Law School Admissions After *Grutter*:
An Essay on Student Bodies,
Pipeline Theory, and the River

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20TH ANNIVERSARY

1982-2002
Law School Admissions After *Grutter*: An Essay on Student Bodies, Pipeline Theory, and the River

Michael A. Olivas

Justice Sandra Day O’Connor writes in *Grutter* that she believes affirmative action should end in twenty-five years,\(^1\) giving law professors a great example of the concept of dicta, or a dictionary-perfect example of wishful thinking or of her lips to god’s ears. After all, it took twenty-five years for the Supreme Court even to take another college admissions case after deciding *Bakke*,\(^2\) and who knew that *Bakke* was a win, the highwater mark for affirmative action?

In the spirit of wishful thinking, I am recycling a small part of an earlier piece I wrote on the social science of admissions and the search for metaphors, or what I once called “the Pool Problem” Problem:

I switch gears here to consider appropriate metaphors for the admissions process, particularly the guest for minorities in college enrollments. First, in the search for paradigms, I
would like to enact a ban, or at least a temporary restraining
order, on the “pool” and the pipeline.” Much of the
research literature on admissions and affirmative action
employs these metaphors, prominently and uncritically. I am
not merely quibbling, like deconstructionists over original
intent, or theologians over articles of faith and morals.
Rather, I believe the paradigms of the pool and pipeline are
inapt, both because they misconstrue the nature of the
problems (as I define them) and because they misdirect
attention. A pool is static, likely to turn brackish, and
bounded. It requires restocking and resupply, and if it
overflows its bounds, it is no longer a pool. Most crucially,
it can become stagnant and unusable without fresh water; it
cannot replace itself. A pipeline is even worse as a
metaphor, though I acknowledge its widespread use and
recognition value. But think of the pipeline in its quotidian, oil-industry meaning. It is a foreign mechanism introduced into an environment, an unnatural device used to leach valuable products from the earth. It requires artificial construction; in fact, it is a dictionary-perfect artifice. It cuts through an ecosystem and can have unintended and largely uncontrollable, deleterious effects on that environment. It can, and inevitably does, leak, particularly at its joints and seams. It can also rust prematurely, and if any part of it is blocked or clogged, the entire line is rendered inoperative.

For the admissions process, I prefer the metaphor of the "river." It is an organic entity, one that can be fed from many sources, including other bodies of water, rain, and melting snow. It can be diverted to create tributaries without altering its direction or purpose, feeding streams,
canals, and fields; it can convey goods, drive mills and
turbines, create boundaries, and irrigate land—all without
diminishing its power. Although it can be fouled by
unnatural pollutants, it has a natural filtration system to
slough off impurities. It can adapt to new flows and can
even be reversed or altered by engineering and hydraulic
interventions. Its surface can be frozen, yet its power will
be undiminished beneath the floes.

This is the image I want to convey, rather than those
conjured by pipelines or pools, neither of which has a river’s
power, purpose, potential, fecundity, or majesty. If this is a
simple autobiographical quirk derived from my childhood in
New Mexico, with its magnificent Rio Grande, then
understand my search for a more apt metaphor.
The metaphor chosen to describe the admissions process is important for its characterization of the problem, for the evidence mounted to measure the problem, and for the solutions proffered to resolve the problem. Let me illustrate briefly. Characterizing the problem of minority underenrollment at any level as a "pool problem" suggests a supply shortage or, at best, a failure to cast one's line in the right fishing hole. The pipeline metaphor reinforces this view of the problem, suggesting that minority enrollment is simply a delivery glitch, or that admissions committees would admit minorities if only they used better conveyances. After all, pipelines do not produce anything of value; they only carry or convey products. While both the supply function and the conveying function are important, they are not, individually, rich enough metaphors to portray the complex phenomenon
of both functions intertwining to produce undergraduates
and transform them into graduate or professional students.

