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I have spent the last twenty-four years of my life working in the admissions offices at four law schools—two private and two public—and one MBA program, all affiliated with large research universities.[1] I do not think this was the professional life I had planned, but it found me. And in doing so, I have embraced this calling. I would often introduce myself as having come to adulthood in the world of high stakes admissions. At all of the places of my employment—some highly ranked, others not—I have always served as a member of the admissions committee.

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† Assistant Dean of Admissions and Financial Aid at Penn State University, the Dickinson School of Law. This paper is taken from remarks made at the January 7, 2005, American Association of Law Schools Annual Conference in San Francisco, California. It is dedicated to the recently deceased, long time Dean of Admissions at Columbia University School of Law, James M. Milligan. Jim was my first boss, my mentor, and finally, later, a dear colleague. From him, I learned many valuable skills, most importantly to judge every applicant on their own merits and to sign every decision letter. To him, I owe my professional career.

[1] From 1994 to 2002, Dean Austin was the Assistant Dean of Admissions and Financial Aid at the University of Pennsylvania School of Law. She also served as Director of Admission at the University of California Hastings College of Law, as the Assistant Director of Admissions at Columbia University Business School, and as an Admissions Officer at Columbia University School of Law. Currently, she serves on the 2003-2005 term of the Board of Trustees of the Law School Admissions Council ("LSAC"), where she is also the chair of the Minority Affairs Committee. She served as a Trustee from 1998 to 2001, and a Trustee Liaison to the Finance and Legal Affairs Committee. Among numerous services to LSAC, Dean Austin has served as a board appointee to the LSAC Strategic Planning Work-Group, the New LSAC Building Committee, a committee member on Services and Programs, the Alternative Decision-Making Models Work-Group, the LSAC Annual Conference and Meeting Work-Group, and as a member of the first Gay and Lesbian Issues Work-Group.

During those meetings, I have listened, debated, argued, enlightened, and at times feigned ignorance. At each school, I witnessed and participated in the struggle to define and incorporate the paradigm of race and merit into the educational mission and, ultimately, our enrollment goals. This was no easy task. Sometimes being referred to as a witness might suggest being complacent or silent, but perhaps to the chagrin of some, I have been neither. Instead, I know that by being a witness I have been able to develop the skills and the knowledge to vigorously advocate for minority applicants, and by doing so, to attempt to enlighten and educate my various law school communities. One particular encounter stands out.

In 1995, while representing the University of Pennsylvania Law School at the LSAC Law School Forum in New York City, I stood stoically behind my table watching over one hundred of my colleagues engaged in conversation with nearly one thousand individuals, all of whom filled the ballroom in search of a law school to apply to. Forums are amazing events; if you have never been to or worked at a law school forum, I would strongly suggest that you do so, perhaps volunteer to help out at your own school's table. I watched a young African-American man move slowly down my aisle. As he walked his eyes darted quickly between the neatly hung banners draped over the tables announcing each school with a well-worn copy of *U.S. News & World Report* ("*U.S. News*") clutched tightly in his hands. I glanced at him and gave him that smile that says, "come, let me tell you about my law school."

Before taking another step, the young man checked out my banner and scanned his magazine pages. He raised his eyes, and I—feeling smug with my low cost, nice city, Ivy League, home of Wharton University bravado—waited for the love that typically comes my way. This young African-American man looked me directly in the eye and snapped back in typical New York style, "Oh, no, you're not a top ten school, Penn is ranked eleventh!" The hairs on the back of my neck rose and I could hear my inner voice saying, "Did he go there?" "Aw, shucks," I murmured to myself, "the game is on now." I stepped forward, and with the wag of a finger I beckoned him closer.

In the two steps it took this young man to move towards my table, the statistical rolodex in my brain began whirling,

searching the data I had stored about African-American men, their LSAT performance, and their likelihood of acceptance at the ranked order in *U.S. News*. In spite of the personal nerve he plucked, I was determined not to let my data bank of information expose any flaws in his reply, or stifle his desire to seek out a top ten. My professional ethos required that I use this as a teachable moment.

When he reached the table, I asked, "So, you are using the *U.S. News* rankings as a guide to identify law schools to apply to?" He snapped back with an emphatic "Yes!" I could see how pleased he was with himself and his ability to identify the apparent "perfect" assessment of each school listed on those dog-eared pages. I nodded, smiled, and said, "That's terrific. You are reading the magazine correctly. This year Penn Law is tied for eleventh with one other school."

