Handout D: *Grutter v. Bollinger* (2003)–Opinions

***Grutter v. Bollinger*, 2003–Majority Opinion (5-4)**

[T]he Law School seeks to "enroll a critical mass of minority students." The Law School's interest is not simply "to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin." That would amount to outright racial balancing, which is patently unconstitutional…

The current Dean of the Law School … did not quantify "critical mass" in terms of numbers or percentages. He indicated that critical mass means numbers such that underrepresented minority students do not feel isolated or like spokespersons for their race…The Law School's concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce…

We find that the Law School's admissions program bears the hallmarks of a narrowly tailored plan… [T]ruly individualized consideration demands that race be used in a flexible, non-mechanical way. It follows from this mandate that universities cannot establish quotas for members of certain racial groups… Universities can, however, consider race or ethnicity more flexibly as a "plus" factor in the context of individualized consideration of each and every applicant…

When using race as a "plus" factor in university admissions, a university's admissions program must remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application…

Here, the Law School engages in a 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… There is no policy … of automatic acceptance or rejection based on any single "soft" variable. Unlike the program at issue in *Gratz v. Bollinger*, the Law School awards no mechanical, predetermined diversity "bonuses" based on race or ethnicity…

It has been 25 years since [the ruling in *Bakke*] first approved the use of race to further an interest in student body diversity in the context of public higher education… We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

1. **Why did the Court uphold the Law School's admissions program?**

***Grutter v. Bollinger* (2003)–Dissenting Opinion (William Rehnquist)**

The Law School has offered no explanation for its actual admissions practices and, unexplained, we are bound to conclude that the Law School has managed its admissions program, not to achieve a "critical mass," but to extend offers of admission to members of selected minority groups in proportion to their statistical representation in the applicant pool. But this is precisely the type of racial balancing that the Court itself calls "patently unconstitutional."

Note: The following charts are taken from Rehnquist's opinion.

	% of African American applicants	% of admitted applicants who were African American
1995	9.7%	9.4%
1996	9.3%	9.2%
1997	9.3%	8.3%
1998	8.6%	7.9%
1999	7.3%	7.1%
2000	7.5%	7.3%

	% of Hispanic applicants	% of admitted applicants who were Hispanic
1995	5.1%	5.0%
1996	5.1%	4.6%
1997	4.8%	3.9%
1998	4.2%	4.2%
1999	4.5%	3.8%
2000	4.9%	4.2%

	% of Hispanic applicants	% of admitted applicants who were Hispanic
1995	5.1%	5.0%
1996	5.1%	4.6%
1997	4.8%	3.9%
1998	4.2%	4.2%
1999	4.5%	3.8%
2000	4.9%	4.2%

1. **What arguments does Rehnquist make about the Law School's "actual admissions practices"?**

2. **Is his argument supported by this data?**

Grutter v. Bollinger–Opinion of Antonin Scalia

The University of Michigan Law School's mystical "critical mass" justification for its discrimination by race challenges even the most gullible mind. The admissions statistics show it to be a sham to cover a scheme of racially proportionate admissions.

1. **Scalia concurred with the majority in part and dissented in part. Is this document an example of his concurrence [agreement] with the decision, or with his dissent?**

Grutter v. Bollinger–Opinion of Clarence Thomas

Frederick Douglass, speaking to a group of abolitionists almost 140 years ago, delivered a message lost on today's majority…Like Douglass, I believe blacks can achieve in every avenue of American life without the meddling of university administrators.

The Law School, of its own choosing, and for its own purposes, maintains an exclusionary admissions system that it knows produces racially disproportionate results. Racial discrimination is not a permissible solution to the self-inflicted wounds of this elitist admissions policy…

I agree with the Court's holding that racial discrimination in higher education admissions will be illegal in 25 years…I respectfully dissent from the remainder of the Court's opinion and the judgment, however, because I believe that the Law School's current use of race violates the Equal Protection Clause and that the Constitution means the same thing today as it will in 300 months.

1. **Why does Thomas reference Frederick Douglass's address?**

2. **What is Thomas's view of the Court's prediction that racial discrimination in higher education admissions will be illegal in 25 years?**