

University of Chicago Law School Admissions Complaint

Background

- The complainant alleged that the University of Chicago Law School “operates a race-based preferential admissions plan in violation of Title VI of the Civil Rights Act of 1964.” Complaint originally filed on an individual and class basis. The individual allegation was withdrawn; the class issue remains.
- OCR’s Chicago Office gathered data, reviewed files, and conducted interviews regarding the School’s consideration of race and national origin in admissions for the 1997-98 school year. The investigation was done in close consultation with ED/DoJ Affirmative Action Task force, which includes ED’s Office of General Counsel, OCR, and DoJ’s Civil Rights Division.

Complaint Resolution Letter

- Draft letter has been read by DoJ components, including the Solicitor General’s office, the Associate AG’s office and the Civil Rights Division. Letter incorporates suggestions made by DoJ. Our DoJ contact advises us that DoJ does not have objections to the letter.
- Letter provides a factually-supported example of an admissions process that satisfies strict scrutiny under Title VI standards, including *Bakke*.
- Letter shows that, in an admissions process properly designed to produce multifactor diversity, differences in the test scores and grades of admitted students, by race, are not tantamount to a violation of Title VI.

Summary of the Proposed Finding

- The University of Chicago Law School has substantiated a compelling interest in student body diversity, based upon interviews of Law School faculty and supplemented by OCR’s citation to research demonstrating the educational benefits of diversity.
- Considering all narrow tailoring factors, (alternatives, flexibility, duration and burden on white applicants) the Law School’s moderate use of race is sufficiently narrowly tailored to satisfy strict scrutiny standards.

DRAFT—version 5

Dr. Hugo F. Sonnenschein
President
University of Chicago
5801 South Ellis Avenue
Chicago, Illinois 60637

Re: OCR Complaint # 05-97-2044

Dear Dr. Sonnenschein:

By letter dated December 17, 1996, a complainant alleged that the University of Chicago Law School "operates a race-based preferential admissions plan in violation of Title VI of the Civil Rights Act of 1964." In support, the complainant cited differences, by race and national origin, in mean LSAT scores and grade point averages for University of Chicago undergraduates who were admitted to the Law School in 1997-98. The Office for Civil Rights (OCR) investigated the allegations by gathering data, reviewing files, and conducting interviews regarding the School's consideration of race and national origin in admissions for the 1997-98 school year.

OCR concluded that, according to the evidence, the Law School's admissions practices for the 1997-98 entering class included the consideration of race and national origin in a manner that was narrowly tailored to achieve its compelling interest in attaining the educational benefits of a diverse student body. Accordingly, the Law School complied with Title VI and its implementing regulation at 34 C.F.R. §100.3(b) with regard to the issue raised by this complaint. A summary of our conclusions follows.

Legal Standards

Under Title VI, the Law School's use of race and national origin to achieve the benefits of student body diversity must meet strict scrutiny standards. The Title VI regulations permit a recipient to take voluntary affirmative action, in the absence of past discrimination, in response to conditions that have limited the participation at the institution of students of a particular race or national origin. 34 C.F.R. § 100.3(b)(6)(ii). The Department has consistently interpreted this provision as incorporating compelling interest/narrow tailoring requirements, as announced by the Supreme Court. See Nondiscrimination in Federally Assisted Programs; Title VI of the Civil Rights Act of 1964, 59 Fed. Reg. at 8761 (February 23, 1994). Therefore, in accordance with the Supreme Court's decision in the leading case, *Regents of the University of California v. Bakke*, 98 S. Ct. 2733 (1978) and Title VI, the Law School's use of race or national origin in admissions must be narrowly tailored to serve a compelling interest. In this case, the Law School relies on the educational benefits of multi-faceted diversity as a compelling reason for considering race and national origin in admissions.

