INTRODUCTION

On September 16, 1976, the Supreme Court of California in the now famous Bakke v. the Regents of the University of California, struck down the special admissions program at the University of California at Davis Medical School. The court ruled that:

> as administered by the university, which was now shown to have previously discriminated against minoritites, (the special admissions program) violated the constitutional rights of nonminority applicants since it afforded preference on the basis of race to persons who, by the university's own standards, were not as qualified for the study of medicine as nonminority applicants denied admission, especially since the university failed to demonstrate that basic goals could not be substantially achieved by less detrimental means.

At minimum, this decision, if upheld by the U.S. Supreme Court (to which it has been appealed), will seriously undermine the historical struggle of racial minorities to win access to higher education and will deter colleges and universities from establishing serious programs to overcome racial discrimination and segregation. However, it is extremely likely that such a decision will also put an end to meaningful affirmative action for minorities in employment and will undoubtedly encourage attacks on similar programs for women.

This racist attack on a hardgained product of the Civil Rights struggle is one of the most damaging of a recent resurgence of racism that has witnessed the reemergence of the Ku Klux Klan and the Nazis as a force in public life. It must be prevented, the tide of racism must be turned! To do so will require the conscious, active participation of not only students, but workers, community organizations, churches, women, and many others as well.

This essay is meant to be an educational tool to be used in this fight and will provide basic background information, especially as regards the legal aspects of the Bakke case. The more crucial political analysis has been set down elsewhere.

I. What is SPECIAL ADMISSIONS?

Various reasons have been enunciated for special admissions programs: to increase minority access to higher education, to desegregate the colleges and universities, to provide trained people to meet the needs of disadvantaged minority communities, and to lay the basis for increased employment opportunities and desegregation of society. These programs, along with their counterpart affirmative action plans in employment, were instituted in response for equality raised by Third World people in the 1960's and early 1970's. Over 100 medical schools were among those educational institutions that created special admissions in this period of time.

The operation of these programs varies significantly from school to school(and even within different departments of a single school), but can generally be divided into three basic types. The least effective are those which merely promise to make special efforts to recruit racial minorities, but which fail to make any concrete committment to admit minorities. The second brand gives preference to minority applicants. That is to say, given two applicants of "equal qualifications", a minority would be given preference over a white. Needless to say, such situations are very rare and therefore these programs have little affirmative effect.

Finally, some special admissions programs set a definite quota or goal, either as a percentage or absolute number of the entering class, for minority admissions. These programs are few in number-- usually limited to a few graduate professional schools of law, medicine, or social welfare-- and the 'quota' or 'goal' may vary greatly. Nonetheless, this third form is by far the most effective to insure at least minimal minority participation in higher education. The Davis program was of this 3rd type.

It should also be noted that some special admissions programs do not include Asians, while others not only include Asians, but also whites. At any rate, for all the drawbacks of special admissions, it is important to remember that they have been perhaps the main vehicle for Third World people to gain entrance into higher education. We should fight for their extension and more effective implementation.

II. The Admissions Program at UC DAVIS MEDICAL SCHOOL

The medical school at Davis was founded in 1968. In its first two years of operation it had no special admissions program and only two blacks and one Latino were granted entry. By contrast, 33 Latinos, 26 Blacks, and one Native American were admitted in the first four years that special admissions operated (1970-74).

In 1973 and 1974, Allan Bakke, a 34-year-old white engineer, applied for admission to thirteen medical schools, including UC Davis, but was neither accepted nor put on the alternates list at any of them. In 1973 there were 2644 applicants to Davis, in 1974 there were 3737. A mere 100 positions were available in each of these two years, a fact which contrast glaringly with the outrageously expensive and

inadequate state of the U.S. health care system (which particularly victimizes minorities and the poor), and which fosters intense competition and racial animosity among students and applicants. Indeed, in 1975, only 1094 students were admitted to medical school in the entire state of California.

Under Davis's regular admissions program, students were assessed based on their application, letter of recommendation, scores on the Medical College Admisssions Test (MCAT), grade point average, and interview. Only those with grade point averages of 2.5 or greater were granted interviews at all and these amounted to only 462 (15%) in 1974. At least 84 persons were regularly admitted each year, the remaining openings being filled by special admissions.

The 16 special admissions ("Task Force") positons were open to all students who could demonstrate that they were 'disadvantaged' according to income (not race). (The population of California is 16% Latino, 7% Black, 2.8% Asian, and 0.5% Indian.) The 628 people who were allowed to apply in this category in 1974 were subjected to much the same criteria and process as their counterparts in regular admissions. However, applicants were not automatically disqualified if their grade point average was below 2.5, nonetheless only 88 applicants (14%) were granted interviews. Among these were white students, but no whites were ever admitted under special admissions at Davis.

It is also important to note that while there were separate committees for regular and special admissions, the special committee only made recommendations which the regular committee could accept or reject. There need not necessarily be 16 special admittees per year. Thus, although students applying under the two programs did not directly compete for the same set of positions, they ultimately were reviewed and accepted or rejected by one and the same regular admissions committee for the same 100 openings.

