

# BAKKE DECISION ATTACKS AFFIRMATIVE ACTION

On Wednesday morning, June 28th, the United States Supreme Court, in a 5 to 4 decision, ruled that Allan Bakke be admitted to the University of California Medical School at Davis. Saying that the quota system, which guaranteed 16 of 100 places in each entering class of the medical school to oppressed nationalities, violated Bakke's constitutional rights as guaranteed by the 14th amendment, the court stated in Justice Powell's majority opinion, "Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids!"

Thus, in one fell swoop, the court gave its constitutional stamp of approval to the bourgeois myth of "reverse discrimination". Despite assertions to the contrary, the decision is a serious attack on affirmative action programs for women and oppressed nationalities not only in the schools and universities but also in employment.

The court's decision climaxed a month which should leave no doubt that imperialist crisis has led to a stepped up chauvinist offensive intensifying domestic oppression and aggravating national contradictions in preparation for new imperialist war. Within four weeks we have seen the passage of Proposition 13, the defense of the "right" of

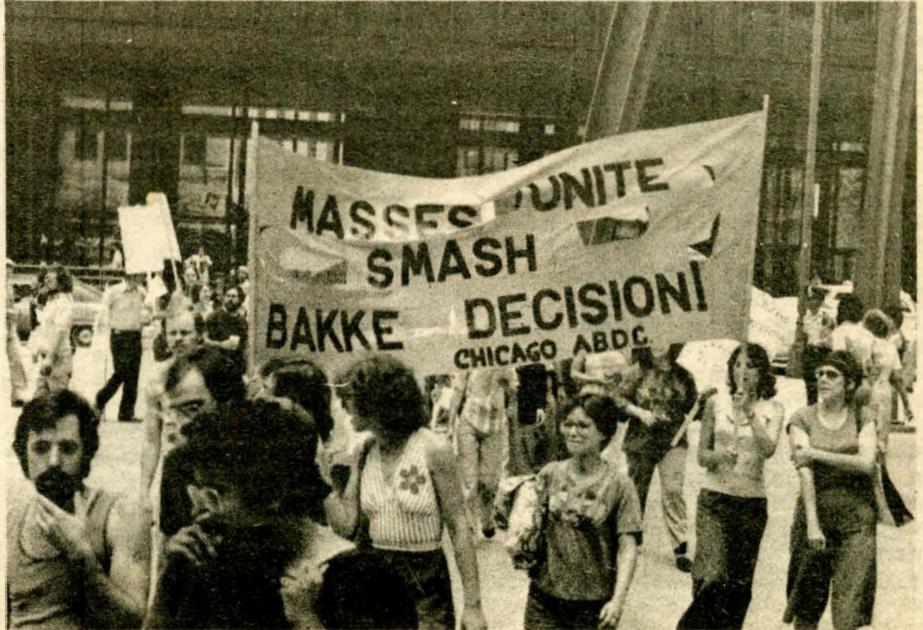


Photo by TC

Nazis to march in Chicago by the bourgeois state, and now the upholding of "reverse discrimination". This offensive must be met with increased efforts on our part to unite all who can be united against the attack on affirmative action programs and all other democratic rights of women and oppressed nationalities.

We must broaden our outlook in building this counter-offensive as part of our international responsibility to build the broadest united front against superpower hegemonism and war preparations.

## IMPLICATIONS OF THE BAKKE DECISION

With the "deceptive liberal gesture of a sly slave owner," (CI Resolution on the Negro Question) the Supreme Court and a whole bagfull of reformers want us to believe that it has upheld the principle of affirmative action.

For Justice Powell, writing the majority opinion, the 14th amendment which was passed to guarantee the rights of Afro-Americans emancipated from slavery, is reduced sole-

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ly to a guarantee of "individual rights". In fact this makes it a vehicle to perpetuate social discrimination against Afro-American and other oppressed nationalities and women. The bourgeoisie takes this 'guarantee of individual rights' and says that Bakke, as a white male, had his individual rights violated because he was not 'allowed' to compete for 16 of 100 seats available in applying for medical school at UC Davis. This defense of individual formal equality under the bourgeois law, assumes there is real equality under a system of imperialism. It assumes that women and oppressed nationalities have an 'equal chance' at the other 84 seats, or for that matter at any place in higher education, jobs, and other aspects of life.

But the bourgeoisie's own statistics prove that 'reverse discrimination' is noth-

ing but a myth. The facts are that the percentage of oppressed nationalities in medical school has never been greater than 12% (and it has been falling in the last 2 years) even though the overall population of oppressed nationalities is at least twice that number. There is one Chicano doctor for every 33,000 Chicanos, one Black doctor for every 5,000 Blacks as compared to one white doctor for every 649 whites. Basically the figures are worse for all other professions.

In employment, the rate of unemployed Afro-Americans is more than twice that of whites, among Puerto Ricans it is more than three times that of whites. According to the Dept. of Labor's June statistics, 95% of all jobs given out to youth were to white youth in the month of June. This had the effect of dropping the rate of unemployment officially among white youth

from 17% to 11%, while unemployment among Afro-American youth remained at 37%. The income of oppressed nationalities is one-half that of whites and according to government statistics the gap has widened in the last 10 years.

This month in a national study HEW found that the infant mortality rate among oppressed nationalities is more than twice that of whites and that life expectancy is almost 10 years less.

This is just some of the reality of life under an imperialist system which has been built and sustained on the basis of inequality among nations, and between men and women. It is this that Powell and the rest of the bourgeoisie wants us to ignore when he states, "the fatal flaw (of the Davis affirmative action program) is its disregard for individual rights as guaranteed by the 14th amendment." This is too much even for the dissenters on the Court. Justice Marshall stated: "Today's judgement ignores the fact that for several hundred years, Negroes have been discriminated against not as individuals, but rather solely because of the color of their skins." Justice Blackmun added, "It is somewhat ironic to have us so deeply disturbed over a program where race is an element of consciousness and yet to be aware of the fact, that institutions of higher learning have given preferences to those possessed of athletic skills, to the children of alumni, to the affluent who may bestow their

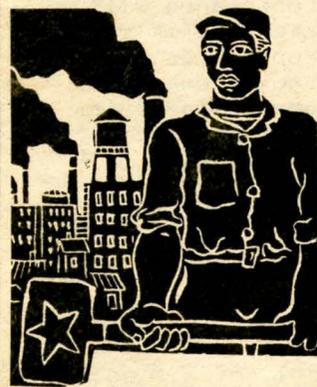
largess on the institutions, and to those having connections with celebrities, the famous and the powerful." What a fitting description of the equality which exists in universities within bourgeois society!

Both Marshall and Blackmun spoke to the fact that there is no other way to make up for past discrimination except through strict quotas. "In order to get beyond racism we must first take race into account. There is no other way. And in order that we treat some people equally, we must treat them differently."

But Powell and the court insist on the illusion of affirmative action without quotas.

Instead of quotas, they want affirmative action programs which include race as a factor, but only as one of many. "In such an admissions program race or ethnic background may be deemed a 'plus' in an applicant's file, yet it doesn't insulate the individual from comparison with all other candidates for the available seats." Other factors to be considered are geographic origin, social origin, professional, or extracurricular activities, etc. Race is a factor only recently added as a result of the civil rights movement. In other words, if you are a musician, a football player, from a farm, or from Montana you would have a plus factor, as much of a plus factor as

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## FACTORY EXPOSURES

FACTORY EXPOSURES is a regular column of THE COMMUNIST. We encourage all workers and Marxist-Leninists to send in articles concerning trade union struggles, local grievances, health and safety issues and other forms of workplace abuse.

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if you were an oppressed nationality!

The majority opinion assumes that universities are eager to implement affirmative action programs and that university admission departments are eager to assign 'plus' points to oppressed nationality applicants. It pretends that they are falling all over themselves to remedy centuries of discrimination.

Facts dispell this fantasy. The UC Davis Admissions Office encouraged Bakke to file reverse discrimination charges. It helped him prepare his case, and the UC Regents themselves, who were the ones answerable to the Bakke challenge and who had the responsibility of defending their affirmative action program, put up a lackluster defense. When the Supreme Court decision came down they expressed their satisfaction with it. In fact, the Harvard plan itself, which the majority opinion held up as a model, was created after World War II to limit the number of Jewish applicants applying primarily from the East coast. That is, the Harvard plan leaves the universities accountable only to themselves. It means in practice no affirmative action programs and the acceptance of very few minority applicants. It is a plan to reinforce the inequalities built into the imperialist system.

In fact to make sure that every door is nailed shut, Powell and the majority says courts must ignore centuries of ruthless discrimination sanctioned by every kind of law unless an individual woman or minority can prove that as an individual they were specifically discriminated against. "State universities could not," he says, "have as an objective the remedying of 'societal dis-

crimination' at large." In plain English, as institutions of the bourgeois state, they function to perpetuate it.

