institutions to expect less.

9 As we were already working in
10 legislation and working on bills, even before we
11 had decided what we could do, a lot of institutions
12 already made it very clear that numbers were going
13 to drop, that students were going to go to other
14 states, that somebody else was going to have a
15 better package, but it sends a very clear message
16 that things have changed. I have never heard of a
17 basketball coach or football coach that goes out
18 and tells the team that they're going to lose
19 because the other team is bigger or faster, or what
20 have you. If they're bigger, of course they run
21 faster; if they're faster, you're bigger or
22 smarter, but you don't start an issue like this by
23 admitting that the numbers are going to drop and
24 there's nothing we can do. So I'm concerned about
25 that.

1 And then I'm really much more concerned
2 about the long term impact that has been ignored.
3 I'll mention it -- that on the Murdock Report that
4 just came out to the legislature -- has made it
5 very clear that in the next 35 years, the
6 population of Texas is going to double. That 90
7 percent of the increase is going to be non-White.
8 That the students seeking to go to universities is
9 going to increase by 71 percent. So there is no
10 question that in the future of Texas there is going
11 to be a tremendous increase of minorities. The
12 issue is how we do it and where they go. I think
13 much of that is going to be determined by the
14 leadership provided by the regents, by the
15 president, by the provost, and the climate that's
16 developed. Because even before, when we could use
17 race and ethnicity, there were some institutions
18 that did much better than others. So, again, I
19 think this -- it's going to be reflected in the
20 future. Those that provide an environment in --
21 that students are attracted to, will go there.

22 I also want to point out that even after
23 the Hopwood decision, we still have the same number
24 of students out there, the same number of minority
25 students. We still have the same number of spaces

1 in our campus. We still have the same number of
2 dollars in our campuses. Those who still want to
3 go to college, and they will go to college -- the
4 issue is which college they choose. I think what
5 is going to occur, those that are more competitive
6 and more selective, now have a way of maybe being
7 more choosy as to who they bring in. But those
8 students are going to go somewhere. Our campus has
9 taken a very strong position that - and we are a
10 very diverse campus - that we feel that as part of
11 the educational responsibility of our institution
12 -- that it's not just bringing in students, but
13 the educational environment that we provide for
14 them, which is very beneficial for them to be in an
15 environment where there is a lot of diversity of
16 all students. And I feel that that was reflected
17 all the way from the regents and chancellor who
18 challenged Morales' interpretation. And we were
19 the only campus that went on record saying that the
20 initial letter that came from Morales was a
21 recommendation; it was not a legal opinion. We did
22 go back -- he finally came back February 10th,
23 making it a legal opinion. But prior to that, we
24 had taken the position that we did not feel that it
25 was binding because it was a recommendation. But

1 it does send a message down the line for the
2 regents and the chancellor in the present day, and
3 I think it makes it easier for us to feel
4 comfortable with -- that we can make a difference.

5 I mentioned that because we've always
6 had affirmative action programs, and it's never
7 been wrong. We've done a lot of things for
8 farmers; we've done a lot for businessmen; we do a
9 lot for many areas. We can have affirmative action
10 programs. We have a lot of ways of giving
11 preferences here in other institutions. We've
12 always given preferences to donors, sons and
13 daughters of donors. We've always given
14 preferences to alumni. And I know you've heard
15 this over and over, for those who can play
16 basketball. So we have a tradition of finding ways
17 of giving preferences.

18 Right now I think the real issue that is
19 not being addressed is the issue of space. When
20 you have space, then you don't have to make
21 selections. And what we have done here - and the
22 same way when I was in California - is that we're
23 trying to find better ways of excluding students.
24 And I mention that because in the late '50s, when
25 we had the baby boom and a tremendous number of

1 students wanted to go to college and university,
2 nobody sat down to talk about who we excluded. We
3 really made a major difference. And I mention
4 California, because I'm much more familiar with
5 that, just came here about a year ago. The
6 Riverside campus didn't exist. The Irvine campus
7 was built. The Santa Cruz campus was built. The
8 Santa Barbara's campus was a teachers college. We
9 still go to Berkeley and you have the temporary
10 buildings. You go to UCLA and you have the
11 temporary buildings. We made everything possible
12 for those students that were eligible and wanted to
13 go to college. We had school on Saturdays. And we
14 had -- we were hiring faculty left and right, and
15 we made a difference. I think that's what is being
16 ignored right now, is that we're trying to find a
17 better way of excluding students. As part of my
18 responsibility -- responsibility at the University
19 of California, I was in charge of the system-wide
20 admission. We did a lot of work and a lot of
21 studies.

22 There is really no way that's effective
23 that you can go and tell the son or daughter of
24 somebody who has worked very, very hard and met all
25 the criteria to be admitted, that whatever you do

1 is fair. It really doesn't matter what it is. If
2 you use -- because we did use GPA and test scores.
3 Those that do not have the grades want to talk
4 about, yes, but my daughter was a cheerleader and
5 was involved in many other things and you should
6 take that into account. Or if it's test scores,
7 you have to keep in mind that many students prepare
8 for tests. They pay \$700 for the Kaplan test and
9 they take the test over and over. There are some
10 students that take the SAT up to 18 times. And we
11 compare it like everybody -- just equal ground, as
12 if they just took it once. When I was in -- of
13 course, I used to live up in San Francisco -- we
14 had students in the sixth grade taking the PSAT,
15 preparing and learning because they knew they were
16 going to go to Stanford or Berkeley, or the private
17 schools, and so that was important. Most of the
18 minority students have had just the opposite
19 experience. A lot of times they're being told they
20 don't have to worry if they're doing well
21 academically, that they're going to be admitted.
22 And often, because they've been intimidated by
23 tests, will take it once or twice. But they're
24 certainly not taking it four or five times or six
25 times. That's a concern.

1 But when it's all said and done, our
2 experience will be that there's a pretty strong
3 correlation between family income, zip code and
4 actual student success in the test scores and
5 GPAs. And it's very clear - and young people say
6 it's not true - those of us who have been in
7 education -- when you move into an area and you
8 have children, the first thing you do is look at
9 schools. What school your son or daughter goes to
10 determines whether or not they're going to be
11 academically prepared for some of the more
12 selective institutions. If you are in San
13 Francisco, people fight all over for attending
14 Lowell High School. They have ample opportunity to
15 go to Mission High School or Cordova High School,
16 which are lower schools, but nobody is fighting to
17 get into those schools. And it's very clear, if
18 you go Lowell High School, the chances are very,
19 very good that you're going to be eligible for a
20 top institution. Everything is geared for that
21 direction. So when we look at students and we look
22 at what we want in our institutions, it's important
23 that those conditions are taken into account.

24 Within our programs, within our budget
25 programs, we were not directly affected by the

1 Hopwood decision because we were not using race and
2 ethnicity for selection of students. I don't know
3 if it's a good indication or bad. Sometimes I was
4 thinking we weren't doing it as much as we should
5 have, but we do have a good representation of
6 minority students. And I think a lot of it has
7 been because students attract students. We always
8 talk about recruitment and local gimmicks, but it's
9 students that bring students. And our
10 representation within our university has been 10
11 percent African-American, 14 percent Hispanic, 18
12 percent Asian, 53 percent White. At the graduate
13 level it's 7 percent Hispanic, 6 percent
14 African-American, 7 percent Asian-American and 64
15 percent White. We attract a lot of international
16 students, and that's something that we have not
17 even spoken about.

18 Graduate programs, medical programs
19 often seem to feel that if somebody comes from out
20 of state or out of the country, they're much better
21 than most students, and that's a discussion that
22 we've had on campus. But often we really don't
23 scrutinize their test scores as much as we do our
24 domestic students, and we always seem to find
25 places to accommodate them. And I'm not speaking

1 against international students, but I'm saying when
2 you look at graduate programs, doctoral programs,
3 it's surprising how accommodating and how well we
4 find ways of making the students comfortable and
5 successful on campuses. I think we can do the same
6 thing for our domestic students.

7 We are in a position where the degree
8 you earn makes a major difference, not only to the
9 individual, but the communities they live in and
10 the family that's coming after them. My view is
11 that it's not the Hopwood decision that's going to
12 make the difference, but it's going to be the
13 attitude and direction that comes from our
14 leaders. All the way from the political leaders,
15 educational leaders and community leaders.

16 Thank you.

17 CHAIRMAN CANALES: Thank you very much.

18 Susan Bradshaw.

19 MS. BRADSHAW: I will simply -- with the
20 graduate and medical school, the situation and the
21 impact of Hopwood is somewhat different from what
22 it has been with regard to the law school and the
23 undergraduate university. In part that's because
24 the admission processes of both of those -- the
25 graduate school and the medical schools tended to

1 be more subjective always. There has not been the
2 -- certainly the GRE and your grades as an
3 undergraduate were important but they have never
4 been decisive after a certain point. The graduate
5 school, because they admit fewer people, have had
6 the luxury of essentially, I think, doing what the
7 Bakke decision envisioned. And that was, you've
8 got a small group, you set your score or you use
9 your test scores to set a floor, and you say
10 anybody who is above a certain point - hypothetical
11 number, 1200 - can do the work. And then after
12 that, the test score leaves the table as an issue
13 and you look at a set of subjective criteria that
14 you then use to determine if the applicant fits
15 your needs. They're much more careful about
16 crafting the -- I should say they're much more
17 careful about being explicit about what they're
18 looking for in their purpose.

19 Medical schools make no -- they do not
20 hide the fact that they are looking for people who
21 will practice in certain areas. And they are not
22 essentially trying to choose a student body based
23 on who will be successful as a student. They
24 choose students according to who will be successful
25 as a practitioner and, to a large extent, a

1 successful practitioner in certain kinds of
2 medicine. So many dynamics go into this because of
3 what is going on with managed care, Medicare and
4 HMOs right now; enormous emphasis has been placed
5 upon family practice and the need for general
6 practitioners.

7 There is also and always has been for -
8 not always - but for many years, the medical
9 schools have been looking to identify applicants
10 and students who will more likely than not return
11 to serve in the under-served areas of this state.
12 This brings up a very interesting issue about
13 compelling state interest, and whether there is a
14 compelling state interest in this area. But
15 medical schools have always attempted to identify
16 individuals who will more likely than not serve in
17 under-served areas. This is one of those
18 characteristics that has a relationship
19 demographically to race. And there is an
20 opportunity frequently to get people where - they
21 can prove it, actually. They've got studies that
22 show that individuals who come from minority
23 communities are more likely than others to return
24 to those communities to serve.

25 Anyway, they have eliminated the use of

1 race as a factor in their admissions processes
2 since Hopwood, that's what has occurred. They
3 still, however, do look at a variety of other
4 factors. The elimination of race this year for the
5 medical schools did not result in a different pool
6 of minority applicants in terms of percentages.
7 Overall applications to medical schools were down
8 nationwide 8.8 percent. They were down in Texas
9 6.5 percent. Ethnic breakdown, as a percentage, if
10 -- the total pool remained relatively the same as
11 it always has been.

12 The schools in Texas differ from each
13 other in terms of their mission and in terms of the
14 kinds of people who apply to them. There is also a
15 matching process that is used as a part of the
16 admissions system that in some ways affects how
17 many minorities go to certain campuses than
18 others. But now, instead of using race, there is a
19 -- I believe the same setting of floor in terms of
20 what you need to get in by way of an MCAT score or
21 a GPA, and then you look at other factors.

22 The issue in medical school has always
23 been interesting, because they've always had
24 interviews. And they have overtly looked for
25 people with communication skills, people who could

1 function in a practice setting. They're aware of
2 -- well, actually one doctor that I talked to
3 said, Someone could get a perfect score in a GMAT,
4 but you can tell in less than two minutes in an
5 interview that that person may not be appropriate
6 for practice.

7 So they have never looked strictly at
8 scores. They are now concentrating on persons who
9 have perhaps shown the commitment or demographics
10 to serve in a medically under-served area. They
11 look at honors or awards in outside achievement or
12 in outside areas. They look at employment
13 history. They look whether -- they look to see
14 whether you have worked your way through college,
15 whether you have had family responsibilities. They
16 look at whether you can function in another
17 language; not related necessarily to race or ethnic
18 background, as much as if -- if someone is
19 bilingual, they'll probably be of greater service
20 in certain areas of the state than others. It's
21 not a race-based characteristic. They look at the
22 educational attainment of one's parent, income
23 level. They look to see whether you come from a
24 rural or urban background. They use a lot of
25 different factors to get you into the last

1 screening process, which is the interview process
2 where you have your face-to-face with the
3 committee, so they can determine if you would be an
4 appropriate practitioner.

5 The graduate school does somewhat the
6 same thing, except the graduate school has so many
7 different programs, and all the programs do
8 different things. But in general, they are dealing
9 with smaller number of applicants. And they can do
10 a much more intensive evaluation, and look at
11 things such as personal statements that are
12 carefully written and carefully gone through.

13 This year the University of Texas at
14 Austin's graduate school program in educational
15 psychology -- a counseling program was sued under a
16 Hopwood theory. In that case, the applicant was an
17 Algerian student who was not admitted. And this
18 was an interesting case. It will not go much
19 beyond its present state, which is that the
20 district court held that the university had shown
21 that the student would not have been admitted under
22 any admission procedure regardless of what was
23 involved, race or not, which in a way was sad to
24 me, because intellectually it presented a very
25 interesting question as to the role of diversity.

1 Because this was one area and one program where
2 there was actual need for pedagogically -- a basis
3 for diversity in that particular course.

4 The students -- they had -- the American
5 Psychological Association has provided evidence and
6 background, empirical studies, showing that
7 individuals who come through a class like this,
8 small, ten people, and spend six years together,
9 their practice is enhanced by having a culturally
10 diverse group in the student body. That question
11 is not going to, apparently, get to the court,
12 unfortunately. It would have been an interesting
13 way to determine this whole issue of diversity
14 being a valid basis for engaging in some type of
15 affirmative action. This is one instance where
16 there was actually, as I said, a pedagogical
17 justification for it, which is different from
18 almost every other situation that we have dealt
19 with.

20 I would like to tell you that there is a
21 group in the - I believe it is Harvard - that is
22 putting together position papers on the value of
23 diversity and attempting to put together an
24 empirical basis which -- for years I think
25 everybody assumed diversity was good but no one

1 ever knew exactly why. They are looking at that at
2 this point in time. Whether it helps them in those
3 circuits, I'm not sure.

4 The law school -- the medical school's
5 admissions for this year have been completed. Some
6 are up, some are down in terms of minorities. But,
7 in general, the overall number tends to be about
8 the same, but recruiting is very difficult. And
9 the loss of the scholarship money is critical,
10 especially to the highly qualified minority
11 applicants who are guaranteed of something if they
12 will leave the state, so in a sense it's a loss
13 both ways.

14 I do not have any other information
15 concerning the impact on graduate school programs
16 proper, because they have not finished doing their
17 admissions cycle for this year.

18 CHAIRMAN CANALES: Thank you very much.
19 Move on to Dr. Robertson.

20 MR. ROBERTSON: Thank you.

21 Good afternoon. I'd like to thank the
22 panel and also the commission for the opportunity
23 to appear before you today. I, too, am going to
24 provide some very brief thoughts. I'd like to
25 point out that these are constrained to the areas

1 of graduate studies. And I think I'd like to begin
2 by pointing out that we have spent a great deal of
3 time and made numerous references, and
4 appropriately so thus far, to the area of
5 applications and to a lesser extent to admissions.
6 In my opinion, that's only half the picture that we
7 should be concerned about. We are rightfully
8 concerned at Texas A&M in our graduate school about
9 applications for next fall. And I can share some
10 limited data with you that will reflect both our
11 application data and the admissions decisions that
12 have been made thus far. As was just pointed out,
13 we, too, are in a process that will not conclude
14 until this summer, so the picture is incomplete.
15 But I would like to point out that no matter what
16 that data would reflect, far more important to me
17 would be the third stage, which would be the number
18 of students who actually matriculate. We will not
19 know that until the early fall. And I believe that
20 something that should be of concern to the panel is
21 not only the number of students who are applying or
22 are admitted and matriculate to many of our
23 institutions, but also the outcome side. Since
24 students matriculate, so what happens? And what
25 I'm getting at is, how many complete their

1 degrees? We have some limited data available on
2 that, and I'm also going to share with you.

3 I am going to roughly split my ten
4 minutes in half between some comments I'd like to
5 make that come directly out of the document that I
6 provided in response to your 14 questions. And I'm
7 just going to touch on a few of the points that are
8 in this document. And then the last half, or
9 roughly that, I'd like to just make some general
10 comments.

11 Let me begin by making a comment on
12 Question 1 from Page 1. Inasmuch as our graduate
13 school is organized very differently than many of
14 the other graduate schools in the state, I'd like
15 to point out that graduate studies at Texas A&M
16 University are decentralized. What I mean by that
17 is we have a central department that receives and
18 assembles and processes, if you will, the
19 application form, but it does not come through our
20 office. It goes directly to each of the 80-plus
21 academic departments. So admissions decisions are
22 made at the department level at Texas A&M. Our
23 office, the Office of Graduate Studies, does not
24 play a role in those decisions.

25 A couple of other things I'd like to

1 point out, Question 2 on Page 2 asks about the
2 processing and how Hopwood may have impacted it.
3 And as has been the case, as you heard earlier this
4 morning from other institutions, race is no longer
5 available to the departments when they're making
6 admissions decisions. We do collect that
7 information. It is then temporarily removed and
8 that data is restored to our information system
9 only once an admissions decision has been made.

10 And I'd also like to point out that our
11 institution also has a continuing commitment to
12 diversity. This has recently been reconfirmed by
13 our president. And the way that it's been worded
14 is that we maintain our commitment to diversity
15 despite the situation with Hopwood.

16 In Question 7, a question is raised
17 about providing some -- I guess I'll call it
18 benchmark data or some historic data about what has
19 happened. And I would like to point out that we
20 really have a contradiction in graduate studies,
21 and what has happened with regard to matriculated
22 students overall versus what has happened with
23 regard to our minority enrollment. And the point
24 that I'd like to make for the panel's consideration
25 is that if one looks at the last five years, total

1 graduate enrollment at Texas A&M has declined by
2 slightly over 8 percent. During that same period
3 of time, minority graduate student enrollment has
4 increased by slightly more than 10 percent. Our
5 numbers are small, so I want to be careful about --
6 cautioning percentage calculations. But the trim
7 line on minority graduate student enrollment is
8 contra to the overall decrease that we have
9 experienced.

10 You've also been provided with a table
11 that shows minority enrollment for a longer period
12 of time. We've gone back and put together data on
13 minority graduate student enrollment for the past
14 10 years. This may be found on Table 2 on Page 5.
15 And that will show an increase of 75 percent in
16 minority graduate student enrollment over the past
17 ten years.

18 Getting to the heart of the matter in
19 Question 8, which will be found on Page 6. We were
20 asked to speculate about the impact of Hopwood.
21 Our position on that is that at this point in time
22 it is impossible for me to draw any cause and
23 effect relationships between what has happened with
24 regard to Hopwood and what will happen with regard
25 to minority graduate student enrollment. We do, as

1 I said, have some additional data, however, that
2 will provide information on graduate applicants,
3 both overall and specifically broken down on the
4 basis of ethnicity or gender or nationality. And
5 just night before last, I got an update of this
6 report, which I believe has already been provided.
7 So even the information that's provided in response
8 to your fourteen questions has been updated.
9 Briefly what that will show as of last Thursday -
10 and this is comparing data from April 3rd, '97
11 versus exactly the same period then, one year ago,
12 April 3rd of '96 - our total graduate applications
13 are down by 1 percent, African-American
14 applications are down by 6 percent, Hispanic
15 applications are up by 8 percent. But going back
16 to what I said initially, applications are just the
17 start of the process. Obviously, the admit
18 decision and then the question of who matriculates
19 and who graduates is of more concern. And we are
20 very concerned about the number of admits. You
21 will notice that we're down significantly, some 39
22 percent on African-American graduate student
23 admissions decisions, and we are down 3 percent on
24 Hispanic admissions decisions. That's in contrast
25 to an overall 15 percent increase in admissions

1 decisions for graduate students. I do not have any
2 insights into why that is the case. Recall that
3 these decisions are made absent or without an
4 indication of ethnicity.

5 In closing, there are just a couple of
6 last comments that I would like to make. I have
7 provided some information -- you can find them on
8 the last two pages of our documentation -- that
9 will reflect data on the number of students who
10 complete their degrees. We are very concerned
11 about recruiting students who not only hopefully
12 will matriculate, but also will complete their
13 graduate degrees.

14 I would like to add the -- a couple of
15 comments that are not found in the report. As I've
16 listened to the discussion this morning, I think
17 we've had some very good dialogue with regard to
18 Hopwood. But one aspect of that impact on graduate
19 education I think has perhaps been omitted from our
20 discussion. I'd like to draw to the panel's
21 attention and especially for the benefit of those
22 who may not be from this state, that it's my
23 opinion that Hopwood occurs within a context which
24 has already had a very negative effect upon
25 graduate education in the state of Texas. If we go

1 back to the early '90s, many of our universities
2 went together to request health insurance for the
3 graduate students on our campuses who were employed
4 as graduate assistants. The legislative response
5 to that was that health insurance was indeed a good
6 idea for graduate student assistants and we should
7 pay for it. It's my opinion that we are still
8 reeling from that financial blow. Health insurance
9 today cost approximately \$3,000 for a single
10 graduate student - student without dependents.

11 In the last legislative session, the
12 1995 legislative session -- I'd like to point out
13 that a decision was made to not permit us to use
14 either university or state funds for out-of-state
15 graduate recruiting. That's very important to us,
16 because we are being raided, as we speak, for many
17 of our best minority applicants. It's already been
18 noted that we are prohibited from providing
19 financial support to them. I'd like to point out
20 that we do not have the opportunity to count,
21 because we do not use university or state funds to
22 recruit out of state. And there are many very good
23 applicants, both minority and non-minority from out
24 of state.

25 In closing, I would like to emphasize

1 that the Hopwood ruling has been - I'm sorry. I
2 should say the ruling in the Hopwood case - has
3 centered -- or the dialogue has centered on the
4 admissions decision. But as other speakers have
5 pointed out, we are also restricted from providing
6 financial support from, quote, recruiting and
7 retention. And I believe those four impose a very
8 uncertain future for us with regard to pursuit of
9 minority graduate students in our respective
10 programs.

11 My last comment pertaining to the - I'm
12 sorry, two last comments. One on standardized
13 testing. It is the case that both the GRE, the
14 Graduate Record Exam, which is the most widely used
15 standardized exam for graduate study across all of
16 our institutions, and the Graduate Management
17 Admissions Test, which is used primarily for
18 graduate programs in business administration, both
19 point out that they should not be used in
20 isolation. I'd like to caution the panel against
21 either/or -- either/or arguments. I've heard some
22 suggestion that grades may be superior to
23 standardized tests or perhaps the reverse. My
24 comment to that is both are wrong used in
25 isolation. We must use all the predictors that we

1 can avail ourselves of when we assess whether or
2 not individuals are qualified for graduate study.
3 By the way, that would include other variables in
4 addition to standardized test scores and grades.

5 My last comments that I want to make is
6 that there was also a reference made this morning
7 to pipelines, and in particular with regard to
8 minorities. And I provided some copies of this to
9 Ms. Youngblood that can be distributed. I would
10 point out that -- I'll take full responsibility for
11 this. It's not a scientific study at all. It's
12 simply an attempt on our part to track total U.S.
13 population, broken out with some gender variables,
14 on through the high school level, bachelor grads,
15 masters grads, doctoral grads and faculty. And you
16 will see, of course, that the higher the level of
17 achievement, generally the lower the level of
18 representation of minorities. I would caution you
19 that the term "faculty," as I have used it, is all
20 inclusive, and you'll see the sources that this is
21 drawn from. But, of course, it does not require a
22 doctoral degree to be included in the faculty
23 figure that you see here involved. Many of the
24 individuals who have faculty rank might have only a
25 masters.

1 Again, I would close by saying thank you
2 very much for this opportunity to appear before you
3 and I look forward to your questions.

4 CHAIRMAN CANALES: Thank you. We'll
5 move on to Dr. Troy Johnson, Texas Tech Assistant
6 Dean.

7 MR. JOHNSON: Thank your for your
8 willingness to add me at this late time. I trust
9 that it is in Stella's good judgment. She is a
10 Texas Tech graduate that we like to claim. Don't
11 blame her then if you're not pleased with my
12 remarks, though, all right, please. Judge me on
13 that. But I'm very pleased to be here.

14 My goal in the next couple of minutes,
15 because I was not formally prepared for a
16 presentation upon arrival today is -- my goal is to
17 characterize and sum up what the position generally
18 is for administrators that are in the field that
19 are trying to grapple with the situation we have at
20 hand.

21 Texas Tech has provided fairly
22 comprehensive responses that you all have, that
23 Stella compiled. And in addition to those
24 responses, we also provided some reports of our own
25 internal summaries and studies that we've

1 conducted. It seems the issue of how you count and
2 how you estimate, whether it's based on an annual
3 cumulative number or based on a per semester
4 projection, can get very confusing in these types
5 of hearings. And, in fact, legislature -- State
6 Legislator Royce West has recently requested data
7 that are similar to what you have requested. And I
8 will submit that -- our report to Royce West to you
9 for your review at a later time.

10 There are three main points that I'd
11 like to cover -- to give you this characterization
12 that I believe we are faced with in the current
13 situation. First of all is the difficulty of
14 diversifying our campuses that we're faced with.
15 Also, the difficulty of all the conflicting
16 opinions and interpretations and directives and
17 then some silver linings that I do see.

18 The difficulty of diversifying has
19 really been conveyed to you through many of the
20 comments just on this panel, but I want to say it
21 in a different way. I want to simply say 49
22 against 1. Forty-nine states can admit, can
23 recruit, can have retention programs and can give
24 scholarships based on race; one state cannot.

25 Texas Tech and several other

1 universities in Texas have recently become members
2 of the Big 12 Athletic Conference. And it's with
3 much disappointment that I watch representatives
4 from Houston - excuse me - from Oklahoma, from Iowa
5 and from other states look to our campuses as great
6 opportunities to take away our own Texas minority
7 students. Their visibility has been enhanced in
8 Texas because of this athletic conference -- I
9 consider a threat to our ability to maintain
10 diversity. Or if it's not a threat, it's certainly
11 a great opportunity for them of which they will not
12 hide from you if you discuss that with them and
13 discuss their recruitment plans.

14 We are not able to use any of the
15 typical race-based recruitment activities we're
16 used to. Just to identify a few that you should
17 know of. The Graduate Record Exam has a minority
18 locator service that many of us like to use; they
19 specialized in mail-outs to inform students across
20 the country of our programs. We can't even do --
21 legally do simple things like print out a list of
22 all the minority applicants or prospective students
23 and have targeted phone calling campaigns to these
24 people any longer. We can't pay for campus visits
25 for minority students to come to campus. And then

1 the financial assistance that we are no longer able
2 to provide is perhaps the biggest barrier. And to
3 convey our situation, we have recently had
4 competition for our chancellors fellowships, which
5 165 applicants -- out of those 70-some were awarded
6 assistantships. If this were last year, we would
7 have been able to consider race. And I assure you
8 that, unlike this year, where no African-Americans
9 received the awards, some would have. These
10 applicants, particularly if they were were
11 African-Americans, were good, strong applicants.
12 But using the criteria that we've had to use based
13 on Hopwood, we were not this year able to consider
14 those applicants.

15 Now, if you were one of those applicants
16 and you were offered a \$7,000 assistantship to come
17 and teach at Texas Tech or you were offered a
18 \$12,000 fellowship to the University of Iowa or
19 Colorado, I can assume you would perhaps be
20 inclined to go for the larger dollar amount,
21 because this is a highly competitive financial
22 market for these particular students.

23 The legal liability that Dr. Apodaca
24 mentioned early is a difficulty that we face on our
25 campus because our faculty members are quite

1 concerned about the individual liability that they
2 face. Even as Morales presents us with possible
3 surrogates to have; these surrogates are untested.
4 Faculty members simply are reluctant to be the test
5 cases for using these surrogates in some cases. So
6 that's a difficulty for us. Another difficulty is
7 what I just categorized as the enemy, and we've
8 heard many of these cases today. The pipeline is
9 an enemy of us. The zip codes and our seeming
10 inability to educate adequately the student that I
11 mentioned earlier. Another enemy is industry that
12 attracts away some of the top-notch bachelors'
13 graduates that are minority within the industry
14 with whom we can't complete financially. Another
15 enemy that I've become aware of today, and I can
16 only hope that I'm eloquent enough to convey this,
17 not as an attack, but as a sincere expression of
18 concern and sadness, but the enemy, I would say,
19 are angry people who would send minorities away
20 with the claim that Texas doesn't want them. Angry
21 people that would say that because of this ruling,
22 our universities do not want minority students.
23 I'm here to say we want them, I just can't
24 discriminate to get them. So it's not an issue of
25 want; it's an issue of can't. And that very anger

1 is an enemy in itself, because it's caused by anger
2 in itself. And that's this image that we portray
3 to the rest of the country, that somehow we are not
4 interested in affirmative action in Texas.

5 The next point I'd like to make is
6 regarding the difficulty of these conflicting
7 opinions, interpretations and directives. We can
8 just run through the list we started with Bakke, we
9 had Hopwood, we had the Supreme Court decision,
10 Morales One, we had Hobby write a letter, we had
11 Morales Two, we had Cantu; today we have Aldave,
12 and we also have the legislative bills that face
13 us. 1419 was just mentioned. Another bill is to
14 repeal the entire use of test scores in admission.
15 And that is pending in the legislature at this
16 time. So these conflicting opinions,
17 interpretations and directives are what we as
18 administrators face on a daily basis. All the
19 while we face these, wanting to maintain diversity,
20 not only because its previously been mandated, but
21 mainly because we believe it's right. We believe
22 it's essential to the economic vitality of the
23 state in the future as Panelist Apodaca mentioned
24 in the report earlier. And also, because we
25 believe that it's key to societal harmony.

