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From the Editors Notebook

The BAKKE Decision

In our issue of October a year ago, an extensive coverage was given to the case of Allan P. Bakke against the University of California Medical School at Davis.

Once again, we are devoting a substantial number of pages to the *Bakke* case. In other words, we are closing the book, mindful of the fact that *Bakke* was brought to rest by the highest court in the land—in favor of the plaintiff.

The case dates back to 1973, when Allan Bakke applied for admission to medical school but was rejected. He reapplied a year later and was rejected again, after which he sued the school for discriminating against him because of his color. Bakke, who is white, challenged the school's special admissions program for minority students, which sets aside 16 out of 100 places each year for Blacks and other minorities.

The fact is, as noted in an article by Ralph Smith, a professor at the University of Pennsylvania, which was published in the October 1977 *New Directions*: "Allan Bakke had applied to 11 medical schools [before Davis] and was rejected by all of them. Even his alma mater, the University of Minnesota—presumably a school with reason to know Allan Bakke best and which has the most sound basis on which to assess his record and potential—rejected him for admission."

The Davis minority admissions program, perhaps due to inherent flaws, was obviously the most vulnerable one to challenge.

On June 28, the Supreme Court ruled that Allan Bakke was indeed a victim of racial discrimination when he was rejected, and ordered him admitted to the University of California Medical School at Davis.

Bakke's gain could mean a setback for Blacks and other minorities seeking admission to professional schools, principally in the field of medicine. Additionally, it could lead to tighter job opportunities for minorities, particularly in areas where they have been unwelcome for a long time before affirmative action was initiated.

While the Court struck down Davis' plan, the ruling did not overturn the principle of affirmative action. It may have, however, injected a source of energy to the efforts of some who oppose affirmative action.

There was no majority opinion in the *Bakke* decision. Four justices agreed with the plaintiff that he had been discriminated against because of his color. They cited Title VI of the 1964 Civil Rights Act, which forbids discrimination on the basis of one's color, race or national origin.

Four other justices agreed that the Davis program was within the law by setting aside 16 places for minority students. They cited the 14th Amendment, which guarantees equal protection under the law, and which permits the courts to take race into account in correcting past injustices.

One of the nine justices agreed with each group—meaning, a majority of five justices ruled the Davis program illegal; a second majority of five ruled that race could be considered in special admissions programs. The latter point was cheered by civil rights groups.

Who really won? Obviously Allan Bakke did. But who lost? The answer depends on one's interpretation of the narrow ruling by the Court, and the fallout from *Bakke*.

For more on *Bakke*, see articles in this issue by Paula Jewell, John Fleming and Gerald Gill. □

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