The compelling interest inquiry centers on educational ends and asks why an institution is considering race or national origin in making admissions decisions. In his opinion in *Bakke*, Justice Powell concluded that achieving the educational benefits of campus diversity is a compelling reason for considering race or national origin in admissions in a narrowly tailored way. According to the Department of Education's established interpretation of *Bakke*, colleges may seek diversity in admissions to fulfill their academic mission through the "robust exchange of ideas" and other compelling educational benefits that flow from a diverse student body. Further, as Justice Powell wrote in *Bakke*, a university's discretion to select students to achieve

core educational objectives, including the benefits of diversity, is within a University's academic freedom interests. 59 Fed. Reg. at 8761. Therefore, under Title VI colleges and universities are permitted to use race or national origin to achieve fundamental educational objectives through campus diversity. To establish a compelling interest, an institution must show how diversity serves its educational objectives.

Admissions practices that use race and national origin must also be narrowly tailored. Under Title VI, the narrow tailoring inquiry focuses on process and asks how the recipient is seeking to meet the educational objective of the race or national origin-based classification. Justice Powell emphasized in *Bakke* that race is merely one of many aspects of diversity and that a narrowly tailored admissions program should treat all applicants as individuals. He approvingly cited Harvard University's undergraduate admissions process, which considers race as a "plus" in an applicant's file "without insulat[ing] the individual from comparison with all other candidates for the available seats." *Bakke*, at 317. Such a plan met constitutional standards because it weighed "all pertinent elements of diversity" in light of the particular qualifications of each applicant "fairly and competitively." *Id.* at 317-18. In general, the factors that bear on the narrow-tailoring inquiry include the necessity for consideration of race and national origin, whether race neutral alternatives have been considered, the flexibility and duration of the use of race, and the impact upon rights of third parties. Narrow tailoring requirements focus on the recipient's educational objectives, policies and practices and do not guarantee a particular statistical outcome for any applicant or any subgroup of candidates. In assessing compliance with narrow tailoring standards, OCR considers all factors to determine whether the weight of the evidence shows that a use of race or national origin is narrowly tailored.

Law School Admissions Procedure

OCR's investigation focused on the first year class for 1997-98. The School admitted 707 students to fill 180 seats. Of the 707 students admitted, 78.4% (554) were white, 10.7% (76) were Asian American, 6.4% (45) were African American, 4.2% (30) were Hispanics, and 0.3% (2) were Native American.

According to University documents and admissions staff, the Law School considers a wide range of factors when determining which applicants to admit, including undergraduate grade-point average ("ugpa"); performance on the Law School Admissions Test ("LSAT"); strength of the applicant's undergraduate institution; undergraduate courses taken by the applicant; undergraduate major; extracurricular activities like athletic and musical accomplishments; distinguished and challenging work experiences; life experiences such as overcoming personal hardships and significant community and humanitarian service; strong letters of recommendation; class rank at the undergraduate institution; ability to think, write, or speak with precision, fluency, or economy; amount of time since college graduation; whether the applicant has earned a graduate degree; race or ethnicity; gender; and residence in a state or region that would contribute to geographic diversity. According to the School, the goal of the admissions process is to assemble a class that is promising academically and professionally, and that includes interesting students of varied backgrounds. The School asserted that race and national origin may be used to varying degrees as a "plus factor," along with other factors in an applicant's file that the School might consider in attempting to create a diverse first-year class.

From the early 1970's through 1999, admissions decisions at the Law School have been made by Richard Badger, the Assistant Dean and Director of Admissions (hereinafter Dean Badger). While personally responsible for the conduct of admissions, Dean Badger does not act alone. He remains in regular contact with faculty and other administrators, both during and after admissions

cycles, about admissions practices and the performance of the first-year class. Using a system of “rolling” admissions, Dean Badger reviews applications as they are received, and makes decisions about whom to admit on an on-going basis. Dean Badger personally reviews the entire file for every applicant. Upon first reviewing a complete application, Mr. Badger decides to admit, reject, or place in a “hold” category. The School asks applicants placed in the “hold” group to submit additional information and invites them for interviews, almost always with Mr. Badger.

Applications for admission include reports from the Law School Data Assembly Service, including LSAT score, undergraduate grade averages, undergraduate institution and transcript of courses, race or national origin, state of permanent residence, and gender. Applicants must also identify their high school, describe significant academic, extracurricular, work, and community experiences, and submit two or more letters of recommendation.

According to Dean Badger, the LSAT score and ugpa are important factors. He charts LSAT scores and ugpa groupings for the applicant pool. For 1997-98, applicants’ grades and test scores were placed into 13 LSAT/ugpa groups, labeled in descending order as 1-9 and w-z. The Dean used the charts only to compare his admitted class to date with national data from the Law School Admissions Council, in order to monitor how the School was doing nationally in attracting applicants. Dean Badger did not use these groupings as cut-offs or in any way as admissions criteria. The applicant files Mr. Badger read did not show group designation for any candidate.

The Law School does not use a formula to determine which applicants it will admit. Applicants are not given points for each admissions criterion, with the highest-scoring applicants being offered admission. There are no numerical cut-offs for automatic admission or rejection. The Law School explained that, with the exception of ugpa and LSAT score, the other criteria employed by the Law School are not expressed as a number or ranking.

The Educational Benefits of Diversity in the Law School's Student Body

Based upon our interviews and existing educational research, OCR found that the Law School has established a compelling interest in achieving the educational benefits of a diverse student body, benefits that are aligned with the University’s mission and the School’s core educational goals.

To justify its use of race and national origin, the Law School stated that diversity within the student body leads to increased educational benefits for all students, and therefore diversity allows the School to achieve its mission. According to University representatives, “[s]ince its founding, the mission of the University of Chicago, reiterated by each president, has been to sustain at the highest level of excellence the communication of knowledge, the creation of knowledge, and the fostering of a dynamic community of scholars and students.” In interviews with OCR, Law School representatives said that the School has pursued diversity for many years because a diverse student body is essential to achieving the University’s mission. They also stressed that diversity does not mean solely *racial* diversity.

Another Law School publication, “Diversity at the University of Chicago Law School,” addresses the importance of diversity: “Exposure to a diversity of ideas is the essential element of education. Such diversity is particularly important to the study of law which, by its nature, integrates history, public policy, philosophy, politics, and economics. While steeped in precedent, the study of law is perhaps one of the most evolving fields of study. The study of law involves a celebration and criticism of our past and our present in order to determine if, when, and how laws should evolve.”

The Law School's 1997 application materials stressed the importance of diversity: "We believe that a diverse student body is essential for a complete legal education. Such diversity provides students with new perspectives on the law and promotes informed discussions inside and outside the classroom."

Periodically, every accredited American law school must issue a report to the American Bar Association to retain its accreditation. In its 1998 report to the ABA, the Law School described how the importance of diversity intersects with the law school's admissions process:

The primary goal in the admissions process is to ensure that each student is qualified to succeed in the Law School's rigorous academic program. But potential for academic success is not the only criterion for admission. The Law School believes that a diverse student body is essential for a complete legal education, both to provide students with new perspectives on law and to promote informed discussions inside and outside the classroom.

The Law School seeks to realize fully the benefits of diversity in numerous ways. The School's commitment to the Socratic method throughout the curriculum provides a forum for a robust exchange of ideas that carries beyond the classroom to student interactions in co-curricular, extra-curricular and informal settings. According to the Law School's Catalogue, "Energized by this dialogue within the classroom, students seek opportunities outside the classroom for further conversation and learning in one of Chicago's clinical programs, with one of Chicago's four student-edited journals, or in one of Chicago's many extracurricular offerings." In its 1997 application materials the School promoted the contribution to the robust exchange of ideas at the Law School made through the educational and cultural activities of over 35 student groups, reflecting a variety of academic, service, identity, and social interests. Throughout its programs, the Law School appears to foster a learning environment that is aligned with its interests in providing its students with a variety of opportunities to interact meaningfully with a heterogeneous group of peers.