A river, in contrast, provides nutrients and conveys
resources, unlike its more static counterparts that do one or
the other, but not both. Finally, a river also creates demand
through its dynamic flow and natural, organic properties. It
continuously changes form, seeking new flows and creating
new boundaries. It can even wear down rock, as observers
of the Rio Grande Gorge and Grand Canyon can attest. This
is what I wish to convey; that demography and efforts by
schools to do the right thing will inevitably lead to
improvement over time.$^3$

Several things come to mind from this search for paradigms lost.

First, there was a loud silence that greeted my suggested
recharacterization of the issue. True, some colleagues liked it, mostly among my friends. My plans for becoming the preeminent scholar of admissions were shelved, including the river-consulting business I was sure would materialize. I did go on to some ameliorative activities designed to monkeywrench *Hopwood*, such as helping draft legislation in Texas to regulate undergraduate admissions ("the Top Ten Percent Plan"), graduate and professional admissions, and undocumented college students. And while I predicted the Court would affirm *Bakke* and restrict its reach, I privately assumed they would uphold the University of Michigan’s undergraduate points program and strike down the more discretionary law school procedures. But now, as we try and struggle through our own admissions policy here in post-*Hopwood* territory, I find myself in an odd position in theory and practice. *Bakke* proved surprisingly resilient and supple over the years. Will *Grutter* hold up as well?
My contribution in this Symposium will be the following: I examine demographic and enrollment data, sufficient to suggest that law school enrollments will have enough potential law students in the riverflow to sustain large numbers and high quality. I will also review the context that counts nearly as much as the sheer numbers of student bodies: the forces of the baccalaureate job market, other post-baccalaureate study options, law placement trends, and law school debt loads. After these demographic and statistical data, I will consider a variety of enrollment/admissions/

management issues in essay-form, all of which variables point to a continued strong flow of law school applications and enrollments.

A. Law School Demographics

The good news for legal education is that law school applications, LSAT test taking, and enrollments are at all time high in 2004 and likely will be for a long time in the foreseeable future. These trends are the
leading indicators for projecting law school demographics, and virtually all
these markers augur an increasingly competitive environment for
recruiting students to attend law school. First, there are simply more
bodies, and available birth and immigration data indicate that these bodies
are likely to swell the ranks of elementary and secondary school
systems; as a corollary, if high school graduation rates and college-going
behavior continue at 2004 levels, future levels will outstrip even the
robust 2000-2005 patterns, when applicant volumes and law school
enrollments were at historic high levels. According to U.S. Census data,
this core group of 22 year olds will increase from slightly more than
3,600,000 in 2000 to 4,500,000 by 2031, in a generally upward slope.
Second, while the ranks of law students are not limited to this young
cohort, older applicants have decreased both and as an absolute number
of applicants and as a percentage of the total; in 2003, 24.8% of the
applicant pool were 22 years or younger, while another 36.3% were 23-
25 years old; only 17.5% of all 2003 law school applicants were 31 years or older. In an important sense, this phenomenon is a function of baccalaureate job markets, perceptions of overall legal placement rates, and, increasingly, the declining application and enrollment rates for competing post-baccalaureate graduate and professional schools. As an example of these allied factors, interested readers should review the panicky literature on U.S. graduate admissions, especially science and engineering enrollments, or the reports on declining MBA and medical school enrollments. The Graduate Management Admission Test (GMAT), the MBA counterpart standardized test to the Law School Admission Test (LSAT) declined by 25% from its high in 2002 to 2004; applications to U.S. medical schools have declined by 21.8% in the period from 1997 to 2003, although the medical school enrollments were virtually the same, reflecting substantially improved odds of being admitted. The number of applicants per place in medical schools
declined from a recent high of 2.7 applicants per seat in 1995-96 to 1.9 in 2002-03.\textsuperscript{17} These data include actual applicants, not the number of applications submitted for consideration. Applicants to medical schools average nearly 13 applications each in 1995-96, and 11 applications each in 2002-2003.\textsuperscript{18} Their law school counterparts have held relatively steady approximately five applications each (4.8 in 1991 and 5.3 in 2003).\textsuperscript{19} Moreover, while the number of medical schools and their enrollments have remained constant in the past twenty years (17,230 first year enrollments in 1982-83 to 17,120 in 2002-03),\textsuperscript{20} the number of ABA-accredited law schools has increased from 172 to 186 in the same period, with more in the works.\textsuperscript{21} As a result of increased class size and numbers of law schools, legal education enrollments have increased from 127,828 in 1982-83 to 140,612 in 2002-03.\textsuperscript{22} At the same time, graduate school enrollments and doctoral recipients have declined, particularly in their U.S. citizen enrollments. For example, PhD’s have
declined from the 1998 peak of 42,652 to 39,955 in 2002, the most recent year for which data are available.\textsuperscript{23} With increased post-9/11 visa restrictions,\textsuperscript{24} fifty percent attrition rates,\textsuperscript{25} and declining numbers of male graduate students and minority graduate students, this traditional alternative path as declined in its attractiveness.\textsuperscript{26}

