

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
3

4 STUDENTS FOR FAIR ADMISSIONS, INC.,

5 Plaintiff,

Civil Action  
No. 14-14176-ADB

6 v.

October 23, 2018

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

Pages 1 to 228

9 Defendants.  
10

11 TRANSCRIPT OF BENCH TRIAL - DAY 7  
12 BEFORE THE HONORABLE ALLISON D. BURROUGHS  
13 UNITED STATES DISTRICT COURT  
14 JOHN J. MOAKLEY U.S. COURTHOUSE  
15 ONE COURTHOUSE WAY  
16 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 23, 2018.)

THE COURT: Do you guys want a sidebar?

MR. MORTARA: Yes, Your Honor.

[Sidebar sealed and redacted.]

THE COURT: Dean Khurana, I remind you you're under oath.

(RAKESH KHURANA previously sworn by the Deputy Clerk.)

EXAMINATION (resumed)

BY MR. MORTARA:

**Q.** Good morning, Dean Khurana, how are you?

**A.** Good morning.

**Q.** We left off yesterday talking about socioeconomic --

**A.** Yes.

**Q.** -- diversity at Harvard. Do you remember that?

**A.** Yes.

**Q.** And we talked about the fact about the top 4 to 5 percent of incomes in the United States, people who make over 150 grand a year, they're 30 percent of the students at Harvard

1 College. Do you remember that?

2 **A.** Yes.

3 **Q.** And I asked you about your work, your research about  
4 inequality, and structures of privilege. Do you remember  
5 that?

6 **A.** Yes.

7 **Q.** And so we left off yesterday with me asking you based on  
8 your research do you think the overrepresentation of wealthy  
9 people at Harvard is responsible for perpetuating structures  
10 of inequality and privilege?

11 **A.** I think higher education is part of the solution to  
12 addressing issues of inequality and privilege. I wish we had  
13 a more equal society, though.

14 **Q.** And you also wish that we had a more equal Harvard, don't  
15 you? I mean, you actually wish Harvard was more  
16 socioeconomically diverse, in your heart. I'm asking you as  
17 your own self, not as the dean of Harvard College.

18 **A.** Yes. I'd like us to continue to do better in that area.

19 **Q.** Okay. Great. Now, I want to talk about you mentioned  
20 yesterday that you're not trying at Harvard College to mirror  
21 the socioeconomic diversity of America. I was making this  
22 point that 5 percent, top 5 percent or 4 percent of incomes,  
23 30 percent at Harvard. And you said we're not trying to  
24 mimic the socioeconomic diversity of America.

25 Do you remember that?

1       **A.**   Yes.

2       **Q.**   Now, Harvard College's student body does pretty closely  
3 approximate the United States population with respect to the  
4 proportion of African-Americans, Hispanics, and Native  
5 Americans on campus, doesn't it?

6       **A.**   I can't say for certain on that.

7       **Q.**   You did the race-neutral alternatives report, right, sir?

8       **A.**   Yes.

9       **Q.**   You talked about percentages of African-Americans on  
10 campus. It's around 14 percent in the 2019 class, right?

11      **A.**   Yes.

12      **Q.**   You talked about the percentage of Hispanics on campus.  
13 I can't remember. I can put it up. Is it 12 percent or  
14 something?

15      **A.**   I can't recall the exact number.

16      **Q.**   Let's put it up so we're all clear on what we're talking  
17 about. Excuse me. It's 14 percent for both, right,  
18 African-Americans and Hispanics. Do you see that?

19               THE COURT: What tab are we at?

20               MR. MORTARA: This is P316, Your Honor. While I'm  
21 at it, I'll move P301 and 302 from yesterday.

22               THE WITNESS: Could you tell me what page you're  
23 on?

24               THE COURT: Hold on. Any objection to P301 and  
25 302?



1 MS. CONLEY: Thanks very much.

2 BY MR. MORTARA:

3 Q. Do you see the numbers 14 percent for African-Americans  
4 and Hispanics?

5 THE COURT: Any objection to 301 and 302?

6 MS. CONLEY: No.

7 THE COURT: 301 and 302 are admitted.

8 (Plaintiff Exhibit Nos. 301 and 302 admitted.)

9 BY MR. MORTARA:

10 Q. Do you see the numbers for African-Americans and  
11 Hispanics?

12 A. I'm sorry. Could you tell me what page you're on?

13 Q. I'm on page 8. It's on the screen as well.

14 A. Yes.

15 Q. You know that's approximately reflective of the United  
16 States population, right?

17 A. I can't say that for certain.

18 Q. What's your best guess?

19 A. I'd rather not guess.

20 Q. You don't know the proportion of African-Americans and  
21 Hispanics in the United States population?

22 A. Not exactly.

23 Q. Well, through your work on inequality and structures of  
24 privilege, do you know whether or not the minority  
25 populations at Harvard reflect the socioeconomic diversity of

1 those minority populations?

2 Let me explain. I mean do the African-American  
3 students at Harvard reflect the socioeconomic diversity of  
4 African-Americans in the United States?

5 **A.** Again, diversity is one built on multiple dimensions.  
6 And so socioeconomic diversity is one of many dimensions that  
7 we consider when evaluating an individual.

8 **Q.** That's not my question, and I'll try to be clearer.

9 African-Americans at Harvard, like Harvard students  
10 generally, are richer than African-Americans in the United  
11 States. What I mean by that is you disproportionately have  
12 wealthy African-Americans at Harvard College versus their  
13 representation in the general African-American population.  
14 You know that, don't you?

15 **A.** I'll assume that that's true. I don't have the exact  
16 data.

17 **Q.** You did the race-neutral alternatives report, right?

18 **A.** Yes.

19 **Q.** That involved increasing socioeconomic diversity, right?

20 **A.** That was one of many factors that we considered.

21 **Q.** And one of the problems that you had with an increase of  
22 socioeconomic diversity was that it was going to increase the  
23 number of nonwhite students from disadvantaged backgrounds.  
24 Isn't that one of the problems you had?

25 **A.** One of the problems that we have is that we don't have

1 any sort of single characteristic that we over-weight in that  
2 sense. What we're trying to do is look at the whole person  
3 that's made up of different characteristics, different  
4 backgrounds and experiences. And socioeconomic diversity is  
5 one of many characteristics that we consider in context of  
6 the individual.

7 **Q.** Let's look at what you said in the report. Please turn  
8 to page 14 of the report. You're on this committee, right,  
9 sir?

10 **A.** Yes.

11 **Q.** Let's look at what you said about the number of nonwhite  
12 students from modest socioeconomic circumstances. This is  
13 your report, your words, right?

14 **A.** This is our report.

15 **Q.** "Using socioeconomic status as a proxy for race in the  
16 admissions process would also, by definition, yield a student  
17 body in which many of the nonwhite students would come from  
18 modest socioeconomic circumstances."

19 Would you explain to the Court what is meant by  
20 that?

21 **A.** So one of the goals that we have is to bring a diverse  
22 student body together from different backgrounds and  
23 experiences. And while, you know, different groups have  
24 different characteristics, we also think about each  
25 individual. We wouldn't want students to think that, for

1 example, students of color only come from modest  
2 socioeconomic backgrounds; that people from different  
3 backgrounds and experiences can come from families that are  
4 coming from upper backgrounds; or that we wouldn't want  
5 students to presume that just because somebody may be  
6 historically Caucasian that that means that they come from we  
7 well-off backgrounds. They could also be coming from very  
8 modest backgrounds.

9           So the goal there is to really overcome this notion  
10 of stereotypes in which we sort of assume if you know  
11 something about somebody's group characteristic, that tells  
12 you who they are as an individual or the complexity of their  
13 background.

14 **Q.** Virtually nothing of what you just said is reflected in  
15 this paragraph; isn't that right?

16 **A.** I think that's what the intent of this paragraph was  
17 meant to --

18 **Q.** So what you intended when you said that using  
19 socioeconomic status as a proxy for race in the admissions  
20 process would yield a student body in which many of the  
21 nonwhite students would come from modest socioeconomic  
22 circumstances is that you were worried that if relatively  
23 well-off African-Americans and Hispanics were present on  
24 Harvard College's campus in greater numbers, it would  
25 reinforce a stereotype about racial minorities.

1                   That's your testimony?

2     **A.**   Yes.

3     **Q.**   And you remember Thang again?

4     **A.**   Yes.

5     **Q.**   Do you remember the slide I showed you yesterday?

6     **A.**   Yes.

7     **Q.**   Do you remember that he comes from quite a modest  
8       socioeconomic background?

9     **A.**   Yes.

10    **Q.**   And so remember I talked about how he was an academic 3?  
11       That was in the earlier academic part of this discussion?

12    **A.**   I remember you talking about that.

13    **Q.**   I'm representing to you that he's an academic 3.  So  
14       fewer 1s and 2s, more 3s, fewer wealthy minorities, more  
15       disadvantaged minorities.

16               And so what you're really saying is the problem  
17       that you have with the race-neutral alternative of boosting  
18       socioeconomic preferences is there would be more students  
19       who, like Thang, have academic 3s and come from very modest  
20       backgrounds?

21    **A.**   Again, all of our students are academically qualified to  
22       being there.  What we're looking at is the backgrounds, the  
23       diversity of their backgrounds, things like their  
24       socioeconomic status but also other types of dimensions.

25               There's public spiritedness, their academic

1 interests, their geographic background. All of this as a  
2 whole person, not reducing somebody to sort of category which  
3 I think is not the approach for our educational philosophy.

4 **Q.** Does the paragraph I have highlighted on the screen say  
5 anything about looking at people as whole people?

6 **A.** I think it does if you look at the second sentence. When  
7 we say, "It would do so at the cost of other forms of  
8 diversity undermining rather than advancing Harvard's  
9 diversity-related educational objectives," which we've sort  
10 of described -- you eloquently described yesterday as people  
11 with different backgrounds and experiences bringing them  
12 together to overcome the chasms of difference to find common  
13 ground with each other.

14 **Q.** One of the other forms of diversity you're talking about  
15 is the diversity granted by wealthier minority students being  
16 at Harvard combatting a racial stereotype. That's what you  
17 said, right?

18 **A.** Again, I think, yes, to have a variety of diversity along  
19 multiple dimensions.

20 **Q.** As the dean of Harvard College, if a student or student  
21 group raised concerns with you that Harvard College's  
22 admissions process was disadvantaging Asian-Americans, what  
23 would you do with that?

24 **A.** If I thought there was any kind of systematic  
25 discrimination, any intentional discrimination, as the dean

1 of the college, as a professor, as a father, I would have  
2 rung multiple alarm bells with multiple people. And anybody  
3 who knows me knows that my commitment to creating an  
4 environment where all of our students can flourish.

5 **Q.** I have no reason to doubt that, Dean Khurana. You'd want  
6 somebody from Harvard College to engage in a conversation  
7 with any students that brought you those concerns, right?

8 **A.** Yes.

9 **Q.** And if it were particular to the question of whether  
10 Asian-Americans were being disadvantaged by the admissions  
11 process, the person that you would have in mind for that  
12 student to speak to would be someone from the admissions  
13 office, like Dean Fitzsimmons, right?

14 **A.** I'd want them to feel comfortable to discuss this with  
15 many of our senior leaders or any of the leaders on campus,  
16 including Dean Fitzsimmons.

17 **Q.** But you would refer them to speak to someone in the  
18 admissions office, correct?

19 **A.** I would suggest that that would be important to do.

20 **Q.** And we started off our conversation with a discussion of  
21 how you did not know in 2017 whether or not Harvard College's  
22 admissions process disadvantaged Asian-Americans. Do you  
23 remember that was your sworn testimony back in 2017?

24 **A.** Yes.

25 **Q.** And the reason you didn't know is that you expected Dean

1 Fitzsimmons in the admissions office to be responsible for  
2 figuring that out, correct?

3 **A.** Yes.

4 MR. MORTARA: No more questions, Your Honor.

5 EXAMINATION

6 BY MS. CONLEY:

7 **Q.** Good morning, Dean Khurana.

8 **A.** Good morning.

9 **Q.** Just stepping back for a minute, when did you first start  
10 working at Harvard?

11 **A.** In 2000.

12 **Q.** And what was your role at that time?

13 **A.** I was appointed assistant professor of organizational  
14 behavior and management at the Harvard Business School.

15 **Q.** And did you receive tenure at some point?

16 **A.** Yes.

17 **Q.** And when was that?

18 **A.** In or around 2008.

19 **Q.** Do you hold any other teaching positions at Harvard?

20 **A.** I also have a joint faculty appointment with the faculty  
21 of arts and sciences in the department of sociology.

22 **Q.** Dean Khurana, what did you do prior to joining the  
23 faculty at Harvard?

24 **A.** I was on the faculty of the Massachusetts Institute of  
25 Technology, MIT.



1     **Q.** And you testified yesterday that you went to Harvard for  
2 graduate school; is that right?

3     **A.** Yes.

4     **Q.** And what degrees did you receive?

5     **A.** I received a master's degree in sociology and a Ph.D. in  
6 organizational behavior.

7     **Q.** Focusing in as your role of the dean of the college, what  
8 are your primary responsibilities in that role?

9     **A.** I have three primary responsibilities: the academic  
10 curriculum; this residential -- second, residential and  
11 co-curricular activities for our students; and third,  
12 academic and social discipline.

13     **Q.** In addition to your role as dean at the college, do you  
14 have any other roles?

15     **A.** Yes.

16     **Q.** And what are they?

17     **A.** I'm a faculty dean of one of Harvard's 12 residential  
18 houses, Cabot House.

19     **Q.** What is the Cabot House?

20     **A.** Cabot House is one of the Harvard's 12 residential houses  
21 in which students are assigned for their sophomore, junior,  
22 and senior years.

23     **Q.** And do all of Harvard College's students live in one of  
24 the residential houses?

25     **A.** 98 percent of our students live in one of our residential

1 houses or in the first-year residential experience.

2 **Q.** And Dean Khurana, why is it that the majority, the  
3 overwhelming majority of Harvard College students live on  
4 campus?

5 **A.** The Harvard College philosophy is that education is not  
6 only what happens in the classroom but it's also what happens  
7 in the sort of whole-student undergraduate experience. And  
8 so students by living together, participating in  
9 co-curricular activities together really learn from each  
10 other, discuss the different subjects that they're learning  
11 with each other, current events, participate in joint  
12 interests. And that's part of our educational philosophy.

13 **Q.** What responsibilities do you have as a faculty dean at  
14 the Cabot House?

15 **A.** Primarily three responsibilities: Our students' academic  
16 well-being, their social well-being, their ability to connect  
17 and interconnect across the class, and their personal  
18 well-being, primarily their physical and mental health.

19 **Q.** Dean Khurana, since you've become the dean of the  
20 college, have you set any goals for improving the Harvard  
21 College educational experience?

22 **A.** Yes.

23 **Q.** At a high level, what goals have you set for the college?

24 **A.** First, that Harvard College should continue to strive to  
25 set the standard for a residential liberal arts and sciences

1 program; second, that we should create a strong culture of  
2 inclusion and belonging so that our students can fully  
3 flourish and thrive and contribute; and third, to strengthen  
4 our commitment to educating citizens and citizen leaders for  
5 our society.

6 **Q.** You mentioned creating a sense of inclusion on the  
7 campus. Why is it important to achieving the educational  
8 goals at Harvard to foster that sense of inclusivity?

9 **A.** As an educator, you know that in order for people to  
10 really reach their full potential, they have to have a sense  
11 that they'll be heard; that their points of view are  
12 respected; that others are listening effectively to them so  
13 that they bring forth their ideas, their perspectives,  
14 debate, discuss different points of view, and learn from each  
15 other.

16 **Q.** And let's talk a little bit about Harvard, how Harvard  
17 College fits into the university as a whole. Did you prepare  
18 a demonstrative to illustrate the various schools at the  
19 university?

20 **A.** Yes.

21 **Q.** If we could pull up DDX2.

22 Dean Khurana, what does this show?

23 **A.** These are the different schools that constitute the  
24 overall university.

25 **Q.** And looking at that demonstrative, how does Harvard

1 College fit into the university as a whole?

2 **A.** Well, we're made up of many schools, so professional  
3 schools, graduate schools. And one of the schools that we're  
4 made up of is the faculty of arts and sciences. And Harvard  
5 College is one of the divisions of the Harvard faculty of  
6 arts and sciences.

7 **Q.** Who's responsible for overseeing each of the schools that  
8 make up Harvard University?

9 **A.** A dean.

10 **Q.** Now, do you recall Mr. Mortara asking you questions  
11 yesterday about the number of people on the Ryan committee?

12 **A.** Yes.

13 **Q.** Which of these schools was the focus of the Ryan  
14 committee?

15 **A.** I believe that the university was the overall focus, not  
16 any individual school, but I don't have any details on that.

17 **Q.** And which of these schools was the focus of the RNA  
18 committee?

19 **A.** Harvard College.

20 **Q.** Now, as the dean of the college, to whom do you report?

21 **A.** I report to the dean of the faculty of arts and sciences.

22 **Q.** And who is that?

23 **A.** Dean Claudine Gay.

24 **Q.** And prior to when Dean Claudine Gay became the dean of  
25 the faculty of arts and sciences, who did you report to?

1     **A.**   Dean Michael Smith.

2     **Q.**   And as the dean of the college, are you involved in the  
3     day-to-day work of the admissions office?

4     **A.**   No.

5     **Q.**   Are you familiar with what the admissions office does at  
6     a high level?

7     **A.**   I am at a high level.

8     **Q.**   Now, Dean Khurana, yesterday in your testimony you  
9     referenced Harvard College's mission statement. Do you  
10    recall that?

11    **A.**   Yes.

12    **Q.**   When did Harvard College adopt its current mission  
13    statement?

14    **A.**   The college has had a longstanding mission. But in its  
15    kind of current colloquial terms, around 2014.

16    **Q.**   Can you turn to Tab 2 in your binder?

17           THE COURT: For identification do you have a number  
18    on this demonstrative?

19           MS. CONLEY: Oh, yes. Sorry, Your Honor. I  
20    believe it's DD 2.3.

21    BY MS. CONLEY:

22    **Q.**   At Tab 2 you'll see Defendant's Exhibit 109. Do you  
23    recognize this document, Dean Khurana?

24    **A.**   Yes.

25    **Q.**   What is it?

1     **A.**   It's the mission of Harvard College.

2     **Q.**   Does the document accurately reflect the mission of  
3     Harvard College?

4     **A.**   Yes, it does.

5             MS. CONLEY:  Your Honor, I'd like to offer  
6     Defendant's Exhibit 109 into evidence.

7             MR. MORTARA:  No objection, Your Honor.

8             THE COURT:  It's admitted.

9             (Defendant Exhibit No. 109 admitted.)

10    BY MS. CONLEY:

11    **Q.**   And what is the mission of Harvard College?

12    **A.**   The mission of Harvard College has been for almost four  
13    centuries now to educate the citizens and citizen leaders for  
14    our society through the transformative power of a liberal  
15    arts and sciences education.

16    **Q.**   And in your own words, what does that mean?

17    **A.**   It consists of three components, what we call the  
18    intellectual transformation, which is new ways of knowing,  
19    new ways of understanding, all toward helping our students  
20    develop an open mind and independent mind.

21             Second, we embed that experience in a very diverse  
22    living and learning experience where students study alongside  
23    students who are different from them, who come from different  
24    walks of life, and have different identities, which we  
25    believe not only deepens the intellectual transformation but

1 sets the conditions for social transformation, what their  
2 understanding of being in a community means, where they learn  
3 to see behind each other's eyes, to hear from another  
4 perspective.

5           And then through those experiences, we hope our  
6 students are on a journey of answering three questions for  
7 themselves: Who am I and who do I want to be? How do I  
8 relate to others? And what can I learn from others? What  
9 are my gifts and talents, and how can I best use them to  
10 serve the world? So a personal transformation.

11 **Q.** And, Dean Khurana, how does Harvard College ultimately  
12 carry out that mission?

13 **A.** Through exposing our students to a diversity of subjects  
14 and fields that allow them to understand how they fit into  
15 the world in the role of history, the different perspectives,  
16 through a diversity of exposure to different types of  
17 students and backgrounds where students learn from each other  
18 who are studying different things, and then basically a  
19 diversity of personal experiences.

20 **Q.** Now, does the diversity of the student body play a role  
21 in allowing Harvard College to achieve its educational  
22 mission?

23 **A.** Yes.

24 **Q.** And how so?

25 **A.** Well, the essence of education is an exposure to

1 diversity of perspectives and points of view where you  
2 decenter yourself, where you start seeing --

3           There's like an old parable in my family about  
4 seeing the elephant. What you do is you learn to step back,  
5 and you learn that you don't have a full picture that other  
6 people can see different parts, that the same thing can look  
7 different from somebody's background, their experience, their  
8 understanding of a text.

9           And that -- all of that comes together to sort of  
10 help people have perspective-taking and also that little bit  
11 of humility that they don't have kind of a monopoly on the  
12 truth.

13 **Q.** Dean Khurana, what times of diversity are important for  
14 Harvard fulfilling its educational mission?

15 **A.** Multiple forms of diversity. Diversity in academic  
16 interests, diversity in backgrounds, diversity in racial  
17 perspectives, diversity in belief systems, political points  
18 of view, geography, diversity of parental occupations.

19           All of those things come together, just really kind  
20 of the diversity of the human experience.

21 **Q.** And I want to focus in on racial diversity for a minute.  
22 Why is it that racial diversity, in particular, is important  
23 to allowing Harvard College to achieve its educational  
24 mission?

25 **A.** Racial diversity, like many of our other sort of



1 identities, can shape our experience of ourselves. They  
2 connect to our traditions, our cultures. They also shape how  
3 others experience us. And as part of a kind of, you know,  
4 complexity of human identity, these are critical aspects  
5 because they shape our understanding and perspective on the  
6 world.

7 **Q.** And have your personal experiences informed your views on  
8 the benefits of diversity?

9 **A.** Yes.

10 **Q.** And how so?

11 **A.** Well, as a teacher and educator, I have a diverse  
12 classroom. I can give you a concrete example.

13 For example, in teaching a case study on a company  
14 making a decision about whether it should outsource some of  
15 its work or factory to a lower-cost area, a student might  
16 advocate, well, we should do that because we don't have a  
17 union in that other place and the cost will be lower.

18 And in that context of explanation, I'll have  
19 another student saying, well, both my parents were in unions,  
20 and unions helped elevate our family's wages, they gave us  
21 access to a better life, and I wouldn't be at Harvard if it  
22 wasn't for a union.

23 And at that moment as an educator, you can see all  
24 sorts of perspectives being changed. The students who were  
25 listening, the student who made the original comment, the

1 student now who had made the second comment also appreciating  
2 the other student's perspective. And that's the kind of  
3 perspective-taking having that diversity allows.

4 **Q.** You talked a little bit about your personal experience  
5 with the benefits of diversity inside of the classroom.

6 During your time as dean, have you personally seen  
7 the benefits of diversity outside of the classroom at Harvard  
8 College?

9 **A.** Yes.

10 **Q.** And how so?

11 **A.** One of the great aspects of my job and life is as faculty  
12 dean at Cabot House. I live with the students. So we live  
13 with about 350 students. And in that context, each of our  
14 houses have their own dining hall and own libraries.

15 You see students coming together of different  
16 backgrounds and experiences who have otherwise not interacted  
17 with each other. You see them talking to each other about  
18 their classroom experiences, about current events at the  
19 dining hall. When something happens in our community that's  
20 difficult, we come together and share in the grief. When  
21 something amazing happens to one of our students, we share in  
22 that joy.

23 And I watch our students form friendships that not  
24 only just last at Harvard but last a lifetime. I watch them  
25 learn to see from each other's perspective. I watch them

1 fall in love and later on become life partners. It's really  
2 a gift.

3 **Q.** Dean Khurana, did Harvard College's interest in  
4 assembling a diverse student body start when you became the  
5 dean?

6 **A.** No.

7 **Q.** And how long did the college's interest in diversity  
8 begin?

9 **A.** You know, it's always been something from since I joined  
10 Harvard that I've understood as part of its perspective.  
11 Again, diversity, perspectives, and points of view. And the  
12 student body has been -- at least in my recent years has  
13 always been of concern.

14 **Q.** And in the time that you've been dean of the college, has  
15 the college ever conducted any formal assessments or studies  
16 about the importance of diversity to achieving its  
17 educational mission?

18 **A.** Yes.

19 **Q.** And have you prepared a demonstrative to illustrate those  
20 assessments?

21 **A.** Yes, we have.

22 **Q.** Let's turn to DD 2.8. Now, looking at DD 2.8, Dean  
23 Khurana, when was the first formal assessment during your  
24 time as the dean of the college when you looked at the  
25 importance of diversity?

1     **A.**   In the late spring of 2014.

2     **Q.**   And was that the committee that you briefly touched on  
3     with Mr. Mortara yesterday, the Walton committee?

4     **A.**   Yes. That was done in consultation with the interim  
5     dean. But it was the Walton committee to look at college  
6     diversity inclusion.

7     **Q.**   Sorry. I referred to it as the Walton committee. It's  
8     the college group on diversity and inclusion?

9     **A.**   Yes.

10    **Q.**   What was the catalyst for that particular working group?

11    **A.**   Well, there had been a lot of just general discussion  
12    about belonging and inclusion. But the specific catalyst was  
13    in a student kind of performance, a student film and writings  
14    on something called "I Too Am Harvard" in which students who  
15    have been from historical minority groups talked about how  
16    their presence at Harvard still often felt suspect to others,  
17    and they didn't feel a full sense of inclusion at the  
18    institution.

19    **Q.**   In addition to the "I Too Am Harvard" movement you just  
20    described, were there any other incidents on campus that  
21    sparked the formation of this particular committee?

22    **A.**   Yes. As Harvard had made a commitment toward financial  
23    inclusion, students from different socioeconomic backgrounds,  
24    students from different, say, minority, political  
25    perspectives, students from historical sexual minorities, all

1 talked about ways that we could strengthen the sense of  
2 inclusion and belonging. We wanted to take a very  
3 comprehensive look about how to do that in order to achieve  
4 our educational objectives.

5 **Q.** Who led the college working group on diversity and  
6 inclusion?

7 **A.** That would be Professor Jonathan Walton from Harvard  
8 Divinity School and who also was the Christian Plummer  
9 professor of Christian morals, the head of Memorial Church at  
10 the university.

11 **Q.** And is that why it's sometimes referred to as the Walton  
12 committee?

13 **A.** Yes.

14 **Q.** Did the Walton committee issue a report?

15 **A.** Yes.

16 **Q.** Stepping back, what was your personal role on the Walton  
17 committee?

18 **A.** Working with the interim dean, wrote the charge and the  
19 remit for the committee and then provided feedback on drafts  
20 of the committee's report.

21 **Q.** If you could, turn to defendant's Exhibit 13, which is  
22 Tab 3 in your binder, Dean Khurana. What is this document?

23 **A.** This document is the report of the college working group  
24 on diversity and inclusion.

25 **Q.** And when was the report issued?

1       **A.**   In the late fall of 2015.

2       **Q.**   And did you have a role in preparing the report?

3       **A.**   Yes.

4               MS. CONLEY:  Your Honor, I'd like to offer  
5   Defendant's Exhibit 13 into evidence.

6               MR. MORTARA:  No objection, Your Honor.

7               THE COURT:  It's admitted.

8               (Defendant Exhibit No. 13 admitted.)