OCR interviewed University witnesses about the importance of diversity in the Law School setting. Dean Badger referred to the "robust exchange of ideas" that occurs at the Law School, and cited the frequent after-class debates, informal discussions, and seminars that take place at the School. He said that in his extensive experience, multi-factored diversity – including racial diversity – contributes to and expands the robust exchange of ideas

OCR asked the Law School to demonstrate the educational benefits of student diversity at the School. In response, the School said that the faculty would speak for the institution on this academic issue and offered the testimony of Professor David Strauss, a tenured professor, who teaches constitutional law, federal jurisdiction and administrative law, and first year courses with large classes. His classes have had varying degrees of diversity, including classes with only one student of color. According to the School and Professor Strauss, he spoke for the Law School on the issue of the educational benefits of student diversity. He also spoke as a senior faculty member who reflected a consensus of the faculty and their experiences with diversity issues.

Mr. Strauss said that, in general, diversity of all sorts improves the quality of the Law School education in several different ways, and that the positive effects of multi-factored diversity are cumulative. The characteristics—personality, academic background, life experiences—of individual students crucially affect the quality of the educational experience of all students in a class. Students in the Law School learn from hearing each other's views, and from debating with

each other both in class and out of class. In his 14 years as a professor, he has observed that the more diverse the class, the stronger the quality of both the in-class discussions and after-class debates.

Professor Strauss said that racial diversity provides an important benefit beyond a “technically good” legal education, which merely describes the rules lawyers must follow. In his experience, racial diversity has improved the quality of courses when students offer insights based on their own racial background and experience that touch on the issues discussed in class. Those insights improve quality. The better the class discussion – which improves with diversity – the more the law students have understood the ramifications of the law, and the more they are prepared to anticipate opposing viewpoints and improve their own skills. In Strauss’s judgment, a variety of viewpoints, sometimes shaped by life experiences in which race was a strong influence, enhances the quality of discussions among students with diverse backgrounds.

Professor Strauss said that, in his experience, racial diversity is particularly important at the law school. He attributes the singular importance of race to its substantial role in the evolution of American law. Mr. Strauss cited how race issues have shaped the law, including the many Supreme Court cases arising out of the civil rights struggles beginning in the 1940s and 1950s, and virtually every aspect of employment discrimination law. But he said that other examples of race driving the evolution of the law are less obvious but equally important in offering students a complete law school education, including disparate punishment for various drug crimes and cases involving interstate travel or voting rights.

Mr. Strauss said, even in the civil procedure context, racial issues are interwoven in the fact patterns of many of the leading cases. For example, one of the seminal decisions about when an individual can represent a class in a class-action lawsuit arose out of a case in which a victim of race discrimination sought to represent himself and others who were similarly situated. He also cited an example that related to his teaching of the *Younger* doctrine, which is that federal courts generally cannot enjoin pending state criminal proceedings. He specifically recalls an occasion when a minority student expressed vehement criticism of the doctrine, arguing that federal judges traditionally place an undue level of confidence in police and state courts because the judges have never been arrested or forced to spend the night in jail. Strauss said that this viewpoint contributed to a better overall understanding for all of his students about the ramifications of what may otherwise be seen as dry rules of federal procedure.

Professor Strauss said that people of a certain race do not necessarily have a certain point of view. Race is not a proxy for viewpoint. In his experience, the views expressed by African American students, for example, have not been consistent or uniform with each other. As a teacher, Professor Strauss is looking for how a student can meaningfully use his or her intuition, judgment, and experiences in presenting and supporting viewpoints during discussions. A student’s race makes a distinctive, positive contribution to the educational experience of other students. Similarly, the Law School’s other diversity factors, like geographic background, life experiences, years out of school, and extracurricular activities also enhance legal education for all students.

In addition, according to Professor Strauss, racial diversity has increased awareness among all students about the experiences of other students with different backgrounds from their own, which becomes an asset for the students when they become lawyers. Diversity helps break down stereotypes and change students’ assumptions.