[Table 1 Here]

In sum, all the traditional competitor academic alternatives to law school are in statistical decline, some substantially, relative to law’s increasing popularity. Applications, test-taking, enrollments, and degree completions are either flat or decreasing in overall medical school, MBA, and graduate school programs. At the same time, even with the increasing number of law schools and law enrollments, there appears to be no excess capacity or underutilization in legal education.

And the most important legal education enrollment indicators are all robust. The applicants in 2003-04 totaled 96,400, generating an average
of 5.3 applicants each for a total of 543,600 applications, and taking
147,600 LSAT exams.27 All of these indicators are historic highs. To be
sure, as Table 2 shows, there is a cycle here, with ebbs and flows, but
the outlook for legal education is strong and likely to get stronger with
the continued growth in its rootstock -- the rising number of 22 year
olds.28

[Table 2 here]

There is a note of caution buried in these robust numbers: the
increasing percentage of the 22 year olds who are people of color. With
the educational underachievement evident in African American and
(especially) Latino populations, there should be great concern about
trends and the possible consequences generally and in graduate and
professional education specifically.29 Even if these trends shift, and these
populations show statistical improvement, there is cause for concern
about the extent to which sheer population growth will result in improved
educational attainment and a sustained level of interest in legal education.

As a general proposition, it is clear that the U.S. will not sustain its educational system or improve its condition if substantial numbers of its citizens are not properly educated and socialized into the full community.

[Table 3 Here]

B. Other External Factors Affecting Legal Education

In addition to this key consideration of its rootstock and student demography, a number of other important factors will continue to affect the flow of the river. Such external factors will include perceptions of baccalaureate and law career placement opportunities, student debt loads, costs of higher education (including undergraduate schooling and legal education), and other features that bear upon potential applicants to law schools, such as the efficacy of the overall application process.

For many recent college graduates, professional school can be an alternative to perceived poor prospects for entry level jobs in their
fields; for them, taking an MBA or going to law school might be an alternative choice, whether or not they are actually committed to long-term careers as business persons or attorneys. The relatively short period of investment in MBA’s (two years) and in law study (three years) surely provides a path of least resistance for some young people, in contrast to the longer gestation of medical school or graduate school.

This distinguished labor economist Ronald G. Ehrenberg, who has spent much of his career writing about academic labor markets, has addressed the pathway issue as a combination of more pragmatic college major choices, lengthening time for doctoral degree completion, growing disparities in academic salaries between traditional arts and sciences fields and those of professional school faculties, corollary disparities between starting academic salaries across fields and those available to elite law graduates in large firms, and other social phenomena such as women’s increased vocational opportunities.
Calculations about eventual life as a lawyer are also driving law
school applications and enrollments. Although many law professors
would love for their students to be drawn to the contemplative life of law
as a philosophical pursuit, most students are more utilitarian about their
career choices and vocational plans. After all, given the cost of
education and the length of time a full time student must forego wages
while enrolled in fulltime study, it is reasonable to assume that potential
students make a judgment about markets and eventual job prospects.
This calculus is widely perceived as responsible for the decline in
graduate, MBA, medical school enrollments. Prospects of fewer
professional jobs for historians and perceived diminished income and
quality of professional life for doctors in a post-HMO world are thought to
have contributed to the statistical profiles already noted.

