

One for the Crows and One for the Crackers: The Strange Career of Public Higher Education in Houston, Texas

Amilcar Shabazz

As surprising as it might seem to those who see the university as a liberal force, the presence of institutions of higher education has not always served to mitigate racial domination or the cultural separateness that dominates the personality of cities like Houston. The title of Andrew Hacker's best-selling book *Two Nations* could scale down to the local level and still ring true: "Two Houstons: Black and White, Separate, Hostile and Unequal." Actually, with its large Latin and Asian American communities, "Four Houstons" would be more accurate. A kind of cultural *apartheid* is as distinct to the city as its Astrodome, medical center, space exploration and oil businesses, and its bayous. Houston, like Texas, emerged from a war between an Anglo Protestant-dominated cultural group against a mestizo Catholic cultural group and a captive African cultural group. The culture wars continue to the present while the intellectual resources of Texas and Houston, especially their university historians, persist in their failure to shed light on the ongoing conflict between the races or cultural groups.¹

Historical exposition is uniquely suited to delineate a great deal about the dynamics of Houston's cultural fragmentation, yet it refuses to meet the task. Political scientists, sociologists, and other academic disciplines have written most of the important publications that analyze the structural and cultural dimensions of ethnocentrism and white supremacy in the metropolis. There are many reasons, both internal and external in nature, that we know, for example, more about Houston's growth into a major oil refining region than we do about its becoming America's largest "Jim Crow" city. Certainly one factor that cannot be overlooked is that Houston's institutions of higher learning are themselves deeply connected to the social structures, behavioral norms, and mentalities that produce

Amilcar Shabazz is Assistant Professor of American Studies at The University of Alabama.

the splintered social consciousness that characterizes the city as a whole. In the main, the teachers who might historicize the issue drive home to racially homogenous neighborhoods, praise God in racially homogenous houses of worship, school their children in largely monochrome, monocultural, and monolingual schools, and do not think twice about it. Their participation in a culturally separate world frames their approach to contemporary and historical issues and, it may be argued, has led them to avoid serious analysis of the city's color line.²

A worthy point of departure for a journey into the complex nature of Houston's poly-cultural reality is the strange emergence of publicly supported higher education in the city. Any visitor must be struck immediately by the existence of two public universities sitting across the street from each other. A brief tour of the two campuses gives the impression that state-sanctioned segregation still lingers in one of the United States' top ten cities. Upon learning about the two institutions, students in university classrooms naively ask: "If we are for racial integration and pluralism why have we not merged Texas Southern University (TSU) and the University of Houston (UH)?" "Why do we taxpayers fund TSU, UH, and the University of Houston-Downtown (UH-D) — it seems like a big waste of resources to maintain three universities doing almost the same thing?" The continued funding of these traditionally black and white schools makes absolutely no sense to the uninitiated and is senseless without a historical perspective. A survey of the history of segregated public higher education in Houston may help to clarify some of the positions and passions that rise over what is known as the TSU-UH merger debate.

In 1927, when the Houston Independent School District (HISD) opened Houston Colored Junior College (HCJC) and Houston Junior College (HJC), the respective antecedent institutions of TSU and UH, the two institutions represented one school with two campuses. One campus served Jim Crow, that is to say the educational needs of black folks; while the other served Joe Cracker, that is to say the needs of the lowly white folks who could not get into the private colleges which operated in the city. The for-whites-only HISD board set overall policy and administered the finances of the two racially distinct campuses for almost two decades. Hitherto, the small amount of historical writing on TSU and UH, especially their early years, has studied their histories separately and typically has been boosteristic rather than analytical. Such an orientation has prevented the development of an analysis of how concerns with ethnicity, race, and both an individual and group sense of "place" have affected public higher education in

Houston. Through the use of official university records, oral interviews, newspaper accounts and other primary and secondary sources on TSU, UH, and race relations in Houston, Texas, it is possible, however, to outline the uniquely interconnected histories of these schools through the era of legal segregation and after.³

For more than five decades prior to 1927, black Texans labored to create and sustain hundreds of schools, several private colleges, and one state normal institute at Prairie View, through which they steadily reduced the numbers in their communities who could not read or write. They did this even as they were marginalized and excluded from the mainstream of civil society, specifically from participating in school governance, financial and academic administration, curriculum development, and other aspects of educational leadership down to simple matters such as textbook selection. The belief in the bogus ideas of white supremacy constructed black folks, in the minds of white folks, as a perpetual outside group, a permanent enemy or antagonist. Instead of African Americans increased exposure to the education and "culture" of the dominant Anglo-American majority, leading to their assimilation into full-fledged citizenship and inclusion within the larger society, black Texans discovered that something in the social system reproduced their subordinate "place" generation after generation regardless of their level of educational attainment. Something was wrong with the melting pot. Color prejudice, ethnic chauvinism, and racism influenced the cultural function of the schools such that they contributed to producing not one type of American, but several different types. Their type, moreover, the "colored" or "Negro" American, persistently found itself ranked among the lowest of the various types.⁴

Through the Constitution of 1876, the state's formal educational policy statement was that "separate schools shall be provided for the white and colored children and impartial provision shall be made for both." For white Texans to spend more on the education of their children compared to that spent on the education of black children did not, by the white supremacist's logic, furnish evidence of bias or partiality. After all, what was the state's purpose for providing blacks with schooling? Was it to make them the equal of whites? Year after year, whites made it explicitly clear that the purpose of black schools had nothing to do with creating blacks who were the social or intellectual equals of themselves. Furthermore, if the function of black schools was, as they would have it, to teach an inferior group and to teach that group to accept its inferiority, such schooling should not cost as much as the instruction of the superior group. How else could

a Texan reason that spending more money schooling a white child over a black child did not go against the stated law of "impartial provision" of education?⁵

Whatever assumptions governed the administration of public education in Houston from its origins as a municipal concern in 1877 well into the 1920s when the city established the forerunners of TSU and UH, ethnic inequality was an unambiguous and undisguised fact. Jesse O. Thomas's *A Study of Social Welfare Status of the Negroes in Houston, Texas* (1929) offers a synopsis of how white and "colored" public education functioned in Houston. Members of the Houston Urban League commissioned him to write this book-length examination of the living conditions of black Houstonians. In the area of education, Thomas cited HISD Superintendent Edison Ellsworth Oberholtzer's report for the school year 1927-28, to disclose that

the value of the school property as quoted was \$16,544,902.00 for the 68 white schools and \$278,068.00 for the 25 colored schools, a difference of \$16,266,834.00, according to information from the Business Manager . . . Although the white population was only three times that of the Negro and the number of white schools less than three times the number of schools for colored, the value of the white schools was nearly sixty times that of the Negro schools.⁶

