

CHAPTER 5

FALLING SKY: TRENDS IN MINORITY ACCESS TO LAW SCHOOLS, PRE- AND POST-*GRATZ* AND *GRUTTER*



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Introduction

In June 2003, affirmative action proponents lauded the U.S. Supreme Court's decisions in *Gratz v. Bollinger* and *Grutter v. Bollinger*, the latter of which upheld the diversity rationale in *Regents of the University of California v. Bakke* (1978) and allowed colleges and universities to continue using race both carefully and flexibly as a “plus” factor in admissions. Her majority opinion in *Grutter* notwithstanding, Justice O'Connor urged admissions officials at the University of Michigan Law School and elsewhere to adopt colorblind programs expeditiously while studying the race-blind “experiments” in California and Washington where voters had previously dismantled affirmative action programs.¹ Three years later, Justice O'Connor's prescience was realized when Michigan voters passed Proposal 2 in November 2006 thus ending race- and gender-based preferences in education, employment, and contracting in the state.

While it may be premature to fully explore the effects of *Grutter* and Proposal 2 on minority access to law schools—especially in Michigan—there are sufficient data (ten years' worth) to assess the deleterious impact race-blind measures have already had on underrepresented minority (URM) enrollment in states such as California and Washington.² A recent report by the Academic Senate Graduate Admissions Task Force at the University of California concluded that the “enrollment of historically underrepresented minority students at UC campuses remains alarmingly low” (Frank, 2005, p. 2). In fact, following the precipitous decline in URM enrollment in California in 1997 caused by Proposition 209, researchers aptly warned there were no viable alternatives to race-conscious tools in selective admissions for achieving a critical mass of URM students (Karabel, 1998; Orfield, 1998).

In the wake of Proposal 2 and the Supreme Court decisions in the University of Michigan cases, this study examines trends in minority applications, admissions, and enrollment from 1995 to 2005 at selective, public law schools in California, Washington, and Michigan. This chapter further examines patterns in college graduation rates—specifically for minorities in California—to assess demographic changes in the law school applicant pool at the state level. Lastly, this paper explores changes, if any, to minority access to U.S. legal education following the *Gratz* and *Grutter* decisions.

The main questions addressed in the study are the following: (a) How has the national pool of URM applicants to law schools changed since 1995? (b) How have state-level demographic changes and college completion rates affected the potential pool of URM law school applicants in California? (c) What have been the effects of abolishing race-conscious tools on minority access to selective, public law schools in California, Michigan, and Washington between 1995 and 2005? (d) What are the *perceived* effects of the 2003 *Gratz* and *Grutter* decisions on minority access to these law schools?

Methodology

This study used a mixed methods design and descriptive time-series analysis to explore and examine outcomes and trends related to law school admissions. Quantitative data for the study included national application, admission, and enrollment data obtained from the Law School Admission Council (LSAC), college completion data from the National Center for Education

Statistics (NCES) and the Public Policy Institute of California, and institutional-level data from public law schools that comprised the study sample: UC Berkeley (UCB), UC Davis (UCD), UC Los Angeles (UCLA), UC Hastings College of the Law (Hastings), University of Michigan (UMI), University of Virginia (UVA), and University of Washington (UWA). Sample inclusion criteria supported the identification of possible trends among selective, peer institutions (UCB, UCLA, UMI, and UVA³) that vary in their use of colorblind or race-based decision making.⁴

The term “selective” was operationally defined by mean UGPA (undergraduate grade point average) greater than 3.6/4.0 and LSAT (Law School Admission Test) scores higher than 95th percentile for entering law students. Less selective public institutions (for example, UCD and Hastings) were also included in the analysis to explore differential impacts linked to selectivity.⁵ Finally, a comparative analysis was conducted across all the law schools sampled to assess initial effects of *Gratz* and *Grutter* on URM outcomes.

Qualitative data for this study were obtained from in-person and telephone interviews with admissions officials from participating law schools excluding officials at UCLA and Hastings who declined to be interviewed. The qualitative inquiry was guided by two objectives: (a) to explore post-Michigan changes to diversity plans including admission and recruitment procedures at the law schools; and (b) to clarify and corroborate any patterns or trends that emerged from minority application, admission, and enrollment data. Additional information for the study was culled from university reports, memoranda, and admissions material provided either by individual law schools or obtained independently by the researcher.