## RESPONSE TO THE DECISION

The rest of the bourgeois state, without acting surprised, gave its approval to the decision. Attorney General Bell, who last October had filed a "friend of the court" brief on behalf of President Carter which supported 'voluntary affirmative action programs' without quotas, stated it was a great gain for affirmative action! Secretary of State of Califano, who recently cut \$800,000 from a minority work program, said "I support this nation's continuing effort to live up to its historic promise-to bring minorities and other disadvantaged groups into the mainstream of American society." Even the majority of Black "leaders" tried to convince us that using race as a 'plus'"should constitute a green light to go forward with acceptable affirmative action programs" (Vernon Jordan, chairman of the National Urban League).

## AN IMMEDIATE ADVERSE EFFECT

In practice the Bakke decision has had an immediate adverse effect on affirmative action programs. In Chicago, within one hour after the decision, the city attorney said he was going to closely study the decision and consider taking the city's quota affirmative action programs in the fire and police department to court. Within a week, Judge Prentice Marshall delayed his order abolishing the discriminatory promotion exams in the police department pending further study of the Bakke decision. In Atlanta's Fulton County the commissioners delayed an affirmative action program for minorities that

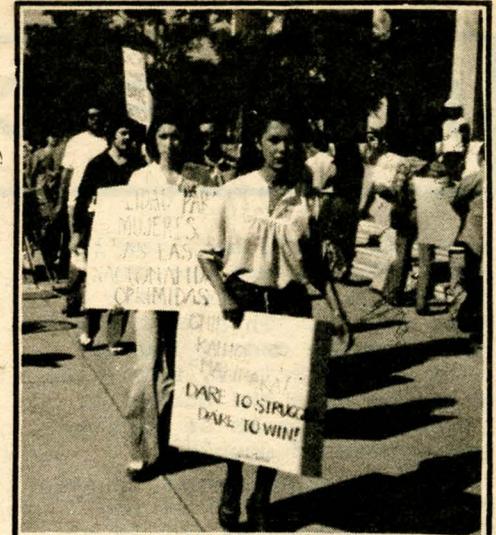
would have boosted the percentage of County employees to 46%, that is, equivalent to the proportion of the county minorities in the population.

Even at that the bourgeoisie is not limiting its attack on affirmative action to the courts. Twice this month in the House of Representatives amendments were passed, "prohibiting the use of federal funds to enforce any ratio, quota, or other numerical requirement related to race, sex in hiring, promotions and university admissions." (The Walker amendment attached to the HEW labor appropriations bill passed by the House June 18). But as we said, affirmative action without quotas or other means to measure performance is nothing but words on paper.

## A SIGNAL TO MOVE FORWARD

The Supreme Court's Bakke decision does not in any way put an end to our struggle against the issues raised by Allan Bakke. It is a signal to push forward. Our efforts have never been directed against one law case involving a single individual or a single professional school in one state which could be resolved in one court action. Our concern has been with defending all affirmative action programs as part of widespread resistance to every attack on our democratic rights. The struggle against the Bakke decision is part of the overall struggle for democracy. We need to build a large mass movement led by the working class in order to defend what we have won against the reactionary effects of imperialist crisis and war preparations.

Militant demonstrations against the Bakke decision in major cities throughout the country were a good beginning. In most cases they showed a broader character and involved a wider spectrum of people than has previously



PROTEST AGAINST BAKKE DECISION IN LOS ANGELES (TC PHOTO)

characterized anti-Bakke actions. This is a good sign which shows the growing consciousness among very wide strata of the population to the consequences which we can expect to follow the Bakke decision.

It goes without saying that the Bakke struggle is not over. The bourgeoisie has given legal recognition to the concept of reverse discrimination and they will use the decision to step up their reactionary attack on national minorities and women. Today the chief task of the anti-Bakke movement is to unite all who can be united in support of affirmative action and the struggle for equal rights. In addition, without liquidating the specific work within the Bakke movement, we must link it up with the struggle against other attacks on democratic rights such as California's Proposition 13, the attacks on the ERA, etc. Overcoming every tendency to narrowness and passivity, and mobilizing much more broadly than we have yet done, we must build a powerful mass movement to defend against every reactionary attack on the democratic rights of the working and oppressed masses.