He also noted that the per capita cost of educating a white pupil was \$47.36 in the 1928-29 academic year while that of a "colored" pupil was \$25.55, "a difference of \$20.81." Moreover, the district did not pay the same salaries to white and black teachers with the same training, experience, and job functions. Black educators received approximately three-fifths to two-thirds of the salaries paid to whites of comparable ability and job classification.⁷

Despite the unequal conditions, Thomas found reason to be optimistic and positive about the status of black public education in Houston, noting proudly that the city was the only one "in the South which has a Municipal Junior College for Negroes." He also praised Oberholtzer as a man with a "sense of justice and courage," who in his previous capacity as superintendent of public schools in Tulsa, Oklahoma, had no problem with the fact that "the Negroes receive[d] exactly the same salary as [was] paid to other teachers." Thomas tried to balance his arguments and be discreet and sympathetic vis-à-vis the political status quo in his criticisms and recommendations. In some places, particularly his analysis of crime and the black community, Thomas placed greater emphasis on alleged deficiencies in the character and activities of blacks than on the structural and economic factors.

In any case, Thomas's assessment of Superintendent Oberholtzer's courage and sense of justice in confronting the problems that faced the education of blacks in the South reveals a manifestation of the then current white liberalism. Many white Texans marched in white sheets through the streets for white supremacy and revolted against a variety of changes in 'modern' moral customs they felt beset them on all sides.⁸ Might not the school district's attention to the educational needs of black people, particularly the simultaneous creation of junior colleges for whites and blacks, have appeared to white supremacists as threatening to the old order of things? The establishment of segregated HCJC and HJC was within the bounds of custom, however, it was quite unusual for blacks and whites to get junior colleges at the same time. Whites were the first to get a secondary school in 1878 when the Houston High School was founded.⁹ Blacks did not secure a high school until 1892.¹⁰

As soon as blacks learned that white district officials had begun making plans to launch HJC, they began presenting petitions to the school board and Superintendent Oberholtzer for a junior college for blacks. A committee of Houston's major black educational leaders, including the great M. E. B. Isaacs and William Leonard Davis, argued that their race had as great or more pressing a demand for college courses than did whites. Initially, district officials responded negatively. They doubted that blacks from the city and surrounding areas could ensure a sufficient enrollment, especially with the State College for blacks at Prairie View being only sixty miles away. The committee, however, did not give up and continued to implore HISD board members to study the two-year track record of the Wiley-Prairie View Extension School that had operated with board approval in the classrooms of Houston's Colored High School.¹¹

Black and white educational leaders agreed that establishing the HCJC could help improve the education of black children by enabling their teachers to acquire better academic and professional training. On this longstanding problem, Thomas Jesse Jones, the sociologist and educator who directed a federal government study on the character of African-American schooling from 1914 to 1916, stated that "the most urgent need of the colored schools of Texas is for trained teachers." In Houston, black teachers (like many of their white counterparts) recognized their need for additional training, but only a few could afford to leave the city during their summers to further their professional development.¹²

At the March 7, 1927, meeting of the HISD Board of Education, the trustees stated it as their belief "that a Junior College can be made to render a

most valuable service to our public school system for providing training for teachers in and for our schools at a nominal cost and in a convenient manner and at a convenient time, and . . . operated on a self-sustaining basis on a comparatively low tuition cost."¹³ Board members felt this way about public higher education for whites, but they did not, however, resolve that a permanent junior college should be created for blacks. Subsequently, the Isaacs-Davis committee arranged to meet with Assistant Superintendent L. T. Cunningham, director of school census and attendance, "to plan for the founding of the Colored Junior College."¹⁴

The HCJC held its first day of classes on June 5, 1927, in the new Jack Yates High School with three hundred students and a predominately white faculty from the University of Texas and Sam Houston State Teachers College.¹⁵ The white HJC opened two days later in the auditorium of the San Jacinto High School, enrolling 232 students by the end of the summer term.¹⁶ Despite the "colored" junior college's auspicious beginning, district officials remained unconvinced as to whether they should continue to operate the school throughout the regular academic year or permit it to function as a summer institute. After Cunningham conducted a survey which indicated that more than eighty students would "take advantage of the college when it is opened . . . this fall . . . on a tuition basis," board members agreed to provide a "negro" junior college, but only "when enrollment is assured." Effectively, because the HISD made no financial commitment to the black junior college, it was to be an entirely self-sustaining institution.¹⁷

As the faculty of both Houston junior college campuses (which in the fall numbered twenty-one at HJC and six at HCJC) came under a supervisory arrangement with the University of Texas and Sam Houston State Teachers College, the two senior colleges had to approve their participation on a year-to-year basis.¹⁸ In the spring of 1928, following visits from representatives of the Texas Association of Colleges and the State Department of Education, HJC gained full accreditation and that fall it became the state's largest junior college.¹⁹ That next year, the HCJC received an "unconditional first class rating by the State Department of Education;" and with that achievement the strange career of public higher education in Houston truly had begun.²⁰

The white and black administrators and enthusiasts of both junior colleges quickly recognized that in order for these institutions to survive and grow they had to broaden their student base and attract others besides those seeking teacher training. For HCJC the reality of an economic structure that had little need for blacks with higher education compounded the problem of defining its mission.

In 1880, eighty four percent of blacks had been employed in low-waged jobs that required little or no education. This situation remained substantially unaltered for more than sixty years.²¹

Raphael O'Hara Lanier, the dean of HCJC from 1933-1938, followed the program of the old wizard of Tuskegee Institute, Booker T. Washington. He prescribed a curriculum for HCJC that

stressed vocational education training and [he] added to the curriculum a course in tailoring, home economics, and cleaning and pressing. Since most Negroes in Houston at this time were domestic employees, he felt that they should be skillful in the jobs they must do for a living.²²

HJC also established a vocational program in addition to its teacher training and junior college course offerings, and it and HCJC grew steadily until 1930, when the full brunt of the Great Depression caused attendance at the junior colleges to drop. In 1934, the HISD board of education fought back against the declining numbers by taking advantage of a state law that enabled it to elevate both schools into senior colleges. In the fall of that year, the University of Houston (UH) and, in the summer of 1935, the Houston College for Negroes (HCN) opened their doors as four-year institutions. The HISD's action halted the downward trend in enrollments at both HCN and UH, at least until the U.S. entered the Second World War in 1941.²³

Offering a four-year degree did not, however, mean that HCN assumed greater autonomy over its internal operation. The HISD school board continued to take responsibility for the overall governance of the black branch campus. As in HCN's preceding seven years as a junior college, Superintendent Oberholtzer served as president of both UH and HCN, and Walter W. Kemmerer served as Assistant to the President. The head Negro in charge of HCN took the title of Dean of Houston College of Negroes. At a curricular level, all HCN course descriptions and outlines were sent to Kemmerer for approval. White central administrative oversight did not, however, directly tie HCN's accreditation to UH's. The black school's rating remained as distinct and separate from UH as its facilities.