My spiel switched to autopilot mode as I continued my customary stump speech about the rankings. I started in, "I understand that as an African-American man you want to provide yourself with the best options made available by attending a top law school, but in my mind, and that of many others, the methodology behind the rankings is flawed. I believe that Penn Law is one of fifteen schools that ranks in the top ten and what's most important is that you find the right school for you."

After a few minutes into my sound bites it became clear that this young man would not budge from his position. He was set on applying to "a bona fide top ten as reported by the magazine." Now I was upset and decided to break my own Rule # 1: Unless someone offers his or her LSAT score, don't ask for it. As the question rose in my throat, I realized that there were other individuals perusing the material on my table. In order to protect his privacy, I leaned forward and softly asked, "Have you taken the LSAT yet?" He nodded in the affirmative. I said, "That's great! How did you do?" Proudly he proclaimed, "I have a 143." Without hesitation I said, "Young man, I would suggest that you consider schools much deeper than the top ten!" Before I could continue, he quickly turned on his heels and marched away without taking any of the Penn Law material.

Since then, every year when I return to the New York City LSAC Forum, I wonder if he achieved his goal. Did a top ten law

school admit the young African-American man with the 143 LSAT? Bingo, there it is! That darn intersection of the LSAT, law school rankings, and the minority applicant.

So what happens when an admissions committee considers applications from a minority candidate? First, a school may be agonizing as it attempts to answers the questions: "Who is a minority applicant?" and "What does it mean to be a minority in our pool?" I would suggest that the answers are probably as varied as the number of AALS accredited law schools. These questions are asked and often answered in silence, only left to reverberate in the minds of each admissions committee member. Is it just too risky to honestly discuss race in an admissions committee meeting? I think we all would agree that a legal education affords the recipient a seemingly limitless path to power and wealth. Of course, membership to this privileged segment of our society should be available to those who can demonstrate their qualifications in a tightly scripted gauntlet.

Today, one of the key qualifiers for an acceptance letter from a law school is the LSAT—the Law School Admissions Test—or as I might dub it, the "Law School Access Test."

As you begin to slice the LSAT performance pie, there continues to be one racial group whose slice is a tad smaller than the rest, resulting in a wider disparity in acceptance rates. Thus, as a group, African-Americans are more likely than any other racial or ethnic minority group to be unsuccessful in a process that places a premium on high LSAT scores. Translated, this means to me that in the near-term, unless schools demonstrate a willingness to buck the trend and enroll students who possess a wider range of LSAT scores, they may find their entering classes, at worst, void of African-Americans or perhaps, at best, enrolling some majority of black students whose ancestral roots extend beyond places like Compton, East Oakland, the Bronx, or even my hometown of Newark, New Jersey.

Back to the admissions committee meeting, consider the following hypothetical, which I believe is more of a reality at most schools. Say Law School X is reported as a third tier law school by *U.S. News*. In addition to wanting to "move up in the rankings," the school is deeply committed to improving its historically low enrollment of ethnic minorities, especially African-Americans. Thanks in part to a unique confluence of

traits, Law School X has done a terrific job at improving the volume and credentials of its applicant pool.[2] However, only a small fraction of the pool identify themselves as ethnic minorities, and even fewer as African-American. All of the African-American applicants have LSAT scores that are far below the target range Law School X believes will provide some of the upward thrust of improved *U.S. News* rankings. How might this hypothetical be discussed in the admissions committee meeting?

I will toss out a few scenarios that I have witnessed. First scenario: the room grows quiet and cold until one well-meaning faculty member says, "This test gap issue is worrisome, why isn't LSAC doing more? It's their test and they have lots of money."[3] The second scenario: another faculty member might say, "I know, let's let the dean decide who to admit within this group of African-American candidates." The third scenario: the admissions professional offers an observation, "We really don't want to have yet another class with only one black student, do we?" And finally, the last scenario: the remaining faculty member says, "I have a good idea; let's strongly encourage these candidates to take the test again. They are only fifteen points below our twenty-fifth percentile, who knows, maybe they'll improve their scores and they can reapply! Won't we be able to count the higher score anyway?"

