

# **RACE, CLASS, AND UCLA SCHOOL OF LAW ADMISSIONS, 1967-1994**

## **I. INTRODUCTION**

In 1967, the UCLA School of Law (UCLA) was one of a small group of law schools that implemented an affirmative action program designed to give socioeconomically disadvantaged students of color a state-subsidized legal education. Since the late 1960s, affirmative action has become increasingly controversial, and UCLA has continued to be one of the leading law schools in promoting racial diversity in the legal profession. However, the school's affirmative action program, subject to institutional politics as well as legal and political developments at large, has significantly compromised its early efforts to recruit and admit more students from low-income backgrounds.

This comment argues that the UCLA School of Law admissions program reflects a fundamental tension between the institution's aspiration to join the ranks of the nation's elite law schools and its obligation as a public institution to educate and serve socioeconomically disadvantaged communities. While UCLA strives to achieve recognition as a top-flight school by attracting the brightest students, the pursuit of elite status tends to result in an overwhelmingly white student body from middle to upper-income families. On the other hand, progressive students and professors have argued for many years that UCLA, as a taxpayer-supported institution and the only public law school in Southern California, has a heightened obligation to educate and serve people whose diversity reflects that of the state.

This tension in UCLA's mission is most often revealed in the debate over its admissions standards: whether to allocate highly coveted admissions slots strictly on the basis of college grades and LSAT scores, or on considerations of academic performance along with factors such as race, class, and the ability and likelihood to serve low-income minority communities. This comment argues that values other than academic performance should be more explicitly recognized as independently important — particularly in public law school admissions — rather than as mere aberrations to prevailing notions of academic merit.

The first section of this comment presents a historical account of UCLA law school's affirmative action program. The

second section is devoted to a critical discussion of current UCLA admissions standards and procedures, with proposed strategies for change. While this comment focuses on UCLA, the author hopes that this case study will provide insight and guidance to all advocates of affirmative action.

## II. A HISTORICAL ACCOUNT OF UCLA SCHOOL OF LAW'S AFFIRMATIVE ACTION PROGRAM

### A. *The Creation of the Legal Educational Opportunity Program (LEOP), 1966-1967*

UCLA law school's affirmative action program, like similar programs across the country, began in response to the political and social climate created by the civil rights movement of the 1960s. In 1965, when the nation's law schools began to recruit more minorities, there were no more than 700 black students among the 65,000 studying law across the country.<sup>1</sup> Of the 700 black students, more than 300 were enrolled at the predominantly black Howard Law School.<sup>2</sup> Statistics for Latinos, Asian Pacific Americans, Native Americans, and other students of color were not available in 1965, but the enrollment figures for these groups were likely to have been even lower.

At UCLA, the Watts riots in the summer of 1965 created a heightened sense of urgency over concerns of race and social inequity. UCLA was the only public law school in Los Angeles, a major metropolitan area with one of the most racially diverse populations in the country. UCLA faculty members — who have the power to establish the school's admissions policies — were heavily influenced by the sense of social pressure and moral responsibility created by the civil rights movement.<sup>3</sup> As one observer wrote, "The adoption of preferential admissions programs by colleges and professional schools seemed a sensible response to mounting racial tensions caused by the failure of the civil rights movement to effect more substantive improvement in . . . [minority] opportunities and status."<sup>4</sup>

Responding to an emerging national trend created by the civil rights movement, UCLA took initial steps toward an affirmative action program. At the time, no other California law school had such a program. UCLA's initiative was largely due to

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1. Louis A. Toepfer, *Harvard's Special Summer School Program*, 18 J. LEGAL EDUC. 443 (1966).

2. *Id.*

3. Sam Magavern, *From Reform to Institution: The History of UCLA Law School's Affirmative Action Admissions Procedure 5* (Dec. 19, 1988) (unpublished student paper, on file with the UCLA Law Library).

4. DERRICK A. BELL JR., *RACE, RACISM, AND AMERICAN LAW* 658 (3rd ed., 1992).

the efforts of Professor Leon Letwin, the principal architect of the school's Legal Education Opportunity Program (LEOP).<sup>5</sup>

During the late 1960s, according to Letwin, UCLA and several other law schools became more willing to accept institutional responsibility for diversifying their student bodies, rather than simply bemoaning the profound social inequalities that, in effect, were barring minorities from legal education.<sup>6</sup> Also, the presence of minority students in law schools became increasingly recognized as improving the quality of education for the entire student body because they contributed perspectives unfamiliar to the existing predominantly white, middle to upper-class student body.<sup>7</sup>

The first step that Letwin took was to participate in Harvard Law School's special summer school program for black law students in 1966. Juniors and seniors from southern black colleges were recruited to attend a program designed to introduce them to the possibilities of a legal career and to encourage applications not only to Harvard Law School, but to other law schools as well. Harvard had already established an affirmative action admissions program in 1963, admitting 3 black students in 1963, 12 in 1964, 15 in 1965, and 21 in 1966.<sup>8</sup>

When he returned to UCLA that fall, Letwin, as a member of the Admissions and Standards Committee (Admissions Committee), prepared a report to the faculty recommending "adoption of a program designed to increase law school enrollment of persons disadvantaged by reason of poverty and ethnic discrimination."<sup>9</sup> Specifically, the report proposed that the school accept 10 to 15 disadvantaged students for the 1967-1968 year under a separate admissions process, develop a recruitment program for such students, operate a summer orientation program similar to Harvard's, create a counseling-tutorial program, establish a scholarship fund, and create a faculty committee to supervise the program as a whole.<sup>10</sup>

The report presented three primary objectives. First, the program would help "counteract the effects of poverty and discrimination."<sup>11</sup> Second, the report highlighted the law school's responsibility in molding student attitudes about the "appropri-

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5. See generally Leon Letwin, *Some Perspectives on Minority Access to Legal Education*, 2 EXPERIMENT AND INNOVATION (1969).

6. *Id.* at 2.

7. *Id.*

8. Memorandum from the Admissions and Standards Committee to the Faculty app. A at 1 (Oct. 18, 1966) (on file with the UCLA School of Law La Raza Law Students Association [hereinafter LRLSA]).

9. *Id.* at 1.

10. *Id.* at 3-4.

11. *Id.* at 4.

ate concerns for lawyers."<sup>12</sup> Third, the new program would help meet the accelerating demand for minority professionals, encourage other minorities to pursue professional careers, and "contribute at least modestly to the opportunities available to the disadvantaged to improve the circumstances of their lives in order to break the self-perpetuating generation-to-generation cycle of disadvantage."<sup>13</sup>

The report particularly emphasized that UCLA, as a public institution, be sensitive to problems of poverty and discrimination and be committed to countering their effects. This obligation was deemed to be important not only for the "moral leadership" it offered but also for the immediate tangible results of admitting disadvantaged students.<sup>14</sup>

At this time, the existing admissions system relied almost solely on the applicant's college grades and LSAT scores.<sup>15</sup> In the 1960s, this system resulted in an almost exclusively white student body. According to Michael Rappaport, Assistant Dean of Student Admissions:

[There were] serious questions about the proper use and validity of traditional objective law school admission measurements such as the Law School Admission Test (LSAT) and grade point average when applied to minority applicants. Having virtually no experience in applying these factors to non-white applicants as other than a barrier which kept minority applicants out of school, the law schools were really not certain to what extent they could be used in choosing among minority applicants whom the school did wish to admit. There were questions shared by some if not all law school faculty and administration about whether the LSAT had any validity at all among minority applicants, and, if it was valid, to what extent was it valid. The same thought, though to a lesser degree, applied to undergraduate grades.<sup>16</sup>

To replace a system that relied solely on college grades and the LSAT, the Admissions Committee proposed the following admissions criteria as indicators of an applicant's probable law school performance: (1) LSAT and college grades, (2) evidence of grade improvement over time or special competence in relevant areas, (3) personal interview, (4) interviews with the applicant's college teachers and advisors, and (5) evidence of relevant interests and motivation.<sup>17</sup> Additional factors to be considered

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12. *Id.*

13. *Id.* at 5.

14. *Id.*

15. *Id.* at 6.

16. Michael D. Rappaport, *The Legal Educational Opportunity Program at UCLA: Eight Years of Experience*, 4 BLACK L.J. 507 (1975).

17. Memorandum, *supra* note 8, at 7-8.

would be: (1) history of discrimination and poverty, (2) quality of pre-law educational opportunities, (3) lack of other relevant opportunities, and (4) assessment of the applicant's motivation and interests.<sup>18</sup>

The report was careful to emphasize that the Admissions Committee was not advocating the admission of unqualified people, rather "the admission only of those who in the school's judgment have the ability to successfully complete law school careers but who do not qualify under our present extremely high (and rising) standards . . . ."<sup>19</sup>

At the same time, it is important to stress that the Letwin proposal explicitly emphasized the twin goals of remedying discrimination and poverty.<sup>20</sup> That is, Letwin and the other original supporters of LEOP intended to recruit and admit not only racial minorities, but students from economically and educationally disadvantaged backgrounds.<sup>21</sup>

The Letwin report was carefully packaged and presented to the faculty for approval. The proposal was relatively modest — only 10 to 15 LEOP students were to be admitted. The Admissions Committee discussed the report widely among the faculty to incorporate their concerns before submitting it to a vote. The faculty approved the LEOP proposal by a wide margin.<sup>22</sup>

To place UCLA's adoption of LEOP in proper context, several factors should be considered. As discussed earlier, the civil rights movement provided the general social and political climate for the change. During these times of heightened sensitivity to issues of racism and poverty, Letwin's leadership and dedication to the establishment of LEOP was critical. His efforts were particularly remarkable given the fact that, at the time, he was not yet a tenured professor.<sup>23</sup>

Several other institutional characteristics were relevant to the adoption of LEOP. There was a core group of liberal faculty members who solidly supported the proposal. Moreover, according to one observer, LEOP provided UCLA with an opportunity to define itself as a leader and unique among the nation's law schools. As *The Docket* (formerly the *UCLA Docket*), the law school's newspaper, declared in an editorial, "UCLA Law School is in the limelight of U.S. legal education for its initiative and

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18. *Id.* at 8-9.

19. *Id.* at 6-7.

20. *Id.* at 1.

21. *Id.* at 4-5.

22. Magavern, *supra* note 3, at 4.

23. Interview with Kenneth Graham, Professor of Law at the UCLA School of Law, in Los Angeles, Cal. (May 16, 1994).

foresight.”<sup>24</sup> Also, the school may have been particularly amenable to change because it was relatively young — the law school was founded only 15 years earlier, in 1951.<sup>25</sup>

It is also noteworthy that LEOP was adopted with little or no student pressure, either for or against the proposal. For example, when the *UCLA Docket* published an open student forum on *What's Wrong With the Law School* in 1966, there was no reference to the LEOP proposal or to the near absence of minority students.<sup>26</sup>

In the fall of 1967, the first LEOP students enrolled. In a class of 210, 13 black students and 4 Latino students enrolled. Of these 17 students, 14 entered through LEOP and 3 through regular admissions.<sup>27</sup>

### B. *The Initial LEOP Years, 1967-1971*

After establishing LEOP's general framework, one of the first tasks addressed was recruitment. Letwin organized a summer orientation program similar to the one he had attended at Harvard. In the summer of 1968, UCLA, University of Southern California, and Loyola law schools jointly sponsored a summer program for about 40 black and Latino pre-law students.<sup>28</sup> The program was sponsored by the Council on Legal Opportunity (CLEO), an organization established in January 1968 by the Association of American Law Schools, the American Bar Association, the National Bar Association, and the Law School Admission Test Council.<sup>29</sup> Students could apply to all three schools by applying to the Los Angeles CLEO program.<sup>30</sup>

While the Harvard summer program recruited black students from the South to apply to law schools across the country, the Los Angeles CLEO program recruited minorities within the Los Angeles area and tried to concentrate the students in the local law schools.<sup>31</sup> Letwin, as the Los Angeles CLEO Director, argued that this concentration would help UCLA fulfill its duty as a “corporate citizen” of Los Angeles.<sup>32</sup> Furthermore, it would provide students with a more familiar and hospitable environ-

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24. *Non-white Profs Are Needed at Law School*, UCLA DOCKET, Nov. 25, 1968, at 2.

25. Magavern, *supra* note 3, at 5.

26. *Forum: What's Wrong with the Law School*, UCLA DOCKET, Sept. 30, 1966, at 3.

27. Magavern, *supra* note 3, at 7.

28. Letwin, *supra* note 5, at 3.

29. *Id.* at 3.

30. *Id.* at 8.

31. Memorandum, *supra* note 8, at 12-13.

32. Letwin, *supra* note 5, at 7-8.

ment and enable them "to develop a more effective voice within the school on issues of vital concern to them."<sup>33</sup>

After two years of CLEO, however, UCLA decided that its benefit as a recruitment tool and tutorial device was limited and short lived.<sup>34</sup> By that time, UCLA was able to look to their own LEOP students to help recruit and interview applicants. The students were receptive and eager to expand the program and gain influence in the decision-making process.<sup>35</sup>

While developing the school's recruitment efforts, the faculty also focused on revising the admissions process. Some faculty members questioned the validity of existing admissions procedures. Letwin, for example, felt that it was "indefensible that the decisions should reflect solely the values of white academics" and argued that "[a]ppropriate participation should be guaranteed through minority faculty members (where they exist), administrators, students, or lawyers."<sup>36</sup> Thus, in the fall of 1968, the faculty added voting student members to most of its committees, including the Admissions Committee.<sup>37</sup> Moreover, the faculty decided to allow the newly formed Black American Law Students Association (BALSA) and the Mexican American and Indian Law Students Association (MAILSA) to conduct mandatory interviews with each minority applicant to determine whether to recommend the candidate for admission.<sup>38</sup>

With the groundwork for LEOP established, proponents of the program pushed for its expansion. Letwin advocated for UCLA's minority enrollment to approximate the minority population in California, which was then 20 to 25 percent.<sup>39</sup> Under Letwin's leadership as Chair of the Admissions Committee, UCLA enrolled 47 LEOP students (26 black, 19 Chicano, and 2 Native American students) in the fall of 1969.<sup>40</sup> The faculty also adopted the expansion of admissions quotas to 32 black, 32 Chicano, and 2 Native American students for each entering class.<sup>41</sup>

This expansion gave UCLA the largest affirmative action program of any law school in the country.<sup>42</sup> Some of the faculty, including the new Dean, Murray Schwartz, thought the expansion was a rash decision, feeling that many of the students filing

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33. *Id.* at 7-8.

34. Rappaport, *supra* note 16, at 512.

35. *Id.* at 511.

36. Letwin, *supra* note 5, at 16.

37. Magavern, *supra* note 3, at 10.

38. *Id.* at 9.

39. Jim Birmingham, *Prof. Letwin Calls for 25% Minority Student Enrollment*, UCLA DOCKET, Nov. 25, 1968, at 1.

40. Magavern, *supra* note 3, at 10.

41. *Id.*

42. *Id.*

the slots would not have the academic qualifications to graduate and pass the bar.<sup>43</sup> Others were concerned that UCLA was becoming a school for the "less-qualified."<sup>44</sup> One professor recalls:

The most tense faculty meeting I ever attended took place during the 1969-70 academic year, when we considered the question of whether to increase the number of minority admissions. The debate was couched in terms of whether we should show our commitment by increasing the then current numbers. No one discussed what everyone was thinking: "If we increase to X now, must we show good faith next year by increasing X and good faith the next year by improving on that figure, etc. — and at what point will the character of the law school, as we know it, change."<sup>45</sup>

Despite these apprehensions, LEOP continued to expand. In 1969, two Asian American students who had entered the school under regular admissions proposed the creation of two LEOP slots for Asian American students. The faculty initially rejected extending the program, arguing that Asian Americans had suffered less socioeconomic and educational disadvantages than blacks, Chicanos, and Native Americans. However, as a demonstration of political solidarity, BALSAs and MAILSAs supported the Asian American students' proposal with each organization giving up one of the quota slots reserved for blacks and Chicanos in order to admit two Asian American LEOP students in 1970.<sup>46</sup> This demonstration of interracial support began a longstanding tradition at UCLA: Students of color working collaboratively to support affirmative action.

In 1971, the school responded to continued pressure by setting aside six LEOP slots for Asian Americans:

With the addition of the Asian admissions slots, the LEOP program assumed the size that it would maintain until the landmark *Bakke* decision of 1978. In 1971, the law school enrolled 31 black, 31 Chicano, 6 Asian, and 2 Native American students to attain 22 [percent] minority enrollment.<sup>47</sup>

While most schools at the time did not consider Asian Americans for affirmative action programs, UCLA recognized the sizeable Asian American community in Los Angeles and in the state, as well as their significant proportional underrepresentation in the

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43. *Id.*

44. *Id.* at 11.

45. Memorandum from Reginald Alleyne, Professor of Law at the UCLA School of Law, to the Faculty 3 (June 1, 1978) (on file with LRLSA).

46. Interview with Mike Yamamoto, in Los Angeles, Cal. (Feb. 23, 1992), cited in Doris Ng, *A History of APILSA's Struggle With UCLA's Admissions Program* 8 (March 11, 1992) (unpublished student paper, on file with LRLSA).

47. Magavern, *supra* note 3, at 12-13.

legal profession.<sup>48</sup> The faculty also recognized the history of anti-Asian racism such as the World War II Japanese internment camps and the Chinese Exclusion Act of 1882.

Several factors are relevant in analyzing the institutional dynamics that led to LEOP's expansion in its early years. One factor was the influence of minority students. BALSAs and MAILSAs provided students of color with an organizational base to participate in the admissions process and to push for LEOP's expansion. Another factor was the hiring of young, liberal faculty members at the law school.<sup>49</sup> For example, in 1969, a quarter of the faculty had been hired within the previous three years.<sup>50</sup> Of the six who started in 1969, Reginald Alleyne and Henry McGee were black, Gary Schwartz was the co-founder of the Harvard Civil Rights-Civil Liberties Law Review, and Michael Tigar was a Berkeley student activist.<sup>51</sup> In fact, it was Tigar who had proposed the LEOP expansion in 1969.<sup>52</sup> Finally, the faculty assessed LEOP's first year and determined that larger numbers of minority students were needed to avoid creating a sense of isolation and tokenism among them.<sup>53</sup>

### C. *Debates Over LEOP Standards and Procedures, 1972-1977*

The admissions debate at UCLA during most of the 1970s focused less on the number of LEOP admission slots and more on admission standards and decision-making procedures. While minority enrollment nationwide rose from 5.9 percent in 1971-72 to a peak of 8.1 percent in 1976-77, UCLA remained far ahead of most schools and felt less social pressure to expand LEOP.<sup>54</sup> The faculty generally felt that the law school was accepting roughly as many applicants as had the minimum qualifications to make it through law school and the bar examination.<sup>55</sup> Moreover, black, Chicano, and Native American applications to the school remained consistent. Applications from Asian American students were rising steadily, but the school felt less of a need to admit Asian American students through affirmative action as they began to enter universities in larger numbers under regular admissions.<sup>56</sup>

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48. Magavern, *supra* note 3, at 12.

49. *Id.* at 11.

50. Cruger Briant, *New Profs Show Changes*, UCLA DOCKET, Sept. 24, 1969, at 1, 8.

51. Magavern, *supra* note 3, at 12.

52. *Id.*

53. *Id.* at 11-12.

54. *Id.* at 15.

55. *Id.*

56. *Id.*

On the issue of admissions standards, minority activists argued that the LEOP program should focus on admitting disadvantaged students of color who were likely to serve their communities.<sup>57</sup> They argued that race, economic and educational disadvantage, and prior commitment to community service should be the primary basis of LEOP admissions decisions. These factors, they argued, were better indicators than grades and the LSAT to determine an applicant's likelihood to serve their community as a lawyer. Grades and the LSAT, on the other hand, should be considered only to demonstrate that an applicant possessed the minimum academic skills necessary to successfully complete law school and pass the bar. Moreover, the students of color argued that they were better qualified than the mostly white and socioeconomically privileged professors and administrators to determine which applicants identified most closely with low-income and minority communities and would be the most able and likely to serve these communities.

The faculty, on the other hand, disagreed among themselves as to the importance of nonacademic criteria and minority student input in admissions decision-making. Under Letwin's leadership, UCLA had de-emphasized its traditional reliance on college grades and LSAT scores as admissions criteria. The traditional criteria returned into favor, however, when LEOP students demonstrated difficulties in law school and on bar examinations and when professors, other than the original LEOP proponents, became more assertive in the admissions debate.

The conflict between the positions of the minority student groups and many of the faculty was evident in the LEOP admissions decision-making process. For example, the 1971 Admissions Committee consisted of six professors and three students. The three minority student organizations interviewed all applicants over a two-month period, either in person or by phone. They emphasized factors such as community service and ethnic affiliation. The student groups then compiled preference lists based on the interviews. Meanwhile, faculty members compiled a preference list based solely on grades and LSAT scores. From that point, faculty and student members of the Admissions Committee negotiated over applicants on the basis of their respective rank orderings.<sup>58</sup>

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57. *Id.*

58. *Chicano LEOP Admissions Process*, HOSTILE WITNESS (UCLA Chapter of the Nat'l Lawyers Guild, Los Angeles, Cal.), Sept. 20, 1972, at 3, 4.

1. *LEOP Standards: A Renewed Emphasis on Academic Criteria, 1973*

In 1971, the faculty formed a LEOP task force to address their concerns over the academic qualifications of LEOP students.<sup>59</sup> The faculty now had five years of experience with over three hundred LEOP students and three years of their bar results. Only two of the ten students from the class of 1970 who made it to the bar passed it.<sup>60</sup> Only 35 percent of the class of 1971 who took the bar passed it on their first try, and only 15 percent of the class of 1972 who took the bar passed it on their first try.<sup>61</sup> The statistics were quite discouraging for LEOP students at the time the task force was convened.

The task force recommended to the faculty the adoption of a new admissions system which, while continuing to utilize subjective criteria, placed greater emphasis on LSAT scores and college grades. This recommendation was based on the task force's findings of apparently significant correlations between academic criteria and law school and bar exam performance for LEOP students.<sup>62</sup> According to Rappaport, their findings seemed to indicate that while the LSAT and grades could not be used when measuring minority students against white students without taking into account their disadvantaged backgrounds, the same data could be used when measuring minority applicants against each other in order to select those applicants most likely to successfully complete law school and become members of the bar.<sup>63</sup>

There were also signs of both internal and external political influences on the task force. For example, Rappaport and many faculty members interpreted the data to indicate that "below a certain minimum, measurable level of competence, motivation, desire and special help are simply not enough to get minorities into the legal system in an acceptably large number of cases to justify a special admissions program to its would-be critics and outside observers."<sup>64</sup> Some members of the task force were more candid about the political heat that LEOP opponents were directing at the law school. Affirmative action was becoming increasingly controversial in the country. Also, some faculty members were unhappy about how the LEOP bar results, in their opinion, were undermining UCLA's national prestige.<sup>65</sup>

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59. Magavern, *supra* note 3, at 16.

60. Rappaport, *supra* note 16, at 526.

61. *Id.*

62. *Id.* at 508-511.

63. *Id.* at 507.

64. *Id.* at 511.

65. *LEOP Curtailed*, HOSTILE WITNESS (UCLA Chapter of the Nat'l Lawyers Guild, Los Angeles, Cal.), Mar. 26, 1973, at 1, 11.

On March 5, 1973, the faculty approved the task force's new statement of purpose for the LEOP program.<sup>66</sup> The newly-adopted statement of purpose did not differ significantly from the general LEOP goals already in place. However, one significant policy change was that the law school would only consider applicants with a predictive index (PI) over a minimum threshold. The predictive index represents a figure calculated from a standard formula using an applicant's grades and LSAT score. The student interviews would continue, but with the primary goal of shedding additional light on an applicant's academic ability and probability of completing law school and entering the legal profession.<sup>67</sup>

The faculty also adopted the task force's recommendation that applicants should not be evaluated on the basis of their stated commitment to community service.<sup>68</sup> While the task force did not disagree with the program's goal of increasing community service, there were several concerns. One was that the concept of "community service" was too vague.<sup>69</sup> For example, the admissions criteria was not clear as to whether one who works in a corporate law firm could be considered to be serving her community.<sup>70</sup> Second, there was the fear that applicants would uniformly declare community service as a goal regardless of their actual intentions.<sup>71</sup> Third, some professors felt that the law school should not be attempting to mold the career choices of individuals.<sup>72</sup> Finally, some professors believed that a "substantial portion of graduates in the program will in fact devote a significant part of their professional endeavors to such service."<sup>73</sup> Therefore, the faculty decided that an admissions criterion to encourage service was not necessary.

The minority student groups criticized the renewed emphasis on traditional academic criteria by arguing that the faculty had gutted one of the original goals of LEOP — to train lawyers from disadvantaged backgrounds to serve the underserved — and replaced it with a program for the "cream of the Chicano, black, and Asian crop."<sup>74</sup> This criticism would be repeated many times in subsequent years as UCLA's admissions standards placed increasing emphasis on grades and the LSAT.

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66. Minutes of Faculty Meeting, March 5, 1973, at 209 (on file with the Office of the Dean, UCLA School of Law).

67. *Id.* at 210.

68. *Id.* at 212.

69. *Id.*

70. *Id.* at 212-13.

71. *Id.* at 213.

72. *Id.*

73. *Id.*

74. *LEOP Curtailed*, *supra* note 65, at 1.

2. *The Denial of Student Voting Power on Admissions Matters, 1975*

In 1975, the administration took further steps to weaken student input in the admissions process. Students had voted along with faculty members on individual admissions cases since the initial appointment of students to the Admissions Committee. However, in the fall of 1972, Dean Murray Schwartz claimed that the law school's by-law provisions allowing students and other non-faculty members to vote conflicted with the Standing Orders of the Regents of the University of California, which delegates the power to make admissions decisions to the faculty of each campus department.<sup>75</sup> Thus, according to Schwartz, university policy did not allow students to vote on individual admissions cases. Despite student protests that the administration was misinterpreting the university regulations, the Admissions Committee stripped student members of their voting power in the spring of 1975.<sup>76</sup>

Despite the loss of voting privileges, students continued to play an influential role in the admissions decision-making process. As the faculty meeting minutes of January 26, 1976 indicated:

The fact is that student influence on the decisions of the Admissions Committee is substantial, even in the absence of the students' right to vote. On the basis of last year's experience, it appears that disagreement between student and faculty members of the Admissions Committee on selection of LEOP applicants occurs in relatively few cases.<sup>77</sup>

3. *Students Reassert Nontraditional Admissions Criteria, 1975*

On April 23, 1975, the Admissions Committee met to discuss two proposed admissions policy changes. One was a proposal to further formalize the emphasis on grades and the LSAT by ranking applicants by their predictive index with the presumption that this ranking would be followed. The second was to completely eliminate any student and faculty consideration of an applicant's likelihood of community service.

