

**Minority Student Pipelines Before and After the Challenges to Affirmative Action\***

**By**

**Kevin T. Leicht  
The University of Iowa  
140 Seashore Hall West  
Iowa City, Iowa  
52242-1401**

**Teresa A. Sullivan  
The University of Texas at Austin  
Main 101, G040  
Austin, Texas  
78712-1111**

May 25, 2000

\*This paper is part of a larger grant proposal in preparation for the Ford Foundation.

Ever since the Alan Bakke case against the University of California, there have been continuous debates about affirmative action and the role it plays in increasing opportunities for underrepresented groups on the nation's college campuses.<sup>1</sup> Many American schools have used affirmative action as their principal strategy for increasing the proportion of minority students in their student bodies. The basic idea, predicated on the *Bakke* decision, was that from among many qualified applicants, a school would differentially select some applicants because they would increase the racial or ethnic diversity of the student body. Affirmative action was used principally at selective schools; schools with open admissions or minimally restrictive admissions were not affected.

Recent legal and political challenges to affirmative action in higher education (including Proposition 209 in California and the aftermath of the Hopwood decision regarding college admissions in Texas) have left the research and policy communities in the United States without an adequate set of research findings for evaluating affirmative action or the programs that come after it (hereafter referred to as "post-affirmative action" programs). Because affirmative action plans never received significant research attention, the baseline information for evaluating post-affirmative action plans (such as the "10 percent rule" in Texas) is not adequate.

Moreover, the changed policy parameters combined with a relative lack of information highlight several post-affirmative action issues. First, the broader issue of increasing the overall proportion of minority high school graduates who seek a college education transcends the local issue of increasing the proportion in a particular student body. Second, universities can no longer be content with admitting good applicants from a limited number of feeder schools. Leaving individuals behind -- the drop-out issue -- and leaving whole high schools behind -- the curriculum issue -- might have been ignored under affirmative action but cannot be ignored in the post-affirmative action climate.

In this paper, we seek to do three things. First, we present an overview of the rise and fall of affirmative action in Texas, and its eventual replacement in public institutions with the "top ten percent" bill. The Texas case is interesting because it represents the extremes of a university forced to use affirmative action by a federal agency and then enjoined against using it by a federal judge. Furthermore, the Texas administration is unique in the nation for facing personal (not official) liability for violating the injunction. The Texas legislature passed the "top ten percent" bill, which by guaranteeing geographic diversity also promised some measure of ethnic diversity. Second, we present a conceptual overview of issues involved in evaluating the effects of the top ten percent bill. In the final section, we identify research questions that remain to be answered.

## **I. A Short History of Desegregation in Texas Higher Education**

That the elimination of affirmative action in Texas would be the decision of the federal judiciary was ironic, in that the federal government itself had initiated both Texas' desegregation of higher education and its development of affirmative action plans. This policy thrust and reversal also bracketed a period in which the state was growing rapidly and seeking to expand the availability of schooling, both in terms of the numbers of students and in terms of the number of years that they completed. Thus, the

effort to increase diversity in Texas higher education was coterminous with a much more general expansion of higher education opportunity. The foremost question posed by the elimination of affirmative action was whether the expansion of opportunity would include all Texans.

By state constitution and statute, during the early Twentieth Century the Texas school system and its state universities had operated under a Jim Crow-style, *de jure* segregation of white and black students. Hispanic students were not segregated *de jure*, but *de facto* segregation was common. Towns often had a separate “Spanish” school.<sup>2</sup> At The University of Texas at Austin, which was singled out by the state Constitution of 1876 to be “a university of the first class,” there had been Hispanic students from its very beginning in 1883. Nevertheless, Hispanic students remained segregated in a residence hall called “the barracks,” and they were often barred from campus organizations.

As recently as 1950, African-American students had never been admitted to The University of Texas, despite the efforts of several applicants to enroll. The first landmark case concerning access was *Sweatt v. Painter* (1950). In this lawsuit, African-American student Hemann P. Sweatt sought admission to The University of Texas School of Law. The Supreme Court ultimately found that the makeshift “Negro law school” the state had set up was in no way the equal of The University of Texas School of Law, and the Court ordered Sweatt’s admission to The University of Texas. This lawsuit was one in a series of lawsuits intended to dismantle Jim Crow in education; by 1954, in *Brown v. Board of Education of Topeka*, the final vestiges of the “separate but equal” doctrine would be reversed.

Nevertheless, the reaction of the state of Texas to *Sweatt* could best be described as resistance. Mr. Sweatt himself dropped out of the law school in 1951, where he had been the object of racial slurs, cross-burnings, and continual anger.<sup>3</sup> Progress in desegregation throughout the 1950s and the 1960s was slow, at least as measured by the relative enrollments of the majority and minority groups in the state’s institutions of higher learning. Even less progress was evident in the actual graduation of minority students, although the concerns of the era seem to center nearly exclusively on the admissions decision and not on retention.

Between 1978 and 1980, the federal Office of Civil Rights (OCR) conducted an investigation of the Texas public higher education system that eventually found that the state had “failed to eliminate vestiges of its former *de jure* racially dual system of public higher education, a system which segregated blacks and whites.”<sup>4</sup> The OCR also found that Hispanics were underrepresented in Texas higher education, and the report explicitly raised the issue of possible discrimination against Hispanic applicants. During the 1980s, in response to the OCR investigation, Texas officials submitted “The Texas Plan,” which included explicit goals of increasing both black and Hispanic enrollment in Texas higher education.

In 1982, Assistant Secretary of Education (now Supreme Court Justice) Clarence Thomas told Texas Governor William Clements that the Texas Plan was deficient because the numeric goals of black and Hispanic students were not sufficiently large to be proportionate to the state’s population. Texas

revised the plan, and OCR again rejected it because the plan did not provide specific enrollment targets for each institution of higher learning. With a plan still not accepted, a federal court in the District of Columbia ordered the Department of Education (DOE; successor to HEW) to begin enforcement proceedings against Texas within forty-five days. In response, the OCR developed thirty-seven suggested measures for increasing minority student enrollment, including a recommendation that graduate and professional admissions requirements be overhauled. OCR recommended that “admissions officers will consider each candidate’s entire record and will admit black and Hispanic students who demonstrate potential for success but who do not necessarily meet all the traditional admission requirements.”<sup>5</sup> To put it succinctly, federal officials initially suggested affirmative action and under the threat of judicial action, affirmative action became one element of the eventual agreement between the state of Texas and the federal government. In 1987, the DOE again affirmed that Texas should act under the tenets of the Texas Plan.

When subsequent studies indicated that the state was failing to meet its goals, state education officials became worried that another enforcement action would be forthcoming. To avoid an additional mandate from the federal government, the state’s Higher Education Coordinating Board developed an additional plan, called Plan II, that continued the state’s commitment to increase the number of black and Hispanic students in higher education. As recently as 1999, OCR has continued to express doubts about the complete integration of the state’s colleges and universities.

#### **A. Affirmative Action at The University of Texas at Austin**

The elements of the Texas Plan that were relevant for The University of Texas at Austin were a specific, institutional goal to increase minority enrollment and an explicit agreement that affirmative action would be used in admissions. The Law School undertook to meet a goal of 5% Black enrollment and 10% Hispanic enrollment – still well below the level of the state’s minority population.

When the University began using affirmative action in its admissions decisions, the University was not particularly selective. In the early 1960s, law school applicants with at least a 2.2 grade point average and an LSAT score (any score) were accepted. By 1965, however, the number of applicants began to exceed capacity, and the Law School became more selective. Under the more selective system, an index number was derived from undergraduate grades and LSAT scores, and all students above the index baseline were automatically admitted; those below the index were reviewed individually. By the late 1960s the law school had admitted a class of more than 700 students, far more than faculty capacity, and students below the index baseline were not considered at all.<sup>6</sup>

A similar process ensued for years in the law school: as it became more selective, its applications increased and it had to become even more selective. The admissions process was revised a number of times. Needless to say, the combination of much more selective admissions with affirmative action was politically explosive. As the law school became more and more selective, larger numbers of very qualified white students were turned away. (Current Texas Governor George W. Bush was among them.) Meanwhile, the Texas law school produced more Hispanic lawyers than any other school in the

country and they produced more African-American lawyers than any law school except for Howard University, even though the numbers of minority students usually did not reach the level of the Texas Plan goals.

A similar intensification of admissions pressure was underway with the undergraduate programs. The University of Texas expanded from about 20,000 students in the 1960s to nearly 50,000 in the late 1990s, giving it the largest headcount of any college in the United States. Despite the expansion, the number of applications continued to grow. For Fall 2000, the University received over 21,000 applications. Over the 1990s, the selectivity of the school did not actually increase very much – from 70% of applicants admitted in 1992 to 69% admitted for Fall 1998. But because of the numbers of applications being received, a similar admission rate nevertheless translated into larger numbers of rejected students every year. The political pressures began to build from the families and friends of students who were rejected.