The testimony of Dean Badger and Professor Strauss about the educational benefits of diversity is supported by the conclusions of educators that diverse student bodies produce significant educational benefits in undergraduate and legal education. In addition, social science research demonstrates that student body diversity may produce educational benefits in undergraduate education that are equally applicable to legal education. Research studies conclude that diversity in higher education improves education, racial understanding, cultural awareness, cognitive development and leadership skills. According to the research, when students interact with others who have backgrounds and characteristics different from their own, they are more likely to think critically and engage in the ‘robust exchange of ideas’ that Justice Powell deemed an essential component of higher education.

Narrow Tailoring Requirements

OCR considered several factors and found that the School’s use of race and national origin to achieve its compelling interest in student body diversity was narrowly tailored in 1997-98.

Necessity of Using Race The Law School and Dean Badger have pursued its educational diversity objectives, in part, through the use of race and national origin in admissions for more than 25 years. In Dean Badger’s judgment, while his individualized consideration of each applicant’s entire file makes it difficult to quantify precisely the impact of race upon admissions, the elimination of all consideration of race and national origin would substantially reduce the number of minority students at the Law School. He testified that, without the consideration of race and national origin in the application process, he would not be able to offer admission to a group of candidates that would be sufficiently diverse to meet the Law School’s educational objectives.

The Law School does extensive recruiting to try to attract a diverse applicant pool. The School uses the Law School Admission Council’s Candidate Referral Service to invite applications from minority candidates with LSAT’s and GPA’s at levels sought by the School. The School recruits at about 25 undergraduate campuses, including at historically black colleges and universities and other campuses with large minority enrollments. The School also encourages students and alumni to identify potential minority candidates.

The Dean testified that increased recruiting would not be enough to ensure a diverse class because of the School’s competition with other selective law schools for the same limited pool of applicants. He also said that modifications to the School’s financial aid program would not overcome the need to consider race in admissions because other law schools also offer generous scholarships.

Dean Badger has also studied race-neutral law school admissions practices currently in use at the University of California and in Texas, including UCLA’s reliance on socioeconomic background as a strong plus factor. He concluded that these practices would not be effective at the Law School. He said, that the School’s use of socioeconomic criteria like family income as a plus factor in admissions, with no reliance on race or national origin, would not be sufficient to serve the School’s interest in achieving the benefits of multi-factored diversity, including racial/ethnic diversity. His opinion stems from his observation, based on experience, that the Law School attracts insufficient numbers of qualified applicants from low income families to make low-income (a race neutral criterion used by other law schools) a useful tool for achieving diversity.

For the 1997-98 entering class, 12% of the enrolled students were African American or Hispanic, 10% were Asian American. No Native Americans enrolled. In our file reviews and interviews

with Dean Badger, it was evident that race and national origin were given positive weight to a limited extent in some decisions to offer admission and, for other candidates, no weight at all. Because admissions decisions were based on consideration of multiple criteria, however, we were unable independently to determine what the exact composition of the 1997-98 class would have been had race and national origin not been considered. The data confirm that the number of African American and Hispanic students admitted in 1997 would have been reduced to a considerable extent if they were admitted at the same rate as white applicants who had comparable grades and test scores to admitted minority applicants.

Through race neutral efforts, the Law School seeks a diverse applicant pool. Based in part upon the experience of other schools, the School had also considered and rejected the sole reliance on race neutral criteria for the year in question. The School supported its judgment that it could not have furthered its educational objectives to the same extent without considering race and national origin for the 1997-98 entering class.

Flexibility of the Use of Race The interviews and file reviews showed that race and national origin are used flexibly, as plus factors among several other factors that, together, comprise the Law School's diversity objectives. OCR found that the School does not use explicit set-asides or quotas based on race or national origin, nor are separate admissions committees or procedures used for minority candidates.

Admission rates and numbers of students admitted varied from 1995 through 1999. For example, African-Americans who were admitted ranged from 30 to 79 students and from 4.7% to 8.9% of total admits. For the same period, annual numbers and percentages of Hispanic candidates admitted also varied between 23 and 58 admits and between 3.6% and 6.6% of total students admitted. These fluctuations are inconsistent with the use of numerical quotas for these groups.