The relationship between UH and HCN did have trouble spots. The total separation of facilities received a challenge at least as early as 1944. Four years earlier, UH had effected its move from San Jacinto High School to a new campus all its own. HCN remained, however, at Yates High School until 1945. As the small number of students who entered the black college's first graduate degree program – the Master of Science in Education – began writing their theses or

otherwise doing research work, the inadequacy of the Yates High School/HCN library became a serious issue. They made numerous appeals to HCN's graduate council, and three white members in January of 1945 wrote Kemmerer recommending that he establish "some procedure" through which black students might use UH's library facilities. They suggested that a room be set aside where HCN graduate students could come at a time "when few of our regular students use the building." Kemmerer refused their recommendation saying that he was "wholly in sympathy with the purpose; however, I do not believe the plan you suggested is at all practical or feasible." His alternative, that the HCN library requisition and purchase the needed books and periodicals, proved even less feasible.²⁴

Kemmerer's intransigence regarding segregation had its opposite in the form of blacks who had begun to adopt a "no quarter" attitude toward all institutions born of Jim Crow. Heman Sweatt, Lulu B. and Julius White, Rev. Albert A. Lucas, James Jemison, Christia Adair, Mack Hannah, Jr., Hobart S. Taylor, and Carter Wesley capitalized on Dr. Lonnie Smith's successful legal challenge to the whites-only Democratic primary following a favorable 1944 Supreme Court decision. By that next year they had built the city's National Association for the Advancement of Colored People (NAACP) branch into the largest in the world with a dues-paying membership of more than 12,000. They projected a new self-image for black Houstonians, one that differed sharply from the odious epitaph of "Jim Crow Niggers" which A. Philip Randolph used against blacks, whom he saw as willing to accept segregation, especially separate schools.

Moving from the ballot box to the educational arena as their next battleground in the fight against white supremacy, Houston's anti-Jim Crow Negroes rallied behind Sweatt's February 1946 application to the University of Texas Law School. Thousands of dollars poured into the NAACP fund to finance the legal work of Texas-based attorney William J. Durham and special counsel Thurgood Marshall, most of it raised in the Houston area. Many supported the case as a way to protest the failure of state government to provide a black equivalent to the esteemed University of Texas.

The NAACP and an emerging group of civil libertarians in the state pushed Sweatt's case in the direction of a direct assault on segregated education. Both sides received some of what they wanted: In March 1947, the state legislature passed Senate Bill 140 that approved the establishment of a three-million-dollar Negro UT. Thus, HCN became the state-supported Texas State University for Negroes (TSUN) with a law school and plans for various graduate

divisions including a medical school. On the other hand, the U.S. Supreme Court found that this Negro UT did not satisfy the constitutional question posed by Heman Sweatt's suit and on June 5, 1950, ordered the University of Texas law school to admit its first black student.²⁵

The wartime industry expansion of employment in the Gulf Coast area combined with the postwar influx of veterans who could attend college with the aid of the Servicemen's Readjustment Act brought about a tremendous boom in student enrollment at UH and TSUN. The war and its aftermath also helped spur a new wave of civil rights struggle, one increasingly dominated by liberal integrationists who openly professed little or no interest in "Negro education" or the welfare of so-called Negro schools such as TSUN.

The NAACP came to represent the spearhead of the civil rights-integration crusade in Texas, and it strove to dominate the field of political action among blacks. Houston NAACP leaders Carter Wesley and Lulu B. White engaged in a bitter word-war in the late 1940s. Wesley defended a flexible, multi-pronged attack on Jim Crow while White argued for an all-or-nothing approach. Wesley correctly assessed that TSU and Prairie View A&M University would continue for many years to be the major providers of higher educational opportunity for black Texans and, thus, efforts to upgrade these campuses had to be sought simultaneously with the fight to integrate white universities. White, however, was prepared to see the historically black universities closed immediately as the surest way of ending racial discrimination and separateness in Texas higher education.

An interesting outcome of this controversy among black activists in Houston is that the city became one of the most racially docile of Texas cities in the 1950s. The city that had been a leader in the fight against the white primary, teacher pay equalization, and which had provided the plaintiff who sued to open UT at the graduate and professional school level, suddenly became inordinately quiet and passive. The local NAACP seemed unable to get beyond mere plans into action with the exception of one noteworthy anti-segregation rally that targeted Texas governor Allan Shivers when he visited the TSU campus on March 18, 1956. They never effectively mounted lawsuits to integrate UH, Rice University, The University of Saint Thomas, TSU, or other segregated colleges in the city.

Following Sweatt's lawsuit, blacks sued or initiated suits to open institutions of higher education in Wichita Falls, Victoria, Wharton, El Paso, Kingsville, Gainesville, Beaumont, Denton, Canyon, Lubbock, Arlington, Texarkana, San Marcos, College Station, Huntsville, and Kilgore. Houston,

however, with its large and powerful NAACP branch, was conspicuously free of any legal challenges at the collegiate level. Many blacks applied to UH only to be refused entry, but no one took legal action. In 1957, repression of the NAACP by the state Attorney General's office had a chilling effect on the Houston branch and statewide, but this does not explain the branch's inability to organize a lawsuit before then. No doubt the presence of TSUN, renamed Texas Southern University (TSU) in 1951, and the support it had in the black community, had something to do with the tolerance of segregation at the city's other collegiate institutions. How could blacks demand their cake and eat it too?²⁶