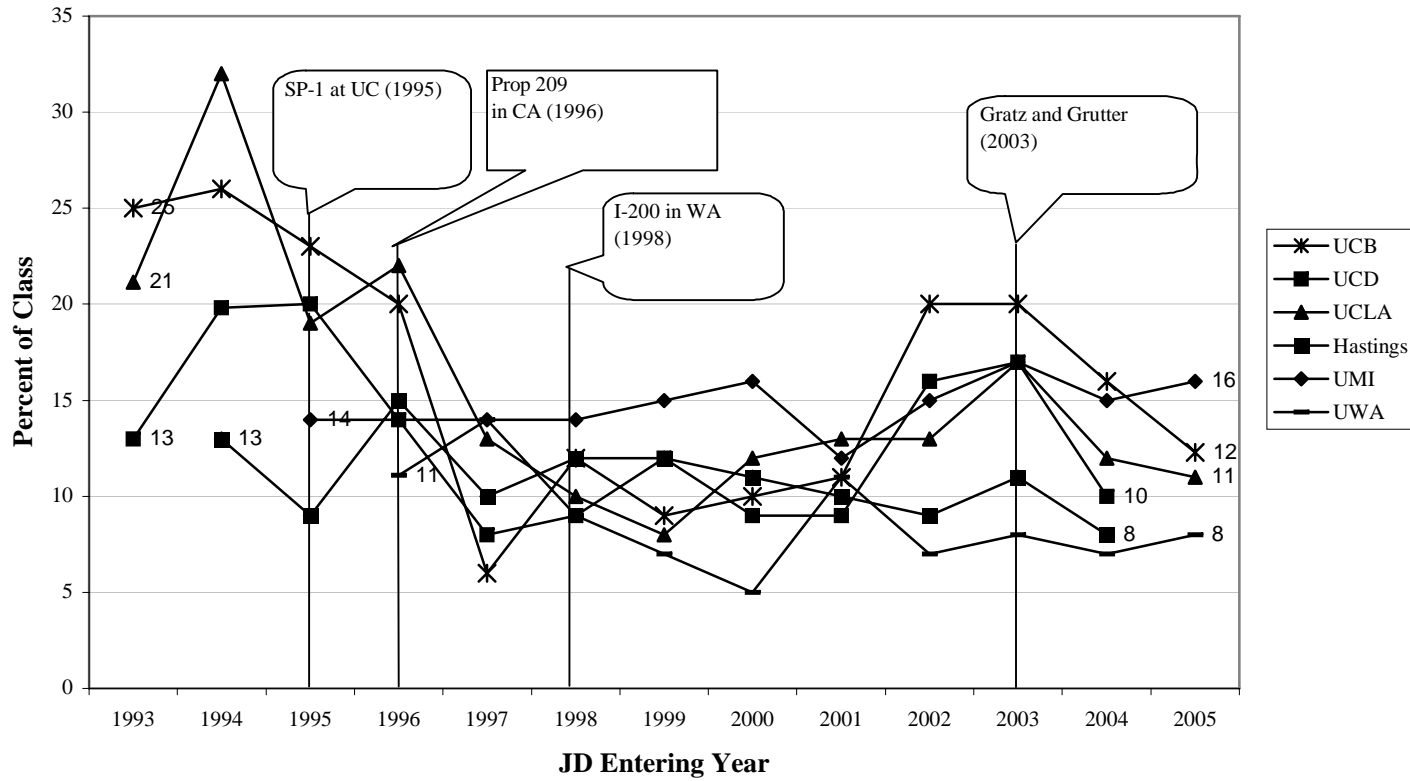
The study focuses mainly on events and institutions in California, but examines national law school data to assess changes in the makeup of the applicant pool. The rationale for examining national trends is due to the paper’s emphasis on selective, public institutions that draw from a national—rather than a state or local—pool of potential applicants. Analysis of state-level college graduation rates by race and ethnicity in California (to determine the pool of eligible URM students) was limited to secondary data analysis. Future research should take into account the changing demographics of the college going pool both at the state and national levels, and examine primary data on undergraduate completion rates by race and ethnicity for all colorblind states.

Findings

National Law School Application, Admission, and Matriculation Trends: 1995-2005

Despite the overall, post-affirmative action decline in URM enrollment at public law schools in California, Michigan, and Washington (to be discussed in the next section), a significant increase in URM enrollment occurred in 2002 and 2003 particularly at UC law schools. At Boalt Hall in Berkeley, UC’s most selective law school, URM students practically doubled from 11% of the entering JD class in 2001 to 20% in 2002 and 2003 (see Figure 5-1). UC Davis and UCLA also experienced increases in their URM enrollment during the same period. What factors contributed to increased URM enrollment at UC law schools in 2002 and 2003?

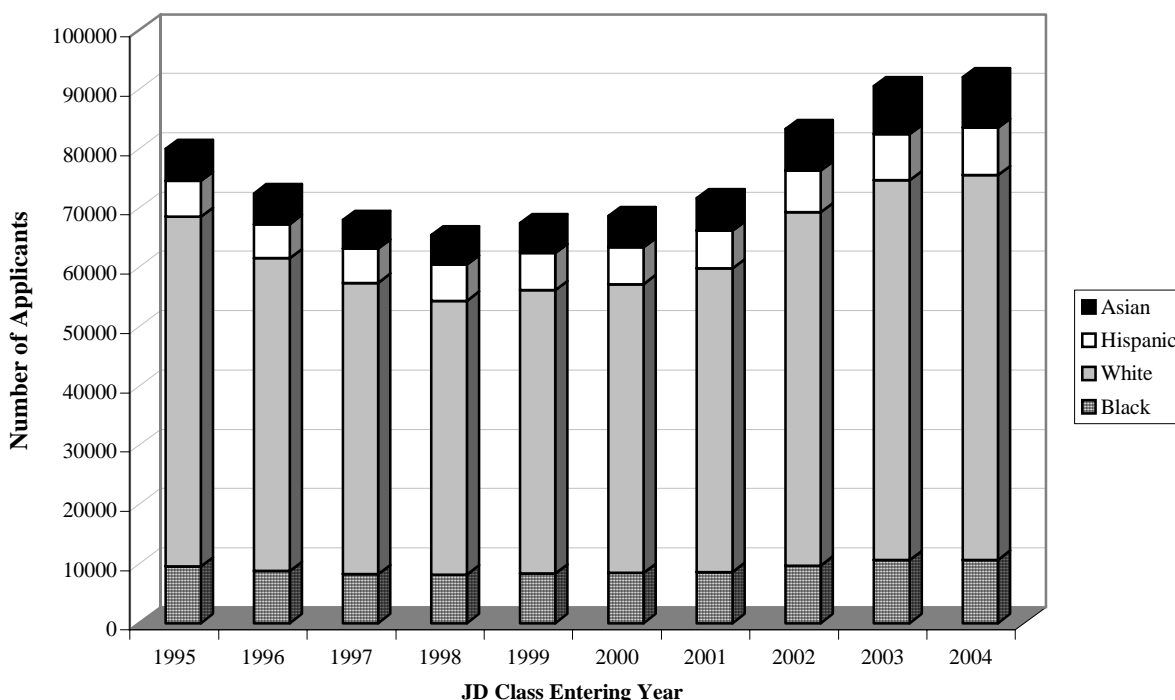
Figure 5-1: URM Law School Enrollment, 1993-2005



Source: Data obtained from Law Schools and Law School Admissions Council—National Statistical Reports, 1993-2005.

