Regents of the U. of California v. Bakke (1978)

Affirmative Action, Equal Protection

> . . . Race or ethnic background may be deemed a "plus" in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats."
>
> — *Justice Powell, speaking for the Court*

In the early 1970s, the medical school of the University of California at Davis devised a dual admissions program to increase representation of disadvantaged minority students. Allan Bakke was a white male who applied to and was rejected from the regular admissions program, while minority applicants with lower grade point averages and testing scores were admitted under the specialty admissions program. Bakke filed suit, alleging that this admissions system violated the Equal Protection Clause and excluded him on the basis of race. The Supreme Court found for Bakke against the rigid use of racial quotas, but also established that race was a permissible criteria among several others.

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Charlotte Friar
Program Coordinator | Street Law, Inc.
cfriar@streetlaw.org
301.589.1130 ext. 250

BACKGROUND

Regents of the U. of California v. Bakke (1978)

Background Summary & Questions (•••)

In the early 1970s, the medical school of the University of California at Davis devised a dual admissions program to increase representation of "disadvantaged" students. Under the regular admissions procedure, a screening process was used to evaluate candidates for further consideration. Candidates whose overall undergraduate grade point averages fell below 2.5 on a scale of 4.0 were automatically rejected. Of the remaining candidates, some were selected for interviews. Following an interview, the admissions committee rated candidates who survived the screening process on a scale of 1 to 100. The rating considered the interviewer's evaluation, the candidate's overall and science grade point averages, scores on the Medical College Admissions Test (MCAT), letters of recommendation, extracurricular activities, and other biographical data. The ratings were added together to arrive at each candidate's "benchmark score."

On the application form, candidates could indicate that they were members of a "minority group," which the medical school designated as "Blacks," "Chicanos," "American Indians," or "Asians." Candidates could also choose to be considered "economically and/or educationally disadvantaged." The applications of those who did so were sent to the special admissions committee, where applications were screened to determine whether the candidate met the criteria established for disadvantaged and minority groups. These applicants did not have to meet the 2.5 grade point average cut off used in the regular program, nor were the candidates in the special admissions program compared to the candidates in the regular admissions program. Of the 100 spots in the medical school, 16 spaces were set aside for this program.

From 1971 to 1974 the special program resulted in the admission of 21 black students, 30 Mexican Americans, and 12 Asians, for a total of 63 minority students.* During the same period, the regular admissions program admitted 1 black student, 6 Mexican Americans, and 37 Asians, for a total of 44 minority students. No disadvantaged white candidates received admission through the special program.

Allan Bakke was a white male who applied to and was rejected from the regular admissions program in 1973 and 1974. During those same years, minority applicants with lower grade point averages, MCAT scores, and benchmark scores were admitted to the medical school under the special program.

After his second rejection, Bakke filed suit in the Superior Court of Yolo County, California. He sought to compel the University of California at Davis to admit him to the medical school. He also alleged that the special admissions program violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964 because it excluded him on the basis of race.

The university argued that their system of admission preferences served several important purposes. It helped counter the effects of discrimination in society. Since historically, minors were discriminated against in medical school admissions and in the medical profession, their special admission program could help reverse that. The university also said that the special program increased the number of physicians who practice in underserved communities. Finally, the

university reasoned that there are educational benefits to all students when the student body is ethnically and racially diverse.

The Superior Court of Yolo County, California found that the special admissions program did violate the federal and state constitutions, as well as Title VI, and was therefore illegal. The Court declared that race could not be taken into account when making admissions decisions. However the Court also ruled that Bakke should not be admitted to the medical school because he failed to show that he would have been admitted in the absence of the special admissions program.

The University of California appealed the case to the Supreme Court of California, which also declared the special admissions policy unconstitutional. Furthermore, the Supreme Court of California determined that Bakke should be admitted to the school because the University failed to demonstrate that Bakke would not have been admitted without the special admissions program.

The Regents of the University of California then appealed the case to the Supreme Court of the United States.

*Note: These were the racial classifications used by the University of California at Davis at the time.

Questions to Consider

1. Why might a college or university want to consider race as a factor in the admissions process? Do you think it is appropriate for a college or university to do so? Why or why not?

2. On what point did both the California Superior and California Supreme Courts agree in their Bakke rulings?

3. Do you agree with the lower courts' decisions? Why or why not?

Background Summary & Questions (••)

Beginning in the early 1970s, the medical school of the University of California at Davis used a two-part admissions program for the 100 students entering each year: a regular admissions program and a special admissions program. The purpose of the special program was to try to increase the number of minority and "disadvantaged" students in the class, so the 16 spots in the special admissions program were reserved for "qualified" minority and disadvantaged students.

Under the regular admissions program, if a candidate had an overall undergraduate grade point average below 2.5 on a scale of 4.0, the candidate was automatically rejected. Candidates who were not automatically rejected were evaluated using other criteria such as math and science grades, Medical College Admissions Test scores, letters of recommendation, and an interview.

On the application form, candidates could indicate that they wanted to be considered economically and/or educationally disadvantaged or members of a minority group. Applications of those who did so were sent to the special admissions program where a separate committee evaluated them. This committee was composed mainly of members of minority groups. The applicants in the special admissions program did not have to meet the same standards as the regular candidates, including the 2.5 grade point average cut off.