The refusal to admit Caucasian students to a university created for Negroes (which said it existed for such a purpose in its very name) was challenged before the new state institution was fully a year old. In the summer of 1948, Jack Coffman became the first white student to apply to the TSU. The Board of Directors requested of Attorney General Price Daniel his formal advice. He issued Opinion No. V-645 on July 31, declaring that "since substantially equal courses of study are offered for white students at The University of Texas and other State colleges, a white student may not be legally admitted to the Texas State University for Negroes." The board, in turn, notified Coffman that he could not enter the for-blacks-only school. In January 1949, another white, Harold Schachter, attempted to enter the black university as part of a joint anti-segregation effort of the NAACP Youth Council and the Young Progressives of Texas. The board also refused his application, citing Daniel's opinion.²⁷

In the fall semester of 1955 white attempts to enter TSU again made headlines. TSU rejected six non-blacks: Warren Martin, an associate pastor of a Methodist church in Houston; Albert Kaszcyke, the seventeen year old son of a Polish war refugee recently moved to Houston from Chicago; Thomas C. Brunson, Jr., a Baylor graduate and navy lieutenant on duty in the Pacific; John August Solomon, Jr., a resident of Dallas; William A. McAnear, a resident of Houston; and Alko Awata, a resident of Tokyo, Japan, who had applied for or inquired about admission. When their names became public, Kaszcyke, Brunson, and Solomon explained to the press that their applications had been misdirected. Kaszcyke stated he did not realize that TSU was only for blacks; Brunson intended to apply to UT for graduate work, and Solomon had intended to apply to UH. Martin, a native of Kerrville who previously had done work with a black church in Waco, inquired about admission to TSU saying he sought the educational opportunity in Houston that best matched what he could afford. The young preacher told the press that "all men are brothers" and that he supported the

"elimination of segregation." Nevertheless, when the semester started he found himself studying at a segregated University of Houston.²⁸

The applications from Caucasians and an Asian sparked reconsideration of TSU's segregated admissions policy among board members. At their September 1955 meeting the executive committee recommended the immediate adoption of a racially nondiscriminatory admissions policy. George Allen, a black board member from Dallas, supported the recommendation, but Dr. H. D. Bruce, a white board member, moved to table further discussion of the matter until the board convened in closed session. Allen objected and called for the matter to be discussed openly before the press, but the other members overruled him.²⁹

In closed session the board voted 5-1 to postpone a decision on desegregation until its next meeting. Mack Hannah, chairman of the board, explained that they had voted to delay final action in order to give TSU's new president, Dr. Samuel M. Nabrit, time to settle into his position. On January 10, 1956, the board met and approved the desegregation of TSU by a vote of 6-1. W. R. Banks, President Emeritus of Prairie View, Hannah, Bruce, Price Crawley and J. O. Nobles of Midland, Dr. J. C. Chadwick, and Houston attorney Ralph Lee attended the meeting. Except for Lee's dissenting vote, the board concurred with the executive committee's recommendation that the U. S. Supreme Court required it to admit "all qualified applicants without regard to race, color or creed." Lee protested that the board's action might be illegal without a specific court order, but then moved that TSU desegregate its faculty and staff, saying "if [integration] were proper for the students it was proper for the faculty." His motion carried unanimously.³⁰

Despite TSU's declaration of an open policy, for the next two years no whites entered the school. In the fall of 1956 several white students were admitted, but never registered. Nabrit gave them each "special counseling" by phone or in a letter, and none followed through on enrollment. What the president told the prospective students is not recorded, but his words along with the negative mood in Houston toward school desegregation apparently combined to keep whites out in 1956 and possibly in 1957 as well. TSU kept no record of the race or ethnicity of its student body as a matter of official policy.

If the massive resistance movement discouraged whites from entering TSU, it ironically provided the university with one of its first publicly acknowledged white students. On Monday, September 15, 1958, E. A. Munroe, a Baptist preacher and ardent segregationist, applied to TSU, accompanied by about twenty-five of his flock from the Missionary Baptist Temple. They were

carrying the church banner, the U.S. flag, and pro-segregation placards with slogans like "Intergration [sic] Leads to Inter-marriage," and "We Believe in a Government by the People Not by Nine Men." Munroe arrived at TSU, registered for classes, and wrote a check for \$83.50 for his tuition and fees. Wearing white high-heeled boots, a dark serge suit, "a broad-brimmed white Stetson hat and tie with fuchsia sequins and gold lame stitching," Munroe cut a comical figure. He told newspaper reporters, who immediately swarmed the campus, that he entered the school to "show the stupidity of integration and our defiance of the Supreme Court verdict on integration." He added, "my purpose is to serve as an object lesson to show how stupid and inconsistent it is for me to enroll in a colored university as a white man when we have so many fine white schools and universities." Munroe exhibited a tongue-in-cheek demeanor about entering TSU. He indicated that he wanted a bachelor's degree in religion and registered for classes in psychology, philosophy, and a survey of the Old Testament; but he also stated he "had no idea tuition would be so high . . . looks like I'll have to sell my Fleetwood Cadillac to pay the tuition."³¹

The board split on whether to admit Munroe. The minority, Lee and Hannah, held that he only applied for "propaganda purposes" and to embarrass the university and did not favor his admission. The majority of the board, however, accepted Nabrit's advice that TSU had to enroll him regardless of his purposes for doing so. After a few days of classes Munroe dropped out and stopped payment on his check, saying that he encountered an "awful lot of prejudice and discrimination" from TSU's black students, which he claimed proved that most blacks as well as whites did not want integration. Another white minister enrolled after Munroe without all the grandstanding, but with a desire to counter the Baptist preacher's views. A Methodist pastor, Clayton McMahill, said he was taking a stand for "a world Christian brotherhood" in desegregating TSU.³²

UH's implementation of its long-planned desegregation occurred in the summer of 1962 when ten black students enrolled for graduate study. The university admitted "on a selective basis as part of a study" Charles P. Rhinehart, Jr., a faculty member in TSU's Department of Music.³³ Vice President Patrick J. Nicholson summarized the "situation" to a journalist:

The initial move this summer toward integration of the university was a part of a study began several years ago by the board. At that time it was decided that at the proper time, we would accept any Negro student into our graduate divisions who met the requirements of

admission. This was effected this summer. As far as I know, there were no incidents involved. The integration was a normal development of the school's program. The situation has quietly taken care of itself.³⁴

The "study" Nicholson spoke of had been initiated in 1959 under the presidency of Clanton Ware Williams. When UH launched its campaign to secure full state support, shortly after UH benefactor Hugh Roy Cullen died on July 4, 1957, university officials knew they would no longer be able to forestall admitting blacks. A. R. "Babe" Schwartz, a Jewish attorney and Democratic politician from the Galveston area who served in the Texas legislature, observed that racism was a key part of the mossback opposition to UH becoming a state-supported institution. State senators from rural areas in East and West Texas formed a powerful bloc and frequently rallied together against measures benefiting urban areas exclusively. UH's becoming a state university, so these politicians felt, would primarily attract to it the "poor and minorities."

