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COMMENTARY
Law School Affirmative Action: An Empirical Study

The Shape of the Michigan River as Viewed from the Land of *Sweatt v. Painter* and *Hopwood*

Thomas D. Russell

> If general ideas and theories about what's going on in society are going to be anything other than moonshine, they have to be rooted in hard-bought knowledge of what in fact is happening in people's lives.
>
> —J. Willard Hurst (1910–96)

There are 5 African Americans among the 433 students in The University of Texas School of Law's class of 2000. There are 7 in the class of 2001, and 7 in the class of 2002. With 1,387 students, the UT School of Law is big. The 19 African American students comprise 1.4% of the total.

This year and for the two previous years, the percentage of African Americans in the entering class at The University of Texas School of Law has been lower than in the fall of 1950, the first year UT admitted African Americans to the law school. With their June 1950 decision in *Sweatt v. Painter*, the justices of the United States Supreme Court ordered the integration of the university's law school and graduate school. In the fall of 1950, Heman Sweatt—the plaintiff in the NAACP-supported case—and five other courageous African Americans enrolled at the law school. With a total entering class of around 280 students, these 6 students comprised 2.1%

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of the entering class. Today, the UT School of Law is behind the fall of 1950. Seen differently, UT has come full circle.

A number of recent steps or factors have led to the near nonrepresentation of African Americans at UT's law school. In 1992, four white plaintiffs filed a lawsuit—*Hopwood v. Texas*—in which they challenged the UT School of Law's use of race in admissions. Attorneys from the Center for Individual Rights assisted the reverse-discrimination plaintiffs (Center for Individual Rights 2000a). In 1996, a three-judge panel of the United States Court of Appeals for the Fifth Circuit ruled that the law school could no longer use race as a factor in admissions (*Hopwood* 1996). Texas's attorney general at the time, Dan Morales, subsequently issued an opinion that broadened the application of *Hopwood* to include admissions and financial aid at all state universities and colleges (Morales 1997). Under the influence of the *Hopwood* opinions of the Fifth Circuit and General Morales, the UT School of Law admitted the classes of 2000, 2001, and 2002.

Texas legislators and some University of Texas administrators have responded to the elimination of race as a tool in admissions. Texas's lawmakers passed legislation that guaranteed admission to The University of Texas for the top 10% of every Texas high school's graduating class, and UT's undergraduate admissions officers began to use a more-complicated admissions scheme that takes into account a variety of socioeconomic and cultural characteristics of applicants. The 10% plan and new admissions procedures have returned to pre-*Hopwood* levels the percentage of students of color who entered the university as undergraduates in the fall of 1999 (UT Office of Public Affairs 1999). At the law school, however, the 10% plan has no application, and although the law school's admissions committee has recrafted the criteria for admission, African American and Latino law students have not returned to pre-*Hopwood* levels.

After 1996, *Hopwood* bounced back to the trial court on remand and presently is on appeal again to a full panel of the Fifth Circuit. Some of the law school faculty helped the state's attorney general prepare the brief, which argues in favor of a continuing though limited use of race in admissions (Cornyn et al. 1999). My personal view is that most of the law school's faculty are fully committed to the theoretical proposition that the university and law school's use of race in admissions is constitutionally permissible. However, my personal view is also that the UT law faculty are less committed to the practice of admitting African American and Latino law students than they are to the constitutional theory that would support such a practice. In Texas, persons of color are disappearing into this gap between theory and practice.

I. HARD-BOUGHT KNOWLEDGE AND MOONSHINE

The University of Michigan now faces the same legal challenge that The University of Texas faced beginning in 1992 when Cheryl Hopwood and three other white plaintiffs filed their reverse-discrimination suit (Center for Individual Rights 2000b; University of Michigan 2000). The state of Michigan is within the jurisdiction of the Sixth Circuit Court of Appeals, so the Fifth Circuit's *Hopwood* decision has no application in Michigan. Lawyers for the Center for Individual Rights, who represent the Michigan plaintiffs and who also assisted the *Hopwood* plaintiffs, would like to bring to the Sixth Circuit the *Hopwood* principle that universities may not consider race in admissions. Eventually, the Center hopes to eliminate race-conscious affirmative action within the entire federal system (Center for Individual Rights 2000).

