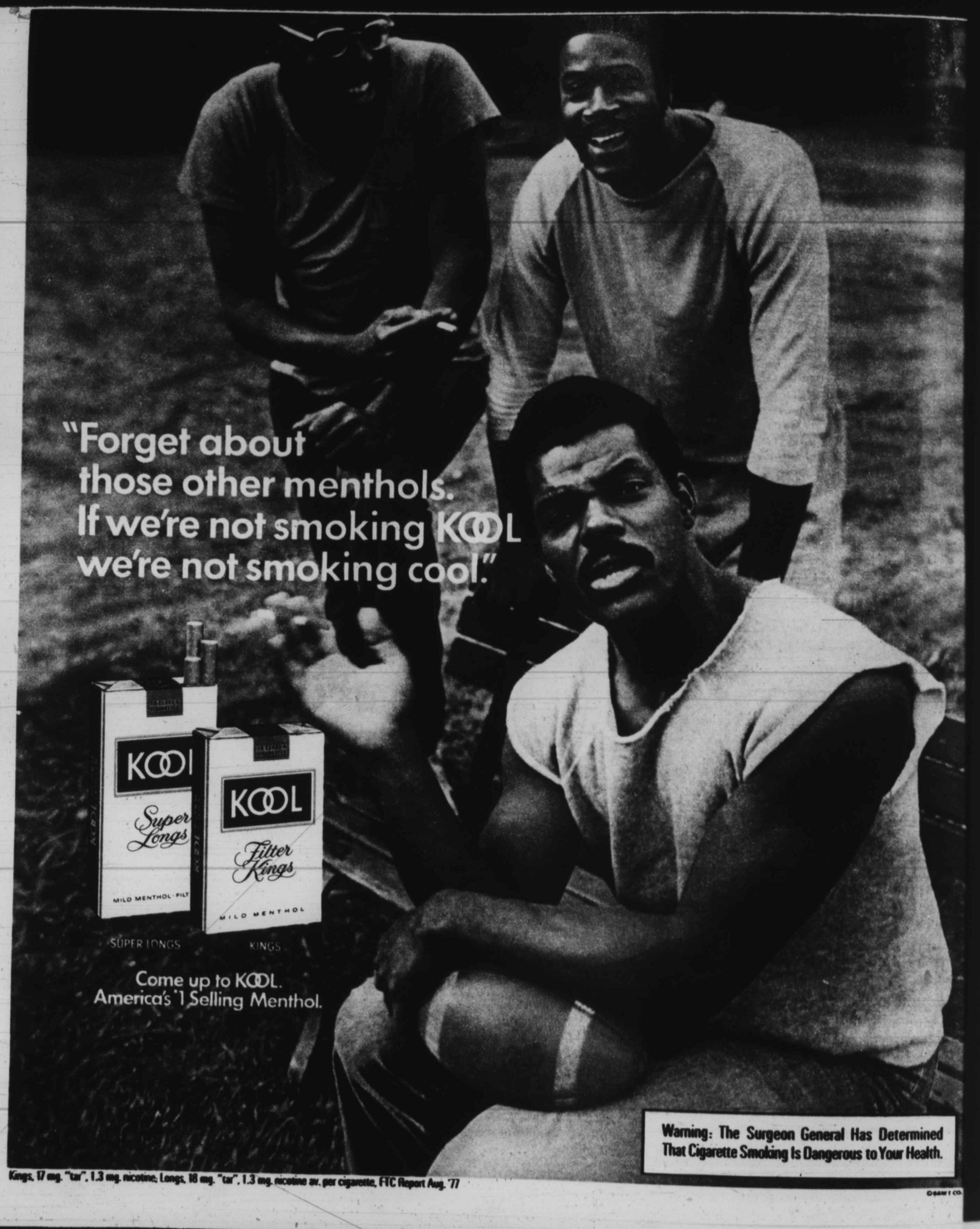


# BAKKE CASE: Meaning and Implications Are Far-Reaching For The Nation

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**Affirmative Action as an instrument to remedy old historic wrongs at stake in celebrated case before Supreme Court**

**Case shows that formal law cannot guarantee freedom and equality**

What does Bakke mean for Affirmative Action?