Schwartz observed that their opposition was a key part of the attack on state funding for UH. Racist opponents represented state financing of UH as analogous to welfare. The Texas senate, nevertheless, approved the UH legislation styled Senate Bill 2 and, in July 1961, Governor Price Daniels signed it. UH became a state university beginning in the fall semester of 1963. During the transition period of 1961-1963, college officials decided to desegregate and avert the negative publicity a lawsuit would generate.³⁵

In November 1962, Nicholson told a reporter from the student newspaper, *The Cougar*, "integration is a large, complex problem and we are moving along without an exact time schedule, but we have had it under study for three years." UH regents took no action in the direction of integrating its living and dining facilities and maintained that they were studying the problem. Black undergraduates were admitted in the fall of 1963, and in 1965, UH President Philip Hoffman authorized the recruitment of blacks into university athletic programs. By the fall of 1967, UH led the field among formerly for-whites-only Texas universities in the number of blacks pursuing graduate or undergraduate degrees. It had approximately 95 black graduate students and 469 black undergraduates. By comparison, North Texas State University in Denton was the next highest with 69 and 453, then Lamar State College of Technology in Beaumont with 10 and 416, and East Texas State University in Commerce with 60 and 325.

The large flagship universities continued to do poorly in the recruitment and retention of black graduate and undergraduate students, with UT having only

31 and 188 and Texas A&M having only 30 and 40. Houston's large, urban environment with a substantial black population no doubt helped UH attract black students. TSU, on the other hand, had about 20 whites enrolled as graduate students and 25 as undergraduates. UH's 564 black students made up about 2.5% of a total student body of 21,770; while TSU's 45 white students comprised a little more than 1% of its 4,422 students. It is interesting to note that UH and TSU represented the most culturally diverse and "integrated" of the state's institutions of higher education.³⁶

The reality that these statewide *leaders* of diversity and integration essentially were still dominated by racial discrimination remained a source of trouble and contest. The old civil rights vanguard such as the NAACP was no longer in the forefront of the continuing struggle for access and equity, democracy and social justice. Young, black racial militants like Lynn Eusan, Deloyd Parker, Ester King, Charles Freeman, Lee Otis Johnson, Eugene and Sherra Locke, now waged many of the battles on and off the campuses. They intended to see to it that the black racial identity was lifted up and respected in the public arena, from the classrooms and boardrooms to the dorm rooms.

Rev. William Lawson, no racial militant but no accommodating "Sambo" either, became a key figure in keeping the pressure on the two universities to overthrow the racist, color-minded pasts that produced them in favor of a color-blind future. His church, Wheeler Avenue Baptist Church, sits between the two campuses and served students and staff of both institutions. As pressure mounted at both campuses to establish a commitment to diversity, or "integration" as it was then termed, something known as the merger debate pushed its way into the public sphere.³⁷

The merger debate characterizes a significant part of the most recent phase in the strange career of public higher education in Houston. One of the first instances of the merger issue came about after Rex G. Baker, a member of the Texas Commission on Higher Education (a precursor to the state Higher Education Coordinating Board), stated that the law schools at TSU and UH ought to be consolidated. Speaking at an inaugural luncheon for UH President Hoffman, Baker opined that "there is little or no justification for two state-supported law schools within a half mile of each other, since integration has been thrust upon us."

The two law schools were created the same year, in 1947, with the TSU law school being a state-funded institution and UH's law school being a municipal/tuition-funded institution until 1963, when it too would become state

supported. Baker held that the presence of the two schools, so close together geographically (plus the existence of the private South Texas School of Law in downtown Houston), represented a duplication of programs. As one or the other institution was a waste of the taxpayers' dollars, one or the other should be "phased out." He noted that UH had about 280 students, while TSU had only about thirty, clearly implying that TSU's law school should be the one to get the axe. The strong support for TSU as a "special purpose" institution and the fear that such a merger would pressure UH into admitting more black students than it cared to, saved TSU's law school in 1962-63.³⁸

A great hue and cry to "abolish" TSU arose again in 1967 in the aftermath of a campus melee in which five hundred students were arrested; Houston police officer Louis R. Kuba was fatally shot, and five TSU students were charged with his murder. Mayor Louie Welch stood by his police chief Herman Short, whose racism and support for officers who brutalized and harassed blacks with impunity had earned him the reputation for being Houston's answer to Birmingham's "Bull" Connor, but he also argued that TSU should not be abolished. He said,

I have enough confidence in the school and enough knowledge of its operations to feel certain it must be maintained. It should not be abolished or done away with . . . TSU has a strong and vital place in our community and with proper administration it will continue to fulfill its proper role.³⁹

The proper role of TSU continued into the 1970s to be a major problem for state legislators and officials in charge of the state's higher educational system. White supremacy and UH's larger size combined to place the burden of justifying its existence on the shoulders of TSU. With election of blacks such as Mickey Leland of Houston and Wilhemina Delco of Austin to the state legislature, however, TSU would find very influential allies. Whenever the subject of merging TSU with UH was broached, these allies effectively silenced all talk by noting that as TSU became a state-supported institution more than 15 years before UH, and given merger experiences in Tennessee and elsewhere, TSU should have priority in any merger process. Not wishing to see UH subsumed within the name, tradition, or tenured professorate of TSU, merger advocates backed off the issue.

Current problems of financial mismanagement at TSU involving an indebtedness of \$13.6 million and the inability to meet its payroll without outside intervention has again brought up discussion of closing or merging it, or placing it into conservatorship. Rumors ran rife and a press conference/mass rally was

called on the campus to protest the receivership proposal. A state legislator, well known as a compromiser and the furthest thing from a black nationalist of any sort, found it expedient to burst into fiery rhetoric stating that "over my dead body will TSU go in conservatorship." The strange career has gotten stranger yet when liberal integrationist politicians become the bulwark saving TSU.