Now come the University of Michigan's Richard Lempert, David Chambers, and Terry Adams with a study that the Center for Individual Rights's lawsuit against Michigan's law school has inspired. These three University of Michigan researchers have patterned and titled their study "Michigan's Minority Graduates in Practice: The River Runs Through Law School," after William Bowen and Derek Bok's important 1998 book *The Shape of the River*. In their book's conclusion, Bowen and Bok observed that "So much of the current debate [concerning the use of race in university admission] relies on anecdotes, assumptions about 'facts,' and conjectures that it is easy for those who have worked hard to increase minority enrollments to become defensive or disillusioned" (Bowen and Bok 1998, 275). Bowen and Bok sought to cheer up and empower those who favor continued or increased enrollment of undergraduates of color. The authors, former presidents of Princeton and Harvard, collected and analyzed empirical data about the in-college and postgraduation performance of students admitted under race-conscious schemes, and they found that these students succeeded during and after college. Lempert and his coauthors have a more focused, parallel goal with their study: examination of how well Michigan Law School's students, particularly students of color, fared as law students and also how successful they have been with their subsequent careers. That is the neutral, social-scientific description of their research aim, but there is no reason to be coy about the study really being a defense of the University of Michigan Law School's use of race as a criterion in admissions. That policy is presently under attack in litigation, and in order to defend the policy, Lempert, Chambers, and Adams have marshaled what the late, great legal historian Willard Hurst would have called "hard-bought knowledge of what in fact is happening in people's lives" (Hartog 1994, 390). In the lingo of sociolegal scholarship, the pull of the policy audience is strong in this study (Sarat and Silbey 1988).

As with Bowen and Bok's *Shape of the River*, the data that Lempert, Chambers, and Adams have adduced are useful to check the truth of anecdotes, assumptions, and conjectures about race-conscious affirmative action. Or, to quote Willard Hurst's down-home language, these data help to expose as "moonshine" some arguments concerning the use of race in admissions.

From my vantage point at The University of Texas School of Law, two of the conclusions of Lempert, Chambers, and Adams merit special attention. The first is the central conclusion of the study, namely that the numerical criteria that figure most prominently in admissions—Law School Admissions Test (LSAT) scores and undergraduate grade point average (UGPA)—have almost no predictive value with regard to the success after graduation of Michigan Law School's alumni (Lempert, Chambers, and Adams 2000, 465–466). This finding can dispel some moonshine.

The second point I will emphasize in this comment is that the Michigan data show that law students value diversity as an aspect of their educational experience (Lempert, Chambers, and Adams 2000, 413–414). As I am a UT legal historian, this point is particularly important to me. Fifty years ago the justices of the United States Supreme Court ruled in *Sweatt v. Painter* that the Texas State University for Negroes (TSUN) School of Law, a "separate but equal" law school that the state and university had cobbled together in order to fend off Sweatt and the NAACP's integration challenge, was not equal to the UT School of Law because, in part, the African American students of TSUN could only receive an inferior legal education in a school that lacked racial diversity (*Sweatt v. Painter* Archive 2000). Another reason that the issue of diversity is particularly interesting to a UT professor is because before 50 years would pass from the Supreme Court's *Sweatt* decision, the Fifth Circuit would debase diversity as a goal of admissions with its 1996 *Hopwood* decision.

The third and final point I will make in this comment is that Lempert, Chambers, and Adams do not emphasize sufficiently that the University of Michigan, like The University of Texas, is a state university. As such, each state offers preference in admissions to its citizens as well as tuition subsidy. In Texas, my observation is that the debate over *Hopwood* has reinforced the assumption that the elimination of race as a criterion in admissions somehow makes admissions a meritocratic process. But, at state universities, this just ain't so, as applicants from within the state gain admission with lower numerical credentials than out-of-state applicants.[1] Rumor has it that the faculty of Michigan Law School think of their law school as a private

1. In her comments concerning the Lempert, Chambers, and Adams study, Professor Lani Guinier refers to the "ironic impulses of the British sociologist Michael Young, who coined in 1958 the term 'meritocracy' to satirize the rise of a new elite that valorized its own mental aptitude." Professor Guinier explains: "Young argued that a meritocracy is a set of rules put in place by those with power that leaves existing distributions of privilege intact while

school, and the tone of the Lempert, Chambers, and Adams study does nothing to disprove this rumor. As part of the defense of race-conscious affirmative action at state universities like Michigan and UT, the faculty and administrators, as well as their lawyers, ought to think hard about the aims of the universities in light of their character as *state institutions*.

II. LSAT AND UGPA ARE UNRELATED TO CAREER SUCCESS

In law-and-society parlance, the Lempert, Chambers, and Adams work fits the classic paradigm of a "gap" study. Gap studies, an important even though not currently fashionable form of sociolegal scholarship, examine whether a particular rule or law in practice has brought about the results theoretically anticipated or formally expressed. For instance, if legislators passed a law guaranteeing a chicken in every pot, a gap study would check pots looking for chickens; the term gap stems from the frequency with which researchers have found pots outnumbering chickens. In this case, Lempert and his coauthors looked at two possible gaps. First, they examined the aims the Michigan Law School faculty had formally expressed for their admissions policy, and second, they checked whether the criteria for admission helped to predict the post–law school success of alumni.

"The test of a school's admissions policy," Lempert and his coauthors observe, "is whether it meets the school's goals with respect to overall class composition and the kinds of persons the school seeks to enroll" (Lempert, Chambers, and Adams 2000, 494). In 1992, the Michigan law faculty adopted a policy in which they expressed a goal of admitting students who were likely to become "esteemed practitioners, leaders of the American bar, significant contributors to legal scholarship and/or selfless contributors to the public interest" (Lempert, Chambers, and Adams 2000, 396).[2] The Michigan researchers find no gap with regard to this policy aim. In particular, Lempert, Chambers, and Adams find that Michigan's alumni of color—1,100 of whom the law school has graduated since 1970—have gone on to successful careers after leaving the law school. Lempert and his coauthors find that the success of alumni of color is not distinguishable from that of white alumni in measures of career satisfaction, contributions to the community, or income.[3] The hard-fought data of Lempert and his co-researchers

convincing both the winners and the losers that they deserve their lot in life" (Guinier 2000, 573).

2. Lempert, Chambers, and Adams offer no evidence as to whether this formal expression of policy is actually meaningful to the Michigan faculty. For example, I cannot tell whether an associate dean wrote the policy and the faculty approved it without discussion or whether the faculty debated and thoughtfully considered the policy.

3. See, however, the companion comment of Professor David Wilkins. Professor Wilkins, an expert on the legal profession with a particular interest in the career paths of African

expose as moonshine the claim that by admitting students of color using race-conscious affirmative action policies, Michigan is merely setting those students up for failure after graduation. Whether graduates of other law schools—particularly less elite law schools—achieve the same career success is a question that must await further study.

The gap that the researchers did discover is more intriguing. Lempert, Chambers, and Adams found that the numerical criteria for admission are largely irrelevant to career success. Right-thinking people should expect that the criteria that professional schools use to select students would have some predictive value concerning how well the students perform once they enter their chosen profession. When we visit our doctors, we expect that our doctors' medical schools admitted them as students based on criteria tending to indicate that they would become good doctors. However, Lempert, Chambers, and Adams find that Michigan—like other law schools including Texas—has emphasized admissions criteria that predict (sort of) how well the students will do while in law school, but the admissions criteria do nearly no work in predicting how successful Michigan's students will be as members of the legal profession (Lempert, Chambers, and Adams 2000, 468). Lempert and his fellow researchers write that "LSAT scores and UGPA scores, two factors that figure prominently in admissions decisions, correlate with law school grades, but they seem to have no relationship to success after law school, whether success is measured by earned income, career satisfaction or service contributions" (Lempert, Chambers, and Adams 2000, 401). That is to say, the criteria for admission help predict success while a student, but there is a gap between the imagined predictive ability of the admissions criteria and the performance of graduates as professionals. This is true for all alumni, whatever their hue.

The Michigan researchers also found surprisingly little correlation between how well students did in law school and their later success in the profession, as measured by income (Lempert, Chambers, and Adams 2000, 477). In future analysis of their data, the researchers will provide more details with regard to this finding, but they now report that the grade point average that students earned while in law school (LSGPA) explained less than 5% of the future variance in income (Lempert, Chambers, and Adams 2000, 479). They note that "If LSGPA relates somewhat to some dimensions of lawyer competence, it is probably orthogonal to many others, and may even have a negative relationship to some" (Lempert, Chambers, and Adams 2000, 502). The researchers also suggest that the correlation between LSGPA and income "may be explained in whole or in part by the role LSGPA plays in initial hiring" (Lempert, Chambers, and Adams 2000,

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American and other lawyers of color, finds that even when minority lawyers achieve the same levels of success as white lawyers, they often travel different and more difficult routes (Wilkins 2000).