1 My third point is silver linings.
2 Earlier, Panelist Bradshaw mentioned that this
3 ruling has forced us to review our admission
4 processes. What are the reasons that we admit
5 people or don't admit people in programs? Are we
6 predicting their success in the program or their
7 success after the program? We have been forced to
8 really look at that. We've also been forced to
9 reevaluate our reliance on test scores, I think, as
10 a key measure. But I would also like to echo
11 Panelist Robertson's statement that the use of
12 multiple criteria gives us the best regression line
13 or prediction for success. So we can't rely simply
14 on one. It's the use of the test scores in
15 conjunction with the GPAs, in conjunction with the
16 other factors that really gives us strong,
17 predictable information. So, specifically, a
18 silver lining to me is that we really have been
19 forced to reevaluate our admission processes and
20 rely more on multiply criteria, but also, mainly,
21 in graduate education of all places, we should be
22 expected to rely cerebrally. And it is my opinion
23 that because of the convenience of test scores and
24 GPAs over time, that can be a convenient way to
25 make decisions. And perhaps this is a good impetus

1 for us, to really analyze the processes to make
2 sure we are making cerebral decisions at this
3 level.

4 CHAIRMAN CANALES: Thank you very much.
5 We will open for questions.

6 Dr. West.

7 Mr. WEST: I'd like to begin with the
8 question that I concluded the last panel with. I
9 really appreciate these administrators being here,
10 both on this previous panel, because the -- what
11 we've gotten, I think, is what we call stance of
12 reluctant compliance with Hopwood or the
13 silver-lining theory of Hopwood that somehow we
14 have to go along with it, but we'd really like to
15 be able to continue to use race as a factor in
16 higher education.

17 Now, the question I have about this goes
18 to the question of diversity within academic
19 administration in the State of Texas. The
20 impression that I've gotten from the seven or so
21 panelists is that there is a complete lack of
22 diversity, there is unanimity about this and
23 presumably similar questions. There is an -- there
24 is a stated concern that Texas is the only state
25 that isn't exactly the way all the other states are

1 with respect to this one question. There is no
2 sense of welcoming the opportunity to build a
3 different solution to the race problem than that
4 which has been tried elsewhere and which many
5 people believe has exacerbated rather than helped
6 the race problem in America. So my question is,
7 for each of the administrators here, could you give
8 me a sense of your judgment of what percentage of
9 administrators at your institution would share your
10 view of this question and what percentage of
11 administrators would share the view -- let's say,
12 of the 80 percent of Americans which think that
13 race is not a legitimate criteria to use in
14 academic decisions, general admissions, in
15 particular?

16 MR. APODACA: Again, and I think it was
17 mentioned early this morning, that at least our
18 reports and data does not show that 80 percent of
19 the population does not support the use of
20 affirmative action. I think the comments that the
21 -- statements made that they were admitted
22 strictly on the basis of race and ethnicity, and
23 that's not true. The minority students that were
24 admitted are among the top within -- within the
25 percentage of their own group. They're much, much,

1 much more selective than we are for any other
2 group. So I think that individuals when they find
3 out that indeed we are selecting qualified,
4 well-prepared minorities, they agree with that
5 until affirmative action -- was the solution. They
6 strongly disagree with just strictly on the basis
7 of ethnicity, and there is a difference.

8 Regarding the other question on the
9 percentage of number of administrators, I would say
10 that the majority -- and you have to keep in mind
11 that for the last 30 years, when we have hired an
12 individual, one of the key components that we've
13 been asking is how do they stand on affirmative
14 action. Are they able to increase the number of
15 minorities? And I think many of us were hired
16 because we made a very strong position that we were
17 able to deal with diverse populations and that we
18 would be able to make a difference in changing the
19 environment of the university. Unless they lied at
20 the time they were admitted, I would have to say
21 that most of the people we hired in the last 30
22 years -- it was part of the process in hiring.

23 CHAIRMAN CANALES: Ms. Bradshaw.

24 MS. BRADSHAW: Not being an
25 administrator, I don't know. I frankly have no

1 idea, any kind of percentage or not. I would say
2 that I would echo the remarks of Dr. Apodaca. Many
3 people in the administration in the past generation
4 have been hired to enhance the diversity of the
5 campuses and to act as role models, to get more
6 minority kids in, so I really don't have any
7 answers to that.

8 I do want to say -- I don't -- do not
9 accept as valid the Gallup Poll figures that were
10 provided by Dr. Horn this morning. And I believe
11 that there was a much more differentiated question
12 and answer situation that was published that showed
13 - depending on how the question was asked - they
14 got a different answer that substantially changed
15 the whole picture. So I would not accept that 80
16 percent as a valid statistic, for the record.

17 MR. ROBERTSON: I certainly would not
18 presume to speak for any one individual
19 administrator on our campus, but it is my
20 impression -- my, if I may, gut feeling, that
21 clearly the majority of our administrators would
22 support this also.

23 I can speak for those who have recently
24 gone on record, and I happen to bring with me a
25 statement, I'll just read the title of the article

1 to you, it's Committed To Diversity, Hopwood Or
2 Not. Now, this is someone who plays a very key
3 role in our undergraduate programs. I've commented
4 already on President Boling's position on this.
5 He's made it very clear. And we did host a
6 conference on Hopwood on our campus about four
7 months ago where several of the leading
8 administrators made their position very clear. And
9 it was that we are committed to diversity.

10 I would like to just, though, elaborate
11 a bit on diversity. I think it's perhaps broader
12 than some of the comments today have lead me to
13 believe. It is not purely ethnic diversity that
14 we're talking about here. Ours is a campus where
15 less than 40 years ago we were all men, all White
16 and all military. We've worked very hard in
17 diversity in a very broad sense; not simply from a
18 racial perspective, if you will, but also for
19 gender representation. And one of our colleagues
20 earlier, at the start of this session, referred to
21 nationality. One fourth of our total number of
22 graduate students are international students. I
23 think the -- part of the impetus for that certainly
24 is reflective of what the state went through in
25 its, perhaps, over-dependency on one product

1 primarily, other than agriculture, and that would
2 be the petrochemical industry. So I feel that our
3 students learn a great deal from their
4 inter-association with individuals from a gender,
5 from an ethnic, if you will, or racial perspective,
6 and nationality perspective. And I think that does
7 fairly, in my opinion, add to the richness of
8 graduate study.

9 MR. JOHNSON: I think that point is very
10 important, Mr. West. I think we need to clarify
11 that this is my opinion, and I can't speak for
12 other administrators, but most of the
13 administration that I speak to on campus is
14 interested in diversity. Now, the way that you
15 phrased the question really asked if -- or really
16 stated that we were making the case that we need
17 this -- we need race-based preferences, period;
18 that's the way you posed it to us. And quite
19 frankly, Mr. West, I don't believe that that's what
20 we are all saying here today. We are -- and, in
21 particular, my comments were to tell you what
22 position we're in; not necessarily to tell you that
23 we have to change to go back or we have those
24 longings. That was not the purpose of my
25 commentary. But I would say, likewise, like

1 Panelist Robertson just said, that we are
2 interested in diversity; we know it's important.
3 And as I mentioned, the economic vitality of the
4 state; it is extremely important to us.

5 CHAIRMAN CANALES: Any more questions?

6 I hate to put you on the spot, because I
7 know you have threat of lawsuit, and those kinds of
8 things, but many times factors that were mentioned,
9 alternative factors to be considered, we've never
10 gone into detail what some of those might be, and
11 I'd be interested in hearing, if you will,
12 discussing it today. Tell us what other factors
13 besides race would you consider: Socioeconomic
14 status, or whatever it may be. If you will share
15 those with us, please.

16 MS. BRADSHAW: I'll be glad to leave a
17 copy of what was provided to the campuses. But in
18 general --

19 CHAIRMAN CANALES: Excuse me. The
20 second part of the question is, are we going to
21 keep the same percentage of minority students?

22 MS. BRADSHAW: I'm sorry?

23 CHAIRMAN CANALES: Are we still going to
24 maintain the same level of minority admissions?

25 MS. BRADSHAW: Well, the answer to the

1 second question is we don't know, but probably
2 not. The process of admission -- you're just a
3 couple of months early or a month or so early to
4 get the final figures. Admissions criteria were
5 given out very general -- generally, and people
6 could pick or chose -- or institutions could pick
7 or chose among them according to their own
8 specified mission or admission goals. But we said
9 you may look at residencies or not, test scores;
10 you may look at academic performance, that includes
11 many things: Rank in high school, where you were
12 in undergraduate school. As recognized by the 5th
13 Circuit, we look at special and unique talents and
14 accomplishments. This would include, I guess,
15 broken field running and cello playing, as well as
16 Peace Corp volunteer experience or significant
17 contribution to your community in some leadership
18 capacity: Volunteering, participation in
19 extracurricular activities, your work history and
20 whether you have received any special honors,
21 whether you participated in special programs. Did
22 you -- were you a foreign exchange student when you
23 were in high school? Did you do something that put
24 you -- we're looking, in essence, for those things
25 that separate people out and give them something

1 special from the applicants -- frequently the
2 applicants all have the same test scores or other
3 background that's virtually the same. Look at
4 measure of motivation. In some instances, the
5 letters of recommendation are looked at carefully,
6 in graduate school in particular. Letters of
7 recommendation are very essential. You look at
8 whether your grades improved over time. Has there
9 been a marked difference between your first two
10 years of high school and your last two years of
11 high school? Geographic representation. We're
12 looking for people from all over the state. Where
13 did you live? Where did you go to high school?
14 We're looking for socioeconomic background factors
15 and indicators. I mentioned these earlier. The
16 parents educational attainment, their occupations.
17 Are you a first generation, college bound, out of
18 your family? High school background. Did you get
19 into a core curriculum? What did you take? How
20 hard was your program? What's the size of your
21 school? Are there personal special circumstances
22 that you have that would indicate that you have
23 overcome quite a few barriers to get there? Is
24 English not the first language in your household?
25 Have you had to work your way through both high

1 school and college? Have you had significant
2 caretaking responsibilities for your family that
3 might indicate that your time was not -- you were
4 not able to devote as much time as you might have
5 to studies? How good is your writing sample? Are
6 you literate in English? Frankly, this is where
7 you can see the pipeline issues come forward in all
8 races. The poor quality of the writing samples in
9 some cases is distressing. And for those that have
10 them, what is the strength of your interview, and
11 what are you looking for?

12 CHAIRMAN CANALES: Okay. Are they
13 weighted in any way?

14 MS. BRADSHAW: No, because it's a
15 rolling admissions process. And I think that every
16 time that you make an admission, it may be changed
17 somewhat. There has been an enormous amount of
18 pressure in this session of the legislature to
19 explicitly define criteria and to assign relative
20 weights to each one, so that you would come up with
21 a strictly numerical score on One through Ten, or
22 something. One side of me says that that would
23 make it lot easier to defend all these lawsuits.
24 The other side of me said it would be an untenable
25 way to deal with admission when subjective factors

1 have to play an important role in making judgements
2 with people fairly similarly situated and deal with
3 changing needs of the student body, so, no, they
4 are not weighted.

5 I think anybody would tell you that they
6 usually look at the indicators of academic
7 performance first and use it as a screening device,
8 in many cases, to try to determine where -- how
9 we're going to deal with the vast number.

10 CHAIRMAN CANALES: Go ahead.

11 MR. APODACA: Again, I'm not speaking
12 for a medical school, which we don't have.
13 Normally, professional schools, I think, take
14 pretty much the position that was just mentioned.
15 For graduate programs, as you probably know, it's
16 not that clear GPA, test scores, what have you. To
17 a large degree it's the mix between the student and
18 the professor and the discipline and the research
19 and writings and studies that they're doing. So a
20 lot of times, the closer the student is in their
21 application and their essay -- on what they're
22 looking for and what the professor or the school
23 offers, I think the better the chances are that
24 they'll get admitted. Because of that I think it
25 will be misleading to assume that minorities got

1 admitted because of special consideration while
2 non-minorities were strictly objective GPA, test
3 scores. As I mentioned, in most graduate programs,
4 the decision is made by the faculty that work with
5 the department and up to the dean. But it's that
6 mix between the applicant and the department, and
7 what they have to offer, that's really very, very
8 important. And as a result of that, it's very
9 difficult to say, This is the basis or the
10 percentages that they use.

11 MR. JOHNSON: I'm not representing the
12 law school or the medical school, just the general
13 academic graduate programs. Your second question
14 about numbers again, we do not know. We do know in
15 the past that we have admitted solely based on
16 race. We know that we have tried to broaden our
17 view of admissions so that it's not so heavily
18 relying on test scores and GPA alone. But other
19 than that, we just tell them -- we will know in a
20 few months.

21 We have considered many of the same
22 factors that have been presented just a moment
23 ago. Our approach, though, because we are largely
24 decentralized, in terms of the admission decision
25 making, the departments make the decision based on

1 fit again. We have tried to emphasize to our
2 departments that they, at least, consider three
3 groups of variables. One is GPA, and that can be
4 GPA in the last 60 hours. It can be GPA in the
5 major. GPA over the entire academic career. GPA
6 and other graduate work. The other group would
7 include test scores, whether it be the GRE general
8 test, subject test, GMAT, other types of tests.

9 And the third group is the important
10 part of the -- we've -- post-Hopwood, have tried to
11 emphasize department views more, which are the
12 other factors. Many of the ones that were just
13 read. The other factors such as the fit, the
14 research or the interest in conducting research or
15 a thesis or non-thesis masters, and will a student
16 fit well. Those kinds of "other" would probably be
17 called more subjective criteria. And we've tried
18 to emphasize those. And then when we use all those
19 three areas, then we try to encourage departments
20 to distribute their weights in a reasonable way
21 that would be inclusive, as well.

22 CHAIRMAN CANALES: Mr. Robertson.

23 MR. ROBERTSON: I think there is
24 precious little that hasn't been covered, but there
25 is one general area that was referred to earlier

1 today. And that is, in some of our graduate
2 programs, the issue that I might call outcome
3 issues are very important in selection. Reference
4 is made, for example, to the MBA kind of program,
5 where you're looking very closely at what a student
6 would do upon attainment of that degree. That's
7 also the case in some of our other graduate
8 programs in our campus. But, I think, other than
9 that, most of the issues have been covered that
10 we looked at.

11 MR. APODACA: Let me mention one that
12 was left out and I missed it. One of the key
13 factors is what I would call faculty sponsorship.
14 When you have a faculty that calls a department and
15 knows a student and puts in a good strong word for
16 that individual, it really makes a difference. And
17 so quite often those students that have had a
18 better or greater opportunity to build strong links
19 with faculty can benefit when they apply for
20 graduate programs and that faculty is willing to --
21 I guess we call it sponsorship. But that's very,
22 very important.

23 CHAIRMAN CANALES: Yes.

24 MS. BERRIOZABLE: I think it was
25 Dr. Bradshaw this morning who mentioned the --

1 personal opinion on going back to the education and
2 opportunity children get, you went back to
3 kindergarten. And we have learned that if children
4 get a good education between zero and five years
5 old, we have it made. And that's where the problem
6 starts. I appreciated that comment.

7 Having some knowledge of some work that
8 has been done by the United Nations on the feminist
9 issue and poverty, particularly studying
10 Scandinavian countries. They have found that when
11 you invest in the education of women and girls, the
12 countries fare out very well economically. With
13 that in mind, and realizing that we're talking
14 about minorities, I would like to address the
15 situation in your universities of women of color,
16 the caretakers of these children, the primary
17 caretakers of these children. How are they faring
18 out? We've talked about race and ethnicity, but
19 not about gender. And women of color have two
20 strikes against them, not only race or ethnicity,
21 but also gender. What programs are present? Are
22 there some -- is there a double negative against
23 them in these days? I'm just interested in knowing
24 what their situation is.

25 MR. JOHNSON: I've really been pleased

1 to be involved with a program on campus that's a
2 federally funded program that's called the McNair
3 Program and happen to know firsthand several
4 Hispanic females that are in that, a couple are
5 single mothers. So we've seen some of the
6 challenges. Now, those kinds of programs come
7 under prey, because of the situation we're in right
8 now. So on one hand I can tell you that those
9 types of programs help very much, and we're very
10 pleased to have them.

11 Another possible detriment to that is
12 that frequently Latinos, but Latino females, score
13 lower on test scores, so they tend to have that
14 additional hurdle, and that is very well documented
15 by the UTS, the group that gives the GRE. So the
16 best that I can say is sensitivity to that, in the
17 admissions process, but again we're based with
18 Hopwood.

19 CHAIRMAN CANALES: Anybody else?

20 MR. APODACA: Let me respond. I think
21 if you look at the data, you'll find that,
22 especially in the African-American women, they're
23 much better represented than the male. We're
24 having a very difficult time attracting males into
25 the masters program, and the same way with the

1 Hispanic. The further you go up the process --
2 it's interesting, because women are better
3 represented in the undergraduate and in the
4 masters, and postgrad, but then in the doctoral
5 level or law school then they're not. But nothing
6 -- in response to your initial question, I'm not
7 aware of anything that's been done special to work
8 with them.

9 MS. BRADSHAW: I'm not aware of all of
10 the programs that are available in the
11 undergraduate level. I think what your comment
12 brings up is one of the issues that is inherent
13 within the whole Hopwood situation. The Supreme
14 Court has held, in all of the affirmative action
15 lawsuits, that universities may not have to combat
16 or remedy generalized societal discrimination, and
17 that ties the hands quite a bit of the capacity to
18 act at the university setting. But it also raises
19 critical issues with regard to the role and scope
20 of educational institutions and local funding
21 issues involved with those kinds of programs that
22 are so proven to do very good jobs, but are also,
23 in some senses, outside of, perhaps, what the
24 original role and the scope of the university was
25 or is a remediation effort beyond that which is

1 normal within the system. And so there are
2 difficulties in incorporating it as a part of a
3 university curriculum.

4 MR. ROBERTSON: Just a couple of
5 benchmark factors I can throw out. We participate
6 in a national organization called the Council of
7 Graduate Schools. And if one looks at all graduate
8 students currently enrolled in this country, it is
9 the case now that the majority are female. But
10 it's just slightly over 50 percent, but that's a
11 significant change from a few years ago.

12 I would comment, somewhat in line with
13 my colleague's comment, that if you look at the
14 pipeline -- if our concern would be to -- for
15 example, increase the number of female doctoral
16 students and a reference -- someone made a
17 reference to this this morning -- and my colleague
18 commented in his enemies list earlier, a problem
19 that we have is that female masters recipients are
20 highly sought by many industries. So while they
21 may go out and come back to us years later in a
22 doctoral program, salaries for -- in many fields,
23 that females receive masters degrees in, are very,
24 very attractive in the industry. And so we do
25 have, I think - and it's not reflective in the

1 information I gave you, because it's not broken out
2 by gender - but I think we have a special challenge
3 on our hands to increase the role models of female
4 faculty members.

5 I did happen to bring with me the
6 summary report from last year put out by the
7 National Research Council, and it shows for 1995
8 that in all fields there were 41,600 doctoral
9 degrees granted in this country, 16,333 were
10 women. It looks as though that - and I'm doing
11 some quick percentages in my head here, because I
12 have only number and not percentage - but it looks
13 as though that percentage is increasing but at a
14 very, very modest rate. I'll be glad to make
15 copies of this available, if the panel would like.

16 CHAIRMAN CANALES: Thank you very much.

17 Dr. Burke.

18 DR. BURKE: Dr. Johnson, you mentioned
19 that Hispanic women tend to have lower test
20 scores. I'm wondering about the outcome of those
21 people who -- what about the outcome of that
22 population?

23 MR. JOHNSON: I don't have that data. I
24 can't answer that question. Sorry.

25 CHAIRMAN CANALES: Mr. West.

1 MR. WEST: Yes. I wanted to ask this
2 question of Mr. Robertson.

3 After the Civil War time, the
4 Constitution was amended to secure voting rights to
5 say that nobody could -- no state could
6 discriminate with respect to race, terminate your
7 voting rights. And the Southerners got together
8 and said, Okay. You can vote no matter what race
9 you are, but if your grandfather was a slave, you
10 can't vote. Then the Congress, of course, turned
11 against that. Then they said, Well, you have to
12 pass this literacy test, and then you can vote.
13 And it turned out that the literacy tests were
14 administered differently for Blacks than Whites, so
15 it kept the Blacks from voting, and so on. So the
16 Southerners kept adding, trying to live within the
17 letter of the 15th Amendment, but in the end they
18 did successfully deny Blacks the right to vote for
19 many years in the South. Now, the reason I've
20 raised that point is because what this and the
21 previous panel have suggested to me is that we
22 might be under the similar danger here in the
23 opposite direction. That is, that although there
24 is going to be compliance with the Hopwood case,
25 it's not with full conviction that the Hopwood case

1 is right and just. The question I would have for
2 you is, are you aware of this as a problem? And
3 what kind of action might you take in your
4 situation here to make sure that -- when you start
5 talking about socioeconomic status and family
6 background, and all these other things, you aren't
7 ending up with the racial criterion of the
8 faculty?

9 MR. ROBERTSON: Well, someone this
10 morning pointed out that the position their
11 university had taken, and it's the position that
12 we've taken, is that we will comply with the ruling
13 that has been handed down by the Attorney General.
14 If you're asking me my opinion, I think it's dead
15 wrong. But my opinions stay outside the door when
16 decision are made.

17 MR. WEST: Well, I just -- I wanted to
18 know what you might do in your institution, in your
19 position as the graduate office director, to make
20 sure that the use of these other criteria doesn't
21 get abused to become a surrogate or a pretext for
22 the reintroduction of a racial criterion without
23 using the name?

24 MR. ROBERTSON: Well, let me remind you
25 that on our campus, we do not make admissions

1 decisions. It's made by each of the departments.
2 And all I can say is you've heard a fairly lengthy
3 litany of things that are being considered on our
4 campus. I've heard mention of all of those and
5 even some additional variables.

6 Now, to what extent those would be used
7 by individual departments, I cannot tell you.
8 There is a great deal about what we do and do not
9 know. And I believe that as a result of the -- not
10 only the Hopwood case, but the ruling by the
11 Attorney General. On my campus, I'm seeing
12 movement in both directions. I'm seeing
13 individuals who reference has been made to
14 liability. They are very concerned about almost
15 any decision. You will notice that there is a huge
16 gap between the number of admits on our campus and
17 the number of applications, and that says to me
18 that some of the people are perhaps almost
19 paralyzed, afraid to make a decision. At the other
20 end of the spectrum, I'm hearing a discussion about
21 wide variety of surrogates. And whether you can
22 perceive that those are surrogates or not for race
23 -- I think that the reference was made this
24 morning, being careful about being cute. I don't
25 think that's the intent. But I think we're

1 searching to say, absent information on ethnicity,
2 what is the right mix of variables to use. And I
3 don't -- I don't have -- I don't propose to have
4 any pat answers. I'm sorry.

5 MR. GRAGLIA: If I can follow up on
6 that, I hear both from you, and most panelists,
7 talking about the continued commitment to
8 diversity. And, of course, what you mean by
9 diversity is racial diversity. Nobody is
10 suggesting that we've got to get more
11 fundamentalist Christians into this; we've got to
12 get more people from other countries. This is
13 racial diversity. You continue to be committed to
14 racial diversity, and yet you're going to be fully
15 compliant with the Hopwood decision which says you
16 may not consider race. Now, I would like to ask
17 you two gentlemen, in particular, what do you
18 understand to be a commitment to diversity that
19 does not consider race, if you are going to be
20 fully compliant as you're maintaining you are?
21 What are you proposing to do for this commitment to
22 diversity that does not consider race?

23 MR. APODACA: Let me respond to that,
24 because, again, you know I have strong feelings in
25 it. But both Morales or -- anybody has not said

1 that they're not in favor of affirmative action,
2 it's just how you approach it. They indicated --
3 made very clear that you're not supposed to use
4 ethnicity or race, but they have come back and
5 said, We still feel that you should have a very
6 diverse population. You're commitment to serve all
7 segments of society needs to be there. And so
8 nowhere have they indicated that they deny --

9 MR. GRAGLIA: But my question is, how
10 are you proposing to have --

11 CHAIRMAN CANALES: Wait a minute,
12 Professor. Hold it.

13 MR. GRAGLIA: -- this commitment without
14 race?

15 CHAIRMAN CANALES: Hold it. Let him
16 finish his answer, please.

17 MR. GRAGLIA: Affirmative action --

18 CHAIRMAN CANALES: Do not interrupt the
19 testimony. Go ahead. You may finish your answer.

20 MR. APODACA: The point I'm trying to
21 make is that we have not -- what -- what we were
22 trying to achieve was wrong. How we were doing it
23 is what is being questioned. And they have given
24 us guidelines as to how we can approach the same
25 area. But you have to keep in mind that the

1 responsibilities of public institutions is not only
2 to admit students, but it is how we prepare
3 students and especially how we prepare the students
4 to meet the needs of the State. And given the
5 population changes and given the needs that are
6 going to be there, it's in the best interest of the
7 university to have a very, very wide and diverse
8 population. And it's not just by ethnicity.
9 That's what I was trying to point out a while ago.
10 When we admit students, it's not like White
11 students strictly GPA, test scores, we have a lot
12 of ways of bringing in diversity of White Anglo
13 students. And I think everybody has benefited from
14 affirmative action. If you didn't, you just go
15 back and look at what was here before '64. And the
16 difference between the student population and the
17 mix between -- before affirmative action and after
18 is very clear in the results.

19 MR. GRAGLIA: Do you think the people
20 who benefit from affirmative action were denied
21 admission because they were White -- benefited?
22 Everybody has benefitted from affirmative action?
23 How about the Whites that were denied admission who
24 would have been admitted if they were Black? Did
25 they benefit?

1 MR. APODACA: Those same students may
2 have been eliminated because they pick up football
3 players or because we did a lot of other things.
4 But I mentioned earlier in my presentation, the
5 issue is not how we exclude students. The issue we
6 need to address is how do we have enough space for
7 all those students that are preparing to go to
8 college?

9 CHAIRMAN CANALES: Thank you very much.
10 Any other questions?

11 Thank you all very, very much for
12 spending time with us today. We appreciate it.

13 We'll move on to the next panel, Panel
14 Four, Hopwood Enforcement, Oversight & Legislative
15 Developments.

16 La Juana Barton. Chief of Staff &
17 Education Legislative Aide to the office of Senator
18 Royce West. And also a representative from the
19 office of State Senator Gonzalo Barrientos. Your
20 name.

21 MR. KESTER: Thank you, Mr. Chairman.
22 My name is Steve Kester, and I'm a -- my name is
23 Steve Kester. I'm a legislative aide to State
24 Senator Gonzalo Barrientos.

25 CHAIRMAN CANALES: Thank you very much.

1 I'm glad you're here.

2 I will ask all the advisory committee
3 members that you must wait to be recognized by the
4 Chair before you ask a question, okay?

5 At this time we'll proceed with
6 Ms. La Juana Barton.

7 MS. BARTON: Good afternoon. I am
8 La Juana Barton, Dallas chief of staff, education
9 legislative aide for State Senator Royce West. I
10 appreciate the opportunity to come before you on
11 behalf of State Senator Royce West, who
12 unfortunately could not be here today, and address
13 you on the issues of Hopwood and it's impact on
14 Texas public institutions and basically what the
15 legislature or even my legislator is proposing or
16 trying to propose dealing with this situation. I
17 do have available copies of the bill that Senator
18 West introduced. Do you have that?

19 CHAIRMAN CANALES: No. We'd like to
20 have that very much.

21 MS. BARTON: The bill was introduced by
22 Senator West, Senator Barrientos and Senator
23 Bivins. And Bivins is the chairperson of the
24 Senate Education Committee.

25 CHAIRMAN CANALES: Is that 1419?

1 MS. BARTON: 1419. The bill was heard
2 in the Senate Education Committee this past
3 Wednesday. It was favorably passed out of that
4 committee and put it on intent on -- yesterday, so
5 it will be sometime next week that it will be heard
6 on the Senate Floor. Okay.

7 Exactly what is Senate Bill 1419? A lot
8 of people have asked that question. Basically what
9 it is is a bipartisan, multi-racial, conglomerate
10 of senators -- came together after the Hopwood
11 decision and also General Morales' opinion to try
12 to see what they could do to ensure that the State
13 of Texas and Texas public institutions were
14 diversified, not using race as a criteria. What
15 they found is if they use factors which were for
16 economically and educationally disadvantaged
17 students that they would be able to increase the
18 pools of applicants. And that's what everyone
19 needs to understand, that the legislation that they
20 have tried to put in place, 1419, was designed to
21 increase the pools of applicants.

22 You have been told previously today that
23 the application levels at all the public
24 institutions have been down. Basically that's for
25 a multitude of reasons, some being that a lot of

1 people are afraid by the Hopwood decision, both
2 educated and uneducated persons.