In less hyperbolic and media-driven discussions the fate of TSU is being worked out. The confused atmosphere generated by the attorney general's opinion of the *Hopwood* decision, which outlaws consideration of race and ethnicity in admissions and financial aid programs, is one factor affecting that fate. Whether UH, its parent campus between 1927 and 1947, will ever be merged with TSU is where prophecy begins and history ends.

The peculiar social construction of race and its salience to both TSU and UH reveal much about the complex of cultures and identity group politics that drive Houston. It tells us much about the persistence of white supremacy and the various ideological and practical ways blacks have responded to institutionalized racism, but it does not tell us the right thing to do as a new century and millennium approach. Little in the behavior of the white majority over the past seventy years has given blacks reason to trust that they would fare better if TSU and UH merged. On the other hand, the question of the naive student who asks why, if society has overcome the racism of yesterday, does the state support one predominately black and one predominately white university in Houston (divided only by Emmett Jay Scott Street), still begs for an answer. History offers but a partial answer by questioning the assumption that the citizens of this city, state, and nation, have overcome racism. Jim Crow and Joe Cracker live, and they still demand their separate universities, albeit not the exclusively black and white ones of bygone days.⁴⁰

I am grateful to the Texas State Historical Association for the opportunity to present this paper at its 1993 meeting. Charles Martin's session, "From Segregation to Integration in Texas Higher Education," provided me with insightful criticisms from William Harris (then president of Texas Southern University), Cary Wintz, and Light Cummins. Big thanks also to Joseph Pratt and the members of his seminar "Desegregation of the South" for their criticism of an earlier draft of this paper, as well as the Nia Dorian Becnel Seminar. Much respect also to Guadalupe San Miguel, Jr., Linda Reed, Dashiell Geyen, Winona St. Julian, Demetria and L'il Al Shabazz, for their help and encouragement in this research.

NOTES

1. See George Ruble Woolfolk, *The Free Negro in Texas, 1800-1860: A Study in Cultural Compromise* (Ann Arbor: University Microfilm, 1966), for an intriguing discussion of the cultural *kampfs* (struggles or wars) that are basic to the social origins of the state.
2. Andrew Hacker, *Two Nations: Black and White, Separate, Hostile, Unequal* (New York: Ballantine Books, 1992). No work has carefully studied racial segregation and the cultural complexities of the city of Houston. Significant sociological studies of black Houstonians include Jesse O. Thomas, *A Study of Social Welfare Status of the Negroes in Houston Texas* (Houston: Webster-Richardson Publishing Co., 1929); National Urban League, *A Review of the Economic and Cultural Problems of Houston, Texas, as They Relate to Conditions in the Negro Population* (n.p., 1945); Robert D. Bullard, *Invisible Houston: The Black Experience in Boom and Bust* (College Station: Texas A&M University Press, 1991); and Chandler Davidson, *Biracial Politics: Conflict and Coalition in the Metropolitan South* (Baton Rouge: Louisiana State University Press, 1972).
3. On TSU there is Ira B. Bryant's self-published work, *Texas Southern University: Its Antecedents, Political Origin, and Future* (Houston: Ira B. Bryant, 1975). Unpublished monographs on TSU include Raphael O'Hara Lanier's "The History of Higher Education for Negroes in Texas 1930-1955 with Particular Reference to Texas Southern University" (Ed.D. dissertation, New York University, 1957); William Edward Terry's "Origin and Development of Texas Southern University" (Ed.D. dissertation, University of Houston, 1968); and John S. Lash, Hortense W. Dixon, and Thomas F. Freeman's "Texas Southern University: From Separation to Special Designation" (Houston: TSU, 1975). For UH see E. E. Oberholtzer, *The Growth and Development of the University of Houston, A Summation: March, 1927 - May, 1950* (Houston: n.p., 1950); and Patrick J. Nicholson, *In Time: An Anecdotal History of the First Fifty Years of the University of Houston* (Houston: Pacesetter Press, 1977). Unpublished monographs on UH include Eleanor Sophia Mohr, "The History of the Houston Junior College" (M.A. thesis, University of Texas at Austin, 1936); and Enma Bolling, "An Interpretation of the Educational Endowment from the Cullens" (M.A. thesis, University of Houston, 1941).
4. For a national to a regional to a Texas study of black education, see Henry Allen Bullock, *A History of Negro Education in the South From 1619 to the Present* (Cambridge: Harvard University Press, 1967); James D. Anderson, *The Education of Blacks in the South, 1860-1935* (Chapel Hill: University of North Carolina Press, 1988); and Lawrence D. Rice, *The Negro in Texas: 1874-1900* (Baton Rouge: Louisiana State University Press, 1971), ch. 11.
5. For a general account of the laws concerning the education of African Americans in Texas up to the early twentieth century see William R. Davis, *The Development and Present Status of Negro Education in East Texas* (New York: AMS Press, 1972 reprint of 1934 ed., Teachers College, Columbia University), 6-23. See also Frederick Eby, *The History of Education in Texas* (Austin: MacMillan Co., 1925), and for blacks' overwhelmingly negative response to the 1876 state constitution see Lamar Kirven, "A Century of Warfare: Black Texans" (Ph.D. dissertation, Indiana University, 1974), 33-34.
6. Thomas, *Negroes in Houston Texas*, 65. Other sources on the development of public education in Houston include B. H. Carroll, Jr., *Standard History of Houston, Texas from a Study of the Original Sources* (Knoxville: H. W. Crew and Co., 1912); Gladys M. House, *Schools of Freedmen's Town* (Houston: Freedmen's Town Association, 1987); Ward Schmidt, "A History of the Desegregation of the Houston Independent School District, 1954-1971" (B.A. honors thesis, University of Houston, 1972); and William Kellar, "Race Relations and School Desegregation in Houston, Texas" (M.A. thesis, University of Houston, 1990).
7. Thomas, *Negroes in Houston, Texas*, 62.