III. HISTORY OF THE BAKKE CASE

Significantly, an official of the University of California--Peter Storandt, Assistant to the Dean for Student Affairs and Admissions at Davis--played a key role in encouraging Bakke's reverse discrimination suit. In his July 18, 1973, letter to Bakke, Storandt repudiated Bakke's contention that his (Bakke's) non-admission was principally due to his advanced age. He went on to encourage Bakke's research into quota-oriented recruitment of minorities by forwarding a summary of the DeFunis Case (an earlier suit virtually identical to the one that Bakke later submitted). He also referred Bakke to a lawyer and an associate dean of New York University's Medical School who had previously been involved in similar research.

The fact that this UC official was a prime motivator and supporter of Bakke's eventual suit is made abundantly clear in Bakke's August 7, 1973, reply to Storandt. Here, Bakke proposed tow alternative plans of action, but stated that, as a matter of "principle," he would "avoid actions which you, Mr. Storandt, personally or professionally oppose. My reason for this is that you have been so responsive, concerned, and helpful to me." Bakke then explicitly inquired: "Would Davis prefer not to be involved in any legal action I might undertake, or would such involvement be welcomed as a means of clarifying the legal issues involved?"

Storandt's answer was unambiguous: He expressed favor for one of Bakke's two proposed palns of action "with the proviso that you press the suit [against minority special admissions]--even if admitted [to medical school]--at the institution of your choice."

In 1974, Bakke filed suit in the Superior Court of Yolo County (where Davis is located) charging that UC Davis' Medical School special admissions program constituted reverse racial discrimination and therefore unconstitutionally violated his right to equal protection under the 14th Amendment to the U.S. Constitution. He therefore requested that the Court instruct the medical school to admit him. The university, in consonance with Storant's earlier activities, filed a "cross complaint" to insure that the constitutional issue -- and not just the issue of Bakke's admission -- would be decided.

Judge F. Leslie Manker was summoned from retirement to hear this visibly important case. No actual trial was ever held; instead the case was decided solely on the basis of written evidence. On this meager foundation, Manker found that the program indeed did discriminate against Bakke because of his race and was therefore unconstitutional, but determined that Bakke was not entitled to an order of admission to Davis. As a result, both parties appealed the decision.

Normally the appeal would have been heard before the Court of Appeal but "because of the importance of the issues involved," the California Supreme Court transferred the case to its own review. At this point, many Third World organizations united and petitioned the Court to be heard on behalf of those who would really be affected by the case, Third World people. They charged that the university had participated in bringing the suit and furthermore that it had not presented proper evidence before the Court that could prove the constitutionality of its special admission program. Despite U.C.'s unfitness to argue the case, the Third World

lawyer's petition was denied and they were not allowed to speak before the Court. Subsequently, the California Supreme Court ruled the program unconstitutional and ordered Bakke admitted to Davis for Fall, 1977.

Over the protests of numerous civil rights, labor, legal, and community groups, the university appealed the case and was granted a hearing before the U.S. Supreme Court. Thus, despite the importance of the issues involved for the future of Third World people and despite the demonstrably weak case being presented by the university, the U.S. Supreme Court is poised to make a decision which will profoundly affect the entire nation.

IV. SUMMARY OF THE CALIFORNIA SUPREME COURT MAJORITY OPINION

A. The Issue: Qualifications and Reverse Discrimination

The issue, as defined by six of the seven California Supreme Court judges, was the constitutionality (under the Equal Protection Clause of the 14th Amendment, which guarantees all person's equal treatment under the law) of rejecting "better qualified" white applicants in order to admit minorities. Cases involving this issue have been more commonly called "reverse discrimination" cases.

B. UC Should Have Shown Past Discrimination

The court asserted that a program using race with the "reverse" effect of discrimination against whites was valid only where past discrimination against minorities by the School had been proved. Since the UC counsel did not present any evidence of this past discrimination, the Court determined that the School's "preferential" treatment of minorities was unconstitutional.

The court required that, in order to prove past discrimination, it had to be shown that the School intended to discriminate on the basis of race. Hence, the Court rejected the argument presented by minority organizations in their "friends of the court" (amicus curiae) brief that UC Davis had discriminated in fact, if not intentionally, against minorities by admitting applicants primarily on the basis of test scores which were culturally biased.

C. Benign Classifications

The court distinguished the use of racial criteria by the Medical School from other cases where the use of racial classifications to benefit minorities had been upheld ("benign" classifications). In cases dealing with desegregation of public schools, bilingual education, and the right of non-English-speaking citizens to vote, the use of race was constitutional because the Court contended whites were not deprived of the benefits extended to minorities.

D. Suspect Classifications

Because the use of race by the School supposedly deprived whites of a medical education while extending the benefits of such an education to minorities, the Court equated the Bakke case to those in which race had been used to discriminate against minroities. In both types of cases, the Court said, the use of race was "suspect" because it discriminated against a person on the basis of race. Such "suspect classifications" can only be used if there is a "compelling state interest" for their use and if their use is the means which is "least burdensome" to the discriminated-against group (allegedly whites in this case).

