Citing Harvard

Although it was not the educational institution directly involved in the affirmative-action cases decided by the Supreme Court on June 23, Harvard again figured prominently in the outcome. Writing for the 5-4 majority in Grutter v. Bollinger, which upheld the consideration of race in admissions to the University of Michigan law school, Justice Sandra Day O’Connor made extended reference to Justice Lewis F. Powell’s opinion in the 1978 Regents of the University of California v. Bakke case, where Harvard’s admissions policies proved crucial to sustaining a workable process for affirmative action.

“We are satisfied,” O’Connor wrote, “that the law school’s admissions program, like the Harvard plan described by Justice Powell, does not operate as a quota.” Further, “Justice Powell’s distinction between the medical school’s rigid…quota [in the Bakke case] and Harvard’s flexible use of race as a ‘plus’ factor is instructive. Harvard certainly had minimum goals for minority enrollment, even if it had no specific number firmly in mind. What is more, Justice Powell flatly rejected the argument that Harvard’s program was ‘the functional equivalent of a quota’ merely because it had some ‘plus’ for race, or gave greater ‘weight’ to race than to some other factors, in order to achieve student body diversity.”

The University had filed a friend-of-court brief supporting affirmative action in admissions as a key to achieving diversity essential to its educational purposes (see “Affirmative Amicus,” May-June, page 50). President Lawrence H. Summers reacted to the twin decisions on the Michigan law-school and undergraduate admissions processes (the latter overturned in Gratz v. Bollinger) by noting the “paramount significance for our community” of the court’s embrace of “the core principles that have long informed Harvard’s approach to admissions.” He observed with satisfaction that, “As Justice Powell did in the Bakke case a quarter-century ago, Justice O’Connor cites Harvard College’s careful and flexible approach to admissions as a model.”

Another Harvardian also weighed in on O’Connor’s expectation that “25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today”—an expressed desire that affirmative action in admissions might have a distinct, limited duration. Gary A. Orfield, professor of education and social policy and founding codirector of the Civil Rights Project at Harvard (see page 82), has researched the recent widening gap between the performance of white and black students enrolled in public schools. Looking ahead 25 years, he told the Wall Street Journal, “if we go on the current trajectory, that gap in achievement will be greater than it is now.”