8. For an interesting discussion of the Klan in Houston see Casey Greene, "Guardians Against Change. The Ku Klux Klan in Houston and Harris County, 1920-1925" *The Houston Review* 10 (1988) 3-20. For more extensive treatment of the subject see Kenneth T. Jackson, *The Ku Klux Klan in the City, 1915-1930*, Urban Life in America Series (New York, 1967); Arnold S. Rice, *The Ku Klux Klan in American Politics* (Washington, 1962); and Charles C. Alexander, "Invisible Empire in the Southwest: The Ku Klux Klan in Texas, Louisiana, Oklahoma, and Arkansas, 1920-1930" (Ph.D. dissertation, University of Texas, 1962).
9. Mohr, "Houston Junior College," 2.
10. Kellar, "Race Relations," 24.
11. The white demand for higher education was partly satisfied by the Rice Institute after it began enrolling students in 1912; as well as by the Houston Law School, the Texas Dental College, various business and parochial schools, and extension campuses of the University of Texas and Sam Houston State Teachers College in Houston. HJC officials, however, estimated in a 1927 report to the State Department of Education that these institutions accommodated only "one-third of the graduates of the [city's] high schools." Mohr, "Houston Junior College," 3. The nearest place at which blacks could satisfy their higher education needs was in Prairie View.
12. Thomas Jesse Jones, *Negro Education: A Study of the Private and Higher Schools for Colored People in the United States* (New York: Arno Press, 1969 reprint of the 1916 Bulletin), 571. See also Michael Heintze, *Private Black Colleges in Texas, 1865-1954* (College Station: Texas A&M University Press, 1985), 5; and Eby, *Education in Texas*, 278.
13. Quoted from the Minutes of the Board in Oberholtzer, *University of Houston*, 20.
14. Bryant, *Texas Southern University*, 3-5.
15. Davis, *Negro Education*, 120; and Bryant, *Texas Southern University*, 7. Some authors prefer to place the establishment of HCJC in 1925 when the privately operated Wiley College instituted an extension campus in Houston at the Trinity Methodist Church, or in 1926 when the Board of Education permitted the Extension School to operate in the Colored High School. See Bryant, *Texas Southern University*, 1-3; and Nicholson, *In Time*, 45.
16. Mohr, "Houston Junior College," 7. Also see Oberholtzer, *University of Houston*, 35, who cites the opening day as June 6.
17. "Negro Junior College Will Be Provided," *Houston Chronicle*, September 15, 1927.
18. Terry, "Texas Southern," 14, gives the names, pay, and salary of these staff members; and Mohr, "Houston Junior College," 71-116, devotes a chapter to the first faculty.
19. Oberholtzer, *University of Houston*, 36. Eby, *Education in Texas*, 300-303, summarizes the movement for junior colleges in Texas.
20. Davis, *Negro Education*, 121.
21. See Cary D. Wintz, "Blacks," in *The Ethnic Groups of Houston*, ed. Fred R. von der Mehden (Houston: Rice University Press, 1984), 18, 21-23. He writes that in 1940, "75.1 percent of black workers in the city still worked in the three lowest job categories (domestic, service worker, and common laborer), and only 2.9 percent were classified as professionals or semi-professional workers. In contrast, 10 percent of white workers were professionals, while only 14.4 percent fell into the lowest job categories".
22. Terry, "Texas Southern," 19. See also Bryant, *Texas Southern University*, 10.
23. Oberholtzer, *University of Houston*, 22.
24. A. L. Kerbow, Terrel Spencer, and R. O. Jonas, letter to Dr. W. W. Kemmerer, January 5, 1945. UH History Archives (UHHA), Box 7, Houston College for Negroes folder. M. D. Anderson Library Special Collections, University of Houston. Kemmerer to Kerbow, Spencer, and Jonas, January 31, 1945. UHHA, Box 7. See Nicholson, *In Time*, for brief biographical material on Kerbow, 36-38; Spencer, 288; and Jonas, 240. On HCN's first graduate degree, see Terry, "Texas Southern," 33-34.
25. Randolph wrote about "Jim Crow Niggers" in a 1925 editorial in his magazine *The Messenger*. It is reprinted in Cary D. Wintz, ed., *African American Political Thought, 1890-1930* (Armonk: M. E. Sharpe, 1996), 298-99. On the ideological division among black Texans regarding the struggle for access and equity in higher education in the 1940s, see Amilcar Shabazz, "The Opening of the Southern Mind: The Desegregation of Higher Education in Texas, 1865-1965" (Ph.D. dissertation, University of Houston, 1996), ch. 2. For a summary of the Sweatt case, see Michael L. Gillette, "Heman Marion Sweatt: Civil Rights Plaintiff," in *Black*

Leaders: Texans for their Times, eds. Alwyn Barr and Robert A. Calvert (Austin: Texas State Historical Association, 1981), 157-88. The TSUN Medical School never did materialize.

26. On the Wesley-White controversy see Merline Pitre, "Black Houstonians and the 'Separate But Equal' Doctrine: Carter W. Wesley Versus Lulu B. White," *The Houston Review* 12 (1990): 23-36; and including Thurgood Marshall in the brouhaha, see Mark V. Tushnet, *The NAACP's Legal Strategy against Segregated Education, 1925-1950* (Chapel Hill: University of North Carolina Press, 1987), 107-09; and Shabazz, "Southern Mind," 103-16. On the anti-Shivers rally at TSU see "Shivers Picket Line Planned by N.A.A.C.P.," *Houston Chronicle*, March 16, 1956; "Integration Row May Overshadow Shivers' Address at T.S.U. Today," *Houston Chronicle*, March 18, 1956; and "In the Colleges," *Southern School News*, April 1956, 3. On the final TSU name change see Carter Wesley, "House OK's the Change of TSU's Name," *Houston Informer*, February 24, 1951.

27. Quotations from Price Daniel to TSUN Board of Directors, July 31, 1948, II-B-205, NAACP Papers, Library of Congress Manuscript Division, Washington, D.C. See also "NAACP Youth Council Protests Exclusion of Whites from Texas State University," *Houston Informer*, January 22, 1949; and "Resolution on Segregation in Education Adopted by the Youth Council, Houston Branch NAACP," January 9, 1949, and Youth Council, Houston Branch NAACP to Price Daniel, January 12, 1949, Price Daniel Papers, The Sam Houston Regional Library and Research Center, Liberty, Texas.

28. "Applies for Admission to T.S.U.: Churches Should Have Taken Integration Lead, Cleric Says," *Houston Chronicle*, September 8, 1955.

29. On whites who applied to TSU's 1956 fall term, see "T.S.U. Admits White Students," *Houston Chronicle*, September 9, 1956; and on Samuel M. Nabrit's "special counseling," see "No White Students Register at T.S.U.," *Houston Chronicle*, September 18, 1956.