Let us assume that Law School X truly believes that it is absolutely flat out unacceptable to have an entering class that does not reflect the many facets of our society. It would be safe to say that the admissions committee meeting has morphed into a moment I would characterize as ripe for practicing "situational ethics."

If you follow the national law school application trends, you know that the appetite to obtain a legal education may be leveling off slightly, but the volume of applications from certain

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[2] Applicants' admission credentials include their LSAT scores, undergraduate or graduate school academic records, samples of written expression, extra-curricular and professional experiences, letters of recommendation, and other supporting documents. *See* Grutter v. Bollinger, 539 U.S. 306, 315 (2003).

[3] As reported in the program guide for the 2005 LSAC Annual Meeting and Educational Conference, LSAC has assets totaling $128,022,468. LAW SCH. ADMISSIONS COUNCIL, LSAC ANNUAL MEETING AND EDUCATIONAL CONFERENCE (2005) (on file with author).

ethnic groups remain disproportionally flat.[4] This is after a generation of intervention initiatives—conceived and implemented by many well-intentioned individuals and organizations—to address the lack of participation and testing performance of minorities.[5] In spite of everyone's best efforts, it still appears that the LSAT score gap and application, acceptance, and matriculation rates continue to plague African-Americans, and African-American men in particular, more than any other ethnic/gender group.[6] The frustrating and scary thing is that I do not expect to see the test score gap diminish or disappear during my remaining professional life. African-Americans—just like any other candidates who opt to sit for multiple tests in order to raise their LSAT score—will only benefit the already bulging coffers at LSAC.

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[4] *See* GITA Z. WILDER, THE ROAD TO LAW SCHOOL AND BEYOND: EXAMINING CHALLENGES TO RACIAL AND ETHNIC DIVERSITY IN THE LEGAL PROFESSION 29 (Law Sch. Admissions Counsel, LSAC Research Report Series No. 02-01, August 2003), *available at* http://www.lsacnet.org/lsac/research-reports/RR-02-01.pdf (observing that certain minorities are under-represented in the legal profession and suggesting causes); *see also* Law Sch. Admissions Council, LSAC Volume Summary by Ethnic and Gender Group, http://www.lsacnet.org/data/volume-summary-ethnic-gender.htm (illustrating the disproportionately low volume of annual law school applicants from specific ethnic groups) (last visited February 26, 2006).

[5] *See Grutter*, 539 U.S. at 327–33 (holding that law schools have a "compelling interest in attaining a diverse student body" and describing the positive impact of diversity upon the educational system); Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 320 (1978) (upholding affirmative action by finding that states have a "substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin"); Harry T. Edwards, *The Journey from* Brown v. Board of Eduction *to* Grutter v. Bollinger*: From Racial Assimilation to Diversity*, 102 MICH. L. REV. 944, 952–55 (2004) (outlining historical steps taken by universities to implement affirmative action policies); Lyndon B. Johnson, Commencement Address at Howard University: "To Fulfill These Rights" (June 4, 1965), *in* 2 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: LYNDON B. JOHNSON 1965, at 636 ("You do not wipe away the scars of centuries by saying: Now you are free to go where you want, and do as you desire, and choose the leaders you please."); *see also Bakke*, 438 U.S. at 322 (citing Brief for Columbia Univ. et. al. as Amici Curiae Supporting Petitioner, Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) (No. 76-811)) (arguing that "diversity adds an essential ingredient" to the educational experience and describing the changed role that race now plays in college admissions).

[6] *See* Tamara E. Holmes, Blacks Underrepresented in Legal Field (Feb. 14, 2005), http://www.blackenterprise.com/ExclusivesEKOpen.asp?id=1039 (noting the declining number of blacks enrolling in law schools in addition to under-representation of black attorneys in top-paying legal jobs); *see also* WILDER, *supra* note 4, at 18 (showing the consistently low mean LSAT scores of African Americans from 1998 to 2001).

Ultimately, I would like to acknowledge that some positive outcomes do occur in the vast majority of admission committee meetings. Otherwise, the matriculation figures at the intersection of the LSAT, rankings, and minority applicants would be far worse and our society would not benefit from having graduates that have complexions of various hues. By acknowledging the positive, let me tell you what I really think happens.