OCR looked at the "lowest scoring" applicants, those from Mr. Badger's "w-z" groups. Of the 707 students who were accepted for 1997, 57 students fell within "w-z"; 18 (31.5%) were white, 1 was Asian American, 38 (66.6 %) were African Americans, Mexican Americans, Native Americans, and Puerto Ricans, and "other Hispanics."

Of the 1774 white applicants, 930 were rejected despite having better or equal scores, as compared to those admitted. Ten white students were rejected from the 2-4 groups. Although none of the African American applicants above the "w" group were denied admission, the Law School admitted four African American applicants who were in the "z" group; at the same time, it rejected 18 African American applicants who were in the "x through y" groups.

OCR reviewed applications for admission in the fall of 1997. We identified the highest-scoring white and African American applicants who were rejected by the Law School, and the lowest-scoring white and African American applicants who were admitted. We judged that these students were likely to provide examples of whether non-racial "diversity factors" – or the lack of them – made a difference in the admissions process.

Our file reviews confirmed that the group of accepted candidates with lower test scores or grades had backgrounds and experiences, other than race or national origin, that otherwise met the School's admission criteria, including non-race factors that promote diversity. For example, the files of several white applicants admitted from the "x" group showed combinations of postgraduate degrees, particularly strong letters of recommendation, significant athletic accomplishments, residence in a state that would contribute geographic diversity, overcoming personal hardships, significant humanitarian volunteer work experience, other experiences, and a

strong interview at the Law School. The applications from several African Americans admitted from the “y” and “z” groups demonstrated public school teaching experience, graduation from highly selective undergraduate programs, a record of overcoming significant adversity, contributions to the Law School’s geographic diversity, varsity athletics, significant community/humanitarian service, musical skills, other experiences, and a strong Law School interview.

To determine the role of race or national origin in particular admissions decisions, where race may have received a “plus,” we also questioned Dean Badger about applicants who were among the lowest scoring African Americans admitted. For each of the candidates, Mr. Badger recalled that he considered race to a limited extent, if at all, in combination with a range of accomplishments and experiences, including academic recommendations, employment history, and interview performance at the Law School.

OCR’s file review and Dean Badger’s testimony demonstrated that the outcomes of the Law School’s admissions system are not explainable only in terms of test scores, grades, and race. We concluded that although test scores and grades appear to be generally significant in predicting the likelihood of admission, they are not the sole factors, regardless of race or national origin. For example, the fact that over 30% of the applicants admitted from the lowest scoring group (“w-z”) were white demonstrates that factors other than test scores and grades were used to a significant extent for applicants of all races and national origins.

The Law School told OCR that it considers a wide variety of factors, and it is clear that Dean Badger relied on them in reviewing applications, conducting interviews, and making admissions decisions. Each applicant was considered as an individual, with race and national origin included among the aspects of the candidates’ background, experiences, and accomplishments that the Dean actively weighed. Based on his testimony, when Dean Badger positively considered race he did so to varying degrees, based on a nuanced consideration of each individual---from a very slight plus to a stronger plus factor---in each case based on the combination of race with all of the applicant’s credentials and experiences. No diversity factor was given a set number of points or a fixed weight. That white students had somewhat higher average test scores and grade point averages is not conclusive evidence of discrimination in an admissions process that applies several subjective criteria in addition to scores and grades. Here, the admission of lower scoring white applicants whom the Law School considered likely to contribute to the excellence of the incoming class according to established criteria undercuts a conclusion that any applicant with a higher test score and ugpa had an unqualified right to expect admission over another candidate.

Duration The admissions process, including the use of race and national origin, has been reviewed on an informal basis by the faculty and the Dean of the Law School throughout the school year. Faculty members provide Dean Badger feedback on the quality and characteristics of each class, including whether the class helps achieve the School’s educational objectives. Mr. Badger and others continue to assess the admissions process, including the need for the consideration of race and national origin.

