



REGENTS OF THE UNIVERSITY OF CALIFORNIA
V. BAKKE 438 U. S. 265 (1978)

**Landmark Case Presentation by
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LS 740 Public School Law ~ Dr. Thomas Hisiro ~ Summer 2013

Historical Context

Brown v. Board of Education 1952

- Court ruled that separate but equal was inherently unequal in the context of public education.
- A racial separation was abolished.



Affirmative Action

- Mandatory and voluntary programs intended to *affirm* the civil rights of designated classes of individuals by taking *positive action* to protect them from discrimination.
- The government increased minority hiring opportunities and colleges took the same approach to diversity in the student body.

Civil Rights Act of 1964

- Effort to end racial discrimination in employment, education and other spheres of life including equal voting rights previously biased against minorities and the disadvantaged.

Related Cases

Grutter v. Bollinger (2002)

Barbara Grutter sued the University of Michigan Law School stating that her Equal Protection rights were violated when she was denied admission.

In a 5 to 4 vote, the court ruled...“In the context of its individualized inquiry into the possible diversity contributions of all applicants, the Law School's race- conscious admissions program does not unduly harm nonminority applicants.”
Ms. Grutter’s equal protection rights were not violated nor was there a violation of Title VI of the Civil Rights Act of 1964.

Related Cases (cont'd.)

Gratz v. Bollinger (2002)

As a result of the Grutter decision, it was found that University of Michigan utilized narrowly tailored policies for admissions decisions at that time; however, the same practices were not utilized from 1995 to 1997 when Ms. Gratz applied for admission and was denied.

In a 6 to 3 vote, the court ruled that UM's racial admissions preferences violated Ms. Gratz's equal protection rights and violated Title VI of the Civil Rights Act of 1964.

Related Cases (cont'd.)

Fisher v. University of Texas (2010)

In 1997, the Texas legislature required the University of Texas to admit all high school seniors ranked in the top 10% of their graduating class. As a result, they implemented a policy to consider race for admission for the remainder of the freshman class. Ms. Fisher, a white female who was not in the top 10% of her graduating class, was denied admission in 2008.

In a 7 to 1 decision vote in favor of Ms. Fisher, the court ruled that race could be considered but only under strict judicial scrutiny to serve a compelling interest. The court held that the lower courts did not uphold the strict scrutiny provision.

This is a direct consideration of the Bakke decision.

Future Implications

▣ California's Proposition 209 (1996)

- “The state shall not discriminate against, or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”

▣ Affirmative Action

- According to Selmi (1999), very little has changed since the Bakke decision noting that “nary a new argument has been advanced in the last twenty years” (p. 1).
- The case reflected the court’s “willingness to compromise on matters involving affirmative action” (p. 1).

University of California Davis School of Medicine

University of California Diversity Statement

“Diversity – a defining feature of California’s past, present and future – refers to the variety of personal experiences, values and world views that arise from differences of culture and circumstance. Such differences include race, ethnicity, gender, age, religion, language, abilities/disabilities, sexual orientation, socioeconomic status and geographic region, and more.”



Implications at Marshall University

LCME Letter to President Kopp (June 15, 2011)

- “After reviewing the report of the full survey team, the LCME voted to place the educational program leading to the M.D. degree at the Joan c. Edwards School of Medicine at Marshall University on probation.”

WV Gazette: Marshall med school expands diversity program after probation (October 5, 2011)

- “The Liaison Committee on Medical Education (LCME), the agency that accredits every medical school in the United States and Canada, recommended in June that Marshall's medical school be put on probation for not recruiting a demographically diverse student body and faculty, for not providing students adequate financial help, and for its curriculum design. “

Marshall University Joan C. Edwards School of Medicine Diversity Statement



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The Joan C. Edwards School of Medicine at Marshall University holds diversity as a core value of its educational, research, service and health care missions. We promote an inclusive academic health care community because *we believe that a diverse population offers a rich environment that leads to greater knowledge, understanding, acceptance and mutual respect. We will continue to promote an inclusive environment by attracting, recruiting and retaining individuals who represent varying backgrounds and perspectives which include, but are not limited to:*

- Individuals from rural backgrounds
- Individuals historically underrepresented in medicine
 - African American/Black
 - American Indian
 - Latino/Hispanic
 - Asian/Other Pacific Islander
- Women
- The Joan C. Edwards School of Medicine's diversity goals support the University culture in which diversity and academic excellence are seen as interdependent.

Cantrell & Stepp Opinions

- ▣ Reverse discrimination? Yes. Bakke was eliminated from consideration based solely on his race.
- ▣ Justice Powell was a wise man to find a compromise in the Bakke case. His decision to require admission for Bakke yet allow race to be considered in admission policy when considered with other factors maintained equilibrium among the races.
- ▣ The allowance of race consideration among other factors has resulted in more diverse student populations. Most educators believe that this improves education in general.
- ▣ Before applying to UC-Davis, Bakke was denied admission to other med schools who specifically cited his age. Why did he not file an age discrimination case?

