Regents of UC v. Bakke / **Mini-Moot Court Activity**

Fisher v. University of Texas at Austin **(2016)**

An Overview of a Mini-Moot Court

A moot court is a simulation of an appeals court or Supreme Court hearing. The court is asked to rule on a lower court's decision. No witnesses are called, nor are the basic facts in a case disputed. Arguments are prepared and presented on a legal question (e.g., the constitutionality of a law or government action or the interpretation of a federal statute).

Activities

1) **Review the <u>facts</u> of the case:** In pairs, read the background, facts, issue, and constitutional provisions and precedents of *Fisher v. University of Texas at Austin* (2016).

   Useful Vocabulary:

   – **Petitioner:** The person/organization/company who lost in the lower court and now appeals the lower court decision to a higher court.

   – **Respondent:** The person/organization/company who won in the lower court and now argues that the lower court decision was correct.

   Note: In some states, different terms may be used such as appellant and appellee.

   With your partner, discuss the following questions:

   – What happened in this case?

   – Who are the people/organizations/companies involved?

   – How did the lower court rule on this case?

   – Who is the petitioner? Who is the respondent?

   – What is the legal question that has to be resolved in this case?

   – How might *Regents of the University of California v. Bakke* (1978) apply to this case?

2) **Identify the <u>issue</u> in this case:**

   – Who was the actor(s)?

   – What is the specific part of the Constitution involved?

   – Who was affected by the action(s)?

   – What caused the controversy?

3) **You will be assigned a role:** You will be assigned to be a petitioner, respondent or justice for the mini-moot court. You will meet with others in the class who will play the same role to prepare.

4) **Prepare for your role in groups:**

Petitioner/respondent attorney group preparation:

Each group of students should consider:

- What does each side (party) want?

- What are the arguments in favor of and against each side?

- Which arguments are the most persuasive? Why? What counter arguments should you anticipate and how will you rebut them?

- How do the legal precedents, including *Regents of the University of California v. Bakke* (1978), influence this case? (A precedent is a previously decided case recognized as the authority for future cases on that issue. Using precedents allows for the development of more sophisticated arguments.)

- What might be the consequences of each possible decision? To each side? To society?

- Are there any alternatives besides what each side is demanding?

Note: Your team should consider all of the facts in the summary. You may not argue the accuracy of the facts. Your arguments do not need to only be rooted in legal technicalities. Any argument that is persuasive from a philosophical, theoretical, conceptual, or practical standpoint can be made. Teams should rely on principles found or implied in the United States Constitution.

Justice/judge preparation:

You should meet with the other justices to discuss the issue involved and any case precedents. You should prepare at least five questions for each side that you need to have answered by the attorneys in order to reach a decision. The questions should not ask about the accuracy of the facts, but rather how the established facts, constitutional provisions, and precedents support each argument. Think about possible hypothetical problems to ask. How will the decision in this case affect other cases in the future?

5) **The mini-moot court:**

Move to a mini-moot triad. Each triad will have a justice, a petitioner, and a respondent.

The justice will run the mini-moot court. The justice should ask each side to present their arguments in the following order:

Initial Presentation	Petitioner	3 minutes
Initial Presentation	Respondent	3 minutes
Rebuttal	Petitioner	2 minutes
Rebuttal	Respondent	2 minutes

Each side gets three minutes for its basic argument and two minutes for rebuttal. Your teacher will be the official timekeeper of the proceedings.

The justice may ask questions at any time in an effort to clarify the arguments. Time continues to run as the justice interrupts to ask questions.

After all arguments have been presented, the justice should consider the arguments and reach a decision. Justices should write their decisions and a brief explanation of the reason they reached that decision including specific arguments and precedents.

6) **Handing down decisions:** Return to your original seats to listen to each justice hand down their decisions and the reasons behind them.

Your teacher will share the Court's decision in *Fisher v. University of Texas at Austin* (2016).

Fisher v. University of Texas at Austin (2016)

Argued: December 9, 2015

Decided: June 23, 2016

Background

Public colleges and universities in the United States use a variety of factors to determine which students will be accepted. Universities often want a student body with diverse academic interests, talents, and backgrounds. They consider factors such as applicants' grades, standardized test scores, community service, athletic or musical ability, and geographic location. Sometimes universities also consider an applicant's race or ethnicity.

Americans disagree whether it is acceptable to consider race in the application process. The practice of making a conscious effort to enroll more minority applicants is called "affirmative action." Some people think that it violates the U.S. Constitution. The 14th Amendment says, in part, that states cannot "deny to any person … the equal protection of the laws." Therefore, any government action—such as the admissions process at public colleges and universities—that treats people differently based on their race may violate the Equal Protection Clause.

Some supporters of affirmative action argue that such programs are necessary because they help to correct a long history of racism and discrimination in America. Opponents often argue that the best way to correct a history of discrimination is to make all admissions decisions without looking at race. The Supreme Court has said that some affirmative action programs are acceptable, but only because public universities gain very important educational benefits by creating a diverse student body.

When ruling on laws that treat people differently because of their race, courts require the government to justify the use of race. To be acceptable, the racial classification must:

– serve a compelling (very important) government interest; and

– be "narrowly tailored" to achieve that interest. "Narrowly tailored" means that the law or policy must be extremely well designed to achieve a specific goal and must minimize any interference with the rights of others. Typically, it is difficult for the government to justify using a racial classification.

Facts

This case is about whether the University of Texas at Austin's admissions policies violate the 14th Amendment and its guarantee of equal protection.

The majority of freshmen applicants at UT Austin are admitted under the state's Top 10% Law. This law automatically admits all Texas high school students who finish at the top of their class. In

2008, 80% of the freshman class was admitted through the law; 25% of this group was African American or Latino.