During the 1980s, the provisional admissions plan had been devised. Under this plan, a graduate of an accredited Texas high school could be provisionally admitted for the summer session. A provisional admittee who took a specified series of courses with a specified grade point average would be regularly admitted to the University in the following fall. Initially conceived as a measure to help minority students who did not quite meet admissions standards, the provisional program became a route into the university for white students from competitive suburban high schools. With the succession of goals in the provisional program, two additional summer bridge programs, Preview and Success, were developed with the goal of assisting more minority students to make a successful adjustment to college life. Meanwhile, the provisional program continues; in the summer of 2000, there will be 1700 provisional students on the campus, up from 700 in 1999. Clearly, the successive functions of the provisional program as a minority bridge and then as a safety valve are being eroded.

Until 1995 the top ten percent of Texas high school graduating classes were automatically admitted to The University of Texas at Austin for baccalaureate study. Focus groups with Texas freshman students showed that the students were unsatisfied with the ease of applying to UT-Austin. They contrasted the simple Texas application with the more elaborate applications, with essays, required by comparable schools. The faculty, for their part, were interested in better indicators of writing ability. As part of a substantial rethinking of the admissions process, the faculty revised the automatic admission process during the 1995-96 school year to provide more comprehensive criteria for admission. For the first time, applicants would be required to submit essays as part of their application. The faculty committee hoped that the essays would provide better information about writing ability but also provide a fuller picture of the applicants as individuals. Faculty critics argued that the essay requirement was merely a back door for bringing in more minority students to the university, because a strong essay might be used to balance out weak standardized test scores. The revised policy passed the University Council on Monday, March 18, 1996. That same day the U.S. Court of Appeals for the Fifth Circuit released the *Hopwood* opinion.

## **B. The *Hopwood* Decision**

Hopwood v. State of Texas was filed by four plaintiffs, all white, who claimed that they were improperly denied admission to The University of Texas School of Law because the affirmative action program then in place violated the Fourteenth Amendment to the U.S. Constitution. The result of the trial in the court of first instance was an opinion by federal judge Sam Sparks finding that the “defendants acted in good faith and made sincere efforts to follow federal guidelines and to redress past discrimination. The record contains no evidence that the defendants intended to discriminate or to harm the plaintiffs.”<sup>7</sup>

The plaintiffs appealed to the U.S. Court of Appeals for the Fifth Circuit. In a sweeping 2-1 opinion, the Fifth Circuit reversed the lower court’s finding and remanded the case to the district court for an assessment of damages. The Fifth Circuit found that any consideration of race in admissions was a violation of the Fourteenth Amendment, although the Court did find it permissible to use such indicators as geographic origin, athletic or musical ability, or relationship to an alumnus. Thus, descendants of the African-Americans who were barred by de jure segregation could be excluded again for their lack of relationship to an alumnus. The Fifth Circuit noted that it would hold administrators of the university liable in their personal (not just official) capacities if there were resistance to their opinion.

In subsequent events, the elected Attorney General of Texas, Dan Morales, held that Hopwood applied to all public institutions in Texas and to all private institutions that accepted federal funds, and further, that the ban on the use of race applied to scholarships and financial aid as well. In the subsequent trial, Judge Sparks awarded each plaintiff one dollar in damages, did not require their admission to the Law School, and entered an injunction that prohibits The University of Texas at Austin from considering race in its admissions decisions. That injunction, at this writing, is being appealed.

In response to the Hopwood developments, the legislature of the State of Texas passed H.B. 588, an act that required state-supported institutions of higher learning to admit any graduate in the top ten percent of any Texas high school, public or private.<sup>8</sup> Given a high-school graduation cohort of approximately 170,000, the bill would entitle up to 17,000 of them to automatic admission to the public institution of their choice. H.B. 588 also listed eighteen criteria that a school might use in its admissions procedures. The eighteen criteria were intended to help minority applicants translate social and economic background factors from obstacles to benefits. An admissions committee could give additional favorable consideration, for example, to speakers of a second language, to persons who had overcome adversities, or to students who had worked during high school. H.B. 588 returned the University, in effect, to its pre-1995 automatic admission policy, but it offered no assistance to graduate or professional programs.

For The University of Texas School of Law, *Hopwood* completed a fifty-year cycle. From openly prohibiting the entry of African-American students, the Law School moved to an aggressive and

successful affirmative action program for African-American and Hispanic students, and then to a situation in which it could no longer consider race or ethnicity in admissions.

### **C. The Demographic Pressures**

Higher education is perceived as a scarce resource in a context of admissions pressures. In Texas, the admissions pressures arose from three sources: population growth, a young age structure, and a population stock that was undereducated relative to other states. In addition, the state has a tradition of relatively low tuition for residents, which has increased the attractiveness of its state institutions relative to more expensive private and out-of-state institutions. The state of Texas would have been hard-pressed to provide adequate higher education to its population base in 1950; the task of increasing access to more people and increasing the number of years of schooling per person was much larger.

In 1950, Texas ranked sixth among the states in population, with a population of 7.7 million.<sup>9</sup> In each of the succeeding decades, Texas recorded double-digit population growth. By 1970, Texas ranked fourth in population, and by 1980 it ranked third.<sup>10</sup> Early in the 1990s, Texas passed New York to become the second largest state in population. Between 1950 and 1960, the population grew by 24.2%.<sup>11</sup> In the next decade, another 16.9% were added, and by 1980 the state had grown an additional 18% to 14.2 million. The projected population for the state in the 2000 Census is between 19 and 20 million, with as many as 22 million projected for 2010.<sup>12</sup> Thus, the Texas population nearly trebled during half a century.

Population growth came from three sources. Between 1990 and 1995, natural increase (the difference between births and deaths) contributed 1 million new Texans; international migration provided 372,000 new residents and internal migration provided another 321,000 new residents.<sup>13</sup> The international migration came overwhelmingly from Mexico, although large flows of Central American immigrants moved to Texas beginning in the early 1980s.

The combination of high natural increase and migration kept the Texas population relatively young. Between 1990 and 1998 Texas rose from 9th among the states to 5th in the proportion of the population under the age of 18. In Texas in 1998, 28.5% of the population were younger than 18, compared with a national proportion of 25.8%.<sup>14</sup>

In 1998, 12.3% of the Texas population was Black, and 29.7% was of Hispanic origin (of any race). About 56% of the Texas population was non-Hispanic whites<sup>15</sup>. Moreover, the minority population typically had higher fertility rates and often younger ages at first birth, so that the population momentum of the two largest minority groups, African-American and Hispanic, was greater than that of the majority white group. School districts south of San Antonio and districts near the major cities experienced particularly rapid growth.

In terms of education Texas lagged behind other large states. By 1987, Texas ranked 15<sup>th</sup> among the 17 largest states in the proportion of high school graduates. Only 72% of persons aged 25

or older had completed high school. Among Blacks, the figure was even lower, 68.7%, but this figure ranked Texas eighth, ahead of states such as Illinois (66.2%), Michigan (64.5%), and Ohio (64.1%), which did not have a history of *de jure* segregation. Among Hispanics the high school completion rate was only 43.1%, a figure that placed Texas seventh among the seven states that reported data for Hispanics.<sup>16</sup> On the other hand, in 1996 Texas ranked first among the states in the proportion of persons aged 5 to 17 who were enrolled in school, with an enrollment rate of 98.7%. The national enrollment rate in 1996 was 91.7%.<sup>17</sup>

College completion rates in 1987 were still lower: 19.8% for all Texans (9<sup>th</sup> among large states). Perhaps surprisingly, given the differential access under Jim Crow, the rates for minority groups, although lower, were better than for many other states. The college completion rate of 11.1% for Texas Blacks was nevertheless third among large states, and the 7.5% college completion rate for Texas Hispanics was sixth among large states.<sup>18</sup> By 1990, the rate has risen slightly to 20.3% of Texans over the age of 25 who had graduated from college.<sup>19</sup> But African-American graduates accounted for only 6% of the bachelor's degrees granted at Texas public universities in 1995 and Hispanic graduates accounted for only 15% of bachelor's degrees.<sup>20</sup> Thus, among recent graduates the two largest minority groups were each represented at about half their proportion in the general population.

#### **D. Effects On "The Pipeline"**

All observers agree that, despite the efforts of Texas to improve the quality and quantity of K-12 education, the minority "pipeline" narrows at every step of education. The first step of the pipeline is graduation from high school, the absolute *sine qua non* for entering college. African-American and Hispanic students are more likely to drop out from high school than are whites. In 1997, nearly 83% of whites aged 18 to 24 had completed high school. The comparable percentages among Blacks and Hispanics were 74% and 62%, respectively.<sup>21</sup>

In Texas, nearly one-half of all students (48%) taking algebra do not pass.<sup>22</sup> Hispanic and African-American students are more likely than white students to be behind their grade level, and their performance on the state-mandated TAAS tests has been poorer than that of whites. In the 1999-2000 school year, the test-score gap between minority group students and white students grew smaller, but it was still evident. Qualitative studies have documented the subtle and not-so-subtle ways in which minority students become discouraged from completing high school.<sup>23</sup>

One of the most important indicators of eventual disparities in college enrollment is taking a college entrance examination, either the SAT or the ACT. Although the top ten percent in Texas are entitled to automatic admission, they must nevertheless apply on time and provide a complete application, including test scores. (Admission, however, is not contingent upon the scores.) The proportion of Texas high school graduates who take the SAT or the ACT is apparently 62% or less.<sup>24</sup> An examination of the proportion of high school students who take the tests by high school suggests that the high schools with the greatest number of minority students have a low fraction of test takers. In Austin, for example, Johnston High School had only 18% of its juniors and seniors take the SAT, most

of them in the magnet high school within the larger high school. At Austin's Reagan High School, only 13% of students took the test. Similar results are evident in the San Antonio area.<sup>25</sup> Of a total "top ten percent" group of 13,000 in 1994, 4,000 had not taken the SAT.<sup>26</sup>

In 1997, Hispanics constituted 30% of high school graduates, 20% of university enrollees, and 16% of graduates with bachelor's degrees.<sup>27</sup> The contraction of the pipeline for African-Americans was similar, but with smaller percentages at every level. As these figures suggest, the drop-out problem in college is also a problem. In Texas as a whole, 27% of freshmen entering four-year schools do not return for their sophomore year, and 44% of freshmen entering two-year community colleges do not return.<sup>28</sup>

### **E. Early Effects of the Top Ten Percent Bill**

Although the U.S. Civil Rights Commission has been sharply critical of percentage plans in lieu of affirmative action, the Commission did find it mitigating that the Texas plan requires admission to any school in Texas, including the flagship institutions of The University of Texas at Austin and Texas A & M University.<sup>29</sup> Thus one measure of the effectiveness of the top ten percent bill is what changes may have come about at those two schools since *Hopwood*.

The post-*Hopwood* admissions changes are based on slim evidence to date. The class that entered in 1996 was admitted with affirmative action because of a stay on enforcement of *Hopwood* during the spring 1996 admissions season. The freshman class that entered in fall 1997 was the first to experience the race-neutral process and it was also the first class required to write essays. The top ten percent bill was passed during the legislative session of spring 1997 and first affected the entering class of 1998. Thus the effects of the bill are most evident in Fall 1998 and Fall 1999. Table 1 shows the numbers of applications, admissions, and enrollments for all freshmen, for African-American freshmen, and for Hispanic freshmen in the three years 1996-1998.

Several facts are immediately evident. First, there was a *general* decline in applications as a whole in 1997 and a general rebound in 1998. In 1997, applications from the top ten percent declined by 16.4% for the class as a whole, and rebounded by 17.2% in 1998. The figures for white students only were a decline of 17.6% and a gain of 17.8%. For African-American students, the decline was 21.6% followed by a gain of 21.9%. And for Hispanics the decline was 21.9% followed by a gain of 21.6%. The essays may have played a role in the decline of all groups, and would seem to be the best explainer for the white students. The evidence for a special shock to minority students was the deeper dip (by about 4%) and the fact that there was a corresponding dip in minority applications to the graduate and professional schools as well, where there had been no changes analogous to the essays.

Second, it is clear that there is a differential yield by racial groups. Roughly half of the minority students accepted the offers of admission, compared with an overall yield closer to 57%. To be sure, the top ten percent of all racial groups have the greatest number of opportunities, and it was clear that schools in other states that could still offer minority scholarships were doing so.<sup>30</sup> One study indicated

that about 50% of the African-American students who did not accept their offer of admission to UT went out of state to college, as did about one-third of those who were admitted to Texas A & M.<sup>31</sup>

Third, a smaller fraction of the top ten percent among minorities apply to UT-Austin than the University might expect. In 1998, 58 percent of Asians in the top ten percent applied to UT, along with 30 percent of Hispanics, 23 percent of whites, and 14 percent of African-Americans. At Texas A & M, 16 percent of Asians, 23 percent of Hispanics, 29 percent of whites, and 15 percent of African-Americans in the top ten percent applied.<sup>32</sup> All of these fractions were lower than for the 1996 and 1997 admissions seasons. There is probably overlap in these figures, because some applicants in the top ten percent probably applied at both flagship schools.

Table 2 shows the racial composition of the applicants admitted to the freshman class from 1996 to 1999. This table includes not only the top ten percent but also all others. The rebound in the percentage of the class admitted from minority groups continued in 1999, so that both the absolute number of Mexican Americans and their proportion of the class increased beyond the 1996 baseline. Among African-Americans, the absolute numbers had increased over the baseline year but the percentage was one-tenth of a point lower than it had been in 1996.

More important than the admission figures, however, are the eventual enrollment figures. In Fall 1996, which was the last year before *Hopwood*, the first-time freshman class included 14.5% Hispanics and 4.1% African Americans. In Fall 1999, the second year of the top-ten-percent plan, the first-time freshman class contained 13.8% Hispanics and 4.1% African Americans. These figures led journalists to declare the top ten percent bill a success.<sup>33</sup> University officials are optimistic about the next class. For the fall of 2000, the university received its largest number of applications in history and it also received historically high numbers of applications from African-American, Hispanic, and Asian-American applicants.

## **F. Implementing the Top Ten Percent Bill**

Because Texas had previously admitted the top ten percent of each high school, the new bill was not a striking break with the past. Nevertheless, in the wake of *Hopwood* it became important for the school to advertise the bill. The state legislature also recognized this need, given the lackluster results for Fall of 1998, and the legislature required all high schools to post a sign explaining the top ten percent bill. UT went further and prepared a letter to every parent of a top-ten-percenter, which was signed by Governor Bush but mailed with UT funds (but contained no logo nor other identifying message about UT -- instead, all public institutions in the state were listed in an insert). The objective of this campaign was to alert the top ten percent to their options and to give their parents sources of additional information.

The University began to think strategically about how students are embedded in social networks, and it opened outreach centers in major cities and held meetings for the parents of the top ten percenters.<sup>34</sup> University counselors contacted high school counselors, and university officials began to

visit high schools. Freshman programs were substantially overhauled to provide more small classes, more intensive tutoring, and more group work.<sup>35</sup>

Perhaps most importantly, UT redirected its minority scholarship funds so that it could attract students from high schools that were not traditional feeder schools.<sup>36</sup> The newly designed Longhorn Opportunity Scholarships were offered to students in 49 high schools for Fall 1999, and will be expanded to 64 high schools in Fall 2000. Each high school was chosen because it serves a low-income set of neighborhoods and because it has sent many fewer applicants to UT-Austin than would be expected based on the size of its graduating class.<sup>37</sup> There were 64 students who received Longhorn Opportunity Scholarships, but the offer of the scholarships encouraged others to apply, and another 75 from the same high schools received different types of scholarships. The average fall semester (1999) GPA of the 146 students who enrolled from the 49 high schools was 2.99; those with an SAT below 900 (25) had an average GPA of 2.76. Forty of the students had GPAs over 3.5.<sup>38</sup>

Meanwhile, freshman attrition has dropped from 12.9% in 1995 to 10.7% in 1998.<sup>39</sup> Table 3 shows that for students entering in Fall 1998 -- the first group truly included under the top ten percent bill -- 88% of the top ten percent group returned for Spring 2000 versus 78% of the others. The highest retention rates were 93% for African-American and for Asian-American top ten percenters. The lowest retention, only 54%, was for Native Americans not in the top ten percent.

Although these indicators are encouraging, it is premature to conclude that the top ten percent bill has been a success. Too many additional indicators are important. Are increasing proportions of high school seniors, especially the top ten percent, taking the SAT or ACT? Are increasing proportions of high school graduates applying to college, whether or not UT-Austin is in their plans? What is happening to high school and college drop-out rates? Why do eighteen of the thirty-seven four-year public colleges in Texas report declines in enrollment?

## **II. Issues Involved In Evaluating The Top Ten Percent Bill**

In this section we provide a general conceptual framework for evaluating post-affirmative action college admission plans, such as the top ten percent bill, against prior affirmative action plans. The framework also provides a way to evaluate retrospectively the surviving affirmative action plans, and deal with many of the unstudied policy questions that are relevant for assessing the impact of any admissions plan on the quality of students admitted, their progress through college, and the consequences for educational and economic inequality that any admission plan shapes.

This framework is driven by several guiding assumptions, most of which are sound principles for evaluating any social policy where part of assessing the impact of change depends on the multiple effects the policy may have on majority and minority groups:

- (1) Because most affirmative action plans (and their post-affirmative action counterparts) are designed to reduce inequalities between majority and minority

groups, both majority and minority groups must be part of any evaluation of any plan.

(2) The impact of any plan cannot be assessed without knowing how exclusion affected the life chances of excluded people. Many discussions of affirmative action plans (and their dismantling) warn of catastrophes created by the plans themselves or the impending catastrophes that will result if specific plans are dismantled. The only way to assess any prediction is to study the actual consequences of exclusion and inclusion for individual lives.

(3) Part of assessing any plan involves evaluating changes in behavior before students become subject to the selection process of the plan. Students, parents, and high school personnel may all change their behavior in response to a new admissions regime. Most changes in institutional functioning have behavioral consequences, and it is as important to understand these in assessing the overall impact of changes in admission plans as it is to assess what the consequences of the plan are once students have been selected or excluded by it. Behavioral changes involve changes in the incentives for students to engage in different types of activities that may help or harm their chances of college admission.

(4) As assumption (3) implies, the evaluation of any plan must be both student and institution based. The changed incentives under any new plan will alter student behavior and the behavior of key actors in higher education institutions. Students must be followed through a decision process and a matriculation process regardless of whether they attend the institutions that are the targets of new admissions plans or not. The performance of students must be followed regardless of whether the racial and ethnic composition of the student body at any institution changes or not.

(5) The proof of any evaluation involves comparing the performance and qualifications of pools of admits with those who would have been admitted under a different plan. This speaks directly to the claims of “denial of opportunity” that both supporters and detractors of affirmative action and post-affirmative action plans discuss. At the individual level, there are transaction costs associated with changes in admission plans. Students that would have been admitted under an old plan may have to attend college elsewhere under a new one. This result may involve increased search and relocation expenses for the students involved, but it may not. From a societal standpoint, these costs probably average themselves out over large numbers of people. The societal consequences of admitting students who do not succeed in college at the same rates as their excluded peers is not likely to average itself out over large numbers of people and it (probably) is the most salient part of evaluating any new college admissions regime.

In their landmark study (using the *College and Beyond* data), Bowen and Bok evaluate the admission and matriculation of several cohorts of majority and underrepresented students in the nation's most prestigious and selective universities.<sup>40</sup> Their research provides four key findings on which our research will build.

(1) There is very little evidence that minority students admitted under affirmative action plans have more trouble academically than their majority counterparts.

(2) Students from both majority and minority groups with the same admissions criteria are admitted and rejected by the universities studied by Bowen and Bok.

(3) The occupational and civic attainments of minority and majority students admitted to this subsample of universities are outstanding by any prevailing measure of success.

(4) There are still differences in income and earnings levels between minority and majority matriculants of these institutions. These differences are smaller than those found in the general population, and the achievements of all students in from this subsample of universities places them among the most privileged 10 to 15 percent of the U.S. population.

The *College and Beyond* data use a combination of school records and surveys of graduates and dropouts to study the consequences of affirmative action in elite colleges and universities. But as an overall evaluation of the consequences of affirmative action, the Bowen and Bok study suffers from several flaws. First, the subsample of colleges and universities studied is unrepresentative of the cross-section of post-secondary institutions in the United States. The schools in the study have stringent selection criteria and routinely reject most of the applications submitted by aspiring students. Seventy-five percent of all post-secondary institutions in the United States have no admissions criteria at all.

A second, and to some extent more serious difficulty from our standpoint, is that Bowen and Bok do not follow students as they apply for college and make decisions about which colleges and universities to attend. Nor do they follow students who are potential enrollees at the institutions they study should they decide to enroll in an institution outside of their sampling frame.<sup>41</sup> These omissions leave us unable to determine exactly what the consequences of different admissions regimes are for the production of social inequality because only those who successfully “get their foot in the door” are surveyed, and only their college records are examined. This is problematic both from the standpoint of evaluating the consequences of any admissions plan for the opportunities of underrepresented groups but also for evaluating consequences for whites. Bowen and Bok do an excellent job of analyzing the sample of students and alumni available to them, but they are left with the unsatisfying conclusion that both whites and minorities admitted to relatively selective colleges and universities “prospered.” The

only comparison the reader can make is that majority and minority students subjected to the same "treatment" -- an elite college education -- show roughly similar results.

### A. A Model for the Study of Changed Admissions Guidelines

Figure 1 provides a picture of our conceptual framework for evaluating changes in admission plans.

(Figure 1 about here)

The key to understanding our conceptual framework for studying change is that it focuses on *non-overlapping groups*. Regardless of the racial and ethnic breakdown of the pool of potential applicants, there are two relevant groups represented under prior affirmative action plans: (1) those who were *admitted* under affirmative action, and (2) those who were *excluded* under affirmative action.

In evaluating any post-affirmative action regime, the two relevant affirmative action groups must be paired with three relevant post-affirmative action groups. Because we are focusing on the Texas 10-percent rule, these four groups include: (1) those admitted under the 10-percent rule who would have been admitted under affirmative action, (2) those who would have been admitted under affirmative action but are excluded under the 10-percent rule, and (3) those who are excluded under the 10-percent rule and would have been excluded under affirmative action. An interesting empirical issue is whether there are any cases in the fourth cell: students admitted under the top 10-percent rule who would NOT have been admitted under affirmative action.

From the standpoint of evaluating the 10-percent rule, the pool of students who would have been admitted under either plan or excluded under either plan are less interesting than the groups whose admission status changes positions on the basis of the change in regime. These include those students who are admitted under the 10-percent rule who would have been excluded under affirmative action and students who would have been admitted under affirmative action who are excluded under the 10-percent rule.

The conventional wisdom as reflected in journalistic accounts has tried to describe who might be in these two groups. In the first group, admitted under the 10-percent rule but excluded under affirmative action, it is hypothesized that there are poor whites, especially those from rural high schools, and perhaps some minority students who had previously been pessimistic about their chances for admission or eventual success despite a high rank in class. In the second group might be strong minority students in competitive suburban high schools, students whose intelligence and hard work put them in the second or third decile in a challenging curriculum, but not the top decile.<sup>42</sup>

The focus on groups whose admissions status changes under different admissions regimes assumes some things that (obviously) are empirical questions that this project is designed to answer. These questions are a subset of a larger group of "pipeline" questions that we think are critical for assessing any post-affirmative action plan. That list of questions includes;

- (1) Does changing the admissions criteria change the pool of admissions?
- (2) Does changing admissions criteria change the pool of enrollees relative to admissions? (i.e. are different sets of admittees encouraged and/or discouraged from attending a college or university because the admissions criteria change?).
- (3) What did students excluded under affirmative action plans do for post-secondary education and what were their subsequent educational and occupational attainments?
- (4) How did students admitted under affirmative action plans compare to those excluded under them?
- (5) Where do students admitted under the 10-percent rule who would have been excluded under affirmative action go to college and what do their educational and occupational attainments look like?
- (6) Where do students who would have been admitted under affirmative action but are excluded under the 10-percent rule go to college and what do their educational and occupational attainments look like?

Obviously it won't be possible to answer each of these questions completely in the course of a single research project, no matter how ambitious or long lasting. But these questions provide a framework for evaluating post-affirmative action plans by comparing them directly with affirmative action plans. Focusing on comparisons of this sort moves research and policy making beyond the issues of comparing pools of already admitted students to elite institutions. They also change the burden of proof for assessing post-affirmative action plans. The burden of proof (in our framework) lies with assessing what a new pool of college admits does relative to a comparable pool of would-be admits who are excluded under the new plan. Further, it would be nice to know how the attainments of a new pool of admits compares to an old pool of admits of the same race and ethnicity. This comparison gets at the heart of the efficacy of affirmative action selection criteria versus broader, non-race based criteria like the 10-percent rule.<sup>43</sup>

Our framework also moves us beyond the comparison of the relative prosperity of new and old admits to the same institution and it moves us onto a more ambitious plane for evaluating different admission plans than simply comparing the racial and ethnic distributions of different classes of first year students. In sum, we think that our focus on non-overlapping groups is an important component of evaluating the institutional consequences of changing admissions plans and the consequences of different plans for future social inequality.

## **B. The Individual Consequences of Changing College Admission Plans**

While assessing different outcomes across pools of college attendees is one important component of evaluating changing college admissions plans, it is not the only one that has consequences for future social inequality. We must also look at how changing college admission plans affect the structure of incentives that individual students, parents, teachers, and schools use in structuring the pre-college educational experience. These changes may (or may not) have a big effect on who applies for college in the first place, which students apply broadly to several institutions (rather than one or two), and who actually enrolls in classes at the institutions we propose to study. For this reason we think it will be necessary to survey students and collect data from high schools and student significant others as part of our project.

### **(1) Race-Specific Issues on Typical College Admissions Criteria**

The major difficulty with assessing any criteria for admissions to college is that many of the non-race based components of secondary educational systems produce racially disparate results, a phenomenon sometimes referred to as “disparate impact” in the legal literature. Moving from a system of college admissions that allows college administrators to assess the relative strengths and weaknesses of individual applicants, to plans that eliminate most of this discretion in favor of objective formulas, has the potential to highlight these de-facto differences in secondary school outcomes.<sup>44</sup> However, these de-facto differences were also part of some admissions criteria that affirmative action plans used that (possibly) are not part of the admissions regime under the 10-percent rule. We outline a few of these criteria and their possible effects below.

#### **a. Grades.**

One obvious place where there are likely to be differences in school performance that individual high schools control is in the assignment of grades. There is evidence that teachers discriminate against minority students in the assignment of grades, and grade point averages are a major component of determining who graduates in the top ten percent of a high school class.<sup>45</sup> Under affirmative action admissions regimes, potential biases in grading could be accounted for and assessed using other admissions criteria such as standardized test scores, personal statements and essays, and letters of recommendation. The University of Texas explicitly uses such criteria in assessing students who are not in the top decile.<sup>46</sup>

The shift toward admissions criteria based on class rank (which is explicitly reliant on grade point average) raises some interesting issues with regard to changes in grading practices in schools, particularly integrated high schools. If teachers expect that most white students will want to go to college and “belong” there, this could increase the (often unconscious) incentive to give better grades to white students in relation to their minority counterparts. If teachers and influential parents of majority students think that prior affirmative action admissions criteria unjustly discriminated against majority group students, the pressure to produce more racial stratification in grading could be higher still. In any

case, much more pressure will be placed on high school teachers to assign “just” and “appropriate” grades to students because college admissions criteria will be more heavily weighted toward grades and the chances to prove one’s ability using other admissions criteria will be diminished.

Alternatively, teachers and schools may be inclined to produce what (for want of a better term) we will call the “Lake Woebegone” effect: producing rampant grade inflation so that all potential students with any post-secondary aspirations at all “look good” to admissions boards. This would assure that everyone with the potential to do post-secondary school work would have a chance at attending some post-secondary institution even if they weren’t admitted to an institution with a post-affirmative action admissions plan. In this case, the students in the top ten percent of high school classes would be admitted to post-affirmative action schools, but those just beneath them would look enough like students in the top 10 percent of the class that they would be able to secure a place at a good post-secondary institution as well. This avenue would be particularly appealing if students aspired to attend a mix of public and private institutions, all of which use different admissions criteria.

One way to examine this issue would be to study grade distributions for a set of integrated and residentially segregated high schools, both before and after the top ten percent bill.

#### (b) Curriculum

The University of Texas at Austin had historically prescribed a curriculum for admission. This curriculum is similar to that used by most colleges: four years of English, two years of a foreign language, and so on. The top ten percent bill did not provide any exceptions for students who had not taken a college preparatory curriculum. There were initial fears that students would be admitted who had not taken appropriate preparatory courses, but in the first year only about a dozen top ten percenters were admitted without the prescribed curriculum. Although journalists have found some top ten percenters who were having a difficult time at UT, the overall data on achievement and attrition suggest that the top ten percenters are doing well. Curriculum is considered for applicants not in the top decile, and applicants receive extra points for years of math, science, and language beyond the requirement, and for more difficult AP and honors courses.

The use of criteria like the 10-percent rule also raises interesting questions about high school curricula. High school curricula tend to be idiosyncratic, and the availability of advanced placement classes, and non-college track curricula complicates the ability of schools to rank their students. At this point, it isn’t clear that there is systematic weight attributed to “college track” and “non college track” high school curricula in the admissions process. Nor is it clear that differential weights are applied to advanced courses relative to basic courses in high school. The criteria for doing this type of weighting probably are as varied as high school curricula themselves. This leads to serious questions about what (exactly) a university system is getting by admitting top 10 percent students.

Two sets of institutions may enter into these issues. The colleges make decisions about what they will accept. In the California case, the University of California has recalculated grade point

averages to even out disparities in school practice. California weights Advanced Placement (AP) courses more heavily, but inner-city high schools with high proportions of minority students offer many fewer AP courses.<sup>47</sup> In an recent lawsuit, plaintiffs argued that the weighting of AP grades stacked the deck in favor of admitting better-off, white and Asian students from suburban high schools. Texas colleges are currently accepting the rank in class reported by the high schools, so that the top ten percent are selected by whatever the local practice is.

The second level of institutional behavior is the school district and/or high school. There is evidence that the weighting of courses has become a hot topic within Texas school districts. The school board in Klein created a furor when it not only set up a new weighting scheme, but made it retroactive for the past three years.<sup>48</sup> Donna, a small mostly Hispanic town in South Texas, decided to eliminate "soft" courses such as physical education and activities courses from its grade point calculation. Donna officials explicitly argued that they were trying to prepare their top ten percent for college. Their decision was also met with protest.<sup>49</sup> Grades of transfer students are another cause for dissension, with school boards disagreeing about whether to transfer in the letter or numerical grades, or merely award transfer credit.

Magnet schools are a special source of difficulty. Typically developed to encourage integration, magnet schools usually bring in a group of high-ability students, often picked for their academic talent in a particular area, to take courses within an already existing high school. Nearly always the magnet school students are disproportionately white, and the existing high school is a minority high school. LBJ High School in Austin is a good example. Its magnet school, the Science Academy, attracts high-ability students who took so many AP tests last year that *Newsweek* ranked LBJ seventeenth on its list of the top one hundred American high schools. Yet only 29% of LBJ's juniors and seniors have taken the SAT. Because all of the Science Academy students are college-bound, it is this latter number that reflects the minority and disadvantaged portion of the student body.<sup>50</sup>

How, then, does the principal at LBJ calculate grade point averages? If the AP courses are weighted, then the top ten percent will always be the Science Academy students. Even if the AP courses are not weighted, the local students would have a hard time competing with the hand-picked magnet school peers. The result at LBJ and at many similar magnet schools has been to argue that the magnet school is a "separate high school," and to produce two top ten lists for colleges, with a weighting for AP courses used.<sup>51</sup>

There are numerous types of incentives shaping individual student behavior here, and not all of the incentives are good from the standpoint of fostering academic achievement or preparing students for successful college careers. In the absence of significant oversight, there would be incentives for students to take easier classes in an attempt to inflate their grade point averages. Of course, since every student with aspirations for attending college would have an incentive to do this, it isn't clear that any specific group of students would gain advantages through this mechanism alone. But the implications for furthering inequalities in performance and completion of college would be possible under such as set of incentives. The reason this is so is because, given all students' incentives for underachievement,

academic performance in college would revert to students' pre-existing stock of social capital and parental/home resources. These resources would advantage white students over their minority counterparts, turning what would appear to be a case of "equal underachievement" into a case of rising inequality in educational outcomes.

If anything, this is the reverse of the situation that exists under affirmative action admissions regimes. Under these plans admissions are based on multiple criteria, and performance on many of the criteria used (essays, SAT scores, etc) are tied to the preexisting social and parental capital of students. Many white students don't try hard in high school, produce relatively average looking academic records, and then write good admissions essays and score well on standardized tests to gain admission to the college of their choice. Minority students rarely have this option because (on average) their SAT scores will not be as high, and their personal statements and essays may lack the polish of their white counterparts. This leaves minority students with (at most) two principal avenues for gaining college admission: producing good high school grades, good recommendations from teachers and counselors, and (if possible) performing well in personal interview situations. All of these incentives would point minority students toward greater achievement in high school.

At best, the curricular ambiguities of plans like the ten percent plan leave students and their parents with some ambiguous choices. We would argue that these choices are especially disadvantageous for minority students. Students can take challenging courses and advanced placement courses and risk not graduating in the top ten percent of their class. Alternatively, students can take a less challenging set of classes in an attempt to improve their class ranking. But most college professors and administrators would prefer that students take challenging courses in high school, and minority students especially need to be encouraged to take challenging courses even if their grades suffer as a result. Without some serious attention to the nature and quality of the courses that students take, white students will be ill prepared to attend college and their minority counterparts will be more so. A recent study by the College Board has urged that minority students take a more challenging curriculum in high school.<sup>52</sup>

Potentially, these same curricular concerns could affect the behavior of well-meaning (but misguided) teachers and administrators. Teachers and administrators who wish to reward "their deserving minority students" may counsel them into less challenging curricula in the hopes of raising their class ranking and gaining college admission for them. Alternatively, they may counsel their white students to take challenging curricula not only because "they should be able to do this work" but also to pull white students back toward the academic performance of minority students in less challenging curricula. This set of incentives would produce a racially mixed top ten percent of a high school class. The white students would be ready for college. Chances are, the minority students would not (but high school administrators and teachers would look good).

Finally, differences across schools in curricula raise questions of the relative quality of top ten percent students from different high schools. High schools differ widely in the courses they offer, and many high schools don't offer very many advanced placement classes. A student who performs well in a

small, rural high school without many opportunities to take advanced classes may perform poorly in an enriched school environment where advanced placement classes are abundantly available and widely taken. Without some way of comparing students across schools, there is no way of knowing this. Further, students in the top twenty or thirty percent of the high school class in the well-endowed/rich curriculum school may potentially outperform the top ten percent student from the small, rural high school. The ten percent rule leaves college administrations with no clear way of finding this out without further research of the kind we propose here.

(c) Rank in the class.

Our discussion so far has suggested different ways that post-affirmative action admissions plans could alter the structure of individual incentives for teachers, parents, and students. Most (or all) of these behaviors are designed to improve the students' class ranking. If admissions criteria focus mainly on class ranking there are other ways of altering class rankings for individual students, and ways that high school teachers, administrators, and parents can aid in this process.

First, and most obviously, students and parents lose some of their incentive to attend well-endowed schools with rigorous curricula, well-trained staff, and lots of good students. As it currently stands it is better to be a "big fish" in a "small pond" under the 10-percent rule than to be an "average sized fish" in a "big pond." One possibility for parents and students is that the extensive use of class ranking in admissions will lead to more transfers to different high schools in an attempt to position students with pools of others with whom they will compare favorably. Obviously, relatively few affluent white parents from the suburbs are going to enroll their underachieving children in inner-city schools solely for the purpose of improving their class ranking. There is more involved with school choice than that. But there might be incentives to shift to adjacent school districts or districts in outlying areas away from suburbs in an attempt to improve class rankings. Generally, the prerogative to do this would rest with upper middle class white parents who could afford to pay tuition in neighboring school districts for short periods of time.<sup>40</sup>

But there is an equal, and perhaps more detrimental, incentive working for minority students as well. High achieving minority students would not have the incentive to attend magnet schools and other advanced placement programs that would change the pool of students to whom they were compared. In effect, these students would have the same incentives as affluent, suburban white students, but many of them could respond to the new structure of incentives just by staying in place. However, as with most of the incentives for change we discuss in this section, the consequences of engaging in this behavior for minority students is probably far more severe than the consequences for white students.

Private and parochial high schools have often provided opportunities to minority students in areas in which the public high schools may be weak. Many private schools in Texas pride themselves on the number of scholarship students they admit and the diversity they foster. Many of these schools do not rank their graduating class, as is the custom with many independent schools. What happens to their graduates under the top ten percent rule remains to be seen. These schools should be observed

during the post-affirmative action period to see whether their racial compositions change and whether they adopt ranking. Alternatively, the private schools may decide that they are preparing students principally for out-of-state or private colleges. Very little attention has been paid to the admission of home-schooled children under the top ten percent bill, even though Texas is a state with a strong homeschooling subculture.

Finally, one of the major potential incentive problems that the ten-percent rule produces is that it reduces public and private incentives for dealing with geographic racial and ethnic segregation and the poverty that so often accompanies it. In a perverse twist on the idea that geographic integration produces improved economic opportunities, minority parents and students face an unhappy choice. They can move to the suburbs, get a better education, but rank less well in a bigger pond of well-endowed students of all races, or they can remain in segregated neighborhoods, many with residents below the poverty line, attending poorly financed and staffed schools, and rank highly in a class of students who are unprepared for college. Further, this structure of incentives discourages whites from doing anything about poverty and racial segregation because to do so would (potentially) lower the percentages of minority students who are admitted under 10-percent plans as education improved, neighborhoods gentrified and desegregated, and schools became more racially mixed. Geographic segregation and inequality is turned into a mechanism for promoting diversity.

The more immediate issue with the class ranks is the allegation that some high schools (especially large, majority-white schools in the suburban rings of major cities) are cheating in calculating the top ten percent.<sup>53</sup> Briefly put, more than ten percent of the class is certified as being in the top ten percent. One high school counselor is quoted as saying that the school posts a sign for entering freshman students that says: "To be in the top ten percent you must have this grade point average: xxx" The exact figure is based upon the experience of the previous three years' graduating classes. But the high school now considers this promised number to be contractual, so that last year it certified 12.8 percent of its graduating class as being in the top ten percent. As it happens, the schools accused of cheating are among the biggest traditional feeder schools to UT-Austin and Texas A & M.<sup>54</sup> Other issues deal with how tied ranks are treated by the school. A school with, let us say, three students tied for first place should list the next student in fourth place. But by listing the next student in second place, the high school can certify an additional two students in the top ten percent.

#### (d) Letters of recommendation.

Under the new 10-percent rule, it is not at all clear what role letters of recommendation would play in the college admissions process. The University of Texas does not currently give weight to such letters. Students of different backgrounds almost certainly have differential access to teachers and counselors with connections to better colleges and universities. But it isn't clear that any of that will matter under a post-affirmative action admission regime.

Ending the use of letters of recommendation would limit the ability of educators to identify deserving students who can do college work but whose written records don't necessarily reflect it.

These letters become much harder to write if students are strategically manipulating their curricular choices to position themselves in the top ten percent of a pool of applicants from a specific high school. Under affirmative action, students could be encouraged to take difficult classes knowing that, if they exerted a good deal of effort and impressed their teachers and counselors, this would be reflected in potential letters of recommendation even if their grades in difficult courses were less than stellar. This would especially endear minority students to counselors and teachers. However, under the new regime students have some incentive to not take these classes in the first place and they have little incentive to impress teachers or counselors. Even if they want to do so, they may take less challenging courses which puts teachers and counselors in a difficult position when it comes to evaluating the students' potential for doing college level work. As long as there remains space in the freshman class for the lower deciles, however, the letters may be helpful to second and third deciles.<sup>55</sup>

The net result of all of this represents a tradeoff for students and their parents. They can impress their counselors and teachers by taking difficult classes and (possibly) not doing as well in them as they would in an easier course of study. Doing this, they get good letters of recommendation that might not count for much. Conversely, students can take easier classes to assure better class rankings and place their teachers and counselors in the position of evaluating whether they can perform in college with insufficient evidence of their capacity. Neither situation is good.

(e) SAT and ACT scores.

There is considerable evidence that there are systematic differences in the scores of white and minority students on college admissions exams.<sup>56</sup> However there is little agreement about what those differences mean. Bowen and Bok make a convincing argument that SAT and ACT exams are valuable, but that they are far from the only criteria that are indicative of potential achievement in college. To the extent that SAT and ACT scores are correlated with intelligence tests, Herrnstein and Murray make much of differences between the top 20 percent of scorers on intelligence tests and the bottom 20 percent. However, most people who are thinking about going to college don't come from the bottom of this distribution, let alone the bottom half, regardless of race or socioeconomic status.

For some observers, the ten-percent rule's main virtue is that it eliminates standardized tests as a criterion for admission to a college or university. If high school curricula and resources were more uniform, standardized tests would be superfluous. But relatively few observers argue that the tests are totally worthless given the lack of standardization of secondary schools. At most, they provide confirming or disconfirming validation of the other information in students' files. The top ten percent bill allows public institutions to require the SAT or ACT of all applicants, and to use the data for counseling the students or for doing statistical studies. But the test score cannot be used to disqualify a top ten percent student from admission.

Table 4 provides data concerning the test scores of students admitted under the top ten percent plan. The University of Texas at Austin currently counsels students with low scores to enter one of the freshman programs that were designed to improve retention. Scholarship winners are sometimes

required to enter a freshman program as a condition of the scholarship. In general, the top ten percent have performed reasonably well on the SAT, although there are certainly admittees whose test scores would have been considered too low for admission in previous years.

There is certainly a problem with the low number of students who take the tests, and especially with the 4,000 members of the top ten percent who have not taken the test. The low percentages of test takers at many schools suggest that relatively few students are thinking of college. A study in San Antonio indicated that children whose parents have the lowest incomes are least likely to take the test. Moreover, there is a strong sex bias, such that young women are more likely to take the test than young men. This gender gap is most pronounced at the lowest income levels.<sup>57</sup>

If students face differential incentives to take the SAT/ACT, administrators lose the value of the aggregate scores as an indicator because they don't have a uniformly normed pool of students against whom to compare the test scores. In the abstract, they could end up with test scores that describe the white or Asian, better-off, and women students.

In short, and as strange as it may sound, standardized tests are almost more necessary under a post-affirmative action admissions regime than they are in an affirmative action admissions regime. At minimum it would be tremendously helpful to administrators and policy makers if all students took the exams and the well-known biases of the exams were taken into account as the exams are interpreted.

#### (f) Personal Statements, Interviews, and Auditions.

These are important components of many college admission decisions. Personal statements often reveal special circumstances that support or detract from a students' application. There are few systematic differences in personal statements between white and minority students, but we suspect that minority students produce statements that are of more variable quality in the eyes of college admissions committees than statements by whites (any evidence to back this up other than my experience reading them?).

Minority students, however, do relatively well in personal interviews and auditions, and the effects of the 10-percent rule on the relative weighting given to these dimensions of college admissions is likely to be adverse for these students. Two scenarios are possible. First, interviews and auditions could be completely eliminated in favor of more objective, paper-and-pencil criteria that support or detract from class rankings. This would directly disadvantage minority applicants. Alternatively, interviews and auditions could be used, but only among students who meet the 10-percent cutoff who are attempting to get into very competitive programs. Under this scenario the same incentives to make the 10-percent cutoff that we outline above would be operative, but the effect of these manipulations on the likely audition and interview of potential students could be very adverse.

Texas uses auditions for admission to majors such as music. Interviews are required for very competitive honors programs, such as Plan II. (This honors program could be filled many times over

with top ten percent students; the interview is used to determine which of the top ten percent may enter the program.) With these exceptions, Texas has decided that top ten percent students get the majors of their choice until those majors are filled. One result of this decision is that it is nearly impossible to major in business administration without being in the top ten percent.

(g) Conclusion

How one evaluates the changes in the incentives for students under the 10-percent rule depends somewhat on how one views the efficacy of affirmative action admissions processes under the old regime. The old regime used all or a large number of the criteria we have discussed. Many of these criteria (by themselves) historically favor white over minority students. A few of them seem to help minority students explicitly. The real question is whether changing the admissions regime changes the incentives to do well on these normal criteria used for college admissions and (if those incentives change) whether the changes benefit white or minority students. Generally, we suspect that most of the changes in incentives would adversely affect white students. But they would adversely affect minority students even more because they would lessen incentives to alter the structure of the social stratification system in ways that improve the education of underrepresented students. Further, they would give underrepresented students incentives to be classified as “overachievers” in low-achieving pools rather than as average or slightly above average achievers among a broader pool of students who are likely to be admitted to and succeed in college.

There are several other unintended outcomes that could affect this structure of incentives. First and foremost among these is the response that surrounding states and private colleges and universities make to the move to a post-affirmative action admissions regime by public institutions in Texas. Many of the responses to the incentives outlined above would make students more competitive in Texas but less competitive elsewhere. Do students really put all of their eggs in one basket like this? A second issue is whether there will be any slots available at competitive colleges and universities for students who are not admitted under post-affirmative action admissions regimes. If one doesn't graduate in the top ten percent of a Texas high school class, does one have any shot at admission to Texas or Texas A & M? If the crush of applications continues unabated at Texas and at Texas A & M, will those schools be able to admit any non-residents or foreign freshmen students? Is the diversity represented by having non-Texans enrolled worthwhile? How about transfer students? The University of Texas at Austin has already announced that it will not admit any additional students in Spring 2001, either freshman or transfer, because of overcrowding.

If there is no room at the flagships for anyone but the top decile, will new public flagships emerge, perhaps at Texas Tech or the University of Houston? Or will there be a benefit to surrounding states and private institutions in Texas (e.g. Rice, SMU, Texas Christian, etc.)? Perhaps the most important issue of all will be what happens to college enrollment overall: does the top ten percent bill fire up the ambition for all students, or does it discourage those who are not at the very top of their class? These are issues we wish to address with our research as well.

### **III. Research Design Implications of Changing Student Pipelines**

There are several research design implications of our framework for studying and evaluating post-affirmative action admission policies in the University of Texas system of higher education. The following is a description of what we (ideally) would want to collect in order to do such an evaluation based on our observations above.

First, we wish to compile an individual-level data file on applicants, admissions, and matriculation at the most selective institutions in the top quartile of college and university rankings in the state of Texas from 1989-1999. This would include not only the University of Texas at Austin and Texas A&M but Rice University, Southern Methodist University and others. Preferably we would like extensive information on matriculants including transcripts, transfer records, final outcomes, and type of employment secured. The purpose behind compiling this file is to compare sets of pre-Hopwood, pre-10 percent plan applicants and matriculants to post-10 percent plan students. In effect we can't tell how the new admissions regime is working if we have no idea how the old admissions regime worked. Starting the data collection in 1989 assures that general macroeconomic conditions were similar and gives us several cohorts of pre-Hopwood/10 percent students for comparison purposes.

Second, we need detailed information on post-1998 students, along with more detail about the recruitment practices of institutions themselves. This is information that (we suspect) schools are in a good position to provide. This is also information that can be confined to higher education institutions in the state of Texas, but (unlike the first data collection) should NOT be limited to data from just top-quartile institutions.

Students in this second group should be systematically followed until they graduate or leave post-secondary education. This would include transfers to other institutions in the state and outside of the state of Texas.

Third, we need information on individual and school-level responses to different admissions regimes. The first mechanism for doing this would involve a school-based survey of high school seniors, selected from schools stratified by racial composition, socio-economic status, and geographic location in the state of Texas. This survey would document student decision-making with regard to the college application and decision-making process. Importantly, ALL seniors in the schools selected would be surveyed so that responses are not biased by surveying only students who claim to be college bound. (Subsequent analyses can be weighted to account differential sampling representations from large and small schools). This survey would produce immediate information on a pool of college applicants with known sampling characteristics from the state of Texas.

The second mechanism for assessing individual and school-level responses to different admissions regimes would involve a school-based survey of ninth grade students selected from schools stratified by racial composition, socio-economic status, and geographic location in the state of Texas. These students could come from the same schools as those in the senior class sample. This would

economize on the collection of contextual information. The purpose of this survey would be to establish a baseline for analyzing the multi-year incentives affecting the behavior of high school students during their entire high school career. These students would be re-surveyed every year between the ninth grade and graduation. Attempts would be made to find and interview students who drop out of school. Appropriate corrections would be made for sampling attrition in cases where students moved out of sampled schools or moved completely out of Texas. Importantly, this group will be entering the college applications process when this process is close to being institutionalized. There will be a well-established routine for dealing with the new regime, and this will be an optimal group of students to observe the new college application process with.

Finally, we should conduct focus group discussions and interviews with selected groups of counselors and administrators in schools that represent each of our sampling criteria. These could be relatively open-ended interviews where we attempt to assess how the college admissions process is handled in high schools of different kinds and whether there have been any changes associated with new post-affirmative action admissions plans. These interviews will also be important for determining whether school observers detect any differences in the activities of their students in response to the new admissions plans.

Together, this combination of archival and current interview information should put us in a good position to evaluate the consequences of the Texas 10-percent rule for the future of educational inequality in Texas, with implications for the rest of the United States.

## Endnotes

---

<sup>1</sup> Two visible and recent contrasting statements on this issue are Richard Herrnstein and Charles Murray's *The Bell Curve: Intelligence and Class Structure in American Life* (New York: Free Press, 1994), and William Bowen and Derek Bok's *The Shape of the River* (Princeton, NJ: Princeton University Press, 1997). [henceforth Bowen and Bok] For further information on the California case, see Jerome Karabel, "No Alternative: The Effects of Color-Blind Admissions in California," pp. 33-50 in Gary Orfield and Edward Miller, eds., *Chilling Admissions: The Affirmative Action Crisis and the Search for Alternatives* (Cambridge, MA: Harvard Civil Rights Project and Harvard Education Publishing Group, 1998); Jerome Karabel, "The Rise and Fall of Affirmative Action at the University of California," unpublished manuscript, September 1999.

<sup>2</sup> For Lyndon B. Johnson's experience in teaching in such a "Spanish" school, see Robert Dallek, *Lone Star Rising: Lyndon Johnson And His Times, 1908-1960* (New York: Oxford University Press, 1991), part 1.

<sup>3</sup> Today a portion of the campus at The University of Texas at Austin is called the Sweatt campus, and an annual symposium, The Hemann Sweatt Symposium, is held each year on some aspect of the civil rights movement.

<sup>4</sup> *Hopwood v. State of Texas*, U.S. Dist. Ct., W.D. Texas, August 19, 1994, opinion of Judge Sparks. OCR's investigation had come about in response to a lawsuit requiring the former federal department of Health, Education, and Welfare (HEW) to enforce Title VI. A full file of the legal documents in the *Hopwood* case is available at the following URL: <http://www.law.utexas.edu/hopwood/>

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* Judge Sparks rehearses many of the facts about the changes in law school admissions, including efforts to increase affirmative action.

<sup>7</sup> *Id.*

<sup>8</sup> HB 588. The bill also provides that the top ten percent may be identified at three points: at the end of the junior year, at the end of the first semester of the senior year, and at the end of the senior year. Moreover, the top ten percent entitlement stays with a graduate for two years. High schools are not permitted to put more than ten percent of the class into the top ten percent classification. Colleges were given authority to admit the top twenty-five percent automatically, if they wished to do so. A good description of the development of the bill, with a contrast to the end of affirmative action in California, is found in David Montejano, "On *Hopwood*: The Continuing Challenge," pp. 133-156 in Neil Foley, ed., *Reflexiones 1997: New Directions in Mexican American Studies* (CMAS Books, 1998); David Montejano, "Maintaining Diversity at the University of Texas," pp. 359-369 in R. Post and M. Rogin (eds.), *Race and Representation: Affirmative Action* (New York: Zone Books, 1998). Also see "Hopwood in Texas: The Untimely End of Affirmative Action," pp. 51-xx in Gary Orfield and Edward Miller, eds., *Chilling Admissions: The Affirmative Action Crisis and the Search for Alternatives* (Cambridge, MA: Harvard Civil Rights Project and Harvard Education Publishing Group, 1988).

<sup>9</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 1989*. Washington, DC: Government Printing Office, 1989, pp. 18-19, T. 22. [henceforth Stat. Ab. 1989]

<sup>10</sup> *Id.* The natural increase between 1970 and 1980 was 1.26 million and the net migration was 1.5 million. *Id.* at p. 21, T. 26.

<sup>11</sup> Stat. Ab. 1989, pp. 18-19, T. 22.

<sup>12</sup> U.S. Bureau of the Census, *Statistical Abstract of the United States, 1996/97* (Washington, DC: 1997), p. 35, T. 36. [henceforth Stat. Ab., 1996/97].

<sup>13</sup> *Id.*, p. 30, T. 29.

<sup>14</sup> Taken from U.S. Census Bureau website, <http://www.census.gov/statab/www/states/tx.txt> (May 21, 2000).

<sup>15</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 1999*, (Washington, DC: Government Printing Office), p. 34, T. 34.

<sup>16</sup> Stat. Ab. 1989, p. 132, T. 214.

<sup>17</sup> Taken from U.S. Census Bureau website, <http://www.census.gov/statab/www/states/tx.txt> (May 21, 2000).

<sup>18</sup> *Id.* The national enrollment data shows a strong disparity among racial/ethnic groups in college enrollment. Among recent high school graduates aged 16-24 in 1998, about 65.4% of Asian and Pacific Islanders were enrolled in college, compared with 46.9% of non-Hispanic whites, 40.3% of non-Hispanic blacks, and only 33.5% of Hispanics. Gladys M. Martinez and Andrea E. Curry, "School Enrollment -- Social and Economic Characteristics of Students (Update)," *Current Population Reports*, P20-521 (Washington, DC: U.S. Census Bureau, October 1999).

---

National Task Force on Minority Achievement, *Reaching the Top* (The College Board, 1999); Kenneth J. Cooper, "Panel Urges Affirmative Development for Top Minority Students," *Washington Post*, (October 16, 1999): A10.

<sup>19</sup>Taken from U.S. Census Bureau website, <http://www.census.gov/statab/www/states/tx.txt> (May 21, 2000).

<sup>20</sup>Texas Commission on a Representative Student Body, *Report* (Austin, TX: The Commission, October 15, 1998);

<http://www.uhsa.uh.edu/TCRSB/report.html>.

<sup>21</sup>"Study: Minority Grads Also Flocking to College," *Houston Chronicle* (February 10, 2000): 20A.

<sup>22</sup>Kelly Hildebrandt, "Educators discuss Easing Student's Climb Through College," *Laredo Morning News* (April 6, 2000). [henceforth Hildebrandt]

<sup>23</sup>Toni Falbo and Harriett Romo, *Latino High School Graduation: Defying the Odds* (Austin, TX: University of Texas Press, 1996).

<sup>24</sup>Michele Kurtz, "Austin's Success on SAT Mixed," *Austin American-Statesman* (January 22, 2000): B1, B7.

<sup>25</sup>"SAT Results," *San Antonio Express-News* (January xx, 2000):

<sup>26</sup>Montejano, "On Hopwood," p. 142.

<sup>27</sup>Texas Higher Education Coordinating Board, *Status Rrport on Higher Education*, (Austin: THECB, 1998): 8-10.

<sup>28</sup>Hildebrandt, loc. cit.

<sup>29</sup>U. S. Civil Rights Commission, *Toward and Understanding of Percentage Plans in Higher Education: Are They Effective Substituts for Affirmative Action ?* (April 2000), p. 1. See also Jeffrey Seligno and patrick Healy, "U.S. Civil-Rights Panel blasts Statewide Admissions Policies Based on Class Rank," *Chronicle of Higher Education* (April 21, 2000): A40; M. Mittelstadt, "New Affirmative Action Programs Unacceptable," *Houston defender* (April 16, 2000):4.

<sup>30</sup>Jeffrey Seligno, "Why Minority Recruiting is Alive and Well in Texas," *Chronicle of Higher Education* (November 19, 1999): A34-36.

<sup>31</sup>Stephen H. Murdock et al, "The Impacts of Hopwood: An Assessment of the Perceptions of Students Accepted for Admission to Texas A & M University and The University of Texas at Austin and of Pre-Hopwood Attendance Patterns for Students from Texas," College Station: Center for Demographic and Socioeconomic Research and Education, Texas A & M University, 1998.

<sup>32</sup>Mary Ann Roser, "College Admission law has Mixed Results," *Austin American-Statesman* (December 28, 1998).

<sup>33</sup>Jodi Wilgoren, "Texas' Top 10% Law Appears to Preserve College Racial Mix," *New York Times* (November 24, 1999): A1, A18. [henceforth Wilgoren]

<sup>34</sup>Louise Applebome, "As University of Texas Admissions Get Tougher, The School has opened a Dallas office to help area students prepare for college," *Dallas Morning News* (May 17, 2000): 17A.

<sup>35</sup>Wilgoren describes some of these programs.

<sup>36</sup>Jeffrey Seligno, "Texas Colleges Seeking New Ways to Attract Minority Students," *Chronicle of Higher Education* (November 19, 1999): A25-26. This article also notes that the Ex-Students Association, the separately incorporated alumni association, raised \$4.2 million for minority scholarships. As a private organization, they are free to provide race-based scholarships.

<sup>37</sup>For a complete discussion, see Gary R. Hanson and Lawrence Burt, "Responding to *Hopwood*: Using Policy Analysis Research to Re-design Scholarship Criteria," available at <http://www.utexas.edu/student/research/reports/Hopwood/Hopwood.html>. Some Longhorn Opportunity Scholars were required to participate in special freshman programs to provide them additional assistance.

<sup>38</sup>Memorandum of Lawrence Burt to President Larry Faulkner, January 14, 2000. Students participating in Gateway, one of the special freshman programs, had an even higher grade point average.

<sup>39</sup>University of Texas, Office of Institutional Studies, *Statistical Handbook*, Table S30, 1999.

<sup>40</sup>Bowen and Bok, *passim*.

<sup>41</sup>A recent study based on the same data suggests that the applicants who subsequently enrolled at less selective institutions also had good, and sometimes better careers than those who attended the more elite institutions. Robert J. Samuelson, "The Worthless Ivy League?" *Newsweek* (November 1, 1999): 45, quoting a study by Alan Krueger and Stacy Berg Dale that shows that for two students each admitted to two colleges, the student who attended the more elite school earned no more than the student who attended the lesser-known school.

---

<sup>42</sup> Professor Uri Treisman, in personal communication, argues that many of the most successful minority students in college are those who came from integrated high schools whose teachers had high expectations of both white and minority students. Such students, he suggests, are well prepared for college even though they might not have succeeded in attaining the top decile of their class.

<sup>43</sup> One argument asserts that the top ten percent students are motivated by having previously competed successfully against their peers, giving them a psychological boost over students in lower deciles and over students admitted on an affirmative action basis.

<sup>44</sup> On the substitution of algorithmic admissions formulas for more holistic judgements, see Teresa A. Sullivan, "Beyond Affirmative Action: Algorithmic versus Holistic Approaches to College Admissions," *Research in Social Stratification and Mobility*, 17 (1999): 319-334.

<sup>45</sup> Shih-sung Wen, "Racial Halo on Evaluative Rating: General or Differential?" *Contemporary Educational Psychology*, v4 n1 (January 1979): 15-19.

<sup>46</sup> Bruce Walker, Report 1, p. 2.

<sup>47</sup> Sara Hebel "A.P. Courses Are New Target in Struggle Over Access to College in California," *Chronicle of Higher Education* (November 26, 1999).

<sup>48</sup> Melanie Markley, "It's A Numbers Game," *Houston Chronicle* (April 24, 2000): 1A, 7A.

<sup>49</sup> A related issue has been the decision of several districts to eliminate "D" as a grade.

<sup>50</sup> Kurtz. The combined average score at LBJ was 1146, versus 1016 for the district.

<sup>51</sup> Daniel Golden, "Some High Schools Finagle to Cram Kids into Top 10% of Class," *Wall Street Journal* (May 15, 2000): A1, A8. [henceforth Golden]

<sup>52</sup> Jonathan Tilove, "Raise Demands on Minority Students, Task Force Urges," *Austin American-Statesman* (October 17, 1999); Kenneth J. Cooper, "Panel Urges Affirmative Development for Top Minority Students," *Washington Post* (October 16, 1999): A10. The report is National Task Force on Minority Achievement, *Reaching the Top* (Princeton, NJ: The College Board, 1999). In another study, a senior research analyst at the U.S. Department of Education argues that "academic intensity" (curriculum) is an important determinant of eventually completing a college degree. Clifford Adelman, "Answers in the Tool Box: Academic Intensity, Attendance Patterns, and Bachelor's Degree Attainment," U.S. Department of Education (June 1999).

<sup>40</sup> A careful exposition of this argument appears in D. Orentlicher, "Affirmative Action and Texas' Ten Percent Solution: Improving Diversity and Quality," *Notre Dame Law Review* (1998): 74. One possibility Orentlicher mentions is that middle-class parents will no longer settle for low-performing high schools.

<sup>53</sup> Jonathan David Carroll, "Margin of Error," *Austin Chronicle* (April 21, 2000): 32. See also Golden.

<sup>54</sup> There is a built-in mechanism for exceeding ten percent because the percentage can be calculated at three points in time: the end of the junior year, the end of the first senior semester, and the end of the senior year. Thus, in a class with many students with similar grade point averages, there may be enough shifting in grades over three semesters that more than ten percent could be certified in the top ten percent.

<sup>55</sup> At UT-Austin, the top ten percent now take up only about half of the available freshman seats. With the growth in the number of high school graduates that is anticipated, however, and if the top ten percent prefer Texas over other options, then it is possible that the space available for other students will be sharply reduced in the future.

<sup>56</sup> Christopher Jencks and Meredith Phillips (eds.), *The Black-White Test Score Gap* (Washington: Brookings Institution, 1998).

<sup>57</sup> "SAT Results."