



Rice Helped Shape Bush Decision on Admissions

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National security adviser Condoleezza Rice took a rare central role in a domestic debate within the White House and helped persuade President Bush to publicly condemn race-conscious admissions policies at the University of Michigan, administration officials said yesterday.

The officials said Rice, in a series of lengthy one-on-one meetings with Bush, drew on her experience as provost at Stanford University to help convince him that favoring minorities was not an effective way of improving diversity on college campuses.

Rice, the first female national security adviser, told Bush that she worked to increase the number of African American faculty members at Stanford but that she was "absolutely opposed to quotas," a senior administration official said. A Stanford official said that under Rice, who served from 1993 to 1999 and was the university's first nonwhite provost, the number of black faculty members increased from 36 to 44.

Officials described Rice as one of the prime movers behind Bush's announcement on Wednesday that he would urge the Supreme Court to strike down Michigan's affirmative action program. Just before midnight last night, the administration filed two briefs totaling 70 pages -- one each for the cases involving the University of Michigan's undergraduate and law school admissions programs -- with the Supreme Court.

The briefs, signed by Solicitor General Theodore B. Olson, repeatedly characterize the programs, which essentially award extra consideration to black, Latino and Native American applicants to ensure a diverse student body, as tantamount to racial quotas and "plainly unconstitutional."

The administration said the case shows the "pernicious consequences" of "ignoring race-neutral alternatives and employing race-based policies that amount to racial quotas." It argued

that diversity "is an important and entirely legitimate government objective," and that "measures that ensure diversity, accessibility and opportunity are important components of government's responsibility to its citizens." But, the briefs said that since the university had alternative "race-neutral" means available to achieve the goal, its use of race-conscious means is unconstitutional.

The briefs cited the reported ability of Texas, Florida and California, each of which has done away with race-conscious admissions in its public universities, to maintain a significant minority enrollment as proof that traditional race-conscious affirmative action is not necessary to achieve diversity.

However, the briefs sidestepped a crucial question presented in the cases, whether diversity could ever be an important enough government interest -- a "compelling interest" in the argot of Supreme Court precedent -- to justify taking race into account, if, for example, programs like the relatively new race-neutral ones in Texas, Florida and California do not continue to show good results over the long term.

Universities maintain that the Supreme Court's 1978 decision in the Bakke case established diversity as a compelling interest, but opponents of race-conscious admissions dispute that and lower federal courts have reached differing conclusions on the issue, prompting the current Supreme Court cases.

On the critical point of "compelling interest," the administration, as expected, offered a compromise answer likely to please neither side in the debate, and to disappoint any justices who might have been expecting definitive guidance on the point from the government: "Regardless of how the University's interest in diversity is defined, [its] policy fails."

As Justice Department officials reworked the administration's brief to meet a midnight deadline, White House aides described Bush's conversations with Rice and other advisers. It was an effort to portray the president's position as striking a moderate balance, encouraging racial diversity but arguing against the use of direct mechanisms for enforcing it.

Aides said Justice Department officials -- and specifically Olson, the federal government's chief lawyer in Supreme Court cases -- proposed that Bush file a brief arguing that the use of race in college admissions to achieve diversity, not just the University of Michigan's program, is unconstitutional.

"Several conservatives, including many in the administration, urged the president to file a broader brief," a senior official said. "The president made the determination that it was his role to issue the narrowly tailored brief to make it clear that the Michigan program was wrong, but not seek to define how to achieve diversity because he believes the best way to accomplish that is to let it evolve."

Many black conservative lawyers who are Bush appointees in the administration, including officials at the Education and Justice departments, lobbied vociferously for a broader argument against affirmative action. An official said Bush's counsel, Alberto R. Gonzales, presented the options in neutral terms, describing how each position could be argued. Officials said Bush only fleetingly considered his option to remain silent on the case, deciding that it was of sufficient national importance that he should describe his views.

Aides researched past affirmative action and civil rights cases and found that the White House typically weighed in. Winning over Hispanic and moderate suburban voters is one of the White House's chief political aims, and some Republicans feared that the decision could hurt Bush, especially after the controversy over racially charged remarks by Sen. Trent Lott (R-Miss.), which forced him to step down as party leader.

Some aides felt Bush had been presented with a no-win situation, and said they felt besieged from the left and right yesterday. Democrats running for president attacked Bush's policy as retrogressive, while some conservative activists complained that Bush did not go far enough.

However, Bush's position could bolster him with his base of conservative voters, and some aides said Bush's moderate rhetoric put him in the middle ground with most of the American public. Bush's aides said the decision emerged from more than two dozen meetings over the past month, almost all of them with a small group of advisers consisting of Rice, Gonzales, Vice President Cheney, Chief of Staff Andrew H. Card Jr., senior adviser Karl Rove and Jay Lefkowitz, director of the White House's Domestic Policy Council. "In these meetings, the president would pepper the group with questions: 'When can race be used? How do you achieve diversity?' " a senior official said.

"He wanted to get at reality." Bush's remarks, drafted by his speechwriting office, were heavily edited by a close adviser, Karen P. Hughes. Hughes and Lefkowitz were architects of Bush's decision last year to allow federal funding for a limited amount of research on stem cells from human embryos.

The affirmative action decision had much in common with Bush's stem cell announcement. Both followed heavy lobbying from conservatives. Both policies sound palatable to moderates but largely achieve the aim of conservatives without directly taking their side. Though some conservatives said they had been pleasantly surprised by the president's strong rhetoric, particularly his denunciation of Michigan's plans as "quotas," others reserved judgment until they saw the legal reasoning. Many on the right view the White House as handling the issue as a political, rather than legal, one.

Meanwhile, the first friend-of-the-court briefs in opposition to the Michigan plan began trickling in to the court. Perhaps the most prominent opponent to weigh in was Florida Gov. Jeb Bush (R), the president's brother, who submitted a brief in his own name and in the name of his

state. The brief sought to provide the court with data from Florida's experience that show how a race-neutral approach to admissions can work better than a Michigan-style approach.

The Florida brief takes a stronger position against affirmative action than Bush's, arguing that diversity in higher education can never be an issue important enough to the government to justify using race in admissions.

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