

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

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4 \_\_\_\_\_  
5 STUDENTS FOR FAIR ADMISSIONS, INC.,

6 Plaintiff,

Civil Action  
No. 14-14176-ADB

7 v.

October 19, 2018

8 PRESIDENT AND FELLOWS OF HARVARD  
9 COLLEGE, et al.,

Pages 1 to 263

10 Defendants.  
11 \_\_\_\_\_

12 TRANSCRIPT OF BENCH TRIAL - DAY 5  
13 BEFORE THE HONORABLE ALLISON D. BURROUGHS  
14 UNITED STATES DISTRICT COURT  
15 JOHN J. MOAKLEY U.S. COURTHOUSE  
16 ONE COURTHOUSE WAY  
17 BOSTON, MA 02210

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, on October 19, 2018.)

THE COURT: How are you?

MR. McBRIDE: Doing well. How are you?

THE COURT: I told Mr. Mortara yesterday my back is starting to bother me. I don't know if your backs are starting to bother you, but you can all feel free to stand up and back and move around a little bit if we're sitting too long, and I may be back and forth doing the same.

In terms of this morning's schedule, I have a conference in another case at noon. I'm not doing it in this courtroom. I moved it to another courtroom so that we didn't disrupt the function or the paperwork in here or whatever. So I'm happy to go straight through to a few minutes before 12:00. I'm also happy to take a morning break, so do whatever you all want. But the afternoon break will be from like five of 12:00 to, hopefully I can hold it to 45 minutes. Okay. But it might be a little bit longer. So if you want a break, go ahead and let me know and take one. But if you want to go straight through, that's fine, too.

1 Just a reminder, you're still under oath okay.

2 THE WITNESS: Yes.

3 (ERICA BEVER previously sworn by the Deputy Clerk.)

4 EXAMINATION (resumed)

5 BY MR. McBRIDE:

6 Q. Good morning, Ms. Bever.

7 A. Good morning.

8 Q. I want to move ahead from October of 2013 into 2014.

9 MR. McBRIDE: And I'm going to put on the screen  
10 Plaintiff's Exhibit 41. And I'd like to offer that into  
11 evidence, please.

12 MS. ELLSWORTH: No objection.

13 THE COURT: It's admitted.

14 (Plaintiff Exhibit No. 41 admitted.)

15 BY MR. McBRIDE:

16 Q. And do you recall that in July of 2014, before you left  
17 OIR, Dean Khurana took his current position as the dean of  
18 Harvard College?

19 A. Yes.

20 Q. I have here Plaintiff's Exhibit 41 on the screen. This  
21 is an email from you to Erin Driver-Linn on July 10 of 2014.

22 A. Yes.

23 Q. And it copies your colleagues, John Scanlon and Liam  
24 Schwartz?

25 A. Yes.

1     **Q.** This email, this was about a meeting that you had the  
2     next day with Dean Khurana to introduce him to your office  
3     and the work OIR had done relating to Harvard?

4     **A.** Yes.

5     **Q.** And you see here you've written, "Hi, Erin. I've  
6     attached a draft agenda for tomorrow's meeting with Dean  
7     Khurana. Does this look right to you? I'm also attaching  
8     the additional college-related materials we should probably  
9     share with him."

10                   Do you see that?

11     **A.** I do.

12     **Q.** The other people who attended the meeting with Dean  
13     Khurana was your boss, Erin Driver-Linn, as well as the two  
14     co-workers listed here, Mr. Scanlon and Mr. Schwartz?

15     **A.** Yes, I believe that's correct.

16     **Q.** And you see that the email list four attachments: agenda  
17     for Khurana, document low-income admission memo final,  
18     factors in admission, and athletes project.

19                   Do you see those attachments?

20     **A.** I do.

21     **Q.** If you page to the next page in Plaintiff's Exhibit 41 --  
22     I'll blow it up here on the screen. Is this the agenda  
23     that's attached for the meeting with Dean Khurana the next  
24     day?

25     **A.** It appears to be, yes.



1     **Q.** You see the three main points that you are proposing  
2     discussing with Dean Khurana are additional OIR analysis on  
3     Harvard College students? That's the first bullet point?

4     **A.** Yes.

5     **Q.** And under there what you've written is --

6             THE COURT: Mr. McBride, I have a bunch of redacted  
7     pages. Do I have the wrong exhibit?

8             MR. McBRIDE: No, Your Honor. You have the correct  
9     exhibit. But the very second page after the email is the  
10    agenda I'm looking at.

11            THE COURT: I see that double-sided. Okay. Go  
12    ahead. Sorry.

13    BY MR. McBRIDE:

14    **Q.** Under the additional OIR analysis on Harvard College  
15    students, the subpoints are athletes, evaluating factors in  
16    admissions, and low-income admissions memo. Do you see that?

17    **A.** I do.

18    **Q.** And then the next two main bullet points are trends in  
19    higher education for the Harvard Corporation, and finally  
20    discussion of OIR work and potential new projects. You see  
21    that?

22    **A.** Yes.

23    **Q.** And if you would page through with me, as Her Honor  
24    noted, there's a number of redacted pages of the additional  
25    attachments going back. Do you see that?

1     **A.**   Yes.

2     **Q.**   But if you go to page 47 -- and we've provided some page  
3       numbers there at the very bottom pages.  This one, for  
4       example, is on page 24 of 66.  But if you go to page 47, we  
5       have some unredacted pages.  Do you see that?

6     **A.**   Yes.

7     **Q.**   And this is the evaluating factors PowerPoint that  
8       relates to that first agenda item, second subpoint,  
9       evaluating factors in admission?

10    **A.**   Yes.

11    **Q.**   And these are familiar slides, correct?  We were looking  
12    at these yesterday in Plaintiff's Exhibit 12?

13    **A.**   Yes.

14    **Q.**   And the third subpoint under that first bullet says,  
15    "Low-income admissions memo on the agenda."

16            You attached slides for that as well, correct?

17            If you go to page 59, that might help you.

18    **A.**   Thank you.  Yes.

19    **Q.**   And here, page 59, you've attached the same May 1 memo  
20    that we looked at yesterday, Plaintiff's Exhibit 26, that you  
21    had previously prepared for Dean Fitzsimmons, right?

22    **A.**   Yes.

23    **Q.**   And that was what was meant by that third sub-bullet  
24    point, low-income admissions memo?

25    **A.**   Yes.

1     **Q.** Now, you don't recall Dean Khurana at your meeting on  
2     July 11th criticizing the analyses that you had sent to him,  
3     do you?

4     **A.** My memory of that meeting does not discuss any specific  
5     discussion of our work.

6     **Q.** And so you don't have any specific discussion of or you  
7     don't have any specific recollection of a discussion with  
8     Dean Khurana where he criticized either of the analyses that  
9     were P12 and P26 that you had sent to him, correct?

10    **A.** No. My memory of that meeting is that he shared sort of  
11    his vision admission for the college and what he was planning  
12    to do as dean. And I don't remember discussing any of the  
13    work we had shared with him that day.

14    **Q.** And if you go back to the agenda, the third bullet point,  
15    as we noted, was discussion of OIR work and potential new  
16    projects. You see that?

17    **A.** Yes.

18    **Q.** And you don't recall there being any discussion with Dean  
19    Khurana at this July 2014 meeting about any new OIR project  
20    to further investigate a possible Asian penalty in  
21    admissions?

22                MS. ELLSWORTH: I'm going to object on foundation  
23    for that question. I don't think it's been established.

24                MR. McBRIDE: It was a "you don't recall" question.

25                THE COURT: It's overruled.

1 THE WITNESS: Can you repeat the question?

2 BY MR. McBRIDE:

3 Q. Sure. You don't recall there being any discussion with  
4 Dean Khurana at this July 2014 meeting about a new OIR  
5 project to further investigate a possible Asian penalty in  
6 the admissions at Harvard?

7 A. No. Again, my memory of that meeting is we discussed  
8 Dean Khurana's vision for his role at the college.

9 Q. And you don't recall anyone taking any action with  
10 respect to these reports after this meeting in July of 2014?

11 A. I don't remember any subsequent discussion of these  
12 analyses, no.

13 Q. Or any subsequent action with respect to them?

14 A. I don't remember any subsequent work, no.

15 Q. Now, we can agree that OIR did some logistic regression  
16 models of the Harvard admissions starting in at least  
17 February of 2013 that we have reviewed, right?

18 A. Yes. They did a limited analysis with a limited number  
19 of variables, yes.

20 Q. And you forwarded those to your co-workers in Boston OIR  
21 in February of 2013. We saw that?

22 A. We did.

23 Q. And you sent a memo to Dean Fitzsimmons using those  
24 models in May of 2013. We saw that?

25 A. We saw similar models and a new memo, yes.

1     **Q.** And we also saw you sent additionally updated versions to  
2     Dean Fitzsimmons in June of 2013?

3     **A.** Yes.

4     **Q.** And you collected them and sent them again to your boss,  
5     Erin Driver-Linn, in October of 2013 just before the  
6     scheduled meeting with respect to the *Fisher* case?

7     **A.** Yes.

8     **Q.** And ultimately you passed them along to the new Dean  
9     Khurana in July of 2014 as part of orienting him to the OIR's  
10    work?

11    **A.** Yes. It was part of a series of, you know, analyses we  
12    shared with him. I think we shared over 300 pages of our  
13    work with Dean Khurana when he started as dean.

14    **Q.** None of these times when you collected and drafted and  
15    forwarded these models did you tell the recipients that the  
16    models you were sending were incomplete or unreliable, did  
17    you?

18    **A.** No.

19    **Q.** And you never told them anything other -- you never said  
20    anything -- there was anything other than the accurate,  
21    timely and digestible research that was your standard at OIR,  
22    did you?

23    **A.** Yes. Although we often shared the limitations that we  
24    knew of of our work.

25    **Q.** And you don't have any specific recollection here of

1 having shared those limitations because you don't recall the  
2 discussions and meetings in question?

3 **A.** Well, we looked at some of the memos which lists the  
4 limitations of our work.

5 **Q.** Correct. We looked at that in P26, right. But  
6 otherwise, you never told them this was anything other than  
7 the accurate, timely, and digestible research that was your  
8 standard at OIR. Is that right?

9 **A.** At the time of those communications we reviewed, that's  
10 correct, yes.

11 MR. McBRIDE: No further questions, Your Honor.

12 EXAMINATION

13 BY MS. ELLSWORTH:

14 **Q.** Good morning, Ms. Bever.

15 **A.** Good morning.

16 **Q.** Ms. Bever, do you recall discussing your analysis in  
17 Exhibit P12 with Mr. McBride yesterday?

18 **A.** Yes.

19 **Q.** And specifically the pages of that analysis that relate  
20 to evaluating factors in Harvard College admissions?

21 **A.** Yes.

22 **Q.** You recall discussing the analysis in P26 relating to  
23 low-income students and Harvard College admissions with  
24 Mr. McBride?

25 **A.** Yes.

1     **Q.** Mr. McBride characterized that analysis as an analysis  
2     about the extent to which the admissions process fell  
3     negatively on Asian-Americans. Do you recall that?

4     **A.** I do.

5             THE COURT: Can you bend that microphone down a  
6     little bit more.

7             MS. ELLSWORTH: Sure can. Is that better?

8             THE COURT: Yes, thank you.

9     BY MS. ELLSWORTH:

10    **Q.** Do you agree with that characterization?

11            MR. McBRIDE: Objection, Your Honor. Can we have a  
12    sidebar, please?

13            THE COURT: Yes.

14            (The following was held at sidebar.)

15            MR. McBRIDE: Your Honor, I suspect that we're  
16    about to have the elicitation of undisclosed expert opinion.  
17    She's testified at length that she doesn't have specific  
18    recollections of the analyses. In fact, yesterday, on  
19    page 232, she said, "You say you actually don't remember much  
20    about the specific analysis that was done in this memo. Is  
21    that right? I don't really remember the analysis of this  
22    work, but I'd be happy to comment on it today." She signaled  
23    very clearly what was the plan, which is to go back and  
24    elicit the new expert opinion on that analysis, not the  
25    percipient knowledge she had at the time, which was Your

1 Honor's ruling.

2 THE COURT: Well, she can ask the question, and if  
3 she has knowledge or remembers it -- I mean, the work was  
4 done in her office. You had her commenting about it all day  
5 yesterday. So they're entitled to do the same. She's not  
6 going to offer expert opinion removed from her participation  
7 in it.

8 MR. McBRIDE: The point is, though, that she made  
9 clear that she didn't have an understanding or recollection  
10 of that analysis.

11 THE COURT: She can see what she does remember and  
12 what she --

13 MR. McBRIDE: Now we're in dangerous testimony.  
14 Now we're talking about recovered memory. She's testified at  
15 length about her lack of understanding.

16 THE COURT: You can cross-examine her on her  
17 recovered memory. It's fair game to ask. We'll see what the  
18 questions are and what the answers are and see if there's  
19 anything objectionable about it, but she's entitled to ask  
20 the question.

21 MR. McBRIDE: Your Honor, respectfully recovered  
22 memory --

23 THE COURT: When people say "respectfully," I know  
24 that's exactly not what they mean.

25 MR. McBRIDE: If I may say, Your Honor.



1 THE COURT: Respectfully or otherwise.

2 MR. McBRIDE: Is that we're in dangerous territory,  
3 and we have someone who is giving testimony that is directly  
4 contradicting the prior sworn testimony about not remembering  
5 the analysis.

6 THE COURT: That goes to her credibility, and you  
7 can certainly poke at how that memory was recovered  
8 overnight, if that's what happens. But I don't know it's  
9 going to happen at the moment. All she's asked is if she  
10 recollects discussing two exhibits with you yesterday.

11 MR. McBRIDE: Actually, the question was do you  
12 agree with that characterization. She's then offering an  
13 opinion on something where she's --

14 THE COURT: To the extent it's consistent with her  
15 job responsibilities and she was there and you can have back  
16 at her on your director redirect or recross whatever you want  
17 to call it.

18 MR. McBRIDE: Just in terms of going forward,  
19 should I be making additional objections?

20 THE COURT: She hasn't asked an objectionable  
21 question, nor has she given an objectionable answer. If it  
22 comes to that, you object. If it looks like you should have  
23 a continuing objection, we can visit that. Let's see where  
24 it goes. I don't think there's anything that happened so far  
25 that's objectionable.

1 MR. McBRIDE: Thank you, Your Honor.

2 (End of sidebar.)

3 BY MS. ELLSWORTH:

4 Q. I believe my question to you, Ms. Bever, was relating to  
5 Mr. McBride's characterizations of the two exhibits  
6 yesterday, P12 and P26. Do you have that in mind?

7 A. Yes.

8 Q. Mr. McBride characterized the analysis in P12 as an  
9 analysis about the extent to which the admissions process  
10 fell negatively on Asian-Americans. Do you recall that?

11 A. Yes.

12 Q. Do you agree with that characterization?

13 A. No. I would say the analysis shows the relationship  
14 between a number of variables and their correlation with the  
15 outcome of interest.

16 Q. Was Mr. McBride's characterization of the work in P12 an  
17 accurate characterization of the work that you did while you  
18 were in OIR?

19 A. I would not agree that it's an accurate characterization.

20 Q. Could you speak up a little bit, please?

21 A. I would not agree that it's an accurate characterization.

22 Q. Thank you.

23 Mr. McBride also characterized the analysis as an  
24 analysis that answers questions about the effect of Harvard's  
25 use of race in admissions. Do you recall that testimony

1 yesterday?

2 **A.** I do recall that.

3 **Q.** Do you agree with that characterization by Mr. McBride?

4 **A.** No. I would say the analysis that was done is missing a  
5 number of the factors and cannot capture the process we use  
6 in admissions, and so it's not doing that.

7 **Q.** And Mr. McBride also this morning characterized the OIR  
8 work that was shared with Dean Khurana as showing an Asian  
9 penalty. Do you recall that characterization?

10 **A.** I do.

11 **Q.** Do you agree with that characterization?

12 **A.** I do not.

13 **Q.** Is it an accurate characterization?

14 **A.** No.

15 **Q.** Ms. Bever, how long did you work at OIR?

16 **A.** Seven years.

17 **Q.** And during your seven years at OIR, how many of your  
18 colleagues had experience working in the Harvard College  
19 admissions office?

20 **A.** None of us did.

21 **Q.** And how many of your colleagues from OIR in the seven  
22 years that you worked there had worked in any college  
23 admissions office?

24 **A.** I don't think any of us had ever worked in admissions.

25 **Q.** Would you look, please, at Tab 1 in your binder that was

1 just provided to you by Harvard, which is Exhibit P12.

2 **A.** Yes. Just give me a moment. You said Tab 1?

3 **Q.** Yes. Do you have P12 in front of you?

4 **A.** I do.

5 **Q.** All right. Have you had a chance to review the analysis  
6 in P12 in connection with this litigation?

7 **A.** Yes.

8 **Q.** Can you turn to Slide 33, please.

9 **A.** Okay.

10 **Q.** What does Slide 33 of Exhibit P12 show?

11 **A.** It shows of the specifications for four models.

12 **Q.** In the four models on Slide 33, which model includes the  
13 most variables?

14 **A.** Model 4.

15 **Q.** And how many variables are included in Model 4?

16 **A.** Eight.

17 **Q.** Now, how long have you worked in the Harvard College  
18 admissions office, Ms. Bever?

19 **A.** Four years.

20 **Q.** And in that time, have you -- you've participated in  
21 three separate admission cycles, right?

22 **A.** That's correct.

23 **Q.** Approximately how many application files have you been  
24 the first reader on?

25 **A.** Over 2,000.

1     **Q.** And approximately how many admissions files or -- and  
2     applicants for admission have you discussed in subcommittee?

3     **A.** I could not count.

4     **Q.** Is it more than the files you've read?

5     **A.** Yes.

6     **Q.** More than a thousand?

7     **A.** Certainly more than a thousand.

8     **Q.** More than 2,000?

9     **A.** Certainly more than 2,000.

10    **Q.** How many application files have you discussed in the full  
11    committee process in your three years in the Harvard College  
12    admissions office?

13    **A.** I could not count.

14    **Q.** More than 2,000?

15    **A.** Certainly more than 2,000.

16    **Q.** Okay. Since your time in admissions, have you come to  
17    learn about the factors that are important to Harvard College  
18    in assessing an applicant for admission?

19    **A.** Yes.

20    **Q.** And having the benefit of having worked in the admissions  
21    office, are the factors that are important to evaluating  
22    Harvard College admission reflected on page 33?

23               MR. McBRIDE: Objection, Your Honor. We're well  
24    into leading territory now.

25               MS. ELLSWORTH: I'll withdraw and retry.

1 MR. McBRIDE: Also, Your Honor, again we are  
2 eliciting undisclosed opinion testimony.

3 THE COURT: Well, it's not undisclosed opinion  
4 testimony. She's agreed to rephrase the question, so . . .  
5 BY MS. ELLSWORTH:

6 Q. Based on your experience in admissions, how many factors  
7 does the admissions office consider in evaluating an  
8 applicant?

9 A. Hundreds. And lots of narrative text that can't be  
10 captured in qualitative variables.

11 Q. And how do those hundreds of factors compare to the  
12 variables listed on Slide 33 of Exhibit P12?

13 A. Certainly this is a very small subset of the things we  
14 review when we review applicants.

15 Q. What's an example of some factors that are admitted and  
16 not listed on Slide 33 of Exhibit P12?

17 A. There are a number of ratings we provide during our  
18 process that are not captured here, such as ratings of the  
19 school support, alumni interviews, staff interviews, music  
20 evaluations, faculty evaluations, and things like that.

21 Q. Are all of the factors that are considered by Harvard  
22 College in admissions decisions quantified in data?

23 A. No, not all of them are.

24 Q. What are some examples of factors considered in Harvard  
25 College admissions that are not quantified in data?

1     **A.** So the personal essay comes to mind. Often faculty  
2     provide feedback that is not quantified. The narrative piece  
3     that is described in letters and things like that is rated  
4     but not always quantifiable.

5     **Q.** Are all of those factors you just listed important to the  
6     admissions process?

7     **A.** Very important.

8     **Q.** Let's take a look at Slide 36 of P12, please. What is --  
9     what does Slide 36 show?

10    **A.** Slide 36 shows -- it says what we have learned, and it  
11    sort of describes what they have done and also what is  
12    missing and what's not captured.

13    **Q.** Did OIR list factors not included in the models in  
14    Exhibit P12 on Slide 36?

15    **A.** They did.

16    **Q.** What factors are listed?

17    **A.** Exceptional talent, parentheses, music, art, writing, the  
18    role of context cases, the role of the personal statement  
19    essay, measures of socioeconomic status such as HFAI flag,  
20    low-income flag.

21    **Q.** Knowing what you now know from your time in admissions,  
22    are those factors important?

23    **A.** Very, yes.

24    **Q.** When you review an application to Harvard College, what's  
25    the goal of your review of that file?

1     **A.** To assess the overall strength of that particular  
2     applicant and their likelihood of admission in comparison  
3     with others.

4     **Q.** And what are some of the examples of the types of forms  
5     of strength an application could exhibit?

6     **A.** Some of the things listed here, such as exceptional  
7     talent or a passion for a particular type of community  
8     service. It can be athletic strength. It can be overcoming  
9     challenges and background. It can be a variety of things.

10    **Q.** And how does your assessment of those various forms of  
11    strengths you just listed compare to the OIR model shown in  
12    Exhibit P12?

13    **A.** Some of those things are very difficult to capture in  
14    data, and so they're just not included in that. It would be  
15    difficult to include them in a model.

16    **Q.** Do you understand that Harvard has retained an economist  
17    named David Card to conduct an analysis of Harvard's  
18    admissions data in this litigation?

19    **A.** Yes.

20    **Q.** And you understand he created a model of the Harvard  
21    admissions process?

22    **A.** Yes.

23    **Q.** Have you seen the list of factors included in Dr. Card's  
24    model?

25    **A.** I have.



1     **Q.** Between OIR's model in P12 and Dr. Card's model, which  
2     model captures more of the information you use in the  
3     admissions office in making decisions?

4     **A.** I believe Dr. Card's model has many more factors  
5     included.

6     **Q.** Have you seen any OIR analysis that models as many  
7     factors in the admissions process as Dr. Card modeled?

8     **A.** I have not.

9     **Q.** Let's turn back to your background for a minute,  
10    Ms. Bever.

11                Could you tell us a bit about your education,  
12    beginning with college?

13    **A.** I was educated at Wellesley College.

14    **Q.** Do you have any degrees after --

15                THE COURT: Can I interrupt for a second?

16                You say Model 4 sort of is very incomplete. But it  
17    still really closely approximates the actual, right?

18                THE WITNESS: So it approximates, if I recall, the  
19    demographics but not the actual students that would have been  
20    selected for admission. So we don't know who those students  
21    are in that final bar.

22    BY MS. ELLSWORTH:

23    **Q.** And I think if we look at Slide 34, is that the bar graph  
24    that you're referring to?

25    **A.** Yes.

1 THE WITNESS: Is that what you mean?

2 THE COURT: It is what I mean, but --

3 THE WITNESS: So we don't know that the students  
4 that are selected in this bar are the actual students who  
5 were selected for admission, if that makes sense.

6 THE COURT: I guess you're saying that Model 4 is  
7 incomplete. But it seems like whatever variables you did  
8 include were good markers because they so closely reflected  
9 actual.

10 THE WITNESS: They so closely reflect the  
11 demographic breakdown but not who was actually selected  
12 for -- I don't know who was actually selected for admission  
13 and how closely aligned those two things are.

14 THE COURT: Okay.

15 BY MS. ELLSWORTH:

16 Q. Ms. Bever, I'm sorry. I believe my question was, after  
17 Wellesley did you have any additional education?

18 A. Yes. I have a master's degree in education.

19 Q. When did you start working at Harvard?

20 A. In July of 2007.

21 Q. Why did you decide to work at Harvard?

22 A. I was interested in the work of institutional research,  
23 and there was a one-year fellowship position that I felt  
24 would give me a good introduction to Harvard. I have some  
25 family connections to Harvard, so I was in interested in

1 working there as well.

2 **Q.** By "family connections," what are you referring to?

3 **A.** My grandfather attended Harvard College. He was the same  
4 class as John F. Kennedy.

5 **Q.** You had fond memories of Harvard from growing up?

6 **A.** Harvard changed his life and I heard a lot about it as a  
7 child. No one else in my family went to Harvard, but it had  
8 been very important to him.

9 **Q.** And when you joined that fellowship program, that was in  
10 the office of institutional research, right?

11 **A.** It was.

12 **Q.** How many -- withdrawn.

13 What positions have you held over your 11 years at  
14 Harvard?

15 **A.** So I began as a management fellow and then I served as a  
16 research analyst and an assistant director in the office of  
17 institutional research before joining the office of  
18 admissions in my current role.

19 **Q.** And what is your current role and title?

20 **A.** I'm the director of research for Harvard College  
21 admissions and financial aid.

22 **Q.** And are you also a senior admissions officer?

23 **A.** I am a senior admissions officer, yes.

24 **Q.** You told Mr. McBride that you read 500 files in an  
25 admission cycle. Is that right?

1     **A.** About that, yes.

2     **Q.** Is that a lower number than other senior admissions  
3 officers read?

4     **A.** Yes. I have about a quarter load of admissions files.

5     **Q.** And why do you have a quarter load of admissions files?

6     **A.** Because of the other duties I have in the office.

7     **Q.** Remind me, please, when did you join the admissions  
8 office?

9     **A.** I joined the office in August of 2014.

10    **Q.** And you're a member of the 40-person admissions  
11 committee?

12    **A.** I am.

13    **Q.** So you have experience both in OIR and in the admissions  
14 office, correct?

15    **A.** Yes.

16    **Q.** And do you still conduct research in the admissions  
17 office relating to Harvard College admissions data?

18    **A.** I do.

19    **Q.** I'd like to ask you to turn to Tab 3, please, which is  
20 Exhibit P17. This is a document Mr. McBride didn't show you.  
21 Do you have it in front of you?

22    **A.** I do.

23    **Q.** Do you recognize P17?

24    **A.** Yes.

25    **Q.** What is this document?

1     **A.** It is an email from my former colleague Mark Hansen to  
2     Elizabeth Yong. The subject is "Admissions data."

3             MS. ELLSWORTH: Your Honor, I'd move the admission  
4     of P17.

5             MR. McBRIDE: No objection, Your Honor.

6             THE COURT: Admitted.

7             (Plaintiff Exhibit No. P17 admitted.)

8     BY MS. ELLSWORTH:

9     **Q.** What is the date of the email in P17?

10    **A.** It's Tuesday, February 26, 2013.

11    **Q.** Can you please read the first sentence of the email in  
12    P17?

13    **A.** It says, "Hello, Elizabeth. Thank you for coming over  
14    and meeting with us yesterday."

15    **Q.** Can you please read the sentence -- withdrawn, actually.  
16             Who is Ms. Yong?

17    **A.** I'm not sure what Ms. Yong's title was when she was in  
18    admissions, but she was the person in admissions we would  
19    contact about admissions data.

20    **Q.** And Mr. Hansen worked for you at this time?

21    **A.** Yes.

22    **Q.** Can you please read the sentence beginning with "I've  
23    attached."

24    **A.** Where are you? Thank you.

25             "I've attached the most recent file specification

1 so that you can see the most complete set of variables we  
2 have."

3 **Q.** And does Exhibit P17 have an attachment?

4 **A.** It does.

5 **Q.** And can you please turn to the attachment. It's a little  
6 hard to read so Mr. Lee has blown it up on the screen for you  
7 there.

8 What does the attachment contain?

9 **A.** It contains a list of -- looks like data from admissions  
10 that includes demographics and family background, a lot of  
11 SAT scores, some of the main ratings we use.

12 **Q.** And are the factors listed in P17 the data that were  
13 available to OIR in 2013?

14 **A.** Based on this email, it appears so, yes.

15 **Q.** Is the -- does the exhibit -- the attachment to  
16 Exhibit P17 contain a comprehensive list of the factors  
17 important to admissions decisions?

18 **A.** No, it does not.

19 **Q.** Can you turn back, please, to the first page of P17, to  
20 the email. Please read the sentence at the bottom of the  
21 first paragraph that begins "In addition to."

22 **A.** "In addition to the variables we have in the file  
23 specification, we'd like to request the following variables  
24 if they exist: One, disadvantaged flag; two, HFAI search  
25 flag; three, faculty staff flag; four, docket; five, some

1 kind of reader ID; six, veteran status; seven, language  
2 spoken at home."

3 **Q.** What does this portion of the email in P17 tell you about  
4 the data sources to which OIR had access in 2013?

5 **A.** They were limited, and they were aware that they were  
6 incomplete.

7 **Q.** And when you say they were aware, do you mean OIR?

8 **A.** Oh, yes.

9 **Q.** Do the factors that are listed or requested by Mr. Hansen  
10 from Ms. Yong in P17 play a role in the admissions process?

11 **A.** They can, yes.

12 **Q.** Are the missing factors listed in P17 important to the  
13 actual admissions process?

14 **MR. McBRIDE:** Your Honor, I object. We're getting  
15 well into leading territory again.

16 **THE COURT:** I don't think that's a leading  
17 question. It's overruled.

18 **THE WITNESS:** Sorry. Could you repeat the  
19 question?

20 **BY MS. ELLSWORTH:**

21 **Q.** Are the missing factors important to the actual  
22 admissions process?

23 **A.** Yes.

24 **Q.** Can you please read the sentence after the list of seven  
25 factors OIR was requesting, beginning "If you can think"?

1     **A.**    "If you can think of any other variables that are  
2     important in making admissions decisions, please let me  
3     know."

4     **Q.**    What does this Exhibit P17 tell you about OIR's  
5     understanding of the Harvard College admissions process in  
6     February 2013?

7     **A.**    So it seems that they were aware -- OIR was aware that  
8     there were variables that were missing and that they still  
9     didn't know all the things that admissions might be using in  
10    the process.

11    **Q.**    Is there a difference between admissions data and the  
12    admissions process?

13    **A.**    Yes.

14    **Q.**    What's the difference?

15    **A.**    The data reflects those things that can be quantified.  
16    But it is difficult to capture the amount of time and  
17    additional information that comes in throughout the process,  
18    the committee procedures, the subcommittee meetings, full  
19    committee meetings in which applications are discussed.

20    **Q.**    Is there information that is important in making  
21    admissions decisions beyond what OIR had that we've reviewed  
22    in these exhibits?

23    **A.**    Is there -- yes.

24    **Q.**    And based on the four years that you've been an  
25    admissions officer, could you make an admissions decision as



1 to a particular applicant if you had only the information  
2 listed in Exhibit P17?

3 **A.** No, nor would I want to.

4 **Q.** You recall speaking with Mr. McBride about the May 1st,  
5 2013, memo that's Exhibit P26 relating to low-income  
6 admissions?

7 **A.** Yes.

8 **Q.** You can take a look at it in your binder. P26. It might  
9 be in Mr. McBride's binder.

10 **A.** Okay.

11 **Q.** I think it's Tab 4 in the binder we gave you.

12 **A.** Where should I look?

13 **Q.** Tab 4 in our binder. Sorry.

14 Are you there at P26?

15 **A.** Yes. Sorry.

16 **Q.** In this memorandum that was sent to Dean Fitzsimmons, did  
17 OIR tell Dean Fitzsimmons that the analysis showed  
18 discrimination against Asian-Americans?

19 **A.** It did not.

20 **Q.** Did the memorandum tell Dean Fitzsimmons that the data  
21 showed bias against Asian-Americans?

22 **A.** No.

23 **Q.** Why did OIR draft the May 1st, 2013, memorandum?

24 **A.** My recollection is that Dean Fitzsimmons left a voicemail  
25 for either Erin or myself in which he asked us to look at

1 whether or not there was a low-income tip for -- in the  
2 admissions process.

3 **Q.** And did you recall that voicemail at the time you were  
4 deposed in this case?

5 **A.** No. I remembered it after the fact.

6 **Q.** What was OIR's conclusion in response to Dean  
7 Fitzsimmons' question?

8 **A.** That we could see a tip for low-income students in the  
9 admissions process.

10 **Q.** Let's take a look at the third page of P26, which is the  
11 second page of the memo. 23549 is the Bates. It's also in  
12 front of you on the screen.

13 **A.** Yes.

14 **Q.** Can you please read the second paragraph starting with  
15 "We implement"?

16 **A.** Where are you? Sorry. Okay.

17 "We implement a logistic regression model to  
18 predict the probability of admission, controlling for  
19 demographic characteristics and a variety of metrics used to  
20 assess qualification for admission. Demographic  
21 characteristics include gender and race ethnicity.  
22 Qualifications used in admission include academic index,  
23 academic rating, extracurricular rating, personal rating,  
24 athletic rating, and legacy status."

25 **Q.** Are the qualifications used in admissions that you just

1 read from P26 the same factors included in that February 2013  
2 analysis that's in Exhibit P12?

3 **A.** I think so, yes.

4 **Q.** And does that list include all factors important to the  
5 admissions process?

6 **A.** No.

7 **Q.** Are the factors listed in this paragraph in Exhibit P26  
8 the only qualifications used in Harvard College admissions?

9 **A.** No. There are many others.

10 THE COURT: I should have asked this of the dean  
11 yesterday, but I didn't think of it until last night. So  
12 here you are.

13 THE WITNESS: Okay. Can I be dean for a day?

14 THE COURT: So I take from this that you can have a  
15 tip that's like a conscious tip, like, you know, economic  
16 status or whatever. And then you can have something that  
17 turns out to be a tip but you don't realize it's a tip until  
18 after you look at the data.

19 THE WITNESS: You mean after we read the  
20 application?

21 THE COURT: No. After you do a regression  
22 analysis -- like he's asking -- he asked initially if there's  
23 a tip for low income.

24 THE WITNESS: Yeah.

25 THE COURT: So is he trying to verify that you are

1       having the tip that he wants for low income, or is he trying  
2       to figure out that there's a tip at all?

3               THE WITNESS:  So we had talked about this a lot,  
4       sort of the low income, right.

5               He was asking whether the data would show that we  
6       do -- his statement was:  We do give a tip for low-income  
7       students in our process.  Can we show that?  Right?

8               It's hard to describe.  That's why we're here.  
9       It's hard to describe, right, how the process works.  So we  
10      wanted to be able to point to something to say, look, I'm  
11      giving a tip for low-income students.  But I think he was  
12      aware that that's what the process was doing.  And again, you  
13      need to be in the discussion to get a tip, right?

14              THE COURT:  Well, are there times when you don't  
15      realize that you're tipping for something or like  
16      anti-tipping for something and then you go to the data and it  
17      shows that there actually is a tip that you didn't really  
18      intend or know about?

19              THE WITNESS:  That's a good -- I have never looked  
20      at that.  I don't know if that's true.  Again, what we're  
21      trying to do in our admissions process is assess the  
22      strength, and sometimes the fact that a student comes from a  
23      disadvantaged background and we can see that in their  
24      application will make that case stronger than a student who  
25      appears similarly situated but, say, didn't overcome that.

1 And so that's how that would play out in the actual process.  
2 And maybe for that student, if we looked at the data, it  
3 would show the strong correlation between their low-income  
4 status and being admitted.

5 THE COURT: Okay. Sorry.

6 MS. ELLSWORTH: That's fine, Your Honor.

7 BY MS. ELLSWORTH:

8 Q. Ms. Bever, just following up on the Court's question, do  
9 you all do data analysis in the admissions office to try and  
10 see whether you're giving tips?