The case of **Regents of the University of California v Allan Bakke** is one in which attention has been centered since 1974. The outcome of the Bakke case is important because it will undoubtedly affect the course of policy decisions concerning blacks, women, and other groups.

Essentially, the Bakke case denies the principle of affirmative action. Affirmative action refers to those steps taken to ensure equal treatment under the law for those elements of society that have systematically discriminated against.

Affirmative Action has its legal basis in the Fourteenth Amendment to the Constitution. The Equal Protection Clause contained within that amendment states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

In practice, however, blacks, women, and other groups were denied access to the institutional apparatus that would have allowed them to gain skills and expertise vital to their development.

The historical situation of the black experience in America is case in point. The legacy of slavery is manifested in a racist system that institutionally places barriers on the accessibility to "decent employment, educational, and housing opportunities." The rigidity of such a system allowed blacks no other recourse but to attempt to effectuate change.

With the intense need for labor to supply the defense industries during World War II, A. Philip Randolph and his Brotherhood of Sleeping Car Porters Union, along with other groups, placed pressure on the system. They organized to rally 50,000 black men to march on Washington on July 1, 1941, to demand that the federal government take action to stop discrimination in the defense industries and armed forces.

President Franklin D. Roosevelt, in order to offset such an event, issued Executive Order 8802 in June, 1941. The Fair Employment Practices Act banned discrimination in defense plants and governmental offices and services based on race, creed, color, or national origin.

Thereby, a foundation was laid for positive action to be taken to bring about equality. It was apparent to blacks who constituted the vanguard of this mass movement for equal justice that positive action must be taken to ensure equal protection.

With the issuance of Executive Order 10924 in March, 1961 by President John F. Kennedy, the phrase 'affirmative action' was used for the first time to refer to the activity that would ensure that blacks, women, and other groups had equal access to job opportunities. Passive non-discrimination was not enough.

In the earlier stage, affirmative action programs were geared toward employment. However, when employment of minorities was fettered, affirmative action began to revise its emphasis and concentrate in the areas of training and education.

As a means to circumvent acceptance of minority candidates and women, employers argued that those groups were not qualified. The legacy of discrimination in the field of education had to be rectified. Affirmative action was the instrument offered to remedy this situation.

In practice, it has meant the planned reservation of a certain percentage of seats in the nation's undergraduate, graduate, vocational, and professional schools to ensure participation by women and minority groups.

It was these circumstances that led to Allan Bakke's claim that he had been the victim of "reverse discrimination." Bakke, a 36-year-old engineer had been twiced denied admission to the University of California Medical School at Davis.

Bakke's lawyers maintain that because minority students were admitted with grade point averages and entrance examination scores lower than his, his right to equal protection under the law has been violated.

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Allan Bakke, a member of an exploitative white male elite group who claims that "his seat" was taken, is defending his position by using the 14th Amendment. Ironically, this is the same amendment that provided the justification for exposing an end to rule by white males, and the logic that any position or privilege is inherently the domain of the white male.

The lesson that should be gained is that a people's freedom and equality can not result from formal law.

The immediate implications of a Supreme Court ruling in favor of Bakke is the legalization of the reduction in affirmative action programs that have been evident since 1970. Educational opportunities, jobs and occupational upward mobility, and decent housing will all be limited for minorities and women.

Bakke's success will symbolize the end of genuine affirmative action programs, including racial and sexual quotas that have proved to be the only means available to break through discriminatory barriers to education, housing, and employment.

Bakke reaffirms the reliance in the United States on individualism in correcting the effects of collective oppression. It is not understood that race and sex were categories singled out for systematic oppression. If this were to be realized, the necessity of quotas would not be questioned.

The Supreme Court of California as well as those elements who argue "reverse discrimination" clearly do not possess such an understanding. These proponents seek to legalize the racial and sexual inequality rampant in America and thereby reaffirm principles that were set down in such cases as Dred

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