Examining national application, admission, and enrollment trends at U.S. law schools between 1995 and 2004 brings into relief some possible answers since the law schools in this study draw primarily from national applicant pools.⁶ In 2002, LSAC reported an 18% increase in applicants (n=90,853) to the 178 ABA-approved law schools in the United States compared to the previous year (n=77,235); in 2003, there was an additional 10% (n=99,504) of applicants; and in 2004, over 100,000 applicants (+1%), a record-breaking number, submitted applications to J.D. programs in the U.S. (see Figure 5-2).

Figure 5-2: National Law School Application Rates, 1995-2004

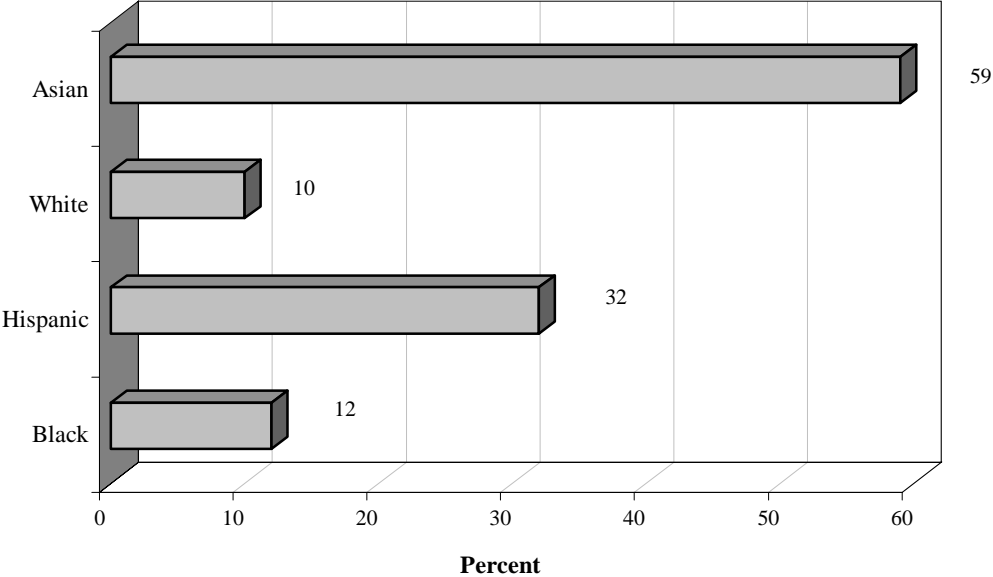


Source: Data obtained from Law School Admissions Council—National Statistical Reports, 1995-2004.

Note: Application totals do not match text figures due to the elimination of racial and ethnic groups other than Asian, Hispanic, White and Black.

As a percentage of the applicant pool, URM representation has remained relatively constant between 1995-2004 at the following levels: approximately 1% for American Indians/Alaskan Natives, 11% for African Americans, and 8% for Hispanics. Conversely, White applicants have decreased as an overall percentage of the applicant pool from 70% in 1995 to 64% in 2004, while Asians have increased dramatically from 6% in 1995 to 9% of the applicant pool in 2004 (see Table 5-1A in Appendix 5A). In terms of raw numbers, the following relative changes occurred between 1995 and 2004: African American applicants increased by 12% (from 9,560 in 1995 to 10,674 in 2004); Latino applicants increased by 32% (from 6,018 to 7,969); White applicants grew by 10% (from 58,990 to 64,869); and Asian applicants increased most noticeably by 59% (from 5,402 to 8,568) (see Figure 5-3).

Figure 5-3: Percentage Increase in Applications, 1995-2004

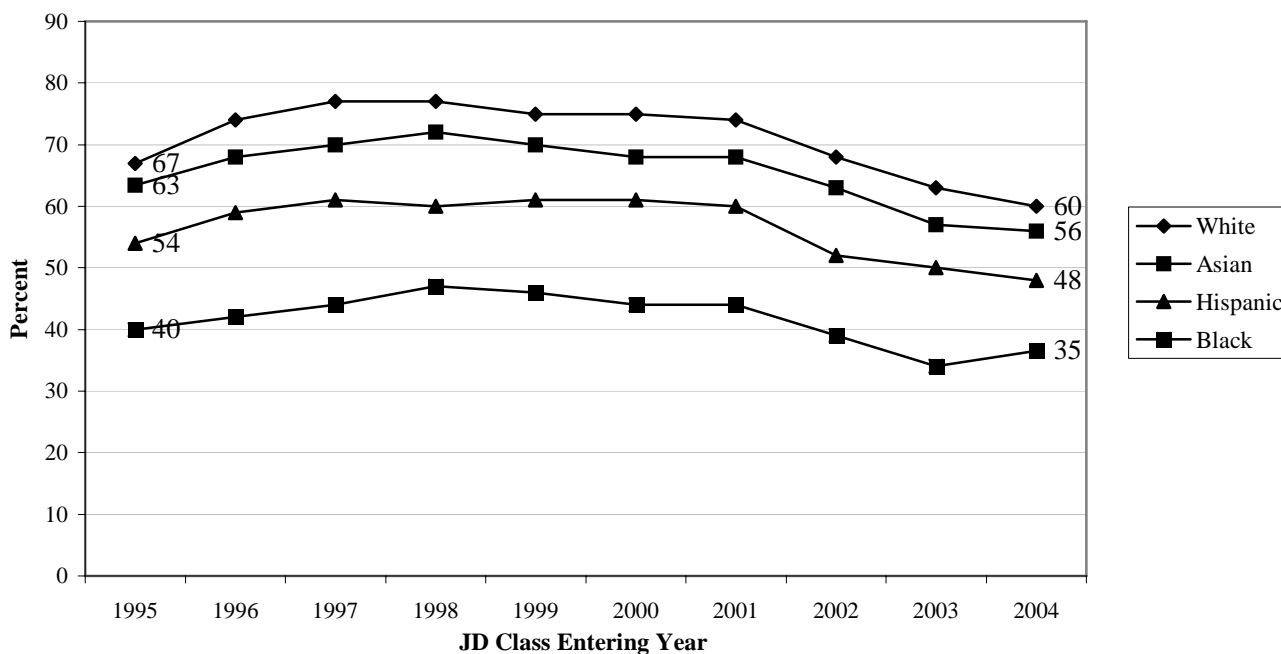


Source: Data obtained from Law School Admissions Council—National Statistical Reports, 1995-2004.