E. UC's Arguments

UC argued that:

1. The Medical School's use of race was not suspect because it did not stigmatize or disadvantage minorities. Hence, the special admissions program should be judged by a less strict standard than that used to judge suspect classifications. Under a more lenient standard, the Court should try hard to uphold a classification if it has any reasonable purpose ("rational basis test").

2. Even if the School's use of race was suspect, there was a compelling state interest for using race: a) to integrate the Medical School and profession, b) to provide minority doctors for minority communities, c) because minority doctors have better relations with patients of their own race and greater interest in the medical problems of that race. (In the state of Washington, in a similar case known as DeFunis v. Odegaard, the State Supreme Court had found a compelling state interest in integrating the law schools and legal profession. It thus upheld the school's minority admissions program despite a claim of reverse discrimination by a white applicant.) The UC also argued that without its special admissions program, the goals stated above could not be met.

F. Fourteenth Amendment Guarantees Individual Rights

The Court rejected UC's first argument, saying that the "equal protection clause" applies whether a member of the minority or the majority has been discriminated against. This is because the equal protection clause guarantees each individual a personal right to equal treatment. The Court also noted that the white majority in "pluralistic," and includes groups who also suffer discrimination, such as Catholics, Jews, Italians, Irish, and Poles.

G. No Evidence That U.C.'s Goals were Served

The court rejected U.C.'s second argument, saying that UC had produced no concrete evidence that any of its stated goals had been met by the program or that UC had to "discriminate against white applicants" to achieve those goals.

The court quoted U.S. Supreme Court Justice Couglas' dissenting opinion in DeFunis, which stated that the university's function was to produce "good lawyers (or doctors) for Americans", not "black lawyers for blacks."

The court stated that racial classifications are not necessary to produce minority doctors for minority communities. It found no evidence on the record to show that minorities do serve minority communities and whites do not.

H. Alternatives Are Available

The court assumed for the sake of argument that integration and serving the needs of minority communities were "compelling state interests." However, the court determined that these interests could be served by methods less harmful to whites. The court acknowledged that the university need not emphasize traditional academic criteria for admissions (test scores and grade point average) but also stated that none of the alternatives could use racial classifications (i.e., they had to be "colorblind").

The court's suggested alternatives were:

a) Flexible admissions standards which take an individual applicant's disadvantaged background into account, "regardless of...surname or color."
b) Aggressive recruitment and remedial programs for disadvantaged applicants of all races.
c) Increasing the number of places in medical schools by enrolling more students or expanding the schools.
d) Considering an applicant's demonstrated past concern for disadvantaged minorities or desire to practice in minority communities in the future.
e) Revamping medical school programs and training so that they serve the medical needs of minority communities and the poor.

I. Policies Favoring Colorblindness

Finally, the court presented several policy reasons for condemning the use of race in admissions: Such use, they argued, would-

a) Threaten racial harmony.
b) Offend the principle that each person should be judged on individual merit alone.
c) Overemphasize the racial context when looking at an individuals success or failure.
d) Practical problem of identifying racial minorities and of eliminating preferences once established.
e) Potential misuse of racial classifications in other situations.

The six judges thus concluded that the medical school's special admissions program was unconstitutional because it violated the rights of whites to equal treatment.

Moreover, there is no evidence that such criteria are related to performance in medical school much less performance as a doctor. In fact, a study by the Ass'n of American Medical Colleges revealed that Blacks who successfully completed the first two years of medical school had lower MCAT averages than whites who flunked out. Such important non-academic qualities as compassion, dedication, energy and maturation are completely ignored.

V Criticism of the Majority Opinion

A. Institutionalized Racism

The court ignores centuries of deprivation suffered by minority races, especially as institutionalized in education and employment. Whites as a racial group have not been and are not being excluded from graduate and professional schools, as minorities have been and still are. (Although poor whites are denied some educational opportunities.) Bakke attacked the 16 Task Force openings allocated to minorities from among the total 100 openings. The court chose to ignore the fact that the other 84 openings, if not more, go overwhelmingly to whites.

B. Qualifications Erroneously Defined

Behind the court's assumption that Bakke and other whites were discriminated against is the erroneous idea that they were "better qualified" than the minorites who were admitted. "Qualifications" referred primarily to MCAT scores and grade point average, an even narrower definition than that drawn by the medical school.

The court and UC- did not even consider the controversial issue of whether standardized tests are racially biased.

Finally, as Justice Tobriner pointed out, "qualifications" could also have been defined in terms of the needs of the profession and society.

C. Community Needs & Race

The court pays lip service to the importance of meeting the medical needs of minority and poor communities. Its suggested alternatives to an admissions program based on traditional criteria challenge the university to implement admissions policies which are more responsive to the needs of such communities, regardless of the outcome of the Bakke case.