30. On postponement of the board's vote, see "Showdown Due on Segregation in Negro School," *Houston Chronicle*, September 8, 1955; and "In the Colleges," *Southern School News*, October 1955, 14. On the opening of TSU, see "T.S.U. Desegregates Students and Faculty," *Houston Chronicle*, January 11, 1956; "TSU Board Votes 6-1 to Desegregate," *Houston Press*, January 11, 1956; "In the Colleges," *Southern School News*, February 1956, 9; and for quotations from Lee and the executive committee's recommendation, see "Integration for TSU Is Voted by Directors," *Houston Post*, January 11, 1956.

31. "Segregationist White Pastor Enters T.S.U.," *Houston Chronicle*, September 15, 1958 (includes photograph); "White Pastor Finds Another on T.S.U. Rolls," *Houston Chronicle*, September 18, 1958 (includes photograph); and "Preacher Vows Court Fight as Entry at TSU Challenged," *Houston Post*, September 18, 1958. In the first of these articles TSU Registrar E. O. Bell said that several white students had enrolled the previous year, but refused to state how many, whether any remained, or to identify them to the press.

32. First quote is in "Rev. Munroe Enrolls at TSU; Tactics Hit by Board Member," *Houston Informer*, September 20, 1958; second quote is in "Object Lesson," *Southern School News*, October 1958, 14; and the third in "Pastor Hopes His Example Will Help," *Houston Chronicle*, September 18, 1958. Clayton McMahon pastored St. Thomas Methodist Church for only a couple of months, and his action led one of the church's board members to say of his enrollment at TSU, "This is a shock. I don't approve of it myself." My thanks to Berniece McBeth of Houston, past chair of the Archives and History Committee of the United Methodist Center (Texas Annual Conference), for helping me try to find out more about McMahon.

Wesley said nothing about McMahon, but wrote about Munroe in his editorial, "Anarchy Vs The Rule of Law," *Houston Informer*, September 20, 1958, that "when a Baptist preacher places placards in the hands of school children, attacking and defying the Constitution of the United States, as interpreted by the Supreme Court; and leads those children in a public demonstration against the law, we are witnessing one of the worst forms of [a] plea for anarchy."

After the initial news sensation, the issue of whites at TSU faded from public view. In small numbers they entered the school, especially its schools of pharmacy and law. As for faculty desegregation, TSU hired whites with unparalleled vigor. Five years after the board voted to drop the color line, whites made up fifteen percent of TSU's faculty; see "In the Colleges," *Southern School News*, April 1962, 17. No traditionally white university hired anywhere near that proportion of blacks as faculty then or since.

33. "Summer News Capsules," *The Cougar* 29 (September 4, 1962): 4.

34. Quoted in Meredith Trube, "Integrated over Summer: Ten Negro Students at UH - No Incidents," *Houston Press* in clippings file at UH Special Collections, M. D. Anderson Library (Houston, Texas) probably September 1962; and see also by Trube, "U. of Houston Integration Going Well," *Houston Press*, March 12, 1963. For two small articles indicative of how editors adopted policies of giving desegregation as little attention as possible, see "Negroes Are in U.H. Classrooms," *Houston Chronicle*, October 2, 1962; and "UH Enrolls 10 Negro Students," *Houston Post*, October 3, 1962.

35. Oral interview with Senator A. R. Schwartz (April 18, 1985), part of the University of Houston Research Project; "The Campaign to Win Full State Support for the University of Houston, 1958-1963," University of Houston Archives, M. D. Anderson Library. On Schwartz, see Ruthe Winegarten and Cathy Schechter, *Deep in the Heart: The Lives and Legends of Texas Jews* (Austin: Eakin Press, 1990), 180-81.

Several months before they actually admitted blacks, *The Houston Post* reported that UH and Rice University had both made plans to move "towards desegregation in the near future," and how in both cases the move was "not entirely voluntarily." See "Rice and UH Expected to Desegregate," *Houston Post*, March 29, 1962; and also "Newspaper Reports Two Universities to Admit Negroes," *Southern School News*, April 1962, 17.

36. Quoted in Reinhard Friederich, "Integration Plans Indefinite as Yet," *The Cougar*, November 1, 1962, 3. See also Jerry Wizig, *Eat 'Em Up, Cougars* (Huntsville, Alabama: Strode Publishers, 1977), 165-66, 206-12, 264-71, 287-90, and 327-30, a popular read on UH athletic desegregation, especially on the activities of star players like Warren McVea, Paul Gipson, Riley Odoms, Jerry Drones, Elmo Wright, Robert Newhouse, Charlie Hall, Wilson Whitley, and others.

See also the furor created by a *Cougar* editorial calling on President Hoffman and Coach Bill Yeoman to cancel a scheduled football match between UH and the University of Mississippi, following the outbreak of violence surrounding James Meredith's attempt to enter that school in the fall of 1962. A bevy of letters poured into *The Cougar*. They were published in issues from October 4-16, mostly supporting the stance Ole Miss officials had taken against integration and in full support of continuing with the game. The contest was held and the Rebels romped over the Cougars, 40-7.

For the numbers of whites and blacks at Texas universities in the fall of 1967 see "Negro Student Statistics," Richard Morehead Papers, Box 3F279, Center for American History, The University of Texas at Austin.

37. See "A Troubled Semester at UH," *The Texas Observer*, May 23, 1969, 4; and "Lee Otis Raps from Prison," *Space City News*, October 11-25, 1969, 3-5.

38. See "UH Law College Faces Controversy," *The Cougar*, May 15, 1962.

39. "Welch Against Abolishing TSU," *The Houston Post*, May 21, 1967. On the disturbance at TSU see Bernard Friedberg, "Houston and the TSU Riot," in *Life Styles in the Black Ghetto*, ed. William McCord et al (New York: W. W. Norton, 1969), 36-51.

40. See Nancy T. King, "The Texas Southern Story: The Destruction of an Institution," *University Faculty Voice* (February 1997): 1, 8-9; Burt Levine, "TSU Supporters Condemn the Proposed Conservatorship," *Houston NewsPages*, December 12-18, 1996, 3; and Darrell A. Simon, "TSU Faithful Protest King's Receivership Proposal," *The Houston Sun*, 16 December 1996, 1. See also *Hopwood v. State of Texas*, 78 F.3d 932 (5th Circuit 1996), *reh'g en banc denied*, 84 F.3d 720 (5th Circuit 1996), *cert. denied*, 116 Supreme Court 2581 (1996); and Attorney General Dan Morales, Letter Opinion No. 97-001, February 5, 1997.