the court on the constitutionality of its special admissions program. When the California Supreme Court held that the question of Bakke's standing should be retried at the trial level, UC and Bakke agreed to falsely assert to the court that Bakke had standing to sue, in order to force an immediate hearing by the U.S. Supreme Court. Also, minority groups had asked UC not to appeal the California decision to the Supreme Court in order that the impact of this extremely weak case not be national in scope. The Regents refused this request.

In short: It was in the interest of minorities to delay a decision, to limit its impact, to question Bakke's right to sue; UC has rushed the case through to the highest court, and swept the question of Bakke's legal right to sue special admissions under the rug.

The evidence shows that the lack of adversity in the **Bakke** case is not just a theoretical legal problem. Minority interests in affirmative action have been sacrificed by UC in the **Bakke** case for the sake of institutional expediency and self-interest. In **Bakke**, minorities have not only been denied an opportunity to be heard in court. They have been stabbed in the back by the very institution which is supposed to be defending them.

U.S. SUPREME COURT: A POLITICAL INSTITUTION

The U.S. Supreme Court has repeatedly decided that adversity (truly antagonistic opponents) is required by Article III of the Constitution. The present court, dominated by the conservative Nixon and Ford appointees, has been made well aware of the lack of adversity in the **Bakke** case. Many minority legal groups in petitioning the UC Regents not to appeal and for the Court not to hear the case, discussed the non-adversity aspect of **Bakke**. Also, the media had widely publicized the Storandt letters, weaknesses of the legal argument, and concerns of minority legal groups. Despite this, the US Supreme Court has decided to hear the case. Given the facts of **Bakke**, the Court can only be seen as an active accomplice to the fraudulent denial of minority rights. The U.S. Supreme Court, in a "safe" political climate of rising racial prejudice and discrimination, is intentionally choosing to hear an extremely weak case which should not even be in court.

WHAT WE MUST DO:

We must build massive political pressure to fight racism and overturn the **Bakke** decision. Join the NCOBD in our demands:

1] **Overturn the Bakke decision;**
2] **Implement, maintain and expand special admissions programs and other essential services for minority students;**
3] **Implement, maintain and expand affirmative action programs in employment.**

Help to mobilize and participate in:

- **October 3 — Day of National Student Protest**
- **October 8 — National Day of Protest**
- **October 12 — pickets at federal buildings around the country on day of US Supreme Court hearing.**

In addition, the University of California, because of its collusive role in the case, has a special obligation to utilize all means at its disposal to win the case. Therefore, we demand that UC: 1) admit its past and present discrimination against minorities; 2) allow UC employees and students to participate without penalty, in activities on October 3 and October 8; 3) make available to the NCOBD its resources and facilities for build-up activities for Oct. 3 and Oct. 8, to be negotiated with representatives of our group; and 4) implement, maintain and expand affirmative action efforts both in education and employment.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

THE REGENTS
OF THE UNIVERSITY OF CALIFORNIA
Petitioner

&

ALLAN BAKKE, *Respondent*

A CASE OF POLITICAL COLLUSION

AN OPINION
BY THE NATIONAL COMMITTEE
TO OVERTURN THE BAKKE DECISION

In America, a legal contest is somewhat like a boxing match. The contestants are expected to follow the rules, the match is monitored by an umpire judge, and each contestant is expected to do his best to defeat his opponent.

In law, as in boxing, it's explicitly against the rules for one side to "take a dive." In legal jargon, this concept is called "adversity." The fairness of any decision is based on the complete disclosure of all relevant facts. In theory, all the important facts pro and con in any case will be brought to the court's attention because the opposing side will do everything they can to win the case. So when there is a lack of adversity in a case — when one side doesn't care about winning, or when both sides want the same results — the American system of justice doesn't work, in theory or in practice. It is the legal equivalent of a rigged fight.