From 1971 to 1974 the special program resulted in the admission of 21 black students, 30 Mexican Americans, and 12 Asians, for a total of 63 minority students.* During the same period, the regular admissions program admitted 1 black student, 6 Mexican Americans, and 37 Asians, for a total of 44 minority students. No disadvantaged white candidates received admission through the special program.

Allan Bakke was a white male who applied to and was rejected from the regular admissions program in 1973 and 1974. During those years, applicants with lower scores were admitted under the special program. After his second rejection, Bakke filed suit in the Superior Court of Yolo County, California. He claimed that the special admissions program violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964 because it excluded him on the basis of race. He wanted the Court to force the University of California at Davis to admit him to the medical school.

The university argued that their system of admission preferences served several important purposes. It helped counter the effects of discrimination in society. Since historically, minors were discriminated against in medical school admissions and in the medical profession, their special admission program could help reverse that. The university also said that the special program increased the number of physicians who practice in underserved communities. Finally, the university reasoned that there are educational benefits to all students when the student body is ethnically and racially diverse.

The Superior Court of Yolo County, California and the Supreme Court of California both found that the special admissions program violated the federal and state constitutions, as well as Title VI, and was therefore illegal. The Superior Court declared that race could not be taken into account when making admissions decisions but also ruled that Bakke should not be admitted to the medical school because he failed to show that he would have been admitted even without the special

admissions program. The Supreme Court of California, however, determined that Bakke should be admitted to the school.

The Regents of the University of California then appealed the case to the Supreme Court of the United States.

*Note: These were the racial classifications used by the University of California at Davis at the time.

Questions to Consider

1. Why would a college or university want to consider race as a factor in the admissions process? Do you think it is appropriate for a college or university to do so? Why or why not?

2. Both the California Superior and California Supreme Courts agreed on what two facts in their Bakke rulings?

3. Do you agree with the lower courts' decisions? Why or why not?

Background Summary & Questions (•)

In the early 1970s, the medical school of the University of California at Davis admitted 100 students each year. The university used two admissions programs: a regular admissions program and a special ***admissions*** program. The purpose of the special admissions program was to increase the number of minority and "disadvantaged" students in the class. ***Applicants*** who were members of a minority group or who believed that they were disadvantaged could apply for the special admissions program.

In the regular admissions program, applicants had to have a grade point average of at least 2.5 on a scale of 4.0 or they were automatically rejected. In the special admissions program, however, applicants did not have to have a grade point average of 2.5. Sixteen of the 100 spaces in the medical program were reserved only for the disadvantaged students. This is known as a ***quota*** system.

From 1971 to 1974 the special program admitted 21 black students, 30 Mexican Americans, and 12 Asians, for a total of 63 minority students.* The regular program admitted 1 black student, 6 Mexican Americans, and 37 Asians, for a total of 44 minority students. No disadvantaged white candidates were admitted through the special program.

Allan Bakke was a white male. He applied to and was rejected from the regular admissions program in 1973 and 1974. Minority applicants with lower scores than Bakke's were admitted under the special program.

After his second rejection, Bakke filed a lawsuit in the Superior Court of Yolo County, California. He wanted the Court to force the University of California at Davis to admit him to the medical school. He also claimed that the special admissions program ***violated*** the Fourteenth Amendment. The Fourteenth Amendment says, in part, "No State . . . shall deny to any person . . . the equal protection of the laws." Bakke said that the University, a state school, was treating him unequally because of his race. He thought that if he were a minority that he would have been admitted to the school.

The university argued that their system of admission preferences served several important purposes. It helped counter the effects of discrimination in society. Since historically, minors were discriminated against in medical school admissions and in the medical profession, their special admission program could help reverse that. The university also said that the special program increased the number of physicians who practice in underserved communities. Finally, the university reasoned that there are educational benefits to all students when the student body is ethnically and racially diverse.

The Superior Court of Yolo County, California agreed with Bakke. It said that the special admissions program violated the federal and state constitutions and was therefore illegal. The Court said that a person's race could not be considered when the University decides whom to admit.

The University of California and Bakke both ***appealed*** the case to the Supreme Court of California. This court also declared the special admissions policy ***unconstitutional*** and said that Bakke had to be admitted to the medical school. The Regents of the University of California then appealed the case to the Supreme Court of the United States.

*Note: These were the racial classifications used by the University of California at Davis at the time.

Questions to Consider

1. Why would a college or university consider race when deciding whom to admit?

2. Why would some people say it is unfair for a college or university to consider race when deciding whom to admit?

3. Do you think colleges and universities should consider race when deciding whom to admit? Why or why not?

4. What did the Superior Court of Yolo County, California and the Supreme Court of California say about choosing applicants based on race?

Important Vocabulary (•••/••)

- **admitted, admissions (to admit)**
  Define:

  Use in a sentence:

- **applicant(s)**
  Define:

  Use in a sentence:

- quota
  Define:

  Use in a sentence:

- **violated (to violate)**
  Define:

  Use in a sentence:

- **appealed (to appeal)**
  Define:

  Use in a sentence:

- **unconstitutional**
  Define:

  Use in a sentence:

Important Vocabulary (•)

As you read the background summary of the Bakke case, look for the important vocabulary words that are italicized. When you come to one of those terms, look at this page for its definition. Then, check to see if you understand the definition by either sketching a picture of what you think it means, or by putting it in your own words. Feel free to add terms from the reading that you would like to practice.