However, the court forbids <u>any</u> consideration of race. It thus ignores the fact that those who predominantly inhabit disadvantaged communities and who have a paramount commitment to improving living conditions there are minorities. It also gives little attention to the integration goal of special admissions, and seems unconcerned about the fact that under

He also suggested that the court could have considered the continuing effects of past discrimination in the country as a whole or the continuing effects of using racially discriminatory standardized tests in primary and secondary schools.

He cited a number of reasons why consideration of race was a compelling state interest: 1. Cultural bias of traditional criteria and their unrelatedness to medical practice; 2. Integration of the student body, the medical profession and society; 3. Meeting the needs of minority communities.

Hence, he saw race as a necessary category for achieving desegregation of the school and profession. A program for the disadvantaged is vague and inappropriate in light of the goal of desegregation because the whites admitted under such a program would lessen the progress toward that goal.

Tobriner refuted the majority's contention that the school's special admissions program constituted an objectionable quota system. He described the sixteen slots instead as a numerical goal set by the school to insure more than token representation of minorities. He cited the school desegregation cases, which permitted concrete integration goals. (Facts revealed in an amicus brief supported Tobriner's position. In 1974, only 15 minorities were admitted under the Task Forcewhile the sixteenth slot was returned to regular admissions because the Task Force felt that there was need for a more qualified admittee.)

Tobriner questioned the policy considerations set forth by the rest of the court, pointing out that there was much conflicting opinion in this area. Hence, policy judgments about minority admissions were more appropriately left to educational institutions.

Finally, Tobriner discussed the broader context in which minority programs were implemented. "Two centuries of slavery and racial discrimination have left our nation...a largely separated society in which wealth, educational resources, employment opportunities-indeed all of society's benefits-remain largely the preserve of the white-Anglo majority." He pointed out that it has been only in the last decade that affirmative action programs have led to "some degree of integration in many of our institutions." But now the court had chosen to use the Fourteenth Amendment to forbid graduate schools from voluntarily seeking integration.

VI. CRITICISM OF THE UC COUNSEL

The UC counsel was very much aware of the broad implications of the Bakke case from the very beginning. The prior DeFunis case had evoked massive commentary and alerted the entire legal community as well as a large part of the general public, of the battle over special admissions. Yet counsel failed to do an adequate job of defending the medical school's special admissions program. The failure was no accident. UC counsel has proven very competent when the university is sued by a minority person charging racial discrimination.

A. Presentation of UC's Case

The University filed a cross-complaint, seeking a determination from the court that the special admissions program was valid. The cross-complaint listed the goals of the program (see Part IV, Sec. E) and stated that the medical school considered the minority status of an applicant as only one factor in selecting Task Force admittees.

Getting the court to declare a special admissions program constitutional is a major task. Yet the only evidence that UC counsel presented in defense of the program was an 11-page document written by the Chairman of the Admissions Committee, Dr. Lowry. No other evidence was presented since the university stipulated that the case could be decided on the basis of Dr. Lowry's declaration and the paper evidence generated by Bakke. UC counsel did not call any witnesses in defense of its case.

From this evidence, the trial court concluded that nonminority applicants had been barred from the special admissions program. UC counsel did not challenge the court's conclusion and failed to mention that whites had applied and were granted interviews under the program.

B. Failure to Show Past Discrimination

One of the main reasons that the court invalidated the special admissions program was because of UC's failure to present evidence of its past discrimination against minorities. UC counsel could have offered evidence of past discrimination conducted not only by the medical school but also by the UC system.

Examples of UC's past discriminatory conduct are its use of culturally-biased tests (e.g., MCAT, LSAT, SAT) or its past policies (express or implied) of denying educational opportunities to minorities.

UC further failed to show how racial discrimination in the country as a whole has manifested itself in all major institutions, including education.

C. Failure to Support its Arguments

UC gave no specific support for its argument that certain "compelling state interests" underlay its program. UC counsel inexcusably presented no statistics from the medical profession proving a lack of minority doctors or the much higher proportion of white doctors to whites than of Third World doctors to Third World people. Additionally, no evidence was presented to supports its assertion that minority doctors have a better rapport with minority patients or that they increase the availability of medical care in Third World communities. Finally, no arguments demonstrating the unique requirements (e.g. language and culture) of minority communities was put forth.

Outside of a single statement by Dr. Lowry, UC presented no evidence to support the argument that its program was the only means of accomplishing its goals. A single, unsupported statement by one individual is hardly sufficient to sustain UC's position, especially when racially based special admissions have been examined with suspicion by other courts. UC counsel was well aware of the legal hurdles to be overcome.

D. Lack of Minority Counsel

UC counsel failed to consult minority attorneys or groups actively involved in civil rights litigation in the development of the Bakke case. Although minority status alone would not have guaranteed that a minority attorney would argue a better case, minority attorneys have a direct concern and desire to prepare a good case and have had valuable experience in dealing with issues of race discrimination.

UC's elitist attitude is further revealed in its choice of lawyers to argue the case in the U.S. Supreme Court. UC has emphasized "big names" rather than experience with affirmative actions issues: Archibald Cox, Jack Owens and Paul Mishkin (Boalt Hall professors) and Donald Reidhaar (head UC counsel).