3 There are students, there are
4 counselors, there are administrators in high
5 schools that feel that -- that are telling some of
6 the best and brightest students in Texas,
7 regardless of color, that Texas schools may not be
8 for you or Texas public institutions may not be for
9 you. You might need to go private, and so forth.
10 I'll take a for instance. We had quite a few
11 parents in the Dallas area to call the office
12 saying that their students -- their students wanted
13 to apply to U.T. U.T. enacted a system where they
14 had three essays, okay. We had counselors at
15 Dallas high schools who were telling their
16 students, You need to apply to U of H, or, You need
17 to apply to whatever, even though these students
18 were in the top 10 percent, top 5 percent with
19 excellent GPAs and excellent SATs, and so forth,
20 because race was not going to be a criteria, and
21 also they have three essays. That's mis -- misrep
22 -- misinformation to those students. That's one
23 of the reasons and -- also with Hopwood, that those
24 students didn't apply, because their counselors
25 were telling them you shouldn't, okay? So there

1 are things that need to be in place.

2 The 1419 bill sets in place a uniform
3 admissions policy for first-time freshmen students
4 that is presented in what we call the 50/40/10 plan
5 or a three-tier structure. The 50/40/10 plan
6 represents the categories of admissions. The first
7 two categories would consist of up to 50 percent of
8 all office of admissions utilizing the same
9 criteria currently used by the institutions, taking
10 into consideration class ranking, standing, test
11 scores and other methods traditionally used by the
12 institution. Basically, admissions as usually
13 okay. But within this 51st, 50 tier, there will be
14 an automatic admission of Texas public and private
15 students whose grade point averages placed them in
16 graduating in the top 10 percent of their class.

17 You ask, How will this increase the pool
18 of applicants to Texas higher education
19 institutions? You do this because 10 percent of
20 the students graduating from Roosevelt High School
21 in Dallas, which is predominantly African-American,
22 10 percent of the school's top graduating class in
23 all of the high schools would have an opportunity
24 to be in that pool of applicants, therefore, you
25 will increase the number of applicants diversely,

1 okay. The second tier would be at least -- 40
2 percent of the next applicants selected would be
3 made utilizing, in addition to the students
4 applicant -- academic class standing,
5 considerations of economic and educational
6 factors.

7 Educationally and economic disadvantaged
8 factors do bring in more minorities. They also
9 bring in more students, period. Because
10 economically and educationally disadvantaged
11 students are multiracial. They're Anglo. They're
12 Hispanic. They're African-Americans. They're
13 Asians. They're the students that represent the
14 state. So using those criteria and where they pick
15 those criteria for that specific 40 percent was
16 from a report that was given to -- as a part of the
17 second status report of the Advisory Committee on
18 Criteria for Diversity Report that was given to the
19 Texas Higher Education Coordinating Board, okay.
20 And these factors initially were 15 hypotheses
21 criteria that could be used in lieu of race, okay.

22 Race-neutral policies in the wake of
23 Hopwood as released by statistical analysis by the
24 Texas Higher Education Coordinating Board concluded
25 that new policies would result in a 40 to 50

1 percent drop in higher -- higher education
2 enrollment of student -- of students of color in
3 Texas. The remaining tier, or up to 10 percent,
4 would be made to applicants whose selection would
5 take into consideration the institutions' desire to
6 admit students that show a potential to succeed and
7 in doing so contribute to the academic community of
8 the institution.

9 Higher education institutions that
10 currently are considered open enrollment would be
11 excluded from the provisions of this bill. The
12 bill would also require that the applicable
13 institutions make annual reports to the Higher
14 Education Coordinating Board that describe the
15 freshmen students admitted under the bill. The
16 information reported would include a demographic
17 breakdown by race, gender and the educational and
18 economic disadvantage factors that were listed in
19 Section 5.803D of the bill.

20 The Higher Education Coordinating Board,
21 also under this bill, may adopt rules relating to
22 admissions policies and procedures as set forth by
23 the subchapter. Also, in the bill you will see
24 that there are subchapters that deal with -- say
25 that colleges, public colleges, need to set in

1 place policies for their professional and graduate
2 schools. Those specific policies are not detailed
3 within this bill because right now there are
4 working groups that are working to try to see if
5 there are policies that they can come up with that
6 would mirror or be very closely related to 1419,
7 and they are working on those right now.

8 CHAIRMAN CANALES: Thank you very much.

9 Mr. Kester.

10 MR. KESTER: Mr. Chairman and Committee
11 Members, I first of all want to thank you also for
12 allowing us to appear here today at this very
13 important forum.

14 I thought since La Juana had an
15 opportunity to go over Legislation Senate Bill
16 1419, I'd give you an accounting of some of the
17 various legislative proposals that are seeking to
18 address Hopwood, that are currently in the
19 legislature. You can imagine there are a number of
20 bills out there right now. In deference to the
21 committee's time, I'll just go over a few of those,
22 in which category -- also, our office is currently
23 compiling a complete list of all the legislation
24 relating to the Hopwood decision. If it's
25 appropriate, we will submit that.

1 CHAIRMAN CANALES: Please do. We
2 appreciate it. Submit it to staff or
3 Ms. Youngblood.

4 MR. KESTER: We'll actually have to send
5 that to you, if that's okay. The office --

6 CHAIRMAN CANALES: That will be fine.

7 MR. KESTER: And we'll submit bills
8 along --

9 CHAIRMAN CANALES: Yes, submit those.

10 MR. KESTER: Okay. Thank you very
11 much.

12 There are several categories of
13 legislation currently being considered. In terms
14 of admissions, I think that might be the primary
15 direct approach that's being used to deal with the
16 Hopwood decision. There are two different
17 approaches that are being used. One is the
18 race-neutral policy. Senate Bill 1419 is an
19 example of that. It has a House companion. It's
20 not actually a companion, but a bill that's very
21 similar, House Bill 588, that's sponsored by
22 Representative Irma Rangel. It takes a somewhat
23 different approach. It's three tiered like 1419.
24 Yet it has a 10 percent -- top 10 percent automatic
25 admissions with a 25 percent automatic admission

1 category that would be based on the top 25 percent
2 of high school graduates. They would then gain
3 admissions to a system. The system would determine
4 which college within that system, top 25 percent
5 students, would be admitted to -- then it goes on
6 to list the race-neutral criteria from the Gaston
7 (phonetic) report that La Juana just mentioned. I
8 have a copy of that to also submit to the
9 Committee.

10 CHAIRMAN CANALES: Thank you.

11 MR. KESTER: The other approach is --
12 that's being taken in -- during admissions is the
13 direct assertion that race should continue to be
14 used. It's a highly controversial assertion. And
15 there are several bills that seek to do that, and
16 I'll go into those in some detail in just a
17 moment.

18 Let me just say quickly that - as
19 La Juana had said - Senate Bill 1419 has passed the
20 Committee. Senate Bill or House Bill 588 has also
21 passed the House Higher Education Committee and it
22 awaits consideration by the full House, so they do
23 have some momentum. At this point, the
24 race-neutral policies are the only bills that have
25 had this momentum in relation to admissions; the

1 direct assertion (phonetic) does not.

2 In addition, both bills also contain
3 retention programs. They require that retention
4 programs be administered by universities to help
5 deal with any remedial problems that may exist from
6 some of the criteria in the education -- criteria
7 that are used in the bills.

8 In terms of trying to find a direct
9 assertion that race should continue to be used in
10 admissions, scholarships, retention programs and
11 recruitment programs, several legislators have
12 filed legislation that seeks to meet the challenge
13 set forth by the 5th Circuit Court's decision. To
14 paraphrase that decision, it basically states that
15 the State Legislature would have to find that past
16 segregation has present discriminatory effects of
17 the magnitude that justify the use of race in
18 admissions. Senate Bill 1869 by Senator Barrientos
19 has a House companion identical to 1869. That is
20 House Bill 3418 by Rangel in the House; that's
21 scheduled for a public hearing this coming
22 Tuesday. It seeks to establish a legislative
23 finding that race and ethnicity can continue to be
24 used in admissions, recruitments, scholarships,
25 retention programs based on the present effects of

1 past discrimination. This finding would be
2 supported by findings set forth in a resolution,
3 which is being drafted currently, which would
4 accompany the bill. That resolution gives an
5 accounting of past discriminatory events and
6 policies in Texas and the present effects of those
7 events and policies today.

8 It's important to note that there is
9 considerable debate as to whether this would be
10 sufficient -- whether this would be sufficient to
11 overcome Hopwood. There is also considerable
12 debate as to whether or not the bills will actually
13 be passed. You can imagine it's very difficult to
14 get the majority of the legislature to agree on the
15 history of discrimination in Texas, the recent
16 history of discrimination in Texas and, of course,
17 the present effects of that discrimination.

18 The other bill to note is House Bill
19 3217 by Representative Turner. It would require
20 that the Texas Higher Education Coordinating Board
21 conduct a study of the effects of racial and ethnic
22 education in Texas and the appropriateness of the
23 measures used to remedy those effects in admission
24 - I'm sorry - discrimination, and the
25 appropriateness of the measures used to remedy the

1 discriminatory effects in admissions and financial
2 aid. That would be a report that would be sent to
3 the next legislature to determine if additional
4 remedial action needs to be taken in admissions or
5 financial aid.

6 In addition to those admissions bills,
7 there are also several bills that relate to
8 scholarships. Higher education institutions note
9 that they will be unable to enroll numbers of
10 minority students equal or greater to those of
11 pre-Hopwood level without additional scholarship
12 funding. Race-neutral policies require that an
13 additional number of Whites be admitted even with
14 economically and educationally disadvantaged
15 criteria, because of the greater proportions of
16 Whites in the Texas population.

17 Additionally, the Texas Higher Education
18 Coordinating Board estimates that funding will have
19 to be approximately doubled to continue to provide
20 scholarship funds to the same number of minority
21 students. All of the proposals for scholarships
22 currently filed with legislation are race neutral.

23 Senate Bill 180 by Senator Ellis from
24 Houston is patterned after the Hope Scholarship
25 Program, which is a successful race-neutral

1 scholarship program in Georgia. It has broad
2 support in the Senate; however, at this point it
3 has not passed. It seeks to give scholarships to
4 students who graduate from high school with at
5 least a B average. There are also a number of
6 proposals which use race-neutral criteria that seek
7 to give scholarships to educationally and
8 economically disadvantaged students. These would
9 be the same criteria -- or similar criteria to that
10 used in Senate Bill 1419 and House Bill 588. Those
11 criteria are based on recommendations of the
12 Coordinating Board Committee on criteria for
13 diversity.

14 There are also two riders to the
15 Appropriations Act, both of which are currently
16 being considered. They exist in something called
17 the "wish list" for the Appropriations Bill Article
18 11. They have not been actually placed into the
19 base budget. That will be debated over the next
20 several weeks. One of those riders would require
21 public universities to consider certain
22 race-neutral criteria, specifically whether or not
23 a student graduating from a low-performing high
24 school, whether or not that student is the first
25 generation college graduate or high school graduate

1 or the first generation to enter college, their
2 socioeconomic status, et cetera. That would be for
3 admissions, scholarships, recruitment and retention
4 programs.

5 The second rider is for universities to
6 encourage private donors who want to contribute
7 funds for minority scholarships, or race-based
8 scholarships, to do so through private
9 foundations. The university under Hopwood can't
10 administer that money, so they would recommend that
11 individuals or organizations or corporations, et
12 cetera, would send that money on to a private
13 foundation.

14 Finally, one of the bills that deserves
15 note is Senate Bill 179. It has a House companion,
16 House Bill 589. It deals with indemnification of
17 higher education admissions officers. It seeks to
18 clarify that university admissions officers are
19 indemnified from actual damages, court costs,
20 attorneys' fees adjudged against the officer if a
21 cause of action is filed against the officer if
22 they're acting in an official capacity and if they
23 were acting within the course and scope of their
24 official duties, because Hopwood declares that they
25 may be held personally liable for admissions

1 decisions. The fear is - at least by some
2 legislators - that in making a decision between a
3 White applicant and a minority applicant, the
4 admissions officer might err on the side of
5 caution, fear of a lawsuit. House Bill 589 passed
6 out of Committee last week and was waiting for
7 consideration before the full House. Senate Bill
8 179 will be up for hearing in Committee on Monday.
9 So with that said, we'd open up for any questions.

10 MS. BARTON: Could I add one more
11 thing?

12 CHAIRMAN CANALES: Yes.

13 MS. BARTON: Steve and I are here to
14 represent our Senators' office, but we also wanted
15 to let the Board know -- the Committee know that
16 legislation alone does not change things. You have
17 to have cohesive group entities going on. So to
18 effectively zero out or try to neutralize the
19 impact of Hopwood, we would have to have
20 legislation that would pass and be made into law.
21 We would have to have extra monies for scholarships
22 and financial aid. We would have to have a
23 commitment from the chancellors and presidents of
24 the entities, that they are going to work toward
25 this goal. And then we would have to have an

1 aggressive public relations campaign of outreach
2 and education to show that the doors of Texas
3 public education institutions are not closed to
4 anyone.

5 CHAIRMAN CANALES: Thank you very much.
6 We are now open for questions.

7 THE COURT REPORTER: Excuse me. Can I
8 go ahead and change the paper now before it runs
9 out?

10 CHAIRMAN CANALES: Sure.

11 MR. GRAGLIA: The indemnification
12 provisions you mentioned for officers seems to me
13 to be possibly quite suspicious and subject to
14 attack. You say the reason is -- what has been
15 suggested is that you wouldn't want admissions
16 officers to be afraid to choose the Black, that
17 might open them to a suit. But one could also say
18 that, this apparently is telling these admissions
19 officers, Feel free to discriminate against Whites
20 all you want. Obviously, the purpose of all of
21 this is, as you say, to counteract Hopwood, somehow
22 to continue to get large numbers of Blacks and
23 Mexicans into these schools. And what this bill
24 seems to be saying to college administrators is,
25 You are free to discriminate. Don't worry about

1 liability. We'll cover you.

2 MR. KESTER: Actually, in no way does it
3 do that. The intent and the language is quite
4 specific. It states that the admissions officer
5 indemnity -- the indemnification would only be
6 extended to the admissions officer if that
7 admissions officer was acting within the course and
8 scope of their duties. In fact, it goes on to say
9 if there was any intent on behalf of that
10 admissions officer to go beyond that, the course
11 and scope of their duties, to wilfully break the
12 law, a rule or regulation of the university, then
13 the indemnification would not be extended. That
14 will be a finding made by the court or by the
15 institution itself, the Attorney General's office,
16 as well. We have taken great pains to make sure
17 that the intent is clearly stated on the
18 legislative record, that that would not be the
19 case. In no way do we want to give a wink to the
20 law, so to speak, in terms of trying to give
21 someone the feeling that they have the protection
22 to break the law, that would not be the case under
23 this bill.

24 MR. GRAGLIA: Let me ask you a different
25 question. This list of alternative criteria, for

1 example, does -- an applicant who outperforms on
2 standardized tests other students with
3 socioeconomic background, why might that be
4 considered a relevant consideration?

5 MS. BARTON: There are studies and
6 reports that indicate that within certain
7 socioeconomic backgrounds, educational backgrounds,
8 so forth, that students in particular situations
9 perform similarly on tests. And students who have
10 been exposed to a better education -- I don't want
11 to say better, because Texas has the best
12 educational system in the country. We are working
13 to make it better. But just those students who
14 just may be in an inner-city community may not have
15 had computers since the first grade where another
16 school -- student may have had that. Or a student
17 may not have been able to study abroad or to be
18 exposed to different workshops and be able to go to
19 debate and go to different math competitions, and
20 things like that, not because they were not
21 educationally prepared, but because they had to go
22 take care of sisters or brothers at home or they
23 had to go to a job because they were helping to
24 sustain the family. So they're saying within the
25 socioeconomic background of which that student was

1 brought up or that student was educated that that
2 student performs similarly to those other
3 students.

4 MR. GRAGLIA: I understand that there is
5 a very close correlation between socioeconomic
6 class and academic performance, very close
7 correlation, especially performance on standardized
8 tests. However, I don't understand that it is
9 valid -- these consideration are valid to the
10 extent that they predict the likelihood of a
11 student to succeed in the course of education. If
12 they do not have that effect, then they're not
13 valid. If they have the effect, say, of increasing
14 the number of Blacks in the school but not
15 educationally valid, then they'd have to be
16 considered racially discriminatory. Just as if
17 someone says, Well, I just don't hire people from
18 that area, perhaps they're all Black. Well, I'm
19 not racially discriminating, I'm geographically
20 discriminating. There is no reason to select that
21 area except the racial effect, that is race
22 discrimination. Similarly with these, unless these
23 are educationally valid -- unless there is some
24 reason to think that the fact that a student from a
25 particular socioeconomic area does better than

1 others in that area, that that indicates a higher
2 likelihood of success and indication, then it's not
3 valid, and I don't believe that that can be shown.

4 Professor Joe Horn of the psychology
5 department was here today, I think can show that
6 there is no reason to think that the fact that a
7 student has done better in certain socioeconomic
8 areas than others in that area, that that means
9 that this student will outperform his marks, not
10 that he will outperform others in that area.

11 Clearly that's right, he's done better. But that
12 somehow his objective scores will now underpredict
13 how he will perform. I don't believe there is any
14 basis for that, I think it's very -- that because
15 he's out -- he outperforms others in his
16 socioeconomic area, now his scores underpredict or
17 underperform, and unless there is a basis for that,
18 this is racially discriminatory.

19 CHAIRMAN CANALES: After this we'll move
20 on to Maria Berriozable's question.

21 MR. KESTER: Let me respond quickly.
22 You said that if the criteria fails to be an
23 accurate predictor of academic success, then it
24 would have to be racially discriminatory. I think
25 that it might be that it would have to be simply

1 not valid as a predictor of success. We have a
2 number of possible -- possible predictors of
3 success that are out there. Test scores are one
4 that have been traditionally considered. Grades
5 have been another that have been traditionally
6 considered. There is a list in the report that the
7 Higher Education Coordinating Board put together of
8 alternative predictors for success, whether or not
9 you came from a low-performing high school and yet
10 still have various others things that may -- may in
11 someway assist you in getting through in a rigorous
12 academic college program, whether or not you worked
13 while you were in high school, whether or not you--

14 What were some of the others?

15 MS. BARTON: Bilingual background,
16 whether your parents had a college degree. You
17 know, a lot of persons are not directed or pushed
18 toward higher education because their parents don't
19 have it.

20 MR. KESTER: I think it's important to
21 say that all of these are somewhat suspect at this
22 point. They have not been tested as a part of an
23 admissions program. Just as -- and yet at the same
24 time we have significant data that says that
25 testing is not an accurate predictor. In fact,

1 Chancellor Cunningham from the University of Texas
2 System stated this much in meetings with the
3 Senators who passed this legislation. So I think
4 that there are a number of predictors out there,
5 all of which could be valid, may not be valid.
6 There is an attempt by the legislature to seek some
7 which hopefully will work. If they don't, then we
8 have to go back to the drawing board.

9 CHAIRMAN CANALES: We'll move on to
10 Maria Berriozable.

11 MS. BERRIOZABLE: Yes. I'm interested
12 in knowing what is happening in this legislative
13 session relating to pre-college education, K
14 through 12. I know that there are some bills on
15 more charter schools and some of us have a deep
16 concern that that will move some of the students,
17 best students, quote, from the public school
18 system. That's one question. And the other one
19 is, is there any work being done by this
20 legislature on the old issue of equalization of
21 funding? Realizing that the reason we are even
22 discussing this affirmative action and all these
23 other issues is because our children are not
24 getting the appropriate opportunities, the fair
25 opportunity, before they even ever get to college.

1 MS. BARTON: There are quite a few
2 pieces of legislation that are dealing with those
3 types of issue. About a week-and-a-half ago there
4 was a press conference after the Higher Education -
5 excuse me - the Education Committee meeting where
6 Senators got together, concerning vouchers and
7 charters. What they basically said is that they
8 were for the education of children. That if you
9 significantly fund at the level that you should,
10 public education, that other measures would not
11 have to be used, okay.

12 Basically there is a push in the
13 legislature, two bills. One is a charter school
14 bill, which you know we have right now 20 existing
15 charter schools that have been in existence, some
16 four years, some just since September. The initial
17 bill was to increase those from 20 to 100 over the
18 biennium. There was considerable debate on that
19 issue, and they have pulled back to say that they
20 will increase it to 80 and that they will do
21 extensive evaluation and monitoring of those
22 programs, not just so that other charter schools
23 could be developed, but that whatever programs or
24 processes that the charter schools are doing that
25 are working to increase the performance of students

1 will be shared with not only charter schools but,
2 you know, the regular school system.

3 There are quite a few programs going in
4 place right now for development of K through - what
5 did they say - K through 13, which actually goes
6 into college, which is outreach programs; making
7 sure that the colleges are targeting students who
8 may be -- might not even consider college, in
9 junior high and high school. These are students of
10 all races, ethnicity, background and so forth.
11 Also, there are programs that they are working on.
12 The governor has a reading initiative that they're
13 going to -- they're trying to implement for
14 K through three students. Saying that the reason a
15 lot of students, multiracial students, Whites,
16 Anglos, Hispanics, are not doing well later on in
17 their academic life is because -- between the ages
18 -- Grades K through three that they have reading
19 problems that were not identified, that were not
20 diagnosed, that were never taken care of at that
21 age. And you know that the basis of the foundation
22 of what you are going to do is basically founded in
23 the K through three. So there are lots of
24 initiatives that are being proposed. Right now
25 they are all proposals, because things have gone

1 from the Senate Education Committee; they're on the
2 way to the Floor, and they have to go out through
3 the other half of the process in the House. So
4 these are all attempts. But it is widely
5 recognized within the Senate and the House that we
6 need to properly fund education, however we have to
7 fund education, if we are to have an educated
8 populace in the future.

9 CHAIRMAN CANALES: Mr. West.

10 MR. WEST: Right. Just a couple of
11 quick question. First for -- is it Steve Kester?

12 MR. KESTER: Kester, yes, sir.

13 MR. WEST: What's the progress on the
14 House side of the equivalent of that SB 1419 that
15 we were hearing about?

16 MR. KESTER: House Bill 588 has passed
17 out of the Committee. It's currently pending in
18 the Calendars Committee, which sets the calendar,
19 the agenda, for the full House for consideration.
20 I wouldn't hazard a guess as to when it will be
21 brought up for consideration in the full House.

22 MR. WEST: Is the bill language the
23 same?

24 MR. KESTER: No, it's not. It's
25 supposed to be the 50/40/10 Plan, if you understand

1 the differences in the tiers there. The 588 seeks
2 to establish a three-tier program --

3 MR. WEST: But this 40 calls for these
4 special criteria in the same --

5 MR. KESTER: In the 1419, no, it's
6 different, actually. The way the House Bill works
7 is it has a 10 percent auto -- automatic admit. In
8 other words, the top 10 percent of high school
9 graduates from public -- from public schools in
10 Texas get automatic admission -- public and private
11 schools, get automatic admission to universities.

12 The next 25 percent of the class -- in
13 terms of class rank from secondary schools would
14 then get automatic admission to systems. Systems
15 would determine which schools within their systems
16 would actually accept those students. From there,
17 various criteria would be applied to determine the
18 remainder of the admissions class.

19 MR. WEST: Now, the question I had -- I
20 wanted to follow up on Lino Graglia's comment about
21 the criteria used, the 40 percent. Because what
22 you're doing is -- I mean, I'm really kind of
23 amazed that these things have passed with so little
24 controversy. What you're saying is that 40 percent
25 of all admits in Texas higher education, public,

1 have to be admitted on the basis of criteria that
2 are correlated with low performance. For example,
3 poverty of parents is correlated with low school
4 performance, lower educational standards by the
5 parents is correlated with lower school
6 performance, English not spoken at home, which is
7 closely associated with bilingual, is similarly
8 correlated with lower performance, broken home is
9 highly correlated with lower performance. And that
10 criterion where you had all those special
11 responsibilities in the family, babysitting, child
12 care, those are all going to be posited and
13 correlated with broken homes. So, I mean, this is
14 a dramatic and drastic change in the character of
15 admissions of Texas higher education. You could
16 end up with a situation that's a lot worse than the
17 pre-Hopwood situation from the point of view of
18 genuine equality in treatment, so I'd like to --
19 has this been discussed? Are people aware of these
20 problems?

21 MR. KESTER: It's been discussed today
22 at great length. In fact, all of the major
23 institutions in Texas have voiced support for it,
24 the Attorney General has voiced support for it.
25 And I think that they feel comfortable that a tax

1 dollar supported institution of higher education
2 does have room for students who are socially and
3 education -- I'm sorry -- economically and
4 educationally disadvantaged. The fact that it is
5 currently a 40 percent figure, as drafted in the
6 bill -- it was up to at one point, it is now at
7 least 40 percent, is something that apparently,
8 members, at least in the Education Committee, have
9 said are comfortable with and that again the Higher
10 Education Committee, at least to the extent of the
11 leadership of the committee, is comfortable with it
12 at this point.

13 MR. WEST: Did anybody vote against this
14 thing?

15 MR. KESTER: In committee, no.

16 MR. WEST: Unanimous?

17 MR. KESTER: It's unanimous.

18 MS. BARTON: And just to let you know
19 Senate Bill 1419 did not just come up out of the
20 blue. The Senators actually met. It was a large
21 group of Senators, not just those on the education
22 committee, that were multiracial, bipartisan, that
23 said we need to do something. This has taken
24 months and many revisions to come up with. The
25 higher education institutions, the chancellors, the

1 presidents, their statistical people, their
2 admissions people met continuously on this. There
3 was a lot of give and take on the issues. And
4 basically they worked. There -- there was some
5 heated debate. There was standstills. There were
6 some -- you know, but they learned and they worked
7 and they compromised to come up with something.
8 And what the institution said on Wednesday during
9 our committee meeting was that this is something
10 that we can work with, okay, to help us increase
11 the pool of students that we will be pulling our
12 admittees from, so they did say that they could
13 work with this. And that's all that the Senate is
14 intending to do, is to give us a workable policy
15 procedure, that we can work with that will increase
16 the pool of students applying to colleges, being
17 admitted to colleges, graduating from these
18 colleges. And basically what it's saying is we
19 will not go back. We will stand firm and go
20 forward.

21 MR. KESTER: I think it's also important
22 to know that you can associate -- it's in the
23 criteria with low performance. I think grades can
24 also continue to be considered as can standardized
25 test scores within -- as they are related to other

1 individuals. Test scores, within the same
2 socioeconomic category. And beyond that, the bill
3 also requires retention programs and outreach
4 programs. Programs that would go to students who
5 need assistance in actually getting through
6 school.

7 The bill also contains reporting
8 requirements which would come back to each session
9 of the legislature to determine whether or not this
10 is actually working. This is ground-breaking.
11 Never before has there been a uniform state
12 admissions policy. Never before has the state told
13 universities how to admit. This is revolutionary
14 here. It's absolutely right. So we, obviously,
15 are breaking the --

16 MR. WEST: So what I raised in the last
17 panel, as a theoretical possibility, is about to
18 become law. That is, the State, basically, is
19 coming up with a series of criteria that are
20 surrogates for race and they are now mandating
21 every university -- every public university to take
22 those surrogate criteria into effect, the 40
23 percent?

24 MR. KESTER: I think the members would
25 take exception with the characterization of it

1 being surrogate for race or a proxy for race.

2 Again --

3 MR. WEST: Do you deny that every one of
4 these criteria is positively correlated to racial
5 minority status?

6 CHAIRMAN CANALES: Let him finish the
7 answer, please.

8 Go ahead, please.

9 MR. KESTER: That is in effect. It is
10 also the case, as is the case, in any debate,
11 you're going to have members with different
12 interpretations. But for the most part, the
13 members feel like socially -- or I'm sorry --
14 economically and socioeconomically disadvantaged
15 students and educationally disadvantaged students,
16 regardless of their race, deserve an opportunity to
17 go to a public -- publicly funded institution. And
18 I think that that is the idea of educationally and
19 economically disadvantaged that drives this, more
20 so than race. That is why you see a bipartisan
21 commission of conservative members, who have very
22 few minorities in their districts, joining hands
23 with minority members, who have significant numbers
24 of minorities in their districts, to pass something
25 that is race neutral.

1 CHAIRMAN CANALES: Yes?

2 MS. BARTON: Excuse me. And in the
3 committee meeting, just for you to know, someone
4 did bring up -- one of the members did bring up the
5 fact that bilingualism as one of the criteria. And
6 it was answered by the members -- by each -- by
7 some of them using different languages, not just
8 Hispanic -- just not -- just not Spanish. Some of
9 them use German. Some use Ebonics. They use every
10 language and said that's -- you know, the multi or
11 bilingual -- bilingual is not just Spanish
12 speaking.

13 MR. KESTER: Ebonics is not.

14 MS. BARTON: Ebonics is not considered a
15 language, but I'm just telling you that they all
16 had an answer to that first request, that this was
17 going to be race. And they said no, because
18 bilingualism does not have a color on it. It just
19 has a tie to a home country.

20 CHAIRMAN CANALES: All right. Thank you
21 both very much, and also to Senator West and
22 Senator Barrientos and both of you for being here
23 today. Thank you very much.

24 We'll stand at recess at this point.

25

(BRIEF RECESS)

1
2
3 CHAIRMAN CANALES: We have with us today
4 Miguel Bendolla, M.D. and a Ph.D., M.P.H. and
5 Juntos Coalition United Against Hopwood. Thank you
6 for being here today. Charles Drayden, J.D., Chair
7 of National Issues and Resolution Committee,
8 National Bar Association. And Deborah Green,
9 Ph.D., Director of Division of Medical Education,
10 Texas Medical Association. Jorge Peacher, M.D.,
11 immediate past president of Mexican-American
12 Physicians' Association. We thank you all very
13 much for being here today.

