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WORKSHOP

Number 2

“THE SEARCH FOR TALENT: THE ADMISSIONS PROCESS AND AFFIRMATIVE ACTION”

Ralph R. Smith, Discussion Leader

Walter J. Leonard

Cruz Reynoso

Discussion Leader — Ralph R. Smith, Associate Professor of Law, University of Pennsylvania, Visiting Assistant Professor of Law, Boston College Law School

SMITH: The first thing I should do is thank those of you who came out this early in the morning. I am not a morning person myself so I understand the nature of the sacrifice.

The comments, considerations and concerns given voice for the duration of this conference are particularly important as we now move to the question of admissions to institutions of higher learning. As we go from the blue collar surroundings of the factories to the more rarefied atmosphere of academia we notice that the quality and ideological make-up of the opposition undergoes a remarkable transformation. And the stridency increases geometrically. Affirmative action is crucified, accused of the treasonous undermining of meritocracy, indicted for promoting reverse discrimination, and convicted of resurrecting the totally discredited notion of quotas.

These charges, serious as they are, surprised many of us. We had watched as institutions of higher learning admitted and served as farm clubs and training camps for future professional athletes. And had not heard any protest.

And why should we? Preferential admission was not only practiced it was commended, recommended and encouraged.

Permit me to read an excerpt from a draft of the 1974 Annual Report of the Chairman of Section on Minority Groups of the Association of American Law Schools.

Illustrative of the fact is the history of admission and graduation at the Washington State Law School where *DeFunis* arose. Between 1902 and 1969 the Washington law school graduated 3800 white students and 12 blacks. The record does not show how many white students with less than spectacular records were admitted when white students with more attractive record(s) were being denied. The record does not show any protest by white students against the admission of other white students. The record does not show any white students of western European stock contesting the admission of a white student of eastern European stock. Nor do we see on the record any protest by Catholic against Protestant, Jews against Gentiles, or any white student against any other white

student, regardless of the academic record involved. No! It is only when more than an absolutely insignificant number of minority students began to compete for spaces to which white students and their parents (because they never had to compete with minorities for anything) felt that they *merited* by the accident of their birth and the color of their skin, that we notice the hue and cry.

The hue and cry has been divisive and obstructionist. But even more important by forcing entrenchment and retrenchment, it has had a chilling effect on a necessary dialogue. It has effectively obfuscated fundamental issues and sidetracked the efforts and energies of many into defending the hard won gains. And in so doing it has obscured some of its own most cogent arguments.

Let me posit a few questions which I hope we get to this morning and if we don't, that we can take away with us.

Is the alleged tension between meritocracy and affirmative action more apparent than real? Is there a true conflict? Or are we merely shadow boxing? In attempting to answer that question it is important to understand that any prolonged or institutionalized disincentive to individual achievement is to no one's benefit and everyone's detriment.

To what extent does the admissions process represent an attempted allocation of a scarce resource? And as corollary questions: is the scarcity temporary or permanent? Real or artificial? What additional considerations would scarcity add to the matrix? Are the operative concepts of affirmative action the same in the allocation situation as it would be in an otherwise normal process of de-selection? How should affirmative action in the admissions context be viewed? Should it merely consist of removing from the process those elements designed to have an invidious effect? Should it then require implementation of oversight machinery to prevent a resurgence? Should it be viewed as expanding the class of those historically afforded preferential treatment by expanding the number of factors considered? Should it require a thorough overhaul of the process? A devising of more comprehensive systems of neutral criteria? Criteria which are neutral not in the superficial sense which merely preserves the status quo, but criteria which will be neutral in the sense of truly reflecting an individual's potential worth and achievement.

Is affirmative action in the context of admissions remedial in nature in that it is invoked by demonstrating present or past discrimination? Or does affirmative action in this context merely look to the future and posit the necessity for a well-rounded citizenry who has not only been exposed to the sciences and the arts, but to each other?

Is it true that to the extent affirmative action in general (and affirmative action in the context of admissions in particular) tends to support the use of race for benign purposes it carries with it the risk of malignancy?

Is affirmative action a concept which must practically, morally, and intellectually be programmed to self-destruct?

Like the law professor that I am, I have offered the questions, but not the answers. However, unlike the typical law class these questions are not posed for the purpose of facilitating the development of analytical skills. The answers to these questions are important. They are important for a

reason I think the opposition understands consciously, unconsciously or subconsciously.

The educational institution is society's Achilles heel. And while the war may not be won here, it may be lost.

I believe that the opposition realizes that affirmative action in the educational sphere will do more than remedy past inequities. It will do more than enhance the education of all students. It will fundamentally affect the ability of the society to retreat from those concessions which were extracted at such horrendous costs.

And finally, if lack of concern and benign neglect have not yet fully matured into a full, unconditional and absolute retreat, it is only because dents have been made in this institution providing a forum and an audience from which solitary voices may cry out to stem the tide.

The next panelist is Mr. Cruz Reynoso who is Professor of Law at the University of New Mexico Law School and Chairman of the Council on Legal Education Opportunity (CLEO). Professor Reynoso.

REYNOSO: Thank you very much. Ralph has been posing some of the really difficult questions in terms of affirmative action or in terms of the affirmative recruiting of minority students that we ought to address after my opening remarks. Like Ralph, I am in the law field, so my samples will come from the law schools, but I think that they can be utilized in all walks of academic life. I understand that most of you no doubt are not involved with law schools but simply with higher education and the problems involved.

As a former fellow lawyer used to say, "I want to make one thing perfectly clear" that in seeking minorities, certainly from the lawyer's point of view and I think from other walks of academic life, it is, as the title of this discussion says, a search for talent. Every discussion that I get involved in that suggests it's less than that in the context of my experience, is an erroneous suggestion. I think that we have to put some of these problems in a little bit of historical perspective, and to give you that historical perspective, I would like to go back to December, 1965.

You will recall that by December, 1965, the civil rights movement was in full swing and there were many observers of the American scene that were more than a little disturbed that Black people in the South could not find competent legal representation, oftentimes because the bar was unwilling to represent those "trouble-making" people down there. This was dramatized by the few number of Black lawyers. It seems to me that when we talk about talent or excellence we are talking about what the bar was doing to represent the Black people in the South who needed that representation in 1965.

