

University of Texas at Austin – Investigation of Admissions Practices and Allegations of Undue Influence

Summary of Key Findings

Final Report to the Office of the Chancellor of The University of Texas System



THE UNIVERSITY
of TEXAS SYSTEM

February 6, 2015



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APPENDIX A - ATTACHED

INTRODUCTION

Founded in 1883, The University of Texas at Austin (“UT-Austin”) has served for the past 131 years as the flagship public university for the state of Texas. During that time, UT-Austin has grown into one of the largest and most elite public universities in the United States. Set on a 350-acre campus in the capital city of Austin, the university encompasses 18 colleges and schools, over 51,000 students, and nearly 24,000 faculty and staff.¹ One of nine universities and six health centers under the governance of The University of Texas System (“UT-System”), the declared mission of UT-Austin is to provide “superior and comprehensive educational opportunities” and to “contribute to the advancement of society.”² It is a highly selective institution, receiving 38,785 applications for 7,287 places in the entering freshman undergraduate class (as of November 2014).³ Nearly 60% of applicants to the undergraduate programs are denied admission.⁴

The University of Texas School of Law (“UT Law School” or “law school”) and the McCombs Graduate School of Business (“McCombs” or “graduate business school”) are likewise highly competitive and selective institutions. UT Law School is nationally ranked, generally considered one of the top fifteen law schools in the United States. Over three-fourths of the law school’s applicants are denied admission. Likewise, McCombs’ full-time MBA program is typically ranked as one of the nation’s top 20 graduate business programs, with nearly two-thirds of its applicants denied admission. Collectively, the law and business schools produce many state and national leaders in the fields of law, business, government, and philanthropy.

The process of selecting students for admission is a critical component of how UT-Austin fulfills its mission. In its annual admissions decisions, UT-Austin seeks to admit an exceptionally talented and diverse group of students who are well-prepared for and positioned to succeed in a challenging academic environment. Ensuring that the admissions process is administered with integrity and fairness, and considers each applicant solely on his or her individual merit apart from outside pressure exerted by “persons of influence” (defined for the purposes of this report as donors, alumni, members of the executive, legislative or judicial branches of government, the Board of Regents, UT-System officials, UT-Austin officials and faculty, or other persons of importance) is an important component of public university

¹ “Campuses with the Largest Enrollments, Fall 2009,” *Chronicle of Higher Education*, August 26, 2011, p. 33; <http://www.utexas.edu/academics/colleges-schools>; <http://www.utexas.edu/about-ut>

² <http://www.utexas.edu/about-ut/mission-core-purpose-honor-code>, as quoted in Brief for Respondents, *Fisher v. University of Texas at Austin*, No. 11-345 (filed with the United States Supreme Court, August 2012), p. 5.

³ <http://bealonghorn.utexas.edu/whyut/profile/app-to-enroll>

⁴ Id.

admissions. So, too, is securing a diverse student body that is well-equipped for dealing with the world as it exists and that extends the benefits of an elite education to those most capable and deserving regardless of race, gender, ethnicity or religion; and irrespective of economic, political or other external influences.⁵ It is in light of these considerations that Kroll was tasked with this investigation.

Because an important backdrop to this report is the UT-System internal admissions inquiry, which concluded approximately three months before Kroll's selection to conduct the present investigation, the findings of that inquiry are summarized below.

A. UT-Austin Admissions Inquiry

On August 1, 2013, in response to questions raised in the media and by a member of the Board of Regents about possible undue influence by state legislators on the UT-Austin admissions process, the Chancellor and Executive Vice Chancellor for Academic Affairs at UT-System requested that Dan Sharphorn, Vice Chancellor and General Counsel, and Wanda Mercer, Associate Vice Chancellor for Student Affairs, investigate whether there existed undue influence or outside pressure in the admissions process at UT-Austin. The inquiry focused initially on the Law School admissions process, but was later expanded to include undergraduate admissions.

In conducting the inquiry, Sharphorn and Mercer interviewed UT-Austin President Bill Powers and his Chief of Staff, Nancy Brazzil; law school Dean Ward Farnsworth and former Dean Larry Sager; former Interim Chancellor Kenneth Shine; UT-System Vice Chancellor and Chief Government Relations Officer Barry McBee; law school Assistant Dean for Admission and Financial Aid Monica Ingram; and three other persons affiliated with the law school. They also reviewed undergraduate and law school admissions data; written statements submitted by Dean Farnsworth and a former Director of Admissions, and 77 letters of recommendation from members of the state legislature that had been sent to President Powers from 2009 to 2013, as well as his responses to those letters.

The University of Texas System – U.T. Austin Admissions Inquiry Report was finalized and issued in May 2014 (“Admissions Inquiry Report”). The report noted that for many years it has been common practice at UT-Austin for legislators and other persons of influence to make admissions recommendations to the President of UT-Austin. “When any of these letters are submitted as part of the prescribed admissions process, there is no appearance of undue influence, so long as the letters are properly evaluated and weighted using the same criteria along with other letters of recommendation.”⁶ However, the letters of concern for purposes of the inquiry were “those that are sent directly to the president or a dean and are outside the prescribed application and recommendation process.”⁷

⁵ U.T. System White Paper: Best Practices in Admissions Processes for Undergraduate and Professional Programs, July 2014, pp. 4-5.

⁶ Admissions Inquiry Report, p. 6.

⁷ Id.

According to the report, “Officials at all levels find it reasonable to recommend a student for admission to undergraduate, graduate, or professional school, including the School of Law, by appealing outside the prescribed admissions process directly to the president of the institution, or through the relevant dean or director of admissions.”⁸ Although President Powers’ responses to these letters were uniform and standard⁹ and revealed no impropriety, the report acknowledged that it was not known “what these influential people expect in response to their recommendations and what, in fact, actually happens in response.”¹⁰

The inquiry found no evidence of a *quid pro quo* in exchange for admissions decisions; no evidence “of a systematic, structured, or centralized process of reviewing and admitting applicants recommended by influential individuals;”¹¹ and no evidence of overt pressure on Admissions Office staff to admit applicants based on the recommendations of persons of influence.¹² However, based on a review of the 77 letters of recommendation (pertaining to 16 law school applicants and 61 undergraduate applicants) that were sent directly to or that copied President Powers outside the standard process, the report concluded that admissions decisions were likely impacted in some cases by the letters of recommendation. In particular, the admission rates for applicants to whom the letters applied were significantly higher than for the rest of the applicant populations. The report found that the disparities in admission rates could not reasonably be explained by factors of individual merit, such as grades, test scores, and other holistic considerations. Although further investigation was deemed unwarranted, the report recommended a review and revision of admissions practices.

In conclusion, the report noted that “sending recommendation letters directly to the U.T. president has been a widespread and longstanding practice by a host of distinguished individuals, [and thus] any problems with this practice would seem to be much more a matter of culture than individual misconduct.”¹³ It deferred to the Board of Regents as to whether a full investigation was needed to answer the questions left unanswered by the report.

On May 1, 2014, the report findings were shared with President Powers, Provost Greg Fenves, and Dean Farnsworth. President Powers accepted the report’s findings and recommendations and committed UT-Austin to work with UT-System in developing and identifying best practices in admissions, particularly in administering recommendations that are sent outside of the formal admissions process.

⁸ Admissions Inquiry Report, p. 2.

⁹ *Id.* at p. 6. The standard response reads: “Thank you for writing to me about XXX. I appreciate your views on his abilities and his potential. I’ll keep an eye on his application. Thanks again for letting me know about XXX – and thank you for all you do for our state, and for higher education in Texas.” *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 12.

¹³ *Id.* at 14.

B. New Information / Allegations

In June 2014, several weeks after the Admissions Inquiry Report was finalized and issued, new information was presented to the Chancellor and the Vice Chancellor and General Counsel by a former Admissions official alleging that the Office of the President (“President’s Office”) had at times exerted pressure on the Office of Admissions (“Admissions Office”) to admit some applicants of lesser qualifications in response to external influences. This allegation was not made by anyone prior to the issuance of the Admissions Inquiry Report and appeared to potentially contradict certain findings of the report.

Additionally, in late June 2014, President Powers informed the Chancellor that as the President of UT-Austin he faced “a lot of pressure” over the admissions process from donors, alumni, and legislators. President Powers said that in certain cases he has responded to that pressure by increasing the class size by the added number of people he chooses to admit so as not to take any positions away from applicants already admitted. Because this information had not been provided during the Admissions Inquiry that concluded in May 2014, the Chancellor believed an independent firm should be retained to more thoroughly and comprehensively review the admissions process, investigate allegations of external pressures on the admissions process, and determine whether any factors other than individual merit as defined by a candidate’s academic achievement or personal holistic characteristics influence decisions to admit or deny applicants to UT-Austin.

The Board of Regents subsequently authorized the investigation with particular focus on the undergraduate program, the law school, and the graduate business school. The UT-System issued a formal Request for Proposals, after which Kroll was selected in August 2014 to conduct the present investigation. This report contains a detailed summary of our findings and recommendations.

C. Cooperation of Participants

Kroll wishes to thank UT-System and UT-Austin for their full and complete cooperation in this investigation. Everyone Kroll interviewed spoke candidly and forthrightly, answered all questions put to them, and worked hard in providing the many documents and other materials requested for our review. Although there was understandably some pushback on the scope and extent of requested documentation, all discussions regarding the nature of our requests and documentation were cordial and professional. While it is possible that not everyone will agree with each of Kroll’s findings and recommendations contained in this report, Kroll has attempted to fairly and accurately describe the issues, facts and, if applicable, need for reforms. It has been a pleasure for Kroll to meet and speak with the many talented professionals at UT-System and UT-Austin. The commitment, dedication, and good faith of all officials and personnel with whom we interacted were readily apparent.

SCOPE OF INVESTIGATION AND METHODOLOGY

A. Scope of Investigation

On August 5, 2014, UT-System entered into an agreement with Kroll to conduct an independent investigation into admissions practices at UT-Austin under the direction of the UT-System General Counsel. Kroll's focus was to evaluate the conduct of UT-Austin, UT-System, and UT-System Board of Regents officials and employees in performing admissions services, not on any external recommenders. As UT-System is responsible for ensuring the integrity of the admissions process, it charged Kroll with the task of determining if the conduct of UT officials in the handling of admissions decisions "is beyond reproach."¹⁴ Stated differently, the scope of work (see **Appendix A**) required Kroll to determine "if admissions decisions are made for any reason other than an applicant's individual merit as measured by academic achievement and officially established personal holistic attributes, and if not, why not."¹⁵ In carrying out this charge, UT-System instructed Kroll to focus exclusively on admissions practices of the undergraduate program, the law school, and the graduate business school from 2004 to 2014.

Kroll understands that letters of recommendation from outside third parties are appropriately considered and evaluated as part of an applicant's file, and that certain letters of recommendation may have more impact on the evaluation of an applicant's file than others. For example, letters from individuals with personal knowledge of an applicant's character, work ethic, and background are typically given greater weight in the evaluation process than are letters from individuals with limited personal knowledge of an applicant. However, the premise of this investigation, which is generally supported by the public pronouncements and representations of UT-Austin and the UT-System concerning the admissions process, is that an applicant should not be advantaged or given special consideration as a result of family connections, political connections, recommendations by persons of influence, or a perceived potential economic benefit or financial gain to the university. Conversely, a student should not be disadvantaged simply because he or she is unrelated to, or has no "connections" to persons of influence. Our investigation was thus directed at determining whether efforts or attempts to influence the admissions process do in fact impact admissions decisions in a manner that compromises the integrity and transparency of that process.

In conducting this investigation, Kroll did not investigate or inquire into the behavior of individuals external to UT-System, the Board of Regents, or UT-Austin. While full cooperation was expected and received

¹⁴ Agreement Between University and Contractor, Exhibit A, Scope of Work. This scope of work is attached to this report as **Appendix A**.

¹⁵ *Id.*

from officials and employees within the University umbrella, we could not expect or insist upon such cooperation from external parties, nor did Kroll attempt to interview such persons, with limited exceptions. UT-System has no control or authority over the behavior of persons not employed by UT-System or its affiliated entities and can only be responsible for ensuring the integrity of its staff, employees, and admissions process.

B. Methodology

In performing this investigation, Kroll conducted the following activities:

Document Reviews and Data Collection. Kroll requested, collected and reviewed relevant documentation and data necessary to prepare for interviews and to fully understand the issues raised and information addressed in the scope of work. Accordingly, we reviewed the Admissions Inquiry Report and all accompanying attachments, including relevant letters of recommendation and responses thereto, and related emails and correspondence. We also requested and reviewed information and data on undergraduate, law school and business school admissions; all written criteria, policies, and guidelines governing the admissions process at UT-Austin, UT Law School, and McCombs School of Business; and other relevant background materials and documentation necessary to enable us to appropriately evaluate and assess the admissions process and a comparison to best practices.

After interviews commenced, and based on information learned during those interviews, Kroll requested additional documentation, including admissions data maintained by the Admissions Office on the UT-Austin mainframe computer concerning applicants for undergraduate admissions placed on various “holds” at the requests of college Deans, the Office of the President, or some combination thereof from 2004 to 2014; the same data for the entire population of admitted applicants from 2009 to 2014; admissions data and breakdowns for UT Law School and McCombs School of Business; and emails between selected officials and employees at UT-System and UT-Austin from January 1, 2009, to December 31, 2013.

After evaluating and analyzing admissions data from the UT-Austin mainframe computer, Kroll reviewed specifically requested application files that included the completed applications, written essays, high school transcripts, letters of recommendation (if applicable), and other documents or notes maintained with the applicant’s file. Kroll worked with UT-System and UT-Austin officials to ensure at all times that student privacy was maintained and that Kroll’s access to student information complied fully with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, 34 CFR Part 99, Attachment B. Consistent with the provisions of FERPA, no students have been named in this report and no student identifying information has been disclosed.

Data Analysis and Reviews of Selected Applications. After beginning interviews of key university officials, Kroll learned that certain records of application “holds” were placed on designated undergraduate application files during the annual admissions process. Accordingly, Kroll requested all

records contained in the Mainframe and/or historical database at the UT-Austin Office of Admissions from 2004 to 2014 that had at any time a “hold” designation of “Q” (President’s hold), “L” (Dean’s hold), or “B” (hold requested by the President’s Office and a Dean). The information requested included student ID, the date the hold designation was created, removed, or changed, the label of the hold record (“L”, “Q”, or “B”), and the person who created, removed or changed the hold designation. For each individual for which a hold designation applied, Kroll requested access to the entire applicant file including but not limited to: Copies of AO4 or AO6 screen,¹⁶ GPA, SAT score, ACT score, Matrix score, AI score, PAI score, and Adjudication.

Kroll did not request or review any records containing a student’s date of birth, social security number or other information that may be considered personally identifiable information. Kroll carefully safeguarded the information provided and took every precaution to ensure that at all times it complied with the terms of our contract, the provisions of FERPA, and all other state and federal statutory laws, regulations, and common laws concerning privacy and the protection of personal and confidential information. All information provided pursuant to this request was placed on an external media device in an encrypted format with password protection, or provided through a secure online Dropbox, to ensure privacy and confidentiality.

Kroll also requested and reviewed undergraduate admissions data from 2004 to 2014 that included the total numbers of applicants and admitted students each year with a breakdown of GPAs, SAT scores, ACT scores, the academic index (AI) and personal achievement index (PAI) for each admitted applicant, and other relevant information. Kroll analyzed this data and compared it to applicant data pertaining to those applicants who received a “hold” designation. Based on a review of this information, Kroll then requested access to the admissions records of 73 UT-Austin undergraduate applicants that had been placed on a “hold” during the admissions process and who reported high school grades and test scores significantly below the median scores of accepted applicants – specifically, Kroll reviewed the files of hold applicants who were admitted (and enrolled) with a combined SAT score below 1100 (math and verbal) and a GPA below a 2.9. The admissions records contained information on demographics, quantitative scores, and copies of supplemental documents such as letters of recommendation, resumes and personal essays. Kroll reviewed the relevant files to discern additional information on the applicants’ holistic attributes, including family backgrounds, personal interests, and unique experiences.

For the law school, Kroll requested admissions data that included the total numbers of the following categories from 2004 to 2014: applicants, admitted students, Texas residents vs. non-resident, undergraduate GPA, LSAT scores, and other relevant data. We also reviewed the specific application files for admitted and enrolled students from 2010 to 2014 who had reported an undergraduate GPA of

¹⁶ The A04 screen captures hold designations and instructions regarding action required on a file before an admissions decision can become final. The A06 screen contains most of the pertinent information about an applicant, including predicted GPA, test scores, evaluation scores entered during the review process (e.g., personal achievement index), high school class rank, high school units, residency, reviewer, and other information.

below 3.0 or an LSAT score below 155. Kroll was not interested in and has not included in this report the names or personal identifying information of any of the students whose files we reviewed.

For the McCombs School of Business, Kroll requested admissions data pertaining to the full-time MBA program that included the total numbers of the following categories from 2004 to 2014: applicants, admitted students, enrolled students, domestic and international breakdown, percentage of male, female, and under-represented minority admits, average GMAT score, range of GMAT scores of admitted students (highest to lowest) and middle 80% range, average age and work experience of admitted students, average GPA, and range of GPAs for admitted students (highest to lowest) and middle 80% range. Based on this data, we reviewed selected application files of admitted and enrolled students from 2012 to 2014 who had reported a GMAT score below 600 or an undergraduate GPA below 2.60. Our review of these files was limited to the past three years due to the business school's recent transition from paper records to computerized files. A total number of 36 "outlier" files were produced and reviewed as a result of this request.

Email Review. Kroll reviewed approximately 9,500 emails between various internal offices within UT-Austin and UT-System. Although Kroll had initially requested a broader email review to include all internal and external emails of key UT-Austin and UT-System officials and members of the Board of Regents, the scope of our review was eventually limited by UT-System and UT-Austin to emails between the following individuals and offices:¹⁷

1. All emails between (a) President Powers, Nancy Brazzil, and/or Janie Wisecup and (b) Kedra Ishop, Bruce Walker, and/or Suzie Deem, from January 1, 2009 – December 31, 2013.
2. All emails between (a) anyone in the UT Austin Office of Government Relations and (b) Kedra Ishop, Bruce Walker, and/or Suzie Deem from January 1, 2009 – December 31, 2013.
3. All emails between (a) President Powers, Nancy Brazzil and/or Janie Wisecup and (b) Law School Dean (Sager or Farnsworth), a Dean's assistant, and/or Monica Ingram from January 1, 2009 – December 31, 2013.
4. All emails between (a) President Powers, Nancy Brazzil and/or Janie Wisecup and (b) Business School Dean (Gilligan), Rodrigo Malta, Stephen Sweeney, Julia Campbell and/or Rene Martinez from January 1, 2009 – December 31, 2013.
5. All emails between (a) Chancellor Cigarroa, Jana Pankratz, and/or Katherine Iannessa and (b) Kedra Ishop, Bruce Walker, and/or Suzie Deem from January 1, 2009 – December 31, 2013.

¹⁷ In collecting emails, Kroll relied on the good faith, honesty, and fair dealing of UT-System and UT-Austin officials and personnel as exercised through the General Counsel for UT-System and the Vice President for Legal Affairs for UT-Austin. It would be cost prohibitive and outside the scope of this investigation, if not impossible, to track down each and every email for all individuals identified over the specified period (2009-2014). Kroll has been advised that for many, but not all, of the UT-System employees whose emails were requested, there existed litigation holds, executive officer and "keep forever" policies, and a House of Representatives Select Committee on Transparency in State Agency Operations preservation request. Similarly, for UT-Austin, Kroll was advised that some, but not all, individuals and requested emails would have been preserved in response to a litigation hold, a request by UT-System for certain documents to be held, and the House Select Committee preservation notice noted above.

6. All emails between (a) Chancellor Cigarroa, Jana Pankratz, and/or Katherine Iannessa and (b) President Powers, Nancy Brazzil, and/or Janie Wisecup from January 1, 2009 – December 31, 2014.
7. All emails between (a) Chancellor Cigarroa, Jana Pankratz, and/or Katherine Iannessa and (b) Law School Dean (Sager or Farnsworth), a Dean's assistant, and/or Monica Ingram from January 1, 2009 – December 31, 2013.
8. All emails between (a) Chancellor Cigarroa, Jana Pankratz, and/or Katherine Iannessa and (b) Business School Dean (Gilligan), Rodrigo Malta, Stephen Sweeney, Julia Campbell and/or Rene Martinez from January 1, 2009 – December 31, 2013.
9. All emails between (a) Francie Frederick and/or anyone in the Board of Regents Office and (b) Kedra Ishop, Bruce Walker, and/or Suzie Deem from January 1, 2009 – December 31, 2013.
10. All emails between (a) Francie Frederick and/or anyone in the Board of Regents Office and (b) President Powers, Nancy Brazzil, and/or Janie Wisecup from January 1, 2009 – May 31, 2014.
11. All emails between (a) Francie Frederick and/or anyone in the Board of Regents Office and (b) Law School Dean (Sager or Farnsworth), a Dean's assistant, and/or Monica Ingram from January 1, 2009 – December 31, 2013.
12. All emails between (a) Francie Frederick and/or anyone in the Board of Regents Office and (b) Business School Dean (Gilligan), Rodrigo Malta, Stephen Sweeney, Julia Campbell and/or Rene Martinez from January 1, 2009 – December 31, 2013.
13. All emails between (a) anyone in the UT System Office of Government Relations and (b) Kedra Ishop, Bruce Walker, and/or Suzie Deem from January 1, 2009 – December 31, 2013.

Interviews. Kroll conducted over 60 interviews of officials and employees of UT-System and UT-Austin from September 2014 to February 2015. The persons interviewed included all members of the Board of Regents; then Chancellor Francisco Cigarroa; Executive Vice Chancellor Pedro Reyes; President Bill Powers; former President Larry Faulkner; staff members in the Office of the President; current and former Provosts and several Vice Provosts; members of the Admissions Office at UT-Austin, including past and present Directors of Admission; past and present Deans of the Law School and Business School; Admissions officials at the Law School and Business School; staff members in the Office of Government Relations for UT-System and UT-Austin; and other relevant employees and officials within UT-System and UT-Austin.

Kroll sought to interview individuals with actual knowledge of relevant events and/or the admissions process as actually implemented from 2004 to 2014. During the course of the investigation, we maintained consistent and open communication with the UT-System General Counsel, the General Counsel of UT-Austin, the General Counsel for the Board of Regents, and other appropriate designees as needed to facilitate the investigation and cooperation of all parties.

Analysis of Applicable Laws and Policies. Kroll obtained and analyzed applicable rules of conduct based in state law (i.e., Texas Constitution, Texas Education Code), Rules of the UT-System Board of Regents, and official policies of UT-System and UT-Austin. We also examined the public representations and pronouncements of the UT-System or UT-Austin in official admission bulletins, the university website, official court briefs and sworn affidavits.

Best Practices Review. Kroll researched and reviewed existing white papers and reports concerning best practices for avoiding undue influence in university admissions. Kroll also consulted with experts in the field of university and graduate school admissions, and with several current and former highly-placed individuals with experience in the area of university admissions, for recommendations on best practices.

C. Report Contents

The remainder of this Report contains Kroll's key findings and recommendations. Section Four outlines the applicable laws, rules, and policies that govern admissions at UT-Austin. Section Five examines the undergraduate admissions process as designed, as publicly represented, and as practiced. Sections Six and Seven review in similar fashion the law school and business school (Full-time MBA Program) admissions processes, respectively. Our key findings are interspersed in each of these sections based on the results of interviews, data analysis, and email reviews. Finally, Section Eight contains an alternative set of recommendations for UT-System's consideration moving forward.

EXECUTIVE SUMMARY

In August 2014, UT-System retained Kroll to conduct an independent investigation into admissions practices at UT-Austin. Kroll was charged with determining whether the conduct of UT officials in the handling of admissions decisions “is beyond reproach,” that is, whether “admissions decisions are made for any reason other than an applicant’s individual merit as measured by academic achievement and officially established personal holistic attributes.” The charge was premised on the belief that the integrity of the admissions process at a public university depends upon the unbiased determination of the appropriate merits of each applicant; that attempts to unduly influence the process are inappropriate; and that a student should not be advantaged or given special consideration as a result of his or her family’s political or alumni connections or financial resources.

Pursuant to UT-System’s instructions, Kroll’s investigation focused on the undergraduate program, the law school, and the full-time MBA program at the graduate business school. Kroll has attempted to conduct this investigation with an eye only on the objective facts and with a nuanced understanding of the complexity of college and graduate school admissions. Accordingly, we have attempted in this report to avoid broad generalizations and conclusions and to not second-guess the merits of individual admissions decisions at any school or program within UT-Austin. Kroll has instead sought to determine only how the admissions processes at UT-Austin are designed and implemented, and whether factors other than an applicant’s individual merit (as defined by the university) are considered in admissions decisions.

After an extensive investigation lasting approximately six months, Kroll finds that most of the essential facts are not in dispute, though we understand that people may differ as to the meaning and significance of the facts. Although Kroll’s findings are set forth in detail throughout this report, we summarize below the essential findings of our investigation.

Preliminary Observations

Kroll found widely divergent attitudes and philosophies among UT-Austin and UT-System officials regarding whether it is appropriate for a public university, when making admissions decisions, to consider in a limited number of cases impact on the university or relations with particular constituents – such as financial and political considerations – in addition to the applicant’s individual merit as measured by academic achievement and personal holistic attributes. Although the Admissions Office is staffed by highly trained professionals who seek to implement a fair and objective admissions process, it is recognized that a holistic admissions process is inherently subjective. Many more applicants than those

admitted into UT-Austin arguably merit admission; for example, partly as a result of the “Top 10% Law” (Texas Education Code Section 51.803), UT-Austin admits automatically many applicants who score lower on the SATs or have fewer meaningful extracurricular activities than many applicants who are denied admission.

Kroll found no existing law or statute, Regents Rule or UT-System Policy concerning how much weight to give “external” recommendations (letters, phone calls, inquiries) in the admissions process. For many years, the practice of the Board of Regents, the Chancellor, and UT-System has been to forward letters and inquiries about applicants to the UT-Austin President’s Office. This practice implicitly suggests that the President of UT-Austin oversees the Admissions Office and is the final arbiter in the admissions process. If the President of UT-Austin, as a matter of law or policy, is to play a different role in admissions determinations, it would seem incumbent upon the legislature or the Board of Regents to enact a law or rule that so states. No such rule or law presently exists.

Finally, while much of our investigation and many of our findings cover a period of time during which Bill Powers has been President of UT-Austin, the system presently in place, and the decision-making authority exercised by the President’s Office over Admissions, existed long before President Powers took office.

Taking into account these preliminary considerations, Kroll makes the following findings, which are further detailed in the report:

Review of Undergraduate Admissions Process

- When an inquiry or recommendation concerning a candidate for admission is forwarded to the President’s Office from a “friend of the university” or other “person of influence” – which may include a public official, a member of the Board of Regents or UT-System official, an important alumnus or alumna, a major donor, a faculty member or other UT-Austin official – a long-standing practice has been to place a “hold” on that candidate’s application. The purpose of a hold is to indicate that a negative decision may not become final until the party which placed the hold is notified.
- Since 2009, certain hold designations have been entered on UT-Austin’s mainframe computer with the designation of “Q,” “L,” or “B.” A designation of “Q hold” indicates the application is being monitored by the President’s Office. An “L hold” indicates that the application is of interest to one of the college Deans. When both the President’s Office and a college Dean request a hold, the file is designated as a “B hold” applicant. (Several other types of holds exist for a variety of reasons; however, as explained later in this report, the only holds within the scope of Kroll’s investigation, and thus of interest for purposes of this report, are Q, L, and B holds.)
- Due in part to the increased competitiveness of undergraduate admissions at UT-Austin, and in part because recordkeeping is now computerized, Q-hold volumes have escalated considerably

over the past several years. Under President Powers, Q holds have totaled as many as 300 applicants of interest per year. The majority of holds appear to be based on requests from Texas legislators and members of the Board of Regents, while others are instigated by requests from the Chancellor's Office, donors and alumni.

- The existence of holds combined with end-of-cycle meetings between the Admissions Office and the President's Office, during which final decisions are made on all hold candidates not already admitted, has caused increasing levels of tension between the Admissions Office and the President's Office. In recent years, President Powers, acting through his Chief of Staff, has at times made holistic determinations that differed from that of the Admissions Office. Consequently, it appears that a select handful of applicants each year are admitted over the objection of the Admissions Office. The President's Office has acknowledged to Kroll that this has occurred, but insists that decisions are always made with the "best interests of the university" in mind.
- Based on our investigation, there is no evidence that any applicants have been admitted as a result of a *quid pro quo* or other inappropriate promise or exchange. There also is no evidence that efforts were made to "save spots" for certain applicants or that a dual system of admissions has been informally established. However, it is acknowledged that additional acceptances are sent out each year to accommodate special cases. With certain "must have" applicants, the President's Office ordered applicants admitted over the objection of the Admissions Office.
- Because written records or notes of meetings and discussions between the President's Office and Admissions are not maintained and are typically shredded, it is not known in particular cases why some applicants with sub-par academic credentials were placed on a hold list and eventually admitted. Rarely was it discussed why particular applicants needed to be admitted, or what, if any, connections the applicants had with persons of influence. But President Powers acknowledged to Kroll that "relational factors" do occasionally play an important role in determinations to admit some applicants who might not have otherwise been admitted.
- Over a six-year period, applicants on whom a hold of any type was placed were admitted 72% of the time, compared to an overall admission rate of approximately 40%. Texas residents accounted for 82% of all applicants placed on a hold list. Email correspondence reviewed by Kroll further confirmed that a relationship with university officials has on occasion provided applicants a competitive boost in the admissions process.
- The total number of arguably less-qualified applicants who have benefitted from the hold system and the President's oversight of the hold candidates appears to be relatively small. Indeed, from 2009 to 2014, Kroll identified a total of only 73 enrolled applicants who were admitted with both a combined SAT score of less than 1100 and a high school GPA of less than 2.9. Kroll's review of the available "outlier" files found that political connections may have influenced the admission decision in a small number of cases, while other cases suggested the possibility of alumni/legacy

influence despite the prohibition under Texas law against legacy admissions. Several other cases, however, suggested a demonstrated commitment to ethnic and racial diversity and the consideration of other appropriate criteria.

