

The Impact of the Bakke Decision: Some Court Cases

The Bakke decision has already begun to have an impact on the lives of Third World people and women, and its implications are far-reaching. The "reverse discrimination" argument implies that 1) either there has never been systematic national oppression, or if there was, there isn't any more; 2) any program which aims to compensate for discrimination against Third World people and women or to overcome the effects of discrimination, discriminates against whites and men. The first point denies the need for special programs, and the second point declares special programs illegal. It is clear that if the Bakke decision is upheld, all special programs won by mass struggle will be threatened. New programs will be still more difficult to achieve.

One aspect of the impact of the Bakke decision can be seen in a number of court decisions handed down in the last year and a half. Though some of the cases were initiated before the Bakke ruling was finalized, they reflect the same kind of reasoning and in some cases the Bakke decision is mentioned.

* The U.S. Court of Appeals in New Orleans ruled that an Affirmative Action on-the-job training program at Kaiser Aluminum and Chemical Corp. violated Title VII of the Civil Rights Act of 1964. (Title VII prohibits discrimination in employment on the basis of race.) The court ruled that since the program aimed to correct discrimination in society at large rather than at the specific plant, it discriminated against whites. As in the Bakke case, Kaiser and the United Steelworkers Union denied past discrimination, even though the surrounding community was 40% Black while only 14.8% of the workforce and 2.8% of the skilled craft workers were Black. The court said that since the program was voluntary and not the result of a court order, it violated the law.

* In Montclair, N.J., a court held that a person had to prove that he or she personally had been a victim of discrimination before becoming eligible for Affirmative Action. This ruling denies that Third World people (in this case, the ruling applied to Blacks) have been discriminated against as a group. If someone fails to apply for a job because he or she is aware of an employer's discriminatory practice, they would not be eligible for Affirmative Action in hiring.

* A sociologist sued Virginia Commonwealth University because two women were hired for positions he applied for. The university, trying to correct for past discrimination, only considered women for the positions. The court ruled that the federal regulation requiring institutions to institute Affirmative Action if they want government money violated the Fourteenth Amendment and Title VII of the Civil Rights Act. The judge claimed that the only solution to past discrimination was to hire "female and minority applicants whose credentials are superior to those of (white) male applicants".

* In a case involving financial aid to law students at Georgetown College, a court ruled that Affirmative Action had to be "administered on a racially neutral basis". Again the courts deny the existence of national oppression.

* In May, 1977, The U.S. Supreme Court upheld the Teamsters seniority plan, even though it violates Title VII of the Civil Rights Act of 1964. The court said that since the plan had been established before the Civil Rights Act was passed, the anti-discrimination provisions couldn't be applied. This decision presumably applies to all seniority plans initiated before 1964, no matter how much Third World people and women have been excluded.

* The U.S. District Court in Los Angeles ruled that a federal law ordering 10% participation by minority contractors on government construction jobs is illegal. The judge said, "For the life of me I don't see how a quota system achieves that stated purpose. There are disadvantaged whites too." The Associated General Contractors has launched a national court drive to overturn the 10% quota for minority contractors.

In addition to these cases, hundreds of other cases are pending in the courts nationwide. Many of these cases may be directly affected by the Bakke ruling.

It is important to recognize that the effects of the Bakke decision are not limited to court cases. Employers and union bureaucrats can attack existing Affirmative Action programs and resist new ones by pointing to the Bakke case. Colleges and universities are already stepping up their attacks on Special Admissions, Ethnic Studies programs, financial aid programs for Third World people, etc. Programs benefiting particular Third World communities are likely to be cutback. ABDC will continue its efforts to gather and distribute information on the impact and implications of the Bakke decision.