14 We'll take it in the order as it is on
15 the agenda. We will start with Dr. Bedolla.

16 DR. BEDOLLA: Good afternoon. I am
17 going to introduce myself. I'm Dr. Miguel
18 Bedolla. I'm an associate professor of family
19 medicine, but I am not here on behalf of the
20 medical school in any way. I am here as a member
21 of a coalition, which is called Juntos Together
22 Against Hopwood. And what we want to say is that
23 we're a coalition of non-Hispanic Whites,
24 African-Americans and Mexican-Americans who want to
25 work against Hopwood.

1 Since I'm a medical ethicist, I would --
2 if you would allow me to do so, I would like to
3 share with you my point of view on this as an
4 expert in ethics, medical ethics. And I see myself
5 as having basically two choices: The choice of
6 Socrates, the man who is accused, convicted, who
7 never accepts to be guilty of what he was convicted
8 for, but he is willing to take the punishment and
9 he takes it to its ultimate consequences. Or the
10 innocent Nazi, the person who obeys the law, but
11 tries not to be responsible for the consequence of
12 his obedience. If anything, I guess, I would
13 rather be Socrates than an innocent Nazi.

14 I want to share with you some things,
15 because I was asked to talk about the impact of
16 Hopwood on the medical profession. In the year
17 1980 -- 1980 there were 18,853 Hispanic physicians
18 in the United States. By 1990 the number had gone
19 up to 28,781. For African-American physicians, for
20 the same years, 1980, there were 13,243
21 African-American physicians. By 1990 the number
22 had risen to 20,874. So in one case we had an
23 increase of 10,000 and in the other case we had an
24 increase of about 7,000.

25 The question is, where did these

1 Hispanic physicians come from? I think we can
2 account for the African-American physicians,
3 because African-Americans -- African-Americans have
4 had a very small but significant number of people
5 enrolling in the medical schools. What I'm driving
6 at is that the increase in the number of African --
7 Mexican -- Hispanic physicians in the United States
8 is mostly due to foreign-born physicians of
9 Hispanic nations who move to the United States and
10 then get classified as Hispanics. In no case would
11 we think that this increase is due to the number of
12 Hispanics who have been born in the United States
13 and in no way does this represent the number of
14 Mexican-Americans who have actually had access to
15 medical school. That's on the one hand.

16 On the other hand, we can -- needs --
17 and since I belong to the what used to be called
18 the South Texas Medical School, I would simply say
19 that we're an under-served area of the State of
20 Texas. Right now if we were to have enough
21 physicians to have the same ratio of physician per
22 unit of population as the rest of the State of
23 Texas, we would -- we could accommodate about 450
24 physicians. But if we went south -- south of
25 Texas, South Texas, to be -- come up to the

1 standards of Massachusetts, for instance, we could
2 probably find work for about 2,500 physicians. So
3 we have a very, very real need of physicians in
4 South Texas, which manifests itself in the
5 statistics, health statistics of the population.

6 Let me tell you about the -- the
7 applicant pool. What is going on with the number
8 of applicants who want to go to medical school.
9 This is both for African-Americans and for
10 Mexican-Americans. In 1974 African-Americans --
11 there were 2,477 African-Americans applying to
12 medical school. That same year, according to my
13 estimates, there were only 440 Mexican-Americans.
14 Actually they're not my estimates. They're
15 official figures from the Physicians of American
16 Medical Colleges. So whereas African-Americans
17 represent around 6 percent of the pool of
18 applicants, Mexican-Americans represent only one
19 percent of the pool of applicants. And the whole
20 pool was made up of forty-two thousand seven -- six
21 hundred and twenty-one people who wanted to --
22 persons who wanted to go to medical school.

23 The pool remained basically the same -
24 and I will make this data available to the
25 committee - until about 1994 by -- when we had

1 3,659 African-Americans applying to medical school,
2 so it's -- from 1974 to '94, that's 20 years, the
3 pool rose by about 1,100, 1,200, but the pool of
4 Mexican-Americans had only risen from 400 and --
5 440 to 861. So that even then, African-Americans
6 represent 8 percent of the pool of applicants to
7 medical school from the U.S. and Mexican-Americans
8 only 2 percent. And the overall size of the pool
9 have increased from forty-two to forty-five
10 thousand people. Meanwhile -- this is what was
11 going on in Texas. And I should let you know that
12 there are three states which account for 32 percent
13 of the African-American and Mexican-Americans
14 supplying to medical school. That's California,
15 Texas and New York.

16 In 1974, according to my estimates, and
17 it was kind of difficult, but I think my estimates
18 are reliable, there were only about 123
19 African-Americans trying go to medical school and
20 about 149 Mexican-Americans. It peaked in 1994, 20
21 years later, with 183 African-Americans applying to
22 medical school and 291 Mexican-Americans applying
23 to medical school. Meanwhile, the overall pool of
24 applicants have risen from about 3,400 to more than
25 3,700. So that's the number of people who were

1 applying to go into medicine.

2 Let me share with you the number of
3 people who were being accepted. Of the 2,400
4 African-Americans who applied in '74, 1,000 got
5 accepted. So that's just a little less -- a little
6 better than one-third. And of the 440
7 Mexican-Americans who applied in 1974, 216 got into
8 medical school. By 1994, of the 3,659
9 African-Americans that got into medical school,
10 1,417 got in. And of the 861 Mexican-Americans who
11 applied to medical school, 478 got in. That's in
12 the United States. These are the figures in
13 Texas.

14 As far as I could estimate in 1974, only
15 32 African-Americans tried to go -- got accepted to
16 medical school in Texas and about 54
17 Mexican-Americans. By 1994, those numbers had
18 risen to 74 African-Americans and about 154
19 Mexican-Americans. But by 1977 (sic), those
20 numbers had decreased as follows: From 74 to 40
21 for African-Americans, and I think that's a very
22 generous estimate. For instance, I know for a fact
23 that the U.T. system has accepted only about 22
24 African-Americans for this fall. And the number of
25 Mexican-Americans have decreased from 154 to about

1 110. And once again, that is probably a generous
2 estimate. Probably the actual number of
3 Mexican-Americans who will go to medical school is
4 closer to 100. So from the class that applied in
5 1994 to the class that applied in 1997, we see a
6 decrease, in the case of African-Americans, of
7 about one-half the number of people who got
8 accepted. And in the case of African-Americans, at
9 least one-third of the people are gone.

10 Now, I want to, as they say, shift gears
11 and speak something about the way people get
12 selected to medical school. And I have briefly to
13 talk about the issue of the MCAT, the Medical
14 College Admissions Test. And I do this, for one,
15 because I had it ready to share it with you. And,
16 second, because the issue of validity was raised
17 earlier today. And there are two issues: Validity
18 and reliability. The MCAT, the Medical College
19 Admissions Test, is very reliable. But the
20 question is whether or not -- is it valid to select
21 people to medical school. This is what I did, and
22 I'm going to read from here, otherwise, I may get
23 confused with the description.

24 I was on my computer working with a
25 statistical package and I created a column with the

1 proportion of the population of each state in the
2 Union, and the District of Columbia, as they appear
3 on Page 107, of Minority Students in Medical
4 Education, Facts and Figures, Roman Numeral IX,
5 which is published by the Association of American
6 Medical Colleges. I then created three columns
7 with the average verbal reasoning, physical
8 sciences and biological sciences score of each
9 state in the Union. Verbal reasoning, physical
10 sciences and biological sciences are the three
11 things that you get tested for when you take the
12 MCAT, and then I correlate the columns for
13 African-Americans.

14 And this is what I found out. And what
15 I found out is that the MCAT is a very good
16 predictor of the size of the population of
17 African-Americans in any state of the Union. So
18 that, for instance, when you correlate the rank of
19 a state in the Union on the basis of its population
20 of African-Americans with the average MCAT score of
21 that state in verbal reasoning, you get a negative
22 correlation, coefficient of minus 0.53. And,
23 personally, I think that you hardly ever see
24 correlations as negative as that in the social
25 sciences. The correlations for the physical

1 sciences is minus 0.31 and the correlation of the
2 biological sciences is minus 0.47. In other words,
3 basically what the MCAT is measuring is how
4 non-Black you are. And this is the instrument
5 which is being used, in many situations, to select
6 people to the medical school.

7 So I come up with an analogy, since I
8 imagine that not everyone deals with these issues
9 all the time. The MCAT is like an antenna. It
10 receives -- it's sensitive to all the frequencies.
11 So you tune your receiver to select the frequency
12 that you really want to be sensitive to. So it's a
13 very gross, very insensitive instrument to
14 precisely -- what we're trying to do with it, which
15 is to identify the people who we think would come
16 to medical school, succeed in medical school, and
17 things like that.

18 I was going to -- I see that I've gone
19 slightly over the time that I was assigned, but I
20 would like, if I still have about a minute, to
21 share something.

22 My organization, Juntos Together Against
23 Hopwood, believes that the impact of the Hopwood
24 decision and Morales' interpretation, on the
25 availability on -- on the medical profession is

1 real. It's effect -- it's effects will be both
2 short term and long term. The short term we see a
3 significant decrease in the number of minority
4 applicants to medical school. Forty-five percent
5 of the Mexican-Americans and about 50 percent of
6 African-Americans in the pool from a year ago were
7 gone this year, and the number is probably going to
8 go down even for 1998.

9 In the long term, we will see the
10 accumulated effect of not addressing the health
11 needs of populations that would be served by the
12 people who have been discouraged from applying to
13 medical school by the Hopwood decision. And
14 perhaps it's not so much the Hopwood decision as
15 the Morales interpretations. People are
16 discouraged. People are not applying -- to
17 programs that we used to have 200 applications for,
18 we now get barely 100 applications. These
19 accumulated effects will manifest themselves in
20 increases in the morbidity and mortality of race
21 populations and decreases in the level of
22 well-being and life expectancy of the populations,
23 because they will not have the providers that they
24 need. And in the long term, we'll also see a
25 decrease in the number of minority physicians who

1 serve as role models to the next generation. So
2 there will be an incremental effect as we go down,
3 you know, 20, 30, 40 years after the Morales
4 interpretation of the Hopwood decision. The brain
5 -- the brain drain on Texas is very real. I have
6 not been able to quantify, so I was asked to
7 briefly mention some things that I would
8 recommend. I really think that the MCAT is
9 violating the civil rights of African-Americans,
10 perhaps not so much as -- as that the case for
11 Mexican-Americans, but my correlations are real.
12 Those negative correlations are real. And I think
13 it really violates the equal opportunity of an
14 African-American to go to medical school when he or
15 she is judged to be fit or not fit on the basis of
16 an MCAT score, which is basically what the
17 admissions committees end up doing.

18 I would ask you to consider the
19 possibility of mandating a moratorium on the use of
20 the MCAT in the medical schools in Texas. I would
21 ask you to consider the possibility of mandating
22 the AAMC to redesign the MCAT during the
23 moratorium. And I guess those are my basic
24 recommendations. Thank you.

25 CHAIRMAN CANALES: Thank you, sir.

1 Deborah Green.

2 MS. GREEN: Sorry. I thought it was
3 Dr. Drayden.

4 I also would like to thank you for the
5 opportunity to come and talk with you today about
6 this critical issue.

7 For those of you who don't know, the
8 Texas Medical Association is a professional
9 organization of more than 35,000 physicians and
10 medical student members. It is located in Austin
11 and has 120 component county medical societies
12 around the state. The association represents 85
13 percent of the doctors of medicine and 48 percent
14 of the osteopathic physicians licensed and residing
15 in Texas. TMA's key objective is to improve the
16 health of all Texans.

17 Some statistical information. I had a
18 sheet distributed that looks like this. You may
19 find it easier to follow some of what I'm going to
20 share with you.

21 Hispanic physicians represent 9 percent
22 of the practicing physicians in the state, while
23 they are 26 percent of the 19 million people living
24 in Texas. That is, they are Hispanic.

25 African-American physicians represent 3 percent of

1 practicing physicians, while 12 percent of the
2 Texas population is African-American.

3 TMA annually surveys students graduating
4 from Texas medical schools and residents completing
5 training programs in the state. We also regularly
6 analyze data on practicing physicians in Texas.
7 The data regarding ethnicity for 1996 Texas medical
8 graduates and 1996 completers of Texas residency
9 training programs suggest a continued shift toward
10 greater diversity in the Texas physician work force
11 of the future. Hispanic physicians represented 14
12 percent and African-American physicians represented
13 3 percent of 1996 completers of Texas residency
14 programs, while Hispanic students represented 11
15 percent and African-American students represented 4
16 percent of 1996 Texas medical graduates.

17 Recent TMA surveys have shown that the
18 percentage of Texas medical students, graduates and
19 residency program completers who are from ethnic
20 minority groups has been slowly but steadily
21 rising. Reinforcing this trend, 15 percent of 1996
22 matriculants to Texas medical schools were Hispanic
23 and 5 percent were African-American. While these
24 numbers do not come close to mirroring the Texas
25 population, they do demonstrate a positive trend

1 toward improving the ethnic diversity of the Texas
2 physician work force. TMA believes that these
3 improvements, however, are at risk resulting from
4 the Hopwood versus Texas ruling.

5 Although the Hopwood case involved
6 admissions at the U.T. School of Law, Texas medical
7 schools quickly examined their admissions policies
8 in light of the results of the ruling. As a result
9 of these reviews, all of the schools and procedures
10 and decisions have been modified to be totally
11 blind to race. In addition, race-based scholarship
12 programs have also been curtailed. The Hopwood
13 decision is binding only in Texas, Louisiana and
14 Mississippi, which is even more problematic for
15 Texas medical schools, because Texas medical --
16 because medical education occurs in a national
17 marketplace. However, by state law, Texas public
18 medical schools must enroll no fewer than 90
19 percent of their entering classes with qualified
20 Texas applicants. But Texas how has one less
21 mechanism for recruiting some of its best and
22 brightest Hispanic and African-American students to
23 our seven public medical schools. The state is
24 further hampered because it cannot earmark an
25 extensive scholarship to attract students from

1 these populations to our schools. This situation
2 has put Texas medical schools in a poor competitive
3 position with out-of-state schools that are also
4 seeking to create a more diverse student body. The
5 playing field is no longer level and Texas is no
6 longer just at risk of losing these students. The
7 public medical schools in Texas have all recorded
8 lower application rates for the entering class of
9 fall 1997 from these populations.

10 I was asked to include in my statement
11 information about TMA policy. Our policy addresses
12 creating an ethnically diverse physician work force
13 for the state and focuses on the beginning of this
14 process. While TMA opposes quota systems, the
15 association's leadership recognizes that there is
16 an under-representation of minority medical
17 students and minority physicians.

18 One of the reasons TMA supports
19 increasing minority admissions to Texas medical
20 schools is that medical graduates who are members
21 of minority groups under-represented in medicine,
22 consistently show a greater interest in practicing
23 in poor areas than the other physicians, and Texas
24 has a very high degree of medical under-service.

25 Studies have shown that more than 20

1 percent of the minority population is and will
2 remain medically under-served past the year 2000.
3 This represents a significant and growing portion
4 of the population that will not have access to
5 medical care.

6 The Association of American Medical
7 Colleges has determined that an ethnically diverse
8 physician work force is a desirable goal for
9 addressing this problem. Hispanics and
10 African-American physicians are more likely to
11 practice in areas highly populated by ethnic
12 minority groups.

13 TMA policies supports the continued
14 efforts of the Texas medical schools to recruit,
15 enroll and retain qualified under-represented
16 minorities. We believe that every effort should be
17 made to provide adequate financial support to these
18 students so that medical education is within the
19 reach of all qualified Hispanic, African-Americans
20 and other under-represented students who desire to
21 become physicians and that the Texas medical
22 schools can continue to successfully compete with
23 non-Texas medical schools in attracting these
24 students.

25 A diverse student body leads to a

1 diverse physician work force. The medical schools,
2 as well as TMA, have been concerned about
3 addressing the number of minority students to
4 reflect the Texas population. This state is
5 woefully unbalanced. Persons of Hispanic origin
6 comprise 26 percent of the population, yet only 9
7 percent of the licensed physicians and only 11
8 percent of the state's medical graduates are
9 Hispanics. African-Americans, at nearly 12 percent
10 of the state's population, represent only 3 percent
11 of the state's licensed physicians and only 4
12 percent of the state's medical graduates.

13 Increasing the number of qualified
14 minority students and helping under-represented
15 minorities become qualified for medical school
16 through a variety of programs targeting minorities
17 at middle school, high school and college, will
18 help our state achieve a more balanced physician
19 work force. But Hopwood has taken away one of our
20 post effective tools.

21 On many levels Texas is truly caught in
22 a bind. We need more African-American and Hispanic
23 physicians to assist in meeting the medical needs
24 of our expanding minority population. By the year
25 2010 Texas' traditional minority population will

1 represent nearly half of the state's population.
2 But we are being told, on the one hand, that we
3 cannot use medical education preparation programs
4 targeting minorities, because they would show
5 preference to one group over another. So we can no
6 longer continue our efforts to increase the pool of
7 qualified minority applicants, even though several
8 federal grant programs would allow these programs
9 to continue.

10 On the other hand, we are being told
11 that we cannot give any preferential weight to
12 these applicants during the admissions process to
13 our medical school. And even more confusing, it
14 seems that our public schools are now being
15 cautioned that by not having these programs in
16 place and attempting to comply with Hopwood, their
17 federal funds may be withheld by the U.S.
18 Department of Education.

19 The Hopwood ruling will adversely affect
20 Texas' ability to grow our own physicians. We are
21 being prevented from continuing some of our most
22 successful pipeline programs, which will enable
23 more students from minority groups to qualify and
24 come prepared for college-level and
25 post-baccalaureate education. We would like the

1 opportunity to turn this situation around. But
2 unless a new case comes forward and the federal
3 courts rule otherwise and gives us some relief, our
4 hands will remain tied.

5 I thank you for the opportunity to
6 testify on this issue.

7 CHAIRMAN CANALES: Thank you very much.

8 Mr. Drayden.

9 MR. DRAYDEN: Thank you very much. I'd
10 like to thank the Commission for giving the
11 National Bar Association an opportunity to testify
12 this afternoon and to discuss, in some measure, the
13 legality of the Hopwood decision, exactly all the
14 measures that have been taken or continue to be
15 taken to comply with Hopwood, and whether or not --
16 in fact, it should have been -- those measures
17 should have been taken in the first place.

18 For those of you who don't know, the
19 National Bar Association is the nation's oldest and
20 largest association of African-American lawyers,
21 judges and law students; representing over 17,000
22 members worldwide.

23 The position that I have been asked to
24 articulate to this commission today is the position
25 of the National Bar Association on Hopwood. The

1 position is really quite simple. Hopwood is not
2 the law of the land. Hopwood is actually a ruling
3 by a three-judge panel from the 5th Circuit, not
4 the entire 5th Circuit, but a three-judge panel on
5 the 5th Circuit, which does not comply with the
6 Supreme Court ruling on Bakke. Hopwood is simply
7 not the law of the land. And you might ask
8 yourself, well, the Supreme Court refused to hear
9 Hopwood and make a ruling on the 5th Circuit even
10 though it was in direct contradiction with Bakke.
11 The Supreme Court stated quite clearly that it did
12 not rule on Hopwood because the University of Texas
13 had changed it's admission policy. The Supreme
14 Court does not issue advisory opinions. It is
15 precluded from doing so. Therefore, again, Hopwood
16 is not the law of the land. Well, you might ask
17 then, well, why is the Attorney General of the
18 State of Texas stating that the schools of higher
19 education might or should comply with Hopwood?
20 Well, I won't comment on a politician's courage
21 with regard to whether or not they actually believe
22 that a ruling is actually the law. But it is not
23 the law of the land. It simply is not.

24 One of the things that I've heard today
25 is the measures that have been taken by public

1 institutions with regard to Hopwood and an effort
2 to comply. And public institutions are between a
3 rock and a hard place, as fellow members of the
4 panel have already articulated. But private
5 institutions in the State of Texas are also moving
6 to comply with Hopwood. Private institutions are
7 moving swiftly to comply with Hopwood. And they
8 are doing so under the auspices that if they
9 receive federal funds, that they must comply with
10 Hopwood, even though, as I said before, it is not
11 the law of the land and certainly not the law as
12 articulated by the United States Supreme Court. My
13 own alma mater, Houston, Texas, Rice University,
14 moved very swiftly to comply with Hopwood, and is
15 now adhering to the tenents of that ruling.

16 One of the concerns of the National Bar
17 Association is not just that Hopwood is not the
18 law, but it is certainly not the law in Louisiana
19 and Mississippi, because they are under a court
20 order decree. So they aren't even subjected to the
21 rulings of Hopwood, so Hopwood is further now. If
22 it has any application whatsoever, it will be in
23 Texas. But, again, unless Texas has seceded from
24 the Union and does not comply with the law as
25 articulated by the United States Supreme Court,

1 then Hopwood is not even the law in Texas.

2 But given the fact that the lawsuit
3 initially was against the University of Texas and
4 you have a ruling by a court with regard to the
5 specifics of that case, then actually Norma Cantu
6 was correct. Hopwood, if it has any application
7 whatsoever, is specifically to the University of
8 Texas. But everyone is very, very quick to move to
9 comply with Hopwood. And I would question whether
10 or not they moved to comply with Hopwood because it
11 is the law or because it is a convenient way to
12 exclude African-Americans, Hispanics and other
13 minorities in this nation from access to higher
14 education.

15 If we truly are going to make a
16 commitment to all Americans being free to pursue
17 the American dream, then we must open the doors of
18 higher education, and that is simply what I presume
19 the Supreme Court was attempting to do in their
20 ruling in Bakke, in which they said that race was a
21 valid criteria for a university or a college
22 seeking to diversify their student body.

23 A concern of the National Bar
24 Association with regard to Hopwood is the effect on
25 historically Black colleges and universities. It

1 would simply wipe them out. If you look at the
2 percentage of professionals that graduate in the
3 state of Texas or around the nation, those
4 professionals that serve the African-Americans,
5 Hispanics and Asians and other minority
6 communities, the majority of those professionals
7 come from historically Black colleges and
8 universities. If they were to comply with Hopwood,
9 they would virtually lose their status as an
10 historically Black or historically Hispanic college
11 or university.

12 Another concern of the National Bar
13 Association, and I think my fellow panel member --
14 panel member articulated it very well, is that,
15 Hopwood really, really hurts and severely hampers
16 the abilities of minority communities to receive
17 the services that these professional groups would
18 provide. Today it is clearly a fact that the
19 majority of doctors and lawyers who service those
20 -- who service African-American, Hispanic
21 communities are, in fact, African-American and
22 Hispanic doctors and lawyers. Those communities
23 would be severely crippled by the Hopwood decision
24 if compliance, in fact, is what we're going to move
25 swiftly to and what we have moved swiftly to.

1 Further, the National Bar Association,
2 in our efforts to stay close to our community that
3 we service, have received numerous complaints from
4 law students and other students on the
5 undergraduate level who are saying that their
6 scholarship has been revoked or their financial aid
7 has been eliminated as a result of the Hopwood
8 decision, even though race was only one of the
9 criteria used to grant that aid; it was not the
10 only criteria. Those students still had to achieve
11 a certain amount of academic success. They still
12 had to be able to compete at the university level,
13 but yet because race was simply one of the criteria
14 used in awarding their aid, that aid has been
15 eliminated. That is a travesty. Texas is poorer
16 for that. The United States is poorer for that.

17 If we hope to compete within the global
18 marketplace, we must educate all of our students.
19 We must give all our students equal access to
20 institutions of higher education. We must
21 recognize that a diverse student body is not just
22 good for the minority, but it is good for the
23 entire student body. In fact, it is good for the
24 entire community.

25 Thank you.

1 CHAIRMAN CANALES: Okay. Jorge
2 Peacher.

3 DR. PEACHER: Thank you very much. I'd
4 like to agree with all the panelists so far. I
5 think they've made superb points. And my
6 perspective will be a little bit different. I
7 would like to take the opportunity to thank this
8 advisory committee for the opportunity to testify
9 before you.

10 As to the professional impact of Hopwood
11 -- in particular as to how it relates to medical
12 education in the Hispanic community. I'm a
13 gynecological neurologist in private practice in
14 San Antonio and the immediate past president of the
15 Mexican-American Physicians Association, also known
16 as MAPA. I am the chairman of its educational
17 committee since 1991. MAPA is a 501(C)(3)
18 nonprofit organization whose mission is to increase
19 the representation of Hispanics and other
20 under-represented minorities in the health
21 professions and thereby increase the access of
22 these under-served communities to health care.
23 MAPA attempts to achieve these goals by its
24 educational programs, it's scholarship programs, by
25 it's community service and by its mentorship

1 programs.

2 Since its inception in 1983 MAPA has
3 given \$200,000 in scholarships to under-represented
4 minority medical students and Medprep high school
5 students. In fact, MAPA has given more scholarship
6 dollars to the University of Texas Health Science
7 Center and Medical School in San Antonio than has
8 its own medical alumni association, which has been
9 in existence 20 years longer than MAPA.

10 MAPA's medical preparatory program or
11 Medprep was started in 1987. It was started by
12 targeting four schools in San Antonio considered
13 medically under-served. Our program has evolved to
14 a four-year, year-round program that serves 200
15 students 9th through 12th grade. It now involves
16 32 high schools and 19 school districts and has
17 students traveling to San Antonio from as far away
18 as Eagle Pass. Medprep is a unique program. It
19 target -- it does not target the academic high
20 achievers, such as the top 10 percent of the
21 class. It targets academically at-risk and
22 economically disadvantaged students with a mean
23 grade point average of 80 percent. It is not
24 restricted to a weekend program or to a week-long
25 field trip, but basically involves 23 hour Saturday

1 sessions throughout the year. Our instructional
2 focus is broken down into three years of
3 concentration. No. 1, social and personal
4 development and life skills. No. 2, academic
5 planning and career preparation. No. 3, medical
6 education and career exploration.

7 MAPA Medprep operating support is
8 generated from MAPA members, from private and
9 community in-house support, with less than 10
10 percent of its funding coming from grants. The
11 majority of our Medprep students represent schools
12 with a 40 percent dropout rate. One hundred
13 percent of the seniors completing Medprep will
14 matriculate -- will graduate from high school, and
15 80 percent will matriculate into a college or
16 university, tremendous resource. This leads us
17 back to Hopwood.

18 As we all know, the Texas Attorney
19 General, Dan Morales, has interpreted the 5th
20 Circuit Court of Appeals decision beyond its
21 original intent. It is now -- he has now rendered
22 a legal opinion that prohibits the use of race or
23 ethnicity as a criteria for admissions, financial
24 aid, recruitment or retainment programs in the
25 State of Texas. Both the Texas House and Texas

1 Senate have introduced bills to attempt to curb the
2 devastation provided by Hopwood. The bills are
3 intended to mandate an automatic admission to the
4 two flagship institutions in the State of Texas,
5 the University of Texas at Austin and Texas A&M.
6 This mandate would allow automatic admission to the
7 top 10 percent of the graduating class of each
8 Texas high school.

9 They also recommend, but do not mandate,
10 and I repeat, do not mandate, that other criteria
11 used -- be used for admissions. The Texas Higher
12 Education Coordinating Board looked at these
13 criteria and concluded that this would result in a
14 decrease in the number of under-represented
15 minorities in Texas colleges and universities. I
16 would like to emphasize that the current numbers
17 are already low, specifically for Hispanics, who do
18 not represent the population demographics. As
19 stated before, the population demographics in the
20 State of Texas is made up of 66 percent Anglo, 18
21 percent for Hispanics and 10 percent
22 African-Americans. And I'm talking about the
23 population makeup of community colleges.

24 In universities in Texas 67 percent are
25 Anglo, 16 percent are Hispanic and 9 percent are

1 African-Americans. In -- how does there compare
2 with the Texas demographics? Sixty percent of the
3 population is Anglo, 33 percent of the population
4 -- with 33 percent of the total growth. Hispanics
5 represent 28 percent of the population and 50
6 percent of the total growth in population. I could
7 break this down further for Bexar County and San
8 Antonio, but for brevity, I will not do that. The
9 end result in -- the two bills above are Texas
10 legislators' answer to Hopwood. However, the end
11 result is a decrease in the number of
12 under-represented minorities getting into Texas
13 colleges and universities and ultimately a decrease
14 in the number that will get into graduate and
15 professional programs.

16 In 1994 those who received bachelor's
17 degrees from the University of -- from the State of
18 Texas' universities, 52 percent were Anglo, 36
19 percent were Hispanic and 27 percent were
20 African-American. Of those who received master's
21 degrees, 77 percent were Anglo, 7 percent were
22 Hispanic and 5 percent were African-Americans. And
23 those who received doctoral degrees, 61 percent
24 Anglo, 2.5 percent Hispanic and 3 percent
25 African-American. As you can see the educational

1 opportunities for under-represented minorities
2 diminished exponentially as they climbed the
3 educational doctoral ladder. And with Hopwood, the
4 opportunities will diminish even more in the State
5 of Texas. This will result in an even larger
6 percentage of under-represented minorities being
7 uneducated or under-educated.

8 MAPA has developed a program that is
9 successful in allowing high school students from
10 academic and economically disadvantaged backgrounds
11 to successfully finish high school and enter a
12 college or university. As a result of Hopwood,
13 there has been a decrease in the number of
14 under-represented minority students apply to U.T.
15 Austin. Hispanic applicants have fallen by 23
16 percent since Hopwood and African-Americans have
17 fallen by 26 percent. The results -- this results
18 in students going from local -- to local colleges
19 and universities and missing out on the opportunity
20 to get the best possible education and diminishing
21 their chances to get advanced degrees. This also
22 results in a brain drain, as previously mentioned,
23 with the best and brightest of under-represented
24 minorities leaving the state for their education
25 and possibly not returning home. Ultimately, this

1 results in the decrease in the pool of
2 under-represented applicants and ultimately --
3 again, decreases the number of students receiving
4 bachelor's degrees and master's degrees and
5 doctorate degrees from Texas universities.