Notified in advance of the Committee's meeting, students mobilized. Over a hundred students packed the faculty conference room as the Third World Coalition (Coalition) — the Asian American Law Students Association (AALSA), the renamed

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75. *Murray the Marshmallow*, HOSTILE WITNESS (UCLA Chapter of the Nat'l Lawyers Guild, Los Angeles, Cal.), Nov. 6, 1972, at 1, 7.

76. *LEOP Students Seek Greater Control*, HOSTILE WITNESS (UCLA Chapter of the Nat'l Lawyers Guild, Los Angeles, Cal.), Nov. 24, 1975, at 6.

77. Minutes of Faculty Meeting, Jan. 26, 1976, at 173 (on file with the Office of the Dean, UCLA School of Law).

Chicano Law Students Association (CLSA), and BALSAs presented a list of demands:

1. That the Predictability Index be discarded;
2. That Third World students exercise an equal vote on the LEOP Admissions Policy Committee;
3. That the vehicle employed for evaluation and selection of the Third World applicant be the interview process established by the respective group, in compliance with the following considerations:
  - a. The candidate's knowledge of and sensitivity to the social, political, educational, and economic problems faced by his or her community;
  - b. The candidate's previous community involvement;
  - c. Bi-lingual ability, where applicable;
  - d. The socio-economic composition of the candidate's family;
  - e. The candidate's educational experience;
  - f. The candidate's work experience.<sup>78</sup>

As in the 1973 debate, the Coalition and faculty members once again confronted each other over whether to emphasize the predictive index or the list of criteria designed to favor disadvantaged minorities committed to community service. For example, CLSA argued that the predictive index measures how far removed the Third World applicants are from their own racial and cultural group and how well the candidate has adopted the standards and values of the white majority culture.<sup>79</sup>

To evaluate the proposals of both the faculty and the Coalition, the new Dean, William Warren, formed an LEOP task force in the fall of 1975, with six professors and four students.<sup>80</sup> The task force held hearings, received written comments, and prepared a report that the faculty adopted without major changes on January 26, 1976.<sup>81</sup>

The report was a mixed bag for students. On the one hand, the task force stated that "the evaluation and selection of LEOP applicants . . . should take into account not only all of the conventional criteria but also all six of the criteria listed by the Third World Coalition . . ." <sup>82</sup> However, the faculty's deep skepticism of the ability to predict and adequately define "community service" led them to decide that "the future intention of an applicant to seek employment in or to serve his or her minority

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78. *Crucial LEOP Confrontation*, HOSTILE WITNESS (UCLA Chapter of the Nat'l Lawyers Guild, Los Angeles, Cal.), Apr. 23, 1975, at 1; Minutes of Faculty Meeting, *supra* note 77, at 163-164.

79. *Position of the Chicano Law Students Association*, HOSTILE WITNESS (UCLA Chapter of the Nat'l Lawyers Guild, Los Angeles, Cal.), Apr. 23, 1975, at 3.

80. *LEOP Students Seek Greater Control*, *supra* note 76, at 6.

81. Minutes of Faculty Meeting, *supra* note 77, at 157.

82. *Id.* at 172.

community should not be considered a criterion for admission."<sup>83</sup> At the same time, they recognized the importance of admitting students who would be well qualified to serve if they chose to do so. As the report summarized, "[N]o one supposes that pledges by applicants to 'return to the community' are reliable predictions of future conduct; but the six criteria listed will help to determine which applicants have the minimum skills necessary for effective work in the minority community."<sup>84</sup>

The report also focused on the mandatory student interviews:

Perhaps no aspect of the LEOP admissions program has received as much critical attention as the [minority student group] interview process. Concern has been expressed from time to time that the compulsory interview may be "threatening," "humiliating," and "insulting"; that there may not be sufficient safeguards against favoritism in the selection process; and that applicants who are political activists and advocates of "radical social change" may be given preference over those who are believed to accept "establishment values."<sup>85</sup>

Nevertheless, the task force rejected challenges to the mandatory interviewing process by concluding, "[w]hatever irrelevant and invidious influences may have been brought to bear in the interview process in the early stages of the LEOP admissions program, we have found no significant evidence that they exist today."<sup>86</sup> The task force decided that making the LEOP interviews optional would create a double standard — some applicants being admitted primarily on their paper records and others on the basis of the Coalition's criteria, which the task force considered "both relevant and significant."<sup>87</sup>

The faculty was also concerned with the Coalition's proposed consideration of "the candidate's knowledge of and sensitivity to, the social, political, educational and economic problems faced by his or her community."<sup>88</sup> They feared that this standard carried too much potential for abuse as an ideological litmus test. The task force investigated these concerns and concluded, "We have found no evidence to support the charge that LEOP applicants are selected primarily on the basis of economic, social, or political ideology."<sup>89</sup> Indeed, it appears that those admitted in recent years reflect a broad range of views on those matters."<sup>90</sup>

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83. *Id.*

84. *Id.* at 172-73.

85. *Id.* at 169.

86. *Id.*

87. *Id.* at 170.

88. *Id.* at 157.

89. *Id.*

90. *Id.* at 170.

Nonetheless, to allay any persistent concerns, the faculty voted to add to the report, "No political test shall be used in the admissions process."<sup>91</sup>

Perhaps most significant for students, the faculty adopted the task force's proposal that the applicants be considered in the order ranked by the students and that "[i]n the ordinary course, it is anticipated that the student groups' ranking will be accepted by the Admissions Committee."<sup>92</sup> This presumption in favor of the student rankings of applicants seemed to be a clear victory for the Coalition.

The student presumption was debated at length. Professor Kenneth Karst, an influential member of the faculty, urged adoption of the student presumption, arguing that it was crucial to show that the faculty sincerely believed that the student interview process was important, and that adopting the student presumption was a symbol of the faculty's faith in the interview process.<sup>93</sup> Professor Letwin also supported it, arguing that since there was no student vote on the Admissions Committee, the presumption was a relatively mild vote of confidence for the legitimacy of the student interview process.<sup>94</sup> However, other faculty members argued against the presumption, objecting to the presumptive power that it gave to the students' recommendations. Dean Warren cast the tie-breaking vote in favor of the students, on the condition that the specific wording of the policy be changed to emphasize the "predictive" and not "imperative" nature of the student recommendations.<sup>95</sup>

While the adoption of the student presumption was an important symbolic victory for the Coalition, the actual implementation of the presumption was often questionable. According to one professor, different Admissions Committee faculty members accorded different weight to the student recommendations ranging from none, in clear violation of the presumption, to some weight in close cases.<sup>96</sup>

Nonetheless, it is important to understand why the faculty acceded to many of the student demands for nontraditional admissions criteria and student input. It is likely that the persistence, vehemence and well-organized nature of the Coalition's protests was a significant factor. Student voting power was a compelling cause to rally around, and the Coalition, along with

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91. *Id.* at 157.

92. *Id.* at 161.

93. *LEOP Admissions*, HOSTILE WITNESS (UCLA Chapter of the Nat'l Lawyers Guild, Los Angeles, Cal.), Feb. 19, 1976, at 4, 6.

94. *Id.*

95. *Id.*

96. Alleyne, *supra* note 45, at 3.

the leftist National Lawyers Guild, provided an excellent organizing base.<sup>97</sup> But the ultimate decision-making power still resided with the faculty. The student protests were effective primarily because many faculty members were already sensitive to the students' arguments, accusations, and anger. For example, Professor Karst argued that the adoption of the student presumption would help build a feeling of community between faculty and students.<sup>98</sup>

D. *The Impact of Bakke: UCLA's Adoption of "Diversity" Admissions, 1978*

During the first ten years of LEOP, the debate over admissions standards and procedures was driven largely by the law school's internal politics. However, the Supreme Court's landmark *Bakke*<sup>99</sup> decision had a greater impact on UCLA's affirmative action program than any development since the civil rights movement. *Bakke* held that the University of California, Davis Medical School's racial admissions quota system was unconstitutional.<sup>100</sup> Most of the UCLA faculty interpreted *Bakke* to mean that the LEOP program was also likely to be found unconstitutional. The law school was particularly concerned because at least one organization, the Anti-Defamation League of B'Nai B'Rith, had intimated that they were considering a lawsuit to challenge LEOP.<sup>101</sup>

In the fall of 1978, Dean Warren appointed a new task force to revise the school's admissions policy. The chairman of the task force, constitutional law professor Kenneth Karst, informally consulted with faculty members while preparing the task force report. There seemed to be a broad consensus that the faculty wanted to preserve the school's minority enrollment at current levels while protecting their affirmative action efforts from litigation. Under Karst's leadership, the task force decided that the best way to achieve these objectives was to follow what Karst calls the "how-to-do-it manual" of Justice Powell's opinion in *Bakke*, which approved Harvard College's "diversity" approach.<sup>102</sup> Powell rejected the traditional affirmative action focus on remedying past discrimination, and instead treated race as

97. Rogelio Flores, *The Struggle for Minority Admissions: the UCLA Experience*, 5 CHICANO L. REV. 1, 4-5 (1982).

98. Steve Shuman, *LEOP Report Adapted*, THE DOCKET, Feb. 26, 1976, at 1, 8.

99. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

100. *Id.*

101. Magavern, *supra* note 3, at 23.

102. Memorandum from the Admissions Task Force to the Faculty 2-4 (Nov. 21, 1978) (on file with the UCLA Law Library) [hereinafter Karst Report]; *Bakke*, 438 U.S. at 316-19.

one of a broad range of "diversity" factors that university admissions officers could appropriately consider in seeking diverse student bodies.<sup>103</sup> Using Powell's opinion as a guide, the task force set out to design a diversity admissions program that would continue to be race-conscious, at least in part.<sup>104</sup> The Karst Report, as the task force's proposal became known, was adopted by the faculty.<sup>105</sup>

The Karst Report gave two official goals for the newly adopted admissions program:

(a) *Academic Promise*. No student shall be admitted to the law school unless it is probable that he or she will be able to complete law school successfully and to be admitted to the bar by passing [the] bar examination.

(b) *Diversity in the Student Body*. The Law School seeks to produce a student body that is diverse in its members' backgrounds, perspectives and career goals, in order to achieve the educational benefits of such diversity and to promote the objective of providing legal representation for the underrepresented.<sup>106</sup>

The Report's diversity criteria included:

1. racial/ethnic background;
2. ability in languages other than English;
3. work experience or career achievement;
4. previous positions of leadership or other special achievements;
5. prior community or public service;
6. unusual life experiences;
7. physical handicap or other disadvantage;
8. career goals;
9. economic disadvantage.<sup>107</sup>

One of the most important features of the diversity program was its size — up to 40 percent of each entering class. An interesting issue is how this 40 percent figure was arrived at, given the 20 to 25 percent enrollment quotas that were in place under the LEOP program. The Karst Report implied that the numerical level of minority enrollment would remain basically constant. For example, the report stated, "[o]ur recent levels of minority representation have enabled us to reap the rewards of . . . 'educational pluralism.'"<sup>108</sup> The report also cited the need to maintain a "critical mass" of students from each minority group "to avoid

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103. *Bakke*, 438 U.S. at 316-319.

104. Karst Report, *supra* note 102, at 2-3.

105. Flores, *supra* note 97, at 11; Howard Posner, *Faculty Adopts Diversity Admissions as Minority Students go on Hunger Strike*, THE DOCKET, Dec. 7, 1978, at 1.

106. Karst Report, *supra* note 102, at 17.

107. *Id.* at 18.

108. *Id.* at 6.

the sense of isolation and to make such students feel comfortable in speaking in the classroom and otherwise participating actively . . . ."<sup>109</sup> These statements suggested the desire of the task force to maintain the existing levels of minority enrollment. Thus, in order to maintain the 20 to 25 percent minority enrollment levels, any new affirmative action program would have to be expanded to admit students under diversity criteria other than race.

Moreover, according to Karst, the 40 percent figure was primarily a result of litigation strategy. According to one observer,

The [t]ask [f]orce, being cautious litigators and liberal policy-makers, felt that the diversity enrollment would have to be 35-40 percent to fend off any claims that it was simply the LEOP system in disguise. In other words, 10-20 percent non-minority students would be enrolled as a kind of litigation buffer."<sup>110</sup>

However, the report was careful to emphasize that every applicant is eligible for consideration for every place in the entering class, regardless of race.<sup>111</sup>

The Coalition vehemently opposed the new diversity admissions system on several grounds. One of the main points of contention was the extent to which an applicant's disadvantaged background would be considered under the new diversity system. The Karst Report focused on disadvantage only to the extent that it sheds light on the likelihood of an applicant's success in law school and the bar examination.<sup>112</sup> For example, an applicant's full academic potential may not be indicated in her grades and LSAT score if she had to work full-time while attending college or could not afford a private LSAT preparatory course.

According to the Coalition, the faculty's emphasis on grades and the LSAT for diversity students meant that, in general, minorities who have suffered the least amount of economic and educational disadvantages would be the most likely to be admitted. As an alternative, the Coalition emphasized disadvantage as the primary criterion for affirmative action admissions.<sup>113</sup> An emphasis on disadvantage was likely to result in admitting diversity students with lower grades and LSAT scores at the expense of more well-to-do minorities with higher academic records. Proponents of the disadvantaged approach argued that wealthier appli-

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109. *Id.*

110. Magavern, *supra* note 3, at 23.

111. Karst Report, *supra* note 102, at 7.

112. *Id.* at 7-8.

113. See, e.g., Chicano Law Students Association, *A Proposal for a Legal Educational Opportunity Program for Disadvantaged Students*, Oct. 13, 1978 (on file with LRLSA); Esteban Lizardo, *Historical Background*, Speech at the UCLA School of Law (Mar. 30, 1988), in 9 CHICANO L. REV. 75, 77 (1988).

cants can always go to private schools, while disadvantaged students can only afford public schools.<sup>114</sup>

Moreover, the students charged that taking the focus away from disadvantage would lead to the admission of minorities on the basis of superficial characteristics such as an applicant's skin color or an ethnic surname, rather than on the applicant's life experience as a disadvantaged minority. The diversity program, they argued, smacked of tokenism.