- While it is often not clear why a particular applicant was placed on hold or received special consideration, the President's Office acknowledged to Kroll that legislative letters and calls are typically accorded more weight than other letters and calls because legislative oversight impacts the university.
- In short, while it is impossible to conclude with absolute certainty from a review of the data and selected files alone that any one particular applicant benefitted from undue influence or pressure exerted on the admissions process, it is readily apparent that certain applicants are admitted at the instigation of the President over the assessment of the Admissions Office. The end-of-cycle meeting between the President's Office and Admissions Office results each year in certain applicants receiving a competitive boost or special consideration in the admissions process. The data reviewed by Kroll confirms what President Powers and others have acknowledged, that relationships matter and are the deciding factor in admissions decisions for a select handful of applicants each year.
- Although the practice of holds and exercise of presidential discretion over Admissions may not violate any existing law, rule, or policy, it is an aspect of the admissions process that does not appear in UT-Austin's public representations.
- Several other important constituents are at least partially complicit for this ad-hoc system of special admissions. For example, the Board of Regents sends approximately 50 to 70 names of applicants to the President's Office each year. Similarly, many names are placed on a hold list as a result of requests from the Chancellor's Office, the UT-System Office of Government Relations, major donors and alumni. In most years, there are certain legislators and Regents whose names are noted more than others. It would appear that these other bodies send inquiries concerning student applicants to the President's Office with the expectation that such applicants be closely monitored by that office.
- Kroll notes that the existence of holds and watch lists, and the end-of-cycle meetings between the President's Office and the Admissions Office, were not disclosed or specifically addressed by President Powers and his Chief of Staff during an internal Admissions Inquiry previously conducted by the UT-System. Although President Powers and his Chief of Staff appear to have answered the specific questions asked of them with technical precision, it appears that by their material omissions they misled the inquiry. At minimum, each failed to speak with the candor and forthrightness expected of people in their respective positions of trust and leadership.

Review of Law School Admissions Process

- By design and practice, UT Law School also utilizes a holistic admissions process. Although the law school requires no minimum LSAT score and only a 2.2 undergraduate GPA from an accredited institution, it is apparent that GPA and LSAT scores play a prominent role in admissions decisions. This fact, which is true of virtually all nationally ranked law schools, is driven in large part by the importance of GPA and LSAT in the perceived competitiveness of the law school and how it affects national rankings.
- Unlike many law schools, UT Law School does not rely on an Admissions Committee to review application files or to render individual admissions decisions. Instead, almost all individual admissions decisions are made by either the Assistant Dean for Admission and Financial Aid or by the Director of Admission Programs. Consequently, although Kroll found that the professionals in these positions perform their jobs with expertise and integrity, the system as designed insufficiently prevents final admissions decisions from potentially being influenced by external factors, including informal discussions with the Dean after receiving letters, phone calls or contacts from persons of influence. For example, members of the Texas legislature and other persons of influence frequently call or write in support of particular law school candidates outside of normal application procedures, and the Dean's Office receives numerous calls from legislators urging the admission of certain applicants.
- Kroll found no evidence that the Dean or others at the law school acted improperly or in any way compromised the integrity of the admissions process. Nevertheless, the system as designed presents these well-intentioned professionals with potentially difficult balancing acts and ethical quandaries.
- When the Dean's Office receives information about a law school applicant from a trusted source, the recent practice has been for the Dean to informally review the applicant's credentials and determine whether a case for admission is plausible. If so, the Dean discusses the matter with the Assistant Dean for Admission and Financial Aid. As long as a final decision has not been made and communicated to the applicant, the Dean feels free to discuss any information received about an applicant with the Assistant Dean. In some instances, the resulting discussions have changed the mind of the Assistant Dean regarding a candidate for admission.
- The President of UT-Austin also receives calls and letters from persons of influence concerning law school applicants. When this occurs, the President's Office advises the law school (usually the Dean) of these interests. From 2006 to 2012, former Dean Larry Sager received 10 to 20 calls a year from Nancy Brazzil about President Powers' interest in certain law school applicants. Brazzil made clear she spoke for the President's Office. Sager acknowledged that the intensity of Brazzil's interest in a candidate may "have on occasion swayed my decision." Sager explained

that Brazzil's calls often forced the law school to take a closer look at some candidates, which could legitimately change one's perspective. Sager insisted, however, that the law school was never forced to admit a candidate against its wishes.

- Current law school Dean Ward Farnsworth has also received several calls from Nancy Brazzil during his tenure as Dean. Farnsworth stated that the law school has never been pressured to admit a law student – by Nancy Brazzil or anyone else – that it did not feel should be admitted based on a variety of holistic factors. But Farnsworth acknowledged that the interest of the President's Office is noted and can impact how a candidate's case is evaluated.
- Our review of law school admissions data and selected application files found that, while the admissions process is driven in large part by the importance of GPA and LSAT scores, the law school prioritizes a holistic review that also emphasizes diversity. Approximately 50% of so-called "outlier" files reviewed (i.e., admitted candidates who scored below a 155 on the LSAT or reported an undergraduate GPA of less than 3.0) had diversity considerations as one of the holistic factors. In most cases a low GPA was accompanied by a higher LSAT score, and a low LSAT score was often accompanied by a higher GPA, and additional holistic factors were also present.
- From 2010 to 2014, the law school admitted no applicants with a GPA below 2.4 and only four with an LSAT score below 150. During that time frame, only two applicants had both a subpar GPA and LSAT score (i.e., GPA below 3.0 and LSAT score below 155) compared to the average GPA and LSAT of other admitted candidates. However, both applicants belonged to under-represented minority groups and had valuable public sector experience.
- Only nine of the 166 letters of recommendation contained in the 70 outlier files reviewed by Kroll were from public officials. In most cases, the applicants had previously interned or worked in the respective legislative offices, usually as a policy analyst or legislative aide. Nevertheless, Kroll identified four instances in which, given the sub-par GPAs or LSAT scores of the candidates, as well as in some instances a lack of relevant work experience or other holistic factors, political or alumni connections may have influenced the decision to admit the applicant.
- Kroll also identified an additional seven cases in which political connections existed, but a combination of holistic factors appeared more obviously in play. Although most letters of recommendation and personal essays were typically explicit about political connections when they applied, it is impossible to conclude on that basis alone that these applicants were granted any sort of special consideration as a result of their political ties. Moreover, many of these applicants also received positive recommendations from professors or work supervisors and added diversity considerations.
- In reviewing email correspondence, Kroll found one instance of a brazen attempt to influence the law school admissions process for reasons having little to do with the individual merits of the

applicant involved. In that case, in an email from a retired elected official, references were made to a state legislator and member of an “important . . . Committee” having a strong interest in this particular applicant being admitted, and “the political and funding implications of having [applicant] in our law school.” In this case, while the applicant was admitted, Kroll found no evidence that UT officials acted improperly. Nevertheless, this email demonstrates the types of misguided demands sometimes placed by person of influence on elite programs.

- In another case, the President’s Office called the law school apparently after speaking with two members of the legislature. According to a voice mail recording of the call, the President’s Office asked “if we can go ahead and admit those kids, [President Powers] says it’s very important.” Two days later, acceptance letters were sent to both applicants. A review of the applicant’s files showed that each was an impressive candidate with solid grades, valuable work and public service experience, and other positive holistic attributes.

Review of Business School Admissions Process

- The admissions process as implemented by the full-time MBA program is robust and genuinely holistic. The McCombs School of Business has a four-person Admissions Committee that appears to take the concept of holistic review seriously. Kroll found that, while the Committee places significant weight on undergraduate GPA and GMAT scores, it also emphasizes an applicant’s work experience, interview performance, demonstrated leadership skills, substantive letters of recommendation, and the applicant’s overall fit with the business school, as well as the impact admission would have on gender, racial, ethnic, and geographical diversity.
- While less emphasis is placed at McCombs on undergraduate GPA and quantitative test scores than appears to be the case for the law school and the undergraduate program, the average GPA and GMAT score at McCombs are higher than the averages for many other full-time MBA programs.
- Although the admissions process at McCombs appears to be well administered and to consider holistically a variety of criteria and factors, attempts to influence the process externally do occur, particularly through letters and calls from alumni, business leaders, and donors. For example, although the McCombs website states that recommendation letters may be submitted only through its online process, it was acknowledged that the school often receives letters, phone calls, and emails outside of the online process. In addition, Tom Gilligan, Dean of McCombs School of Business, has acknowledged that he receives many calls from influential people inquiring about certain applicants and that he maintains a “list” of applicants that he feels the need to monitor.
- In some cases, Dean Gilligan consults with the Director of MBA Admissions about individual candidates. However, Gilligan and the Director both told Kroll that they have never felt pressured

by external forces, including donors, alumni, the business community, or other university officials, to admit any undeserving candidates. Moreover, everyone on the Admissions Committee with whom Kroll spoke confirmed that there is little if any pressure to admit a candidate that does not meet the MBA program's academic criteria or objectives.

- Most candidate-related calls Dean Gilligan receives come not from politicians, but from business professionals who frequently call Gilligan about candidates they believe have great potential. Gilligan said he encourages this because he wants to hear from people about potential leadership and talent. There appears to be very little interaction between the MBA program and the President's Office.
- A review of admissions data from 2004 to 2014 confirms that admission into the graduate business school is very competitive and that McCombs consistently admits MBA candidates with strong academic credentials, test scores, and work experience. In most years since 2008, the admission rate is less than 30%.
- Moreover, Kroll's review of "outlier" application files – defined as admitted applicants who scored less than 600 on the GMAT or had an undergraduate GPA of below 2.6 – determined that, from 2012 to 2014, countervailing holistic attributes existed that reasonably justified all admissions decisions examined. For example, approximately 61% of the files reviewed had diversity considerations as one of the holistic factors. Several applicants were fluent in foreign languages. In most instances, evaluation notes reflected the candidates gave strong in-person interviews, or demonstrated strong business and leadership potential. Some applicants had military experience, others valuable managerial experience.
- A recent article published on the watchdog.org website alleging a possible *quid pro quo* and other examples of undue influence in the business school's admissions process was found by Kroll to be factually incorrect and unsubstantiated. In short, Kroll found no evidence of political or financial influence in the admissions process, and no evidence of any *quid-pro-quo* or other inappropriate consideration in admissions decisions at the McCombs School of Business.

Recommendations and Best Practices

In the final section of this report, Kroll presents a set of best practices and recommendations for the consideration of the UT-System, the Board of Regents, and UT-Austin. Ultimately, a determination of how much influence is wielded by persons outside of the Admissions Offices of the respective institutions is a decision that has to date been largely deferred and can only be made by the university community. It is Kroll's hope that our recommendations will begin a robust discussion within UT-System and UT-Austin to enact policies and procedures that will prevent future controversy and division and will ensure admissions processes that are perceived as fair and transparent and implemented with integrity.

APPLICABLE LAW AND POLICY

Before examining admissions practices at UT-Austin and evaluating what role, if any, external influences play in UT-Austin admissions decisions, it is important first to understand the laws and policies that govern the admissions process and to determine what guidance they provide to university officials in carrying out their official duties and responsibilities. The various admissions processes at UT-Austin, including its undergraduate program, law and business schools, have evolved over time. Accordingly, in this section of the report we review the specific state laws, court decisions, administrative rules, Board of Regents Rules, and official university policies that govern the admissions processes of UT-Austin's undergraduate and graduate programs. Below is a brief summary of the relevant provisions and considerations.

A. Background and Recent History

Prior to 1996, the UT-Austin undergraduate program selected applicants using an Academic Index (“AI”), which was based on an applicant’s high school class rank, standardized test (SAT or ACT) scores, and high school curriculum. To promote a more racially and ethnically diverse campus and to rectify the state’s past segregationist policies, UT-Austin also gave express consideration to an applicant’s race in the admissions process. In some instances, an applicant’s race or minority status was “a controlling factor in admissions.”¹⁸ That changed in 1996, however, when the United States Court of Appeals for the Fifth Circuit, in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), held that the UT Law School’s consideration of race in admissions was unconstitutional.

In 1997, the Texas legislature responded to the *Hopwood* decision by enacting House Bill 588 (“HB 588”) codified at Section 51.803 of the Texas Education Code, commonly known as the “Top 10% Law.” Section 51.803 guaranteed admission to UT-Austin to any graduate of a Texas high school who was ranked in the top 10% of his or her class, so long as the student also satisfied other specified requirements, including certain high school curricula, or achieved a certain ACT or SAT score, and residency.¹⁹ The law affected all applicants beginning with the fall 1998 admissions cycle. A primary purpose of the Top 10% Law was to promote racial and ethnic diversity at UT-Austin by guaranteeing admission to the top students of all Texas high schools, including the predominantly black and Latino high

¹⁸ Brief for Respondents, *Fisher v. University of Texas at Austin*, No. 11-345 (filed with the United States Supreme Court, August 2012), p. 6.

¹⁹ Section 51.803 (a).

schools in certain regions of the state, which high schools had historically been under-represented at UT-Austin.²⁰

Also, in response to *Hopwood*, the Texas legislature in 1997 enacted Section 51.805 to compliment the Top 10% Law. Section 51.805, as discussed below, was designed to provide for “holistic review” of applicants not eligible for automatic admission under Section 51.803.

In response to Sections 51.803 and 51.805 and the *Hopwood* decision, UT-Austin revised its admissions policy to exclude race as an explicit factor in admissions. The university implemented a Personal Achievement Index (“PAI”) to be scored and used in conjunction with the AI. The PAI involved a “holistic review” of an applicant’s file and took into account such factors as an applicant’s leadership qualities, extracurricular activities, awards and honors, special skills, work experience, and civic and community projects, among other things. The PAI also accounted for any “special circumstances,” including an applicant’s socio-economic status and background, language barriers, and similar factors. At the same time, UT-Austin engaged in efforts to increase recruitment of under-represented minority students, established three new regional admissions centers in Houston, San Antonio, and Dallas (and more recently in the Rio Grande Valley), and created several scholarship programs directed at students from low socio-economic backgrounds.

Partly as a result of the growing attractiveness of an education at an elite state university, the portion of the entering classes admitted pursuant to the Top 10% Law gradually increased over the years and has ranged from approximately 60% to 80% of each year’s freshman class. Because some academic programs at UT-Austin found that they could fill virtually all of their entering spaces with applicants graduating in the top 10% of their respective high schools, the legislature amended Section 51.803 in 2009 to limit the spaces allotted to each undergraduate program filled by the top 10% admittees to 75% of the freshman enrollment.²¹ This change has resulted in effectively limiting automatic admissions at UT-Austin to high school seniors ranked in the top 7% to 9% of their high school class. The precise percentage varies from year-to-year depending on the total numbers of top 10% students who apply, and when the 75% of total enrollment threshold is filled.

Other court cases since *Hopwood* have further impacted the admissions process at UT-Austin. In June 2003, the United States Supreme Court decided *Grutter v. Bollinger*, 539 U.S. 306 (2003), which effectively overruled *Hopwood*. In *Grutter*, a case involving the University of Michigan Law School, the Court ruled that “student body diversity is a compelling state interest that can justify the use of race in university admissions.” 539 U.S. at 325. The ruling endorsed the view of Justice Powell in *Regents of University of California v. Bakke*, 438 U.S. 265, 311-12 (1978), that “the attainment of a diverse student

²⁰ Some critics suggest that the Top 10% Law results in declined academic selectivity at UT-Austin because the law considers only an applicant’s high school class rank that is based solely on his or her GPA; SAT scores and similar academic criteria are irrelevant to whether or not a student is admitted under the law (though, as discussed later, these considerations impact into what school or academic program an applicant is admitted). Thus, while racial diversity has improved under the law, critics contend that academic excellence has declined.

²¹ Section 51.803 (a-1).

body . . . is a constitutionally permissible goal for an institution of higher education.” Although the Court ruled that, while universities may not establish quotas, award a fixed number of points for minority applicants, create a “separate admissions track” for minorities or consider race in a “mechanical” manner, they may consider race as a plus factor in the admissions process where admissions policies are narrowly tailored and individualized. *Grutter*, 539 U.S. at 315. Because the policy at University of Michigan Law School under review in *Grutter* was narrowly tailored and “highly individualized and holistic” by subjecting each applicant to an individualized review process that considered race as only one of several possible plus factors, the Court found the policy to be constitutionally permissible. *Grutter*, 539 U.S. at 334.

On August 7, 2003, in response to *Grutter*, the UT-System Board of Regents adopted a resolution authorizing each institution within the UT-System to develop and propose plans to consider race and ethnicity as part of the admissions process. Accordingly, on June 25, 2004, UT-Austin formally proposed that each of its schools affirmatively consider race as one of many individualized, holistic factors in the admissions process in an attempt to continue efforts to further diversity the student body at UT-Austin.

In August 2004, the Board of Regents formally approved UT-Austin’s proposal to alter its admissions policy to allow for the consideration of race as part of the holistic review process for applicants who were not automatically admitted under the Top 10% Law.²² The holistic review process, as mandated by Section 51.805, outlined by UT-Austin and approved by the Board of Regents, thus became official policy of UT-Austin. See Board of Regents Rule 40304 (Affirmative Action Plans). This rule and policy has not been amended or altered since 2004.

In 2008, Abigail Fisher was denied admission to UT-Austin’s 2008 entering undergraduate class and filed suit in the United States District Court for the Western District of Texas. Fisher alleged that UT-Austin’s consideration of race in the admissions process violated the Equal Protection Clause of the United States Constitution. The District Court ruled in UT-Austin’s favor and the decision was upheld on appeal before the United States Court of Appeals for the Fifth Circuit. *Fisher v. University of Texas at Austin*, 631 F.3d 213, 217-218 (5th Cir. 2011). Fisher appealed to the United States Supreme Court, which agreed to hear the claim.

On June 24, 2013, the Supreme Court reversed the rulings of the lower courts and remanded for further proceedings. The Court held that the lower courts had too narrowly applied the strict scrutiny standard and showed too much deference to UT-Austin’s presumed good faith in its use of racial classifications in the admissions process. The Court thus remanded the case to the Fifth Circuit to “assess whether the University has offered sufficient evidence that would prove that its admissions program is narrowly tailored to obtain the educational benefits of diversity.” *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411, 2421 (2013). “In order for judicial review to be meaningful, a university must make a showing that

²² Board of Regents Rule 40304 (Affirmative Action Plans); see also Brief for Respondents, *Fisher v. University of Texas at Austin*, No. 11-345 (filed with the United States Supreme Court, August 2012), p.11.

its plan is narrowly tailored to achieve the only interest that this Court has approved in this context: the benefits of a student body diversity that ‘encompasses a . . . broa[d] array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.’” *Fisher*, 133 S.Ct. at 2421.

On the remand by the Supreme Court, the Fifth Circuit denied UT-Austin’s request that the case be remanded back to the district court, because there was no need for any further development of the facts in a district court hearing. 758 F.3d 633, 641-42 (5th Cir. 2014). After giving “strict scrutiny” to UT-Austin’s admissions process, the Fifth Circuit ruled in the university’s favor, finding that it (the court) had “verif[ied] that it [was] ‘necessary’ for [the] university to use race [as a positive factor in holistic admissions] to achieve the educational benefits of diversity,” in accordance with Supreme Court precedent. 758 F.3d at 644, *citing Fisher*, 133 S.Ct. at 2420 (additional citation omitted).

Continuing to rely on the Supreme Court’s opinion in *Fisher*, cited above, the Fifth Circuit further stated, that in the context of a challenge by a reverse discrimination case brought by a white applicant:

it remains a university's burden to demonstrate and the court's obligation to determine whether the “admissions processes ensure that *each applicant is evaluated as an individual*, and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application.”

758 F.3d at 644 (citation omitted, emphasis added). “And it is the university that bears ‘the ultimate burden of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice.’ ” *Id.* (additional citation omitted). The *Fisher* litigation is ongoing.

B. Texas Statutes

This section outlines the relevant state statutes that govern the admissions process at UT-Austin and other Texas state institutions of higher education.

1. Undergraduate Admissions

Texas statutory law on undergraduate university admissions is codified as Subchapter U, Chapter 51, Education Code, entitled “Uniform Admission Policy.” Automatic admissions, or the Top 10% Law, are governed by the provision codified at Section 51.803:

[E]ach general academic teaching institution [including UT- Austin] shall admit an applicant for admission to the institution as an undergraduate student if the applicant graduated with a [GPA] in the top 10 percent of the student's high school graduating class if the student graduated from an accredited Texas ... high school and meets certain other requirements relating to high school curriculum, ACT or SAT score, and residency.

In order to limit the number of applicants admitted automatically under this provision, in 2009, Section 51.803 (a-1) was enacted, which effectively limits the total number of applicants admitted automatically to 75% of enrolled students.

The remaining discretionary or non-automatic admissions – usually referred to as holistic admissions – are governed by Section 51.805(a). According to the statute, “[i]t is the intent of the legislature that all institutions of higher education pursue academic excellence by considering students' academic achievements in decisions related to admissions. Because of changing demographic trends, diversity, and population increases in the state, each general academic teaching institution shall also consider all of, any of, or a combination of the [18 listed] socioeconomic indicators or factors.” The 18 specified factors for holistic admissions are:

- (1) the applicant's academic record;
- (2) the socioeconomic background of the applicant, including the percentage by which the applicant's family is above or below any recognized measure of poverty, the applicant's household income, and the applicant's parents' level of education;
- (3) whether the applicant would be the first generation of the applicant's family to attend or graduate from an institution of higher education;
- (4) whether the applicant has bilingual proficiency;
- (5) the financial status of the applicant's school district;
- (6) the performance level of the applicant's school as determined by the school accountability criteria used by the Texas Education Agency;
- (7) the applicant's responsibilities while attending school, including whether the applicant has been employed, whether the applicant has helped to raise children, or other similar factors;
- (8) the applicant's region of residence;
- (9) whether the applicant is a resident of a rural or urban area or a resident of a central city or suburban area in the state;
- (10) the applicant's performance on standardized tests;
- (11) the applicant's performance on standardized tests in comparison with that of other students from similar socioeconomic backgrounds;
- (12) whether the applicant attended any school while the school was under a court-ordered desegregation plan;
- (13) the applicant's involvement in community activities;
- (14) the applicant's extracurricular activities;
- (15) the applicant's commitment to a particular field of study;
- (16) the applicant's personal interview;
- (17) the applicant's admission to a comparable accredited out-of-state institution; and
- (18) any other consideration the institution considers necessary to accomplish the institution's stated mission.

The last factor (18) is the broadest of the specified factors and would seem to allow virtually any consideration deemed necessary to accomplish UT-Austin's stated mission – that is, to provide “superior

and comprehensive educational opportunities” and “to contribute to the advancement of society”²³ – when making discretionary admissions decisions. In addition, pursuant to Section 51.805(c), the law expressly authorizes general academic teaching institutions such as UT-Austin to “review other factors in making an admissions decision.”

Pursuant to Section 51.807, “The Texas Higher Education Coordinating Board has the authority to adopt rules related to admissions under [Subchapter U].” And an institution must publish “a description of the factors considered by the institution in making admissions decisions.” Section 51.805(d).

Legacy Admissions. The only reference in the Texas Education Code to “legacy” admissions is at Section 51.803(a-4). This provision states that the university continues to have a “practice of not considering an applicant’s legacy status as a factor in the university’s decisions relating to [holistic] admissions.”

2. Graduate and Professional Admissions

Section 51.808 of the Education Code requires each general academic teaching institution and each medical and dental unit to adopt a written admissions policy governing admissions to graduate, postgraduate, or professional programs.²⁴ This provision is similar to the statute referred to immediately above requiring publication of “the factors considered by the institution in making admissions decisions” as to undergraduate admissions.

Section 51.842 states that a general academic teaching institution or a medical and dental unit “may consider the following 11 listed factors in making admission decisions.” These factors are:

- (1) an applicant’s academic record as a high school student and undergraduate student;
- (2) the socioeconomic background of the applicant while the applicant attended elementary and secondary school and was an undergraduate student, including any change in that background;
- (3) whether the applicant would be the first generation of the applicant’s family to attend or graduate from an undergraduate program or from a graduate or professional program;
- (4) whether the applicant has multilingual proficiency;
- (5) the applicant’s responsibilities while attending elementary and secondary school and as an undergraduate student, including whether the applicant was employed, whether the applicant helped to raise children, and other similar factors;
- (6) to achieve geographic diversity, the applicant’s region of residence at the time of application and, if the applicant graduated from a public high school in this state within the preceding 20 years, the region in which the applicant’s school district is located;
- (7) the applicant’s involvement in community activities;
- (8) the applicant’s demonstrated commitment to a particular field of study;

²³ Brief for Respondents, *Fisher v. University of Texas at Austin*, No. 11-345 (filed with the United States Supreme Court, August 2012), p. 5.

²⁴ For this report, any references to graduate and/or professional schools should be understood as references to UT-Austin Law School and the Business School.

(9) for admission into a professional program, the current comparative availability of members of that profession in the applicant's region of residence while the applicant attended elementary and secondary school;

(10) whether the applicant was automatically admitted to a general academic teaching institution as an undergraduate student under Section 51.803; and

(11) the applicant's personal interview.

The statute prohibits use of an applicant's performance on a standardized test as the sole criterion for admission or as the primary criterion to end consideration of the applicant. In addition, the institution may not assign a specific weight to any single factor. Unlike the 18th criterion for undergraduate admissions, set out in Section 51.805(c)(18) and discussed above, there is no provision which, as Kroll reads this statute, expressly permits consideration of an apparently open-ended criterion of what is necessary to accomplish the university's stated mission when making discretionary admission decisions.

C. Administrative Rules

1. Undergraduate Admissions

In accordance with its statutory rule-making authority discussed above, the Texas Higher Education Coordinating Board has adopted Rule §5.5, Uniform Admission Policy, 19 TAC 5.5. This rule is largely repetitive of the statute, but provides details on how applicants demonstrate required academic achievement and how high school class ranking is determined and reported. Rule §5.5 also goes into more detail than the statute about the process UT-Austin uses to select applicants for admission. For example, when the 18-factor test under Section 51.805 is utilized, “[a]t least four or more [of those] criteria ... are used to select students admitted.” Rule §5.5(g)(2)(C). This provision appears to require that, for each individual admissions decision, an applicant should meet at least four of the 18 factors listed under Section 51.805. It is beyond the scope of this investigation to determine if this rule was observed in the admissions process.

2. Graduate and Professional Admissions

The Texas Higher Education Coordinating Board has also adopted Rule §5.7, 19 TAC 5.7, concerning computation of the grade-point average in connection with graduate and professional school admissions. Kroll found no other relevant provision for purposes of this investigation.

D. Regents Rules

Under Texas Education Code Section 51.352, the governing board of each institution of higher education – in the case of UT-Austin, the Board of Regents - has the responsibility to provide the policy direction for each institution under its management and control. In addition, the Board of Regents has the express duty to set campus admissions standards. Regents' Rule 10101 states that “Texas court cases ... have held that ... the rules adopted by the Board have the same force as statutes.” Section 3.5 of that Rule

directs that “[m]embers of the Board will ... respect management and reporting lines for U. T. System and institutional employees.”

Section 1.1 of Rule 10501 provides that “Institutional presidents ... are responsible for identifying contracts, agreements, and other documents of such significance to require the prior approval of the Board of Regents.” That there is no provision in Rule 10501 which delegates authority over admissions to any other official suggests that the Board of Regents has implicitly delegated such authority to the President of UT-Austin.

More specifically, Section 4 of Rule 20201 states, “Within the policies and regulations of the Board of Regents and under the supervision and direction of the appropriate Executive Vice Chancellor, the president has general authority and responsibility for the administration of that institution.” Section 4 specifies several of the president’s responsibilities, including “[d]evelop[ing] and administer[ing] plans and policies for the program, organization, and operation of the institution (Section 4.1) and “[i]nterpret[ing] the [UT] System policy to the staff” (Section 4.2). In addition, the president is responsible for “[c]aus[ing] to be prepared ...for approval, the rules and regulations for the governance of the institution, ...[which] rules and regulations shall constitute the Handbook of Operating Procedures” for the institution.

Rule 40301 requires each institution to make maximum use of resources “to admit and educate as many qualified students as possible” consistent with the standards of accrediting bodies and admissions policies approved by the Board of Regents. The general rules governing admission are found in Rule 40303.

- Section 1.1 requires institutions to adopt a policy for admission consistent with the requirements of law, including automatic and other admissions. This section requires the policy to specify the criteria to be considered for admissions other than automatic admissions, i.e., holistic admissions.
- Section 1.2 requires each institution to adopt policies for admission to graduate, postgraduate, and professional school programs, which are consistent with the statutes.
- Section 3 requires admissions policies to be published in the institutional catalog a year in advance.

Rule 40101 requires that the faculty have a “major role” in the governance of the institution, expressly including the requirements for admission and graduation.

REVIEW OF UNDERGRADUATE ADMISSIONS

This section of the report reviews the admissions process of UT-Austin's undergraduate program. Most information reported in this section is based on interviews of UT-Austin and UT-System personnel and a review of public sources and documents, including court briefs filed by lawyers acting on behalf of and with the approval of UT-Austin, sworn testimony and affidavits of former Directors of Admissions for UT-Austin, and information gleaned from UT-Austin's website and other public sources. Kroll also reviewed and analyzed admissions data, emails, and the files of selected applicants provided by UT-Austin under the direction of its legal counsel.

KEY FINDINGS

Based on interviews conducted and documents and other sources reviewed, Kroll makes the following key findings concerning the undergraduate admissions process at UT-Austin:

- The Admissions Office at UT-Austin is staffed by highly trained professionals who work hard at designing and implementing a fair and objective admissions process. Despite this fact, it is widely acknowledged that the holistic admissions process is inherently subjective and that many more applicants than those admitted into UT-Austin arguably merit admission; for example, partly as a result of the Top 10% Law, UT-Austin admits automatically many applicants who score lower on the SATs or have fewer meaningful extracurricular activities and other holistic attributes than many applicants who are denied admission.
- There is no existing law or statute, Regents Rule or UT-System policy concerning how much weight to give “external” recommendations (letters, phone calls, contacts and inquiries) in the admissions process. Moreover, there exist widely divergent attitudes and philosophies within UT-Austin and UT-System regarding whether it is appropriate for a public university to consider, as part of holistic review, impact on the university or relations with particular constituents.
- For many years, the practice of the Board of Regents, the Chancellor, and UT-System has been to forward letters and inquiries about applicants to the UT-Austin President's Office. This practice implicitly suggests that the President of UT-Austin oversees the Admissions Office and is the final arbiter in the admissions process.
- When an inquiry or recommendation concerning a candidate for admission is forwarded to the President's Office from a “friend of the university” or “person of influence,” a long-standing

practice has been to place a “hold” on that student’s application. The purpose of a hold is to indicate that the President’s Office is to be notified before a negative decision is finalized and sent to the applicant.

