Innovations in Pre-Law Advising in a Post Affirmative Action Era

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Academy of Criminal Justice Sciences - Annual Conference 2024

March 20, 2024

Pre-Law Advising in a Post Affirmative Action Era

- This is not our first trip down the "race" road …
- Companion cases:
  - Sweatt v. Painter, 339 U.S. 629 (1950): separate law school for Blacks is unequal, violates the Equal Protection Clause, effectively mandates the desegregation of higher education.
  - McLaurin v. Oklahoma State Regents for Higher Education, 339 U.S. 637 (1950): refusal to admit a black student to graduate programs because of his race violates the Equal Protection Clause of the Fourteenth Amendment.

After 28 years, the issue comes back

- Regents of Univ of California v. Bakke, 438 U.S. 265 (1978): race quotas are unconstitutional but allowed for race to be considered as one of many factors in admissions decisions.
- Hopwood v. Texas, 78 F.3d 932 (1996): 5th Circuit rules that race factors in law school admissions is unconstitutional – but THIS school could consider its own institutional history as a reason to remedy discrimination.
- Grutter v. Bollinger, 539 U.S. 306 (2003): affirmative action admissions policy allows race as one of many factors considered in higher education because it furthers "a compelling interest in obtaining the educational benefits that flow from a diverse student body“ (court struck down a race-based point system in a related case)

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And keeps coming back …

- Fisher v. University of Texas at Austin, 530 U.S. 297 (2013): reaffirms compelling interest of diversity in higher education but requires universities to demonstrate that race in admissions is narrowly tailored to achieve diversity.
- Students for Fair Admissions v. Harvard, 600 U.S. 181 (2023), strikes down nearly all affirmative action programs and policies and rules that UNC's & Harvard's race-conscious admissions policies violate the Constitution.
- *1950s cases appear intact (segregation and rejection by race are unconstitutional)*
- *Bakke, Hopwood, and Grutter are invalid*

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What now?

- For advisors, Harvard decision allows:
  - "[N]othing in [its] opinion should be construed as prohibiting universities from considering an applicant's discussion of *how race affected his or her life*, be it through discrimination, inspiration, or otherwise."
  - Applicant experiences with race could show "courage and determination," or "that student's unique ability to contribute to the university."
  - "[T]he student must be treated based on his or her experiences as an individual - not on the basis of race."
  - Admissions may still consider student experiences with race and how those experiences shape who they are, their character, and how they might contribute to the university community.

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Higher education applicants

- For our students:
  - If you choose to highlight race issues, do so by explaining in your personal statements how race (or class, wealth, culture, ethnicity, religion, etc.) provided unique experiences that influenced or affected your life.
  - Your schools can and will consider your explanation of your life, goals, obstacles, hardships, etc., gave you these goals – especially if your drive is to serve an underserved community, population, etc.
  - The Supreme Court specifically states these Applicant experiences with race could show "courage and determination," or "that student's unique ability to contribute to the university."
  - "[T]he student must be treated based on his or her experiences as an individual - not on the basis of race."
  - Admissions may still consider student experiences with race and how those experiences shape who they are, their character, and how they might contribute to the university community.

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Thank You!

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