E. Other Criticisms

To undermine Bakke's argument that he was "better qualified" than minority admittees, the UC counsel should have introduced the fact that some whites admitted to the medical school in 1973 or 1974 had lower scores than Bakke.*

UC counsel failed to challenge Bakke's contention that Task

* For instance, some of the regular slots in the freshman medical classes were given - at the order of senior medical school officials - on the basis of friendship and political connections, to students who would not normally have been eligible. Significantly, it is the programs for minorities, not for the priviledged, that are so inadequately defended by the university.

D. Impact on Existing Affirmative Action Programs

Affirmative action programs vary in each industry or school. In Part I, we described the three major types of programs: 1) recruitment, 2) preferential treatment, and 3) racial quotas or slots.

Employers or schools which implemented programs like (2) and (3) on a voluntary basis are very likely to dismantle such programs to protect themselves from multiple suits like Bakke's.

E. National Impact

If the California Supreme Court's Bakke decision is upheld by the U. S. Supreme Court, it will become the law throughout the country, and not just in California. Such a powerful legal precedent will undoubtedly open the court doors to a flood of "reverse discrimination" suits and will further result in immense pressure on, if not elimination of, Affirmative Action programs. The impact of the decision will become most striking in areas where racial minorities are only beginning to be admitted, hired, or promoted, while many whites are also vying for positions. Such situations have been multiplying since the onset of economic recession in 1972: today, more applicants are forced to apply for fewer jobs and university openings. At UC Davis, 3737 people applied for 100 slots in medical school in 1974.

Despite centuries of racial oppression, few legal remedies have ever been available to minorities. Even worse, the existing legal remedies are increasingly under constitutional attack. The Bakke decision is in the frontline of this racist attack and will give great encouragement to future restrictions, if it is upheld. Many judges and lawyers, not to speak of corporations and government agencies, are itching to cite and quote the Bakke decision in their attack on Affirmative Action and the struggle for racial equality.

This decision is crucial, its possible effect is vicious.

VII. POSSIBLE IMPLICATIONS OF BAKKE IF AFFIRMED BY US SUPREME COURT

A. Special Admissions Based on Disadvantage

As suggested by California District Court of Appeals Judge Cruz Reynoso, the case could be interpreted most narrowly as upholding special admissions programs for disadvantaged applicants. The following factors would then be relevant:

1. linguistic background;
2. culture of the applicant;
3. geographical distribution of resources;
4. financial need of applicant;
5. desire to serve minority communities;
6. understanding of and rapport with one or more minority groups in the state.

However, racial quotas or consideration of race would be unconstitutional without a finding of past discrimination by the court. Hence, even though special admissions programs might be maintained or expanded, all the openings could conceivably be taken up by disadvantaged whites. There would be no guarantee that Third World applicants would be admitted. Minority admissions would be left up to the good will of admissions committees which historically have proven unresponsive to Third World people.

B. Employment

Bakke might be interpreted narrowly as applying solely to special admissions programs at schools. However, this seems unlikely, given today's high unemployment rate and the resultingly greater competition for jobs and promotions. Bakke represents a legal tool for any disgruntled white who considers himself or herself a victim of "reverse discrimination" in hiring or promotions. Several of these cases are already in court and have cited the Bakke decision to back up their position.

C. Requirement of Past Intentional Discrimination

Affirmation of Bakke would give added strength to the arguments that: 1. the person charging discrimination must prove that the school or employer intentionally discriminated against minorities in the past and 2. absent a record of past discrimination, no school or employer could voluntarily implement special admissions or a hiring program giving preference to one's minority status.

In other words, racial discrimination would now be legal except in those rare cases when the racist intentions of the perpetrator of racism could be documented. Moreover, these results would, in essence, legitimize the idea of "reverse discrimination."

VIII. WHERE THE CASE IS AT NOW

The Bakke case is now before the U.S. Supreme Court. Both Bakke and the university are requred to submit their legal arguments in writing by June 7, 1977

Interested organizations and individuals are also allowed to express their opinions and make arguments in the form of "amici curiae" briefs which must also be presented tc the Court by June 7. These so called amicus briefs are important as they are the only method for the public to express its opinions directly to the Court.

The date of the actual Court hearing has not yet been set, but most commentators agree that the hearing will occur sometime in October since the Court is on vacation through the summer. The hearing consists merely of half hour presentations by the opposing parties, most of which time is spent answering questions posed by the judges. After that, the Court will make its decision anytime from a week to many months after the hearing.

Since the case is before the Supreme Court, it is necessary to know whom we are dealing with. Supreme Court justices are appointed by the President and approved by the Senate for lifetime terms. The present court is dominated by Nixon and Ford appointees of conservative stripe, including Chief Justice Berger, William Rehnquist, Harry Clackmun, Lewis Powlell, and John Paul Stevens. The "moderates" tend to be Bryon White and Potter Stewart, while the liberals are Thurggod Marshall, the only black justice, and William Brennan. In order to overturn the California Supreme Court's Bakke decision, all four of the moderates and liberals plus at least one of the conservatives--most likely Blakmun or Stevens--must so vote.