References

- 14th Amendment Section 1. (n. d.). <http://www.law.cornell.edu/constitution/amendmentxiv>.
- Affirmative Action (n. d.). <http://legal-dictionary.thefreedictionary.com/affirmative+action>.
- Affirmative Action (n. d.). <http://www.merriam-webster.com/dictionary/affirmative%20action>
- Brown v. Board of Education (I). (n. d.) http://www.oyez.org/cases/1950-1959/1952/1952_1.
- California Proposition 209. (n. d.). <http://vote96.sos.ca.gov/bp/209analysis.htm>.
- Civil Rights Act of 1964 (n. d.). <http://legal-dictionary.thefreedictionary.com/Civil+Rights+Act+of+1964>.
- Fisher v. University of Texas. (n. d.). http://www.oyez.org/cases/2010-2019/2012/2012_11_345.
- Gratz v. Bollinger (n. d.). http://www.oyez.org/cases/2000-2009/2002/2002_02_516.
- Grutter v. Bollinger (n. d.). http://www.oyez.org/cases/2000-2009/2002/2002_02_241/.
- LCME Letter to President Kopp. (2011, June 15). http://musom.marshall.edu/lcme/documents/LCME_ProbationLetter.pdf.
- Harris, A. (2011, October 5). Marshall med school expands diversity program after probation. *West Virginia Gazette*. <http://www.wvgazette.com/News/201110051882>.

References (Cont'd.)

- Marshall University School of Medicine Diversity Statement (n. d.).
<http://musom.marshall.edu/diversity/>.
- Regents of the University of California v. Bakke (n. d.).
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=438&page=265>.
- Regents of the University of California v. Bakke (n. d.).
<http://constitution.laws.com/supreme-court-decisions/major-decisions-regents-of-u-of-california-v-bakke>.
- Regents of the University of California v. Bakke (n. d.).
<http://kids.laws.com/regents-of-the-univeristy-of-california-v-bakke>.
- Regents of the University of California v. Bakke (n. d.).
http://www.streetlaw.org/en/Page/620/Summary_of_the_Decision.
- Regents of the University of California v. Bakke (n. d.).
<http://supreme.justia.com/cases/federa/us/438/265/>.
- Regents of the University of California v. Bakke (n. d.).
http://www.oyez.org/cases/1970-1979/1977/1977_76_811.
- Selmi, M. (1999). The life of Bakke: An affirmative action retrospective. *Georgetown Law Journal*, 87(4), 981 – 1015.
- Title VI of the Civil Rights Act of 1964. (n. d.).
<http://www.justice.gov/crt/about/cor/coord/titlevi.php>.
- University of California Davis School of Medicine Diversity Statement (n. d.).
<http://www.ucdmc.ucdavis.edu/diversity/index.html>.

Image Sources

- Affirmative Action Protests. Middle Images on Slide 11: http://www.pbs.org/wgbh/amex/eyesontheprize/story/img_22_bakke_02.html.
- Affirmative Action Protests. Right Image on Slide 11: http://www.pbs.org/wgbh/amex/eyesontheprize/story/img_22_bakke_06.html.
- Bakke, Allan. Image on Slide 4: <http://www.s9.com/Biography/Bakke-Allan-Paul>.
- Bakke Graduation. Left Image on Slide 11: http://www.pbs.org/wgbh/amex/eyesontheprize/story/img_22_bakke_07.html.
- Brown v. Board of Education. Newspaper Image on Slide 2: <http://raisinsun9.wikispaces.com/Integration,+1954+Brown+Vs.+Board+of+Education>.
- Campbell, Shelvy. Image on Slide 17. <http://musom.marshall.edu/diversity/>.
- California Supreme Court. Image on Slide 7: <http://www.thetruthaboutcars.com/2009/07/california-supreme-court-admits-ignores-breathalyzer-flaws/>.
- University of California Davis School of Medicine. Image on Slide 3: <http://www.ucdmc.ucdavis.edu/welcome/tour/1.html>.
- University of California Davis School of Medicine Logo. Image on Slide 16: <http://www.ucdmc.ucdavis.edu/diversity/index.html>.
- U. S. News & World Report Best Grad Schools Logo. Image on Slide 16: <http://www.ucdmc.ucdavis.edu/diversity/index.html>.
- U. S. Supreme Court. Image on Title Slide: <http://lovell.com/economy/supreme-court-expert-discusses-affordable-care-act-decision/>.
- U. S. Supreme Court. Image on Slide 8 : <http://ffrf.org/faq/freethought/item/15139-did-you-know>.
- U. S. Supreme Court Justices. Images on Slides 9 and 10: http://www.oyez.org/cases/1970-1979/1977/1977_76_811.

Thank you.