502 n.73). So, the Michigan researchers report that LSAT and UGPA do not help to predict the career success of Michigan Law School graduates, but LSAT and UGPA do some work in predicting how well law students do in law school, as measured by their grades. However, LSGPA predicts only a bit of the variance in the income of alumni. I will use these findings to cheer up law students who do not get the highest grades in their classes.

I can imagine that some law professors would say that we have done a sufficient job if we admit students who will do well in law school, even if we know that the criteria we use for admission do not predict how well they will do as lawyers.[4] I would like to think, though, that anyone who is not a law professor would expect that we admit students whom we expect to become good lawyers. Imagine, for example, if law schools rejected applicants with letters that said "We reject your application for admission based on our prediction that others are likely to earn higher grades in law school than you, even though we really have no clue as to whether you would be a better lawyer than those whom we are admitting. Good luck in some other profession." Honest law schools will start sending that letter in the next admissions cycle.

The Michigan findings identify as moonshine the facile equation of LSAT and UGPA with merit. In arguments about law school admissions, these numerical indexes often serve as representations of merit. Lempert and his fellow researchers note that theirs is "the first paper which indicates that LSAT scores and UGPAs, the admissions credentials that the opponents of law school affirmative action would privilege for their supposed bearing on 'merit' and 'fitness to practice law,' bear for one school's graduates little if any relationship to certain plausible measures of later practice success or societal contributions" (Lempert, Chambers, and Adams 2000, 496). One small criticism here is that Lempert and his coauthors should recognize that both proponents and opponents of affirmative action privilege LSAT and UGPA as representations of merit. After all, even Michigan relies on these numbers in admissions, and opponents of affirmative action did not craft Michigan's admissions policy.

4. Professor Guinier makes a similar point with regard to Lempert, Chambers, and Adams's finding of a lack of relationship between LSAT/UGPA and public-spiritedness of alumni: "Some may doubt the significance of this finding that traditional test-centered entry-level predictors are failing us. Skeptics of the study," Guinier predicts, "might remain resolutely committed to the conventional predictors on the grounds that although such indicators fail to correlate with public service, that is not their 'job.'" The skeptics will argue, Professor Guinier suggests, that "Predicting who will do public service or be public spirited is arguably not the role of entry-level admission tests" (Guinier 2000, 570). As I note below, the citizens and legislators of the states, when they subsidize education, may indeed expect that their investment will yield some return in the form of public-regarding behavior by alumni of their state's law school.

III. THE VALUE OF DIVERSITY

The second important empirical finding on which I would like to comment concerns the value of diversity. During the 1998–99 year at UT, I taught a small, year-long torts class with just 28 students. One day, we discussed the issue of whether the reasonable person standard of torts was a gendered norm (Bender 1988, 20–25). For this discussion of gender, I split the class into halves, with 14 men on one side of the room and 14 women on the other. After class, I joked with my African American student that in the next class, I would put all the African Americans—him, that is—on one side of the room. In the fall of 1999, I taught a small torts class of 32 students but could not reuse this joke, as our registrar had not allocated 1 of the 7 African Americans in the first-year class to me. If I were teaching one of our large first-year classes of 120 students, I might have had 2 African American students. Imagine teaching a first-year law school class in such a nondiverse environment. How possible would it be to draw meaningfully on the life experiences of your students in order to examine, say, constitutional law issues that implicate race?

Lempert and his fellow data hounds find that law students value diversity. The researchers surveyed alumni concerning the value to them of ideological, gender, and ethnic diversity as part of the law school classroom experience. They found that women and students of color from the 1970s, 1980s, and 1990s placed considerable value on diversity (Lempert, Chambers, and Adams 2000, table 5A). White men who graduated in the 1970s and 1980s found much less value in diversity than did white women and students of color. Before the 1990s, less than a quarter of white men found value in ethnic diversity, but in the 1990s, nearly half of Michigan's male graduates say that they placed considerable value on the ethnic diversity of their classrooms (Lempert, Chambers, and Adams 2000, table 5B). One wonders whether the federal judges who will decide challenges to race-conscious affirmative action plans come from older cohorts of white male law school graduates who value diversity less than the law school graduates of today.