9   BY MS. CONLEY:

10       **Q.**   And if you could, turn to pages 13 and 14.  Sorry.  I  
11   believe it's actually pages 4 and 5 of this document, Dean  
12   Khurana.

13       **A.**   Yes.

14       **Q.**   Who are the individuals who appear on those pages?

15       **A.**   These are faculty, students, and staff who were on the  
16   committee.

17       **Q.**   And who are they?

18       **A.**   Well, they're really a remarkable group of individuals.  
19   These are individuals who had a strong interest in  
20   strengthening, belonging inclusion in our classroom  
21   experiences and our residential experiences and through our  
22   student co-curricular activities.

23       **Q.**   And if you turn to page 6 of the report, you'll see a  
24   section entitled "The Mission of Harvard College."  Do you  
25   see that?

1     **A.**   Yes.

2     **Q.**   Okay.  And looking at the second paragraph in the second  
3     sentence there, it states that "Harvard fosters the ability  
4     to see the world through the eyes of others."

5     **A.**   Yes.

6     **Q.**   What did the committee mean by that?

7     **A.**   At the core of a liberal arts and sciences education is  
8     the ability to see the world from somebody else's  
9     perspective; to develop a narrative imagination of what it's  
10    like to be someone else; to deepen the reservoirs of empathy  
11    so that one can deparochialize their centeredness in the  
12    world; and realize that they exist in context of a history  
13    and context of others.

14    **Q.**   Let's turn to page 7.  Look at the next page there.

15                 Now, yesterday Mr. Mortara asked you questions  
16    about this particular section of the report and particularly  
17    examples of periods in Harvard's history where it operated  
18    contrary to its current mission of diversity and inclusion.

19                 Do you recall those questions?

20    **A.**   Yes.

21    **Q.**   Why did the Walton committee reference those historical  
22    periods in this particular report?

23    **A.**   If you don't know the mistakes you've made, if you don't  
24    contextualize it, you're likely to make those mistakes again,  
25    and so you have to constantly be aware of your own history.

1     **Q.** Now let's turn to page 9 and look at the section entitled  
2     "The Charge of the Working Group on Diversity and Inclusion."

3             Do you see that?

4     **A.** Yes.

5     **Q.** What was the Walton committee's charge?

6     **A.** To assess Harvard College's learning environment in order  
7     to ensure that all students benefit equally from its liberal  
8     arts and sciences mission and experience.

9     **Q.** And after the Walton committee completed its work, did it  
10    provide recommendations?

11    **A.** Yes.

12    **Q.** Let's turn to page 30. Looking at that second full  
13    paragraph, what are the categories of recommendations that  
14    the Walton committee offered?

15    **A.** We focused on both the short-term and long-term  
16    recommendations.

17    **Q.** And with respect to the short-term recommendations  
18    proposed by the Walton committee, can you provide an example  
19    of what one or two of those short-term recommendations were?

20    **A.** Yes. There were several. But just to take one concrete  
21    example, as we increased the socioeconomic diversity of our  
22    student body, we became aware of certain practices that could  
23    create a sense of just alienation or otherness.

24             Specifically, we provided students free tickets to  
25    student social events. But there was actually a separate



1 line for students who were on financial aid to get those  
2 tickets. I don't know why that ever existed, but it  
3 shouldn't have been that way, and we very quickly corrected  
4 that, that everybody could be just in one line and you just  
5 pick up your ticket.

6 We also became aware that, you know, again, given  
7 Harvard's commitment to socioeconomic diversity, certain  
8 practices like closing the dining halls during spring break  
9 didn't work for everyone. Some people couldn't go away for  
10 spring break, and we wanted to make sure that meals were  
11 provided and activities during that time period. So those  
12 were the kinds of things we considered.

13 **Q.** And if we turn to page 35 of the report, looking at the  
14 recommendations for long-term interventions, did the college  
15 adopt any of the long-term recommendations that were proposed  
16 by the Walton committee?

17 **A.** Yes.

18 **Q.** And can you give an example of one of those?

19 **A.** Some of the long-term recommendations we said is that we  
20 need to consistently also be looking at our academic  
21 curriculum, making sure that continually it's updated, that  
22 it reflects the interests, but also the contemporary  
23 literature in a lot of areas. And so those were some of the  
24 types of things that we began to consider.

25 **Q.** And let's turn to page 38 of the report. What was the

1 conclusion that was ultimately reached by the Walton  
2 committee?

3 **A.** The conclusion that we reached was that while we had made  
4 much progress as an institution in increasing the diversity  
5 of our student body, we hadn't yet created an environment  
6 where we were able to ensure that we were able to realize its  
7 full benefits.

8 **Q.** Now, separate and apart from the Walton committee, were  
9 you involved in any other studies or formal assessments of  
10 the importance of student body diversity to Harvard College?

11 **A.** Yes.

12 **Q.** And if we pull up DD 2.9. What other committee were you  
13 involved in?

14 **A.** The committee to study the importance of student body  
15 diversity.

16 **Q.** And you were the chair of that committee?

17 **A.** I was.

18 **Q.** So it's referred to as the Khurana committee?

19 **A.** Okay. That's fine.

20 **Q.** When was that committee formed?

21 **A.** That committee was formed in the early spring semester of  
22 2015.

23 **Q.** And, Dean Khurana, why was the Khurana committee formed?

24 **A.** During the work that we had been doing at the college, I  
25 stayed in constant communication with Dean Smith and

1 President Faust and continued to talk about the opportunities  
2 we had to strengthen our commitment to belonging and  
3 inclusion. And they asked me to chair this committee.

4 **Q.** Okay. And I believe that Mr. Mortara referred you to  
5 this document in his examination of you, but it's at Tab 4 of  
6 your binder, Plaintiff's Exhibit 302.

7 **A.** I have it.

8 **Q.** And that's the report of the Khurana committee; is that  
9 right?

10 **A.** Yes, I believe it is.

11 **Q.** Let's take a look at the last page of that report,  
12 page 22.

13 **A.** Yes.

14 **Q.** Who are the individuals listed at the bottom of the page?

15 **A.** These are faculty at Harvard University.

16 **Q.** And are those faculty the members of the Khurana  
17 committee?

18 **A.** Yes.

19 **Q.** Let's take a look at page 1 of the report. So looking at  
20 the first paragraph there under the introduction, what was  
21 the ultimate goal of this committee?

22 **A.** The goal of this committee was to underscore the  
23 importance that student body diversity plays in the  
24 achievement of our educational mission.

25 **Q.** Let's turn to page 4. If you look at the first indented

1 paragraph there, there's a quote from former President  
2 Rudenstine regarding creating a community that includes "a  
3 collision of views."

4 What is that referring to?

5 **A.** Again, at the heart of an educational experience is that  
6 different perspectives and points of view and ideas competing  
7 with each other, in debate with each other, arguing with each  
8 other respectfully is how we get to a closer approximation of  
9 a true understanding of the world.

10 **Q.** And, Dean Khurana, did your committee make any findings  
11 regarding the benefits of diversity to the educational  
12 curriculum at Harvard College?

13 **A.** Yes.

14 **Q.** Let's take a look at page 7. Now, there's a section  
15 there on the general education curriculum at the college.  
16 What is the general education curriculum?

17 **A.** The general education curriculum is a set of core courses  
18 that we ask all our Harvard undergraduates to take. Its aim  
19 is to prepare our students to be responsible citizens and  
20 citizen leaders in our society.

21 **Q.** And looking at the last paragraph there, what did your  
22 committee find regarding the benefits of diversity to the  
23 general education curriculum at the college?

24 **A.** Well, what we found is that, you know, since we're  
25 preparing our students for a diverse society and a diverse

1 and interconnected world, that our general education  
2 curriculum had to continually reflect that type of diversity  
3 and those different perspectives.

4 And so part of what we were suggesting is that our  
5 courses really step back and take advantage and reflect on  
6 how we're doing that in our current curriculum. And this  
7 subsequently led to revisions in the gen ed cores.

8 **Q.** If we take a look at page 8, the next page, there's also  
9 a section on the broader curriculum. What is the broader  
10 curriculum at Harvard College?

11 **A.** In addition to the required courses that we have, such as  
12 in the gen ed, our students also have majors or what we call  
13 concentrations and the elective courses that they take.

14 **Q.** What were the committee's findings regarding the impact  
15 of diversity to the broader curriculum at the college?

16 **A.** That diversity was key to kind of renewing and ensuring  
17 that our broader curriculum reflected the best knowledge of  
18 the date.

19 **Q.** So still on page 8, did the committee relay an example of  
20 how diversity has made an impact on the broader curriculum?

21 **A.** Yes.

22 **Q.** Can you explain what that example was?

23 **A.** So in this example, a professor made a comment in a class  
24 that upset one of the African-American students in the class.

25 And then that student sort of made certain

1 assumptions about the nature of that information, why it was  
2 presented, and was upset.

3 But then another student who is also  
4 African-American actually agreed with the perspective that  
5 the professor had put forward, then causing the first student  
6 to kind of rethink their own point of view.

7 And then there's a third student who also had  
8 another point of view who also happened to have been of  
9 African-American descent.

10 Just something like that demonstrates that  
11 stereotypes are broken; that you can't assume that you know  
12 somebody just because of some shared group identity of how  
13 they think; and that learning is not only for the students  
14 within that, but it's the learnings for all students who are  
15 benefiting from those perspectives and realizing that our  
16 differences don't necessarily define us. And neither do our  
17 similarities tell you everything about us.

18 **Q.** Now, Dean Khurana, let's turn to page 11 of the report.  
19 There's a section there labeled "Residences and  
20 Extracurricular Activities."

21 **A.** Yes.

22 **Q.** Did the committee make findings regarding the importance  
23 of diversity outside of the classroom?

24 **A.** Yes.

25 **Q.** Looking at the section, if you scroll down a bit, labeled

1 "Freshman Rooming and the Harvard House System."

2 **A.** Yes.

3 **Q.** How does Harvard's housing system with respect to  
4 freshman rooming and the overall housing system allow  
5 students to benefit from diversity outside of the classroom?

6 **A.** The entire college experience is curated around creating  
7 encounters with people different from you and different  
8 backgrounds and experiences.

9 In the case of freshmen, we don't let our students  
10 decide their own roommate. Rather, a student sends in a  
11 description about themselves. We also have family send in  
12 family letters. They're hand-by-hand, you know, resident  
13 deans and the proctors begin to create a microcosm of the  
14 college not only in the rooming situation but also the  
15 surrounding rooms so the students can benefit from the  
16 diversity of different backgrounds and experiences that are  
17 at the college.

18 **Q.** Let's turn to page -- the next page, page 14. There's a  
19 section that's labeled "Extracurricular Activities." Do you  
20 see that?

21 **A.** Yes.

22 **Q.** Did the committee make any specific findings regarding  
23 the importance of diversity in extracurricular activities at  
24 Harvard?

25 **A.** Yes.

1     **Q.** And could you provide just one example of how  
2     extracurricular activities allow students to benefit from  
3     diversity outside of the classroom?

4     **A.** So our students are very energetic. They belong to a lot  
5     of student organizations, so we have many, many student clubs  
6     across a variety of different interests.

7             In the case or the example here is a group called  
8     Kuumba which is a longstanding student group that celebrates  
9     the culture of black spiritual music. And it's open to every  
10    student. And when you go to a Kuumba performance -- and you  
11    will see many of them at Harvard -- you'll see students from  
12    all different backgrounds and experiences singing from  
13    different religious backgrounds -- racial, geographic,  
14    ethnic -- all working together and honoring a culture that  
15    for many people is important to them but also a culture that  
16    students may not have been familiar with and yet respecting  
17    and honoring that culture.

18            And I could give countless examples of this that  
19    happen at the college.

20    **Q.** Dean Khurana, let's move one more page forward to the  
21    athletics section of the report.

22    **A.** Yes.

23    **Q.** Did the committee make any specific findings regarding  
24    diversity for athletics at college?

25    **A.** Yes.



1     **Q.** How do athletics allow students to benefit from diversity  
2 outside of the classroom?

3     **A.** Being a student athlete is another form of background and  
4 diversity and interest. We saw three. One is that athletics  
5 created a strong sense of community identity for the college.

6             Just in a couple of weeks, for example, we're going  
7 to have the Harvard-Yale football game in which tens of  
8 thousands of alumni and students are coming together to  
9 celebrate and reacquaint themselves with the institution.

10            Athletes also, you have a diverse backgrounds and  
11 experiences on our athletic teams, and their students learn  
12 to work together toward a common goal.

13            Our athletes also benefit all of our students  
14 because they have to both balance a rigorous training  
15 schedule but also their academic work.

16            But many of our students have -- all of us as  
17 humans face challenges, but I would say that for our age  
18 group, many of our students haven't yet perhaps confronted  
19 all of the things that life sometimes brings you. And having  
20 athletes who have been injured, lost games, and have to be  
21 resilient to recover from that also teaches all of our  
22 students about the importance of that capacity and that  
23 capability of being resilient.

24     **Q.** Now, Dean Khurana, does Harvard have any offices that are  
25 devoted to issues of diversity?

1     **A.**   Yes.

2     **Q.**   And what are those offices?

3     **A.**   This is part of the work that all of us do, but we do  
4     have within the college an office of equity, diversity, and  
5     inclusion in which we work together. We have The Harvard  
6     Foundation all to strengthen a common culture around equity,  
7     diversity, and inclusion.

8     **Q.**   Now, let's turn to pages 21 and 22, looking at the  
9     "Conclusion" section of the report.

10                 What conclusion did the Khurana committee  
11     ultimately reach regarding the benefits of student body  
12     diversity?

13     **A.**   That student body diversity in all of its dimensions,  
14     including racial diversity, is essential. It's the oxygen by  
15     which our institution progresses. It's how our research  
16     progresses. It's how our teaching progresses, and it's how  
17     ultimately we are able to do our part to contribute to  
18     society.

19     **Q.**   And what happened after of the committee finalized its  
20     report?

21     **A.**   This report was brought to the faculty council, which is  
22     an elected body within the faculty of arts and sciences.

23     **Q.**   Did the faculty council vote on whether to endorse the  
24     committee's report?

25     **A.**   Yes. The faculty council voted to endorse the

1 committee's report and then it was brought to the full  
2 committee to vote as well. I believe that both votes were  
3 unanimous.

4 **Q.** Dean Khurana, in the two and a half years since this  
5 report was endorsed by the full faculty, has Harvard College  
6 achieved its goals for creating a diverse student body?

7 **A.** Not yet.

8 **Q.** How so or why not?

9 **A.** I feel we have more work to do. Given our society, I  
10 know talent is everywhere, but our opportunities are not.  
11 And we want that talent to feel like it has a place at  
12 Harvard.

13 **Q.** And is Harvard continuing to work toward creating a more  
14 diverse and inclusive educational environment?

15 **A.** Yes. We are engaged in multiple dialogues about this.  
16 We continue to invite students from different backgrounds and  
17 experiences, and we hope they'll consider Harvard as an  
18 option. When students are here, we're trying to create an  
19 environment in which they engage and encounter each other in  
20 a variety of different contexts. So yes.

21 **Q.** Switching topics for a minute, Dean Khurana.

22 Do you interface with the Office of Institutional  
23 Research in your role as dean of Harvard College?

24 **A.** Yes.

25 **Q.** And had you ever worked with OIR before you became dean

1 of the college?

2 **A.** Not in any formal way.

3 **Q.** Now, when you first became dean, did OIR provide you with  
4 any of their work?

5 **A.** When I first became dean, there was a lot of material  
6 that was left in my office from a variety of different  
7 groups, and among that I think there was material from the  
8 Office of Institutional Research.

9 **Q.** And if you could, turn to Tab 1 in your binder, which is  
10 Plaintiff's Exhibit 41. Let me know when you're there.

11 **A.** Yes, I'm there.

12 **Q.** What is this document?

13 **A.** It's an email.

14 **Q.** And who is it from?

15 **A.** Erica Bever.

16 **Q.** And who is it to?

17 **A.** Erin Driver-Linn.

18 **Q.** And, Dean Khurana, what's the subject of the email?

19 **A.** Agenda underscore for Khurana.

20 **Q.** And what's the date?

21 **A.** July 10, 2014.

22 **Q.** And when did you formally become dean of the college?

23 **A.** July 1, 2014.

24 **Q.** So this email is about nine days after you formally  
25 became the dean?

1       **A.**   Yes.

2       **Q.**   And in her email, Ms. Bever states that she's attaching  
3       "a draft agenda for tomorrow's meeting with Dean Khurana."

4               Do you see that?

5       **A.**   Yes, I see that sentence.

6       **Q.**   And do you recall meeting with OIR around this time in  
7       July of 2014?

8       **A.**   Yes.

9       **Q.**   And what was the subject matter of that meeting?

10      **A.**   It was a very high-level meet-and-greet type of meeting.

11      **Q.**   And at that meeting, did you discuss any of OIR's work  
12      product?

13      **A.**   No.

14      **Q.**   Let's take a look at page 47 of P41. The presentation is  
15      entitled "Evaluating Factors That Play a Role in Harvard  
16      College Admission."

17               Do you see that?

18      **A.**   Yes, I see that sentence.

19      **Q.**   Could you turn to Slide 2 in that presentation, which is  
20      page 48 of P41.

21      **A.**   Yes.

22      **Q.**   And what is the stated goal there?

23      **A.**   It says, "Using various admissions ratings, how well can  
24      we approximate admit rates by race/ethnicity and the  
25      demographic composition of the admitted students pool?"

1     **Q.** And sticking on that slide, if you'd go to the bottom  
2     there, what do the notes say?

3     **A.** Bullet Point 1 says, "Students with no academic index are  
4     excluded from this analysis."

5             Bullet 2 says, "The following analysis is  
6     preliminary," that's underscored and bolded, "and for  
7     discussion."

8     **Q.** Dean Khurana, on the same slide, what does the first  
9     bullet under "Strategy" say?

10    **A.** "Fit a series of basic logistic regression models using  
11    data from classes of 2007 through 2016.

12    **Q.** Now, can you please turn to page 50 of P41.

13    **A.** I'm there.

14    **Q.** Do you recall seeing a slide like this when you became  
15    the dean of the college?

16    **A.** I can't say I saw this exact slide, but I do remember  
17    seeing a slide that looked like this.

18    **Q.** Other than this slide or a slide that looked like this,  
19    do you recall reviewing any other analysis by OIR related to  
20    admissions when you became the dean?

21    **A.** No.

22    **Q.** And, Dean Khurana, are you familiar with how to run a  
23    regression analysis?

24    **A.** Yes.

25    **Q.** And what's that familiarity based on?

1     **A.** As part of my doctoral training, you learn regression  
2     analysis. And I've used that in my own research and also in  
3     reviewing articles for journals.

4     **Q.** And, Dean Khurana, what was your reaction when you saw  
5     this particular slide?

6     **A.** I didn't really have a reaction. I had an impression,  
7     which is I found this kind of incomplete and a little bit  
8     puzzling approach to understanding how you got admitted to  
9     Harvard.

10    **Q.** And what, if anything, did these models suggest to you  
11    regarding Harvard's admissions process?

12    **A.** Well, if I put myself back in that time, even knowing  
13    what I knew then, I know that Harvard's admissions process  
14    actually looks, you know, at a role of, like, recommendation  
15    letters; it looks at whether students have competed in  
16    national science fair competitions; it looks at the personal  
17    essay; and that these are things that are very important in  
18    college admissions. And that was not reflected in these  
19    slides -- this slide. Sorry.

20    **Q.** What, if anything, did Model 1 show you?

21    **A.** Again just with lots of caveats of not knowing what was  
22    underneath this, the reading that you would give to this is  
23    academics, however it's defined -- and I don't know what goes  
24    into this other than if it's largely quantitative -- that  
25    Asians as a group do better under that category relative to

1 other groups.

2 **Q.** And if you take a look at Model 4, does the fact that  
3 Model 4 is close to the actual composition of the class,  
4 which is reflected in the final bar there, impact your view  
5 of the models on this slide?

6 **A.** A model fit is not always an indicator of a good model if  
7 it doesn't actually reflect the underlying processes. So you  
8 have to be very cautious when you read into that. I'd also  
9 want to know as you added this data how was it filled in.  
10 One way to get good model fit is if you know what the  
11 outcome --

12 MR. MORTARA: Your Honor, I object. This goes to  
13 the trial motion in limine. He's not testifying as to his  
14 percipient memory of the document. He's now giving expert  
15 testimony.

16 MS. CONLEY: Your Honor, he's explaining what his  
17 reaction was when he saw the slide and the basis for that  
18 particular reaction.

19 MR. MORTARA: That was not the question nor the  
20 answer, Your Honor.

21 THE COURT: So let's move on to your next question.  
22 He answered it and went beyond. So I'll stop him there and  
23 you can ask your next question.

24 Hold on one second. Sorry. Technical difficulties  
25 up here today.



1 BY MS. CONLEY:

2 **Q.** Dean Khurana, at the time when you looked at these  
3 particular models, what was your reaction when you looked at  
4 the difference between Model 4 and the actual class that's  
5 reflected in the fifth bar?

6 **A.** Well, because the title of this is "Projected Admitted  
7 Student Pools," one of the things I'd want to know is how the  
8 data was filled for -- if you already knew who got in, which  
9 is you already knew the outcome and then that became part of  
10 your input, that's actually problematic from a scientific  
11 hypothesis testing perspective.

12 It would be as if, for example, if I already knew  
13 what the Powerball numbers are going to be for tonight and I  
14 put that into my model before that happened, I'm going to  
15 have a pretty high similarity outcome in that way. But that  
16 violates how you do hypothesis testing. So you can't know  
17 the outcome or the result of an experiment before you  
18 actually run the analysis.

19 MR. MORTARA: Your Honor, I object and move to  
20 strike. I understand the question was his percipient  
21 knowledge. The answer was not restricted to that at all. I  
22 move to strike.

23 THE COURT: I'm not going to strike it, but I'm  
24 going to take that as his reaction to it and not impute it to  
25 the expert testimony that's going to follow.

1 MS. CONLEY: Thank you, Your Honor.

2 MR. MORTARA: Thank you.

3 BY MS. CONLEY:

4 Q. Now, did you ultimately discuss this OIR chart with  
5 anyone?

6 A. No.

7 Q. Why didn't you discuss this chart with anyone?

8 A. There was nothing to discuss.

9 Q. And what do you mean by that?

10 A. It didn't reflect how Harvard College admissions process  
11 works. It's not the approach that I think you look at to  
12 understand how students are admitted. You want to have a  
13 model that actually reflects the actual processes. It didn't  
14 have -- it had a very narrow set of variables. Didn't really  
15 say anything to me.

16 Q. Dean Khurana, did anything in this chart suggest to you  
17 that there was bias against Asian-American applicants in the  
18 admissions process at Harvard College?

19 A. No.

20 Q. And have you ever seen any information that suggests that  
21 the admissions office discriminates against Asian-American  
22 applicants in the admissions process?

23 A. I have not.

24 Q. And I believe Mr. Mortara asked you a variation of this  
25 question earlier, but if you had seen any evidence of

1 discrimination against Asian-American applicants in the  
2 admissions process, what would you have done?

3 **A.** I would have raised multiple alarms with multiple people  
4 without any hesitation.

5 **Q.** Now, let's switch gears a little bit and talk about how  
6 Harvard College goes about assembling a diverse student body.

7 Just stepping back, does Harvard consider race in  
8 admissions in order to assemble a diverse student body?

9 **A.** Race is one of many characteristics that are considered  
10 in assembling our student body. But again, it has to be  
11 understood in context of other aspects of a student.

12 **Q.** And why does Harvard consider race, or why might Harvard  
13 consider race in an applicant's application when deciding  
14 whether to admit that applicant? What's the reason?

15 **A.** Well, it's one of many characteristics, but often it  
16 depends on how the applicant themselves thinks about their  
17 racial identity or any other identity they might have and how  
18 it reflects on the kind of person they are, what they hope to  
19 contribute to the Harvard College community, and what the  
20 Harvard College community can benefit from their presence.

21 **Q.** And is one of the purposes to create -- well, let me back  
22 up.

23 What would be one of the reasons that Harvard is  
24 considering race in the admissions process?

25 **A.** Well, we live in a diverse society, diverse along a

1 variety of different dimensions. Race is a characteristic  
2 that for some people shapes their sense of self and how  
3 others experience them.

4 Our students benefit from understanding people of  
5 all types, and that ultimately, I think, prepares our  
6 students not only -- like many other colleges and  
7 universities, not only to thrive in their educational  
8 experience but also to be well-prepared for serving as  
9 lawyers, as business leaders, as community leaders and public  
10 servants because they know how to thrive in that kind of  
11 environment and use it to its full potential.

12 **Q.** And, Dean Khurana, have you ever studied the question as  
13 to whether Harvard College could achieve a racially diverse  
14 student body through race-neutral means?

15 **A.** Yes.

16 **Q.** And in what context did you consider that question?

17 **A.** I was asked to serve on a committee to study race-neutral  
18 alternatives.

19 **Q.** Let's take a look at DD 2.1. When did you serve on the  
20 RNA committee?

21 **A.** That was in the late spring of 2017.

22 **Q.** And what specifically, in your own words, did the RNA  
23 committee study?

24 **A.** Specifically we looked at a variety of alternatives to  
25 achieve student body diversity and examine that in the

1 context of its impact on student body diversity and its  
2 impact on other institutional objectives.

3 **Q.** And how is it that you came to serve on the RNA  
4 committee?

5 **A.** I was asked to.

6 **Q.** By whom?

7 **A.** Then Dean Michael Smith.

8 **Q.** Ask you turn to Tab 5 in your binder, which is  
9 Defendant's Exhibit 60.

10 MS. CONLEY: Your Honor, should we pause?

11 THE COURT: No. Go ahead. I'm just relocating.

12 MS. CONLEY: Okay.

13 BY MS. CONLEY:

14 **Q.** Dean Khurana, are you at Tab 5, Defendant's Exhibit 60?

15 **A.** Yes.

16 **Q.** What is this document?

17 **A.** This document looks like the letter of invitation to  
18 serve on this committee.

19 MS. CONLEY: Your Honor, we move to admit  
20 Defendant's Exhibit 60 into evidence.

21 MR. MORTARA: No objection, Your Honor.

22 THE COURT: Admitted.

23 (Defendant Exhibit No. 60 admitted.)

24 BY MS. CONLEY:

25 **Q.** Dean Khurana, does this document accurately reflect the

1 charge of the race-neutral alternatives committee?

2 **A.** Yes.

3 **Q.** And what was of the charge of that committee?

4 **A.** To evaluate --

5 THE COURT: Hold on one second. Okay. Sorry.

6 BY MS. CONLEY:

7 **Q.** Dean Khurana, what was the charge of the RNA committee?

8 **A.** To evaluate whether proposed race-neutral alternatives  
9 are available and workable for achieving the benefits that  
10 flow from our student body diversity.

11 **Q.** And how did the RNA committee ultimately carry out that  
12 charge?

13 **A.** Well, we spent a lot of time doing a literature review.  
14 There's a lot of readings that we prepared ourselves with,  
15 including benefiting from some of the suggestions from the  
16 expert witness reports like Professor Cavanaugh's --  
17 Kahlenberg's ideas that helped inform our discussion and  
18 dialogue.

