Race quota is illegal, race consideration isn't in Bakke

NEWS ANALYSIS

BY MARGIE BAUMAN

"The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal." –Supreme Court Justice Lewis Powell

In a landmark decision issued June 28, the U.S. Supreme Court ruled that a 38-year-old white man, Allan Bakke must be admitted to the medical school of the University of California at Davis.

The court held, in a 5-4 decision, that Bakke had been improperly denied admission because of his race. The school's practice of setting aside 16 places in each freshman class of 100 students for minority applicants constituted illegal discrimination, the majority opinion said.

Bakke had charged that he was turned down by the school because of that quota, despite the fact that his test scores were higher than some minority applicants who were admitted.

But the court also ruled, 5-4, that the medical school is not legally barred from considering race in deciding which applicants to accept.

No Quotas

Rigid quotas based solely on race are illegal, but race is still a legitimate element to use in judging possible admissions, the court said. In short: preference, yes; quotas, no.

The 154-page, 40,000 word decision, which approved the principle of affirmative action, was promptly met in a divided nation by both praise and fury. "This is the first time the Supreme Court has upheld affirmative action," said U.S. Attorney General Griffin Bell, "and it has been done in about as strong a way as possible."

But the Rev. Jesse Jackson, a black leader in Chicago, called the ruling a "devastating blow to our civil rights struggle, though not a fatal one. It is consistent with the country's shift to the right, a shift in mood from redemption to punishment," Jackson said.

N.A.A.C.P. executive Benjamin Hooks said the decision was "a mixed bag, both a victory and a defeat. Coretta Scott King, widow of the slain civil rights leader Martin Luther King Jr., warned that "the decision could be misinterpreted by people who want to use it to their own advantage. The people who were against us are going to take this as a signal," she said.

Justice Thurgood Marshall, the only black on the Supreme Court, was gloomy about the decision. Marshall had voted with the minority--against admitting Bakke, in favor of the quota system at Davis. Marshall traced the movement toward equality for blacks in the United States since the Civil War, then said, "I fear we have come full circle...Now we have this Court again stepping in, this time to stop affirmative action programs."

"In light of the sorry history of discrimination and its devastating impact on the lives of Negroes, bringing the Negro into the mainstream of American life should be a state interest of the highest order," Marshall said. "To fail to do so is to ensure that America will forever remain a divided society.

"While I applaud the judgment of the Court that a university may consider race in its admissions process, it is more than a little ironic that, after several hundred years of class-based discrimination against Negroes, the Court is unwilling to hold that a class-based remedy for that discrimination is permissible," Marshall said.

Liberal Justices William J. Brennan Jr. and Byron R. White and moderate Harry A. Blackmun dissented along with Marshall, each contributing lengthy opinions supporting the Davis quota.

They said, in part, that claims that the law must be "color blind" or "that the datum of race is no longer relevant to public policy must be seen as aspiration rather than as description of reality. This is not to denigrate aspiration; for reality rebukes us that race has too often been used by those who would stigmatize and oppress minorities. Yet we cannot...let color blindness become myopia which masks the reality that many 'created equal' have been treated as inferior..." they said.

Justices Potter Stewart, John P. Stevens, William H. Rehnquist and Chief Justice Warren E. Burger were joined by Justice Lewis F. Powell in their majority opinion, banning racial quotas, but upholding consideration of race.

They cited Section 601 of the 1964 Civil Rights Act, which provides:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Stewart, Stevens, Rehnquist, and Burger found that Bakke was excluded because of his race by a special admission policy of the University of California at Davis.

Powell, Man in the Middle

Powell spoke for the slim majority as he said, "The guarantees of the Fourteenth Amendment (are) explicit: "No state...shall deny to any person within its jurisdiction the equal protection of the laws "

"The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal..." Powell wrote.

Powell noted that the University of California had asked, in its petition to the court, that the court "adopt for the first time a more restrictive view of the Equal Protection Clause and hold that discrimination against members of the white 'majority' cannot be suspect if its purpose can be characterized as 'benign.'

"The clock of our liberties, however, cannot be turned back to 1868. It is far too late to argue that the guarantee of equal protection to all persons permits the recognition of special wards entitled to a degree of protection greater than that accorded others," Powell said.

"...We have never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative or administrative findings of constitutional or statutory violations," Powell said.

Beyond Bakke the Doctor

The Supreme Court decision goes far beyond Allan Bakke's efforts to become a physician. The decision should have an impact on racial policies affecting millions of Americans in schools, jobs and private industry, but commentators still speculate as to what that impact will be.

Eleanor Holmes Norton, head of the Equal Employment Opportunity Commission, said the Bakke decision would make no difference in efforts to achieve hiring and promotion goals. "My reading of the decision is that we are not compelled to do anything differently from the way we've done things in the past and we're not going to," she said.

But there are predictions from others like Harvard Professor Paul Freund, a Constitutional expert, who believes the Bakke decision will carry over into employment cases, especially when past discrimination within a company can be proven. "When Powell talked about diversity (in admissions) he was

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listing the possible justifications for preferential treatment. In employment, there might be other, even stronger justifications, such as the poverty in our cities and all of the social costs that that involves," he said.

The Bakke decision left so many questions unanswered that its legacy may well be a wave of lawsuits to follow, as the American public continues to question what can and what cannot be done in the name of civil rights.