11 A. No. Not outside of this litigation.

12 Q. Do you -- when you're considering an applicant for  
13 admission, do you think about how that's going to end up  
14 looking reflected in the data after the fact?

15 A. No.

16 Q. What are you trying to do when you consider an applicant  
17 for admission?

18 A. We're trying to admit a student who will use Harvard well  
19 and benefit from Harvard and find the best class we can.

20 Q. Looking back at this P26 that we have in front of you,  
21 the factors that are listed here that you read off, are those  
22 the same factors that were included in Dr. Card's model that  
23 you reviewed?

24 A. These factors at the bottom of this paragraph?

25 Q. Yes.

1     **A.** I believe he includes these factors. But of course there  
2     are many others in his model.

3     **Q.** Dr. Card's model includes many more factors than this OIR  
4     analysis in P26?

5     **A.** Yes.

6     **Q.** And were any of the three OIR individuals working on P26  
7     Ph.D. economists?

8     **A.** No.

9     **Q.** Between OIR's model and P26 and Dr. Card's, which model  
10    captures more of the information used in making admissions  
11    decisions at Harvard College?

12    **A.** I believe Dr. Card's model includes more.

13    **Q.** And you looked at the listing of factors that are  
14    included in his model, right?

15    **A.** I have.

16    **Q.** If you can, look, please, at the next paragraph down on  
17    P26, beginning with "This approach," and if you could read  
18    the first two sentences.

19    **A.** "This approach has several limitations. We picked a  
20    small set of variables that would factor in admissions  
21    decisions. The selection of a wider set of variables might  
22    result in a better fitting model, one that accounts for more  
23    of the variation in individual applicants and their  
24    potentially unique contributions to the entering class."

25    **Q.** Is that true?

1     **A.** I believe so, yes.

2     **Q.** Mr. McBride asked you several questions about whether the  
3     work of OIR he showed you was complete and reliable. Do you  
4     remember that testimony?

5     **A.** Yes.

6     **Q.** And you agree that OIR tried to do complete and reliable  
7     work, right?

8     **A.** I believe we did, yes.

9     **Q.** Can work be complete and reliable and still be  
10    preliminary?

11    **A.** Yes.

12    **Q.** Can work be complete and reliable and still be limited?

13    **A.** Yes.

14    **Q.** Let's look at the last sentence of the same paragraph,  
15    beginning "In addition." Could you please read that.

16    **A.** "In addition, our model is limited to the main effects,  
17    not examining interactions between variables. Our analysis  
18    should not be considered exhaustive."

19    **Q.** Is that true?

20    **A.** Yes.

21    **Q.** The prior sentences that you were reading noted that the  
22    model contained a small set of variables. Do you see that  
23    above?

24    **A.** Yes.

25    **Q.** And you've had a chance to review the chart that's in

1 Exhibit P26 on the next page?

2 **A.** Yes.

3 **Q.** Do you agree with the statement in the OIR memo that this  
4 model uses a small set of variables?

5 **A.** It does.

6 **Q.** Why did OIR include a description of the limitations of  
7 the analysis in this memorandum?

8 **A.** I think it's fairly standard practice in doing this sort  
9 of work where you would acknowledge the things that cannot be  
10 measured in a model or that you don't have data for.

11 **Q.** Do you recall yesterday just before we broke Mr. McBride  
12 asking you questions about some earlier drafts of this  
13 memorandum?

14 **A.** I do.

15 **Q.** He asked about some sentences that were edited in the  
16 final version?

17 **A.** Yes.

18 **Q.** Did the drafts that you looked at yesterday, Exhibits P26  
19 and P25, did those ever go to Dean Fitzsimmons?

20 **A.** I don't think they did.

21 **Q.** Did OIR conduct any follow-up analysis after P26 was sent  
22 to him on May 1st, 2013?

23 **A.** I believe we did, yes.

24 **Q.** And what follow-up analysis did OIR conduct?

25 **A.** I think Dean Fitzsimmons asked us to look at the



1 interaction between race, ethnicity, and low-income status.

2 **Q.** Did that follow-up analysis include all the factors that  
3 the actual admissions process involves?

4 **A.** It did not.

5 **Q.** Was that another example of OIR doing reliable work that  
6 might still be limited?

7 **A.** Yes.

8 **Q.** And again, Ms. Bever, have you seen any OIR study that  
9 models all factors in the admissions process?

10 **A.** No.

11 **Q.** Mr. McBride asked you this morning about the meeting you  
12 had with Dean Khurana in July of 2014. Do you remember that?

13 **A.** I do.

14 **Q.** And you referenced that you believed you had sent over  
15 300 pages of work to Dean Khurana when he first became dean.  
16 Do you recall that?

17 **A.** I do.

18 **Q.** Could you turn to Tab 9, please, which is Exhibit P288.

19 **A.** Yes.

20 **Q.** Do you recognize P288?

21 **A.** I do.

22 **Q.** What is P288?

23 **A.** P288 is a cover memo that accompanied our -- the actually  
24 fairly exhaustive set of work we shared with Dean Khurana  
25 when he became dean.

1       **Q.** And the date of the memo is?

2       **A.** May 30, 2014.

3       **Q.** It is from Ms. Driver-Linn, correct?

4       **A.** It is.

5       **Q.** Were you involved in drafting this memo?

6       **A.** I think so.

7       **Q.** Were you involved in compiling the exhibits that  
8 accompanied this memo?

9       **A.** I think so, yes.

10               MS. ELLSWORTH: Your Honor, I move to admit P288.

11               MR. McBRIDE: No objection Your Honor.

12               THE COURT: It's admitted.

13               (Plaintiff Exhibit No. P288 admitted.)

14       BY MS. ELLSWORTH:

15       **Q.** Can you just describe at a general level -- it's a large  
16 exhibit -- what was included in the documents sent to Dean  
17 Khurana in December of 2014?

18       **A.** I think we were aiming for completeness, and we tried to  
19 include as many examples of our work as we could.

20       **Q.** Was all of OIR's work relating to Harvard College  
21 attached to the memo?

22       **A.** I can't say for certain that it was all, but it was  
23 certainly most.

24       **Q.** And you recall discussing with Mr. McBride this morning a  
25 few additional analyses that were sent closer in time to

1 another meeting, right?

2 **A.** Yes.

3 **Q.** Did you -- withdrawn.

4 Why did you meet with Dean Khurana in July 2014?

5 **A.** My recollection of that meeting is that the purpose was  
6 to introduce him to our office and for us to be able to meet  
7 him.

8 **Q.** And you testified in response to Mr. McBride's questions  
9 that you don't recall discussing with Dean Khurana any  
10 specific analyses, right?

11 **A.** I don't recall discussing our work with him in any  
12 detail.

13 **Q.** You do recall the meeting with Dean Khurana, right?

14 **A.** I do.

15 **Q.** And your memory is there was no discussion of the  
16 substantive work provided by OIR?

17 **A.** That's correct.

18 **Q.** Was the purpose of the July 2014 meeting to show Dean  
19 Khurana OIR's current works in progress?

20 **A.** I don't think so, no.

21 **Q.** Were you seeking Dean Khurana's input on any of the  
22 analyses you showed him?

23 **A.** No.

24 **Q.** Were you seeking his reaction to any of the analysis you  
25 showed him?

1     **A.** I don't think we showed him anything, and I don't think  
2     we were asking for feedback.

3     **Q.** Are there -- is there more than one institutional  
4     research office in Harvard University?

5     **A.** There is.

6     **Q.** Is there an institutional research department for Harvard  
7     College as well?

8     **A.** Yes.

9     **Q.** And Dean Khurana is the dean of Harvard College, right?

10    **A.** Yes.

11    **Q.** The institutional research for Harvard College is  
12    different than OIR, right?

13    **A.** That's correct.

14    **Q.** And is the difference between college research and the  
15    office of institutional research some of what you were trying  
16    to discuss with Dean Khurana in July 2014?

17    **A.** It may have been. I don't specifically recall.

18    **Q.** Were you trying to alert Dean Khurana to any findings of  
19    discrimination in sending him any of the material that you  
20    did?

21    **A.** I don't believe so.

22    **Q.** Were you trying to alert Dean Khurana to any findings of  
23    bias in sending him the information?

24    **A.** No.

25    **Q.** Let's switch gears and talk a little bit about your work

1 in the admissions office. Okay?

2 **A.** Okay.

3 **Q.** Why did you want to move from OIR to admissions?

4 **A.** The work I had done on the affordability initiative at  
5 Harvard and the return to early action was some of the work I  
6 most enjoyed. So when I saw the job posting for the director  
7 of research role, I decided I would like to try that.

8 **Q.** And do you enjoy your work in admissions?

9 **A.** I love my job.

10 **Q.** You recall Mr. McBride asking you a little bit about  
11 training that you received when you joined the office?

12 **A.** Yes.

13 **Q.** Can you describe the form of the training that you had  
14 when you first joined admissions?

15 **A.** I had a month-long orientation period where I met with  
16 colleagues from across the office of admissions and financial  
17 aid.

18 **Q.** And who conducted the training, the orientation?

19 **A.** Yeah. I think it was Grace Cheng who organized the  
20 training and conducted some of the sessions. But I met with  
21 colleagues from -- many colleagues from across the office who  
22 performed different roles and work on different parts of our  
23 process.

24 **Q.** What types of information did you learn in your  
25 admissions orientation?

1     **A.** So everything from how our recruiting groups function to,  
2     you know, how we read an application, to our yield  
3     activities, to the subcommittee process, and things like  
4     that.

5     **Q.** And what specific training did you receive relating to  
6     reading and reviewing application files?

7     **A.** So we had a specific training where we were given some of  
8     our case book files to read and review after going through  
9     what's called the reading procedures that describes how to  
10    read a file and talking about how we do that initial  
11    assessment.

12                 And then we did a mock committee where we presented  
13    cases and discussed them as if we were actually in the  
14    admissions process.

15    **Q.** And why does the admissions office conduct its training  
16    in the manner you just described?

17    **A.** I think part of what we do is best learned by actually  
18    doing it, actually reading an application file, seeing all  
19    the pieces of information there are, trying to make an  
20    initial assessment, using the ratings, and then figuring out  
21    how you're going to share that information with your  
22    colleagues and committee.

23    **Q.** And you discussed with Mr. McBride a little bit the fact  
24    that somebody read your initial files after you when you were  
25    new in the admissions office. Do you remember that?

1     **A.**   Yes.

2     **Q.**   What type of feedback did you receive from those second  
3     reviewers?

4     **A.**   The second reviewers provide ratings of their own and  
5     then often write up a narrative themselves of what they see  
6     the particular strengths of that application are, any missing  
7     pieces of information, whether they -- you know, some of them  
8     might have agreed, just said I agree with everything you've  
9     said here. Some of them would have said, you know, we're  
10    going to need the following pieces of information before we  
11    might bring this further.

12                So it's written feedback mostly that helps me, as  
13    the newer reader, understand how other colleagues might see  
14    that file.

15    **Q.**   And did you take that feedback into account when  
16    reviewing additional files after you received the feedback?

17    **A.**   Yes.

18    **Q.**   How so?

19    **A.**   Again, I think I went through every single file and read  
20    how my colleagues either saw me, my own read. And it helped  
21    refine what I was doing, how I was -- refined what I wrote on  
22    the application, and helped me think about what's going to  
23    make a strong applicant.

24    **Q.**   Since that initial training that you've just described,  
25    have you received additional on-the-job training?

1     **A.**   Yes.  We have ongoing sessions and things like that.

2     **Q.**   Have you received any training relating to the Supreme  
3     Court's guidance on the use of race in college admissions?

4     **A.**   We have.

5     **Q.**   Who conducted those trainings?

6     **A.**   Our general counsel, Bob Iuliano.

7     **Q.**   How frequently do those trainings occur?

8     **A.**   Annually.

9     **Q.**   Without getting in the substance, what were topics of  
10    Mr. Iuliano's annual trainings in the years that you've been  
11    in the office?

12    **A.**   So they vary, but his discussion of considerations in the  
13    admissions process.

14    **Q.**   Does the admissions office conduct any professional  
15    development activities for admissions officers?

16    **A.**   It does.

17    **Q.**   What are some examples?

18    **A.**   So we often have professional development sessions where  
19    we invite faculty or other senior leaders from the university  
20    to come talk to us about things that are changing at Harvard.  
21    Sometimes we have external speakers, people doing research  
22    that's relevant to our work, things like that.

23    **Q.**   Have you had any professional development sessions  
24    related to how files are reviewed and rated?

25    **A.**   Yes.  At our annual retreats.



1     **Q.** And what is the -- what is an example of a professional  
2     development session at your retreat relating to the topic of  
3     reviewing and rating files?

4     **A.** So we've done some joint reading of files and discussion  
5     of how we use the ratings. This past year we had a  
6     discussion about how we used the top ratings and the idea  
7     that perhaps we should be using the top ratings more than we  
8     have been.

9     **Q.** And by the "top ratings," you mean the 1s?

10    **A.** The 1s, yes.

11    **Q.** In those professional development activities you just  
12    described, what have you learned?

13    **A.** Again, I think some of them are just helpful to have the  
14    discussion about how others see the ratings, how they use  
15    them in the process, what they are trying to signal, and they  
16    help inform my own reading of an application.

17    **Q.** Who participated in those professional development  
18    activities you just described?

19    **A.** Generally it's all the staff in retreats.

20    **Q.** And that means all 40 admissions officers who sit on  
21    committee?

22    **A.** Yeah, and more.

23    **Q.** Let's turn quickly to the subject of how race is used in  
24    the process.

25                 So as a senior admissions officer, you're the first

1 reader on approximately 500 applications, right?

2 **A.** Yes.

3 **Q.** Can an applicant's race make his or her case for  
4 admission more compelling?

5 **A.** Again, it can be part of their case, yes.

6 **Q.** And it can be a part of their case that might make their  
7 application more compelling?

8 **A.** Yes.

9 **Q.** Is race the only factor that might make an application  
10 more compelling?

11 **A.** No. There are many factors that make for compelling  
12 applications.

13 **Q.** What are some of the other factors that may make an  
14 application more compelling for admission?

15 **A.** Everything from geography to socioeconomic status to  
16 exceptional talent.

17 **Q.** When you're assigning ratings to an application file,  
18 does race ever factor into an applicant's academic rating?

19 **A.** It does not.

20 **Q.** Does race ever factor into an applicant's extracurricular  
21 rating?

22 **A.** Not per se.

23 **Q.** Does race ever factor into an applicant's personal  
24 rating?

25 **A.** Not per se.

1     **Q.** When you say "not per se," what do you mean?

2     **A.** I mean not the fact that they are a particular race, but  
3     certainly students might write about their background and  
4     things like that that would inform my personal rating or what  
5     I give in the personal rating.

6     **Q.** When a student writes about their background in a way  
7     that informs the personal rating, it's not their racial  
8     background that's informing the rating. Is that your  
9     testimony?

10    **A.** That's my testimony.

11    **Q.** Have you ever assigned an applicant a lower rating  
12    because of his or her race?

13    **A.** No.

14    **Q.** Have you -- withdrawn.

15                 Can you please describe the preliminary overall  
16    rating?

17    **A.** So we use -- I -- I should speak for me.

18                 I use the preliminary overall rating to give my  
19    assessment of how strong I think that particular applicant  
20    is. So it's intended to capture the whole, if one can, in a  
21    rating.

22    **Q.** And does the preliminary overall rating differ from the  
23    four profile ratings?

24    **A.** Yes.

25    **Q.** How so?

1     **A.** Again, it's trying to capture all of the pieces and give  
2     an overall assessment of how strong that applicant is.

3     **Q.** Does race ever factor into an applicant's preliminary  
4     overall rating?

5     **A.** Insofar as their race plays a role in how strongly I  
6     might view a case, then yes.

7     **Q.** Let's talk take a look, if we can, at an application  
8     file.

9                 MS. ELLSWORTH: Your Honor, I'd like to show an  
10    application that we'll be moving into evidence under seal, so  
11    I'd like to ask the gallery monitors to be turned off,  
12    please.

13                THE COURT: That's fine.

14    BY MS. ELLSWORTH:

15    **Q.** Let's pull up SA1, please. That's at Tab 6 in your  
16    binder. Do you have SA1 in front of you, Ms. Bever?

17    **A.** Yes.

18    **Q.** Do you recognize SA1?

19    **A.** I do.

20    **Q.** What is that?

21    **A.** It is an application file.

22    **Q.** How do you recognize this exhibit?

23    **A.** This is the summary sheet that appears at the beginning  
24    of our application reader, which is an online tool we use to  
25    read applications.

1       **Q.** And did you read this application file?

2       **A.** I did.

3       **Q.** Were you the first reader?

4       **A.** I was.

5       **Q.** Now, this applicant's name is not redacted, correct?

6       **A.** That's correct.

7       **Q.** And you're aware that that applicant is a current Harvard  
8 student who will testify in this case?

9       **A.** I am.

10      **Q.** What is the name of this student?

11               THE COURT: Where does it show on here that you  
12 were the first reader?

13               THE WITNESS: So there is certain information on  
14 this particular page that is associated with where we are in  
15 the process now, and there is certain information that's tied  
16 to the applicant. So my initials actually aren't here. This  
17 has been changed to reflect who currently reads this high  
18 school. But I remember this applicant.

19               MS. ELLSWORTH: And if you look at SA1 0005, it may  
20 have the correct reader information on it.

21               THE COURT: Because normally it would have your  
22 initials. It would have your initials under that rating,  
23 right, because you did it?

24               MS. ELLSWORTH: Sorry. It's not 5. 40 is where  
25 the reader sheet is.

1 THE WITNESS: Yes. So you can see I was actually  
2 the first rater who submitted the form. The way our slate --  
3 our CRM works is that this is being generated at the moment.  
4 So because somebody else covers this high school now, her  
5 initials are reflected, even though the data show my ratings  
6 which happened in the past.

7 BY MS. ELLSWORTH:

8 Q. And Ms. Bever, following up on Her Honor's question, are  
9 there other aspects of the first page of this and other files  
10 from the cycle that have incorrect information on them  
11 because of the way they were pulled?

12 A. Yes.

13 Q. What are those? What are the portions of the summary  
14 sheet that have inaccurate information because of the way  
15 they were pulled?

16 A. So for example, it says "Harvard Class of 2022" at the  
17 top of it, and then above that it says "2015, Regular  
18 Action."

19 The regular action was when this student actually  
20 applied, but it was pulled at the time at which we were  
21 reviewing applications from the class of 2022. So that's why  
22 it says "Harvard Class of 2022."

23 Q. Other than -- the reader initials are incorrect on the  
24 first page of the summary sheets for some these files,  
25 correct?

1       **A.**   Yes.

2       **Q.**   They're correct on the reader rating sheet at the back?

3       **A.**   Yes.   The first reader rating form at the back reflects  
4       who actually submitted the form and the rating.

5       **Q.**   Did you pull these application files yourself to produce  
6       them for purposes of this litigation?

7       **A.**   I did.

8       **Q.**   Are you aware, Ms. Bever, that SA1 is the application of  
9       a current Harvard student who will testify in this case?

10      **A.**   Yes.

11      **Q.**   Who is this student's name?

12      **A.**   Sally Chen.

13      **Q.**   And you're aware Ms. Chen has agreed to have her  
14      application file used in this litigation, right?

15      **A.**   Yes.

16               MS. ELLSWORTH:  I'd move to admit Exhibit SA1.

17               MR. McBRIDE:  No objection, Your Honor.

18               THE COURT:  It's admitted.

19               (Defendant Exhibit No. SA1 admitted.)

20      BY MS. ELLSWORTH:

21      **Q.**   Let's take a look at this, the reader rating sheet that's  
22      at page 40 that has your actual initials on it.

23               What ratings did you provide to Ms. Chen on her  
24      academic profile?

25      **A.**   I gave her a 2.

1     **Q.** And what preliminary overall rating did you assign to  
2     Ms. Chen?

3     **A.** A 3+.

4     **Q.** Ms. Chen attended Lowell High School; is that right?

5     **A.** She did.

6     **Q.** And you read all the application files from Lowell High  
7     School?

8     **A.** In that cycle, I read all the applications from Lowell  
9     High School.

10    **Q.** How did Ms. Chen's application compare to the academic  
11    credentials of other applicants from Lowell High School?

12    **A.** Lowell is a very strong school in the city of San  
13    Francisco. I think I got between 30 and 50 applications from  
14    Lowell in any given year.

15               Her academic credentials, her scores were a little  
16    bit lower than many of her peers, and I would have seen many  
17    perfect transcripts, meaning straight As, all four years.

18    **Q.** Let's take a look at page 22 of Exhibit SA1. What's  
19    shown on page 22?

20    **A.** Page 22 is a teacher evaluation.

21    **Q.** And does this teacher comment on Ms. Chen's academic  
22    abilities?

23    **A.** She does. She writes a beautiful letter about her  
24    academic qualifications.

25    **Q.** Does she -- the final sentence in the first paragraph,



1     could you please read that, "I was happy."

2     **A.**   "I was happy to see that Sally fits the pattern her older  
3     sisters had established, combining exceptionally strong  
4     academic strengths with the commitment to the communities  
5     around her, including, in Sally's case, by working for a  
6     mentor in the school's peer resources program, a role she is  
7     particularly well suited for."

8     **Q.**   Looking at the second paragraph of this teacher  
9     recommendation, what does the teacher say about Ms. Chen's  
10    academic work in the second paragraph?

11   **A.**   She writes a very nice description of Sally's academic  
12    work. The way she pulls ideas together, sort of her -- the  
13    way she thinks about herself. Her critical thinking and  
14    writing skills were exceptional, she says. So she sort of  
15    rounds out her academic skills for us.

16   **Q.**   Did the information provided in this letter of  
17    recommendation from a teacher factor into your academic  
18    rating of Ms. Chen?

19   **A.**   I think this letter and others sort of showed the  
20    academic strength Sally was bringing or would bring to  
21    Harvard, yes.

22   **Q.**   Let's take a look back at page SA5 of this application.  
23    What does page SA5 -- what is the information provided on  
24    page SA5?

25   **A.**   It shows her family background.

1     **Q.** Does it include information about her parents'  
2     occupations?

3     **A.** It does.

4     **Q.** What were the occupations of Ms. Chen's parents?

5     **A.** It says her father is a chef, employed, and her mother is  
6     a homemaker.

7     **Q.** Is that information that you take into account when  
8     reviewing an application file?

9     **A.** Yes.

10    **Q.** Is that information you took into account when reviewing  
11    and assigning ratings to Ms. Chen's application file?

12    **A.** It certainly would have played a role, again, in sort of  
13    my overall picture of her.

14    **Q.** And why is this information that's taken into account in  
15    the admissions process?

16    **A.** Family background can play a role in sort of the choices  
17    you are able to make, what you're doing. She writes about  
18    her family in her essay in a way that helps us understand  
19    sort of what she has to do for them. I think she talks about  
20    translating for her family and her father working despite --  
21    I think he had an injury. And all of that plays a role in  
22    sort of who she is and how strong, sort of all the things  
23    she's been able to accomplish.

24    **Q.** Does an applicant's parents' occupation provide  
25    information just beyond the applicant's socioeconomic status?

1     **A.**   Yes.

2     **Q.**   What are some examples?

3     **A.**   Again, a parent can play a role in sort of the type of  
4     opportunities a student can get. Again, sort of what their  
5     home duties might be, whether or not a student had access to  
6     internships or other opportunities like that.

7     **Q.**   Where is the information that's shown on this page 5 of  
8     SA1, where does that information come from relating to parent  
9     occupation?

10    **A.**   It comes from -- in this case, it came from the common  
11    app.

12    **Q.**   And the common application is a standard-form  
13    application?

14    **A.**   Yes.

15    **Q.**   Does Harvard control the way the common application codes  
16    its information?

17    **A.**   It does not.

18    **Q.**   Does the common application ever change the coding fields  
19    relating to parent occupation?

20    **A.**   The common app makes changes to its application every so  
21    often, yes.

22    **Q.**   Do those changes in the coding fields affect the  
23    admissions office's ability to consider the information an  
24    applicant provides via that application?

25    **A.**   No. We use the information as we see it.

1     **Q.** Have the changes made by the common application to the  
2     parent occupation field affected -- prevented the admissions  
3     office from considering an applicant's parents' occupation?

4     **A.** No. We would have used the information as it was  
5     presented to us.

6     **Q.** And so as an admissions officer, you would have used the  
7     information on page 5 of SA1?

8     **A.** Yes.

9     **Q.** Let's turn back to page 40 where the reader rating form  
10    is.

11                 What extracurricular rating did you assign to  
12    Ms. Chen?

13    **A.** I gave her a 2.

14    **Q.** And while we are on this page, what is the rating that  
15    you assigned to Ms. Chen's teacher recommendation that you  
16    were previously discussing?

17    **A.** Was that teacher -- can I look? Sorry.

18    **Q.** Take your time.

19    **A.** What page was that? Do you remember?

20    **Q.** 22 and 23.

21    **A.** Yeah, so I gave that a 1.

22    **Q.** And that reflected your view that it was a strong --  
23    excuse me -- a strong recommendation?

24    **A.** Yes.

25    **Q.** Keeping your 2 extracurricular rating in mind, please

1 turn to page 8 of Exhibit SA1. What does page 8 show?

2 **A.** So page 8 is what we call the extracurricular grid. It  
3 includes a list of the activities that she was participating  
4 in, how much time she spent, what academic years she  
5 participated in them, and a description of them.

6 **Q.** And what does the information on page 8 of Ms. Chen's  
7 application tell you about her extracurricular involvement?

8 **A.** So the first thing she lists is she was the first  
9 violinist, which is obviously an important role in the  
10 orchestra. She was also the Lowell student association  
11 president.

12 So she had a number of research roles -- or  
13 leadership roles. I'm sorry. She was doing research  
14 mentoring. She had found some roles doing some research  
15 as -- or work as a web designer. She was radio producer.  
16 She had a lot of different interests. She was doing a lot of  
17 different things.

18 **Q.** Can you turn please to page 20 of Exhibit SA1, which is  
19 the guidance counselor recommendation.

20 **A.** Yes.

21 **Q.** Does this guidance -- are you there?

22 **A.** Yes.

23 **Q.** Does the guidance counselor's recommendation provide  
24 information relating to Ms. Chen's extracurricular  
25 involvement?

1     **A.**   Yes.

2     **Q.**   And what type of information?

3     **A.**   So it talks about her internship at UCSF Mission Bay.  It  
4     provides some -- it actually -- I think this letter wasn't  
5     the most helpful, but it does sort of describe some of the  
6     things Sally had already described in her application.  So at  
7     least it reaffirmed her participation in some of these  
8     things.

9     **Q.**   I'm sorry.  I didn't catch the end of it.

10    **A.**   It just reaffirmed her participation in some of these  
11    things.

12    **Q.**   Did you factor that information into the extracurricular  
13    rating you assigned her?

14    **A.**   Yes.

15    **Q.**   You read all the files for Lowell High School that year,  
16    correct?

17    **A.**   I did.

18    **Q.**   Did the guidance counselor provide a letter for every  
19    single applicant?

20    **A.**   Lowell is a big school with just a few counselors, and so  
21    they are unable to provide letters for every student, even  
22    sometimes their top students.

23    **Q.**   But they did provide a letter for Ms. Chen, correct?

24    **A.**   They did provide a letter for her.

25    **Q.**   Did that provide you information about what the school

1 thought of Ms. Chen?

2 **A.** Yes.

3 **Q.** Did the fact that they wrote a letter in this case  
4 provide you information about what the school thought of  
5 Ms. Chen?

6 **A.** Yes, that they knew her was important.

7 **Q.** Looking back at page 40, the rating sheet, what personal  
8 rating did you assign to Ms. Chen?

9 **A.** I gave her a 2.

10 **Q.** And looking back at page 20 which has the guidance  
11 counselor recommendation, did the guidance counselor's  
12 recommendation provide information about Ms. Chen other than  
13 the extracurricular information you just discussed?

14 **A.** Yes. I mean, it talks at the very top, she's a  
15 well-spoken, ambitious, and humorous person. So throughout  
16 the letters, there are descriptions of her personal  
17 qualities.

18 **Q.** Turning to page 27, please, of the application.

19 Is this another teacher recommendation letter?

20 **A.** It is.

21 **Q.** Can you please read the third paragraph from the bottom,  
22 beginning "Sally"?

23 **A.** It says. "Sally fits no mold. She is her own person and  
24 pursues her interests with great vigor. Sally manages to  
25 master new skills and knowledge with ease."

1     **Q.** Can you read the next sentence at the beginning of the  
2     next paragraph?

3     **A.** "Sally is truly an exceptional student in so many ways.  
4     She is highly capable academically, clearly in the top few  
5     percent of all college-bound students I have taught."

6     **Q.** Did these recommendations inform the personal rating you  
7     assigned to Ms. Chen?

8     **A.** Yes.

9     **Q.** Did the guidance counselor letter that you were just  
10    discussing inform the personal rating that you assigned to  
11    Ms. Chen?

12    **A.** Yes.

13    **Q.** The profile ratings we've just been discussing, are those  
14    the only factors that the admissions office considered about  
15    Sally's application?

16    **A.** No. We would have looked at all of her application.

17    **Q.** Take a look back at the first page of the application  
18    file, which is page 1. Are there profile ratings from the  
19    docket chair for Ms. Chen's case?

20    **A.** There is just an overall rating.

21    **Q.** Do you know why?

22    **A.** Yes.

23    **Q.** Tell us why, please.

24    **A.** So my recollection of Sally is that we were in  
25    subcommittee and we were going through all of the applicants



1 from Lowell High School. And my colleague Roger Banks  
2 stopped us and said, "Erica, you read this application quite  
3 strongly, but it doesn't look like you passed it" -- there  
4 would have been no 2 there. "Can we take a closer look?"

5 And so in subcommittee we went through it page by  
6 page, all of us reading it. And when I read it, she was  
7 missing an interview, which I was hoping would set her apart  
8 and help further set her apart.

9 And we all read it together and agreed that it came  
10 together quite nicely. And again, I think at that point the  
11 subcommittee made a preliminary recommendation to admit her,  
12 and she hung on.

13 So Christine went back in and would have put an  
14 overall. But since she read it in committee, she may not  
15 have put in all of the ratings.

16 **Q.** You mentioned that the interview information had not come  
17 in when you first read the file. Do I have that right?

18 **A.** Yes.

19 **Q.** Is that a common occurrence?

20 **A.** It very much depends on when your subcommittee is meeting  
21 and when you're doing readings. So it looks like I read this  
22 on January 18, and that's pretty early in our process. Our  
23 interviewers probably had not read or interviewed most of our  
24 students at that point.

25 **Q.** When you're referring to the interviewer, you're

1 referring to the alumni interviewer?

2 **A.** Yes.

3 **Q.** If you look at page 29 of SA1, is there an alumni  
4 interview report?

5 **A.** Hold on. Yes.

6 **Q.** And did the Harvard alumnus who met with Sally write a  
7 positive account of their interview?

8 **A.** They did. It was very helpful.

9 **Q.** And did you take that into account in the subcommittee  
10 process in discussing Ms. Chen's file?

11 **A.** We would have, yes.

12 **Q.** Did the subcommittee ultimately recommend Ms. Chen for  
13 admission?

14 **A.** Yes.

15 **Q.** And ultimately she was admitted, right, and attends  
16 Harvard?

17 **A.** She was, yes.

18 **Q.** Were you concerned that you had originally not passed  
19 Ms. Chen's file on to your docket chair?

20 **A.** I think I was. But you know, that's why we have the  
21 committee review process and we can all go through and see  
22 and have someone else catch it.

23 **Q.** Ms. Bever, in your time working in the admissions office,  
24 how many times have you seen another admissions officer  
25 demonstrate bias against an applicant because of the

1 applicant's race?

2 **A.** I've never seen that happen.

3 **Q.** When considering whether to admit an applicant, is an  
4 applicant's race ever a negative factor?

5 **A.** No.

6 **Q.** Have you ever admitted an applicant because of his or her  
7 race?

8 **A.** I could not say that, no.

9 **Q.** Have you ever rejected an applicant because of his or her  
10 race?

11 **A.** No.

12 **Q.** In your view, is it important that Harvard has a diverse  
13 student community?

14 **A.** It is.

15 **Q.** Why?

16 **A.** I think it's important that we as students learn from  
17 each other, and students of different background bring  
18 different perspectives to issues that are important.

19 **Q.** In your view, does racial diversity have benefits?

20 **A.** It does.

21 **Q.** What are those benefits?

22 **A.** Again, I think we learn from people who come from  
23 different places and different perspectives, and that's part  
24 of who we should be, as educated.

25 **Q.** Have you ever been instructed to admit a target number of

1 students from any racial or ethnic background?

2 **A.** No.

3 **Q.** Based on your years working in the admissions office,  
4 what is your view of the evaluation process employed by  
5 Harvard in the admissions office?

6 **A.** It's incredibly labor-intensive. It takes incredible  
7 care and time in order to find exceptional students. There  
8 are moments that are very difficult when we have to, you  
9 know, reject students who are exceptional. But we make  
10 choices, and it always feels great when you get to see the  
11 sort of final students who come through and meet us during  
12 our visiting program. It feels worth it.

13 MS. ELLSWORTH: Thank you. No further questions.

14 FURTHER EXAMINATION

15 BY MR. McBRIDE:

16 **Q.** Ms. Bever, just a few more questions for you.

17 You talked about parental occupation and admissions  
18 with Ms. Ellsworth.

19 **A.** Yes.

20 **Q.** And I heard you talking about things that were in the  
21 common application that you were relying on with relationship  
22 to parental occupation?

23 **A.** Yes.

24 **Q.** And I understood you to be saying that you rely on the  
25 category of occupation from the common application?

1     **A.** So there's a number of things that are printed here. It  
2 includes often an actual category. It includes an employment  
3 status. Sometimes there's more information.

4     **Q.** The common application also allows an applicant to  
5 identify, for example, the parents' employer. Is that right?

6     **A.** So at the moment, I'm not recalling. That may be the  
7 case.

8     **Q.** Well, then that can come through to your summary sheet as  
9 well, right, what's in the common application with respect to  
10 the employer?

11    **A.** I don't think it appears on our summary sheet.

12    **Q.** So it doesn't appear on your summary sheet, who the  
13 parents' employer is?

14    **A.** I don't think so. I think their education comes through.  
15 And it's not on this one, yeah. I'm not --

16    **Q.** Does it matter to you, then, whether -- what the parents'  
17 employer is if you do have that information on the summary  
18 sheet?

19    **A.** Again, I'm not sure it's on the summary sheet.

20    **Q.** Well, let me ask you this. You consider the whole person  
21 when you're looking at these applicants; is that correct?

22    **A.** That's correct.

23    **Q.** And you're looking at the parental occupation associated  
24 with that whole person's -- sorry, withdrawn.

25                   You are looking at the whole person with respect to

1       what those parents do; is that right?

2       **A.**   Whole -- I'm not sure what you mean.

3       **Q.**   Withdrawn.

4               Just to clear up for the record, do you know  
5       whether or not the parents' employer is included on the  
6       common application?

7       **A.**   I'm sorry. At the moment I can't remember whether the  
8       employer is actually included.

9       **Q.**   If you get the information with respect to the parents'  
10      employer off the common application or some other way, if  
11      that appears on the summary sheet, would you consider that as  
12      part of your whole person evaluation?

13      **A.**   Again, if we can see the information we might take it  
14      into account, if it was important for that particular  
15      applicant.

16      **Q.**   And would it be important if that parents' employer, for  
17      example, were a small business owner, say the owner of a  
18      small grocery store, as opposed to a business owner who owned  
19      a large corporation?

20      **A.**   Again, if it was important to the student and the student  
21      elevated that as a part of their experience, then it might  
22      matter.

23               MR. McBRIDE: No further questions.

24               MS. ELLSWORTH: Nothing further, Your Honor.

25               THE COURT: You're excused.

1 THE WITNESS: All right. Thank you.

2 MS. HACKER: Your Honor, if we could have a few  
3 minutes. We can take our morning break if you want or --

4 THE COURT: Either way. Do you all want a break?  
5 Either way is fine with me.

6 MS. ELLSWORTH: I think we're fine to go ahead.

7 MS. HACKER: Your Honor, at this time SFFA calls  
8 Erin Driver-Linn.

9 (ERIN DRIVER-LINN duly sworn by the Deputy Clerk.)

10 COURTROOM CLERK: Would you please state your name  
11 spell your last name for the record.

12 THE WITNESS: Erin Driver-Linn. D-R-I-V-E-R hyphen  
13 L-I-N-N.

14 EXAMINATION

15 BY MS. HACKER:

16 Q. Good morning, Ms. Driver-Linn. My name is Kat Hacker.  
17 We haven't had a chance to meet before. Thank you for being  
18 here today. I want to start by talking about your background  
19 that led you to become involved in the office of  
20 institutional research.

21 You have a doctorate degree in social psychology,  
22 right?

23 A. Yes, I do.

24 Q. You got that degree from Harvard?

25 A. I did.

1     **Q.** To get your doctorate, you took classes in statistical  
2     analysis methods, correct?

3     **A.** I did.

4     **Q.** Let me take a step back for a second.

5             I understand you prefer to be called  
6     Ms. Driver-Linn despite the fact that you have a doctorate?

7     **A.** Yes.

8     **Q.** I just want to make sure I'm using your preference.

9             Before joining OIR, you had almost a decade of  
10    experience in statistical analysis, correct?

11    **A.** Correct, roughly.

12    **Q.** Then in 2008, you got the job as director of the office  
13    of institutional research?

14    **A.** That's right.

15    **Q.** In that job, you were responsible for overseeing OIR?

16    **A.** That's right.

17    **Q.** You maintained that responsibility from 2008 until fairly  
18    recently, right?

19    **A.** Yes, that's correct.

20    **Q.** So for about ten years, you were the person in charge at  
21    OIR?

22    **A.** That's correct.

23    **Q.** Ms. Driver-Linn, before we get into talking about the  
24    substance of your work with OIR today, I'd like to spend a  
25    few minutes talking about a committee that you served on back



1 in 2014.

2 **A.** Okay.

3 **Q.** What I've put on the screen for you is Exhibit P299.  
4 I'll blow it up so you can see it.

5 Do you recognize this as an email that you received  
6 on June 13, 2014?

7 **A.** I do. Would it be okay if I look at the binder?

8 **Q.** Of course. Every exhibit we're going to look at today is  
9 in that binder. If you want to look at a hard copy, please  
10 feel free. It's P299.

11 Do you have that in front of you, Ms. Driver-Linn?

12 **A.** I do.

13 **Q.** Is this an email that you received on June 13, 2014?

14 **A.** Yes.

15 **Q.** And this was sent from Mr. Iuliano's assistant. Is that  
16 right?

17 **A.** That's correct.

18 **Q.** Mr. Iuliano is Harvard's general counsel?

19 **A.** That's right.

20 MS. HACKER: Your Honor, SFFA offers P299.

21 MS. ELLSWORTH: No objection.

22 THE COURT: It's admitted.

23 (Plaintiff Exhibit No. P299 admitted.)

24 BY MS. HACKER:

25 **Q.** Now, you see the subject of this email is "Ryan

1 Committee," right?

2 **A.** I do.

3 **Q.** Then we're going to scroll down to the bottom, the first  
4 email in this chain. And it says, 'On behalf of President  
5 Faust and Dean Ryan, thank you again for agreeing to serve on  
6 the committee." Do you see that?

7 **A.** I do.

8 **Q.** You did, in fact, serve on the Ryan Committee?

9 **A.** Yes.

10 **Q.** And then in this top email, it says, "Our first meeting  
11 will be June 26, 2014." Is that right?

12 **A.** Yes.

13 **Q.** So that is the first meeting of the Ryan Committee,  
14 correct?

15 **A.** To the best of my knowledge, yes.

16 **Q.** Then do you remember there being a second meeting of the  
17 Ryan Committee that occurred on August 27, 2014?

18 **A.** I don't have a specific memory of that meeting.

19 **Q.** Let me show you a document and see if it helps refresh  
20 your recollection. And you can flip to it if you want. It's  
21 P303. And what I'd like you to look at I've highlighted here  
22 on the screen. That may help make things go a little bit  
23 faster.

24 Do you see the entry that says "Ryan Subcommittee"  
25 and the date is August 27, 2014?

1       **A.**   I do.

2       **Q.**   Does that refresh your recollection that there was a  
3       meeting of the Ryan Committee on that date?

4       **A.**   No, it doesn't.

5       **Q.**   You don't remember having a meeting on that date?

6       **A.**   I don't have a specific memory.

7       **Q.**   Let's look together at P300 next, and I'd actually like  
8       to start on the second page of this document, put it up on  
9       our screen.

10               THE COURT:   You want to move to admit 299?

11               MS. HACKER:   No, Your Honor.   Just used it to  
12       refresh her recollection.

13               THE COURT:   Okay.

14       BY MS. HACKER:

15       **Q.**   Are you with me, Ms. Driver-Linn?

16       **A.**   Sorry.   The second page.

17       **Q.**   You see here there's an email from James Ryan?

18       **A.**   Yes.

19       **Q.**   And that email gets sent to you and a number of other  
20       people?

21       **A.**   Yes.

22               MS. HACKER:   Your Honor, SFFA offers P300.

23               MS. ELLSWORTH:   Your Honor, the first page of this  
24       document this witness has no foundation for.   The second page  
25       we don't object to.   I'm not sure how you'd like to handle

1       that.

2                   MS. HACKER: Let me just try to address this.

3       BY MS. HACKER:

4       **Q.** Ms. Driver-Linn, do you see the first page of this  
5       document? I've blown it up on your screen.

6       **A.** Yes.

7       **Q.** And then down here at the bottom it says, "Attachments,  
8       correspondence." Do you see that?

9       **A.** I do.

10      **Q.** And the attachment is, in fact, this correspondence that  
11      you received, correct?

12      **A.** I assume so. I don't know.

13      **Q.** Do you assume you received these documents together? Is  
14      it typical to get memos with attachments within Harvard?

15                   MS. ELLSWORTH: Your Honor, this is  
16      mischaracterizing the document. It's a briefing for somebody  
17      that is not Ms. Driver-Linn. I have no objection to the  
18      second page. It's just the first page.

19                   THE COURT: Clearly you get the second page. You  
20      don't have the first page yet. I don't know if you can get  
21      her there or not. But if you don't need the first page,  
22      maybe you just want to move on. But if you do need it,  
23      you're going to have to keep working at her.

24                   MS. HACKER: That's fine. Let's -- how about we  
25      offer P300, the second page, Your Honor.

1 THE COURT: Yes, admitted.

2 (Plaintiff Exhibit No. P300 admitted.)

3 BY MS. HACKER:

4 Q. Let's focus on the second page. Do you see this as an  
5 email from James Ryan?

6 A. I do.

7 Q. And the subject of this email is "Diversity committee  
8 meeting." Do you see that?

9 A. Yes, I do.

10 Q. And we already went over this. You're on this email and  
11 there's a number of other people in the "To" and "CC" lines.  
12 Do you see that?

13 A. I do.

14 Q. Were these other people in the "To" lines the other  
15 members of the Ryan Committee as of December 3rd, 2014?

16 A. I couldn't be sure. I'd have to compare the names. I  
17 think so.

18 Q. And Mr. Ryan was the chair of this committee, correct?

19 A. Yes.

20 Q. What I'm going to show you now is demonstrative. It's  
21 marked PD19. Do you see that on your screen?

22 A. Yes.

23 Q. Now, you can see what I've done is I've taken all the  
24 names -- and you have P300 in front of you on the hard  
25 copy -- we've taken all of those names and we've put them

1       into this slide.

2               You see James Ryan there at the top, right?

3       **A.**   I do.

4       **Q.**   And back in December of -- he was the dean of Harvard's  
5       graduate school of education?

6       **A.**   That's right.

7       **Q.**   And the people below it, are these the other people who  
8       you served on the Ryan Committee with?

9               MS. ELLSWORTH: Your Honor, I've already informed  
10       Ms. Hacker we object to the demonstrative only to the extent  
11       the witness is not able to verify whether these are, in fact,  
12       members of the Ryan Committee, which she just testified to.  
13       It's a demonstrative. I'm fine to have her go to through it,  
14       but I just wanted to lodge that objection.

15              THE COURT: She's asked if these are the people who  
16       are on the Ryan Committee, and her answer is going to be her  
17       answer. They're not moving to admit it, so it doesn't need  
18       to be authenticated.

19       BY MS. HACKER:

20       **Q.**   Ms. Driver-Linn, do you recognize these people on this  
21       slide as the people you served on the Ryan Committee with?

22       **A.**   I really am not sure. I can't remember serving on a  
23       committee with all of these people and being in a room  
24       together with them.

25       **Q.**   That's fair. So you just didn't meet with them enough to

1 be able to recognize all of these people now?

2 **A.** I'm not sure that's how I'd characterize it. I just  
3 couldn't tell you for sure if this is the membership of the  
4 Ryan Committee and if we were all in a room together meeting.

5 **Q.** Now, we talked -- we saw in P300, the second page of it,  
6 that there was a meeting of the Ryan Committee in December  
7 of 2014. Was the committee in fact disbanded after that  
8 point?

9 **A.** I'm not sure about being disbanded. I know we stopped  
10 meeting at some point.

11 **Q.** And did you stop meeting at the end of 2014?

12 **A.** I think so.

13 **Q.** Did anyone ever explain to you why you stopped meeting  
14 after that point?

15 **A.** I don't think it was explained to me.

16 **Q.** And the Ryan Committee met so few times you don't recall  
17 whether you ever discussed race-neutral alternatives to the  
18 admissions process, correct?

19 **A.** I have a hazy recollection of a number of large committee  
20 meetings right around that timeframe. I don't feel confident  
21 that I can say with certainty whether we discussed  
22 race-neutral alternatives.

23 **Q.** You don't recall specifically whether you discussed  
24 race-neutral alternatives?

25 **A.** I don't recall specifically.

1     **Q.** And you don't recall ever being asked as part of the Ryan  
2     Committee to do any analysis of the alternatives to using  
3     race in the college admissions process?

4     **A.** I'm sorry. Could you repeat the question?

5     **Q.** Sure. You don't recall ever being asked as part of the  
6     Ryan Committee to do any analysis of the alternatives to  
7     using race in the college admissions process?

8     **A.** I believe that the team did some work, under privilege.

9     **Q.** The team did some work. And I'm sorry I couldn't hear  
10    you.

11    **A.** Under direction of counsel.

12    **Q.** But you don't recall ever being asked as part of the Ryan  
13    Committee to do any analysis of the alternatives to using  
14    race in the college admissions process?

15    **A.** I don't recall that specifically.

16    **Q.** Now, let's turn to talking about some of the work OIR did  
17    in early 2013. I first want to make sure we're on the same  
18    page in terms of the context of that work.

19            You're familiar with the article that Ron Unz  
20    wrote, called "The Myth of American Meritocracy," right?

21    **A.** Generally.

22    **Q.** One of the claims, among other things, that Unz's article  
23    focused on was a claim that Harvard was capping  
24    Asian-American admissions?

25    **A.** I can't remember specifically if that was one of the



1 exact claims.

2 **Q.** You don't remember whether Ron Unz's article discussed  
3 whether Harvard caps Asian-American admissions?

4 **A.** I remember that article making a number of claims. I  
5 remember that Harvard's name was in them.

6 **Q.** And the Unz article was picked up by the New York Times  
7 on Christmas Eve in 2012, right?

8 **A.** Yes.

9 **Q.** That got the attention of a number of people at Harvard,  
10 including people at OIR?

11 **A.** Yes. I believe we were -- that was brought to our  
12 attention in that timeframe.

13 **Q.** Do you remember sending and receiving a number of emails  
14 over the holidays concerning the Unz article?

15 **A.** I don't have a specific memory of those email exchanges.

16 **Q.** Well, Ms. Driver-Linn, what I'd like you to do is turn to  
17 P4060 in your binder in front of you and see if we can help  
18 refresh your memory about the number and dates of those  
19 emails so we can piece together a timeline of what was going  
20 on back then. Let me know when you have it.

21 **A.** Okay. I have it. Yes.

22 **Q.** Now, what you have in front of you is something called a  
23 privilege log that Harvard's attorneys provided to us. I  
24 don't want to talk about the substance of any of these emails  
25 because they're privileged. But I'd like to walk through

1 just how many emails you were sending and receiving on this  
2 topic back then.

3 So if you flip with me to the second page, we see  
4 there is an email between you and Dean Fitzsimmons on  
5 September 28, 2012. Do you see that?

6 **A.** I do.

7 **Q.** And the subject of that email is "American Conservative  
8 article." Is that right?

9 **A.** Yes, I see that.

10 **Q.** You understand that to be referring to Mr. Unz's article  
11 that was published in American Conservative?

12 **A.** Yes, I do.

13 **Q.** And then if you flip to the next page, page 3, at the  
14 very top we see two more emails between you and Dean  
15 Fitzsimmons on December 28, 2012. Right?

16 **A.** Yes, I see that.

17 **Q.** Those are also about Unz's article?

18 **A.** They also have "The American Conservative article" as the  
19 file subject name.

20 **Q.** And if we go down the page, there are 13 more emails back  
21 and forth between you and other Harvard employees on  
22 December 29, 2012?

23 **A.** I see that.

24 **Q.** All of those emails are also about Unz's article, right?

25 **A.** They all have that same subject line.

1     **Q.** And some of the people you were emailing with on this day  
2 include Dean Fitzsimmons?

3     **A.** Yes.

4     **Q.** Some of these emails are between you and Alan Garber?

5     **A.** I see that.

6     **Q.** He's the provost at Harvard, right?

7     **A.** That is correct.

8     **Q.** He's one of the top officials in the entire university?

9     **A.** Yes.

10    **Q.** Is he -- was he at the time your boss's boss's boss? Is  
11 that right, three levels up?

12    **A.** No. Two.

13    **Q.** How often did you email directly with Mr. Garber?

14    **A.** It's difficult to answer that question with any  
15 precision. Can you be more specific?

16    **Q.** Was it not that often that you'd email with Mr. Garber?  
17 Were you emailing with him every day?

18    **A.** I don't think every day. I don't think it's unusual for  
19 me to have emailed with him.

20    **Q.** And you're also emailing around this time a number of  
21 people within your office, OIR, right?

22    **A.** That's correct.

23    **Q.** Including Ms. Bever?

24    **A.** Yes, I see that.

25    **Q.** And Mr. Hansen?

1     **A.**   Yes.

2     **Q.**   And then on the next page we see some more emails you're  
3       continuing to send and receive, again related to the Unz  
4       article, right?

5     **A.**   Yes. They still have that same subject line.

6     **Q.**   And it looks to me like there's about ten more emails  
7       between December 29 and January 2 on this page?

8     **A.**   I see that the subject line does change.

9     **Q.**   Do you believe these emails were still related to the Unz  
10      article?

11    **A.**   I can't be sure.

12    **Q.**   And if you look down to the entry that's number --  
13      Document Number 20, you see that that is an email you sent to  
14      the folks at OIR on New Year's Eve, 2012. Is that right?

15    **A.**   December 31, yes.

16    **Q.**   And you sent it at about 9:20 p.m. on New Year's Eve?

17    **A.**   It looks like it.

18    **Q.**   I hope that's pretty unusual for you to be working that  
19      late on a holiday.

20    **A.**   I'm not sure.

21    **Q.**   Did you try not to bother your employees on a holiday if  
22      you didn't have to?

23    **A.**   I would typically try to not bother my employees on a  
24      holiday.

25    **Q.**   And then if you flip with me through the next five pages,

1 pages 5 through 10. I don't want to walk through each one  
2 individually. But now we're into the new year in 2013,  
3 right?

4 **A.** Yes.

5 **Q.** And if you count pages 5 through 10, it looks to me like  
6 you send or receive 61 more emails in January of 2013 related  
7 to these issues.

8 **A.** I see a number of highlights with my name. And I think I  
9 see the subject line changing some.

10 **Q.** 61 looks about right? 60?

11 **A.** I'll take your word for it.

12 **Q.** Some of those emails again were to Provost Garber?

13 **A.** I don't see any others to Provost Garber.

14 **Q.** Look with me on page 5, Ms. Driver-Linn.

15           You see about four entries from the top there's  
16 another email, two emails between you and Dean Fitzsimmons  
17 and Provost Garber?

18 **A.** Yes.

19 **Q.** Some of these emails are also back and forth between all  
20 of the OIR employees, right?

21 **A.** Yes.

22 **Q.** And some of these emails, a few of them are with someone  
23 named Elizabeth Yong. Is that right, on page 6?

24 **A.** Yes, I see that.

25 **Q.** Part of her job at Harvard was to maintain the database

1 of admissions data, right?

2 **A.** I don't -- I don't know what her job description is. I  
3 know she had some work that she did with admissions data in  
4 the office of admissions and financial aid.

5 **Q.** And when people at OIR needed admissions data, would you  
6 often reach out to Ms. Yong?

7 **A.** Ms. Yong was often our contact person for that.

8 **Q.** Given all the emails we see going back and forth between  
9 Christmas 2012 and January 2013, it's fair to say that this  
10 article got some attention from Harvard's leaders, right?

11 **A.** Sure.

12 **Q.** So turning to 2013. In the beginning of 2013, OIR was  
13 doing work related to Harvard's admissions process that  
14 concerned the question of Harvard's treatments of whites as  
15 compared to Asian-American applicants, right?

16 **A.** I'm sorry. Could you repeat that question?

17 **Q.** Sure. In the beginning of 2013, OIR was doing work  
18 related to Harvard's admissions process that concerned the  
19 question of Harvard's treatment of white applicants versus  
20 Asian-American applicants, right?

21 **A.** No. I don't think that's how I'd characterize it.

22 **Q.** Well, the reason OIR was looking at that difference was  
23 because there was a concern about Harvard potentially  
24 treating those two groups, white applicants and  
25 Asian-American applicants, differently, right?

1     **A.** No. At that time my understanding is we were doing some  
2 work under direction of counsel, and we were -- the office  
3 was doing other work that was not at the direction of  
4 counsel.

5     **Q.** I'm not focused on who directed the work.

6             But in early 2013, there was -- OIR was looking at  
7 the difference between white and Asian-American applicants,  
8 right?

9     **A.** We did analytic work that included looking at different  
10 groups and the admissions process.

11    **Q.** And you were doing that work because there was a concern  
12 about the difference between Asian and white applicants at  
13 the time?

14    **A.** My sense of what we were doing is, in the work that  
15 wasn't under direction of counsel, was roughly in response to  
16 the Unz article, that it was sort of in the ether at the  
17 time.

18    **Q.** It was in the -- that was a concern because it was in the  
19 popular press at the time?

20    **A.** That's correct.

21    **Q.** So to take a look at the issue, OIR put together a  
22 regression analysis, right?

23    **A.** No.

24    **Q.** OIR put together a logistic regression model?

25    **A.** The part I was referring to is to address a particular

1 question.

2 I think, if I'm understanding what you're talking  
3 about, the work that you're talking about, there were a  
4 series of models that were being looked at to try to model  
5 the admissions process.

6 **Q.** And you're generally familiar with logistic regression  
7 analysis?

8 **A.** Generally.

9 **Q.** OIR has used these types of analyses before?

10 **A.** Yes.

11 **Q.** And there are people in OIR who can competently execute  
12 logistic regression analyses, right?

13 **A.** I'd say the office can competently do logistic  
14 regression.

15 **Q.** Let's take a look together at P9. It's also in your  
16 binder if you'd like to take a look at the hard copy.

17 Ms. Driver-Linn, you recognize this document,  
18 right?

19 **A.** I do.

20 MS. HACKER: Your Honor, SFFA offers P.

21 MS. ELLSWORTH: Your Honor, I think I need a little  
22 more foundation on this.

23 THE COURT: Isn't it already admitted?

24 MS. ELLSWORTH: This is not admitted.

25 MS. HACKER: This has been used with another



1 witness, Your Honor, so that we didn't have to recall Dean  
2 Fitzsimmons. But it actually hasn't been admitted into  
3 evidence yet.

4 BY MS. HACKER:

5 **Q.** Ms. Driver-Linn, you were designated as Harvard's  
6 corporate representative to talk about OIR reports at your  
7 deposition, right?

8 **A.** That's right.

9 **Q.** And this is one of the documents you reviewed to prepare  
10 to testify on Harvard's behalf about OIR reports; is that  
11 right?

12 **A.** I'm sorry. I can't quite remember which part of the  
13 deposition was as the corporate representative and which part  
14 was not.

15 **Q.** Do you remember being designated as a corporate  
16 representative to talk about OIR reports and this report  
17 specifically at your deposition?

18 **A.** I remember talking about this document specifically at  
19 the deposition.

20 MS. HACKER: Your Honor, SFFA offers P9.

21 MS. ELLSWORTH: Your Honor, I'm not sure being a  
22 corporate representative at deposition lays foundation. The  
23 witness testified at her deposition she didn't recall the  
24 document from 2013. She can certainly speak to it. We don't  
25 object it to being used in the same way with Dean

1 Fitzsimmons. I'm just not sure that a foundation has  
2 actually been laid.

3 THE COURT: I am going to let her testify about it.

4 MS. HACKER: If I may, just one more question on  
5 this. I think I may be able to clear this up.

6 THE COURT: I'm wondering who is going to be able  
7 to lay a foundation for them. And the document seems fair  
8 game.

9 MS. ELLSWORTH: There is an individual who will be  
10 testifying later who is the person who created the document  
11 who would be the likely person to lay a foundation with.

12 THE COURT: So you can get it now through her, or  
13 we'll do it through a later witness. But you can certainly  
14 question her about it now. If you want to try and get it in  
15 through her, that's fine.

16 BY MS. HACKER:

17 **Q.** Ms. Driver-Linn, you've seen this document or one very  
18 much like it, correct?

19 **A.** Yes, I have.

20 MS. HACKER: Your Honor, this witness has  
21 foundation. She's seen the document. She reviewed it for  
22 her deposition. She oversaw the office of institutional  
23 research that created this document for ten years. She  
24 certainly has foundation to testify about it.

25 THE COURT: Well, I'm going to let her testify

1 about it. I'm not sure you've elicited -- you may be able to  
2 elicit a foundation based on the fact that she oversaw the  
3 work of the office during that time period and what her  
4 responsibilities were in that way, but I don't think you've  
5 laid it yet. Or that you have a chance to lay it with her or  
6 they're representing that the author of the document will be  
7 on later. So you can try it through her. And if it doesn't  
8 come in through her, it will come in later. I don't think  
9 they're objecting to you putting it up on the screen now, in  
10 any event.

11 MS. ELLSWORTH: No, and the witness can be  
12 questioned on it. No objection on that. It's just a  
13 foundation issue.

14 BY MS. HACKER:

15 Q. Ms. Driver-Linn, let's start with the date on the first  
16 page of this document. You see that it says February 14,  
17 2012, right?

18 A. I do see that.

19 Q. But this document was actually created in February  
20 of 2013?

21 A. I believe so.

22 Q. And you believe it's likely that this document was  
23 created by Erica Bever and/or Mark Hansen?

24 A. No. I believe it was Mark Hansen.

25 Q. Ms. Bever -- I'm sorry.

1                   Ms. Driver-Linn, you remember testifying in a  
2 deposition in this case, right?

3     **A.**    I do.

4     **Q.**    You were under oath during that deposition?

5     **A.**    Yes.

6     **Q.**    In fact, the very same oath you're under today?

7     **A.**    Yes.

8                   MS. HACKER:  Permission to approach, Your Honor?

9                   THE COURT:  Yes.

10                  BY MS. HACKER:

11     **Q.**    Ms. Driver-Linn, I'd like you to turn with me in your  
12 deposition to page 99 where -- I've put it up here on the  
13 screen if you'd like to take a look at that.  I'd like you to  
14 look at with me lines 12 through 22.

15                   "Who prepared this document?

16                   "I'm not sure.

17                   "QUESTION:  You don't have any idea who prepared  
18 this document?

19                   "ANSWER:  That's not what I said.

20                   "QUESTION:  What do you know about who prepared  
21 this document?

22                   "ANSWER:  I think it likely involved Erica Bever  
23 and/or Mark Hansen."

24                   Were you asked those questions and did you give  
25 those answers at your deposition?

1     **A.**   Yes.

2     **Q.**   Now let's go back to P9.  And in this document, OIR used  
3     data from the classes of 2007 through 2016; is that right?

4     **A.**   Sorry, that's -- are we looking at a particular page?

5     **Q.**   You can look at the pages if you'd like.  I think page 3  
6     shows those years.  Do you see those here at the bottom?

7     **A.**   Yes, I do.

8     **Q.**   So that's ten years of data, right?

9     **A.**   Yes.

10    **Q.**   And I'd like to look at page 5 together.  This page shows  
11    us the difference in average test scores and ratings for  
12    white and Asian applicants, right?

13    **A.**   That's the title on the graphic, yes.

14    **Q.**   I'd like to start here at the bottom in these notes.  We  
15    see here that this excludes legacies and athletes, correct?

16    **A.**   Yes.  It also says OIR doesn't have the ratings for all  
17    years.

18    **Q.**   But it does exclude legacies and athletes?

19    **A.**   Yes.

20    **Q.**   If we zoom in on this chart so we can all see it  
21    together, we have a line going down right here at zero,  
22    right?

23    **A.**   Yes.

24    **Q.**   And the way this works is anything to the right of the  
25    line means that Asians are higher, on average, right?

1     **A.**   Yes.

2     **Q.**   And anything to the left of the line means whites are  
3     higher?

4     **A.**   That's the way this graphic is labeled and how it's  
5     organized.

6     **Q.**   We see for the first two variables that Asian-American  
7     applicants do better on both SAT II averages and SAT  
8     averages, right?

9     **A.**   They have a higher rating.

10    **Q.**   And then if we go down to the third variable,  
11    Asian-American applicants have a higher rating on the alumni  
12    rating 2, as well?

13    **A.**   Yes. This particular graphic and this exercise, that's  
14    what you see.

15    **Q.**   Is that the alumni personal rating versus the alumni  
16    overall rating?

17    **A.**   I don't know what these ratings are. I don't think we  
18    can tell from this.

19    **Q.**   Then if we go down, the next four categories were pretty  
20    close to even between white applicants and Asian-American  
21    applicants, right?

22    **A.**   Those ratings are smaller.

23    **Q.**   And then if we focus down on this personal rating, here  
24    we see this is the only variable where white applicants score  
25    a good deal better than Asian-American applicants to Harvard,

1 right?

2 **A.** This is a -- that's what you see on this chart.

3 **Q.** And you don't believe that this difference between white  
4 and Asian applicants on the personal rating is based on any  
5 errors in analysis of data by OIR, right?

6 **A.** I don't think this is a product that has errors, so to  
7 speak. But I do think it's a very exploratory and limited  
8 graphic.

9 **Q.** But you don't believe this chart is based on any errors  
10 in analysis of the data?

11 **A.** I don't have any reason to believe it's based on an  
12 error.

13 **Q.** Now, let's move on to February of 2013. You met with  
14 Dean Fitzsimmons and some others from OIR on February 25,  
15 2013, right?

16 **A.** Yes.

17 **Q.** And the work that OIR had done analyzing how race factors  
18 into admissions at Harvard was shared with Dean Fitzsimmons  
19 during that February 25 meeting?

20 **A.** I'm sorry. Could you repeat the question?

21 **Q.** Sure. The work that OIR had done analyzing how race  
22 factors into admissions at Harvard was shared with Dean  
23 Fitzsimmons during the February 25 meeting?

24 **A.** That's not how I'd characterize that, the work that was  
25 shared with Dean Fitzsimmons that day.

1     **Q.** The work that OIR had been doing was shared with Dean  
2     Fitzsimmons that day, right?

3     **A.** That's my understanding.

4     **Q.** And you would have reviewed that work and made any  
5     comments you thought were appropriate before presenting it to  
6     Dean Fitzsimmons?

7     **A.** I think that's likely.

8     **Q.** You certainly didn't knowingly share any analysis with  
9     Dean Fitzsimmons that you believed to be incorrect?

10    **A.** No, I wouldn't share something we knew was incorrect.

11    **Q.** You wouldn't have shared work with Dean Fitzsimmons that  
12    you considered shoddy?

13    **A.** No.

14    **Q.** And since you were the head of OIR, you doubt anyone  
15    would have shared information with Dean Fitzsimmons if you  
16    had objected to it?

17    **A.** I don't think so.

18    **Q.** You felt comfortable sharing OIR's analysis with Dean  
19    Fitzsimmons because Dean Fitzsimmons loved to talk about  
20    statistics?

21    **A.** I think I felt comfortable sharing work with Dean  
22    Fitzsimmons for a number of reasons. One is that he did like  
23    to talk about data.

24    **Q.** During that February 25, 2013 meeting, you don't recall  
25    Dean Fitzsimmons disagreeing with the models created by OIR,



1 right?

2 **A.** I do not.

3 **Q.** You don't recall anyone asking any follow-up questions  
4 during or after that February 25 meeting?

5 **A.** I don't have specific memories of that meeting.

6 **Q.** You don't recall taking any steps after the February 25  
7 meeting to correct anything in OIR's analysis that was shared  
8 with Dean Fitzsimmons?

9 **A.** I'm sorry. Could you repeat that again?

10 **Q.** Sure. You don't recall taking any steps after the  
11 February 25 meeting to correct anything in OIR's analysis  
12 that was shared with Dean Fitzsimmons?

13 **A.** I do remember that there were exchanges around trying to  
14 refine and increase the variables that we might have in our  
15 data. So I do think there were steps taken to work on some  
16 of the things that were presented that day.

17 **Q.** But there were no steps taken to correct anything in the  
18 reports shared with Dean Fitzsimmons, right?

19 **A.** I'm not -- I don't think of this as a report, this kind  
20 of work that we were sharing. I think there may have been  
21 work to try to improve and continue working on some of what  
22 was shared that day.

23 **Q.** Ms. Driver-Linn, if you could, turn to page 203 in your  
24 deposition. I've blown it up on the screen so you can see  
25 it.

1           "QUESTION: Did you take any steps after the  
2 meeting on February 25 to correct anything in this report?

3           "ANSWER: Not that I recall."

4           Were you asked that question and did you give that  
5 answer at your deposition?

6   **A.** Yes.

7   **Q.** And you don't recall anyone from admissions asking you to  
8 dig deeper into the issue of whether there was a bias in  
9 Harvard's admissions process against Asian-Americans, right?

10   **A.** I don't recall that.

11   **Q.** So now we've gotten through the end of February 2013.  
12 Let's fast-forward a month to April 2013. I'm going to show  
13 you P604. You see this is an email from someone named  
14 Christine Heenan to you, right?

15   **A.** I do see that.

16   **Q.** And this was sent to you on April 29, 2013?

17   **A.** Yes.

18           MS. HACKER: SFFA offers P604.

19           MS. ELLSWORTH: No objection.

20           THE COURT: It's admitted.

21           (Plaintiff Exhibit No. P604 admitted.)

22   BY MS. HACKER:

23   **Q.** I'd like to start on the second page where the email  
24 chain begins, and we can scroll down here to the bottom.

25   Ms. Heenan says to you -- sorry.

1           You say to Ms. Heenan, "Would like to give you a  
2 heads-up about some analysis and correspondence we've been  
3 having with Fitz."

4           Do you see that?

5   **A.** Yes.

6   **Q.** It goes on, "He's" -- and the "he" there is Dean  
7 Fitzsimmons, right?

8   **A.** Yes.

9   **Q.** So, Dean Fitzsimmons -- "excited to share more broadly.  
10 I believe is going to be in touch with Jeff Neal tomorrow,  
11 but I'd like to make sure you've had a chance to think  
12 through implications. Not entirely straightforward."

13          Do you see that?

14   **A.** I do.

15   **Q.** And when you're emailing Ms. Heenan here -- by the way,  
16 Ms. Heenan, she's involved in media relations, right?

17   **A.** At that time I believe she was vice president for Harvard  
18 public affairs and communications.

19   **Q.** So she dealt with media relations generally?

20   **A.** Among other things, yes.

21   **Q.** Now let's take a look at what Ms. Heenan says in response  
22 to your email.

23          She asks, "Re Fitz, what is the issue?"

24          And if we go back to the first page and see how  
25 this conversation continues, you respond to Ms. Heenan, "Fitz

1 asked us to do some analysis of thumb on the scale for low  
2 income. Could be a positive message but has implications for  
3 need-blind policy as well as opening the door to Unz-like  
4 requests for info about other thumbs on the scale."

5 Do you see that?

6 **A.** Yes, I do.

7 **Q.** Then in the next sentence you say, "Team is putting  
8 together a memo to send to Fitz, copy you and Jeff, to put  
9 this in context."

10 And the team you're talking about there is OIR,  
11 right?

12 **A.** Yes, I think so.

13 **Q.** Then Ms. Heenan asks you, "Thumbs on the scale meaning  
14 extra weight we give to those students? If so, you are  
15 right. There are upsides and downsides of being public about  
16 that analysis."

17 Do you see that?

18 **A.** Yes, I do.

19 **Q.** You reached out to Harvard's media relations person,  
20 Ms. Heenan, because you were concerned that there were  
21 upsides and downsides of being public about admissions  
22 decisions?

23 **A.** My sense of reaching out to Christine was that Dean  
24 Fitzsimmons wanted to make a public statement and that it  
25 would be good for her to know about that. And that when you

1 take admissions analysis and you look at it without the  
2 context and without the nuance, it can get looked at  
3 narrowly, and that could be problematic.

4 **Q.** So there are upsides and potentially downsides of it  
5 being public?

6 **A.** Of it being looked at narrowly.

7 **Q.** So in this April 29 email, you say, "OIR is working on a  
8 memo to share with Dean Fitzsimmons, among others."

9 You believe that you've reviewed drafts of that  
10 memo as it was being created, right?

11 **A.** Yes, I do.

12 **Q.** So let's look at a draft together. And this is P24. Do  
13 you have P24 in front of you?

14 **A.** Yes, I do.

15 **Q.** And this is a draft of the memo that you and some others  
16 sent to Dean Fitzsimmons, right?

17 **A.** Yes.

18 **Q.** You agree that it's possible you wrote some portion of  
19 this memo?

20 **A.** I do think it's possible.

21 **Q.** And at the very least, you reviewed it before it went to  
22 Dean Fitzsimmons?

23 **A.** I think so.

24 **Q.** Because you were ultimately responsible at OIR?

25 **A.** That's correct.

1 MS. HACKER: Your Honor, SFFA offers P24.

2 MS. ELLSWORTH: No objection.

3 THE COURT: It's admitted.

4 (Plaintiff Exhibit No. P24 admitted.)

5 BY MS. HACKER:

6 Q. Now, we see in addition to Dean Fitzsimmons at the top,  
7 this is also addressed to Jeff Neal and Christine Heenan.  
8 They both are folks who deal with public relations for  
9 Harvard?

10 A. They're both -- they were both at that time in public  
11 relations in communications.

12 Q. We have Nina Collins. She's in the dean's office, right?

13 A. Yes.

14 Q. Then we have Sally Donahue. She was the financial aid  
15 director at this time, right?

16 A. That's correct.

17 Q. So let's see what this says to Dean Fitzsimmons on page  
18 3. I want to start with this chart here. Zoom in so we can  
19 all see it.

20 Now, this chart shows us something called  
21 coefficient estimates, right?

22 A. Yes.

23 Q. The higher the coefficient estimate means essentially a  
24 stronger effect on someone's chances of admission?

25 A. This is the output of a regression analysis looking at

1 the probability of admissions. And the coefficient estimates  
2 are looked at relative to one another in relationship to that  
3 particular analysis.

4 **Q.** And because they're relative to one another, the higher  
5 the estimate means a stronger effect on someone's chances of  
6 admission?

7 **A.** This is really a modeling exercise. It's not speaking  
8 directly to a chance for admission. But in this analysis,  
9 you have a -- the probability of admission in this model, the  
10 coefficient estimates, if they're higher, that it is a  
11 stronger probability.

12 **Q.** And that probability could either be positive or  
13 negative, right?

14 **A.** Yes.

15 **Q.** A positive relationship would indicate that a student is  
16 more likely to be admitted?

17 **A.** Again, this is a sort of hypothetical modeling. It's not  
18 speaking to the actual admissions process. But in this, if  
19 it's a positive effect, it would be the probability is more  
20 positive in this model. And negative, it would be negative.

21 **Q.** In this model, to be clear, negative means there's a  
22 negative. A student is less likely to be admitted to  
23 Harvard, right?

24 **A.** I just don't feel comfortable with the movement from this  
25 model to the probability of getting admitted in the class

1 because it is a hypothetical.

2 **Q.** But you understand that a negative in this model shows a  
3 negative relationship between that variable and the chance of  
4 a student's admission to Harvard, right?

5 **A.** Yes, in this model.

6 **Q.** And according to this model, if we look down here at the  
7 bottom, there's a negative effect of being Asian on an  
8 applicant's chance of admission, right?

9 **A.** The coefficient estimate is negative .37.

10 **Q.** And that means an applicant's chance of admission is  
11 lower because of being Asian-American, right?

12 **A.** I just -- the leap to an applicant's chance is lower in  
13 this model, yes.

14 **Q.** And then if we look at the text above this chart, let's  
15 zoom in on that. We see the same thing reflected in the  
16 text. On the flip side, we see a negative effect for Asian  
17 applicants.

18 Do you see that?

19 **A.** I see that sentence, yes.

20 **Q.** And then it goes on to say, "These realities have also  
21 received intense scrutiny from critics like Bowen or more  
22 recently Unz, as we have discussed at length."

23 Do you see that?

24 **A.** I do.

25 **Q.** And you believe the reference to discussions at length



1 refers to the February 2013 meeting with Dean Fitzsimmons,  
2 right?

3 **A.** I'm not sure.

4 **Q.** Well, let's see if we can refresh your recollection.  
5 Turn to page 252 with me in your deposition, and read to  
6 yourself lines 5 through 13. Let me know when you've  
7 finished.

8 **A.** (Witness reviews document.) I'm finished.

9 **Q.** So you believe that the conversations being referred to  
10 having been discussed at length, you expect that references  
11 the meeting in February with Dean Fitzsimmons, right?

12 **A.** Yes, I see the line here.

13 **Q.** And whoever wrote this sentence described the negative  
14 effect for Asian-American applicants as a reality?

15 **A.** I'm sorry. Could you point out what you're referring to?

16 **Q.** You see this, "These realities"?

17 **A.** Yes. Yes, I do.

18 **Q.** And then this continues, "To draw attention to the  
19 positive benefit that low-income students receive may also  
20 draw attention to the more controversial findings around  
21 Asians."

22 Do you see that?

23 **A.** Yes.

24 **Q.** That was a concern that you had?

25 **A.** I don't remember having that concern.

1     **Q.** Ms. Driver-Linn, let's look at your deposition page 253.  
2     And I'd like for us to look at lines 8 through 19 together.

3             "QUESTION: It goes on to say to, 'To draw  
4     attention to the positive benefit that low-income students  
5     receive may also draw attention to the more controversial  
6     findings around Asians or the expected results around legacy  
7     and athletes.' Did I read that correctly?

8             "ANSWER: Yes.

9             "QUESTION: Was that a concern you had?

10            "ANSWER: Based on the preparation for today's  
11     deposition, I do believe it was a concern I had."

12            Were you asked those questions and did you give  
13     those answers?

14     **A.** I do. And it goes on to say that I was referring to the  
15     Christine Heenan email as a way to --

16     **Q.** Referring to your concerns about these issues?

17     **A.** Yeah. I think my sense of this is that in the deposition  
18     exchange I was thinking back to the Christine Heenan email  
19     and thinking of it being a concern that I had raised with  
20     her.

21     **Q.** Focusing back on this memo, P24, you didn't say anywhere  
22     in here that the analysis is unreliable, did you?

23     **A.** No. In this draft memo, I don't remember saying that.

24     **Q.** You didn't warn Dean Fitzsimmons in this memo that what  
25     was sent to him, OIR's analysis, was inaccurate?

1     **A.** I don't recall that in this draft or the other drafts.

2     **Q.** Instead, you wrote about the concerns of negative effects  
3     on Asian-American applicants and your concern about them  
4     getting publicized?

5     **A.** I'm sorry. Could you repeat the question?

6     **Q.** Instead of writing about how OIR's analysis might be  
7     inaccurate, you wrote about the concerns of negative effects  
8     on Asian-American applicants getting publicized?

9     **A.** I don't think these memos talk about the concern. I  
10    think the concern was in the previous email.

11    **Q.** You don't remember looking at page 3 right here and  
12    talking about these concerns about drawing attention to the  
13    more controversial findings around Asians?

14    **A.** I just don't see the word "concern" there.

15    **Q.** So after sending this memo to Dean Fitzsimmons, you don't  
16    recall him expressing any concerns about the findings in this  
17    memo regarding Asian-Americans and Harvard's admissions  
18    process, do you?

19    **A.** I don't think this is a memo that went to Dean  
20    Fitzsimmons.

21    **Q.** Let's look at the final memo that's P26. It's already in  
22    evidence.

23               Do you see that this is an email from Ms. Bever to  
24    Dean Fitzsimmons?

25    **A.** Yes.

1     **Q.** And you see the memo is included there as an attachment?

2     **A.** It's an edited version of the draft we were looking at.

3     **Q.** After sending this final memo, P26, to Dean Fitzsimmons,  
4     you don't recall him expressing any concern about the  
5     findings in this memo regarding Asian-Americans and Harvard's  
6     admissions process?

7     **A.** No, I don't.

8     **Q.** You don't recall Dean Fitzsimmons raising any criticisms  
9     about the implications of OIR's analysis with respect to  
10    being Asian and how it was negatively associated with  
11    admissions outcomes?

12    **A.** I don't recall any criticisms.

13    **Q.** And you don't remember any requests for further follow-up  
14    research on that particular question about the negative  
15    effect on Asian applicants, right?

16    **A.** This memo was about low-income students, and there was a  
17    follow-up request related to low-income students, low-income  
18    analysis.

19    **Q.** But there was no follow-up request on the particular  
20    question about the negative effect on Asian applicants,  
21    right?

22    **A.** There was not a follow-up question. That was not the  
23    subject of this analysis.

24    **Q.** I understand that you believe that was not the subject of  
25    this analysis. But what my question is, is directed not on

1 the low-income analysis.

2 But you don't remember any requests for further  
3 follow-up about the question of the negative effect on  
4 Asian-American applicants after this memo was sent to Dean  
5 Fitzsimmons?

6 MS. ELLSWORTH: Your Honor, I object. I think this  
7 question has been asked and answered about two or three times  
8 now.

9 THE COURT: I'll let her have it. I'm sure it's  
10 been asked. I'm not totally sure it's been answered.

11 THE WITNESS: I'm sorry. Could you repeat it?

12 BY MS. HACKER:

13 **Q.** Of course. You don't remember any requests for further  
14 follow-up research on the particular question about the  
15 negative effect on Asian applicants, right?

16 **A.** I don't recall a request for that particular question.

17 MS. HACKER: Pass the witness.

18 MS. ELLSWORTH: Your Honor, what time to you need  
19 to break?

20 THE COURT: Five of 12:00.

21 MS. ELLSWORTH: Five of? Okay.

22 EXAMINATION

23 BY MS. ELLSWORTH:

24 **Q.** Good morning, Ms. Driver-Linn.

25 **A.** Good morning.

1     **Q.** Ms. Hacker was just asking you about a question of the  
2     negative effect of Asian-American ethnicity on admission. Do  
3     you recall that phrasing?

4     **A.** Yes, I do.

5     **Q.** Is that the question that the low-income memo, Exhibit  
6     P26, was attempting to address?

7     **A.** No, it is not.

8     **Q.** What was the subject of the P -- Exhibit P26 memorandum?

9     **A.** The -- whether or not low-income students, we had any  
10    evidence of highly rated low-income students having a tip in  
11    the admissions process.

12    **Q.** And that was a question Dean Fitzsimmons had asked OIR to  
13    look into?

14    **A.** Yes.

15    **Q.** And that was the question you answered in the P26?

16    **A.** That is correct.

17    **Q.** You testified that Dean Fitzsimmons did ask for follow up  
18    on the subject matter of that memorandum, the low-income  
19    analysis, right?

20    **A.** Yes, he did.

21    **Q.** And what did he ask OIR to follow up on?

22    **A.** He asked to follow up on whether or not there was an  
23    interaction between low income and Asian ethnicity.

24    **Q.** And did OIR conduct that follow-up work?

25    **A.** Yes, it did.

1     **Q.** And what did OIR conclude?

2     **A.** OIR, I don't know that we would say concluded, but we  
3 looked at the relationship between low income and other kinds  
4 of ethnicities, and we saw that low-income Asian students did  
5 receive a positive tip toward the probability of admission.

6     **Q.** And were the results of that analysis passed on to Dean  
7 Fitzsimmons?

8     **A.** Yes.

9     **Q.** Ms. Hacker was asking you several questions about whether  
10 the work that you performed at OIR you considered it to be  
11 reliable. Do you recall that?

12    **A.** Yes.

13    **Q.** She asked whether you considered it to be complete or  
14 correct. Do you recall that?

15    **A.** Correct, yes. I'm not sure about complete.

16    **Q.** You recall her asking you whether OIR's work was  
17 generally correct when it was passed along, right?

18    **A.** Yes.

19    **Q.** And do you agree that OIR tried to do correct work when  
20 you were the leader of the office?

21    **A.** I think the office tried to do the best work it could  
22 under time pressures, data limitations. We always tried to  
23 do our best.

24    **Q.** And OIR always tried to do reliable work as well, right?

25    **A.** Yes.

1     **Q.** Can work be correct and reliable and still be  
2 preliminary?

3     **A.** Yes.

4     **Q.** Could OIR's work be correct and reliable and still be  
5 preliminary?

6     **A.** Yes.

7     **Q.** Could OIR's work be correct and reliable and still be  
8 limited?

9     **A.** Yes.

10    **Q.** And what are some of the limitations to the work that OIR  
11 is able to do, in a general sense?

12    **A.** Data completeness, data quality, the other kind of work  
13 that might be going on in the office. I think also we could  
14 do analytic work that didn't take into account the kind of  
15 subject matter expertise of what it might be we were looking  
16 at.

17    **Q.** Is that how you would characterize the work that was in  
18 Exhibit P26?

19    **A.** Yes, I think that's fair.

20    **Q.** And is that how you would characterize the work that's in  
21 Exhibit P12 that Ms. Hacker showed you briefly?

22    **A.** I'm sorry. P12 is the --

23    **Q.** Actually, Ms. Hacker may not have shown you P12, so let's  
24 take a look at it. It is in your binder at Tab 1. Do you  
25 have P12 in front of you?



1     **A.**   I do.

2     **Q.**   Do you recall discussing with Ms. Hacker a meeting in  
3     February of 2013 with Dean Fitzsimmons?

4     **A.**   Yes.

5     **Q.**   And what prompted that meeting?

6     **A.**   I think I reached out to Dean Fitzsimmons and asked for a  
7     meeting.

8     **Q.**   And is Exhibit P12 a version of the slide deck that was  
9     shown at that meeting?

10    **A.**   Yes.

11    **Q.**   Ms. Hacker asked you about Exhibit P9. Do you recall  
12    that?

13    **A.**   Yes.

14    **Q.**   And could you take a look, please, at Exhibit P9, which  
15    is in your binder at Tab 2?

16    **A.**   I see it.

17    **Q.**   Were you involved in creating Exhibit P9?

18    **A.**   No.

19    **Q.**   Do you recall reviewing Exhibit P9 in or around January  
20    of 2013?

21    **A.**   No.

22    **Q.**   Have you reviewed it since then?

23    **A.**   Yes.

24    **Q.**   Have you reviewed it outside of the context of this case?

25    **A.**   No.

1     **Q.** Was P9 ever shared outside of the office of institutional  
2     research?

3     **A.** Not to my knowledge.

4     **Q.** Did OIR ever show Exhibit P9 to Dean Fitzsimmons?

5     **A.** No.

6     **Q.** How do you know that?

7     **A.** I know that we showed P12 to him during that February 25  
8     meeting, and there's just no record of P9 being shown to  
9     anyone outside of the office, and I have no memory of it.

10    **Q.** Are there other aspects of Exhibit P9 that contribute to  
11    your conclusion it was not shown outside of the office of  
12    institutional research?

13    **A.** Yes.

14    **Q.** And what are those?

15    **A.** It's just so preliminary in the formatting. It's the --  
16    you know, the title is off. Some of these exhibits have the  
17    data flipped. There's pages that are blank. It seems to me  
18    to be a very -- like an internal document of people working  
19    out what they were looking at.

20    **Q.** So let's take a look at some of those pages. We have the  
21    title page up on the screen. You've already responded in  
22    response to Ms. Hacker's questions that the title of this  
23    exhibit is Admissions Part II subtitle. Do you recall that?

24    **A.** Yes.

25    **Q.** And is that the type of title of a work product that

1 would have been shared outside of the office of institutional  
2 research?

3 **A.** No.

4 **Q.** Why not?

5 **A.** Even though we would maybe not get things perfect, the  
6 typical -- even with -- even with people we might meet with  
7 to have working meetings would be to have had someone check  
8 and complete things like the title, not have blank pages.

9 **Q.** And the date on this document, is that the correct date?

10 **A.** No.

11 **Q.** You testified earlier that it's a 2013 document, not a  
12 2012, right?

13 **A.** That's correct.

14 **Q.** Take a look at Slide 3 of Exhibit P9, please, and focus  
15 in particular on the chart at the bottom of the page, if you  
16 could.

17 Do the labels on this chart accurately reflect the  
18 data shown in the graph?

19 **A.** They do not. The graphic doesn't match with the table  
20 below.

21 **Q.** Did OIR have a practice for how to check the accuracy of  
22 work before it was finalized?

23 **A.** Typically a member of a team who might put together  
24 something like this might ask for other members of the team  
25 to review and help catch errors. But even that -- I don't

1 think this would have been gotten -- I don't even think this  
2 would have gotten to that stage of having someone double  
3 check it. I think someone who created this would have caught  
4 these errors before sharing it.

5 **Q.** And to the extent that work had been checked, would it  
6 have errors like this with the data being mislabeled?

7 **A.** I don't think so.

8 **Q.** You mentioned some blank slides in this presentation.  
9 Can you look please at Slides 13 and 14.

10 Are those the blank slides you were referring to?

11 **A.** Yes.

12 **Q.** Take a look back, please, at Slide 5 of Exhibit P9. You  
13 discussed this with Ms. Hacker.

14 Does Slide 5 show the output from a model of any  
15 sort?

16 **A.** I don't think so.

17 **Q.** Is there any logistic regression analysis going on in  
18 Slide 5?

19 **A.** No.

20 **Q.** Is Slide 5 descriptive statistics?

21 **A.** Yes, I believe so.

22 **Q.** And you pointed out, when Ms. Hacker was questioning you  
23 about this slide, some labels on the bottom. Do you recall  
24 that?

25 **A.** Yes, I do.

1     **Q.** And what was the -- what does the second bullet at the  
2     bottom of Slide 5 say?

3     **A.** "OIR doesn't have all ratings for all years, so number of  
4     applicants differs for each rating test score."

5     **Q.** Do you recall ever reviewing Slide 5 when you worked in  
6     the office of institutional research?

7     **A.** No.

8     **Q.** Do you recall reviewing Slide 5 in 2013?

9     **A.** No.

10    **Q.** When is the first time you remember --

11             THE COURT: P12 went to the dean, though?

12             THE WITNESS: P12, yes, Your Honor.

13             THE COURT: Okay.

14    BY MS. ELLSWORTH:

15    **Q.** Why don't we turn to P12 right now. It is Tab 1 in your  
16    binder. And in particular, can you look at the slides  
17    beginning on 31.

18    **A.** I'm there.

19    **Q.** Actually, let's look at 32, please. Does this describe  
20    the analysis that's being shown in Exhibit P12?

21    **A.** This is a methods page describing the subsequent models.

22    **Q.** And can you describe what the models that are shown on  
23    the subsequent pages were attempting to do?

24    **A.** Yes. They were attempting to -- in a highly simplified  
25    way try to look at whether we understood the admissions

1 process by doing a series of logistic regressions that would  
2 be a modeling exercise to kind of look at the probability of  
3 admissions with very limited factors, sort of one at a time,  
4 to see whether or not we understood the admissions process in  
5 a simplified way.

6 **Q.** Let's take a look at Slide 34, which has the output from  
7 the model.

8 MS. ELLSWORTH: And can we zoom in on that a  
9 little, please, Mr. Lee?

10 **Q.** Do the models on Slide 34 measure the effect of any  
11 particular factor on an applicant's chance of admission?

12 **A.** No.

13 **Q.** Do the models on Slide 34 show the effect of any tip in  
14 the Harvard's admission process?

15 **A.** No.

16 **Q.** Do the models that are shown on Slide 34 reflect a  
17 hypothetical admitted student pool?

18 **A.** Models 1 through 4 are a simulation, and it's not meant  
19 to actually be an analysis of a tip or anything. The -- I'm  
20 sorry.

21 **Q.** If we can go back a slide to Slide 33, which describes  
22 the inputs for the models, and looking first at Model 1, can  
23 you explain, please, how Model 1 operates in the context of  
24 this logistical regression?

25 **A.** What I think was done here is you took the pooled set of

1 applicants for the years that were being looked at. And in  
2 Model 1, you look just at those two variables, academic  
3 index, academic rating, and you do a logistic regression to  
4 get the probabilities of admission just with those two  
5 variables and then take an arbitrary cutoff of 2,100  
6 applicants that had the highest probability in this  
7 simulation.

8 And then in the graphic on page 34, it would be  
9 taking the output of that 2,100 -- the 2,100 with the highest  
10 probability and saying what was the race ethnicity breakdown  
11 of them.

12 MS. ELLSWORTH: Your Honor, I know we have  
13 questions on these slides, but I do see it's five of. We can  
14 resume after the break.

15 THE COURT: I would like to resume at quarter of  
16 1:00. It might be a little ambitious, so head for quarter of  
17 1:00 but walk slowly. Okay?

18 (Recess taken 11:55 a.m.)

19 \*\*\* AFTERNOON SESSION \*\*\*

20 THE COURT: Whenever you're ready, Ms. Ellsworth.

21 MS. ELLSWORTH: Thank you, Your Honor.

22 BY MS. ELLSWORTH:

23 **Q.** Ms. Driver-Linn, can you turn to Tab 11 in your binder,  
24 please. Do you have in front of you Exhibit P13?

25 **A.** Yes, I do.

1     **Q.** What do you recognize Exhibit P13 to be?

2     **A.** A version of the presentation that we were looking at  
3 before. I believe it was P12.

4     **Q.** Is this a version of the presentation that was shown to  
5 Dean Fitzsimmons in February of 2013?

6     **A.** Yes.

7     **Q.** Does this version have your handwritten notes on it?

8     **A.** Yes, it does.

9             MS. ELLSWORTH: Your Honor, I'd move to admit P13.

10            MS. HACKER: No objections.

11            (Plaintiff Exhibit No. P13 admitted.)

12     BY MS. ELLSWORTH:

13     **Q.** You can put gnat to the side, Ms. Driver-Linn. We were  
14 talking about Exhibit P12 before we broke for lunch. I'd  
15 like you to open your binder to Exhibit P12, which is Tab 1,  
16 and look back at Exhibit P9, which is what Ms. Hacker was  
17 discussing with you this morning. So keep you binder open  
18 and we'll put P9 up on the screen. And we'll just do P9.  
19 Thank you.

20            Do you know who created Exhibit P9?

21     **A.** I believe Mark Hansen.

22     **Q.** Do you know why Mr. Hansen created this document?

23     **A.** I think he was interested in learning more about  
24 modelling statistics. Prior to this particular era in the  
25 office, he had been more involved in kind of data collection,



1 data architecture, and he was teaching himself a lot of  
2 things about statistics and additional kinds of analytic  
3 techniques. And I believe he did it because he was aware of  
4 the kind of Unz-like issues that had been discussed.

5 **Q.** If we can look at Slide 5 of Exhibit P9. You can keep  
6 P12 open in front of you. We'll keep 5 on the screen. You  
7 recall discussing this slide with Ms. Hacker?

8 **A.** Yes.

9 **Q.** Does Slide 5 show the output of a logistic regression  
10 model?

11 **A.** No.

12 **Q.** Does Slide 5 show what you would term descriptive  
13 statistics?

14 **A.** Yes.

15 **Q.** What is the difference between descriptive statistics and  
16 logistic regression?

17 **A.** A descriptive statistic tends to be just showing a  
18 number, an average, or a trend. Logistic regression is a  
19 technique, a modelling technique where you output a number of  
20 different variables in using this technique, look at them  
21 relative to one another and the outcome.

22 **Q.** Slide 5 that's shown here does not show the output of the  
23 model like the one you just described, right?

24 **A.** I don't think so.

25 **Q.** Looking at the version of P12 or P12 which you have in

1 your binder, is Slide 5 from Exhibit Plaintiff's 9, does that  
2 appear anywhere in P12?

3 **A.** No.

4 **Q.** Turn, if you would, please, to Slides 8 and 9 of  
5 Exhibit P9. Do you recall seeing Slides 8 and 9 in  
6 Exhibit 13?

7 **A.** No.

8 **Q.** Are Slides 8 and 9 of Exhibit P9 contained within P12,  
9 the version shown to Dean Fitzsimmons?

10 **A.** No.

11 **Q.** Had you seen Slides 8 or 9 of Exhibit P9 prior to your  
12 deposition in this case? I'll withdraw the question to make  
13 it clear.

14 Prior to this litigation?

15 **A.** No.

16 **Q.** What is your reaction to the information on Slides 8 and  
17 9 in Exhibit P9?

18 **A.** I think that Mark was using these in an exploratory way  
19 to try to understand the relationship of variables with one  
20 another, kind of as an understanding the data. And I find  
21 them, in terms of an analysis that you would look at to try  
22 to interpret, very difficult to interpret.

23 THE COURT: What do the class years on there mean?

24 THE WITNESS: I believe that they are the variables  
25 that represent the students in this applicant pool that were

1 applying for that class year.

2 And, Your Honor, this is one of the reasons I find  
3 this confusing as output to try to determine is that it's  
4 difficult to imagine that you're looking at the class of 2012  
5 and saying you're more likely to get in if you're in the  
6 class of 2012 than these other years. They're not the same  
7 as the other kinds of variables.

8 BY MS. ELLSWORTH:

9 **Q.** Ms. Driver-Linn, looking at the information shown on  
10 Slides 8 and 9 in Exhibit P9, does the information in those  
11 slides show any discrimination against Asian-Americans in the  
12 Harvard College admissions process?

13 **A.** No. These exploratory models are looking at data, a kind  
14 of data set, and trying to understand the variables in  
15 relationship to one another. They are not meant to show  
16 anything about the admissions process.

17 MR. LEE: Your Honor, we've lost the realtime.

18 (Off the record.)

19 BY MS. ELLSWORTH:

20 **Q.** Ms. Driver-Linn, which slides in Exhibit P9 are included  
21 in Exhibit P12, which is the version that was shown to Dean  
22 Fitzsimmons? And I'll have Mr. Lee flip through them on the  
23 screen.

24 **A.** A version of this but not this exact.

25 **Q.** Of Slide 10?

1     **A.**   Slide 10.

2     **Q.**   Let's look at Slide 11, please.

3     **A.**   A version of this but not this exact exhibit.

4     **Q.**   And Slide 12?

5     **A.**   A version of this but not this exact exhibit.

6     **Q.**   And what's the next slide, Slide 13?

7     **A.**   No.

8     **Q.**   Slide 14?

9     **A.**   No.

10    **Q.**   Slide 15?

11    **A.**   No.

12    **Q.**   Slide 16?

13    **A.**   No.

14    **Q.**   Slide 17?

15    **A.**   No.

16    **Q.**   Slide 18?

17    **A.**   Some of the same information on Slide 17 might be. I  
18    don't remember.

19    **Q.**   Slide 18? Is that the last slide? Okay.

20               How would you describe the information in  
21    Exhibit P9?

22    **A.**   I think it's exploratory, trying to work out what the  
23    analyst was exploring and trying to see.

24    **Q.**   So I'm going to turn our attention back to Exhibit P12.  
25    Before I ask you any more questions about that exhibit,

1       though, I'd like to just understand a little built more about  
2       the Office of Institutional Research.

3               Does OIR receive requests for analysis from outside  
4       of the office?

5       **A.**   Yes.

6       **Q.**   And from whom does OIR receive requests?

7       **A.**   The office receives requests from people across the  
8       university and outside of the university.

9       **Q.**   And does OIR ever initiate an analysis on its own?

10      **A.**   Yes.

11      **Q.**   Under what circumstances?

12      **A.**   Often we would do an analysis or do analytic work when we  
13      knew that the university was going to be needing that kind of  
14      work.

15               For example, when we knew that the institution was  
16      going to be experiencing the comprehensive accreditation  
17      visit, the office decided to do work related to student  
18      outcomes across the university, knowing that that work would  
19      need to be looked at.

20      **Q.**   And are there times when OIR initiates analysis on its  
21      own that are different from the circumstance you just  
22      described?

23      **A.**   Yes.

24      **Q.**   And what are some examples of that?

25      **A.**   Well, we would do additional work if we had the capacity

1 in the office to explore our understanding of particular data  
2 sets. We would do work -- mostly it would be imagining that  
3 someone in the university would need it at some point.

4 **Q.** In your time as the director of OIR, did you ever count  
5 or track the number of separate analyses being conducted at  
6 OIR in a given period?

7 **A.** We did at one time. I asked the team to keep track of  
8 the number of requests we got. We call them ad hoc requests.  
9 And in that year, we had 750 requests.

10 **Q.** At any given time during the time that you led the  
11 office, how many ongoing projects did OIR have?

12 **A.** A typical sort of project list would include 30 or so  
13 projects of different sizes and lengths in time.

14 **Q.** Could you describe the approach that OIR takes to its  
15 analytic work?

16 **A.** We often describe our work as always iterative, always  
17 trying to refine. We would explore questions from multiple  
18 angles, trying to look at it from different points of view.

19 We often would approach our work by scoping out  
20 questions and then inviting what we would call content  
21 experts or subject-matter experts to talk with us so that we  
22 would understand the background of what we were trying to  
23 look at, ask them more questions.

24 **Q.** Who outside OIR might you consult with as a content  
25 expert, as you just mentioned?

1     **A.** Many people would typically be those on the ground who  
2     had some expertise. So for example, if we were doing a  
3     project related to the staff across the university, we would  
4     ask members of HR, who understood the full sort of work force  
5     data, to come and talk with us.

6     **Q.** Who would be the context experts in connection with work  
7     being doing relating to Harvard College admissions data?

8     **A.** Dean Fitzsimmons, Dean Donahue. We had Janet Irons, I  
9     believe, someone who deeply understood the financial aid  
10    data. We might consider someone like Elizabeth Yong, a  
11    content expert, but much less about the process, much more  
12    about understanding the data.

13    **Q.** At what point in the analytic process would you typically  
14    consult with people outside of OIR?

15    **A.** Usually multiple points. We might early in a process, as  
16    I was just mentioning, and then periodically as we were  
17    iterating to get their feedback on what we would be doing.

18    **Q.** So let's focus again on P12 and in particular Slide 5 of  
19    Exhibit P12, please. What does Slide 5 show?

20    **A.** It's a kind of outline. It's entitled "Part 1 Access,"  
21    and it has the three sort of chapters in this set of  
22    exhibits.

23    **Q.** Does Slide 5 show all three topics that were discussed  
24    with Dean Fitzsimmons at the February 2013 meeting?

25    **A.** Yes.

1     **Q.** Focusing just first on the first topic, who requested the  
2     analysis that OIR performed relating to the return to early  
3     action?

4     **A.** I think of this one as -- we would have always known that  
5     we wanted to come back to that. We had done some earlier  
6     work on early action. And then as the policy was reinstated,  
7     that we would want to look at the data again. We may have  
8     discussed it as a request from Dean Fitzsimmons and others,  
9     but I think the team imagined we would be doing this, and we  
10    might not have actually gotten a question.

11    **Q.** What is the second topic on Slide 5 of P12?

12    **A.** Shift in the gender balance and impact of concentration  
13    choice.

14    **Q.** Who requested the analysis on gender balance and  
15    concentration choice?

16    **A.** Dean Fitzsimmons.

17    **Q.** And what's the third topic?

18    **A.** Evaluating factors that play a role in Harvard College  
19    admission.

20    **Q.** Who requested the work on evaluating factors that play a  
21    role?

22    **A.** No one.

23    **Q.** What is the origin of the evaluating factors analysis?

24    **A.** Mark Hansen did this work, and we brought it forward to  
25    discuss it with Dean Fitzsimmons.



1     **Q.** Do you recall discussing earlier in response to some  
2     questions from Ms. Hacker the entries on Harvard's privilege  
3     log relating to Mr. Unz's article?

4     **A.** Yes, I do.

5     **Q.** Did OIR conduct an analysis at the direction of Harvard's  
6     counsel that arose out of those privilege log entries?

7     **A.** Yes.

8     **Q.** Is that the analysis shown in Exhibit P12?

9     **A.** No.

10    **Q.** Was the analysis contained in Exhibit P12 concerning  
11    evaluating factors that play a role in Harvard College  
12    admission part of an investigation into discrimination  
13    against Asian-American applicants?

14    **A.** No.

15    **Q.** Were all three topics shown on Slide 5 discussed at the  
16    meeting with Dean Fitzsimmons?

17    **A.** To the best of my understanding, yes.

18    **Q.** Let's take a look at the evaluating factors portion of  
19    this deck, and Slide 32 in particular, please. The last  
20    bullet point on Slide 32 says, "The following analysis is  
21    preliminary and for discussion."

22                 Do you see that?

23    **A.** I do.

24    **Q.** And "preliminary" is bolded and underlined?

25    **A.** Yes.

1     **Q.** Does that underlining and bolding signify anything it?

2     **A.** I think we meant to convey that it was very preliminary,  
3 as we were getting ready to show this to the content experts.

4     **Q.** And why did OIR want to convey the fact that this  
5 analysis was very preliminary in this deck?

6     **A.** I believe because we understood that it was a highly  
7 simplified version of the way that someone who was a content  
8 expert like Dean Fitzsimmons and others would think about  
9 their admissions process.

10    **Q.** Why did you share your work with Dean Fitzsimmons at this  
11 stage of the analysis?

12    **A.** I think we wanted to get his feedback, and I think we  
13 wanted to see if we could ask about further variables that we  
14 could look at and see if there were other ways of thinking  
15 about the process that we could use.

16    **Q.** Look, please, at the second bullet under "Strategy" on  
17 this Slide 32, beginning with "Generate." Could you please  
18 read that?

19    **A.** "Generate fitted probabilities of admissions. Given an  
20 applicant's characteristics, how likely are they to be  
21 admitted (0 or 1)?"

22    **Q.** And can you describe how OIR constructed the model to  
23 generate these fitted probabilities of admissions?

24    **A.** I think the way that this was done was to take this pool  
25 of data from 2007 to 2016 and step by step in these models

1 look at just those variables that are listed and generate the  
2 probabilities.

3 And then, as I was saying earlier, taking a kind of  
4 arbitrary 2,100 and designating those applicants that had the  
5 highest probabilities in that 2,100 up and then looking at  
6 the demographics of those.

7 Some of those in this modelling exercise may have  
8 actually been admitted, and many of them may not have been  
9 admitted.

10 THE COURT: How do you get the 2,100?

11 THE WITNESS: I think that the reason for the 2,100  
12 cutoff would have been --

13 THE COURT: No, not the cut off, but how do you  
14 identify the 2,100?

15 THE WITNESS: Oh. I believe that as you did the  
16 logistic regression and you got the probability, you take the  
17 highest probability 2,100 and above.

18 BY MS. ELLSWORTH:

19 **Q.** We talked before the break about how that would have  
20 worked in the context of Model 1. So if you can look at  
21 Slide 33 which has the inputs to the model. Are you there?

22 **A.** Yes.

23 **Q.** To the models, I should say. In connection with Model 2,  
24 what are the factors of the variables that were included?

25 **A.** Academic index, academic rating, legacy, athlete.

1     **Q.** How did the model that you just described operate in the  
2     context of Model 2?

3     **A.** The same as I just described. But the variables that  
4     would be used to fit the probabilities would include all four  
5     of those as opposed to just the two in the prior model.

6     **Q.** And then looking at Slide 34, which has the bar charts,  
7     and particularly focusing on Model 2, what is Model 2 showing  
8     in terms of -- what is Slide 34 showing in terms of the  
9     results of Model 2?

10    **A.** You take that hypothetical, the highest probability is  
11    the 2,100, and then look at what were the race/ethnicities of  
12    those in that 2,100 and look at the percentages.

13    **Q.** And the percentage is broken down by ethnic group,  
14    correct?

15    **A.** Correct.

16    **Q.** And looking back at Slide 33 for Model 3, would you add  
17    in these two additional readings into the modelling process?

18    **A.** Yes.

19    **Q.** And so can you once again describe how Model 3 works in  
20    the context of this particular regression analysis?

21    **A.** So you'd do the same modelling exercise, add in those  
22    additional variables, and then again get the probabilities  
23    and take the top 2,100. And then in the next page show the  
24    racial ethnicity, the race and ethnicity of those that were  
25    in that 2,100.

1     **Q.** Back to Slide 33, please. And focusing again on Model 3  
2     which you were just disgusting, does Model 3 show the effect  
3     of any of those six factors on the probability of admission  
4     to Harvard College?

5     **A.** No. And we don't see the coefficients or any one of  
6     these -- any one of these variables in these exhibits.

7     **Q.** You've mentioned that the models create a hypothetical  
8     admitted class. Do I have that right?

9     **A.** That's correct.

10    **Q.** And can you please just explain what that means, a  
11    hypothetical admitted class.

12    **A.** So we're fitting these probabilities as a kind of  
13    simulation. And then you take this cutoff of 2,100 and look  
14    above, but it's not necessarily the actual students that were  
15    admitted.

16    **Q.** And so does it mean that there are students who may have  
17    had other factors that contributed to their admission to  
18    Harvard that are not measured by these models and that the  
19    impact of those factors is not demonstrated in these models?

20    **A.** Definitely these are a very limited number of factors.

21    **Q.** Are there more factors that are considered in the Harvard  
22    admissions process than the factors included in Model 4,  
23    which is the model that includes the highest number of  
24    factors in this exercise?

25    **A.** Many more.

1     **Q.** Does the modelling exercise shown on Slides 33 and 34  
2     take into account any impact of socioeconomic status on  
3     Harvard College admissions?

4     **A.** No.

5     **Q.** And when you say that there are different individuals who  
6     may have been actually admitted than are shown in these  
7     models, does the identity of the individuals who may have  
8     been admitted, would that be impacted by the way in which  
9     Harvard College considers or weights factors for admission?

10    **A.** I'm sorry. Could you repeat that again?

11    **Q.** Sure. The fact that there are -- there's a difference  
12    between those who are actually admitted and those shown in  
13    the results of Model 4. What contributes to that difference?

14    **A.** It could be any number of things. I mean, many different  
15    things could have contributed to the way that the actual  
16    admissions process works. Here, we're just looking at with  
17    this limited number of variables can we get to a kind of  
18    demographic -- not demographic, but race/ethnicity background  
19    that is close to the actual admitted classes.

20    **Q.** And in Model 4, the gender and ethnicity of applicants is  
21    included in the modelling process, correct?

22    **A.** Yes.

23    **Q.** And does inclusion of the gender and ethnicity of the  
24    applicants in Model 4 contribute to the fact that Model 4 is  
25    the closest approximation of the gender and ethnic breakdown

1 of the actual admitted class?

2 **A.** Yes.

3 **Q.** Do the models on Slides 33 and 34 show the effect of any  
4 particular tip that may be given in Harvard's admissions  
5 process?

6 **A.** No.

7 **Q.** And even as to the eight factors that are showing on  
8 Slide 33, do the models on Slides 33 and 34 show the effect  
9 of any one of those factors on or around admissions outcomes?

10 **A.** No. They don't show this year.

11 THE COURT: Are you saying is it a coincidence that  
12 Model 4 and actual are the same, or are you saying that  
13 you're trying to build a model that approximates actual?

14 THE WITNESS: Your Honor, I don't think it's a  
15 coincidence. I think we were trying to model something to  
16 see if we could get as close as we could to the actual.

17 BY MS. ELLSWORTH:

18 **Q.** And can you explain why you were trying to do that?

19 **A.** To understand the -- to understand the admissions process  
20 and to understand the way that these different variables may  
21 as a whole contribute to the probability of admission.

22 **Q.** Why did you present the results of these models to Dean  
23 Fitzsimmons in February of 2013?

24 **A.** To show him what we were doing and to get his input and  
25 feedback and to ask questions about additional variables that

1     could be used in a modeling exercise like this.

2     **Q.**   Do you recall testifying in response to Ms. Hacker's  
3     question that OIR had, in fact, obtained some additional  
4     information from admissions after attending this meeting with  
5     Dean Fitzsimmons?

6     **A.**   Yes.

7     **Q.**   And was OIR able to work with the additional data that it  
8     received?

9     **A.**   I think we were able to use the additional data for  
10    different strands of work for admissions and financial aid,  
11    but I don't think we did anything more with these modeling  
12    exercises.

13    **Q.**   When you first saw the models contained on Slides 33 and  
14    34 of Exhibit P12 in 2013, did you interpret them to show  
15    evidence of bias or discrimination?

16    **A.**   No.

17    **Q.**   Did you tell Dean Fitzsimmons in 2013 that you thought  
18    the modeling exercise on Slides 33 and 34 showed evidence of  
19    bias or discrimination?

20    **A.**   No.

21    **Q.**   Do you interpret them today to show evidence of bias or  
22    discrimination?

23    **A.**   No.

24    **Q.**   Why not?

25    **A.**   They weren't designed to look for evidence of bias or



1 discrimination. They were trying to model in a highly  
2 simplified way the admissions process so that we could  
3 understand.

4 **Q.** Are you aware that both Harvard and SFFA have retained  
5 experts to give testimony in this case?

6 **A.** Yes.

7 **Q.** And are you aware that both parties' experts conducted  
8 statistical analyses of Harvard's admissions data?

9 **A.** Yes.

10 **Q.** Have you reviewed some of that analysis?

11 **A.** Yes, I have.

12 **Q.** How many factors did the experts include in their  
13 analysis?

14 **A.** I didn't count them. Many, many more than are here.

15 **Q.** And what does that fact tell you about OIR's modelling  
16 analysis on Exhibit P12?

17 MS. HACKER: Objection, Your Honor. This is  
18 improper undisclosed expert opinion testimony.

19 MS. ELLSWORTH: Your Honor, I think the witness,  
20 being the head of OIR at the time of these documents, which  
21 have been the subject of extensive questioning from SFFA, is  
22 entitled to provide some reactions to how they compare.

23 THE COURT: I'll give you some latitude on it. But  
24 let me just interrupt you because I'm probably embarrassed to  
25 be asking this question, because I'm sure I'm being thick

1 about this.

2 I don't understand. You pick 2,100 random people,  
3 right? Hypothetical people, right?

4 THE WITNESS: No, Your Honor. Let me just say I  
5 think these are very hard to understand.

6 THE COURT: You're being very kind.

7 THE WITNESS: What I believe is that you take the  
8 full applicant pool from 2007 to 2016, and that's the kind of  
9 data set. And in the data set, we know who was actually  
10 admitted. But you use all the applicants and you kind of  
11 leave aside knowing whether they were admitted or not. You  
12 do a logistic regression to kind of understand the  
13 probabilities of these individual factors and then draw a  
14 cutoff line. Look at those probabilities and then show what  
15 is the demographic -- or the race/ethnicity makeup of those  
16 one by one as a modelling exercise. I don't know if that  
17 answers your question.

18 THE COURT: It doesn't. I'm sure it does, but I  
19 still can't understand it.

20 You have the actual class. You take a bunch of  
21 variable that come up with the ones most likely to be  
22 admitted, right? Is that what you're saying, that the  
23 hypothetical class is the 2,100?

24 THE WITNESS: The 21 would be the hypothetical.

25 THE COURT: Most likely to be admitted based on

1     what criteria?

2             THE WITNESS: On just those variables. So for  
3     example, in Model 1 it would be the highest likelihood,  
4     highest probability of admission just based on academic index  
5     and academic rating. And that might be -- I'm sure it would  
6     be a very different -- not very, but it would be a different  
7     2,100 than the 2,100 after you add in legacy and athlete.

8             THE COURT: So it's not the same 2,100.

9             THE WITNESS: No. It would be different. You'd  
10    get these different probabilities based on each of these  
11    modelling exercises, draw the cutoff. And then on this  
12    exhibit with Model 4, that particular exercise is shown right  
13    next to the actual admitted students in that pool.

14            THE COURT: How does it come out that actual ends  
15    up being -- so actual -- demographics is --

16            MS. ELLSWORTH: If you look at Slide 33, I think  
17    that provides a little information. Maybe it would be  
18    helpful, Your Honor, if I could have Ms. Driver-Linn try and  
19    walk through an example using the model of how it was done.

20            THE COURT: That's fine. I guess I don't  
21    understand how actual and the last model come out so close to  
22    each other if you're dealing with a random 2,100,  
23    hypothetical 2,100.

24            THE WITNESS: I don't think of them as random.  
25    Once you put in the eight variables in this data set in

1 Model 4 and then you take that resulting 2,100 that is this  
2 hypothetical and you look at their race/ethnicity breakdown,  
3 the percentages mapped on pretty nicely to the actual.

4 And if you look at the difference between Model 3  
5 and Model 4, the two variables that are being added in are  
6 gender and ethnicity. So that made a difference to get it  
7 closer to the actual.

8 THE COURT: I have to think about that.

9 BY MS. ELLSWORTH:

10 **Q.** Let me try this. Ms. Driver-Linn, let's take a look at  
11 Model 3 and on Slide 33. What are the six factors that were  
12 included in Model 3?

13 **A.** Academic index, academic rating, legacy, athlete,  
14 personal rating, extracurricular rating.

15 **Q.** How did those -- how were those six variables used in  
16 constructing the output of Model 3?

17 **A.** The variables would be included in the regression model.  
18 You get an algorithm that creates the kind of probability.  
19 The probabilities are used to then rank those in the pool --  
20 not rank -- yeah, rank -- rank them in the pool and then take  
21 that 2,100 and say let's now look at the race/ethnicity of  
22 that arbitrary class.

23 **Q.** And so looking at the output from the model on Slide 34,  
24 which takes those rank-ordered 2,100, right?

25 **A.** Yes.

1     **Q.** And it identifies the racial and ethnic breakdown of that  
2     rank-order 2,100, right?

3     **A.** Yes.

4     **Q.** Could the output from Model 4 be shown using some  
5     different breakdown? For example, any one of the variables  
6     as opposed to ethnicity?

7     **A.** I'm sorry?

8     **Q.** Could the output of Model 3 be shown in a way that shows  
9     those who have an academic rating of X, Y, or Z?

10    **A.** I don't know. The academic rating was used in all of  
11    these models.

12    **Q.** So the depiction on Slide 34 is just showing those 2,100  
13    schools cut along racial or ethnic lines, right? The 2,100  
14    applicants. Excuse me.

15    **A.** Yes.

16    **Q.** So the 2,100 applicants could be cut on any other lines  
17    that are available in the data, right, to show how that  
18    makeup would have been?

19    **A.** Yes.

20           THE COURT: Why wouldn't you do that with the  
21    actual admitted students?

22           THE WITNESS: That's what was done in that line  
23    that says "actual."

24           THE COURT: Okay.

25           THE WITNESS: And then we compared with the model

1 that was hypothetical, Hypothetical 1 through 4.

2 THE COURT: The actual has all those other  
3 variables built into it, too, or just the race and ethnicity?

4 THE WITNESS: Just race/ethnicity.

5 THE COURT: Couldn't you do this with taking the  
6 actual instead of 2,100?

7 THE WITNESS: So this would take the students that  
8 were actually admitted in those years and then look at the  
9 race/ethnicity breakdown without looking at any of the  
10 factors and how they might have been used. I guess as a  
11 modelling exercise it's just trying to understand how these  
12 particular simplified factors result in a class.

13 BY MS. ELLSWORTH:

14 **Q.** So the fact that the Model 4 output and the actual look  
15 similar, they're similar in terms of racial breakdown,  
16 correct?

17 **A.** Correct.

18 **Q.** Are there any other similarities that you can discern  
19 between the results of Model 4 and the actual class from this  
20 exercise?

21 **A.** From this exercise, you cannot.

22 **Q.** Could the applicants shown to be the highest probability  
23 of admission in Model 4 be all male or all female, for  
24 example?

25 **A.** Hypothetically they could.

1     **Q.** Could the applicants shown in the output of Model 4 be  
2     all from a high socioeconomic status and not low  
3     socioeconomic status?

4     **A.** They could.

5     **Q.** Could the applicants in the output of Model 4 be all from  
6     the State of Montana?

7     **A.** I don't think so.

8             MR. HUGHES: Come on.

9             MR. WAXMAN: Counsel doesn't have enough kids yet.

10            BY MS. ELLSWORTH:

11     **Q.** Could the applicants from the output of Model 4 be all  
12     from the Northeast?

13     **A.** Yes.

14            THE COURT: The first thing he said during the  
15     entire week, you know.

16            MS. ELLSWORTH: Your Honor, do you have any more  
17     questions about the slides?

18            THE COURT: Not that I'm willing to admit.

19            BY MS. ELLSWORTH:

20     **Q.** Let's look at Slide 36 of this exhibit. What is Slide 36  
21     summarizing?

22     **A.** It's saying from this exercise, from this modelling  
23     exercise, here's what we've learned. And then there's a  
24     variety of factors that are missing or that ratings do not  
25     capture, and in particular at this time saying we'd like to

1 better understand exceptional talent, role of context cases,  
2 role of the personal statement/essay, measures of  
3 socioeconomic status.

4 **Q.** And are those all -- is that all information that was not  
5 included in the modelling process that OIR conducted?

6 **A.** It was not included.

7 **Q.** That information that may play a role in the Harvard  
8 College admissions process?

9 **A.** Yes, I believe so.

10 **Q.** Are applicants to Harvard College who may have exhibited  
11 exceptional talent, which was the reason for their admission,  
12 are those applicants necessarily going to be included in that  
13 output of Model 4 that we were just looking at?

14 **A.** No.

15 **Q.** Applicants to Harvard College who wrote a compelling  
16 personal statement that may have played a role in their  
17 admission, would they necessarily be included in that output  
18 to Model 4 that we were just looking at?

19 **A.** Not necessarily.

20 **Q.** And applicants to Harvard College who may have come from  
21 a more modest socioeconomic background and that may have  
22 played a role in their admission to Harvard College, would  
23 they be reflected in that output of Model 4 we were just  
24 looking at?

25 **A.** Not necessarily.



1     **Q.** What does the information on this Slide 36 tell you about  
2     OIR's modelling analysis in 2013?

3     **A.** That we were wanting to get further insight from having  
4     additional factors and variables and trying to ask questions  
5     of the content experts to see if there were things we weren't  
6     capturing and wanted to -- would help us to understand the  
7     admissions process.

8     **Q.** Can you draw any conclusion from the modelling exercise  
9     in Exhibit P12 about the effect of race on Harvard College  
10    admissions decisions?

11    **A.** No.

12    **Q.** Did you draw any conclusion in 2013 from Exhibit P12  
13    about the effect of race on admissions decisions?

14    **A.** No.

15    **Q.** Did you tell Dean Fitzsimmons in 2013 that the models  
16    contained in Exhibit P12 provided any information about the  
17    effect of race on admissions decisions?

18    **A.** No.

19    **Q.** Can you draw any conclusion from Exhibit P12 about the  
20    effect of the personal rating on admissions decisions?

21    **A.** No.

22    **Q.** Did you tell Dean Fitzsimmons in 2013 that you could draw  
23    any conclusion from P12 about the effect of the personal  
24    rating on admissions decisions?

25    **A.** Not that I recall.

1     **Q.** Can you draw any conclusions from the modelling exercise  
2     in P12 about the effect of any single factor on admissions  
3     decisions?

4     **A.** No, you cannot.

5     **Q.** You discussed the meeting you had in February 2013 with  
6     Ms. Hacker. Do you recall that?

7     **A.** Yes.

8     **Q.** Did Dean Fitzsimmons tell you during that meeting to stop  
9     working on the modelling analysis?

10    **A.** No.

11    **Q.** At any point after the meeting did Dean Fitzsimmons tell  
12    you to stop working on the modelling analysis?

13    **A.** No. No one has ever told us to stop working on anything.

14    **Q.** Did anyone ever tell you to stop working on this  
15    particular analysis?

16    **A.** No.

17    **Q.** In fact, you testified earlier that OIR did try and do  
18    some additional work on this analysis, right?

19    **A.** I think the team did some additional work on things that  
20    were in this presentation.

21    **Q.** Did you believe in 2013 that the analysis in Exhibit P12  
22    showed discrimination against Asian-Americans in the Harvard  
23    College admissions process?

24    **A.** No.

25    **Q.** Did you tell Dean Fitzsimmons in 2013 that you thought

1 the modelling exercise in P12 showed discrimination against  
2 Asian-Americans?

3 **A.** No.

4 **Q.** Do you believe today that this analysis in P12 shows  
5 discrimination against Asian-Americans in the Harvard College  
6 admissions process?

7 **A.** No.

8 **Q.** Let's look, please, at Exhibit P26, which is Tab 3 in  
9 your binder. You discussed some earlier drafts of this memo  
10 with Ms. Hacker. Do you remember that?

11 **A.** I do.

12 **Q.** If you can, take a look at the second and third page of  
13 Exhibit P26. The discussion in P26 relates to a logistic  
14 regression model, correct?

15 **A.** I'm sorry. Could you repeat the question?

16 **Q.** Sure. There's a discussion in the bottom of the first  
17 page of P26 about a logistic regression model.

18 **A.** Yes.

19 **Q.** Is this the same regression model as the one we were  
20 discussing in P12?

21 **A.** No, I don't -- no, it's not.

22 **Q.** Is this a different model?

23 **A.** This is a different modelling exercise, yes.

24 **Q.** Is the modelling exercise in Exhibit P26 a refinement of  
25 the model in P12?

1     **A.** No. I don't see it that way.

2     **Q.** Does the modelling exercise in Exhibit P26 rely on the  
3     same data set as Exhibit P12?

4     **A.** No. It says this is classes 2009 through 2016. Those  
5     aren't the same exact years.

6     **Q.** Was the analysis in P26 conducted at Dean Fitzsimmons'  
7     request?

8     **A.** Yes.

9     **Q.** And what was the purpose of the analysis in Exhibit P26?

10    **A.** He had been interested in some of the popular press  
11    around being able to get highly qualified low-income students  
12    to apply for admissions and wanted to understand whether in  
13    the Harvard College admissions process there was a tip given  
14    to low-income students.

15    **Q.** On page 23549 of this memo, which is the second page of  
16    the actual memo, in the middle of the third paragraph does  
17    OIR point out any limitations to the analysis?

18    **A.** Yes.

19    **Q.** And beginning with "this approach," can you please read  
20    some of the limitations that were pointed out in this  
21    memorandum?

22    **A.** "This approach has several limitations. We picked a  
23    small set of variables that would factor in admissions  
24    decisions. The selection of a wider set of variables might  
25    result in a better-fitting model, one that accounts for more

1 of the variation in individual applicants and their  
2 potentially unique contributions to the entering class.

3 "For example, the model does not capture  
4 exceptional talent in art or music explicitly, although  
5 ratings may capture some aspect of these attributes. In  
6 addition, our model is limited to main effects, not in  
7 examining interactions between variables.

8 "Our analysis should not be considered exhaustive."

9 **Q.** Do you agree with those limitations that you've just laid  
10 out in that memo? Are those correct?

11 **A.** Yes, I do.

12 **Q.** Did those limitations affect the analysis that OIR  
13 conducted in Exhibit P26?

14 **A.** Yes.

15 **Q.** How so?

16 **A.** They were limited and not including the factors, as we  
17 listed here.

18 **Q.** And how does that affect the extent to which conclusions  
19 can be drawn from this analysis?

20 **A.** I think of these as being able to show some signal of the  
21 variables relative to one another, not beyond just the  
22 modelling exercise.

23 **Q.** Why did you list the limitations to the methodology and  
24 data sources in the memo sent to Dean Fitzsimmons?

25 **A.** I think we wanted to make sure he understood that this

1 was a limited modelling exploration to try to answer his  
2 question.

3 **Q.** Do you recall speaking earlier with Ms. Hacker about an  
4 email exchange you had with Ms. Heenan around the time of  
5 this memo?

6 **A.** I do.

7 **Q.** And if you could look, please, at the first page of the  
8 memorandum, the first sentence. If you can please read "As  
9 you have discussed with us.

10 **A.** "As you have discussed with us, there may be value in  
11 responding to recent press about the rate of admission for  
12 low-income students at elite institutions and in particular  
13 for Harvard College."

14 **Q.** So was it your understanding that the analysis you were  
15 conducting was potentially to be released publicly?

16 **A.** Yes.

17 **Q.** And Ms. Heenan, you testified in response to Ms. Hacker's  
18 questions, was involved in Harvard public affairs and  
19 communications at the time?

20 **A.** Yes.

21 **Q.** Why did you discuss this analysis with Ms. Heenan?

22 **A.** I think you would want, if there was something to be made  
23 public, for them to be involved. And in addition, I think I  
24 was aware that taking any individual factor and not having it  
25 in context could be construed in narrow ways and in ways that

1 could be problematic.

2 **Q.** Does the analysis in Exhibit P26 evaluate whether Harvard  
3 discriminates against Asian-Americans in its admissions  
4 process?

5 **A.** No.

6 **Q.** What was of the main focus of this memo?

7 **A.** The main focus was on understanding the so-called tip for  
8 low-income students.

9 **Q.** When you sent this memorandum to Dean Fitzsimmons in  
10 2013, did you believe it showed discrimination against  
11 Asian-American applicants?

12 **A.** No.

13 **Q.** And when you reviewed the memo yourself in 2013, did you  
14 believe it showed discrimination against Asian-American  
15 applicants?

16 **A.** No.

17 **Q.** In 2013, did you believe this analysis showed bias  
18 against Asian-American applicants?

19 **A.** No.

20 **Q.** Did you tell Dean Fitzsimmons that you thought this  
21 memorandum showed bias against Asian-American applicants?

22 **A.** No.

23 **Q.** Do you recall Ms. Hacker asking you some questions about  
24 earlier drafts of this memorandum?

25 **A.** Yes.

1     **Q.** Did you or anyone else at OIR show those earlier drafts  
2     to Dean Fitzsimmons?

3     **A.** No, I don't think so.

4     **Q.** Did Dean Fitzsimmons request follow-up on the analysis in  
5     this memo?

6     **A.** Yes, he did.

7     **Q.** Let's take a look at Exhibit P29, which is already in  
8     evidence.

9     **A.** Sorry, where --

10    **Q.** I'm sorry. It's at Tab 5. Are you there?

11    **A.** I am.

12    **Q.** What is P29, please?

13    **A.** P29 is a cover email and an attached exhibit or set of  
14    exhibits entitled "Demographics and Income."

15    **Q.** Is this the follow-up analysis that Dean Fitzsimmons  
16    requested?

17    **A.** Yes.

18    **Q.** And this email was sent to Dean Fitzsimmons, correct?

19    **A.** It is.

20    **Q.** What information did Ms. Bever include in her email to  
21    Dean Fitzsimmons about that follow-up analysis?

22    **A.** She describes that "In these slides you'll see low-income  
23    applicants are more diverse than all applicants to Harvard  
24    College. Likewise, a greater share of minority applicants  
25    are low income than white applicants. Across all



1 race/ethnicity groups, low-income students are admitted at a  
2 higher rate."

3 **Q.** Let's take a look, please, at Exhibit P28, which is Tab 6  
4 in your binder. Is this the slide deck that was transmitted  
5 via P29?

6 **A.** Yes.

7 **Q.** Take a look at page 2, please, of P28.

8 And does page 2 of P28 contain the same general  
9 information as Ms. Bever had included in her email to Dean  
10 Fitzsimmons?

11 **A.** Generally, yes.

12 **Q.** Let's take a look at page 3 of P28, please. What does  
13 page 3 show?

14 **A.** It shows two pie charts. The first is all applicants by  
15 ethnicity for the classes of 2009 through 2016. And the  
16 second, applicants with incomes less than 60K by ethnicity.

17 **Q.** And what does page 3 show with respect to Asian-American  
18 applicants to Harvard during the years in question?

19 **A.** In the first with all applicants, Asians represent  
20 23 percent of the total and in the second represent  
21 31 percent of the total.

22 **Q.** And can we look, please, at slide -- I believe it's  
23 Slide 3 or 4 of P28 -- the next slide, sorry, 5 -- 6. Sorry.

24 Can we look at Slide 6, please, Mr. Lee? What  
25 does this slide show?

1     **A.** Admit rates by ethnicity and income broken -- these bar  
2 charts are broken down by low income and then income greater  
3 than 60K.

4     **Q.** And does this Slide 6 of Exhibit P28 show the admit rate  
5 for low-income Asian applicants as Dean Fitzsimmons had  
6 requested?

7     **A.** Yes.

8     **Q.** And is that admit rate higher for low-income  
9 Asian-American applicants than it is for non-low-income Asian  
10 Americans?

11    **A.** Yes.

12    **Q.** Was that the analysis Dean Fitzsimmons had requested?

13    **A.** Yes. He had, I think, not requested a specific analysis  
14 but us to be responsive to that general question.

15    **Q.** And these slides were sent to Dean Fitzsimmons in  
16 Exhibit P29, correct?

17    **A.** Correct.

18    **Q.** Ms. Driver-Linn, do you think that any of the OIR  
19 analyses that we've looked at today or that Ms. Hacker showed  
20 you showed discrimination or bias against Asian-Americans in  
21 the Harvard College admissions process?

22    **A.** No.

23    **Q.** Why not?

24    **A.** I don't believe that they -- I believe all of them are  
25 explorations and models that can't speak to the actual

1 admissions process. They are trying to be informing,  
2 understanding, and all of them were very limited in the  
3 number of variables and factors that were used.

4 **Q.** Did you ever tell Dean Fitzsimmons in 2013 or any time  
5 after that you thought any of OIR's modelling analyses showed  
6 any sort of discrimination or bias against Asian-Americans in  
7 the admissions process?

8 **A.** No.

9 **Q.** Did Dean Fitzsimmons ever ask you to stop any analysis  
10 that you were conducting related to Harvard College  
11 admissions process?

12 **A.** No.

13 **Q.** Did anyone ever ask OIR to stop conducting any analysis  
14 relating to Harvard College admissions process?

15 **A.** No.

16 **Q.** If you thought that any OIR analysis showed evidence of  
17 discrimination or bias, what steps would you take?

18 **A.** I'm not sure exactly, but I would definitely go up the  
19 food chain and try to let people know.

20 **Q.** When you say "go up the food chain," what do you mean by  
21 that?

22 **A.** I mean talk with those who are higher than me in the  
23 hierarchy of the university.

24 **Q.** And to whom do you directly report or did you as the head  
25 of OIR?

1     **A.** As the head of OIR, it was to the deputy provost who then  
2     reported to the provost.

3     **Q.** Did you contact either the deputy provost or the provost  
4     in 2013 to alert them about any analysis you thought showed  
5     discrimination or bias?

6     **A.** No.

7     **Q.** Why not?

8     **A.** I wasn't concerned. I didn't feel that there was a need  
9     to raise any alarm.

10           MS. ELLSWORTH: Thank you. I have no further  
11     questions.

12           MS. HACKER: Your Honor, SFFA has no further  
13     questions for this witness.

14           THE COURT: You're excused.

15           MR. MORTARA: Your Honor, Students for Fair  
16     Admissions will call Director Marlyn McGrath.

17           Can we have a five-minute break to set up?

18           THE COURT: Sure.

19           (Court recessed at 1:45 p.m.)

20           THE CLERK: Can you please stand and raise your  
21     right hand.

22           (MARLYN McGRATH duly sworn by the Deputy Clerk.)

23           THE CLERK: Thank you. You may be seated. Can you  
24     please state your name and spell your last name for the  
25     record.

1                   THE WITNESS: My name is Marlyn McGrath,  
2 M-C-G-R-A-T-H.

3                   THE COURT: I'm ready when you are.

4                                   EXAMINATION

5 BY MR. MORTARA:

6   **Q.** Good afternoon, Director McGrath. My name is Adam  
7 Mortara. It's nice to meet you.

8                   I think you might have answered my first question  
9 already, which is what do I call you. Sometimes in my head I  
10 call you Director McGrath. Sometimes I call you Director  
11 McGrath Lewis, sometimes I call you Ms. McGrath, Dr. McGrath.

12 **A.** You can call me anything you like. Marlyn is fine.

13 **Q.** Don't go that far, ma'am. I'm going to stick to Director  
14 McGrath most of the time. I just want to make sure I got it  
15 the way you want.

16                   I understand you're a Harvard graduate yourself or,  
17 more technically maybe, a Radcliffe graduate. Is that right?

18 **A.** Yes.

19 **Q.** What's the difference, for slightly younger people  
20 like --

21 **A.** How much time do you have? There's no difference. I am  
22 from an era when the degree was granted originally by  
23 Radcliffe College. I have a Harvard degree.

24 **Q.** You have a master's and a Ph.D. from Harvard, right?

25 **A.** Correct.

1     **Q.** When did you get those?

2     **A.** My Ph.D. was in 1978.

3     **Q.** That's in English literature, if I remember right?

4     **A.** In Celtic languages and literatures.

5     **Q.** Can you tell us what you did after you got all these  
6 degrees up until you became director of admissions in I think  
7 it's 1987. If I got that wrong, correct me.

8     **A.** I was various kinds of dean. I was a residential dean.  
9 I was a lecturer in Celtic languages, and I worked in  
10 academic departments in academic planning in the faculty of  
11 arts and sciences. In 1987, I became director of admissions  
12 for Harvard College -- Harvard and Radcliffe College.

13    **Q.** Residential dean at Harvard. Is that right?

14    **A.** Yes.

15    **Q.** What does a residential dean do? Do you live amongst the  
16 students?

17    **A.** Yes.

18    **Q.** You so you got to know the students very well. What  
19 years were those?

20    **A.** 1978 to 1981.

21    **Q.** Did you enjoy it?

22    **A.** I loved it.

23    **Q.** So your job as director of admissions today and going  
24 back to 1987 -- and if it's different, let me know -- is to  
25 oversee the work of the admissions office, correct?

1     **A.**   Yes.

2     **Q.**   And in addition to that -- withdrawn.

3                 To explain, Director McGrath, I've read about a  
4     thousand of your documents. What I perceive is that in  
5     addition to that, you have an internal university role in  
6     that many Harvard personnel, including faculty and  
7     administrators, turn to you with questions about the  
8     admissions process. Is that right?

9     **A.**   That is correct.

10    **Q.**   And you also I think have, from what I've seen, a  
11    public-facing role that you've spoken externally to groups  
12    about Harvard admissions, correct?

13    **A.**   Yes.

14    **Q.**   For instance, I think you went to England in 2013 and  
15    spoke at something called the Suffolk Institute. Is that  
16    right?

17    **A.**   The Sutton Trust.

18    **Q.**   Sutton Trust. That's it.

19                 The public-facing role also sometimes concerns  
20    responding to people from the outside world, no connection to  
21    Harvard, with inquiries about Harvard admissions?

22    **A.**   Yes, that's true.

23    **Q.**   That can even be students who email the admissions office  
24    with questions about how it works?

25    **A.**   Yes.

1     **Q.** And part of your job in sort of a mix of that  
2     internal-external role is receiving inquiries from alumni  
3     about Harvard admissions; is that right?

4     **A.** Yes.

5     **Q.** And you respond to those, too, right?

6     **A.** Yes.

7     **Q.** Now, we've talked -- you weren't here because you weren't  
8     here, but you heard about -- you were here for my opening,  
9     right?

10    **A.** I was, yes.

11    **Q.** And you listened to it?

12    **A.** Yes.

13    **Q.** I hope it wasn't boring. But we've heard a lot -- to  
14    give you a narrative, we've heard a lot about the Unz  
15    article. You read the Unz article when it came out in 2012,  
16    right?

17    **A.** Yes.

18    **Q.** I'm not sure you remember, but I think you might have  
19    read it between about 1:00 and 8:00 p.m. on November 28,  
20    2012. Does that sound about right?

21    **A.** I can't challenge that.

22    **Q.** I'm going to help you remember that. If you would, turn  
23    in your binder that's in front of you there.

24                   Or did anybody get you the binder?

25    **A.** Do I have a binder? I don't think I do.



1     **Q.** I'll get you a binder, Director McGrath. There's a few  
2 things I can be helpful with.

3             MR. MORTARA: Your Honor, may I approach the  
4 witness?

5             THE COURT: Of course, yes.

6 BY MR. MORTARA:

7     **Q.** For the record, Director McGrath, there's some tabs here.  
8 You can turn to all the document. They're labeled by  
9 plaintiff's and defendants's numbers, and I'll use P and D.  
10 If you have trouble finding something, just let me know.

11     **A.** I will.

12             THE COURT: Mr. Mortara, I have another  
13 not-very-smart question.

14             Dean of admissions versus director of admissions?

15             THE WITNESS: I work for Bill Fitzsimmons. There  
16 is on the other side of the house a director of financial  
17 aid. It's not explainable much beyond that. We divide work.

18 BY MR. MORTARA:

19     **Q.** Let me see if I can help. There's an office that's the  
20 office of admissions and financial aid or financial aid and  
21 admissions. Which is it?

22     **A.** Admissions and financial aid.

23     **Q.** Dean Fitzsimmons is the head of that unit, correct?

24     **A.** Yes.

25     **Q.** And then underneath there's admissions and then there's

1 financial aid, right?

2 **A.** Yes.

3 **Q.** And you're in charge of admissions?

4 **A.** I oversee the office, yes.

5 **Q.** All right. Now, if you would, turn to Plaintiff's  
6 Exhibit 220. Plaintiff's Exhibit 220 is a series of emails  
7 to and from you. I want to see if this refreshes your  
8 recollection first about whether you read the Unz article  
9 sometime on November 28, 2012.

10 **A.** Yes, I see this.

11 MR. MORTARA: I'm going to offer Plaintiff's  
12 Exhibit 220.

13 MR. LEE: I would object if it's being offered for  
14 its truth. There's hearsay within the document itself, for  
15 which there's no exception.

16 MR. MORTARA: Your Honor, you're looking at the  
17 email, I hope.

18 THE COURT: I have the email in front of me.

19 MR. MORTARA: I can go through with you right now.  
20 There's plenty of statements in here from Director McGrath  
21 herself. She's a party. There those are party admissions.  
22 There's an inquiry coming in from somebody else at Harvard;  
23 she's answering it, talking about the Unz article.

24 THE COURT: I'm just reading this quick, but  
25 there's no -- I don't see any hearsay on the first page.

1 MR. LEE: It would be the third page, Your Honor.  
2 The bottom half of the third page is the hearsay within the  
3 document. I'm not objecting to Director McGrath's  
4 statements.

5 THE COURT: Are you talking about Ted Gilman?

6 MR. LEE: It's a summary of Unz's article that's at  
7 the bottom half under the RD.

8 MR. MORTARA: I'm not going to ask her about it,  
9 Your Honor.

10 MR. LEE: But it shouldn't come in for its truth.

11 MR. MORTARA: I'm not offering it for its truth.  
12 It's the entire email chain that she saw and responded to.

13 THE COURT: The email chain is admitted. To the  
14 extent that there's hearsay in it, I won't consider it for  
15 the truth of the matter asserted.

16 MR. LEE: That's fine, Your Honor.

17 (Plaintiff Exhibit No. 220 admitted.)

18 BY MR. MORTARA:

19 **Q.** With that out of the way, let's talk about Plaintiff's  
20 Exhibit 220. This is an email chain. When you get to the  
21 end of it, it starts with somebody called Robert Dujarric.  
22 Am I pronouncing that correctly? Do you even know him?

23 **A.** I do not know him.

24 **Q.** Neither one of us will know if we're pronouncing his name  
25 correctly unless you know how it's pronounced. Do you?

1     **A.** I have no idea.

2     **Q.** So we're just going to call him Robert D so that if he  
3 reads the transcript someday neither one of us --

4             MR. LEE: Your Honor, if we could have a little  
5 less of the commentary and just have questions? We're going  
6 to be here until Thanksgiving.

7             MR. MORTARA: I heard about Mr. Lee's cousin  
8 yesterday. I'm going to try to be conversational, if that's  
9 okay.

10            THE COURT: Don't you want to wait for my answer?

11            MR. MORTARA: I said if that's okay.

12            THE COURT: And you kept right on going.

13            MR. MORTARA: You're right.

14            THE COURT: It would be fine for this afternoon.

15            I take your point, Mr. Lee, but it does help break  
16 up the day.

17            MR. MORTARA: Thank you, Your Honor. I'll try to  
18 keep it limited.

19     BY MR. MORTARA:

20     **Q.** And it starts off with this email from Robert D, and he's  
21 writing to Ted Gilman and some others.

22            Who is Ted Gilman?

23     **A.** Ted Gilman is an administrator at the Reischauer  
24 Institute For Japanese Studies At Harvard.

25     **Q.** He's forwarding some concerns about the Unz article. I

1 don't want to get into what other people said. I kind of  
2 want to get into what you said. So let's delete that and  
3 come back up. We'll go to the previous page.

4 Now you can see Ted Gilman's email to you. Let's  
5 get where you get involved here. All right? Do you see  
6 that?

7 **A.** Yes.

8 **Q.** November 28, 2012, 8:46 a.m.?

9 **A.** Yes.

10 **Q.** Are you with me?

11 **A.** Yes.

12 **Q.** "Dear Marlyn. I hope your fall term is going smoothly.  
13 How did December get here so quickly? An alum and friend,  
14 Robert D, '83 below, sent the following email. The sniff  
15 test suggests the piece is a witch hunt. It's written by Ron  
16 Unz, college '83, and is published in The American  
17 Conservative, full text link below."

18 And then he goes on with some criticisms that he  
19 has of the Unz piece, correct?

20 **A.** Yes.

21 **Q.** I take it that means that Mr. Unz is, in fact, a graduate  
22 of Harvard College as well?

23 **A.** I can't confirm or deny that. We have what we have in  
24 front of us. I have no reason to doubt it.

25 **Q.** Is that what you understood Mr. Gilman to be saying here,

1       that Unz was a graduate of the college?

2       **A.**   That is what I understood.

3       **Q.**   Up at the top, we have your response.  I'll try to blow  
4       it up just a little bit more.  It comes in at 1:36 p.m.  Do  
5       you see that?

6       **A.**   Yes.

7       **Q.**   And it says, "Ted, I shook my head at this, too."  
8               Do you see that?

9       **A.**   I do.

10      **Q.**   And then, "We are in the throws of EA committees" --  
11              That's early action committees, right?

12      **A.**   Right.

13      **Q.**   -- "and can't be helpful with deconstruction or comment  
14      but will do in due course."

15              Do you see that?

16      **A.**   Yes.

17      **Q.**   "Thanks so much for looking out for us all.  M."  
18              That's you, right, Marlyn McGrath?

19      **A.**   Yes.

20      **Q.**   Then right above that, Mr. Gilman or Dean Gilman responds  
21      and says, "I apologize for bothering you."

22              Do you see that?

23      **A.**   I do.

24      **Q.**   And now let's go back to the second page.  I'm going to  
25      try to blow up your email there.  Here we go.  And you then

1 at 8:33 p.m. on the same day respond to Ted Gilman, correct?

2 **A.** Yes.

3 **Q.** Your first statement to Ted in your response is, "Just  
4 had a chance to read this," right?

5 **A.** Yes.

6 **Q.** Now, we know you probably read the article sometime on  
7 the afternoon or evening of November 28, right?

8 **A.** This probably refers to that document, yes, I would  
9 assume.

10 **Q.** The Unz article. Okay. And "After I emerged from  
11 committee and it is what I thought, a hodgepodge of old  
12 chestnut arguments."

13 Do you see that?

14 **A.** Yes.

15 **Q.** I want to talk to you about a lot of what's written here.  
16 And I think that Mr. Lee will have a chance to talk about it  
17 if he wants to as well. I'm going to come back to this  
18 several times. We'll use it as a kind of launching-off point  
19 for discussions. The first thing I wanted to talk about was  
20 a comment you make at the bottom.

21 When faculty and other stakeholders of Harvard ask  
22 you questions or engage you with questions about the  
23 admissions process, do you try to be accurate and truthful in  
24 your responses?

25 **A.** Yes, I do.

1     **Q.** And so I want to ask you about the highlighted statement  
2     on the screen at the end of your email to Mr. Gilman. And it  
3     says, "We look for the people with the most promise for the  
4     future and we make every decision on the basis of  
5     achievement, in the context of what the applicant has done  
6     with what he has had, etc."

7             Is that statement accurate?

8     **A.** You read it correctly, and I -- yes.

9     **Q.** It's an accurate statement about how Harvard admissions  
10    at Harvard College works?

11    **A.** Yes.

12    **Q.** Director McGrath, I want to take this off the screen and  
13    I just want to ask you a general question.

14             Is it true that sometimes when you speak to people  
15    about admissions like when you're at the Sutton Trust --

16             Is it in England?

17    **A.** Sutton Trust, yes.

18    **Q.** You spoke about admissions. I actually watched --  
19    anyway. Spoke about admissions at the Sutton Trust, correct?

20    **A.** Yes.

21    **Q.** And it's true sometimes when you speak to people about  
22    Harvard admissions, you do so in generalities that might not  
23    be completely accurate. Is that fair to say?

24    **A.** Do you have an example in mind?

25    **Q.** I think we're going to get to one. What I'm trying to



1 help you with -- what I'm trying to say is, do you sometimes  
2 speak about Harvard admissions at sort of a level of  
3 generality, like maybe what we just saw with Mr. Gilman, that  
4 doesn't tell the complete truth or the complete picture?

5 **A.** When I speak about Harvard admissions, I speak about it  
6 accurately in the context of the people -- as I understand  
7 the context of the people I'm speaking with.

8 **Q.** And that includes the statement to Ted Gilman, "We look  
9 for the people with the most promise for the future, and we  
10 make every decision on the basis of achievement."

11 You believe that Harvard College makes every  
12 admission decision on the basis of achievement; is that  
13 right?

14 **A.** We make every admission decision on the basis of  
15 achievement and a good many other factors as well. I think  
16 there's no decision we make to admit someone that does not  
17 include a measure of achievement.

18 **Q.** What's the Z list?

19 **A.** The Z list is shorthand for a list of people for whom at  
20 the end of each cycle -- this has been true in recent years;  
21 I can't tell you when it began -- are people who we wish to  
22 admit and for whom we do not offer a place for the coming  
23 year. We may not have room.

24 It is a list of people who are admitted but for a  
25 subsequent year.

1     **Q.** And about how many people get in off the Z list each  
2     year?

3     **A.** Several dozen. It has varied somewhat from year to year.  
4     I can't tell you precise numbers.

5     **Q.** Is one factor considered on whether to admit an applicant  
6     under the Z list is whether they're a child or relative of a  
7     major donor?

8     **A.** We take lots of things into account in decisions not just  
9     for the Z list but at other times, and that may be in a given  
10    case something that is considered by the committee, yes.

11    **Q.** You take lots of things into account. But one of the  
12    things you might take into account in putting somebody on the  
13    Z list is whether the applicant is a child or relative of a  
14    major donor; is that correct?

15    **A.** It may be part of a strong case, and it may help us  
16    decide to admit the person.

17    **Q.** Can it be part of a terrible case?

18    **A.** It could be part of a terrible case. But that person is  
19    unlikely to be admitted, in my experience.

20    **Q.** We'll talk about that in a second.

21               Can somebody's being a celebrity or the daughter or  
22    son or relative of a celebrity be a reason that they get on  
23    the Z list?

24    **A.** What do you mean by "celebrity"?

25    **Q.** Oh, I don't know. Movie star or somebody who is big in

1 business, whatever you think.

2 **A.** I can recollect no such case. But I can't tell you that  
3 it's never happened.

4 **Q.** Could somebody's relationship to perhaps a politician be  
5 a reason that they get on the Z list?

6 **A.** Not in and of itself.

7 **Q.** Could it be one of the many things you look at when  
8 deciding to put somebody on the Z list?

9 **A.** Without having a case in mind, I suppose it could.

10 **Q.** Now I need to get into some subjects, some things out of  
11 the way, and they're going to involve some of your other  
12 emails. And I want to get something clear. I am sure that  
13 sometimes you've written emails never ever thinking they were  
14 going to come out in a public setting like this. Isn't that  
15 right?

16 **A.** That's true.

17 **Q.** I think that's true frankly of all of us. So what I'm  
18 going to try to do is we're going to turn off the gallery  
19 screen now, if that's okay, Your Honor, and I'm going to talk  
20 to you about Plaintiff's Exhibit 257 in your binder.

21 MR. LEE: Your Honor, we have no objection to the  
22 screen being turned on. I think it suggests more with the  
23 screen off than to let --

24 THE COURT: Hold on a second. Let me just read it.

25 MR. MORTARA: I'm happy to turn the screen on if

1 Director McGrath wants it on.

2 THE COURT: Why don't we leave that up to Director  
3 McGrath. I'm fine with it on the screen. You're fine with  
4 it on the screen. Why don't you take a look at it and see  
5 what your preference is.

6 THE WITNESS: Thank you for that, Your Honor. I  
7 will take the advice of my counsel.

8 MR. MORTARA: And you would like it displayed.

9 THE WITNESS: I would defer to their advice. I  
10 have no objection.

11 THE COURT: Displayed?

12 MS. ELLSWORTH: Yes.

13 THE WITNESS: Thank you.

14 BY MR. MORTARA:

15 **Q.** Director McGrath, now what we have on the screen, in the  
16 middle of the screen is an email written I think by you,  
17 July 24, 2013, at 8:44 a.m. Do you see all that? And it's  
18 signed "X, Mum." Do you see that?

19 **A.** I do.

20 **Q.** I'm going to get into the content of this. This is an  
21 email exchange you had with your daughter; is that right?

22 **A.** That's correct.

23 **Q.** And your daughter is involved in the Harvard D.C. Club;  
24 is that right?

25 **A.** Yes.

1     **Q.** She interviews candidates for admission as part of  
2     Harvard's alumni interviewing program, right?

3     **A.** Yes.

4     **Q.** And down at the bottom, this starts off with a forwarded  
5     message from David Evans to a bunch of redacted email  
6     address, subject line, "Wait-list applicant offered a Z."

7             Do you see that?

8     **A.** Yes, I do.

9     **Q.** Who is David Evans?

10    **A.** David Evans is my colleague who was one of the admissions  
11    officers who handles candidates from D.C., from the greater  
12    D.C. area.

13    **Q.** "Just a note to inform you that the admissions offered  
14    so-and-so of so-and-so a Z; that is, a place in the class of  
15    2018."

16             That's a notification that someone was offered a Z  
17    list acceptance, correct?

18    **A.** Yes.

19    **Q.** And then up above, from context I think you can tell this  
20    is an email from your daughter to you. Can you tell that  
21    from context?

22    **A.** Yes, I can tell that from context.

23    **Q.** Your daughter says, "This is interesting. I am not a  
24    huge fan of the mother who just started interviewing for us a  
25    couple of years ago. Harvard really cleaned up even before

1 this at" -- redacted -- "and I'm not sure he was terribly  
2 strong."

3 Do you see that?

4 **A.** I do.

5 **Q.** And then you respond to your daughter right here. And  
6 the first thing, very first thing you say is what?

7 **A.** "Terrible case."

8 **Q.** This is a terrible case that got admission off the Z  
9 list, right?

10 **A.** Well, "terrible case" may refer to the case itself. I  
11 don't recall doing this email, though I have no doubt that  
12 it's mine.

13 **Q.** You were asked about -- excuse me. Go ahead.

14 **A.** It may also have referred to the terrible situation of a  
15 mother on the inside but not on the inside. But I actually  
16 don't know. But yes, I see those words and that's what I  
17 wrote.

18 **Q.** And to be fair to you, you saw this document at your  
19 deposition, right?

20 **A.** I did, yes.

21 **Q.** And the next sentence says, "We did it entirely for  
22 contingent reasons" -- "We did it for entirely contingent  
23 reasons." Do you see that?

24 **A.** I do.

25 **Q.** What were the entirely contingent reasons, if you

1 remember them?

2 **A.** I don't remember them from memory. I think that it was  
3 what was described in the email below, an alum mother who was  
4 also involved in the schools committee.

5 **Q.** So it was the influence of a Harvard alum got this  
6 terrible case admitted that your daughter said was not sure  
7 he was terribly strong; is that right?

8 **A.** It may have been taking into account the mother's  
9 involvement. I don't know for certain.

10 **Q.** Director McGrath, I really hate to do this. Did you  
11 suggest earlier that the "terrible case" comment may have had  
12 something to do with this applicant's mother or the  
13 situation?

14 **A.** I don't remember what it was referring to. I was giving  
15 you a sense of what it might refer to.

16 **Q.** Your daughter then criticizes the mother of this  
17 applicant, correct?

18 **A.** I only have in front of me her email, and that's what she  
19 seems to be doing.

20 **Q.** And you respond to that criticism at the top, correct?

21 **A.** Yes.

22 **Q.** All right. I'll put that down.

23 Do you agree that what's being communicated here is  
24 that Harvard has let in a candidate who was not terribly  
25 strong, for whatever you described as contingent reasons,

1 correct?

2 **A.** I don't see anything here that suggests that the  
3 candidate had no strengths.

4 **Q.** Your daughter told you that her belief was that the  
5 candidate was not terribly strong, correct? She said that?

6 MR. LEE: Your Honor, I'm going to object. This  
7 has gone way beyond the point of being relevant. It has  
8 nothing to do with discrimination against Asian-Americans.

9 MR. MORTARA: Your Honor --

10 THE COURT: I think he's trying to impeach the  
11 witness.

12 MR. MORTARA: There is that.

13 MR. LEE: With her daughter's statement.

14 MR. MORTARA: That's not being offered for the  
15 truth. It's being offered for what it said.

16 And Your Honor, part of our case is that Harvard is  
17 not entirely truthful about its admissions process, including  
18 that it is totally meritocratic.

19 THE COURT: I will give you some latitude on it,  
20 but you are pushing the edges of it. I think you made your  
21 point with this email.

22 MR. MORTARA: I'm going to move on, then, Your  
23 Honor.

24 THE COURT: Go ahead.

25 BY MR. MORTARA:



1     **Q.** I want to talk to you about staff interviews. How are  
2     staff interviews offered to applicants?

3     **A.** How are staff interviews offered to applicants? In  
4     several ways. They are offered or have been in some years on  
5     a first-come, first-serve basis typically during the summer.  
6     They are also offered from time to time in certain  
7     circumstances. Shall I describe one?

8     **Q.** Sure.

9     **A.** A candidate who's coming from a long distance or an area  
10    of the country where we think there will not be an alumni  
11    interview available. We interview people or speak with  
12    people sometimes when they have parents who are involved and  
13    they would like their child to come by and meet an admissions  
14    officer.

15                 There are various other kinds of times when we see  
16    candidates interviewed by staff in our office. Also they can  
17    be interviewed elsewhere; when staff are traveling, often we  
18    meet people.

19    **Q.** Would it be particularly accurate to say staff interviews  
20    come on a first-come, first-serve basis?

21    **A.** The first case I mentioned, yes. We post a certain  
22    number of available interviews and members of the public may  
23    sign up for them in advance. That was the first example I  
24    gave.

25    **Q.** About how many of these staff interviews take place in a

1 given admit cycle, in a given year? Would 500 sound about  
2 right?

3 **A.** To be honest, I don't -- I can't give you a number and I  
4 can't confirm that one.

5 **Q.** So who organizes all the staff interviews? That's under  
6 admissions, right, where you're in charge?

7 **A.** It is under admissions. And my staff use their judgment  
8 about people from their area visiting. Sometimes we have to  
9 assign someone who happens to be in the office and available.  
10 I keep no tally, and I don't arrange most of them myself.

11 **Q.** Do you do any of them?

12 **A.** I don't do interview-interviews. I do meet people from  
13 time to time, but I don't substitute for an official  
14 interview.

15 **Q.** How about this: Are there thousands of staff interviews  
16 in an admit cycle?

17 **A.** I don't think so, but I don't -- I can't confirm that. I  
18 can't deny it. I don't know.

19 **Q.** Would you be comfortable with maybe there's hundreds?

20 **A.** Probably.

21 **Q.** All right. It's going to be a small percentage of the  
22 applicants that get a staff interview, right?

23 **A.** Thousands or tens of thousands of people have an official  
24 interview, an alumni interview, as part of the application  
25 process. So that would be a much larger number, yes.

1       **Q.** I'm talking about staff interviews.

2       **A.** I understand. But you said a percentage of, which is why  
3 I mentioned the larger number that includes -- that adds up  
4 to the large number of interviews we offer.

5       **Q.** Sure. Let me try to make sure we're getting a clear  
6 record here.

7               Most people, the vast majority of applicants to  
8 Harvard do some kind of interview, right?

9       **A.** Most people who apply have an alumni interview.

10       **Q.** A very small portion of the applicant pool interview with  
11 a member of your staff, right?

12       **A.** Yes. A much smaller number.

13       **Q.** And on your website, you talk about staff interviews,  
14 right?

15       **A.** I think we do.

16       **Q.** Do you want me to refresh your recollection? I have it  
17 right here.

18       **A.** Fine.

19               MR. MORTARA: Your Honor, may I approach the  
20 witness?

21               THE COURT: Of course, yes.

22       **A.** Thank you.

23       BY MR. MORTARA:

24       **Q.** And this is just from your website, and I'm putting it up  
25 on the screen. And it says "Have a conversation with an

1 alumni interviewer."

2 Do you recognize this from your website?

3 **A.** Yes, now that I see it, I do.

4 **Q.** And it says, "We also offer a limited number of  
5 on-campus interviews from September through November."

6 Do you see that?

7 **A.** Yes.

8 **Q.** And does that refresh your recollection about how you  
9 advertise interviews?

10 **A.** Yes.

11 **Q.** And you see here that there's an encouragement to do the  
12 official local interview. Do you see that?

13 **A.** Yes.

14 **Q.** And that's because space is scarce for the staff  
15 interview, right?

16 **A.** Yes.

17 **Q.** What's the admission rate for somebody that gets one of  
18 these scarce staff interviews?

19 **A.** I have no idea, I'm sorry to say.

20 **Q.** Would it surprise you in any way if I told you the  
21 admission rate for people who come on campus and interview  
22 with one of your staff is over 50 percent?

23 **A.** No.

24 **Q.** Do you have any reason to dispute that that might be the  
25 rate, that it might be over 50 percent?

1     **A.** I have no reason to dispute that.

2     **Q.** And that would sort of make sense, right, if you meet  
3     somebody on the admissions staff and impress them, then you  
4     kind of have an internal advocate within the process, right?

5     **A.** I don't think that's the effect. I don't think that's  
6     the explanation.

7     **Q.** What's your general admission rate, Director McGrath?

8     **A.** About 5 percent.

9     **Q.** So if I'm right -- and we'll put on the evidence later in  
10    the case. I don't want to bother you with it now if you  
11    don't have it off of the top of your head.

12                 But if the evidence shows that people who get staff  
13    interviews get admitted 50 percent of the time and your  
14    general admit rate is 5 percent, it means doing a staff  
15    interview is pretty helpful, right?

16    **A.** I don't think you can conclude that it was the having of  
17    the interview that made the difference.

18    **Q.** Let's talk about the people that get interviews. You  
19    were here for my opening, right?

20    **A.** I was.

21    **Q.** And you heard me say, and I think you might have heard  
22    Mr. Lee say something similar, about 5 percent of your  
23    applicant pool are in the recruited athletes, legacies,  
24    dean's list, and children of faculty or staff group. Would  
25    you agree with that?

1     **A.**   Yes.

2     **Q.**   And they make up about 30 percent of the admitted class.  
3       You agree with that, too, right?

4     **A.**   I have no reason to doubt that.

5     **Q.**   What percentage of the people that get staff interviews  
6       are in that ALDC group?

7     **A.**   I don't know.

8     **Q.**   You don't know if they're overrepresented in the group  
9       that do staff interviews?

10    **A.**   If who --

11               MR. LEE:  I'm going to object to the question  
12       because I don't know what "overrepresented" means.

13               MR. MORTARA:  I was about to explain.  Can I  
14       explain, Your Honor?

15               THE COURT:  Yes.

16       BY MR. MORTARA:

17    **Q.**   So they're 5 percent of the general applicant pool.  Are  
18       they more than 5 percent of the people that get staff  
19       interviews?

20    **A.**   I don't know what the number is.

21    **Q.**   Would it surprise you that nearly half of the staff  
22       interviews your office does are from athletes, legacies,  
23       dean's list, and the children of faculty or staff?

24    **A.**   I think that's possible.  I can't dispute that.

25    **Q.**   And you wouldn't have any reason to dispute that

1 20 percent of all the ALDC applicants get these staff  
2 interviews. Would you have any reason to dispute that?

3 **A.** No.

4 **Q.** And that would be compared to about 1 percent of the  
5 regular non-ALDC applicants. You wouldn't have any reason to  
6 dispute that either, would you?

7 **A.** I would not.

8 **Q.** Does that seem like a first-come, first-serve system to  
9 you?

10 **A.** What's described here on this website is one group of  
11 on-campus interviews which are available to the general  
12 public. Earlier I tried to suggest that we do, in addition  
13 to that, a number of in-person interviews as needed, in their  
14 broad definition for that, of people who are in town who we  
15 need to see or who wish to see us and who we're able to see.

16 That's not the same thing as the thing that I think  
17 is being described on this website.

18 **Q.** This is kind of what I meant earlier. What you put on  
19 your website is a general statement to the public about  
20 interviews, right?

21 **A.** Yes.

22 **Q.** Then there's something else. There's interviews you can  
23 get in other ways that are not advertised, correct?

24 **A.** Yes. There are interviews we do in other ways?

25 **Q.** And some of the other ways that you can get interviews is

1 if you're the child or relative of a donor; is that right?

2 **A.** That may happen. It does happen.

3 **Q.** And some of the other ways you can get interviews are,  
4 for instance, you set aside a quota of interviews for  
5 recruited athletes for each team.

6 **A.** We do interview a number of athletes for each team, and  
7 we do have a target number for that, yes.

8 **Q.** You have a set-aside number of interview slots for  
9 recruited athletes?

10 **A.** Yes. We have a number we agree on not doing more than,  
11 yes.

12 **Q.** And you can even get an interview outside of the  
13 September-to-November timeframe that you tell the world on  
14 the website you can get one if you're in one of these special  
15 categories, right?

16 **A.** Yes.

17 **Q.** I want to talk more about your holistic admissions. And  
18 that word comes in part from Supreme Court opinions. You  
19 recognize the word, right, Director McGrath?

20 **A.** Yes.

21 **Q.** Harvard's been a part of making that word into our  
22 Supreme Court law, I think.

23 **A.** Yes. I do recognize the word.

24 **Q.** We've heard a lot -- I wish I wasn't going to say the  
25 word *Bakke* because I almost think I'm going to have a



1 response to it, but we've heard a lot about *Bakke* and you've  
2 read *Bakke*, haven't you?

3 **A.** Yes.

4 **Q.** I understand you're not a lawyer. I'm not going to try  
5 to test your legal acumen, but you've also read the *Grutter*  
6 decision, right?

7 **A.** Yes.

8 **Q.** I want to just read you a sentence from *Grutter*, not to  
9 ask for legal view but to ask you if it reflects Harvard's  
10 college admissions. This is about the Michigan law school.

11 "The law school engages in a highly individualized  
12 holistic review of each applicant's file, giving serious  
13 consideration to all the ways an applicant might contribute  
14 to a diverse educational environment."

15 Does Harvard consider all the ways an applicant  
16 might contribute to a diverse educational environment?

17 **A.** We consider all the ways that we're aware of in which  
18 that would be true.

19 **Q.** Right. Because of course something that somebody never  
20 tells you and is internal to them and you don't know, and  
21 they might contribute in some way you never expected, right?

22 **A.** That's right.

23 **Q.** One of the aspects of a person that you consider when  
24 you're looking at all the ways you can that an applicant  
25 might contribute to a diverse educational environment is that

1 person's race or ethnicity, right?

2 **A.** Yes.

3 **Q.** Now, Director McGrath, you would agree with me that  
4 someone's religion can be as or even more important than  
5 their race, wouldn't you?

6 **A.** Important for what purpose?

7 **Q.** Important to them. Important to what they'll teach  
8 others. I'll get into a few examples in a second.

9 But you agree it can be as important to them, for  
10 example?

11 **A.** It certainly could, yes.

12 **Q.** For instance, I'm white, I'm of somewhat Italian  
13 extraction, but I'm also Roman Catholic. And it might be  
14 more important to me that I'm Roman Catholic than it is what  
15 my skin color is, right?

16 **A.** Yes.

17 **Q.** Now I want to talk about religious diversity. An  
18 applicant might not choose to mention their religious  
19 background in their essays, but it still might be something  
20 they would bring to Harvard's pluralistic community, right?

21 **A.** Yes. Right.

22 **Q.** I want to use an example based on me.

23 So imagine a young white gentleman from -- young  
24 man from Milwaukee. He goes to college where his best  
25 friends are a Muslim, Hindu, and a Catholic. You agree it's

1 possible that both the identity of those three friends as  
2 well as their religious background could really add to this  
3 suburban Milwaukee boy's experience, don't you?

4 **A.** Yes. I would agree.

5 **Q.** And this would be true even though the three friends just  
6 checked boxes on their application and didn't mention their  
7 own ethnicity or their religious preferences anywhere, right?

8 **A.** Yes.

9 **Q.** And the Muslim fellow for instance could be a Pakistani  
10 or Arab, but maybe the most profound way in which he was an  
11 educator of the young boy from Milwaukee is that he was a  
12 Muslim. That's not implausible, is it?

13 **A.** No, it's not implausible.

14 **Q.** He's Pakistani, by the way.

15 The Catholic fellow could be Polish-American or  
16 Filipino, but maybe the most profound way in which he was an  
17 educator of me was that he was Catholic and my confirmation  
18 sponsor when I converted in college. Is that possible?

19 **A.** Yes, that's possible.

20 **Q.** He's Filipino.

21 So religion can be very important to who someone is  
22 and what they bring to the community and whether they'll be a  
23 great educator of others. Would you agree with that?

24 **A.** I would agree that that's possible.

25 **Q.** But Harvard does not track the religious identity of

1 applicants, do you?

2 **A.** No, we do not track them.

3 **Q.** And your paper and online application systems do not  
4 allow you to even see the self-proclaimed religious identity  
5 of an applicant, correct?

6 **A.** Correct.

7 **Q.** That's the case even though there's a place on the common  
8 application for religion, self-proclaimed religion, correct?

9 **A.** Correct.

10 **Q.** There's a place for it on the application. Some  
11 applicants provide their religious information, and you  
12 choose to ignore it by not even having it transfer to your  
13 system, correct?

14 **A.** We have done that on the advice of counsel in  
15 Massachusetts. We are in Massachusetts.

16 **Q.** Are you suggesting to me that the reason that Harvard  
17 does not look at the religious persuasion of its applicants  
18 is because its lawyers told them it might be illegal to do  
19 so?

20 **A.** I did not say that Harvard does not look at the religious  
21 persuasion of our applicants.

22 **Q.** Harvard chooses to ignore the self-proclaimed religious  
23 affiliation of applicants who provide that information on the  
24 common application because that's the advice of counsel. Is  
25 that what you said?

1     **A.** I would not say that we ignore what we do know, which  
2     will not be the information on that box you're referring to.

3             We do take into account, as we say we do,  
4     everything we can learn about an applicant. We do not track  
5     or preserve the answer given to that opportunity to check a  
6     box.

7     **Q.** It's not just track or preserve, ma'am. You don't even  
8     allow it to transfer to your system. Your admissions  
9     officers don't see it.

10            MR. LEE: It's been asked and answered and she said  
11     it was on advice of counsel because of Massachusetts law.

12     BY MR. MORTARA:

13     **Q.** I just want to clear up one thing, which is that it's not  
14     just that you don't retain it. It's that you don't see it.

15     **A.** We don't see it.

16            MR. LEE: Right.

17     BY MR. MORTARA:

18     **Q.** How is that looking at the whole person if you can't see  
19     something that's as important as religion?

20            MR. LEE: Your Honor, on the checking the box, she  
21     said why they don't transfer the information. She just said  
22     three times they'll look at the information if they find it  
23     out otherwise. There's no foundation for this question.

24            THE COURT: That's what I understand she's saying.  
25     They don't transfer it from the common app. They don't track

1 it from the common app. But if it appears elsewhere in the  
2 application, they --

3 MR. MORTARA: They can look at it. That's  
4 completely my understanding to that --

5 THE COURT: If you're trying to make that point,  
6 I've already got the point. If you're trying to make a  
7 different point, ask the question and then I'll decide  
8 whether or not it's going to be --

9 MR. MORTARA: All right. I'll try to make the  
10 point through a question rather than directly to Your Honor.

11 THE COURT: Perfect.

12 BY MR. MORTARA:

13 **Q.** Is this a significant obstruction in looking at whole  
14 applicants that you're not able to see their self-proclaimed  
15 religious identity in the box checking? Not in an essay. I  
16 understand if somebody writes "I'm a Catholic and it's really  
17 important to me," for instance, I would have written "I'm an  
18 atheist and maybe I'm going to meet somebody that's going to  
19 convert me to become a Roman Catholic" or whatever.

20 You can take into account what they're writing  
21 about themselves in their essays. You do that, right?

22 **A.** Yes.

23 **Q.** Okay. I'm just talking about the fact that you're not  
24 allowed to, for whatever reason, look at someone's  
25 self-identified religion, I am Roman Catholic, I am Muslim.

1 I am Hindu. Just in the checking of a box or filling out of  
2 a form, that's the common app. You got that distinction in  
3 your head?

4 **A.** Yes. I want to be sure that I understand your question  
5 when it comes to, again --

6 **Q.** Do you consider that to be a significant obstacle in  
7 evaluating whole people, that you are not allowed to think  
8 about their self-proclaimed religious identity unless they've  
9 written about it elsewhere in their application?

10 **A.** We have not considered that to be a disadvantage.

11 **Q.** Would you consider it to be a disadvantage if you  
12 couldn't consider their race?

13 **A.** Would I consider it to be a disadvantage if we couldn't  
14 consider their race?

15 **Q.** It's the exact same question. So I just asked you about  
16 religion in the box and if you can't consider that is that an  
17 obstacle. And you said we haven't considered it a  
18 disadvantage.

19 **A.** We find it an advantage to be able to consider race.

20 **Q.** Right. But you said it's not a disadvantage that you  
21 can't do religion the same way, right?

22 MR. LEE: No.

23 **A.** I did say that.

24 MR. LEE: I object to "in the same way." What are  
25 we talking about? Checking the box or what's in the

1 application now?

2 MR. MORTARA: Your Honor, that's not even an  
3 objection. I got instructed on this yesterday.

4 THE COURT: Yes. It's not an objection.

5 MR. LEE: I object. The question is vague and  
6 ambiguous because we don't know what he's talking about.

7 THE COURT: You can just rephrase the question.

8 BY MR. MORTARA:

9 Q. We'll keep working on this until we get it right.

10 MR. LEE: You know, Your Honor, there is a limit.

11 THE COURT: Skip the narrative. Ask the question.

12 BY MR. MORTARA:

13 Q. There is a box or there's a form on the common  
14 application where someone can say "I am Roman Catholic." Do  
15 you understand that?

16 A. Yes.

17 Q. Harvard doesn't look at that answer. They're not -- they  
18 don't do it, for whatever reason, right?

19 A. Correct.

20 Q. Forgetting about what people say on their essays and all  
21 that, I asked you do you find it to be a disadvantage that  
22 Harvard doesn't get that information about self-proclaimed  
23 religious identity from the common application. And you said  
24 we don't find it to be a disadvantage. Do you remember that?

25 A. Yes.



1     **Q.** My question is, would Harvard find it to be a  
2     disadvantage if they couldn't consider race?

3     **A.** I think we would.

4     **Q.** In the same way, on the box in the application. So it's  
5     different between religion and race. That's your testimony?

6     **A.** Yes.

7     **Q.** Why is it different?

8     **A.** Because we have, as you're aware, a practice of giving  
9     special consideration to ethnic identity as submitted on  
10    those check box materials.

11    **Q.** But you have that special practice of considering ethnic  
12    identity in order to get the educational benefits that flow  
13    from racial diversity, right?

14    **A.** That's correct.

15    **Q.** Are there educational benefits that flow from religious  
16    diversity?

17    **A.** Yes.

18    **Q.** So why isn't it a disadvantage that you can't consider  
19    the self-proclaimed religious identity of someone who puts  
20    that in on the common application?

21    **A.** When we know it as provided through the other aspects of  
22    the candidacy, we may well consider it.

23    **Q.** This is my point. You say it's not going to be a  
24    disadvantage that you don't get to see what someone puts in  
25    the box on religion, right?

1     **A.**   Yes.

2     **Q.**   But it is going to be a disadvantage if you can't see  
3     their race?

4     **A.**   We have found it helpful to know what racial identity a  
5     student has given us.

6     **Q.**   Would you find it helpful to know the religious identity  
7     a student give you?

8     **A.**   When it is disclosed to us in the application, we often  
9     find it helpful.

10    **Q.**   Would you find it helpful if you carried through the  
11    information from the common application, just like you carry  
12    through the information about race from the common  
13    application?

14    **A.**   I can't tell you whether we would or not, but we don't.

15    **Q.**   You could choose not to carry through the information  
16    about race on the common application, just like you've  
17    elected to not carry through the information about religion,  
18    right?

19    **A.**   We have made that choice with the advice of counsel.

20    **Q.**   I don't want to know why you made the choice.

21               My point is you could make the choice not to carry  
22    through that information about race, just like you've made  
23    the choice for whatever reason not to carry through that  
24    information about religion, correct?

25    **A.**   Yes, that choice could be made.

1     **Q.** You don't even have a hunch as to whether or not a  
2     race-blind admissions process would be beneficial or  
3     detrimental to diversity on campus at Harvard; isn't that  
4     right?

5     **A.** I have a hunch that we would have a different college  
6     without taking that factor into account.

7     **Q.** You don't have a hunch as to whether it would be  
8     beneficial or detrimental, do you?

9     **A.** I do.

10    **Q.** Could you please turn to your deposition? I'm going to  
11    get it for you because you don't have it yet.

12             MR. MORTARA: Your Honor, may I approach?

13             THE COURT: Yes.

14             MR. LEE: Which one?

15             MR. MORTARA: We've got it all in one. It's  
16    consecutive. When I use a page, you'll know which one.

17    BY MR. MORTARA:

18    **Q.** Would you turn to page 255, Director McGrath, and let me  
19    know when you're there, ma'am.

20    **A.** I'm there.

21    **Q.** At line 21 it says, "Do you have a view as to whether or  
22    not a race-blind admissions process would be beneficial or  
23    detrimental to diversity on campus?"

24             Your lawyer objected. Go ahead and answer if you  
25    can.

1           You asked your own question, "As the director of  
2 admissions?

3           "QUESTION: Yes."

4           And this is your answer to the question. "I don't  
5 know whether it would. I can't -- I don't have a hunch on  
6 that."

7           Do you see that?

8   **A.** I do.

9   **Q.** That was your sworn testimony in this case, right?

10   **A.** That's right.

11   **Q.** I want to talk to you about Harvard's historical use of  
12 race, just very briefly. Does Harvard use race in its  
13 college admissions process more than it did 15 years ago?

14   **A.** I don't think so, no.

