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Foreword: Bakke at 40: The Past, Present, and Future of Affirmative Action

Kevin R. Johnson*

In 2018, the UC Davis Law Review hosted the “Bakke at 40” conference. The day was devoted to the exploration of the past, present, and future of Regents of the University of California v. Bakke,1 the 1978 U.S. Supreme Court decision that for a generation has shaped the consideration of race in admissions programs at American colleges and universities. Bringing together influential scholars from across the United States to commemorate the iconic decision’s fortieth anniversary, the symposium shed light on the lasting impacts of Bakke.

It unquestionably is a most appropriate time to examine the affirmative action framework established by Bakke. On the day of the live symposium event, affirmative action literally was on trial in an

* Copyright © 2019 Kevin R. Johnson. Dean and Mabie-Apallas Professor of Public Interest Law and Chicana/o Studies, University of California at Davis, School of Law; A.B., University of California, Berkeley; J.D., Harvard University. A special thanks to Law Review Publications and Production Specialist Sue Jones, Faculty Symposium Advisors Professor Brian Soucek and Professor Jonathan Glater from UC Irvine School of Law, and all of the conference participants. Thanks also to Law Review faculty advisor Professor Shayak Sarkar, the law school staff who made this event possible, and Senior Symposium Editors, Shera Kwak and Caitlin Hoffman, as well as the entire Law Review symposium committee.

action challenging Harvard University’s race-conscious admissions program on the grounds that it unlawfully discriminates against Asian American applicants. The Harvard case is simply the latest challenge to Bakke, which is symptomatic of the fact that the decision fits uneasily into the Supreme Court’s increasingly color-blind constitutional jurisprudence.

The truth of the matter is that Bakke’s days may be numbered. The Supreme Court, with two new Justices appointed by President Trump, is poised to revisit the constitutionality of affirmative action. Although reaffirming the core of Bakke in 2003, Justice O’Connor, writing for a majority of the Court, stated out of the blue that the nation should expect to no longer need to consider race in admissions in twenty-five years. Nonetheless, Bakke, at least for now, remains good law.

The University of California, Davis was a most appropriate venue to hold a symposium examining four decades of Bakke. Allan Bakke, a White man, claimed that the UC Davis School of Medicine’s “quota” for students of color violated his rights under the Equal Protection Clause of the Fourteenth Amendment. In ruling in his favor, a

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7 See Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 277-78 (1978) (opinion of Powell, J.). For background about Allan Bakke and his desire to become a doctor,
splintered Supreme Court held that rigid quotas violate Equal Protection but that a narrowly-drawn race-conscious admissions program in pursuit of a diverse student body, a compelling state interest, might survive constitutional scrutiny. Holding out the Harvard admissions program as an example of the appropriate consideration of race in admissions decisions, Justice Powell's opinion came to govern the law of affirmative action.

The Bakke decision directly impacted admissions at UC Davis School of Law, which hosted the “Bakke at 40” symposium. In DeRonde v. Regents of the University of California, the California Supreme Court in 1981 applied Bakke to the case of Glen DeRonde, who was one of approximately 2,200 applicants for admission to the Law School. Claiming that the denial of his application was because he was White, DeRonde asserted state and federal constitutions claims. The California Supreme Court held that, because the law school's narrowly-tailored admission scheme considered race among many factors, it complied with the strictures of Bakke and thus was constitutional.

As discussed throughout the symposium, admissions programs at virtually all institutions of higher education have been influenced by the framework laid out by Bakke. Now four decades later, conference participants in the following articles carefully examine the status of affirmative action in higher education as well as the workplace. Besides revealing some previously unknown facts surrounding the Bakke case, the contributions analyze subsequent developments as well as the future of affirmative action.

The conference was composed of three panels. The first panel focused on the history of the Bakke decision, and included the following panelists:

- Ashutosh Bhagwat, UC Davis (moderator)
- Devon Carbado, UCLA

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8 See supra note 6 (citing cases following Bakke); see also Joelle A. Marty, Comment, Affirmative Action in Higher Education: Federal Circuit Split over Bakke's Diversity Rationale 36 U.C. DAVIS L. REV. 505 passim (2003) (analyzing division in lower courts over diversity rationale).
9 See Bakke, 438 U.S. at 269, 316-19 (opinion of Powell, J.).
11 See id. at 226-27.
A lunchtime discussion focused on the *Bakke* case from a variety of perspectives. Panelists included

- Lisa Pruitt, UC Davis (moderator)
- Russell Robinson, UC Berkeley
- Michal Kurlaender, UC Davis, School of Education
- Justice Melissa Hart, Colorado Supreme Court
- Katharine Bartlett, Duke University

The third panel focused on *Bakke* as the decision is applied today. Panelists included

- Carlton F.W. Larson, UC Davis (moderator)
- Meera Deo, Thomas Jefferson School of Law
- William Kidder, UCLA Civil Rights Project
- Nancy Chi Cantalupo, Barry University
- Lauren Edelman, UC Berkeley
- Brent Nakamura, Boies Schiller Flexner LLP

The concluding panel predicts what might happen with *Bakke* and the future of race-conscious affirmative action. The panelists were

- Brian Soucek, UC Davis (moderator)
- Yuvraj Joshi, Yale University
- Cheryl Harris, UCLA
- Jonathan D. Glatzer, UC Irvine

This symposium offers a panorama of perspectives on forty years of the Supreme Court's decision in *Regents of the University of California v. Bakke*. The contributions shed important light on the consideration of race in affirmative action programs in higher education and employment. They also provide guidance to educators, employers, lawyers, and judges in seeking to promote diversity in universities and the workplace.