- There are three types of holds that are of interest in this investigation. A “Q hold” indicates the application is being monitored by the President’s office. An “L hold” indicates that the application is of interest to one of the college Deans. When both the President’s Office and a particular Dean request a hold, the file is designated as a “B hold.” Since 2009, hold designations have been entered on UT-Austin’s mainframe computer.
- Due in part to the increased competitiveness of undergraduate admissions at UT-Austin, and in part because recordkeeping is now computerized, Q-hold volumes in particular have escalated considerably over the past several years. Under President Powers, Q holds (including B holds) have totaled as many as 300 applicants of interest per year. The majority of Q holds appear to be based on requests from Texas legislators and members of the Board of Regents, while others are instigated by requests from the Chancellor’s Office, donors and alumni, or other persons of influence.
- The existence of Q (and B) holds combined with end-of-cycle meetings between the Admissions Office and the President’s Office, during which final decisions are made on all remaining Q-hold candidates, has caused increasing levels of tension between the Admissions Office and the President’s Office.
- In recent years, President Powers, acting through his Chief of Staff, has made certain holistic determinations that differed from the Admissions Office. Consequently, a select handful of applicants each year are essentially admitted over the objection of the Admissions Office. President Powers acknowledged to Kroll that this practice occurs, but he insisted that such decisions are made with the “best interests of the university” in mind.
- There is no evidence that any applicants have been admitted as a result of a *quid-pro-quo* or other inappropriate promise or exchange.
- There is no evidence that efforts were made to “save spots” for certain applicants. However, President Powers and his Chief of Staff admitted to Kroll that places are added each year to the admitted class in order to accommodate special cases. “We always add to the class,” said Powers. “These last-minute decisions do not affect the standard admissions practice. Adding to the total enrollment numbers is the ‘price we pay’ for exercising this balance.”
- Under President Powers, the tone and style if not the substance of the end-of-cycle meetings has changed from previous presidents. Through the Chief of Staff, it has been made clear that final admissions decisions are the prerogative of President Powers. For example, the Chief of Staff has essentially ordered certain “must have” applicants admitted over the objection of the

Admissions Office. Rarely was it discussed why particular applicants needed to be admitted, or what, if any, connections the applicants had with donors, politicians, or other persons of influence. Efforts were also made to minimize paper trails and written lists during this end-of-cycle process.

- The President's Office acknowledged to Kroll that legislative letters and calls are typically accorded more weight than other letters and calls because the legislature has a major impact on the university.
- The Board of Regents sends approximately 50 to 70 names of applicants to the President's Office each year.
- Email correspondence reviewed by Kroll confirmed that a relationship with university officials has on occasion provided applicants a "competitive boost" in the admissions process.
- Over a six-year period examined, applicants that received a hold of any type were admitted 72% of the time, compared to an overall admission rate of approximately 40%. Texas residents accounted for 82% of all applicants placed on a hold list.
- From 2009 to 2014, Kroll identified a total of 73 enrolled applicants who were admitted with a combined SAT score of less than 1100 and a GPA of less than 2.9. Kroll's review of the available "outlier" files suggested that, in some cases, political influence or political connections may have played a role in the decision to admit an applicant. In other cases, there were suggestions of alumni/legacy influence. Other cases demonstrated a commitment to ethnic and racial diversity.
- It is readily apparent that certain applicants have been admitted at the insistence of the President over the assessment of the Admissions Office. The data and application files reviewed confirm that the Q-hold list and the end-of-cycle meetings between the President's Office and Admissions Office results each year in certain applicants receiving a competitive boost or special consideration in the admissions process. Although this practice appears to have violated no law, rule, or policy (with the possible exception of the prohibition against legacy admissions), it is an aspect of the admissions process that does not appear in the public representations of UT-Austin's admissions process.
- Finally, we note that the existence of holds and watch lists, and the end-of-cycle meetings between the President's Office and the Admissions Office, were not disclosed or specifically addressed by President Powers and his Chief of Staff during an internal Admissions Inquiry previously conducted by the UT-System. Although President Powers and his Chief of Staff appear to have answered the specific questions asked of them with technical precision, it appears that by their material omissions they misled the inquiry. At minimum, each failed to speak with the candor and forthrightness expected of people in their respective positions of trust and leadership.

A. The Holistic Review Process as Designed

As noted in Section Four, the Top 10% Law, Texas Education Code Section 51.803(a-1), fills approximately 75% of the seats available to incoming freshmen at UT-Austin. To fill the remaining discretionary seats, UT-Austin uses a holistic review process, also known as "full-file review." Holistic review is also used to evaluate applicants who are automatically admitted under Section 51.803(a-1) to place them into the appropriate school or major.

The number of discretionary seats varies slightly from year-to-year and is determined in part by the number of total admissions slots established annually by the Provost. Although there is some variability in this number, it is generally set at around 1,500 to 1,800 spaces per year. Assuming a normal yield rate of approximately 47%, the total number of admitted applicants needed to fill these discretionary spaces totals around 3,000 to 3,500 in any given year (including non-Texas residents and international applicants).

The admissions process has been described in detail in a sworn affidavit of Kedra Ishop, Director of Admissions from 2009 to 2014, from which much of the below discussion is based.²⁵ Kroll has confirmed the accuracy of this description with several current staff members of the Admissions Office. In general, the process can be described as follows:

Academic Index. The review of admissions applications involves the calculation of an academic index ("AI"), which is derived from the calculation of a predicated grade point average ("PGPA") (produced via a multiple regression equation) and a curriculum-based bonus point ("units plus"). SAT/ACT scores and class rank are used to determine an applicant's PGPA. If the applicant took more than UT-Austin's minimum high school coursework requirements in at least two of three designated subject areas, a bonus of 0.1 points ("units plus") is added to the PGPA to produce the student's AI. The maximum AI that a student can obtain under this system is a 4.1, which correlates to an AI on the admission decision matrix (explained further below) of 410.

Personal Achievement Index. The Admissions Office also determines a Personal Achievement Index ("PAI") for each applicant. The PAI is the holistic evaluation of an applicant. The PAI score includes an evaluation of the two required personal essays and the applicant's demonstrated leadership qualities, extracurricular activities, honors and awards, work experience, community service, and special personal circumstances. The special personal circumstances considered include: the socioeconomic status of the applicant's family and school, whether the applicant is from a single-parent home, whether languages other than English are spoken at the applicant's home, the applicant's family responsibilities, and the applicant's race.

²⁵ Affidavit of Kedra B. Ishop, filed in Fisher v. University of Texas at Austin, Civ. No. 08-263 (W.D.TX) (February 23, 2009).

Other than the scores assigned to the two required essays, no numerical value is assigned to any of the individual components that make up the PAI. As race is a factor considered in the context of each applicant's entire file, it may be a beneficial factor for minorities or non-minorities alike, depending on the applicant's unique circumstances.

Until recently, each required essay was read and scored according to a scale of 1-6 by one of many specially-trained essay readers who score essays based on the quality of the writing (essays are now scored on a scale of 1-2 regarding quality of the writing). The entire application, including the required essays and any supplemental information provided by the applicant (i.e., letters of recommendation, the optional essay, and resume), is then reviewed and assigned a "personal achievement score" (or "leadership score") on a scale of 1-6. Full files are read by one of the senior readers. From the three scores (the two essay scores and the personal achievement score) a PAI is computed. The personal achievement score is given slightly more weight than the essays in the calculation.

The purpose of reading entire admissions files is to determine the PAI. The "whole file" readers do not make admissions decisions at this point of the review, but simply assign a PAI score. The file reader does not make a judgment regarding academic strength when determining the PAI, as that is accounted for in the applicant's AI.

Competitive Pools and College/School Distinctions. Applicants to UT-Austin fall into one of three competitive pools that are evaluated separately: (1) Texas residents, (2) non-residents (i.e., applicants residing within the United States but outside Texas), and (3) applicants from foreign countries. Admission decisions for Texas residents and non-resident applicants are made by the Admissions Office liaison to each college or school. Admission decisions for foreign applicants are made by admissions staff in the Graduate and International Admissions Office. Applicants are separated into these three pools and they compete for admission only against others in their respective pools. The vast majority of admitted Texas residents are offered admission pursuant to the Top 10% Law based on either class rank or AI alone, without any consideration of the PAI.²⁶

The admissions process begins by establishing automatic admissions cut-offs for individual colleges and schools. Some academic programs could fill most of their admissions slots based on the first choice preferences of top 10% applicants alone, while others, such as the School of Business, would be oversubscribed based on that population alone. It was for this reason that, as of 2009, Section 51.803(a-1) effectively limited the total number of applicants admitted automatically to 75% of enrolled students.

²⁶ Although Section 51.803 requires admission only into UT-Austin and not into an applicant's preferred academic program, many schools and colleges within the University grant admission to every applicant who qualifies under the Top 10% Law and selects that school or college as his or her first choice of academic program. However, for six Colleges and Schools within the University – Liberal Arts, Social Work, Nursing, Business, Communications, and Geosciences – admissions decisions are made at the college/school level. The AI/PAI requirements for entry into these academic programs are the same regardless of the major to which a student is admitted within the college/school.

“A” Group and “C” Group Categories. The Admissions Office also establishes "A" group and "C" group parameters for some colleges and schools based solely on an applicant's AI, without consideration of an applicant's PAI. "A" group applicants are those who have high AIs (e.g., 3.9 or above for Liberal Arts, 3.5 or above for Natural Sciences, etc.) and who are offered admission based solely on their AI. The exceptional academic strength of these applicants determines their earlier (rolling) admission, allowing the admissions office to offer earlier admittance to these highly competitive applicants.

"C" group applicants are those for which AI has typically rendered their admissions chances highly unlikely. All applicants with an AI of 2.599 and below are considered "C" group applicants. The file of each "C" group applicant is reviewed by a senior admissions reader, who will refer the applicant for a full file review if warranted from the contents of the file. If referred for a full file review, the review process is the same as the review of any other applicant. In most years, after all admissions offers based solely on academic performance (either pursuant to the Top 10% Law or due to the applicant's high AI) are made for each entering class, less than 1,000 available admissions slots remain open for Texas Residents.

The AI/PAI Matrices for Each Academic Program. The admissions process into particular programs outside of automatic admissions begins when the Admissions Office generates an initial AI/PAI matrix for each academic program. On each matrix, PAI scores are plotted on the vertical left axis ascending from 1 to 6 in whole-number increments; AI scores are plotted on the horizontal bottom axis, starting at the far left with 410 and descending in increments of 10. The cell that represents the highest combination of AI and PAI scores is located in the top left hand corner of the matrix, and the lowest combination can be found in the bottom right-hand corner. All applicants with the same AI and PAI combination are placed in the same cell on the matrix. The number of applicants within each cell of the matrix determines the cut-off.

On that matrix is displayed where the liaison has drawn the "stair step" admit line. The line is drawn to tentatively establish the admitted cells. The remaining applicants (i.e., those located in the cells that fall below the admit line) are then "cascaded" to the matrix for their second choice academic program, where the process begins again. Adding these "cascaded" applicants to a matrix, for many programs, increases the total number of applicants that fall within one of the cells tentatively considered for admission. When that occurs, each liaison adjusts the initial set of cells considered for admission to match the available number of admissions slots, again taking into consideration the desire to admit those applicants with the highest combination of AI and PAI scores. At the conclusion of this second round, each liaison determines which cells to admit to each academic program, and all applicants who fall within any of the cells above the line drawn on the matrix are admitted.

This “admit and cascade” process occurs for all academic programs until all applicants not admitted to their first- or second- choice academic program are cascaded to the matrix for Liberal Arts, undeclared major, which is the default third-choice program for all applicants.²⁷

B. Public Representations of Undergraduate Admissions Process

There are two primary sources of publicly accessible materials on the official UT-Austin websites, <http://www.utexas.edu/> and <http://bealonghorn.utexas.edu/>, which describe the admissions process and what is expected of applicants who seek admission to UT-Austin. First, the official University Catalog, described as “the document of authority for all students,” is found on the University Catalog webpage²⁸ and is linked to the Freshman Admission webpages that discuss and link to descriptions of the admissions process and factors considered in holistic review.²⁹ Second, the “Be a Longhorn” website also describes the factors considered in the holistic review process.³⁰ Each site contains statements and representations about the undergraduate admissions process.

According to the University Catalog, “The Office of Admissions uses an individualized, holistic review process to consider each completed freshman application. Applications from students who qualify for automatic admission are reviewed to determine majors. Applications from students who are not eligible for automatic admission are reviewed to determine admissibility and to make decisions about majors.”³¹

The nine items to be considered as part of the holistic review process include:

1. Class rank
2. Strength of academic background
3. SAT Reasoning Test of ACT scores
4. Record of achievements, honors, or awards
5. Special accomplishments, work, and service both in and out of school
6. Essays
7. Special circumstances that put the applicant’s academic achievements into context, including his or her socioeconomic status, experience in a single parent home, family responsibilities, experience overcoming adversity, cultural background, race and ethnicity, the language spoken in the applicant’s home, and other information in the applicant’s file
8. Recommendations (although not required)
9. Competitiveness of the major to which the student applies³²

²⁷ UT-Austin has also developed a summer program (called the “Summer Freshman Class”) that allows an additional group of Texas residents to be admitted to the University provided they are willing to begin coursework during the summer months immediately preceding the beginning of the Fall semester. In addition, the Coordinated Admission Program (“CAP”) allows students to transfer to UT-Austin after completing 30 approved credit hours at a participating UT-System campus and maintaining at least a 3.2 GPA. All Texas residents who apply to UT-Austin by the application deadline are at least offered the option of participating in the CAP program, through which they can eventually attend UT-Austin.

²⁸ <http://catalog.utexas.edu/general-information/the-university/>

²⁹ <http://catalog.utexas.edu/general-information/admission/undergraduate-admission/freshman-admission/>

³⁰ <http://bealonghorn.utexas.edu/freshmen/decisions/review>

³¹ <http://catalog.utexas.edu/general-information/admission/undergraduate-admission/freshman-admission/>

³² Id. There is a separate list of eight considerations for the holistic review process included in the separate “Be a Longhorn” website. <http://bealonghorn.utexas.edu/freshmen/decisions/review>. While these eight considerations are worded slightly differently from the nine considerations quoted from the catalog, there do not appear to be any material differences.

Moreover, “No specific class rank, test score, or other qualification by itself – other than automatic admission based on section 51.803 of the Texas Education Code – ensures admission.”³³ Consistent with the catalog’s statement that admission decisions are based on the information submitted as part of the student’s application, applicants are encouraged to submit supplemental items that may help convey additional information about their qualifications, including “accomplishments and extracurricular activities, letters of recommendation, and letters addressing an applicant’s special circumstances.”³⁴

The “Be a Longhorn” website, which is intended for prospective students, contains much of the same information as the catalog. After discussing automatic admission, the website states: “During holistic review, we consider academic achievement, personal achievement, and special circumstances.”³⁵ Under academic achievement, the site lists class rank, test scores, and high school coursework. “Although test scores aren’t everything, considered with other academic information they can be a meaningful indicator of academic ability.”³⁶ As with the catalog, the “Be a Longhorn” website states that “[n]o minimum test score is needed for an applicant to be considered for admission” and “[n]o score by itself, no matter how high, guarantees admission to any applicant.”³⁷ While SAT Subject Test scores are not required, “any information submitted as part of an applicant’s record . . . may be considered during the evaluation of an individual application.”³⁸

Under personal achievement, the “Be a Longhorn” website discusses the written essays, activities, and recommendations. Written essays are “read and reviewed holistically . . . to evaluate the quality of your writing and to uncover personal information about you.” An applicant’s activities may include “the extent of a student’s involvement in his or her community,” as well as a student’s “long-term commitment to and leadership in extracurricular activities, community service, and work and employment experience.” Although recommendations are not required, “sometimes a well-written recommendation from someone who knows you well can enhance your application. Such recommendations can provide additional information about your personal and academic achievements or about things you may not have been able to tell us about yourself.”³⁹

Finally, the “Be a Longhorn” website explains the types of special circumstances that are considered during the holistic review process. “Special circumstances in an applicant’s life sometimes help an application reviewer to get a clearer picture of the applicant’s qualifications.” The special circumstances considered include:

- Socioeconomic status of family
- Single parent home
- Language spoken at home
- Family responsibilities

³³ <http://catalog.utexas.edu/general-information/admission/undergraduate-admission/freshman-admission/>.

³⁴ Id.

³⁵ <http://bealonghorn.utexas.edu/freshmen/decisions/review>

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.

- Overcoming adversity
- Cultural background
- Race and ethnicity
- Other information in the file⁴⁰

Other than that described above, very little additional information about the admissions process or how admission decisions are made is set forth publicly in the catalog or on the “Be a Longhorn” website.

Finally, UT-Austin has made several public representations in the *Fisher* litigation concerning its admission process. For example, the briefs filed by lawyers for UT-Austin with the United States Supreme Court provide a detailed outline of the undergraduate admissions process, and attach as an exhibit the sworn affidavit of former Director of Admissions Kedra Ishop. Both the briefs and the Ishop affidavit outline in great detail the process, consistent with the description of the holistic admissions process in Section 5.A above. While the explanations provided of the holistic process are consistent with the information provided in the university catalog and the “Be a Longhorn” website, the briefs and the affidavit provide far greater detail as to precisely how the process works in an attempt to evaluate all applications in a fair and accurate manner. For example, the Ishop affidavit and briefs explain the process of determining how AI and PAI are calculated. They also explain how matrices help determine a cut-off line for admissions in each school and major, and explain such concepts as “A” Group and “C” Group, which are not otherwise discussed on the admissions websites or catalog.

C. Review of Undergraduate Applications

The Admissions Office at UT-Austin has approximately 145 full-time employees, of which about 60 are “readers” – staff members who participate in reading and reviewing individual application files. The readers are trained every year in how to properly read and score files. Although there is much consistency in how readers evaluate applications, it is acknowledged that some applicants are admitted each year that do not rise to the level of the typical admissions criteria. As noted by one longstanding Admissions official, “There are always special circumstances that we review and say to ourselves that this kid deserves a shot – on occasion.” Conversely, there are a large number of applicants every year that are qualified for admission but who nevertheless are denied because “we cannot admit everybody.”

The present holistic review admissions process was designed and implemented following the *Hopwood* decision in 1998, and it is widely acknowledged that scoring the PAI is the most subjective part of the process. Consequently, UT-Austin conducts annual training sessions for essay and full-file readers, led by a recognized national expert in holistic reading. Readers must participate in training every year, and anyone who does not participate in the training process cannot be a reader that year.

The training takes place over two days and covers the holistic review and evaluation of personal essays and application files. Until recently, essays were scored from 1-6, with 1 being the lowest score possible and 6 being the highest score. Within the past year or so, the process was modified to evaluate the

⁴⁰ Id.

writing quality of each essay on a scale of 1-2, with 2 meaning the writing is reasonably proficient and 1 meaning the writing is not proficient. The purpose of the training is to condition the readers to score essays and application files as objectively and consistently as possible.

The training takes into account that some applicants may attempt to “game the system” and pad their resumes or applications with extracurricular activities and civic accomplishments. Participants are taught how to review an application to distinguish between a quality activity – proof that someone is truly committed and involved – as opposed to merely “padding” a resume by listing membership in a lot of different groups with no leadership involvement or commitment.

The reading process usually begins in mid-October and ends in the third week of February. To account for the role fatigue plays on grading applications and essays, the Admissions Office occasionally pulls scored files and re-reads them to ensure that readers are consistently grading the files and essays. When readers review and score applications, they look at context and ask, “What does the student bring to campus?” While the resulting scores may be influenced by the student’s socioeconomic background and other factors, the readers do not consider a student’s connections to politicians, UT officials, alumni, or donors. From the perspective of Admissions staff, while one occasionally comes across a high profile name, there is usually no clear sense or indication among staff of an applicant’s family or political connections during the review process.

D. Undergraduate Admissions Process as Practiced

It is widely acknowledged that a holistic admissions process is inherently subjective and that there is no perfect college admissions system. For the relatively small number of discretionary slots that exist outside of the spaces allotted for automatic admissions, there are many more qualified applicants than spaces available. The specific focus of Kroll’s investigation is thus on whether factors other than individual merit or officially established personal holistic characteristics are considered in the admissions process and, if so, for what reason.

We have identified no Board of Regents Rule or UT-System Policy concerning how to treat or how much weight to give “external” recommendations (letters, phone calls, contacts, and other inquiries) in the admissions process. As stated by a high-level UT-System official, the issue here is “fairness,” not whether any specific rule, law, or policy was violated.

Virtually everyone Kroll interviewed acknowledged that, for many years, it has been common practice for letters, phone calls, contacts, and other inquiries on behalf of applicants to be routed through the President’s Office. This includes even those letters and contacts that originate with the Chancellor, UT-system, or individual members of the Board of Regents. According to former Chancellor Cigarroa, there is no written policy, it is simply a “practice – we let the President’s Office handle it and forward it to the Admissions Office.” When asked why letters of recommendation and other applicant inquiries are forwarded to the President’s office, he replied, “Because that is the chain of command.” UT-Austin is a

huge institution with a complex organizational chart. Most everyone with whom Kroll spoke agreed that, as the CEO of the university and its operations, the President of UT-Austin is ultimately responsible for the admissions process.

According to one high-level UT-Austin official, the question that must be asked in making an admissions decision is whether a particular applicant is going to be a successful student at UT-Austin. The approximately 15,000 applicants admitted (and 7,200 enrolled) each year in the undergraduate program are not the only applicants out of the nearly 40,000 who could be successful students. There are many more qualified applicants than could ever be admitted. The challenge during the admissions process, therefore, is not simply selecting the best applicants, but getting the best class for UT-Austin.

1. Complexity of Admissions Process

As noted in Section 5.A, the admissions process at UT-Austin is a very complex affair. Particularly in light of the Top 10% Law, there are many applicants admitted automatically who score much lower on the SATs than many applicants who are denied admission. Although historically UT-Austin was essentially an “open admissions” college and was not particularly competitive, that has changed dramatically. It is now a highly selective institution. For example, UT-Austin received 38,785 applications for 7,287 places in the 2014 entering freshman class.⁴¹ With 75% of spaces automatically filled under the Top 10% Law, and with an overall acceptance rate of only 40%,⁴² the competition for the small number of discretionary spaces available for Texas residents is intense.

As noted by one high-level university official, in part due to court decisions and various state laws regulating its conduct, “the admissions process has become much more political” and there has “naturally evolved a relationship between the President’s Office and Admissions that does not exist with other departments.”

The Admissions Office is staffed by many career professionals, some who have been with UT-Austin for twenty years or more. Consequently, the Admissions staff has developed a well-deserved reputation as conscientious and principled in evaluating applications and thinking strategically about how to maximize student success. Nevertheless, some contend that admissions officers are too focused on numerical formulas and take a “black-and-white” approach to admissions, failing to account for factors that can have a significant bearing on the university’s broader interests.

Virtually everyone agrees, however, that stress and admissions go hand-in-hand. The Admissions Office makes thousands of “yes/no” decisions every year, affecting the futures of thousands of applicants. As one official noted, the university receives calls every day from people all across the state making comments like, “I am the pastor of XX Lutheran Church. There is this great kid, you have to take him.” Another long-standing Admissions official stated, “We are bombarded all the time with people who want

⁴¹ <http://bealonghorn.utexas.edu/whyut/profile/app-to-enroll>

⁴² Id.

to influence the admissions process.” This is not limited to the President’s Office or other office holders within the university. At least under the current setup, pressure simply goes with the job.

As a former high-level university official told Kroll, pressure on Admissions is not unique to UT-Austin. Money and influence are always significant factors. “What you do with that pressure and how a university responds to it are how institutions differ.”

2. Philosophical Differences

Kroll found widely divergent attitudes and philosophies from UT-Austin and UT-System officials and members of the Board of Regents regarding whether it is appropriate for a public university, when making admissions decisions, to consider in a limited number of cases the impact on the university and relations with particular constituents in addition to the individual merit of the applicant as determined by AI and PAI. One concern with admitting less-qualified applicants simply because they are connected to persons of influence is that it becomes a sort of “affirmative action for the advantaged.” As one former high-level university official said, “Admissions are an allocation of opportunities. You don’t mess with that.”

One Regent indicated that, even if it violates no specific rule or policy, “It has always been wrong to ever allocate admission slots to a state institution on anything other than merit.” According to another Regent, when UT-Austin publicly advertises certain procedures and standards and then fails to comply with those standards, it is essentially “defrauding the public.” Yet another Regent opined that “it is bad public policy to have anything other than a clean admissions process” and that holistic admissions “are generally thought to encompass merit-based considerations that cannot be measured as easily as grades and test scores.” According to this Regent, there is a “very clear expectation that influence is not a factor in admissions” and that “merit and diversity are the only legitimate considerations.”

On the other hand, several UT-Austin and UT-System officials Kroll interviewed believed that, absent a specific rule or policy prohibiting certain considerations, there is nothing particularly inappropriate with the president of a university essentially overriding preliminary admissions decisions based on knowledge he or she may have, as long as the president acts in good faith and in what he or she perceives is the best interests of the university. As one high-level UT-Austin official told Kroll, that there is “outside influence” should come as no surprise, but the president is effectively the CEO of the university and is accountable to many stakeholders. It is his or her job to balance those interests and occasionally make judgment calls on admissions.

At UT-Austin, the President is expected to raise large amounts of money, cultivate donors and alumni, and maintain positive relations with the state legislature, which has unprecedented oversight and influence over university funding. Some believe, therefore, that any factor that advances the interests of the university is fair game and can be taken into consideration when conducting a holistic review of a particular applicant. See Texas Education Code Section 51.805(b)(18) (academic institutions may consider as a factor for admission “any other consideration the institution considers necessary to accomplish the institution’s stated mission”). Many have suggested that, “after all, it is the way the world

works.” According to this view, what is the right thing to do when making certain admissions decisions is a value judgment and the prerogative of the president as the head of UT-Austin. Individual admission decisions are inherently subjective, and it is not inappropriate or impermissible to consider what value a particular student may bring to the university. The President and the Director of Admissions have to look at the whole picture. As President Powers told Kroll, “Looking out for the best interests of the university is the proper role of the president. And I am the only one who is in the best position to make some of these ultimate determinations.”

As one high-level UT-Austin official noted, “there is a role for university leadership to consider important factors” such as a donor’s wishes “as part of the holistic admissions process.” Thus, some officials believe it appropriate in certain limited cases to consider special admission factors that benefit the university. For example, if a long-time committed donor knows a student and can attest to his or her character and potential, the donor’s opinion of the student has probative value and should be one of many factors considered. This same official noted, however, that “we should not admit unqualified students” – i.e., applicants with “no redeeming qualities.”

According to Patti Ohlendorf, UT-Austin’s Vice President for Legal Affairs and the chief legal officer of the university, there is no violation of law or policy for the President’s Office to pass along recommendations and other relevant information to Admissions. Ohlendorf believes the university has appropriate discretion to consider special circumstances that are in the institution’s best interests, as long as three conditions are met: (1) The decision respects and appreciates the work of the Admissions Office; (2) the university does not admit anyone who is not likely to succeed at UT-Austin or is unable to perform the work; and (3) there is no *quid-pro-quo*. “But it is perfectly fine, and often the right thing to do, for the President to balance and weigh the interests of the university against the determination of the Admissions Office and make a final decision to admit a student.”

3. Presidential Pressure on Admissions Office

In June 2014, a former high-level Admissions official informed then Chancellor Cigarroa and General Counsel Sharphorn that concerns of outside pressure and influence on the Admissions Office are “real and probably worse” than imagined. He said that there was frequent pressure placed on the Admissions Office by the President’s Office to admit certain applicants, particularly those connected to influential people who the president had an interest in. This occurred under past presidents, according to the former official, but became particularly acute under President Powers.

President Powers designated Nancy Brazzil or her assistant to keep an eye on particular applicants with the Admissions Office. In sit-down meetings between the Admissions Director and Nancy Brazzil before the decision deadline each year, Admissions was essentially “forced to admit” many of these applicants over the objection of Admissions, including some applicants who, in this former official’s opinion, clearly did not qualify for admission.

The added involvement and pressure from the President's Office coincided with Powers becoming president and moving such things as football ticket distribution and other functions to the jurisdiction of the president (it had previously been handled by the Office of the Vice President for Legal Affairs at UT-Austin).⁴³ There are instances in which applicants do not succeed in the standard admissions process and the President's Office will request, and in some cases direct, that certain files be reviewed again.

In most instances, when pressure to admit a questionable applicant is placed on Admissions by the President's Office, it is usually in the form of, "Can you please look carefully at this applicant and see if there is some way to admit the person?" All recent past presidents have discussed with Admissions certain close calls and other sub-par applicants who the president wanted to admit. However, each president brings different management styles, personalities, and approaches to such conversations. According to multiple sources, President Powers, acting through his Chief of Staff, has been less conciliatory than previous presidents when dealing with Admissions. Consequently, the perception has been that more pressure on Admissions is exerted under President Powers than had been the case under past Presidents Faulkner or Berdahl.

However, as noted by a senior Admissions official, much of the increased pressure on Admissions in the past ten years is simply a result of the numbers. There are now approximately 23,000 to 24,000 non-automatic admission files reviewed every year, of which only 3,000 to 4,000 can be admitted, including non-Texas residents and foreign applicants. Ten years ago, when President Faulkner ran the university, the level of selectivity was not nearly as high.

A high-level UT-Austin official noted that some tension between the president of a university and Admissions is not uncommon; a president might have one opinion and an Admissions officer another about a particular applicant. "There can be legitimate disagreements."