6 In regards to medical education, there
7 has been a fall in the number of under-represented
8 minority applications. In 1995 - as Dr. Bedolla
9 previously stated - there were 303 Mexican-American
10 applicants. In 1996 there were 326. And in 1997,
11 since Hopwood, there was a fall to 204. These were
12 applicants and not matriculants. This represents a
13 38 percent reduction in the applicant pool. As the
14 applicant pool drops, so does the number of
15 under-represented minorities which become
16 accepted.

17 I could speak firsthand as to what is
18 happening at the University of Texas Health Science
19 Center in San Antonio, also at South Texas Medical
20 School, because I happen to be a member of the
21 admissions committee. In 1992, South Texas Medical
22 School had the highest percentage of Hispanic
23 medical students enrolled in the nation at 15
24 percent. This is 1992. In 1997, it has projected
25 -- it is projected to have below 8 percent, which

1 ranks at No. 4 in the State of Texas, No. 4. So
2 since 1992 it's fallen from No. 1 in the nation to
3 No. 4 in the state. This is a medical school in
4 San Antonio.

5 The admissions philosophy started before
6 Hopwood, but Hopwood has reinforced this
7 philosophy. There have been two policies that have
8 been instituted at South Texas Medical School,
9 which will greatly reduce the number of
10 under-represented minorities in this school. First
11 and foremost, an unwritten minimum MCAT of 29. And
12 secondly, the requirement that a second-year
13 medical student must pass the United States Medical
14 Licensure Exam Part 1 before he or she can proceed
15 to the third year. The average MCAT in the nation
16 is 24. And this is regardless of age, except for
17 African-Americans, as previously discussed by
18 Dr. Bedolla.

19 In 1996 there were 23 Mexican-Americans
20 and one African-American admitted to South Texas
21 Medical School. Of those, only three would have
22 been admitted -- only three of the 24 would have
23 been admitted if the minimum MCAT of 29 would have
24 been in place.

25 In his orientation address to the

1 entering medical school class, the chairman of the
2 admissions committee at South Texas Medical School
3 told the students, Those of you with an MCAT less
4 of 29 have a very poor chance of becoming a
5 physician. What's the message? The attitude is
6 tolerated by the dean, the medical school is
7 supported by the president of the Health Science
8 Center. Again, this attitude is only, only
9 supported by Hopwood.

10 The South Texas Medical School is
11 supposed to provide service to all South Texas
12 communities, which happen to be predominately
13 Hispanic. Yet the medical school is decreasing the
14 number of Hispanics it trains and increasing the
15 number of out-of-staters and foreign nationals that
16 it's training. These students may have a very high
17 MCAT, but this does not predict the success of the
18 physician.

19 A recent study in the New England
20 Journal of Medicine, May, 1996, reveals that
21 African-Americans care for nearly six times as many
22 African-American patients as non-African-American
23 physicians. And that Hispanic physicians see 50
24 percent more uninsured patients than do their
25 non-Hispanic Anglo counterparts. A study by the

1 Association of American Medical Colleges revealed
2 that minority medical graduates are four times as
3 likely to practice in social/economically deprived
4 areas.

5 A 1996 Robert Wood, Robin Johnson
6 Foundation Report concluded that limiting
7 affirmative action admission practices may
8 undermine access to health care for under-served
9 populations by stating that minorities and women
10 from lower socioeconomic backgrounds have a high
11 propensity to serve under-served groups.

12 As of yet I have only discussed how
13 Hopwood will affect admissions. But even if we
14 admit under-represented minorities to Texas
15 schools, there must be retention programs in place
16 to assure that they are able to complete their
17 studies. There must also be financial aid
18 available to assure that they are able to stay in
19 school.

20 In 1995, 46 percent of the
21 under-represented minorities attending the Texas
22 medical schools received scholarships, and 87
23 percent received financial aid. The single most
24 powerful obstacle for matriculation to Texas
25 universities and professional schools for

1 under-represented minorities is the emphasis on
2 standardized admission testing. Standardized
3 admission testing.

4 In closing, until Hopwood, I was
5 convinced that MAPA's efforts were destined for
6 great success because of Medprep. Medprep is a
7 mission, a mission with a vision, a vision to
8 realize dreams come true. In the face of Hopwood,
9 the American dream has now become almost impossible
10 to attain for many under-represented minorities.

11 I would like to leave you with one last
12 thought. Education should be a right and not a
13 privilege, as some -- as some others would have us
14 believe.

15 Thank you very much.

16 CHAIRMAN CANALES: Thank you, sir.

17 Well, at this time, we'll open it up for
18 questions, Professor Graglia.

19 MR. GRAGLIA: I was interested in your
20 comment, Mr. Drayden, that you thought that ending
21 race preferences would be detrimental to the
22 traditionally Black schools. I hadn't heard that
23 before. I would think -- one thing that would be
24 operating would be in their favor, in that race
25 preferences for Blacks, which all these schools now

1 use, tends to draw some of the most talented Blacks
2 away from the Morehouses and the Howards, and the
3 traditionally Black schools. And if Blacks are now
4 to be considered for the nontraditional Black
5 schools, the same as Whites, I would think that
6 this would result in many of them going to those
7 schools and strengthening the student body of the
8 these traditionally Black schools.

9 MR. DRAYDEN: That is not, in fact, the
10 case. As a matter of fact, there are -- I believe,
11 there is one lawsuit that's already been filed, I
12 believe, in the state of Georgia to challenge the
13 admissions policies of a traditionally or
14 historically Black university by an Anglo
15 plaintiff.

16 While it may be true that
17 African-American students who might decide to
18 attend an historically Black college or university
19 are now, in fact, attending a majority Anglo
20 university -- the fact that they aren't attending
21 that historically Black college or university
22 doesn't mean that that student body isn't already
23 strong and already full of very talented students.
24 As a matter of fact, they are. But what is being
25 challenged is any race-based admission policy,

1 whether it be an historically Black college or
2 university or an Anglo university. So utilizing
3 that criteria --

4 MR. GRAGLIA: And there are many Whites
5 trying to get into the traditionally Black schools,
6 that you think that -- think that if traditional
7 Black schools can't prefer Blacks, they will turn
8 to becoming largely White? Is that it?

9 MR. DRAYDEN: That is, in fact,
10 happening in some traditionally Black schools,
11 particularly in some traditionally Black
12 professional schools.

13 DR. BURKE: I agree that it's already
14 happened.

15 MR. GRAGLIA: Excuse me?

16 DR. BURKE: It has happened.

17 CHAIRMAN CANALES: Let me turn to
18 Ms. Green. You mentioned that there have been
19 studies -- I believe you mentioned, to show that
20 the minority doctors tend to go more, in the
21 majority of the cases, in terms of race, to poor
22 areas and medically under-served areas. I wonder
23 if that would not be a compelling state interest in
24 that case to take that into account, to take race
25 into account, in that case?

1 MS. GREEN: As a matter of fact, our
2 policy-making body is going to be meeting in
3 Houston in May and is going to take a look at that
4 issue. The concern is, of course, that Texans will
5 not have adequate medical care and that there are
6 so many barriers already to getting adequate
7 medical care, that this lack of physicians of
8 different ethnic groups would just create another
9 barrier for those communities. So I do believe we
10 will be moving forward with that to be considered.

11 CHAIRMAN CANALES: Thank you.

12 Dr. Bledsoe.

13 MR. BLEDSOE: Thank you, Judge.

14 I've got a couple of questions here. I
15 guess the first one is relating to the MCAT. Is it
16 true that the MCAT has limited validity and that
17 individuals who score above a certain amount on the
18 MCAT are perfectly capable of matriculating from
19 medical school and becoming practicing physicians
20 in the community?

21 DR. BEDOLLA: Maybe I can attempt to
22 answer that question. As I said, the MCAT has
23 actually got four sections: Verbal reasoning,
24 physical sciences, you have to write two essays.
25 That's the writing sample in the biological

1 sciences. Actually, the best predictor of whether
2 or not you're going to be able to succeed in
3 medical school is the verbal reasoning section, for
4 which you don't even have to study, because it just
5 tests your command of the English language. So as
6 long as the person has a decent verbal reasoning
7 score, the person can sail through medical school.

8 Let me give you some examples,
9 anecdotes, whatever they are. We have -- as Dr.
10 Peacher said, the average MCAT in the nation is 24,
11 with a standard deviation of two. So when these
12 persons at the medical school in San Antonio were
13 saying that we should have a floor of 29, what he
14 wanted were people who were more than two standard
15 deviations to the right -- to the right of the
16 mean, which means he wanted to get into the medical
17 school of San Antonio only from the two or three
18 percent of the top of the nation. But, in any
19 case, we have had people with MCATs of 18 and 19
20 and 20s come to the medical school and succeed,
21 because one of the most important reasons for
22 success in medical school is family support. Is
23 your family there for you when you flunk anatomy,
24 biochemistry? And as somebody said at the medical
25 school, If you have the fire in the belly, your

1 MCAT may not be that important. So as I said, it's
2 very unspecific. The MCAT is sensitive, so that's
3 -- that was my analogy of the antenna. It's very
4 sensitive, but it's also unspecific. You don't
5 really know what is it that you're measuring,
6 although you measure it very reliably.

7 DR. PEACHER: If I may address the
8 issue, as well. I concur with the comments of
9 Dr. Bedolla.

10 The issue in San Antonio is very
11 straightforward. The intent of the admissions
12 chairman, who has been the chairman of the
13 admissions committee for years, has been to get la
14 creme de la creme. Unfortunately, the medical
15 school has been tasked to provide service to the
16 community. And by getting la creme de la creme,
17 it's deviating from its task.

18 The reason that a minimum of 29 was
19 selected by this individual was that -- his feeling
20 is -- if you look at the statistics in San Antonio,
21 at the medical school, 92 percent passing U.S.
22 Medical Licensure Exam -- 92 percent the first
23 time. He didn't like that statistic. He wanted it
24 to be higher. We're talking about the first time.
25 So his goal was to -- his reasoning is that if I

1 get somebody who has a high MCAT, thereby -- if I
2 look at the statistics of those individuals who
3 have MCATs of 29 and above, 29 and above, that they
4 are going to have a higher success rate in the
5 USMLE. And that reasoning is correct.
6 Unfortunately, we're not -- just because you can
7 pass a test doesn't mean you're going to be a good
8 physician. And it doesn't mean that you're going
9 to go to the service areas that are under-served,
10 and that's the goal for under-represented
11 minorities, under-represented minorities.

12 MR. BLEDSOE: One second, as kind of a
13 follow-up to that. In the Bakke opinion, the
14 medical school deans were -- that submitted an
15 amicus brief, and they talked about how they did
16 not look for individuals that had 4.0 averages,
17 because there were certain characteristics
18 associated with those individuals that would make
19 them not good physicians. Does that still hold
20 true that there are certain criteria that one looks
21 for in someone who is going to be a good
22 physician? For example, I think it's been widely
23 held, within the National Medical Association, that
24 African-American physicians, for whatever reason,
25 have a -- rendered better treatment to individuals

1 on Medicaid who happen to live in minority
2 communities. In that regard, can we say that there
3 are certain qualities that must be looked at beyond
4 a grade point average or an MCAT score?

5 DR. BEDOLLA: It was mentioned earlier,
6 that people tend -- they did not say it quite this
7 way, but people tend to follow the path of least
8 resistance. So what I'm trying to say is that we
9 have all kinds of very poetic rhetoric. In fact,
10 people are being selected on the basis of their
11 MCATs. How do I know? Because I did this.
12 Everybody in a certain medical school, which will
13 go unnamed, gets a priority to interview score. So
14 I have the list of all the priority to interview
15 scores of about 1,000 people who had been asked to
16 come for an interview. And I correlated it with
17 everything, and the highest correlation that I got
18 was with their MCATs. In other words, people get a
19 very thick application in which they have all those
20 things that Esquire Bradshaw mentioned, but the
21 easiest thing to do is just to flip to the page
22 where you have the MCAT and saying, Yeah, I'm going
23 to give this guy an interview while you look at his
24 MCAT. It's exactly the same thing that happens to
25 minorities. At the end, after they've been

1 interviewed and everything and knowing as they did,
2 the MCAT from the very beginning, they say, Yeah,
3 but look at the MCAT. And then we go back to the
4 -- I forgot the name of the committee that allows
5 you to go from the first to the second, from the
6 second to the promotions committee. Whenever a
7 minority student is in trouble, they always say,
8 What was his or her MCAT when he or she came to
9 medical school? When a non-minority applicant is
10 in academic difficulties, the MCAT is never an
11 issue. So the MCAT has this enormous hold on the
12 minds of the admissions committees and on the minds
13 of medical educators, which I think is producing an
14 enormous amount of damage.

15 MS. GREEN: Can I also respond to that?

16 There are about 15 to 20 different
17 factors that have been examined over the last five
18 years for determining likelihood to practice in an
19 under-served area, to practice with -- within rural
20 communities, to go into primary care, and so on.
21 And those are the factors that the medical schools
22 are discussing and have been discussing when they
23 go through the admissions process.

24 While I agree with what my colleagues at
25 the end of the table suggest, I'm also wanting you

1 to be aware that there are other factors that are
2 being brought into play, because the legislature
3 has told the medical schools that they must be
4 producing more physicians who are practicing in
5 primary care and more physicians who are going to
6 work in these under-served areas. And they're
7 being deaned (phonetic) for it, if their graduates
8 don't end up going to those areas. They're a
9 little more sensitive now.

10 MR. BLEDSOE: Is that in the
11 appropriations bill? The legislature is mandating
12 this? Where does that come from?

13 MS. GREEN: It's in the Education Code.
14 And sometimes it appears as riders in the
15 Appropriations Bill, yes.

16 MR. GRAGLIA: You know, I understand
17 correctly that the MCAT is central or even
18 virtually all-important in medical school
19 admissions decisions. There was a recent book and,
20 of course, I don't have it with me, or the name,
21 where he discusses at length the affirmative
22 action, race preference programs at medical
23 schools, and he discusses how this school has had
24 to constantly lower its standards. Now, the
25 chemistry requirement has been reduced and

1 eliminated. Or the number of times that you can
2 take the tests and get through, it's had to be
3 increased, and then any number of times. And he
4 concludes that the result of racial preferences and
5 admitting people who don't come close to meeting
6 the normal standards -- and if you look at the
7 figures of the Bakke case, for example, which was a
8 medical school case, of course, the gaps are
9 enormous. Bakke had scores of 95th percentile, the
10 median score of the admitted Blacks was in 35th
11 percentile. So you think, what did the book say?
12 The gaps of that size really do make a difference,
13 and that it has become necessary to extremely
14 loosen up the requirements of medical school with
15 the clear result that we're producing much less
16 competent doctors. What do you say to that?

17 DR. BEDOLLA: Well, I can say two things
18 with lots of respect. First, sir, you sound like
19 the racists at the medical school, because that's
20 their fundamental argument. We have to lower the
21 MCAT in order to let these minorities into the
22 medical school. And the second thing that I have
23 to say is that the instrument that has been
24 standardized with non-minority populations, as in
25 the case of the statistics that I showed you, the

1 MCAT is strongly, but very, very strongly biased,
2 at least against African-Americans, so that I
3 actually would consider it immoral to use the MCAT
4 to select African-Americans for medical school.
5 And I did say that respectfully, sir.

6 MR. GRAGLIA: I know. We generally call
7 people racist respectfully.

8 The -- you say the MCAT is biased as to
9 Blacks. Does that mean that Blacks actually
10 perform better --

11 DR. BEDOLLA: No.

12 MR. GRAGLIA: -- than the MCAT would
13 indicate? Usually a test is considered biased if
14 it under-predicts. It gives you a certain score,
15 and yet the people do better than that score would
16 indicate; that that's under-predicted. That's the
17 usual definition of bias in a test.

18 Now, if you're saying the MCAT is biased
19 to Blacks, it seems to me to make that meaningful
20 you must be saying, Blacks, in fact, do better in
21 medical school than the MCAT would indicate. And
22 the information I have is that that is not the
23 case.

24 CHAIRMAN CANALES: You may answer.

25 DR. BEDOLLA: I am sorry, sorry, sir.

1 CHAIRMAN CANALES: That's all right.

2 DR. BEDOLLA: Sir, where is your data,
3 because I haven't seen the data. We have cases in
4 the medical school in which we have an
5 African-American lady who comes to the medical
6 school with an MCAT of 17 and goes on to become a
7 very successful neurosurgeon. So we have that. So
8 that, in fact -- I have never seen the angle that
9 you brought, so I have to thank you for that.

10 African-Americans are performing at a
11 lot higher level than their actual MCAT score would
12 lead you to believe. And once again, this is
13 because of that very strong negative correlation
14 between being an African-American and the MCAT. As
15 I said, I'm going to repeat myself, I can actually
16 order the States of the Union by the proportion of
17 African-Americans they have in their population
18 just by looking at the average MCAT score of that
19 state.

20 MR. GRAGLIA: That, by the way -- in the
21 Bakke case, wasn't meant -- the question -- the
22 question whether the MCAT is biased,
23 under-predicted, was the central question. And as
24 I recall, the plaintiffs really dropped the claim
25 that they could show bias, because they could not.

1 DR. PEACHER: I guess if you're looking
2 for a predictor of success in -- there's several
3 predictors of success that are crucial here. One,
4 if you want to go back and look at your grade point
5 average and core curriculum taken in the past. So
6 that would be one positive correlate for success.
7 And two intangibles are desire and work habits. So
8 if you have a great desire and you're willing to
9 overcome the obstacles put before you, you will
10 succeed and you will succeed many more times than
11 you will fail.

12 The issue of this testing is critical,
13 because the assertion is that if you have a high
14 admissions standardized test that you will succeed
15 in life. And the reality is that -- it's borne
16 out, that there is no positive correlation. The
17 only positive correlation is 30 percent, so the
18 issue is just as I've stated. The single most
19 obstacle to matriculation, not just for medical
20 school or law school -- but we're talking about
21 colleges and universities, is the standardized
22 test.

23 I'm a perfect example. When I -- I came
24 originally from the Rio Grande Valley, had a very
25 poor, poor, education; transferred to San Antonio

1 to a very large school district and I was making Cs
2 and Bs in the Rio Grande Valley. My motivation
3 changed, and ultimately I finished high school in
4 three years and finished in the top 10 percent of
5 my class in San Antonio. I then took the SAT and I
6 made a marginal score. I was admitted to the
7 University of Texas here in Austin under provision,
8 and my first semester I made dean's list cum
9 laude. I'm a perfect example of standardized
10 testing unhampered. I had to work very hard to
11 achieve that goal, very hard. But the point is
12 that I did. I am currently the only gynecologic
13 neurologist in South Texas, not just in San
14 Antonio, but in South Texas. This is an individual
15 who, if I would have listened to those who were
16 counseling me, if I would have listened and let one
17 obstacle keep me from my path, would not be
18 standing here before you. I'm a perfect example of
19 what you can do if there is desire, motivation.

20 CHAIRMAN CANALES: We have time for two
21 more questions. And the first one is from Maria
22 Berriozable.

23 MS. BERRIOZABLE: Actually, there are
24 two short questions, I think, to either Dr. Bedolla
25 or Dr. Peacher. But one of them has to be to

1 Dr. Peacher in the role of admissions officer for
2 the medical school.

3 This morning someone talked about
4 individuals being admitted to colleges because of
5 history of donors in the family or an alumni in the
6 family of that institution, perhaps grandfathering
7 or grandmothering, if you can call it that. Have
8 you seen that at the medical school where
9 individuals -- applicants get accepted because of
10 reasons such as those?

11 And the other one is, I'm very impressed
12 with your work with the young people in the Medprep
13 program, but concerned. I would think that after
14 they complete four years of that program, they
15 would be the creme de la creme, as you have
16 described it, but you express concern about them,
17 too. What is that concern?

18 DR. BEDOLLA: Okay. Let me say one
19 thing that has to do with something that was
20 mentioned earlier by somebody here in the panel. I
21 have never seen anybody automatically be accepted
22 to the medical school because he was Hispanic or he
23 was African-American. The only Hispanic and
24 African-Americans who have ever come to the medical
25 schools were, besides Hispanic or Mexican-American

1 or African-American -- they were also qualified to
2 come to medical school. So there is no such a
3 thing as automatic pass and admission into medical
4 school because of your ethnicity or your whatever.
5 And the other thing is, I've never seen at
6 San Antonio Medical School - and I've been in the
7 admissions committee for about nine years -
8 somebody who got accepted because of his
9 grandfather or even, I think, because of
10 legislative pressure. I've never really ever seen
11 anything like that.

12 DR. PEACHER: I serve on a subcommittee
13 on the admissions process. I do not serve on the
14 committee that has decision-making policy, so I
15 want to clarify that. So basically I interview
16 applicants. And the task before us -- what has
17 been told to all those individuals who interview
18 applicants for medical school is that every
19 applicant who comes for an interview is qualified
20 to be a physician. What we are looking for are
21 those who basically are on either side of the bell
22 curve, either they're superstars or they're people
23 who should not be in medical school. That is the
24 task before us, as the interview subcommittee. And
25 I will tell you that I have been in the interview

1 subcommittee now for approximately four years. At
2 the beginning when San Antonio had the highest
3 percentage of Hispanics in the nation, I mainly saw
4 under-represented minorities that I interviewed.
5 This year I saw none. I saw none. I don't know
6 why. But I did what I did. My job is to interview
7 those individuals that they ask me to interview,
8 and I do that gratefully.

9 Regarding the Medprep students, you have
10 to understand why we choose and we target the
11 students that we target. These are kids who have
12 great desires and have beautiful dreams. They are
13 kids that come from school districts and high
14 schools that have a great deal of unrest and could
15 easily go one way or the other. Our goal is to,
16 obviously, increase the number of Hispanic and
17 under-represented minorities in health
18 professions. But our real goal is, No. 1, to get
19 them out of high school and hopefully into a
20 college or university. These are kids who don't
21 have any role models. These are kids that may have
22 a mother or father who only finished the 7th
23 grade. They don't know what lies before them.
24 They have no guidance in the schools. And other
25 than our program, they have very little to provide

1 positive reinforcement. They have no life skills,
2 and that's what makes our program different. The
3 issues that we deal with are, we try to give them
4 some self-esteem. We try to send the message that
5 if you work hard -- if you work hard, you will
6 achieve your goal. And not to listen to those
7 individuals that tell them you will never make it.
8 That's our main -- our message, and we do many
9 other things besides that.

10 And one of the issues that we have been
11 involved with is, obviously, personal and social
12 skills. These kids have a hard time asking for a
13 letter of recommendation from their teachers. That
14 may be an insurmountable task for them. And I'm so
15 proud of them.

16 We talked to them about Hopwood. These
17 kids took petitions and went to their community and
18 -- we only have 200 students. They went back to
19 their community; went door to door. Imagine this.
20 Door to door and were able to get 600 petitions,
21 signed petitions, that then they came before the
22 House Higher Education Committee and presented
23 those -- we made ten copies of those 600. They
24 took them to the Governor, the Lieutenant Governor,
25 the Attorney General, and all those appropriate

1 committee members. Incredible. These are kids who
2 are learning to be civically minded. They're
3 learning that they need to get involved, and
4 they're learning to give back to their community.

5 Now, I ask you ladies and gentlemen,
6 what kind of community do you want? Do you want a
7 community where all have a chance of being
8 educated? One where each member of society has a
9 potential to contribute? Or do you want one where
10 you see gangs and violence as a rule, and that's
11 what we're talking about. There's two options:
12 Good and bad.

13 My personal feeling is that Hopwood and
14 the - for lack of a better tone - racist attitude
15 that is currently predominating in the United
16 States -- Prop 209 is one. And it's spreading like
17 a wildfire. Is that -- that is evil. It is evil.
18 I'm a Christian person and I believe that good will
19 overcome evil and that is why I am here.

20 CHAIRMAN CANALES: Thank you.

21 Mr. West.

22 MR. WEST: Yes. Judge Canales said
23 something at the beginning of our proceedings that
24 I would like to reiterate. And that is, that we
25 don't take kindly to people defaming other people

1 in these discussions. We've just had two of our
2 panelists accuse other Americans of racism, because
3 they don't agree with their views of civil rights.
4 We've had, in effect, a member of our own panel
5 here accused of racism, because he didn't agree
6 with the panelist's view of civil rights. I've
7 found that in discussion with people, it's a
8 favorite tactic, of liberals, when they feel that
9 they can't answer the argument to stigmatize their
10 opponent with racist and fascist and sexist,
11 instead of answering the argument.

12 CHAIRMAN CANALES: Excuse me. If you
13 would --

14 MR. WEST: If you don't mind, I'd like
15 to finish --

16 CHAIRMAN CANALES: No, no, no.

17 MR. WEST: -- instead of being
18 interrupted by you.

19 CHAIRMAN CANALES: You're arguing with
20 him, sir. You can ask a question. We're here to
21 ask questions --

22 MR. WEST: I've got a question.

23 CHAIRMAN CANALES: -- and not make
24 lectures. And we're not here for that purpose.

25 MR. WEST: My question is for

1 Mr. Bedolla, who raised this charge, and that is,
2 are you aware, Mr. Bedolla, of the fact that what
3 is really at issue here is not whether some people
4 are in favor of civil rights and others are
5 against, but rather the fact that Americans are
6 divided on the question of what is -- what it means
7 to protect civil rights? Some people believe the
8 government should discriminate by race, use race as
9 a factor, for example, in college admissions.
10 Others, for example, myself, believe that Americans
11 -- that American government should not
12 discriminate by race. And we think that that is
13 the policy that would secure everybody's civil
14 rights. Are you aware of that? And if so, would
15 you be willing to apologize to Lino Graglia for
16 your remarks?

17 DR. BEDOLLA: First, I am aware.
18 Second, I will not apologize, because he gave me
19 permission to do what I did. He said, How do you
20 react to that? Had he said his question
21 differently, I would have answered it differently.
22 I happen to admire Dr. Graglia a lot, and I said it
23 with a lot of pain. But that is precisely the
24 argument that I have heard over and over and over
25 and over at the medical school. If we bring in

1 minorities, we're going to have to lower the
2 standards, so I will not apologize, sir. And my
3 name is Dr. Bedolla, not Mr. Bedolla.

4 CHAIRMAN CANALES: Doctor, thank you
5 very much, both doctors, and Mr. Drayden and
6 Ms. Green. Thank you all for coming here today.
7 And I'm sorry if you have felt insulted in any
8 way. I apologize for that. I must say that we are
9 here only to gather information and we're not here
10 to lecture. We appreciate you coming here today,
11 and your remarks will be included in the report
12 that we send to Washington.

13 Thank you all very much.

14 This session is now closed. We're going
15 into the open session.

16 CHAIRMAN CANALES: Those that have
17 registered, we're going to call your name and come
18 forward. And our time is short, but we'll give you
19 some time. The first one on the list is Hector
20 Rodriguez.

21 I will remind the panel members, again,
22 that we are here only to ask questions.

23 MR. RODRIGUEZ: It's late in the day and
24 I know we're all a little bit stressed, but I'll
25 try to be as brief as possible.

1 For purposes of the record, my name is
2 Hector Rodriguez. I am an attorney here in Austin
3 and I am a solo practitioner. I attended this law
4 school from 1984 to 1987; graduated, passed the bar
5 and now a licensed attorney.

6 In my opinion, Hopwood is a nothing. It
7 carries no weight at all. Everything that you've
8 heard from Dean Aldave, from some of the other
9 panelists, I fully agree with them. The decision
10 is limited to its facts. It's limited to the
11 admissions policy that existed in this school in
12 1992, and that is it.

13 I speak with a little bit of
14 experience. I have been intimately involved with
15 the entire Hopwood litigation. In 1994 I was the
16 president of the Hispanic Bar Association of
17 Austin. I was called as an expert witness by the
18 University of Texas School of Law in its defense of
19 the Hopwood litigation. Consequently I am very,
20 very familiar with the facts. I'm very familiar
21 with the legal defenses. I am very familiar with
22 the process -- with the plaintiff's case. I know
23 exactly what happened at trial court. I know
24 exactly what happened at the 5th Circuit Court of
25 Appeals. And I know exactly what happened at the

1 United States Supreme Court.

2 I am not going to elaborate as to those
3 things at this time, because I have -- I am
4 representing a Mexican-American woman by the name
5 of Marisa Perales. She was denied admission to the
6 law school in 1994. She is scheduled to graduate
7 from Texas Tech School of Law this May. She has
8 done exceedingly well. She has scored the highest
9 score in a couple of her classes, including a
10 constitutional law class. She is a first-year
11 tutor at the law school. Here at U.T. they call
12 them TQ, teaching quiz masters. Plus, as a
13 third-year student, she holds what is called a
14 third-year bar card and she currently prosecutes
15 misdemeanor cases for the Lubbock city attorney.
16 Now, this was the individual that for some reason
17 or another U.T. denied her application for the
18 school of law.

19 The way I met her was that, again, when
20 I was the president of the Hispanic Bar
21 Association, she was the president of the Hispanic
22 Prelaw Association here at the University of
23 Texas. She asked me to speak to her organization
24 on attending law school and the law school
25 application, and all that -- all that was

1 required. And based on my experience at the law
2 school, based on my experience as a lawyer and
3 based upon information that I had as to the
4 admissions policy in 1994 at this law school, I
5 would have given her a 99.99 percent chance of
6 admission.

