

US Supreme Court justice argues black students should attend inferior schools

Tom Carter
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The US Supreme Court heard extended arguments December 9 regarding the validity of an affirmative action program at the University of Texas.

The case and the arguments, which were significant in themselves, were overshadowed by a provocative and racist diatribe by Supreme Court Justice Antonin Scalia, in which he claimed that black students would be better off in “less-advanced” and “slower-track” schools.

“There are those who contend that it does not benefit African Americans to get into the University of Texas where they do not do well, as opposed to having them go to a less-advanced school, a slower-track school, where they do well,” Scalia said.

Scalia claimed that “most of the black scientists in this country” come from “lesser schools” where they were not “pushed ahead in classes that are too fast for them.”

Repeatedly interrupting the attorney who was trying to argue the case, Scalia went on to declare that he was “not impressed by the fact that the University of Texas may have fewer” black students if certain affirmative action policies were discontinued. “Maybe it ought to have fewer,” he said.

Scalia’s words were carefully chosen—doubtless prepared in advance—as a direct appeal to racists. This is language that has not been heard in Supreme Court for decades, and the attorneys arguing the case were evidently stunned. The lawyer representing the University of Texas pointed out that this was essentially a proposal to send minorities to “inferior schools.”

Scalia’s words are an echo of the darkest days in the court’s history, when it upheld racial segregation in the infamous case of *Plessy v. Ferguson* (1896), and chattel slavery in the *Dred Scott* case (1857).

It is significant that Scalia made his remarks in a case that originated in Texas. Annexed in 1845, Texas was a slave state and its regiments fought for the Confederacy. For a century after the end of the Civil War, the state constituted a bastion of Jim Crow apartheid, and Texas officialdom to this day remains a cesspool of Christian fundamentalism, bigotry, and corruption. It is clear that Scalia’s remarks are directed at those sections of American society that never fully accepted the civil rights reforms.

Scalia’s racist remarks came only two days after Republican candidate Donald Trump’s call to close the country’s borders to all Muslims. Scalia no doubt feels emboldened by this political climate.

The case being argued before the Supreme Court was *Fisher v. University of Texas at Austin*, a prolonged and complicated lawsuit that was argued in the Supreme Court once before in 2012. The lead plaintiff in the case is Abigail Fisher, a white high school graduate who was denied admission to the university in 2008, her attorneys alleged, because of racial preferences.

Fisher was not admitted on the basis of the “Top Ten Percent Law,” which guarantees university admission to the top 10 percent of each high school class in Texas. Accordingly, she was one of 17,131 applicants for the remaining 1,216 positions at the university, who were subject to a

“holistic” and “race-conscious” review that included racial preferences. Fisher alleged that she had higher academic scores and qualifications than other students who were admitted. She had a 3.59 grade point average (out of 4.0) and a class ranking of 82nd out of 674 students at her high school (ranking among the top 12 percent).

When the Supreme Court previously heard the case, it decided that the racial preferences (called “affirmative action” in America) that lower courts had upheld at the University of Texas had been given “undue deference” and should have been subjected to more exacting scrutiny. It upheld affirmative action in an abstract sense, and remanded the case back to the lower courts for more factual findings and analysis.

The Fifth Circuit Court of Appeals has upheld the University of Texas affirmative action regime twice, in each case finding that the university takes race into account as a legitimate part of a “holistic” review process, which aims for a generally diverse student body. Fisher’s attorneys argued that it was still a violation of Fisher’s individual constitutional rights for the university to take her race into account, in effect denying admission to Fisher because she is white.

The *Fisher* case once again underscores the extent to which affirmative action policies have become integrated into the framework of the state and the corporate-military-political establishment. Sixty-seven *amicus curiae* (friend of court) briefs favored the university, with only sixteen supporting Fisher.

The briefs revealed broad support from within the ruling class for affirmative action. One such filing—by “Fortune-100 and Other Leading Businesses”—emphatically defended affirmative action from the standpoint of maximizing profits. These businesses, “who collectively generate revenues in the trillions of dollars,” have hiring practices that mirror the university’s admissions policies, which they consider “critical to their business success.” Diversity, they argue, is “associated with increased sales revenue, more customers, greater market share, and greater relative profits.” In other words, promoting minorities to positions as “business leaders” is profitable.

Another *amicus* brief was filed on behalf of 36 military leaders, including “four Chairmen of the Joint Chiefs of Staff, two Army Chiefs of Staff, a Chief of Naval Operations, two Air Force Chiefs of Staff, two commanders of Special Operations Command, five military academy superintendents, a former U.S. Senator and Congressional Medal of Honor recipient, and the first female 4-star in the U.S. military.”

These military officials considered “this case as critical to the Armed Forces’ ability to defend our Nation’s security, because that ability depends on an officer corps consisting of our best qualified, able, and racially diverse leaders.” They pointed to the phenomenon of “fragging” during the Vietnam War, during which “many black troops lost confidence in the military.” Affirmative action policies at universities, they argue, provide the military with a pool from which to recruit black officers, which in turn improve the “legitimacy and effectiveness of our military as an institution in the eyes of minority service members and

society at-large.”

