

*Review of Jeffrey Selingo's***WHO GETS IN AND WHY:
A YEAR INSIDE COLLEGE ADMISSIONS**

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INTRODUCTION

A college or university attorney might fear that a book promising an inside view of admissions by an award-winning journalist could be effort by a muckraker to expose corruption and create scandal. Although Jeffrey Selingo's book has moments of cynicism, on the whole he takes a higher road. While he is critical of hypercompetitive admissions and proposes ameliorative measures to be taken by colleges, universities, and the federal government, his principal aim is to inform high school students and their parents about the process so that they can be better equipped to find colleges best suited to the student and family.¹ His welcome message is that "plenty of schools offer a top-notch education and have high acceptance rates" and that students and families should avoid the "mythical quest to get into the rights schools at any cost."² The book is a readable analysis of the complex dynamics of college admissions, with suggested remedies to simplify the process and increase transparency, fairness, and access. The book will be interesting and useful, whether one is a lawyer advising colleges and universities on admissions and financial aid, a college or university attorney focused on other areas of the institution, a parent of a college-bound student, or someone simply curious about the way the process works. This review focuses on topics likely of greatest interest to college and university attorneys, regardless of whether they have children in the next cohort of undergraduate applicants.

I. Scope of Book

Selingo researched his book from the fall of 2018 through 2019, prepandemic. The book was published in 2020, and he updates the narrative with a preface focused on COVID-19. He mentions trends such as "test-optional" policies, but says nothing about the legislative and regulatory pandemic relief measures or the refund class actions that students filed against a number of institutions in the wake of the transition to online courses. He concludes that "[t]he underlying process

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1 Selingo focuses on undergraduate admissions and often uses the term "college" to refer not only to four-year institutions, but to the undergraduate component of universities. This review adopts the same usage.

2 JEFFREY SELINGO, *Who Gets In and Why: A Year Inside College Admissions* 5 (2020); see *id.* at 55.

that drives the selection machine at an elite college . . . remains in place.”³ Yet the full effects of the pandemic on the college admissions process, various types of financial aid, and enrollments at different kinds of colleges and universities remain to be seen.⁴

Selingo structures his book around the traditional admissions cycle—“Fall: Recruitment Season,” “Winter: Reading Season,” and “Spring: Decision Season.”⁵ While cautioning that the division “is not a reflection of the actual educational quality of the school,” he categorizes colleges as “sellers”—the “haves” of admissions—and “buyers”—the “have-nots.”⁶ He similarly characterizes students as two types—“drivers” and “passengers”—those who “start[] early as voracious consumers of information” and those who go “along for the ride.”⁷ Much of his book is designed to help “drivers” better map their journeys and encourage “passengers” to take the driver’s seat.

Selingo received permission from Davidson College, Emory University, and the University of Washington to sit in on their admissions processes for a year—a seat that even most college and university lawyers have not occupied. Lafayette University also gave Selingo access to its process for financial aid awards. In addition to following these institutions, Selingo accompanies three high school students on their college searches.

Some of the most intriguing parts of *Who Gets In and Why* are Selingo’s historical perspectives on the admissions process. For example, he recounts Bill Royall’s impact on institutional marketing, the origins and consequences of *U.S. News & World Report* college rankings, the rise of “enrollment management” and the application of *Moneyball*-type analytics to recruitment and admissions, and the trend to contract with vendors to transform college tours from a “death march” to an experience of “storytelling” and “authenticity.”⁸ College and university lawyers who would like more background on the mechanics of the admissions process may learn from those sections.

II. Legal Issues

Although Selingo does not focus on legal issues, he refers to various legal matters that have shaped higher education admissions in the context of his overall description and analysis of the admissions process. He highlights three significant legal developments:

3 *Id.* at xii.

4 An update based on the fall 2020 semester appears in Scott Jaschik, *Admissions Have and Have Nots*, *INSIDE HIGHER ED*, Jan. 11, 2021, <https://www.insidehighered.com/admissions/article/2021/01/11/admissions-cycle-favors-institutions-prestige-and-money>.

5 SELINGO, *supra* note 2, at ix.

6 *Id.* at 48–49, 51.

7 *Id.* at 52.

8 *Id.* at 239 (internal quotation marks omitted).

