

'Reverse discrimination' faces new court decision

by Martin Fassler

[Martin Fassler practices law in San Francisco, handling mostly labor and employment discrimination cases. He has written on legal affairs for both Pacific News and Juris Doctor, a law magazine in which a longer version of this article also appears.]

SACRAMENTO (PNS) — Allan Bakke is a tall, blond, 36 year old NASA engineer who claims his hopes of becoming a doctor have been frustrated because he is white.

In a case that could eventually topple current university "special admission" programs for the disadvantaged, Bakke is challenging the University of California at Davis' medical school special admissions policies — which he says discriminate against whites.

Bakke's case, now before the California Supreme Court, spotlights the already bitter issue of "reverse discrimination". But it also raises the underlying problem that spurred the rise of special admissions programs: How best to bring urgently needed medical, legal and other professional services to non-white, mostly low-income communities throughout the nation, especially in the person of non-white professionals.

With only one Black physician for every 4,300 Black people in the U.S., as compared to the national physician-patient ratio of one for every 630 persons (and similar ratios for lawyers).

Such needs are already widely acknowledged. But even advocates of change sharply disagree as to the merits of the special admissions approach.

Reverse discrimination was first raised before the Supreme Court in 1974, after white law school applicant Marco DeFunis filed suit against the University of Washington. DeFunis, who had been ordered admitted while the court considered the case, was so close to graduation when the final decision neared that his case was declared moot. But the DeFunis case stirred great passions among college administrators and students, civil rights groups and organized labor.

Even usually firm allies split over the racial quota issue. While the AFL-CIO and the Anti-Defamation League of the B'nai B'rith filed court briefs opposing special admissions programs, for instance, the United Auto Workers and the National Council of Jewish Women argued in their favor.

BAKKE VS. REGENTS
The case of Allan Bakke vs. the Regents of the University of California began just three months after the Supreme Court's 1974 DeFunis decision.

After being turned down twice for admission at the Davis medical school in 1973 and 1974 — despite excellent grades and two degrees in previous schooling — Bakke filed suit in Yolo county court alleging that the university's special admissions program for economically and educationally disadvantaged applicants had violated his 14th amendment rights to due process.

The university asked the court to declare its special admissions program unconstitutional.

While both parents lost the first round — the court ruled the program unconstitutional but refused to admit Bakke because other more highly qualified applicants had been turned down before him — each appealed the case to the California Supreme Court. The state supreme court heard oral arguments on the case last March and is expected to issue an opinion this summer.

During these oral arguments, Bakke's lawyer, Reynold Colvin of San Francisco, told the court, "I do not think people should get points by reason of ancestry." Colvin said he and his client did not oppose all affirmative action programs, but suggested "there are other steps short of quotas, like recruiting and tutoring."

The Davis medical school admissions director, Dr. George Lowrey, had earlier contended that "There would be few, if any, Black students and few Mexican-Americans, Indians or Orientals from disadvantaged backgrounds in the Davis Medical School, or any other medical school, if the special admissions program and similar programs at other schools did not exist." In 1968, Davis Medical School enrolled no Black or Chicano students, for example, though Blacks and Chicanos

represent twenty percent of the state's population.

Most of the nation's medical and law schools, in fact, have adopted special admissions procedures of one kind or another in response to pressures by student and civil rights groups.

About 130 of the 150 accredited law schools in the U.S. have formal programs or at least give special consideration to applicants who are "economically disadvantaged." Slightly more than 100 of the nation's medical schools have affirmative admissions programs, including almost all the prestige schools.

Proponents of such programs contend that the normal medical and law school admissions procedures — based on a fairly inflexible numbers game of college grade averages and test scores — are not accurate indicators of how minority group students will perform if admitted.

According to Davis admissions director Lowrey, special admissions students attain virtually the same scores as regular admissions students on national exams after four years of medical school. Yet these same students had scored significantly lower than the regular admittees on their undergraduate grade averages and their Medical College Admissions Tests (MCATs).

The widespread use and weight given to the MCATs and the analogous Law School Aptitude Tests (LSATs) have come under increasing attack in recent years. Critics contend they measure easily learned skills, rather than innate talent or potential for medical or legal study.

Even the Educational Testing Service, which administers both exams, admits that an applicant's score is likely to increase by many points on a second or third testing.