About that time the war on poverty was just getting started. No more than a couple of years after the date I have given you, I joined one of the leading poverty law firms, California Rural Legal Assistance, as its director. At the time I joined it we had about 40 lawyers, only three were Chicano even though about 60% of our clientele, perhaps 65% were Spanish-speaking, mostly farm workers and a large number of them were monolingual Spanish-speaking. To do a competent, lawyerly job, to have good lawyers, to have talent, we needed people, and by people I mean lawyers

who understood the problems of our clients, and who were then therefore able to do a better professional job for them. Again it reached the public's eye that the law schools and the bar had done little to train lawyers that could do a competent professional job for our clients—as competent as could be done if there was a real understanding of the folk whom we represented—our clients.

Keep those two historical happenings in mind when I read to you two portions of two paragraphs from the Presidential Address to the General Meeting of the Association of American Law School on December 28, 1965. This is what he said, "Many people have tried to assess the implications of the student riots. As far as I know nothing like them has occurred in law schools. (This was obviously before Cambodia.) I do not detect any kind of political unrest among our students. In most of our schools the classroom relations between students and faculty are good. Perhaps our students recognize that there are overriding interests, professional interests outside the school." The talk is concluded in this fashion, "Fortunately for us our problems exist within a narrow compass, we can patch up and we can do a lot as individuals. The times have been good to us. Many recruits are coming to us as law students and teachers. Other men in the profession are seeking our guidance. A law teacher can build a good life for himself. Legal education never had it so good, let us not spoil it."

Well, some folk were not quite as happy as the President of the AALS was with the role of law schools, among those were the minorities. In 1965-66 we think that somewhat under 2% of the law students were minorities. I say we think because the law schools, being non-discriminators, did not keep figures on minorities. And the 2% includes all of the Blacks in Black Law schools. By 1967-68, when some of the figures began to be compiled, we started getting a little bit more accurate showing of the number of minorities and by that time it had gone up perhaps slightly. Let me read you the figures that we have of what the minority representation was in the law schools in 1967-68: Blacks 1,252; American Indians 32 (I think that figure is exaggerated on American Indians); Puerto Ricans 69; Chicanos 180; other Latins 81. Now, a lot has happened since 1967-68. I will come back to that in a minute. A lot of other things haven't happened that I think perhaps should have happened. But we have had what some folk would deem a dramatic increase in the number of minorities in law schools since that time. It is true that the number of students itself has gone up dramatically as compared between 1967-68 and the figures I am about to give you for 1972-73. About 7% of the law students today are minority and the breakdown goes something like this: Black 4,817 in contrast to 1200 in 67-68; American Indian 222 in contrast to 32; Puerto Rican 180 in contrast to 69, this is "mainland Puerto Rican;" Chicano 1,259 in contrast to 180; other Hispano 281 in contrast to 81; and we have a new figure of Asian Americans 850 which was not incorporated in the initial figures. So we have an increase. Percentage-wise a rather dramatic increase in the number of minority students in terms of what we used to have in minorities—not dramatic at all in terms of what I think it ought to be.

I will just cite one example because I have been doing a study. The

Chicano presently finds itself at about a 1% level of law students as compared to the over 106,000 law students in accredited law schools in this country. Now during the time from 1967-68 to 1973-74, well there is some question on 73-74, I was going to say we at least have had the notion that the law schools and higher education ought to do better by minorities. I have some question on 1973-74 as I will indicate because we appear to be having some very disturbing changes for the last year or so.

What were the problems that were encountered in terms of minorities getting into law schools in greater numbers? I will just mention two of the more obvious ones. One simply is the matter of finances. It is expensive to get an education. Most minorities come from families that don't have the finances. If we are going to be doing better by minorities it obviously means that we have to do better in terms of supporting the minorities that go to law school. Perhaps it seems relatively obvious but I think it is worth repeating. Secondly, from the point of view of the law schools, the law school admissions test became a problem because too many law schools were admitting students placing too great an emphasis, in my view, on the law school admission test results and were simply admitting people who ended up with the highest grades. That was viewed by many admissions officers as "qualifications". I will come back to that notion in a minute but I mention that only as a problem.

Since those were posed as problems and they were real administrative problems in terms of how to get minorities into law schools; there were a series of programs developed throughout the country on how to get minorities into law schools. I would like to mention just one of those, the one that I am most closely associated with and that is the Council on Legal Education Opportunity, CLEO. That Council was established in 1967-68. Its first summer institutes were in 1968. The first question that was posed to CLEO was this: Are minorities interested in going to law school? I suppose you can translate that into, are minorities interested in being physicists, and so on. There appeared to be serious question in 1968 about whether minorities, for a variety of reasons, were interested in going to law school. Included among the reasons I heard discussed was the fact that minorities often saw the law, lawyers, judges and so on as the "enemy" particularly the minorities coming from barrios and ghettos. All of this seems like fine discussion. The reality is, and I think has been that minorities in fact are interested in bettering themselves, are interested in getting a higher education, and are interested in law.

The process was to have a Summer Institute, have students go to the Institute and if they did well try to get them into law school. One of these Institutes was in Los Angeles, out at UCLA. It was sponsored by three Southern California law schools, Loyola, USC and UCLA. As happens when you have foundation or government funding, things get started late. They only had a couple of months to advertise the fact that there was going to be such an Institute that was directed at poor and minority potential students at law schools and the advertising emphasized the Institute would work with them to overcome "traditional barriers" which really meant results in examination tests. With that in mind, the CLEO Institute and its sponsors, the three schools, advertised in student papers and the press at

large saying that there was going to be this Institute. And I think it is interesting that while they had only 42 positions for students in that Institute they in a matter of no more than a couple of months came up with over 300 applicants. It seems to me that this little incident shows what I have long felt and that is simply that the interest is there, it is only a matter of opportunity. As a matter of fact, last year in CLEO we had the funds for only about 200 CLEO students—students who will go to a summer Institute and hopefully will go in to a law school. We had last year 2,097 applications for those 200 positions. So 10 to 1. All of this is simply by saying that there is that interest.

Now, what has the experience of CLEO been. Since it began about 1,300 students have gone through the CLEO Institutes and ended up in law school. Now the focus of CLEO has been this, we want to get students, poor and minority students into law school who would not otherwise make it into law school, and who we think are needed in the profession. Practically what that has meant is that we had a dual consideration because there has been a stipend for the students. One, the students needed to be poor, that is have a financial need. Two, they needed to have an educational need. And an educational need has essentially been defined as they wouldn't get into law school but for a CLEO program. It has meant certainly in the last few years that we have taken students into the CLEO Summer Institutes who had lower grades and particularly lower LSAT scores who otherwise would not have been admitted into law school. They have then gone through a Summer Institute, normally for six weeks, and then have gone into law school. I can certainly speak I think with some authority in terms of what's happened to the CLEO students in my own law school, the University of New Mexico. But figures tell us that the result has been about the same nation-wide. It has essentially been this, that the CLEO students, though they came into the law school with lower LSATs and were on a predictive factor in greater danger of not doing well in law school than other colleagues who came into law school, essentially CLEO students have done well. They have done at least as well as the national average. At my law school, they have done considerably better than that. So that CLEO has been one of those relatively isolated incidents in our educational experience that has provided an infusion into one professional type of training, law school, of folk who otherwise would never have made it there, and they have done well.

