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TRUE CONVICTIONS: A POST-209 EYEWITNESS ACCOUNT OF UCLA LAW

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As a student representative to the UC Regents, I watched in disbelief as the elimination of affirmative action was orchestrated. Beginning as a humble agenda discussion item in committee, the idea was fed by demagoguery and grew to become a statewide ballot referendum. As a student organizer, I was one of many student activists fighting to have a voice in the public forum by organizing thousands of UC students, staff, and faculty across the state to walk defiantly out of their classrooms and to join together in protest of the Regents' decision to eliminate UC affirmative action policies. However, with the passage of Proposition 209, the defiance fueling the activism and the walk-outs seemed to dissipate into an amorphous and bitter cloud of disillusionment. Since then, we have all heard the ominous predictions of the eventual impact of Prop. 209, and today, we stand together as somber eyewitnesses to the stark realization of those predictions within the walls of this very law school.

Many people have questioned the continuing relevance of this issue, given the passage of Prop. 209 by a majority of the voting electorate. Some would advise us to abandon this political project altogether, to stop hitting our collective foreheads on the proverbial brick wall. Prop. 209 is, after all, the law of the land. There is nothing left to do but to move on and begrudgingly accept the shift in political winds.

While I understand the sentiment, I must submit that giving up is not a viable option in light of the fundamental injustice posed by this change in the law. "Moving on" is nothing more than a euphemism for an institutional mute indifference to the erosion, right in front of our eyes, of invaluable gains made by the Civil Rights Movement. The principles of affirmative action were socially just at the policy's inception, and they still hold a saliency in today's stratified society that begs the question "Why stop now?" To simply accept defeat is little more than a polite

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way of describing our collective, silent, de facto animus towards whole populations that this institution has deemed unworthy of a legal education.

If social justice is a priority, we can only press forward and continue fighting. It will be soon enough when there are no more teach-ins, no more calls for walk-outs, and no more discussions like this one. The halls will be left ringing with nothing more than the smug silence of disregard. Already, the very existence of student-of-color organizations with great importance and relevance for their respective communities (the Chicano-Latino Law Review and the Black Law Student Association) hang on to a tenuous, threadbare existence.

Much of the political rhetoric of previous discussions like this one have made note of affirmative action's imperfections and complexities, stressing the importance of grappling in good faith with all the different patchwork minutia of anecdotal and racialized values which both sides bring to bear in this bitter debate. The issue, however, is also paradoxically simple when we bear witness to the consequences of the elimination of affirmative action. When affirmative action is prematurely removed and we artificially narrow our definitions of merit without altering the racially-stratified socioeconomic context in which those merit judgments are based, we are left with a single net result—quite simply, the re-segregation of our public institutions.

Are we a better law school without affirmative action? The answer is an unequivocal "NO." We are not smarter, we are not more qualified than we were three years ago, except perhaps in the most narrow-minded, constricted conception of qualification. We are not going to see qualitatively better lawyers coming out of here because of Prop. 209. In fact, we are simply and bluntly put quickly becoming one of the most homogeneous law schools in the entire nation, *at least in one fundamental sense*.

Clearly, we are in the midst of a silently encroaching crisis in education and democracy. In a true democracy, education is a basic and fundamental right. Protecting that right is one of the most important functions of the democratic state. To the extent that any of its public institutions has failed to stave off regressive efforts to limit who is being educated, to the extent this law school has stopped fighting for affirmative action, it has failed in its most basic mission.

The administrators at UCLA Law are good, well-intentioned people, and many share our concerns and beliefs. Unfortunately, they also broadcast a sense of inevitability and settled expectations about the state of affirmative action. We are here, testifying to the changes we have witnessed within these walls in

the hopes of convincing the administration to share in our priorities, our convictions, and our sense of urgency in these matters. This is a good law school, and we can do better. There is a crisis within the walls of UCLA Law. . . *where are our priorities?*

More than a few administrators have shrugged their shoulders to this question, methodically responding with a mantra-like recitation of a convenient and simplistic defense: "Prop. 209 is the law." Far be it for us to argue with this less-than-compelling analysis of the amendment to the California Constitution. However, we continue to assert that true conviction to the values of social justice are demonstrated in exactly *how* the administration chooses to interpret that law. True conviction to the priorities of social equality demand that we rage against and define, surge forward and refine, the meaning and scope of Prop. 209.

Any analysis of Prop. 209 must be made in the context of its underlying spirit and unstated intent. The referendum was disingenuously drafted, politically and opportunistically conceived by a governor hoping to enhance his chances at a Presidential nomination on the backs of women and people of color. If you are wondering about Framers' Intent, look closely between the language of Prop. 209 and you will see the words "Wilson to win Republican primary." Prop. 209 *cannot* be seen a popular mandate against affirmative action. The words "affirmative action" were deliberately and strategically taken out of the ballot language by Dan Lundgren, a Republican Attorney General and Wilson's would-be political successor, for a simple reason: polls showed the inclusion of the two signifying words would have produced a different electoral result. Prop. 209 stands for little more than a shining symbol of how distorted, manipulable, convoluted, and prone to corruption the referendum process has become in California.

Should we then interpret such a law in such a way as to give it the most conservative force and broadest impact? Or should we look, struggle, and fight for innovative, substantive ways to scrape at the mortar and brick of ill-conceived barriers to the doors of UCLA Law? We must find a way to re-prioritize what goes on within these walls in order to achieve substantive, rather than simply procedural, justice.

This school is part of an institution, but it is also an actor with agency and choice. UCLA Law has thus far chosen the most conservative route, a well-worn path paved with the smooth, cold rocks of institutional self-preservation and self-aggrandizement. While developing Prop. 209-compliant law school policies, Dean Varat's administration adopted what has been characterized as a "risk-averse" policy approach, borrowing its

values from the corporate world. By essentially evaluating the permissibility of law school policies under the rubric of potential reactionary conservative litigants, Dean Varat assumes a defensive posture that protects his administration from the mere threat of litigation and unwelcome publicity, but sacrifices any semblance of diversity and ensures the law school's de facto complicity with the ongoing re-segregation process. He has chosen *not* to take an advocate's approach, perhaps extrapolating potential law school policies from the judicial permissiveness evidenced in the 9th Circuit Court of Appeals interpretation of Prop. 209, which held that the phrase "209 is the law" does not necessarily mean the end of affirmative action. The Dean has thus far chosen *not* to push the envelope of the law, content with attenuating the task of policy innovation and moral leadership.

When the only existing option unavoidably leads to an unacceptable, irrational result, it is of the utmost imperative that we reassess our priorities, avail ourselves of new options, and conceive a new vision. UCLA Law must not become a technocratic trade school, with a myopic fixation on LSAT's, GPA's, and US News & World Report rankings. The end result can only be the mass production of black letter lawyers and insulated bureaucrats who are ill-equipped to serve or govern California's emerging cultural and ethnic majorities. Rather, let us boldly create a law school which operates as an organic, democratic space, and fill it with a representative and dynamic population that is diverse in every sense of the word. UCLA Law must be a place for hammering out what our role as citizen-lawyers will be, for learning about what we to give back to a society in consideration for six-figure salaries, for teaching each other about our experiences, and most importantly, for becoming culturally literate about the social context that each of us shapes and in which the law operates.

These are the things that can make a young law school a great one, where new leaders can take root and where social justice can grow. This is why we must continue to fight for affirmative action.