Beginning in fall 2000, the admission rate for all racial and ethnic groups has been declining due largely to increased competition resulting from a larger volume of applications submitted to U.S. law schools. Still, the admission rate for African American applicants, i.e., the number of African Americans admitted divided by the total number that applied to law schools in a given year, is almost half that for White applicants (see Figure 5-4). In 2004, the national admission rate for African Americans was 35% compared to 60% for White applicants. For Hispanics, the admission rate in 2004 was 48%, and for Asians that figure was 56%.

With the exception of African Americans, the matriculation rates (the percentage of admitted applicants who enrolled at a law school) for all racial and ethnic groups have increased or remained stable. For admitted African American applicants to U.S. law schools between 1995 and 2004, there has been a downward trend in their enrollment levels from 86% in 1995 to 83% in 2004 with a slight increase in 2003. Hispanic matriculation rates have fluctuated considerably between 1995 and 2004, with sizeable drops in 1996-97 and 2001-02, but returning to 82% in 2004 (the same enrollment statistic for 1995). For Whites and Asians, matriculation rates from 1995 to 2004 have increased slightly: from 80% to 81% for Whites, and 77% to 79% for Asians.

Figure 5-4: National Law School Admission Rates, 1995-2004



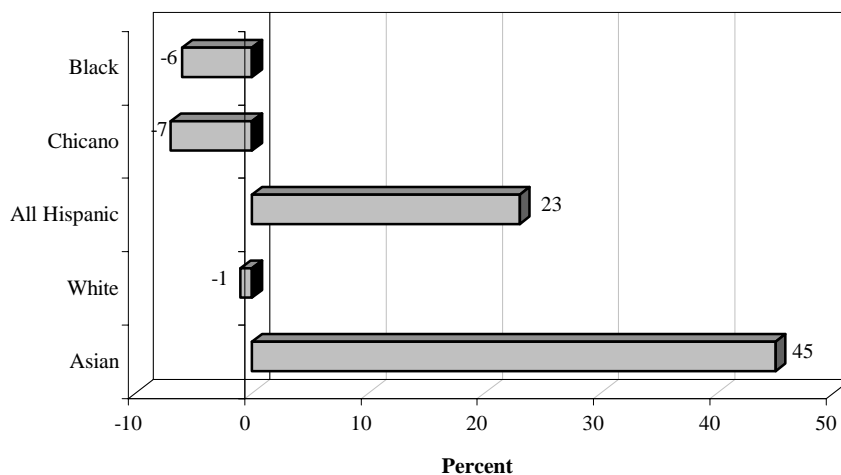
Source: Data obtained from Law School Admissions Council—National Statistical Reports, 1995-2004.

The following relative changes in law school enrollment counts occurred between 1994-2004 by race and ethnicity (see Table 5-2A in Appendix 5A): African American matriculants decreased by 6% (from 3,315 in 1995 to 3,101 in 2004); Hispanic enrollees increased by 23% (from 1,973 to 2,424)—however, if Chicano enrollees are viewed separately, their matriculation rate declined by 7% (from 701 to 652); White enrollees at U.S. law schools decreased by less than 1% (from 31,858 to 31,747); and, Asian matriculants to U.S. law schools increased significantly by 45% (from 2,614 to 3,797) (See Figure 5-5).

Discussion

National data reveal the number of applicants to U.S. law schools reached record levels in 2004, increasing dramatically by 33% since 2000. During this period, increased interest in law schools is seen across all racial and ethnic groups, but is most apparent among Latino and Asian applicants who showed the largest gains between 1995-2004 with 32% and 59% increases, respectively. Demographic changes related to Hispanics and Asians in the college-going population have possibly fueled the trend (Chapa & De La Rosa, 2004; Hune & Chan, 1997). In terms of possible factors or events that contributed to increased URM enrollment at UC law schools in 2002 and 2003, the unprecedented volume of applicants in those years—reflected proportionately across all racial and ethnic groups with the exception of Asians—provided more eligible URM applicants to the pool. In effect, there were more URM applicants to select from than ever before.

Figure 5-5: Percent Change in Matriculation Rates, 1994-2004



Source: Data obtained from Law School Admissions Council—National Statistical Reports, 1994-2004.

In fall 2003, for example, there were 10,604 African American applicants to U.S. law schools (compared to 8,648 in 2001) and 7,780 Latino applicants (compared to 6,325 in 2001). Having 1,956 more Black and 1,455 more Latino applicants in the pool represented a significant increase in the number of potentially admissible URM candidates. And this was particularly true for Hispanic applicants. In 2002, Latino representation in the entering J.D. class at Boalt Hall doubled from 17 students in 2001 to 36 (Boalt Hall Annual Admissions Report, 2005, p. 13).

In general, application volume is positively correlated to selectivity: as the number of applications rise so does competition for admission. In selective admissions processes that rely substantially on traditional measures of merit, i.e., standardized test scores and GPA., the disparate impact on URM applicants is even more pronounced. From 1995 to 2004, national admission rates declined for Chicanos (-6%) and African Americans (-4%), although they remained virtually unaffected for White applicants (-1%). The admission rate for Asians, on the other hand, increased significantly by 42% in the same period. Holistic review processes that rely more on discretion, as is the case now at most of the UC law schools, may produce a mitigating effect (Hyun, 2000). This could explain the increase in Latino enrollment at Boalt Hall in 2002-03 despite the national decline in URM admission rates.

National enrollment rates at U.S. law schools by race and ethnicity reveal a declining trend for admitted URM applicants compared to that for Whites: African American and Chicano enrollment rates at U.S. law schools are down by 6% and 7%, respectively, while White rates are essentially the same (<-1%). Enrollment rates for Latinos varied enormously across the years, but increased, on average, by 23%. Not surprisingly, Asian enrollment rates have increased by 45% since 1995.

