Legal Considerations Related to Minority Group Recruitment and Admissions

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Abstract—Legal considerations and judicial attitudes relating to minority recruitment and policies in medical schools were explored with a panel of judges. Questions of equity, the appropriateness of special consideration, and the significance of real and threatened legal challenges were measured against the assumed need to enlarge the pool of minority physicians. A consensus drawn from the jurists in the study revealed that a responsibility exists on the part of professional schools to establish reasonable criteria with respect to the selection of students and that the criteria should be broad-gauged and extend beyond a strict reading of scores, grades, and aptitude tests and should recognize institutional responsibility to the community as a whole. Further, judgments of faculty tend to be given overriding consideration by courts; experimentation in selecting a class and the development of special programs are permissible; the fear of judicial restraint and constitutional bars are less real than imagined.

For too long there has been unusual and understandable concern for the legal and ethical problems relating to the admission of students to professional and graduate schools from minority and underprivileged communities. The purpose of this article is to explore in as concise a fashion as possible prevailing legal attitudes and how several distinguished jurists view this irksome problem.

The Association of American Medical Colleges’ Northeast Group of Student Affairs asked the author to explore this issue and generally determine whether existing mechanisms within the admissions process were tenable and consistent with the best interests of the school and the students affected. The author was asked particularly to explore the legality of special committees on minority admission, recruitment and incentive programs, and tutorial and academic support courses.

Any and all of these approaches have been tried and tested. Medical schools have used these and other techniques with some measure of success but rarely with satisfaction. The implications have been clear for some time—special efforts are to be made to equalize opportunities, to increase the numbers of physicians from minority groups, to enlarge the pool of doctors who will serve in depressed and physician-shortage areas, and to generally broaden the realities of professional education for all who wish and are able to seek it.
There are questions of equity involved and serious doubts as to the appropriate-ness of all these good intentions in view of the long-established belief that the equal protection clause of the fourteenth amendment may restrict or inhibit this activity. Equally significant is the reality of legal challenge. Hardly a day goes by that medical school administrators do not hear the whispered refrains of self-doubt as to whether the “special efforts” are appropriate, legal, and moral. Deans, school and university administrators, admissions officers, faculty, students, premedical advisers, parents, grandparents, politicians, and the scores of friends and allies of prospective medical applicants have views which conveniently suit their needs or prejudices—but there is hardly anyone who does not hold a firm and resolute attitude on this most contentious subject except for those individuals who may have the ultimate responsibility for developing and executing admissions policies.

To the admissions office staff and dean, it’s the challenge of walking a tight rope over the angry, rejected applicant, the threatened but usually not executed lawsuit, the countless inquiries, and the awesome truth that urgent national need and privatization necessitate a special response. Self-doubt has always been endemic to the admissions process. Even when confronted by riches of academically talented youngsters, there remains the element of choice and the inevitable query—why not me? Recognizing that choice and selection are constant admissions variables and that what remains is the probability of a successful legal challenge, the heart of the matter is how the courts will treat the problem if and when presented with it. Their responses, which may not be consistent, are the only tangible and dependable support available.

**Expert Opinion**

Five justices of the New York State Supreme Court were interviewed. Three of them spent a considerable amount of their time discussing their own views and what they thought the courts’ ultimate response would be to a lawsuit similar to the one now before the Supreme Court of the state of Washington. The deFunis case is a challenge to the University of Washington Law School on the question of the constitutionality of its Admissions Committee decision to deny a place to an applicant while granting admission to 30 students who are members of racial minorities with inferior academic qualifications. The plaintiff, Mr. Marco deFunis, Jr., prevailed in the lower court, and the law school was ordered to admit him. This case has achieved national status and has conveniently found a niche in the subconscious of every admissions officer.*

Each of the New York judges selected for interview was given in advance the brief of amici curiae submitted to the appellate court in Washington as an introduction to the general problem. The justices were all mindful of the issues involved and anxious to discuss their philosophy in anticipation of having to rule on such a challenge.