Combined with the charge of tokenism, the Coalition attacked what they saw as UCLA's shift in focus from providing legal representation to underserved minority communities to providing a diverse educational environment for the benefit of students. They felt that the diversity approach had taken away the heart of LEOP: To train lawyers to serve disadvantaged communities.<sup>115</sup> Despite the fact that one of the new system's stated goals was to provide legal representation for the underrepresented, many students and faculty supporters saw the primary thrust of the diversity program to be the provision of a diverse learning atmosphere. Professor Kenneth Graham, who was an outspoken supporter of the Coalition's position, opposed the diversity program for being designed to create an "ethnic zoo for the edification of wealthy white students."<sup>116</sup>

Finally, students opposed the new admissions decision-making procedure. Under the new procedure, the Admissions Committee would be divided into three reading teams, each with two professors and one student. Each team would select admittees from a random third of the applicants whom the Assistant Dean had selected as possessing one or more of the recognized diversity characteristics. The minority student groups could submit a written recommendation to accompany an applicant's file, but there was no presumption that it would be followed. Furthermore, applicants would now have the option of personal interviews, rather than being required to interview as they were under LEOP.<sup>117</sup>

There were several reasons for eliminating mandatory student interviews. Most of them were fully debated in past years, including concerns over an applicant's privacy, the faculty's fear of student groups engaging in ideological screening, and faculty skepticism over the student groups' ability to predict future community service. According to the faculty, there were also some reports of applicants who complained of offensive interviews, as

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114. Howard Posner, *Faculty Headed for 'Diversity' Admissions*, THE DOCKET, Nov. 1, 1978, at 1, 5.

115. Posner, *supra* note 105, at 1, 5.

116. Interview with Kenneth Graham, *supra* note 23.

117. Karst Report, *supra* note 102, at 1.

well as local pre-law advisors commenting that interviews were deterring some potential applicants.<sup>118</sup> Finally, many faculty members felt that the mandatory interviews were simply a great time burden on faculty and student participants that unjustifiably delayed the admissions process.<sup>119</sup>

Students protested the proposed diversity program bitterly. The Coalition held several rallies, gathering the media's attention by featuring prominent supporters like civil rights leader Cesar Chavez.<sup>120</sup> Their attempts to reason with the faculty had failed, and the new system was scheduled for adoption only days before finals. Left to desperate measures, they occupied a wing of the school, and more than forty students went on a hunger strike. Many of the students feared that the faculty was going to use *Bakke* to eliminate or significantly cut back on minority admissions, and felt powerless to stop such changes except through dramatic means. However, despite the students' valiant efforts, the faculty voted to adopt the diversity program.

The admissions policy changes indicated that the majority of the faculty wanted to cut back on student influence in admissions affairs. Even professors who had advocated for greater student input as members of the 1975 LEOP task force felt that student input had gone too far in the last three years.<sup>121</sup> In particular, many professors may have been reacting at least in part to events in the previous school year, when students protested over UCLA's failure to fill the 32-student quota for Chicanos. That year, students occupied the law library and went on strike for eight days, effectively cancelling many classes with demonstrations, picket lines, and a class boycott.<sup>122</sup>

Despite the fears of many students, minority enrollment ultimately did not decrease under the diversity program. In the years following the adoption of the new system, black and Latino enrollment varied from year to year, while Asian American enrollment increased most significantly.<sup>123</sup>

#### E. *The Proposal to Cut Asian Americans from Diversity Admissions, 1981-1982*

There were several reasons for the rise in Asian American enrollment. First, there was a dramatic increase in Asian Ameri-

118. *Id.* at 12-13.

119. Lizardo, *supra* note 113, at 76.

120. Cesar Chavez, *A Worker's Perspective*, Speech at the UCLA School of Law (Mar. 30, 1988), in 9 CHICANO L. REV. 75, 87 (1988).

121. Magavern, *supra* note 3, at 28.

122. Flores, *supra* note 97, at 6-7; Diane Sherman, *Admissions to be Revised*, THE DOCKET, Aug. 31, 1978, at 1, 31.

123. Magavern, *supra* note 3 app. at 45-47.

can applicants, from 121 in 1979 to 319 in 1983. Also, more Asian American applicants were being admitted strictly on the basis of their grades and LSAT scores, rather than on diversity considerations. Moreover, as one observer points out, Asian American enrollment benefited from the admissions system change. LEOP had 6 slots set aside for Asian Americans, while diversity admissions had no such limit. While LEOP by design set aside larger numbers of admission slots for blacks and Latinos, the goals of the diversity program seemed to apply with equal force to Asian Americans as to the other groups. This was particularly true in light of the rapidly growing Asian American community in Los Angeles and the state. Furthermore, the Admissions Committee's use of three reading teams — with one student member from each of the Asian, black, and Latino student groups — may have boosted Asian American student influence as well as created symbolic parity with blacks and Latinos.<sup>124</sup>

Affirmative action for Asian Americans, particularly Chinese and Japanese Americans, continued to be controversial among the faculty, and the admissions reading teams were widely inconsistent in their evaluation of Asian American applicants. According to Michael Rappaport, Assistant Dean of Admissions, in one year, one of the teams decided not to admit any Asian American students.<sup>125</sup>

In the fall of 1981, Professor Jonathan Varat, the Admissions Committee chair for the 1981-82 school year, addressed the issue of affirmative action for Asian Americans. Professor Varat wanted to codify the prevailing practice of not admitting wealthier Japanese and Chinese Americans under diversity admissions unless they possessed some other diversity characteristic.<sup>126</sup> Some faculty members felt that while Japanese and Chinese Americans have certainly suffered historical discrimination they should not receive special treatment. They cited the fact that Chinese and Japanese Americans were already being admitted in proportion to their statewide population representation through the regular (i.e., non-diversity) admissions process.

While Varat claimed it was only a pro forma change, the Asian Pacific Law Students Association (APLSA) and other supportive students feared the proposal would result in a drop or elimination of all Asian Americans from diversity admissions.

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124. *Id.* at 30.

125. *Id.* at 31.

126. *Id.* at 31-32.

According to one observer, at least some professors, including Dean Warren, intended a significant change.<sup>127</sup>

Students mobilized to protest the proposed change. On April 12, 1982, about 25 students occupied the law school records office while over a hundred other students chanted in the adjacent hallway. After a heated negotiation with the occupying students, Dean Warren and then Assistant Dean, Susan Prager signed an informal agreement that Asian Americans would not be dropped from diversity admissions and that student interviews would not be further denied, at least for the remainder of the semester and over the summer.<sup>128</sup> Prominent members of the local Asian American community and bar association also lodged protests with Dean Warren. Warren and Varat ultimately decided to table the issue indefinitely.<sup>129</sup>

#### F. *Further Erosion of Student Input*

Students seemed to have succeeded in achieving at least a symbolic victory in preventing the law school from cutting Asian Americans from diversity admissions. However, the trend was clearly toward further erosion of student input in admissions affairs. Some faculty members, along with the new Dean, Susan Prager, were discontent with the admissions reading teams. Each year, the Admissions Committee reviewed several hundred to a thousand applications from applicants who did not qualify through regular admissions (60 percent of every entering class) but may have qualified for further consideration because of elements of diversity in their background. The procedure was as follows. First, the Assistant Dean of Admissions read all files and designated those appropriate for consideration under diversity admissions. Second, if the applicant desired, a minority student group interviewed the applicant and wrote comments on her file before forwarding the file to two faculty members for a vote.<sup>130</sup>

During his term as Chair of the Admissions Committee, Varat proposed to do away with both reading teams and optional interviews for several reasons. First, Varat felt that the process was burdensome to faculty and student participants.<sup>131</sup> Second, the reading teams were inconsistent in applying the official list of criteria. The diversity criteria were numerous and somewhat

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127. *Id.* at 32.

128. *Pickers Invade Records Office*, THE DOCKET, Apr. 19, 1982, at 1.

129. Magavern, *supra* note 3, at 32.

130. Memorandum from Jonathan Varat, Professor of Law at the UCLA School of Law, to the Faculty (Dec. 1, 1981) (on file with LRLSA).

131. Barbara Riegelhaupt, *Admissions: The Controversy*, THE DOCKET, Feb. 16, 1982, at 1, 6.

vague, creating a lot of room for interpretation. Each year brought new professors and students into the process with different ideas about what made an applicant attractive.<sup>132</sup> Third, the interviews and the lengthy decision-making process made the system slow, resulting in UCLA lagging a month or more behind other schools in sending out acceptance letters and recruiting top students.<sup>133</sup> Finally, Varat asserted that the experience of past committee members has been that the process yields very little useful information that is not already available in the written application.<sup>134</sup>

Instead, Varat suggested a system in which the Committee Chair would make decisions subject to a veto by at least three members of the Committee, including at least two faculty members. The file would then be sent to the full Committee for consideration.<sup>135</sup> As expected, minority students protested the proposal as yet another step toward denying students meaningful input in the admissions process. In response, Varat compromised and asked that his proposal be implemented only for "clearly admissible" students — those whose college grades and LSAT score are higher than some predetermined level. The Coalition argued that given the 40 percent diversity goal, students with good grades and LSAT scores would be displacing, without committee review, the more disadvantaged students and students who aspired to work in the community.<sup>136</sup> Despite the students' arguments, the faculty approved Varat's proposal in January 1982.<sup>137</sup> This change not only eliminated student input as to the "clearly admissible" diversity students, but it also reflected the desire of a growing number of professors to place greater emphasis on academic criteria rather than on considerations of disadvantage or community service.

#### G. *Diversity Admissions and the Bar Passage Problem, 1982-1987*

Since Dean Prager's appointment in 1982, UCLA has taken several steps to improve the academic performance and bar passage rates of diversity students. In January of 1983, the law school hired Kristine Knaplund to design and teach what has become one of the largest academic support programs among the nation's law schools. In the spring of 1985, the school also added a special voluntary section of Legal Research and Writing which

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132. *Id.*

133. *Id.*

134. *Id.* at 1.

135. *Id.*

136. Lizardo, *supra* note 113, at 78.

137. Riegelhaupt, *supra* note 131, at 1, 6.

was designed primarily for diversity students to improve their studying and test-taking skills. In 1986, Dean Prager initiated a two-week summer orientation program for incoming diversity students.<sup>138</sup>

But many faculty members remained concerned about the academic qualifications of the diversity students. Their concern focused on UCLA's California bar passage rate, which fell from 69.7 percent in 1982 to 61.4 percent in 1986. The 1986 figure ranked UCLA behind Stanford, Boalt, Davis, and Hastings, and equal to USC.<sup>139</sup> It should be noted that during these years, California's bar passage rates were dropping at all schools, and UCLA had ranked fifth among California's law schools in 1982 as well. Nonetheless, the faculty focused on the low bar passage rates, which had been a problem since the beginning of UCLA's affirmative action efforts.

Moreover, the number of affirmative action students at UCLA had almost doubled with the adoption of the diversity admissions program. While this doubling was due in part to the admission of white "affirmative action" students, these students were doing about as poorly as the minority diversity students on the California bar examination.<sup>140</sup> Thus, the adoption of the diversity approach had doubled the number of students with relatively low bar passage rates, which lowered the overall school rate correspondingly.

UCLA's low bar passage rates created a potential drop in the law school's prestige. Dean Prager feared that the widely publicized bar passage rates might reduce the quality of the entire student body.<sup>141</sup> She cited student fears that UCLA was not preparing students well enough for the bar examination.<sup>142</sup> Moreover, UCLA alumni were calling Dean Prager to complain about the poor bar statistics. They apparently questioned why UCLA, generally considered to be among the top 20 law schools in the country, was doing so poorly on the California bar exam. Given the fact that potential employers and faculty members across the country may have been asking similar questions, it is likely that the UCLA faculty was becoming increasingly apprehensive about the school's reputation.

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138. Magavern, *supra* note 3, at 33.

139. Memorandum from Kristine Knaplund, Professor of Law at the UCLA School of Law, to Susan Prager, Dean of the UCLA School of Law, and Carole Goldberg-Ambrose, Associate Dean of the UCLA School of Law attachment A (Apr. 2, 1987) (on file with LRLSA).

140. *Id.*

141. Letter from Susan Prager, Dean of the UCLA School of Law, to the Faculty (Mar. 4, 1987) (on file with LRLSA).

142. *Id.*

Meanwhile, there were several legal challenges to the California bar exam for its consistent disparate impact against racial minorities. Several law schools, including UCLA, also began to publicly criticize the State Bar for setting the bar passage requirement too high, which resulted in otherwise qualified applicants — particularly minority applicants — who were passing in most other jurisdictions but were being denied the opportunity to practice in California.<sup>143</sup>

In 1987, UCLA decided to make significant changes in their admissions, retention, and academic support policies to address the bar passage issue. On March 4, 1987, Dean Prager issued a letter to the faculty to initiate discussion on these issues.<sup>144</sup> She wrote, "I believe, as I think the large majority of the faculty believes, that we should continue to take risks in our admissions in order to further our priority of bringing more minority lawyers into the profession."<sup>145</sup> However, she expressed grave concern that "we are graduating a significant number of people who do not have a meaningful chance" of passing the California bar.<sup>146</sup> For the years 1982 to 1984, the first-time California bar passage rate ranged from 26 to 41 percent for diversity students,<sup>147</sup> while non-diversity students, for the years 1982-86, maintained strong rates that ranged between 86 to 90 percent.<sup>148</sup>

The Coalition charged that the administration and faculty were scapegoating minorities for their failure to properly prepare students to pass the bar. They called for more effective tutorials and support programs designed to increase the bar passage rate of minority students.<sup>149</sup> To support their arguments, they compared the bar passage rates of diversity students with those of minority students at the University of San Francisco and Southwestern University, who had similar median college grades and LSAT scores in 1985.