7 When she was denied, I was shocked. And
8 the only reason that I could come up with that she
9 was denied was because of the Hopwood suit that had
10 been filed two years earlier and was scheduled for
11 trial in May of '94. That is the only reason.

12 The university was very, very concerned
13 about having more Hopwood-type litigants, and so
14 they saw her, they denied her, opened up another
15 seat, and -- well, she ended up where she is. Be
16 that as it may.

17 I also know Stephen Smith. Stephen
18 Smith is the attorney who originally represented
19 the four Hopwood litigants, as I call them. He
20 also graduated from U.T. in 1987. I spoke with him
21 a couple of days ago. We were panelists at another
22 session. And someone asked him why he filed the
23 lawsuit in the first place. And what he said, and
24 it's on the record, was -- he said, well -- he had
25 listened very carefully to Professor Graglia's

1 suggestions in some of Professor Graglia's classes
2 that affirmative action was wrong and that it was
3 probably illegal. And he took that as a suggestion
4 for someone to challenge affirmative action in
5 Texas.

6 So he took up that challenge. He
7 obtained, somehow, the names of White applicants
8 that had been denied admission to law school in
9 1992. He sent out 31 letters, received 10
10 responses. And out of the ten responses, four of
11 them decided to file the lawsuit, and that's the
12 lawsuit that you presently have today. So that's
13 directly from the attorney who originally filed the
14 lawsuit as to why he filed the lawsuit in the first
15 place, for whatever that's worth.

16 I also obtained Stephen Smith's open
17 records request. And that's a request that he had
18 filed with the law school where he asked for the
19 names and addresses of the White applicants at the
20 law school that had been denied in 1994, '95. The
21 law school denied it saying that it was not public
22 for some reason or another. He challenged them.
23 The Attorney General issued his decision, that it
24 was not public information. Stephen Smith filed a
25 lawsuit against the university, and Travis County

1 District Judge Jeanne Meurer issued her decision,
2 oh, about six weeks ago, stating that it was, in
3 fact, public information and ordered the university
4 to release that information.

5 Well, I took Smith's open records
6 request and I copied it practically verbatim. The
7 only thing that I changed was where he put White
8 applicant, I asked for information on Hispanics and
9 Mexican-American applicants. Well, I dropped it
10 off. I hand-delivered it to Dean Charlotte's
11 office here on March the 10th. According to the
12 Public Information Act of Texas, the university had
13 10 days within which to give me the information or
14 tell me, for some reason, that the information was
15 not available or to request an open records
16 decision as to whether it was open or not. They
17 did nothing. They just sat on it.

18 So on March the -- I guess, the 20th or
19 21st, I called Dean Charlotte's office to request,
20 you know, what was the status of my request. I was
21 informed that my request had been passed up to the
22 vice-provost, Patricia Ohlendors' office. I said
23 okay. So I just sat there and I waited a few days
24 expecting some kind of response. I heard nothing.

25 On March 27, which is now 17 days after

1 my original request, way beyond the 10 days that is
2 required by the Open Records Act -- I went to
3 Patricia Ohlendors' office to inquire as to the
4 status of my request. She was unable to visit with
5 me because she had some other function to attend,
6 but I left her a little note, basically, asking her
7 what's the status of my request. She called my
8 office later that afternoon and left a message,
9 stating that she had received my note and that she
10 had been advised by the general counsel's office,
11 the U.T. System, that the information would not be
12 released to me because -- and solely because I had
13 filed a lawsuit against the university and -- on
14 behalf of Marisa Perales. She did not say that it
15 was not public information. All she said was that
16 we're not going to give it to you because you filed
17 a lawsuit. She said if you want further
18 information, please contact the general counsel's
19 offices and specifically Susan Bradshaw, who was
20 one of the panelist here this morning.

21 Well, I sent a letter the night of March
22 21st -- 27th, 28th midnight - right about midnight
23 - to Susan Bradshaw outlining that -- No. 1, I had
24 been lecturing at continuing legal education
25 seminars on the Public Information Act for the past

1 five or six years. I know each of the exceptions
2 by heart and none of the exceptions apply. No. 2,
3 I said that the law school had already missed the
4 statutory 10 day deadline, therefore, according to
5 the statute itself, it was presumed public
6 information. And No. 3, I cautioned her that a
7 public informations officer, that with criminal
8 negligence, knowingly declines to disclose
9 information, could be guilty of a criminal offense,
10 and all of these matters.

11 Needless to say, she called me back the
12 next day and confirmed that, yes, she wasn't going
13 to give it to me solely because I had sued the
14 university. Went to the Attorney General's office
15 and they admitted to me that, yes, it was public
16 information, but that they didn't want to give the
17 information to Stephen Smith, so how could they
18 give it to me. I ended up suing the university and
19 a criminal investigation has been instituted
20 against the law school. Very, very serious.

21 I'll sum up very quickly by saying that,
22 as some of the panelists have said, I am probably
23 one of the beneficiaries of affirmative action. If
24 I were to apply to the law school for fall
25 admissions, I would not be admitted. Yet, here I

1 am a very successful lawyer and I'm suing the
2 university.

3 There is a problem with the LSAT.
4 There's a problem with the Texas Index, and all of
5 these matters are going to come out in the Marisa
6 Perales versus U.T. Law School very, very shortly.

7 Thank you very much.

8 CHAIRMAN CANALES: Any questions?

9 Thank you very much, sir. And we will
10 make it part of the record.

11 Next one is Mono Aguilar.

12 MR. AGUILAR: I spoke this morning
13 regarding implementation of the Hopwood decision.
14 This afternoon I would like to briefly address the
15 issue of civil rights.

16 We must all realize that regardless of
17 our personal opinions on the outcome of affirmative
18 action in the past year, that the most vital
19 changes which must -- which are supposed to occur
20 in the future, occur in K through 12 education.
21 Should we concentrate our efforts in truly
22 equalizing K through 12 education statewide, via
23 finances, staffing, facilities, et cetera, the
24 present controversy will become moot. Absent,
25 however, such hard and honest efforts, either in

1 race, ethnic and class-based affirmative action --
2 absent such efforts, race, ethnic and class-based
3 affirmative action must be continued or we must
4 have a whole-scale restructuring of standardized
5 tests in order to remove biases and accommodate for
6 unequal preparation for those standardized tests,
7 or we must eliminate standardized tests entirely in
8 light of the realization that there is no
9 standardized education or even an attempt of
10 producing equal education in this state.

11 If you take identical twins of equal
12 intelligence, raise one in the inner-city barrio in
13 San Antonio and raise the other in an affluent
14 suburb in Dallas and submit them to 12 years of
15 education and then have them tested under the exact
16 same standardized test, you'll find great disparity
17 in the results. And that is not -- standardized
18 test is not a -- it does not show intelligence. It
19 shows preparation based on education. Now, absent
20 standardized tests, I would recommend that this
21 committee consider that admissions to graduate
22 school, colleges, law school and medical school
23 should be determined by GPA, rank in class,
24 community involvement, extracurricular activities,
25 faculty recommendations, educational or economic

1 disadvantages or advantages and commitment to
2 service in an impoverished community. What this
3 will do is create a much more objective and much
4 more fair rationale for admitting students into
5 higher education.

6 Now, discussing the idea of present
7 effect of past discrimination. If a student lived
8 in a poor section of town, attending an equally
9 poor school because her father or mother were
10 denied jobs for which they are qualified and they
11 were forced to live in the poor part of the
12 community based upon community rental laws, then a
13 substandard education, which handicaps that student
14 in applying to colleges, is a present effect of
15 past discrimination. With minority students --
16 what Texas is going through right now, statewide
17 and whole scale, is a present effect of past
18 discrimination. Affirmative action may then be
19 utilized to address this disadvantage.

20 One other thing I would like to point
21 out with the 80 percent figure, which has been
22 thrown around very cavalierly today, is that not a
23 soul in this assembly has agreed with this dubious
24 80 percent regarding -- toward affirmative action.
25 Not only do we challenge the figure as drastically

1 overinflated, we must recognize the population
2 comprises -- who these questions were asked of. If
3 I recall correctly, Mr. West - I'm sorry. Not Mr.
4 West - one of the panelists earlier today, broke it
5 down into general population, student population,
6 faculty and association of schools, claiming that
7 80 percent of those groups asked -- when asked,
8 were against affirmative action.

9 The general population of the United
10 States is approximately 70 percent Anglo. The
11 student population of higher education in the
12 United States is approximately 65 to 80 percent
13 Anglo. Faculty of higher education in the United
14 States is upwards of 85 percent Anglo. And I
15 should hazard a guess that membership of the
16 association of schools follows likewise.

17 CHAIRMAN CANALES: I must ask you to
18 summarize at this time.

19 MR. AGUILAR: Yes, sir.

20 In that sense -- what I'm saying is, in
21 the continuing debate over affirmative action, not
22 only do the present effects of past discrimination
23 loom largely, but affirmative action's time -- it
24 will not come for at least another generation.

25 Thank you very much.

1 CHAIRMAN CANALES: Is there anyone who
2 has not registered to speak?

3 Your name, sir?

4 MR. CASTRO: Excuse me?

5 CHAIRMAN CANALES: What is your name?

6 MR. CASTRO: Julian Castro.

7 I'll submit my paper.

8 CHAIRMAN CANALES: All right. Give it
9 to Ms. Youngblood.

10 I don't see Alonzo Jones here. He was
11 here earlier, but --

12 Oscar De La Torre. We only have about
13 two minutes per person.

14 MR. DE LA TORRE: Yes.

15 I won't be long, but I'll be strong. I
16 want to thank you all for giving me the opportunity
17 to address you and to bring up a couple of issues.

18 My name is Oscar De La Torre. And I'm a
19 graduate student here at the LBJ School of Public
20 Affairs. I'm a proud beneficiary of affirmative
21 action programs and policies.

22 Really quick, just to summarize my life
23 in the educational system. A graduate out of Santa
24 Monica High School in California with a 630
25 combined SAT score. The SAT score that I received

1 put a severe stigma on me, on my view of myself as
2 college material. I was able to participate in a
3 program called the Educational Opportunity Program
4 that the California State University System held
5 for students in my situation. I was able to
6 complete that program, receiving numerous awards.
7 Went on to my first year of college and made the
8 dean's list. I eventually graduated from
9 California State University, Chico, with high
10 honors and also the first Mexican-American student
11 body president ever elected at that institution.
12 The institution was 89 percent White. I then took
13 the GRE examination to enroll here at the LBJ
14 School of Public Affairs, scored 930 combined on
15 the GRE. A score, again -- a strong statement.
16 But I knew that those tests didn't really mean
17 much, and I was able to enroll. Currently I have a
18 3.9 GPA and I have been involved in many other
19 student activities.

20 So we first have to look at those
21 examinations. Those tests are used to exclude
22 people. And really what we're talking about is
23 opportunity. Affirmative action did not write my
24 papers. Affirmative action was not in place when
25 the professors were grading my essays that I

1 wrote. All the hard work that I did to stay in
2 school and to graduate was not the result of
3 affirmative action, it was the result of my hard
4 work. Affirmative action just gave me an
5 opportunity to compete, and that's something that
6 we don't really hear much of.

7 Another thing that we have to look at
8 then is also the affirmative action that took place
9 for White Americans. We're not talking about
10 that. We're only focusing on people of color. And
11 I think that's something to the detriment of all
12 society, because we look at the affirmative action
13 for Whites, for example, alumni preference. That's
14 -- we talk about proxies for race, and so forth,
15 and that's one that we haven't talked about. So
16 nobody can sit down and truthfully say that they're
17 for civil rights without looking at the inherent
18 biases and inequalities that benefit White
19 Americans in this society.

20 I just want to end by saying that
21 education is the most effective process to
22 reconcile social and economic inequalities within
23 our society. A lot of people that are against
24 affirmative action say that they want to do away
25 with racism. Well, the only way to do away with

1 racism is by educating people, by giving them the
2 opportunity to share their ideas and their views
3 with other Americans and, therefore, we can form a
4 better America for all.

5 Thank you very much.

6 MR. BLEDSOE: May I ask a question?

7 CHAIRMAN CANALES: Yes, sir.

8 MR. BLEDSOE: Thank you, Judge.

9 Mr. De La Torre, I want to ask you a --
10 maybe a two-pronged question here. A lot of our
11 conservative cohorts seem to support the idea that
12 if it is shown that there is discrimination against
13 a certain group, that it's appropriate to have a
14 remedy for such a group. And that's one thing that
15 the Hopwood decision didn't come out and say, there
16 is no more discrimination at the University of
17 Texas. It didn't say that. It just said, Well you
18 need to prove (coughing) --

19 THE COURT REPORTER: I'm sorry, you
20 said?

21 MR. BLEDSOE: -- if we're going to have
22 a remedy. So what I'd like to ask you, in your
23 opinion, and in your travels around this state, and
24 particularly your experience at the University of
25 Texas, can you say, No. 1, if there is present and

1 current discrimination against different ethnic
2 groups? And, if so, which ones? And secondly, are
3 there present effects of past discrimination that
4 occur and that cause problems for minorities on the
5 campus of this university.

6 MR. DE LA TORRE: Yes, sir.

7 First of all, here at the University of
8 Texas, we celebrate Texas' independence day, which
9 has a history of racial animosity. Before -- you
10 know, in the 19 -- this event, for example, that's
11 celebrated on March 2nd, this year was celebrated
12 February 28. But two years ago when there was
13 Mexican-American students who protested the way the
14 celebration was portrayed -- basically being
15 portrayed that Mexicans being the enemy and the
16 foreign -- foreign invader. The Mexican-American
17 students were yelled at and were threatened, and it
18 was just a very hostile environment. That event is
19 still continuing today even though it causes a lot
20 of racial animosity on campus and it's very
21 offensive to many students. That event is
22 officially promoted by the administration here at
23 the University of Texas. So that is just one
24 example, and there are others. But these other
25 examples are more subtle. And, you know, the

1 standardized test scores, the way they give out
2 fellowships, for example. Now that we don't have
3 the graduate opportunity fellowship program that
4 was used to help out graduate students receive
5 financial aid, now, that -- that process of
6 divvying up funds is suspect. And we have proof
7 that there is -- there are exclusionary practices
8 still in giving out money. They established a
9 program that was going to replace the graduate
10 opportunity program and so far we know of two
11 minority students that have received that funding.
12 Before the graduate opportunity program, there were
13 77 students -- minority students, who were granted
14 full fellows at the graduate schools here at the
15 University of Texas.

16 So there is a very strong -- especially
17 with the Hopwood decision, there is a lot of
18 animosity. Professors do not want to help out in
19 -- in -- in helping us deal with it. In fact, we
20 have a deficit of professors that can allow us, as
21 students of color, to deal with this very serious
22 issue. And that is to the detriment of learning,
23 in general, about this very complicated problem of
24 racism.

25 CHAIRMAN CANALES: Anything else?

1 Thank you very much.

2 MR. DE LA TORRE: Thank you.

3 CHAIRMAN CANALES: Orson Aguilar.

4 MR. AGUILAR: Good afternoon. My name
5 is Orson Aguilar. I'm a student at the Lyndon B.
6 Johnson School of Public Affairs. And I want to
7 thank you for the opportunity to speak in front of
8 you today. But mostly, I want to thank you for the
9 opportunity to attend this school. And the reason
10 why I'm here is because I'm here on a
11 minority-based scholarship program called the
12 Woodrow Wilson Program. Today it's called the PPIA
13 Program. Unfortunately, I was the last -- last
14 cohort of my class to receive the scholarship to be
15 able to attend this school.

16 I was just talking to a friend of mine
17 who applied to school here, and this was his first
18 choice, but this school doesn't want to allow him
19 the scholarship and they're not giving him a penny
20 of financial aid, so he's not going to come here,
21 because he can't afford it. And I think that's
22 really sad and that's happening to a lot of top
23 students who want to come to school here today.
24 They're not receiving the financial aid they need,
25 because we're not supporting them.

1 And one thing I really want to say -
2 this is really sad - people who benefit from
3 affirmative action, such as myself, are the ones
4 who go back to our communities and give back, you
5 know. And we not only give back to our communities
6 but to our nation, especially as the demographics
7 are growing. It's a big burden on people like
8 myself to go back and give those opportunities,
9 too, because I won't forget it, affirmative
10 action. That's how I got into the UC -- the UC
11 System. UC, that's where I graduated. And that's
12 why I'm here today. And I just want to say that
13 it's pretty sad. We're losing a lot of people like
14 myself that are going to go back and make a
15 difference.

16 Are there any questions?

17 CHAIRMAN CANALES: Thank you very much.

18 Any questions? I think we're tired.

19 We've been here since 9:00 morning.

20 MR. AGUILAR: Thank you, sir.

21 CHAIRMAN CANALES: Anyone else that
22 wishes to speak, you need to register with
23 Ms. Youngblood.

24 Next is Julian Castro.

25 MR. CASTRO: First, I want to say thank

1 you to the committee for giving us all a chance to
2 speak in open session. Myself and my twin brother
3 are from San Antonio, Texas. Unfortunately my twin
4 brother is not here. In the fall we are going to
5 begin at Harvard Law School. We applied in the
6 fall of 1995 to eleven law schools, including the
7 University of Texas Law School; got into U.T. Got
8 offered a scholarship to U.T.; didn't come to U.T.
9 I turned down U.T., because I think they have
10 better law schools than U.T. And when we have the
11 opportunity to go there, we can.

12 I want to address three things. The
13 first thing, the replacement of class space,
14 considerations in admissions over the use of racial
15 factors. Suppose that we have 5,000 applicants to
16 the University of Texas Law School and we're using
17 primarily economic considerations instead of racial
18 ones to make our decision. Right? There are more
19 in Texas -- there are more people that are Anglo
20 that are poor, right, just as a gross figure, than
21 there are minorities, right? And there are
22 probably more -- or there may be more poor White
23 applicants than there are poor minority applicants,
24 because I would bet, and I don't have the specific
25 figures, that White applicants apply more than

1 minorities at a higher rate. Right? So if you
2 have a total of, let's say, 1,000 poor students and
3 700 of those 1,000 are White, right, what is to
4 stop the traditional racism from coming into effect
5 in admissions decisions when you have plenty of
6 Whites to choose from who are poor and fill out
7 your class that way, or instead of having to
8 consider one's race. Right? I hope you understand
9 my argument.

10 The second thing is this, I graduated in
11 1996 from Stanford University with my twin brother
12 also. Going into Stanford, I made a 1210 on my
13 SAT, right -- to address the issue of standardized
14 test scores, right. That is well below Stanford's
15 average. Stanford's average is something like
16 1350, 1370, and so is Harvard's, something like
17 that. So I came in -- and if you believe the
18 standardized test scores, I shouldn't have done
19 very well there. I should have done lower than
20 average, right, that's what you're arguing,
21 Mr. Graglia.

22 CHAIRMAN CANALES: Please do not address
23 the panel members.

24 MR. CASTRO: Okay.

25 I should have done lower than average.

1 Right? I didn't. I graduated with a 3.8 average.
2 I majored in two subjects. I graduated with honors
3 and distinction, and so did my brother. So we did
4 a lot better than our standardized test score would
5 have said. And in case there are some members who
6 don't believe -- who put it out of their minds,
7 are being unreasonable, and saying that
8 standardized test scores certainly do have -- you
9 know, they can't even consider that they might be
10 worthless, then let me argue this. Okay? I came
11 in there with a standardized test score that was
12 probably in the 80 something percentile or maybe
13 nearing 90. When I took the LSAT to get into law
14 school, I got a 97 percentile. And that is one
15 point over the Stanford Law School average and one
16 point under - this year - the Harvard Law School
17 average. Right? So, in other words, they gave me
18 that opportunity at Stanford and I was able to
19 catch up, because I did as good -- I did as well as
20 I could in the system that I was in in the Edgewood
21 Independent School District in San Antonio and then
22 the San Antonio Independent School District. I did
23 as well as I could, and my brother, too. And then
24 when I was given the opportunity to catch up at
25 Stanford, with that excellent education, I did

1 catch up in standardized test scores. But if they
2 had never let me in, I doubt that I would have
3 caught up like that.

4 The third thing - and I'll be quick - is
5 that I hope you will address the issue, or it will
6 be addressed in some form, the issue of legacy
7 preferences, because if you consider the historical
8 racial makeup of legacy preferences -- if you
9 consider the historical racial makeup of student
10 bodies - you're a reasonable man. All of you are
11 reasonable people - then you have to admit that it
12 is historically a White student body; it is
13 historically a male student body. So you -- any
14 reasonable person that says we will not tolerate
15 discrimination by race, then you have to say we
16 will not tolerate legacy preferences because they
17 are affirmative action policies for Anglos. And I
18 hope that all of you will take up that cross.

19 Thank you.

20 CHAIRMAN CANALES: Thank you. I see
21 your twin brother just walked in.

22 MR. CASTRO: Oh, there he is.

23 Does anybody have any questions?

24 CHAIRMAN CANALES: Do you have a
25 question?

1 MS. BERRIOZABLE: I have a question, and
2 also just the deepest pride and appreciation to all
3 the -- particularly the young people who have
4 addressed this body. I thank you for being here.
5 And to Julian, specifically, why did you come here
6 from San Antonio on a Saturday; you've sat there
7 most of the day. Why are you here?

8 MR. CASTRO: Well, obviously, I am at a
9 point right now where I have made it, so to speak,
10 through this educational system. Right? Once I
11 make it to Harvard, I have no doubt that I will do
12 well there. However, I was a permanent substitute
13 teacher last semester at the high school from which
14 I graduated in the San Antonio Independent School
15 District. Graduated in June -- June 16th I
16 graduated; September 16th I was in the classroom
17 filling a vacancy for three classes. Permanent
18 substitute teacher. I saw so many people in those
19 classes - and the school is probably about 90
20 percent Mexican-American, probably about 8 percent
21 African-American and 2 percent Anglo. So many
22 people who had the same aspirations that I had,
23 somebody that just graduated just five years ago,
24 four years earlier from the school, but who have,
25 one, the perception that they cannot or will not be

1 accepted to the schools like U.T. and A&M,
2 particularly, and, you know, don't even think about
3 law school or medical school, business school.
4 Right? They have a perception, and I talk to them
5 about it, they have this perception that that's
6 something else out there. That's not their world;
7 that's not where they belong. Right? So they're
8 disadvantaged to begin with.

9 And I talk to them about Hopwood and
10 they said, well, you know -- they didn't really
11 know anything about it. But I don't think it would
12 have mattered because they already feel that
13 they're outside of that realm of possibility, you
14 know. That's one of the reasons that I'm here,
15 too. And I'm sure other people
16 have done this, to let the committee know that
17 nothing is being done to address the situation of
18 those people, of the community that I come from,
19 the community that I'm sure some of you-all come
20 from.

21 I'm also here because, to be honest, I'm
22 very, very upset, very angry, with the reasoning of
23 Dan Morales, the Attorney General. I'll leave it
24 at that.

25 CHAIRMAN CANALES: Yes. Mr. Bledsoe.

1 MR. BLEDSOE: I'd like to ask you, you
2 said that you attended Edgewood Independent School
3 District, and that's one of the school districts
4 that was involved in one of the landmark decisions
5 in education. I want to ask you what kinds of
6 impediments do you see as a young Texan that --
7 that are presented to minority young people around
8 this state because of the educational system that
9 we have?

10 MR. CASTRO: Well, as I'm sure all of
11 you know, Edgewood is a very poor school district.
12 My brother and I started out school there. Went
13 through about second or third grade there and then
14 switch to SAISD, which actually did join the suit,
15 I understand, after it was filed against SAISD, but
16 then SAISD joined that suit.

17 I'll give you two answers. First, I was
18 tested before I went into the Edgewood School
19 District. My mom took me to be tested and my
20 brother, and they said that we had an above-average
21 IQ. It was like an IQ test or skills test. And
22 they said something to the effect to her of, Well
23 that will probably change. You know, they'll
24 become normal over the course of the next few
25 years. In other words, you're right here. You're

1 going to go down. Right? You'll become normal
2 over the course of the next few years.

3 The second thing is 6th grade -- 6th
4 grade orientation at Rhodes Middle School in the
5 San Antonio Independent School District. We're
6 sitting in orientation about, let's say, 200
7 people, parents, their students, they don't know
8 what's going on. It's the 6th grade, unfamiliar
9 territory. The counselors -- one of the counselors
10 gets up there and says -- starts talking about the
11 school district and some of the hopes that they
12 have for the students and says, Well, you might
13 want to take a look around the room, because
14 chances are that half of you won't be here to go to
15 the 9th grade. Sixth grade, and being told that.

16 Well, needless to say, I didn't go to
17 Rhodes Middle School. I switched immediately to
18 SAISD middle school, but to see that kind of
19 mentally and then to see the poverty around there.
20 You can't -- I can't believe that any of you all
21 could believe that somebody that grows up in the
22 Edgewood Independent School District is not
23 disadvantaged compared to somebody that grows up in
24 a Dallas suburban school district or Alamo Heights
25 in San Antonio or Northeast in San Antonio, so

1 that's very pertinent also.

2 Here, I mean, as far as discrimination,
3 I heard it at Jefferson High School when I was a
4 substitute teacher there, about teachers, their
5 attitudes. Particularly, Anglo teachers. There is
6 - and it does somewhat puzzle me - there is a
7 large contingent of teachers who have been there a
8 very long time at very different schools that have
9 old attitudes that really need to change, and that
10 kind of discrimination, that kind of negative
11 attitude permeates teaching still out there. And I
12 think that the minorities that grow up in Texas
13 does still face that. And not seeing persons like
14 the people that have presented here today that are
15 very successful.

16 You grow up -- it's almost a miracle
17 that I even applied to Stanford, Harvard. I didn't
18 even graduate first in my class. I graduated like
19 8th, and my brother was a little bit further up
20 than that. The people that graduated below us --
21 one of them went to MIT. The others didn't even
22 go. They applied to St. Mary's. Most of them
23 ended up at San Antonio College. And these were
24 people that had done so very well in what they were
25 given in that educational system. They had gotten

1 high GPAs. Right? Of course, when they went up
2 against the national standardized test scores, they
3 didn't -- we didn't score, you know, particularly
4 stellarly, but we did as well as we could at that
5 school system. And these were people that were
6 ending up at San Antonio College and -- I mean,
7 compared to what -- if they had just applied, they
8 could have done, but they don't feel that that's
9 their world. They don't know that. They don't
10 have the role models, the examples, as is more
11 prevalent, I think, in the Anglo community and in
12 more influential communities.

13 CHAIRMAN CANALES: Anything else?

14 MR. WEST: Yes.

15 If you had not been the beneficiary of
16 affirmative action coming out of high school, what
17 kind of school would you have gotten into or gone
18 to?

19 MR. CASTRO: If I had not been the
20 beneficiary?

21 MR. WEST: Instead of Stanford, where
22 would you have gone?

23 MR. CASTRO: U.T.

24 MR. WEST: Same question with respect to
25 law school. Would you have gotten into Harvard

1 without affirmative action?

2 MR. CASTRO: Would I have gotten into
3 Harvard without affirmative action? I don't know.

4 MR. WEST: I mean, would you have gotten
5 into U.T. without affirmative action?

6 MR. CASTRO: Originally?

7 MR. WEST: No, now.

8 MR. CASTRO: Now?

9 MR. WEST: Based on your current test
10 scores.

11 MR. CASTRO: Maybe. Maybe that's -- for
12 example, I'll give you the specific number. I got
13 a 168 on the LSAT, which is 97 percent. For that
14 year, the U.T. average was 163, so, yeah, I
15 guess --

16 MR. WEST: Pretty good chance.

17 The question I have is, would it have
18 been so bad for your life if you hadn't had
19 affirmative action? You would have had to go to
20 U.T. instead of Stanford and maybe U.T. instead of
21 Harvard. That doesn't seem so bad to me.

22 MR. CASTRO: That's a funny question.

23 MR. WEST: Is it bad, I don't know?

24 MR. CASTRO: Well, no. Hey -- well, you
25 know, don't give me two ice creams, give me one and

1 I'll be happy. No, it wouldn't have been bad. Of
2 course, it wouldn't have been. I mean, it's not
3 horrible. But what about the person who is a
4 little bit lower on the scale when we're talking
5 about you go to U.T. or you go to UTSA? What about
6 somebody who is a little bit lower? You know, you
7 go to UTSA or, hey, you're disillusioned, you don't
8 go anywhere. What about that, you know? So for
9 me, personally, no, because I - just like I trust
10 you are - are a smart individual. And there are
11 many, many smart individuals that aren't getting
12 the same chances that we got. I understand that
13 there are some U.T. law professors here --

14 CHAIRMAN CANALES: Let's not address
15 anyone.

16 MR. CASTRO: Well, I didn't know who all
17 are U.T. law professors.

18 CHAIRMAN CANALES: We need to
19 summarize. One more question. Ms. Zamora.

20 MS. ZAMORA: I just simply wanted to
21 ask, is it better that you went to Stanford? Does
22 it make a significant difference in your life, you,
23 personally?

24 MR. CASTRO: Well, I think that going to
25 any of those schools -- if you went to Princeton,

1 Harvard, Stanford, whatever, I think, yeah. I
2 think if you look at the numbers -- especially when
3 you go to grad school. Those places just switch
4 around their people. Right? Stanford will take 20
5 people for the law school from Harvard. Harvard
6 will take 15 people from Stanford -- from -- 15
7 from Princeton. It would be much more difficult if
8 I went to, you know, A&M to get into Harvard Law
9 School than it would if I went to Stanford, sure.
10 Because the strength of the school is a -- from
11 what I understand, a significant factor in whether
12 you're allowed to get in or whether you're
13 admitted. So, yeah, I think -- you know, whether
14 it enhanced my life ultimately, that's still a
15 question to be answered. But, yeah, it enhanced my
16 chance of getting into a good grad school.