4. Application Holds and "Watch Lists"

President Holds: When an inquiry or recommendation concerning a candidate for admission is forwarded to the President's Office from a "friend of the university" or other "person of influence" – which may include a public official, a member of the Board of Regents or UT-System official, an important alumnus or alumna, a major donor, a faculty member or other UT-Austin official – a long-standing practice has been to place a "hold" on that candidate's application. The purpose of a hold is to indicate that a negative decision may not become final until the party which placed the hold is notified.

Since 2009, certain hold designations have been entered on UT-Austin's mainframe computer with the designation of "Q," "L," or "B." A designation of "Q hold" indicates the application is being monitored by

⁴³ The President of UT-Austin and the Chancellor of UT-System each have access to a football suite, where they invite and host guests and friends of the university. In addition, a set of football tickets is issued to the Vice Presidents (two tickets per game, plus bowl games and away games), Assistant Vice Presidents (two tickets per game), UT-System executive officers (two tickets per game), and members of the Board of Regents (four tickets per game). Placing oversight of this function in the president's office allows the office to keep track of how many tickets are being used for each game and to give out extra tickets as they become available. Before President Powers shifted this function to the president's office, it was handled in the same manner by the Office of Legal Affairs.

the President's Office. An "L hold" indicates that the application is of interest to one of the college Deans. When both the President's Office and a college Dean request a hold, the file is designated as a "B hold." (Several other types of holds exist for a variety of reasons noted below; however, the only holds within the scope of Kroll's investigation, and thus of interest for purposes of this report, are Q, L, and B holds.)

An administrative assistant in the Admissions Office is generally the person who enters the hold designations into the system. According to the Admissions Office, some type of "hold" system has existed in one form or another under the tenures of at least the past six presidents of UT-Austin, if not longer. Although now the holds are computerized, they previously were on paper.

The holds that came to be known as "Q holds" started under a previous Director of Admissions after Powers became President of UT-Austin. Although there were applicants of interest considered through the process under former President Faulkner, the volume has escalated considerably over the past several years. This appears to be due to the increasingly competitive nature of admissions at UT-Austin, particularly for the discretionary spaces, and because holds were computerized starting in 2008 or 2009, while records of past holds were not maintained with any degree of precision and were destroyed at the end of each year.

The purpose of a hold is to prevent a negative decision from becoming final until the President's Office (in the case of Q and B holds) or a Dean (in the case of L and B holds) is first notified. If the decision by Admissions is to admit, there is no issue; the applicant is notified of his or her admission and taken off the hold list. But if the preliminary decision is to deny admission, the hold designation requires that Admissions first notify the President's Office (in the case of Q and B holds) or a particular Dean (in the case of L and B holds).

During the application review process, the reader(s) of the applicant's file cannot see whether there is a hold on a candidate. Consequently, there is no reason to believe that the members of Admissions staff who review and evaluate applications are aware or in any way influenced by hold designations.

Before a Q hold is entered into the system, an administrative assistant in Admissions is typically informed by an administrative assistant from the President's Office regarding candidate files on which to designate a hold. All of the Q holds are designated by Nancy Brazzil. In most cases, no particular reason is provided as to why a particular hold is requested.

President Powers and Brazzil noted that the vast majority of Q holds are based on requests from Texas legislators and members of the Board of Regents. Others are instigated by requests from the Chancellor's Office, donors and alumni. In most years, there were certain legislators and Regents whose names would be heard more than others. These communications accumulate over the course of the school year as the names are forwarded from the President's Office to the Admissions Office. In recent years, Q holds have totaled as many as 200 or 300 applicants of interest per year. As suggested by a review of admissions data (discussed later in this report), a majority of applicants on the list turn out to be either automatic admits or a relatively easy call on the merits. Only those applicants who are not already admitted by the

end of the admissions cycle remain on the “watch” or “hold” list. It is these applicants who cannot be denied admission without further conversation with the President’s Office.

Towards the end of the admissions cycle, usually in late February (before the final admissions decisions are made), whoever remains on the Q-hold list is reviewed and discussed in meetings between the Director of Admissions and the President’s Office. An administrative assistant from each office also attends these meetings, which are held in the Government Relations conference room or the Director’s Office. As the remaining files are reviewed, many candidates are relatively easy to resolve – some are admitted, some are denied, others are placed into a CAP program or offered Summer Freshman enrollment. Eventually, the list whittles down to around 50 or 60 files that may need further discussion.

In some cases, an index card may designate an applicant “MH” for “must have.” The “must have” designation is based on instructions from the President’s Office and means, according to Nancy Brazzil and an administrative assistant in the President’s Office, “really important” to the person who is recommending the student. Brazzil noted that not all “must haves” are admitted and not everyone on the hold list is considered a “must have.”

For the past several years, the Directors of Admission have provided some push back to the President’s Office on the desired admissions of certain applicants. The Directors of Admission saw it as their job to defend the Admissions Office evaluations and to ensure consistency in and integrity of the admissions process. In some instances, when the Admissions Directors stood their ground, Nancy Brazzil would ask, “Do we need to talk to Bill [Powers]?” In a few cases, a Director said yes. Then, sometime after the meeting, the President’s Office called the Admissions Office and said, “Nancy talked to Bill and we have to do this.”

Brazzil acknowledged that Admissions Directors do occasionally provide push back to the perceived interference from the President’s Office in what Admissions believes is its “turf.” “Admissions officers are black-and-white,” noted Brazzil, “they see grades, and scores . . . a student is in or not. They did not like when Bill [Powers] overrode their decisions.” Brazzil confirmed that she acted on Powers’ behalf at these meetings, having consulted with him prior to the meetings. She further confirmed that Powers “absolutely made holistic determinations that differed from the Admissions Office” and occasionally admitted applicants with “lesser” qualifications based on factors he felt were in “the best interests of the university.” Ultimately, however, “the President is the boss” and sometimes Admissions disagreed.

Brazzil and Powers candidly acknowledged to Kroll that this was essentially how things worked. They believe strongly that President Powers acted in good faith on behalf of the university. He never intervened or interfered with the admissions process for a friend or relative, but only when he believed it advanced the cause of the university. Brazzil believed that the President’s actions violated no rule, law, or policy, and stated “no one was ever misplaced.” She acknowledged, however, that there is otherwise “no real defense of this issue.”

President Powers stated that the Admissions Office does not always see the larger picture and benefits to the University of admitting certain applicants due to “relational factors” and the importance of those relationships to the university community. The Admissions Office often is not privy to certain facts, he said, such as the relation of and involvement (financial and otherwise) of an applicant’s family to the university. For a variety of reasons, the President is responsible for the overall welfare of the university. “It definitely mattered what Kedra [Ishop] and Bruce [Walker] said, and there would be a dialogue – it was important what Admissions felt.” But the President’s Office must balance how important the countervailing interests are against the potentially negative impact on Admissions. Most of the time, according to Powers, they would come to an agreement, but sometimes they would not. It was ultimately Powers’ call.⁴⁴ Although Brazzil was more involved in day-to-day details, as spring and the end-of-the-admissions cycle approached, Powers would become more aware of the specifics (from Brazzil).

None of the participants at these end-of-cycle meetings could recall many specifics of applicants discussed during these meetings. However, according to one participant, in one case, an applicant in the bottom 12% of his class at one of the prestigious private high schools with a middling SAT score was admitted over the Admissions Director’s objection. This staff member noted that one legislator was “always pushing for students from XXX High School,” and thus a number of holds were placed on applicants from his district. Some legislators routinely impacted the hold list more than others.

For those involved, it was generally agreed that one important factor was the timing of these decisions; specifically, that they not impact any other applicants admitted. While there is no indication that efforts were made to “save spots” for certain applicants, President Powers and Brazzil both stated to Kroll that places were added each year to the admitted class so as to accommodate some of these special cases at year-end. “We always add to the class,” noted Powers. “These last-minute decisions do not affect the standard admissions practice. Adding to the total enrollment numbers is the ‘price we pay’ for exercising this balance. We are slightly more crowded than we would have been.”

Efforts were made to minimize paper trails and written lists during this end-of-cycle process. At one meeting, the administrative assistants tried not keeping any notes, but this proved difficult, so they took notes and later shredded them. One administrative assistant usually brought to these meetings a stack of index cards that were subsequently destroyed.

During his tenure, President Faulkner also held these end-of-cycle meetings with the Admissions Office to decide on hold applicants. However, until recently, there were fewer holds in place, in part because UT-

⁴⁴ Powers made clear to Kroll that, in his view, the final admissions decisions essentially rest with the President of UT-Austin, and ultimately with the Chancellor and the Board of Regents. “If the Regents passed a rule that said we cannot do this, I would not do it.” He believes, however, that it would be very harmful to UT-Austin for the Regents to pass such a rule. He has talked with many university presidents and “I do not know of any college or university where, to some limited extent, these sorts of considerations are not taken into account.” President Powers acknowledged, “There are a lot of practices that take place that are not perfectly pure.” He has a lot of responsibilities and it would severely damage the university if the firewall white paper were implemented. Why? “Because we are in the business of dealing with important outside constituents – Regents, legislators, the Governor, donors, advisory people – on balance, as long as it is very limited, it is in the best interests of the university.”

Austin admissions were not as competitive as it is at present. During Faulkner's occasional one-on-one meetings with Admissions, Faulkner persuaded the Admissions Director to admit some applicants over the Director's initial wishes, but it was not as many as under Powers, and the meetings were by most accounts very cordial as Faulkner was skilled at articulating why he felt admitting the student was in the best interests of the university.

From 1998 to 2006, Patti Ohlendorf acted as Chief of Staff to then President Faulkner. During that time, the President's Office received around 100 calls a year from various legislators, Regents, UT-System officials, and others concerning particular applicants for admission. Notes were kept on index cards, which were used and discarded from one year to the next. Ohlendorf, as then Chief of Staff, handled most of the requests concerning admissions. Once a year, towards the end of the admissions cycle, she and her assistant met with the Admissions Office to review the names on the hold list. In as many as five to seven cases each year, a student was admitted over the preliminary determination of Admissions, mostly at the urging of certain Regents, and occasionally because a particular legislator was interested in a student. In those instances, Ohlendorf would say to the Admissions Director, "Would you please give the person another look?"

There is little dispute that, under the tenure of President Powers, the style if not the substance of the end-of-cycle meetings changed. Through Brazzil, it was made clear that the final admissions decisions were the prerogative of President Powers. During the yearly sit-down meetings with Brazzil and the Director of Admissions, Brazzil expressly indicated in some instances which applicants needed to be admitted. By the time that meeting took place, there had already been much back-and-forth and reconsideration of applicants. According to the people involved in these meetings, Brazzil possessed what was essentially a "must-admit" list of applicants. In some cases, Brazzil accepted the denials and pushback from Admissions, and in other cases she insisted that a particular applicant needed to be admitted.

The Director's goal in the process was to defend the initial evaluation of the Admissions Office, as that was based on AI, PAI, and multiple reviews. The Director explained why these applicants should not be admitted; sometimes Brazzil agreed, while sometimes she simply asked, "Do you need to talk to Bill [Powers]?" This usually occurred in a relatively small number of cases each year. The Directors never asked to speak with President Powers, but instead relented on whoever remained a "must have" out of that group.

Because the total numbers of admission slots is established by the Provost at the beginning of the process each year, a former Director of Admissions once insisted to Brazzil that any applicants admitted following their year-end meetings should occur only after the admitted class was already determined. In this way, any "special consideration applicants" would not take away slots from any applicants considered in the normal course of business. The President's Office agreed with this approach.

The Admission Directors never talked directly with President Powers about specific applicants on the hold list. All conversations occurred with Brazzil. Nevertheless, it was understood that Brazzil spoke for the

President. As one former Director noted, “At the end of process, when we were down to must-haves, it was understood that we would have to admit [applicants] that were insisted upon” by Brazzil. However, it was not specifically discussed why these particular applicants needed to be admitted or what, if any, connections they had with persons of influence. According to Brazzil and President Powers, the reasons were always based on what they deemed to be the “best interests of the university.”

According to one former Director of Admissions, the “close call” cases are easy to handle and “not a problem.” He acknowledged the subjective nature of the process and understands that “previously unseen holistic attributes” can be recognized in candidates when you take a closer look. But he believes the goal should be to keep the process as transparent as possible, which helps high school guidance counselors across the state explain to parents and students what is likely to happen in a given applicant’s case, and why certain admissions decisions are made. It is important that guidance counselors provide consistent advice to students and parents; that objective is undermined whenever an admissions decision is based on factors outside of the publicized process. When a counselor sees a less competitive applicant admitted over a more competitive applicant, it sends the message that some kids are admitted because of who they know. And the parents see this as well.

Under former President Faulkner, according to this official, “there was an understanding as to why we made certain final decisions.” The decision was more collaborative, although the final decision ultimately rested with Faulkner. Although it may be a matter of personal style, the official said that, “with Powers, it became more of an order, less of a discussion.” Most of the applicants under discussion were from private schools or elite public schools, and there were a few cases each year of “truly unqualified kids.” He recalled one case when, in a discussion with Nancy Brazzil, it was stated by the Admissions Director that the student under discussion was “so bad for so many reasons, there is no way I can admit this student.” Brazzil nevertheless responded, “But the president wants this done.” The former director said, “Well, if the president orders me to do it, I will do it.” Brazzil then replied, “Well, I speak for the president and he wants it done.” So, the Director did as instructed and the student was admitted into UT-Austin.

Dean Holds: As noted, many of the college Deans also place holds on certain candidates of interest. These are designated as “L holds” on the mainframe computer. As explained by one high-level official who was a former Dean, “As Dean, I might have a donor who has an interest in a student applicant. I would give the name to the Chief Development Officer, who would keep track of the progress of the application, and we would place a ‘hold’ on the application to ensure that we were informed of a negative decision before it was finalized.” The deans do not typically become involved in admissions decisions, but this allows them to be informed as to an applicant’s progress. As this official stated, “Donors are important.”

Kroll found no direct evidence that Deans or others affirmatively interfere with the independent admissions decisions made by the Admissions Office with respect to applicants placed on L holds. By most accounts, the L-hold designation is more a matter of process and notification than special consideration. However, it is not unknown for a Dean and the Director of Admissions to have legitimate

disagreements over the merits of a particular applicant. If a Dean does not like a particular admission decision, he or she could request that the President's Office become involved.

Moreover, as noted later in this section, applicants subject to L holds are admitted at rates similar to those subject to Q holds. Thus, in each of the past four years, 70% or more of L-hold applicants were admitted, compared to an overall admission rate of 40% for undergraduates in general. This differential may be due to the fact that the applicants subject to L holds are applicants of interest to the Deans of particular colleges and are thus, on average, higher quality applicants with fewer "outlier" candidates. For example, as noted below, Kroll found that the total number of L-hold applicants with SAT scores at 1100 or below and a GPA of 2.9 or below was relatively small. Moreover, in most of the years examined, the majority of outlier files were at or near the "outlier" thresholds. Nevertheless, Kroll cannot conclude at this time whether or not undue external influence is ever exerted into the L-hold process.

Other Types of Holds: In addition to the holds noted above, UT-Austin also maintains a system of electronic holds for a variety of reasons that involve a number of different departments and constituencies on campus. For example, an "H hold" is placed on certain admitted applicants who are being considered for the Honors program. A "J-hold" is placed on recruited varsity athletes so that the staff member in Admissions who has expertise in NCAA requirements can help ensure that all needed paperwork and regulations are complied with. It also allows for the Director of Admissions to discuss with a designated person in the Athletic Department any recruited athletes who may not have done well in the standard Admissions evaluation process, recognizing that an individual's unique athletic skills and value to the university sports program are not factors considered during the normal holistic review. Other holds include those that apply to applicants who are appealing denials; processing holds to ensure that files missing key information are not prematurely denied without an opportunity to obtain the requisite documentation; several types of liaison holds, including a hold for fine arts students who must perform auditions or submit portfolios; and holds that allow assigned Admissions staff to keep watch on certain applicants of particular programs and schools.

Although it is possible that some of these holds present issues similar to that of Q, L, and B holds, most pertain either to administrative concerns or to applicants with unique talents and skills in a particular field, be it sports, art, music, or other field of interest having to do with the applicant's individual merits. Accordingly, we have not examined the impact or implications of any of these other holds in this report.

5. Legislative Influence

Maintaining good relations with state government, particularly the legislative branch, is important to the financial and legal viability of the university. UT-Austin must ultimately report to the legislature, which has the authority to positively and negatively impact the university's funding, budget priorities, and operations. Thus, both UT-System and UT-Austin have in place full-time professional government relations staff responsible for communicating and maintaining positive relations with the Texas legislature and Governor. As former President Faulkner explained, Texas is a legislatively governed state and the

legislature has substantial influence over the fate of UT-Austin (and all other state universities). “It is unavoidable that, as president of UT-Austin, you are going to have substantial interactions with many legislators.” Moreover, every university president receives letters and calls from legislators. “That is part of the job,” noted Faulkner, “you can never eliminate the pressures.” For this reason, it is important to develop a system for managing such interactions. While most inquiries and requests from legislators (as well as alumni, donors, and Regents) concerning a student applicant are harmless and well-intentioned, it is the process of making exceptions and granting special considerations that is potentially troublesome.

As noted by many staff members in both the UT-System and UT-Austin Offices of Government Relations, from a legislator’s perspective, it would be a rare legislator who would think that a phone call or letter to UT-Austin on behalf of an applicant could cause someone to be admitted. In 99% percent of the cases, a letter or call from a legislator’s office is simply constituent service.

Many Government Relations staff members believe the concerns over legislative influence in the admissions process is “totally overblown.” As one staff member noted, “100% of what we do in government relations is about relationships” and obtaining or disseminating information. “When members call us, it is not because [they think] we have juice, but because they have issues or concerns with a particular constituent.” But as noted by a high-level Government Relations staff member who has been with UT-System for several years, “it is human nature to take certain calls more seriously than others” and, thus, “we note who called and who inquired.”

Another high-level UT-System Government Relations official explained that, concerning admissions, his office receives inquiries from, and interacts with, three groups of people: (1) legislators and their staff; (2) executive branch officials (Governor and staff, Attorney General and staff, etc.); and (3) professional colleagues – former members of the legislature, friends and family. These interactions and inquiries take several different forms, from general questions (e.g., someone who wants a tour or has a question about the admissions process) to inquiries about the son or daughter of a constituent and simply wants to know, “What are their chances of getting in?” In most instances, Government Relations staff attempt to provide basic information and guidance without making any representations regarding a student’s prospects for admission.

Sometimes when a legislator calls, he or she wants it known that a call came in from Senator X or Representative Y. This is the most “troubling” of legislative contacts or inquiries, according to one staff member, because it is unclear precisely why the legislator wants it known they are calling. But no one with whom Kroll spoke has known a legislator or staff member to bully, coerce, or pressure the university to admit a student. The most that happens is the admonition, “Let them know I am calling.” In most instances, the information is forwarded to the UT-Austin Office of Government Relations (e.g., “Senator X wants to know....”). Occasionally, someone from UT-System Government Relations calls Nancy Brazzil so that she can make President Powers aware that a particular legislator is inquiring about an applicant.

The Government Relations staff understands that most letters and inquiries from legislators are seen as constituent service. “This is the system we inherited,” noted one high-level UT-System official, “it has always been this way.” Government Relations is in the business of relationship building. Accordingly, said one staff member, “We do lots of things to reward friends of the university – we give football tickets away, hold events,” etc. “But there is no *quid-pro-quo*.” No one in the UT-System Government Relations Office was aware of any case where this has happened, and no one had spoken directly to President Powers about an individual legislator’s interest in a student.⁴⁵ One official emphasized, however, that “I am not doing my job if I do not think about everything I can do to cultivate positive relationships with the legislature.”

On the UT-Austin side, a high-level Government Relations staffer acknowledged that the office receives “a lot of calls” from legislators and their staff, but that most calls and requests are “very routine” – essentially information flow. Government Relations staff notifies an administrative assistant in the President’s Office whenever they receive an inquiry from a legislator about an applicant. The assistant then calls back with an answer after checking with the Admissions Office (e.g., the student is missing her high school transcripts, etc.). Some legislators are very clear in their calls that they are simply servicing a constituent and are not attempting to influence the process (e.g., “I just want to check on this student. Let the chips fall where they may.”).

It is widely acknowledged that legislative relations are an important aspect of the President’s responsibilities. When President Powers worked on passage of SB 175, for example, he personally met with 120 members of the legislature (out of 150). He has many contacts with the legislature and often personally interacts with them. Nancy Brazzil told Kroll that legislative letters and calls often are accorded more weight than other letters and calls because the legislature has a major impact on the university. “They are our boss.” As Powers noted, the legislative agenda “affects our campus” and the System’s overall welfare. So, according to Powers, when UT-System Government Relations calls over and says “This person is important,” it usually means that the person interested in the applicant is important to UT-Austin and UT-System.

6. Board of Regents Influence

In the past, members of the Board of Regents had a freer hand in talking to Admissions officers and the President of UT-Austin about admissions decisions. One long-time Admission official noted historically that Regents have made inquiries and put pressure on the Admissions Office to admit certain applicants. In one instance, during President Faulkner’s tenure, this official saw a note from a Regent which said that “every graduate of XXX High School should be admitted into UT.”

⁴⁵ One official noted that, with respect to most graduate school programs, Government Relations often does not even let the campus know about an inquiry. Transfer inquiries are also a different process, because transfers are more readily granted, which the CAP program facilitates. They also receive a fair number of community college transfer questions, such as, “What does it take to get in?” They usually respond to such inquiries by providing information about the process.

In 2003, a public information request asking for letters of recommendation written by members of the Board of Regents turned up numerous letters from one particular Regent. This prompted Francie Frederick, General Counsel to the Board of Regents, to implement a more strongly worded policy discouraging Regents from writing letters of recommendation on behalf of student applicants.

In more recent years, the counsel provided by Frederick to individual Regents has become even stronger, such that Regents are told from the moment they join the Board that it is inappropriate for Regents to write letters on behalf of applicants or to communicate with the Admissions Office about potential students. Kroll's review of correspondence and written instructions provided by Frederick to the Board of Regents over the past several years confirms that Regents are instructed during orientation not to write letters of recommendation on behalf of applicants or to communicate directly with the Admissions Office about student applicants. The language used by Frederick in these informal instructions (there is no formal Regent's Rule on the topic) has become stronger with time.

Nevertheless, almost all of the current members of the Board of Regents with whom Kroll spoke acknowledged that they receive many calls from friends, relatives, and others about high school students applying to UT-Austin. Such calls range from questions about the admissions process to what help or advice the Regent can provide the applicant. Sometimes the caller will simply want the Regent to check on the status of an application. Some inquiries are by phone, others by mail or email.

In most instances, the Regent forwards the inquiry to Frederick, who in turn monitors the status and progress of the application in coordination with the President's Office. Prior to 2012, Frederick forwarded all inquiries received by Regents to an administrative assistant in the President's Office. Although Frederick used to indicate who on the Board inquired about a particular applicant, starting in 2012, she discontinued this practice. Instead, Frederick now merely indicates that the Board of Regents is interested in tracking the application of student xxx. When the President's Office updates Frederick on the application status, Frederick informs the appropriate Regent of the information. Frederick forwards the inquiries to the President's Office, rather than the Admissions Office, because she believes there is "something inappropriate" for the Regents to make direct inquiries with an institution's operational units.

According to Frederick, the Board of Regents sends approximately 50 to 60 names of applicants to the President's Office each year. However, in the fall of 2013, a total of 70 applicants were tracked by the Board of Regents. This included 44 applicants being tracked by individual Regents and 26 applicants who had simply contacted the Regents' office.

One Regent has sent approximately 100 referrals to Frederick during his tenure as a Regent. Many of the referrals pertain to the grandparents and children of "friends of mine". In each case, he informed Frederick and asked that she keep him apprised of the application's progress.

In 2012, a miscommunication backfired when a Regent inquired about a series of applicants and Frederick later informed the Regent of which applicants on his list were admitted and which ones were denied. The Regent personally called and congratulated the family of one of the applicants only to

subsequently discover that the student had actually been denied admission. The Regent insisted that Frederick call the family back and explain the mistake, which she did. He then demanded that the university correct the mistake by reversing its admission decision and admitting the applicant. As a result, Frederick spoke with Nancy Brazzil, who agreed that they could admit the applicant, but only if certain other applicants were also admitted to prevent additional unfairness.

Kroll has also learned of several instances in which individual Regents contacted UT-Austin officials directly on behalf of relatives. In one instance, a Regent requested a meeting with the Director of Admissions while a relative's appeal of a denial was pending. Although the Regent claimed that the subject of the requested meeting was unrelated to the relative's appeal, the meeting was disallowed at the intervention of the General Counsel to the Board of Regents. On another occasion, a Regent called Nancy Brazzil directly on behalf of a relative who had applied to UT-Austin. The Regent asked Brazzil, "Who does [the applicant] need to talk with?" Brazzil replied, "Don't worry, I'll take care of it." The applicant was admitted.

7. Other External Influences

Historically, it has been a common and long-standing practice for persons of influence to call and request that someone in the UT-System (e.g., Vice Chancellor for External Relations) check on the status of a particular applicant. This was true under Presidents Berdahl, Flawn, Faulkner, and Powers. The universe of people asking about the status of applicants has grown substantially over the past 10 to 15 years, with everyone from donors to former Regents and alumni calling about particular applicants. It is widely agreed that relations with these individuals are important to the university. For this reason, the UT-System Office of External Relations exists to maintain front-line relationships with thousands of donors across the state, and it is the job of that office to be responsive to donors' concerns and requests.

During interviews of key officials, Kroll learned of instances in which university officials may have been given special consideration in the decisions to admit their sons and daughters. In the case of one official at UT-System, while the official's son was in the process of applying to the undergraduate program, the official called Nancy Brazzil and said, "I just want you to know my . . . son is applying to the university." Brazzil replied, "OK, we'll take care of that." Although this official noted that, in hindsight, this had the appearance of exerting influence, he insisted there was no such intent to pressure or influence UT-Austin in its admissions decision. Nevertheless, the son was admitted.

As noted in section 5.D.10 below, a review of emails from 2009 to 2013 found a few instances in which a former high-level Admissions official appears to have intervened on behalf of family friends and a relative to see that certain applicants were placed on a watch list.

8. Failure to Disclose During Sharphorn Inquiry

At the start of our investigation, then Chancellor Cigarroa requested that Kroll also examine whether the university officials interviewed during the prior Admissions Inquiry were fully candid and honest in

response to the questions asked of them by Dan Sharphorn and Wanda Mercer. Of concern was the fact that, during the Admissions Inquiry, there were no disclosures of “holds” and “watch lists,” nor any mention of end-of-cycle meetings between the President’s Office and the Admissions Director. However, Sharphorn and Mercer did not interview the two prior Directors of Admissions, nor did they interview their administrative assistants. Thus, the only people interviewed with specific knowledge of the current system of Q holds and watch lists were Nancy Brazzil and President Powers.

Kroll has examined Sharphorn’s and Mercer’s notes and interviewed them about their questioning of Powers and Brazzil. Although neither Brazzil nor Powers made any mention of holds or watch lists, Sharphorn and Mercer each acknowledged that they may not have asked sufficiently precise questions to elicit that information. Moreover, only after they had questioned Brazzil and Powers did the focus of the inquiry expand from law school admissions to also include undergraduate admissions. And the primary concern of the inquiry was limited to how letters of recommendation from legislators, submitted outside of the normal application process, are handled and processed.

Powers and Brazzil each stated during the Admissions Inquiry that letters sent to the President’s Office on behalf of applicants are routinely forwarded to the Admissions Office and added to the applicant’s file. This was an accurate and technically correct statement. That no mention was made of watch lists and year-end meetings with the Admissions Director, or efforts to closely monitor the fates of certain applicants, was arguably outside the scope of the precise questions asked of them. Nevertheless, one would reasonably have expected that, during an internal inquiry into concerns of external influence and pressure on admissions, responsible officials with knowledge of such activity would disclose the same without specific prodding. It is disappointing, at minimum, that this did not occur.

Brazzil acknowledged to Kroll that her answers to Sharphorn and Mercer were “very close to the vest.” But she asserts that she told the truth and that the focus of the inquiry was very narrow – at the time Sharphorn and Mercer interviewed Brazzil, they were primarily concerned with law school admissions and the handling of letters of recommendation sent directly to the President. Brazzil noted that Sharphorn and Mercer asked a limited number of questions narrowly focused on what the President’s Office did with letters of recommendation sent directly to President Powers. She truthfully answered that such letters are forwarded to Admissions (the law school Admissions Office in the case of letters sent on behalf of law school applicants). While Brazzil agrees she did not voluntarily disclose the undergraduate process of holds and watch lists, she was not specifically asked about this aspect of the admissions process.

Moreover, as President Powers explained, watch lists and holds are a long-standing practice that existed long before he became president of UT-Austin; they are the result of a practice that had large “buy-in” from the UT-System, the Board of Regents, and his own Legal Affairs Office. He thus does not believe he intentionally misled Sharphorn and Mercer or hid anything from them. “There are times when relational factors in some cases are an appropriate consideration,” he fully acknowledged to Kroll (but not to Sharphorn and Mercer). But until recently, said Powers, it was “absolutely clear” that this was also the

position of the Board of Regents and UT-System. These officials all “knew the practice was going on, they encouraged it, and we often were responding to their concerns.”⁴⁶

Kroll finds that neither Brazzil nor Powers lied outright during the Admissions Inquiry. Had they been under oath (and they were not), it would be difficult or impossible to establish that they perjured themselves. While they did not volunteer information concerning the broader admissions process, they appear to have answered with technical precision the specific questions asked directly of them by Sharphorn and Mercer pertaining to the handling of letters of recommendation. Nevertheless, it appears that Powers and Brazzil by their material omissions misled the inquiry. At minimum, each failed to speak with the candor and forthrightness expected of people in their respective positions of trust and leadership.