The rest of the spots in the freshman class went to general applicants: students from Texas who were not in the top 10% of their high schools and students from outside Texas. These "general" applicants are each given scores based on academics and personal achievement. The score for personal achievement is based on two essays and six additional factors (including leadership potential, extracurricular activities, and special circumstances). The "special circumstances" factor breaks down into seven attributes, including language spoken at home, socio-economic status, and race. None of these factors are given any numerical value. Rather, they are all viewed together to see the totality of the applicant.

Abigail Fisher, a White student who was denied admission to UT Austin in 2008, sued the school. She argued that this admissions program discriminated against White students. Fisher argued that the school got enough diversity from the Top 10% Law; therefore, additional affirmative action measures were unconstitutional.

The U.S. District Court ruled against Fisher. The Fifth Circuit Court of Appeals upheld the District Court's decision that there was no Equal Protection Clause violation. Fisher appealed to the U.S. Supreme Court in 2012. In 2013, the Supreme Court sent the case back to the Fifth Circuit for additional consideration. The Supreme Court said that the Fifth Circuit must look to whether UT Austin's admissions program was "narrowly tailored" to obtain the educational benefits of diversity. The Fifth Circuit still decided there was no constitutional violation and affirmed UT Austin's policy. Fisher appealed again to the U.S. Supreme Court in 2015. The Supreme Court agreed to hear the case. Justice Kagan recused herself, meaning she would not hear the case, because she was involved in the lower court case when she was U.S. Solicitor General.

Issue

Does the University of Texas at Austin's consideration of race in undergraduate admissions violate the Equal Protection Clause of the 14th Amendment?

Constitutional Provisions and Supreme Court Precedents

- **14th Amendment to the U.S. Constitution**

  "No State shall … deny to any person within its jurisdiction the equal protection of the laws."

- *Regents of the University of California v. Bakke* **(1978)**

  The University of California at Davis Medical School had an admissions procedure that reserved 16 spots for minority applicants. Minority applicants were placed on a special admissions track and scored only against each other rather than the entire pool. The U.S. Supreme Court ruled that this program violated the Equal Protection Clause of the 14th Amendment because it set a specific quota of minority applicants to be admitted. However,

it said that the attainment of a diverse student body is considered a compelling interest to justify the use of race in admissions, but only if race is used merely as a "plus" factor that might tip the scales in a close case.

- *Gratz v. Bollinger* **(2003)**

    The University of Michigan used a 150-point ranking system that considered grades, high school reputation, high school curriculum difficulty, alumni relationships, and "unusual circumstances" factors such as race and socio-economic status. Being part of a racial minority group was worth 20 points. The Court decided that giving applicants a specific number of points due to their race alone was not narrowly tailored, and, therefore, violated the Constitution.

- *Grutter v. Bollinger* **(2003)**

    The University of Michigan Law School considered a student's race as part of a holistic (whole-person) application process. The U.S. Supreme Court said the policy was Constitutional because the law school had a compelling interest in attaining a diverse student body. In addition, the policy was specifically written to serve that interest by including race merely as a "potential 'plus' factor."

Handout 1: Justice/Judge

Prepare at least five questions to ask each side (petitioner and respondent). The questions should not ask about the accuracy of the facts, but rather how the established facts, constitutional provisions, and precedents support each argument.

Call the case to order by saying, "We will hear arguments today in (case name)." After hearing arguments from both the petitioner and the respondent, decide whether you think the decision of the lower court should be upheld or overturned. Be prepared to share the reasoning behind your decision.

Case name:	
Constitutional question(s):	
Questions for petitioner:	
Questions for respondent:	

Notes on the petitioner's argument:

Notes on the respondent's argument:

Notes on respondent's argument (cont.):

Decision:

Reasons for decision (opinion):

Consider the strengths of the arguments and how precedents should be applied. Be sure to consider the impact of your decision on other situations that may arise in the future. If there is a precedent that is directly on point (very similar to your case) and you decide NOT to follow that precedent, be prepared to explain why you are overturning an established precedent (this should only happen on rare occasions and for extremely compelling reasons).

Handout 2: Petitioner

Outline an argument for the petitioner using the established facts, constitutional provisions, and precedents. Predict what questions the justice/judge will ask. Take notes on the respondent's argument to help prepare your rebuttal.

In preparing your arguments, you should think about the following questions:

- Why is the decision of the lower court wrong?
- What decision do you want?
- What are the legal and policy arguments in favor of and against each side? (Anticipating the opposition can strengthen your argument.)
- Which arguments are the most persuasive? Why?
- What are the precedents and how do they influence this case?
- What might be the consequences of each possible decision?

Case name:	
Petitioner:	
Constitutional question(s):	
Precedents that support your argument:	

Argument for petitioner:

Possible questions from justice:

Respondent argument notes:

Rebuttal points:

Handout 3: Respondent

Outline an argument for the respondent using the established facts, constitutional provisions, and precedents. Predict what questions the justice/judge will ask. Take notes on the petitioner's argument to help prepare your rebuttal.

In preparing your arguments, you should think about the following questions:

- Why is the decision of the lower court right?
- What decision do you want?
- What are the legal and policy arguments in favor of and against each side? (Anticipating the opposition can strengthen your argument.)
- Which arguments are the most persuasive? Why?
- What are the precedents and how do they influence this case?
- What might be the consequences of each possible decision?

Case name:	
Respondent:	
Constitutional question(s):	
Precedents that support your argument:	

Argument for respondent:

Possible questions from justice:

Petitioner argument notes:

Rebuttal points: