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UT And Abigail Fisher Back Before The High Court Today, Becoming A Regular Event

Jim Schutze

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The U.S. Supreme Court hears oral arguments today — again — in Fisher v. University of Texas, so colleges and universities all over America will be on edge — again — to see if UT has bollixed up all affirmative action admissions programs for good.

But “for good” has been a flexible concept in past high court rulings about Abigail Fisher, who didn't get into UT in 2008 and whose court case about it has been up and down the judicial string like a yo-yo ever since:

She didn't get cheated. She maybe did. No she didn't. Wait, tell us again what happened? It's enough to make you wonder if the justices are texting while ruling.

Meanwhile, what I'll be watching is whether one word gets said to the court about our own guy here in Dallas, Wallace Hall, the University of Texas regent who blew the whistle on widespread cheating in student admissions. If a recent CATO Institute seminar on the Fisher case is any indication, I'd say no.

Hall was included in a panel of nationally distinguished legal experts on affirmative action discussing “Fisher,” as we self-appointed legal experts call it, and he did speak, but the other members of the panel, all real experts in constitutional law, seemed more interested in each other than in Hall. It occurred to me in watching that my own favorite question — what if UT leaders are lying through their teeth about everything they say — may not be, strictly speaking, a constitutional issue.

In August 2009, a U.S. District Court ruled that UT had not committed an unconstitutional harm against Fisher, who is white, and that UT's admissions system was constitutionally copacetic in how it weighs race as a factor in admissions. In 2013, the Supreme Court ruled that the district court had mishandled the case and sent it back down to the district court for more careful consideration.

In 2014, the district court ruled, and I paraphrase, “OK, we considered it very carefully and gave it very 'strict scrutiny' as SCOTUS ordered us to do, and guess what, she still loses.”

That was supposed to be it. For good. Asked and answered, over and done with. But on June 29 of this year, after taking an unusually long time to decide, the Supreme Court agreed to take Fisher back and hear it all over again, which is what happens today.

UT actually has two admissions systems. The university admits three-quarters of its freshman class every year based on a “Top 7” rule guaranteeing admission to any student who graduates in the top 7 percent of his or her high school class. (The rule was 10 percent when Fisher applied.) Because schools in Texas are highly segregated by race, the rule guarantees that lots of minority kids will get in. It's a kind of euphemistic work-around, a bit of smoke and mirrors if you will, to achieve diversity in the wake of other Supreme Court rulings supposedly outlawing directly race-based admissions policies.

But that's not what Fisher is about. It's about the other 25 percent of the freshman class admitted under a separate system called “holistic” — a term that always invokes for me, for some reason, an image of people sitting in the lotus position but maybe not in this case.

In the UT case, holistic admissions are supposed to be decisions carried out by a group of wise persons in the admissions department who consider a host of criteria so varied, so esoteric and arcane that they can't really ever just put it into so many words, which, again, still makes me think of the lotus position even when I try not to.

By digging and banging away on his own, Hall, the UT regent from Dallas, was able to unearth major elements of the lotus-position admissions system that the university itself had considered too delicate to put into words — namely wholesale backdoor admissions for totally unqualified sons and daughters of powerful state politicians with purse-strings control over the university.

Hall and investigative reporter Jon Cassidy at Watchdog.org laid bare an admissions scam at UT's vaunted law school so crude that it produced a cadre of UT law school graduates incapable of passing the bar exam after repeated tries — an incredible humiliation for what has always been one of the nation's top law schools.

Hall was repaid for his efforts by attempts to impeach and criminally indict him on charges he had asked the university for way too much information, thus “burdening” it, and that he had made the university look bad, which members of the Texas Legislature thought was a crime.

When Fisher's lawyers went back to the Supreme Court this year to ask for a rehearing of the rehearing of the hearing (technically, in legalese, a rerehearhearing), they included a description of the Hall matter, describing all of the admissions procedures at UT as “a sham.”

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Last spring when the Supreme Court was wibble-wobbling about taking Fisher back for a rererhearhearing, there was much speculation about whether the Hall matter could be a factor in the court's judicial fibrillation.

After all, lawyers for UT had told the high court last time around that UT was trying to solve really arcane fairness issues like “diversity within diversity” — not whether you have enough black kids but whether, among the black kids you do have, you have enough rich ones. Huh?

Maybe the court didn't like it when they read about Hall and found out the real problem the university was trying to tackle was more like (speaking theoretically) admitting the nitwit kid of some legislative cigar butt with booze stains on his pants so he'd vote for better pensions for top university officials.

They say it's not nice to lie to the Supreme Court.

By the way, the new UT chancellor, Admiral William McRaven, has joined a majority of the board of regents in trying to bar Hall from further investigations. Toward that end, the board of regents has adopted a policy of fiduciary self-mutilation by which they have agreed that they can only ask for information that the admiral, their employee, tells them they can ask for, raising the obvious question: Are these people whom you would trust to resurface your driveway?

But as I say, that Cato seminar, which was pretty darned interesting and exhaustive, as well as an excellent discussion in The New York Times yesterday, make it sound as if Hall won't come up, at least not directly.

In court today the talk will revolve around this: Since the court has ruled that affirmative action is illegal but the court still seems to consider it a good thing, how can universities adopt race-based admissions policies that look like they're based on something else when we all know (nudge-nudge, wink-wink) they're not? When lawyers get into really fun, ornate law questions like that one, mere bald-faced lying and fraud may fade from interest.