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Myths and Realities

By Ralph R. Smith

As the United States of America enters its third century, its landscape is still scarred by its legacy of slavery and history of racism. Blacks and other minorities continue to find their horizons artificially limited and their mobility constrained through poverty and powerlessness in a society of plenty. Minorities, denied access to the perquisite and benefits of American society, populate the lower rungs of the economic and social strata—are provided inferior education, confined to substandard housing, discriminated against and victimized in every facet of the American society.

After a decade of activity, there has been a visible and significant slackening of efforts to remove these vestiges of racism. Instead, the society now seems preoccupied with the question of whether the very modest efforts undertaken to alleviate the burden of racism in education and employment constitute "reverse discrimination" against whites.

The case styled *Regents of the University of California v. Allan Bakke* is the current focal point of the debate about so-called "reverse discrimination." Last February, the U. S. Supreme Court agreed to hear the case. As a consequence, there has been increased media discussion of the merits of this case. Unfortunately, there appears to be a significant amount of confusion about the origins, developments and factual background of this crucial case. In many instances, the media and various commentators seem to regurgitate the myths, misconception and half-truths fabricated by those who seem committed to rush to judgment on this issue regardless of the facts.

A fair appraisal of the facts compel the conclusion that this case has no business before the United States Supreme Court at this time, that it does not fairly raise the issue purportedly presented, and that it is an inappropriate vehicle to carry what may be the most profound judicial pronouncement of the decade.

The following review of the record is intended to fill in some of the interstices in the reporting of the case thus far and to expose some of the myths currently being promulgated about the facts of this case.

The Rejection

After learning that his application for admission to the Davis Medical School had been rejected, Bakke sent two letters to that school. In the first correspondence he inquired about the possibility of enrolling in the school in any capacity. In the second, he noted the existence of, and raised questions about the legality of admissions programs and policies which gave preference to minority applicants.

In the exchange of correspondence which followed, a university official at Davis suggested that Bakke "pursue his research into admissions policies based on quota-based recruiting," voluntarily disclosed information about the special admissions program at the school; urged Bakke to review carefully the then pending suit against the University of Washington [1971 suit by Marco DeFunis for admission to law school]; gratuitously supplied the names of persons who could be of assistance to him in challenging the special admissions program; endorsed Bakke's plan to sue the Davis Medical School; and invited Bakke to re-apply.

Bakke reapplied and was again rejected. In June 1974, he filed a legal complaint alleging that the admission process at Davis was operated in a manner which violated state and federal laws and requested that the California State Court order his admission.

Rather than vigorously contesting the allegations in the complaint, the University of California ignored conventional legal arguments and procedural devices and chose instead to raise the ultimate constitutional issue by filing a cross-complaint for a declaratory judgment.

There was no extensive pre-trial fact-finding in this case. The record consists of the deposition and declaration of the associate dean of the Davis Medical

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School and Bakke's responses to a set of interrogatories propounded by the university.

There was no trial in this case. The parties stipulated to the facts and issues. At the brief hearing at which these stipulations were entered into the record, the university failed to argue or otherwise remind the court of the existence of its motion for a declaratory judgment.

Judgment was entered on March 7, 1975. The trial court found that Bakke would not have been admitted to the Davis Medical School even had there been no special admissions program. But because the university had requested a declaratory judgment, the trial judge went on to find the special admissions program unconstitutional.

Both parties appealed and the case went directly to the California Supreme Court. On September 16, 1976, that august body issued its decision when by a 6 to 1 majority it upheld the lower court's finding that the special admissions program was unconstitutional. The high court asked the trial court to reconsider the question of whether Bakke would have been admitted absent the program. At this point, the university abandoned its steadfast insistence that Bakke would not have been admitted in any event, and stipulated that it could not meet the burden of proof in this area.

Following this stipulation, and pursuant to the university's request, the California Supreme Court ordered Bakke's admission. (The case is up for a review this fall by the U. S. Supreme Court).

Myth and Reality

Myth: Allan Bakke was an exceptionally well-qualified student who would have gotten into the Davis Medical School had it not been for the Task Force (special) Admissions Program being challenged in this case.

Reality: (1) Eleven medical schools, eleven separate committees, dozens of faculty members and medical students across the country obviously agreed with the assessment of the Uni-

versity of California Davis Medical School—Allan Bakke was a good student but was not so outstanding an applicant as to be considered clearly superior to the thousands of other students competing for a limited number of seats in the entering class.

Allan Bakke had applied to 11 medical schools 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.

(2) Allan Bakke would not have been admitted to the Davis Medical School even had there been no Task Force Admissions Program.