To this end, law graduates still have room to be pleased. While the
placement data are cyclic, the figures continue to encourage applicants to
flock to law school. For example, recent NALP data report nearly 90% of
JD graduates ("the overall employment rate") found employment. To
be sure, the employment prospects for law graduates differ according to
their talents, opportunities, and preferences, but despite legal sector
restructuring and all time high enrollment figures, the overall placement
figures reveal strong and resilient hiring trends.

C. Internal Factors Affecting Admissions

Many trees have been felled to provide the printstock for
admissions literature, and explicating *Grutter* and *Gratz* will add to this
defenestration. Even so, notwithstanding the geopolitical
environment of national (or international) admissions policies, all
admissions is local. That is, every educational institution and its
constituent subunits engages in its own institutional interests through
the operation of its admissions policy. This view harkens to what
the *Sweezy* decision characterized as the "four essential freedoms" of
a university: “to determine for itself on academic grounds who may
teach, what may be taught, how it shall be taught, and who may be
admitted to study.”

In this vein, every law school uses the basic building blocks (grades
and test scores) to select a class, but each uses these blocks for
different emphases. The ABA accreditation standards and their
regulations ("Interpretations") form a minimum foundation:

**Standard 501. ADMISSIONS**

(a) A law school’s admission policies shall be consistent with the
objectives of its educational program and the resources
available for implementing those objectives.

(b) A law school shall not admit applicants who do not appear
capable of satisfactorily completing its educational program and
being admitted to the bar.

**Standard 503. ADMISSION TEST**
A law school shall require each applicant to take a valid and reliable admission test to assist the school in assessing the applicant’s capability of satisfactorily completing the school’s educational program.\textsuperscript{41}

The admission test currently in use by every U.S. law school is the Law School Admission Test (LSAT).\textsuperscript{42} Although Standard 503 and its Interpretations contemplate the possible employment of another such test (conceivably the GRE or Miller’s An alogy Test or other such standardized examination),\textsuperscript{43} no law school has undertaken to deviate from the gold standard. There are many other demographic and personal characteristics used by schools to admit students to the study of law, even beyond those elaborated by Interpretation 503-2 (undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome).\textsuperscript{44} For example, a Texas
statute on the subject elaborates eighteen such criteria, and does not allow graduate or professional schools to use a single criterion to deny admission.\textsuperscript{45}

This convergence of the two building blocks is reinforced by the near-universal use of the Law School Data Assembly Service (LSDAS), which reports the two pieces of data to each school where the candidates choose to send their applications.\textsuperscript{46} But the use of these two pieces of information is increasingly wagged by the tail of U.S. News & World Report’s annual rankings of law schools, which weight the LSAT score and UGPA.\textsuperscript{47} The use of these two factors for published school rankings has given them even more prominence then they have historically been accorded, and law schools have began to game them, resorting to tactics that maximize the rankings criteria.