Antitrust investigations: Selingo notes the U.S. Department of Justice (DOJ) investigations and lawsuits involving the “Overlap Group” and the National Association of College Admission Counseling (NACAC) for alleged anticompetitive behavior. The DOJ alleged that the Overlap Group engaged in price-fixing in financial aid awards, and although Selingo does not mention the legal outcome, the litigation resulted in settlements with several universities and a subsequent, limited legislative exemption from antitrust laws.⁹ The DOJ alleged that the NACAC improperly “banned schools from offering incentives to encourage students to apply early decision or continuing to recruit applicants after the May 1 decision deadline.”¹⁰ As Selingo reports, the association modified its rules in response to DOJ’s actions.

Fraud: Selingo mentions the “Varsity Blues” scandal as a starting place for a broader discussion of the role of athletics in admissions. Like colleges and universities, he condemns the “out-right cheating, stunning in both its audacity and sprawling scale.”¹¹ While colleges and universities have improved internal controls to avoid such misconduct in the future, Selingo laments that Varsity Blues had a counterintuitive result—reaffirming the belief of many parents and high school students that going to a brand-name college matters because celebrities and other well-to-do parents engaged in fraud and other criminal conduct to get their children into such schools.

Diversity: Selingo devotes much of *Who Gets In and Why* to issues of access to higher education. He begins with the historical context of the gradual expansion of higher education in the United States from “preserving the admission of white men”¹² to the pending litigation over Harvard University’s race-conscious admissions process to foster student body diversity.

Selingo refers only in passing to race-neutral alternatives to race-conscious admissions. He observes that under state law the University of Washington cannot use race or ethnicity as a consideration in admissions. Instead, the university employs a “personal score [that] allows creativity in improving racial diversity by using criteria that are often alternatives to race—students’ socioeconomic profiles and the hardships they have overcome.”¹³

In accordance with U.S. Supreme Court precedent, many colleges and universities have adopted a “holistic” approach that includes consideration of race among other characteristics in the admissions process. Selingo observes that “[w]hen it comes to the diversity of elite college campuses, students of color and first-generation students receive the most attention these days. But colleges are also struggling to maintain a gender balance. . . .”¹⁴

9 See 15 U.S.C § 1 note (Extension Relating to the Application of the Antitrust Laws to the Award of Need-Based Educational Aid).

10 SELINGO, *supra* note 2, at 254.

11 *Id.* at 146.

12 *Id.* at 87.

13 *Id.* at 97.

14 *Id.* at 216.

Selingo criticizes “holistic admissions” as a “cloak . . . nearly ubiquitous among selective schools.”¹⁵ Perhaps reflecting his own journalistic desire to search out facts, he observes that “[h]uman beings like certainty and admissions procedures provide anything but.”¹⁶ “Affirmative action,” he contends, “is just another way that holistic admissions have helped colleges create a black box that only they can see inside.”¹⁷

Selingo emphasizes the differences in access to higher education embedded in American society. “We like to talk about our higher education system as the linchpin of meritocracy. But . . . it never was that, and likely never will be.”¹⁸ “To put it in blunt terms: upper-middle-class and wealthy kids search for the perfect fit; poor and working-class kids usually don’t have choices or don’t go to college at all.”¹⁹ Noting that government in the United States generally funds public schools through property taxes, Selingo agrees with a former admissions director for the Massachusetts Institute of Technology who observed that “most of the real screening for selective colleges is rooted in the home and school environment of children from infancy on.”²⁰ Ironically, much of Selingo’s book seems geared to helping well-to-do families find the right fit with less anxiety.

Selingo criticizes two “hooks that . . . perpetuate a culture of privilege and entitlement among students at selective colleges: legacies and athletics.”²¹ He notes that “[t]o many, college admissions has turned into a zero-sum game,” but he explains that “[t]he reality is that two applicants are rarely, if ever, pitted side by side.”²² As an exception to this general rule, he contends that “[o]n campuses where the competition to get in is stiff and seats severely limited, admissions is often turned into a zero-sum game because of athletics.”²³ He also argues that research shows that legacies are not as academically qualified as other applicants and that consideration of legacy status does not affect alumni contributions.

Selingo focuses a chapter on the final stage of the admissions process, dubbed “shaping the class” or “lopping.”²⁴ He observes, “This is the break point between fair and unfair, between a selection based on some measure of traditional criteria and one based on a variety of other factors: money, race, gender, and major.”²⁵ In explaining why admissions sometimes seem irrational, Selingo observes that

15 *Id.* at 10; *see id.* at 116.

16 *Id.* at 10.

17 *Id.* at 113.

18 *Id.* at 8.

19 *Id.* at 63.

20 *Id.* at 167 (QUOTING BRAINERD ALDEN THRESHER, *COLLEGE ADMISSIONS AND THE PUBLIC INTEREST* (1966)) (internal quotation marks omitted).

21 *Id.* at 147.