Lempert, Chambers, and Adams disclaim political correctness as the explanation for sudden ethnic sensitivity of Michigan's men of the 1990s and speculate that the shift toward more white men valuing diversity may have something to do with white men becoming a minority in the law school of the 1990s (Lempert, Chambers, and Adams 2000, 417). Even so, I think that readers will suspect that pressure to give the "right" answer explains at least a component of the 1990s shift. In any case, the data do support the presumption of many educators that diversity enhances the educational experience of students. Indeed, Michigan's law professors may be interested to learn that Lempert, Chambers, and Adams have found that in

the 1990s, Michigan's students value diversity more than they value the faculty's scholarship (Lempert, Chambers, and Adams 2000, table 4; table 5A). Given the value that educators claim for diversity and the value that students report placing on diversity, the editors of *U.S. News and World Report* might consider adding diversity as a factor in the system by which they rank law schools. Doing so would help to offset the penalty in *U.S. News* ranking that law schools with active, race-conscious affirmative action plans suffer by admitting students with relatively lower LSAT scores (*U.S. News* 1999).

IV. THE MISSION OF STATE LAW SCHOOLS

More than 100 of the 375 Texans admitted as part of the UT School of Law's class of 2000 would not have gained admission to the law school but for a quota that the legislature has established for Texans. In Texas, state law requires that 80% of the students the law school admits be Texans (Appropriations Act 1999; see also Levinson forthcoming). At the undergraduate level, the Texan quota rises to 90%.

The language the legislators use to craft the Texas admissions quota is remarkable for its frank acknowledgment of the potentially weak academic qualifications of Texans so admitted. In the Appropriations Act, the legislators threaten to withhold all money for university salaries if in any semester UT's law school were to admit more than 10% nonresidents and deny "admission to one or more Texas residents who apply for admission and who reasonably demonstrate that they are probably capable of doing the quality of work that is necessary to obtain the usual degree awarded by [the law school]." This language corresponds neatly with Professor Guinier's idea for how state universities might reduce their reliance on standardized tests. "[P]ublic universities," she suggests, "might consider using the tests as a floor, below which no one in recent memory has succeeded in graduating from the institution. Above that test-determined floor," Professor Guinier proposes that "applicants could be chosen by several alternatives, including a lottery" (Guinier 2000, 579). In Texas, the idea of such a floor already has legislative backing, though not yet for the use that Professor Guinier intends.

In the fall of 1997—the first post-*Hopwood* semester—I performed a simple experiment to check the impact of the 80% quota. I asked the director of admissions for the numerical data but not the names of applicants. After plugging admissions data for all applicants for the law school's class of 2000 into a spreadsheet, I sorted applicants by their Texas Indexes—a combination of LSAT and UGPA—*without* regard to their residency. That is, I omitted the usual preliminary step of the UT admissions process, which is to separate the applicants into resident and nonresident pools. Taking into

account that admitted Texans have about a 60% likelihood of enrolling while admitted non-Texans have about a 20% chance of enrolling, I used the spreadsheet to "admit" a class of 475 students. I then checked those I had admitted in my experiment against those the law school had actually admitted. I discovered that around 109 of the 375 Texans who were part of the class of 2000 would not have been admitted but for the 80% set-aside that state law requires. Given the differential rate of enrollment of admitted nonresidents, the state's residence-conscious affirmative action plan resulted in the rejection of more than 300 out-of-state applicants with higher Texas Indexes. Using the language of opponents of race-conscious affirmative action—for a moment—I could say that more than one-quarter of Texans at the UT School of Law gained admission under an affirmative action plan that treated them as members of a group rather than as individuals and that in so doing, the law school rejected three times as many better-qualified applicants.

My small admissions experiment led me to several conclusions and thoughts. I saw that smug claims that the elimination of race as a criterion for admission had restored a system of merit were moonshine. I also noted that the great beneficiaries of this affirmative-action plan for Texans were white, and yet they were largely unconscious of the great advantage in admissions they received. I knew that during periods when race was included among the criteria for admission, students of color were always conscious of the benefit they might have thereby gained and also always conscious that other students and faculty might think of them in such terms. For example, when students of color answer questions, they sometimes give wrong or mixed-up answers—like every other student. When they misspeak in class, students of color carry the additional burden of knowing that other students and/or the professor may be viewing them as less qualified beneficiaries of affirmative action. The color of their skin puts them under suspicion. I knew, though, that white Texans admitted only because they were residents never carried the same burden in class as students of color. White Texans were free to err without calling into question their qualifications for admission as students.

I conceived a dastardly plan to bring to light—in the harsh glare of the classroom—the advantages that "less qualified" Texans were enjoying in admissions. That is, my plan would emulate the socially constructed stigma of skin color in the classroom and subject white Texans to the suspicion and stigma of having been admitted on some basis other than merit. My plan was this: Any time a student with a clear Texas accent gave a wrong answer during classroom discussion, I would ask curtly, "Are you a Texan?" I would then abruptly move on to question another student, preferably a non-Texan.