The mix of choices available to law schools includes the ABA’s “other relevant factors” as well as miscellaneous factors widely
employed by public and private institutions: in-state residence,\textsuperscript{48} rank in class,\textsuperscript{49} alumni privilege (legacy credit),\textsuperscript{50} professional licensing,\textsuperscript{51} second languages,\textsuperscript{52} political connections,\textsuperscript{53} wealth,\textsuperscript{54} internship or other professional experiences,\textsuperscript{55} moral character and fitness issues,\textsuperscript{56} writing ability,\textsuperscript{57} and a host of other characteristics. In addition, schools apportion different weights to the same criteria, so that a student with strong LSAT scores and a moderate UGPA might be accorded more on fewer points, depending upon the schools’ weighted index.\textsuperscript{58} Schools can choose to vary the mix of presumptive admits and devices, leaving the task of choosing from among the undifferentiated middle range; a variation of this technique would employ a waitlist for students who do not warrant automatic admission but who might fill the class if vacancies occur or if the field from first-rank choices is not sufficient to fill the class. The ebb and flow of such choices and yield policies can swing widely in the art of admissions.
At the end of the day, law schools have all the tools they need to assemble the kind of law school they desire to be. Courts have historically given wide latitude to academic decisionmaking, demography favors law study, and Grutter reaffirmed the tools needed to attract and admit diverse classes. Even in jurisdictions that have constraints on their ability to use affirmative action are in a position to recruit in a large stream of applicants, a river that is likely to be increasingly diverse. At the same time that the overall stock of law students has soared, competing opportunities for applicants have declined in favor. Although these mood swings can and will shift in the foreseeable future, it is likely that law school study will remain an attractive option for very good students, even in an increasingly competitive and expensive world. Not every school will be poised to take advantage of the opportunities that have been reviewed in this Essay, but every school has substantial control over its fate in this large marketplace for students. If Justice
O'Connor's hope that *Grutter* will expire in twenty five years is to come true, it will be because institutions employed the discretion and tools available to them. In a previous life, I studied for eight years to become a Catholic priest, and while I did not enter that vocation, I came to believe that anyone can be saved. Therefore, it may be cynical for me to hazard this guess: if law schools take their inevitable course and become more open to people of color, I suspect that "minority" rights will assert themselves more successfully. But it will be a long time before Anglos become the minority.
Endnotes

1. 439 U.S. 306, 342 (2002) ("We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.") See Vikran David Amar and Evan Caminker, *Constitutional Sunsetting? Justice O’Conn or’s Cl osing Comments in Grutter*, 30 HAST. CONST. L. Q. 541 (2003).


6. V.T.C.A. Education Code Sec. 51.809 (1997) ("Admissions Policies for Graduate and Professional Programs") (restricting Texas public institutions from denying graduate admissions based upon single criterion, such as test score).


10. The U.S. Census data in Table One were generously provided by Philip D. Shelton, LSAC, from a presentation to the ABA Council in May 2004. He and his staff have my thanks. (Hereinafter, LSAC data)


17. *Id.* at Table 3.

18. *Id.*

19. LSAC REPORT, *supra* note 11 at Chart A.


21. Substantial data are available at the ABA website


22. *Id.* Additional legal education data and LSAC studies are available on the LSAC website <LSACnet.org> (last visited September 10, 2004).

23. Peter D. Syverson, *Down Again: NSF Reports Decrease in Number of New Doctorates for 2002; U.S. Citizens Drop 4%*, CGS COMMUNICATOR,


26. *Id.* The declining minority percentage data are particularly troubling, as additional studies show that the major source of college enrollment growth is predicted to be students of color.


28. I need not add that these data are national (and international) figures, and that not every school will fare as well as will others in drawing applications from the river. Some schools will defy gravity in their applicant pool, while others will not.
29. These are complex issues, ones that extend beyond the scope of this article. As just one example of the phenomenon, buried deep within current LSAT data is the clear indication that among Black, Latino, and Native American law applicants who take the LSAT (already a lagging indicator), a disproportionate number apply late in the cycle, seriously restricting their chances of being admitted. *Id.*, at Charts C and D.

30. There is a lifetime’s worth of reading here, and a small shelf would include:


31. The length of time in graduate school has increased, leading some observers to cite this feature as a major cause of attrition. Syverson, *supra* note 23; Denecke, *supra* note 25.

work, despite my many years of being a student, including graduate school 
and law school. I know that I left graduate studies in English due to a 
personal calculation of generalized overall employment prospects, but I did not 
go to law school due to an overall sense of its presenting me with better 
employment prospects. Notwithstanding my admiration for Ron Ehrenberg (a 
personal friend and professional colleague), I often use the V-term when 
discussing the economics of education.