19 **Q.** Slip of the tongue.

20 **A.** Sorry.

21 **Q.** And you mentioned the expert reports. What consideration  
22 did the RNA committee give to the expert reports that were  
23 submitted in this litigation?

24 **A.** We looked at them in context of the literature. It  
25 helped inform our dialogue, but we ultimately also had to

1     apply our own judgment in considering all of the different  
2     recommendations.

3     **Q.**   How many times did the RNA committee meet?

4     **A.**   I believe around seven.

5     **Q.**   Outside of the times that you formally met as a  
6     committee, did you do any work on these issues on your own?

7     **A.**   Yes.

8     **Q.**   And did the committee ultimately -- we took a look at the  
9     report that the committee issued regarding its findings. And  
10    so can you turn to that, which is at Tab P316? Sorry. It's  
11    Tab 6 in your binder.

12    **A.**   Sorry.

13    **Q.**   Sorry about that.

14    **A.**   I'm there.

15    **Q.**   Could you please provide a high-level summary of the  
16    report?

17    **A.**   Essentially we looked at a number of alternatives to look  
18    at different ways that student body diversity could be  
19    achieved and studied the impact of that diversity with  
20    respect to our mission as well as with respect to other  
21    institutional goals.

22    **Q.**   And, Dean Khurana, did the committee do a serious  
23    evaluation of each of the race-neutral alternatives that it  
24    considered?

25    **A.**   Yes.

1     **Q.** And in the process of discussing and considering those  
2 alternatives, were there any disagreements among members of  
3 the committee?

4     **A.** Yes. There were debates and disagreements. They were  
5 civil, but we did have different perspectives.

6     **Q.** Can you provide an example of one of those different  
7 perspectives?

8     **A.** One that stands out for me personally is that I had a  
9 strong view that -- based on the literature that early  
10 admissions actually worked against students from lower  
11 socioeconomic backgrounds. It was a kind of part of the  
12 assertion in the literature, and I thought that it was true.

13             I didn't know at the time -- I had heard of it, but  
14 I didn't realize how seriously actually Harvard College  
15 admissions had actually taken that and, in fact, had removed  
16 early admissions, unlike many other schools. They did it  
17 unilaterally.

18             And it actually had the exact opposite effect, that  
19 it actually decreased the student body diversity rather than  
20 increasing the student body diversity. And that was  
21 something that was really both interesting when you do really  
22 do true analysis, but it was also heartening to know that  
23 this was something that the institution took very seriously.

24     **Q.** If you turn to page 8 of the report, looking at the first  
25 paragraph there, what did the committee conclude would happen



1 if Harvard College stopped considering race altogether?

2 **A.** That it would have a significant impact in the quality of  
3 the Harvard College experience for our students; that  
4 specifically it would be a very narrowing educational  
5 experience for our students rather than expansive.

6 **Q.** What conclusion did the committee reach regarding whether  
7 Harvard College should simply stop considering race?

8 **A.** Again, we thought it really would come at the expense of  
9 our student's educational purpose. If you don't have  
10 different people from different perspectives, different  
11 backgrounds studying across all of your different fields, you  
12 are less likely to encounter those different perspectives and  
13 points of view.

14 And so you really want to make sure that you are  
15 constantly bringing a lot of diverse perspectives of all  
16 types. And you also want to be very conscious that if --  
17 you're not creating a kind of what I would call a token or  
18 minor experience for anyone as well.

19 And so you really need to again constantly be  
20 rigorous and vigilant in making sure that you're bringing as  
21 much diversity of perspectives and points of view into the  
22 classroom.

23 **Q.** Did the committee point to a particular -- to a drop-off  
24 in particular racial or ethnic minorities as one of the  
25 reasons that it couldn't stop the use of the consideration of

1 race all together?

2 **A.** Yes. In our simulations, we did.

3 **Q.** And which racial and ethnic minorities?

4 **A.** So for example, on the page that we have, it would be a  
5 significant drop in people who self-identified as  
6 African-American or Hispanic or other.

7 **Q.** And how would such a drop-off in the enrollment of  
8 African-American and Hispanic students impact the diverse  
9 educational environment that you alluded to earlier?

10 **A.** It would be very narrowing for all of our students. We  
11 live in a society that's highly stratified among multiple  
12 dimensions. Part of our goal in our educational experience  
13 in order to advance our mission is to bring students in  
14 contact and encounter with people who are different from  
15 them.

16 And this would be a significant decline and a very  
17 negative experience in our classrooms, in our extracurricular  
18 experience, for our residential experience, all of which we  
19 very carefully curate to really allow for that encounter with  
20 difference and that respect building as we cross chasms of  
21 difference and learn to sort of find so much in common with  
22 each other.

23 **Q.** And let's turn to page 14 of the report.

24 Focusing there on the second paragraph, did the  
25 committee consider race-neutral alternatives that

1 Mr. Kahlenberg proposed?

2 **A.** Yes, we did.

3 **Q.** And what did the committee find regarding how the  
4 race-neutral alternatives proposed by Mr. Kahlenberg would  
5 impact the academic quality of the admitted class?

6 **A.** That it would decrease the academic quality of our  
7 overall class.

8 **Q.** And why would the decrease in the academic or the drop in  
9 the academic quality of the class be unacceptable to Harvard  
10 College?

11 **A.** That's part of our identity, that academic interest, the  
12 quality of academic curiosity, and commitment to academic  
13 quality is part of the identity of Harvard College and how we  
14 advance our mission.

15 **Q.** And did the committee find that the academic quality of  
16 the admitted class would decline for each of the race-neutral  
17 alternatives that Mr. Kahlenberg proposed?

18 **A.** I believe that's what we did find.

19 **Q.** Now, looking a little further down in the same paragraph,  
20 what would be the impact for extracurricular, personal, and  
21 athletic ratings of the admitted class under Mr. Kahlenberg's  
22 proposals?

23 **A.** Again, I think we would see declines in a variety of  
24 these areas. And in the sort of academic quality, the  
25 extracurricular quality, the public-spirited orientation of

1 our students, all the other aspects that are really important  
2 in composing our student body.

3 **Q.** Let's turn to page 18 of the report to the "Conclusion"  
4 section.

5 Dean Khurana, what was the committee's overall  
6 conclusion regarding whether viable race-neutral alternatives  
7 were available?

8 **A.** We concluded that at present we couldn't identify a  
9 race-neutral alternative that met our overall institutional  
10 objectives and advance the mission at present.

11 **Q.** Now, was it the view of the committee that race-neutral  
12 alternatives would never work at Harvard College?

13 **A.** It was not.

14 **Q.** And if you look at the final paragraph on page 19, what  
15 did the committee conclude regarding the consideration of  
16 race-neutral alternatives in the future?

17 **A.** That this is something that, again, our admissions  
18 process and looking at different approaches, including  
19 race-neutral alternatives, is something we should continue to  
20 do. And we made an explicit recommendation that this be  
21 reevaluated in five years' time.

22 **Q.** Now, Dean Khurana, if Harvard College had to stop  
23 considering race today, what would be the consequence to the  
24 college?

25 **A.** It would significantly set us back as an institution.

1 Like other higher education institutions, the diversity of  
2 our student body, the diversity of their interactions with  
3 each other, the residential experience that we have curated  
4 would result -- it would just decline. It would be a very  
5 narrowing effect on students. The differences of experiences  
6 they had from home versus being at a college would decrease.  
7 And they would just basically be less well-prepared to be  
8 effective citizens and leaders in our diverse and  
9 interconnected world.

10 MS. CONLEY: Thank you, Dean Khurana. No further  
11 questions.

12 THE COURT: Can I ask you a question? You talked  
13 about you want to avoid a token experience. How do you kind  
14 of measure what's enough?

15 THE WITNESS: I don't think there's like a  
16 quantitative number. What it is, is that when you have a lot  
17 of people who share different backgrounds and experiences and  
18 no one is more salient than others; that is, you have just a  
19 lot of ways that you have to understand each person as an  
20 individual, that you've had enough experiences where your  
21 notions of stereotypes are broken, I think that educational  
22 experience is what gets us do that point.

23 THE COURT: Okay.

24 MS. CONLEY: Thank you.

25 MR. MORTARA: Your Honor, would you like to take a

1 short morning break or do you want me to get set up and go?

2 THE COURT: Do you have more for him?

3 MR. MORTARA: I do.

4 THE COURT: It's up to you. I'm happy to take a  
5 break or I'm happy to forge forward, whatever you want to do.

6 MR. MORTARA: Let's take a five-minute break.

7 Ms. Hacker I think wants to talk to you about depositions.

8 THE COURT: Why don't we take a break until 11:00,  
9 then. And anyone who wants to talk about depositions, they  
10 can do it over here.

11 (The following was held at sidebar.)

12 THE COURT: The ones that we had not done are  
13 Pedrick, Walsh, Weaver and Lopez. Do you want to do some of  
14 those now or do them all at the same time at the end of  
15 lunch? What do you want to do?

16 MS. HACKER: Whatever is Your Honor's preference.  
17 We can wait and do them all at the end of lunch if that would  
18 be easiest.

19 THE COURT: I'm ready to go.

20 MS. HACKER: Let do it.

21 THE COURT: Starting at page 8 on Howrigan,  
22 overruled. Page 11, all overruled. Page 12, overruled. Is  
23 this --

24 MS. ELLSWORTH: It's fixed now.

25 THE COURT: Those are all overruled. Page 15,

1 they're all overruled.

2 Lopez.

3 MS. ELLSWORTH: Lopez is another objection in full.

4 THE COURT: That's all out as far as I'm concerned.

5 I don't see what that -- I'm happy to hear you on it, but --

6 MS. HACKER: As Your Honor knows, SFFA has a racial  
7 balancing claim in this case. Ms. Lopez is the sister  
8 cochair of an organization called the Association of Black  
9 Admissions and Financial Aid Officers of the Ivy League and  
10 Sister Schools. What they do is they get together twice a  
11 year and have something called a round robin where all of  
12 these schools sit a table and read the demographics of each  
13 minority of racial and ethnic group in their admitted pool so  
14 far, and they share that information with each other. It  
15 goes to the racial balance claim that SFFA has in this case.

16 THE COURT: I just don't see it. Unless you can  
17 show that it influences what Harvard does.

18 MS. HACKER: It is circumstantial evidence that  
19 Harvard -- Harvard wouldn't want these numbers and take these  
20 numbers if it didn't have some control over how it is  
21 affecting its admitted class and the percentages of these  
22 minorities in the admitted class.

23 THE COURT: Out. We have Walsh and Weaver. Let's  
24 start with Walsh. Page 8, both sustained.

25 Weaver, so on page 1 --

1 MS. ELLSWORTH: I might have a different version  
2 here. Is that the second Weaver? Her deposition stopped and  
3 restarted. I'm there. Sorry.

4 THE COURT: That one sort of lost me. This is  
5 supposed to be the question, and then this is supposed to be  
6 the answer?

7 MS. FASULO: Yes, Your Honor.

8 THE COURT: I think the question is fine which is  
9 what you're objecting to. The answer is nonresponsive, but I  
10 guess they circle back to it.

11 MS. ELLSWORTH: They get it later.

12 THE COURT: I guess that I'll overrule that one.  
13 Page 7, overruled. Page 8, they're all overruled. That's  
14 it.

15 MS. HACKER: We'll have two additional transcripts.  
16 We'll probably get them to Your Honor tomorrow after we hear  
17 from Harvard if there are any objections being withdrawn.

18 MS. ELLSWORTH: The two transcripts are 30(b)(6)  
19 transcripts testimony from Dean Fitzsimmons and  
20 Ms. Driver-Linn both of which were here as you know. So  
21 we're going to take a look at them. We just got them last  
22 night. We may be objecting to cumulative.

23 THE COURT: I'm going to extend the break for five  
24 minutes to give her a break.

25 (End of sidebar.)



1 (Off the record.)

2 THE COURT: Mr. Mortara, any time you're ready.

3 MR. MORTARA: I'm ready to proceed, Your Honor.

4 THE COURT: Go ahead.

5 FURTHER EXAMINATION

6 BY MR. MORTARA:

7 Q. Okay, Dean Khurana, only a few more questions, I think.

8 Turning back to Plaintiff's 316, the report of the  
9 committee to study race-neutral alternatives.

10 Very simple question, sir. Who wrote the first  
11 draft of this report?

12 A. Could you just tell me what --

13 Q. You have two binders in front you. One is the one I gave  
14 you. One is the one your lawyers gave you. It's got a lot  
15 more in front of it. It's got the case caption at the top.  
16 It looks like this. I'll grab it.

17 A. Okay. Thank you.

18 Q. This is Harvard's binder, sir.

19 A. I've got it.

20 Q. And the other one is the binder I gave you, and mine is  
21 labeled by plaintiff's exhibit number, so you can look at  
22 P316 in that one. You found the document.

23 And the question is who drafted the first draft of  
24 this report?

25 A. It was drafted about our attorneys.

1       **Q.** Who?

2       **A.** I don't know who specifically drafted it.

3       **Q.** Lawyers wrote the first draft of this report?

4       **A.** Yes.

5       **Q.** Now let's talk about some of the things you were  
6 discussing with my friend on the other side regarding  
7 Plaintiff's Exhibit 41, Ms. Conley. Remember you were  
8 discussing Plaintiff's Exhibit 41? That's in your Harvard  
9 binder. It's behind Tab 1. Take a look at it for a second.

10               THE COURT: Which tab is it?

11               MR. MORTARA: Tab 1 in the Harvard binder, Your  
12 Honor.

13               THE COURT: Thank you.

14       BY MR. MORTARA:

15       **Q.** You talked about this email?

16       **A.** Yes.

17       **Q.** And what was attached to it?

18       **A.** Yes.

19       **Q.** And you reviewed Plaintiff's Exhibit 41 in preparation  
20 for your testimony today, right?

21       **A.** Only that exhibit that was pulled up earlier.

22       **Q.** Well, let's take a look at some other parts of it.  
23 Please turn to page 59 of 66 as you're reading pages at the  
24 bottom.

25       **A.** I apologize, but I don't think I'm looking at the right

1 thing. If somebody could help me here.

2 MR. MORTARA: Could I approach the witness and  
3 assist?

4 THE COURT: Yes. Of course.

5 BY MR. MORTARA:

6 Q. I'll try to be loud, Joan.

7 Dean Khurana, I think you and I have the same  
8 binders from Harvard. This is the Harvard binder. Do you  
9 see it? And behind Tab 1 is Plaintiff's Exhibit 41. If you  
10 would now turn to page 59 of 66. Let me know when you're  
11 there, sir.

12 A. I'm there.

13 Q. You've never seen this memorandum to Bill Fitzsimmons  
14 from Erica Bever, Erin Driver-Linn, and Mark Hansen, have  
15 you?

16 A. I've not seen this outside of this litigation.

17 Q. Turn to the last page, sir.

18 A. I'm there.

19 Q. In 2013, 2014, you had never seen this analysis from OIR,  
20 had you?

21 A. No.

22 Q. Down at the bottom you had never seen these statements:  
23 "While we find that low-income students clearly receive a tip  
24 in the admissions process, our descriptive analysis and  
25 regression models also shows the tip for legacies and

1 athletes is larger and that there are demographic groups that  
2 have negative effects."

3 You never saw that, did you?

4 **A.** No.

5 **Q.** If you had, you would have done something, right?

6 **A.** No.

7 **Q.** If you had seen this you would have done absolutely  
8 nothing?

9 **A.** I'm not sure what it's saying. I haven't studied this,  
10 but not as it currently reads.

11 **Q.** At your deposition you were shown some slides from OIR.  
12 Do you remember that?

13 **A.** You'd have to point me to something specific, please.

14 **Q.** Take a look at the other binder. Please turn to  
15 Plaintiff's Exhibit 632.

16 **A.** I'm there.

17 **Q.** You were shown this document at your deposition, correct?

18 **A.** I might have seen a document that looked like this, but I  
19 can't tell you if it's this exact document.

20 **Q.** Please turn to Slide 38. I've got it on the screen, sir.  
21 I'm only going to ask you one question about it.

22 **A.** I'm there.

23 **Q.** Do you see at the top it talks about research questions  
24 and next steps? Number 3, it says, "Is there bias against  
25 Asians in college admissions?"

1 Do you see that?

2 **A.** I see at that sentence under part 1. There's a Number 3  
3 and that's where that sentence is.

4 **Q.** You don't remember reviewing any presentation containing  
5 tables or other similar information that was addressing  
6 whether there was bias against Asians in college admissions,  
7 do you?

8 **A.** No.

9 **Q.** And you don't remember discussing such tables or that  
10 analysis with anybody, do you?

11 **A.** No.

12 **Q.** And you never discussed any of your concerns that you  
13 expressed to Ms. Conley that you do remember with anyone at  
14 OIR, did you?

15 **A.** No.

16 **Q.** You assume that the people who do institutional research  
17 for the college and university have a background in  
18 statistical modeling, correct?

19 **A.** Yes, I hope.

20 **Q.** And your background in statistical modeling came from  
21 when you did your doctoral work, right?

22 **A.** Yes.

23 **Q.** You received your Ph.D. in 1998, correct?

24 **A.** Yes.

25 **Q.** Would you assume that the people doing institutional

1 research at the Office of Institutional Research at Harvard  
2 maybe were a little bit more up to date on their knowledge of  
3 statistical modeling?

4 **A.** I can't answer that question for certain.

5 **Q.** Well, you assume they're competent in their jobs,  
6 correct?

7 **A.** Yes.

8 **Q.** And you personally took no steps to find out why these  
9 OIR analyses you testified about were prepared, correct?

10 **A.** Correct.

11 **Q.** And despite the criticisms that you discussed with  
12 Ms. Conley, you did not take any steps to determine what a  
13 proper analysis would reveal with respect to this  
14 information, did you?

15 **A.** I did not.

16 MR. MORTARA: No more questions, Your Honor.

17 FURTHER EXAMINATION

18 BY MS. CONLEY:

19 **Q.** Dean Khurana, just really quickly. Mr. Mortara pointed  
20 you to Plaintiff's Exhibit 632.

21 **A.** Yes.

22 **Q.** Other than at your deposition, do you recall ever seeing  
23 this document?

24 **A.** No.

25 **Q.** And other than the slide that we talked about in P41, the

1 bar graph with the Models 1 through 4 --

2 **A.** Yes.

3 **Q.** -- did you see any other presentation or slide prepared  
4 by OIR?

5 **A.** I don't believe so.

6 **Q.** So the slides that Mr. Mortara just directed you to in  
7 Plaintiff's Exhibit 632, had you ever seen those slides  
8 outside of the context of this particular litigation?

9 **A.** No.

10 MS. CONLEY: No further questions.

11 THE COURT: You're excused, sir. Thank you.

12 MR. McBRIDE: Your Honor, SFFA next calls Dean  
13 Michael Smith.

14 MR. LEE: Your Honor, Mr. Waxman is going to  
15 represent us on Dean Smith, and I'm going to walk out with  
16 Dean Khurana, if that's okay.

17 THE COURT: I'm happy to wait until you get back,  
18 Mr. Lee, if you want.

19 MR. WAXMAN: Your Honor, my optimistic prediction  
20 was wrong, and we have no objection to proceeding in  
21 Mr. Lee's absence.

22 THE COURT: I also don't have any objection to  
23 waiting. It looks like they're still setting up.

24 MR. McBRIDE: Your Honor, if I could use this  
25 opportunity, I'll pass out some binders. May I approach the

1 witness?

2 THE COURT: Absolutely fine.

3 MR. McBRIDE: I also have copies for the Court.

4 THE COURT: We'll start at 11:15.

5 MR. McBRIDE: I'll just cool my jets.

6 MR. WAXMAN: And I'll stretch my back.

7 THE COURT: That's exactly what I'm doing. Nobody  
8 wanted to start without you, Mr. Lee.

9 MR. WAXMAN: I think for the record, I did.

10 MR. LEE: Don't let that happen.

11 THE COURT: We'd given you a limit of 11:15.

12 THE CLERK: If you could please stand and raise  
13 your right hand.

14 (MICHAEL SMITH duly sworn by the Deputy Clerk.)

15 THE CLERK: Could you please state your name and  
16 spell your last name for the record.

17 THE WITNESS: Michael David Smith, S-M-I-T-H.

18 MR. McBRIDE: May I proceed, Your Honor?

19 THE COURT: You may.

20 EXAMINATION

21 BY MR. McBRIDE:

22 **Q.** Good morning, Dean Smith.

23 **A.** Good morning.

24 **Q.** What's your current position at Harvard?

25 **A.** I'm a member of the faculty at Harvard.



1     **Q.** You're no longer the dean of the faculty of arts and  
2     sciences?

3     **A.** I am not.

4     **Q.** For how long were you the dean of the faculty of arts and  
5     sciences?

6     **A.** For a little over 11 years.

7     **Q.** That was from when to when?

8     **A.** From July of 2007 to August of 2018.

9     **Q.** And at a broad level, what were the responsibilities that  
10    you had as a dean of the faculty of arts and sciences?

11    **A.** So I had broad oversight of the faculty of arts and  
12    sciences, everything from its financial and organizational  
13    aspects to the educational program within the college,  
14    Harvard College, the Graduate School of Arts and Sciences,  
15    the School of Engineering and Applied Sciences, and what we  
16    call the division of -- the division of -- I forget the name  
17    of it -- anyway. It includes the extension school and the  
18    summer school in it.

19           There's a number of libraries that report up to the  
20    dean of the faculty. There's a big portion of the museum  
21    system reports up into that position. Athletics reports up  
22    into that position. Those sorts of things.

23    **Q.** And the admissions office also reports to you directly?

24    **A.** The director of admissions and financial aid reports  
25    directly to the dean of faculty and of arts and sciences.

1     **Q.** And the dean of college, Dean Khurana, he also reported  
2 directly to you when you were in that position?

3     **A.** Yes.

4     **Q.** In your position as dean, you understood that the  
5 admissions department says that race is one factor among many  
6 taken into account when they're considering a particular  
7 student?

8     **A.** I do.

9     **Q.** But you can't explain how it's actually taken into  
10 account as one factor by the admissions department, can you?

11    **A.** No. I don't know the details of the admissions process.

12    **Q.** I want to talk about your work on the race-neutral  
13 alternatives committee, if we could. You're familiar with  
14 that committee obviously?

15    **A.** I am.

16    **Q.** And who was on that committee?

17    **A.** I was the chair of that committee. Dean Khurana was a  
18 member, and Dean Fitzsimmons was a member.

19    **Q.** And that committee, that came out of a conversation  
20 between you and the president of the university and your  
21 counsel?

22    **A.** Yes.

23    **Q.** And that was in June of 2017?

24    **A.** Yes.

25    **Q.** About how many times did you meet before you issued your

1 ultimate report?

2 **A.** The committee met seven times.

3 **Q.** And the report you issued, was that in April of 2014 was  
4 it?

5 **A.** I believe it's 2017.

6 **Q.** 2017. My apologies. I'm going to put that up on the  
7 screen. This is Plaintiff's Exhibit 316 which is already in  
8 evidence.

9 Is this the final report of your committee that you  
10 issued in 2017, you said?

11 **A.** Yes. Sorry. No. The final report was two-thousand --

12 **Q.** 2018.

13 **A.** -- eighteen. Sorry.

14 **Q.** We'll all get our dates straight here. April of 2018.

15 **A.** I'll remember what year we're in.

16 **MR. WAXMAN:** Stipulated.

17 **A.** Mine is a little blurry, but it looks like --

18 **BY MR. MORTARA:**

19 **Q.** If you need to, you can turn in your binder to  
20 Plaintiff's Exhibit 316. It will have a clear copy. I'll  
21 also blow up anything particularly we look at so you can read  
22 it on the screen as well.

23 I want to turn to the second page and look at the  
24 third paragraph here. You see in your report you say, "In  
25 2014, Harvard convened a universitywide committee chaired by

1 James Ryan, dean of the graduate school of education. That  
2 committee was charged with examining the importance of  
3 student body diversity at the university and with evaluating  
4 whether the university could achieve the educational benefits  
5 of a diverse student body without considering the race or  
6 ethnicity of its applicants."

7 Do you see that?

8 **A.** I do.

9 **Q.** And so the Ryan committee, as you understood it, that was  
10 not restricted to the college but was rather a universitywide  
11 committee to look at race-neutral alternatives as  
12 possibilities?

13 **A.** That's correct.

14 **Q.** And it continues to state, "That committee, the Ryan  
15 committee, paused its work when Students For Fair Admission  
16 filed a lawsuit against Harvard challenging Harvard College's  
17 consideration of race in undergraduate admissions."

18 Do you see that?

19 **A.** I do.

20 **Q.** That's your understanding of what happened is that after  
21 SFFA filed a suit against Harvard College, the committee  
22 covering the entire university paused its work in exploring  
23 race-neutral alternatives?

24 **A.** That's my understanding.

25 **Q.** And if you read on a bit further, "Recognizing that the

1 litigation would include an extensive discovery process in  
2 which experts would conduct in-depth empirical analyses of  
3 the college's admissions processes and proposed changes to  
4 it, Harvard decided to evaluate whether it could achieve the  
5 educational benefits of diversity without considering race in  
6 admissions in the college in a way that would be informed by  
7 the race-neutral alternatives proposed in the SFFA complaint  
8 and the analysis of those and other alternatives anticipated  
9 to be prepared by the parties' expert witnesses."

10 Do you see that?

11 **A.** I do.

12 **Q.** And so the idea was that because there had been this  
13 lawsuit filed and race-neutral alternatives was going to be a  
14 part of that lawsuit generating expert analysis, you and the  
15 committee believed, and Harvard believed, that it could  
16 leverage the benefits of that data for purposes of its own  
17 evaluation of race-neutral alternatives. Is that right?

18 **A.** Yes.

19 **Q.** And to be clear, that's something the Ryan committee  
20 could have done, too, right?

21 **A.** I can't speak to what the Ryan committee thought it  
22 should or should not do.

23 **Q.** Not what they should have done but what they could have  
24 done.

25 You would agree that there was no barrier to the

1 Ryan committee already formed to consider diversity on a  
2 universitywide basis to prevent them from considering exactly  
3 the same expert analysis that you mentioned would be of  
4 significance here; isn't that right?

5 **A.** As a piece, as I understand your question, as a piece of  
6 what they were trying to accomplish, college being one piece  
7 of a larger university, they certainly could have used the  
8 information that we ultimately used.

9 THE COURT: Can you speak up? Or pull the  
10 microphone closer. I'm having trouble hearing you.

11 THE WITNESS: Sure.

12 BY MR. McBRIDE:

13 **Q.** And the Ryan committee in doing its work could have also  
14 generated a report on race-neutral alternatives as part of  
15 its universitywide mandate that discussed the possibility for  
16 race-neutral alternatives specific to the college informed by  
17 these expert analyses. Is that right?

18 **A.** My understanding of the original charge of the Ryan  
19 committee was that they were going to produce that kind of  
20 information for the college.

21 **Q.** And they could have generated that kind of information  
22 for the college using exactly the same empirical analyses  
23 that you mentioned here from this litigation, right?

24 **A.** Certainly.

25 **Q.** And so there was no barrier to the Ryan committee

1 performing an analysis of race-neutral alternatives that  
2 would impact the college as a result of anything happening in  
3 this lawsuit, was there?