The military leaders also argued that having black officers helped the military recruit from black neighborhoods. The Obama administration’s brief similarly argued, “Maintaining a pipeline of well-prepared and diverse officer candidates is...an urgent military priority.”

The Obama administration went on to argue that “our military leaders have concluded that an officer corps that shares the diversity of the enlisted ranks improves performance by ‘facilitating greater confidence’ in leadership.”

It goes without saying that there is nothing remotely left-wing about any of these arguments for affirmative action.

In Wednesday’s arguments, the ostensibly liberal justices twisted themselves into knots to try to justify the ever-more convoluted maze of legal fictions surrounding affirmative action, which in the final analysis involves denying admission to students like Fisher on the basis of race. The reactionary justices advanced openly right-wing arguments for abolishing affirmative action at the University of Texas or abolishing it in general. Various intermediate positions were taken and compromises were proposed. After more than an hour of oral argument it was clear that none of the positions on this spectrum have any progressive content, and none of them constitute anything resembling a program of genuine social equality.

Affirmative action in America is not about social equality. As its defenders on the Supreme Court make clear, it is about fostering a “diverse elite,” which the population will regard as “legitimate.”

“High-ranking retired officers and civilian military leaders assert that a highly qualified, racially diverse officer corps is essential to national security,” Justice Sandra Day O’Connor wrote in 2003 in support of affirmative action policies.

“In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry,” O’Connor continued, “it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.”

In other words, the point of affirmative action is not to abolish an unfair and unequal social system. The point is to *preserve* an unfair and unequal social system by bringing a privileged layer of minorities into “visible” positions in the military, the government, academia and business, in order to make the system appear more “legitimate.” Not one more student receives a university education as a result of affirmative action policies; instead these policies force students to compete with each other for limited positions based on racial preferences.

The reactionary justices, led by Scalia, exploit the undemocratic character of racial preferences to posture as proponents of fair and “race-neutral” policies. However, Scalia’s comments Wednesday expose these pretensions. The reactionary justices would be happy to roll back all of the democratic reforms that have been implemented over the past century, and are only seeking to take advantage of the resentments generated by “race-conscious” policies.

The comments of Trump and Scalia over the past week pose even more sharply a question of major concern to students, workers, and youth: how are racism and bigotry to be eradicated? To answer that question it is necessary to examine these phenomena objectively.

For the theorists of the pseudo-left, racism and bigotry are primarily a psychological phenomenon, rooted in the “white male psyche,” in “white privilege,” and so forth. Their program flows from these conceptions: race-based identity politics, diversity training, more racial preferences, increased oversight by the state apparatus, and more “opportunities” for minorities to get rich within the framework of capitalism. On the basis of the conception that race is the fundamental social category, the pseudo-left widely endorsed Barack Obama, one of the most reactionary presidents in American history, on the basis of his skin color.

Socialists understand that the decisive dividing line in society is class,

not race. Racism and other backward prejudices are promoted and encouraged by the capitalist class and intensified in the imperialist epoch. The capitalist class dredges up the ideological filth of the past to divide the working class and to stampede popular support behind policies that benefit the ruling class, and which could not otherwise be justified. This is the class content of racism and bigotry.

Anti-Muslim hysteria, in particular, provides a clear example of this phenomenon. Hatred against Muslims is being deliberately promoted by the imperialist ruling classes around the world in order to justify domestic crackdowns and military aggression abroad, as part of the phony “war on terror.” Contrast the response in broad sections of the international working class to the Syrian refugee crisis—compassion, hospitality, and demonstrations for better treatment—with the attempts by political leaders to whip up fear and hatred.

In the US, the figure of Donald Trump expresses perfectly the relationship between imperialism and bigotry. The billionaire parasite, like every aspiring fascist politician before him, seeks to generate support for his policies by appealing to xenophobia, misogyny, racism, and religious bigotry. For socialists, the fight against Trump means shutting down the machine that produces Trumps—capitalism.

Imperialism, Lenin explained, is “reaction all down the line.” The ugly reappearance of open racism in American politics, including on the Supreme Court, is a process parallel to the abrogation of democratic rights, the plundering of the economy, the shift towards dictatorship, and fifteen years of military aggression and brinkmanship.

Looking back at the 20th century, it should be clear to every class-conscious worker and student how very dangerous this is, and where it will lead if the working class does not intervene. The struggle to put an end to racism and bigotry must be a united struggle by the international working class against capitalism, the driving force of reaction.

The author also recommends:

Trump: The ugly reality of American politics
[10 December 2015]

US Supreme Court upholds affirmative action
[25 June 2013]

US Supreme Court hears oral arguments in affirmative action case
[19 October 2012]



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