Two recent Supreme Court decisions illustrate the political tendency of the Court and its attitude toward minority rights. In Keyes v. School District #1,Denver (1973), the justices struck a damaging blow to school desegregation. In this decision, they held that the Court could not order desegregation action unless it can proved that segregated schooling exists due to intentional official acts. In other words, the fact of segregations is not enough for the Court to compel desegregation; in fact such segregation is evidently constitutional. Segregation is unconstitutional only if it can be proved to have been intentionally created by official (governmental) acts.

This "logic" was extended to all suits brought on the basis of the U.S. Constitution in Washington v. Davis (1974). In this decision, the Court, in effect, declared that racial discrimination is quite constitutional unless it can be proved to have been intentionally brought about by the specific institution or organization charged with discrimination. In other words, the effects of racism are no longer important to the Court. To them the only questions is whether or not it can be proved that racial discrimination was practiced intentionally. It is obious that in this post Civil Rights era, it is virtually impossible to obtain such proof of intention depite the face that racism, segregation, police brutality of minorities, etc. goes on unabounded and is in fact on the rise.

Rare (and stupid) is the racist who writes down his intentions and makes it available to a court. Needless to say, to the victims of racism, it matters not the least bit whether intent can be proved or not, for that matter, whether intent existed at all.

In each of these cases the Court's opinion was far from unanimous. Nonetheless, it should be clear that we cannot rely upon legal argument alone to overturn the Bakke decision. This case is a political case and is so recognized by the Court. It is undoubtedly the most important Court decision affecting minorities and race relations since the famous Brown v. Board of Education (1954) decision which renounced the "separate but equal" doctrine which had previously been the legal justification for segregation. Now the Bakke decision could mean the Supreme Court's complete abandonment of its past stance of legal activism to combat racism and its adoption of disastrous policy of assuming racial equality.

We cannot rely upon either the weak arguments of the university or the good will of the Supreme Court to overturn the Bakke decision. Instead we must build a broad based movement of all who oppose racism and force the court to overturn this racist decision. We must turn a bad thing-a racist attack on Third World people-into a good thing- a persistent mass movement for racial equality, justice, and human rights.

most foolish racist documents his intentions.

Secondly, the court ruled that minority students admitted to UC Davis' special admissions program were less qualified by UC's own standards. This assumes that grade point averages and the Medical College Admissions Test (MCAT) accurately predict how well an applicant will perform in medical school and as a doctor. But this has been decisively disproven. For example, a recent study of the Association of American Medical Colleges showed that blacks who had successfully completed the first two years of medical school had lower MCAT scores than whites who had flunked out. Clearly such characteristics as compassion, motivation, and energy -- so important for doctors -- are not measured by these traditional standards. *Even (this) has been forced to concede the cultural and social biases of its testing procedures and has been revised.*

4. the last sentence of para. 11 should now read: In other words, the Court ignored the legacy of racial discrimination in the U.S. and the oppression faced by minorities today.

5. An entirely addional section on the Supreme Court was suggested. The following is a draft proposal:

The U.S. Supreme Court

The present Supreme Court is dominated by Nixon and Ford appointees of conservative stripe. The hostility of this body to the rights of racial minorities is well known. This court was responsible for seriously undermining the legal basis of school desegregation, for forcing victims of racism to prove the intent of their oppressor in order to have a legal basis to sue, and for holding that inequities in school financing (e.g. between ghetto and surburban schools) does not justify court-ordered equalization. Moreover, the Supreme Court has purposely chosen to make an historic judgement about 'reverse racial discrimination' on the basis of a case which has been deliberately weakened by the U.C. regents. Many Bakke-like cases are now making their way through the state courts which make far stronger arguments to uphold special admissions and affirmative action. The Court's choice of the Bakke case indicates that they may have already made up their minds to sanction 'reverse discrimination.' Clearly, it would be foolish to count on such a Court to overturn the Bakke decision on its own initiative.

It is sometimes thought that the Constitution is a clearcut document that requires or allows for little 'interpretation' or that the Supreme Court is so distant that it never will be influenced by public opinion. If this were so, we would be hard put to explain why the Court has so often changed its mind about what is constitutional. It was no accident that slavery was declared illegal after the Civil War or that Jim Crow rules of 'separate but equal' were ruled unconstitutional during the Civil Rights movement. Now it is our task to generate the kind of people's movement that will force the Court to strike down the Bakke decision and debunk the concept of 'reverse discrimination.'

6. the section on the role of the U.C. (section 7) should be improved in the following ways: (a) stronger language should be used to criticize the U.C., (b) their role in insuring that the constitutional question -- and not just the question of Bakke's admission to the medical school -- be decided in this case should be exposed. (c) perhaps the quote from U.C. Counsel Morrison saying that he was working for the university, not for minorities, could be included.

7. Section 6, para. 15: this paragraph could be clarified by the use of the terms 'main target' (the Supreme Court) and 'secondary target' (meaning the U.C.).