4 **A.** I'm not an expert in all aspects of the law and the  
5 reasons why or why not a particular lawsuit against one part  
6 of the university would cause us to take a particular tack.  
7 So I don't know how to answer the question.

8 **Q.** So you don't have any reason to believe or -- you have no  
9 understanding that the Ryan committee would in some way have  
10 been unable to perform the task of identifying whether  
11 race-neutral alternatives could be used at the college by  
12 applying this empirical analysis, are you?

13 **A.** I don't know. I only know why -- the reason given here  
14 why it paused its work.

15 **Q.** So I want to turn to page 3. And if we go to the bottom  
16 of page 3, talk about the process that you followed. In the  
17 paragraph on the screen that discusses the seven meetings  
18 that you held between August of 2017 and April of 2018, do  
19 you see that?

20 **A.** Yes.

21 **Q.** And I don't want to read the whole paragraph, but just  
22 focus on the highlights.

23 "To inform our work, the committee reviewed social  
24 science and other literature on race-neutral means of  
25 pursuing diversity and collected information from several

1 offices of Harvard College including the office of admissions  
2 and financial aid."

3 Do you see that?

4 **A.** I do.

5 **Q.** And so one of the first things that your committee did is  
6 it reviewed some background material in the field of  
7 race-neutral alternatives as well as information that had  
8 been collected by the office of admissions and financial aid?

9 **A.** That's correct.

10 **Q.** And it goes on in the remaining highlights. It talks in  
11 between about the expert reports and the materials in the  
12 ongoing litigation.

13 And it says, "Specifically, the committee reviewed  
14 the reports submitted by SFFA's expert, Richard Kahlenberg,  
15 which claim that Harvard could achieve its diversity-related  
16 educational objectives without considering race, and reports  
17 submitted by Harvard's expert, Professor David Card, which  
18 illuminate the trade-offs associated with eliminating the  
19 consideration of race and adopting various race-neutral  
20 alternatives."

21 Do you see that?

22 **A.** I do.

23 **Q.** So you as part of your work and your committee's work,  
24 the three of you reviewed all of expert reports from both  
25 Harvard's expert as well as SFFA's expert in doing your work



1 with respect to exploring race-neutral alternatives; is that  
2 right?

3 **A.** Among of the other information that we talked about, yes.

4 **Q.** In fact, if you could turn to Plaintiff's 312.

5 MR. WAXMAN: What tab?

6 MR. McBRIDE: Plaintiff's 312.

7 MR. WAXMAN: Which tab is it?

8 MR. McBRIDE: I don't have your binder.

9 May I approach, Your Honor?

10 THE COURT: Of course.

11 MR. McBRIDE: Did you find them?

12 MR. WAXMAN: Yes.

13 MR. McBRIDE: I'll put Plaintiff's Exhibit 312 up  
14 on the screen. I'd like to offer 312 into evidence.

15 MR. WAXMAN: No objection.

16 THE COURT: Admitted.

17 (Plaintiff Exhibit No. 312 admitted.)

18 BY MR. McBRIDE:

19 **Q.** Dean Smith, Plaintiff's Exhibit 312, does that reflect a  
20 memo being sent with respect to a scheduled meeting of the  
21 race-neutral alternatives committee?

22 **A.** It does.

23 **Q.** And that's for March 23, 2018?

24 **A.** The meeting was scheduled for March 23, yes.

25 **Q.** And what the goal of this meeting was, was to, in the

1 first instance, have a discussion of Dr. Card's rebuttal  
2 report; is that right?

3 **A.** Yes.

4 **Q.** And not just in committee, but also outside of committee,  
5 did you and the other committee members spend time analyzing  
6 and reviewing materials including Dr. Card's rebuttal report?

7 **A.** We certainly did.

8 **Q.** And what these experts did, Mr. Kahlenberg and Dr. Card,  
9 is they did simulations of how Harvard's admitted class would  
10 look if Harvard did not consider race in admissions; is that  
11 right?

12 **A.** Yes.

13 **Q.** And they did that looking at the consideration of -- I'm  
14 sorry -- simulations of the class without race together with  
15 changes of other types, like eliminating the preference for  
16 legacies?

17 **A.** Correct.

18 **Q.** And they also added to that a strong boost to lower  
19 socioeconomic status applicants as part of these simulations?

20 **A.** As part of some of them, yes.

21 **Q.** And at the end of the day both, Dr. Card and  
22 Mr. Kahlenberg, they generated an output of what you could  
23 expect the admitted classes to look like under these changes  
24 of no racial preferences, no legacy preferences, and a strong  
25 boost for lower socioeconomic status applicants, right?

1     **A.** Among other items that they were considering, yes.

2     **Q.** I want to go back to Plaintiff's Exhibit 316 and look on  
3     page 13. I want to look down at the third paragraph. It's  
4     under "Increased Weight For Socioeconomic Background."

5             And you see at the end of that first paragraph  
6     under the section "Increased Weight For Socioeconomic  
7     Background" you wrote, "The simulations show that Harvard  
8     could not both achieve its diversity interests and achieve  
9     other equally important educational objectives such as  
10    academic excellence."

11            Do you see that?

12    **A.** I do.

13    **Q.** And when you talk about the simulations, you're talking  
14    about the simulations that were done by Dr. Card and  
15    Mr. Kahlenberg, right?

16    **A.** Yes.

17    **Q.** And if you turn to the next page, in the middle of the  
18    page there's a paragraph that talks about some of the results  
19    of these simulations and your opinions on it; is that  
20    correct?

21    **A.** Yes.

22    **Q.** And what you write here is, "For example, if Harvard  
23    afforded weight sufficient to produce a combined proportion  
24    of African-American, Hispanic, and other students comparable  
25    to that of current classes, the proportion of admitted

1 students with the highest academic ratings as assigned by  
2 admissions officers would be expected to drop from 76 percent  
3 to 66 percent."

4 Do you see that?

5 **A.** I do.

6 **Q.** And you go on to talk about other elements that would  
7 happen under these simulations. And then at the very end  
8 what you state is, "Although some of the proposed  
9 race-neutral practices reflected in those simulations could  
10 therefore achieve a significant degree of racial diversity,  
11 Harvard does not seek diversity to the exclusion of all its  
12 other objectives, nor does the committee understand that  
13 Harvard is required to do so. Academic excellence across the  
14 student body remains an institutional imperative."

15 Do you see that?

16 **A.** Yes.

17 **Q.** And that was the conclusion of your committee about  
18 whether or not these simulations from Dr. Card and  
19 Mr. Kahlenberg represented a class that Harvard would  
20 consider acceptable going forward under a race-neutral  
21 regime; is that right?

22 **A.** It is correct that we -- the judgment of the committee  
23 after looking at all the simulations from both of the expert  
24 witnesses and discussions of the different race-neutral  
25 alternatives there, we felt that no race-neutral alternative

1 could substitute for our consideration of race as one  
2 consideration among many in our admissions process by looking  
3 at what happened to both the diversity in many different --  
4 not just racial diversity, but all the kinds of diversity  
5 that Harvard values and what we were trying to from an  
6 intellectual point of view and an intellectual excellence and  
7 broader excellence in many different categories that we were  
8 trying to achieve.

9 **Q.** What you concluded was is that under the scenarios  
10 imagined by the simulations, you could achieve comparable  
11 diversity to current classes, which you characterized as a  
12 significant degree of racial diversity. Isn't that right?

13 **A.** There were certainly simulations that produced a racial  
14 diversity.

15 We were also very concerned with what was happening  
16 in each one of those. It wasn't just total racial diversity,  
17 but we were also looking at what happened to specific racial  
18 groups throughout this. And then once we understood with  
19 some of these simulations if you, in this case, turn up  
20 the -- I believe we're in socioeconomic diversity -- you can  
21 get a significant amount of racial diversity, but it does  
22 affect other characteristics of the class, and there's a  
23 trade-off there.

24 **Q.** We'll talk about the specific diversity within each  
25 racial group here in a moment, but I want to make clear that

1 under the simulations that both your expert and SFFA's expert  
2 ran, your committee found those simulations generated  
3 potential admitted classes with diversity comparable to that  
4 of the current classes, which you characterized as a  
5 significant degree of racial diversity; is that right?

6 **A.** I'm not certain exactly which simulation you're talking  
7 about. Certainly if you did some changes to the simulations,  
8 you could produce quite a bit of racial diversity in the  
9 simulated class.

10 **Q.** And the cost of those was a cost you found unacceptable  
11 to implement the policies reflected in those simulations; is  
12 that right?

13 **A.** There were aspects of those simulations that produced  
14 either characteristics in the class, sometimes in the racial  
15 characteristics, other times in other characteristics that we  
16 value at Harvard, and we thought it was not going to work for  
17 what we were trying to accomplish.

18 **Q.** Well, the specific cost that you found unacceptable that  
19 you describe in that first sentence is that the proportion of  
20 admitted students with the highest academic ratings would be  
21 expected to drop from 76 to 66 percent. And this is true  
22 under each of the simulations that SFFA's expert in the  
23 litigation, Mr. Kahlenberg, embraces. Isn't that right?

24 **A.** One of the things that the committee and certainly I was  
25 concerned about was a significant drop -- I consider this a

1 significant drop -- in the highest academic ratings when we  
2 were looking at these classes.

3 **Q.** So one of the costs that you found unacceptable in the  
4 simulations that achieved comparable diversity was a decline  
5 in the highest academic ratings that were assigned by  
6 admissions officers from 76 percent to 66 percent?

7 **A.** I'd like to be a little careful. We're grouping a lot of  
8 simulations together here. The simulations had a number of  
9 different effects to -- you were focused on racial  
10 composition there for a moment. Sometimes the overall racial  
11 composition number was large. Sometimes it was only large  
12 but a particular racial category was excluded from that.

13 So I have a little hesitation in answering directly  
14 your question because we're talking about a lot of different  
15 simulations here.

16 **Q.** Well, what you say in this report -- and we don't even  
17 have to tie it to the specific numbers --

18 **A.** Okay.

19 **Q.** -- in this paragraph -- is that the cost that your  
20 committee found unacceptable for purposes of looking at the  
21 outcome of these simulations, that cost was the drop in the  
22 highest ratings that were given to incoming applicants by the  
23 admissions office; isn't that right?

24 **A.** Certainly what's it says here in this sentence.

25 The committee also discussed other effects that

1 came out of these simulations. I, for example, was  
2 interested in what happened to all of the ratings because  
3 we're looking for excellence across all of the different  
4 rating categories that we evaluate as part of our admissions  
5 process.

6 I was also interested in the other things that were  
7 reported in these simulations: What happened to the  
8 geographic diversity; what happened to the different  
9 interests of our incoming students and how they would choose  
10 among the different humanities, social sciences, sciences,  
11 engineering, taking place on our campus. So I was looking at  
12 all those different values.

13 **Q.** To be clear, in this paragraph you don't talk about that  
14 element of diversity. You have talk about your specific  
15 concern with the drop in the ratings, both academic,  
16 extracurricular, personal, and athletic.

17 **A.** That's certainly something that the committee -- yes, the  
18 committee certainly all felt that this was a significant  
19 drop, and that's why it's here in this report.

20 **Q.** And I just want to be clear, that cost that you felt was  
21 unacceptable in terms of the decline in the dimension of  
22 excellence that Harvard considers essential, that was a  
23 decline in the ratings, top ratings assigned to applicants by  
24 the admissions office?

25 **A.** Yes. This is the academic 1s and 2s rating that we're



1 talking about, if I understood your question.

2 **Q.** Looking on the screen, some demonstratives that we got  
3 for you from Harvard that I anticipate Mr. Waxman will be  
4 using with you. I just want to go to the seventh slide here.

5 This demonstrative that your lawyers have prepared  
6 for you, this reflects the cost that you felt was  
7 unacceptable coming out of your expert's analysis of  
8 Mr. Kahlenberg's Simulation Number 6?

9 **A.** Yes.

10 **Q.** And this comes from the work of Dr. Card, as reflected in  
11 the rebuttal reports that you studied both in the committee  
12 as well as outside of the committee before writing your  
13 report?

14 **A.** Yes.

15 **Q.** So I want to go to Dr. Card's rebuttal report. And this  
16 is also in your binder as well. It should be. Do you see  
17 this is Dr. Card's rebuttal report from March 15, which is  
18 about eight days, I believe, before the committee meeting  
19 where you were going to study it?

20 **A.** I do see it, yes.

21 **Q.** And if you go to page 96, do you see that there's an  
22 Exhibit 26 there?

23 **A.** Yes.

24 **Q.** And this was one of the charts that you studied as part  
25 of your committee's work where it reflects Dr. Card's

1 analysis of the outcomes from the different simulations?

2 **A.** Yes.

3 **Q.** I'll just highlight. I'm pulling out here at the top for  
4 you. So this is Dr. Card's exhibit on "predicted class  
5 without consideration of race and factors that allegedly  
6 advantage white applicants."

7 Do you see that?

8 **A.** Yes.

9 **Q.** And when it says, "without consideration of race and  
10 factors that allegedly advantage white applicants", the  
11 "allegedly advantage white applicants" factors, that's  
12 primarily things like the legacy preference?

13 **A.** It includes the legacy preference. I'm not sure I would  
14 say primarily. It takes out athletes, legacies, dean's and  
15 director's list, and children of faculty and staff.

16 **Q.** So this has all of those preferences associated with what  
17 we've called the ALDCs, but specifically the legacies, dean's  
18 and director's list, and the preferences to children of  
19 faculty and staff. That's what this includes?

20 **A.** By "includes" you mean the -- with ties to be factors.  
21 So they're taken out.

22 **Q.** I apologize. We have a directionality problem. It  
23 includes the fact that they are taken out of the simulations?

24 **A.** Correct.

25 **Q.** This now has the information in it specifically

1 referenced in that paragraph we're looking at, doesn't it,  
2 when it talks about the drop in the academic ratings?

3 I'll just point you down here. I did not create  
4 this red box. That was in the original report. But I'll  
5 highlight there. Do you see that, the 76 and 66 percent?

6 **A.** I do.

7 **Q.** So this reflects here what you were referencing in your  
8 report is the unacceptable cost to academic excellence. That  
9 was Dr. Card's simulation showing the supposed drop in a  
10 76 percent admitted class with an academic rating of 1 or 2  
11 to 66 percent. Is that right?

12 **A.** Yes.

13 **Q.** I want to first look now at what the output of the  
14 simulations that your expert produced, what that output looks  
15 like in terms of class composition, okay?

16 **A.** Okay. Sorry.

17 **Q.** That's what you referenced in your report when you talked  
18 about these unacceptable costs going from 76 to 66. You were  
19 talking about what your own expert had identified as being  
20 the drop in the expected academic ratings, right?

21 **A.** For -- yes.

22 **Q.** If we look at the top for Dr. Card's simulation, which is  
23 labeled four times SES boost, at the top you have what  
24 Dr. Card predicted for you would be the outcome under this  
25 race-neutral simulation of the racial diversity of the class.

1 Do you see that?

2 **A.** I do.

3 **Q.** And this is the comparable diversity that your report was  
4 talking about, right?

5 **A.** By "comparable diversity" there, we were talking about  
6 the fact that the number of nonwhite students is roughly  
7 unchanged from the original class.

8 **Q.** And if we look specifically at what Dr. Card had  
9 determined, he determined that the white students under his  
10 simulation would drop by about 13 percent. Do you see that?

11 **A.** Yes.

12 **Q.** And that's probably attributable to taking away the  
13 variety of legacy preferences that were associated and  
14 children of staff and also the dean's and director's list?

15 **A.** I couldn't say for certain without looking in more detail  
16 at the simulation. But --

17 **Q.** And if we also look, we notice that the Asian-American  
18 population in your class would be expected under these  
19 race-neutral simulations that you were citing in the  
20 race-neutral alternatives report would be expected to go up  
21 by 26 percent; is that right?

22 **A.** Yes.

23 **Q.** And in fact, if you look below that, the Hispanic  
24 applicant population would also be expected to go up by  
25 around 26 percent?

1     **A.**   Yes.

2     **Q.**   And the one underrepresented minority group which I  
3     believe you had mentioned before that you understood was  
4     going to decline under these race-neutral policies was that  
5     the African-American population in your applicant pool would  
6     drop by around 30 percent, right?

7     **A.**   Yes.

8     **Q.**   Now, if we do the math in terms of the composition of the  
9     student body, that would represent a drop from around  
10    14 percent of the class to around 10 percent of the class?

11    **A.**   As I recall the numbers, yes.

12    **Q.**   And so the comparable diversity that was achievable under  
13    your expert's race-neutral alternatives included an increase  
14    in Hispanic and Asian admitted populations by 26 percent  
15    each, a 13 percent decrease in the white admit population,  
16    and a reduction in the African-American admitted population  
17    from 14 percent to 10 percent; is that right?

18    **A.**   Yes.

19    **Q.**   So moving down, I wanted to look at the objective  
20    academic qualifications of this simulated incoming class that  
21    your committee found unacceptable. You see here under  
22    academics where we have a variety of average objective test  
23    scores?

24    **A.**   Yes.

25    **Q.**   And we don't have to go through them all. But is it

1 generally true that between SAT, ACT, GPA, and the average  
2 academic index, this incoming simulated class would have a  
3 reduction in those objective qualifications by 1 to  
4 2 percent?

5 **A.** That's correct. We have a very strong applicant pool.  
6 Many more perfect SAT scores, ACT scores, and GPAs than we  
7 could possibly admit.

8 **Q.** Then if we go down to the very bottom here, we have a  
9 fraction with profile rating of 1 or 2. Do you see that?

10 **A.** I do.

11 **Q.** And this is what you meant in your race-neutral  
12 alternatives report about the expected drop in those ratings?

13 **A.** Yes. That's what I was referring to. We're losing  
14 students here that we have identified as truly exceptional  
15 that we would love to have come to Harvard across these  
16 different profiles.

17 **Q.** And ignoring the athletic for the moment, but between the  
18 academic, extracurricular, and personal, that drop would be  
19 roughly 9 to 13 percent?

20 **A.** Academic, extracurricular, and personal, 9 to 11 you  
21 mean?

22 **Q.** I'm looking at both academic, extracurricular, and  
23 personal. And they range from a drop of 9 percent to a drop  
24 of 13 percent?

25 **A.** Correct.

1     **Q.** And that right there is the cost you cited specifically  
2     in your race-neutral alternatives report as being the  
3     unacceptable cost to bear, even for the comparable diversity  
4     seen here; is that right?

5     **A.** Yes.

6     **Q.** To be clear, these ratings, these are ratings that you  
7     get from the admissions office, right?

8     **A.** Yes.

9     **Q.** And these are not grades associated with how they  
10    actually perform at Harvard, not from the registrar, right?

11    **A.** No. These are students that have not yet been admitted  
12    to Harvard.

13    **Q.** And you did no analysis to actually look at the  
14    composition of grades of any incoming class under any kind of  
15    simulation to predict what their grades might or might not  
16    have been. You focused just on the academic ratings?

17    **A.** I'm not sure I'm following your question.

18    **Q.** I'll withdraw that one.

19                To be clear, these are just the ratings from the  
20    admissions office, not actual data of any performance that  
21    took place at Harvard, right?

22    **A.** That's right. These are just ratings that are from the  
23    materials that the applicants have sent to us or we have  
24    gotten on their behalf from other parties, their high  
25    schools, their guidance counselors, and their grade reports

1 from SATs and so forth.

2 **Q.** The person on your committee who was directly responsible  
3 for admissions, that was Dean Fitzsimmons; is that right?

4 **A.** I'm not sure why -- I'm not sure the reference to on our  
5 committee. Dean Fitzsimmons was the head of admissions and  
6 financial aid.

7 **Q.** Your race-neutral alternatives committee.

8 **A.** Yes. What about it?

9 **Q.** He was the only person on your committee who had any  
10 responsibility directly for the admissions department that  
11 generated these ratings?

12 **A.** Sorry. Yes, that is true.

13 **Q.** And was it Fitzsimmons, Dean Fitzsimmons, who told the  
14 committee that ratings of 1 and 2 from the admissions office  
15 reflected the dimensions of excellence that you needed to  
16 preserve that we saw earlier?

17 **A.** He was certainly one of the individuals that spoke to  
18 that.

19 I had my own small experience from visiting the  
20 admissions area early in my deanship, and I certainly have  
21 talked to faculty over time that have participated in the  
22 admissions committee. And I understand what we're trying to  
23 accomplish with those academic 1s and 2s and what the  
24 characteristics are of those individuals what when they get  
25 rated with an academic 1 or 2.



1     **Q.** So between Dean Fitzsimmons, the people you had talked to  
2     on the admissions committee, and your own work or visiting to  
3     the admissions office early in your tenure as dean, you had  
4     an understanding that academic ratings of 1 and 2 were a  
5     central element of the dimensions of excellence that you  
6     needed to preserve going forward at Harvard College?

7     **A.** That we would be looking carefully at any changes in any  
8     of these top 1 and 2 profile ratings. Those are individual  
9     applicants that we would love to have at Harvard. They add a  
10    tremendous amount to the academic program as well as the  
11    program that's taking place outside of our classroom, and  
12    they're helping all of our students in terms of learning, and  
13    they also interact terrifically with our faculty in terms of  
14    the scholarship that is produced at Harvard.

15   **Q.** Was it Dean Fitzsimmons from the admissions office who  
16   told you that the decline in ratings of either 1 or 2 that  
17   you saw in these simulations was simply too high of a cost  
18   for these dimensions of excellence that you cared so much  
19   about?

20   **A.** Dean Fitzsimmons -- no. Dean Fitzsimmons did not just  
21   tell the committee that this was too high a drop. I came to  
22   it on my own judgment, based on the kinds of inputs that we  
23   were just talking about and the discussions that took place  
24   in the committee.

25   **Q.** Another feature of the race-neutral alternatives report

1 that you got from your expert in terms of these simulations  
2 had to do with, as we discussed, the elimination of the  
3 legacy preferences in admissions?

4 **A.** Yes.

5 **Q.** And you would agree that legacy admissions preferences  
6 disproportionately favor white applicants?

7 **A.** I don't know all of the details in it, but that is  
8 certainly changing over time.

9 **Q.** That's why you included in what we discussed before as  
10 the so-called factors that allegedly advantage white  
11 applicants, right?

12 **A.** It is included in there because it was one of the things  
13 that is brought up in the literature, and it's also brought  
14 up in the complaint in this case. And so it was one of the  
15 things that we looked at to see how much of a change would  
16 occur if we eliminated that, among the other ALDC preferences  
17 that are involved here.

18 **Q.** Dean Smith, whether or not it's changing over time, you  
19 would agree that at least as it stands today and going back  
20 in time that the legacy preference at Harvard  
21 disproportionately favors white applicants. Isn't that true?

22 **A.** For the data that was looked at in the classes here,  
23 certainly that is true. I don't know the data for today's  
24 classes that are coming in.

25 **Q.** Now, you discussed in your committee's report on

1 race-neutral alternatives your concerns with the possibility  
2 of eliminating the legacy preference, right?

3 **A.** Yes.

4 **Q.** Let's go to page 16 back in your report, which is  
5 Plaintiff's Exhibit 316. If we can go to Plaintiff's  
6 Exhibit 316 and turn to page 16. Look down at the bottom,  
7 there's the very last bullet point. It carries over to the  
8 next page.

9 And in this bullet point, you are discussing that  
10 "The practice of considering, among many other factors,  
11 whether an applicant's parents attended Harvard College or  
12 Radcliffe College as an undergraduate also helps to cement  
13 strong bonds between the university and its alumni. Harvard  
14 hopes that its alumni will remain engaged with the college  
15 for the rest of their lives, and this consideration is one  
16 way that it encourages them to do so.

17 "Harvard also relies to an unusual degree on the  
18 participation of its alumni in the admissions process. In  
19 every state and almost every country around the world,  
20 Harvard graduates volunteer their time to serve as alumni  
21 interviewers.

22 "Harvard alumni also offer generous financial  
23 support to their alma mater. That financial support is  
24 essential to Harvard's position as a leading institution of  
25 higher learning. Indeed, it helps make the financial aid

1 policies possible that help the diversity and excellence of  
2 the college's student body."

3 Do you see that?

4 **A.** I do.

5 **Q.** And you would agree that Harvard graduates provide a  
6 significant amount of support to the college; is that right?

7 **A.** Through their time, expertise, and resources.

8 **Q.** And it's not just their time and expertise but also their  
9 resources, meaning their financial contributions to Harvard,  
10 right?

11 **A.** Yes.

12 **Q.** And Harvard believes that eliminating the legacy  
13 preference in admission would put that financial support at  
14 risk, doesn't it?

15 **A.** I'm not sure who you mean by "Harvard" there. That is  
16 not the reason why we keep in our legacy preference. It is  
17 for the broader aspects of what we were just talking about.

18 I've seen a tremendous benefit to the university,  
19 especially to the students and what we're trying to  
20 accomplish in the college, by the participation of our alumni  
21 in new initiatives that we're trying to launch and bringing  
22 expertise to help us think through how we might launch them.

23 As this mentions here, time that our alumni spend  
24 in evaluating candidates and applicants for our pool. All of  
25 these things matter. It's not just financial donations.

1     **Q.** What you write here -- you write, "The committee is  
2     concerned that eliminating any consideration of whether an  
3     applicant's parent attended Harvard or Radcliffe would  
4     diminish this vital sense of engagement and support."

5             Do you see that?

6     **A.** I do.

7     **Q.** And the support that you are referring to includes  
8     financial support, right?

9     **A.** It includes financial, their time, their expertise. All  
10    of those things are what I meant by "support."

11    **Q.** And the race-neutral alternatives committee in its report  
12    is expressing its concern that eliminating the legacy  
13    preference in admissions would put the financial support of  
14    its alumni at risk. Isn't that correct?

15    **A.** No. This paragraph is in here talking about even though  
16    all of the considerations in ALDC, including the legacy, if  
17    they're simulated as being eliminated, it doesn't do enough  
18    to get to a point where we're getting back to the  
19    diversity-related educational benefits and objectives we  
20    want.

21             And then we took a further step here and say, while  
22    we're talking about this, let's talk about even if it doesn't  
23    make any difference what we're trying to do here, can we  
24    still come up with good reasons why we should continue to do  
25    this.

1           And hence this is what we were trying to do in this  
2 part here is talk about -- after discussion within the  
3 committee about legacies and what legacies bring to our  
4 academic program, to the support of the university, broadly  
5 construed, it's important for us to continue to talk to our  
6 alumni base and say we understand. If you put time and  
7 effort into what we're trying to do here, we will recognize  
8 that as one piece of the larger review of if you happen to  
9 have a child in the pool.

10 **Q.** The flip is also true, which is you were concerned that  
11 if you didn't give consideration to the child of a Harvard  
12 alum in the applicant pool, that that would diminish that  
13 vital sense of financial support that you get from them;  
14 isn't that right?

15 **A.** Again, no, because you're focused solely on the financial  
16 support. And I'm thinking much more broadly about all the  
17 things that I do. And my experience has been that alumni are  
18 getting indications of we value what you're doing for other  
19 universities, and we are stating that we value what they do  
20 for us, too.

21 **Q.** Isn't it true, Dean Smith, that one of the important  
22 reasons why Harvard rejected the possibility of a  
23 race-neutral admissions process is because such a process  
24 would necessarily require eliminating the legacy preference  
25 in order to achieve the so-called comparable diversity to

1       that of the current classes? Isn't that right?