The approach and criteria used in choosing the judges were based on their availability, previous personal friendship, their political and social philosophies, and care to ensure some divergence in viewpoint if possible. One judge is considered liberal, another moderate, and the third conservative. Two additional judges were interviewed as a modified control, but less intensively, and ultimately substantiated the views and opinions which follow. All

* Since the writing of this article, the Supreme Court of the state of Washington has reversed the decision of the lower court.
justices are from the First Department of the New York State Supreme Court, which covers a jurisdiction of Manhattan and the Bronx. Within the jurisdiction reside some 4 million inhabitants, and there are several colleges and universities, including five law schools, two dental schools, and six medical schools—Einstein, Columbia, New York Medical College, Mount Sinai, Cornell, and New York University. Each jurist was to have his anonymity protected, and a pledge was accordingly given.

As a result of these interviews, the entire matter was later reviewed at a conference of supreme court judges in the same judicial department, illustrating the concern of the bench for this particular issue.

Items for Consideration

The items for consideration in the following list are based on comments of the five justices and are put forth in a positive light to encourage medical schools to increase minority enrollment and to undertake appropriate support mechanisms. No priority or special significance is accorded to any one item, and they are to be given equal consideration:

1. The United States Supreme Court through various interpretations of the Constitution has not forbidden programs designed to increase access of minority groups to higher education. Measures instituted to correct racial imbalance have been upheld as constitutional.

2. Remedial and tutorial support programs in graduate and professional education are justified, necessary, and compelling.

3. Preferential treatment of certain members of minority groups does not indicate exclusive reliance on race. Certain minority applicants are admitted with records of lower rank than some excluded nonminority candidates, but the significance of this can be too easily exaggerated. Race is not and should not be the sole and determinent factor. As a matter of fact, not all minority applicants are admitted—only those who, after careful review of their records, are deemed likely to succeed.

4. Admissions committees should consider many factors in making a decision, and factors which go beyond statistical and mathematical determinants are allowable and important. A committee which goes beyond consideration of scores, grades, and rank order in aptitude tests seems eminently rational, since it seeks to “humanize” the process of selecting prospective members of the profession.

5. Courts have generally shied away from upholding challenges to administrative rulings and tend not to override faculties of colleges and universities unless the act is obviously arbitrary and capricious. There is a long and continuing tradition to rely on the judgments of a faculty, especially when it concerns qualifications and standards of admission to a graduate or professional school.

6. The best approach (and here there was absolute unanimity among all judges queried) is to spell out criteria and to broaden the number of factors which are involved in making a decision to admit or reject. Incidentally, medical schools are at a distinct advantage over other professional schools because of the general policy of requiring a personal interview before acceptance. This factor alone extends the judgment area beyond the mere consideration of scores and grade points as the only criteria for admission.

7. Experimentation in selecting a class is both desirable and permitted. The tendency to get away from rigid categories is also healthy as long as experimental and special programs are published and clearly defined as different from the normal or traditional practices.

8. Admissions committees clearly have
the obligation and right to expand or restrict admissions criteria—although expansion of criteria is preferred and desirable. New and reasonable criteria may be included when considering applicants, that is, the nature of societal and community needs viewed from a national as well as a local perspective; the school’s surrounding neighborhood and its special requirements, a clear preference on the part of the candidate to pursue a specific community-oriented experience upon completion of the course of study, and the applicant’s extra-curricular activities when examined against the immediate societal need and his long-range plan. No commitments by the student are necessary—just an expression of future interest and an honest belief that the applicant will most probably fulfill the commitment which made his selection so compelling.

All of these factors and others provide a rational basis for making a judgment other than on a score or grade comparison. Grades alone cannot accurately predict performance.

9. Establishing given percentages or quotas of minority students to be accepted in a class poses predictable problems. This should be avoided at all costs.

10. Medical schools may stimulate interest by creating mechanisms for recruitment, tutorial support, and special preparatory courses in order to qualify and ultimately enroll minority students.

11. Special committees or subcommittees of admissions entrusted with the unique problems of minority applicants are in fact legitimate and permissible.

12. It is also appropriate to identify some students as career models or examples and to reassure other disadvantaged youths that emulation is possible and the “system” penetrable.

Conclusion

Twelve items have been identified, all representing a consensus of judicial thought on the subject of minority recruitment and admissions. However, it would be foolhardy to rely on this report as definitive law or as a cover for a multiplicity of actions not entirely consistent with local traditions, laws, and judicial temperaments.

This report and its information were not designed to be an admission office legal primer. The purpose here is to convince the cautious, encourage the timid, and fortify those who have engaged in useful and productive exploration.