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143. Monica Bay, *Educators: Bar Exam Too Tough*, THE RECORDER, Apr. 8, 1986, at 1.

144. Prager, *supra* note 141.

145. *Id.*

146. *Id.*

147. Memorandum from Carole Goldberg-Ambrose, Associate Dean of the UCLA School of Law, and Susan Prager, Dean of the UCLA School of Law, to the Faculty (Apr. 2, 1987) (on file with LRLSA).

148. Letter from Susan Prager, Dean of the UCLA School of Law, to UCLA law students (Apr. 13, 1987) (on file with LRLSA).

149. *See, e.g.*, Letter from LRLSA, to Susan Prager, Dean of the UCLA School of Law (Feb. 2, 1988) (on file with LRLSA).

1985 MEDIAN UNDERGRADUATE GRADE POINT AVERAGE  
(UGPA) AND LSAT FOR UCLA DIVERSITY STUDENTS,  
UNIVERSITY OF SAN FRANCISCO STUDENTS, AND  
SOUTHWESTERN UNIVERSITY STUDENTS.<sup>150</sup>

	Median UGPA	Median LSAT
UCLA Diversity	3.0	34
Univ. of San Francisco	3.1	34
Southwestern	3.0	33

FIRST-TIME JULY BAR PASSAGE RATES FOR UCLA DIVERSITY  
STUDENTS, UNIVERSITY OF SAN FRANCISCO STUDENTS, AND  
SOUTHWESTERN UNIVERSITY STUDENTS.<sup>151</sup>

	1982	1983	1984	1985	1986
UCLA, All students	78%	72%	63%	68%	72%
UCLA Diversity	41%	32%	26%	37%	30%
Univ. of S.F.	61%	71%	54%	49%	54%
Southwestern	47%	45%	43%	52%	57%

These statistics suggest that diversity students with relatively low grades and LSAT scores should, with adequate preparation, be passing the California bar at higher rates. However, some faculty members saw little value in academic support and other pedagogical reforms.

The faculty, after considering a range of options, focused on two alternative proposals on admissions. The first was for the faculty to make no changes to admissions policies until the law school initiated new support programs and evaluated their effectiveness.<sup>152</sup> The second — which was adopted and remains in effect to date — was for diversity students to be admitted by the Assistant Dean of Admissions in consultation with the Chair of the Admissions Committee, pursuant to policies prescribed by the faculty and Admissions Committee as set forth in the Karst Report.<sup>153</sup>

Student activists vehemently opposed this move to centralize decision-making power in the Assistant Dean, which would dramatically reduce student input in admissions. For example, the La Raza Law Students Association protested:

As Latinos, we are in the best position to define our own ethnic community and to gauge each applicant's potential for future community involvement. We do not believe that the

150. Knaplund, *supra* note 139.

151. *Id.*

152. Memorandum from the Short-Term Committee to Faculty and Students 6 (Apr. 16, 1987) (on file with LRLSA).

153. *Id.*

current Assistant Dean of Admissions, or any single individual, is capable of making these determinations for us.<sup>154</sup>

Although students had no voting power on admissions matters, their representatives on the reading teams allowed them to serve as checks on faculty discretion, and in many cases, to persuade faculty committee members to change their votes.<sup>155</sup>

A minority of professors supported the students. Professor Letwin argued:

The 40 percent admissions standards are phrased very broadly; and there is no fixed number to be admitted, only a ceiling. In short, the process seems highly discretionary, and the values of those who apply the standards may have a broad effect on the admissions pattern. I would rather those values be those of a cross-section of the faculty, as now, than those of the assistant dean."<sup>156</sup>

However, many professors opposed any significant student input in the admissions process because they felt that students neither had any special insights into the applicants and their backgrounds, nor could they better predict which students would serve underserved communities. Such sentiments were shared among many members of the faculty, despite their own ethnic and racial backgrounds. For example, one African American professor felt that "the range of possible minority community contributions a lawyer can make is so great, that it is impossible to make valid long-range assessments on the basis of a short interview by anyone." In particular, he dismissed a student's ability to determine how a lawyer can contribute to the community by stating, "Most students do not learn what lawyers really do until they get out of law school."<sup>157</sup>

Mutual distrust among student protesters and the faculty had reached a peak. Many faculty members anticipated student protests against anything that they were going to do, no matter how reasonable. Many students feared that the faculty was using the bar passage problem as an excuse to undermine UCLA's commitment to minority admissions.<sup>158</sup>

Students had several reasons to question the administration and faculty's commitment to addressing student concerns about admissions. First, many students felt betrayed by Dean Prager, who had told students earlier in the year that she had no plans to

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154. Letter from LRLSA, *supra* note 149, at 4.

155. Memorandum from the Diversity Coalition to the Faculty 13 (Apr. 22, 1987).

156. Memorandum from Leon Letwin to the Short-Term Committee (Apr. 13, 1987) (on file with LRLSA).

157. Alleyne, *supra* note 32, at 2.

158. Kenneth Kimmell, *On Diversity, Student Input and Due Process*, UCLA DAILY BRUIN, Apr. 20, 1987, at 7.

call for admissions policy changes that school year.<sup>159</sup> Second, students also protested that the proposed changes were being reviewed in such a short time, without adequate opportunities for student input. Finally, the students charged that scheduling the final faculty vote three days before the semester's end, with final exams imminent, indicated the administration and faculty's bad faith in working with students.<sup>160</sup>

Despite the fact that final exams were only a week away, the Third World Coalition, working with the National Lawyers Guild, the Lesbian and Gay Law Students Association, and the Public Interest Law Foundation, devoted long hours to protest the proposed change. They prepared position papers, held rallies, and received support from elected officials, judges, and other prominent members of the local community. They sought to postpone any major admissions policy changes until a more thorough evaluation of the bar passage problem could be made.

When it looked like the faculty's decision was imminent, the minority student groups debated a more dramatic and desperate move. APILSA voted to occupy the Records Office; BLSA voted not to; and La Raza was deadlocked.<sup>161</sup> On April 28, 14 APILSA and 6 La Raza students occupied the Records Office and barricaded themselves inside, while a large crowd of students gathered outside in support. After occupying the office for about three hours, the campus police came in riot gear and arrested fifteen of the student protesters.<sup>162</sup>

In spite of the students' desperate move, on May 1, 1987, the faculty vested the centralization of admissions decision-making power in the Assistant Dean of Admissions. At the same time,

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159. See Letter from Susan Prager, Dean of the UCLA School of Law, to UCLA law students 2 (Apr. 13, 1987). In her letter, Dean Prager states:

While I did not envision changes being adopted in the admissions system this year and I indicated to some student representatives in February and early March that I did not intend to press for admissions changes this year, the only commitment that I made was that no changes would be made in the admissions of the 1987 entering class.

*Id.*; Jane Newman, *The Diversity Struggle: Brief Chronology of Events*, THE DOCKET, Oct. 1987, at 11.

160. See, e.g., Reid Honjiyo, *Law School Must Not Give Up Fairness Towards Minorities*, UCLA DAILY BRUIN, Apr. 13, 1987, at 5.

161. Interview with Reid Honjiyo, in Los Angeles, Cal (Feb. 3, 1992), cited in Ng, *supra* note 46, at 25. According to Tammy Chung, one of the protestors who occupied the Records Office, BLSA members did not participate because of their fear of police brutality stemming from the history of police brutality against African Americans. *Id.*

162. Henry Tovmassian, *Fifteen Law Students Arrested in Records Office Sit-in*, THE DOCKET, Aug. 1987, at 5.

they also voted to increase the funding of academic support programs and raised academic probation and retention standards.<sup>163</sup>

#### H. *Recent Developments, 1988-1994*

Once again, despite student fears to the contrary, UCLA's minority enrollment did not drop after the 1987 policy changes. However, the role of the minority student groups in the admissions process had been significantly reduced, with Assistant Dean Rappaport and the Admissions Committee Chair essentially holding all decision-making power on diversity admissions. To protest the new admissions system, La Raza withdrew from all recruiting, interviewing, and admissions activities in 1988, and BLSA followed suit in 1989, leaving only APILSA participating in the process.<sup>164</sup> However, both La Raza and BLSA resumed participation shortly thereafter, resigned to the belief that some input in the process was better than none.<sup>165</sup>

While the size of diversity admissions has not changed significantly, the underlying philosophy has changed. There is now more focus on producing competent lawyers and less concern about what they will do as lawyers. Also, there is a general sense that law school should do little to compensate for the educational, economic, and other socioeconomic disadvantages that students have faced prior to attending law school.<sup>166</sup>

#### I. *The Current State of Diversity Admissions, 1994*

Today, Assistant Dean Rappaport, in consultation with the Chair of the Admissions Committee, essentially makes all decisions as to who is admitted under the diversity program, a group which now comprises about forty percent of every entering class. Rappaport describes himself as an administrator who only implements the faculty's admissions policies, particularly those set forth in the Karst Report. However, students who have worked with Assistant Dean Rappaport insist that he has broad discretion to decide which diversity factors listed in the Karst Report will receive more weight than others.<sup>167</sup>

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163. Letter from Susan Prager, Dean of the UCLA School of Law, to UCLA law students 1-2 (May 4, 1987).

164. Adriene Rodriguez, *Introduction*, Speech at the UCLA School of Law (Mar. 30, 1988), in 9 CHICANO L. REV. 73 (1988).

165. Memorandum from LRLSA Admissions Chair to the La Raza Admissions Subcommittee 1 (Feb. 27, 1992) (on file with LRLSA); Vincent Sarmiento, *Raza Admissions at the UCLA School of Law: An Update on Current Policies and Recent Developments*, 14 CHICANO-LATINO L. REV. 161, 166 (1994).

166. Magavern, *supra* note 3, at 42.

167. Interview with Michael Balaoing, APILSA Admissions Representative, 1992-93, in Los Angeles, Cal. (May 1, 1994).

Rappaport does refer some cases for consideration to the full Admissions Committee, but he continues to feel that there are relatively few cases where faculty and student input is helpful. According to Rappaport, La Raza gives him guidance on ethnic identity issues, while APILSA helps him choose among Asian American applicants with similar scores and backgrounds. For African American applicants, according to Rappaport, identity is less of an issue and the pool of qualified candidates is relatively small, so he needs less assistance in choosing among them.<sup>168</sup>

While the Karst Report lists economic disadvantage as one of its diversity admissions criteria, Rappaport does not seem to give much weight to it. Rather, he places overriding emphasis on grades and LSAT scores for both regular and diversity admissions. Rappaport considers disadvantage primarily to discern whether the applicant's grades and LSAT may not fully reveal the applicant's academic potential.<sup>169</sup>

Rappaport claims that no significant policy change is foreseeable for Asian American diversity applicants, despite the continuing ambivalence of a significant number of faculty members. His method is to require diversity factors other than race to justify diversity admissions consideration for each Asian American ethnic group. Thus, Japanese, Chinese, and Korean applicants — more of whom are being admitted under regular admissions — need diversity characteristics other than their ethnicity, such as an immigrant background and language skills, whereas Filipinos, Vietnamese, and other underrepresented Asian ethnic groups need less consideration of other diversity factors.<sup>170</sup>

In making admissions determinations, Rappaport consults with the Admissions Committee Chair and the Dean, while talking informally with other faculty members. For example, Dean Prager feels that diversity white students should have qualifications very close to those of the regular admittees. The admission of white diversity students is less an important end in itself than a way to preserve minority enrollment after *Bakke*.<sup>171</sup> In response to this philosophy, Rappaport states that he is decreasing the numbers and increasing the academic qualifications of white diversity students. For example, he states that a low-income back-

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168. See also Sarmiento, *supra* note 165. According to Sarmiento, who served as La Raza admissions representative during 1991-92, La Raza's net impact on the admissions process during 1991-92 was "negligible at best." *Id.*

169. Interview with Michael Balaoing, *supra* note 167.

170. Magavern, *supra* note 3, at 40.

171. *Id.*

ground will add little to a white applicant's chances of acceptance unless the poverty was fairly extreme.<sup>172</sup>

Thus, after debating admissions policies with students for over 25 years, most faculty members have withdrawn from the process, seemingly satisfied with the current process of delegating admissions duties almost exclusively to the Assistant Dean of Admissions. The history of affirmative action struggles at UCLA clearly indicates a trend toward emphasizing prevailing measures of academic ability, reducing concerns related to socioeconomic disadvantage, and maintaining skepticism over attempts to predict which applicants are likely to serve disadvantaged communities. This history also has shown the faculty's increasing apprehension over giving students the power to influence admissions policy decision-making. Every year, a small group of students advocates for an admissions program for disadvantaged and service-oriented students. However, the experiences of the last 25 years seems to have left the majority of the faculty resigned to the current compromise between attracting the "best and the brightest" and continuing the institution's commitment to promote racial diversity in the legal profession.