2       **A.**   So I can envision a simulation where you eliminate the  
3       consideration of race as one factor among many, but you still  
4       have a consideration and you let your alumni know that what  
5       you do for us matters. If your child happens to apply, we  
6       will recognize that fact. It's not something that will get  
7       your child in. It never is. I'm not sure -- you're saying  
8       if you have to eliminate one, you must eliminate the other?

9       **Q.**   My question was that one of the important reasons why  
10      your committee rejected the possibility of a race-neutral  
11      admissions process is because, through your work and through  
12      your analysis, you realized that such a process would  
13      necessarily require eliminating the legacy preference in  
14      order for you to achieve sufficient diversity in an incoming  
15      class. Isn't that right?

16      **A.**   No.

17               MR. McBRIDE: No further questions.

18               THE COURT: Do you want to get started, Mr. Waxman,  
19      or do you want to take the lunch break?

20               MR. WAXMAN: It's really completely up to Your  
21      Honor.

22               THE COURT: I'm planning on breaking in like five  
23      minutes.

24               MR. WAXMAN: To my mind, you've answered your own  
25      question, but I'm happy to work for another five minutes if

1 that would please the Court.

2 THE COURT: Either way. Why don't we take the  
3 lunch break. So we'll come back at like around 12:40 --  
4 12:45. Let's make it even. Okay?

5 (Court recessed at 11:56 a.m.)

6 \*\*\* AFTERNOON SESSION \*\*\*

7 MR. WAXMAN: May I proceed, Your Honor?

8 THE COURT: You may.

9 EXAMINATION

10 BY MR. WAXMAN:

11 Q. Good afternoon, Dean Smith.

12 A. Good afternoon.

13 Q. When did you begin working at Harvard?

14 A. I began working at Harvard in 1992.

15 Q. Was that also the year that you completed your doctoral  
16 degree at Stanford?

17 A. I completed most of my work. I was actually given my  
18 degree in January of 1993.

19 Q. Were you hired by Harvard as an assistant professor?

20 A. I actually officially started as an instructor.

21 Q. Is that because you had not yet gotten your degree?

22 A. That's correct.

23 Q. Did you become an assistant professor on the tenured  
24 track when you did finally receive your degree?

25 A. I did.



1     **Q.** When did you begin serving as the dean of the faculty of  
2     arts and sciences?

3     **A.** July of 2007.

4     **Q.** What is your current position?

5     **A.** I am the John H. Finley Jr. Professor of Engineering and  
6     Applied Sciences within the School of Engineering and Applied  
7     Sciences.

8     **Q.** Are you also the Harvard University distinguished service  
9     professor?

10    **A.** I am.

11    **Q.** What are you doing this year?

12    **A.** I am on sabbatical right now pursuing my own interests.

13    **Q.** You're on sabbatical preparing for and testifying at a  
14    trial, correct?

15    **A.** Yes.

16    **Q.** Unusual sabbatical experience, I imagine.

17    **A.** Yes, it is.

18    **Q.** Let me ask you some questions about the reporting  
19    structure here. You have testified about what the faculty of  
20    arts and sciences is and what your job is. But is it fair to  
21    say that both the dean of the college and the dean of the  
22    admissions and financial aid office report to you, among many  
23    other deans?

24    **A.** That's correct.

25    **Q.** Reported to you?

1     **A.**   That's correct.

2     **Q.**   Okay.  Let me ask you some questions about the office of  
3     admissions and financial aid.

4                 Did you oversee Dean Fitzsimmons?

5     **A.**   I did.

6     **Q.**   And how did you do that?

7     **A.**   So we had regular meetings as I do with all of my direct  
8     reports.  The frequency of those regular meetings depends  
9     upon the unit, what we're trying to accomplish in that unit,  
10    how long the person has been as the head of that unit.

11                In terms of Dean Fitzsimmons, he had been  
12    long-serving in the office of the admissions and financial  
13    aid.  I met mostly with him once a semester during the  
14    academic year, and then I also met with him, as I did with  
15    all of my direct reports, at the end of the academic year to  
16    do a review of what took place in the office, how we  
17    accomplished things, and what we would think about doing next  
18    for the upcoming year.

19    **Q.**   And in the course of that particular meeting with  
20    Dean Fitzsimmons, would you evaluate his performance and the  
21    performance of the office that he was responsible for?

22    **A.**   I did.

23    **Q.**   Did you in any way evaluate him based on the racial  
24    composition of the admitted classes?

25    **A.**   No.

1     **Q.** Did you ever give Dean Fitzsimmons feedback on his  
2 performance, either constructive or critical?

3     **A.** Certainly. Yes, I did. As part of the performance  
4 review I was mentioning a moment ago, I would have each of my  
5 direct reports produce a report of what they accomplished in  
6 the past year, what they had started out to try and  
7 accomplish, how things had changed during the year. We would  
8 go through that, talk about the success or whatever happened  
9 in those different aspects.

10             And then we would look to the future. We would  
11 talk about what was going to happen next. We would often  
12 talk -- for example, I'm sure we'll do in a moment -- what  
13 else can we do to explain what we're trying to accomplish  
14 with our financial aid program, how can we get the word out  
15 to all the students who should know about it so that they can  
16 realize that they can be part of our pool, and they can come  
17 to Harvard.

18     **Q.** Did you ever discuss, during the course of your duties,  
19 the Harvard admissions office recruitment efforts and what  
20 could be done to improve it?

21     **A.** Certainly. We talked about a number of different things.  
22 In particular, for example, recently we had huge updates to  
23 our website and thinking about other kinds of social media  
24 outreach to applicants or prospective applicants and their  
25 families.

1           We also talked about organization of the office and  
2 how it might function better given the changing environments  
3 that we all find ourselves into. How can we get more  
4 information to the admissions officers, not just through  
5 paper means but through electronic means.

6   **Q.** I think you testified you have a general understanding of  
7 how Harvard College selects applicants for admission?

8   **A.** I do.

9   **Q.** What is that understanding?

10   **A.** So we are looking at an individualized whole student  
11 evaluation taking into account as much as we can about their  
12 academic interests, their lived experiences. All of that is  
13 evaluated against what it is that they want to try and  
14 accomplish.

15           And in particular we're looking for students who  
16 not only have a broad range of interests that will take  
17 advantage of the opportunities that we have on our campus but  
18 will also add to the community that we're building on our  
19 campus. So those are very important aspects of what we look  
20 for in the applicant's record.

21   **Q.** In the course of familiarizing yourself with the  
22 operation of the office and the admissions process, did you  
23 make a point to sit through an admissions committee meeting?

24   **A.** I did.

25   **Q.** And do you have an understanding of how the office

1 considers race?

2 **A.** It's one factor among many.

3 **Q.** Do you think it's appropriate for the admissions officers  
4 to consider an applicant's race as one factor?

5 **A.** I do.

6 **Q.** And why is that?

7 **A.** I think it is part of the applicant's lived experiences  
8 in many cases. It's not necessarily an impact on every  
9 applicant's record, but in many cases the experience that the  
10 person has had through their cultural or racial background  
11 has infected how they've gone through their schooling, how  
12 their life has gone. That kind of information is important  
13 for us to have as context as we're looking at the rest of the  
14 record.

15 We're also looking for how that can add to our  
16 community, improving what's taking place on our campuses.  
17 Much of what we're trying to do is break down stereotypes.  
18 And having people with many different kinds of lived  
19 experiences on our campus is an important way for that to  
20 happen.

21 **Q.** And are you aware that in some instances race can be a  
22 "tip" in the holistic consideration of a particular  
23 applicant's file?

24 **A.** I am.

25 **Q.** Do you have an understanding of whether applicants are

1     ever rejected from Harvard because of their race?

2     **A.** My understanding is they're never rejected because of  
3     their race.

4     **Q.** How does diversity relate to Harvard's educational  
5     mission?

6     **A.** Certainly. We are looking for, as I was mentioning  
7     before, all kinds of different kinds of diversity on our  
8     campus. It is clear from my experiences in the classroom  
9     that when students bring their own perspectives on a topic we  
10    may be discussing that we get a much richer interaction among  
11    our students.

12             It's one thing to read about something in a book.  
13    It's much more impactful and a better learning environment if  
14    the students can debate it from their own perspectives,  
15    realize that there are multiple different perspectives and  
16    come out of that class much stronger than they would have  
17    been had we just discussed something in the abstract.

18             It also helps tremendously with the scholarship  
19    that our faculty and our students are trying to undertake.  
20    Many different perspectives with respect to how we might  
21    approach a problem. I'm an engineer by training. So I  
22    naturally gravitate to those sorts of societal issues.  
23    Having a better understanding of how different people in our  
24    society view issues that are confronting the United States,  
25    help us to think through what possibly we might do, where we

1 can take our research, where we might publish some new  
2 scholarship. Those are just two examples.

3 **Q.** During the course of your 26 years --

4 **A.** Yes.

5 **Q.** -- at Harvard in the faculty of arts and sciences, have  
6 you had occasion to talk with alumni about their  
7 recollections of what the most impactful learning experiences  
8 were?

9 **A.** Absolutely.

10 **Q.** What do you hear?

11 **A.** I hear a number of different things. One of the first  
12 things I often hear is that many of our alums when they first  
13 came to campus, that was the first time they had ever been in  
14 that diverse environment, and diverse in all perspectives.  
15 That had a huge impact n many of our students who later  
16 became alumni.

17 Then they talk often not just about what happened  
18 in the classroom, but what happened in our houses, our  
19 residential places where our students reside when they're not  
20 in class. The conversations that took place around the  
21 classrooms; the conversations that took place in their  
22 extracurricular events. Events that they ended up going to  
23 that they had no realization that those kinds of  
24 perspectives, those kinds of ideas existed.

25 Those are all things that come up when I talk to

1 our alumni, and that they have good feelings about why  
2 Harvard was so impactful for their life, and it had a huge  
3 difference on what they learned and what they were able to do  
4 later in life.

5 **Q.** Were you the dean of the faculty of arts and sciences  
6 when the Harvard College Working Group on Diversity and  
7 Inclusion, which has been referred to here as the Walton  
8 committee, was convened and prepared its report?

9 **A.** I was.

10 **Q.** And did you review that report?

11 **A.** I reviewed it mostly as a faculty member. It was not a  
12 report that came to my office.

13 **Q.** And were you also the dean of the faculty of arts and  
14 sciences when President Faust convened the university-wide --  
15 I don't know if it was a committee or a project -- the  
16 university-wide committee to study racial diversity and  
17 inclusion?

18 **A.** I was.

19 **Q.** And did you review that?

20 **A.** I have seen it, too. Again it was not a report that came  
21 directly to my office.

22 **Q.** Mr. McBride asked you several questions about the  
23 committee chaired by Dean Ryan. Do you recall that?

24 **A.** I do.

25 **MR. WAXMAN:** Mr. Lee, can we put up



1 Demonstrative 3.2.

2 Your Honor, I believe these are in the back of the  
3 notebook that we provided you.

4 BY MR. WAXMAN:

5 Q. So this is largely, I think, familiar to the Court, but  
6 what does this show?

7 A. This is a timeline that includes a number of committees  
8 and important dates with respect to the study of the  
9 importance of diversity to our educational process, but also  
10 the evaluation of race-neutral alternatives and how they may  
11 or may not work for what Harvard is trying to accomplish.

12 Q. Okay. Now, do you know what Dean Ryan's committee was  
13 charged with?

14 A. In general only.

15 Q. You recall that they were -- that it was a  
16 university-wide committee?

17 A. Yes.

18 Q. And do you recall that the committee was charged with,  
19 number one, evaluating for all faculties and components of  
20 the unit the extent to which diversity was important to the  
21 mission of that particular component?

22 A. Yes.

23 Q. And do you also understand that for those components of  
24 the university that took race into account in selecting  
25 applicants for admission, that the committee was charged on a

1 university-wide basis to evaluate for each individual faculty  
2 or school in the university whether the diversity-related  
3 objectives could be accomplished through race-neutral beings?

4 **A.** That was I understanding.

5 **Q.** And is it also your understanding -- I think you  
6 testified in response to Mr. McBride's questions -- that the  
7 committee paused its work at the time that this lawsuit was  
8 filed?

9 **A.** Yes.

10 **Q.** Now, subsequent to the filing of this lawsuit, did  
11 Harvard College undertake to answer for itself the two  
12 questions that the Ryan committee was charged with exploring  
13 for the entire university?

14 **A.** Yes. As it shows on this chart here, we had two  
15 committees, as you're pointing out. The first one separated  
16 out the question of our diversity-related educational  
17 objectives and goals and how that was impacting our  
18 educational program and the other things we were trying to do  
19 with our mission.

20 The Dean Khurana committee or committee here called  
21 "Committee to Study Importance of student body Diversity."  
22 And later the committee to study race-neutral alternatives,  
23 which took advantage, as we talked a bit earlier, of  
24 materials that were produced in this lawsuit.

25 **Q.** So do you recall Mr. McBride asking you some questions

1 about whether the Ryan committee, if it had not been -- if  
2 its work had not been paused, whether the Ryan committee  
3 could answer the two questions, the question that the Khurana  
4 committee was charged with answering, and the question that  
5 the committee that you chaired was charged with answering,  
6 those things could have been explored by the full Ryan  
7 committee. Do you recall that line of questioning?

8 **A.** Yes.

9 **Q.** Were you on Dean Ryan's committee?

10 **A.** I was not.

11 **Q.** Was the dean of Harvard College on Dean Ryan's committee?

12 **A.** Not to the best of my knowledge.

13 **Q.** How many members of Dean Ryan's university-wide committee  
14 represented the leadership of Harvard College?

15 **A.** I can't recall anyone except Dean Fitzsimmons on the Ryan  
16 committee.

17 **Q.** Now, the Khurana committee, the committee to study the  
18 importance of student body diversity, who convened that?

19 **A.** President Faust.

20 **Q.** Were you also involved in that?

21 **A.** I was.

22 **Q.** Are you familiar with the committee's report?

23 **A.** I am.

24 **Q.** What role or roles did you personally play with respect  
25 to that report?

1     **A.** Certainly. In cases like this I'm there to help support  
2     the committee to make sure that whatever it is that they need  
3     in order to have the conversations take place can take place.  
4     And then I have a very formal role toward the end of such a  
5     process where the committee is preparing to issue its final  
6     report.

7             And in many cases what needs to occur then is it  
8     needs to come eventually to the full faculty for a discussion  
9     at one of our faculty meetings in order to get on the agenda  
10    of one of our faculty meetings. It needs to go through a  
11    body called "faculty council."

12            Faculty council is a council that I chair as dean  
13    of the faculty. It's 18 elected members of the faculty,  
14    faculty of arts and sciences. It's got a number of different  
15    things that it does, not only gives advice to the dean, but  
16    it also helps to make sure that materials are prepared and  
17    ready to be presented to the full faculty.

18            So I help shepherd the report through the faculty  
19    council for a number of discussions, and then eventually  
20    moved onto the faculty meeting where we had discussions in  
21    the faculty meeting about that report, too.

22    **Q.** Okay. And was the Khurana report discussed by the full  
23    faculty of arts and sciences on more than one occasion?

24    **A.** It was.

25    **Q.** Did various members of the faculty offer comments about

1 it?

2 **A.** They did. And the way we typically approach matters like  
3 this, which we consider substantial matters is -- again, with  
4 everything that I just explained, when it eventually comes to  
5 the full faculty meeting, we'll have an initial meeting to  
6 present the material to the faculty at the faculty of arts  
7 and sciences.

8           Unfortunately not every faculty member can make  
9 every one of our faculty meetings. So an issue of substance  
10 like this is first presented, and then there are  
11 opportunities outside of the faculty meeting to continue to  
12 get input from the community and the faculty.

13           And then eventually when the time is appropriate  
14 and we are prepared, it will make it back to a faculty  
15 meeting for further discussion and then hopefully a vote as  
16 was taken in this case.

17 **Q.** Okay. And what was the vote in this case?

18 **A.** It was unanimously in support of the committee's  
19 findings.

20 **Q.** Now, let's turn to the committee to study race-neutral  
21 alternatives. You chaired that committee, correct?

22 **A.** I did.

23 **Q.** And how did you come to chair it?

24 **A.** President Faust asked me to chair it.

25 **Q.** And who selected the other members of the committee?

1     **A.** As I typically have done in cases like this when  
2     President Faust asks me to lead a committee, I'll have some  
3     discussion with individuals about who might be good members  
4     of this committee, but I ask to go off and spend more time  
5     thinking about who we need, what we need on those committees.

6             And then I'll bring a recommendation back, as I did  
7     in this case, a recommendation back to President Faust saying  
8     I've thought about this. Here's the reasons why it is that I  
9     think we should have these individuals. Here's who I would  
10    like to ask first. Do you have any more input. Can I go  
11    ahead and invite these individuals.

12    **Q.** And were the two individuals that you presented as your  
13    choices, in fact, Dean Khurana and Dean Fitzsimmons?

14    **A.** They were.

15    **Q.** And did President Faust indicate any -- ask any questions  
16    about that or indicate any concerns about having these two  
17    deans serve on the committee with you?

18    **A.** She had no concerns.

19    **Q.** And what were your reasons for asking Dean Khurana and  
20    Dean Fitzsimmons to join the committee?

21    **A.** Sure. So I spent some time thinking about what we needed  
22    to accomplish. As the Court knows well, what we're trying to  
23    do is understand whether or not these race-neutral  
24    alternatives would work for Harvard College and do so in  
25    place of the consideration of race as one factor among many.

1           So I was looking for initially certainly two kinds  
2 of skills. A skill that said I'm very well familiar with  
3 what's going on in race-neutral alternative world. I  
4 understand the admissions process. We can bring that  
5 perspective to the committee. So I was thinking about  
6 someone from our office of financial aid and admissions.

7           Given Dean Fitzsimmons's long history, 30-plus,  
8 almost 40 years or so of experience in admissions and dealing  
9 with the issues in race-neutral alternatives, he was my first  
10 choice. If he had not agreed to serve on this committee, I  
11 would have looked elsewhere in the office for someone with  
12 that kind of sets of skills.

13           Second of all, this impacts greatly the educational  
14 experience that's taking place in the college, and I needed  
15 someone who was well aware of what it is we're trying to  
16 accomplish in the college, what goes on inside of our  
17 classroom, what goes on outside of our classrooms.

18           As you heard me talk about a moment ago, a lot of  
19 the learning that comes out of our diversity-related  
20 educational goals comes out of discussions and interactions  
21 that take place outside the classroom.

22           Dean Khurana is not only dean of Harvard College  
23 but he's also what we call faculty dean of one of our houses,  
24 one of our residences. He eats, lives with our students, and  
25 sees things that are important to have brought forth to this

1 committee.

2 So, again, he was an ideal candidate. I needed  
3 somebody like that from the college.

4 Then what I was also looking for individuals who  
5 could bring a background in social science research. As we  
6 were talking about earlier, we would be reading a lot of  
7 literature, looking at reports that are specific to social  
8 science kinds of questions. And Dean Khurana has that  
9 background, too.

10 **Q.** At the time you were thinking about who would serve on  
11 this committee, did you consider inviting individuals who had  
12 published research on race-neutral alternatives?

13 **A.** I did.

14 **Q.** And why did you decided -- I gather you decided not to  
15 conclude them.

16 **A.** That's correct.

17 **Q.** Why is that?

18 **A.** In the end I decided that we wouldn't do it for a number  
19 of different reasons. First of all, we were getting a lot of  
20 support, as we were talking about earlier, in the court,  
21 social science research experts that were working. We had  
22 our own knowledge of a lot of the race-neutral alternatives  
23 that were being considered through this complaint in the  
24 literature.

25 And also the timing was just difficult. It was



1 just about to be summer. Many of my faculty had already left  
2 for the summer, already had commitments to go off. And at  
3 that time my understanding was we had to do the work fairly  
4 quickly to get to a report. That was my understanding of  
5 when the expert witness reports would come in and so forth.

6 **Q.** Let me ask you about that. Did you at any time in the  
7 process of conducting the work of the committee feel  
8 pressured to issue your report at any point before you were  
9 ready to issue your report?

10 **A.** No. I was very clear with people that were interested in  
11 having the report done that the report would be done when we  
12 had it done. It's when the committee was satisfied that it  
13 had looked at everything that it needed to look it, it had  
14 evaluated it.

15 Certainly even toward the end, I can tell you when  
16 I was being scheduled for my deposition with respect to the  
17 race-neutral alternative committee, I said at that time I  
18 hope this is done because it's going to be done when it's  
19 done, and we may have to move the scheduling of that  
20 deposition.

21 **Q.** During your time as dean of faculty of arts and sciences,  
22 did you have occasions to chair other committees?

23 **A.** I did.

24 **Q.** And did you also convene other committees?

25 **A.** I have.

1     **Q.** And during your 26-year tenure on the Harvard faculty,  
2     have you served on other committees?

3     **A.** I've served on plenty.

4     **Q.** Is it unusual to have a committee with only three  
5     members?

6     **A.** It is not.

7     **Q.** Now, were there lawyers involved with the committee's  
8     work?

9     **A.** There were.

10    **Q.** And why?

11    **A.** For a number of reasons. Again, first and foremost,  
12    because we were dealing with a topic that had a number of  
13    opinions coming out of the Supreme Court, and I needed to  
14    have individuals who would understand those opinions and  
15    what -- both we were supposed to be doing and what the  
16    framework within which we should be doing that.

17           And then this lawsuit itself was something that we  
18    had to keep in mind as we went through our work. And so  
19    having access to someone who could help me understand the  
20    issues and implications of the lawsuit with respect to what  
21    the committee needed to accomplish was important.

22    **Q.** And what role did the lawyers play in the committee?

23    **A.** So I certainly -- anyone who attends one of my meetings,  
24    I'm expecting them to participate in the discussion and  
25    whatever they think they can bring to the discussion. We

1 hold very open meetings that way.

2 But I also asked -- in particular I've always  
3 looked for committees like this to someone staff the  
4 committee. That individual responsible for taking notes  
5 during the committee meetings, preparing the materials so  
6 that everyone has the materials in advance of the next  
7 meeting and we're prepared to actually have a successful next  
8 meeting. And I ended up asking our general counsel's office  
9 if someone could staff it.

10 **Q.** And is it unusual in your experience for lawyers to  
11 participate in the work of an FAS committee?

12 **A.** It is not. I look across our entire community when I'm  
13 thinking about who could best staff a particular committee.  
14 And our office of general counsel is just as good as somebody  
15 from the staff of the college or elsewhere. It all depends  
16 on what we're trying to accomplish and how we can be -- how  
17 much benefit we can get from a person with that kind of a  
18 background being the staff member for us.

19 **Q.** Dean Khurana was here earlier today, and he testified  
20 that the first draft of the committee's report was actually  
21 prepared by an attorney. Is that your recollection?

22 **A.** Yes. I would have put it, it was prepared by the staff,  
23 person staffing the committee.

24 **Q.** And is it unusual for FAS committees that are staffed by  
25 attorneys to ask that staff person to prepare -- after a

1 discussion of all the relevant issues, prepare a first  
2 preliminary draft of the report?

3 **A.** No, it is not unusual. The way I run my committees is a  
4 person who is staffing the committee, who in this case  
5 happened to be a lawyer, has participated in all the  
6 conversations, understands the surround, understands the  
7 conversations that took place.

8 It's very natural for us to ask that person to pull  
9 all the notes together, make a first draft. It is just a  
10 first draft. It is fully expected that the committee could  
11 reject it. It could make major changes to it. It could make  
12 small changes to it. I've just found it's much more  
13 productive if we have something physical in front of us as we  
14 start our discussions about what the final report, if the  
15 committee calls for a final report, should look like.

16 **Q.** Did the race-neutral alternatives committee have a  
17 charge?

18 **A.** It did.

19 **Q.** And what was that charge?

20 **A.** The charge was to, within the context of the  
21 diversity-related educational objectives and goals that the  
22 Khurana committee found, evaluate the race-neutral  
23 alternatives, either singularly or in combination, and decide  
24 whether or not they were going to work for us as a  
25 replacement for race as one consideration among many in our

1 admissions process.

2 **Q.** Please turn to Tab 2 of your book. And do you find there  
3 a document that's been marked as Defense Exhibit 60 now in  
4 evidence?

5 **A.** I do.

6 **Q.** What is it?

7 **A.** So this is the memo that I sent to Dean Khurana and  
8 Dean Fitzsimmons asking them to be members of the  
9 race-neutral alternatives committee and presenting them with  
10 the charge, and I think a little bit of the timeline.

11 **Q.** When the committee commenced its work, did you have a  
12 view about whether Harvard could achieve the educational  
13 benefits of diversity through race-neutral means?

14 **A.** I did not have a definitive view on how that should be.  
15 I approached it with an extremely open mind.

16 **Q.** And do you know whether the other members of the  
17 committee had preexisting opinions?

18 **A.** Not that they expressed to me. And I had expressed to  
19 the members of the committee, Dean Khurana and  
20 Dean Fitzsimmons, that they should come to this with an open  
21 mind.

22 **Q.** How did the committee begin its work?

23 **A.** So we began our work before the official first meeting.  
24 We spent time both getting ourselves a collection of  
25 literature that the committee was going to review before our

1 first meeting, and we had an opportunity to sit down with the  
2 office of general counsel and get a better understanding of  
3 the surround, the lawsuit, how it might impact this and more  
4 background on the opinions from the Supreme Court in this  
5 space.

6 **Q.** And once the committee had gotten the legal surround and  
7 had collected and reviewed the -- is it fair to say a  
8 groaning table of literature?

9 **A.** It was a lot of literature that I didn't really think  
10 about before that point having to read at the beginning of my  
11 summer, yes.

12 **Q.** Then having read the literature, what did the committee  
13 do first?

14 **A.** So one of the first things that we did was to have an  
15 open meeting just trying to collect all the different  
16 race-neutral alternatives that we would want to consider  
17 throughout this process.

18 That was not the last time. I tried to make it  
19 certainly clear to the committee that, as we went through our  
20 discussion of any of the race-neutral alternatives, if they  
21 thought there was other combinations of them or other  
22 race-neutral alternatives came up, I wanted to hear about  
23 them as soon as possible so that we could get the support we  
24 needed to evaluate them appropriately.

25 **Q.** Did the committee evaluate all of the race-neutral

1 alternatives that were identified either in the complaint in  
2 this case or in Mr. Kahlenberg's reports?

3 **A.** We did.

4 **Q.** And did it limit itself to those race-neutral  
5 alternatives?

6 **A.** We did not.

7 **Q.** Did the committee carefully review the expert reports of  
8 Mr. Kahlenberg and Dr. Card?

9 **A.** We did. One of the things that we did when we scheduled  
10 the committee meetings is we tried to make sure we scheduled  
11 the committee meetings soon after the reports themselves as  
12 they came in during the year so that we had an opportunity to  
13 review the reports, discuss them, think about what else we  
14 might need in addition to the information that was coming out  
15 of those reports.

16 **Q.** And what role did the expert reports play in the  
17 committee's evaluation of race-neutral alternatives?

18 **A.** Certainly it was an important part of what we were  
19 looking at. I think it was very beneficial to the committee  
20 to have both a set of -- an expert witness that was strongly  
21 a proponent for a race-neutral alternative as well as  
22 Dr. Card's broad-based look at all the implications that come  
23 out of these.