Burdens on Non-Beneficiaries The evidence did not show that the use of race and national origin had an undue impact on those candidates who did not benefit from the consideration of race. The Law School’s admissions process involves the use of race or national origin as one factor among many. Although at some test score and ugpa levels minority candidates have a higher likelihood of admission, the impact on white applicants of the School’s limited use of race and national origin is not impermissibly burdensome.

For 1997-98, white candidates were admitted at a higher rate than were minority applicants. Further, the number of minority candidates admitted from particular race or national origin groups is small, compared to white applicants. For example, the 45 offers made to African American applicants were only 6% of the 707 applicants accepted in 1997. All candidates in the large “hold” category are asked to submit additional information and are given the opportunity to be interviewed on campus. The data show that interview opportunities were available regardless of race or national origin and that white students, as well as minority applicants, helped or hurt their chances through their interview performance. Because admissions are clearly based on consideration of a combination of factors and the same mission-based criteria for each applicant, the School’s limited use of race or national origin does not prevent all candidates from receiving individual, competitive consideration. The School’s program fits Justice Powell’s formula in *Bakke* for the acceptable use of race as a plus: “The applicant who loses out on the last available seat to another candidate receiving a ‘plus’ on the basis of ethnic background will not have been foreclosed from all consideration for that seat simply because he was not the right color or had the wrong surname. It would mean only that his combined qualifications, which may have included similar nonobjective factors, did not outweigh those of the other applicant. His qualifications would have been weighed fairly and competitively [in compliance with the Fourteenth Amendment.]” 96 S. Ct. at 2762.

Conclusion

There is no single path to compliance with Title VI in admissions. Given the wide variety of institution types and educational missions in American higher education and the many approaches to admissions currently available, schools may choose from among several means of pursuing core educational objectives through admissions, so long as they also meet Title VI standards. We find in this case, based on the facts presented, the University of Chicago Law School has established that it has a compelling interest in seeking the educational benefits that all law students receive from the multi-faceted diversity the School seeks to achieve, in part, through its admissions criteria. The documents and testimony present a functional definition of diversity that is designed to achieve tangible benefits that are themselves aligned with the core objectives of the University.

The Law School uses race and national origin as one factor among several others in admitting first year students. The rolling admissions process is based upon the academic experience and judgment of Assistant Dean Richard Badger, who, with faculty consultation, considers each applicant as an individual, through a whole file review, using the full range of admissions criteria as the same yardstick for each candidate. In addition, many candidates receive intensive individual scrutiny through personal interviews with Mr. Badger. The evidence supports that the Law School has exercised its academic discretion through a system where test scores and grades are important, but are not the sole factors used for all candidates. Other criteria, selected because they improve the excellence of the incoming class, were used to admit students from all racial groups who had lower test scores than other candidates from the same race who were rejected. Overall, race and national origin operate flexibly in combination with several criteria reasonably designed to achieve the benefits of diversity.

According to the evidence, in 1997-98 the admissions process, on balance, satisfactorily addressed the narrow tailoring requirements of necessity, consideration of alternatives, flexibility, duration and avoiding undue impact upon applicants for whom race was not a plus factor. After weighing all of the evidence regarding how race and national origin are used in admissions, OCR concludes that the process the School used is narrowly tailored to meet the compelling interest in diversity which the School has chosen to justify its use of race and national origin in this case.

DRAFT—version 5

Based on the evidence, OCR concludes that the Law School complied with Title VI and its implementing regulation at 34 C.F.R. §100.3(b) with regard to the issue raised by this complaint.

We appreciate the cooperation extended to OCR by University staff, including Arthur Sussman, Beth Harris, and Ingrid Gould. If you need additional information about this letter, your staff may contact Madonna Lechner, Team Leader, OCR, Chicago Office, at 312 886-8434.

Sincerely yours,

Linda A. McGovern
Director, Chicago Office
Midwestern Division

cc: Arthur M. Sussman, General Counsel
Beth A. Harris, Associate General Counsel
Ingrid Gould, Xxxxx