Just kidding. I never implemented such a horrible scheme. I try my best to be humane in class and do not engage in ritual humiliation. But the thought experiment helped me see more clearly the advantages that many white students enjoyed, advantages that never come up for discussion when *Hopwood* is the topic of conversation. One advantage is preferential admission for Texans. Another advantage, though, was the ability to enjoy the first advantage without detection. Preferences for alumni—more important at other schools than at my own—operate in much the same way. Imagine if professors said to every student who said a dumb thing in class—"Is your father an alumnus?"

My spreadsheet admissions experiment led me to think more broadly about the reasons that Texas legislators set aside four-fifths of the law school seats for Texans. First, one should begin by admitting that the set-aside is *necessary*. Texans cannot win the spots on their own. For one thing, Texans have to compete with all the rest of the country, and there are a lot of qualified applicants outside the Lone Star state. However, Texas is also a state that underfunds primary, secondary, and higher education. Therefore, Texans are unprepared to compete on a level playing field with all other law school applicants. They need the boost.

I also thought about the preferential admission of Texans in instrumental terms. Following the broad, general lessons of Willard Hurst, I conceived of the law school as an agent of the state and an instrument of state policy. Just as a state might choose to subsidize a particular industry—say, the lumber industry in Wisconsin—Texas legislators had chosen to subsidize legal education for Texans (Hurst 1964; see also *Law and History Review* 2000). Not only do Texans enjoy a subsidy with regard to admissions standards, they also enjoy a tuition subsidy, as UT School of Law's tuition is at least $10,000 below the market rate. In effect, the admissions committee of the law school delivers a three-year, $10,000 per year educational subsidy to each admitted Texan. This amounts to roughly $11 million dollars per year. Again, thinking of law as an instrument that legislators and others use to achieve particular ends, I wondered whether the way the admissions committee distributed the $11 million per year would be satisfying politically to legislators. What if, for example, a small immunization program with funding of $11 million delivered vaccinations almost exclusively to children in a few white neighborhoods of Texas? Such a result would be politically unacceptable.

The state institutional character of UT and also the University of Michigan—where resident applicants also benefit from an admissions advantage—opens up the possibility of a different sort of gap study. The citizens of both states—or their legislators—might ask whether the admissions practices of the state universities are advancing the goals of tuition subsidy and *residence*-conscious admissions. What value does the state receive by

making admission easier and tuition lower for its residents? Lempert, Chambers, and Adams focus on the goals of the Michigan faculty; they might also broaden their inquiry by conceiving of the faculty goals as expressions of *state* policy. We can ask whether the chickens are getting into pots, but we should also ask whether the right pots are getting chickens. Such a study would require that state law schools, state universities, and legislators first define just what the goals of state universities ought to be. This definitional project is underway in a number of states already. With the goals of state-sponsored professional training in mind, educators and legislators can work together to determine whether present patterns of admissions will best meet these goals and serve the needs of states in the twenty-first century. Perhaps educators and politicians will agree that the best practice is to subsidize the educations of those who have the highest test scores. I suspect, though, that a thoughtful inquiry will yield a more diverse result.

V. CONCLUSION

In the aftermath of *Hopwood,* the number of students of color at The University of Texas has declined to a trickle, putting us behind the fall of 1950. The University of Michigan Law School is now engaged in litigation that will determine whether its affirmative action policy can endure or whether instead the University of Michigan's river of alumni of color will also turn to a trickle. Richard Lempert, David Chambers, and Terry Adams's study is valuable in the narrow context of Michigan's litigation but also important within the broader national debate taking place over race-conscious affirmative action. The hard-fought data that these able Michigan researchers have collected and analyzed help to dissipate some moonshine. Most important from my point of view, Lempert, Chambers, and Adams have shown that LSAT and UGPA—the numerical criteria on which Michigan and so many other law schools rely in admissions—have almost no predictive value concerning the success graduates will have with their careers after they leave Michigan. Put simply, LSAT and UGPA are not proxies for merit. The Michigan researchers also show that Michigan law students value diversity and regard a diverse legal education as a better education. These two findings, coupled as I think they should be with serious thought about the instrumental role of state law schools as agents of state policy, can assist judges, educators, and other policymakers in crafting and maintaining admissions policies that meet the goals of states seeking to train professionals to meet the diverse challenges of the twenty-first century.

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