24 So we benefited tremendously from them, but that  
25 was not the end of our work. We all knew that in addition to

1 understanding the effects on a simulated class, we then had  
2 to think through does that accomplish our diversity-related  
3 educational goals, what other impacts might that have on our  
4 mission, both with Harvard College and the broader  
5 university, and that was left up to the committee to discuss.

6 **Q.** And did the committee ultimately issue a report?

7 **A.** We did.

8 **Q.** And does that report memorialize the committee's  
9 institutional judgments?

10 **A.** It does.

11 **Q.** How would you compare the process that this committee  
12 undertook with respect to its charge with the process  
13 followed by other committees that you've chaired or  
14 participated in?

15 **A.** Yes. As much as possible I tried to follow our normal  
16 process. Obviously it was tilted a little bit with the  
17 lawsuit surround in it. But as I was trying to mention  
18 earlier, I followed the same kind of process that I would  
19 follow if we did any kind of report like this for the  
20 faculty, and that's the way I look at it.

21 The report that we came out at the end of this was  
22 both the report, obviously, to be used as part of this  
23 lawsuit, but importantly from the perspective of the members  
24 of the committee, it's a report for the university and for  
25 Harvard College, that it think through the implications of



1 race-neutral alternatives, what we found at this time, and  
2 what our recommendation is at this time.

3 **Q.** And I think you testified that the committee had seven  
4 formal meetings. Am I recalling that?

5 **A.** Yes.

6 **Q.** When did the committee first formally meet?

7 **A.** The first formal meeting was in August of 2017, if I can  
8 keep my years straight.

9 **Q.** Now, did the committee do the work -- did the committee  
10 members do the work of the committee -- that is, the process,  
11 the work that led up to the finalization and issuance of the  
12 report -- outside of the seven meetings that it held  
13 formally?

14 **A.** Yes. In addition to the seven meetings, we all realized  
15 that we would have to put in quite a bit of work between  
16 those meetings. And that's, again, one of the reasons why it  
17 was important to carefully think through the members of this  
18 committee.

19 So we spent a lot of time in the beginning with the  
20 literature. And then as each one of the expert witness  
21 reports came out, it was my expectation for each of the  
22 committee members to spend quite a bit of time with that  
23 report, think through the implications of the simulations  
24 that were in that report so that -- in case -- in this case  
25 all hes -- he could come to the meeting prepared to discuss

1 with his colleagues what their interpretations of what this  
2 meant and how it would affect our diversity-related  
3 educational objectives.

4 **Q.** Did you -- prior to each meeting, did you send out a  
5 formal agenda to the other committee members?

6 **A.** I did.

7 **Q.** Let me ask you to turn to Tabs 3 through 9 of your  
8 binder, which contains Defense Exhibits 79, 80, 81, 82, 86,  
9 and 84. Tab through those. I'm going to ask you whether you  
10 recognize those documents.

11 **A.** I do.

12 **Q.** What are they?

13 **A.** They are the agendas that I sent out from my office to  
14 the members of this committee before each of our committee  
15 meetings.

16 MR. WAXMAN: Your Honor, we move to admit Defense  
17 Exhibits 79, 80, 81, and 84.

18 I just note that 86, which is the agenda for the  
19 March 23 meeting has already been introduced as Plaintiff's  
20 Exhibit 312.

21 MR. McBRIDE: No objection, Your Honor.

22 THE COURT: They're all admitted.

23 (Defendant Exhibits Nos. 79, 80, 81, and 84  
24 admitted.)  
25

1 BY MR. WAXMAN:

2 Q. Generally speaking, did the committee discuss the items  
3 on the agenda?

4 A. Generally speaking, yes.

5 Q. Did you always complete the agenda?

6 A. Unfortunately not.

7 Q. Why not?

8 A. First of all, there's a lot to be discussed through many  
9 of these different race-neutral alternatives. And in some  
10 cases the conversation, which was a productive, good  
11 conversation, generative conversation, I didn't want to cut  
12 off just to move to another agenda item. We would simply  
13 move that agenda item to the next meeting.

14 Q. Let's now talk about the committee's report itself. And  
15 before we explore its content, I just want to ask you a few  
16 more questions about the process that the committee went  
17 through in preparing that report.

18 You told us that you spent time in between the  
19 meetings reviewing the literature and reviewing the reports,  
20 the expert reports, and you met seven times.

21 How did the process of getting from reviewing the  
22 literature and the reports to the issuance of the final  
23 report proceed?

24 A. Sure. I'll do it at a high level, and please ask  
25 whatever questions you like.

1     **Q.** Yeah.

2     **A.** So in the beginning we were honestly bouncing from one  
3 race-neutral alternative to another, lots of comments were  
4 being made. As we made it farther through and we were  
5 starting to see actual simulations, it helped us to start  
6 thinking through, well, here's some that are interesting.  
7 They might have some impact for us. Let's focus some more on  
8 those.

9             Other ones, as we got information from other  
10 offices or other members of the committee understood what we  
11 have done, for example, with early admissions in the past, we  
12 had to more focus.

13            Toward later in the process, if that made sense --  
14 I'm happy to talk about if it didn't.

15            Toward later in the process, then I started  
16 mentioning how we think about pulling this together as a  
17 report. What's important for us to articulate based on the  
18 conversations that we've had during this process.

19            So we started framing the basic outline of what a  
20 report would look like. Had some ideas about what we would  
21 say in each of the areas, race-neutral alternatives. But  
22 then it was to a point where, as we were talking about a  
23 little bit earlier, I felt we needed an actual document, a  
24 draft in front of us so we could react to it and see is this  
25 actually expressing what it is that we're thinking about

1 expressing here.

2 It's oftentimes true that one person will have one  
3 idea in their mind and a different one will have a different  
4 idea. And having something concrete helps work out those  
5 issues between individuals.

6 And then we got a first draft. And then we worked  
7 through that first draft all the way to the end of going  
8 through it line by line, paragraph by paragraph to make sure  
9 that every committee member was supportive of what the report  
10 was saying, nothing had been left out, and we were confident  
11 in our recommendations.

12 **Q.** Did the committee meet outside the presence of the  
13 lawyers that were staffing of the committee?

14 **A.** We did.

15 **Q.** And was that a session -- what happened in that session?

16 **A.** So it was a session later in the process, one of the last  
17 of our committee meetings where we had a report. It was  
18 mostly now time where it was the opinion of -- the judgment  
19 of the committee that I was looking for. I didn't have other  
20 guests in the room, and the committee itself spent time -- I  
21 think it was one of the agendas we talked about before --  
22 both looking at one of the last expert witness reports, Dr.  
23 Card's rebuttal report coming in, and then also going through  
24 and specifically talking about each part of the draft of the  
25 final report at that point to make sure that we were getting

1 in everyone's thoughts before we turned to something we would  
2 hope would be close to a final version.

3 **Q.** Whose views are reflected in the committee's final  
4 report?

5 **A.** It is the views of each member of the committee.

6 **Q.** Now, were there some overarching conclusions that are  
7 reflected in the committee report?

8 **A.** Yeah. There are two main conclusions in our report. One  
9 of which is, as I was discussing a little bit earlier, that  
10 we did not find any race-neutral alternative or a combination  
11 of race-neutral alternatives that provides the same  
12 educational -- diversity-related educational benefits and  
13 goals that we have today through our use of race as one  
14 factor among many in the admissions process.

15 Second of all, that the landscape was changing.  
16 Other ideas may come up in the future, and this is something  
17 that we should look it at. And the committee made a  
18 recommendation that we should look at this within the next  
19 five years.

20 **Q.** And are you aware that after the committee end its  
21 report, Mr. Kahlenberg wrote a response?

22 **A.** I am.

23 **Q.** Did you review his response?

24 **A.** I did.

25 **Q.** Do you know if the other members of the committee

1 reviewed it?

2 **A.** I sent it off to the other members asking them to take a  
3 look at it and contact me if they had anything that they had  
4 a question about or that they wanted to speak further about  
5 it.

6 **Q.** Did Mr. Kahlenberg's response cause you or the other  
7 members of the committee to change any of your conclusions?

8 **A.** It did not. I did not see anything new that we hadn't  
9 already discussed in the committee meeting or had read in one  
10 of the expert witness reports.

11 **Q.** Let's talk about the substance of the report. And please  
12 turn to page tab in the -- page tab.

13 Please turn to Tab 10 in the notebook which  
14 contains Plaintiff's Exhibit 316 in evidence.

15 Do you have it?

16 **A.** I do.

17 **Q.** Is that the committee's final report?

18 **A.** Yes, it is.

19 **Q.** Was there an intended audience for this report?

20 **A.** It is. We obviously knew that this was going to be used  
21 in this lawsuit, too, but as we tried to do with reports like  
22 this, we are thinking about this is important for our faculty  
23 in general, leadership of the university, and hopefully as we  
24 recommended in this case a future committee that will look at  
25 these questions.

1                   MR. WAXMAN: Let's put up Slide 3.3, Mr. Lee,  
2 please.

3 BY MR. WAXMAN:

4 **Q.** What does this show?

5 **A.** This is a listing of the race-neutral alternatives that  
6 were considered as part of this process.

7 **Q.** And I see you have a listing of ten things, but then  
8 you've got some unnumbered bolded text. Can you just explain  
9 what that signifies?

10 **A.** Sure. So this is also a structure of the back part, if  
11 you will, the latter half of our report looking at how we  
12 actually went through and discussed and came to conclusions  
13 about each of the race-neutral alternatives.

14                   The first thing that the committee looked at was  
15 just what would happen to the different characteristics of  
16 our class if you could no longer consider race as one factor  
17 among many. Make no other changes, just remove race as one  
18 factor among many. That came out of Dr. Card's report.

19 **Q.** What's the second category?

20 **A.** And then the other two categories are different  
21 race-neutral alternative. We broke it into, just for ease of  
22 exposition, two kinds of things.

23                   First, if you will, Numbers 2 through 7 are  
24 policies that may promote diversity by doing more. So  
25 there's things here that we could, for example, increase



1 recruiting efforts. If we did more there, we possibly could  
2 improve our diversity in our admitted class if we did that.

3 And then the latter, 8, 9, and 10, are kind of the  
4 opposite. What could we do less of and possibly improve the  
5 diversity and the diversity-related educational benefits that  
6 we're choosing to pursue.

7 **Q.** Dean Smith, this report is in evidence, and I'm not going  
8 to try the Court's patience or the patience of anybody in  
9 this room by going through the report in enormous detail.

10 Let me just ask you whether in your view this  
11 report describes the committee's high level conclusions about  
12 each of these alternatives?

13 **A.** It does.

14 **Q.** And in considering these alternatives, I guess 2 through  
15 10, did the committee consider them individually or in  
16 combination?

17 **A.** We looked at both. We looked at things individually, but  
18 a lot of the simulations, as we were discussing earlier,  
19 pulled multiple things together. But we definitely did both  
20 individually and in combination.

21 **Q.** Let me direct your attention to the third page of the  
22 report, Plaintiff's Exhibit 316.

23 **MR. WAXMAN:** Mr. Lee, would you mind highlighting  
24 the -- yes, the paragraph beginning "this committee held."  
25 Yes, exactly. There you are.

1 BY MR. WAXMAN:

2 Q. Do you see the sentence that begins "Three  
3 considerations"?

4 A. I do.

5 Q. You have the report in front of you?

6 A. I have the report in front of me, yes.

7 Q. We're not exactly getting the -- there we go. All right.  
8 Do you see the sentence -- the second sentence of the  
9 paragraph that says "Three considerations"?

10 A. Yes.

11 Q. Would you mind reading into the record that entire  
12 sentence?

13 A. "Three considerations guided our discussions when  
14 evaluating alternative admissions practices.

15 "1. The impact of alternatives would have on the  
16 overall diversity of backgrounds, experiences, and interests  
17 of the entire group of students who share a common  
18 educational experience;

19 "2. Whether alternatives would be consistent with  
20 other institutional commitments and goals; and

21 "3. Whether alternatives could reasonably be  
22 implemented given their resource and administrative  
23 requirements."

24 Q. Does that sentence accurately describe how the committee  
25 organized the analysis of the race-neutral alternatives it

1 considered?

2 **A.** It does. We were looking at what impact it would have on  
3 the overall class characteristics. We were interested to see  
4 if that alternative would be consistent with our  
5 institutional goals and the goals of Harvard College. And  
6 then whether or not we could implement that alternative.

7 **Q.** Let's turn to the committee's analysis and look at  
8 Number 1 on the list that you've prepared in the previous  
9 demonstrative.

10 How did the committee analyze whether Harvard  
11 should eliminate the consideration of race while leaving  
12 unchanged its other policies?

13 **A.** So we relied in this case on Dr. Card's analysis of  
14 that -- he has a simulation where he just simply keeps  
15 everything else about our admissions process, as he  
16 understood it and could model, alone and then simply removed  
17 race as one consideration among many.

18 The committee looked at the resulting demographics  
19 of the class and were dismayed to see a large reduction in  
20 the number of African-Americans that were admitted and the  
21 number of Hispanic and other category that were actually  
22 admitted.

23 **Q.** Now, do you recall an exchange that you had with  
24 Mr. McBride about -- and I think we will turn to this in a  
25 little bit later -- the passage in the report in which the

1 committee expresses the view that some of Mr. Kahlenberg's  
2 simulations approximated the total aggregate diversity of the  
3 existing class of 2019?

4 **A.** Yes.

5 **Q.** Was the committee focused on whether these simulations  
6 approximated the overall share of the class that was  
7 African-American, Hispanic, Pacific Islander,  
8 Native American, or other; or with respect to the particular  
9 ethnic and racial identities that are represented in the  
10 class?

11 **A.** We looked at both. The overall ethnic portion, and we  
12 also looked at the individual ones because we've learned  
13 through some of the committees that you mentioned earlier  
14 that there are different experiences across different racial  
15 groups.

16 **Q.** Is there a specific -- when you're thinking about the  
17 overall share of African-Americans, Hispanics, Pacific  
18 Islander, Native Americans, and otherwise, or the share in  
19 the Harvard admitted class of any one of those groups, is  
20 there a specific level of diversity that is required to  
21 achieve the educational benefits of diversity?

22 **A.** The committee had no specific number in mind.

23 **Q.** So how do you, one, think about -- in light of Harvard's  
24 educational mission, how does one -- how did the committee  
25 think about what an appropriate or acceptable level of racial

1 and ethnic diversity would be?

2 **A.** Right. We had a number of different conversations along  
3 this. I can try to simplify it into a statement of we were  
4 certainly not looking to move backwards. We've made progress  
5 in some areas in terms of improving the racial diversity on  
6 our campus. We've seen what a positive impact that had. But  
7 through the kinds of conversations that are ongoing right now  
8 on campus, we know we still have more to do in that space.

9 So there was just a, first of all, look at are we  
10 moving backwards from where we are today knowing that this is  
11 also already an issue for us to be dealing with.

12 How do we get to the kinds of numbers that we have  
13 today, and what does that mean in terms of resources required  
14 or other trade-offs with respect to the aspects of the  
15 mission.

16 And then what benefits could we get if the  
17 diversity was actually increased in a particular category.

18 **Q.** Let's turn to Demonstrative 3.5. And now look at the  
19 second category of race-neutral alternatives. How did the  
20 committee assess Alternatives 2 through 7?

21 **A.** So we first familiarized ourselves with the ongoing work  
22 that's already going on within Harvard in each of these  
23 areas. Many of these areas are things that we have invested  
24 heavily in, have experimented with, have some real experience  
25 with. And not all members of the committee had all that

1 background. So we spent some time understanding exactly  
2 where we were and what's working well and what hasn't worked  
3 in the past.

4 And then whenever possible we were -- we took  
5 advantage of the expert reports and looked at the kinds of  
6 simulations that they did. There was times when we had the  
7 question before the committee is there any simulations that  
8 the experts are producing that aren't answering the questions  
9 that we want, are we going to ask them is there another  
10 simulation that we want to have them do.

11 Actually the experts did a fantastic job of  
12 producing the kinds of things that the committee was  
13 interested in.

14 And then we had the discussion that you and I had a  
15 little bit earlier. All right. What does that all mean  
16 given the demographic change, the change in the  
17 characteristics of the class, under the framework that we  
18 talked about a little bit earlier. If it has an actual  
19 impact on the demographics, is that a positive impact, can we  
20 afford to do it, can we make -- is it practical for us to do  
21 this, and how does that interact with the other institutional  
22 objectives and goals that we have.

23 **Q.** I'm not going to take you through each one of these  
24 orally both because it's in the report and because  
25 Mr. Kahlenberg has not provided testimony about some of them.

1           But let's look at the first one, "Increasing  
2     Recruiting Efforts." How did the committee analyze the  
3     proposal that Harvard increase its recruitment efforts?

4     **A.** So, again, as I was mentioning a moment ago, we first  
5     learned the extensive efforts that we already make in this  
6     space, both before we even get to the admissions process,  
7     what do we do for outreach. We have groups and programs on  
8     campus like the undergraduate minority recruitment program  
9     that has been running for a long time, made sure that  
10    everybody was aware of that. The literatures that we send  
11    out today, all the ways that we try to make outreach to  
12    perspective students that we would like to have in our  
13    applicant pool.

14           And then we got to the point, well, if we did more  
15    in this space, what would happen to the composition of our  
16    class. We took advantage of the simulations that looked at  
17    saying, here's our low socioeconomic applicants today. What  
18    happens if we just double them, assuming that changes in our  
19    recruitment efforts could actually produce that same set of  
20    students again.

21    **Q.** I'm going to ask you separately about Number 7 which is  
22    "Increasing the Weight For Socioeconomic Background"?

23           THE COURT: Can I stop you for a second? What is  
24    Number 3?

25           THE WITNESS: 3 is "Partnerships."

1 THE COURT: It's the one we haven't discussed,  
2 right? No one's discussed it?

3 MR. WAXMAN: No one's discussed it yet. It's in  
4 the report. But I was going to ask Dean Smith what it is.

5 THE COURT: Are you asking me if I read the report  
6 yet?

7 MR. WAXMAN: Is this the part where we give you a  
8 quiz?

9 THE COURT: I just don't know what Number 3 is.

10 BY MR. WAXMAN:

11 **Q.** Why don't we take Number 3, and then we'll go back to  
12 Number 2.

13 **A.** Number 3 is another way of doing, if you will,  
14 recruitment. Partnerships. And I won't be able to tell you  
15 all the names of the different partnerships that exist, but  
16 there are organizations in the world whose mission is to try  
17 and take individuals who are having a hard time understanding  
18 where they should go to college and giving them the  
19 background that they need, and then they become on these  
20 individuals' organization's list, which then they give to  
21 institutions like us that say, we have this individual, who  
22 is an outstanding individual. Doesn't really understand the  
23 application process. You might want to consider him or her  
24 moving forward.

25 And there's a lot of these partnerships in the



1 world. I am not the expert on all these partnerships. The  
2 last thing I'll say on this is Harvard has a particular way  
3 that we like to work with these partnerships. We're not  
4 looking to work with just one partner or two partner.

5 We're trying to partner with as many people as  
6 possible because the individual students themselves, at least  
7 one of the things I understand -- Dean Fitzsimmons would be  
8 able to answer better than me -- you're not guaranteed to  
9 have an applicant work with a particular organization. So we  
10 want to get as many outstanding applicants as we can. So we  
11 try to work with as many organizations as we possibly can.

12 **Q.** Again, I'm not going to ask you for a compendium of all  
13 the partnerships, but is it your understanding that many or  
14 most of the community partnerships with which the Harvard  
15 admissions office -- many or most of the community  
16 organizations that the Harvard admissions office partners  
17 with are organizations designed to serve either low income or  
18 underrepresented minority student populations?

19 **A.** That is my understanding.

20 **Q.** Okay. Now that we've checked off Number 3, let me just  
21 ask you a few more questions about Number 2.

22 Do you recall the assertion in Mr. Kahlenberg's  
23 reports that Harvard could double the number of equally  
24 qualified low-income applicants if it simply increased its  
25 recruitment efforts?

1     **A.**   I do.

2     **Q.**   And what was the committee's reaction to that assertion?

3     **A.**   Our reaction was that we're willing to look at the  
4       results of that, but to actually have that happen in our  
5       applicant pool we thought was very difficult. My own  
6       personal experience in that, as I may have mentioned earlier,  
7       Dean Fitzsimmons and I had regular conversations, especially  
8       around things like financial aid, where I wasn't certain the  
9       message was getting out well enough, what else could we do to  
10      improve.

11               And we're not looking to just increase the size of  
12      our applicant pool. It's very easy to increase the size of  
13      your applicant pool by having people apply that have no  
14      chance of getting in. What we're really looking for is the  
15      students that we duplicated there, the outstanding, low  
16      socioeconomic, minority students that we want more of in the  
17      pool.

18               Dean Fitzsimmons and I have been working on that  
19      for a decade, and I did not find that to be easy. We found  
20      nothing that would easily improve that number tremendously.

21     **Q.**   Let's turn to Number 4, which is the proposal that  
22      Harvard increase its financial aid. How did the committee  
23      address that contention?

24     **A.**   So, again, we reviewed the history of changes to our  
25      financial aid policy, which has been a huge investment both

1 at the college as well as at the university. We have made a  
2 number of different changes from 2004 through 2007, '8, to  
3 the more recent one. And I forget the exact date, 2011,  
4 something like that.

5 Initially the changes in the increased aid that we  
6 provided to our students made not only a big difference to  
7 the student and their ability to undertake their educational  
8 goals on our campus, but it improved the characteristics of  
9 our pool.

10 But in these later rounds, that has not been the  
11 problem. Putting more money into our financial aid program  
12 alone is not making noticeable changes to the number of low  
13 socioeconomic students that are applying or to them being  
14 admitted and enrolling.

15 **Q.** Did you review Dr. Card's analysis on the effects of  
16 increasing financial aid?

17 **A.** We did.

18 **Q.** And what did it tell you about -- maybe you've covered  
19 this already, but what did it tell you about the proposal  
20 that by increasing financial aid Harvard could substantially  
21 increase the number of qualified low-income applicants?

22 **A.** Right. Yes. So just to go a little bit deeper. In the  
23 beginning we were seeing noticeable -- the beginning 2004  
24 timeframe. In the last change we're basically not seeing  
25 any, and that's what Dr. Card said, any changes.

1           So we're already at a level -- we moved in this  
2           last change to the financial aid system from any family under  
3           \$60,000 not requiring to provide any support to their  
4           student, either in tuition or room and board, to come to  
5           Harvard. We moved that to 65,000. That's already covering a  
6           majority of our low socioeconomic students in the United  
7           States.

8           Moving that number up farther and investing more  
9           there, we're not seeing any changes, and that's what Dr. Card  
10          was telling us, too.

11       **Q.** Well, I was going to turn to place-based preferences, but  
12       I don't want to slight the Court's -- any interest the Court  
13       has in Number 5, which also has not yet been discussed in  
14       this trial, which is the proposal that Harvard could achieve  
15       a more ethically and racially diverse class consistent with  
16       its other goals by increasing transfer admissions.

17               Is that proposal discussed in your report?

18       **A.** It is.

19               MR. WAXMAN: Your Honor, would you like me to  
20       question him on this, or would you prefer to?

21               THE COURT: No. That's fine. I'll read the  
22       report. I knew what that one was.

23               MR. WAXMAN: Let's look at place --

24               THE COURT: You're supposed to remind me that  
25       there's no such thing as a dumb question, right?

1 MR. WAXMAN: I have asked not only in my life but  
2 in the course of preparing witnesses to testify in this case  
3 so many dumb questions --

4 THE COURT: There's no such thing as a dumb  
5 question, Mr. Waxman.

6 MR. WAXMAN: There is no such thing as a dumb  
7 question unless perhaps, as has happened with me, you have  
8 asked that same question of the same person a dozen times.

9 THE COURT: I'm sure Mr. McBride will let you know  
10 if that happens today.

11 MR. WAXMAN: He's got a little poker right here.

12 THE COURT: I just didn't know what Number 3 was.  
13 I understand what Number 5 is, and I will read the report.

14 BY MR. WAXMAN:

15 **Q.** All right. Well, let's turn to Number 6, which is  
16 "Place-Based Preferences."

17 And what did you understand Mr. Kahlenberg to be  
18 proposing about place-based preferences?

19 **A.** So the committee understood two general schemes for  
20 place-based preferences. The first being either admitting  
21 the top student from every ZIP Code in the United States or  
22 every high school in the United States, which has been a  
23 race-neutral alternative that has been discussed in the  
24 literature.

25 And then the second basic category is moving away

1 from admitting just a single student in each one of those, I  
2 suppose I could generalize, and admit more than one student  
3 from each.

4 But then looking at the College Board neighborhood  
5 clusters, there's 33 of those as opposed to the many  
6 thousands of ZIP Codes and high schools in the United States.  
7 And then admitting a fixed number of individuals from each of  
8 the College Board neighborhood clusters.

9 The first that I mentioned there, admitting the top  
10 student from any ZIP Code, from ZIP Codes or from high  
11 schools, honestly the committee didn't spend a lot of time  
12 talking about because there are so many more ZIP Codes or  
13 high schools than there are slots in our admitted class, that  
14 it's just not a workable alternative for us.

15 Not to mention the problem of trying to understand  
16 the single best student given that we're looking for  
17 excellence across many different dimensions and in particular  
18 looking for students who exhibit excellences in multiple  
19 dimensions. It's very hard for us to come up with that.

20 So it's more likely that we could do something in  
21 the second place-based preference world where we could admit  
22 at least a reasonable number. I would say the committee is  
23 still uncomfortable with that. We have never looked for  
24 excellence and talent in one place. Say we've admitted five  
25 students from that place. There can't be any more good

1 talent from there, let's move to a different place.

2 That's why we're looking for talent wherever we can  
3 find it. We believe it exists everywhere, but we don't  
4 believe necessarily it exists uniformly.

5 **Q.** In the context of thinking about the proposal to admit  
6 roughly -- I think it's 52 applicants from each of the  
7 33 neighborhood clusters, did you evaluate any analyses that  
8 Professor Card provided as to the predicted racial and ethnic  
9 breakdown of the class and other characteristics of the class  
10 such as 1s or 2s on the four profile ratings that admissions  
11 officers assign?

12 **A.** We did. We did everything that you just mentioned with  
13 respect to the simulations that were provided to us.

14 **Q.** And what was the committee's conclusion with respect to  
15 adopting a place-based preference that would admit an equal  
16 number of students from each of the 33 clusters?

17 **A.** All right. Again, as I was discussing earlier, we looked  
18 at, for example, the racial composition of the class. And  
19 though the overall nonwhite percentage of the class came back  
20 to similar to what we have in our current class today, we  
21 were worried about the fact that the African-American  
22 representation in that simulated class was significantly  
23 lower than what we have today.

24 And given the discussion I had a little bit  
25 earlier, with respect to the things that we're learning

1 through our Inclusion and Belonging committees and task  
2 forces, we weren't looking to go backwards for any particular  
3 racial group.

4 And then we also took time to look carefully at the  
5 other characteristics. And in particular the discussion we  
6 had earlier was the particular ratings, and the fall in the  
7 ratings were something that worried the committee greatly.

8 **Q.** Let's turn now to the proposal Number 7, which is that  
9 Harvard increase the weight for socioeconomic background.