- **admitted, admissions (to admit)**

  Definition: To permit to attend or participate; process by which the people who will be allowed to attend are selected

  Express this term in your own words or in a drawing:

- **applicant(s)**

  Definition: One who seeks a particular opportunity, in this case admission to a school

  Express this term in your own words or in a drawing:

- **quota**

  Definition: A number or percentage, especially of people, constituting a required or targeted minimum

  Express this term in your own words or in a drawing:

- **violated (to violate)**

  Definition: To break or disregard (a law or promise, for example)

  Express this term in your own words or in a drawing:

- **appealed (to appeal)**

  Definition: To formally request that a lower court decision be examined and reconsidered by a higher court

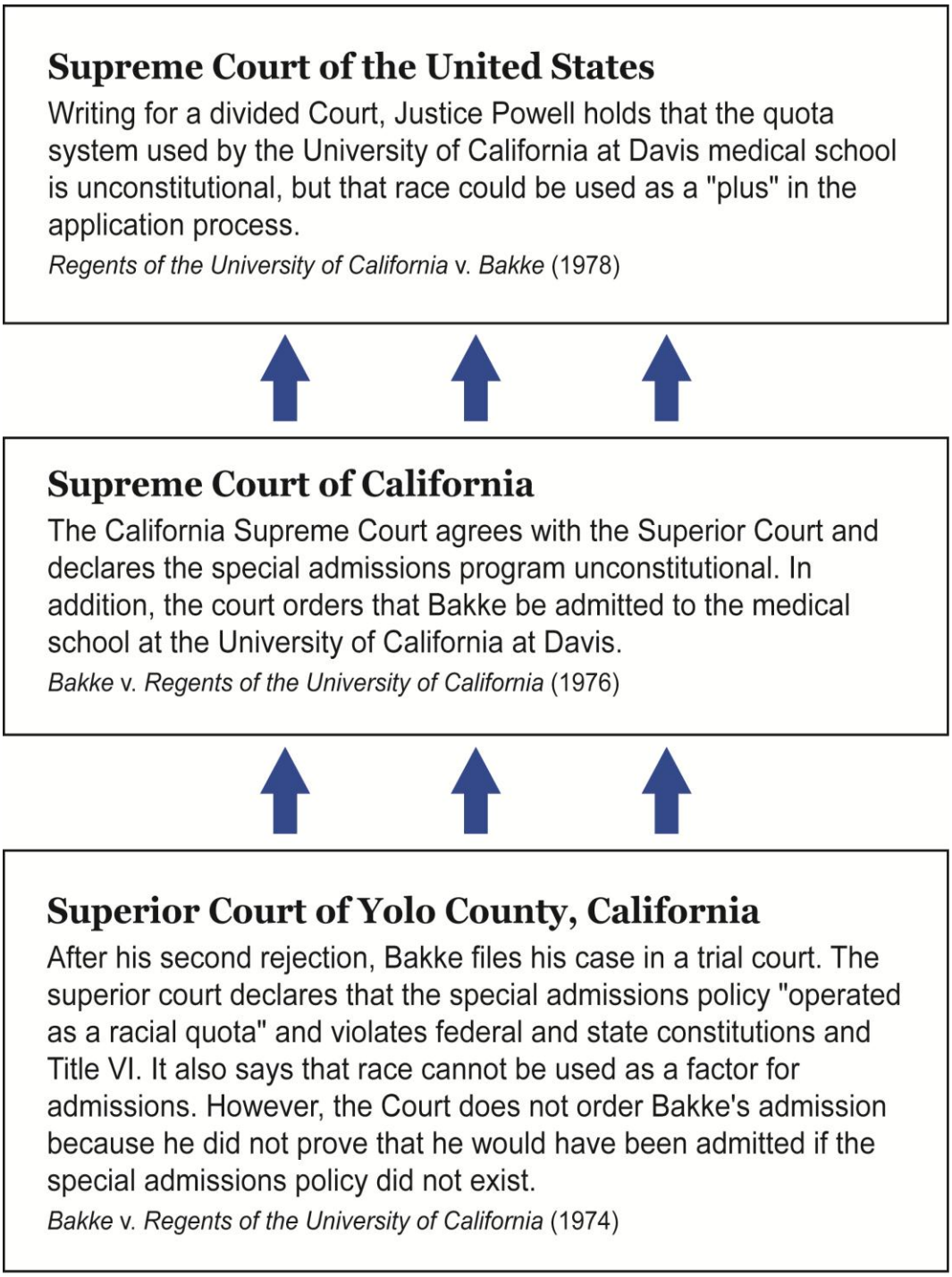
  Express this term in your own words or in a drawing:

- **unconstitutional**

  Definition: Not in agreement with the principles set forth in the constitution of a nation or state

  Express this term in your own words or in a drawing:

How the Case Moved Through the Court System



ACTIVITIES

Regents of the U. of California v. Bakke (1978)

You Decide: Who Should Be Admitted?

Directions

- You are a member of the admissions committee at a prestigious college. Examine the credentials for each of the candidates below and rank the candidates from 1 to 8, with one being the candidate you are most likely to admit.
- Organize into groups of three or five students; these are the other members of your admissions committee. Work with them to determine which THREE candidates you will admit. Circle your choices.
- Share your selections with the other groups in your class.