Minority College Graduation Rates in California, 1970-2000

In terms of state-level statistics on the pool of eligible minority applicants to law school, Census data suggest notable increases in college completion rates for all racial and ethnic groups across the United States since 1970. However, a recent study by the Public Policy Institute of California (PPIC) found significant gaps in the college graduation rates between Hispanics and Blacks born in California, compared to Whites and Asians. According to 2000 Census data, the college graduation rate for Hispanics and African Americans was 13% and 15%, respectively, compared to 31% for Whites and 62% for Asians. Moreover, the study's author suggested the widening gap in California's bachelor's degree attainment rates between Hispanics and Blacks, on the one hand, and Asians and Whites, on the other, was attributable to the demise of race-based admissions in the mid-'90s (Reed, 2005). In fact, between 1990 and 2000, the percentage increase in four-year college completion rates in California for California-born Hispanics and Blacks was 3% each, compared to 7% for Whites and 10% for Asians.

Declining URM Enrollment in California: Fiction and Facts

In his *Grutter* dissent, Justice Thomas opined on the obsolescence of overt race-based decision making in selective admissions. As an example, he pointed to UC Berkeley Law School and its ostensive success in restoring prior levels of underrepresented diversity to its student body despite its legally mandated colorblind approach:

The sky has not fallen at Boalt Hall at the University of California, Berkeley, for example. Prior to Proposition 209's adoption ... which bars the State from "grant[ing] preferential treatment ... on the basis of race ... in the operation of ... public education," Boalt Hall enrolled 20 blacks and 28 Hispanics in its first-year class for 1996. In 2002, without deploying express racial discrimination in admissions, Boalt's entering class enrolled 14 blacks and 36 Hispanics.... Total underrepresented minority student enrollment at Boalt Hall now exceeds 1996 levels. (Sec. IV, C, 2)

While affirmative action opponents like Justice Thomas claim the "chilling effects" of Proposition 209 have dissipated and that the number of underrepresented minority students at UC law schools have returned to pre-Proposition 209 levels, in fact, they have not. Further, race-based admission and recruitment policies at the University of California were dismantled prior to Proposition 209: In 1995, the UC Board of Regents passed a landmark resolution titled "SP-1" that prohibited system-wide use of race, religion, sex, color, ethnicity, or national origin in admissions considerations.⁷ Citing URM enrollment data for UC law schools in 1996—as Justice Thomas did—presents an inaccurate picture of pre-Proposition 209 URM levels due to the highly publicized, controversial adoption of SP-1 in 1995.

By examining minority enrollment data from 1993, to glean a more accurate account of pre-SP-1 and pre-Proposition 209 URM enrollment levels, it is clear that URM representation has dropped markedly at UC law schools (see Figure 5-1). At Boalt Hall, the number of American Indian, African American, and Latino students (as a percentage of all first-year enrollees) has declined by more than one-half since 1993. URM students represented 25% of the entering class in 1993

(a figure more consistent with URM enrollment trends at Boalt Hall in the 1980s and early 1990s before affirmative action was banned); by the fall of 2005, that figure dropped to 12%. At UCLA Law School, URM enrollment reached a high of 32% in 1994, but has fallen to just 11% in 2005 despite numerous attempts to counter the effects of Proposition 209 including a failed class-based admissions model that unintentionally increased its Asian and White student enrollment, programmatic and curricular offerings rooted in equity and social justice, and other innovative recruitment efforts. Less selective UC law schools including UC Davis—and to a smaller extent Hastings College—have also seen major declines and fluctuation in their URM enrollment between 1994-2004—from 20% to 10% at UCD, and 13% to 8% at Hastings.

At all the UC law schools, URM enrollment fell dramatically in the fall of 1997, the year SP-1 took effect and one year after Proposition 209 was passed by California voters. The impact of Proposition 209 was most pronounced at Boalt Hall and UCLA, the premier law schools in the UC system. In 1997, Boalt Hall enrolled just one African American student in its entering J.D. class compared to 20 in 1996 (Boalt Hall Annual Report, 2000, p. 11.). Similarly, since Initiative 200 (I-200) passed in Washington in 1998, the percentage of URM in each first-year class at UWA, the state's top public law school, has also dropped from an average of 11% in 1996 to about 7% in 2004.

The relationship between legally mandated race-blind admissions and long-term decline in URM enrollment was corroborated in interviews with admissions officers and committee members at law schools in California and Washington. At UC Berkeley, the admissions committee chair stated that despite the pro-affirmative action outcome of *Grutter*, the Law School had little to celebrate since they were still “bound by 209” which has produced considerable decline and variation in its URM enrollment over the past ten years (A. Petersen, personal communication, November 3, 2005). At UC Davis, the admissions director likened compliance with colorblind mandates in admission and recruitment to “having your hands tied” when it comes to enrolling URM students, and African Americans in particular (S. Pinkney, personal communication, December 5, 2005). An admissions officer at the University of Washington also stated that since the passage of I-200 by voters in 1998, URM enrollment has declined visibly (K. Swinehart, personal communication, November 16, 2005).

Perceived Outcomes of Gratz and Grutter

In November 2005, Dr. Jordan Cohen, head of the American Association of Medical Colleges, stated explicitly that the increase in the number of Black and Hispanic students enrolled in medical schools in 2004 was directly related to the Michigan cases in 2003. “Now that the Supreme Court has clarified that issue, it has allowed our admissions committees to accept minority applicants who might not have had the same academic credentials, but who demonstrated other indicators of success” (Mangan, 2005, p. 2). When the question of how, if at all, *Gratz* and *Grutter* affected diversity plans and URM enrollment at their institutions, admissions officers at race-blind schools in this study were quick to report the effects were negligible due to legal prohibitions on race-based decision making. “Status quo” was the response most commonly provided by admissions officials including those at UVA and UMI law schools.

Explanatory Model for Declining URM Enrollment

What factors or events have contributed to declining admission and enrollment trends for African American and Hispanic applicants at U.S. law schools? Through an analysis of extant research literature and qualitative data obtained from interviews with admissions officers, four explanatory propositions emerged: (1) Increased competition—exacerbated by the importance of the *US News and World Report* rankings of ABA-accredited law schools—has worsened the disparate impact that traditionally selective admissions have on URM applicants; (2) Rising tuition costs at public law schools and undergraduate institutions have had an adverse effect on URM matriculation rates; (3) The “chilling effect” of anti-affirmative action measures has made law school officials at race-blind institutions more cautious in their approach to URM admission; (4) The stigmatized affiliation of affirmative action tied to high-profile legal and political challenges has dissuaded URM students from enrolling at certain law schools.

Increased Competition, Selectivity, and the U.S. News and World Report Rankings

Since 2002, J.D. applications have soared to record levels: in fall 2004, there were over 100,000 applicants to U.S. law schools compared to 84,000 in 1994. Law school officials surmise that cyclical increases in applications to graduate and professional schools are related to public perception of a weaker U.S. economy. Nevertheless, the increase in volume of applications exacerbates competition particularly in selective admissions. It has also been well documented that when traditional measures of merit, i.e., standardized test scores and GPA., are over-relied upon to sort and admit applicants in selective processes, there is a disparate impact on URM applicants (Bowen & Bok, 1998; Guinier & Sturm, 1996). Yet selective law schools including Boalt Hall and UCLA continue to rely heavily on quantitative measures of merit to choose from among qualified candidates. Anecdotal evidence from admissions officers interviewed for the study suggest they are concerned about how the increased importance of published annual rankings—specifically from the *U.S. News and World Report* magazine—drives their continued reliance on the LSAT as a selection tool. Some admissions officials have stated publicly that improving their national law school ranking and increasing student diversity are competing interests, but that heavy pressure from faculty, alumni, and even students to increase their law school’s standing comes at the cost of enrolling more URM students (Garret, 2005; Rindskopf Parker, 2006).

The impact of numbers-driven admissions on URM representation is apparent in the UC system where post-Proposition 209 URM levels have fallen more precipitously at Boalt Hall and UCLA than at other UC law schools (i.e., UC Davis and Hastings). A numbers-driven approach tends to reduce the eligible pool of URM applicants since, on average, URM students perform less well than their White and Asian peers on standardized measures. The reasons for underperformance are beyond the scope of this paper, but have been attributed largely to persisting structural inequality (Orfield & Lee, 2005) and psychosocial factors (Steele, 1997) among others.

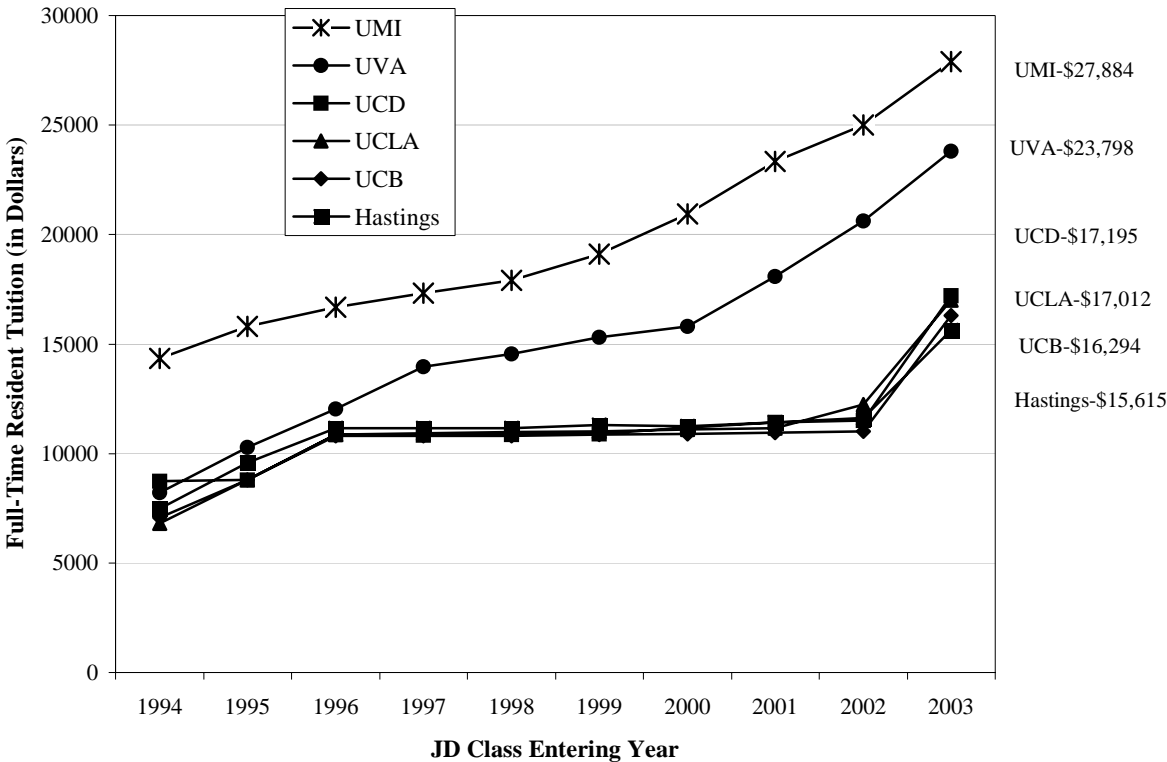
What colorblind strategies have been effective in yielding higher URM presence at UC law schools? Since Proposition 209 and I-200, most of the race-blind law schools sampled adopted a holistic review process combined with increased outreach and recruitment efforts, as well as programmatic and theme-based approaches to attract qualified URM applicants. While this

multi-pronged approach is more receptive to URM admission than singular strategies, it has been relatively ineffective in restoring pre-Proposition 209 URM levels. Nevertheless, law schools that employ discretionary review are more likely to enroll greater numbers of URM students, although obtaining a critical mass is unlikely in the absence of race-based tools (Hyun, 2000).