15   **Q.** Does Harvard use race less today in its admissions  
16 process than it did 15 years ago?

17   **A.** No, I would not say that.

18   **Q.** So the use of race in Harvard's admissions process has  
19 maintained a steady state over the last 15 years. Is that  
20 about right?

21   **A.** That is my sense.

22   **Q.** I want to shift focus now to other aspects of the  
23 admissions process.

24           Before the full committee, the docket subcommittees  
25 have already decided who to affirmatively bring up in full

1 committee; is that right? Correct my language if I'm wrong.

2 **A.** Would you mind repeating the question?

3 **Q.** Sure. There's something called a docket subcommittee.  
4 Dean Fitzsimmons was here. There's something called a docket  
5 subcommittee.

6 **A.** Yes.

7 **Q.** They produce a list of candidates they want to bring up  
8 at full committee. Is that kind of the way to say it?

9 **A.** Yes.

10 **Q.** And before the full committee, those docket subcommittees  
11 have decided who they're going to bring up in the full  
12 committee, right?

13 **A.** Yes.

14 **Q.** Now, at the beginning of the full committee meeting, you  
15 discuss the relative breakdown of applicants by race,  
16 correct?

17 **A.** Yes.

18 **Q.** And at the same time, you and Dean Fitzsimmons actually  
19 know the racial makeup of not just the applicant pool but  
20 also of those who have been passed out of the subcommittee,  
21 right?

22 **A.** Yes.

23 **Q.** And the reason you get that information is that it's  
24 interesting to you and Dean Fitzsimmons to see what the shape  
25 of the group appears to be as it's shaping up, right?

1     **A.**   Yes.

2     **Q.**   And if you or Dean Fitzsimmons saw the numbers coming out  
3       of subcommittee showed a particular racial group was  
4       underrepresented, you'd talk about it and give it attention,  
5       right?

6     **A.**   Yes. But our typical practice is at that juncture and  
7       with that information in hand to give the entire committee an  
8       overview of the proportions, the shape of the class as it's  
9       shaping up along several dimensions, including race.

10    **Q.**   Now, after the full committee has voted, there's some  
11       fine-tuning of the decisions because you'll still have too  
12       many admits, right?

13    **A.**   Typically at the beginning of the full committee process,  
14       we have some number of applicants in various categories,  
15       physical sciences, geography, race and so on. And those are  
16       usually the total number and the total -- we're adding a lot  
17       of people, and we're also taking away a lot of people. So  
18       those are very preliminary numbers, and we typically end up  
19       at the end of the process with more people than we have total  
20       in front of you us in that one-pager.

21    **Q.**   And so there's some fine-tuning that has to take place,  
22       right?

23    **A.**   You can call it fine-tuning, yes.

24    **Q.**   If there was a group that was surprisingly or notably  
25       underrepresented, you'd go back and look at those cases,

1 whether it be engineers or whether it be a racial group,  
2 correct?

3 **A.** We might or might not. Depending on the strength of the  
4 cases and the area people's sense of their own cases that  
5 might not at that point have yet been admitted or proposed  
6 for admission.

7 **Q.** What's the sufficient level of specificity the office  
8 uses for what constitutes good representation of the class?

9 **A.** Well, we don't have a formula or numbers, and we don't  
10 have a formulaic way of describing that. We mostly want  
11 people to understand where we are then and to take a look at  
12 where we are going ahead. It doesn't necessarily change the  
13 proportions. It may.

14 **Q.** When you say where we're going then and where we're going  
15 ahead, that's last year's numbers were X and this year's  
16 numbers look like it's Y. Let's look carefully the these  
17 people?

18 **A.** No. What I meant is that people have a sense of where  
19 the class is headed at the moment in the context, often, of  
20 last year's numbers. And they're at this moment going back  
21 and preparing cases to present again or to strengthen, to  
22 confirm to keep in the class. It's a piece of information  
23 that may help area people.

24 And it also helps us as we fine-tune the final  
25 total target number. We do have one target number in our

1 process which is the number of beds in the freshman class.  
2 And to yield that number we have to determine or project a  
3 total number of candidates to admit. And that chart may help  
4 us do that.

5 **Q.** And that clarity is the one-pagers that show all sorts of  
6 information, including race?

7 **A.** Yes.

8 **Q.** Now, your goal is to make sure that you're not having a  
9 dramatic drop-off in some group from a certain level that you  
10 had last year, right?

11 **A.** That's not really a goal. It's something we would like  
12 to be aware, but it's not a goal to prevent it.

13 **Q.** Could you look at your deposition at page 269, Director  
14 McGrath.

15 **A.** Yes.

16 **Q.** And at line 11 there's a question and quite a lengthy  
17 answer, and I will read the entire answer. I want to start  
18 with the question and the beginning part of the answer.

19 "Is there anything specific about last year's  
20 statistics that makes sense, or is the goal to simply ensure  
21 there is not too great a deviation from year to year?

22 "ANSWER: The goal is to make sure -- the goal  
23 is -- a goal is to make sure that we're not having a dramatic  
24 drop-off in some group who we did at a certain level with  
25 last year. And because the numbers I referred to tell you



1     how many applicants that there are this year, if we're not,  
2     you know, underconsidering, as it were, applicants who seem  
3     to be admitted or at a higher level this year than we seem  
4     likely to do. We're looking at dramatic differences in a  
5     short period of time. Just as we think about hearing cases  
6     at the end, we're talking about this in the context of  
7     individual cases, just how members of" -- I think that should  
8     be "this" -- "his ethnic group are doing, is this a strong  
9     case or perhaps underweighted."

10             Do you see that?

11     **A.**    Yes.

12     **Q.**    And that was your sworn testimony?

13             MR. LEE:  Actually, I think you misread it.  It  
14     says "we're looking for dramatic differences."

15             MR. MORTARA:  Thank you, Mr. Lee.

16             MR. LEE:  And you missed the end of the answer  
17     which says "is this a strong case that was perhaps  
18     underweighted," and the rest is "or is it just not a very  
19     good case, period."

20     BY MR. MORTARA:

21     **Q.**    And then the next question is, "The goal at the end of  
22     the day is to avoid a dramatic drop-off among minority  
23     representation within a particular class on any given year?

24             "ANSWER:  A goal would be to avoid it by  
25     inadvertence or lack of care.  Some things can't be avoided."

1                   Do you see that?

2       **A.**   And that's what I should have said in the first place to  
3       your question, your initial question, previous question.

4       **Q.**   That's no problem, Director McGrath.

5                   You remember we were talking about the Unz article,  
6       and it was published in late 2012, right?

7       **A.**   Yes.

8       **Q.**   And you remember that David Brooks mentioned it in the  
9       New York Times in December 2012, do you?

10      **A.**   Yes, I do.

11      **Q.**   And you got some email and some discussions about Unz.  
12      We've already looked at one of them.

13                  But you also got some emails and discussions about  
14      the Unz article in the early 2013 timeframe, right?

15      **A.**   Yes.

16      **Q.**   We'll get into that in a little bit.

17                  But in that early 2013 timeframe, data about  
18      whether Harvard's admissions process was discriminating  
19      against Asian-Americans would have been interesting to you?

20      **A.**   The press coverage of it was of interest to us.

21      **Q.**   But would data about whether or not Harvard's admissions  
22      process was discriminating against Asian-Americans been  
23      interesting to you at that time?

24      **A.**   It would be of interest to us to know what was being  
25      published.   Yes.

1     **Q.** I don't mean to quibble with you.

2     **A.** Yes.

3     **Q.** I'm just talking about you. I want to just talk about  
4     you.

5                 Would data about whether or not Harvard's  
6     admissions process was discriminating against Asian-Americans  
7     been interesting to you in early 2013?

8     **A.** If I understood the data, yes. I'm always interested to  
9     look at data.

10    **Q.** And of course, in the course of this case you became  
11    aware that in 2013 Harvard's 's Office of Institutional  
12    Research had done some work related to this topic, correct?

13    **A.** No, I was not aware of that.

14    **Q.** Are you aware today of work that the Office of  
15    Institutional Research was doing in January, February of 2013  
16    to analyze whether Harvard's admissions process was biased  
17    against Asian-Americans?

18    **A.** I have become aware of those data and that work during  
19    the course of preparation for this trial.

20    **Q.** And to be clear, you did not see reports or PowerPoints  
21    or memos from OIR on this subject matter in 2013, did you?

22    **A.** I have seen from time to time and had seen from time to  
23    time data they had produced for various questions. I frankly  
24    don't remember on what topics. They have done research for  
25    the president for a long time.

1     **Q.** But you did not see -- you personally did not see any  
2     reports or PowerPoints or memos from OIR purporting to  
3     analyze the question of Asian-American discrimination in  
4     early 2013, did you?

5     **A.** You know, I'm not sure what I saw in what year, but I  
6     don't recollect that.

7     **Q.** And you don't remember having any discussions with Dean  
8     Fitzsimmons about that work back in early 2013, do you?

9     **A.** About which? About OIR's work?

10    **Q.** About the work that you've become aware of through the  
11    course of preparing for this trial that OIR did on the  
12    subject of Asian-American discrimination.

13    **A.** I do not recollect anything back then that we discussed.

14    **Q.** Can you think of any reason today why Dean Fitzsimmons  
15    would not have included you in the loop with respect to work  
16    that OIR was doing on admissions?

17    **A.** I don't know why he didn't.

18    **Q.** I want to go back to that November 28 email chain,  
19    Plaintiff's Exhibit 220.

20               MR. MORTARA: And I haven't offered it yet, Your  
21    Honor. I am going to offer Plaintiff's 220 now.

22               MR. LEE: I thought it was offered. This is the  
23    one with the hearsay within the hearsay.

24               MR. MORTARA: That's my fault. I forgot it's been  
25    offered and admitted against the hearsay uses that I said I

1 wasn't going to make. Sorry about that, Mr. Lee.

2 THE COURT: I'm not sure it ever was moved in.

3 THE CLERK: Yes, it was.

4 THE COURT: I didn't have it marked off either.

5 Karen did.

6 BY MR. MORTARA:

7 **Q.** And looking back at your email -- thank you, Ms. Folan.

8 Looking back at your email, we can agree it's a  
9 fair thing to say in your email response to Mr. Gilman that  
10 the thrust of your email is you don't agree with what Unz is  
11 saying, right?

12 **A.** I don't take the question of the data on directly in that  
13 email. I introduce some variables that I think would make it  
14 hard to interpret them very simply. I certainly don't  
15 provide other data that are better or more accurate.

16 **Q.** I perhaps made the question a little bit more complicated  
17 than I should.

18 You don't agree with the thesis of the Unz article,  
19 do you?

20 **A.** No, I don't.

21 **Q.** Right. And now I want to clear up something that's in  
22 the email.

23 It says, "The only numbers we disclose to the  
24 public are in our regular press releases, and we furthermore  
25 provide to IPEDS and to the census bureau and related federal

1 offices. None of them would support the more crazy  
2 speculations here, though some of it is correct."

3 And I wanted to give you an opportunity and maybe  
4 the next couple sentences would help to explain what you  
5 thought was correct about the Unz article.

6 **A.** You know, I actually don't remember it. I do remember it  
7 was a busy time, and I remember reading this quite quickly.  
8 I probably should not have seemed to confirm that it was  
9 correct. I did say that.

10 **Q.** Thanks for that clarification. I want to focus you on  
11 the paragraph above where you say, "One can argue endlessly,  
12 and people do, about the criteria they wish to use for  
13 Harvard admission."

14 Do you see that?

15 **A.** Yes, I do.

16 **Q.** Sorry. Were you finished?

17 **A.** Yes.

18 **Q.** You said several times that many, many people attempt to  
19 lecture Harvard about how they should be deciding who gets  
20 in. I think you said that several times, haven't you?

21 **A.** Yes, I think I have.

22 **Q.** Do you consider Students for Fair Admissions to be  
23 lecturing Harvard about how it should do its admissions  
24 process?

25 **A.** I'm not sure that I would be quick to use the word

1 "lecturing," but I do know that people have various opinions.

2 **Q.** And you say, "As you know, these criteria have also been  
3 of interest to the OCR and the courts."

4 Do you see that?

5 **A.** Yes.

6 **Q.** And the OCR refer to the Office of Civil Rights, right?

7 **A.** Yes.

8 **Q.** And down at the bottom it says, "And we have been  
9 examined by OCR most fully about 22 years back when we had a  
10 full compliance review about Asian-American bias which  
11 resulted in a very gratifying finding of approbation. It  
12 appears that that chapter is known to the author."

13 Do you see that?

14 **A.** Yes.

15 **Q.** One of the reasons you were comfortable conveying to  
16 Mr. Gilman that you thought little of the Unz allegations was  
17 that OCR had cleared Harvard previously, right?

18 **A.** That was part of my context, yes.

19 **Q.** And you frequently relied on the OCR investigation in  
20 discussing the question of Asian-American discrimination with  
21 others internally to Harvard and externally. Is that fair?

22 **A.** Yes. From time to time I do.

23 **Q.** I'd like you to turn now to Plaintiff's Exhibit 225.  
24 Plaintiff's Exhibit 225 is another email chain on which you  
25 are participating. Do you see that?

1       **A.**   Yes.

2               MR. MORTARA:  We are going to offer  
3       Plaintiff's 225.

4               MR. LEE:  Same thing.  Second page has hearsay  
5       embedded in the email.  I assume it's not being offered for  
6       its truth.

7               MR. MORTARA:  It is not.

8               THE COURT:  Okay.  With that caveat, it's admitted.  
9       (Plaintiff Exhibit No. 225 admitted.)

10      BY MR. MORTARA:

11      **Q.**   And it starts off with an email from our previous  
12      participant, Robert D.  Do you see him?

13      **A.**   I do.

14      **Q.**   And he writes to Kathryn Vidra.  Who is she?

15      **A.**   She is a colleague of mine who is in financial aid and  
16      admissions and may have, although I can't be certain, been an  
17      admissions area person for some area that this Robert D is  
18      concerned.  She knows him somewhere, but she's a colleague of  
19      mine, a senior colleague of mine in the admissions office.

20      **Q.**   This is occurring in December 2012.  Do you see that?

21      **A.**   Yes.

22      **Q.**   Is it a fair characterization to say Robert is emailing  
23      Ms. Vidra, again passing along the Unz article and asking  
24      questions?

25      **A.**   Yes.



1     **Q.** And then Ms. Vidra forwards the email to you and Dean  
2     Fitzsimmons. It says, "Hi, WRF" --

3             That's Dean Fitzsimmons, right?

4     **A.** Yes.

5     **Q.** -- "/Marlyn. Do we have a response? Thanks for any  
6     advice."

7             Do you see that?

8     **A.** Yes.

9     **Q.** You don't have any reason to doubt you got this email,  
10    right?

11    **A.** I have no reason to doubt that.

12    **Q.** And then at the top is your response which also copies  
13    Dean Fitzsimmons, right?

14    **A.** Yes.

15    **Q.** Do you see that? And it says, "Kitty, I have been  
16    telling people that that set of views is nothing new, etc. I  
17    often mention that we have had opportunities to show the OCR,  
18    the courts, and others how our process works and that the OCR  
19    has found us in compliance with the law and with general  
20    principles of fairness."

21             Do you see that?

22    **A.** I do.

23    **Q.** And again, there you're mentioning the Office of Civil  
24    Rights review, right?

25    **A.** Yes.

1     **Q.** And down below it says, "Fitz may have more specific  
2     talking points to offer, but I have found that a pretty  
3     simple response seems to shut up anyone not already loaded  
4     for bear, and one can do little with the latter except point  
5     out that many people have views about how we should do  
6     admissions."

7                     Do you see that?

8     **A.** I do.

9     **Q.** Did you ever see any talking points that Dean Fitzsimmons  
10    drafted in response to the Unz article?

11    **A.** Did I ever see any? I don't remember when or what they  
12    were, but I think yes, I did.

13    **Q.** Now I want to talk to you about some correspondence that  
14    you were involved with with somebody from outside of Harvard.  
15    And I'm going to use Plaintiff's Exhibit 279 which is in your  
16    binder.

17                     And you recognize this letter to Drew Faust, right,  
18    Director McGrath?

19    **A.** I'm looking at it. If I could have just a moment. I'm  
20    sorry. I'm slow here. I want to be sure that --

21                     MR. MORTARA: Your Honor, could we have an  
22    afternoon break? Because now would be a perfect time.

23                     THE COURT: I could use the break myself. So why  
24    don't we take a 10- or 15-minute break. What do you want?

25                     MR. MORTARA: 15 would be great.

1 THE COURT: Five past 3:00.

2 MR. LEE: Your Honor, how late are we going today?

3 THE COURT: We've done a lot today. So I am  
4 available until 4:00, but I'm happy to stop earlier if you  
5 want.

6 MR. MORTARA: I've got about, I'm going to guess,  
7 25 to 30 minutes left.

8 MR. LEE: I just have to talk to her about her  
9 expectations. She was supposed to get on and off today. It  
10 looks like that's not going to happen.

11 THE COURT: He says he has another -- say he goes  
12 to something like 3:30. How long do you all think you have  
13 with her.

14 MR. LEE: Can I talk to her?

15 THE COURT: Yes. Let me tell you this: If her  
16 schedule, if it means something to her to get off today and  
17 we take a break now, I can sit past 4:00.

18 MR. LEE: Let me talk to her and I'll see what I  
19 can do.

20 MR. MORTARA: Your Honor, just for the record, if  
21 we can clear up right now, I'd want to move P257 into  
22 evidence. That was the Z list email.

23 THE COURT: 257, the emails between her and her  
24 daughter.

25 MR. LEE: I'm not sure it's relevant, but we'll

1 deal with it on cross.

2 THE COURT: He's just moving to admit it. Now it's  
3 been shown and discussed. So I think the prudent thing is to  
4 admit it.

5 MR. LEE: Fine.

6 THE COURT: I can go as long as we need to today if  
7 it's important for her to get off the stand today.

8 MR. LEE: Can I confer with her about that at the  
9 break?

10 THE COURT: Yes. Do it at the break and we'll come  
11 back at five past, which is now 13 minutes.

12 (Court recessed at 2:53 p.m.)

13 (Plaintiff Exhibit No. P257 admitted.)

14 BY MR. MORTARA:

15 Q. Hello again, Director McGrath. When we left, I had asked  
16 you to turn to --

17 THE COURT: Hold on one a second.

18 What do you want to do about scheduling?

19 MR. LEE: Your Honor, I think we'll see how long  
20 SFFA goes. Then I'll make a judgment.

21 THE COURT: That's fine. And as I say, I have some  
22 flexibility. I'll say 5:00 is my outside limit or Joan will  
23 shoot me.

24 MR. LEE: I think the likelihood is I won't be able  
25 to get through it, but I'll tell you that as soon as I get

1 up. If I can't, we'll suspend at 4:00. I think she can come  
2 back Monday afternoon.

3 THE COURT: As I say, I'm happy to go another  
4 couple of hours if that makes anybody's life easier.

5 BY MR. MORTARA:

6 Q. Dr. McGrath, before you left, I asked you to turn to  
7 P279, which is a letter from a redacted name to Draw Faust.

8 And my first question is, do you recall having this  
9 letter in your files?

10 A. From preparation for the trial, I recall the letter. I  
11 mean I've seen the letter. I don't recall it, but I see it  
12 now and I've seen it in preparation.

13 Q. And I'm just going to point out some elements of the  
14 letter. Just first, you understand that this is a letter  
15 from what appears to be a self-identified Asian-American high  
16 school student to President Faust on the subject the Unz  
17 article and the possibility that Harvard was discriminating  
18 against Asians, correct?

19 A. Yes. I see that that's the topic.

20 Q. It says, "My name is" -- redacted -- "and I am a junior  
21 at" -- redacted. "Part of our AP English curriculum includes  
22 drafting an activism letter inspired by Thoreau's 'Civil  
23 Disobedience' and Dr. Martin Luther King Jr's 'Letter From  
24 Birmingham Jail.' I have chosen to write to you, the  
25 president of the Harvard Corporation, because I believe you

1       may have some authority and can address my concerns about  
2       inequality in Ivy League admissions."

3               Do you see that?

4       **A.**   Yes.

5       **Q.**   And it goes on to discuss concerns about Asian-American  
6       discrimination, doesn't it?

7       **A.**   Yes.

8       **Q.**   And this is from April 2014, correct?

9       **A.**   Yes.

10      **Q.**   Would you agree with me this is a very well-written and  
11      thoughtful letter?

12      **A.**   Yes.

13      **Q.**   And you were involved in discussing the response to this  
14      letter, correct?

15      **A.**   Yes.

16               MR. MORTARA:  And I would offer Plaintiff's 279,  
17      Your Honor.

18               MR. LEE:  I'd object to it as it's offered for its  
19      truth.  The fact that it was sent is fine.

20               MR. MORTARA:  I'm not offering it for the truth.

21               THE COURT:  That's fine.

22      BY MR. MORTARA:

23      **Q.**   Can you turn now to Plaintiff's 287?

24      **A.**   Yes.

25      **Q.**   This is an email chain which includes Robin Bernhard and

1     you and several others. Do you see that?

2     **A.** Yes.

3     **Q.** And it's also from April 2014, correct?

4     **A.** Yes.

5     **Q.** Do you recognize it?

6     **A.** I do from preparation for the trial.

7             MR. MORTARA: Your Honor, we offer Plaintiff's 287.

8             MR. LEE: No objection.

9             THE COURT: Admitted.

10            (Plaintiff Exhibit No. 287 admitted.)

11     BY MR. MORTARA:

12     **Q.** And on the second page you can see the first email is  
13     from Robin Bernhard to Jeff Neal. You ultimately are copied  
14     in on the chain. The subject is, "Letter to President Faust  
15     from high school student re admissions diversity, April 14."

16            Do you see that?

17     **A.** Yes, I do.

18     **Q.** "Dear Jeff. I'm working on a response to the attached  
19     letter, and Marilyn McGrath suggested that I get in touch  
20     with you as you are already dealing with the issue" --  
21     blank -- "writes about."

22            Redacted there is, I believe, the student's name.

23            Do you see that?

24     **A.** Yes.

25     **Q.** You suggested to Robin Bernhard that she get in touch

1 with Jeff Neal about how to respond to this high school  
2 student's essay and letter to President Faust on  
3 Asian-American discrimination?

4 **A.** That's what this is, I have no reason to doubt it.

5 **Q.** And Jeff Neal, he works in public relations for Harvard,  
6 right?

7 **A.** He did, yes, at this time.

8 **Q.** And now you can see Mr. Neal's response, which starts on  
9 the previous page. And I'll split it over two on my screen  
10 here.

11 Do you see the response from Mr. Neal?

12 **A.** Yes, I do.

13 **Q.** At the top he says, "Hi, Robin. This is a tough one.  
14 Seems extraordinarily well-written for a high school  
15 student."

16 Do you understand this to be a compliment to the  
17 letter?

18 **A.** I'm only seeing what I'm reading. I have no idea what he  
19 meant. I can't read his mind.

20 **Q.** And you see down at the bottom he says, "Frankly, I worry  
21 that this letter is a bit of a straw man for the folks  
22 seeking to stage anti-affirmative action lawsuit against  
23 Harvard."

24 Do you see that?

25 **A.** Yes, I do.



1     **Q.** Did you have those same feelings, or did you take the  
2     letter at face value?

3     **A.** I don't remember. I probably took it at face value.

4     **Q.** And then in the middle you see Mr. Neal making a comment,  
5     "More broadly, Harvard was, in fact, investigated by OCR for  
6     just this allegation in the 1980s."

7             Do you see that?

8     **A.** Yes.

9     **Q.** That's the Office of Civil Rights again, right?

10    **A.** I assume so, yes.

11    **Q.** "OCR found that adjusting for legacy and athletics, the  
12    percentage of Asian-American students admitted to Harvard  
13    College was in line with what would be expected."

14             Do you see that?

15    **A.** I do.

16    **Q.** "That is not a fact that we point to regularly. Largely  
17    many folks would also disagree with our policies around  
18    admitting athletes and giving a tip to sons and daughters of  
19    alums."

20             Do you see that?

21    **A.** Yes.

22    **Q.** It goes on to say, "But it is true that we have been  
23    exonerated of these charges that our athletic and legacy  
24    admissions policies are perfectly legal and nothing has  
25    substantially changed since then."

1 Do you see that?

2 **A.** Yes.

3 **Q.** And here, I just want to ask you about "That is not a  
4 fact that we point to regularly."

5 Is this an example of what I was getting at in the  
6 beginning of our discussion together about how Harvard talks  
7 about its admissions process but sometimes doesn't highlight  
8 certain features of it?

9 **A.** I have no idea whether this is an example of that.

10 **Q.** When you have spoken about Harvard's admissions process,  
11 for instance when you were at the Sutton Trust in England,  
12 did you talk about Harvard's preferences for legacies?

13 **A.** I don't remember. I may have.

14 **Q.** Do you know whether Mr. Neal had seen anything from the  
15 Office of Institutional Research on Asian-American  
16 discrimination when he was writing these things in 2014?

17 **A.** I'm sorry. I don't know that either.

18 **Q.** Now, we're just going to get to the part where you get  
19 directly involved in the chain. The bottom email comes from  
20 Robin Bernhard. Who's she?

21 **A.** She was in the president's office, and she was one of the  
22 personnel who handled a good deal of President Faust's  
23 correspondence.

24 **Q.** And she says, "Dear Marlyn. I'm writing to share Jeff  
25 Neal's response below with you in case" -- blank -- "contacts

1 admissions after she gets our letter. I'll also BCC you on  
2 the outgoing."

3 Do you see that?

4 **A.** I do.

5 **Q.** You have no reason to doubt you were blind-carboned on  
6 the outgoing, right?

7 **A.** I have no reason to doubt that.

8 **Q.** In the middle, I want to get to this. You say, "Sounds  
9 just right. No going on the record. And we are always happy  
10 to give our own dumb answer if she contacts us. Thanks very  
11 much for your care with this. Best, M."

12 Do you see that?

13 **A.** I do.

14 **Q.** And by "dumb answer", you don't mean stupid. You mean a  
15 stock answer to these types of inquiries?

16 **A.** I mean our simple, basic answer, yes. Stock answer, yes.

17 **Q.** Form or stock answer?

18 **A.** Probably.

19 **Q.** Did that stock answer when you gave it sometimes include  
20 a mention of the OCR investigation by the Department of  
21 Education?

22 **A.** Yes. And it may in any stock answer. It certainly was  
23 an available idea that was helpful to us.

24 **Q.** I want you now to turn to Plaintiff's Exhibit 265.

25 **MR. MORTARA:** Your Honor, did I offer 287?

1 Ms. Hacker said I did, so I did.

2 THE COURT: Yes, you did.

3 BY MR. MORTARA:

4 Q. Plaintiff's Exhibit 265 is another email course exchanged  
5 between you and your daughter, correct?

6 A. Yes.

7 Q. You were e-mailing your daughter here in her capacity as  
8 an alumni interviewer for Harvard, correct?

9 A. Yes.

10 MR. MORTARA: Your Honor, we offer Plaintiff's 265.

11 MR. LEE: No objection.

12 THE COURT: Admitted.

13 (Plaintiff Exhibit No. 265 admitted.)

14 BY MR. MORTARA:

15 Q. And here you are forwarding to your daughter an email,  
16 which you see at the bottom, from the Utah schools committee.  
17 Do you see that?

18 A. I do.

19 Q. Let's just take a look. This is a January 25, 2014, to  
20 Ian Anderson, copy -- is that your email address?

21 A. Yes.

22 Q. Who is Ian Anderson other than the lead singer of Jethro  
23 Tull?

24 A. That's new information to me. The information that I  
25 have is my Ian Anderson is my colleague who at this time was

1 serving as area person for the state of Utah.

2 **Q.** All right. And what happens here is the Utah schools  
3 committee sends you a list of applicants that they have  
4 ranked in their order of perception of the applicant's  
5 quality for admission to Harvard, correct?

6 **A.** Yes.

7 **Q.** And we can see that there's a lot of redactions here.  
8 The names are redacted, but the applicants are grouped. Do  
9 you see that?

10 **A.** Yes.

11 **Q.** And down below, the committee makes special  
12 recommendation of several specific students. Do you see  
13 that?

14 **A.** Yes.

15 **Q.** And you forwarded on to your daughter. "Sending this  
16 along for your amusement. Pure Utah."

17 Do you see that?

18 **A.** Yes.

19 **Q.** What was so funny about this?

20 **A.** It's part -- this exchange was part of a continuing  
21 discussion I've had with the people in Utah actually who run  
22 a very elaborate ranking process and a couple of other  
23 schools committee chairs around the country who have been  
24 trying to learn from Utah's experience. Elizabeth, my  
25 daughter, was one of them. And I thought it was a good

1 example of what the end product of that was. So there was a  
2 certain continuation of a correspondence in this exchange.

3 **Q.** And your daughter responds to you, "Ha, ha, ha. Very  
4 thorough," which you probably took to be a recognition of  
5 that ongoing conversation you were having with her, right,  
6 about the thoroughness?

7 **A.** Yes, I think so.

8 **Q.** And then it says, "I also love that the top-tier list is,  
9 as you've told me before, all Asians except for a couple."

10 Do you see that?

11 **A.** I do.

12 **Q.** You have remarked to your daughter that the Utah  
13 committee ranks as their top-tier candidates predominantly  
14 Asians, correct?

15 **A.** I probably have. I know that I have pointed out  
16 repeatedly that the group from Utah is more diverse than  
17 people expect it will be.

18 **Q.** But you know that, for instance, Salt Lake City has a  
19 significant Asian population, don't you?

20 **A.** I do.

21 **Q.** But you thought your daughter would find it amusing, in  
22 part, that the Utah committee had put all Asians at the top  
23 of their list?

24 **A.** I thought it would be notable, yes.

25 **Q.** Why did you think it would be okay to remark to your

1 daughter on the ethnicity of the top tier of the Utah  
2 committee recommendations based exclusively on their race?

3 **A.** Because it confounds the stereotype that many people have  
4 of the population of Utah.

5 **Q.** Could you now turn to Plaintiff's Exhibit 461.

6 **A.** Yes.

7 **Q.** In April of 2012, you were involved in responding to  
8 another letter sent to President Faust, weren't you?

9 **A.** Yes.

10 **Q.** And before we look at your response which is here in  
11 Plaintiff's Exhibit 461, the actual letter is also in the  
12 back. It comes after your response, attached to an email  
13 from Andrea Balian.

14 Do you see that?

15 **A.** Yes.

16 **Q.** And so Ms. Balian, who is she?

17 **A.** She's my staff assistant.

18 **Q.** And you were sent this by Rachel Partin. Do you see  
19 that?

20 **A.** Yes.

21 **Q.** From the office of the president?

22 **A.** Yes.

23 **Q.** It says, "Hi, Marlyn. President Faust received the  
24 attached letter from an alumnus regarding admissions  
25 practices. Given the nature of the suggestions, I was

1       wondering if your office wouldn't mind responding on behalf  
2       of the president. Let me know what you think."

3               Do you see that?

4       **A.** I do.

5       **Q.** What follows from that is a letter from a fairly elderly  
6       alum of Harvard, correct?

7       **A.** Yes.

8       **Q.** And you recognize all these documents, both your response  
9       the email and the letter from the alum?

10      **A.** I recognize them from preparation for this trial.

11               MR. MORTARA: Your Honor, we move Plaintiff's 461.

12               MR. LEE: As long as it's not for the truth. The  
13       Harvard response is fine. The letter from the alum is  
14       definitely not for its truth.

15               THE COURT: Yes.

16               (Plaintiff Exhibit No. 461 admitted.)

17       BY MR. MORTARA:

18      **Q.** Let's turn to the letter from the alum. His name has  
19       been redacted. It's dated April 4, 2012. Do you see that?

20      **A.** Yes.

21      **Q.** It's to President Faust. And the writer first says that  
22       he's from the Harvard class of 1942. Do you see that?

23      **A.** Yes.

24      **Q.** And on the second page -- he has a variety of suggestions  
25       about Harvard in the two-page letter, right?



1     **A.**   He does, yes.

2     **Q.**   And on the second page, I want to blow up some of the  
3       suggestions he has. And he says he's got -- "The reason for  
4       my letter is to make comments with regard to the college's  
5       admissions policy."

6               Do you see that?

7     **A.**   Yes, I do.

8     **Q.**   And down below he says, "Another aspect of the admissions  
9       policy should, in my mind, be based on informal quotas."

10              Do you see that?

11    **A.**   Yes.

12    **Q.**   And he says, "I think it is also important to have a  
13       quota based on religious affiliation and skin color."

14              Do you see that?

15    **A.**   Yes.

16    **Q.**   And in a sentence prior to that he says, "I would limit  
17       the number of Japanese students to a certain percentage or  
18       number."

19              Do you see that?

20    **A.**   Yes.

21    **Q.**   And he says, "None of this, of course, has to go beyond  
22       the confines of the dean's office."

23              That's the suggestion from this alum?

24    **A.**   Yes.

25    **Q.**   Then he says, "The last time I was in Cambridge it seemed

1 to me that there were a large number of Oriental students,  
2 for example. I think they probably should be limited to  
3 5 percent, as should other criteria."

4 Do you see that?

5 **A.** I do.

6 **Q.** You would not call Asian-American students at Harvard  
7 Oriental students, would you?

8 **A.** I never have. I wouldn't.

9 **Q.** Neither would I, if I weren't reading this. So we'll  
10 stop doing that now.

11 I want to talk about how you responded to this alum  
12 at President Faust -- was it at President Faust's direction  
13 or her office's direction that you responded?

14 **A.** Yes.

15 **Q.** And I want to talk about your response. Here it is.  
16 April 19, 2012.

17 And you start off with, "President Faust has asked  
18 me to respond to your April 4 letter in which you offer many  
19 thoughtful observations about Harvard College students and  
20 the results of the admissions process."

21 Do you see that?

22 **A.** I do.

23 **Q.** And this wasn't your true thinking about it. You were  
24 being polite, right?

25 **A.** Thank you. Yes, it was a polite response to an elderly

1       alumnus.

2       **Q.**   And elderly alumnus making what we I think can all agree  
3       are shocking suggestions, correct?

4       **A.**   Yes.

5       **Q.**   And at the end of the letter you say, "All of us at  
6       Harvard appreciate your thoughtful letter, as well as your  
7       loyalty over the years."

8               Do you see that?

9       **A.**   Yes, I do.

10       **Q.**   Ms. McGrath, I want to explore this only in minor detail.  
11       In your view, this was an appropriate response, correct?

12       **A.**   I thought it was of the polite response that I would  
13       send.

14       **Q.**   I want to talk about this. This is just something that I  
15       want to just ask you, and I want to do it -- I'm going to try  
16       and do it this way: Do you think in our culture we're more  
17       polite about stereotypes about Asians and Asian  
18       discrimination than we would be about stereotypes or comments  
19       made about other minority groups? Do you think that that's  
20       true in American society?

21       **A.**   I don't.

22       **Q.**   You think we react just as negatively to the use of  
23       "Oriental" as we would to the use of the N word?

24       **A.**   Yes.

25       **Q.**   Would this have been an appropriate response if the alum

1 had complained about the number of N words on campus, to  
2 thank him for his thoughtful comments?

3 **A.** I might have sent the same response. I don't know that  
4 it would be a more or less appropriate response.

5 **Q.** Would you have sent the same response if the alum had  
6 complained about the number of Jewish students on campus?