17 CHAIRMAN CANALES: Thank you very much,
18 sir. Move on to the next person. Thank you.

19 Bonnie Harrison.

20 Does anyone else still -- have you
21 registered? I don't have your form.

22 Ms. Harrison.

23 MS. HARRISON: Hi. Thank you very
24 much. I know you're all tired. We came early this
25 morning, too. Just to follow-up, I just want to

1 make a comment about getting into school and my own
2 personal cases. I was admitted to two schools for
3 graduate school, and one of them was the University
4 of Chicago. And I grew up in the neighborhood of
5 where that school is -- town. And it would have
6 been very prestigious for me to go to that school.
7 I did not get in an affirmative action program,
8 however. And I don't think I got into U.T. under
9 an affirmative action program, either. Being well
10 sought for by my field; having worked in the field
11 before I came back to school. All I'm trying to
12 say is that faced with a choice of University of
13 Chicago and University of Texas, both very good
14 schools, University of Texas offered me an
15 affirmative action scholarship, so I came to the
16 South against my family's wishes. And I think that
17 that's a significant part of what affirmative
18 action is all about, particularly for Texas. I
19 wouldn't have come here if I hadn't been offered a
20 program that said we believe in you, and we want
21 you here at our school and we think that people
22 like you should be here. I simply wouldn't have
23 come here, because of my own perceptions --
24 perhaps, someone's prejudices, but also because my
25 family grew up in Alabama and they -- they were

1 unscreamed (phonetic), if you'll allow me to be a
2 little expressive, from the South, to the North
3 just two generations ago. So, anyway, that's my
4 own particular take. And, of course, coming to
5 Texas, I learned so many things. That it wasn't so
6 bad here, et cetera, et cetera. There are
7 wonderful things to do around here.

8 I'm going to make my very brief
9 statement and I hope, again, that it's helpful and
10 not too expressive. When I first heard about
11 Hopwood versus Texas, I was amazed that anyone
12 could oppose affirmative action. It quickly
13 overcame my mind. I began to think about the
14 reasons why I had taken affirmative action for
15 granted and the values that I brought to that
16 assumption.

17 Clearly, the exclusion of people of
18 color and women in U.S. institutions have had a
19 profound effect on our life choices, both in the
20 past and in the present. But while the civil
21 rights and women's movements began a long and
22 arduous journey to social justice, the inclusion of
23 people of color, and women, has not been a value
24 that all us share unfortunately, nor has it been
25 possible to implement social justice in the basic

1 structure of racism. I began discussions with
2 other people who were not in favor of affirmative
3 action to understand that not valuing the inclusion
4 of communities of color and women was easy for
5 those who did not themselves have a history of
6 exclusion or who did not have a strong commitment
7 to justice, which involved understanding structural
8 obstacles of racism and sexism. Indeed, in
9 ignorance of these fundamental actions of power, it
10 would make it easy to miss the social power of
11 racism and sexism, and to blindly say that they
12 don't exist or to accept simple solutions and
13 pretend that they have gone away. There are no
14 simple solutions for social justice. Racism in
15 Texas cannot be dismissed by ignoring it.

16 Herein lies the problem. I've heard a
17 lot of times people equating race with racism and
18 race consciousness with racism. This simply is not
19 the case. If we ignore race as a solution to
20 racism, it's like ignoring gender to erase sexism.
21 It simply is not a viable solution. And this is
22 why we need affirmative action. This is one of the
23 reasons.

24 Indeed the best way to combat racism and
25 sexism, as we know it, is to continuously and

1 vigorously acknowledge their presence in the code
2 of social -- code and social forces, and to
3 squarely and clearly meet them head on.

4 Affirmative action programs meet racism head on.
5 They are not complete or perfect solutions by any
6 means, but they are nonetheless crucial.

7 I personally believe that the government
8 is not responsible for all of our social actions.
9 And we are personally involved -- it's our own
10 person -- it behooves us to get involved, but -- in
11 our social struggles. But the government, on the
12 other hand, represents our collective struggles for
13 justice and affirmative action acts on our behalf.

14 A double-edge sword indeed are a
15 collective will -- the will of the majority,
16 sometimes undervalues the rights of the minority.
17 And, hence, it takes clear and careful
18 consideration of how justice actually works, for it
19 to be served. Our Constitution guarantees, for
20 example, justice in theory. But it took three
21 fragile amendments -- amendments to the
22 Constitution -- to the Constitution for those
23 rights to be applicable to African-Americans like
24 me. Three fragile amendments to the Constitution.
25 And those are fragile amendments.

1 These three amendments make the ideal of
2 the Constitution possible for all. Without these
3 amendments to an ideal -- to the ideal of the
4 Constitution, the structure and the institutional
5 biases in favor of land-owning White men severely
6 constrict the lives of those who do not fit that
7 description. This is a perfect example of how our
8 values and ideals may not, without assistance,
9 translate into social reality. Affirmative action
10 is likewise designed to amend structural racism in
11 the U.S. institutions. When the Civil Rights Act
12 passed in 1964, it was the ideal in law. The same
13 institutions and racism -- administrators, from the
14 educational system to the business world, who had
15 maintained a segregated society, did not, for the
16 most part, change their values or ideals to include
17 groups of people they formerly found advantageous
18 to exclude. Amendments were needed to our social
19 ideal to face our social reality.

20 Affirmative action was a solution to
21 this reality. And in the name of reality -- of
22 racism and sexism in the United States today. I
23 support not racial preferences or quotas, but a
24 real concerted effort to understand the difference
25 between race, race consciousness and racism, and to

1 make space available in today's society for all of
2 our individuals, even if that means that some
3 people may have to move over to make some space.

4 What racism and sexism do -- excuse me.

5 CHAIRMAN CANALES: I must ask you to try
6 to summarize because of our time. I've asked
7 everybody else.

8 MS. HARRISON: Okay. Great. Thank
9 you.

10 What do racism and sexism, do you -- you
11 ask me. Well, when I walk into a classroom, my
12 students question my capacity to teach them on the
13 basis of my race and my sex today. Or when my last
14 chances of even getting a job are limited by my
15 education -- are limited by the educational chances
16 that I've had because of an inferior school, or the
17 assumption that people make about my character
18 because I'm a black women. These are -- these are
19 the sources of -- this is racism and sexism at
20 work, and it's very prevalent today and it's very
21 present in my life.

22 This society of meritocracy is still
23 based, for the most part, on your social status,
24 and people of color and women are still
25 undervalued. Social justice is not a zero sum game

1 that many of us suffer by exclusion, but we all win
2 by inclusion.

3 CHAIRMAN CANALES: Any questions?

4 Mr. Bledsoe.

5 MR. BLEDSOE: I've got one, maybe a
6 two-pronged question here. One is, being familiar
7 with the minority graduate students around the
8 campus, can you tell us what impact there will be
9 on those numbers, being familiar with the
10 individuals who are here. If funding is taken away
11 so that students such as yourself who have come
12 here partially because of the funding, what will
13 that do to the numbers at the graduate school? And
14 the other question relates to, have you seen
15 evidence of bias or discrimination on the campus
16 since you've been here?

17 MS. HARRISON: For the first part of the
18 question, I know several graduate students who will
19 not be able to finish their Ph.D.s in the history
20 department, in particular. Several students,
21 Mexican-American students, who are friends of mine,
22 have expressed, not in a political context, but in
23 a personal context, the fact that they will have to
24 be putting off going to school next year because
25 the scholarships that were -- that they were

1 brought into the university for under -- have been
2 changed or have not -- they are no longer eligible
3 for them. So very particularly I know of
4 individuals whose education will be curtailed, will
5 be stopped in some instances, because of these
6 changes. I know that people are not applying to
7 the University of Texas, that devalues all of our
8 education, because the devaluation of the
9 University of Texas as an institution, in peoples'
10 minds -- I mean, if you look at -- if you go to
11 Harvard, Columbia, the University of Chicago -- and
12 people start talking about the University of Texas,
13 you know, it's not -- it's not a pretty -- it's not
14 -- we don't have a good image right now, and
15 people aren't applying to us because of that.

16 I'm a part of an African ambassador
17 program and we're trying desperately to show that
18 this university does have a commitment to
19 diversity. It does have a commitment to racialized
20 knowledge and to social justice. And we're trying
21 to promote that image, you know, because in part
22 we're invested here. I'm invested here. And I
23 came here and learned a lot and believe in this
24 institution, which is why I'm so disappointed
25 they've taken Hopwood so far. But, again, we won't

1 be seeing the kinds of quality of students applying
2 to this institution that we would have before
3 Hopwood.

4 Secondly, bias -- and for the most part
5 I think in the America today and the United States
6 today, most of us don't -- aren't worried about
7 racism. I have a roommate that once said to me,
8 Aren't you glad we live in a society that's not
9 racist? And I made it very clear. I had to sit
10 with her and say, Do you really think that your
11 experiences and mine are the same, because you're
12 European-American and I'm African-American? And we
13 had to really struggle with that, because people
14 don't have a sense of what being racialized is
15 about or using -- or understanding what race means
16 and how race is a social factor that we are grouped
17 into, for good or for bad.

18 In my own personal experiences, I've had
19 several incidents of people abusing me or throwing
20 things at me, or whatever, since I've come to Texas
21 that have been very illuminating. They are --
22 those are individual examples of racism of people
23 choosing me as a target or calling me names or
24 whatever. I never had these experiences in
25 Chicago. But, anyway, those are very specific

1 individual examples.

2 On the institutional level, the extreme
3 lack of consciousness or awareness of other ways of
4 Americans as a diverse community. In classrooms,
5 I'm often the only black woman. I'm often the site
6 of questions about African-American lives and
7 struggles and history. And to me that's absurd at
8 the college level that -- we've been here for 400
9 years. We've been neighbors. We know each other
10 very well, I should think. Ignorance about
11 difference shouldn't be in here -- shouldn't be at
12 this level. And for me, even though that's another
13 -- again an individual -- an individual experience
14 with racism of people not understanding or putting
15 me in certain boxes because they think that I mean
16 something because I'm -- they have a certain image
17 about what I -- who I am because I'm
18 African-American. Again, I believe that those are
19 constructed in institutions and educational systems
20 that people go through. And our lack of
21 consciousness and our willingness to not talk about
22 race, safe thing, pretending that we're not racist,
23 because this is a very racist society and it's very
24 much a part of our life.

25 CHAIRMAN CANALES: Thank you very much.

1 MS. HARRISON: Thank you.

2 CHAIRMAN CANALES: Mr. Alonzo Jones.

3 MR. JONES: Good afternoon now. It was
4 morning when we discussed a little earlier and
5 you're still here I see.

6 I would -- I was looking forward to
7 possibly answering any questions that the panel had
8 from this morning, but I know time is short and
9 perhaps -- in terms of what you all are trying to
10 do legally is perhaps either supporting, affirming
11 or reversing Hopwood, or whatever the ultimate
12 intention is, that the legal aspect plays a much
13 more significant role in a certain perspective.
14 I'm here now and I would like to answer any
15 questions that may come up.

16 What I'd like to do is that -- I'm glad
17 there was an opportunity to speak openly, because I
18 want to get some things, naturally, off my chest.
19 I tried to be as neutral and objective as possible
20 giving my presentation, but naturally I have some
21 emotional attachment to the issue of Hopwood.

22 I wrote a -- I was a guest presenter for
23 a doctoral program here at U.T. back in March of
24 1996, and that's when we were basically talking
25 about our impressions about Hopwood. And I want to

1 let you know some predictions I made back in 19 --
2 March of 1996, and see how close to accurate I
3 was. But I had mentioned that the challenge of the
4 constitutionality of minority, multi-cultural,
5 social equity or --

6 THE COURT REPORTER: You're going to
7 need to go slower.

8 MR. JONES: Am I going too fast?

9 THE COURT REPORTER: Yes, you are. It's
10 the end of the day, so --

11 MR. JONES: Okay. That's the second
12 time you got me.

13 The challenge of the constitutionality
14 of minority, multi-cultural and social equity or
15 cultural-specific offices that has occurred in my
16 university. We have been looked at with a critical
17 eye as to whether or not we are considered a valid
18 office. If you eliminate the potential of
19 multi-cultural office, you eliminate significant
20 numbers of your minority staff, although we're in
21 the process of revising. The challenging and
22 targeting minority recruitment issues. And before
23 you today we stand challenged on minority
24 recruitment issues. What I didn't even fathom was
25 the challenge of retention issues. But I stand

1 before you today that we are challenged on
2 retention issues to the point that even an
3 African-American Freshmen Leadership Conference can
4 no longer seek out institutional funds. Or is
5 being questioned about whether or not -- because
6 African-American Freshmen Leadership is in the
7 title, that now we're in some form of jeopardy.
8 The Black Student Alliance can't even go to the
9 student services and ask for a Black program
10 dealing with something that's cultural specific,
11 because it has undertones of being funding -- state
12 funding based upon race, so there are sweeping
13 implications.

14 The other issue is awareness of new
15 scholarship criteria, excluding race, will create a
16 flow of White applicants to the extent that the
17 majority of awards of fair practices will go to
18 white students in disproportionate numbers.
19 Initially, we had first generation of low income
20 scholarship criteria and we instantly became
21 flooded with so many scholarship applications that
22 we were just inundated and really unable to
23 maintain any remnants of diversity because that's
24 -- out of 260 million people in the United States,
25 some 75 percent of that -- which identify

1 themselves as White. Just pure numbers are going
2 to overwhelm your pool.

3 And the last one I said - and I don't
4 know if this is too far based - but arguments will
5 arise asserting that financial assisted programs,
6 scholarships, should be given in proportion to race
7 percentage of eligible students in applicant
8 pools. Fair is fair; no discrimination. These are
9 some things that I see on the horizon. And I think
10 that they're coming from individuals who are trying
11 to do what they consider to be fair. But I have to
12 also assert that we are a nation divided by racism,
13 and our historical context has us look at things
14 from a different lens. Hopwood attempts, and I
15 quote -- it said, Racial preference appeared to
16 even the score only if one embraces the proposition
17 that our society is appropriately viewed as divided
18 into race; making it right that an injustice
19 rendered in the past to a Black man should be
20 compensated for by discriminating against the
21 White. Those are harsh terms. I deal with Black
22 and White daily, and I know no other way to speak.
23 And I'm quoting from the Texas Appeals. But I ask
24 you, what kind of issue or agenda do we have that
25 it reflects parity opinion or representation

1 consistent to the nation's statistical diversity?
2 What are we really united about? Opinions of race,
3 from anything from residential clustering, levels
4 of involvement within the justice system, SES
5 clusters, educational attainment, religious
6 practice, social habits, political agenda, career
7 patterns, music, definitions of identity,
8 hyphenated American, strictly American. We are
9 clearly a nation divided by race. But Hopwood
10 takes the position that they try to make law
11 without considering the significance of culture.
12 That is somewhat -- somewhat insulting. And let me
13 address that briefly, and certainly you'll have to
14 cut me off. I may have been here a long time.

15 But our interpretation of Hopwood stems
16 from the way we interpret culture in this society.
17 If one values an act in such a way to align and
18 affirm culture, then typically affirmative action
19 is seen as a continued necessity. If one holds
20 allegiance to country until monolithic (phonetic)
21 equates individual effort with reward, then
22 affirmative action is typically on its death bed
23 and arguably should never have been born.

24 I believe America is divided by race.
25 If people faced with the challenge of survival --

1 they value team cohesiveness, they value culture.
2 And people faced with prosperity value independence
3 and individuality. Blacks in America and Chicanos,
4 I believe, are more consistent with the first
5 description and Whites the last. If Blacks are to
6 be held under the strict and literal interpretation
7 of the 14th Amendment and thus led to the same
8 standards without any compensation for varying
9 starting points based upon past discrimination,
10 then let's first come to the consensus on the
11 following questions. Okay? And I'm saying this is
12 the context that if you look at everyone that
13 argued law, Hopwood -- if you look at the people
14 that made decisions about Hopwood. If you look at
15 the cultural mind set of the people that are
16 affirming Hopwood, they typically, I believe, come
17 from the cultural evolution, overwhelmingly, that's
18 not from the lineage of oppression.

19 If Blacks, during times -- if Blacks
20 during times of slavery associated reading and
21 writing with death, castration and brutality, how
22 long a generation, once given access, would it take
23 before the collective of Black people began to
24 embrace these basic tools of education? And when
25 did that beginning point begin? 1863, 1965? Why

1 do Blacks dominate sports they become involved with
2 in significant numbers? Why are Blacks
3 under-represented in education? Why do you think
4 there are statistically disproportionately more
5 Blacks in the penal system than Whites? Then I ask
6 the most basic question: Do you believe this is
7 biology or do you believe this is sociology? I
8 would -- I'd have to go to blows with anybody that
9 wanted to say biology. So clearly it stands to be
10 an issue of sociology.

11 But the thing -- because civil rights no
12 longer allows us to -- we have overcome the
13 physical barrier and the outright physical blocking
14 of access, so it is now into a covert mentality. I
15 do not want to blanketly say that the dominant
16 culture practices racism, but I can't sit here
17 before you today and say that it no longer exist
18 when I constantly look around my community with
19 statistical numbers and find that it's
20 under-represented in education and over-represented
21 in crime, under-represented in the social, health
22 and welfare type things. Is this biology? Do we
23 from the womb predestine ourselves to be in this
24 type of mentality? Or are there influences that
25 span from intangible things out there?

1 Yes, sir.

2 CHAIRMAN CANALES: If you would
3 summarize, please. If you have a written
4 statement, we can include it in the record.

5 MR. JONES: I have a document that I can
6 share.

7 CHAIRMAN CANALES: We'll be glad to
8 include it. Will you please summarize. We still
9 have about three more people.

10 MR. JONES: Yes. Okay. I'll just close
11 it out and say that -- and I thank you all for this
12 opportunity to vent some things off my chest. But
13 America is attempting to pass law without the
14 consideration of culture, for survival reasons, for
15 issues of slavery, for issues of Jim Crow, for
16 issues of military conflicts, for issues of
17 violation of treaties. When this has been your
18 constant relationship to the dominant society, you
19 tend to be a little bit cautious. And then you
20 need the protection of law, and we've had that
21 then. We've had that protection of law even though
22 with the protection of law we still deal with
23 Texaco; we still deal with Rodney King; we still
24 deal with all these aspects. So without the
25 protection of law, we're placed into a position of

1 vulnerability and we're subject to a dominant
2 culture's mind set that does not value culture, but
3 yet tries to influence us from their mind sets.
4 And I think that's a great travesty that's missing
5 from the Hopwood dialogue. It's more rhetoric than
6 legislation. But you can't legislate culture and
7 you certainly can't legislate -- we need to involve
8 more people in dialogue.

9 Thank you.

10 CHAIRMAN CANALES: Are there any
11 questions?

12 Mr. Bledsoe.

13 MR. BLEDSOE: I have a couple of
14 questions here. I'll ask them for my -- one is,
15 have you observed what you feel to be efforts to
16 implement Hopwood that, in your opinion, have
17 caused minorities to be discriminated against
18 themselves and lose their rights as guaranteed by
19 law in the Constitution because of how Hopwood has
20 been interpreted? And No. 2, what kinds of
21 recommendations would you make where you sit to fix
22 the problem?

23 MR. JONES: Yeah, I think you could make
24 a strong -- strong argument that actually Hopwood
25 violates the rights of minority students,

1 especially if you look to post-1965 where
2 opportunity advances were in place and then you
3 look at 1997. Let's say, you look at what
4 scholarship and admissions opportunities, as small
5 as they are, even though the effort and intention,
6 I believe, are noble and good. But yet when you
7 implement Hopwood and you take race out of the
8 equation, no matter how you slice it, no matter how
9 you look at it, every race and culture will have
10 those same characteristics. So, in essence, you've
11 taken a limited number of resources and you further
12 -- further divided those. So, in essence,
13 something that was initially put into the program
14 for minorities is now being reduced, in essence,
15 taken away.

16 So I think there's an argument there
17 that affirmative action basically assured
18 minorities a piece of the pie, and now the
19 anti-Hopwood rhetoric is basically further slicing
20 that pie, so one may make an argument that in the
21 name of Hopwood minorities are further
22 discriminated against because they have to give up
23 what was initially provided to them.

24 In the later part of your second
25 question, I believe Hopwood went too far. I

1 believe we should constantly look at what our
2 policies are. I think that an affluent,
3 middle-class or wealthy African-American student,
4 that's third or fourth-generation student,
5 basically can no longer hold on to the argument
6 that I'm still dealing with the vestiges of the
7 past, so that student shouldn't be a recipient of a
8 race-based scholarship or a race-based admissions
9 criteria. But I do think that that still should be
10 limited in the context of race to the first
11 generation and low income students.

12 And I say that because - and maybe this
13 is a point of contention - but I know -- I can
14 argue with you how disproportionate
15 African-American and Hispanics of first generation
16 and low income, but I cannot put that same argument
17 in the case of White history throughout the
18 chronicles of America. So to put them under the
19 same pool of income and admissions criteria, when
20 they're bringing to the table a completely
21 different lineage and tracks, seems inconsistent,
22 unfair and seems more consistent with dominant
23 logic as opposed to cultural logic.

24 MR. BLEDSOE: And what recommendations
25 would you make for us if we're going to repair the

1 problems that we have encountered? As a college
2 administrator, you know the situation, if you were
3 going to devise a plan that you think might meet
4 some of the race conscious concerns that have been
5 manifested by the Hopwood principal that you
6 recommend?

7 MR. JONES: Okay. I believe we need to
8 critically look at everything. I'm not certain
9 whether a race-based scholarship in the freshmen
10 level determines whether or not a student goes to
11 school. I think it determines where they go to
12 school. And what's most important to me is that
13 they go to school. I think a \$1,000 or \$2,000
14 scholarship is not as significant as perhaps a
15 \$5,000 or \$10,000 scholarship. So I think we need
16 to look at the value of the dollar and what we're
17 really trying to accomplish. I would think that
18 the problem is students are not going to school.
19 That scholarships should somehow be manifested in
20 taking a student that would not have gone to school
21 and creating such a program that would actually
22 have changed that person's life. Because simply to
23 have a scholarship to go to SWT when a student
24 would have gone somewhere else -- that student
25 still breaks the chain of lack of education.

1 I think that it should be scrutinized in
2 the sense that it's first generation, low income,
3 still within the context of race. I think that
4 universities like mine that have -- that don't have
5 caps -- that do not have cap enrollment for very
6 highly selectively criteria, in terms of admissions
7 criteria, shouldn't really be in the business of
8 affirmative action, because just overwhelmingly our
9 students can meet our academic criteria. But if
10 you take a Berkeley, a Stanford, a U.T. law school,
11 medical program, and if you look at the low numbers
12 that are even meeting the core admissions criteria,
13 then those are the types of institutions that need
14 affirmative action. I'm all for narrowing down and
15 being more specific, but I just could not see the
16 lumping of what Hopwood is trying to do.

17 DR. BURKE: Thank you, Mr. Jones.

18 MR. JONES: Yes, sir.

19 DR. BURKE: We have just a few more
20 people to hear from.

21 MR. JONES: Thank you. I appreciate
22 it.

23 DR. BURKE: We'd like to hear from Laura
24 Saponara, please. I hope that I pronounced that
25 correctly.

1 MS. SAPONARA: Yeah, pretty good. I'm
2 just going to be real brief. My name is Laura
3 Saponara. I'm a graduate student here at U.T. in
4 the radio/television film department and I also
5 serve on the local board of Central Texas American
6 Civil Liberties Union. And I work with a group of
7 students on campus who have been very concerned
8 about the effects of the implementation of the
9 Hopwood decision. And we've been working to some
10 degree with Senator Ellis's office up at the
11 Capitol. We held a press conference there on March
12 5th to state our concerns. And not only are we
13 concerned about a drop in minority enrollment, but
14 we're also concerned that legislative attempts to
15 circumvent or subvert the Hopwood decision, such as
16 the 10 percent plan, while they're very well
17 intended, and I don't mean to imply that we don't
18 support them, but we certainly feel that they're
19 insufficient in terms of compensating for what is
20 already -- what we perceive as a rather drastic
21 decline in minority applications and interest in
22 the school at large.

23 I just wanted to make -- say briefly
24 that -- well, I had sort of known for a while,
25 because I attended a Chicano/Hispanic Law Students

1 Association Forum that was held in this room a
2 couple of weeks ago -- I had an indication that
3 this hearing was going to happen today, but I had a
4 little bit of a hard time finding out where and
5 when, in other words, getting the details, until I
6 realized that I needed to talk to the Western
7 Regional Office of the U.S. Commission on Civil
8 Rights. And after trying for a few days, I
9 received a news release on Thursday. But I noticed
10 the news release states, explicitly, that one of
11 the objectives of this forum is to elicit
12 information from students, scholars,
13 administration, others, regarding the
14 implementation of Hopwood. And I don't mean this
15 in a spirit of antagonism at all, but I'm concerned
16 that this event itself was ill-publicized if, in
17 fact, the intention was to gather input from
18 students. And the reason I say that is that I
19 called a woman named Sylvia Magill, who is at the
20 Black Law Student Association -- member, and she
21 was not -- she's here in the law school and she was
22 not informed. I don't believe her organization was
23 informed. Rodney Ellis' office was not informed of
24 this hearing as of yesterday morning. David
25 Montehano, of the Center for Mexican-American

1 Studies here on campus found out that this was
2 happening on Thursday of this week. And certainly
3 the American Civil Liberties Union, we weren't --
4 we weren't informed. Also, just -- I realized that
5 there was a note in the Federal Register, but
6 students unfortunately don't read the Federal
7 Register. And also, we were a little disconcerted
8 that that notice did not mention the words
9 "affirmative action" or "Hopwood," if it was
10 intended for general publicity. So that's all I
11 have to say.

12 CHAIRMAN CANALES: Thank you.

13 MR. BLEDSOE: Just one question. I'd
14 say that -- I think Senator Ellis' office probably
15 was notified. I know that for a fact, I think.
16 But I don't know about the others. That's a good
17 recommendation, food for thought. But I wanted to
18 ask one question here. I know a lot of
19 corporations are looking to find people that have
20 experiences indicating that they can deal with
21 diverse people, because with a global economy that
22 we're in, et cetera, there is more and more of an
23 effort to look toward people who know how to deal
24 with different groups of people, et cetera, et
25 cetera. In your opinion, will the RTF program at

1 the University of Texas be harmed by Hopwood
2 because of the elimination of diversity in that
3 program?

4 MS. SAPONARA: I think your point is
5 certainly a valid one in terms of corporate
6 interest in hiring people who are able to
7 adequately negotiate cultural difference, which is
8 particularly apparent in California over
9 Proposition 209. Some of the corporate leaders
10 that expressed concern and came out, voting in
11 opposition for the proposition, were from -- CEOs
12 from ARCO, Southern California Edison, Hewlett
13 Packard, corporations like that.

14 Certainly I think -- in addition to the
15 demoralizing effect that it has on students, and I
16 say that as a -- as a teaching assistant. When the
17 Hopwood decision came down last year and there was
18 really a lot of concern I think about students in
19 terms of just feeling the panic, not even being
20 able to really think so much in terms of their
21 future hiring prospects, because of feeling
22 discouraged about what their opportunities might be
23 while they are still here. Yeah, I think, in
24 general, when we talk about promoting diversity in
25 the workplace that -- you know, that without an

1 increasingly diverse student population in RTF, and
2 other colleges within the college of communication,
3 including advertising, journalism, public
4 relations, speech communication, you know, in
5 disciplines where there is a direct connection to a
6 community, like a clinical connection in terms of,
7 let's say, the need for a speech pathologist, or
8 something, that are able to specialize or to
9 interact effectively in minority communities. I
10 mean, that's one sense. That's one example of the
11 kind of ill-effects that a decision like this would
12 have. And I'm sure it's exactly, you know, the
13 same when it comes to corporate recruiting on
14 campus for communication students.

15 CHAIRMAN CANALES: Okay. Thank you.

16 MR. BLEDSOE: Thank you.

17 MS. SAPONARA: Sure.

18 CHAIRMAN CANALES: Sheila Contreras.

19 MS. CONTRERAS: My name is Sheila
20 Contreras and I'm a Ph.D. candidate in the
21 Department of English, University of Texas at
22 Austin. I'm also an assistant instructor. I teach
23 a course in Chicana and Chicano literature to
24 generally sophomore, junior students, a literature,
25 incidently, that I had no access to, whatsoever, in

1 my own education before I was 25 years old and in
2 graduate school.

3 I am here today to address the impact of
4 Hopwood versus Texas, as I have witnessed it as a
5 graduate student at the University of Texas at
6 Austin. More specifically, I speak to the broad
7 interpretation of that decision as it has been
8 initiated and implemented by Attorney General Dan
9 Morales, legal counsel to the University of Texas
10 at Austin and U.T. Chancellor Cunningham. I refer
11 to the extension of the decision to apply to
12 financial aid awards, effectively eliminating all
13 affirmative action funding for U.S. minorities.
14 And by that I mean Chicana and Chicano students of
15 Mexican descent, Black, native and Puerto Rican
16 students.

17 I came to U.T. in 1991 on a graduate
18 opportunity fellowship, a program that was
19 dismantled over the summer in accordance with the
20 mandate of the Attorney General's office.