Rising Tuition Costs

Heller (2002, 2005) found that escalating tuition costs are contributing to the growing, color-based gap in higher education. Since 1994, resident tuition fees at public law schools have skyrocketed. The full-time, resident tuition at the University of Virginia tripled from \$8,206 in 1994 to \$23,798 in 2003, and doubled at the University of Michigan Law School—from \$14,334 to \$27,884 in 2003 (see Figure 5-6). Resident tuition fees at UC law schools have also increased significantly by almost 150%—from a system-wide average of \$7,000 in 1994 to \$17,000 in 2003. In a single year (2002), tuition at UC law schools increased from an average of \$11,000 to \$17,000.

Figure 5-6: Law School Annual Tuition, 1994-2003



Source: Data obtained from ABA LSAC Official Guide to ABA-Approved Law Schools, 1994-2003.

The director of admissions at Boalt Hall attributed the decline in URM enrollment in 2004 to escalating tuition costs (E. Tom, personal communication, November 3, 2005). At UC Davis, the admissions director felt the Law School was losing applicants to its private law school

counterparts where tuition is now comparable, and where they have access to scholarship funding (S. Pinkney, personal communication, December 5, 2005).

At undergraduate institutions, the college participation rates of low-income minority students continues to lag, particularly in California where demographers estimate that by 2015, minorities will comprise over 65% of 18 to 24 year olds (Swail, Gladieux, & Lee, 2001). Fitzgerald (2006) reports that “financial barriers represent key factors in determining whether academically prepared low-income students have access to a four-year public institution and a bachelor’s degree” (p. 62).

The Chilling Effect of Anti-Affirmative Measures

Following the landmark ruling in *Bakke* (1978), affirmative action experts predicted a decline in minority applications to graduate and professional schools. However, as Welch and Gruhl (1998) observed, the phenomenon dubbed “the chilling effect” (in graduate and professional school admissions) expected after *Bakke* never happened. The researchers theorized public confusion surrounding the interpretation of the Powell decision may have obviated any decline in minority application rates following the highly controversial Supreme Court decision. Yet in their study of law and medical schools post-*Bakke*, they found admissions officials interpreted the decision as confirmation to continue race-based decision making rather than retreat from it.

In states where affirmative action has been banned, there were immediate declines in URM enrollment. The experience in California following Proposition 209 is the classic example. However, a qualitative finding that emerged in this study is that “the chilling effect” can apply not just to prospective applicants, but also to law school officials reticent to expose their institutions to potential legal challenges and unwanted public scrutiny. Law school admissions officers from race-blind institutions interviewed for this study appeared more reticent and cautious in their responses, and less willing to express on record their reaction to the pro-affirmative action outcomes of the Michigan cases.

Stigmatized Perceptions of Affirmative Action

Counter to the declining trends at selective, race-blind law schools in California and Washington, the University of Michigan Law School—which never discontinued its use of race-based affirmative action—increased its URM enrollment slightly from 14 percent in 1995 to 15 percent in 2004 (see Figure 5-1). However, the dean of admissions speculated that URM representation had been negatively affected by *Gratz* and *Grutter* since “now we’re [UMI Law School] forever associated with affirmative action.” The dean also stated that some employers have even questioned the qualifications of UMI law school graduates because “we are perceived as doing something different in our admissions process” (S. Zearfoss, personal communication, November 9, 2005). Through qualitative reporting, the University of Virginia Law School, considered a peer institution to UMI and Boalt Hall, stated their enrollment of African American students has risen steadily in the past ten years including the year following *Gratz* and *Grutter* (S. Palmer, personal communication, October 26, 2005).

Thus declining URM matriculation rates at selective, public law schools in California and Washington may be due, in part, to the perception by prospective students that racial stigma and negative political rhetoric at schools readily associated with affirmative action may be detrimental to their law school experience and legal careers.

Conclusion

As next steps, Ancheta (2005) proposed long-term studies to add to the growing body of empirical research on race-neutral alternatives and their effects on student diversity in race-blind states. To date, there are no truly effective, race-blind strategies for enrolling a critical mass of URM students, nor are there adequate proxies for race and ethnicity that produce positive diversity outcomes. Yet in the short term, a holistic process that incorporates discretionary review—where a wide range of factors and characteristics are considered—is a more effective approach for increasing URM representation than a traditional, numbers-driven approach. In the long term, as Orfield (1998) recommended, affirmative action in selective admissions must be reconceptualized to take into account attributes and characteristics of applicants correlated not just to educational achievement, but also to professional success and service.

In the meantime, URM access to higher education has lost ground since the mid-1990s within the context of legally mandated colorblindness, an unprecedented increase in admission applications, unrivaled preoccupation with published law school rankings, and skyrocketing tuition costs at major public law schools and undergraduate institutions across the country. In addition, conservative decisionmaking by admissions officials as well as negative perceptions of affirmative action by prospective students and employers may also be influencing declining trends in admission and matriculation rates for URM applicants. Without race-based tools in admissions and recruitment, URM enrollment rates will continue to vary from year to year at selective public law schools thereby producing large fluctuations in matriculation patterns and entering classes dominated by Whites and Asians. How these enrollment trends compromise the mission of state institutions of higher education requires immediate examination, especially if, as Justice O'Connor warned in *Grutter*, the demise of affirmative action is expected in the next twenty-five years.

Notes

¹ In 1996, California voters passed Proposition 209 eliminating affirmative action in education, employment, and contracting throughout the state. In November 1998, Washington voters passed Initiative 200 restricting the use of race and ethnicity in employment, education, and contracting decisions.

² The term “underrepresented minority” used in this paper refers to individuals from racial and ethnic groups historically underrepresented in higher education including African American or Black, Latino or Hispanic, and American Indian. Due to the relatively small number of American Indians (<1%) in the sample, this study focuses primarily on African Americans and Latinos. Also, the terms “Latino” and “Hispanic” are used interchangeably and include individuals who self-identify as Chicano, Latino, and/or Hispanic.