Candidate A

White Female, 4.0 G.P.A., 1560 S.A.T. scores

- Captain of the swim team
- Competes in horseback riding at local club

Candidate B

African American Female, 3.7 G.P.A., 1380 S.A.T. scores

- Captain of her school's cheerleading squad
- All-state in Forensics (public speaking group)
- Takes dance lessons and performs in recitals
- Tutors elementary school children for one hour each Saturday

Candidate C

African Male, 3.4 G.P.A., 1150 S.A.T. scores

- Runs track; his relay team placed second in the state last year
- Member of Students for Global Responsibility, an organization that works for a better environment by recycling, cleaning up streams, and performing other service projects

- Moved to United States three years ago from a war-torn country where his education was interrupted; his father and brothers were killed in that war
- Volunteers in a neighborhood literacy program after school and during the summer

Candidate D

Latina Female, 3.5 G.P.A., 1200 S.A.T. scores

- President of her school's Hispanic Club
- Sings in her school and church choir
- Has lived in the United States for 5 years
- English is her second language; her family speaks Spanish at home
- Works 20 hours per week at her parents store and cares for her younger siblings

Candidate E

Asian Male, 3.8 G.P.A., 1350 S.A.T. scores

- Editor of his school's newspaper
- Member of the football team
- Treasurer of the Vietnamese club
- Has been in the United states for 8 years; English is his second language
- Coaches a neighborhood Little League baseball team

Candidate F

White Male, 3.8 G.P.A., 1400 S.A.T. scores

- Class president of his senior class
- Member of Students Against Drunk Driving
- Member of his school band

- Captain of his school's debate team
- Helps care for his younger brother, who is severely mentally and emotionally disabled

Candidate G

White Male, 3.5 G.P.A., 1200 S.A.T. scores

- All-State Wrestler
- Captain of his school's soccer team
- His father and grandfather both graduated from the university
- His family donates $10,000 a year to the university

Candidate H

White Female, 3.7 G.P.A., 1380 S.A.T. scores

- President of her school's Student Government Association
- Plays three varsity sports; captain of one
- Volunteer tutor for disabled students at lunch and after school
- Active in her church's youth group
- Prom Queen
- Her mother died of cancer when she was 14

Questions to Consider

1. Which candidates did you choose? Did the other groups choose the same candidates as you or different ones?

2. What factors did you consider in making your selections? How did you determine which factors should weigh more heavily?

3. Was the selection process a difficult or easy one? Explain.

4. Which factors should admissions officers at colleges and universities consider in making their decisions? Should race play a role in their decisions? Why or why not?

5. Now assume that you have been told that approximately one-third of the available spaces should go to "under-represented minorities" (African Americans and Hispanics). Put a star next to the candidates that you would choose.

6. What does it mean to "set aside" a set number of places for members of certain minority groups? What does it mean to give "preferential treatment" to members of certain minority groups? Do you think that colleges or universities should engage in either of these practices? Explain your answers.

7. Do you have any suggestions that might help colleges and universities form a diverse student body while ensuring that the process is fair to everyone?

Classifying Arguments in the Case

Directions

The following is a list of arguments from the *University of California* v. *Bakke* court case. Read through each argument and decide which side it supports. Write your answer in the space provided.

- (UC) - the argument supports the University of California's side
- (AB) - the argument supports Bakke's side
- (B) - the argument supports both sides
- (N) - the argument supports neither side

_____ The Equal Protection Clause of the Fourteenth Amendment of the Constitution states: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

_____ The Fourteenth Amendment does not allow a state to impose distinctions based upon race. The belief that some forms of discrimination based on race might be "benign" is irrelevant to the demands of the Fourteenth Amendment.

_____ The Fourteenth Amendment states that people should be treated equally; it does not state that people should be treated the same. Treating people equally means giving them what they need.

_____ "In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot—we dare not—let the Equal Protection Clause perpetuate racial supremacy."

_____ The special admissions program at the University of California at Davis medical school did not consider only those of minority races, but (in 1973) also considered white students who had been educationally and/or economically disadvantaged.

_____ The Fourteenth Amendment gives the right to equal protection to individuals, not groups.

_____ "Benign" discrimination based on race is only valid where an individual can point to specific acts of discrimination that have disadvantaged that person.

_____ Benefits provided to individuals because of alleged group discrimination are not valid under the Fourteenth Amendment.

_____ "It is unnecessary in twentieth-century America to have individual Negroes demonstrate that they have been victims of racial discrimination; the racism of our society has been so pervasive that none, regardless of wealth or position, has managed to escape its impact."

_____ Some candidates admitted in the special admissions program at the University of California at Davis had lower GPAs than those who were rejected in the regular admissions program.

_____ Though there were white applicants who asked to be considered disadvantaged, none were actually admitted through the special admissions program.

_____ Three times as many Asians were admitted through the regular admissions program as were admitted in the special admissions program.

Predict the Supreme Court's decision in Regents of the University of California v. Bakke. Write your prediction in paragraph form. Be sure to explain the facts supporting your prediction.

A Comparison of the University of California at Davis' Admissions System to That of Harvard

Directions

At the time the Supreme Court of the United States found UC-Davis's medical school admission process unconstitutional, Harvard College's admission process was congratulated for ensuring diversity in a nondiscriminatory manner.

Read the excerpt of Harvard's admission policy and then complete the Venn Diagram on the following page.

Excerpts from the Harvard College Admissions Program

For the past 30 years Harvard College has received each year applications for admission that greatly exceed the number of places in the freshman class. The number of applications who are deemed to be not "qualified" is comparatively small. The vast majority of applicants demonstrate through test scores, high school records and teachers' recommendations that they have the academic ability to do adequate work at Harvard. . . . Faced with the dilemma of choosing among a large number of "qualified" candidates, the Committee on Admissions could use the single criterion of scholarly excellence and attempt to determine who among the candidates were likely to perform best academically. But for the past 30 years, the Committee on Admission has not adopted this approach. The belief has been that if scholarly excellence were the sole or even predominant criterion, Harvard College would lose a great deal of its vitality and intellectual excellence and that the quality of the educational experience offered to all students would suffer. . . . Consequently, after selecting those students whose intellectual potential will seem extraordinary to the faculty—perhaps 150 or so out of an entering class of over 1,100—the Committee seeks—variety in making its choices. . . . The effectiveness of our students' educational experience has seemed to the Committee to be affected as importantly by a wide variety of interests, talents, backgrounds and career goals as it is by a fine faculty and our libraries, laboratories and housing arrangements. . . .

The belief that diversity adds an essential ingredient to the educational process has long been a tenet of Harvard College admissions. Fifteen or twenty years ago, however, diversity meant students from California, New York, and Massachusetts; city dwellers and farm boys; violinists, painters and football players; biologists, historians and classicists; potential stockbrokers, academics and politicians. The result was that very few ethnic or racial minorities attended Harvard College. In recent years Harvard College has expanded the concept of diversity to include students from disadvantaged economic, racial and ethnic groups. Harvard College now recruits not only Californians or Louisianans but also blacks and Chicanos and other minority students. Contemporary conditions in the United States mean that if Harvard College is to continue to offer a first- rate education to its students, minority representation in the undergraduate body cannot be ignored by the Committee on Admissions.

In practice, this new definition of diversity has meant that race has been a factor in some admission decisions. When the Committee on Admissions reviews the large middle group of applicants who

are "admissible" and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases. A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer. The quality of the educational experience of all the students in Harvard College depends in part on these differences in the background and outlook that students bring with them.

In Harvard College admissions the Committee has not set target-quotas for the number of blacks, or of musicians, football players, physicists or Californians to be admitted in a given year. At the same time the Committee is aware that if Harvard College is to provide a truly heterogen[e]ous environment that reflects the rich diversity of the United States, it cannot be provided without some attention to numbers. It would not make sense, for example, to have 10 or 20 students out of 1,100 whose homes are west of the Mississippi. Comparably, 10 or 20 black students could not begin to bring to their classmates and to each other the variety of points of view, backgrounds and experiences of blacks in the United States. Their small numbers might also create a sense of isolation among the black students themselves and thus make it more difficult for them to develop and achieve their potential. Consequently, when making its decisions, the Committee on Admissions is aware that there is some relationship between numbers and achieving the benefits to be derived from a diverse student body, and between numbers and providing a reasonable environment for those students admitted. But that awareness does not mean that the Committee sets a minimum number of blacks or of people from west of the Mississippi who are to be admitted. It means only that in choosing among thousands of applicants who are not only "admissible" academically but have other strong qualities, the Committee, with a number of criteria in mind, pays some attention to distribution among many types and categories of students.

Understanding the Decision

Read the summary of the Court's decision in this case. As you read it, complete the following steps:

1. Underline the sentences that explain the reasons the Supreme Court ruled against the university and for Baake.
2. Circle the standard the Court applied when deciding whether race could be used as part of the university's admission process.
3. Put a star next to justifications (or purposes) the university gave for treating minority and disadvantaged students differently in the admissions process.
4. Fill in the blanks of these sentences:
    - In the 1978 Baake case, the Supreme Court ruled that a university _____ (can / cannot) consider race in its admissions process.
    - However, a system that uses _____ to reserve a certain number of spots for applicants who are from racial or ethnic minority groups is _____.
5. Write a paragraph to explain whether you agree or disagree with the Court's decision. Be sure to write about the reasons you agree or disagree.

Summary of the Decision

Five members of the Court voted to require the University of California at Davis to admit Bakke to its medical school. Justice Powell wrote an opinion in two parts, each of which received the votes of four other justices. The Court determined that any racial quota system in a state supported university violated both the Civil Rights Act of 1964 and the Equal Protection clause of the Fourteenth Amendment. Justices Burger, Stewart, Rehnquist and Stevens joined this part of Powell's opinion. The Court also ruled that the benign use of race as one of several criteria in admissions decisions did not violate either the Civil Rights Act or the Fourteenth Amendment. Justices Brennan, Marshall, Blackmun and White joined this part of Powell's opinion.

In the first part of the opinion, Justice Powell reasoned that admissions programs that rely on a quota system, in which a specified percentage of spaces in the class is reserved for a particular racial or ethnic group, were always unconstitutional, regardless of the justifications offered for them. Because a certain number of seats were reserved for applicants of a particular racial group, applicants not within that racial group could not compete for those seats, no matter how qualified they were. Justice Powell declared that "preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids." The specific admissions system used by UC Davis was determined to be unconstitutional because it used racial quotas.