### III. A CRITIQUE OF UCLA LAW SCHOOL'S CURRENT ADMISSIONS POLICY

#### A. *An Overview of the Current Admissions Policy*

UCLA Law School's current admissions policy allows for about forty percent of every entering class to be admitted under the diversity program. Diversity admits are applicants with competitive college grades and LSAT scores who also possess one or more characteristics (e.g., race, disability) or experiences (e.g., work experience, living abroad) that are considered to bring diversity to the student body and thereby enhance the law school learning atmosphere. Among candidates for diversity admissions with similar backgrounds, those with the highest grades and LSAT scores are admitted. The remaining 60 percent of every class is admitted strictly on the basis of the predictive index. Applicants with the highest predictive indices (basically, the highest college grades and LSAT scores) are automatically offered admission to the law school. This 60/40 breakdown between regular and diversity admits is the admissions office's general goal, with the actual breakdown varying from year to year.

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172. *Id.*

## B. *Critique of UCLA Law Admissions as Public Policy Decisions*

UCLA Law School's primary reliance on college grades and LSAT scores to allocate limited admission slots can be critiqued as a normative choice.<sup>173</sup> In these times of highly competitive law school admissions, law schools are rejecting thousands of applicants who would otherwise be able to successfully complete law school. As former American Bar Association (ABA) President Chesterfield Smith once observed, "Law school admission officers, rather than bar examiners, are in large measure picking our future lawyers."<sup>174</sup> Most American lawyers and judges practicing today would never have been admitted to law school if they had been competing under the inflated standards which now govern admissions.<sup>175</sup> This also holds true for UCLA Law School, where the number of applications for admission has skyrocketed in recent years.<sup>176</sup>

As a public institution, UCLA's admissions policy should reflect public policy decisions on how to allocate taxpayer-subsidized educational opportunities. As UCLA Professor Kenneth Graham states:

In exercising its delegated power to decide who to admit to the Law School, the faculty is making a choice of public policy. The decision of who to admit to a public law school should be related to the reasons that justify the existence of publicly-funded legal education in a state that already has an abundance of non-public law schools and no shortage of lawyers. Given the fact that anyone who can pay for it can obtain a legal education in California, our admissions decisions are less a question of who can be a lawyer in California and more a question of which lawyers shall have their legal education subsidized by California taxpayers.<sup>177</sup>

The UCLA law administration and faculty deserves recognition for its commitment to promote racial diversity among its stu-

173. See, e.g., David E. Van Zandt, *Merit at the Right Tail: Education and Elite Law School Admission*, 64 TEX. L. REV. 1493 (1986) (reviewing ROBERT KLITGAARD, *CHOOSING ELITES* (1985)).

174. LAW SCHOOL ADMISSIONS COUNCIL, 1973 ANNUAL COUNCIL REPORT, at 70 (1974).

175. Barbara Lerner, *Equal Protection and External Screening: Davis, DeFunis, and Bakke*, 1977 PROC. ETS INVITATIONAL CONF. 3, 6.

176. For example, the enrolling class of 1961 had an average LSAT percentile ranking of 70 percent, while the enrolling class of 1967 had a mean LSAT percentile ranking of 86 percent. Assistant Dean, Memorandum to Faculty Re: Class of 1969 Statistics, Feb. 23, 1967. In comparison, regular admittees of the enrolling class of 1993 had an average LSAT percentile ranking of 96 percent. Source: UCLA School of Law Admissions Office.

177. Interview with Kenneth Graham, *supra* note 23. In 1993, there were 16 ABA-approved California law schools, of which 4 are public, and 19 California law schools not approved by the ABA.

dents and in the legal profession. UCLA was one of the first law schools in the country to establish an affirmative action program, and the school has maintained its commitment to racial diversity over the last 25 years, despite the growing public disfavor with affirmative action. In recent years, UCLA's minority enrollment level follows only the historically black universities and the University of Hawaii.<sup>178</sup>

However, over the same 25 years, UCLA has significantly diminished its earlier efforts to promote economic diversity among its students, and to admit more students who wish to serve disadvantaged communities. This lack of commitment to class diversity and service to disadvantaged communities is related to the law school's admissions standards and its increasing emphasis on college grades and the LSAT. This emphasis is applied not only to the school's regular admittees, but also to their affirmative action students.

### C. *The Validity of Grades and the LSAT as Measures of Academic Merit*

There has been much debate since the early 1970s as to the validity of college grades and LSAT scores as objective measures of academic merit. The most common justification for using these measures is that LSAT scores and college grades have been useful in predicting first year law school grades.<sup>179</sup> UCLA has conducted several studies which have been used to support the validity of these predictors.<sup>180</sup>

However, other studies criticize the poor to moderate predictive ability of grades and the LSAT.<sup>181</sup> The more common

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178. Stephen D. Simon, *UCLAW Receives Diversity Award*, THE DOCKET, Feb. 1993, at 1.

179. Law School Admissions Services, THE LAW SCHOOL ADMISSIONS TEST: SOURCES, CONTENTS, USES (Sept. 1991), at 5 ("[The] LSAT is designed to perform . . . the task of predicting academic success in the first year of law school."). See also Carnegie Council on Policy Studies in Higher Education, SELECTIVE ADMISSION IN HIGHER EDUCATION: COMMENT AND RECOMMENDATIONS AND TWO REPORTS, (San Francisco: Jossey-Bass, 1977). For general studies, see George L. Dawson, *Use of the Law School Admission Test to Predict First Year Law School Performance: An Update*, B. EXAMINER, May 1988, at 35, 38-39; Donald E. Powers, *Long-term Predictive and Construct Validity of Two Traditional Predictors of Law School Performance*, 74 J. EDUC. PSYCH. 568, 569 (1982).

180. Memorandum from Kristine Knaplund, Professor of Law at the UCLA School of Law to Michael Rappaport, Assistant Dean of Admissions (Feb. 11, 1987).

181. An LSAC-sponsored study, after reviewing the results of fifty-seven different validity studies, concluded, "Not surprisingly, admissions directors at many schools have found that, for the great majority of their students, grades and LSAT scores are not very closely related to actual first year performance." Albert R. Turnbull, William S. McKee, and L. Thomas Galloway, LAW SCHOOL ADMISSIONS: A DESCRIPTIVE STUDY, in LAW SCHOOL ADMISSION COUNCIL, REPORTS OF LSAC SPONSORED RESEARCH: VOLUME II, 1970-74, 265 (1976).

criticism of the reliance on grades and the LSAT is that these indicators are correlated more to an applicant's economic background and race than to any objective notion of academic merit. The LSAT score has a very high correlation with the socioeconomic status of an applicant's family.<sup>182</sup> This correlation is magnified at schools like UCLA, where the admissions office calibrates an applicant's college grade point average according to the LSAT mean of all LSAT test-takers from the applicant's college.<sup>183</sup> Meanwhile, there is an ongoing debate as to whether the LSAT is culturally biased.<sup>184</sup> However, supporters of the predictive index distinguish correlation from causation. Most attribute differences in grades and LSAT scores among different groups to the persistent realities of unequal educational opportunities available to students of different race and class origins in this country. Perhaps others continue to believe that the wealthy and the white are simply smarter and work harder.

Aside from the causes of disparities in academic performance, the fact is that admissions decisions based solely on grades and the LSAT negatively impact people of color. UCLA admissions statistics in recent years clearly indicate that if the law school were to rely primarily on grades and the LSAT for admissions, the student body would be overwhelmingly white. In general, UCLA's white students have significantly higher college grades and LSAT scores than the students of color, although a

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182. Franklin R. Evans and Donald A. Rock, *A Study of the Effects of Moderator Variables on the Prediction of Law School Performance*, in LAW SCHOOL ADMISSION COUNCIL, REPORTS OF LSAC SPONSORED RESEARCH: VOLUME II, 1970-74, 357 (1976). See also ALLAN NAIRN AND ASSOCIATES, THE REIGN OF ETS: THE RALPH NADER REPORT ON THE EDUCATIONAL TESTING SERVICE 220-259 (1980).

183. Evans and Rock, *supra* note 182 (The schools whose students systematically scored lowest on the LCM were the ones where students had the lowest incomes. Some entire classes of schools — such as the predominantly black colleges — had their grades systematically valued as inferior by the LCM.); See also NAIRN, *supra* note 182, at 247 (citing Guide to the Interpretation of Undergraduate Transcripts (LSAC Nov. 1972)).

184. See, e.g., TOWARDS A DIVERSIFIED LEGAL PROFESSION: AN INQUIRY INTO THE LAW SCHOOL ADMISSION TEST, GRADE INFLATION, AND CURRENT ADMISSIONS POLICIES (David M. White ed., 1981); LLOYD BOND, BIAS IN MENTAL TESTS, IN ISSUES IN TESTING: COACHING, DISCLOSURE, AND ETHNIC BIAS (Bert F. Green, ed., 1981); David M. White, National Conference of Black Lawyers, The Effects of Coaching, Defective Questions, and Cultural Bias on the Validity of the Law School Admission Test (1984); Cecil R. Reynolds and Robert T. Brown, BIAS IN MENTAL TESTING: AN INTRODUCTION TO THE ISSUES, IN, PERSPECTIVES ON BIAS IN MENTAL TESTING 1, (Cecil R. Reynolds and Robert T. Brown, eds., 1984); David M. White, *Culturally Biased Testing and Predictive Invalidity: Putting Them on the Record*, 14 HARV. C.R.-C.L. L. REV. 89 (1979); David M. White, *Pride, Prejudice and Prediction: From Brown to Bakke and Beyond*, 22 HOWARD L. J. 375 (1979); David A. Weber, *Racial Bias and the LSAT: A New Approach to the Defense of Preferential Admissions*, 29 BUFFALO L. REV. 439 (1975); and Edward Bronson, *Trial by Numbers: The LSAT and Cultural Bias*, 34 GUILD PRAC. 33 (1977).

growing number of Asian American students are being admitted with comparable records.

Despite the problematic nature of formula admissions based strictly on grades and the LSAT, another common reason why law schools rely on them is simply that this approach is easy and cost-efficient. Given the thousands of law school applications that understaffed admissions offices face each year, the pressure is strong to rely on mechanical and computerized decision-making processes. Even the Law School Admissions Council, which administers the LSAT, is critical of admission decisions based solely on grades and the LSAT.<sup>185</sup>

#### D. *Using Bar Passage Rates to Justify the Use of the Predictive Index*

Another justification for the reliance on college grades and the LSAT is their usefulness in predicting law school grades, which in turn have been fairly accurate predictors of bar passage rates. Some UCLA faculty members have argued that public law school resources should not be squandered by educating students who have little chance of passing the California bar, so these students should not be admitted into the law school.

While law school grades by race were not available to the author, available bar passage statistics clearly indicate that UCLA diversity students had tremendous difficulties in passing the California bar exam during the 1980s. These difficulties indicate an undetermined degree of correlation between their academic records prior to law school and their bar passage rates.

#### DIVERSITY STUDENT BAR PASSAGE RATES, 1982-1985.<sup>186</sup>

Graduating Class	First-time CA Bar Passage Rate	CA Bar for Repeat Exam Takers
1982	41	69 (for 1-9 attempts)
1983	32	57.6 (for 1-7 attempts)
1984	25.8	62 (for 1-5 attempts)
1985	36.6	51.6 (for 1-3 attempts)

Relevant statistics are also available for minority graduates of California's American Bar Association-accredited law schools. For first-time July California bar exam takers from the state's ABA-accredited schools, minority students consistently passed at

185. Turnbull, et al., *supra* note 181.

186. Memorandum from Kristine Knaplund, Professor of Law at the UCLA School of Law, and Susan Prager, Dean of the UCLA School of Law, to the Faculty attachment B (Apr. 2, 1987) (on file with LRLSA).

lower rates than white students from 1977 through 1988.<sup>187</sup> According to one study, virtually all disparities in bar exam scores and passing rates among groups can be explained by differences in their law school grades.<sup>188</sup>

However, defenders of law school affirmative action efforts emphasize that the primary concern should be whether students who wish to practice in California eventually pass the bar, not that they pass on their first try. The eventual passing rate of minorities is much higher than the passing rate among its first-time takers. Most students of color eventually pass.<sup>189</sup>

Meanwhile, numerous legal challenges have been raised against the California bar examination for being racially or culturally biased.<sup>190</sup> During the 1970s, legal claims of intentional or inherent racial discrimination directed at bar exams and bar examiners reached its peak.<sup>191</sup> Studies on such claims remain inconclusive, and the legal challenges have failed thus far.

#### E. *College Grades and the LSAT are Poor Predictors of Success as Lawyers*

Aside from the debate as to whether college grades and the LSAT are useful predictors of bar passage rates, these measures are widely criticized for having little correlation to the likelihood of success in the legal profession.<sup>192</sup> For example, they may not accurately assess such critical factors as motivation, maturity,

187. Stephen P. Klein, *Disparities in Bar Exam Passing Rates Among Racial/Ethnic Groups: Their Size, Source, and Implications*, 16 T. MARSHALL L. REV., 516, 519 (1991).

188. *Id.* at 523 (Based on one's law school grades alone, "it is possible to predict with about 79% accuracy whether a candidate will pass the California exam."); See also Donald E. Powers, *Differential Trends in Law Grades of Minority and Nonminority Law Students*, 76 J. EDUC. PSYCHO. 488, 488-89 (1984); Donald E. Powers, *Comparing Predictions of Law School Performance for Black, Chicano, and White Law Students*, LAW SCHOOL ADMISSION COUNCIL, REPORTS OF LSAC SPONSORED RESEARCH: VOLUME III, 1975-1977, 721 (1977); Robert L. Linn, *Test Bias and the Prediction of Grades in Law School*, 27 J. LEGAL EDUC. 293 (1975).

189. Klein, *supra* note 186, at 526-527.

190. See, e.g., *Pettit v. Gingerich*, 427 F. Supp. 282, 290 (1977). (Plaintiffs allege that the examination is inherently discriminatory or culturally biased against blacks as evidenced by the disproportionately high black failure rate.); Symposium: *The Minority Candidate and the Bar Examination*, 5 BLACK L.J. 120, 128 (1977). (Key-note speaker, Lennox S. Hinds, suggests that the difference in bar performance between minority and white candidates is most likely the result of cultural bias or racist practices in the bar examination process rather than any difference in their respective skills and knowledge.)

191. See generally National Conference of Bar Examiners, THE BAR EXAMINERS HANDBOOK, 18 (S. Duhl ed., 2d ed. 1980), at 35-49.

192. See, e.g., SUSAN E. BROWN, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, LAW SCHOOL ADMISSIONS STUDY 37 (1980); Andrew Hacker, *The Shame of Professional Schools*, 32 J. LEGAL EDUC. 278, 281 (1982); and Peter J. Liacouras, *Toward a Fair and Sensible Policy for Professional School Admission*, 1 CROSS REFERENCE 156 (1978).

commitment to client or community interests, business savvy, or counseling and negotiating skills.<sup>193</sup>

As civil rights advocates have successfully argued in the employment discrimination context, many believe that the use of standardized tests like the LSAT should be justified only if the tests measure traits relevant to the legal profession.<sup>194</sup> For example, when Leon Letwin established the LEOP program to train lawyers to serve disadvantaged communities, he emphasized that traditional criteria like the LSAT were not designed to address the problems of low-income minority communities, and suggested that community leadership, tenacity, and identification with the community may be more valued criteria for LEOP admittees.<sup>195</sup>

F. *UCLA's Emphasis on Grades and the LSAT Results in a Disparate Impact Against the Socioeconomically Disadvantaged*

Recent surveys of UCLA law students also illustrate how the admissions office's emphasis on grades and the LSAT has had a disparate impact on socioeconomically disadvantaged students. Surveys of incoming members of the classes of 1993 and 1994 found that the median income of students' parents was \$75,000 in 1990, with over a third of students' parents earning incomes over \$100,000.<sup>196</sup> In contrast, the median income of all families in the U.S. was \$35,700 in 1990, while the corresponding median income in Los Angeles was \$38,000.<sup>197</sup> Roughly half of UCLA students come from families in the top 10 percent of the national income distribution, while only 20 percent come from families in the bottom half.<sup>198</sup> These findings are consistent with studies done at other law schools since 1961, showing that the "eliteness" of law students seems consistent over time and geography.<sup>199</sup>

The surveys also found that the parents of students represent even more of an educational elite than an economic one. Among those participating in the UCLA survey, 45 percent of students' fathers and 21 percent of students' mothers had graduate degrees, as compared to about 8 percent of all American men

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193. See, e.g., LAW SCHOOL ADMISSIONS COUNCIL, *supra* note 174, at 71; Letwin, *supra* note 5, at 11.

194. See, e.g., *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

195. Birmingham, *supra* note 39, at 1, 4.

196. Rick Sander, *Another Side of Diversity*, THE DOCKET, Feb. 1994, at 1.

197. *Id.*

198. *Id.*

199. *Id.* at 4; Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 572 (1973).

and 3.5 percent of all American women of their generation.<sup>200</sup> Over 68 percent of students' fathers and 54 percent of students' mothers had bachelor degrees. In comparison, in the general population, only 22 percent of the men and 13.5 percent of the women of the parents' generation are college graduates. Again, this finding of educational eliteness is consistent with past studies.<sup>201</sup>

Finally, the surveys also suggest that the socioeconomic eliteness of its law students holds true across racial lines. The median income of non-white students responding to the survey was about \$60,000, about 20 percent lower than the school-wide median, but nonetheless, still much higher than the corresponding figure in the general population. Moreover, close to half of the African American, Latino, and Asian American students who participated in the survey come from families whose income places them among the most affluent 10 percent of all non-white families in the United States.<sup>202</sup>

The relatively privileged socioeconomic backgrounds of UCLA law students may come as no surprise. Disadvantaged students of all races face tremendous economic, educational, and other obstacles that they must overcome in order to get to the point of applying to law school. Students of color who graduate from high school, enter college, and graduate are members of a very small group within the minority youth population.<sup>203</sup> Financial hardships are likely to undermine a student's undergraduate academic record. Moreover, disadvantaged minorities who attend predominantly white colleges experience subtle cultural influences that create a sense of alienation and undermine their motivation, particularly if they come from dramatically different backgrounds than most of their college peers. Succeeding in academics against these obstacles is a tremendous and truly exceptional accomplishment for students of any race.

#### G. *UCLA Should Make a Greater Commitment to Admit Students from Economically Disadvantaged Backgrounds*

To make law schools more representative of the economic as well as racial diversity in our society, the admissions office should

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200. Memorandum from Rick Sander, Professor of Law at the UCLA School of Law, to the Faculty 2 (Jan. 11, 1991).

201. *Id.* at 4.

202. *Id.* at 4.

203. In 1990, the high school graduation rate for Latinos was 54.5 percent; for African Americans, 77 percent; and for whites, 82.5 percent. Among those who graduated from high school, in 1990, 29.1 percent of Latinos went to a two or four-year college, 33 percent of African Americans, and 39.4 percent of whites.

make a stronger effort to admit disadvantaged students who possess the basic academic ability necessary to successfully complete law school and pass the bar. Just as the law school has recognized racial diversity as an admissions goal worthy of pursuit along with academic excellence, class diversity should be similarly recognized as an important goal.

There are particularly compelling reasons for admitting students into law school who come from disadvantaged backgrounds. The wisdom of a 1949 State Bar report still holds true today:

Under our form of government, law is so closely related to politics and to the operation of government that any barrier to the legal profession which would keep out the economically less fortunate would have serious political repercussions and would ultimately impair the functioning of the democratic process. Even with the road to the legal profession open to all, it tends to become an essentially conservative group, largely concerned with maintaining the social and economic status quo. If the legal profession were to be recruited . . . mainly from the sons and daughters of the well-to-do, this tendency might well be accentuated to a degree seriously against the public interest.<sup>204</sup>

To deny a person access to the legal profession, is to deny access to judgeships and to significantly limit access to influential positions in government, business, and politics. Almost two-thirds of all United States Senators, almost one-half of Congressional representatives, and about one-sixth of the nation's state legislators are lawyers.<sup>205</sup>

As a public institution, UCLA should be held to a heightened obligation to train lawyers from disadvantaged backgrounds in order to provide more effective political and legal representation of poor and working-class people. Lawyers who have personally overcome many of the same obstacles that their client community faces would be most familiar with the oppressive conditions of poverty:

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204. STATE BAR OF CALIFORNIA, LEGAL EDUCATION AND ADMISSIONS TO THE BAR IN CALIFORNIA: REPORT OF THE SPECIAL SURVEY BOARD at 82, (1949). It is noteworthy that the 1949 California State Bar report recommended that the UCLA School of Law offer a part-time division to make it more accessible to students who can not afford a full-time legal education. The Report noted that "a relatively small number of students, many of whom could well afford to pay tuition, are being given legal education at public expense," while "a very much larger number of students who are compelled to support themselves through law school and therefore to go to school at night are paying high rates of tuition in private institutions." The Report concluded, "If the provision of part-time professional instruction in law is a public necessity, it is equally a public responsibility and should be publicly financed." *Id.* at 84.

205. NATIONAL CONFERENCE OF STATE LEGISLATURES, STATE LEGISLATORS' OCCUPATION (1987).

For example, members of cultural and linguistic minorities are more familiar with how cultural and language barriers tend to inhibit members of their communities from consulting lawyers not of their race or ethnicity when they are in need of legal services. As former Harvard Law School Dean Erwin N. Griswold has stated:

Minority law consumers frequently are able to relate better to a member of their own race and are sometimes unwilling to confide in a member of another race and, therefore, do not utilize our legal system. Effective access to legal representation not only must exist in fact, it must also be perceived by the minority law consumer as existent so that recourse to law for the redress of grievance and the settlement of disputes becomes a realistic alternative to him.<sup>206</sup>

Dean Griswold's observation found support in a 1988 survey of UCLA's Asian alumni, which compared LEOP and diversity alumni with Asian Pacific Islander alumni who entered UCLA under regular admissions.<sup>207</sup> According to the survey, LEOP and diversity alumni's estimated percentage of minority clients was almost two (1.8) times that of alumni who entered UCLA through regular admissions.<sup>208</sup> Moreover, LEOP/diversity alumni's percentage of low-income and working-class clients was more than two and a half (2.7) times larger than that of the regular admit alumni.<sup>209</sup> Finally, LEOP/diversity alumni's percentage of clients who required foreign language proficiency was more than three (3.1) times larger than that of the regular admit alumni.<sup>210</sup>

UCLA can also promote the goal of community empowerment by training people from disadvantaged communities to return to their communities to serve as lawyers. In recent years, poverty law practitioners and scholars have begun to emphasize the importance of lawyer-activists who are part of the community in which they serve, rather than those whose life experiences differ from their client community.<sup>211</sup> Having outsiders serve disadvantaged communities only reinforces the sense of dependency among subordinated people on the charity or benevolence of

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206. Erwin N. Griswold, *Some Observations on the DeFunis Case*, 75 COLUM. L. REV. 512, 517 (1975).

207. Memorandum from the Asian Concerns Committee of the Japanese American Bar Association, Southern California Chinese Lawyers Association, Korean American Bar Association, and the Philippine American Bar Association to the Faculty of the UCLA School of Law (May 9, 1988).

208. *Id.*

209. *Id.*

210. *Id.*

211. *See, e.g.*, GERALD LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

government or elites, rather than encouraging them to take control of their own affairs and work to improve their condition.

While those having more privileged backgrounds should be encouraged to assist underserved communities, advocates of community empowerment should work toward the admission of more disadvantaged students who demonstrate an interest to return to their communities as lawyer-activists.

#### H. *UCLA should admit more students committed to serving disadvantaged communities*

As a public institution, the UCLA School of Law should not only admit more economically disadvantaged students, but also make a greater effort to train lawyers who will serve the disadvantaged. In support of this idea, a 1980 ABA committee formed for the study of legal education reported that perhaps too much attention is being paid to grades and LSAT scores across the range of law schools, without sufficient regard for other attributes such as the desire to serve the disadvantaged.<sup>212</sup> This argument is particularly compelling for taxpayer-subsidized schools like UCLA. Moreover, a law school can profoundly mold student attitudes as to what are appropriate concerns and values in the legal profession. These values are reflected by the characteristics that a law school looks for in an applicant. UCLA can actively encourage students to serve the underrepresented by giving preferential status to applicants who have demonstrated their commitment to public service prior to entering law school.

Without active encouragement, the pervasive law school culture of working in corporate law firms will often deter even the most committed student from entering into public service careers. Typical of a nationally ranked law school, UCLA's graduates are overwhelmingly corporate law firm-oriented.<sup>213</sup> While UCLA's employment statistics may not accurately reveal the public service inclinations of graduates, these statistics nonetheless illustrate the general corporate orientation of UCLA students.

These employment statistics contradict the Karst Report's stated objective of promoting diverse career goals among its students. Under the Karst Report, UCLA should be promoting diversity in career aspirations by looking at not only an applicant's

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212. AMERICAN BAR ASSOCIATION, SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION, LAW SCHOOLS AND PROFESSIONAL EDUCATION 29 (1980).

213. For example, the UCLA Class of 1993 was more or less typical of employment trends in recent years. At the time of graduation, only 1.2 percent secured public interest employment, while another 4.2 percent attained government positions. Of the respondents, 67.5 percent accepted employment with private law firms of more than 50 attorneys.

self-proclaimed career goals, but also her community service record prior to law school.<sup>214</sup> Among those who defend the current emphasis on grades and the LSAT, many focus on the difficulties in attempting to predict whether an applicant will, after three years of law school socialization and financial debt, continue to pursue a career serving the underrepresented. Several studies have documented how the public service inclinations of entering students tend to erode during law school. UCLA can survey their students at different points in their law school years to discuss this problem and to identify potential countermeasures to the prevailing corporate orientation of the law school culture.

Some professors also complain that admissions criteria involving community service tends to be ideologically loaded. Their criticism can be addressed in two ways. First, the reliance on grades and the LSAT for admissions decisions can similarly be challenged for its ideological content. As discussed earlier, given the existing realities of unequal educational opportunities along race and class lines, the continued reliance on traditional measures of academic performance merely perpetuates the privileged status of the wealthy and white. Second, the Admissions Committee and students should work together to establish guidelines on the criteria that constitutes community service for admissions purposes.

There are some who argue that public service goals should be encouraged not by admissions, but by establishing mandatory pro bono requirements, loan forgiveness programs, and curricular and clinical programs geared toward public interest law. Such efforts are also important. But it is logical to assume that such programs are more likely to encourage UCLA graduates to serve the underrepresented if these students demonstrate a predisposition to such work prior to attending law school.

I. *Are LEOP and diversity alumni more service-oriented than other UCLA alumni?*

Studies have shown that minorities and students from low-income backgrounds are more likely to cite service to the underprivileged as a motivation for entering law school than other students.<sup>215</sup> This tendency was supported by the 1988 survey of UCLA law school's Asian and Pacific Islander American alumni.<sup>216</sup> According to the survey, LEOP/diversity alumni contributed seven times more pro bono hours in the minority com-

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214. Karst Report, *supra* note 102, at 4.

215. See, e.g., Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 613-14 (1973).

216. Memorandum from the Asian Concerns Committee, *supra* note 207.

munities, and almost four times (3.7) the amount of time in minority civil or business organizations than their regular admit counterparts.<sup>217</sup> Moreover, LEOP/diversity alumni spent more than one and a half (1.6) times the amount of time in ethnic bar associations than their regular admit counterparts.<sup>218</sup>

These survey results can be interpreted in different ways. Some may cite these findings to argue that the existing diversity program is already doing enough to promote service to the underserved. But a noteworthy fact is that the surveyed alumni all attended UCLA before student input was dramatically reduced in 1988. Thus, the commendable service record of these LEOP and diversity alumni can be seen as the expected result of an earlier admissions program that favored applicants who demonstrated their commitment to community service.