Proposed Changes in Demands

The proposed changes in the demands are major ones. They are proposed however to realign the subsequent demands with the primary one, that is "Overturn the Bakke Decision."

Behind this demand we must unite every possible sector of the population to "Overturn the Bakke Decision". In doing so we must note that particular stress should be given to the minority students and minority workers for it is their well being that is immediately at stake.

Whether it be these sector or others we must recognize that there will be a need for particular tactics and sometimes particular goals given the various areas that the case effects.

In this spirit, we are proposing demands that can be embraced by this body as a whole. Demands, that people can take to their various areas of work and apply creatively.

Demand #1 -- As is; no changes from the original text.

Demand #2 -- Maintain, implement & expand special admissions and other services for minority students at the graduate and undergraduate levels.

This demand is directed against the UC and other educational institutions. Special admissions and other services for minority students are essential to enable minorities to participate in all aspects of society & also with their skills, serve the needs of their communities. Educational institutions have a special responsibility to correct conditions resulting from racial discrimination. The UC is an institution with a strong history of racism and non-responsiveness to the needs of minority communities. The Bakke case is only one more example of the UC's opposition to any basic changes. We must force UC and other educational institutions to maintain and expand their special minority programs and services.

Demand #3 -- Implement, maintain, and expand affirmative action and other (minority) programs in employment.

In this demand we are addressing ourselves to the serious ramifications that the Bakke decision will have and is already having on minorities in employment. The demand not only takes into account the historical struggle for the basic right of these sectors to make a living but it also seeks to mobilize the potentially giant energies of these sectors to fight a decision that is being directly aimed at them.

This demand reveals the Bakke decision's full impact on all minority people -- whether it be on the job or in

#3 (~~Oppose any~~ No cutbacks of affirmative action programs in employment, especially when the (~~court~~) Bakke decision is used as a precedent.)

aspect of our society. Even as minority people have labored strenously to build this country's wealth and resources, they have received few benefits from this labor. Minorities have been systematically excluded from educational and employment opportunities available to white Americans; and therefore, relegated to live in ghettos/barrios where the poverty, unemployment, poor housing, and health services have been recycled for decades.

The Civil Rights movement of the 1960's represented a major attempt to change these conditions, in fact, to alter the course of centuries of discrimination. The Civil Rights movement drew attention to the racist institutions and ideas that were so firmly embedded into American society. People of color demanded human rights through militant protests, boycotts, strikes, and legal and legislative means.

This powerful Civil Rights movement produced gains in the political, educational, economic and social arenas. The Civil Rights Act of 1964, affirmative action programs in employment, special admissions at the colleges, and a widespread awareness of racism as a central problem in the U.S. were some of the products of this movement. Despite the fact that advances were registered, many of these programs had severe shortcomings in their funding and actual implementation. Moreover, as the Civil Rights movement was dissipated, the difficulties increased and attacks on hard won gains intensified.

It is no accident that the Bakke case has arisen when it has. In the mid-1970's we are witnessing an upsurge of racism in this country. Many gains of the Civil Rights movement are being cutback and eliminated. Affirmative action programs and special programs in education are being questioned and attacked. When minorities have tried to preserve and extend these minimal human rights gained in past years, the rallying cry of the racists is "reverse discrimination," a concept which makes the victims of racial discrimination appear as oppressors. This concept of "reverse discrimination" is the foundation of Allan Bakke's case against the UC Davis medical school's special admissions program. The Bakke case, then is indicative of the general trend of rising racism in this country.

Bakke Decision==Racism

The Bakke case itself will most directly and most immediately lay the basis for the dismantling of all special admissions programs at universities and graduate schools nationwide. Additionally, and even more significantly, it would justify "reverse discrimination" as a legal concept. This will drastically accelerate the urrent trend of cutbacks of special programs for minorities in all spheres of society. It would clear the way for similar "Bakke suits" to be filed against affirmative action programs in employment, as well as those supporting women's rights. In fact, already many suits based on the rationale of the Bakke case and attacking affirmative action programs are, have been filed and are pending in the courts. Moreover, employers who voluntarily implemented affirmative action programs are, in light of the current status of the case, considering their elimination rather than face legal suits similar to Bakke's.

The severe implications of the Bakke already point out that the decision of the California Supreme Court is a direct assault on the struggle for racial equality. Two important legal issues emerged in the court's upholding of Bakke's suit: "intent" and "qualification." First, the court said that by consitutional law it is not sufficient to prove that the effects of UC's past admission policies were racist. The court claimed it is necessary to prove that UC intended to be racist in its admissions policies. The problems with this legal point is obvious; in the post-Civil Rights

era it is virtually impossible to prove the "intent" to be racist. Secondly, the court also ruled that minority students who were admitted to UC Davis' program were less qualified by UC's standards (the MCAT examinations and grade point averages). The assumption of the court is that UC's standards in themselves are just and accurate for predicting if someone will be a good medical student and a good doctor. Various studies, and experience, have disproved this. For example, minority medical students who later became doctors achieved lower MCAT examination scores than white medical students who eventually dropped out of medical schools.