10 How did the committee analyze the suggestion to  
11 place increased weight on socioeconomic status in the  
12 admissions process?

13 **A.** So we already are looking to tip low socioeconomic  
14 students. They're bringing an important perspective to have  
15 on campus. These simulations, as I understand them from  
16 reading the expert witness reports, were taking and slowly  
17 cranking up, if you will, the weight given to someone who is  
18 disadvantaged, low socioeconomic in terms of the overall  
19 evaluation of the characteristics of that individual.

20 So we were particularly looking at what weights are  
21 required in these simulations in order to make significant  
22 changes to the racial composition, to the kinds of other --  
23 the profile ratings that we were talking about earlier.

24 And one of the things that came out is that there's  
25 a significant weighting given to low socioeconomic background



1 to get back to the kinds of distributions that the committee  
2 was looking for that Harvard values in its classes to the  
3 point where it becomes the defining characteristic that in  
4 our opinion was causing that student to be admitted.

5 **Q.** Do you recall Mr. McBride asking you questions --

6 **MR. WAXMAN:** And Mr. Lee, perhaps we could pull up  
7 Exhibit 26 of Professor Card's rebuttal report, which was  
8 used by Mr. McBride. And in Exhibit 26 is that table -- yes,  
9 exactly.

10 So Mr. McBride -- let's look down at the red box  
11 that's identified there L.

12 **BY MR. WAXMAN:**

13 **Q.** Do you recall -- do you see at the top that there are  
14 three different simulations, "Card's Simulation 4X SES  
15 Boost," "Kahlenberg's Simulation 6," and "Kahlenberg's  
16 Simulation 7"?

17 **A.** Yes, I do.

18 **Q.** And Mr. McBride was asking you questions about what would  
19 happen under Card's simulation of a 4X SES boost. And the  
20 Court will have the opportunity to hear from Professor Card  
21 about what that model actually shows.

22 But do you have an understanding from reading  
23 Dr. Card's report of how much of a boost a 4X boost in  
24 Mr. Card's model would actually have?

25 **A.** I do. As I understand the simulation and the write-up in

1 Dr. Card's report, a 4X low socioeconomic boost provides you  
2 with the same kind of record that one of our most talented  
3 applicants would have that was getting a 1 and 2 rating in  
4 multiple of our profile ratings.

5 So basically if I remember the number correctly,  
6 it's someone who's going to be admitted with an 80 to  
7 95 percent probability.

8 **Q.** So, in other words, a candidate who has a 7 percent  
9 probability of being admitted, which is roughly the  
10 probability of being admitted to the class of 2019, given a  
11 4X boost, am I correct in doing the math that a 4X boost  
12 essentially would admit every student who qualified for that  
13 boost?

14 **A.** As I understood it.

15 **Q.** Look to the next column. Do you see where it says  
16 "Kahlenberg's Simulation Number 6"?

17 **A.** Yes.

18 **Q.** Do you recognize this as the simulation that  
19 Dr. Kahlenberg in his rebuttal report said was his preferred  
20 simulation?

21 **A.** I do.

22 **Q.** Look at -- again, let's look at the -- first, let's look  
23 under "Race."

24 What happens to the African-American share of the  
25 class under Mr. Kahlenberg's preferred simulation?

1     **A.**   So it drops by 30 percent from the actual admitted class.

2     **Q.**   And that is the same as it would under Dr. Card's 4X  
3     simulation, correct?

4     **A.**   The same percentage, one more person actually, but yes.

5     **Q.**   And what about Mr. Kahlenberg's Simulation Number 7?

6     **A.**   It drops even further. It drops this time by 32 percent.

7     **Q.**   Okay. And I won't ask you to recite all the other  
8     numbers that are in here, but I want to ask you again about  
9     this issue of whether the committee and Harvard College in  
10    thinking about a diverse learning environment is concerned  
11    with the aggregate share of the class of African-Americans,  
12    Hispanics, or others or the individual components? I think  
13    you said it was both.

14    **A.**   It's definitely both.

15    **Q.**   What was the committee's concern about these kinds of  
16    drops in the share of the admitted class of African-American  
17    students at the present time given what's happening in the  
18    college and the world?

19    **A.**   So this felt like, if you will, a bridge too far. We're  
20    going backwards from where we are today. We've learned a  
21    tremendous amount over the last couple of years as we've dug  
22    farther into issues of diversity, inclusion, belonging.  
23    There's already a sense as these committees have heard of  
24    alienation and isolation that's interfering with an  
25    individual's ability to pursue their academic studies on our

1 campus. Those impacts are tremendously felt by individuals  
2 here.

3 We're not looking to make that worse. Certainly  
4 the African-Americans in this category that are interacting  
5 with other students are bringing important perspectives to  
6 our educational process, but we're also very worried about  
7 their own educational experience.

8 **Q.** Thank you.

9 **MR. WAXMAN:** Mr. Lee, can you put up  
10 Demonstrative 3.6.

11 **BY MR. WAXMAN:**

12 **Q.** And let's now talk about the third category, "Eliminating  
13 Certain Other Policies." And let me direct your attention to  
14 what is listed as Number 8, which is "Eliminating Early  
15 Action." Do you see that?

16 **A.** I do.

17 **Q.** How did the committee assess Mr. Kahlenberg's proposal  
18 that Harvard eliminate early action?

19 **A.** We have a natural experiment that occurred in this space.  
20 So we were bringing a lot of that learning, that experience  
21 to our discussions. So our experience there has been,  
22 though, the elimination of early-action programs, in  
23 particular early decision programs, has been said to allow  
24 you to bring more diversity to your applicant pool and then  
25 eventually into your admitted class, our experience in that

1 case when we eliminated at Harvard early action -- now I'm  
2 forgetting off the top of my head what the date of that was,  
3 but it was during my deanship.

4 We ran that experiment for four years and looked at  
5 the results of what happened in that case. And what we saw  
6 was no change effectively in the number of -- in the  
7 percentage of African-American, Hispanic, and other students  
8 who were applying to our classes, but a drop in the actual  
9 yield rate.

10 So fewer of the students that we were admitting  
11 from those racial categories were actually choosing to come  
12 from Harvard. And we also looked -- we've talked a number of  
13 times in this courtroom today about other things that we care  
14 about. In particular the profile ratings, academic 1s and  
15 2s, and we were seeing that those students we would really  
16 love to have on our campus, the academic 1s and 2s from those  
17 racial minorities, were choosing to go to other institutions  
18 that had an early an early-action program, an early decision  
19 program.

20 And when we looked at the actual statistics, it was  
21 not benefiting us to eliminate this. In fact, it sometimes  
22 was working against us when we eliminated it.

23 **Q.** Were you involved in the decision to reinstate early  
24 action?

25 **A.** I was.

1     **Q.** Please turn to Tab 11 of your binder, which is Defense  
2     Exhibit 39. Do you have that?

3     **A.** I do.

4     **Q.** What is it?

5     **A.** It is the memorandum that President Faust and I prepared  
6     for the Harvard Corporation discussing the reinstatement of  
7     early action.

8             MR. WAXMAN: Your Honor, we'd move defense  
9     Exhibit 39 into evidence.

10            MR. McBRIDE: No objection, Your Honor.

11            THE COURT: It's admitted.

12            (Defendant Exhibit No. 39 admitted.)

13     BY MR. WAXMAN:

14     **Q.** Please turn to the page marked DX039.0004. And look at  
15     the first full sentence of the paragraph.

16            Do you see the sentence that says "Of particular  
17     interest"?

18     **A.** I do.

19     **Q.** Please read that.

20     **A.** "Of particular interest given the rationale for  
21     eliminating early action, our admissions office is becoming  
22     increasingly concerned that not having an early admission  
23     option is causing us to lose some of the most academically  
24     talented and prepared low income and underrepresented  
25     minority students."

1     **Q.** Please turn to page DX 039.0025. A page from an exhibit  
2     that you and President Simmons presented to the Harvard  
3     Corporation with a recommendation to eliminate early action?

4     **A.** President Faust and I presented.

5     **Q.** What did I say?

6     **A.** Simmons.

7     **Q.** Oh. That's the witness next week.

8             President Faust.

9     **A.** Yes.

10    **Q.** The Court has heard something about this, but what is  
11    shown in the box on the left on the page titled, "Change in  
12    yield rates by academic and extracurricular rating and  
13    ethnicity"?

14    **A.** So the left graph here is the one you're asking about,  
15    right?

16    **Q.** Yes.

17    **A.** The left graph shows for the period of time between 2003  
18    and 2007, what the yield rates -- I'm assuming it's an  
19    average; I don't actually remember off the top of my head --  
20    for the different ethnic minorities or ethnicities, I should  
21    say, here.

22             And then the gray portion from 2008 to 2010 is the  
23    yield rates for those students, particularly -- sorry -- for  
24    each of those racial categories. Those students with high  
25    academics and high extracurricular ratings, what the yield

1 rate was during the time that we did not have early action.

2 **Q.** And again what does this show?

3 **A.** It shows the decrease that I was talking about earlier in  
4 Hispanic and black.

5 **Q.** So we've heard in this case about yield rates, and we  
6 have heard also about matriculants.

7 Does this decline in -- I think I'm asking you  
8 something close to a tautology. But just so we're clear on  
9 the vocabulary.

10 Does the decline in the yield rate of these groups  
11 translate into a decline in the share of each of these groups  
12 in the admitted class -- in the matriculating class?

13 **A.** Typically, yes.

14 **Q.** Did the Harvard Corporation vote to end early action as  
15 you and President Faust recommended?

16 **A.** So it voted to end early action in 2007, and then voted,  
17 I guess, in -- whatever the actual years are, and I think you  
18 meant to ask me to did it vote to bring it back, and it did  
19 bring it back.

20 **Q.** Thank you for answering the question that I thought I was  
21 asking.

22 And so how did the committee in light of this  
23 experience evaluate Mr. Kahlenberg's proposal that Harvard  
24 end early action in order to increase the underrepresented  
25 minority share, or shall I say, the African-American,



1 Hispanic, Pacific Islander, Native American, and other share  
2 of the matriculating class?

3 **A.** While this race-neutral alternative may work for other  
4 institutions, it's our experience, and our recent experience  
5 that it did not work for us, and we did not think we should  
6 be bringing it, redoing that experiment again at this point.

7 **Q.** Let's turn again to Demonstrative 3.6 and ask you to --  
8 we're going to address Number 9, "eliminating other practices  
9 that allegedly benefit white applicants."

10 What other practices allege to benefit white  
11 applicants did you consider?

12 **A.** So this category includes the practices that we referred  
13 to before as ALDC, athletes, giving them a tip; legacies,  
14 giving them a tip; individuals listed on the dean's and  
15 director's list, and then children of faculty and staff at  
16 Harvard. Plus it also included the consideration of  
17 individuals for deferred admission.

18 **Q.** Okay. That is eliminating the so-called "Z list"?

19 **A.** Yes. As I understand the Z list.

20 **Q.** Okay. And with respect to the proposal that Harvard  
21 eliminate tips that are given to the so-called ALDC  
22 applicants, and I guess I'll just ask about deferred  
23 admission as well, what did the committee conclude about the  
24 likely effects of eliminating those tips on the ethnic and  
25 racial makeup of the matriculating class?

1     **A.** So we looked carefully at Dr. Card's simulations in that  
2     space, who -- he eliminated all the ALDC including deferred  
3     admissions. Every simulated student was given an opportunity  
4     to be in the current class. So there was no deferred  
5     admissions.

6             And it did not change the racial composition from  
7     the -- noticeably from the earlier experiment where we talked  
8     about simply removing race as one consideration among many  
9     when we had a 14 to 6 percent drop in the percentage of  
10    African-Americans in our admitted class and a 14 to 9 percent  
11    drop in the number of Hispanics and other that were in the  
12    admitted class.

13            MR. WAXMAN: Mr. Lee, would you please put up the  
14    report, which is Plaintiff's Exhibit 316 and page 16. And  
15    let me ask you to highlight the second full paragraph on the  
16    page. That doesn't seem to be it. The paragraph that  
17    starts, "Thus, to the extent." That entire paragraph.

18    BY MR. WAXMAN:

19    **Q.** I want to focus you on the sentence that's just a little  
20    more than halfway down the paragraph starting "Elimination."

21            Do you see that?

22    **A.** Yes.

23    **Q.** "Eliminating."

24    **A.** Yes, I do.

25    **Q.** By the way, do you understand this discussion to be in

1 the context of the proposal to eliminate tips for ALDCs and  
2 eliminate the Z list?

3 **A.** Yes.

4 **Q.** What does that sentence beginning with the word  
5 "eliminating" say?

6 **A.** Would you like me to read it?

7 **Q.** Yes.

8 **A.** "Eliminating the consideration of race and eliminating  
9 these processes would have a negligible effect and not always  
10 positive on diversity resulting in an admitted class that is  
11 5.3 percent African-American down from an earlier 5.6 and  
12 9.3 percent Hispanic or other from an 8.9 percent earlier.

13 **Q.** And what is the next sentence?

14 **A.** "That is reason enough for the committee to conclude that  
15 these practices would not prevent Harvard from needing to  
16 consider race in the admissions process to achieve its  
17 racially -- its diversity-related educational objectives."

18 THE COURT: Could you break out which of the ALDC  
19 factors had that effect?

20 THE WITNESS: The simulation that was done for the  
21 committee through Dr. Card's work put them all in.

22 THE COURT: Did you ever try and separate it out?

23 THE WITNESS: You mean from the further reduction  
24 in the African-Americans? Is that what you're asking about?

25 THE COURT: Yes.

1           THE WITNESS: No. I don't know. Dr. Card might,  
2 but I don't.

3 BY MR. WAXMAN:

4   **Q.** You were asked a number of questions by Mr. McBride about  
5 your perception of the impact of alumni giving or alumni  
6 contributions if a tip for lineage or legacy applicants was  
7 omitted, correct?

8   **A.** Correct.

9   **Q.** Was that the reason that you concluded that the proposal  
10 to eliminate the tips for ALDC applicants and the Z list was  
11 unworkable for Harvard?

12   **A.** Absolutely not.

13   **Q.** What about the effect of eliminating the tip for  
14 athletic -- for recruited athletes? Was that the reason that  
15 the committee concluded that this proposal was unworkable for  
16 Harvard?

17   **A.** No. We looked at what would happen if we eliminated  
18 recruited athletes, the tip for recruited athletes.

19   **Q.** And did you -- was the fact that the elimination -- that  
20 eliminating ALDC preferences would eliminate special  
21 consideration or a tip for the children and staff of  
22 Harvard -- children of Harvard faculty and staff or  
23 applicants who are listed on the dean's and director's list  
24 the reason that you rejected Mr. Kahlenberg's proposal to  
25 eliminate the tips for ALDCs and the Z list?

1     **A.**   No.

2     **Q.**   Did the committee nonetheless consider criticisms of  
3       those practices?

4     **A.**   We did.

5     **Q.**   Okay. And is the committee's analysis of the criticisms  
6       of the practices -- that is, why should you give an athletic  
7       tip; why should you give a tip to children of Harvard College  
8       alumni or alumni; why should you give it a tip in considering  
9       an application from a child of a Harvard staff or faculty  
10      member; or why should you give an academic tip, if one is  
11      given, to individuals that are listed in the dean or  
12      director's list -- did your report -- did the committee  
13      evaluate the criticisms of each of those practices?

14    **A.**   We did. And we went further to discuss whether or not it  
15      was important for us at Harvard as the community that we are  
16      to continue to do or not continue to do those actions.

17    **Q.**   And I'm not going to ask you to explicate what's in the  
18      report with respect to most of them, but Mr. McBride spent  
19      quite a bit of time asking you about the connection between  
20      legacy admissions and alumni giving.

21                Do you recall that?

22    **A.**   I do.

23    **Q.**   And the committee discussed the relationship between  
24      legacy preferences and alumni giving?

25    **A.**   We definitely discussed that as part of our broader

1 discussion, too, but it wasn't the sole point of our  
2 discussion.

3 **Q.** And did you understand the discussion to concern alumni  
4 financial donations or more broadly?

5 **A.** I'm not sure I follow the question.

6 **Q.** Okay. When you're thinking about the relationship  
7 between special consideration to the children of Harvard  
8 College alumni or alumnae, and what's referred to broadly as  
9 alumni giving or alumni contributions, were you focused  
10 purely on financial contributions or did you look at other  
11 contributions that alumni make?

12 **A.** We were very concerned with the broader thought of all  
13 kinds of contributions from our alumni. As I mentioned  
14 earlier, certainly the donating of their time to our  
15 admissions process, we could not do our admissions process  
16 without the generous donation of the time by so many  
17 individuals in our alumni to give us detailed, thoughtful  
18 reports back on the applicants to the times that I have  
19 experienced real, useful, active advice that I could use as  
20 we were thinking through, for example, the new generation of  
21 the theatre dance and media concentration on our campus.

22 I benefited tremendously from talking to some of  
23 our alumni in that space about how we should think about  
24 doing this, where is the field going, what is the field going  
25 to be doing next, how should we be best preparing our

1 students for someone who wants to concentrate in that area.  
2 It wasn't just about financial donations.

3 **Q.** So I just want to ask you, with respect to the donations  
4 that are prospective or past donations, that are monetary  
5 contributions to Harvard College or the faculties of arts and  
6 sciences, does Harvard have a policy with respect to  
7 soliciting contributions from a family member -- from a  
8 family when a family member is applying for admission?

9 **A.** We absolutely do.

10 **Q.** And what is the policy?

11 **A.** The policy is not to solicit any donations from a member  
12 of our alumni base or anyone who has a child that's about to  
13 enter into our admissions pool or is actually in our  
14 admissions pool.

15 **Q.** Let's finally turn to consideration of Mr. Kahlenberg's  
16 simulations. Do you recall that Mr. Kahlenberg's report  
17 included many simulations?

18 **A.** Yes.

19 **Q.** Did you consider all of the simulations that  
20 Mr. Kahlenberg proposed?

21 **A.** We did.

22 **Q.** And particularly did you consider -- did you consider  
23 particularly Mr. Kahlenberg's proposal of his preferred  
24 simulation, Simulation Number 6?

25 **A.** We did.

1     **Q.** What was the committee's assessment of the demographic  
2 results of this submission?

3     **A.** As we were discussing a little bit earlier, we remained  
4 concerned even though the overall percentage of minority  
5 students resembles the current class, the distributions were  
6 different and particularly different in ways that worried us  
7 with respect to the African-American students.

8     **Q.** And did you have in mind that a simulation --  
9 Mr. Kahlenberg's simulation, we saw it earlier, would result  
10 in a 30 percent drop in the African-American share of the  
11 matriculating class?

12    **A.** Yes.

13    **Q.** And did Mr. Kahlenberg offer any simulations under which  
14 the African-American share of the class was comparable to  
15 current levels?

16    **A.** Only under very high socioeconomic boosts.

17    **Q.** And did Dr. Card's reports provide additional information  
18 about the simulations that the committee considered?

19    **A.** Yes.

20    **Q.** Simulation of the preferred model?

21    **A.** Yes. We benefited tremendously from Dr. Card's full  
22 description of how the different characteristics were  
23 affected both under the simulations that he looked at and he  
24 thought were interesting, plus the ones that he did for  
25 Dr. Kahlenberg -- I'm sorry, Mr. Kahlenberg.



1                   MR. WAXMAN: Mr. Lee, would you put up  
2 Demonstrative 3.7.

3 BY MR. WAXMAN:

4 **Q.** What does this show?

5 **A.** This is the comparison between the actual admitted class  
6 for -- I believe it's class of 2019 and the percentage of the  
7 simulated class under Mr. Kahlenberg's Simulation Number 6 as  
8 reported in Dr. Card's, I believe, rebuttal report.

9 **Q.** And what does it show with respect to the predicted  
10 change in the number of academic 1s in the share of the class  
11 that is academic 1s or 2s?

12 **A.** So as this shows here, the predicted share of the class  
13 of academic 1s and 2s has decreased from 76 percent of the  
14 actual class of 2019 to a simulated class that would have  
15 61 percent of its student coming from the academic 1s and 2s.

16                   And this is the difference that, as I was  
17 discussing earlier, made a huge impact on the committee and  
18 what we're trying to accomplish at Harvard. These are  
19 students that add so much not only to the things that take  
20 place in our classroom, the kinds of work that our faculty  
21 do, to how they interact with the other students on campus.  
22 This would be a noticeable drop in what's happening on our  
23 campus and what Harvard strives to have these academic 1s and  
24 2s on our campus. We benefit greatly from their  
25 participation.

1     **Q.** Does the presence on Harvard's campus of 76 percent of  
2     the admitted class having academic 1s and 2s have an effect  
3     on Harvard's ability to recruit and retain faculty?

4     **A.** I believe it does. In my experience in 11 years in the  
5     dean's office, much of that, one of my major responsibilities  
6     is the upkeep and hiring of new faculty. And I would  
7     probably on a weekly basis have a faculty member come into my  
8     office and tell me about another outstanding student that he  
9     or she interacted with on our campus and how wonderful it is  
10    to be at Harvard.

11                 And this is what makes it exciting, not only the  
12    interactions that he or she might have with their colleagues,  
13    but especially with our Harvard College students.

14    **Q.** So is Harvard College interested and interested in  
15    enrolling 1s and 2s only on the academic rating to the  
16    exclusion of other ratings?

17    **A.** No. We are looking for multitalented individuals. Many  
18    of our students are not just outstanding in their academic  
19    work, but they're outstanding in some of these other profile  
20    ratings, too. And that's what we're really looking for to  
21    having on our campus.

22    **Q.** And what does Mr. Kahlenberg's simulation tell you of  
23    what would happen to the share of extracurricular, personal,  
24    and athletic 1s and 2s if his preferred simulation were  
25    adopted by the Harvard admissions committee?

1     **A.** They all drop. Not as big as the academic 1s and 2s  
2 drops, but there are drops in each one of them.

3     **Q.** I have two final questions for you.

4             MR. WAXMAN: Well, actually, Your Honor, I believe  
5 I neglected to have the witness identify and admit Defense  
6 Exhibit 76.

7 BY MR. WAXMAN:

8     **Q.** Could you just turn to Tab 3 in your exhibit book. Do  
9 you recognize that?

10    **A.** Yes, I do.

11    **Q.** What is it?

12    **A.** It's the agenda for our first official meeting of the RNA  
13 committee.

14             MR. WAXMAN: Your Honor, we'd move Defense  
15 Exhibit 76.

16             MR. McBRIDE: No objection.

17             THE COURT: I think it's already in, but...

18             THE CLERK: No, it's not.

19             THE COURT: Karen says it's not. I had it marked  
20 as in. It's admitted.

21             (Defendant Exhibit No. 76 admitted.)

22 BY MR. WAXMAN:

23    **Q.** I have two final questions. Was it the view of your  
24 committee that race-neutrality alternatives would never work  
25 at Harvard?

1     **A.**   No.

2     **Q.**   What in your view would the consequences be if Harvard  
3     had to stop considering race in admissions at this time?

4     **A.**   After careful consideration of all the simulations and  
5     the reports that we reviewed, it was the judgment of the  
6     committee, as I mentioned a little bit earlier, that no  
7     existing race-neutral alternative today or combination of  
8     them could substitute for the consideration of race as one  
9     factor among many in our admissions process.

10           And the reason we say that, as I mentioned earlier,  
11     is because the effects that it has on all the characteristics  
12     of our class. The reduction in some of our minority student  
13     percentages, the impact on the profile ratings, those are all  
14     things that worry us greatly.

15           It showed us that through the use of race-neutral  
16     alternatives today we could not admit a class that is both  
17     excellent in the characteristics that we value on our campus  
18     and broadly diverse that we get benefits from the  
19     diversity-related educational goals that we have.

20           So this reduction in broad-based diversity is  
21     something that the committee felt directly impacts the  
22     educational process, and it would directly diminish the  
23     education that's taking place, the learning that's taking  
24     place on our campus.

25           And I can't overestimate the harm that this kind of

1 a change would have to Harvard College's educational program,  
2 to the student experience on our campus, and to the  
3 institution's mission and goals.

4 **Q.** Thank you.

5 MR. WAXMAN: No further questions.

6 MR. McBRIDE: No additional questions, Your Honor.

7 THE COURT: You're excused.

8 MR. WAXMAN: Go back to your sabbatical.

9 (Off the record.)

10 (Court recessed at 3:27 p.m.)

11 THE COURT: When you're ready, Ms. Hacker.

12 MS. HACKER: Your Honor, at this time SFFA calls  
13 Elizabeth Yong.

14 (ELIZABETH YONG duly sworn by the Deputy Clerk.)

15 THE CLERK: Can you, please state your name and  
16 spell your last name for the record.

17 THE WITNESS: It's Elizabeth Yong, Y-O-N-G.

18 DIRECT EXAMINATION

19 BY MS. HACKER:

20 **Q.** Good afternoon, Ms. Yong.

21 **A.** Good afternoon.

22 **Q.** My name is Kat Hacker. We haven't had a chance to meet  
23 yet. So I wanted to introduce myself.

24 Let's start today by talking about how you fit into  
25 the picture here from your time at Harvard. Your time at

1 Harvard dates back to your own college years, right?

2 **A.** That's correct.

3 **Q.** You graduated with a degree from Harvard in applied math  
4 in 1982?

5 **A.** That's correct.

6 **Q.** Then right after you graduated you took a full-time  
7 position at Harvard?

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

9 **Q.** You started as an administrative intern in the admissions  
10 office?

11 **A.** Yes.

12 **Q.** A year later you got promoted up the ranks within the  
13 admissions office, right?

14 **A.** That is correct.

15 **Q.** You had a series of promotions, but eventually you became  
16 the special projects administrator for policy operations and  
17 research.

18 Did I get that right?

19 **A.** That is correct.

20 **Q.** And that's the position you held until you left Harvard  
21 in 2015?

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

23 **Q.** So you worked in the Harvard admissions office for  
24 33 years?

25 **A.** Yes.

1     **Q.** In all the roles you held during your time at Harvard,  
2     you would generate reports based on the electronic data that  
3     the admissions office kept, right?

4     **A.** That is correct.

5     **Q.** Those reports included statistics about the applicant  
6     pool?

7     **A.** Yes.

8     **Q.** Specifically the reports listed the ethnicities of the  
9     applicant pool?

10    **A.** They were sort of dashboards that gave a picture of what  
11    the entire applicant pool was like. In addition to that  
12    there was gender and geography as well.

13    **Q.** So that dashboard did include the ethnicities of the  
14    applicant pool?

15    **A.** In addition to other info, yes.

16    **Q.** And it also included the ethnicities of the admitted  
17    students, correct?

18    **A.** In addition to the other info, yes.

19    **Q.** So that we all know what we're talking about here, I'd  
20    like to take a look at one of these reports together to start  
21    out, and this is P163 that I'm putting up on the screen.

22             You also have a binder in front of you if you'd  
23    like to look at it in hard copy. I'll blow things up that  
24    we're talking about to try to make it easier to see  
25    everything.

1           So you see P163 in front of you. This is already  
2 in evidence.

3           And down here at the bottom we see an email from  
4 you, right?

5   **A.** That is correct.

6   **Q.** And you say, "Attached are stats for tomorrow's  
7 meetings."

8           Right?

9   **A.** That's what it says.