³ The rationale for including UVA Law School is that it serves as an analytic “control” group for its peer institutions—UCB and UMI law schools—since it continues to employ affirmative action admissions.

⁴ Notwithstanding the importance of *Hopwood v. Texas* (1996) on race-based admissions policies in higher education, this study excluded the University of Texas Law School in its analysis for two reasons: (1) the study focuses on public law schools bound by legislative—rather than court-ordered—bans on affirmative action; (2) *Gratz* and *Grutter* rendered *Hopwood* legally void.

⁵ Hastings College of the Law, a University of California affiliated, public law school not governed by the UC Regents, is frequently excluded from analyses related to SP-1 and Proposition 209 outcomes. The decision to include Hastings in this study was based on the following rationale: (1) the premise that Hastings, a popular California law school with a sizeable minority student body, is perceived by most applicants as a UC law school, rather than just an “affiliate”; (2) the tuition cost at Hastings is identical to that for Boalt, UCLA, and UC Davis law schools.

⁶ The Law School Admissions Council (LSAC) provided national application, admission, and enrollment data for this study. LSAC employs slightly different racial and ethnic categories than those used in this paper. For example, LSAC reports Mexican Americans, Puerto Ricans, and Hispanics as distinct ethnic groups. For a complete list of racial and ethnic groups used by LSAC, see the *ABA-LSAC Official Guide to ABA-Approved Law Schools 2006* or visit <http://www.lsac.org>. In some graphs, application totals do not match figures reported in text due to the elimination of racial and ethnic groups other than Asian, Hispanic, White, and Black.

⁷ The University of California was the first institution of higher education in the nation to abolish race-based tools in admission and recruitment. In 2001, the UC Regents voted to rescind SP-1 although Proposition 209 remains in effect.

Appendix 5A

Table 5A-1: National Law School Application Rates by Race/Ethnicity

Data Obtained from Law School Admissions Council (LSAC)—National Statistical Reports, 1994-2004

[Note: In 2000, LSAC altered its reporting format from academic year to entering year for JD programs.]

Applicant Group	1994-95	1995-96	1996-97	1997-98	1998-99	Fall 2000	Fall 2001	Fall 2002	Fall 2003	Fall 2004
All	84,305	76,687	72,340	71,726	74,380	74,550	77,235	90,853	99,504	100,604
Percent change	--	-9%	-5%	0%	0%	0%	4%	18%	10%	1%
American Indian/ Alaskan Native	814	706	642	601	644	609	577	637	737	781
Percent of pool	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
Black/ African American	9,560	8,830	8,273	8,216	8,375	8,503	8,648	9,703	10,604	10,674
Percent of pool	11%	12%	11%	11%	11%	11%	11%	11%	11%	11%
Caucasian/ White	58,990	52,725	49,101	46,170	47,787	48,684	51,190	59,573	64,106	64,867
Percent of pool	70%	69%	68%	64%	64%	65%	66%	66%	64%	64%
All Latino	6,018	5,761	5,770	6,076	6,207	6,219	6,325	7,066	7,780	7,969
Percent of pool	7%	8%	8%	8%	8%	8%	8%	8%	8%	8%
Asian/ Pacific Islander	5,402	5,157	4,866	4,942	5,074	5,278	5,527	6,965	8,059	8,568
Percent of pool	6%	7%	7%	7%	7%	7%	7%	8%	8%	9%

Table 5A-2: National Law School Matriculation Rates by Race/Ethnicity

Data Obtained from LSAC—Individual Year National Decision Profiles, 1994-2004

[Note: In 2000, LSAC altered its reporting format from academic year to entering year for JD programs.]

Matriculant Group	1994-95	1995-96	1996-97	1997-98	1998-99	Fall 2000	Fall 2001	Fall 2002	Fall 2003	Fall 2004
All	42,151	42,071	41,568	41,523	42,163	41,227	42,719	45,992	46,176	45,388
All - matr rate	80.7%	81.5%	82.5%	82.6%	82.3%	82.0%	82.5%	81.4%	81.3%	81.1%
American Indian/ Alaskan Native	389	360	324	323	309	310	304	295	323	350
Am Ind - matr rate	84.4%	85.7%	80.2%	82.6%	80.1%	80.9%	82.6%	78.0%	81.8%	82.2%
Black/ African American	3,315	3,122	3,027	3,262	3,192	3,096	3,110	3,088	3,040	3,101
Black - matr rate	86.0%	84.7%	83.9%	84.2%	83.2%	83.3%	82.5%	82.0%	83.8%	83.4%
Caucasian/ White	31,858	31,653	31,040	29,395	29,657	29,853	31,236	33,411	32,707	31,747
White - matr rate	80.4%	81.3%	82.7%	82.7%	82.5%	82.3%	82.9%	82.2%	81.3%	81.1%
Chicano/ Mexican American	701	751	737	860	786	711	701	697	702	652
Mex Am - matr rate	87.2%	86.2%	84.6%	85.2%	84.0%	83.9%	83.1%	83.5%	86.0%	86.0%
Hispanic/ Latino	1,272	1,323	1,406	1,373	1,497	1,490	1,510	1,543	1,742	1,772
Hisp - matr rate	82.3%	84.4%	85.9%	84.2%	83.4%	82.8%	83.5%	80.2%	80.7%	81.6%
Asian/ Pacific Islander	2,614	2,781	2,677	2,856	2,835	2,875	2,996	3,456	3,682	3,797
Asian - matr rate	77.4%	79.6%	78.7%	80.4%	80.2%	80.1%	80.0%	79.1%	79.9%	79.0%
Puerto Rican	587	552	569	431	615	576	789	741	778	767
PR - matr rate	83.4%	80.5%	86.2%	83.2%	82.4%	81.5%	84.5%	86.2%	86.9%	86.4%

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