What does this mean in terms of the LSAT and other predictive factors that law schools utilize and that other schools at the graduate level, certainly many at the undergraduate level, utilize in terms of admitting folk into their schools? I am not prepared to say and I do not believe that those tests do not in fact contain a high element of predictability on how well folk will do in those respective schools. I do say that with respect to a great number of students and I think experts in testing will acknowledge, and that is the type of academic testing that we have simply doesn't test everything that we need to know about that individual and his or her potential for doing well. And CLEO with whatever ingredients are there, perhaps we should discuss that later on, has shown that as to the folk that have been in CLEO, the LSAT has not been a good predictor and they have done well in law school. More importantly perhaps, nobody who works on the ETS or the LSAT has ever

said that those tests are meant to test how well these folk will do professionally once they get out of law school. There has simply been no attempt at testing that. A few days ago I attended some sessions in San Francisco where some folk are getting together to put together a team to investigate what a lawyer does and how you can go about testing what a lawyer does. There has been practically no effort at that, so I just want to make clear that we aren't talking about how well these folk will do as professionals.

Now let me give you a couple of examples of what has happened. I mentioned to you the year was 1968 when I joined the California Rural Legal Assistance. At that time, three of our lawyers were Spanish-speaking, were Chicano, and could relate because of that at least it seemed to me, particularly well to our farm worker community clientele. By last year, approximately half of the lawyers in CRLA were Chicano and most of them had graduated from law school and passed the bar, but too, and more importantly from our perspective of people who get into law schools, those lawyers, most of them went to law school through some of these "special" programs and are now lawyers, and are now representing our clients, I think better than many of us were able to some years back.

There was one program that began just one year before CLEO and then became a part of CLEO. There were ten students who went to that program; it was at the University of Denver. Of those ten who graduated, eight are now members of the bar and I am really fascinated by what happened to those ten. Let me just read to you this short paragraph from an article a couple of colleagues and I have written about what happened to those folk. "All ten successfully completed law school, two on an accelerated 2½ year program, eight in the normal three years. Eight of the ten are now members of the bar. Two are private practitioners, two are legal aid attorneys, one, the executive director of a large rural legal services program, not CRLA, and the other a staff attorney in another program. Two are with the Equal Employment Opportunity Commission, one an assistant to the commissioner and the other a staff attorney in an EEOC litigation center. One is a deputy clerk of the United States Supreme Court, and one is a law professor and assistant dean. Each of the foregoing members of the bar could not have attended law school under established numerical predictive criteria. Each had strong motivations to succeed. Each continues to better the life of the Chicano community professionally and each is making a distinct contribution to society." So those are folk who would not even have made it into law school as students but for these programs. There is obviously a cost factor in these programs—psychological cost factor that I think we need to discuss a little bit later on. For now, I'd just like to make two final points before we get into the discussion or have other presentations.

One is the matter that I mentioned of retrenchment. *Minority Newsletter* that comes to the Law Schools indicates that the "rate of growth" has materially diminished the last year. Now that does not mean that the absolute number of minorities in law school has gone down. It means that we have a modest increase in minorities and the increase has gone down from modest to less than modest. I think this is reflective of the type of discussion that I have been involved in with many of my colleagues and with

law students the last couple of years. We were chatting just before coming here that nowadays when minority students see that the number of minorities hasn't gone down in law schools from last year to this, we consider it a success story. Three or four years ago, the fact that there might not have been an increase would have been considered a fighting expectation or "fighting words" to the minority students at law schools. That is, more was expected from law schools than simply to keep the numbers the same. Unfortunately I see that sort of retrenchment.

Secondly, I see an antagonism. There is an antagonism to the notion of affirmative hiring in institutes of higher education because you are no longer dealing with plumbers and folk like that who are easy to find we are told. We are dealing with folk with higher training of whom there are fewer trained in the minority community, etc. But essentially there is a far greater antagonism to the simple notion of affirmative hiring—and I see that same sort of concern with respect to affirmative recruiting of minority students. I am intrigued by that.

We were chatting just before the session here that if in fact minority hiring has a difficult element involved in it, that there aren't a sufficient number of minorities trained as Ph.D.'s and doctors and so on, presumably we ought to be doing better in terms of getting those minorities into law schools and other professional schools so that the training can be there. But a major part of the antagonism to affirmative action I have found is an antagonism to affirmative recruiting of students. So I just ask you whether or not we aren't dealing with some of the basic philosophical questions that Ralph was mentioning a little bit earlier.

A few days ago, I was taking a look through some old *Los Angeles Times* (newspapers) and there was a report there about the affirmative hiring plan that the University of California system has presented to HEW. The plan has goals and timetables. The goals and timetables, however, are restricted by this notion that the ideal representation on the professional staffs ought to be proportionate to the representation of females and minorities in those professions. Thus for example, if only 7% of all the lawyers are women, if you have 7% women on your faculty, you are doing ideally well. If there are 8% you are discriminating in their favor and that would be a no-no under that plan presumably. Further, if you find .001% Blacks who are physicists, if you have that percentage reflected on your staff, you are doing well. While I personally reject that notion, I must say because I think that we in education must be leaders in this field, nonetheless, it does point to the importance of expanding that professional pool. Incidentally, last year we had circulated from somebody at the University level, the University of New Mexico, a memo that was making this point and broke professions down. At that point I think the memo said that women were represented something under 5% of the legal profession, and we at that time had one woman professor out of 20. According to that memo we were over-represented by women. Since that time we have hired three more, now we have four out of 20 and whoever wrote that memo would be certainly shocked by our reverse discrimination, I suppose. But that is important.

I just want to relate the problems of recruiting students to the

professional hiring. I believe that you are dealing with this. If the will is not there to hire affirmatively—about the only thing that HEW or school administrators can do is to set up check points to make sure that folk who are not favorable to the notion of affirmative hiring have to overcome certain hurdles before they can discriminate. Just for example, your university recently adopted a rather complicated system to implement affirmative hiring, you need to have hiring committees, you need to advertise, to interview, you need to do all kinds of things which I suggest to you are there probably justifiably because HEW is suspicious on the basis of the few number of minorities you have on your professional staff that the will to do affirmative hiring is not there.