Justice Powell further concluded that even though admissions systems relying solely on racial quotas violate the Constitution, the Constitution does not prohibit any consideration of race in admissions decisions. He acknowledged that a state may have legitimate interests in considering the race of an applicant during the admissions process. These interests included increasing the racial diversity of the student body to increase the proportion of minorities in medical schools and in medical professions, to "counter the effects of societal discrimination," to "increase the number of physicians who will practice in communities currently underserved," and to "obtain the educational benefits that flow from an ethnically diverse student body."

In order to use race as an element in making admissions decisions, a state university must be able to justify the use under the standard of strict scrutiny. This means that admissions programs that consider race must be narrowly tailored to advance a compelling government interest in order to be constitutional.

The Court found that UC Davis's admissions policy was not narrowly tailored to a compelling government interest. Basing admissions decisions solely on race, as in UC Davis's quota system, was not an effective way of furthering their interest in a diverse student body. The majority opinion said "the diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single … element." Other elements include "exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, [and] a history of overcoming disadvantage," among others. Race can only be considered a "plus factor" in a particular applicant's file, along with these other factors. Only then would an admissions program be deemed narrowly tailored to the compelling state interest of achieving diversity in the admitted class.

Because UC Davis's admissions program relied solely on racial quotas, a majority of the Court ruled that it violated both the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. A majority of the Court also agreed, however, that race could be considered in admissions decisions, but only as a "plus factor" among other factors, rather than as the determinative element. The Court thus ruled that Bakke must be admitted to medical school at UC Davis.

The Court Revisits Bakke 25 Years Later: The Michigan Affirmative Action Cases

Directions

1. Read the synopsis of Gratz v. Bollinger and Grutter v. Bollinger.
1. Complete the first part of the graphic organizer.
2. With your class, review the decision in Regents of the University of California v. Bakke. Based on that information, make a prediction about the Court's decision in Gratz and Grutter. How did you arrive at that prediction? Share your prediction and your rationale with a partner.
3. Read the outcome in The Two Cases Decided and record that information on the graphic organizer.

Graphic Organizer

	Gratz v. Bollinger	**Grutter v. Bollinger**
Basic Facts about the applicant		
Level (undergraduate or graduate)		
Summary of Selection Process		
Constitutional Question		
Your prediction: is it Constitutional?		
Actual Outcome		

Synopses: Gratz v. Bollinger and Grutter v. Bollinger

Gratz v. Bollinger

Jennifer Gratz, a white resident of Michigan, applied to the University of Michigan as a high school senior in 1995. Her standardized test score (25) on the ACT placed her in the top quarter of applicants, and she had a GPA of 3.8. In addition, Gratz participated in student council and various other extra-curricular activities. Nevertheless, the university denied Gratz admission. The University of Michigan's admissions guidelines in effect in 1995 called for the acceptance of all underrepresented minority applicants with academic credentials similar to Gratz's. Both parties agree that Gratz would have been admitted to the university had she been a minority applicant.

From 1995 through 1997 the university admissions officers used guideline tables or grids that reflected a combination of the applicant's adjusted high school GPA and ACT or SAT score. To promote diversity, the university utilized different grids and admissions criteria for applicants who were members of preferred minority groups as compared to other candidates. Michigan also set aside a prescribed number of seats in the entering class for minorities in order to meet its numerical target.

In 1998, the university dropped its admissions grid system and replaced it with a 150-point"selection index." Admissions officers assign applicants points based on various factors, including test scores, "legacy" status, geographic origin, athletic ability, socioeconomic level, and race/ethnicity. The more points an applicant accumulates, the higher the chance of admission. Applicants from "underrepresented" racial and ethnic groups (African Americans, Latinos, and Native Americans) are assigned 20 points. Scholarship athletes and students who are economically disadvantaged also receive an automatic 20-point bonus. Geographic origin could earn 6 points, the child of an alumnus 4 points, and an "outstanding" admissions essay 3 points.

Gratz, and another unsuccessful white applicant, Patrick Hamacher, brought suit challenging the legality of the University of Michigan's admission's policy. The federal district court ruled that the school's undergraduate admissions policy in place before 1999, which maintained a set-aside for minorities, violated the Fourteenth Amendment, but the court upheld the current system, which does not use quotas and utilizes race as a "plus."

Grutter v. Bollinger

In 1997, Barbara Grutter, a resident of Michigan, applied for admission to the University of Michigan law school. Grutter, who is white, had a 3.8 undergraduate GPA and scored 161 on the LSAT. She was denied admission and subsequently filed suit, claiming that her rights to equal protection under the Fourteenth Amendment had been violated.

At the time, the law school had an admissions policy that used race as a factor in the admissions process. In selecting students, the law school considered the applicant's academic ability, including undergraduate GPA, LSAT scores, the applicant's personal statement, and letters of recommendation. The school also considered factors such as the applicant's experience, the quality of the undergraduate institution he/she had attended, and the degree to which the applicant would

contribute to law school life and the diversity of the community. The admissions policy did not define the types of diversity that would receive special consideration, but did make reference to the inclusion of African-American, Hispanic, and Native-American students, who might otherwise be under-represented.