33. ABA, Commission on Loan Repayment and Forgiveness, LIFTING THE 
BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE (2003) 
[available at www.abanet.org/LegalServices/lrap/home.html] (last visited on 
September 10, 2004). See also Michael A. Olivas, Paying for a Law Degree: 
Trends in Student Borrowing and the Ability to Repay Debt, 49 J. LEG. EDUC. 
333 (1999); Philip G. Schrag, The Federal Income-Contingent Repayment 
Option for Law Student Loans, 29 HOFSTRA L. REV. 733 (2001); PHILIP G. 
SCHRAG, REPAY AS YOU EARN: THE GOVERNMENT’S FLAWED PROGRAM 
TO HELP STUDENTS HAVE PUBLIC INTEREST CAREERS (2002).

34. For example, Barzansky and Etzel attribute some of the demographic/applicant 
issues to medical school debt issues. Supra note 14, at 1196. One reaction 
has been to include health-related business and economics in the medical 

36. Id. (summary findings)

37. As recent examples in addition to this Journal’s Symposium issue on Gratz and Grutter, see the special issues of the Journal of College and University Law (Vol. 30, No 3 2004), Columbia Law Review (Vol. 103, No. 6, October 2003), and double issues of Hastings Constitutional Law Quarterly (Vol. 30, No. 4, Summer 2003) and (Vol. 31, No. 1, Fall 2004).

38. For examples of how a single institution can have differentiated admissions policies and racial practices, one need look no further than Grutter (law school) and Gratz (undergraduate). My own institution, which has a predominantly-minority undergraduate population and a predominantly white law school also has adopted a differentiated racial admissions policy.


41. Id., Standard 503 at 40.

42. I have examined the LSAT in what will seem to readers to be excruciating detail. See, for example, Olivas, supra note 3 at 1069-1080; Olivas, supra note 5 at 1002-1006.

43. One of the advantages of using the GRE or MAT exams for law school would be that they can both be taken at testing centers at unscheduled times, rather than having to take them in the Standard, cattle-call fashion in which LSAT’s, ACT’s, and SAT’s are given. See Rachel Shtier, LINGUA FRANCA, Dec., 1996-Jan., 1997, at 54.

44. ABA, STANDARDS, supra note 40, at 40.

45. V.T.C. A. Education Code Sec. 51.802 (Uniform Admission Policy).

46. For a very detailed and careful analysis of the LSAT/UGPA/index issue, see Herman Hill Kay, Report of the Committee on Diversity in Legal Education, 29 SYLLABUS 1 (1998); excerpts appear in Olivas, supra note 5, at 1007-1011.

48. For a review of residency issues generally, see Olivas, *supra* note 7, at 437-41; Ronald G. Ehrenberg, in TUITION RISING (2002) recounts how even private colleges have begun to employ residency criteria. *Id.* at 84.

49. This seemingly-simple criterion, like so much of this topic, is deceptive. Most evaluators take into account not just how well an applicant performed, but what their major was, how strong was the competition, and other less-objective measures. This issue figured prominently in *Hopwood*. 861 F. Supp. at 533 n. 1, 564-65 (Professor’s evaluation of Hopwood’s college record).


51. These would include whether an applicant holds licensure in another field, such as being an engineer, doctor, or accountant.

52. At least outside the U.S., speaking a language other than English is considered a sign of learning and accomplishment. *See* Steven W. Bender, *Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the*


54. While the issue of wealth advantages raises its head at many levels, its quintessence is evident in *DeMarco v. University of Health Sciences*, 352 N.E. 2d 356 (Ill. App. 1976) and *Steinberg v. Chicago Medical School*, 372 N.E. 2d 634 (Ill. App. 1977), where it was clear that medical school admissions slots were, in effect, purchased.

55. Northwestern University School of Law, for example, is one of the very few law schools that requires interviews of its applicants, and stresses “two years of postcollege work experience”.