I was chatting with our Dean the other day and he said, "You know, it is amazing, all of those things we talked about in terms of affirmative hiring, how you have got to do this and how you have got to do that, and how you have got to advertise, and how you have got to interview all those people and so on," he said, "you know it is all very silly. If it is a high enough priority with you," he says, "I think normally you will find a way of doing it." Now, that is too broad a statement, I think for some of the professions. And I say that only because I don't know the other professions. I agree with that statement in terms of the legal profession. That is, even though women and minorities represent such a small number of the legal profession, I believe that any law school, I believe that the teaching profession is attractive enough that any law school that wants to hire a sufficient number of minorities and women can find them. I just want to cite my own law school as an example.

We determined a few years back, about three years ago, that we were going to have an affirmative hiring plan, and the plan was this, it's a very simple plan. That at least 50% of all the new hires would be women or minorities. I have been on the hiring committee. So, therefore, when we get together and we talk about people, you know, and we talk about their credentials, and all this business about you only hire numbers one and two out of law schools to go into the legal profession, it ain't true. You know, as a matter of fact, of the people that we hired and have been doing some teaching, I don't know how well they did in law school. You know, all we really know is that they come to us with a good reputation. We check out people that know them, and if they are good people, you know, if they are the best people that we have interviewed—and we don't interview everybody who is in the labor market—we hire them. It is a very informal sort of thing.

You have heard a lot said about the buddy system. In New Mexico we call it the "good ole boy" system. Whatever system it is, it is very informal. I am relatively new to teaching, this is my third year. You folk are far more expert at it but I have been taken aback by how informal it is.

We decided that we needed, that we really ought to look seriously at women at a certain point and we looked around and we found in Albuquerque, where my university is, a lady who had graduated from our law school about 10 years before, number one in her class, had been a top practitioner and a judge in our community, and a person that apparently our law school had never looked seriously at hiring who had all of the paper credentials. So we considered her but we didn't hire her. We found

somebody else, another woman in Albuquerque whom we thought had higher credentials and we hired a woman. Since that time, we now have four women on our faculty, fine. And too, we looked around, 40% of our population in New Mexico is Chicano and we started out with zero Chicanos, now we have three Chicanos and one Chicana on the faculty. Remember we have approximately 20 full-time faculty. All of this has happened in about three years, since I think the will to do something about it became a reality. Now even assuming a will, there are many, many problems that I think we ought to talk about, and Ralph you just started mentioning those, but I just want to mention to you at least one place where I think we have been able to do some good and we ought to explore whether that possibility also exists in your institution.

SMITH: Professor Ravenell could not make it, however, I was able to impose upon a staff member to share with us the perspective and insight he has gained from his experiences as Assistant Dean at Howard University and a Dean here at Harvard University Law School, a position which he now holds hostage, I understand. So I will ask Walter Leonard to join us down here and to share with us a few comments.

LEONARD: With regard to the admissions process, let me just be very brief. There is only one way to get students into schools and that is to admit them. All of the conversation, all of the discussion around what people do, and how they will do, all of that is absolute verbiage and surplusage. The only way to get students into school is to admit them. The only way to get people out at the other end is to let them matriculate and not to engage in the ABD syndrome, all-about-the-degree. Consequently, one must ask at the outset—what are we looking for in students? It seems to me there are about six things, or I would say five that we are looking for.

The first question that we should raise with ourselves as admissions officers, as we look at folders, as we talk to students—and I take the position that we don't really recruit students, we counsel with students about the institution which we represent or with respect to the discipline that the student may consider entering—as we counsel the students about institutions, the first question that should come to our mind is this: based on what we see before us, and based on our own experience, can this student, can this person do the required academic work at my institution? That is the essential question—can this student, based on the record I see before me and based on my experience, based on my knowledge of the institution—can this student do the work at my institution? Secondly, and usually you will find in any admissions process something that asks the student, how did you do in college, particularly if we are looking at the graduate school level, or if you are looking at the undergraduate school level, how did that student do in high school? Now how and why is that most important? If the student is going into a professional school and has finished college, the collective judgment of the student's professors, and if a student has taken a normal load there are at least 32 professors who have at some time or another evaluated that student. The collective judgment of that group of professors is far more important than the next element that I am going to talk about.

The next element is how did the student do on the national test.

Remember now, the national test is controlled by someone who does not answer to anybody. Someone who is totally unregulated but who will have control over your future movement. Still how did that student do on the national test? Remembering that the national test does in fact, as Cruz said, measure something, but with respect to law school, the national test is intended only to determine or predict how the student will do during his first year. It does not say anything about how that student will do during his/her second or third year. How will the student perform during the first year, and even then, under a given set of circumstances? Given the fact that there are about 160 different law schools, it is impossible then to predict how the student is going to do at even one law school vis-a-vis another law school. You take that factor into consideration.

The other thing is, there is a "practice" factor. DeFunis, for example, took the examination three times. ETS will tell you that there is a practice factor in taking the examination, of 50 to 75 points. The first time he took the examination he had a score of 512. That is below most minority students. That's amazing isn't it? Then he took it again and he got a few more points and finally he got 600 and something. Well, now based on what one would consider the national average—if one were going to look for an absolute genius—on that continuum, DeFunis was dumb. But how did the student do on the national test?

The fourth factor is what background did this student come from? How did the student survive to this point? What elements of strength can we see from this student's background that caused this person to reach this level where he or she is now knocking on either the college door or the door to the graduate schools. To what extent then, can we extrapolate from these factors elements which may well modify the graduate examination, or the national exam, or the performance in school?

Lastly, there is usually an optional section in applications where students may well write in about himself or herself. How would this student at this point in his or her life handle main stream vocabulary? Since most things are written in major stream vocabulary, how does this student handle a factual situation; that factual situation being his or her life to that point? And then can we, based on our judgment, determine how much teaching it is going to take within our institution to move that student to a point where we would expect our students to be? I want to emphasize "how much teaching it will take," because too often admissions officers look for students who don't need to be taught. Bring people into institutions and give them the bibliography, give them the reading list, tell them you don't have to go to class, in fact many professors don't go to class, anyway you say, "Look, you don't have to go to class, just take and read this and come back and sit for the examination." Well we are visiting a fraud on the students if the student who needs to be taught and who can indeed enjoy learning from being taught, if we bring that student into a laissez-faire situation.

