

An Affirming Action: O'Connor Ruling Upholds Diversity

by Swanee Hunt, Scripps Howard News Service, July 2, 2003

“Race unfortunately, still matters.”

With those words, Supreme Court Justice Sandra Day O’Connor struck a blow to affirmative action opponents and protected diversity on campuses.

Her swing vote in the recent University of Michigan case was a bold move. Despite blistering attacks from some of her colleagues, O’Connor stood her ground. Her majority ruling in the five-four decision solidifies legal support behind affirmative action, strengthening a court ruling a quarter of a century ago by the late Justice Lewis Powell.

Essentially, O’Connor affirmed that it is acceptable for the university’s law school to take race into account, as long as it is just one factor in a “holistic” review of an applicant. The court struck down the university’s undergraduate scoring system that blatantly gave minorities an edge but allowed for a revised program that still considers race in admissions.

O’Connor borrows from Powell’s earlier Bakke versus Regents of The University of California ruling on racial preference but takes it a step further. Not only does she uphold the notion of diversity as a “compelling state interest,” she rigorously defends it as essential to democracy. “Effective participation by members of all racial and ethnic groups in the civil life of our nation is essential if the dream of one nation, indivisible, is to be realized,” she writes. Pretty strong stuff from a conservative appointed by Republican Ronald Reagan.

O’Connor’s ruling is not just a reflection of her own personal point of view but a consensus devised from an outpouring of “friend-of-the-court” briefs. Despite President Bush’s outspoken opposition to affirmative action in this case, high-ranking retired officers and civilian leaders of the U.S. military unequivocally supported the school’s position, as did corporations such as Microsoft and General Motors. National Security Advisor Condoleezza Rice and Secretary of State Colin Powell backed it too—a

rare disagreement with their boss. They knew first-hand the importance. In their own careers, Powell and Rice rose meteorically based on talent but each benefited from policies guaranteeing diversity.

Ironically, one of O'Connor's harshest critics, Justice Clarence Thomas, himself benefited from the Yale Law School's affirmative action program. But this African American appointee of father Bush now wants to shut the door on disadvantaged minorities. He called the majority ruling "a faddish slogan of the cognoscenti." He believes that "blacks can achieve in every avenue of American life without the meddling of university administrators."

Get real. We have a long way to go to correct the imbalance of past practices that have blocked minorities from true equal rights. Most inner city schools are struggling, and low-income families don't have money for books or tutors. Many parents work two jobs to make ends meet, and even bright kids leave school for the street.

Pupils who hang in and want more education have beaten the odds. Still, as O'Connor says, "By virtue of our nation's struggle with racial inequality, such students are...less likely to be admitted in meaningful numbers...". In her view, a diverse student body not only helps minorities—it promotes "cross-racial understanding" and breaks down stereotypes.

O'Connor's argument affirms that higher education leads to success in business, politics, the military. But you have to get in first. The Justice argues that to "...cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity."

There's a glint of truth on both sides of this case; hence its journey all the way to the Supreme Court. Justice Thomas may have felt a stigma on the Yale campus, an experience that soured him on racial preferences. And I don't question the frustration of talented white students denied college admission in favor of underrepresented minorities.

But that's where O'Connor's true gift lies: the ability to seek a compromise that reflects an evolving social consensus. Her ruling offers a foundation for future decision-making and social policy while protecting civil rights.

Still, the ruling is ripe for review as time goes on. Even O'Connor admitted, "We expect that 25 years from now, the use of racial preferences will no longer be necessary..." in university admissions. That may be wishful thinking. Let's just hope that in 25 years, when O'Connor is no longer on the bench, but Thomas probably will be, he'll remember her words and soften the harshness of his own.