This fundamental requirement of adversity in court is violated by the **Bakke** case. The people who really have something at stake in the case — minorities — have been excluded from the case, and given no opportunity to present their own defense of affirmative action. Instead, the University of California, an historic perpetrator of institutionalized racism, is the defendant in the case, and only UC has been allowed to present evidence and arguments in defense of affirmative action.

THE FACTS

By both words and actions, UC has proven itself incapable and unwilling to adequately defend minority admissions.

There is plenty of evidence that UC has been historically antagonistic to minority admissions and employment. From 1972 to 1974, the federal government found pervasive discrimination against women and minorities in University employment on at least three separate occasions. Even today, according to UC's own figures, only 1.1% of the tenured faculty at UC Berkeley is Chicano, and only 1.8% black; only 2.1% of the undergraduates at UC Berkeley is Chicano, and 4.1% black. In California, 16% of the population is Chicano. and 12.5% black. Despite this obvious racial inequality, UC has a special admissions program for minorities at the undergraduate level which is a paltry 2% of each entering class, and no affirmative action program for tenured faculty.

In legal terms, UC is not the "real-party-in-interest." Simply put, that means that UC is not the party that will be primarily affected by the results. If UC loses **Bakke**, what will it lose? A minority admissions program it implemented only because of intense political pressure by minorities. A program far more cumbersome and expensive to operate than standardized admissions. A program which reduces alumni donations by increasing the numbers of less wealthy, more community-service oriented graduates. Economically, UC will only gain by losing the case.

It is little wonder that minorities question UC's commitment to affirmative action: history, current practice and economics all prove that UC's interests do not coincide with the interests of minorities. To the contrary, UC has proven itself antagonistic to minority admissions time and again.

UC'S DEFENSE:

UC's legal defense of affirmative action parallels its practice in this area. Because of lack of space, just a few of the more important ways UC sabotaged its own case (and thus all affirmative action programs) are described below:

- A UC Davis admissions officer, Peter Storandt, was the primary instigator of the case. He suggested Bakke pursue a court suit on the grounds of racial discrimination; he suggested lawyers to Bakke and offered legal precedent for the case; Bakke even offered Storandt veto power over the suit, which Storandt refused to exercise.

- Because UC was not the real-party-in-interest, it faced a basic conflict-of-interest in its defense of the case. It is well-established legally that a history of past discrimination mandates remedial affirmative action programs. Yet UC introduced not one word of testimony regarding its long history of past discriminatory practices. It thus discarded a winning argument in the suit, in order to maintain the institution's legal and social interest in **not** indicting itself as a racist institution. UC's conflict-of-interest was further revealed when it failed to challenge the Medical College Admissions Test, which supposedly proved that Bakke was more "qualified" than minority applicants. The test has been widely attacked as a useless predictor of actual performance as a physician, and as a test biased against minorities. However, UC wishes to continue to use the test, so it intentionally disregarded another critical aspect of the case.

- UC made a pitifully inadequate effort at the trial court level. It offered only one witness, who did not even testify before the judge. It made no attempt to offer testimony from students and minorities who would be primarily affected by the decision, nor from social scientists who could offer expert testimony to support the program.

- UC's only witness, Dean George Lowrey, either lied or made an incredible mistake in regards to Davis' special admissions program. He stated that **only** minority applicants were considered for the program, when in fact white students had been considered and actually interviewed for special admissions. Lowrey's error falsely validated the critical claim of Bakke that the program intentionally discriminated against whites.

- Through its legal maneuvers, UC has consistently shown that it is more interested in getting a final decision on the case than it is in **winning** the case. Bakke's contention was that the UC special admissions program was responsible for his non-admission. UC could have challenged Bakke's "standing" (legal right) to sue the University program since it could have been argued that other factors (Bakke's age, number of admission slots overall, etc.) were the primary reasons for Bakke's non-admission. But UC did not challenge Bakke's "standing"; instead it assumed the special admissions was in question and counter-sued for a declaration by