I believe there is a community of individuals who— by their presence and the strength of their voice—are uniquely positioned to inspire our law schools to capitalize on, and operate within the constraints of, the intersection of the LSAT, *U.S. News*, and minority admissions. My message today is to pay homage and encourage them to continue to keep their hands on the plow.[7]

My longevity in law school admissions graces me with an unparalleled privilege. During my years I have met some truly remarkable individuals who have been toiling away in the admissions offices of our law schools. This is especially true for those law schools that have taken a leading role since 1991 in the public discourse regarding access and affirmative action. If you consider each of these schools, you will note their success at matriculating a critical mass of minority students has resulted in public criticism and legal scrutiny. These schools, the Universities of Michigan, Washington, Texas, California-Boalt Hall, and Georgetown, have many common threads and connections, but the one that matters most is that the person managing the admissions process or serving as the visible face of the enrollment process was, and in most places still is, a person of color. I can call all of these individuals my colleagues and friends. They were endowed with a keen sense of fairness and a willingness to be the warriors fighting to create an inclusive law school environment and enhance our society.

Back in 1991, when a white Georgetown law student decided to stomp on the concept of confidentiality by exposing the credentials of his black classmates in a student newspaper article,[8] the visible admissions person at Georgetown was Dean

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[7] *Luke* 9:62 (New American) ("No one who sets a hand to the plow and looks to what was left behind is fit for the kingdom of God.").

[8] *See* Michel Marriot, *White Accuses Georgetown Law School of Bias in Admitting Blacks*, N.Y. TIMES, Apr.15, 1991, at A13; Saundra Torry, *Black Law*

of Admissions David Wilmot, a black man, and Tedd Miller, also a black man, was the Director of Admissions. In 1992, when the Office of Civil Rights and University of California at Berkeley signed an agreement regarding the use of race and ethnicity in Boalt Hall's admissions process,[9] the visible admissions person there was, and still is, Edward Tom, a man of Asian ancestry.

At the University of Texas, in the beginning of the Cheryl Hopwood era,[10] the assistant dean of admissions was Laquita Hamilton, an African-American woman; and when the ruling was announced, there was a Latina, Shelli Soto, in that position. Between their terms, there was Tonya Brown, another African-American woman, and currently the admissions office is operating under the leadership of Monica Ingram, also an African-American woman.

We all know that the admissions dean at Michigan, Dennis Shields, an African-American man, was one of the named defendants in *Grutter v. Bollinger*.[11] At the University of Washington, throughout the years that Ms. Katuria E. Smith and others, as plaintiffs, demanded justice over their claim of reverse discrimination,[12] the dean overseeing admissions was, and still is Sandra E. Madrid, a Latina.

In simple terms, these admissions professionals have been accused of the mistreatment of qualified white candidates. Is it a coincidence that all of these admissions professionals are themselves members of minority groups? No, I do not think so. In fact, there is a fairly straightforward explanation. I think that these individuals, myself, and others not in the limelight have been successful in convincing admissions committees to accept the limitations of the LSAT for a wide range of candidates, regardless of race and/or ethnicity. We have proven with our enrollment and graduation figures that the LSAT is a good, but

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Students Assail Author of Article on GU Law Admissions, WASH. POST, Apr. 16, 1991, at C1.

[9] *See* Karen De Witt, *Berkeley Law School to Change Admission Policy*, N.Y. TIMES, Sept. 29, 1992, at A14.

[10] The case was first tried in district court in May of 1994. *See* Hopwood v. Texas, 861 F. Supp. 551 (W.D. Tex. 1994).

[11] 137 F. Supp. 2d 821, 821 (E.D. Mich. 2001) (listing Dennis Shields as one of the named defendants).

[12] *See* Smith v. Univ. of Wash., 392 F.3d 367, 369–70 (9th Cir. 2004) (describing the white plaintiffs' claim that the law school denied them admission due to an unconstitutional consideration of race).

not always the absolute predictor of performance for all individuals, especially minorities in law schools and the legal profession.