22 *Id.* at 6–7.

23 *Id.* at 155.

24 *Id.* at 205–06 (internal quotation marks omitted).

25 *Id.* at 205.

“[c]ollege admissions is not about you, the prospective student or parent of a student, it’s about the college. It’s not about being ‘worthy,’ per se, it’s more about fitting into a college’s agenda, whatever that might be.”²⁶ He observes that “[l]egacies, children of faculty and staff, and applicants under the watchful eye of a college’s president or fund-raising office usually receive their biggest boost” at the final stage.²⁷ In addition, he comments that “[t]his is where racial and ethnic diversity comes into play”,²⁸ but he does not offer support for the point. He notes that “[t]he selection process at top colleges is particularly tough on qualified women. That’s especially the case in regular decision when colleges might need to make up for shortages of men from early decision, when women are more likely to apply”²⁹

Discussing the role of a family’s ability to pay, he criticizes colleges that “claim they’re ‘need blind’ in making admissions decisions, but . . . give students only a fraction of the money a federal financial formula or the institution’s own aid recipe determines a family can afford to pay for college”—a result known as “gapping.”³⁰ He highlights “need-aware colleges [that] typically provide financial aid that satisfies a student’s requirements, without a gap,” considering it “fairer to reject a student than accept them along with a \$20,000 bill they can’t really pay.”³¹

III. Call for Change

Selingo argues for more and earlier transparency about the cost of college—and more and earlier attention to the cost of undergraduate education on the part of high school students and their parents. He observes, “Schools want to offer enough money to lure students away from other schools where they were also accepted. But they need to collect sufficient tuition revenue to operate, too. Figuring out that sweet spot is the job of *Moneyball*-inspired quants who have brought sophisticated statistical approaches from Wall Street and Fortune 500 companies to higher education.”³²

Selingo critiques the process for financial aid awards and notes a few government efforts to provide additional consumer information. He points out that “[u]nlike the government-required forms that spell out the details of a home mortgage, there is no common document that colleges must send to explain what you’ll be paying and how.”³³ And he warns that “half of colleges practice what is known as front-loading—giving bigger grants to first-year students than to everyone else.”³⁴ He objects that “[i]n the search for a college, the real cost of the

26 *Id.* at 10.

27 *Id.* at 206.

28 *Id.* at 207.

29 *Id.* at 216.

30 *Id.* at 211.

31 *Id.* at 212.

32 *Id.* at 221.

33 *Id.* at 225.

34 *Id.* at 226.

purchase is revealed only at the back end of the process instead of at the front, unlike most big-ticket items we buy.”³⁵ He notes that the federally mandated net-price calculators “help families estimate what they might pay . . . , but the results don’t usually take into consideration merit aid that is a significant chunk of a financial aid award at many schools.”³⁶ He also highlights the U.S. Department of Education’s College Scorecard, which “allow[s] students to take a more granular look at what graduates earn and how much debt they take on broken out by academic program, not just the college they attend.”³⁷

Selingo closes his book with a chapter on “Charting the Future.” He comments that “[c]olleges and universities operate like a cartel.”³⁸ He observes that “[u]nlike in most other industries, a new entrant can’t knock off established players.”³⁹ Given the number and variety of higher education institutions, it is hard to see how such a cartel would operate. Surely barriers to new higher education institutions are substantial, requiring significant time and capital to hire faculty and staff, acquire facilities and technological infrastructure, and develop educational programs and marketing and recruitment tools; to obtain education licensure, accreditation, and eligibility for federal student financial aid; and to recruit, admit, and enroll students. But those barriers have not precluded nonprofit, public, and for-profit start-ups and innovative transactions, to say nothing of the less regulated service providers that have sprung up to offer a wide range of support to higher education institutions as well as courses directly to consumers.

Selingo predicts that “gradual changes in admissions are coming, driven by teenagers, the government, and colleges themselves.”⁴⁰ He warns that “the federal government has opened up the floodgates to potentially even more aggressive sales pitches from colleges” by forcing NACAC to repeal its guidelines, which it had “designed to protect students from being poached by schools with a vested financial interest in filling their classes.”⁴¹ He also highlights “the declining significance of standardized test scores”⁴² in college admissions. (Indeed, the pandemic-inspired flight from standardized tests has resulted in a surge of applications to selective schools.⁴³) He emphasizes the changing demographics of the United States, with fewer high school graduates, particularly in the Northeast and Midwest, beginning in 2026 and proportionately more Latino and first-generation college-bound students.

35 *Id.* at 227–28.

36 *Id.* at 230.