7 **A.** I can't tell you what I would have done, but I don't know  
8 that I wouldn't have also tried to end the correspondence  
9 with a perhaps too-polite response.

10 **Q.** Do you think that we as a society are less sensitive to  
11 stereotypes or archaic words being used to describe  
12 Asian-Americans than we are to other minority groups?

13 **A.** I don't think that.

14 **Q.** I'm going to shift focus now. I think you've told us  
15 about a lot of things that can go in the personal rating in  
16 your deposition, right? And I want to talk to you about some  
17 of those.

18           You weren't here, Director McGrath, yesterday,  
19 where we had an episode where I had to walk across the  
20 courtroom, and I promised the court that I was going to use  
21 the computer because my handwriting was terrible. It was a  
22 big waste time in terms of the walking back and forth, at  
23 least.

24           I want to ask you if the following list of things  
25 are included in analysis of the personal rating. All right?

1     **A.**   Sure.

2     **Q.**   Is like likability something you look at for the personal  
3     rating?

4     **A.**   That might be a factor.

5     **Q.**   What about whether that person is a good person to be  
6     around?

7     **A.**   That's possibly part of the consideration.

8     **Q.**   You told us it was part of the consideration, right?

9     **A.**   Yes.

10    **Q.**   What about integrity?

11    **A.**   Yes.   Very important.

12    **Q.**   And helpfulness?

13    **A.**   Yes.

14    **Q.**   What about courage?

15    **A.**   Yes.

16    **Q.**   And kindness?

17    **A.**   Yes.

18    **Q.**   And those are some of the things you told us were  
19    involved in the personal rating in your deposition, right?

20    **A.**   Yes.

21    **Q.**   Now, I know you told us that a person's race or ethnicity  
22    should not be included in one of the factors that would weigh  
23    into the personal rating, right?

24    **A.**   Yes.

25    **Q.**   Your words were "should not," right?

1     **A.**   Should not in itself.

2     **Q.**   You also told us that race or ethnic background is not  
3       supposed to be considered in assessing the scores in any of  
4       these areas, right?

5     **A.**   Yes.

6     **Q.**   Now I'm going to ask you to refer to Plaintiff's  
7       Exhibit 1.

8               MR. MORTARA:  Your Honor, we're going to mark this  
9       as plaintiff's demonstrative 22.  We're going to provide a  
10      copy just so it's a record of what I put up on the  
11      demonstrative.

12              THE WITNESS:  I'm sorry.  Which one are you  
13      directing me to?

14      BY MR. MORTARA:

15      **Q.**   Plaintiff's Exhibit 1.

16      **A.**   I got it.

17      **Q.**   Right at the beginning.

18      **A.**   Yes.

19      **Q.**   This is your reading guidance, right?

20      **A.**   That's what it's called.  It's called "Reading  
21      Procedures."  It really, in fact, is, as you will have seen,  
22      I think, a guide to coding.  It's what you take from reading  
23      the application and make sure it gets put into the electronic  
24      records system.  But it's called "Reading Procedures."

25      **Q.**   And it's got a little bit more than that.

1     **A.** It does. But its fundamental thing is it's a how-to  
2     note.

3     **Q.** And also it's got some guidance on how to score things?

4     **A.** Yes, it does.

5     **Q.** And you're responsible for the content of this document  
6     ultimately?

7     **A.** Yes, I am. A group of us develop it every year, change  
8     it every year.

9     **Q.** Please go to the section of the personal rating that's on  
10    page 5.

11    **A.** Yes.

12    **Q.** Does it say anywhere in this document that race should  
13    not be used in assessing the personal rating?

14    **A.** I do not think so.

15    **Q.** Now I've got a broader question.

16           Does it say anywhere in the admissions office, in  
17    any written form, training material, memo, email, or any kind  
18    of writing down to a Post-it on the coffee maker, that race  
19    should not be used in the personal rating? Is it written  
20    anywhere?

21    **A.** In written form, no. It is the subject of a great deal  
22    of discussion and attention in our training process.

23    **Q.** Did you finish, ma'am? Sorry.

24    **A.** I'm finished.

25    **Q.** And we talked about OCR and your reliance on OCR in

1       communications several times today, right?

2       **A.**    Yes.

3       **Q.**    You reviewed the OCR findings when they cleared Harvard  
4       in 1990, correct?

5       **A.**    Yes.

6       **Q.**    Please turn to Plaintiff's Exhibit 555.  Are you there,  
7       ma'am.

8       **A.**    I am.

9       **Q.**    Plaintiff's Exhibit 555 is the statement of findings.  
10      You're familiar with this document, right?

11      **A.**    Yes.

12      **Q.**    And over on page 15 I want you to focus on the statement  
13      at the bottom that is now not displaying properly.  Oh.

14      **A.**    Yes.

15      **Q.**    We'll do our best here.  There we go.  And it carries  
16      over -- putting ing on the screen.  Oh, I did it again.  Not  
17      as good as Ms. Hacker with this thing.  There we go.

18               There's a statement highlighted on the screen.  I'm  
19      going to read the whole thing.  This is part of the OCR  
20      investigation.  OCR actually interviewed a bunch of people  
21      that worked in the admissions office, right?

22      **A.**    Yes, they did.

23      **Q.**    Were you interviewed?

24      **A.**    Yes, I think I was.

25      **Q.**    And here's one of OCR's findings.  "We found that the



1 readers had several different views as to where and whether  
2 Asian-American ethnicity was given positive weight or a tip  
3 in the admissions process. Some readers explained that when  
4 ethnicity was deemed to be a significant factor in an  
5 application, it was reflected in the POR and during  
6 discussions at subcommittee and committee meetings."

7 Do you see that?

8 **A.** I do.

9 **Q.** And I understand that to be Harvard's position about how  
10 it works today, is that right, that ethnicity or race is  
11 reflected in the preliminary overall rating and in  
12 discussions?

13 **A.** Yes. That it may be, yes.

14 **Q.** Then it says, "Other readers indicated that ethnicity was  
15 a factor considered throughout the entire admissions process.  
16 They stated that it could be reflected in the four reader  
17 rating areas as well as in the POR and during the  
18 subcommittee and committee meeting discussions."

19 You see that, right?

20 **A.** I see that, yes.

21 **Q.** And that is in part a reflection of what you say should  
22 not happen which is people using race in assigning the  
23 personal rating, correct?

24 **A.** Yes.

25 **Q.** Now, do you think -- after you read the OCR findings that

1 maybe it would have been a good idea to develop written  
2 guidance so you could ensure the consistency of people using  
3 race in Harvard's admissions process?

4 **A.** I did not I think react at the time nor would I now to  
5 think that the right remedy for that is more written  
6 guidance.

7 **Q.** Did you suggest the development of written guidance?

8 **A.** I don't believe I did. I don't remember.

9 **Q.** Did anyone?

10 **A.** I don't remember following this.

11 **Q.** Now, there is approximately 40 members of the admissions  
12 committee year in and year out; is that right?

13 **A.** Yes.

14 **Q.** You do the hiring in the admissions office, right?

15 **A.** Yes.

16 **Q.** And a lot of your hires are recent college graduates,  
17 right?

18 **A.** Yes.

19 **Q.** In fact, most of your hires in recent years have been  
20 recent college graduates?

21 **A.** Yes. The majority probably these days.

22 **Q.** Now, since you're in charge of hiring, can you give the  
23 Court an idea of what the turnover is like in the people that  
24 read applications?

25 **A.** Yes. We have some very long serving members of our

1 committee. We also have a cohort of more junior people who I  
2 would say typically stay three to six or seven years. It's  
3 hard to generalize, but there's a range.

4 **Q.** I want to go through -- I want to do a who's still left  
5 from the spring of 2011 with you. If you turn to defendant's  
6 Exhibit -- it's not a memory test, Director. Don't worry.

7 **A.** Good. Because I won't get it right.

8 **Q.** Defendant's Exhibit 25, we're going to go through some  
9 together. And the first thing on defendant's Exhibit 25 is  
10 actually a letter.

11 **A.** I'm sorry. I want to make sure. Defense 25. Yes.

12 **Q.** I'm trying to move it along because I know you want to be  
13 somewhere and I want to be somewhere. I'm sorry, Director.  
14 Please take your time.

15 **A.** You're sending many he to D25.

16 **Q.** D25.

17 **A.** I have that.

18 **Q.** The first thing is actually a letter. This document is a  
19 massive collection of things. I'm just going to zoom through  
20 it. It's actually I think from your files and consists of  
21 several manila folders. Do you have recognize some of these  
22 documents?

23 **A.** Yes, I do. And from preparation for this trial.

24 MR. MORTARA: Your Honor, we're going to offer  
25 Defendant's 25.

1 MR. LEE: It's in evidence already.

2 MR. MORTARA: Sorry.

3 THE CLERK: No.

4 MR. LEE: Okay. Then no objection.

5 (Plaintiff Exhibit No. DX 25 admitted.)

6 BY MR. MORTARA:

7 Q. I'd like you to find, it make take you a little while,  
8 page 117 of this file of yours.

9 A. Can you tell me on what part of the page the number  
10 appears?

11 Q. It's at the bottom, the very bottom. Do you see DX 025  
12 dot and there's a number.

13 A. What's the last number?

14 Q. 117.

15 A. That's fine. I'll have it in a moment. I have it now.  
16 Thank you.

17 Q. What you see here is Admissions Committee Members Spring  
18 2011.

19 A. Yes. Good. Yes.

20 Q. I want to go through some of these with you. And we  
21 don't have to go through them one by one. I've tried to do  
22 my best to identify who's there and who isn't. Ian Anderson.  
23 He was on the committee in 2011, correct?

24 A. Yes.

25 Q. He's still at the admissions office, correct?

1     **A.**   Yes.

2     **Q.**   Roger Banks was on the admissions committee in 2011,  
3     correct?

4     **A.**   Yes.

5     **Q.**   He's still at the admissions office, correct?

6     **A.**   Yes.

7     **Q.**   Valerie Bielensen was on the committee in 2011 but is no  
8     longer at Harvard admissions, correct?

9     **A.**   Correct.

10    **Q.**   Okay. I'm going to cross her name off. Jessica Clark  
11    was on the committee in 2011. She is still there, correct?

12    **A.**   Yes.

13    **Q.**   Now we go through Monica Del Toro Brown was on the  
14    committee in 2011 but is no longer there, correct?

15    **A.**   Correct.

16    **Q.**   The same is true of Sarah Donahue, no longer there,  
17    recently retired?

18    **A.**   Yes.

19    **Q.**   And then Devery Doran also no longer there?

20    **A.**   Correct.

21    **Q.**   Danielle Early also no longer there?

22    **A.**   Correct.

23    **Q.**   Precious Eboigbe also no longer there?

24    **A.**   Correct.

25    **Q.**   Ellis Eckhard also no longer there?

1     **A.**   Correct.

2     **Q.**   Bronwyn Evans also no longer there?

3     **A.**   Correct.

4     **Q.**   Now we'll turn to the second page.   Okay?

5     **A.**   Yes.

6     **Q.**   At the top is David Evans.   In 2011 according to this  
7     chart he had been there for 41 years; is that right?

8     **A.**   Yes.

9     **Q.**   And he's still there, isn't he?

10    **A.**   He is.

11    **Q.**   Still at the admissions office.   He was around for the  
12    OCR investigation, correct?

13    **A.**   Yes.

14    **Q.**   Chad Faeber, he's no longer there, correct?

15    **A.**   Yes.

16    **Q.**   William Fitzsimmons, who is he?

17    **A.**   I think you met him yesterday or I should say Monday.

18    **Q.**   That was my poor attempt at a joke.   Natalie Galindo,  
19    she's no longer there?

20    **A.**   Correct.

21    **Q.**   Jennifer Gandi no longer there?

22    **A.**   Correct.

23    **Q.**   Rosemary Green, she's no longer there, but she was around  
24    for the OCR investigation, correct?

25    **A.**   Correct.

1     **Q.** Sally Harty is still there, correct?

2     **A.** Yes.

3     **Q.** She was around for the OCR investigation?

4     **A.** Yes.

5     **Q.** I'm going the wrong way. Marcy Homer is no longer there?

6     **A.** Correct.

7     **Q.** Kaitlin Howrigan is no longer there?

8     **A.** Correct.

9     **Q.** Janet Irons still works there, correct?

10    **A.** Yes.

11    **Q.** And she was around for the OCR investigation, right?

12    **A.** Yes.

13    **Q.** Jonathan Kaufman and Charlene Kim still work in the  
14    office, correct?

15    **A.** Yes.

16    **Q.** On the next page we start off at the top, Amy Crilcaldi,  
17    she's no longer there?

18    **A.** Correct.

19    **Q.** Sean Logan is no longer there?

20    **A.** Correct.

21    **Q.** Christopher Looby is still working at the admissions  
22    office today?

23    **A.** Yes.

24    **Q.** Mary Magnuson is still at the admissions office?

25    **A.** Yes.

1     **Q.** Christine Mascolo is still at the admissions office?

2     **A.** Yes.

3     **Q.** Then there's you?

4     **A.** Yes.

5     **Q.** Sophia Meeze is still at the admissions office?

6     **A.** Yes.

7     **Q.** She's gone, I think, sorry.

8     **A.** She's gone, yes.

9     **Q.** My fault.

10    **A.** She's been gone.

11    **Q.** Dwight Miller is still at the admissions office and has  
12    been there for 44 years in the spring of 2011; is that right?

13    **A.** That's right.

14    **Q.** And he was around when the OCR investigation happened,  
15    correct?

16    **A.** He was.

17    **Q.** Lucerito Ortiz is no longer there?

18    **A.** Right.

19    **Q.** The Elizabeth Pabst is no longer there?

20    **A.** Right.

21    **Q.** James Pautz is no longer there?

22    **A.** Right.

23    **Q.** And on the last page Rick Rice is still at the office,  
24    correct?

25    **A.** He is.



1     **Q.** Margaret Swift is no longer there?

2     **A.** No longer.

3     **Q.** Kathryn Vidra had been there for 27 years in 2011. She's  
4 still there, correct?

5     **A.** Yes.

6     **Q.** And she was around for the OCR investigation, right?

7     **A.** She was.

8     **Q.** And Paris Woods is no longer with the office, correct?

9     **A.** Yes.

10    **Q.** So we've been through the whole list --

11    **A.** And Robin Worth, the last person.

12    **Q.** Sorry. Robin Worth is it still there?

13    **A.** Yes.

14    **Q.** Sorry. We've been through the whole list. There's been,  
15 would you agree, a fair amount of turn over in those seven  
16 years. I think I counted 22 out of 39 people are no longer  
17 there from seven years ago?

18    **A.** Right.

19    **Q.** You'd agree with me there's a fair amount of turnover,  
20 right?

21    **A.** Yes.

22    **Q.** I just have a few questions. Going back to the first  
23 page. Are you certain whether or not Precious Eboigbe was  
24 using race in her assignment of the personal rating?

25    **A.** I cannot be certain of that.

1     **Q.** You also can't be certain whether Monica Del Toro-Brown  
2     was using race in the personal rating?

3     **A.** I can't be certain. I have no reason to believe that in  
4     either case.

5     **Q.** But you can't be certain, can you?

6     **A.** I can't.

7     **Q.** One of the reasons you can't be sure whether these  
8     individuals and others considered race in the personal rating  
9     is Harvard had no written guidance on whether to use race in  
10    the personal rating?

11    **A.** No. The reason I can't be sure is that I haven't seen  
12    evidence of it one way or another.

13    **Q.** You've been reading applications for nearly 40 years,  
14    right?

15    **A.** Yes.

16    **Q.** Going back to our list of things you told us go into the  
17    personal rating. In your experience do Asian-Americans as a  
18    group lack attractive personal characteristics compared to  
19    other applicants?

20    **A.** Not in my experience.

21    **Q.** And none of the characteristics that we've talked about  
22    have any correlation with race, do they?

23    **A.** No. Not per se. They may be revealed in a racial  
24    context, but they have nothing to do with race per se.

25    **Q.** None of these characteristics we've talked about have any

1 correlation with race, do they?

2 **A.** No.

3 **Q.** Thank you. I have no further questions, Director  
4 McGrath.

5 MR. LEE: Your Honor, in answer to your question I  
6 think what I'll do is start and then go until 4:00.

7 THE COURT: Okay. If you decide at 4 you're  
8 feeling energized and wish to push on, just let me know.

9 MR. LEE: Okay.

10 THE COURT: I just missed some of these names.  
11 Natalie Galindo still at the office?

12 THE WITNESS: No, she is not.

13 THE COURT: What about Marcy Homer?

14 THE WITNESS: She is not.

15 THE COURT: Irons?

16 THE WITNESS: Yes.

17 THE COURT: Kaufman?

18 THE WITNESS: Yes.

19 THE COURT: And Kim.

20 THE WITNESS: Yes.

21 THE COURT: Sorry. I just missed a couple.

22 THE WITNESS: Not at all. Thank you.

23 EXAMINATION

24 BY MR. LEE:

25 **Q.** Actually let me provide one more question. May I

1 proceed, Your Honor?

2 THE COURT: Yes.

3 BY MR. LEE:

4 Q. Mr. Mortara suggested Sally Donahue was no longer  
5 involved in admissions; is that correct?

6 A. She has retired from her professional role. She will  
7 help us in admissions not as a regular staff member, I think.  
8 So I just let that go.

9 Q. And is she still reading folders?

10 A. I think she will be this fall.

11 Q. Now, Mr. Mortara began his conversation by suggesting,  
12 and I have a quote, "I've read about a thousand of your  
13 documents."

14 Do you remember he said that at the beginning?

15 A. Of my documents is what he said. I may have misheard.

16 Q. Documents. Now, let's see what he came up with after he  
17 read these thousands of documents. He came up with PX257  
18 which is an email chain between you and your daughter,  
19 correct?

20 A. Correct.

21 Q. And he came up with PX265 which is another email with  
22 your daughter, correct?

23 A. Correct.

24 Q. And he came up with a letter to a 90-year old alum who  
25 was making completely inappropriate comments. That's what he

1     came up with, correct?

2     **A.**   Yes.   Correct.

3     **Q.**   Let's talk about the three things he came up with from  
4     these thousands of documents.  The emails between you and  
5     your daughter, do you recall PX257, the first one?

6     **A.**   I'll have to remind myself which one it was.

7     **Q.**   It would be on the screen.

8     **A.**   257.  I'd rather look at the -- yes, I see it.

9     **Q.**   This is a document he discussed with you about the Z list  
10    email?

11    **A.**   Yes.   Yes.

12    **Q.**   This email exchange between you and your daughter, did  
13    you ever expect it to see the light of day in a federal  
14    courthouse?

15    **A.**   No, I did not.

16    **Q.**   Now, does the email concern discrimination against any  
17    Asian-American applicant at all?

18    **A.**   Not that I can see.

19    **Q.**   Does it concern an Asian-American applicant period?

20    **A.**   Not that I can see.

21    **Q.**   So that's number one of his list.  Let's look at number  
22    two, PX265.

23    **A.**   Yes.

24    **Q.**   Do you have that before you?

25    **A.**   I do.

1     **Q.** This is another email with your daughter, correct?

2     **A.** Yes.

3     **Q.** And this is the one on the Utah schools committee,  
4 correct?

5     **A.** Yes.

6     **Q.** And he asked you specifically about the word "amusement".  
7 Do you recall that?

8     **A.** Yes.

9     **Q.** Were you criticizing or casting aspersions on any of the  
10 applicants mentioned in those emails?

11    **A.** No, I was not.

12    **Q.** Did you criticize or cast aspersions on any individual  
13 applicant in any of the two emails with your daughter?  
14 That's a poor question because it has both.

15                 Let's just stay focused on 265. Did you cast  
16 aspersions or criticize any applicant in the emails that are  
17 P265?

18    **A.** No.

19    **Q.** Do you understand that SFFA contends and has suggested  
20 these emails somehow suggest that you have a bias against  
21 Asian-Americans. Are you aware of that?

22    **A.** I'm aware of that.

23    **Q.** Is that true?

24    **A.** No.

25    **Q.** Now, let's look at his third document from your thousands

1 of documents. It's PX461. Do you have that?

2 **A.** I do.

3 **Q.** Now, this is a letter from an elderly alum, correct?

4 **A.** Yes.

5 **Q.** And do you condone his criticisms of different racial or  
6 ethnic groups?

7 **A.** I do not.

8 **Q.** Do you condone his suggestion of quotas?

9 **A.** No.

10 **Q.** Do you condone the views he expressed about what the  
11 Harvard campus should look like?

12 **A.** No.

13 **Q.** Would you tell us why you decided to give a 90-year old  
14 alum a polite response rather than getting into a war of  
15 words with him?

16 **A.** Because he is a 90-year old alum, and I thought it was a  
17 polite institutional thing to do. And I took a mild and  
18 modest stab in paragraph three of my own letter to provide a  
19 context in which we do admissions knowing that it wouldn't  
20 make any difference to him.

21 **Q.** In fact, I wanted to ask you about that. Would you look  
22 at the paragraph that you talked about and go to the third  
23 paragraph. What you say to him is, "Our ambition to educate  
24 future leaders has made Harvard appealing to the most  
25 talented and ambitious students across America. As a result

1 the college has been more representative of the ethnic and  
2 economic diversity of the country and, the university  
3 believes, better positioned to make significant contributions  
4 to the country. We have been pleased by our graduates'  
5 success and their leadership in their communities and  
6 professions following college."

7 That was part of your response, correct?

8 **A.** Yes, it was.

9 **Q.** The polite response that you provided, correct?

10 **A.** Yes.

11 **Q.** Now, so we've looked at the three documents that  
12 Mr. Mortara asked you about. Two emails with your daughter  
13 and a polite response to an alum, correct?

14 **A.** Yes.

15 **Q.** And incidentally, did the alum's letter have anything to  
16 do with an Asian-American applicant to Harvard College?

17 **A.** I do not think so.

18 **Q.** Let me ask you about a different topic he asked you about  
19 now which is religious diversity. If an application  
20 discloses an applicant's religion and discusses the  
21 importance of the religion, as Mr. Mortara discussed his with  
22 us, would you take that into account in evaluating the  
23 application?

24 **A.** I think we would. Normally we would.

25 **Q.** Do students, in fact, disclose that type of information?



1     **A.**   Quite often.

2     **Q.**   Is the Harvard campus a religiously diverse campus today?

3     **A.**   It is very diverse.

4     **Q.**   And have you been able to assemble a religiously diverse  
5       class?

6     **A.**   I think we have.   We do not have data on religion.

7     **Q.**   To the extent you have information, is it because  
8       applicants have self-disclosed and described the importance  
9       themselves, correct?

10    **A.**   Yes.

11    **Q.**   Next topic, and I'm going to come back to going through  
12       some of the issues I want to go through with you on a  
13       discipline basis.   But I want to before the end of the week  
14       take care of a few things Mr. Mortara asked you about.

15               Mr. Mortara asked you about your deposition about  
16       alternative ways to achieve racial diversity.   Do you  
17       remember that?   The date of the deposition was June 18, 2015?

18    **A.**   Yes.

19    **Q.**   And your answers were correct as of that time?

20    **A.**   Yes.

21    **Q.**   Has there been the issuance of a report by race neutral  
22       alternatives committee after the date of your deposition?

23    **A.**   I have heard that there was, yes.

24    **Q.**   And that was by the college, correct?

25    **A.**   Yes.

1     **Q.** Now, let me go and ask you to look at PX220 which  
2     Mr. Mortara also asked you about. I just want to talk about  
3     a couple of things that he didn't review with you. Tell me  
4     when you're there.

5     **A.** 220, yes.

6     **Q.** 220. Do you have that before you?

7     **A.** I do.

8     **Q.** Now, he covered some portion of this. I'd like to sort  
9     of complete the picture if we could. In the email that you  
10    actually drafted yourself, that's in the second half of the  
11    first page, correct?

12    **A.** Yes.

13    **Q.** And I want to be sure first we have the correct reading  
14    of the sentence that refers to the OCR report. Do you see  
15    the sentence that reads, "And we have". We'll highlight it  
16    here.

17    **A.** Yes. I see that sentence.

18    **Q.** And would you read that sentence?

19    **A.** "And we have had been examined by OCR most fully about 20  
20    years back when we had a full compliance review about  
21    Asian-American bias which resulted in a very gratifying  
22    finding of approbation. It appears that that chapter is  
23    known to this author."

24    **Q.** The word is approbation rather than probation, correct?

25    **A.** Correct.

1     **Q.** Now, go to the next paragraph.

2     **A.** Yes.

3     **Q.** I'm going to bring your attention to the last sentence of  
4 your email, and this follows a sentence or two that  
5 Mr. Mortara asked you about. Do you see the portion that  
6 reads, "We do not run a single-factor admissions system. Nor  
7 do we have any interest in inner and outer rings, etc. We  
8 look for the people with the most promise for the future and  
9 we make every decision on the basis of achievement in the  
10 context of what an applicant has done and what he has had,  
11 etc."

12                   Have I read that correctly?

13     **A.** Yes.

14     **Q.** Is that, in fact, true?

15     **A.** Yes.

16     **Q.** And has it been consistently true during the period of  
17 time that you have been the director of admissions?

18     **A.** During my time, yes.

19     **Q.** Director McGrath, you began working at Harvard in what  
20 year?

21     **A.** My first professional job began in 1978.

22     **Q.** And when did you become the director of admissions?

23     **A.** In 1987.

24     **Q.** Do you serve as the chair of any dockets today?

25     **A.** Yes. Two dockets.

1     **Q.** Which dockets are you the chair of?

2     **A.** B which is the Mountain West, not California. And the  
3     other docket is T which is New York City and Westchester  
4     County and Rockland County.

5     **Q.** What are your duties and responsibilities as the docket  
6     chair?

7     **A.** The chairman of the docket organizes and leads the review  
8     of candidates. I'm the final reader, at least the senior  
9     reader, of all of the candidates who will be discussed in the  
10    committee. I do a good deal of work with the alumni who in  
11    New York City especially do a lot of recruitment, and we're  
12    trying to do more of that in the west.

13                 And I also organize and chair and lead the  
14    committee discussions of candidates for admission and various  
15    other duties as well.

16    **Q.** When you read applications as the docket chair, do you  
17    assign ratings?

18    **A.** Yes.

19    **Q.** Has a first reader also assigned ratings?

20    **A.** Yes.

21    **Q.** Now, Her Honor has heard a great deal about the ratings  
22    from Dean Fitzsimmons. Let me just ask you a few questions  
23    that go to questions Mr. Mortara asked you about.

24                 Does Harvard consider the personal qualities and  
25    characteristics of the candidates in the admissions process?

1     **A.**   Yes, we do.

2     **Q.**   And why?

3     **A.**   Well, we're aware, for one thing, that we will be  
4     bringing into Harvard individual people, not records of  
5     achievement. We want to invest our opportunities in people  
6     who have -- seem likely to us -- of course this is a  
7     projection. Who seem likely to us to use their talents and  
8     education about the benefits of society.

9                 We're really firm about hoping for that and hoping  
10    to identify those people. Personal qualities are part of  
11    that calculation on our part.

12    **Q.**   What are the sources of information you use to make that  
13    judgment?

14    **A.**   Well, there are a number of sources. The first one is  
15    chronologically in reading a folder, the first one you  
16    encounter is the student's own self-presentation, whatever  
17    she said in her essay, what whatever she says about her  
18    interests, whatever she characterizes as important. She  
19    starts the reading process for us or he, we start where the  
20    candidate is.

21                 In addition to that there are a number of other  
22    sources or voices in the folder. There are teacher letters,  
23    a couple typically, maybe more. There is a letter from  
24    somebody representing the school. It could be the guidance  
25    counselor, the headmaster, whoever writes for students who

1 are heading out.

2 We often have letters in the folder from the rabbi  
3 or the boss or the grandfather's best friend or godfather.  
4 We have lots of people who feel encouraged to write to us  
5 about candidates for admission. We may have the opinions of  
6 coaches, either their coach or our coach, or the music  
7 teacher.

8 And we normally have also, we always have, some  
9 kind of report from the interviewer, typically the alumni  
10 interviewer who helped us. There may be other voices, too.  
11 But there are lots of people from outside the Harvard world  
12 who are giving us their impression of any aspect they want to  
13 talk about about any candidate.

14 **Q.** Now, Mr. Mortara asked you some questions about the role  
15 of race in the different ratings. Do you recall that?

16 **A.** Yes.

17 **Q.** And I think I wrote down correctly your answer was "race  
18 alone" is or is not a factor?

19 **A.** Yes.

20 **Q.** The phrase you used was "race alone", correct?

21 **A.** That was of the phrase I used.

22 **Q.** Let me ask you these questions. Does the applicant's  
23 race alone factor into the personal rating?

24 **A.** No, it should not.

25 **Q.** The does an applicant's race alone factor into any of the

1     profile ratings?

2     **A.**   No, it should not.

3     **Q.**   Does an applicant's race alone factor into the  
4     preliminary overall race?

5     **A.**   It may be a factor, in a good case we may be adding that  
6     into our consideration in the overall rating, yes.

7     **Q.**   Now, can experiences of an applicant that are related to  
8     race be reflected or believe considered in assigning a  
9     profile rating?

10    **A.**   Yes.

11    **Q.**   Can you give us an example?

12    **A.**   Yes. I'm making this up as I go. A candidate who was  
13    the, let's say, only member of his or her race in a school  
14    that was predominantly something else and had felt himself --  
15    we actually see a number of these candidates -- who felt  
16    himself to be marked throughout his school experience as  
17    different from other people, and yet, making up this  
18    fictional case, may have been elected school body president,  
19    might have been valedictorian and felt watched as he achieved  
20    those things, may write about it and help us understand  
21    persistence, courage, self-confidence.

22                 Sometimes the situation that a student was born  
23    into is in his narrative part of his explanation of who he is  
24    and who he hopes to be and what he's done already.

25    **Q.**   Now, Mr. Mortara asked you along the same lines whether

1       there were written directives of precisely how to use race in  
2       the process.

3                   Do you remember that?

4       **A.**    I do.

5       **Q.**    He also asked you some questions about whether you were  
6       familiar with some of the Supreme Court decisions?

7       **A.**    Yes.

8       **Q.**    I know you're not a lawyer, but are you familiar with the  
9       concept of race being used flexibly and not mechanically?

10      **A.**    Yes, I am.

11      **Q.**    As opposed to according to some directive?

12      **A.**    Right. Yes, I am familiar with that.

13      **Q.**    So I want to ask you about that. When you were asked  
14      those questions you said to Mr. Mortara that you discussed  
15      this quite a bit in training, correct?

16      **A.**    Yes.

17      **Q.**    Does the admissions office provide training for new  
18      admissions officers?

19      **A.**    Yes.

20      **Q.**    When does that training start?

21      **A.**    Well, it starts at the beginning. Their first day of  
22      work they're hit with about a month of training in a kind of  
23      series of meetings accompanied by an enormous amount of  
24      reading. The first month there is intense.

25      **Q.**    Are there different phases of the training?



1     **A.** Yes. So the first month is reading and meeting with  
2 people and mastering the various aspects of our business. I  
3 think of the training period -- I think of the first year as  
4 being an apprentice year. I think the first year really does  
5 extend -- the first training extends through the year because  
6 in a way, our new hires know this, they don't get to do much  
7 alone.

8             They read folders, the first 50 folders or so they  
9 read are always read by another person after they had read  
10 them even if they thought they might not be worthy of further  
11 consideration. During the times that they're in committee  
12 that first year, they're pretty intensely monitored by the  
13 chair of the committee, perhaps by other committee members as  
14 well.

15            When they begin to do their group sessions, which  
16 is group information sessions where we recruit people who  
17 come to Cambridge and we speak with them in groups, we always  
18 make sure at the beginning that there's another staff member  
19 there to watch and give feedback. It's a feedback-giving  
20 process.

21     **Q.** Go ahead.

22     **A.** So some of the most important parts of what people learn  
23 in what I think of as an apprentice year are not the kind of  
24 thing that we think can be very effectively taught in  
25 something in a handbook. Things like the handling of race or

1 the handling of character and personality, the interpretation  
2 of family circumstances of various kinds, the assessment of  
3 very granular skills, that's stuff that we teach people in  
4 conversation over that first year.

5 Staff meetings, subcommittee meetings, specific  
6 meetings on topics. We also send around, perhaps too much,  
7 but a lot of material to people on topics that are salient to  
8 our work. The first year there is a supervised experience.

9 **Q.** We're getting close to 4:00. I want to ask you just a  
10 few questions, and then we'll be at a good stopping point for  
11 the week.

12 The first is this: There are written materials  
13 that you use for the training, correct?

14 **A.** Yes.

15 **Q.** And they include among them the exhibit that Mr. Mortara  
16 showed you on how to fill in the numbers, correct?

17 **A.** Yes, they could.

18 **Q.** Is there also an interview handbook?

19 **A.** There is.

20 **Q.** Is there also case books?

21 **A.** Yes.

22 **Q.** Now, as lawyers we're accustomed to being trained by case  
23 books. Are they used to train admissions officers?

24 **A.** Yes. They're important.

25 **Q.** Are there guides to how you use the case books?

1     **A.**   Yes.   There are guides to how to use the case books so  
2     that whoever is doing the training can hit all the notes.  
3     Yes, there are guides.

4     **Q.**   I'm going to next week take you through each so Her Honor  
5     can see the training.

6                 Are there written guidelines for admissions  
7     officers on how to judge someone's integrity?

8     **A.**   No written guidelines that I can recall.

9     **Q.**   Is there any written guideline on how to judge someone's  
10    creativity?

11    **A.**   There are guidelines on the process for getting  
12    assessments of that which includes faculty reviews, for  
13    example.

14    **Q.**   But in terms of guidelines that tell you specifically how  
15    to judge someone's creativity and incorporate it in the  
16    process, is there a written guideline?

17    **A.**   Well, my favorite yes response to that, and the only one  
18    I can really offer, is a letter that's part of the packet  
19    that we give to new people to discuss is a letter from a  
20    member of our faculty, Helen Vendler who writes about less  
21    tangible creative aspects. And that's a very important  
22    document forever for our staff to come to grips with.

23    **Q.**   Is there any portion in the handbook that tells someone  
24    how to judge someone's grit?

25    **A.**   I don't think so specifically directly.

1           MR. LEE: Your Honor, this would be a good place to  
2 stop and then I can move to the documents on Monday.

3           THE COURT: Yes, that's fine. Do you want to start  
4 at 9:30 or 10 on Monday?

5           MR. LEE: 9:30 would be great if it's possible. I  
6 know they want to get Mr. Kahlenberg off and on.

7           MR. MORTARA: 9:30 would be preferable.

8           THE COURT: 9:30 is fine. I think we've moved  
9 everything to our afternoon beginning at 3:30.

10          MR. LEE: I think what's going to happen,  
11 Mr. Hughes is going to talk about this briefly. We'll  
12 interrupt Director McGrath, let Mr. Kahlenberg go on and off,  
13 and then we'll bring her back to finish. If that's all right  
14 with Your Honor.

15          THE COURT: That's fine with me.

16          (Court recessed at 4:00 p.m.)  
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18  
19  
20  
21  
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CERTIFICATION

I certify that the foregoing is a correct  
transcript of the record of proceedings in the above-entitled  
matter to the best of my skill and ability.

/s/ Joan M. Daly

October 19, 2018

\_\_\_\_\_  
Joan M. Daly, RMR, CRR  
Official Court Reporter

\_\_\_\_\_  
Date

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