J. *Admissions decision-makers should be more representative of the diversity which the law school seeks to promote.*

To effectively accomplish the goals of admitting more disadvantaged students who will return to serve their communities as lawyers, those with the power to make admissions policy decisions should include those who have personally experienced race and class subordination. This proposal is based on the premise that those who come from a particular community or background are better qualified to determine who is likely to effectively serve their communities.

In the early years of LEOP, Leon Letwin and other faculty members who were instrumental in establishing LEOP were very conscious of the importance of incorporating diverse perspectives in the admissions decision-making process. Today, however, Assistant Dean of Admissions Michael Rappaport holds almost all decision-making power over diversity admissions. Rappaport occasionally consults with the faculty Admissions Committee chair on individual admissions cases. Thus, at least in terms of public perception, minority participation in the admissions process has been limited to the advisory roles served by the student organizations.<sup>219</sup>

Rappaport defends his position by saying that he has a very prescribed range of authority, and that he merely administers the

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217. *Id.*

218. *Id.*

219. At UCLA School of Law, general policy decisions are made by faculty-student committees. The Dean's Advisory Committee, comprised of two Associate Deans and three professors elected by the faculty, make all committee appointments, including committee chair appointments. The Student Bar Association makes all student committee appointments. Each committee has at least twice as many faculty members as students.

policies that the faculty sets. Moreover, as the Assistant Dean of Admissions since the early 1970s, Rappaport possesses an institutional memory of past admissions debates, the law school, and local communities. He cites the problem of inconsistency among faculty and students in past admissions committee experiences, and believes that faculty-student committees wasted a great amount of time to arrive at an outcome that differed very little from his own decisions. Finally, Rappaport criticized the inconsistent levels of commitment and organization among the participating minority organizations in the past.<sup>220</sup>

As to the public perception of one man holding the power to determine who is admitted through the diversity program, Rappaport counters that the law school has tried a wide variety of alternatives, with very little difference in results. Thus, he argues, accommodating public perception would make little difference at the expense of an enormous expenditure of time and effort by faculty and students.<sup>221</sup>

Nonetheless, using efficiency as a primary justification, the current approach gives the Assistant Dean tremendous discretion in administering the broad guidelines of the Karst Report. One former LRLSA admissions representative who worked extensively with Rappaport criticized the Assistant Dean for largely ignoring the Karst Report provisions which list economic disadvantage and prior community service as diversity admissions criteria, and for focusing primarily on an applicant's predictive index and race.<sup>222</sup>

### K. *Some strategies for change*

Any proposed departure from the prevailing emphasis on college grades and the LSAT is likely to meet significant resistance from the faculty. Faculty members occupy their current positions precisely because they excelled in the traditional system of academic merit. To propose admissions criteria other than those that they have excelled under would undermine their own legitimacy. As Letwin states:

They have mastered the system as it now stands. Indeed they owe their faculty status to their outstanding success as students in the system. It has certified them as persons of considerable distinction. They are children of the system, and it would be a thankless child who now questioned the very standards that proclaim his virtue.<sup>223</sup>

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220. Interview with Michael Rappaport, Assistant Dean of Student Admissions, UCLA School of Law, Los Angeles, Cal. (Feb. 15, 1994).

221. *Id.*

222. Sarmiento, *supra* note 165, at 169.

223. Letwin, *supra* note 5, at 11.

Moreover, resistance is likely to come not only from the faculty, but from all those with a vested interest in maintaining UCLA's prestige, including alumni and current students. It is no secret that highly competitive admissions requirements translate into prestige for law schools.<sup>224</sup> The reputation of the student body can affect a law school's ability to recruit and hire respectable or promising faculty members and the brightest students. Prestige also translates into expanded career opportunities for all those affiliated with UCLA. Even students and alumni who entered UCLA through affirmative action have a vested interest in having average grades, LSAT scores, and bar passage rates rise, which translates into more value for their UCLA degrees.

One UCLA professor commented on student demands for greater diversity:

Some students think that if the law school became a third-world law school it would still be the same law school, would have the same faculty and the same high ranking in academic circles. I doubt that any faculty member believes this. But no faculty member wants to get caught up in a debate which would require an open and complete response to the question of why, even if the faculty remained the same (and it would not), the law school would not be the same and the degree offered would not mean as much to those receiving it; that only the numbers of minority students receiving the degree would change.<sup>225</sup>

Thus, it seems that any attempt to make UCLA admit more students committed to work for the underserved would encounter significant resistance from all those who have a vested interest in maintaining UCLA's reputation along the lines of "excellence and diversity," and not as a Third World school training community lawyers.

Progressive students who seek to reform the current admissions program must also assess the current political realities outside the law school. The general political climate in the country is clearly against affirmative action. Since the decision in *Bakke*, the composition of the Supreme Court has changed, thus clouding the future of affirmative action and the constitutionality of UCLA's diversity program.

Because of these concerns, some proponents of affirmative action believe that they should not push forward now, for fear of a conservative backlash that may undermine UCLA's current ef-

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224. See, e.g., Leo M. Romero, *An Assessment of Affirmative Action in Law School Admission After Fifteen Years: A Need for Recommitment*, 34 J. LEGAL EDUC. 430, 433 (1984).

225. Alleyne, *supra* note 45, at 3-4.

forts to promote racial diversity. Others, including myself, believe that while such concerns are legitimate, in the long run activists must constantly educate and organize to build the political base of support for affirmative action, rather than letting complacency erode the support of those in the ideological middle ground.

Along with advocating for the admission of more disadvantaged students, it is important to remember the importance of academic support programs and curricular reform. As UCLA learned through experience, students from educationally disadvantaged backgrounds need additional academic support to assist them with law school and the bar exam.<sup>226</sup> To its credit, UCLA already has one of the best academic support programs among the nation's law schools. However, other steps can be explored in order to better prepare students for the bar exam, such as incorporating more practice bar problems in the existing curriculum.

Given the fact that only faculty members hold decision-making power on admissions and other policy matters, students need to support the hiring of progressive and diverse professors who will support and initiate reform. While advocating for racial diversity on the faculty, students should remember that some of the most outspoken supporters of students of color have been white men, such as Leon Letwin and Kenneth Graham.

As of the spring of 1993, there were only eight minorities among 69 UCLA faculty members.<sup>227</sup> While the greater participation of minority professors in admissions affairs certainly does not insure a more progressive faculty, the underrepresentation of minority perspectives should at least raise serious doubts as to the representative nature of this policy-making body. Furthermore, while UCLA's faculty diversity record may be better than most other schools of equal caliber, this fact merely underscores how poorly the other schools are doing in terms of diversifying their faculty ranks.<sup>228</sup>

In advocating for change, students should maximize their political power. For example, students can leverage their influence on admissions affairs by coordinating alumni donations and letterwriting campaigns, enlisting the support of ethnic bar as-

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226. See, e.g., Rappaport, *supra* note 16, at 512-13.

227. William Litt and Dorris Y. Ng, *Student Organization Focuses on Faculty Diversity at UCLA Law*, THE DOCKET, Mar. 1993, at 1, 6.

228. For a comparative discussion of the UCLA School of Law and other law schools in terms of their efforts to diversify their faculties, see Larry Frank, *A Question of Commitment? The Recruitment, Hiring, and Retention of Minorities and Women Faculty Members at U.S. Law Schools with a Focus on UCLA School of Law* (May 18, 1990) (unpublished student paper on file with LRLSA).

sociations, gaining media publicity, and utilizing alumni contacts with state legislators and other influential people.

At the same time, students should recognize that the faculty and administration, despite real or perceived shortcomings, may be more supportive of a progressive agenda than potential outside actors. As Assistant Dean Rappaport once stated, "I don't see any court telling the law school that we're not doing enough to diversify the legal profession."<sup>229</sup>

#### IV. CONCLUSION

Professor Derrick Bell writes:

We must remember that minority admissions programs are far more the product of minority insistence than the tardy manifestation of white conscience. The Supreme Court did not create minority admissions programs, and the *Bakke* decision, even on the slender record in that case, narrowed, but did not eliminate discretion to operate these programs. Thus, for the present, their continued existence will depend on the efforts of proponents in each school. After *Bakke*, it may be prudent to substitute vagueness for precise quotas, and to rely on the vigilance and persistence of minority admissions advocates rather than on court orders.<sup>230</sup>

For student activists to be effective, they must work to preserve an institutional memory that will allow them to learn from and build upon past admissions struggles. An institutional memory for students is particularly important in light of the fact that students come and go every three years, in contrast to the faculty and administration. Until the political pendulum swings back toward a social climate more hospitable to affirmative action and other initiatives of social equity, these memories of past struggles can provide valuable lessons and hope for current and future generations of activists.

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229. Interview with Michael Rappaport, *supra* note 220.

230. Derrick A. Bell Jr., *Bakke, Minority Admissions, and the Usual Price of Racial Remedies*, 67 CAL. L. REV. 3, 18-19 (1979).

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## APPENDIX I

TABLE 1: AVERAGE UNDERGRADUATE GRADE POINT  
AVERAGE (UGPA) AND LSAT (WITH PERCENTILE RANKING)  
FOR UCLA REGULAR ADMITS  
(Source: UCLA School of Law Admissions Office)

	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
UGPA	3.6	3.66	3.68	3.6	3.64
LSAT	42	44	44 (97)	168	167 (96)

TABLE 2: AVERAGE UNDERGRADUATE GRADE POINT  
AVERAGE (UGPA) AND LSAT (WITH PERCENTILE RANKING)  
FOR UCLA DIVERSITY ADMITS  
(Source: UCLA School of Law Admissions Office)

	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
UGPA	3.2	3.24	3.25	3.32	3.36
LSAT	36	37	38 (82)	158	158 (78)

TABLE 3: ADMITTEES BY RACE  
(Source: UCLA School of Law, Office of Admissions)  
\* Note: 1989 admittee statistics not available.

<u>1990 Group</u>	<u>Regular</u>	<u>Diversity</u>
white	613	26
black	1	104
Latino	8	89
Asian/Pac. Islander	63	42
Native American	0	5
<u>1991 Group</u>	<u>Regular</u>	<u>Diversity</u>
white	650	27
black	0	113
Latino	11	85
Asian/Pac. Islander	87	46
Native American	0	7
<u>1992 Group</u>	<u>Regular</u>	<u>Diversity</u>
white	625	49
black	3	110
Latino	14	88
Asian/Pac. Islander	89	44
Native American	1	10
<u>1993 Group</u>	<u>Regular</u>	<u>Diversity</u>
white	757	40
black	3	98
Latino	22	83
Asian/Pac. Islander	171	34
Native American	1	10

TABLE 4: ENROLLEES BY RACE  
 (Source: UCLA School of Law, Office of Admissions)

<u>1989 Group</u>	<u>Regular</u>	<u>Diversity</u>
white	177	20
black	0	31
Latino	1	41
Asian/Pac. Islander	12	31
Native American	0	4
<u>1990 Group</u>	<u>Regular</u>	<u>Diversity</u>
white	194	11
black	1	39
Latino	0	39
Asian/Pac. Islander	11	27
Native American	0	2
<u>1991 Group</u>	<u>Regular</u>	<u>Diversity</u>
white	177	10
black	0	31
Latino	2	42
Asian/Pac. Islander	19	27
Native American	0	4
<u>1992 Group</u>	<u>Regular</u>	<u>Diversity</u>
white	144	25
black	1	34
Latino	2	45
Asian/Pac. Islander	13	23
Native American	0	7
<u>1993 Group</u>	<u>Regular</u>	<u>Diversity</u>
white	197	15
black	0	21
Latino	3	47
Asian/Pac. Islander	47	18
Native American	0	2

## APPENDIX II

Asian Concerns Committee (a joint committee of the Japanese American Bar Association, Southern California Chinese Lawyers Association, Korean American Bar Association, and the Philippine American Bar Association), Results of the UCLA Asian Alumni Survey, May 9, 1988. The results of the survey are as follows:

I. Total responses: 84

Respondents who were Diversity/LEOP admittees: 33

Respondents who were regular admittees: 33

Respondents who were uncertain as to which program they were admitted under: 18

II. *Service to the Ethnic Minority Community*

A. *Diversity/LEOP Admittees:*

i. Average percentage of ethnic or minority clients in regular practice: 46.7 percent

ii. Average percentage of low-income/working class clients in regular practice: 39.5 percent

iii. Average percentage of current practice which requires foreign language proficiency: 15.9 percent

iv. Average hours per month of pro bono work with ethnic or minority community: 2.1 hours per month

v. Average hours per month in ethnic civic/business organizations: 5.2 hours per month

vi. Average hours per month in ethnic bar associations: 3.3 hours per month

vii. Average hours per month of pro bono in general community: 0.9 hours per month.

B. *Regular Admittees*

i. Average percentage of ethnic or minority clients in regular practice: 25.2 percent

ii. Average percentage of low-income/working class clients in regular practice: 14.6 percent

iii. Average percentage of current practice which requires foreign language proficiency: 5.0 percent

iv. Average hours per month of pro bono work with ethnic or minority community: 0.3 hours per month

v. Average hours per month in ethnic civic/business organizations: 1.4 hours per month

vi. Average hours per month in ethnic bar associations: 2.0 hours per month

vii. Average hours per month of pro bono in general community: 1.0 hours per month.