The school thought this policy complied with Bakke, on the grounds that it served a "compelling interest in achieving diversity among its student body." The District Court ruled that the goal of achieving a diverse student body was not a compelling one. In reversing this decision, the Court of Appeals said that Justice Powell's opinion in Regents of the University of California v. Bakke, constituted a binding precedent establishing diversity as a compelling governmental interest sufficient under strict scrutiny review to justify the use of racial preferences in admissions. Furthermore, the attempt to enroll a "critical mass" of minorities was not comparable to a quota system.

The Two Cases Decided

Because the issues of diversity and affirmative action in higher education are so important and because federal courts of appeal had issued conflicting decisions, the Supreme Court granted certiorari and agreed to hear both Michigan cases in 2003. In analyzing both cases, a majority of the justices agreed that racial discrimination was involved and that the Court had to apply strict judicial scrutiny. This meant that the state had to show a compelling state interest in support of the use of race and that race could only be used to further that interest if it did not unduly burden disfavored groups. For example, a race-conscious admission program cannot use a quota system which sets aside a certain number of places in the entering class for members of selected minority groups, although race or ethnicity could be considered a "plus" in a particular applicant's file.

A majority of the justices agreed that student body diversity is a compelling state interest that can justify using race in university admissions. In a 5-to-4 opinion, the Court found that Michigan's law school admission policy did not violate Barbara Grutter's rights. Having a critical mass (essential number) of students from underrepresented groups can enrich classroom discussion, produce cross-racial understanding, and break down racial stereotypes.

Rather than emphasizing diversity as justified by past or present discrimination, the Court's opinion in the law school case looked to the future and related diversity to the challenges the nation faces: ".because universities, and in particular, law schools, represent the training ground for a large number of the Nation's leaders, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity." The Court also noted that "the Law School engaged in highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment."

Four justices dissented in the law school case, believing that the "critical mass" notion was simply a disguise for an illegal quota. To the dissenters, the Constitution's prohibition against racial discrimination protects whites as well as minorities. They also believed there were nondiscriminatory ways to achieve diversity.

In contrast, Michigan's undergraduate admissions policy was found unconstitutional by a vote of 6 to 3. The majority objected to the program's failure to consider applicants on an individual basis as required by the Court's decision in the Bakke case. While the undergraduate admissions program could use race-conscious affirmative action, it had to be in a form that was individualized and not mechanical.

The dissenters in the undergraduate case would have allowed the use of automatic points to achieve diversity because it was an honest, open approach to the role race plays in the admissions process.

Drawing Mixed Reactions: Political Cartoons in Response to the Michigan Affirmative Action Cases

Analyze the cartoon below in terms of its meaning related to the Michigan affirmative action cases, Grutter v. Bollinger and Gratz v. Bollinger.

1. What do you see in the cartoon? Make a list. Include objects, people, and any characteristics that seem to be exaggerated.

1. Which of the items on the list from Question 1 are symbols? What does each symbol stand for?

2. What is happening in the cartoon?

3. What is the cartoonist's message?

4. Do you agree or disagree with the message? Explain your answer.

Cartoon 1

"Bush Turns Back Clock," Mike Keefe, The Denver Post, January 26, 2003.

Cartoon 2

– "Bush and Michigan Affirmative Action," Mike Lane, Cagle Cartoons, January 16, 2003.

Cartoon 3

"You Must Be This Tall," Mike Lester, The Rome News-Tribune, June 24, 2003.

Cartoon 4

"Supremes on Affirmative Action," Mike Keefe, The Denver Post, June 24, 2003.

All of these cartoons are used with permission from www.caglecartoons.com.

DECISION

Regents of the U. of California v. Bakke (1978)

Key Excerpts from the Opinion

Directions

Read the following excerpt from the Supreme Court's opinion in Bakke. As you read, complete the following steps:

1. Underline the three problems the Supreme Court of the United States identifies with UC's medical school admissions preferences.
2. Circle the two standards the Court says preferences must meet to be constitutional.
3. Draw a star next to each of the four purposes the regents of UC—Davis say their preference system serves. Put a plus "+" sign next to each of those purposes that you think is justifiable and a minus "-" sign next to each of the purposes that you do not think is justifiable.
4. Summarize the Court's decision in one sentence.

(Writing for a divided Court, Justice Powell rendered a judgment. Four justices agreed with part of it and another four justices agreed with another part of his opinion. The lack of consensus among the justices has kept the Bakke case from having the impact on American law that it might have had otherwise. The issue is still a controversial one.)

Justice Powell delivered the opinion of the Court.

. . . The special admissions program is undeniably a classification based on race and ethnic background.

The guarantees of the Fourteenth Amendment extend to all persons. Its language is explicit: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." . . . The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal.

....Petitioner urges us to adopt . . . more restrictive view of the Equal Protection Clause and hold that discrimination against members of the white "majority" cannot be suspect if its purpose can be characterized as "benign."

. . . [T]here are serious problems of justice connected with the idea of preference. . . . First, it may not always be clear that a so-called preference is in fact benign. Courts may be asked to validate burdens imposed upon individual members of a particular group in order to advance the group's

general interest. . . . Nothing in the Constitution supports the notion that individuals may be asked to suffer otherwise impermissible burdens in order to enhance the societal standing of their ethnic groups. Second, preferential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth. . . . Third, there is a measure of inequity in forcing innocent persons in respondent's position to bear the burdens of redressing grievances not of their making.