37 *Id.* at 245–46.

38 *Id.* at 253.

39 *Id.*

40 *Id.* at 254.

41 *Id.* at 254–55.

42 *Id.* at 255.

43 JASCHIK, *supra* note 4.

Selingo predicts that “[h]igher education in the United States is increasingly headed toward even more of a two-tier system, with accelerating polarization between the wealthiest colleges and the rest.”⁴⁴ He notes that “[a]bout a dozen colleges have closed each year since 2015—double the number at the beginning of the century—a trend that, along with mergers, is projected only to increase.”⁴⁵ While “buyers” are pressed to meet enrollment goals, the challenge for “elite campuses will be . . . to enroll the significant numbers of low-income, first-generation, and minority students coming down the pike.”⁴⁶ Whereas colleges and universities, in order to elicit government support, often argue that higher education is a public good rather than a private benefit, Selingo turns the argument into one for access: “After all,” he observes, “colleges are not another set of private clubs but rather a public good that receive billions in tax breaks because of their role in serving broader society.”⁴⁷

Selingo “imagine[s] a more revolutionary overhaul.”⁴⁸ He notes the “popular suggestion” for an admissions lottery,⁴⁹ but does not identify any arguments against such a process, including intrusion on the academy’s institutional autonomy and recognized right to choose “who may be admitted to study.”⁵⁰ He raises a matching system such as the rank-order system used for medical residencies, but recognizes that to mount a national system would be “a daunting task and . . . probably wouldn’t pass muster with federal antitrust lawyers”⁵¹ Revealing himself as a devotee of Adam Smith, he posits a more efficient marketplace for admissions: “a national clearinghouse created by colleges or another entity, such as the U.S. Department of Education” that would provide an open exchange of information between high school students and colleges and universities.⁵²

Dialing back his imagination, Selingo urges colleges to make four changes in their admissions processes: (1) eliminate binding early decision, which “rushes a process that should be a journey of discovery and reflection for teenagers and their families”;⁵³ (2) redesign the application to focus on key considerations (primarily high school courses and grades), including forcing changes to the Common Application; (3) for selective colleges, expand class size, including with more federal support for low- and middle-income students, reciprocated by expansion of the range of institutions considered by college-bound students; and (4) allow high school students, early in their college search, to see the total price that they would likely pay, including through a searchable database of financial aid offers.

44 SELINGO, *supra* note 2, at 256.

45 *Id.* at 257.

46 *Id.*

47 *Id.*

48 *Id.* at 258.

49 *Id.*

50 *Sweezy v. N.H.*, 354 U.S. 234, 263 (1957) (Frankfurter, J., with Harlan, J., concurring).

51 SELINGO, *supra* note 2, at 258.

52 *Id.* at 260.

53 *Id.* at 261.

IV. Takeaways

Who Gets In and Why is worth a few hours of precious time for college and university attorneys who want a fuller understanding of the admission process. Given his intended audience, it is understandable that Selingo does not dwell on legal aspects of college and university admissions.

Although some of Selingo's proposed reforms seem flights of fancy, some steps that he suggests, such as a mandatory uniform financial aid disclosure form, have been publicly debated. It is possible that Congress or the Biden Administration will take steps along those lines. But most of Selingo's ideas would be policy decisions on the part of colleges and universities. A few institutions have experimented with elimination of binding early decision, only to revert to it under competitive pressures.⁵⁴ Given Selingo's acknowledgment that each college has its own priorities for selection of an incoming class, it seems unlikely that the Common Application would be streamlined to the extent he suggests; if it were, colleges would likely expand supplemental questions relevant to their particular criteria. As Selingo notes, a few selective colleges have expanded their class size in an effort to foster access and diversity, but there may be legal and regulatory constraints, as well as financial, geographic, and other practical limits, on their ability to increase their residential campuses, particularly during the pandemic. Certainly, the pandemic has brought home more powerfully than ever the racial, ethnic, and economic disparities endemic in our society, including in access to higher education. Colleges and universities are acutely aware of those structural problems and increasingly purposeful in addressing them.

Selingo's book is not primarily intended as a policy white paper, and he does succeed in his basic purpose—to explain college admissions in a way that should help high school students and their families gain a fuller understanding of the process and tailor their college searches accordingly. Selingo's guidance in itself may help promote the access to higher education that he, like colleges and universities, hopes to increase.

⁵⁴ Contrary to Selingo's hopes, in the fall of 2020, apparently thanks to test-optional policies, many selective institutions not only experienced a leap in applications, but increased the number of early decision admissions. Jaschik, *supra* note 4.