The use of these legal concepts "intent" and "qualification" obscure the actual conditions of racial oppression, and thus, prohibit the remedying of these conditions. For example, the court gave little consideration to the health needs of minority communities, but contended that these needs could be met by simply altering the medical school's curriculum toward "an orientation on minorities" for white medical students. The court also asserted that minority doctors would not be more concerned with the health needs of minority communities. In essence, the court virtually ignored the legacy of racial discrimination in the U.S. and the oppression minorities face today.

The Role of the University of California

It is a documented fact that a UC official was a prime motivator and supporter of Allan Bakke's suit. In letters, later made public, to Bakke in 1973, Peter Strandt, UC Davis Assistant to the Dean for Student Affairs and Admissions, persuaded Bakke that minority admissions was the cause of his non-admission, provided him with legal counsel and explicitly encouraged a suit against the special admissions program.

The university's legal defense of the special admissions program has also come under virtually unanimous criticism from the legal community. UC failed to admit or provide evidence of its long hisotry of racial discrimination which would have justified the special admissions program. Nor did UC legal counsel debate Bakke's contention that entering minority students were less "qualified" than white students not admitted into UC Davis medical school.

Finally UC has continuously refused to hire a minority co-counsel, despite the vigorous demands of minority groups. UC's actions in the Bakke case are consistent with its traditional stand towards minorities. At UC, as in many other schools, special admissions and other assistance programs were forcibly created not benevolently bestowed. And once in existence, there were attempts by these same educational institutions to cutback or eliminate the programs long before the Bakke case. With such a past history of treatment of minorities, it is clear that without strong public pressure UC will put up a very weak defense against the Bakke suit.

Organizing Against the Decision

The Interim Bakke Committee believes that the main route to defeat the Bakke decision must lie in organizing the American public to voice their opposition to it. The Bakke decision and its implications can unite all those opposed to the historic injustice towards racial minorities. This public pressure should be directed principally to those who have "the say" on the decision at this time--the US Supreme Court. From the time the Court decided to hear the case, until the decision is actually made, the Court is the primary target of our efforts. The Supreme Court Justices, just like anyone else in society are influenced and pressured by the climate of

public opinion. Although the main pressure point at this stage is the Supreme Court, we must also focus on the UC to pressure them to put up a strong defense against Bakke. Without this pressure, as was shown in the lower court, UC will purposely create a weak case.

Our Demands:

We, the Interim Committee to Overturn the Bakke Decision, believe our demands can unite vast numbers of the American people necessary to organize the legal and public pressure necessary to overturn the Bakke decision. In formulating our demands we addressed three major considerations. First, that the Bakke decision most directly and most immediately affects the ecucational sector of society. Secondly, that the right to quality education is an important issue in the struggle against racial oppression, and it is an issue that people from all sectors of society are concerned about. And thirdly, the demands that we put forward are ones that we feel, through the work of large numbers of people, we are capable of winning.

1. Overturn the Bakke Decision

The Bakke Decision, if upheld, will clearly affect special admission programs nationwide. It will also justify the legal concept of "reverse discrimination" which will drastically accelerate cutbacks of all special programs for minorities and women. To fight this decision we must direct our main energies at the US Supreme Court. We must generate a broad people's movement to overturn the decision.

2. Implement and maintain special admissions and other services for minority students at undergraduate and graduate school levels.

This demand is directed at UC and other educational institutions. Special admissions and other services for minority students are essential to enable minorities to participate in all aspects of society. Educational institutions have a special responsibility to ameliorate the conditions resulting from racial discrimination. UC clearly has not functioned in the interests of minority students. The Bakke case is only one example of this trend. We must force UC and other educational institutions to maintain and expand their special minority programs and services.

3. Increase admissions, programs and services at graduate and professional school levels, especially medical and law.

The Bakke decision also reveals some very basic problems in graduate and professional schools in general. At UC Davis, for example, 3737 students were competing for only 100 admissions openings in 1974. Medical and law schools should train increasing numbers of people to meet the health and legal needs of society. Instead they are elitist institutions which produce relatively few doctors and lawyers. Graduate schools, like many other institutions in society, actually perpetuate racism by pitting minorities against whites for the few places in the programs. This demand challenges the elitism of graduate schools and also focuses on the responsibility of educational insitutions to serve society as a whole, and not just the profit interests of the medical industry.

THE BAKKE DECISION IS A RACIST DECISION WHICH INFRINGES ON THE DEMOCRATIC RIGHTS OF MINORITIES IN THIS COUNTRY. THEREFORE WE DEMAND:

1. OVERTURN THE BAKKE DECISION

2. IMPLEMENT AND MAINTAIN SPECIAL ADMISSIONS AND OTHER SERVICES FOR MINORITY STUDENTS AT UNDERGRADUATE AND GRADUATE SCHOOL LEVELS

3. INCREASE ADMISSIONS, PROGRAMS AND SERVICES AT GRADUATE AND PROFESSIONAL SCHOOL LEVELS, ESPECIALLY MEDICAL AND LAW

FIGHT RACISM--- OVERTURN THE BAKKE DECISION