We have held that in "order to justify the use of a suspect classification [i.e. in order to discriminate on the basis of race], a State must show that its purpose . . . is both constitutionally permissible and substantial, and that its use of the classification is 'necessary . . . to the accomplishment' of its purpose. . . . The special admissions program purports to serve the purposes of: (i) "reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession," . . . (ii) countering the effects of societal discrimination; (iii) increasing the number of physicians who will practice in communities currently underserved; and (iv) obtaining the educational benefits that flow from an ethnically diverse student body. It is necessary to decide which, if any, of these purposes is substantial enough to support the use of a suspect classification.

If petitioner's purpose is to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose must be rejected not as insubstantial but as facially invalid. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids.

Petitioner identifies, as another purpose of its program, improving the delivery of health-care services to communities currently underserved. It may be assumed that in some situations a State's interest in facilitating the health care of its citizens is sufficiently compelling to support the use of a suspect classification. But there is virtually no evidence in the record indicating that petitioner's special admissions program is either needed or geared to promote that goal.

The fourth goal asserted by petitioner is the attainment of a diverse student body. This clearly is a constitutionally permissible goal for an institution of higher education. . . . The freedom of a university to make its own judgments as to education includes the selection of its student body. . . .

It may be assumed that the reservation of a specified number of seats in each class for individuals from the preferred ethnic groups would contribute to the attainment of considerable ethnic diversity in the student body. But petitioner's argument that this is the only effective means of serving the interest of diversity is seriously flawed. . . . The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. Petitioner's special admissions program, focused solely on ethnic diversity, would hinder rather than further attainment of genuine diversity.

. . . [R]ace or ethnic background may be deemed a "plus" in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats. The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive when compared, for example, with that of an applicant identified as an Italian-American if the latter is thought to exhibit qualities more likely to promote beneficial educational pluralism. Such qualities could include exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, a history of

overcoming disadvantage, ability to communicate with the poor, or other qualifications deemed important.

In summary, it is evident that the Davis special admissions program involves the use of an explicit racial classification never before countenanced by this Court. It tells applicants who are not Negro, Asian, or Chicano that they are totally excluded from a specific percentage of the seats in an entering class. No matter how strong their qualifications, quantitative and extracurricular, including their own potential for contribution to educational diversity, they are never afforded the chance to compete with applicants from the preferred groups for the special admissions seats. At the same time, the preferred applicants have the opportunity to compete for every seat in the class.

With respect to respondent's entitlement to an injunction directing his admission to the Medical School, petitioner has conceded that it could not carry its burden of proving that, but for the existence of its unlawful special admissions program, respondent still would not have been admitted. Hence, respondent is entitled to the injunction, and that portion of the judgment must be affirmed.

Summary of the Decision

Five members of the Court voted to require the University of California at Davis to admit Bakke to its medical school. Justice Powell wrote an opinion in two parts, each of which received the votes of four other justices. The Court determined that any racial quota system in a state supported university violated both the Civil Rights Act of 1964 and the Equal Protection clause of the Fourteenth Amendment. Justices Burger, Stewart, Rehnquist and Stevens joined this part of Powell's opinion. The Court also ruled that the benign use of race as one of several criteria in admissions decisions did not violate either the Civil Rights Act or the Fourteenth Amendment. Justices Brennan, Marshall, Blackmun and White joined this part of Powell's opinion.

In the first part of the opinion, Justice Powell reasoned that admissions programs that rely on a quota system, in which a specified percentage of spaces in the class is reserved for a particular racial or ethnic group, were always unconstitutional, regardless of the justifications offered for them. Because a certain number of seats were reserved for applicants of a particular racial group, applicants not within that racial group could not compete for those seats, no matter how qualified they were. Justice Powell declared that "preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids." The specific admissions system used by UC Davis was determined to be unconstitutional because it used racial quotas.

Justice Powell further concluded that even though admissions systems relying solely on racial quotas violate the Constitution, the Constitution does not prohibit any consideration of race in admissions decisions. He acknowledged that a state may have legitimate interests in considering the race of an applicant during the admissions process. These interests included increasing the racial diversity of the student body to increase the proportion of minorities in medical schools and in medical professions, to "counter the effects of societal discrimination," to "increase the number of physicians who will practice in communities currently underserved," and to "obtain the educational benefits that flow from an ethnically diverse student body."

In order to use race as an element in making admissions decisions, a state university must be able to justify the use under the standard of strict scrutiny. This means that admissions programs that consider race must be narrowly tailored to advance a compelling government interest in order to be constitutional.

The Court found that UC Davis's admissions policy was not narrowly tailored to a compelling government interest. Basing admissions decisions solely on race, as in UC Davis's quota system, was not an effective way of furthering their interest in a diverse student body. The majority opinion said "the diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single … element." Other elements include "exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, [and] a history of overcoming disadvantage," among others. Race can only be considered a "plus factor" in a particular applicant's file, along with these other factors. Only then would an admissions program be deemed narrowly tailored to the compelling state interest of achieving diversity in the admitted class.

Because UC Davis's admissions program relied solely on racial quotas, a majority of the Court ruled that it violated both the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. A majority of the Court also agreed, however, that race could be considered in admissions decisions, but only as a "plus factor" among other factors, rather than as the determinative element. The Court thus ruled that Bakke must be admitted to medical school at UC Davis.