LEGAL DEBATE
The legal debate in the Bakke case swirls around the "equal protection" clause of the 14th amendment.

To pass constitutional muster if challenged under the 14th amendment, a state law that makes distinctions among people must be judged to have a "rational basis." Certain bases for such distinctions — including race — are "suspect classifications" that deserve "strict scrutiny," and may be used only for a

"compelling state interest."

Proponents of special admissions programs argue that the Constitution permits the law to be color-conscious for the purpose of eliminating the results of past and current discrimination — a "compelling state interest." Opponents argue that the Constitution requires colorblindness here as in other cases.

"Racial classifications run contrary to the very foundations of American society," Bakke's lawyers argued before the state supreme court. "The ultimate fact," they continued, "is that the categorization of individuals by race is not benign,

but an evil heretofore recognized by the judicial system."

In defense of its Task Force program, the university argued that it should be judged by the "rational basis" test. The needs of society, it contended, "are not best met by a medical profession which continues to count in its ranks only a tiny percentage of minority physicians."

In making their decision in the Bakke case, several of the seven California supreme court justices indicated they may place heavy emphasis on the views of former U.S. Supreme Court Justice William O. Douglas. He wrote after the

DeFunis case that he believed admission quotas in state-supported schools were impermissible because they favored ethnic minorities — but that sole reliance on college grades and board scores for law school admissions discriminated against non-whites.

"The key to the problem," Douglas wrote, "is consideration of such applications in a racially neutral way. Abolition of the LSAT would be a start."

If Bakke wins and is later upheld by the U.S. Supreme Court, pressure to develop such a new "racially neutral" admissions process is sure to mount.

Health problems drain energy

"For too many Black patients, health care is a luxury which must wait until the moment when pain and weakness no longer allow them to drag another step," writes Dr. Charles S. Ireland, director of the Howard University Hospital in Washington, D.C.

In an article called "The Health Woes of Blacks" appearing in the June issue of Reader's Digest, Dr. Ireland identifies the Four Horsemen of the Black community as alcoholism, malnutrition, hypertension and mental disturbance. Calling hypertension "the most serious health problem of Blacks in America today," he points out that about one in four Blacks over the age of eighteen has it; over the age of forty the ratio rises to two out of five. The mortality rate from high blood pressure in Black males is 1 1/2 times the rate for white males between ages 25 and 44. Hypertension kills Black females at seventeen times the rate for white females.

"Day after day, in the emergency rooms and wards of our hospitals, I see evidence that the medical problems of Blacks are more acute, more complicated and more neglected than those of other Americans," he declares.

To remedy the double standard of health care which has created these desperate conditions, Dr. Ireland calls for education: "Education of more Black doctors, of Blacks, of the public." He urges higher quotas for Blacks in medical schools, government subsidy to prepare qualified medical students and see them through their training, and white political



DR. C. IRELAND

support to ensure that these subsidies are not reduced.

The health of 25 million Black Americans affects all Americans, the noted physician believes. He contends that "In view of the present cost of illnesses — including the millions of lost hours of work, the billions of dollars spent on welfare for the victims of ill health, the added billions spent for alcohol-related illnesses and accidents — the cost of what I have suggested is trifling."

HUD seeks housing proposals

Proposals are being sought by the Portland Area Office of the United States Department of Housing and Urban Development from private developers or public housing agencies to take part in the Section 8 Housing Assistance-Payments Program.

The Portland Area Office plans to subsidize 260 units of newly constructed or proposed rehabilitation housing throughout the Portland SMSA area of Clackamas, Multnomah, Washington Counties in Oregon and Clark County in Washington. One hundred units will be for low-income families, and one hundred sixty units for the elderly and/or handicapped persons.

Director Russell H. Dawson of the Portland Area Office announced that he has advertised for proposals to be received at the HUD Portland Area Office by July 21, 1976.

The Section 8 portion of the 1974 Act replaces other forms of Federal assistance for low-income rental housing. Successful developers will be offered a contract under which the Department of Housing and Urban Development will agree to pay that portion of the agreed monthly rental which the low-income tenants cannot afford to pay. The successful developers will own and manage the units. Included in their management responsibilities will be the need to determine the eligibility of prospective tenants to be assisted under the program and the rent paying ability of those tenants.

Developers or public agencies interested in making proposals should contact: the Portland Area Office, Department of Housing and Urban Development.

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