The struggle for my warrior friends, my other colleagues, and myself does not end with each entering or graduating class. We are constantly challenging our institutions, and those who will listen, to follow the LSAC's position, which is to inform the reviewers to use the test score only in the most appropriate way, rather than give it weight it does not deserve.[13]

I know that the struggle is never kind to warriors. They often grow weary faster than someone in a less combatant position. I would like to send a message to the existing warriors and warriors-in-training: "Don't get tired yet. Not as long as it is necessary to challenge and demand more from our minority applicants, and much more from the admissions committees we sit on." Otherwise, if my warrior colleagues of color had opted to be tired and silent, their law schools might have limited acceptances only to those in their pools who possess LSAT scores that would add to the formulaic ranking in *U.S. News*. I believe they would not have become the warriors we know through the courts or on the front pages of our newspapers.

If you talk to a person of color who, by accident or by choice, is employed in a law school admissions office, I am confident that you will find a person who is grounded in the reality of the test scores, knows all about the test gaps, and, most importantly, recognizes the inherent limitations of the LSAT. I anticipate that this person is also well aware of the institution's desire to be "diverse and move up in the rankings." Finally, it would not surprise me if they also silently enjoyed the attention and the benefits that come with being associated with a law school. It is a unique talent to balance this influential role and maintain a sense of equity.

I know firsthand how special our role can be and how unforgiving the challenge that my colleagues and I face every

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[13] LAW SCH. ADMISSIONS COUNCIL, LSAC STATEMENT OF GOOD ADMISSION AND FINANCIAL AID 1–2 (2003), *available at* http://cachewww.lsac.org/pdfs/statement-of-good-adm-practices.pdf ("LSAT scores provide at best a partial measure of an applicant's ability and should be considered in relation to the total range of information available about a prospective law student. Thus, the LSAT score . . . should not be given undue weight.").

year. We accept a gargantuan task: To enroll a diverse class that meets and/or exceeds the institution's numerical goals. Only the real naive among us thought that *Grutter v. Bollinger* [14] would make this task easier. Actually, I believe that in many ways the weight of this task has gotten heavier, and, as a result, professional fatigue often takes its toll on the most talented among us. From my own personal experience, and that of others, I know how heavy this burden can be and how the weariness of suffering from professional fatigue can shatter many minority admissions professionals.

In sum, I feel the need to clarify one thing. I am not suggesting that law school deans should run out and hire minority admissions professionals in order for a school to have a better chance at recruiting, selecting, and enrolling minority students at the intersection of the LSAT and the rankings. Instead, admissions committees must be charged to be more observant and give true value to the academic credentials, the personal and professional experiences, and the achievements of minority applicants. Indeed, they should do this for all candidates. Sometimes this may be accomplished by conducting a more thorough review, not just relying on the typical qualifiers, LSAT scores and undergraduate grade point averages. It means admissions committee members will have to take serious the admissions professional, regardless of their color, when they advocate for a "whole file review."

To help our deans and faculty admissions committee members listen and learn, the admissions person must find his or her voice and use it loudly and consistently to advocate on behalf of candidates whose LSAT scores are often below the school's "unspoken cutoff line." Once their voice is found and it fills the ears of the institution, that same ability to find one's voice must be passed to the next generation of admissions professionals. We need the next generation of admissions professionals to learn to articulate a position informed from the basis of the experiences of my warrior friends. This will enable my younger colleagues to strengthen their resolve on these issues as they will be the new

[14] 539 U.S. 306, 326–27, 334 (2003) (holding that since race based admissions policies satisfy the narrow-tailoring requirement, they do not violate the equal protection clause and describing what makes a race-conscious admissions program "narrowly tailored").

warriors during the twenty-five year life expectancy that Justice O'Connor has given the practice of affirmation action.[15] Otherwise, the efforts of us, the aging warriors, will be condemned to reside in the institutional archives.

Regardless of race or the institution's ranking, I do not expect every admissions professional will have the desire or ability to chart, navigate, and pass on a more holistic approach to the entire enrollment process. I reluctantly accept this fact: Institutional policies and pressures often serve to stifle the admissions professional's ability to reward the qualitative characteristics and traits that we proclaim to be most desirable in our law school students. However, it is my sincere hope that just a few more admissions professional colleagues will be able to ward off the pressures that coexist at the intersection of the LSAT, *U.S. News*, and minority admissions by demanding our law schools not to succumb to the temptation of appearing on the glossy pages in *U.S. News & World Report*.

[15] *See id.* at 343 ("We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.").