Allan Bakke had a combined numerical rating of 468. There were 15 other students who were not selected who had scores of 469. Moreover, there were 20 students with the score 468 who were put on "alternate list." There were also a total of 35 applicants who would have been considered ahead of Bakke even if the 16 Task Force slots were not set aside.

In 1974, Bakke's benchmark score was 549 out of a possible 600. There were 12 applicants with higher benchmark scores who were not admitted. Moreover, there were 20 applicants on the alternate list. Again, even had there been no Task Force Program, there would have been 32 applicants ahead of Bakke for the 16 available places.

The trial court in California made specific findings on this matter: Plaintiff would not have been accepted for admission . . . even if there had been no special admissions program.

(3) If Allan Bakke was discriminated against it was on account of his age, not his race.

In a letter dated September 13, 1971, Bakke then 31, wrote the admissions committee at Davis to inquire about the impact of his age on the application process. On September 20, 1971, the associate dean for student affairs responded.

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". . . when an applicant is over thirty, his age is a serious factor which must be seriously considered. One of the major reasons for this is that an older applicant must be unusually highly qualified if he is to be seriously considered for one of the limited number of places in the entering class."

It is clear that so long as age was a factor—and this standard was applied—Bakke would not be accepted. He was just not "unusually highly qualified."

Myth: The program being challenged is one from which white students were arbitrarily excluded so that a rigid quota of racial minorities could be admitted, thus discriminating against whites on the basis of race.

Reality: (1) White students were never excluded from consideration under the Task Force Admissions Program.

The program was designed and identified as a program for the economically and educationally disadvantaged. While race-related, that category is not race-specific. White students applied and were in fact considered and interviewed under the auspices of the program on each year of its existence.

Much is made of the fact that no Anglo student had been admitted under the program since its inception. Other very important facts are ignored thus tending to mislead. The bulk (more than 80%) of applications to the Davis Medical School come from residents of California. More than 90% of the students accepted in the class are California residents. Much the same is true for Task Force applicants. Therefore, the relevant geographic area on which to base a decision as to relative economic and educational disadvantage is California. The fact is that racial and ethnic minorities comprise a disproportionate number of the economically disadvantaged residents of California. Furthermore, there is no doubt that the people of California who are educationally disadvantaged are those minorities who attend the inner city schools.

6 Therefore, it should not be surprising that the overwhelming majority, if not all of the admittees to any program for the economically and educationally disadvantaged, would be minority.

(2) The 16 seats set aside for the Task Force Program did not constitute a ceiling nor a floor on the number of minorities admitted into the Davis Medical School and therefore cannot be considered as being a "quota."

The Task Force allotment did not constitute a ceiling on the number of minority students in the class. In 1973 and 1974, a total of 56 minority students were admitted to the Davis Medical School, 25 of them regular admittees.

The Task Force slots did not constitute a floor either. In at least one year, a "slot" was "returned" to the "regular" committee because the Task Force could not fill it with a qualified applicant. Moreover, it should be noted that 16 was no magic number designed to assure proportional representation. The minority population in California is far in excess of 16%.

(3) Contrary to popular belief, the students admitted into the Davis Medical School through the Task Force Program were not all members of so-called racial minorities.

The record shows that Native Americans, Asian-Americans, Black Americans and Chicanos were accepted into the program. An often overlooked point is this: While Black and Asian-Americans can be classified as racial minorities, such a classification is inappropriate for either Chicanos or native Americans. Chicanos are a cultural and ethnic minority, not a racial group. Native Americans are a political minority, indigenous to this country, not a racial minority.

This fact is important since it severely undercuts the notion that those Anglo students not admitted under the Task Force Program were discriminated against because of race.

Myth: The so-called "regular" admitted students had far better credentials than—and had consistently outperformed in

This impression is conveyed because the writers have chosen to focus on the disparity in mean scores. Such a focus is misleading since many people do not remember that the mean score is not an average and suggest that half of the target group comes above the mean score.

Reality: The record shows that many of the Task Force Program admittees had better undergraduate grade point averages than many of the so-called "regular" admittees.

The two years in which Bakke applied are illustrative. For the class admitted in 1973, regular admittees had an overall grade point averages as low as 2.81. Task Force admittees had averages as high as 3.76.

For the class admitted in 1974, regular admittees had compiled undergraduate grade point average as low as 2.79 while Task Force admittees were as high as 3.45. In both years, the undergraduate performance of the Task Force admittees on the high side was markedly better than the majority of students admitted into class through the "regular admissions" process. □