We put all of these factors together then we have what may well be a kind of composite of the individual. It seems to me then, that that is going to eliminate the kind of thing that DeFunis suggests. DeFunis suggests that all we need is a computer. It seems to me we are going to have to deal with people, with judgment. If we have people with good solid judgment, and as

Cruz and Ralph said, people who are committed to a heterogenous and pluralistic class situation, we can find people. I shall add up the score, you've got my six pints.

Before I move on let me mention this whole question about the displacement of people at institutions by the admission of minority students. Now we will use Cruz' law school as an example for figures. In 1964 there were 65,000 full-time law students in the United States, approximately 700 minorities, so there were 63,300 approximately, white students. In 1973-74 there were 106,000 full-time law students in this country; less than 8,000 minority, which means then that there was a net gain in that period, a net gain of more than 35,000 white law students. Now, I just raise the question with you, who was displaced? Where was the preferential treatment? I just raise those two questions in the admissions process.

But lastly, on the national test score—the national test score, by evaluating an entire society as pluralistic as this society is, and let's remember that it has never been a melting pot—(to some extent we have developed a stew theory—now everyone knows the stew theory. You put various kinds of food into a pot and you make a stew, but they always remain independent and individual. But there hasn't been any melting pot, we had a stew)—considering that then, if we were to give the test to a controlled group of students from Scarsdale, or a controlled group of students from Bronxville, which is really Yonkers but since they don't permit some people to live in that area they call it Bronxville, it's really Yonkers—a controlled group of students from Boston and a controlled group of students from Shaker Heights and another controlled group from Weston and we give that test to them then a vis-à-vis each other they determine the best of the group based on that national test. Now it becomes unfair to take a group of students from a barrio outside of Los Angeles or Austin or Albuquerque, or take a group of students from Alabama, from Fairfield, Alabama, or from Savannah, Georgia, give them that same test and then on the basis of the students in Scarsdale and Shaker Heights and Weston and Bronxville, you say oh yes, you see, you are not as smart as they are. It becomes a fraud to say that one test within the United States is in fact geared to the norm of a pluralistic society. That is why it becomes necessary to have people rather than machines determine the admissions process, if you are in fact going to select the best people or the people with potential from various classes.

With those remarks I will stop and I will be happy to answer any questions.

QUESTION: How do you answer a faculty which says, your argument is fine for the two or three who we concede might do well if admitted? They are really looking for that sharpest cutting edge line to prove what the results will be and trying to keep some sort of their own community. They give you that argument, how do you come back at it?

LEONARD: Well, there are a couple of ways that I attempt to deal with that argument. In the first instance, the whole thing borders on the term that has been quoted in academia, meritocracy. I think we ought to examine that. For many, many years people merited positions because they were born in

the right family, or they were born with the right skin color, or their fathers or their mothers went to the right institution, or their parents happened to be the earlier invaders of the country and they have taken as much as they wanted, and then passed laws against stealing; so that as a consequence they merited position because of their parents and because of their history. So we want to deal with meritocracy.

Does an institution, based on what I consider all institutions to be, public trusts . . . I don't consider anybody owning Harvard, Harvard, like others, is a public trust. Does an institution as a public trust have an obligation to go beyond the old concepts and myths of merit? Now you are dealing with people who resist change. You are also dealing with people who are conscious to the consciousness of kind. They want people to look like them, talk like them, walk like them, act like them. They want people whose background is very similar to theirs. Then there is no shock to the system when they invite such people in. My response to the suggestion that is made is this: To the extent that we do not expand the opportunities and expand the doors for individuals who are dissimilar in background and skin color—to that extent we are violating a public trust as an institution of higher learning.

The only place, the only place that people are going to get the credentials that they need are in these institutions. We are the only ones who can sanction that. There is no other place that gives Ph.D.'s but a college or a university. There is no other place they can get it. There is no other place that one can get a terminal degree but a university. To the extent that we do not include these people, and the public funds aside, then we are violating the public trust. Now that catches on with some people, but not all. There are others who come back and say, if the person has the background we will take them. Well, what do you mean by background, what are you looking for in an individual? Are you looking for someone whom you don't need to teach? Are you looking for someone who is going to be a partner in your laboratory, or someone who is going to serve as editor of your book, or a junior editor who is going to be an unpaid editorial assistant? Or are you looking for someone who wants to gather something from the discipline? This is the only argument that I can give, aside from getting into the question of funds and budgeting. So you try with the moral argument and you try hard. It works for some people, others it has not.

COMMENT: Some faculties though have dared to say that statistical measurements, Phi Beta Kappa key and so on, really don't make very good predictors for value as to whether this kid is going to be one of the most exciting kids to ever be in this seminar. One technique that somebody tried was to ask a group of faculty to think in their minds, who stands out as ten of the most exciting graduate students they have had over the past five to seven years, and it turned out they weren't the ones with the GRE's necessarily, in the 99 percentile, or the Phi Beta Kappa keys. They had qualities, perhaps an irreverence, but it all seems to tend to stand out, but it turned out to be one of the most provocative kids in the whole class.

LEONARD: Let me give you an example. We, one of our departments—I won't name the department, one of our departments—only had allocated so

many spaces under the Dean's allocation of funds for graduate students, and they had approximately five applicants for every one of those spaces, and as they ranked students for admissions purposes, there weren't any women, there weren't any minority students within the top 70. Consequently they would never get to them. I raised the question: Have you ever accepted anyone from the lower level, because after interviewing that student you thought it might be a good person to go to lunch with? It seemed a very simple question to me. But one member of the department said yes. So, I said well then why can't you do the same thing in selecting this person because it may be someone of quality. It happened to work, we got two women and two minority students in that department. Two years later one of the professors in the department said, those are some of the sharpest people, where did they come from?

CRUZ: Could I just give the example of our law school in terms of similar sort of problems? As you know in law schools you have so many applicants that you are picking only the people who are "most qualified." Right? These are the people you admit in to law school. All others you exclude. CLEO was there with some Federal money with some notion that most law schools sort of thought was right. So in our law school regrettably in terms of the minorities we had a big gap (traditionally "qualified" students and traditionally "unqualified"). Two years ago they decided that minority students up in this level ought not to be excluded even if they weren't CLEO material. So they started including some more minority students there. That gave the law school enough experience so that this year even though the admissions committee hasn't quite said exactly what it is going to do it is going this way in terms of the discussion: "We will decide what the mark-up is, where we think folk have a good chance of making it through law school." Maybe it's around a certain score on the law school admissions test. And everybody who is above that, we are going to consider eligible for our law school. Then we are going to take a look at their biographies, we are going to ask them for essays and recommendations and all the other things that the last two years the law school hasn't wanted because they didn't have the personnel to go into it. We are going to say we are just going to take the time to go through them and we are going to look at the many factors: where do the people come from, particularly New Mexico—small community; big community; what's their race; what's their ethnicity; what's their sex; what's their economic standing; what high school did they graduate from; all of those sort of things to come out with a notion of does the person (1) have a good chance of being a good law student, and (2) have a good chance of being a good lawyer and if the trend goes as the discussions are now going, they are also looking for that kind of breakdown that the committee feels the profession needs. Right now in New Mexico I think we have 0% of Black lawyers, .01% of Indian lawyers, and 7% of Chicano lawyers in a population that is 40% Chicano, and maybe 10% other minority, about 50% minority, so we are not doing too well. The committee is going to look at some of those factors.

QUESTION: Mr. Reynoso or perhaps Walter, if you have 200 applicants for 20 places in a CLEO program how do you choose those 20?

REYNOSO: The decision-making is so diverse that it is difficult to tell you. The national administration of CLEO will leave it up to the directors of the summer programs whom they will admit. The Directors of the summer programs in turn want to be sure that most of the students that they accept will get admitted into law school. So many of the Directors will work with a consortium of law schools to assure that the persons will be admitted into law school assuming successful completion of the summer program. That means that, therefore, the director of the program works with the admissions officers.

QUESTION: The question is really how do you decide of those 200 students who don't have the normal qualifications which ones are most likely to succeed, granted all those things you are talking about?

REYNOSO: It is difficult to say how that decision is made. But I can tell you how that decision was made in one CLEO Institute that I was involved in. It went like this—CLEO said the range that we are looking at generally without absolute limits are LSAT's of between 325 and 525 because those folk can't get into law school normally, and people who are needy. Then we have minority representation in our own law school that dealt with the admissions committee and they had a list of people who were eligible and of those they looked again at their entire files. They looked at these people, hopefully the way these people will be looked at; they looked at their entire files, they looked at what their interests were and so on and tried to make a judgment. I think it is difficult to assess whether they are right or wrong in this judgment, but they try to make a judgment on whether the folk had a good chance of getting through law school and a good chance of being pretty good lawyers.

The concept of CLEO has not been a revolutionary one from the point of view of trying to change these institutions. It has taken more of a pragmatic notion, how do we get those students through the law school and out. Therefore of the students they consider, the question of whether or not the student has a chance of getting through law school, including writing skills and so on.

QUESTION: As a member of the CLEO committee making the selection what specifically do you look for as an indicator that a student would have success in your law school? You mentioned writing skills. Can you think of any other items that you, yourself, personally, view as a group leader of the probabilities for success for students with under 575 LSAT's?

REYNOSO: Perhaps a correction. I wasn't on the committee, but I worked so closely with them that I thought I was. They looked at, where did the person come from and family background.

QUESTION: What about that do you look for?

REYNOSO: If the person came from either from a poor, a non-professional, non-middle, non-upper middle class family, I think they looked at that and figured that if someone had done well as an undergraduate, for example, they had a better chance of making it through law school than if somebody wasn't that background and had done about the same. They

talked to people who knew the individual, particularly students in law school, to see what their motivation and desire was—the strength of their motivation and desire to get through law school. They looked at, as perhaps might be implied in my first statement, as to how they had done as undergraduates, not just how they did on LSAT. I think that was influential. They looked at the courses they took, to see what courses they took and how well they did in those courses again in terms of an individual being able to write pretty well and so on. They look at where in New Mexico, for example, they come from. If they come from a little town called Raton, which means “mouse,” they try to take that into account. If the committee was knowledgeable enough about New Mexico certainly they would know whether or not a person with a certain LSAT from a certain area perhaps was brighter than what the LSAT showed. So they looked at all of that “soft criteria” and the input of fellow students—not fellow students in terms of undergraduates, but students in the law school—who knew the individuals and said “We think that person would be good because of this, etc.” which was also influential in terms of the admissions committee.

LEONARD: There is another soft criteria and I guess I refer to it as toughness. It's something that there is no way to quantify.

QUESTION: I agree. How do you spot it?

LEONARD: Here's how we spot it. I sat on the Admissions Committee here at the Harvard Law School for 2½ years. For approximately 525 seats, we would receive 7,000 applications. If I were to categorize those applications, I could say that 60% of the students could do the work at Harvard, 60% of them. We began to apply this practice that I talked about. There were five members of the Admissions Committee. Every file was read by at least one member of the Admissions Committee. The second reading was usually done on at least, I would say 60% of those files. Let's begin with the fact that you have a committee which is knowledgeable about your institution or about your discipline, and you have got to confer on your admissions committee members some power of reasoning and judgment. At least 60% if not a few more, were read by at least two members of the committee. At least 50% were read by three members of the committee. That is when you begin to get into making the hard choices. You have 10 seats and 100 people all of whom, without any stretch of any imagination, are qualified. What we are dealing with now are qualified students, we are not dealing now with preferential treatment. Who is going to be preferred out of this pool of qualified students? A number of factors—do we have any students from Ohio in this group? Have we admitted any students from Ohio? Geographic distribution has been a criteria for a long time, it's not publicized, but it is. That may be one of the last things that we get to but I am just suggesting it. Is it likely that this individual will return to Raton, New Mexico where there is a lawyer shortage; and this comes into institutional pride and maybe elitism—should not there be an individual in that area with the training that a person will get from our institution? Furthermore, don't we want an alumnus there? I haven't gotten to the hard data yet, I am just going through the soft data. Who recommended this person to us? Let me see the letters that came in on this individual. What do

they say about him? Now, not just whether they were big names, because we weren't impressed with big names. But what did people say about the person who knew the person?

COMMENT: But we are talking about New York City kids who come out of these vast high schools—what kind of recommendations do they get?

LEONARD: Well, I know what kind of recommendations they get.

COMMENT: Well, I mean, people don't know them

LEONARD: Well let me suggest something here about what we know from Harvard College. Now, this was involved in the filing of the *DeFunis* brief. Harvard could have filled maybe three classes and never left the northeast United States—but then we would have had what rather would have amounted to a sterile situation. We also found that a great number of people, whom we thought would have benefited from Harvard—we are talking about students who qualify, I want to keep that out—a number of people who would have benefited from what we consider a Harvard education, never would have been admitted. Secondly, we found that the thrust of *DeFunis* would defeat the integrity of the admissions process. It would destroy flexibility. It would not permit us to “take a chance” on a student from Alaska because that student didn't have the national credentials, yet we thought there ought to be students from Alaska trained in the institution. Letters may be almost non-existent with respect to a number of these students. We have an aggressive admissions office. The admissions office is aggressive enough to see a student and see where this student is from and want to find out more about that student and will affirmatively, on its own motion, seek information about certain students which will help the admissions committee to make up its mind. What I am suggesting is that where you don't have information on a student—now I recognize the financial problems involved with a lot of institutions who know they can't hire people to do all this, I understand all that. So again, I say Harvard is not really a good example because Harvard is blessed financially. But where you find a student or a few students and you don't have information on them, and they look attractive, there is nothing wrong with seeking additional information on those students if it will in fact help the heterogeneity of the class, if it will help diversify for racial purposes your class, and if you are trying to search to see if these students have potential.

Now when I said how these persons handle main stream vocabulary you are looking for (1) how much a student has progressed, as well as, based again on judgment, how much you think that person can progress, with good, good solid teaching, or the kind of good solid teaching that would be given in your institution. You can't give all one to one instruction and you can't give one to fifteen or one to twenty, you may be doing that person a disservice by admitting that person. Do you follow what I am saying? You know your institution.

QUESTION: Now with all the variables you present for Harvard Law School, by all that we have for as long as we have been doing this, you know Shaker Heights, or the kid from Shaker Heights, Ohio or Scottsdale, Arizona is no different from Bronxville or Scarsdale. So after, in my own

limited experience geographical use has been one of the greatest subterfuges for avoiding going into the place in New Mexico, Raton. There must be from your experience some of the human qualities that nobody is going to get measured or nobody from the Harvard Club is going to talk about: Guts, imagination, dominance, etc.

LEONARD: Well, I used the term toughness

REYNOSO: There are some human qualities that have been examined sometimes. For example, when the Admissions Committee talks to the Chicano law students, or Black law students, they will often urge that a certain candidate be admitted because of "commitment" to the community. All I am suggesting is that that is a human quality that is considered important, certainly by the students. So it is possible, I think, once you get to know your applicants moderately well, to start looking at those important qualities.

QUESTION: With reference to CLEO students and how successful they have been, do you have any statistics as to how the students who didn't have the benefit of these summer programs have adapted or progressed in law school once they were admitted?

REYNOSO: Law schools including my own, have even before CLEO and through CLEO admitted some folk who predicted poorly but who had special qualities. Thus for example, a fellow who just graduated from our law school who had had some sort of specialized training and he wanted to pick up a law degree and the admissions committee thought that was something that ought to be encouraged even though he did not predict to doing too well in law school. I would say that all such folk, minority or non-minority, CLEO or non-CLEO that get into law school nonetheless are relatively special. Relatively special in terms of their drive, in terms of their background, and so on. So I think that we have no data to answer the question you are asking—what a student who is not special who still predicts out at this level will do in law school as compared to those who got in. We just don't have that data. But for these exceptions there wouldn't even be data on the folk that we do have.

QUESTION: How important is the interview, the personal interview in generating thought on questions of motivation, attitude, the general thing other than scores that you are looking for to help you make that difficult decision?

REYNOSO: On a scale of from 1-10, assuming all 10 are all good, I put it at about 10. I personally don't think that a short interview, you know one after another tells you that much about a student and I say that only because I have been involved in hiring people. I remember going to Hastings one time and I had to see all of these folk we were going to hire for summer positions. I must have interviewed 20 people that day and after that I said that I would never do it again and never have done it again. You know, I had at the end of that time about a half page of notes on all those students and it meant practically nothing to me. The most important thing is to get to know your student. Interviews will help some if you get to know the student. But I

think more important is who the student is, where he comes from, what his background shows, and so on, if you know others who do know him, it's better to talk to those persons it seems to me in getting an assessment about that student. That's a personal point of view and I am not sure that any law school has a system of interviewing people straight down the line.

COMMENT: At Antioch School of Law in the District of Columbia, we interviewed with this entering class in the past September there, at least 85% of that entering class had been interviewed. Now, how much time did I as a person spend? We didn't farm out the applications true, to a person with 10 and a person with another 10. All six of us had all of them, first reading. And at first it took me 45 minutes to an hour and a half, it got a little better with more practice. How did we meet the toughness that Walter and others talked about? Give me three minutes in a room with a prospective student and I can tell you how tough or how weak that person is. Where did they come from, how did they survive up to that? And these computers, and these predicting scores and these statistics, too much of it is going on because I never knew a statistic to make up my mind. We had no LSAT cut off, period. I suspect it's the only one in the country. You told us about the kind of cut off's that you have at the University of New Mexico, but I don't think *DeFunis* is ever going to hit Antioch because it is not involved with that kind of thing. So motivation, and I suspect that if everyone of the persons representing schools in this room were to write to Antioch and ask for their application—there are 10 questions on there that are asked that anybody who is intelligent enough to read what the answers are in terms of the questions, you would find out if the person is motivated. Once you have the feeling that that is the kind of person you want, you set up an interview. But it is unfair to speak of Antioch in this context because it is a different kind of undertaking.

LEONARD: I think one thing we ought to know here. A number of institutions are attempting to be Harvard where Harvard was 10 years ago. I can say without equivocation and without anyone contradicting it I believe, that the Harvard Law School—and this applies to admissions in other areas in other schools, the undergraduate level—does not, does not adhere to the LSAT as the terribly important predictive factor that other institutions seem to suspect. Just doesn't do it. Now, maybe part of the reason it doesn't do it is because it has in the American scheme of things the power of name and prestige and consequently it can be arrogant, it doesn't care. It doesn't have to worry about what some institutions say about whether or not it took somebody with a 400 LSAT score, they would say well, Harvard can do that. But so can other institutions.

Now with respect to the undergraduate level, when the institution decides that it is going to be good for our student body to have people from various levels of prior performance within the student body and indeed that they stimulate our teaching, then the institutions can do that. It's done here.

Someone raised a question, well what about those students who were not special? Well, they weren't special because they were white. Unfortunately, students who have been selected on what is considered "bent criteria," if they are white students it is just a normal thing to admit them.

Now if they are minority students, then they are considered special and experimental. Students have been selected in this manner for years.

COMMENT: Mr. Leonard, then you are saying to me that the white students are also selected on bent criteria.

LEONARD: Well what do you do if you need a tuba player in your band?

QUESTION: Not in the professional schools though.

LEONARD: In the professional schools—let's get to that. I don't know where this would apply except that it would apply for most schools, I am not being specific. Let us suppose that Judge X's daughter has finished Sister's College and she decides she wants to enter the Y Law School—and I am not suggesting that it would be like the David Eisenhower situation at George Washington where there is just an absolute, blatant, disregard for the admissions process and the person is admitted and nobody screams—well one, he was white, second he was Nixon's son-in-law. The *DeFunis* case is about that by the way; even my good friends who pushed *DeFunis* were greatly concerned about that one. So I am not suggesting that kind of thing. Judge X's daughter wants to go to Y Law School. She applies. The Admissions Committee, even up to the Dean, says, "Well, certainly, this is Judge X's daughter, these scores don't mean anything, I know her background, she had a bad day on that Saturday, and besides who expects those scores to always be right. I know that girl, all right. She is admitted." It happens, it happens at almost every institution. One of the great scandals that we have going on now at about three medical schools is that the parents of some applicants have made gigantic grants, gifts to the medical schools. Then the student is admitted, the student receives a merit scholarship. One I understand was as high as \$15,000—\$15,000, a merit-need scholarship they called it. Out of the funds, well I won't say out of the funds because the families happened to make a grant of \$30,000.

COMMENT: Laundered through the university

LEONARD: Yes, you know, they just happened to make one of \$30,000. The student is admitted, the student even receives a scholarship. At this point nobody is raising a lot of stink about that. I am sure that there will be a lot of stink, but unfortunately we have that kind of thing. That is an extreme, but that happens.

COMMENT: Walter, I think it is clear in the questions and in the comments that there is something we haven't put our finger on yet and that is those decisions that well, that is Judge so and so's daughter I know her test scores don't mean anything. What you have is a majority group committee, with some reasonable inferences that experience has taught them are justified, making some judgment about the quality of toughness of an applicant. Now I think one of the points of the question that you and I have been asking is, at least what I have observed in our committees with a committee that is principally a majority group committee, those indicators are not as obvious for a majority group committee dealing with minority student applicants as they will be in dealing with majority student applicants. Now I have noticed the same thing in reverse dealing with minority

politics. I have observed in minority politics that it would be better to pick up cues in identifying that quality of experience and toughness in minority students in a majority college. But, one thing we need at a point where there has not been sufficient affirmative action employment to distribute minority colleagues in numbers that would be desirable, is some articulation from persons with some real skill in spotting these qualities in minority students, particularly those with limited backgrounds, CLEO students.

LEONARD: I could name maybe three sources that you might want to look at. I'm not suggesting these at all, but they would be helpful. At WICHE in California there was a study done of "Minority Students in Colleges and Universities: Expectations and Potential." It is about four years old. But it went through admissions, through graduation and placement, a number of very well delivered papers. It was published by WICHE and again it was "Minority Students in Colleges and Universities: Expectations and Potential." There is another study just completed by Bill Boyd, whom you heard yesterday, "Desegregating American Colleges" and it is published by Praeger Press. There is another study, it's a bit old now, but it was put out by the University of Toledo Law Review. Again it's about three or four years old—1970 University of Toledo Law Review.

There was another study done by Charles Willie when he was at the University of Syracuse and that was "Black Students in White Colleges." Again he dealt with the admissions process, he dealt with the identification factors of student participation, etc. Now, there is one that deals not with students, but deals with administrators. That is, principally Black administrators and faculty in white institutions. The title of the book I believe is "Black Administrators and Faculties in White Institutions." One of the co-authors' last name is Moore and it's the Ohio State University Press. Those of you who would want to write to me, I have a couple of things that I did as a consequence of my experiences at both Howard and Harvard in the admissions process and I will try to get them duplicated and sent to you.

COMMENT: I just want to say very quickly that I don't think bent admission criteria are used just exclusively for daughters and sons of judges and important people. I know that each member of the admissions committee has what they call a "wild card." They can use it anyway they want to if it is someone they think is going to be particularly creative, something different to offer. Everybody is entitled to make a judgment at that point and they can use it anyway they wish.

SMITH: The short answer to the question that was raised in the back, forth-right answer, is that the statistics demonstrate at least insofar as the law school, statistics have to demonstrate that minority law students overall have not performed as well as white law students. Statistics however, show many students graduate law school even though they may have some problems on the bar examination. Statistics also demonstrate that that is changing. What the statistics do not say is the extent to which the graduate performance is due to the self-fulfilling prophecy of both the students and the faculty and it has become of increasing concern the type of attitudes that are visited upon the students when they come to the law school; the type of expectations that the faculty have, and the way the faculty go about fulfilling

those expectations in the examination-grading process. That's the type of thing that is yet to be quantified and therefore, statistics concerned with differential are somewhat suspect.

LEONARD: One last point and I think this has to do too with the question raised earlier. The ETS has just completed a curvilinear study of performance. There was the assumption that students who would score 500 would do less well than students who scored at 550, and students who scored 600 would do better than students who scored 550. What they found, but have not published—they have got to have another study now to try to undermine that study—what they found was that the curvilinear effect of national test scores when tested against performance fell. For this reason, that students who scored from 700 to 800 did not do as well as predicted in school. Students who scored between 200 and 400 did much better than predicted; while the so-called "middle" sort of remained at an average performance level. And they tested that and retested, they studied and restudied it and they have not been able to come up with any other conclusions. Consequently, what they have done now is to engage LSAC, Law School Admissions Council, which owns the Law School Admissions Test—now we want to emphasize admissions test, not aptitude test because it is also admission and exclusion—has now engaged the ETS to do a further study and that is to determine, from college to profession, just how well a person does—or should do.

And lastly, the question of toughness—it has to be dealt with by people who have experience and knowledge with respect to the discipline and the college that they are dealing with. It is going to require hard work and you can't do it with computers. People who want an easy way out in the admissions process will just not do a good job in admissions. It is a very, very hard and tough job.

SMITH: Let me conclude by just underscoring a point that Cruz made at the very beginning. We spend a lot of time talking about and looking at the law schools, and should anyone doubt the applicability or the importance of the analogy of the law schools to the overall situation, you should just look at the impact of *DeFunis*. What is happening in the law schools the past five years and what is happening now is terribly important and it is definitely a reflection of what will happen in the system as a whole.

I would like to thank Walter and Cruz and you.