21 In the wake of Hopwood, the graduate
22 studies office developed -- (loud noise) --

23 THE COURT REPORTER: I'm sorry, "In the
24 wake of Hopwood --"

25 MS. CONTRERAS: In the wake of Hopwood,

1 the graduate studies office developed what they
2 called the thematic fellowship on peoples and
3 cities of the Southwest to fund dissertations in
4 that area. People working ostensibly on
5 communities of color in the U.S. Southwest.
6 Approximately a month and a half ago, the awards
7 were announced. This fellowship which funds
8 dissertations on borderland history, borderland
9 studies and history, anthropology, sociology,
10 English and other disciplines, as far as students
11 and many faculty can tell, went predominately to
12 Anglo students. I cannot offer precise statistics,
13 because they have not been made available to us.
14 In fact, there has been somewhat of a resistance to
15 even tell us any more about this. At this point, I
16 know of only one Chicana or Chicano student who was
17 awarded that fellowship, and many more that I know
18 of applied for it. While I do not claim exact
19 knowledge of this statistic, I believe our general
20 impressions are correct. Anglo students, in this
21 case, are being more heavily funded to study
22 communities of color in the U.S. Southwest at the
23 University of Texas at Austin.

24 Who, I ask you, will write our histories
25 and tell our stories now? Do we return to a time

1 when information about our cultural, social and
2 political lives is disseminated only by those in
3 the dominant group? Are we being effectively
4 removed from a position by an academic agency? I
5 don't suppose a conspiracy on anybody's part. What
6 I claim is the mechanisms of exclusion are so
7 deeply imbedded in the machinations of this
8 institution, that unless we remain vigilant and
9 unless we have access to institutional recourses,
10 such exclusions will continue to perpetuate as we
11 are witnessing right now, I can tell you that.

12 Go to any department on this campus and
13 ask anybody who knows anything about this. I ask
14 what I asked the committee for, is to demand
15 accountability from the Attorney General's office
16 and the U.T. Chancellor in the form of demographic
17 statistic on the awards of the people and cities of
18 the Southwest thematic fellowships and university
19 fellowships. Historically, U.S. minorities have
20 been denied access, denied access to university
21 fellowships at U.T. Austin, because what they did
22 was they funneled us all into the GOP or whatever
23 minority funding that was available. We were not
24 -- we were never nominated for those fellowships
25 and I have absolutely no knowledge of any student

1 of color, other than international students, who
2 has ever held a university fellowship, and that is
3 supposedly the main source of our funding now.

4 We must know if this trend has
5 continued, and the awards of the university
6 fellowships will be -- which will be announced next
7 week, I believe; and if it is, indeed, operating in
8 the award of other funding for research, i.e.,
9 people and the cities of the Southwest thematic
10 fellowship. I cannot stress enough the importance
11 of this historical moment, which I believe the
12 committee has recognized in its decision to hold
13 this hearing. There is data being generated daily
14 at U.T., and we must have access to it in order to
15 prove what many of us already know, what is -- what
16 is readily apparent. The fellowship competition
17 that recognizes and supports virtually no students
18 of color is no colorblind endeavor.

19 I thank you for the opportunity to talk
20 to you today.

21 CHAIRMAN CANALES: Thank you very much.
22 Any questions?

23 MS. CONTRERAS: Any questions?

24 CHAIRMAN CANALES: Ms. Berriozable.

25 MS. BERRIOZABLE: Do you have any data,

1 even if it's just your personal knowledge, of the
2 number of Latinas, Chicanas, Hispanas, who are
3 doctoral students at the university or, even more,
4 faculty?

5 MS. CONTRERAS: In terms of faculty, I
6 believe that there are --

7 MS. BERRIOZABLE: And then I have a
8 second part to the question. That, and then,
9 No. 2, what specific recommendations do you have?

10 MS. CONTRERAS: Okay. Well, in terms of
11 Latinas, Chicanas on the faculty, I can really only
12 speak about liberal arts. From what I understand,
13 there are perhaps five, six, less than 10.
14 Certainly less than 10 in the State of Texas on the
15 faculty of the University of Texas at Austin. In
16 terms of Ph.D., or in terms of graduate students,
17 Latinas, Chicanas, in the English Department we
18 have - you see, I can count them on one hand - we
19 have five, I believe. I believe history has five.
20 Sociology, anthropology, I would wager there's no
21 more than five in each of those departments. And
22 many of these are students who applied for that
23 thematic fellowship and did not receive it and who
24 are looking at completing their education with no
25 knowledge or not even knowing if they're going to

1 complete their education, because they don't know
2 if they're going to get support. Right?

3 In terms of my recommendations, I think
4 that we have to take advantage of the data that is
5 out, because it is there. And the statistics have
6 been manipulated to such a degree that it is really
7 necessary for us to understand and to make public
8 -- to make public what is going on right now. And
9 demographic statistics on the awards of these
10 fellowships seems to me to be a very good way to do
11 that. I think we have to look at retention rates.
12 We have to look if the level of minority students
13 at the University of Texas at Austin, and I think
14 this is even more crucial at the graduate level in
15 which there are far fewer of us. If the level is
16 being maintained; if it's dropping. I think that
17 students are -- you know, not going to be too
18 interested in coming to a place like U.T. based on
19 what has happened here last year, and the
20 elimination of much of our funding. And I think
21 that we have to pressure the Attorney General's
22 office, that we have to make known to the U.T.
23 chancellor that we're aware of what's going on,
24 we're keeping track of it, and we're going to
25 consistently demand accountability. I think that's

1 also what is happening. People, administrators,
2 the Attorney General are not being held
3 accountable. And I just think that it's an
4 important time; stuff is happening. It's
5 happening. It's out there, and we see it every
6 day. You know, I know maybe you-all don't have
7 access to it, because you're not on campus, you're
8 not working in these departments, you're not seeing
9 what's happening, but --

10 CHAIRMAN CANALES: Mr. Bledsoe.

11 MR. BLEDSOE: Just two things very
12 briefly. Were you saying, Doctor, that -- or, I
13 guess, it's a little preliminary there.

14 MS. CONTRERAS: I'm not a doctor.

15 MR. BLEDSOE: Is there a discrimination
16 against minority students in the -- in the
17 provision of scholarships on the campus, as far as
18 you can -- scholarships or fellowships, No. 1?
19 That's one question. And No. 2 is, in terms of
20 professors coming to the University of Texas,
21 because Hopwood is being applied in Texas and
22 essentially nowhere else, maybe Georgia, but
23 essentially nowhere else, is this going to have an
24 impact on the number of minority professors who can
25 be attracted to the University of Texas to make up

1 for past discrimination in that area?

2 MS. CONTRERAS: Okay. To address the
3 first part of your question, whether I believe
4 students of color, U.S. minority students are
5 experiencing discrimination. I would say, yes, of
6 course I do. Of course I do. And it was there
7 before affirmative action was dismantled. The
8 thing is that it's very subtle. Racism, even
9 tacit, even unconscious like racist assumptions
10 that people hold, are not about calling somebody a
11 greaser or nigger, or whatever, anymore. It's much
12 more sophisticated than that. And we see it in who
13 gets funded. Who gets funded? White students get
14 funded to study Black and Brown students in the
15 U.S. Southwest, and we don't. I think that that's
16 a clear -- and, of course, one could say that --
17 well, these were colorblind applications. That
18 there was no information as to the ethnic or racial
19 identity of the students, but there are markers, of
20 course, we can always tell. Right?

21 I believe that discrimination also comes
22 in the form of holding culturally biased standards
23 up as neutral standards, as objective standards,
24 standards which are very much grounded in class,
25 regional, cultural identities. Identities that are

1 privileged over the identities of many of us.
2 Right? So that SAT scores, or something like that,
3 operate as a kind of objective signifier of one's
4 intelligence or one's intellectual ability, one's
5 possibility of actually succeeding in an academic
6 context, but which actually reflect no more than
7 predominant cultural assumptions about what success
8 or what intelligence or what intellectual ability
9 actually is. Right? I mean -- and I see this all
10 the time, because I teach freshmen -- some
11 freshmen, sophomore and junior students. And
12 because I teach a Mexican-American literature
13 class, the majority of those students are of
14 Mexican descent, and I see in the ways that many
15 struggle with language, struggle with coming,
16 because they came from school districts that did
17 not necessarily have resources, where teacher to
18 student ratios were very high and are now having to
19 play a lot of makeup. Right? But what I also have
20 to say to them is -- the way you speak, maybe
21 because it's not standardized English, maybe
22 because you get your pronouns and conjunctions
23 confused because, you know, you've been speaking
24 Spanish for a long time or Spanish dominant -- but
25 standardized English is not something that is

1 inherently better or more valuable or more
2 intelligent than the way -- than the way we speak
3 in other areas of our lives. Right? We have to
4 understand that. We have to communicate to
5 students that the idea that they should not also
6 internalize these value judgments, these standards,
7 and hold themselves up to -- to conform to
8 culturally and even racially bias, I think.

9 CHAIRMAN CANALES: Another question?

10 MS. CONTRERAS: I didn't answer the last
11 part. In terms of attracting faculty of color, I
12 think, yes, it will affect this university. And I
13 believe it was in 1992, Professor Laura Romano, who
14 was a Chicana professor in the Department of
15 English at U.T., left the department in protest
16 after Dean -- then acting Dean Robert King, blocked
17 the hiring of two Chicana professors in that
18 department. She left in protest; is now at
19 Stanford. And we had no Latina/Chicana faculty in
20 the English department until last year when Lisa
21 Sanchez was hired. She's a Puerto Rican
22 professor. I think that -- that -- what the
23 extension of, you know, Hopwood, interpretation of
24 Hopwood, to financial aid also signals is that
25 target opportunity of funding will also be in

1 jeopardy. And that is money that is specifically
2 set aside to recruit faculty of color to the
3 University of Texas at Austin, and many of our
4 faculty have been hired that way.

5 I think it's going to -- it's going to
6 affect, not only professors' desires to come here,
7 but the actual avenues through which they may be
8 hired.

9 CHAIRMAN CANALES: Ms. Zamora.

10 MS. ZAMORA: I have a couple of
11 questions. One was, it's my understanding that at
12 the doctorate level, universities typically seek to
13 support their doctorate students through their
14 dissertation, and since the minority students were
15 all channeled into minority monies, you know, set
16 asides, have there been any efforts made to find
17 other sources of money for their doctorate
18 students?

19 MS. CONTRERAS: Well, I think that was
20 part of the objective. I would say Dean Terry
21 Sullivan and Dr. Chapa and Dr. John Dollard, I
22 believe, also, in developing this thematic
23 fellowship of peoples and cities of the Southwest,
24 which was -- in many ways we felt targeting ethnic
25 studies -- people working in ethnic studies, many

1 of them, though not all, are people of color, so
2 there is that.

3 In many -- most departments don't
4 guarantee funding until you finish. Ours doesn't.
5 And, in fact, they're attempting to pass internal
6 legislation right now which would only guarantee
7 three years of funding for students. There is
8 always teaching. In my department we get a lot of
9 teaching experience, but I don't know if anybody
10 knows what it's like to teach a rhetoric and
11 composition course and also try to write your
12 dissertation and staff 10 hours in the writing
13 center or computer writing and research lab, but
14 it's very difficult. So we aren't being nominated
15 for university fellowships, because we don't make
16 the grade, which I personally think is just
17 ridiculous, that means that we're going to have to
18 be teaching, which means it's going to take us
19 longer, which means it's going to be harder for us
20 to finish, which means our funding may run out.
21 So, yeah, I guess I wouldn't assume that people are
22 supported all the way through their graduate
23 careers. And that while there may be attempts to
24 provide alternate sources of funding -- basically
25 what happened with our graduate opportunity program

1 money was that it was dumped into university
2 fellowships, and that's another thing I think we
3 want to know, is where is that money going, and who
4 is getting it? Who is getting it? Especially when
5 you're talking about people studying communities of
6 color. And as I said, I'm sorry I got upset, but I
7 just can't imagine that we may be going back to a
8 time when we have absolutely no kind of say in
9 public discourse or academic discourse.

10 MS. ZAMORA: That really goes to my
11 second question. It's my understanding that the
12 department of anthropology have made significant
13 efforts to kind of reduce the bias that was
14 inherent in people of one culture studying people
15 of another culture and filtering it out through
16 their cultural biases. And given that, aren't
17 there established pedagogical reasons for people of
18 a culture studying, writing about, as you say,
19 telling the story of their own culture?

20 MS. CONTRERAS: Okay. I think I
21 understand your question.

22 MS. ZAMORA: In other words, aren't
23 there pressing academic reasons for people of
24 color, people from South Texas to --

25 MS. CONTRERAS: -- to write about people

1 from South Texas, native anthropologists, et
2 cetera? Well, I would say that depends on who you
3 talk to in the anthropology department. Certainly,
4 I know many white folks, you know, who are working
5 in anthropology, working in history, who I respect
6 and whose ethics I believe in. Right?

7 MS. ZAMORA: And they've made a
8 significant effort to reduce their cultural bias --

9 MS. CONTRERAS: Yes.

10 MS. ZAMORA: -- whereas -- it just
11 strikes me as odd that a pool of people already in
12 graduate school would not have the opportunity to
13 carry out their own field of study with that
14 support, and that it -- and kind of counter to the
15 academic trend, so that people -- go to people of
16 another culture.

17 MS. CONTRERAS: Right.

18 MS. ZAMORA: Or they back in --

19 (Ms. Zamora and Ms. Contreras
20 talking at the same time.)

21 MS. CONTRERAS: Go to white people not
22 even from the U.S. Southwest. People coming out
23 here to study us, because we may be less exotic
24 than going to Latin America.

25 MS. ZAMORA: Well, it just strikes me as

1 strange. It strikes me as counter to -- to, you
2 know, recent thinking.

3 MS. CONTRERAS: Well, I think that
4 would, again, depend on who you talk to in the
5 anthropology department.

6 CHAIRMAN CANALES: Dr. West.

7 MR. WEST: I'd just like to ask -- how
8 would you react to the objection that by that line
9 of logic, then only Italians could study Italy,
10 only Russians could study Russia, only Blacks could
11 study Africans, et cetera, it seems like the whole
12 presumption of American Western higher education is
13 precisely that there is such a thing as the ability
14 to understand another person's point of view
15 without having to be a part of the other person's
16 culture.

17 MS. CONTRERAS: Well, of course. There
18 isn't a need to justify that, because there has
19 been people from the dominant group writing about
20 people from non-dominant groups for as long as we
21 can remember. Of course we have to find some kind
22 of rationale for it that sounds intellectual, that
23 sounds logical. What I would say is I'm not
24 talking about dichotomies. I'm not saying only
25 brown people can write brown people and only black

1 people can write about black people. As I said, I
2 respect too many white progressive academics to
3 ever say something like that. What I am concerned
4 about is that we are being denied the opportunity
5 to do that. That's my concern. That we are being
6 denied the opportunity to enter into that
7 conversation, to that dialogue, to that body of
8 literature and knowledge, which is passed on to
9 school children and it forms their ideas about who
10 and what U.S. society is, who is to be feared in
11 this country, and who is to be acknowledged.

12 CHAIRMAN CANALES: We thank you very
13 much for your comments. We're moving on to Jemima
14 Pierre.

15 MS. PIERRE: This will be quick. I am
16 the co-chair of the Black African Student
17 Association, and ever since Hopwood -- this is my
18 first year, also as a graduate student. But I've
19 had to deal with lot of graduate students' concerns
20 about the broad interpretation of the Hopwood
21 decision by Attorney General Morales. Many have
22 expressed their disillusionment and -- with the
23 University of Texas System, because, you see, black
24 graduate students are already under-represented in
25 the University of Texas System if you look around.

1 Many departments have one or two, besides the
2 professional schools, like the business school, the
3 other -- the liberal arts departments, you'll find
4 two graduate students; in economics -- two black
5 graduate students in economics; government, there
6 -- the numbers are very, very few, and so those --
7 the ones that have come are -- they've come because
8 they've had some sort of funding offered to them in
9 order to stay and be enrolled in graduate school.

10 As a graduate student, I'm in the
11 anthropology department and I'm in a program called
12 the African Diaspora Graduate Program in
13 anthropology. And I can tell you, firsthand, that
14 we have one of the largest concentrations of Black
15 graduate students in anthropology only because of
16 that program, but that program is only five years
17 old and was only instituted by the first
18 African-American professor employed by the
19 anthropology department here in Texas, which was
20 five, six years ago. Not only that, before the
21 program was instituted, there was never a Black
22 graduate student in the anthropology department at
23 the University of Texas at Austin. And for the two
24 years -- the first time in 1995, where we had a
25 Black graduate student receive a graduate degree in

1 anthropology. This is 1995. And, you know,
2 anthropology is supposed to be one of the
3 progressive, you know, fields where we study the
4 other. Well, you know, we've always -- minorities
5 have always been the ones that have been studied by
6 the dominant group, by the dominant culture, and
7 here you are -- you have a lot of people who are
8 interested in studying themselves now. As you can
9 see, our program -- now, there are 13 of us in the
10 program, so you can see -- the interest is there,
11 but we've never had the opportunity to do such a
12 thing. The African diaspora program is one of the
13 very few in the entire country, and the University
14 of Texas itself is really benefitting from the
15 program. It makes it much -- it makes the
16 university a much more prestigious school to have
17 -- to be able to turn out so many minority
18 anthropologists in -- you know, over -- over the
19 past couple of years. And so it -- the diaspora
20 program brings prestige. But what allows the
21 diaspora program to continue with the funding that
22 was given to the students who came -- who came for
23 the program -- they were funded through the GOP.
24 And so now that this GOP is no longer there, there
25 is absolutely nothing available. In fact, the

1 director of the program is even thinking about not
2 even continuing the program for the next few years
3 until there is something made available to the
4 students coming in.

5 THE COURT REPORTER: I ran out of
6 paper.

7 CHAIRMAN CANALES: Change the paper.

8 THE COURT REPORTER: You may continue.

9 MS. PIERRE: The GOP program, as the
10 young woman before myself stated, there was -- they
11 tried -- the borderlands program, which was
12 started, I guess, to make up for the loss of GOP
13 funding, only targeted people studying Southwest
14 Texas or the borderlands in the Southwest of the
15 United States, and so we're wondering what's
16 happening to all the other -- you know, all the
17 other areas, all the other fields of study, you
18 know, other parts of the United States, and so on
19 and so forth, other minority groups that need to be
20 studied besides -- besides Mexican-Americans, and
21 so on and so forth, not that kind of support -- and
22 studying Black Americans, and so on. But the fact
23 that there is only one program there to address the
24 loss of funding through -- through the GOP, that's
25 -- that's a little problem for us, so now we're at

1 a standstill. The program is -- the program is in
2 danger of no longer being there, which would
3 definitely be a loss, not only for the University
4 of Texas but for the State of Texas and, you know,
5 the country, because after the 13 of us are
6 finished -- if we ever finish, you won't find --
7 it's going to be difficult to find black
8 anthropologists anymore.

9 What I'm asking, though -- it is
10 imperative that the committee recognize the value
11 of an ethnically diverse population for the future
12 of both Texas and for the future of this country.
13 From the end of the Civil War to the middle of the
14 20th Century, no laws protected minorities and
15 women from biased employers, from biased admissions
16 committees and so on. And currently the process of
17 discrimination are much more subtle, and since
18 institutionalized racism and sexism have been woven
19 into the American -- American society,
20 anti-discrimination laws are not enough. And for
21 us to think that race-neutral funding or programs
22 is the way to go, I think it's -- it's -- we're
23 deceiving ourself into believing that we've
24 overcome, you know, all the vestiges of past
25 discrimination. And so I just hope that the

1 committee can take this into consideration, because
2 Texas universities have never really adequately
3 addressed equal access to the education side for
4 students of color. And graduate school level is
5 even -- it's even more demoralizing not to see so
6 many minority graduate students and to see the
7 numbers going down, and they will continue to go
8 down in light of Hopwood. And so I thank you.

9 CHAIRMAN CANALES: Any questions?

10 Mr. Bledsoe.

11 MR. BLEDSOE: Yes. Was the diaspora
12 program intended to correct past discrimination by
13 the anthropology department, to your knowledge?
14 And No. 2, have you observed what you think to be
15 discrimination against minorities caused by the
16 university's reaction to the Hopwood opinion?

17 MS. PIERRE: Well, I can answer the
18 first question. The second question I'm not sure
19 if I can answer that, first of all, because I am an
20 individual. I can deal with me, and I know my
21 peers influence. And the discrimination that I set
22 forth is very subtle. It's so subtle that -- I
23 mean, you can't really -- you can't really see it,
24 but when you see things like, for example, the
25 University's fellowships that are being offered.

1 The anthropology department has more than 150
2 graduate students and they can only offer two,
3 right, they can only offer two every year. It
4 makes you wonder, because all of us who are getting
5 -- all the people who were getting funding through
6 GOP, no longer have that. And people like myself -
7 as a personal issue - I work -- I am not only a TA,
8 I also work an extra job in order to support my
9 graduate studies, because the funding is not there
10 for me. And so, you know, I see my counterparts,
11 other people who have, you know, the time -- you
12 know, who have the time to study and do, you know,
13 do whatever they have to, not necessarily have to
14 work two jobs in addition to being a TA, you know,
15 to get through graduate school. And I see that --
16 I see a lot of my peers, you know, people in the
17 Black Graduate Students Association, other people
18 having to work in addition to being in graduate
19 school, and that's something even undergraduates
20 are not encouraged to do, so you wonder, you know,
21 what is happening.

22 But the diaspora program itself was not
23 meant to, I guess, get rid of past discrimination.
24 It was there because there was a need for it.
25 Anthropology -- anthropology has always been the

1 field to study the other. Africa was one of the
2 biggest, you know, places, you know, "the other,"
3 the exotic study by white males. And for the
4 longest time, we black people have been represented
5 by white males in anthropology. You have Boaz, you
6 have Erscovich (phonetic), you have all those
7 people. And now that we are -- you know, now that
8 we've been allowed certain leeway, to show that we
9 have the capabilities to represent ourselves, it's
10 not -- it's being denied to us, the opportunities
11 are being denied to us once again. And so the
12 program was not there for that specifically, but
13 the program is the only program that has managed
14 successfully to draw black students to the
15 anthropology department at Texas. And, you know,
16 until the program is -- you never saw a Black
17 graduate student walking around, you know, in the
18 anthropology building. It's amazing to me that in
19 1995, we've only had one -- you know, that was the
20 first time we had a graduate degree in that
21 department.

22 CHAIRMAN CANALES: Okay. Thank you very
23 much for your remarks. We have one last person.
24 We only have about two minutes left. You must
25 understand we've been here since 9:00 this

1 morning. The court reporter, her fingers are about
2 ready to fall off. She hasn't had a break in about
3 three hours.

4 If Mr. Perry will come forward.
5 Mr. Perry, about two minutes, if you will
6 summarize. If you have something written, you can
7 submit it to the record.

8 MR. PERRY: Okay. I'll be brief.

9 CHAIRMAN CANALES: Okay.

10 MR. PERRY: I'll be brief.

11 Thank you. My name is Mark Perry. I'm
12 a first year anthropology graduate student, also in
13 the African diaspora studies here at U.T. And I
14 don't want to go over some of the issues that were
15 raised already, because actually I was going to
16 speak on the issue of the GOP. I am a recipient of
17 the GOP funding fellowship, okay. And I just
18 wanted to make a point that I decided to come to
19 U.T. because U.T. had a very unique, dynamic
20 program in the African diaspora studies program,
21 and I actually turned down a number of other
22 prestigious private universities that offered me
23 very generous packages, funding packages, to come
24 to U.T. Now, if I didn't receive a GOP grant, I
25 would not have been here at the University of

1 Texas. The vast majority of graduate students that
2 I know of color here at U.T., African-American,
3 Chicano, specifically, are recipients of the GOP
4 funding, okay. I have not lost my funding. GOP
5 has been dismantled, but I am guaranteed that
6 through the course of my studies here I will
7 continue to receive my funding, however, next
8 year's class, incoming class, is not going to have
9 the opportunity to receive GOP funding, okay. This
10 is of great concern, because if you look around
11 today and you see the smattering of people of color
12 who are graduate students now, the vast majority of
13 us, like I said, are recipients of GOP. We will no
14 longer exist come next year. I mean, we will
15 exist, but the incoming classes of people will no
16 longer be here. So my question is, where are we
17 supposed to go? Okay. Talented, you know,
18 students of color will be choosing to go to other
19 universities, other private institutions that will
20 offer funding and support, okay. So it's not just
21 an issue of funding. It's also an issue of
22 support.

23 If you felt -- if you feel as if you're
24 not being welcomed in a university setting, because
25 of the color of your skin, or whatever other

1 determinant, which has nothing to do with the
2 abilities that you have, you'll choose not to
3 attend those universities, that institution, and
4 you'll go elsewhere. And that's the message that's
5 being sent by the elimination of a number of
6 affirmative action programs, both through
7 retention, recruitment and funding here at U.T.,
8 not only affecting graduate students but affecting
9 undergraduate students, as well.

10 And I just want to make a point that I
11 think that public education has an opportunity, a
12 responsibility, an obligation, to educate its
13 citizenry. And currently the University of Texas
14 graduate of -- University of Texas student body is
15 about 17 percent Black and Chicano, okay. Now,
16 when you mention that to -- the fact that 37
17 percent of the population of the university -- of
18 Texas, as a state, statewide, is Black and Chicano,
19 there is a real discrepancy there. Now, we're
20 starting to see that next year's class, because of
21 the implementations of Hopwood here at the
22 University of Texas, those numbers are going to
23 drop dramatically -- radically going to drop.
24 We're already seeing those in the application
25 pools, that have dropped in terms of the applicants

1 from both Black and Chicano students, okay. So
2 we're looking at that 17 percent representation
3 dropping even further down from that, and that's a
4 real problem here, especially when we're trying to
5 consider that this is a public institution that's
6 funded by public money, that has a responsibility
7 to educate it's people, and that's not what is
8 being done here at U.T., and I think that needs to
9 be addressed.

10 And I'm very happy that you guys are
11 here and I hope something comes out of this,
12 because what is going on right now is extremely
13 radical and very threatening, and we have got to do
14 something about it. And I hope something comes out
15 of this. I really do. I really do. Thank you.

16 CHAIRMAN CANALES: And I wish you'd make
17 a point -- to address the point briefly that the
18 students that are being denied the education, are
19 students that would be very successful. Right?

20 MR. PERRY: Absolutely, absolutely,
21 absolutely.

22 CHAIRMAN CANALES: They would be
23 successful. We're not talking about someone that
24 has come in and dropped out?

25 MR. PERRY: No, absolutely. I mean, I

1 think -- I mean, I can give myself as an example.
2 I mean, I just completed my -- I'm completing my
3 second semester here. I mean, I've gotten -- I
4 mean, I'm not going to boast, but I'm doing very,
5 very well here at U.T., and I think the majority of
6 other students of color are doing that as well.
7 It's not an issue of allowing people who aren't so,
8 quote, unquote, qualified, okay, to come here to
9 the University of Texas. We're all qualified.
10 However, if I'm qualified, and I'm given a choice
11 between the University of Texas, which has decided
12 to do away with all affirmative action programs,
13 which says to me, We don't want you, black boy, go
14 somewhere else, and I get accepted at Yale
15 University or Cornell, I'm going to go there over
16 the University of Texas. And that's a shame,
17 because Texas is going to suffer, not just I, as an
18 individual, I'm going to go somewhere else, but
19 Texas, as a university, is going to suffer, and
20 other students who may not necessarily have those
21 other options are going to suffer, as well.
22 And just a point I'd like to make is,
23 I'm getting my funding regardless of what happens
24 with Hopwood, so I'm not concerned about myself.
25 I'm concerned about other students who are going to

1 be coming here to the University of Texas that are
2 going to be denied funding, okay. I'm concerned
3 about the communities of color who are going to
4 suffer because we are not being educated to the
5 point where we deserve to be educated. And I'm
6 concerned about this country, really, because
7 you're denying a very important, a very strong
8 component of this country access to higher
9 education. And if that isn't corrected, we're
10 going to go right back to a segregated educational
11 system, which is what existed here in Texas for a
12 very, very long time, and it still -- as you can
13 see, at 17 percent Black and Chicano presence at
14 the university of Texas, it still exist.

15 CHAIRMAN CANALES: Okay. Anyone else?

16 All right. That concludes it. We thank
17 you very much for coming by. We thank all of you
18 for coming by today. And our staff people have
19 already left. But the transcript will be prepared,
20 be ready in -- is it 30 days or 60 days?

21 MR. BLEDSOE: Sixty days.

22 CHAIRMAN CANALES: Sixty days from now
23 the transcript will be available. Also, after that
24 time, what we will do -- we compile everything and
25 write a report and send it to the United States

1 Commission on Civil Rights in Washington, DC.
2 After that, it's almost out of our hands. We're an
3 advisory committee. It goes to the Commission in
4 Washington, and that's where they take it up from
5 there. But as you know there is also a great
6 diversity of opinion on this panel and also on this
7 committee. There are some on this panel, I know I
8 speak for myself and others, that share your
9 concerns, and we appreciate you coming by. We
10 share your concerns and we thank you very much. We
11 hope for a better future. Session is now closed.

12 (Texas Advisory Committee to
13 (the United States Commission
14 (on Civil Rights meeting adjourned.
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1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

3 I, SYLVIA M. VIDAURRI, Certified
4 Shorthand Reporter and Notary Public in Travis
5 County for the State of Texas, do hereby certify
6 that I did, in shorthand, report said proceedings;
7 and that the above and foregoing typewritten pages
8 contain a full, true and correct transcription of
9 my shorthand notes taken on said occasion.

10 WITNESS my hand and seal of office this
11 the 28th day of April, 1997.

12
13
14 

15 SYLVIA M. VIDAURRI, CSR #3559
16 Notary Public in and for
17 Travis County, Texas
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