9. A Note on Graduate School Admissions

There appears to be less concern regarding outside influence in the admissions process for most graduate school programs. Excluding the professional schools (Law and Business), most graduate programs involve mentor relationships between sponsoring faculty members and the applicants. According to Patricia Ellison, Associate Director of Admissions in charge of graduate admissions, while the President’s Office occasionally inquires about someone to track their progress, it has never attempted to influence or alter an admission decision involving a graduate program. Ellison, who has been at UT-Austin for nearly 40 years, knows of no circumstance in which anyone has put pressure on the people handling graduate admissions or has ordered someone to be admitted.

Ellison noted one case this past year in which a graduate applicant was denied admission to the desired program and the President’s Office asked graduate admissions to “take another look.” They agreed to do so, but when the decision remained “no admit,” the President’s Office said “okay” and did not pressure them to reverse course. Ellison believes that, “on the graduate side, there is simply no pressure to admit someone not qualified.”

10. Email Review

Kroll requested and received approximately 9,500 emails from January 2009 to December 2014 that were sent to and from selected individuals within the following offices: Admissions Office, Office of the President, Governmental Relations Office, McCombs School of Business Dean’s Office, School of Law Dean’s Office, Chancellor’s Office, and General Counsel, Board of Regents.

Kroll reviewed each Inbox and conducted a targeted review using relevant search terms. Most of the emails reviewed were administrative in nature and did not provide relevant information to the investigation. Some emails discussed past and/or future meetings between school administrators, official

⁴⁶ Powers also made clear that he does not consider as mandatory the recommendations of the UT-System Best Practices White Paper, which includes a requirement that all universities within UT-System (including UT-Austin) are to implement policies and procedures that put the recommendations, including a firewall between Admissions and other university departments, into effect. Powers said that he believes the white paper to be incorrect. He said that his office has taken actions that are contrary to the white paper’s recommendations since that paper was released.

university documents and functions, university operations, and recruitment efforts, among other things. A significant number of emails were subscription notifications from various companies, organizations or social media websites. A small subset of emails discussed student applications and recommendations from school administrators or other individuals. Kroll identified few emails from President Powers, and none of which spoke directly or indirectly about student applications.

Our review found that, in some instances, family and friends of school officials, alumni and others have submitted admission requests and recommendations directly to high-level UT-System and UT-Austin officials. In most cases, the responses to these emails assured the sender that the attached documents would be forwarded to the relevant admissions personnel. In general, the information was forwarded to Admissions or the President's Office with a request from the school official that the applicant be placed "on hold" or on a "watch list." Most emails typically ended with a short, standard reassurance that final decisions would be left to the admissions committee and the university, such as:

XXX, please see the attached recommendation for XXX. As always, we are respectful of the decisions made by the admissions committee and the university.

Most of the identified emails we found relevant to this inquiry were written by family or close friends of school officials and included copies of applicants' resumes and letters of recommendation. These application materials were not submitted through the prescribed admissions channels, but rather were submitted directly to Admissions or the President's Office through the Chancellor's Office, UT-System officials, or a Director of Admissions. For example, in an email from 2009, a Governmental Relations Office staff member directed a state representative to send a recommendation letter directly to the Director of Admissions. In another email from 2010, a former Admissions official offered to put a neighbor of a family friend on a "watch list" and suggested that the applicant's letters of recommendation be addressed to the new Director of Admissions. Other emails between university officials also requested that certain applicants be placed "on hold" or on a "watch list."

Based on documents provided as a result of a public records act request from a media entity, Kroll found one email from Chancellor Cigarroa to President Powers, forwarding an email sent to the Chancellor from a relative of a transfer applicant. The relative noted in his email to the Chancellor: "As you know her mother and father were both UT graduates." Kroll's research found that the relative was the Chairman of the Board of a Texas-based company and had contributed several million dollars to UT institutions.

Kroll finds that the noted email correspondence above is not indicative of any wrongdoing per se, and would appear to reflect the normal communication flow that frequently occurs within the context of university admissions. Nevertheless, these emails confirm that relationships matter and can often provide particular applicants a slight boost in the highly competitive environment of university admissions. At minimum, the emails suggest that applicants who know, or whose parents know, a present or former university official, may be placed on a hold or watch list and thus be entitled to a second look if the

preliminary admission decision is negative. In some instances, it may allow the applicant an opportunity for special consideration outside of normal admission channels.

11. Analysis of Admissions Data

As previously noted, there are three types of holds of interest to this investigation: (1) a “Q Hold” that is being monitored by the President’s office; (2) an “L Hold” that is of interest to one of the college Deans; and (3) a third designation, “B Hold”, is given to applicants that have both a Q and an L hold. Kroll was thus provided with relevant data for 2,165 UT-Austin undergraduate Q-, L-, and B-hold applicants pertaining to students admitted from fall 2004 through fall 2014.

Kroll notes, however, that the data provided was largely incomplete from 2004 to 2008 as the holds were not then recorded on the mainframe computer until sometime in 2008 or 2009. Thus, while President and Dean holds existed before 2009, any records concerning the number of such holds and to which applicants they pertained are mostly non-existent prior to 2009. Accordingly, our analyses focused on the 2,085 UT-Austin Q-, L-, and B-hold undergraduate applicants noted for the period 2009 to 2014.

The table below shows the breakout by Resident pool and type of hold for the six years included in our analyses.

Table 1

Year	Foreign & Non-Resident of TX				Texas Resident				Grand Total			
	L	Q	B	Total	L	Q	B	Total	L	Q	B	Total
2009	12	27	2	41	60	134	11	205	72	161	13	246
2010	89	21	1	111	246	143	27	416	335	164	28	527
2011	15	28	1	44	48	190	15	253	63	218	16	297
2012	24	47	0	71	61	248	17	326	85	295	17	397
2013	18	36	1	55	36	264	8	308	54	300	9	363
2014	15	25	4	44	77	121	13	211	92	146	17	255
Total	173	184	9	366	528	1,100	91	1,719	701	1,284	100	2,085

As might be expected, in most years there were approximately five times as many holds for Texas resident applicants as for foreign and non-resident applicants. The only exception was 2010, when there was a significant jump in L holds for foreign and non-resident applicants (89 versus a five-year average of 17). Because 2010 also had the highest amount of L holds for Texas resident applicants (246 versus a five-year average of 56), 2010 had the highest number of total undergraduate holds out of the six years included in our review.

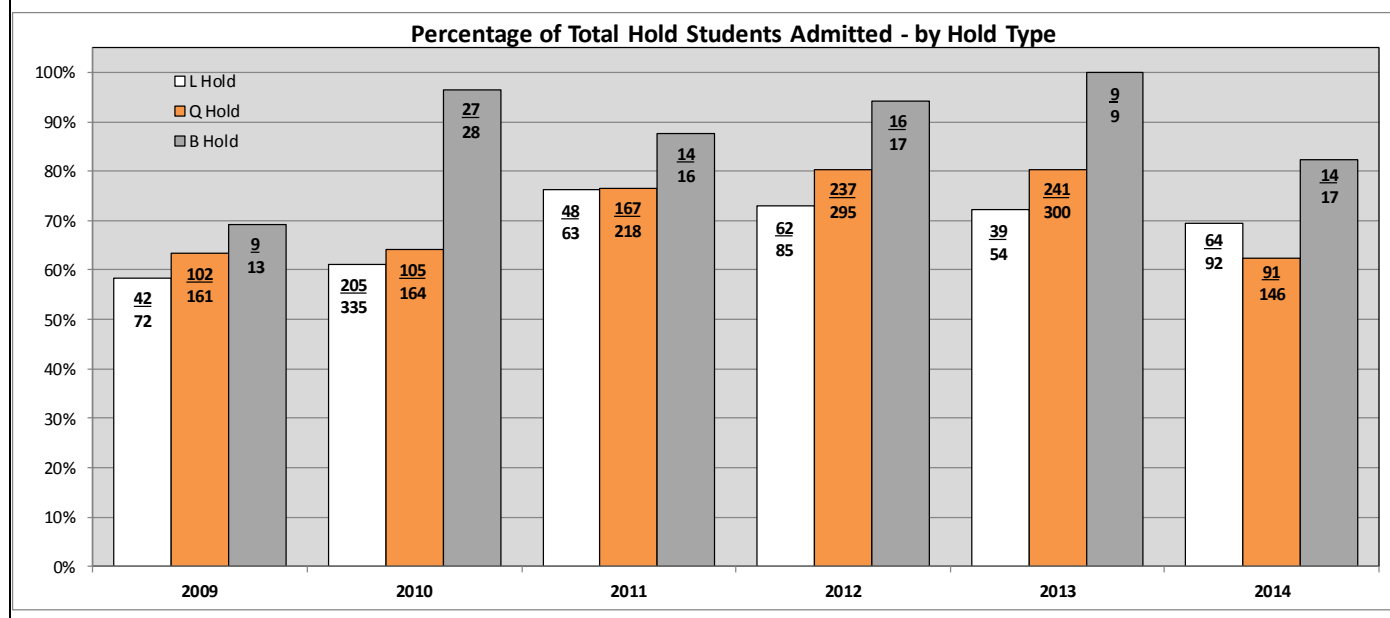
The 1,284 presidential Q holds from 2009 to 2014 accounted for 62% of the total hold population of 2,085 during that time frame. Although the number of Q holds remained fairly consistent in 2009 and 2010 at

slightly over 160, the total number of Q holds rose significantly from 2011 to 2013 (to a high of 300) before declining to 146 in 2014.

The next layer to our analyses concentrated on how many of the Q-, L-, and B-hold applicants were subsequently admitted to UT-Austin. As noted in Table 2 (and related chart) below, the percentages of hold applicants who were admitted varied slightly by hold type and by year.

Table 2

Year	Decision	Shown on the Chart below																							
		Foreign and Non-Resident of Texas								Texas Resident								Grand Total							
		L	%	Q	%	B	%	Total	%	L	%	Q	%	B	%	Total	%	L	%	Q	%	B	%	Total	%
2009	Admitted	4	33%	19	70%	1	50%	24	59%	38	63%	83	62%	8	73%	129	63%	42	58%	102	63%	9	69%	153	62%
	Other	8	67%	8	30%	1	50%	17	41%	22	37%	51	38%	3	27%	76	37%	30	42%	59	37%	4	31%	93	38%
	Total	12		27		2		41		60		134		11		205		72		161		13		246	
2010	Admitted	67	75%	13	62%	1	100%	81	73%	138	56%	92	64%	26	96%	256	62%	205	61%	105	64%	27	96%	337	64%
	Other	22	25%	8	38%	0	0%	30	27%	108	44%	51	36%	1	4%	160	38%	130	39%	59	36%	1	4%	190	36%
	Total	89		21		1		111		246		143		27		416		335		164		28		527	
2011	Admitted	13	87%	19	68%	1	100%	33	75%	35	73%	148	78%	13	87%	196	77%	48	76%	167	77%	14	88%	229	77%
	Other	2	13%	9	32%	0	0%	11	25%	13	27%	42	22%	2	13%	57	23%	15	24%	51	23%	2	13%	68	23%
	Total	15		28		1		44		48		190		15		253		63		218		16		297	
2012	Admitted	19	79%	35	74%	0	0%	54	76%	43	70%	202	81%	16	94%	261	80%	62	73%	237	80%	16	94%	315	79%
	Other	5	21%	12	26%	0	0%	17	24%	18	30%	46	19%	1	6%	65	20%	23	27%	58	20%	1	6%	82	21%
	Total	24		47		0		71		61		248		17		326		85		295		17		397	
2013	Admitted	14	78%	28	78%	1	100%	43	78%	25	69%	213	81%	8	100%	246	80%	39	72%	241	80%	9	100%	289	80%
	Other	4	22%	8	22%	0	0%	12	22%	11	31%	51	19%	0	0%	62	20%	15	28%	59	20%	0	0%	74	20%
	Total	18		36		1		55		36		264		8		308		54		300		9		363	
2014	Admitted	12	80%	17	68%	4	100%	33	75%	52	68%	74	61%	10	77%	136	64%	64	70%	91	62%	14	82%	169	66%
	Other	3	20%	8	32%	0	0%	11	25%	25	32%	47	39%	3	23%	75	36%	28	30%	55	38%	3	18%	86	34%
	Total	15		25		4		44		77		121		13		211		92		146		17		255	



As noted in Table 2 and the accompanying chart above, B-hold applicants consistently had the highest percentage of undergraduate admittance, ranging from 69% in 2009 to 100% in 2013. The overall six-year admittance rate for the B-hold applicants was 89%. This would be expected, as B-hold applicants were of interest not only to the President's Office (based on inquiries and requests from legislators, Regents, UT-System, and others), but also to one or more college deans. The 2010 L-hold aberration is also evident here, as a total of 205 such applicants were admitted that year versus an average of 51 in the other five years. However, it is interesting to note that the percentage of L holds admitted in 2010 was the second lowest during the six years reviewed, with an L-hold admittance rate of only 61% (205 out of 335). The only lower percentage was in 2009, when only 58% of L-hold applicants were admitted.

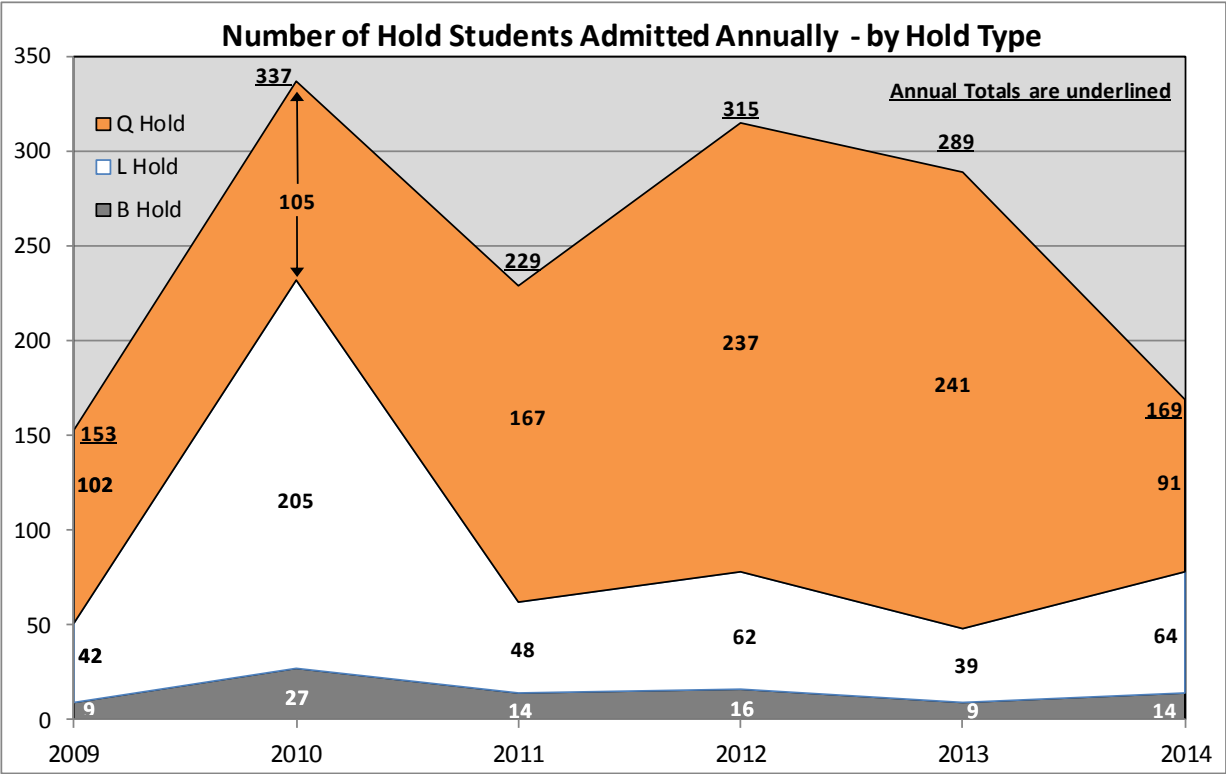
As shown on Table 3 below, in most years, Q holds had a slightly higher percentage of admitted applicants than L holds. The only exception is 2014. The highest percentages of admitted L- and Q-hold candidates occurred from 2011 to 2013. Over the six-year period, applicants that received a hold of any type were admitted 72% of the time.

Table 3

Year	L Hold	Q Hold	B Hold	All Holds
2009	58%	63%	69%	62%
2010	61%	64%	96%	64%
2011	76%	77%	88%	77%
2012	73%	80%	94%	79%
2013	72%	80%	100%	80%
2014	70%	62%	82%	66%
Total	66%	73%	89%	72%

Chart 1 below provides a graphic presentation of the numerical admittance results from Table 2, where the 2010 L-hold anomaly can be clearly observed.

Chart 1



As shown on Chart 1 above, the total number of Q-hold applicants (including B holds) that were admitted from 2009 to 2014 was as follows:

- 111 (2009)
- 132 (2010)
- 181 (2011)
- 253 (2012)
- 250 (2013)
- 105 (2014)

As noted, there was a significant increase in the number of presidential Q holds from 2011 to 2013, which dropped to previous levels in 2014. The high-water marks for total undergraduate holds admitted were 337 in 2010, followed by 315 in 2012, and 289 in 2013.

To address concerns regarding the effect of the holds on the undergraduate admissions process, Kroll compared the independently quantified scholastic measurements for the hold applicants – SAT scores (combined scores for verbal and math) and GPA – to the results reported for all undergraduate applicants who were admitted to and enrolled at UT-Austin over the same six-year period. These results are shown on Table 4 below.

Table 4

Year	GPA					SAT				
	Count w/GPA	Average GPA	Std Dev Range		Std Dev	Count w/SAT	Average SAT	Std Dev Range		Std Dev
			Lower	Upper				Lower	Upper	
2009	9,103	3.273	2.843	3.703	0.430	9,288	1257	1090	1425	168
2010	9,317	3.302	2.865	3.739	0.437	9,761	1264	1092	1436	172
2011	9,555	3.349	2.930	3.768	0.419	10,148	1283	1117	1449	166
2012	11,916	3.341	2.903	3.779	0.438	12,597	1284	1115	1453	169
2013	14,922	3.370	2.937	3.803	0.433	15,633	1290	1119	1462	172
2014	14,719	3.405	2.979	3.830	0.425	15,457	1312	1145	1479	167
TOTAL	69,532	3.340	2.909	3.771	0.431	72,884	1282	1113	1451	169

The data in Table 4 above shows a six-year average GPA of 3.340 and a six-year average SAT score of 1282. Under normal distribution for statistical analyses, 68% of the scores will be within one standard deviation of these averages; 16% of the scores will be below one standard deviation of the average score; and 16% of the scores will be above one standard deviation of the average.

Our analysis focused on those hold applicants that fell within the lower 16%. As shown on Table 4, the average GPA score that fell one standard deviation below the six-year average GPA of 3.340 is 2.909. Table 4 also shows the average SAT score that fell one standard deviation below the six-year average SAT of 1282 is 1113. Accordingly, these approximate thresholds were used by Kroll in further analyzing the impact and influence of holds on the admissions process. Thus, we sought to identify admitted hold applicants with a GPA of less than or equal to 2.9 and a combined SAT score of less than or equal to 1100.

Our initial analysis was limited to Texas residents, which accounted for 82% of the total Q-, L-, and B-hold applicant population. As noted previously on Table 1, of 1,719 undergraduate Texas residents subject to a hold of any of the three types noted, 1,191 (or 69%) had either a Q or B hold. After eliminating denials and others who were conditionally admitted, there were a total of 893 Q- or B-hold applicants admitted to UT-Austin. We eliminated 51 of the 893 applicants from further analysis as they were automatically admitted under the Top 10% Law, as determined by the actual percentages admitted under Texas Education Code Section 51.803 (a-1) (which varied from 7%-9% depending on the year). Relevant annual information in this area is provided on the UT-System admissions website.

The remaining 842 admitted Texas residents who were subject to Q or B hold are included in the breakdown analysis summarized on Table 5 below. Note that GPA and SAT information was missing from the data provided to Kroll for a number of applicants in 2009 through 2012; this is indicated by an "N/N" on the below chart. Based on representations of the UT-Austin Admissions Office, we understand these applicants did not choose to attend UT-Austin and their admissions data was purged pursuant to standard university practice.

After eliminating the "N/N" applicants, a total of 73 (8.7%) out of the 842 applicants were selected for further review based on their sub-par SAT scores and grades, as determined by the aforementioned thresholds. Hold applicants that fell below the SAT and GPA thresholds are highlighted in yellow on the schedule below.

Also shown is the complete breakdown of admitted Q- and B-hold applicants by SAT and GPA ranges. The blue highlighted portion of Table 5 shows the number and percentages of Q- and B-hold applicants that were automatically admitted under Section 51.803 (a-1).

Table 5

To Be Reviewed Students (< 2.9 GPA AND < 1100 SAT) are shown in the Yellow segments														
2009	SAT SCORES							Grand Total	To Be Revw'd Total					
	N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400							
G P A	N/N	10						10	7 7.7%					
	< 1.5							0						
	< 2		1	1				2						
	< 2.5			1	1	2		4						
	< 2.9			4	7	3	2	1		17				
	< 3				1	7	3	1		12				
	< 3.5				12	8	11	4		35				
> 3.5					1	4	6	11	0					
2009 Total	10	1	6	21	21	20	12	91	91					
2012	SAT SCORES							Grand Total	To Be Revw'd Total					
	N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400							
G P A	N/N	9	1					16	17 8.5%					
	< 1.5			1		1	1	3						
	< 2		1			1	1	1		4				
	< 2.5			6	3	2	2			13				
	< 2.9		1	7	22	10	5	1		46				
	< 3				5	5	1	2		13				
	< 3.5				11	29	34	9		83				
> 3.5					2	10	9	21	19					
2012 Total	9	3	14	42	52	56	23	199	218					
2010	SAT SCORES							Grand Total	To Be Revw'd Total					
	N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400							
G P A	N/N	7		1	1	2	2	13	11 10.1%					
	< 1.5				1			1		2				
	< 2				1	1				2				
	< 2.5		4	1	1	1	1			8				
	< 2.9		1	4	9	7		1		22				
	< 3			1	3	3	1			8				
	< 3.5				9	12	13	8		42				
> 3.5						5	7	12	9					
2010 Total	7	5	7	25	26	22	17	109	118					
2013	SAT SCORES							Grand Total	To Be Revw'd Total					
	N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400							
G P A	N/N				1	1	1		3	19 9.3%				
	< 1.5				1	1	1		3					
	< 2		2	1	1		2		6					
	< 2.5		3	3	5	3	7	2	23					
	< 2.9			10	20	15	5	2	52					
	< 3				7	3	6		16					
	< 3.5				10	26	28	18	82					
> 3.5					1	9	10	20	16					
2013 Total	0	5	14	45	50	59	32	205	221					
2011	SAT SCORES							Grand Total	To Be Revw'd Total					
	N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400							
G P A	N/N	13			2	1		16	14 8.9%					
	< 1.5					1	3	4						
	< 2				1	1				2				
	< 2.5		2	5		2	2			11				
	< 2.9		1	6	16	5	2	2		32				
	< 3			2	5	10	1			18				
	< 3.5			1	6	22	30	7		66				
> 3.5					1	5	2	8	4					
2011 Total	13	3	14	30	43	43	11	157	161					
2014	SAT SCORES							Grand Total	To Be Revw'd Total					
	N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400							
G P A	N/N							0	5 6.2%					
	< 1.5							0						
	< 2						1			1				
	< 2.5		1	1			5	1		8				
	< 2.9		1	2	4	4	1	1		13				
	< 3				1	1	4	1		7				
	< 3.5				2	14	17	13		46				
> 3.5					1	3	2	6	3					
2014 Total	0	2	3	7	20	31	18	81	84					
Total Admitted Texas Residents with Q or B Holds (Excl. "Top 10%" Admits)									842	Total To Be Reviewed		73	or	8.7%

Finally, Table 6 below shows the number of "outlier" files among the L-hold (i.e., Dean hold) applicants. Although these individual files were not reviewed by Kroll, the highlighted portion reveals that the total number of L-hold applicants with SAT scores at 1100 or below and a GPA of 2.9 or below is relatively small. Moreover, in most of the years examined, the majority of outlier files are borderline yellow. For example, in 2009, of the 42 L-holds applicants admitted, only four fell within the yellow highlighted portion of the chart, and all four fell within the upper-end of the selected range of SAT scores and GPA (excluding

the N/N category of non-enrolled applicants). The same is true in 2010, where only three of 205 L-hold applicants fell within the highlighted portion, and all three were borderline yellow; and in 2013, two of 39 L-hold applicants fell within the highlighted portion, and both were on the upper edges of the outlier SAT/GPA combination.

The most troublesome year was 2011, when 5 of 48 L-hold applicants were admitted with sub-par GPAs and SAT scores, with only one of the five on the borderline. In 2014, while only two of 64 admitted L-hold applicants had outlier quantitative factors, both of those were admitted with less than a 2.0 GPA and less than a combined SAT score of 1000.

Table 6

To Be Reviewed Students (< 2.9 GPA AND < 1100 SAT) are in the Yellow segments

2009		SAT SCORES							Grand Total	To Be Revw'd
		N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400	Total	Revw'd
G P A	N/N	7							7	Total
	< 1.5								0	
	< 2								0	4
	< 2.5			1					1	9.5%
	< 2.9		1	2	4	3	2		12	
	< 3				1	2	1	1	5	w/Top "10%"
	< 3.5			2	1	6	5	1	15	
> 3.5						2		2	0	
2009 Total		7	1	5	6	11	10	2	42	42

2010		SAT SCORES							Grand Total	To Be Revw'd
		N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400	Total	Revw'd
G P A	N/N	67					1		68	Total
	< 1.5								0	
	< 2								0	3
	< 2.5			1		2			3	1.7%
	< 2.9		1	1	6	3	5	1	17	
	< 3				3	3	2		8	w/Top "10%"
	< 3.5			1	9	14	12	16	52	
> 3.5						7	23	30	27	
2010 Total		67	1	3	18	22	27	40	178	205

2011		SAT SCORES							Grand Total	To Be Revw'd
		N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400	Total	Revw'd
G P A	N/N	7	2						9	Total
	< 1.5			1					1	
	< 2		1						1	5
	< 2.5						1	2	3	11.1%
	< 2.9			1	2	2	1	1	7	
	< 3			1	1	6	1		9	w/Top "10%"
	< 3.5				2	3	5	3	13	
> 3.5					2			2	3	
2011 Total		7	3	3	5	11	10	6	45	48

2012		SAT SCORES							Grand Total	To Be Revw'd
		N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400	Total	Revw'd
G P A	N/N	7							8	Total
	< 1.5					1			1	0
	< 2								0	6
	< 2.5		2			1			3	9.8%
	< 2.9			4	6	4	1		15	
	< 3				2	2			4	w/Top "10%"
	< 3.5			2	2	13	6	3	26	
> 3.5					1	4	2	7	1	
2012 Total		7	2	6	10	20	11	5	61	62

2013		SAT SCORES							Grand Total	To Be Revw'd
		N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400	Total	Revw'd
G P A	N/N								0	Total
	< 1.5								0	
	< 2								0	2
	< 2.5					1			1	5.7%
	< 2.9			2	1	2	1		6	
	< 3					1			1	w/Top "10%"
	< 3.5				2	4	7	3	16	
> 3.5					1	2	8	11	4	
2013 Total		0	0	2	3	9	10	11	35	39

2014		SAT SCORES							Grand Total	To Be Revw'd
		N/N	< 1000	< 1100	< 1200	< 1300	< 1400	> 1400	Total	Revw'd
G P A	N/N				1		1	1	3	Total
	< 1.5								0	
	< 2		2						2	2
	< 2.5				2			1	3	4.7%
	< 2.9						2	1	3	
	< 3					1	1	1	3	w/Top "10%"
	< 3.5					4	13	4	21	
> 3.5						1	7	8	21	
2014 Total		0	2	0	3	5	18	15	43	64

Total Admitted Applicants with L Holds (Excluding "Top 10%" Admits)									404	Total To Be Reviewed		22	or	5.4%
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12. Review of Selected Application Files

As noted above, Kroll requested data on the admissions records of 73 UT-Austin undergraduate applicants who had been placed on a Q hold during the admissions process and who were admitted despite grades and test scores substantially below the median for admitted students. Specifically, Kroll was given access to and reviewed the admission files for each applicant who fell within the yellow

highlighted section of Table 5 above. These files pertain to admitted students from fall 2009 to fall 2014 that had been subject to a Q or B hold and had combined SAT scores below 1100 and a high school GPA below a 2.9.⁴⁷

The examined admissions records contained the full application files of the students at issue, including grades and quantitative test scores, high school transcripts, resumes, personal essays, letters of recommendation, demographics and other relevant information. Kroll reviewed all available documents to discern what factors may have played a role in the decisions to admit these applicants despite their sub-par grades and test scores, such as the applicant's holistic attributes, family background, personal interests, unique experiences, and letters of recommendation.

A total of 230 letters of recommendation were included in the 72 student files reviewed (one of the 73 files contained no information). While letters of recommendation are not required for admission into the undergraduate program at UT-Austin, most applicants provided two or three letters, and some applicants submitted as many as nine letters of recommendation. Most of these letters were written by one of three sets of people: (1) school teachers and guidance counselors, (2) family friends with ties to UT-Austin (alumni), and (3) family friends who were personally or professionally acquainted with certain university officials. Approximately 40 letters of recommendation, including eight from legislators, were addressed to past or present university officials. Most of the remaining letters were addressed to the Admissions Office at UT-Austin.

Only 14 of the 230 letters of recommendation reviewed were from public officials. Twelve of the letters were from nine different state legislators, while one was from a judge and one from a mayor. Although most of the legislators indicated they were "family friends" of the applicants, the letters typically contained little substantive information about the applicants.

In four cases, given the low grades and test scores of the applicants, as well as in most instances a mediocre holistic review evaluation (as indicated by the PAI), it appears likely that political connections had at least some influence on the decisions to admit these applicants. Two applicants with close ties to state legislators had very low high school grades (GPA range of 1.8 to 2.2) combined with SAT scores in the 800s (combined math and verbal). Neither of these candidates had any other obvious holistic attributes, other than positive letters of recommendation referencing the applicants' ties to the legislators. The other two applicants in this pool had slightly higher grades and test scores, although still well below the mean for UT-Austin, but the files were replete with references to the applicant's legislative connections and family ties and no other obvious holistic attributes (although one applicant had a high PAI score).

⁴⁷ A number of files within the yellow highlighted sections of Table 5 on page 60 are listed as "N/N", which reflects no reported GPA or test scores for those applicants. As explained by the UT-Austin Admissions Office, no records exist for those applicants because these applicants did not enroll at UT-Austin and their files were thus purged pursuant to standard record-keeping practices of the Admissions Office. Thus, it is not known where on the chart any of the non-enrolled applicants would have been placed.

In eleven other cases where legislative influence was apparent, there were multiple factors that may have contributed to the decision to admit, including political and alumni connections, ethnic and racial diversity, a high PAI, or slightly more borderline grades and test scores. For this group, GPAs ranged from 1.8 to 2.7 and combined SAT scores ranged from 940 to 1100. Several of these applicants were proficient in Spanish or other foreign languages, and some came from lower socio-economic backgrounds.

Approximately 18 of the 73 applicant files contained references to the student's family ties to UT-Austin. Some of the applications contained letters of recommendation written by family members who were UT alumni, which explicitly referenced the student's family affiliation to UT-Austin. A number of applicants listed on their resume family members who were UT alumni, or wrote about their family's UT-Austin connections in the personal essay. In one case, an applicant's grandfather, who had attended UT-Austin along with each of his other grandparents, ended his letter by stating, "This is my last hope to get a Longhorn grandson." Although it is impossible to conclude that these applicants were specifically granted some sort of legacy consideration in violation of Texas Education Code § 51.803(a-4), it is noteworthy that the letters of recommendation, resumes, and/or personal essays were typically explicit about the alumni connection. While family ties to the university may appropriately evidence a desire and commitment to attend if accepted, state law precludes consideration of legacy status as part of the holistic review process. See Texas Education Code § 51.803(a-4) (requires UT-Austin to "continue its practice of not considering an applicant's legacy status as a factor in the university's decision relating to admissions").

In approximately 29%, or 21 of the 73 files reviewed, the contents of the files suggest that ethnic, racial, and state geographical diversity may have been an important consideration. In very few of these files were there any indication of political or other connections with persons of influence.

Approximately 45%, or 33 of 73 files, pertained to applicants who came from families with reported gross incomes of over \$200,000. Nearly 29% (21 of 73) of the applicants reviewed came from five high schools – Highland Park High School (7), St. Andrews Episcopal School (4), Saint Mary's Hall (4), Stephen F. Austin High School (3), and Westlake High School (3). Ten of the 73 applicants attended high schools in districts represented by the same state legislator.

In sum, Kroll's review of the 73 application files, in which applicants subject to a Q or B hold were admitted despite sub-par quantitative scores and grades, suggested that, in some instances, factors such as political influence or connections with persons of influence may have played a role, including in some cases an element of potential alumni/legacy influence. In many other cases, there was no evidence of political or other connections with persons of influence. Many cases demonstrated the nature of holistic review, as well as a demonstrated commitment to ethnic and racial diversity.

It is impossible to conclude with absolute certainty from a review of the files alone that any one particular applicant benefitted from undue influence or pressure exerted on the admissions process. Nevertheless, Kroll's review of these files tends to confirm that certain applicants are admitted at the request of the

President over the assessment of the Admissions Office. The data and application files reviewed thus confirm that the hold list and the end-of-cycle meeting between the President's Office and Admissions Office results each year in certain applicants receiving a competitive boost or special consideration in the admissions process. That is, the data confirms what President Powers and others have stated to Kroll – that relationships matter and are sometimes the deciding factor in admissions decisions for a select handful of applicants each year.

Kroll does not express an opinion on whether admission of the applicants within the 73-file parameter, or other “borderline” cases (based on grades and test scores) was appropriate or not, fair or not, right or wrong. Rather, we have sought to determine only whether factors other than individual merit and personal holistic attributes may have played a role in the admission of a relatively small number of applicants. The data we evaluated and files we reviewed tend to confirm that, in fact, factors other than individual merit and personal holistic attributes do occasionally influence the admissions process as practiced at UT-Austin, and particularly under President Powers.

REVIEW OF LAW SCHOOL ADMISSIONS

According to the most recent *U.S. News* rankings, the School of Law of the University of Texas at Austin is nationally ranked as the 15th best law school in the United States.⁴⁸ The law school receives over 4,000 applications each year for a total of approximately 350 places in the first-year class. Consequently, the law school selection process is extremely competitive, with an acceptance rate of only 22.5% in 2014. Because many of the law school's graduates move on to fill prominent roles in the ranks of government, politics, business, and the most prestigious law firms, admission into UT Law School is a highly-valued objective for aspiring lawyers in the state of Texas and elsewhere.

In this section of the report, we examine the admissions process at UT Law School, both as established and as represented publicly; how the process is actually implemented; and what pressures, if any, are placed on the admissions personnel by the Dean, the Office of the President, the Board of Regents, public officials, and other persons of influence.

KEY FINDINGS

Based on interviews conducted and documents and other sources reviewed, Kroll makes the following key findings concerning the law school admissions process at UT-Austin:

- Although the law school has a holistic admissions process, GPA and LSAT scores appear to play the most prominent roles in admissions decisions, driven in large part by the importance of GPA and LSAT in the perceived competitiveness of the law school and how it affects national rankings.
- The law school does not rely on an Admissions Committee to review application files or render individual decisions on applicants. Instead, individual admissions decisions are made by either the Assistant Dean for Admission and Financial Aid, or the Director for Admission Programs. Although the professionals in these roles perform their jobs with integrity, the nature of the process allows for increased opportunities for others to potentially influence the decisions made, through informal discussions with the Dean, the President's Office, the Board of Regents, or other factors.

⁴⁸ <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings>.

- Public officials and other persons of influence frequently call or write in support of particular law school candidates. The Dean's Office has received numerous calls from legislators over the years.
- When the Dean's Office receives information about a law school applicant from a trusted source, the Dean informally reviews the applicant's credentials and determines whether a case for admission is plausible. If not, the Dean informs the recommending party that the applicant's chances are not promising. However, if the case for admission is plausible, the Dean discusses the matter with the Assistant Dean for Admission and Financial Aid and passes along the information from the recommender.
- As long as a final decision has not been made and communicated to the applicant, the Dean feels free to discuss any information received about an applicant with the Assistant Dean. In some instances, the resulting discussions may change the mind of the Assistant Dean regarding a candidate for admission.
- From 2006 to 2012, former Dean Larry Sager received approximately 10 to 20 calls a year from Nancy Brazzil about President Powers' interest in certain law school applicants. Brazzil made clear she spoke for the President's Office. Sager acknowledged that the intensity of Brazzil's interest in a candidate may "have on occasion swayed my decision." Sager added that Brazzil's calls often forced the law school to take a closer look at some candidates, which could legitimately change one's perspective. Sager insisted, however, that the law school was never forced to admit a candidate against its wishes.
- Current Dean Ward Farnsworth has also received calls from Nancy Brazzil about particular law school candidates. Farnsworth insisted, however, that during his tenure, the law school has never been pressured to admit a law student – by Nancy Brazzil or anyone else – that it did not feel should be admitted based on a variety of holistic factors.
- Our review of law school admissions data suggested that, whatever external influences do occur, its overall impact on law school admissions is limited. The data reviewed from 2010 to 2014 confirmed that, while the admissions process places great importance on GPA and LSAT scores, the law school also prioritizes a holistic review that gives positive consideration to diversity factors, including gender, race, and socioeconomic background.
- For example, from 2010 to 2014, approximately 50% of the 70 so-called "outlier" files reviewed (i.e., admitted candidates who scored below a 155 on the LSAT or reported an undergraduate GPA of less than 3.0) pertained to the applications of racially and ethnically diverse candidates. In most cases, a low GPA was accompanied by a higher LSAT score, and a low LSAT score was accompanied by a higher GPA. During the time period reviewed, we found only two applicants who were admitted with both an undergraduate GPA below 3.0 and LSAT score below 155;

however, both applicants belonged to an under-represented minority group and had valuable public sector experience before applying to law school.

- Only nine of the 166 letters of recommendation contained in the 70 outlier files reviewed by Kroll were from public officials. In most of the nine cases, the applicants had previously interned or worked in the respective legislative offices, usually as a policy analyst or legislative aide, which appeared to give the recommender a substantive basis for the letter. Nevertheless, Kroll identified four instances in which, given the low GPA and/or LSAT score and scarcity of other positive holistic attributes, including in some instances a lack of relevant work experience, it appears that political connections may have influenced the decision to admit the applicants.
- Kroll identified an additional seven cases in which political connections existed, but a combination of holistic factors appeared more obviously in play. Although most letters of recommendation and personal essays were typically explicit about political connections when they applied, it is impossible to conclude that these applicants were granted any sort of special consideration as a result of these political/alumni ties. Moreover, many of the applicants also received positive recommendations from professors/supervisors, while others are from underrepresented minority groups.
- In reviewing email correspondence, Kroll found one instance of a brazen attempt to influence the law school admissions process for reasons having little to do with the individual merits of the applicant involved. In that case, in an email from a retired elected official, references were made to a state legislator and member of an “important . . . Committee” having a strong interest in this particular applicant being admitted, and “the political and funding implications of having [applicant] in our law school.” In this case, while the applicant was admitted, Kroll found no evidence that UT officials acted improperly. Nevertheless, this email demonstrates the types of misguided demands sometimes placed by person of influence on elite programs.
- In another case, the President’s Office called the law school apparently after speaking with two members of the legislature. According to a voice mail recording of the call, the President’s Office asked “if we can go ahead and admit those kids, [President Powers] says it’s very important.” Two days later, acceptance letters were mailed to both applicants. A review of the applicant’s files indicates that each was an impressive candidate with solid undergraduate grades, valuable work and public service experience, and other positive holistic attributes.

A. The Holistic Review Process as Designed

The law school officially claims a holistic admissions process. According to Dean Ward Farnsworth, holistic review “means we take many considerations into account and try to judge each case on an all-things-considered basis, not mechanically.”⁴⁹ Although GPA and LSAT scores appear to play the most

⁴⁹ Memorandum of Dean Ward Farnsworth, January 14, 2014, p.1.

prominent roles in the admissions process, driven in large part by the importance of GPA and LSAT in the perceived competitiveness of the law school and how it affects national rankings, the holistic review process also involves an examination of a number of success indicators, including employment history, academic experiences, ethnic and cultural background, representation of diverse geographic regions, and letters of recommendation.

Letters of recommendation that come to Dean Farnsworth are forwarded to the law school's Admissions Office, while letters sent to the President of UT-Austin are forwarded to the law school and treated in the same fashion. The weight given to recommendations from alumni, legislators, or other persons known to the law school community is, according to Dean Farnsworth, a "matter of judgment. . . . But there is no such thing as automatic admission of an applicant on the say-so of any recommender, whether it is a legislator or alum or the President of the University."⁵⁰

By law, non-Texas residents cannot exceed 35% of enrolled students. The law school prioritizes geographical and ethnic diversity, and through the South Texas Valley consortium program attempts to recruit 10-15 students a year from predominantly Hispanic colleges in the South Texas Valley (e.g., UT-El Paso, UT-San Antonio, and UT-Pan American).

Unlike some other law schools, UT Law School does not rely on an Admissions Committee to review files or make individual decisions on applications. Instead, an Admissions Committee, which presently has seven faculty members, considers matters of policy, such as whether an early-decision program is advisable and when to waive application fees. The Committee also considers a small subset of "difficult" applications, such as candidates with a high LSAT and a low GPA, or vice versa, or an otherwise top candidate with potential character or fitness issues.⁵¹

Most admissions decisions are made essentially by one of two persons. The Assistant Dean for Admission and Financial Aid reviews and makes admission decisions for most non-resident applications. The Director for Admission Programs reviews and makes admission decisions for most Texas residents. While decisions to admit candidates are generally made by either of these two officials, when the initial recommendation is to deny an applicant, a final decision is not made until the other official also reviews the file.

B. Public Representations of Law School Admissions Process

Law school applicants learn about the UT Law School admissions process and requirements for admission from (1) the law school admissions bulletin, (2) the official law school website, and (3) the UT-Austin official catalog. All three information sources provide similar if slightly varied discussions of admission requirements and factors examined in evaluating candidates for admission.

⁵⁰ Id. at p.4.

⁵¹ In prior years, UT Law School had a faculty committee that reviewed law school applications, but the committee was disbanded by Bill Powers when he became Dean of the Law School in 2000. Dean Larry Sager, who succeeded Powers as Dean in 2006, and Dean Ward Farnsworth, who succeeded Sager as Dean in 2012, have each chosen not to reinstate the committee approach to law school admissions.

Admissions Bulletin. The Admissions Bulletin notes that admission to the JD program is competitive, but that, “[a]s a general rule, there are no presumptive numbers. We want our graduates to be educated leaders who become responsible professionals, and we find those prerequisites in many types of pre-law backgrounds. Thus every application submitted and completed is reviewed in its entirety.”⁵² Nevertheless, while no specific scores and grades are determinative, based on recent experience, “we would have few challenges filling each seat with [applicants] who have achieved excellent LSAT scores and high GPAs in challenging undergraduate programs with difficult majors. Those two criteria, within certain limits, help . . . assess a student’s ability to succeed at UT Law.”⁵³

The Bulletin notes that other factors of importance include: rigor of undergraduate course of study, graduate study (if applicable), demonstrated commitment to public service, work experience, leadership experience, extracurricular or community activities, socio-economic status (i.e., history of economic disadvantage), race and ethnicity, personal experiences with discrimination or disability, geographic diversity (i.e., under-represented regions of Texas), maturity, ability to communicate, foreign language proficiency, service in the armed forces, publications, and other personal talents and experiences. In addition, each applicant is required to submit a personal statement, which provides an “opportunity to give the committee insight into individual experiences and characteristics.”⁵⁴

Letters of recommendation, while not required, are “strongly encouraged.”⁵⁵ Applicants may submit no more than three letters, which should be sent directly to the Law School Admissions Council (LSAC), and such letters “will be considered in the admissions process only if received by Credential Assembly Service (CAS) before the [stated application deadlines].”⁵⁶ The Bulletin advises that letters from professors and employers are most useful, while “[l]etters from judges, politicians, and family friends tend not to be useful except in instances in which the letters are based on a working or supervisory relationship.”⁵⁷

Law School Website. The official law school website contains similar representations concerning the admissions process and requirements for admission. Thus, all completed and submitted applications are subjected to a “full-file review” in order to identify applicants:

- who exhibit demonstrated commitment to public service, leadership, and other qualities valuable to the legal profession;
- whose background, experience, and other qualities are likely to be of value in the classroom and the Law School; and
- who provide a service to the state of Texas by educating its citizens from underrepresented regions of the state and disadvantaged socioeconomic background.⁵⁸

⁵² “Your Path is Individual,” UT Law School Admissions Bulletin, 2013-2014, p. 30.

⁵³ *Id.*

⁵⁴ *Id.* at p. 33.

⁵⁵ *Id.* at p. 34.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ <http://www.utexas.edu/law/admissions/application/>

While strong LSAT scores and high GPAs in challenging undergraduate programs are important, such “quantitative factors . . . are not exhaustive. Arbitrary weight is not attributed to any one of the factors considered and the Admissions Committee does not use an index.”⁵⁹ The same factors as highlighted in the Admissions Bulletin are also considered when evaluating candidates. “Specific attention is given to an applicant’s socioeconomic background. . . . Such disadvantage might take a number of different forms, e.g., an applicant who is a first-generation college graduate; an applicant’s dealing with a serious physical or mental disability; an applicant’s encounter with discrimination based on race, religion, sexual orientation, gender identity or national origin; or an applicant’s limited educational opportunities due to geographical or other restrictions.”⁶⁰

UT-Austin Catalog. Finally, the official UT-Austin Catalog repeats in slightly different wording the same guidelines noted in the Admissions Bulletin and the law school website. Specifically, according to the Catalog, in addition to GPA and LSAT, the following criteria are considered for admission to the law school:

- Rigor of the undergraduate course of study as reflected by the applicant’s college transcripts
- Graduate study
- Demonstrated commitment to public service
- Work experience
- Leadership experience
- Extracurricular or community activities
- History of overcoming economic or other disadvantage
- Race and ethnicity
- Personal experiences with discrimination
- Overcoming disability
- Disadvantaged socioeconomic background
- Geographic diversity (particularly underrepresented regions of Texas)
- Diversity of experience and background
- Maturity
- Ability to communicate well, exceptional writing skills
- Foreign language proficiency
- Honors and awards
- Service in the Armed Forces
- Publications
- Any other personal characteristics or experiences that would contribute to the diversity and overall enrichment of the Law School⁶¹

According to the Catalog, the law school seeks applicants with the greatest probability of success “considering proven predictors (LSAT score, grade point average, the applicant’s undergraduate school and major);” who are committed to public service and have demonstrated leadership skills, possess qualities “likely to be of value in the classroom and in the Law School;” and who come from “underrepresented regions of the state and disadvantaged socioeconomic backgrounds.”⁶²

⁵⁹ Id.

⁶⁰ Id.

⁶¹ <http://catalog.utexas.edu/general-information/admission/law-school-admission/>

⁶² <http://catalog.utexas.edu/general-information/admission/law-school-admission/>

C. Law School Admissions Process as Practiced

The law school boasts of an entirely holistic admissions process, which takes into consideration many factors and attempts to judge each case on its totality of circumstances. The admissions practices at the law school thus appear to be in conformity with the Texas statutes, Administrative Rules, and Regents' Rules quoted and summarized in Section Four of this report, as well as the law school admissions bulletin, the official law school website, and the UT-Austin official catalog referred to above.

The law school claims to avoid mechanical decisions based solely on such "objective" criteria as LSAT scores and GPA, though it is acknowledged that these are very important factors as they impact the school's national rankings and perceptions of selectivity. Although a minimum GPA of 2.2 is the only quantitative requirement for admission, the median LSAT of admitted applicants is 167 and the median GPA is 3.68.

According to one law school admissions official, the main criteria considered for admission to the law school are: GPA and LSAT score; undergraduate major and strength of course load; whether the candidate attended a top college or university and the median GPA for those schools; personal factors that may explain a low GPA; gender, race, and diversity; and what the candidate has done with his or her life to that point. The official noted that, while the law school admits around 1,000 to 1,200 applicants per year, they could easily admit 2,000 or more based solely on qualifications.

Although there is no minimum requirement for the LSAT, it is rare for the law school to accept an applicant with an LSAT score under 150. However, the LSAT score is accorded less weight in evaluating the likelihood of success for applicants recruited from some predominantly Hispanic colleges in the South Texas Valley, many who come from highly disadvantaged backgrounds. Specifically, the law school is under both a moral and contractual obligation to take a number of top Hispanic students who graduated from certain colleges in the South Texas Valley. The law school had an agreement with these schools to take their best pre-law students. As a result, nearly ten percent of the top Latino lawyers in the United States have graduated from UT Law School. As former Dean Larry Sager noted, "This has been part of the mission of the law school." Sager also noted that many of the state legislators in the Mexican American Caucus came out of UT Law School. "This is a hugely important legacy in the state." According to Sager, President Powers is deserving of credit for this program, which he established as Dean of the Law School.

1. Letters of Recommendation and Other External Influences

It is openly acknowledged that politicians and other persons of influence often call or write about particular candidates interested in the law school. The Dean's Office has received numerous calls from legislators over the years. Dean Farnsworth noted that "there are no rules about what to do when a politician or person of influence calls. People have completely differing positions" on how to handle such calls. It is a "much unguided process" and it is not always clear what is the right or wrong thing to do.

Although letters of recommendation typically play a small role in admissions decisions, such letters are considered as part of the holistic process. Letters submitted from people who know an applicant well and can comment directly and personally about an applicant's abilities and potential are given more weight than letters of recommendation from individuals with less specific information. Thus, as Dean Farnsworth noted, letters from "people we have good reason to believe care about the school, and who have reputational interests to protect because they deal with the school repeatedly" can be helpful. "If such a recommender swears by an applicant's potential, that is meaningful to us, and may cause us to consider an applicant who otherwise would not have gotten in."⁶³

Dean Farnsworth also noted that, while LSAT scores and GPA are major factors in the admissions decision, "numbers are crude. Many applicants who don't have high test scores or high GPAs nevertheless have the potential to be great law students and lawyers. The difficulty is in knowing who they are. . . . [I]f someone we trust says that an applicant is outstanding, that is a very valuable piece of information and might be more important than the numbers."⁶⁴

When the Dean's Office receives information about a law school applicant or a letter of recommendation (or telephone call) from a trusted source, the Dean informally reviews the applicant's credentials and determines whether a case for admission is plausible. If not, he or she informs the recommending party that the applicant's chances are not promising. However, if the case for admission is plausible, the Dean discusses the matter with the Assistant Dean for Admission and passes along the information from the recommender. According to Dean Farnsworth, "Sometimes it becomes clear to both of us that the candidate deserves admission. Sometimes it becomes clear that the candidate does not deserve admission. If a favorable decision seems to me a sound idea, my question in the end for the Assistant Dean is: are you comfortable admitting this student? If she says no, I do not press the case any further."⁶⁵

As long as a final decision has not been made and communicated to the applicant, the Dean may discuss any information received about an applicant with the Assistant Dean. Sometimes their discussions may change the mind of the Assistant Dean regarding a candidate for admission, and sometimes it will not. However, once a "deny" letter has been sent to an applicant, that decision is final, though the applicant can apply for reconsideration based on new material in the file, such as a better LSAT score. In such cases, the Assistant Dean generally makes the final call.

Dean Farnsworth noted that it is a matter of judgment concerning how much weight to give to recommendations from alumni or legislators. He regards such recommendations "acceptable so long as it doesn't amount to letting outsiders make our decisions for us, and doesn't lead to automatic admission at the request of particular recommenders." Dean Farnsworth insists that there is "no such thing as automatic admission of an applicant on the say-so of any recommender, whether it is a

⁶³ Memorandum of Dean Ward Farnsworth, January 14, 2014, at p.2.

⁶⁴ Id.

⁶⁵ Id.

legislator or an alum or the President of the University. I have personally and comfortably said ‘no’ to recommendations from all of those sources.”⁶⁶

2. Input from President’s Office

Former Dean Sager acknowledged that, when he was Dean of the law school, he received about 10-20 calls a year from Nancy Brazzil about President Powers’ interest in certain law school applicants. It was always clear that Brazzil was speaking for the President’s Office. In some cases, Brazzil called about a strong candidate who was going to be admitted in any event. But in other cases, where Sager disagreed with whether someone should be admitted, they would have a more extensive discussion. According to Sager, the conversation went something along these lines:

Brazzil: I need to talk to you about some candidates. I need the law school to admit xxx.

Sager: Why?

Brazzil: Because it is something Senator XXX wants a lot.

Sager: Nancy, I can’t admit him.

Brazzil: Will you call the senator and tell him?

Sager: Yes.

Sager would then call the senator (or appropriate party) and explain why it would be bad for all concerned to admit the student. He might also add, “But, let me tell you what I am happy to do. I am happy to meet with X. I will tell X that I am meeting with him because of my respect for you, and that if he wants to attend UT Law School, he needs to retake the LSAT. Or that if he gets into another school and does well his first year, in his second year, I will meet him on the front steps and welcome him.”

Sager noted that this model worked well because it respected the integrity of the admissions process and the friendship and relationship with the person of interest, and the student appreciated it as well. “And then I would meet the student.”

In the case of one politically connected applicant, Sager recalled that the applicant had scored very low in the LSAT. Sager remembers discussing with Brazzil that “we cannot admit [applicant].” Nevertheless, the applicant was admitted. In hindsight, said Sager, “I honestly don’t know how [applicant] got admitted. I may have agreed at the end of the day after learning about [applicant’s] personal hardships. I may have changed my mind. It is possible that Nancy spoke with [the Assistant Dean] about it. . . . And it is conceivable that I was pushed so hard that, at the end of the day, I agreed. Powers was my boss.” However, when reminded that the applicant retook the LSAT and significantly improved applicant’s score, Sager said it is “quite possible” that made the difference and it was agreed to admit [applicant] only after the new LSAT score was received.

Sager noted that, on occasion, Brazzil would insist that “we look hard at a person.” Sager said that admission decisions fell into three pots when they had the attention of Brazzil and Powers: The first pot consisted of those applicants who were plainly admissible. The second pot consisted of those applicants

⁶⁶ The Dean believes that the law school admissions process is generally sound, but acknowledges that some alternatives may be worth considering, such as the use of an Admissions Committee.

who were plainly inadmissible. And the third pot was in the middle, the “closer calls.” In some of the close cases, the intensity of Brazzil’s and Powers’ interest “could have on occasion swayed my decision.” Although Sager acknowledged that it was often an annoyance to him to have to take Brazzil’s calls about particular law school candidates, it often forced him to take a hard look at the candidates and sometimes it legitimately changed his perspective. Sager said he was never forced to admit a candidate against the law school’s wishes.

Similarly, Dean Farnsworth has never spoken directly with President Powers about a candidate and a legislator’s interest in a candidate, though he occasionally receives calls from Nancy Brazzil. Farnsworth insisted, however, that in two years as Dean, Brazzil has never pressured him to admit a law student that he did not feel should be admitted based on a variety of holistic factors.

In response to some of the recent controversies that led to this investigation, Farnsworth noted that, starting this year, he has told the Assistant Dean for Admission that Farnsworth will not discuss directly with the Assistant Dean any candidates for admission. Instead, Dean Farnsworth will address the Admissions Committee (which serves in a consulting role) and make any necessary disclosures or advocacy to them about candidates of interest, and then leave the room and defer to their decision.

Email Review. In our review of emails provided by UT-Austin, Kroll found two instances in which attempts to influence the law school admissions process occurred. As noted, both examples raise potentially troubling questions.

- On December 9, 2012, a retired elected official emailed Dean Farnsworth regarding the daughter of a family friend who had applied to the law school. In the email, the official indicated that the applicant’s father was a “member of [an] important . . . Committee [and] a UT graduate.” The official noted that two of the applicant’s family members had previously applied to the law school and were not admitted. In the email, the official further revealed that:

When XXX [daughter who was denied admission] applied to UT School of Law two years ago, I strongly encouraged Dean Sager to admit her, mainly because I understood the political and funding implications of having [Father of XXX]’s daughter in our law school. Unfortunately, Dean Sager did not make that happen...Of course, I am interested in her, but mainly I believe that it could be very important for the entire University, especially as we are going into a legislative session.

The retired elected official then added:

I have visited with [Father of XXX] in the last few days about the session, funding, and the needs of the university and the law school. He would like to meet and visit informally with you sometime, and he also said that he would like to visit informally with President Powers in advance of the session.

Dean Farnsworth's response to the official, with a copy to President Powers and Nancy Brazzil, was the following:

. . . thanks so much for letting me know of XXX's application. Much appreciated. I look forward to seeing you soon.

All the best,

Ward

The applicant was eventually admitted into the law school. A review of her application file shows that she graduated with an impressive GPA from a major public university and also earned a master's degree from that same university. Although her LSAT score was below average by UT Law School standards, she had other positive holistic attributes. It is impossible to conclude, however, that political factors did not influence the decision to admit this applicant to the law school.

- On May 25, 2011, former Dean Larry Sager received an email from an assistant containing a voice message from Nancy Brazzil. In her message, Brazzil informed Sager that President Powers had requested that two applicants be admitted, indicating "it is very important." According to a transcript of the voice message, it stated as follows:

Hi Larry, it's Nancy Brazzil. Bill just came in, he received a phone call from both members on those two applicants I talked to you about, [applicant names]. He asks if we can go ahead and admit those kids, he says it's very important. Anyway, I told you I'd call you back on them, I'm happy to talk to you about it, so give me a call if you'd like, [phone number], my direct dial is [phone number]. Thanks, Larry. Bye, bye.

Kroll confirmed that two days after this phone call, both applicants were sent acceptance letters by the law school. A review of the applicant's files indicates that each was an impressive candidate with solid undergraduate grades, valuable work and public service experience, and other positive holistic attributes. One of the applicants had a sub-par LSAT score but added a diversity component to the law school. The other applicant was previously denied admission, but he nevertheless had impressive academic credentials and work experience. At a minimum, these two cases were "close calls." While it seems apparent that the intervention of the President's Office following calls from two legislators had a substantial impact on the decision to admit these applicants, there is little question that the applicants were eminently qualified.

While Kroll found no evidence that UT officials acted improperly, and while the above examples pertain to only two or three applications out of thousands received each year by the law school, the communications reveal the types of pressures that Deans and admissions officials contend with regularly, and the types of misguided demands sometimes placed by person of influence on elite programs.

3. Analysis of Admissions Data

Kroll requested and reviewed an assortment of law school admissions data, including total applicants, admission and yield rates, average grades and test scores and a breakdown of each category. The data confirms that UT Law School is a highly competitive program with an exceptional student body. As Table 7 below indicates, from 2004 to 2014, the average GPA of admitted applicants has exceeded 3.6, while the average LSAT score is 167. In most years, the admission rate is well under 25%.

Table 7

Summary of Law School Admissions Data

Year	Application			Admitted		
	Average GPA	Average LSAT	Count	Average GPA	Average LSAT	Count
2014	3.36	159	4,387	3.57	167	1,080
2013	3.33	159	4,188	3.58	167	1,270
2012	3.40	160	4,316	3.67	167	1,175
2011	3.41	161	4,759	3.68	167	1,311
2010	3.42	161	5,815	3.71	167	1,319
2009	3.41	160	5,275	3.71	167	1,224
2008	3.38	159	4,850	3.65	167	1,204
2007	3.40	159	4,879	3.63	167	1,172
2006	3.39	158	4,999	3.63	166	1,085
2005	3.38	158	5,436	3.62	166	1,021
2004	3.36	158	6,095	3.64	166	961
Average	3.39	159	5,000	3.64	167	1,166

In addition, when one examines the breakdown and distribution of GPAs and LSAT scores for each class of admitted applicants from 2010 to 2014, it is readily apparent that undergraduate grades and LSAT scores play a major role in admission decisions at the law school. As Tables 8 and 9 below indicate, while a high GPA and/or a high LSAT score does not guarantee admission, and while a lower GPA or LSAT score does not preclude admission, the vast majority of admitted applicants exceed on both fronts. Thus, in most years, over 50% of applicants with a 3.8 GPA or better are admitted, while a relatively small percentage of applicants are admitted with under a 3.0. Similarly, in most years, an LSAT score above 170 results in admission for around 70% of applicants, with some variation between years, while scoring under a 160 on the LSAT results in denials well over 90% of the time.

Table 8

UT Law School – GPA Ranges (2010 – 2014)

According to the law school's website, a minimum GPA of 2.2 is required for admission. Admissions data from 2010 to 2014 reveal that no applicants were admitted with a GPA below 2.4. The vast majority of applicants reported a GPA of 3.4 or better.

Kroll notes that 117 of 6,155 admitted applicants during this time period reported no GPA. 84 of the applicants were from foreign schools that did not have an equivalent grading system, while the remaining 33 applicants appear to have attended non-traditional schools within the United States that do not use the standard GPA scale.

2014			
GPA Range	Applications	Admitted Applicants	% Admitted
3.80 - 4.00+	828	352	43%
3.60 - 3.79	1,049	340	32%
3.40 - 3.59	891	201	23%
3.20 - 3.39	611	97	16%
3.00 - 3.19	391	43	11%
2.80 - 2.99	202	14	7%
2.60 - 2.79	127	5	4%
2.40 - 2.59	91	3	3%
2.20 - 2.39	37	0	0%
< 2.20	22	0	0%
no GPA	138	25	18%
Total	4,387	1,080	25%

2013			
GPA Range	Applications	Admitted Applicants	% Admitted
3.80 - 4.00+	827	460	56%
3.60 - 3.79	908	378	42%
3.40 - 3.59	789	217	28%
3.20 - 3.39	575	101	18%
3.00 - 3.19	371	52	14%
2.80 - 2.99	237	23	10%
2.60 - 2.79	172	11	6%
2.40 - 2.59	97	2	2%
2.20 - 2.39	46	0	0%
< 2.20	26	0	0%
no GPA	140	26	19%
Total	4,188	1,270	30%

2012			
GPA Range	Applications	Admitted Applicants	% Admitted
3.80 - 4.00+	960	505	53%
3.60 - 3.79	1,059	415	39%
3.40 - 3.59	837	161	19%
3.20 - 3.39	537	56	10%
3.00 - 3.19	382	11	3%
2.80 - 2.99	191	3	2%
2.60 - 2.79	117	1	1%
2.40 - 2.59	66	3	5%
2.20 - 2.39	28	0	0%
< 2.20	10	0	0%
no GPA	129	20	16%
Total	4,316	1,175	27%

2011			
GPA Range	Applications	Admitted Applicants	% Admitted
3.80 - 4.00+	1,038	562	54%
3.60 - 3.79	1,164	500	43%
3.40 - 3.59	960	170	18%
3.20 - 3.39	637	43	7%
3.00 - 3.19	395	8	2%
2.80 - 2.99	191	1	1%
2.60 - 2.79	123	0	0%
2.40 - 2.59	64	1	2%
2.20 - 2.39	37	0	0%
< 2.20	23	0	0%
no GPA	127	26	20%
Total	4,759	1,311	28%

2010			
GPA Range	Applications	Admitted Applicants	% Admitted
3.80 - 4.00+	1,200	626	52%
3.60 - 3.79	1,400	490	35%
3.40 - 3.59	1,177	141	12%
3.20 - 3.39	813	28	3%
3.00 - 3.19	518	9	2%
2.80 - 2.99	263	4	2%
2.60 - 2.79	161	1	1%
2.40 - 2.59	93	0	0%
2.20 - 2.39	50	0	0%
< 2.20	22	0	0%
no GPA	118	20	17%
Total	5,815	1,319	23%

Table 9

UT Law School – LSAT Ranges (2010 – 2014)

Law school admissions data from 2010 to 2014 shows that LSAT scores play a significant role in determining whether an applicant is granted or denied admission to the law school. Of 6,155 admitted applicants from 2010 to 2014, only four were admitted with an LSAT score below 150. By contrast, over three-fourths of admitted applicants (76%) scored 165 or better on the LSAT.

2014			
LSAT Range	Applications	Admitted Applicants	% Admitted
175 - 180	46	28	61%
170 - 174	312	211	68%
165 - 169	970	561	58%
160 - 164	1,114	196	18%
155 - 159	848	71	8%
150 - 154	526	13	2%
< 149	562	0	0%
no LSAT	9	0	0%
Total	4,387	1,080	25%

2013			
LSAT Range	Applications	Admitted Applicants	% Admitted
175 - 180	39	25	64%
170 - 174	307	272	89%
165 - 169	914	619	68%
160 - 164	1,061	271	26%
155 - 159	714	60	8%
150 - 154	537	21	4%
< 149	603	2	0%
no LSAT	13	0	0%
Total	4,188	1,270	30%

2012			
LSAT Range	Applications	Admitted Applicants	% Admitted
175 - 180	57	49	86%
170 - 174	417	306	73%
165 - 169	1,151	557	48%
160 - 164	1,094	190	17%
155 - 159	725	66	9%
150 - 154	457	7	2%
< 149	406	0	0%
no LSAT	9	0	0%
Total	4,316	1,175	27%

2011			
LSAT Range	Applications	Admitted Applicants	% Admitted
175 - 180	62	39	63%
170 - 174	470	336	71%
165 - 169	1,225	637	52%
160 - 164	1,276	227	18%
155 - 159	785	60	8%
150 - 154	491	10	2%
< 149	441	2	0%
no LSAT	9	0	0%
Total	4,759	1,311	28%

2010			
LSAT Range	Applications	Admitted Applicants	% Admitted
175 - 180	107	66	62%
170 - 174	507	299	59%
165 - 169	1,452	662	46%
160 - 164	1,655	227	14%
155 - 159	974	52	5%
150 - 154	594	13	2%
< 149	521	0	0%
no LSAT	5	0	0%
Total	5,815	1,319	23%

4. Review of Selected Application Files

Kroll requested an opportunity to review all application files of admitted applicants from 2010 to 2014, where the admitted applicant had a reported undergraduate GPA of below 3.0 or an LSAT score of below 155. Based on the data provided by the law school, and as noted by the chart below, approximately 169 applicants met one or both of those criteria during the relevant time period.

Year	Requested Admitted Applications			
	# Below 3.0 GPA	% of Admitted	# Below 155 LSAT	% of Admitted
2014	30	3%	12	1%
2013	41	3%	22	2%
2012	15	1%	7	1%
2011	5	0%	12	1%
2010	12	1%	13	1%
Total	103	2%	66	1%

The law school was limited in its ability to produce files of applicants who were admitted but chose not to enroll at the law school, as those files are not retained by the law school in the ordinary course of business. Accordingly, Kroll was provided with all application files from 2010 to 2014 that met the above criteria in which the admitted applicant enrolled at the law school. A total of 70 “outlier” files were produced and reviewed as a result of this request.

The records reviewed contained the candidates’ law school application, including GPAs and LSAT scores, letters of recommendation, demographical information, resume and personal essays. Of the 70 files provided, 44 pertained to applications for the 2013 and 2014 entering classes, suggesting a sizeable increase in the total number of candidates admitted with GPAs below 3.0 and/or LSAT scores below 155 for those years. This would appear consistent with national trends since 2010, with reduced overall numbers of law school applicants and slightly less competitive applicant pools the result of declining economic performance in the legal industry and a less favorable job market for new law school graduates.⁶⁷

The application files examined confirmed the overall admissions data noted in Section 6.C.3 above, that from 2010 to 2014, the law school admitted no applicants with a GPA below 2.4 and only four with an LSAT score below 150.⁶⁸ During that time frame, only two applicants had both a subpar GPA and LSAT score (i.e., GPA below 3.0 and LSAT score below 155). However, both applicants contributed to the law school’s racial and ethnic diversity and had valuable public sector experience.

⁶⁷ “Law School Applications Down 37 Percent since 2010; First-Year Class could be Smallest in 40 Years,” *ABA Journal*, July 22, 2014.

⁶⁸ A fifth applicant who was eventually admitted originally scored below 150. However, according to law school officials, this student was only admitted after retaking the LSAT and achieving an improved score.

Our review confirmed that, while the admissions process is driven in large part by the importance of GPA and LSAT scores, the law school prioritizes a holistic review that considers such diversity factors as gender, race, and socioeconomic background. Approximately 50%, or 35 of the 70 files reviewed, pertained to the applications of under-represented minorities. At least three application files were of applicants of Hispanic origin that had graduated from one of the designated South Texas Valley schools. In addition, a low GPA was often accompanied by a high LSAT score, and a low LSAT score was often accompanied by a high GPA.

The majority of applicants submitted two to three letters of recommendation. Only one applicant submitted more than three letters of recommendation, while four applicants did not submit any. Most of the letters were written by former college professors or managers during the candidates' reported internships or full-time employment. Although most of the 166 recommendation letters reviewed were addressed to the Law School Admissions Council, some were directly addressed to school officials, including Dean Farnsworth, former Dean Sager, and President Powers. A small portion of the letters were not submitted through the prescribed admissions channels, but mailed directly to the Dean's office.

Only nine of the 166 letters of recommendation were from public officials. Most applicants who submitted letters of recommendation from state senators or representatives had previously interned or worked in their offices, usually as a policy analyst or legislative aide. Therefore, it is reasonable to assume that the legislators in question knew the applicants' qualifications well enough to warrant writing a letter of recommendation. In a few instances, given the low GPAs and LSAT scores of the candidates, as well as in some instances a lack of any unique or relevant work experience, it appears that political connections may have influenced the decision to admit the applicant. While most letters of recommendation and personal essays were typically explicit about these connections, it is impossible to conclude with any certainty that applicants were granted special consideration as a result of political or, in some cases, alumni ties. Further, many of the applicants, regardless of any apparent political or alumni connections, also received positive recommendations from professors/supervisors, while others added a diversity component to the law school class.

Kroll identified an additional eleven applicants from 2010 to 2014 who had apparent political connections. Four applicants arguably benefitted the most from their political connections, including three with LSAT scores under 150 (but with GPAs in the vicinity of 3.5) and one with a GPA and LSAT well below the norm for UT Law School. Two of these applicants were related to political leaders, while the other two worked for legislators. Although one applicant was proficient in Spanish and another had suffered severe personal hardships, the lack of other personal holistic attributes of note for these four applicants suggests that these applicants benefitted in part from their political ties.

With respect to the other seven applicants whose application files made note of their political connections, Kroll's review found that other holistic factors appear to also have influenced the admissions process. At a minimum, these files suggest that a more nuanced, holistic review process was at work. Thus, six of the seven files pertained to candidates of Hispanic heritage. Several of the candidates were proficient in

Spanish or had valuable work experience. Six of the applicants had previously worked for public officials in substantive roles. While all of these applicants had LSAT scores under 155, in several cases the low scores were offset by an impressive GPA. All of the applicants had positive letters of recommendation.

There were many files of applicants who neither fell within an under-represented minority group nor had any obvious political or other influential connections, but nevertheless were admitted based on a countervailing LSAT score or GPA, or some other holistic factor. For example, in a few cases, the applicants had been school teachers or had other valuable work experience before applying to law school. In a few cases, a below average GPA in the 2.5 – 2.6 range was accompanied by an LSAT score over 170. Some applicants had military experience with glowing recommendation letters from commanders. One applicant had overcome a childhood disability.

In sum, there appears to be some evidence that relationships matter in law school admissions, and that political influence and connections to prominent legislators and public officials is often a positive attribute. Nevertheless, a close review of individual cases suggests how subjective and individualized each admissions decision is and the difficult terrain law school administrators must maneuver when choosing appropriate candidates among an impressive array of qualified applicants.

REVIEW OF BUSINESS SCHOOL ADMISSIONS

The McCombs School of Business is a nationally-ranked, top-20 MBA program. Admission into the program is very competitive. The full-time MBA program currently enrolls approximately 270 students (MBA Class of 2016) out of 2100 applications, with an acceptance rate of around 30%. The average age of entering students is 28 with five years of work experience. The entering class of 2014 reported an average GMAT score of 690 and average GPA of 3.40. Of the various programs examined by Kroll, the full-time MBA program at McCombs arguably implements the most subjectively holistic admissions process.

KEY FINDINGS

Based on interviews conducted and documents and other sources reviewed, Kroll makes the following key findings concerning the full-time MBA admissions process at UT-Austin:

- The admissions process at the business school is a robust and holistic process, with many data points. With a four-person Admissions Committee that takes its responsibilities and the concept of holistic review seriously, the Committee considers not simply undergraduate GPA and GMAT scores, but work experience, interview performance, demonstrated leadership skills, substantive letters of recommendation, diversity, character, and overall fit with the business school.
- Less emphasis is placed on undergraduate GPA and GMAT scores than appears to be the case for law school and the undergraduate program. Nevertheless, the average GPA and GMAT score at McCombs are higher than the national averages for other full-time MBA programs.
- Although the McCombs website states that recommendation letters may be submitted only through its online process, it was acknowledged that the school often receives letters, phone calls, and emails outside of the online process.
- Tom Gilligan, Dean of McCombs School of Business, acknowledged that he receives many calls from influential people inquiring about applicants. While he may later consult with the Director of MBA Admissions about individual candidates, he has never felt pressured by external forces, including donors, alumni, the business community, or other university officials, to admit any undeserving candidates.

- It is known that the Dean maintains a list of applicants of interest, but it is not known by anyone other than the Dean who and why these candidates are of interest. Everyone on the Admissions Committee confirmed to Kroll that they feel no pressure, collectively or individually, to admit potentially unqualified candidates.
- There is very little interaction between the MBA program and the President's Office. Most candidate-related calls Dean Gilligan receives come not from politicians, but from business professionals who frequently call Gilligan about candidates they believe have great potential. Gilligan encourages this because he wants to hear from people about potential leadership and talent.
- Everyone with whom Kroll spoke at McCombs believes that the school has never admitted anyone that did not meet the school's academic standards or program objectives.
- A review of admissions data from 2004 to 2014 confirms that the graduate business school is highly competitive and consistently admits candidates with strong academic credentials, test scores, and work experience. In most years since 2008, the admission rate is less than 30%. During the time frame examined by Kroll, there were no applicants admitted with a GMAT score below 530, and only one candidate who had a GPA below 2.6 combined with a GMAT score below 600.
- Kroll's review of "outlier" application files – defined as admitted and enrolled applicants who scored less than 600 on the GMAT or had an undergraduate GPA of below 2.6 – found that, from 2012 to 2014, there were generally many countervailing factors that reasonably justified taking a risk on, or agreeing to admit, each such applicant. For example, approximately 61% of the files reviewed included diversity considerations as one of the holistic attributes. Several other applicants were fluent in foreign languages. Most of the files reviewed had evaluation notes that reflected the candidates gave strong in-person interviews, or demonstrated strong business and leadership potential. Some applicants had military experience, others valuable managerial experience.
- A recent article published on the watchdog.org website alleging a possible *quid pro quo* and other examples of undue influence in the business school's admissions process was found by Kroll to be factually incorrect and unsubstantiated. In short, Kroll found no evidence of political or financial influence in the admissions process, and no evidence of any *quid-pro-quos* or other inappropriate considerations in admissions decisions at the McCombs School of Business.

A. MBA Admissions Process as Designed and Publicized

According to the school's website under "Admissions Criteria" and as confirmed by the Director of MBA Admissions, there are essentially three criteria for admissions into the full-time MBA program:

- Academic Aptitude. An applicant must have a bachelor's degree from a regionally accredited institution in the United States or a comparable degree from a foreign academic institution. According to McCombs' website, the school "is a demanding, fast-paced, and collaborative environment. The admissions committee is looking for applicants who demonstrate superior academic performance and intellectual ability." Although no minimum GMAT or GPA is required, these factors are considered when assessing an applicant's academic aptitude.
- Professional Experience. At least two years' work experience is desired and the average student admitted into the program has around 5 years of professional experience. According to McCombs' website, the business school is most interested in quality work experience, "as shown by responsibility, leadership, supervision, and teamwork." References and letters of recommendation are closely reviewed and given a significant degree of weight by the Admissions Committee.
- Personal Characteristics. This includes the candidate's communication skills, demonstrated maturity, initiative, integrity, and self-awareness, attributes which cannot be quantitatively measured and which are assessed during in-person interviews and by reviewing an applicant's resume, essays, and letters of recommendation.

Although a handful of applicants every year are admitted into the MBA program from undergraduate school, McCombs is generally looking at the quality of a candidate's work experience and responsibilities, his or her overall resume, letters of recommendation, and leadership potential, along with academic aptitude.

Thus, similar to the Law School, the full-time MBA program has a holistic admissions process. But unlike the law school, there is far less weight placed on undergraduate GPA and test scores. As noted on the school's website, "There are no fixed criteria, no minimum scores for GMAT or TOEFL, no minimum GPA, and no formula or weighting of specific areas of the application." Instead, the "MBA Admissions Committee dedicates itself to a meticulous, holistic review of each application. Our ultimate objective is to get a firm sense of each applicant as a person in order to determine if he or she is a good fit for McCombs – and to be sure that McCombs is a good fit for him or her."

During the application process, McCombs specifically asks for an applicant's personal and background information, test scores, and education and employment history. It also requires personal essays, official transcripts of undergraduate and other graduate education, and at least one letter of recommendation. Concerning the characteristics of a strong applicant, the website notes that the Admissions Committee

pays particular attention to “personal essays, work history, undergraduate performance, letters of recommendation, extracurricular and community activities, honors, achievements and test scores.”

The business school emphasizes in particular whether an applicant will be successful from a career search perspective. According to one Admissions official, career placement stats weigh heavily on national rankings, so McCombs is far more interested in someone who is likely to succeed than someone with an exceptional GMAT or GPA. *US News* is the only ranking that takes into account GMAT and GPA, and those scores are not overly-weighed in the rankings.

Diversity of the entire class (gender, race, international, socioeconomic) is another important factor in admissions decisions. As noted by an Admissions official, McCombs could easily fill the entire school with applicants from India with 750+ GMAT scores, but it would not be a diverse class or a good experience for the students. They are more interested in someone with a lower GMAT score and good leadership skills, than a high GMAT and prior leadership skills.

Evaluating Application Files: Each application for admission is assigned two readers. The readers include some combination of part-time readers, such as faculty members with whom McCombs contracts, and admissions officers. Some applications are rejected based on the first reading. These are generally applications of students with little or no work experience, a very low GMAT or GPA, and/or a sloppy and unprofessional application. All other applications are subjected to further review and a personal interview.

Interviews are required for admission. Interviews are conducted by current students, alumni, and admissions officers, either on campus or by Skype. While not every applicant gets interviewed, everyone who gets admitted will have been interviewed as part of the process.

Admissions Committee. The MBA Admissions Committee makes all of the admissions decisions. The committee is made up of permanent members – the Director of MBA Admissions along with a Senior Associate Director and two Associate Directors. On occasion, an Assistant Dean will be brought in to discuss “borderline cases”. The committee may also discuss close cases with the career management director.

Applications are screened out each year that do not warrant further review. All other candidate files – i.e., everyone who is interviewed and/or admitted – are reviewed and discussed by the full committee. Although the Admissions Committee is often in agreement on most candidates, when there is a split, they may bring in another person, such as the assistant Dean, for a tie-breaking opinion.

The business school wait lists a fair number of applicants. This permits the admissions committee to see how things play out at the end of the admissions season and allows McCombs to defer some borderline candidates. In some cases, after receiving updated information and feedback (e.g., some applicants change their minds), the decision is made for the school. Sometimes, an additional interview may be requested.

B. MBA Admissions Process as Practiced

The admissions process at the business school appears to be very robust, with many data points – it considers not merely GPA and GMAT scores, but work experience, interview performance, demonstrated leadership skills, substantive letters of recommendation from someone with good working knowledge of the candidate’s work habits and ethics, and diversity, character, and overall fit with the culture of the business school. Candidates with clearly defined goals and career objectives are more highly valued than less focused candidates. Consequently, as noted by senior admissions official, “We can take a bit more risk on those without the quantitative background who we think can excel in the program.”

Every application is read at least twice by a committee member and a part-time reader (part-time readers may be a faculty member, second-year MBA student, or alumni). Although undergraduate GPA and GMAT scores are important and often the first criteria reviewed, less emphasis is placed on these factors than appears to be the case for the law school and undergraduate program. Nevertheless, the average GPA and GMAT score at McCombs far exceeds the national averages.

1. External Influences

At least one letter of recommendation is required from a person who has supervised an applicant’s work or assessed his or her career. Although the McCombs website states that recommendation letters may be submitted only through its online process, it was acknowledged that the school often receives letters, phone calls, and emails outside of the online process. According to one official, the school has “a lot of very passionate alumni” who may send an email to someone on the Admissions Committee contending that a particular applicant would be a great addition to McCombs. The staff response is typically, “Thank you for the email and feedback,” and the remarks are then placed in the applicant’s file.

McCombs also utilizes a referral form that asks for additional details concerning how the recommender knows the applicant. For example, a lot of people will reach out and ask something like, “Applicant X is applying, what I can do to recommend this student?” The school replies with a referral form, which can be completed online, and which is subsequently added to the applicant’s file. The form asks “How do you know this person?” According to one member of the Admissions Committee, McCombs is more interested if the recommender knows the applicant in a professional capacity vs. a personal capacity.

Dean Gilligan acknowledged that he receives many calls from influential people inquiring about applicants. He will note them and provide a standard response, such as, “Thank you for the information, I will monitor the application” etc. He may consult with the Director of Admissions about some individual candidates, but he told Kroll that he has never felt pressure to admit an undeserving candidate.

After each round of applications is reviewed by the Admissions Committee and preliminary admissions decisions are made, but before any final decisions are released, the Director of Admissions meets with Dean Gilligan to see if there is anyone Gilligan needs to know is getting admitted or denied, in case

further discussion or review is needed. Sometimes they will go back-and-forth on certain borderline applicants. But the Admissions Committee has never been forced to admit candidates that it did not feel should be admitted on the merits.

It is known that the Dean maintains a list of applicants that he is keeping an eye on, but it is not known by anyone other than the Dean who and why these candidates are of interest. Everyone on the Admissions Committee confirmed to Kroll that they feel no pressure to admit a candidate who should not be admitted. The Director of Admissions noted that, when Gilligan discusses with him certain candidates of interest each year, it is “simply a discussion;” the Dean allows the Admissions Committee the power and authority to make the final decisions. (The Director also noted that he has never spoken with President Powers and he does not even know Nancy Brazzil). Sometimes, after a discussion with Dean Gilligan, the Director may decide to bring a candidate in for a second interview to allow the Committee an opportunity to re-evaluate the candidate and take a closer look.

Most candidate-related calls Gilligan receives come not from politicians (who tend to call the President of UT-Austin), but from business professionals who frequently call Gilligan about candidates they believe have great potential. Gilligan encourages this because he wants to hear from people about potential leadership and talent. For example, Gilligan noted that he sometimes receives calls from a Regent who is a big supporter of McCombs, recommending certain applicants. But Gilligan stated that there is never any undue pressure or influence exerted. Likewise, a prominent alumnus and financial contributor frequently calls Gilligan to promote particular candidates. Many of those applicants have been denied, and the alumnus and Gilligan have had many blunt and candid discussions concerning some of the recommendations. As stated by Gilligan, this person “cares about the school and his heart is in the right place” even if some of his recommended candidates are deemed not sufficiently qualified by the Admissions Committee. The alumnus does not attempt to override or pressure different results.

Gilligan noted that many applicants who are recommended by prominent people do not get admitted, and he has had many candid discussions with callers explaining why the graduate program is unable to admit certain applicants. He is comfortable with the integrity of the process and believes that all admissions decisions in the MBA program are aimed at advancing the academic mission of the school. Everyone at McCombs with whom Kroll spoke believes that the school has never admitted anyone that did not meet the school's academic standards or program objectives.

2. Analysis of Admissions Data

A review of admissions data from 2004 to 2014 confirms that the graduate business school is highly competitive and consistently admits candidates with strong academic credentials, test scores, and work experience. As noted in the below chart, since at least 2008, the admission rate is less than 30% in most years. For the past four years, the average GMAT score of admitted applicants has been 690 or above, with a low GMAT score in two of those years (2011 and 2014) of 570 among admitted candidate. 80% of all admitted applicants have scored between 640 and 740 (or close to these marks). Because most full-

time students accepted into the McCombs MBA program have several years work experience, grade point averages vary more widely than might be found in other graduate programs. Thus, in each of the last three years, the low GPA among admitted applicants was around 2.1, with the high GPA consistently at 4.0. However, in most years, eighty percent (80%) of all admitted applicants had a GPA of between 2.8 and 3.8.

Entering Class	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Applicants (following report crit)	1,647	1,335	1,440	1,548	1,929	2,284	2,259	2,253	1,900	1,951	2,130
Admits (following report crit)*	708	526	538	526	516	535	542	571	544	637	608
Enrolled	318	257	253	264	264	261	261	263	234	275	270
Selectivity (using above numbers)	43%	39%	37%	34%	27%	23%	24%	25%	29%	33%	29%
Yield (using above numbers)	45%	49%	47%	50%	51%	49%	48%	46%	43%	43%	44%
%Domestic (perm res included)	74	78	75	75	76	75	75	81	79	81	76
%International	26	22	25	25	24	25	25	19	21	19	24
%Male	80	75	71	73	69	74	67	72	69	74	68
%Female	20	25	29	27	31	26	33	28	31	26	32
%TX Resident (includes perms)	43	41	45	32	33	30	31	35	37	38	35
%Non Resident (includes perms)	31	37	30	43	43	45	44	46	41	43	41
%Underrep Minority	8	8	8	8	11	11	11	9	9	12	12
Avg GMAT	670	672	669	673	681	681	684	692	692	690	690
GMAT range (total)	530 -780	530 -760	540 -780	530 -790	540 -770	560 -780	530 -780	570 -760	530 -770	550 -780	570 -780
GMAT range (middle 80%)	610 -720	610 -720	600 -740	610 -730	620 -730	610 -740	620 -730	640 -740	630 -750	640 -740	640 -730
Avg Age	28	28	28	28	28	28	28	28	28	28	28
Avg Work (yrs)	5.07	4.86	5.03	5.15	5.19	4.85	5.07	5.25	5.08	4.92	5.25
Avg GPA	3.38	3.38	3.38	3.38	3.39	3.45	3.43	3.43	3.40	3.39	3.40
GPA range (total)	2.27 -4.00	2.15 -4.00	2.21 -4.00	2.28 -4.00	2.16 -4.00	2.37 -4.00	2.39 -4.00	2.34 -4.00	2.12 -4.00	2.08 -4.00	2.13 -4.00
GPA range (middle 80%)	2.83 -3.86	2.80 -3.93	2.75 -3.89	2.76 -3.85	2.85 -3.87	2.99 -3.88	2.94 -3.86	2.87 -3.85	2.87 -3.84	2.85 -3.79	2.84 -3.83
*Admits are GMAC compliant following two sanctioned methods: Before '07 deferrals were apps and admits in year admitted, but enrolled in following yr. Starting in 2007, deferrals were apps, admits, and enrolled only in the yr of enrollment.											
^permanent residents are not included											
^^Starting in 2009, we are using the new internet (IBT) scoring system											

3. Review of Outlier Candidates

Admissions staff at McCombs explained that, consistent with holistic review, there are many cases in which a sub-par GPA, GMAT score, or lack of work experience is offset by countervailing factors that justify taking a risk on the applicant. For example, in an attempt to enroll more women, work experience sometimes takes a lesser role in the evaluation, because it is recognized that, after a few years in the workforce, many women are in their child bearing years and become disadvantaged in career progression. Applicants with military experience who demonstrate great leadership skills sometimes have lower GMAT scores or undergraduate GPAs than other candidates, but they nevertheless make outstanding MBA candidates. And some candidates with great work experience may have done poorly in undergraduate school, but at this stage in their life, their undergraduate GPA is of less significance.

As noted by one Admissions Committee member, “You cannot hide in a class of 270. No one can get admitted who cannot do well and who does not have other really positive factors” to point to. “If you examine the outlier candidates [i.e., candidates with low GPA or GMAT scores], you will find that we do not admit folks without good reasons to admit them.” This official reflected a pride in the work of the Admissions Committee that was clearly reflected in the comments of each of the Admissions personnel at the business school: “I make it my job to really understand the person and background and make a really informed decision” when evaluating candidates for admission. In part because the number of applicants is lower than at the law school and undergraduate program, the personnel interviewed by Kroll strongly believe that they have the luxury to thoroughly review every application and to make fair, rational, and comprehensive admissions decisions.

Kroll requested all application files pertaining to full-time MBA outlier candidates – defined as those with an undergraduate GPA of below 2.6 or a GMAT score of below 600. Although Kroll had initially requested outlier files for all admitted candidates from 2010 to 2014, the scope of our review was in the end limited to admissions records for enrolled students in the incoming classes of 2012 to 2014. It was explained that the school does not retain files of applicants who were admitted but chose not to enroll in the program and, although files are potentially obtainable for enrolled applicants from the 2010 and 2011 classes, those files are in hardcopy form with evaluation and application records maintained in separate locations. Because producing the requested files from those two years would cause a burden on McCombs School staff, Kroll agreed to initially restrict our review to 2012 to 2014. Accordingly, based on the data provided by the business school, approximately 36 “outlier” files met one or both of the requested criteria during the relevant time period.

The files reviewed included the complete files of the relevant applicants, including demographical information, GPAs and GMAT scores, college transcripts, resumes, personal essays, letters of recommendation, and other relevant information submitted by the applicants. The files also included the MBA Admissions Committee candidate evaluation report.

The files reviewed by Kroll confirmed that the full-time MBA program is highly competitive and admits candidates based on a sincere and thorough evaluation of a variety of factors, including work experience, grades and test scores, leadership potential, diversity, and career goals and objectives. During the time frame examined by Kroll, there were no applicants admitted with a GMAT score below 530, and only one candidate who had a GPA below 2.6 combined with a GMAT score below 600.

A close examination of the outlier files revealed that candidates who fell below one of the two “objective” categories (GPA and GMAT) had positive credentials in other areas, including quantitative skills, work experience, interview skills and leadership potential. As noted by one Admissions official, one factor that played an important role in admitting some applicants with a lower than average GPA or GMAT score was that the candidate had chosen an undergraduate major with a quantitative focus, such as Engineering, Chemistry or Mathematics. While some of these applicants may have reported sub-par undergraduate

GPA, this was in part due to the difficulty of their coursework; often, these candidates excelled in the GMAT and attained high scores in the quantitative section.

In addition, approximately 61%, or 22 of the 36 files reviewed, pertained to applicants who added to the diversity of the business school class. Several other applicants noted they were fluent in foreign languages. Most of the files reviewed had evaluation notes that reflected the candidates gave strong in-person interviews, or demonstrated strong business and leadership potential. Some applicants had military experience, others valuable managerial experience.

The majority of applicants submitted two letters of recommendation, with only one applicant having submitted more than two letters. Most letters of recommendation were written by the applicants' former colleagues or managers, or by individuals who had known the applicant in a professional capacity.

Kroll found that virtually all of the outlier files reviewed had some combination of positive criteria that offset the sub-par grades or GMAT score and appeared to justify admission to the MBA program based on a holistic review. For example, in several cases, a GPA in the range of 2.2 to 2.4 were offset by GMAT scores well over 700 with high quantitative scores. The candidate with the lowest undergraduate GPA had a high GMAT and had overcome some difficult personal circumstances, and then did well in her final undergraduate years. This applicant was also proficient in multiple foreign languages. In none of the cases examined by Kroll was there evidence of political or financial influence, alumni connections, or other consideration that would suggest improper outside influences.

4. Specific Allegations of Undue Influence

On December 16, 2014, an article published on Watchdog.org⁶⁹ alleged that emails produced in response to a public records request suggested that improper outside influence was being exercised by the Texas Exes alumni association and the Texas Coalition for Excellence in Higher Education on the UT-Austin admissions process. The article specifically discussed emails sent to Dean Gilligan regarding certain applicants to the McCombs undergraduate and MBA programs. These emails, the article suggested, demonstrated that some candidates were admitted as a result of outside influence and pressure on Dean Gilligan, including a possible *quid-pro-quo* admission in exchange for a promised financial contribution. The article concluded that the emails, which were first obtained by the advocacy nonprofit group Empower Texans, showed that key Texas Exes members and the education coalition “have been involved in subverting UT’s admissions process.”⁷⁰

In light of the seriousness of the claims raised in the article, Kroll requested all records produced pursuant to the open records act request to identify the emails referenced in the Watchdog.org allegations. We also requested from UT-Austin the files and admissions records of the applicants in question, and we re-

⁶⁹ <http://watchdog.org/187458/pay-play-scandal-involves-ut-dean-texas-exes/print/>

⁷⁰ *Id.*

interviewed Dean Gilligan and others. Based on this follow-up investigation, Kroll makes the following findings:

On January 31, 2013, the CEO of Texas Exes, Leslie Cedar, wrote to Dean Gilligan about an applicant who was admitted to UT-Austin but not to the McCombs undergraduate program. Cedar inquired whether there is an appeals process for McCombs, and indicated that the applicant's father "hasn't done much giving but was about to cut you a 25K check." According to the emails provided, the original request came from Richard Leshin, former president of the Texas Exes and founding member of the Texas Coalition for Excellence in Higher Education, who as alleged in the article is "close to [President] Powers and to South Texas power brokers Carlos Zaffirini and his wife, state Sen. Judith Zaffirini."⁷¹

Gilligan's response informed Cedar that he "would like to offer [applicant] a 'contract,' which says that he will be admitted into McCombs upon completing several of the key prerequisites (e.g., Calculus, Statistics, Microeconomics, Macroeconomics) with good grades (around a 3.5 GPA). Will that work?" According to the records provided by UT-Austin, the applicant was accepted into the College of Liberal Arts for the fall of 2013. His file contained no hold designations. The applicant subsequently transferred to another college at UT-Austin. It does not appear that he ever transferred to McCombs.

According to Dean Gilligan, the email at issue simply described the transfer process available to all UT-Austin students who wish to transfer to the business school after being admitted into another program. The "contract" offered the student was in fact a standard offer the business school makes to all admitted applicants who wish to internally transfer to McCombs' undergraduate program. Kroll notes that these same requirements are expressly described in McCombs' public description of its internal transfer process. Specifically, as noted on the website,⁷² any student wishing to transfer into McCombs must complete course work in Calculus I and II, Microeconomics, and Macroeconomics. In 2013, when the email in question was sent by Dean Gilligan, internal transfer students needed a minimum GPA of 3.5.⁷³

Kroll finds that Dean Gilligan did nothing improper in offering to "contract" with the purported transfer student. We also find that the implications and innuendo set forth in the watchdog.org article – including a caption under Gilligan's photograph stating, "Tom Gilligan, dean of the McCombs School of Business, was willing to admit a connected student in exchange for a \$25,000 donation" – was false, unfair to Dean Gilligan, and irresponsible.

To make matters worse, the watchdog.org article also alleged that Scott Caven, a member of the Board of Regents from 2003 to 2009, "tried to pull strings with Gilligan, the dean of the business school, in 2010 and 2013."⁷⁴ Specifically, in April 2010, Caven wrote to Dean Gilligan recommending a student for the incoming MBA class. While the email produced pursuant to the open records request was mostly

⁷¹ Id.

⁷² <http://my.mcombs.utexas.edu/BBA/Internal-Transfer>

⁷³ The minimum GPA requirement varies slightly from year-to-year, although it fell somewhere between 3.4 and 3.6 from 2010 to 2014. In 2011, 2012, and 2013, the minimum GPA required for internal transfers to McCombs was 3.5. <http://my.mcombs.utexas.edu/BBA/Internal-Transfer>

⁷⁴ Id.

redacted, the admissions data Kroll requested indicates that the applicant had strong academic credentials and work experience. Indeed, according to the Admission Committee's evaluation report, the applicant was rated as an overall "exceptional" candidate. The applicant had an undergraduate GPA approaching 4.0 and a GMAT score well above the norm for the McCombs MBA program. She was proficient in a foreign language and had been awarded several high honors in her undergraduate school. The Admissions Committee evaluation noted the applicant was an "Exceptional Candidate". According to the interviewer notes, the applicant was "by far my favorite candidate that I have interviewed to date" and highly recommended her for admission.

According to the records provided, Caven knew the applicant most of her life. In response, Dean Gilligan merely wrote that the applicant was "a very strong candidate" and that the school had invited her to interview with McCombs.

Kroll finds that, notwithstanding the recommendation letter from Caven, the applicant's file and evaluation report clearly establishes that the applicant was a remarkably strong candidate with excellent academic credentials, a strong GMAT score, and solid work experience. It is simply not the case, therefore, that this applicant was granted admission to the MBA program based on the alleged influence of a former Regent.

Former Regent Caven⁷⁵ also emailed Dean Gilligan in January 2013, urging McCombs to consider another undergraduate applicant. The Watchdog.org article indicated that the 2013 email "regards a freshman for whom Caven urges Gilligan to 'consider her under the more holistic review urged by Justice O'Connor,' because of her unimpressive qualifications." Six months later, Caven wrote to Dean Gilligan thanking him for "ensuring that her application got a full review."

Kroll finds, after reviewing this particular applicant's file, that the candidate in question also had very impressive academic credentials and would have been admitted to UT-Austin (and to her first-choice program) with or without any recommendation or interference from former Regent Caven. This applicant had an impressive GPA and a high combined SAT score that placed her well above the norm by UT-Austin standards. She was involved in a diverse array of substantive outside activities, including several years of work experience. She also was president of a school club and received several academic honors. In addition, the applicant had musical and athletic talents.

The records also showed that former Regent Caven sent an email dated April 12, 2013, to Dean Gilligan on behalf of a student who was waitlisted. In the email, Caven indicated that former Regent Janiece Longoria, with whom Caven had served on the Board, asked Caven to contact Dean Gilligan on behalf of a student who was on the wait list for admission to the McCombs graduate program and had been invited in for an interview. Although much of the email is redacted, Dean Gilligan responded: "He's on our radar. He'll hear more from us after April 18th." There were no follow-up emails concerning this applicant.

⁷⁵ The records reviewed by Kroll also noted that, in April 2011, Caven made a \$1 million gift to UT-Austin to launch the renovation of its sports field. There is no indication that this gift was in any way tied to or concerned with any applicant recommendations.

Unrelated Emails

Finally, Kroll reviewed a series of additional emails pertaining to the undergraduate program that were unrelated to the watchdog.org report. Specifically, on April 21, 2013, former Chancellor Cigarroa sent an email to Dean Gilligan, which forwarded another email sent to the Chancellor from the grandfather of an applicant who was accepted to McCombs undergraduate program but turned down from the honors program. In response, Dean Gilligan wrote to his administrative assistant requesting a narrative of the applicant's case. The assistant in turn emailed the Assistant Director of Recruitment in McCombs' BBA Program Office, who explained that the applicant's SAT scores, grades and class rank were well below the average for those admitted into the program. Dean Gilligan subsequently informed Chancellor Cigarroa, who wrote to the grandfather and indicated that the business school had already made a final decision on admissions for the honors program.

Kroll also identified one additional email that pertained directly to the graduate business school. Specifically, on March 6, 2012, a San Antonio community leader emailed Graciela Cigarroa, the wife of then Chancellor Francisco Cigarroa, requesting that Graciela pass on to the Chancellor the application materials of an active duty Marine who had applied to the McCombs School of Business. That same day, Graciela forwarded the community leader's email to the Chancellor, who in turn emailed Dean Gilligan about the application. In his email, the Chancellor wrote:

Dear Tom:

I am sharing this recommendation to you from XXX, a great community leader in San Antonio. I always leave these decisions to your admissions committee but I wanted to forward her recommendation to you.

With great respect,
Francisco

Dean Gilligan responded to Chancellor Cigarroa by writing, "Thanks Franciso. Best wishes." Kroll's research found that this applicant did not ultimately attend McCombs, but instead enrolled at one of the top-ranked MBA programs in the country.

Kroll notes that none of the applicants noted above were listed as a "Q"- or "L"- hold or were on any "watch lists" maintained by the President's Office or the college Deans as recorded on the UT-Austin mainframe computer. In short, Kroll finds no wrongdoing on Dean Gilligan's part (or that of any UT-Austin official) with respect to any alleged or imagined instances of improper outside influence.

RECOMMENDATIONS AND BEST PRACTICES

College and graduate school admissions involve a complex set of factors and criteria. Broad generalizations and conclusions should be avoided when evaluating the admissions process and its implementation at a particular school or program. In conducting this investigation, Kroll has not attempted to second-guess the merits of individual admissions decisions at any school or program within UT-Austin. However, Kroll found a lack of guidance for decision makers, from the President of UT-Austin to the Chancellor, Board of Regents, and others within the UT-System. In this final section of the report, we attempt to offer some suggested guidelines for future consideration and possible implementation.

Kroll has reviewed several sources of best practices for avoiding undue influence in university admissions. Among them were the White Paper issued by UT-System in July 2014 (“White Paper”);⁷⁶ the Admissions Inquiry Report of May 2014;⁷⁷ the proposal issued by UT-Dallas in December 2014 (“UT-D”); the Report of State of Illinois Admissions Review Commission issued on August 6, 2009, as to the University of Illinois at Urbana-Champaign (“Illinois Report”);⁷⁸ the Common Application website;⁷⁹ and the Member Conventions for the National Association for College Admission Counseling (NACAC).⁸⁰ Other recommendations are obtained from the “Recommendations” page on the “Be a Longhorn” website (“Longhorn”).⁸¹ Finally, in addition to interviews of current and former employees of UT-Austin, Kroll has consulted with several current and former highly-placed individuals with experience in or with other university admissions offices to obtain their recommendations on best practices.

If, after reviewing the report of our investigation, the Chancellor and the Board of Regents determine that the University’s policies are in conformity with those of many universities in the country, and accepts Kroll’s finding that there is no evidence of any *quid pro quo* between a recommender and the university, then it would not be unreasonable to also determine that UT-Austin could maintain current procedures. If, however, the current Chancellor and the Board of Regents determine that reforms are necessary, Kroll proposes a set of recommendations for UT-System’s consideration.

Kroll has determined that there is no well-recognized single source for the best practices discussed in our report. While the Illinois Report was a significant study, it concerned a deeply-entrenched pattern of operating a “shadow process” by which “scores” of seemingly unqualified applicants who were supported

⁷⁶ U.T. System White Paper: Best Practices in Admissions Processes for Undergraduate and Professional Programs, July 2014.

⁷⁷ The University of Texas System – U.T. Austin Admissions Inquiry Report, May 2014.

⁷⁸ <http://www2.illinois.gov/gov/admissionsreview/Pages/default.aspx>

⁷⁹ <https://www.commonapp.org/>

⁸⁰ <http://www.nacacnet.org/Pages/default.aspx>

⁸¹ <http://bealonghorn.utexas.edu/freshmen/admission/recommendations>

“by public officials, University Trustees, donors, and other prominent individuals” were blatantly favored for admissions to the University. Illinois Report at 1. Although there are some similarities between the kinds of issues discussed in that Report and those discussed here, the depth of the problems at Illinois were much more pronounced than the conduct at UT-Austin, which Kroll has found involved a small number of applicants and was intended to promote the best interests of the University. Over time, Kroll expects that the university community in the United States will agree on best practices for the typical challenges of undue influence, but this report is a first step in that process.

Kroll’s overall recommendation, which we refer to as a “limited firewall,” is intended to reduce the likelihood that contacts from persons of influence unduly affect the admissions process. Implementation of a “limited firewall” would maintain the traditional scope of the President’s Office in setting policy on the full range of admissions issues, but would permit the President’s Office to play a more limited role in the actual admissions process.

Kroll’s recommendations are discussed below. The sources of each individual recommendation are indicated.

Undergraduate Admissions Recommendation: “Limited Firewall”

As Kroll noted earlier in this report, there is a wide assortment of views concerning the proper role of the President of UT-Austin with respect to admissions. As President Powers explained, it is his view that final admissions decisions essentially rest with the President of UT-Austin, and ultimately with the Chancellor and the Board of Regents. Several officials agreed that, if the Board of Regents wishes to pass a rule prohibiting the consideration of certain factors in the admissions process, then those factors would not be considered. Many officials who spoke with Kroll believe that an approach which is too inflexible would be potentially harmful to UT-Austin.

It was noted that colleges and universities across the country must weigh and balance competing factors, which sometimes includes relationships with donors, legislators, and others. Despite its ivory tower image, the world of university administration is not irreproachable. The President of UT-Austin, for example, has many responsibilities, including fundraising and the cultivation of donors, alumni relations, government relations, and other roles that could potentially be adversely affected by overly strict and inflexible rules over how the president carries out those responsibilities. As noted by President Powers, “[W]e are in the business of dealing with important outside constituents – Regents, legislators, the Governor, donors, advisory people.” The question thus arises: How does a university appropriately balance these competing interests in a manner that is in the best interests and mission of the university?

Kroll recommends at the outset that the Board of Regents, the Chancellor, and the universities that make up UT-System engage in an open, honest, and thorough discussion of all the issues. Kroll does not know what the correct answer to the question is, for it ties into a university’s values and objectives within the context of its political, economic, and community environment.

Nevertheless, if the Chancellor and the Board of Regents determine that the practices followed by the Office of the President on undergraduate admissions should be changed, but not to the extent of imposing a “full firewall” as recommended in the White Paper, then Kroll offers this set of recommendations.

1. Letters of Recommendation

- Applicants should be limited to four letters of recommendation (“LREC”), which should be supplied by persons, such as teachers, clergy, coaches, guidance counselors, and employers, who can provide substantive and preferably first-hand information about the student’s academic, professional, extra-curricular, or community involvement. The current online and paper admissions system should be utilized to submit all such LREC. (Common Application website,⁸² UT-D at 3, Admissions Inquiry Report at 3)
- LREC can also be furnished by an individual with knowledge of special circumstances in an applicant’s life. (Longhorn website)
- The purpose of LREC is, as with all other aspects of the application and supporting documents, to assist Admissions in making decisions whether or not to admit an applicant based on his or her individual merits, rather than on the recommender’s standing in the University or in the larger community. (Kroll, NACAC Member Conventions)
- If the President or other University official receives LREC or other forms of communication in support of an application, even though not submitted with the online or paper application, a copy of that communication should be forwarded to Admissions to be made part of the file if the university official receiving that communication believes that it is of sufficient substance. (Kroll)
- A recommender may submit a courtesy copy of LREC to others at the University, with the understanding that it is Admissions which makes the final decision on which applicants should be offered admission. (Kroll)
- The Board of Regents should adopt a Regents’ Rule on this issue of whether there is a potential conflict of interest for a member of the Board of Regents to submit LREC on behalf of an applicant. (Kroll)

⁸² Kroll notes that the Common Application form is utilized by six of the ten universities in the country which have the largest endowments. Compare <http://www.forbes.com/sites/ccap/2014/07/30/22-richest-schools-in-america/> with <https://www.commonapp.org/>.

Kroll comment. There are some universities, such as UCLA and the University of Washington, among others, which discourage LREC.⁸³ Kroll believes, however, that the additional information provided by such letters, if based on the recommender’s experience with the applicant, could be helpful to the admissions process, as long as properly utilized. Likewise, our investigation demonstrated no need to consider barring members of the University community, such as Deans and the faculty, from submitting LREC, in accordance with the procedures stated above and below.

Kroll recommends, in accordance with what should be standard practice, that any communication pertaining to the application should be made part of the Admissions file. Based on our investigation, we have identified a critical problem, not as the way various kinds of recommendations are filed, but rather as the way in which such recommendations are treated. The best practices call for the measures outlined in the proposed “limited firewall,” which in turn depends on collegial collaboration, recognition of the professionalism of Admissions, and the importance of admitting students on the basis of the merits of each individual’s application.

Kroll’s recommendation that LREC must be based on “the student’s academic, professional, extra-curricular, or community involvement” would be a tightening of the standards set in the UT-Austin “Be a Longhorn” website, which includes helpful suggestions but no requirements.

Because Kroll understands that the General Counsel to the Board of Regents has advised the Regents against submitting LREC on behalf of an applicant, we recommend that the Board of Regents consider adopting a Regents’ Rule on this issue.

2. Policy on Unsolicited Communications

- Supporting documentation not solicited by UT -- including LREC beyond the four made part of the file, e-mails, or phone calls from university faculty and staff members not involved in the admissions process, UT-System officials, members of the Board of Regents, donors, alumni, corporate representatives, elected officials of the State of Texas and other public officials (“unsolicited communications”) – will not unduly influence the outcome of admission decisions. (UT-D at 5)

Kroll comment. The central recommendation in this section is that unsolicited communications “will not unduly influence the outcome of admission decisions.” Based on our investigation, Kroll finds that, during the years 2009 to 2014, recommendations from persons of influence, in certain limited cases, likely had an undue effect on the President’s Office and impacted admissions decisions.

⁸³ https://www.admissions.ucla.edu/FAQ/FR_Before.htm

3. Inquiries to Admissions

- Inquiries regarding the status or details of an application will only be discussed with the applicant or a representative designated by the applicant, such as his or her parent or legal guardian, spouse, or secondary high school counselor. Disclosure of any material in an applicant's file to a third party is prohibited. (UT-D at 5)
- Third party inquiries, such as those from university employees without admissions responsibilities, donors, alumni, corporate representatives, the Board of Regents, UT-System officials, elected officials of the State of Texas and other public officials, will not be answered. (UT-D at 5)
- Individuals who submit recommendations, whether in the form of LREC or otherwise, are not entitled to any additional information regarding the applicant's admission status. (UT-D at 5)
- The handling of inquiries regarding applicants, including any responses thereto, must observe the non-disclosure policies of the Family Educational Rights and Privacy Act (FERPA) with respect to the privacy of student education records. (White Paper at 7)

Kroll comment: Because there is support for the view that FERPA applies only to enrolled students, any disclosure of information about an applicant would not have violated the statute. However, the statute's policy against non-disclosure should be applied in the future to all applicants, even if they never become enrolled, because the privacy interests of such applicants should also be protected.

4. Decisions on Admitting Applicants

- The Office of the President maintains its traditional authority over setting admissions policy and oversight of the Admissions Office, except for the limitations noted below. (Kroll)
- The Office of the President can discuss with Admissions, in a collaborative manner, the merits of applicants who have been brought to the attention of the President's Office, but such office must not direct or otherwise exert pressure on Admissions as to the decision whether or not to admit any applicant. (Kroll)
- Admissions will document violations of this policy. (Kroll)

Kroll comment: This approach should be adopted to achieve the goals of promoting fairness to the individual applicant, protecting the integrity of the admissions process, and of recognizing the role of the President's Office in fostering relationships with a broad spectrum of individuals and entities to advance the best interests of the University. Kroll maintains that, although during the years 2009 to 2014 the

President's Office may have too vigorously tried to build relationships that, in the President's view, advanced the interests of the University as a whole, a resetting of the relationship between the President's Office and Admissions is warranted.

The distinction between collegial discussions between the President's Office and Admissions, and pressure or a directive from the President's Office on Admissions, should be easily understood and managed by reasonable members of the university community.

5. Policy on "Holds"

- As set forth in the Executive Summary, Kroll finds that UT-Austin's use of certain "holds" including but not limited to "Q holds" (President's holds) – has had a demonstrably unfair, albeit limited, impact in favor of students recommended by persons of influence who have contacted the President's Office or other university officials, and against those students who are not so recommended. Kroll believes that, at this point, rather than overly restrict the President's Office, the best policy would be to implement reasonable reforms.
- While, as discussed above, Kroll agrees with the finding in the UT-System White Paper that the independence and professionalism of Admissions must be sustained, we also believe that, at this point, the recommendation in the White Paper for a full firewall between the President's Office and Admissions goes too far, without first exploring other, less restrictive measures. Kroll also finds that, in another respect, the White Paper did not go far enough, because it did not examine what our report finds to be the unfair advantage to those applicants on whose files "Q" and "B" "holds" have been placed.
- At the same time, Kroll maintains that to the extent that the "Q" and "B" "holds" are at the root of the unfairness, the University should consider eliminating all such holds, unless the Chancellor and the Board of Regents determine, during the remainder of the 2014-15 admissions cycle, that the other best practices recommended by Kroll will result in a substantial reduction and/or elimination of the disparity set out in this report between the percentage of applicants who were admitted with holds on their files and the percentage of applicants admitted without such holds.
- During the remainder of the 2014-15 admissions cycle, Kroll recommends that all participants in the admissions process be advised that the existence of a "Q" or "B" hold is not a signal that an applicant should be favored over other candidates of comparable qualifications.
- Unless the Chancellor and the Board of Regents are convinced that the disparity found by Kroll has been substantially reduced and/or eliminated by the end of the 2014-15 admissions cycle by the other "limited firewall" measures recommended above, and unless they are convinced that this disparity will be substantially reduced and/or eliminated in the 2015-16 cycle and subsequent cycles, then Kroll recommends that the "Q" and "B" holds, placed by the President's Office as prompted by a recommendation from an influential person, be taken off all files in subsequent

cycles. In such a case, Kroll recommends that the computerized holds be eliminated and not replaced by informal notes or lists of applicants supported by influential persons.

Kroll comment: Kroll recommends that the system of “Q” and “B” “holds” – now numbering approximately 200-300 per year - be reformed. Although Kroll certainly is aware that in education, as well as in business and government, the various participants in those areas will often be best informed about and sympathetic to the needs of those institutions by having personal relationships with those institutions – here in the form of applicants they know, or have some tie to, being admitted to UT-Austin – our investigation has uncovered what we believe is significant evidence that “holds” result in what might be described as “gaming” the system or as creating an uneven playing field. Even though those with knowledge of how well-managed university admissions offices work – who assert that holds make for only a “closer look,” rather than added weight – would have to pause to reconsider their views after examining this report.

Certainly, if applicants, secondary school teachers, parents, and others believe that a well-placed recommender can persuade the University to admit a less qualified applicant based on non-merit related factors, the integrity of the University is compromised.

6. Admissions Committee – Not Recommended

- Kroll does not recommend that the University adopt the following recommendation in the White Paper: “An Admissions Committee shall be constituted to include multiple officials, such as faculty and academic administrators. It is exceedingly important to have an Admissions Committee that is of adequate size to prevent undue influence on an admission officer or a small Admissions Committee.” (White Paper at 5-7, citing Illinois Report)

Kroll comment: The organization of the Admissions Office is, of course, a matter left to the discretion of the President’s Office, the Chancellor, and the Board of Regents. Kroll, however, does not recommend the use of such a committee for undergraduate admissions for three reasons. First, creating a new committee, to include faculty and academic administrators, might have the advantage of reducing the likelihood of the admissions process being unduly influenced by outside recommenders, but it would have the disadvantage of creating an additional bureaucratic layer. Second, the analogy mentioned in the White Paper to the Illinois School of Medicine, which has a “25-member faculty admissions committee,” makes perfect sense in the context of a medical school, but would not seem to be apt to the functioning of the undergraduate admissions office at a university of the size of UT-Austin. Third, to follow this recommendation of the White Paper would appear to undervalue the expertise of professional administrative staffers in Admissions, and to underestimate the ability of the President’s Office and Admissions to follow directives of the Chancellor and the Board of Regents.

Law School Admissions

Recommendation: Expand Admissions Committee and Office of Assistant Dean for Admission

The range of admissions issues at the law school is much narrower than for undergraduates. Based on Kroll's investigation and findings, and after consulting with several high-ranking officials at other prominent law schools, we make the following recommendations:

1. Admissions Committee

- Kroll recommends that the UT Law School expand the role of its Admissions Committee, currently consisting of seven faculty members. The Committee would play a more active role in admissions decisions, such as what might be called "close calls." The general approach to admissions taken by the law school is unexceptionable, but could possibly be more focused on the intangible qualities that would not necessarily show on GPA or LSAT scores. An Admissions Committee might, for example, devote additional resources to reviewing applications, and possibly conducting telephone or in-person interviews of applicants, to gain a better picture of an applicant's potential abilities as an attorney.

2. Admissions Office

- The Assistant Dean for Admission and Financial Aid and the Director for Admission Programs do the great majority of the reviewing of the approximately 4,000 applications to the law school each year. Although there were no telltale signs of inadequate reviews, Kroll questions whether the law school is devoting sufficient resources to finding students who, for example, have superior ability at describing events or providing narratives, both of which are crucial skills for lawyers.
- Expanding the personnel available to the Assistant Dean for Admission may permit more time to explore innovative ways to evaluate those candidates who have the most potential, beyond their GPA and LSAT scores, to become leaders in various fields of law.
- The law school should consider adding personal and/or telephone interviews in those instances where the applicant makes a defensible case for admission, much as does the McCombs School of Business.

Business School Admissions
No Recommendations

Kroll found that the full-time MBA program at McCombs implements a robust holistic admissions process. The school's emphasis on work experience, potential leadership skills, interview performance, and other factors in addition to grades and quantitative test scores makes for a more comprehensively holistic process. In addition, the existing Admissions Committee, currently consisting of four full-time professionals, each of whom actively participates in and has a voice in final admissions decisions, makes it less likely that external or inappropriate considerations will potentially impact admissions decisions. Kroll believes that the full-time MBA admissions process at McCombs could serve as a model for other professional school programs. Accordingly, Kroll does not have any specific recommendations at this time for the full-time MBA program.

APPENDIX A

EXHIBIT A

SCOPE OF WORK

Contractor will provide the following services to University:

This investigation will be conducted under the direction of the U.T. System General Counsel.

The focus will be on an evaluation of the conduct of U.T. Austin, U.T. System, and U.T. System Board of Regents, (collectively "U.T.") officials and employees in performing admissions services, not on any external recommenders. U.T.'s responsibility to ensure integrity in the handling of admissions recommendations lies with the staff and officials within U.T., thus the charge is to determine if the conduct of U.T. officials is beyond reproach. Specifically, the investigation should determine if U.T. Austin admissions decisions are made for any reason other than an applicant's individual merit as measured by academic achievement and officially established personal holistic attributes, and if not, why not.

This charge is based on the premise that applicants should only be admitted to a public university based on their individual merit, i.e., academic achievement and officially established personal holistic factors. They should not gain advantage only because they are recommended outside the prescribed admissions process by an influential individual, whether that individual is a regent, U.T. System or U.T. Austin officer or staff member, member of the executive, legislative or judicial branch, or major donor, who adds no new substantive information about the applicant's personal merit. Any competing evidence or premise as to the basis for admissions should be identified so it can be openly debated.

The Admissions Inquiry sufficiently established that recommendations communicated to U.T. Austin outside the prescribed admissions process do impact admissions decisions. Thus, further analysis of admissions data is not expected.

The Admissions Inquiry also established that sending letters of recommendation outside the established admissions process is a common and generally benign practice. The focus here is not to be on external letters of recommendation or those who write them or otherwise communicate about an applicant. If something about a particular recommendation or other conduct of an individual outside U.T. is brought to light that raises serious concern, such as evidence of a quid pro quo or a threat from a recommender, it should be noted and promptly conveyed to the U.T. System General Counsel. Should there be an inquiry about such conduct from any external agency that has authority over the individual, U.T. will fully cooperate.

Student privacy must be fully protected. Investigators may have access to and/or use Education Records and/or "Personally Identifiable Information" about students derived from Education Records (collectively "FERPA Records" as permitted by and consistent with the Family Educational Rights and Privacy Act ("FERPA," 20 USC Sec. 1232g, 34 CFR Part 99). All such access or use will be governed by **Section 12.25 of the Agreement**. Information provided to investigators in the course of the Work that could be used to identify a student and derived from FERPA Records will be protected accordingly, and will not be disclosed as part of the investigators' Final Report without the consent of the U.T. Austin General Counsel.

Investigators shall seek guidance from the U.T System Office of General Counsel if any questions arise about the privacy or handling of FERPA Records or the terms of the Agreement.

Interviews are to be conducted with relevant officials and staff from U.T. Austin, U.T. System Administration, the Board of Regents and others as deemed necessary. Current and former admissions staff who participated in the admissions process for the 2004 to 2013 entering classes will be included.

A final report shall be submitted by investigators to the U.T. Austin General Counsel that describes the investigation methods employed and reports the investigators' factual findings ("Final Report").

If at any time the investigators deem it necessary to conduct further interviews, document review, or data analyses in order to fulfill the charge, investigators should consult with the General Counsel.