10   **Q.** So let's turn to page 2 together. And page 2 here  
11 includes these reports I was referring to. I've heard people  
12 refer to these as "one-pagers."

13           Is that what you would call this?

14   **A.** Yes.

15   **Q.** And just so there's no confusion, we'll see some  
16 documents today that include multiple pages, but when we hear  
17 the term "one-pager," it's this piece of paper that's being  
18 referred to; is that right?

19   **A.** It is.

20   **Q.** So let's start here on the top, and I'll zoom in a little  
21 bit more so we can get a good view of this. The one-pager  
22 here lists the total number of applicants, right? That's the  
23 first column?

24   **A.** It is.

25   **Q.** And then we see the percentage of applicants that



1 accounts for?

2 **A.** That's right.

3 **Q.** And then we see the number of admits?

4 **A.** Yes.

5 **Q.** Next to that we have the admit rate?

6 **A.** That's correct.

7 **Q.** And then we have the percentage that that accounts for in  
8 admits; is that right?

9 **A.** That is correct.

10 **Q.** We see a comparison of the prior year's class to the  
11 admissions cycle. Is that right?

12 **A.** It is.

13 **Q.** Then if we scroll down to the bottom of this one-pager,  
14 we have some different rows for races; is that right?

15 **A.** We do.

16 **Q.** But this only includes minorities, correct?

17 **A.** That's what it does, yes.

18 **Q.** It doesn't list white applicants or white admits?

19 **A.** It does not.

20 **Q.** So looking just at the statistics about minorities on the  
21 bottom of the one-pager doesn't give you information on how  
22 the full class is shaping up because the full class, of  
23 course, includes white applicants and admits, right?

24 **A.** The number is included in total, and the gender numbers  
25 and the geography numbers include all groups.

1     **Q.** So focusing us just on the statistics on the bottom about  
2     races and ethnicities, do you see I've put a square around  
3     that on your screen?

4     **A.** Yes.

5     **Q.** And just focusing on those statistics about races and  
6     ethnicities, we can't see how the full class is shaping up,  
7     right, because this, of course, doesn't include the full  
8     class?

9     **A.** Other numbers do, yes.

10    **Q.** I'm sorry?

11    **A.** But the other numbers do include the full class.

12    **Q.** I understand you're talking about the other numbers.  
13    What I'd like to focus on is just the numbers of these races  
14    and ethnicities at the bottom.

15                 Do you see that?

16    **A.** Yes.

17    **Q.** So focusing just on those numbers, those don't give us a  
18    full indication of how the class is shaping up because, of  
19    course, it doesn't include the full class?

20    **A.** Not for those numbers.

21    **Q.** And then if we look down here at the bottom, all of the  
22    one-pagers are dated, correct?

23    **A.** That is correct.

24    **Q.** Like the example we're looking at, the one-pagers would  
25    always compare the current admissions cycle to the previous

1 year?

2 **A.** That is correct.

3 **Q.** They would always include this breakdown of minorities  
4 that we're looking at?

5 **A.** It included all of those. It's a template that has all  
6 those fields, and this is generated every time one was  
7 requested.

8 **Q.** It was Dean Fitzsimmons himself who requested that you  
9 generate these reports, right?

10 **A.** I believe, yes.

11 **Q.** In fact, you never prepared these reports for  
12 Dean Fitzsimmons's predecessor Fred Jewett?

13 **A.** There wasn't the technology to do that for Dean Jewett  
14 because we had an old key punch system. And so it was harder  
15 to create these reports.

16 **Q.** But Dean Jewett never requested that you prepare any type  
17 of report like this, right?

18 **A.** Dean Jewett didn't really trust the database. He did his  
19 counting by hand.

20 **Q.** But Dean Fitzsimmons did trust the database?

21 **A.** Yes.

22 **Q.** Let's turn now to P147. Do you recognize this as an  
23 email that Ms. Howrigan sent to you here at the bottom on  
24 March 19, 2013?

25 **A.** I do.

1 MS. HACKER: SFFA offers P149, Your Honor.

2 MS. CONLEY: No objection.

3 THE COURT: Admitted.

4 (Plaintiff Exhibit No. P149 admitted.)

5 BY MS. HACKER:

6 Q. Just so we know who Ms. Howrigan is, she was the database  
7 administrator at this time, right?

8 A. No. Actually I was. She had stepped down from that  
9 position and was a full-time admissions officer.

10 Q. So Ms. Howrigan worked in the admissions office?

11 A. Yes, she did.

12 Q. This email was sent on March 19. So this was around the  
13 time of the full committee meetings, right?

14 A. I'd have to see a calendar to fully confirm that. But  
15 it's March; so it could have been.

16 Q. March is around the time when the full committee meets?

17 A. Yes.

18 Q. And the full committee meeting is where the entire  
19 admissions committee comes together to discuss and review  
20 applicants?

21 A. It is.

22 Q. Now, Ms. Howrigan in this email says to you, "We just  
23 finished up our first pass, and WRF was hoping he could get a  
24 one-pager and his ethnic stats."

25 Do you see that?

1     **A.**   I do.

2     **Q.**   "WRF" is Dean Fitzsimmons, right?

3     **A.**   He is.

4     **Q.**   And at the end of this email Ms. Howrigan says, "It looks  
5     like we need to take 28 more right now from the lop mes."

6                 The reference to the lop mes is a reference to the  
7     group of provisionally admitted students that get suggested,  
8     some get removed or lopped, right?

9     **A.**   They are the group of admits that are the most  
10    vulnerable, yes.

11   **Q.**   So from this email it looks like the full committee has  
12   gone through the applicants once and has a provisional group  
13   of students, right?

14   **A.**   It does.

15   **Q.**   But before adjusting that group, Dean Fitzsimmons wants  
16   to see his ethnic stats?

17   **A.**   He wants to see the one-pager, yes.

18   **Q.**   You would run these one-pagers throughout the admissions  
19   cycle to provide to Dean Fitzsimmons, right?

20   **A.**   I would run them whenever it was requested.

21   **Q.**   And it was requested throughout the admissions cycle?

22   **A.**   It was requested whenever Dean Fitzsimmons needed them.  
23   I can't tell you when.

24   **Q.**   It was your responsibility to prepare those one-pagers,  
25   right?

1     **A.**   It was.

2     **Q.**   Let's see how often Dean Fitzsimmons needed those  
3     one-pagers. I'd like to start by taking a look at P68. And  
4     this is an admissions calendar you referenced just a minute  
5     ago.

6                 Do you recognize this as the admissions calendar  
7     from 2013 to 2014?

8     **A.**   It is.

9                 MS. HACKER: Your Honor, I offer P68.

10                MS. CONLEY: No objection, Your Honor.

11                THE COURT: Admitted.

12                (Plaintiff Exhibit No. P68 admitted.)

13     BY MS. HACKER;

14     **Q.**   So, Ms. Yong, what I'm going to do is put up what I've  
15     marked as PD20. And what I've done here is taken that  
16     admissions calendar that we looked at and put it onto a  
17     timeline so that we can build out together exactly how many  
18     one-pagers we see in an admissions cycle.

19                To do that, in your binder in front of it you, you  
20     have the hard copies of all of the exhibits. I'd like you to  
21     start by turning to P148.

22                You see that P148 is an email that you sent to  
23     Dean Fitzsimmons; is that right?

24     **A.**   It is.

25     **Q.**   It's dated November 5, 2013?

1     **A.**   It is.

2     **Q.**   And in that email you say, "The first one-pager of the  
3     season is attached," right?

4     **A.**   I do.

5     **Q.**   So let's put that on our calendar as the first one-pager  
6     of the season. I've put a little P148 icon so that we can  
7     see that.

8                 And if you turn to the second page of P148, we see  
9     the one-pager, right?

10    **A.**   We do.

11    **Q.**   Like the one-pager we looked at on the screen together,  
12    we see a comparison of the class of 2017 to the class of  
13    2018?

14    **A.**   For early-action applicants, yes.

15    **Q.**   And then down at the bottom we see a comparison of the  
16    racial or ethnic breakdown of the applicant pool for the  
17    class of 2017 versus the class of 2018?

18    **A.**   In addition to the other elements of the template, yes.

19    **Q.**   And like the example we looked at, the ethnic or racial  
20    breakdown at the bottom of the one-pager only shows the  
21    percentage of each minority, right?

22    **A.**   It does.

23    **Q.**   It doesn't list the percentage of white students for  
24    either the class of 2017 or the class of 2018?

25    **A.**   It does not.

1     **Q.** And that last column shows us the change between the  
2     racial makeup of those minorities in the applicant pool for  
3     the class of 2017 to the class of 2018?

4     **A.** It does.

5     **Q.** Next I'd like you to turn to P150 in your binder.  
6     There's a few sheets of statistics in this one. What I want  
7     to turn your attention to is the fourth page in. If you see  
8     the small number in the bottom right-hand corner, it says,  
9     "HARV4232."

10                 Do you see that, Ms. Yong?

11     **A.** I do.

12     **Q.** That one-pager was created on November 24, 2013?

13     **A.** I did create this, yes.

14     **Q.** And you created it on November 24, 2013?

15     **A.** I did. But I did not put that check mark on the page.  
16     So this is not my report, but I did create the template.

17     **Q.** Great. So we'll add that to our calendar on November 24,  
18     2013.

19                 And if we look at the calendar, taking a step back,  
20     this is the day before the beginning of the early-action full  
21     committee meetings, right?

22     **A.** I need to go back and check.

23     **Q.** The timeline we have on the screen in front of you if  
24     that helps.

25     **A.** It is.



1 Q. So at this point the subcommittees have chosen the people  
2 to admit in the early-action cycle, right?

3 A. They have.

4 Q. In your binder if you'll turn back to P149, and I promise  
5 that's the last one we'll go out of order, P149 you see is a  
6 one-pager that was prepared a few days later?

7 A. It is.

8 Q. And that one is dated 11/26/2013?

9 A. Yes.

10 Q. So we'll add that to our timeline. That was the second  
11 day of the early-action full committee meetings, right?

12 A. Again, yes.

13 Q. So these statistics would show how things changed based  
14 on the first day of the early-action full committee meeting?

15 A. That's what they reflect, yes.

16 Q. Now, let's flip to P152. This is a one-pager you  
17 actually emailed to Dean Fitzsimmons instead of printing out,  
18 right?

19 A. Yes.

20 Q. You emailed this on December 2, 2013?

21 A. I did.

22 Q. So we'll add that to our timeline as well. That was also  
23 during the early-action full committee meetings?

24 A. Let me just go back. December 2, yes.

25 Q. So, again, we're seeing the changes of the percentage of

1 minorities in the class day to day based on the committee's  
2 discussions?

3 **A.** In addition to the breakdowns by gender and geographic  
4 region and concentration, yes.

5 **Q.** Flip with me to P153. That's our next one-pager. This  
6 one is dated a few days later, December 5, 2013, right?

7 **A.** It is.

8 **Q.** We'll put that in our timeline. And we see that was the  
9 day before the end of the early-action full committee  
10 meetings?

11 **A.** Yes.

12 **Q.** P154 is next. That is a one-pager that was created the  
13 very next day, December 6, 2013, right?

14 **A.** Yes.

15 **Q.** So we'll add that to our timeline, and we see that that  
16 was the day of the -- that was the last day of the  
17 early-action full committee meeting?

18 **A.** According to the calendar, yes.

19 **Q.** P155 is our next one-pager. That one was created on  
20 December 10, 2013?

21 **A.** Yes.

22 **Q.** So we'll add that. This is now a few days after the full  
23 committee meetings were complete, right?

24 **A.** Yes.

25 **Q.** P156 is next. That was a one-pager again created just a

1 few days later on December 13, 2013, right?

2 **A.** Yes.

3 **Q.** We'll add that one as well. And that takes us through  
4 the end of 2013.

5 So flip to P157 next. Can you see that as a  
6 one-pager that was prepared on January 2, 2014, right?

7 **A.** Yes. But I did not put the slash marks on that. So I  
8 don't know whose this is.

9 **Q.** But you prepared the one-pager itself. You just didn't  
10 write the "X" mark on it?

11 **A.** That's correct.

12 **Q.** And the one-pager itself was created on January 2, 2014?

13 **A.** It was.

14 **Q.** Let's add that one to our timeline. And we can see that  
15 now we finished up early action, right?

16 **A.** Yes.

17 **Q.** This is moving on to regular decision applicants?

18 **A.** It is.

19 **Q.** This one-pager was created the day after the regular  
20 application deadline; is that right?

21 **A.** It was.

22 **Q.** Similar to the one-pager we saw after the early-action  
23 deadline, this one, again, shows us the breakdown of the  
24 minorities in the applicant pool between the classes of 2017  
25 versus 2018?

1     **A.** In addition to the information about gender, geography,  
2     area of study, financial aid status, yes.

3     **Q.** But nothing yet about the breakdown of admits because, of  
4     course, we're just at the beginning of the regular action  
5     cycle?

6     **A.** That is correct.

7     **Q.** Flip to P158. That one-pager comes a few days later on  
8     January 5, 2014, right?

9     **A.** It does.

10    **Q.** So we'll add that one. And then P159 is next. This is  
11    an email that you sent on January 7, 2014, right?

12    **A.** That's what it says.

13    **Q.** We'll add that to our timeline as well. But this one's a  
14    little bit different. This is a one-pager you sent to Roger  
15    Banks, correct?

16    **A.** It is.

17    **Q.** This was in preparation for an ABAFAOILSS meeting?

18    **A.** It was.

19    **Q.** Just so we all understand, ABAFAOILSS is an organization,  
20    the letters stand for the Association of Black Admissions  
21    Financial Aid Officers of the Ivy League and Sister Schools,  
22    right?

23    **A.** Actually "seven sisters."

24    **Q.** Seven sisters?

25    **A.** Yes.

1     **Q.** It's a group that a number of colleges participate in  
2     that they get together to try to help historically  
3     under-represented minorities, right?

4     **A.** I've never been to an ABAFAOILSS meeting; so I can't  
5     comment.

6     **Q.** Is that your understanding of what ABAFAOILSS is?

7     **A.** I know it's a group of people who meet. I don't know why  
8     they meet or what they discuss. I've never been to a  
9     meeting.

10    **Q.** You just know that Mr. Banks requests these one-pagers  
11    with all of the statistics on Harvard's applicants and admits  
12    before he goes to ABAFAOILSS meetings?

13    **A.** The admits are of the class that's already set and  
14    finished, yes.

15    **Q.** And on page 2 you see the attachment to your email to  
16    Mr. Banks includes the one-pager, right?

17    **A.** It does.

18    **Q.** It's just like all the other one-pagers we've seen?

19    **A.** It is.

20    **Q.** So flip with me to P161. That's our next one-pager.  
21    That one was created on January 13, 2014, right?

22    **A.** It was.

23    **Q.** So if we add that to the timeline, we see it's just about  
24    a week before the subcommittees are going to start meeting,  
25    right?

1     **A.**   Thereabouts, yes.

2     **Q.**   And then P163 is our next one-pager.  Again, this one is  
3     attached to an email, right?

4     **A.**   It is.

5     **Q.**   And it's dated March 2, 2014?

6     **A.**   It is.

7     **Q.**   So if we add that to the timeline, we see that this is  
8     the full committee -- this is when the full committee for  
9     regular action was just about to start to meet, right?

10    **A.**   It is.

11    **Q.**   P164 is our next one-pager, and this one was created  
12    during the full committee meetings, right?

13    **A.**   Yes.

14    **Q.**   That one is dated March 14, 2014?

15    **A.**   It is.

16    **Q.**   So we'll add that one as well.

17                 P165 is our next one-pager.  This is an email that  
18    you sent to Dean Fitzsimmons, Director McGrath, and Sally  
19    Donahue, right?

20    **A.**   It is.

21    **Q.**   This is dated March 17, 2014?

22    **A.**   It was.

23    **Q.**   If we put that on our timeline, we see that that's the  
24    day that the final review process began, right?

25    **A.**   It's the start of final review, yes.

1     **Q.** And final review is when the committees might have to lop  
2     students to make sure Harvard doesn't admit too many people,  
3     right?

4     **A.** To make sure that we come in on the target, yes.

5     **Q.** P 167 is our next one-pager. And it's dated the very  
6     next day, March 18, 2014, right?

7     **A.** It is.

8     **Q.** When we add that to our timeline, we see that's the  
9     second day of the final review or lopping process, right?

10    **A.** Yes.

11    **Q.** So now we're getting towards the very end of the regular  
12    decision part of the admissions cycle, right?

13    **A.** Yes.

14    **Q.** After this decision letters are sent to applicants?

15    **A.** A week or so later, yes.

16    **Q.** But that's not the end of the full admissions cycle,  
17    right?

18    **A.** It is not.

19    **Q.** The admissions office still has to deal with the  
20    wait-list process at some point?

21    **A.** It does.

22    **Q.** And you continued to prepare one-pagers throughout that  
23    process, too?

24    **A.** I did.

25    **Q.** So turn with me to P168. This is another email that you

1 sent to Roger Banks.

2 Do you see that?

3 **A.** I do.

4 **Q.** That you sent on May 5, 2014?

5 **A.** Yes.

6 **Q.** And again it attaches a one-pager?

7 **A.** That reflects the number of matriculants, yes.

8 **Q.** So we'll add that to our timeline as well.

9 Would this have been around the time of year of the  
10 second ABAFAOILSS meeting, or do you not know?

11 **A.** I think it might have been, yes.

12 **Q.** P169 is our next one-pager. That one was prepared just a  
13 few days later on May 7, 2014, right?

14 **A.** It is.

15 **Q.** When we add that to our calendar, we see this is leading  
16 up to the wait-list meetings, correct?

17 **A.** That is correct.

18 **Q.** P170 is our next one-pager. That one was prepared on  
19 May 21, 2014, right?

20 **A.** Yes.

21 **Q.** So now we're in the middle of the wait-list review  
22 process?

23 **A.** Middle or start. I would have to see a calendar for that  
24 to be exactly sure.

25 **Q.** This one-pager was created during the wait-list process,



1 right?

2 **A.** Possibly or it could have been the start. I don't know  
3 if it was middle or start.

4 **Q.** So P171 is our next one-pager. And that one appears on  
5 the second page of the document.

6 Do you see that?

7 **A.** I do.

8 **Q.** That was created on June 27, 2014?

9 **A.** It was.

10 **Q.** We'll add that to our timeline as well. Now we're still  
11 in the wait-list process, right?

12 **A.** Yes.

13 **Q.** But this is towards the end of the wait-list process?

14 **A.** According to the calendar, yes.

15 **Q.** The part of the process where the last few spots may be  
16 being filled with people from the wait-list?

17 **A.** Yes.

18 **Q.** P172, I believe, takes us to our last one-pager of the  
19 year. Do you see that one?

20 **A.** I do.

21 **Q.** And that one is dated August 27, 2014, right?

22 **A.** Yes.

23 **Q.** We'll add that final one to our calendar. That is right  
24 before the start of the fall semester, isn't it?

25 **A.** It is.

1     **Q.** So this one-pager would be pretty close to what the  
2     actual admitted class looks like, right?

3     **A.** It is.

4     **Q.** And it shows us the percentage of each minority group in  
5     the class of 2018 compared to the class of 2017?

6     **A.** In addition to all the other fields, yes.

7     **Q.** Looking back to the timeline now that we've filled it  
8     out, by my count during the admissions cycle we found  
9     21 different one-pagers that you prepared; is that right?

10    **A.** Looks like it, yes.

11    **Q.** And you recognize all the documents we just flipped  
12    through together as the one-pagers you were responsible for  
13    while you worked at Harvard?

14    **A.** I did.

15           MS. HACKER: Your Honor, SFFA offers P148 through  
16    P150, P152 through P159, P161, P164 through P165 and P167  
17    through P172.

18           MS. CONLEY: Your Honor, we'd object to several of  
19    these because Ms. Yong testified that she didn't recognize  
20    the handwriting on 150, 156, 157, and I believe 167. We  
21    don't have an issue with the data, but with respect to the  
22    handwriting that was on the document, she said it wasn't  
23    hers.

24           THE COURT: What to you want to do about it? Do  
25    you want to substitute it? Or do you want to --

1 MS. HACKER: Your Honor, my understanding is these  
2 one-pagers were kept in hard copy in Harvard's files. So  
3 these were produced in discovery. These were the only ones  
4 we have.

5 To the extent there's handwriting on them, we're  
6 not offering the handwriting for the truth of the matter of  
7 what they assert, I guess, but it doesn't change the fact  
8 that there's foundation that the documents are authentic and  
9 can be admitted.

10 MS. CONLEY: Your Honor, several of these documents  
11 came from Dean Fitzsimmons files, and they could have offered  
12 these exhibits with him when he was here, and he could have  
13 authenticated here.

14 THE COURT: All right. You can bring  
15 Dean Fitzsimmons back at your convenience and he can admit  
16 those documents.

17 MR. LEE: She's offering them without the  
18 handwriting.

19 MS. CONLEY: If you're offering just for the data  
20 and not for the handwriting, that would be fine.

21 MS. HACKER: We're offering this just for the data,  
22 Your Honor.

23 THE COURT: That's fine then. They're admitted  
24 with that understanding.

25 (Plaintiff Exhibits Nos. P148-P150, P152-P159,

1 P161, P164, P165, P167-P172 admitted.)

2 BY MS. HACKER:

3 **Q.** All right. Ms. Yong, now that we made it through all the  
4 one-pagers from an admissions cycle, let's talk about some of  
5 the other reports that you put together to help with the  
6 admissions process.

7 We're going to look at P326 together. And I've  
8 blown it up on your screen.

9 Do you see that document, Ms. Yong?

10 **A.** I do.

11 **Q.** This is a report that you prepared, right?

12 **A.** It is.

13 MS. HACKER: SFFA offers P326.

14 MS. CONLEY: No objection, Your Honor.

15 THE COURT: Admitted.

16 (Plaintiff Exhibit No. P326 admitted.)

17 BY MS. HACKER:

18 **Q.** Ms. Yong, you prepared this at the request of  
19 Dean Fitzsimmons, right?

20 **A.** No. I prepared this -- I don't know why I prepared it,  
21 for whom I prepared it. There's no other -- there's no  
22 context here.

23 **Q.** Would this be something that Dean Fitzsimmons requested  
24 from you?

25 **A.** As I said, I don't remember why I prepared it and for

1       whom I prepared it because there's nothing around it that  
2       explains why I did it.

3       **Q.**   Let me see if I can help remind you of why you prepared  
4       it.

5                       MS. HACKER:   May I approach, Your Honor?

6                       THE COURT:    Sure.

7       BY MS. HACKER:

8       **Q.**   Ms. Yong, you remember giving testimony at a deposition  
9       in this case, right?

10      **A.**   I do.

11      **Q.**   You were under oath to tell the truth during that  
12      deposition?

13      **A.**   I was.

14      **Q.**   Turn with me to page 293 of your deposition and read to  
15      yourself lines 14 through 16 there.  If it helps, on the  
16      previous page you see the exhibit that's being referred to,  
17      and you see the sticker on the exhibit on your screen that  
18      says "Yong Exhibit 29."

19                       Have you had a chance to read that, Ms. Yong?

20      **A.**   I'm almost done.  Okay.

21      **Q.**   Does that refresh your recollection that you prepared  
22      this at the request of Dean Fitzsimmons?

23      **A.**   Yes.

24      **Q.**   And you did, indeed, prepare this at the request of  
25      Dean Fitzsimmons?

1     **A.**   I guess I did.

2     **Q.**   Now, you see on the first two pages there's some  
3     information about the demographic breakdown of applicants and  
4     matriculants at Harvard, right?

5     **A.**   There is.

6     **Q.**   If we turn to the third page in this document, again we  
7     have information on the demographic breakdown of applicants  
8     and matriculants, but here the focus is solely on the  
9     percentages of Asian-Americans in Harvard's classes, right?

10    **A.**   That's what it says.

11    **Q.**   The last class year that is included on this report is  
12    the class of 2016, correct?

13    **A.**   That's what it says.

14    **Q.**   And it includes matriculant data for the class of 2016?

15    **A.**   It does.

16    **Q.**   So does that tell us that this would have been made  
17    sometime late in 2012 or perhaps early in 2013?

18    **A.**   Not necessarily. Any time after 2012, yes, but I don't  
19    know exactly when I create -- I can't remember when I created  
20    this.

21    **Q.**   It would have had to have been created after fall of 2012  
22    to have matriculant data for the class of 2016, right?

23    **A.**   That is correct.

24    **Q.**   So let's focus together, I'm going to zoom in a little  
25    bit here so we can see it. Starting on the classes of 2010,

1 and I'd like to look at the percentage of Asian-American  
2 students in those classes. So the first one we see is about  
3 19 percent Asian-Americans in the class of 2010; is that  
4 right?

5 **A.** Yes.

6 **Q.** And then we see about 20 percent Asian-Americans in the  
7 class of 2011?

8 **A.** Yes.

9 **Q.** Then we see 21 percent in the class of 2012?

10 **A.** Yes.

11 **Q.** 19 percent in the class of 2013?

12 **A.** Yes.

13 **Q.** About 22 percent in the class of 2014?

14 **A.** That's correct.

15 **Q.** About 21 percent in the class of 2015?

16 **A.** That's what it says.

17 **Q.** And finally about 22 percent in the class of 2016, right?

18 **A.** That's what it says, yes.

19 **Q.** Let's turn now to Exhibit P182. Do you recognize this as  
20 the document that shows the targets for subcommittee  
21 meetings, right?

22 **A.** I do.

23 MS. HACKER: SFFA offers P182.

24 MS. CONLEY: No objection, Your Honor.

25 THE COURT: It's admitted.

1 (Plaintiff Exhibit No. P182 admitted.)

2 BY MS. HACKER:

3 Q. And targets -- when we have here at the top, "Targets for  
4 Subcommittee," what that means is how many admits each  
5 subcommittee is supposed to try to come in at, right?

6 A. That's the number they should try and come in at, at the  
7 end of subcommittee, yes.

8 Q. And the target is just based on what was done the year  
9 before?

10 A. That is correct.

11 Q. So the goal is to try to stay consistent year to year?

12 A. The target is a recommendation for subcommittee. It may  
13 or may not change by the end of the process, but it's a goal  
14 for the chairperson to work towards in subcommittee.

15 Q. Well, let's talk about that goal. You take the target  
16 numbers from documents like this each year and hand them to  
17 the chairs of each subcommittee before the meeting started,  
18 right?

19 A. I would give them that number that's underneath the  
20 column that says "Targets For Subcommittee."

21 Q. These numbers that I've highlighted on the screen?

22 A. Yes.

23 Q. And you did that at Dean Fitzsimmons's direction, right?

24 A. That is correct.

25 Q. Then the subcommittees would observe those targets pretty



1 closely?

2 **A.** They would try, yes.

3 **Q.** They would try to observe them pretty closely, right?

4 **A.** That is correct.

5 **Q.** Now, if we flip to page 2 of this document, we have a  
6 column here labeled "Asian-American" and "Asian-American As  
7 Percentage of Admits," right?

8 **A.** Yes.

9 **Q.** Let's zoom in a little bit so we can see down here at the  
10 bottom. We see in the total column for the Asian-American as  
11 percentage of admits is 19.8 percent, right?

12 **A.** Yes.

13 **Q.** That's right in line with the numbers we just walked  
14 through on the last document, P326?

15 **A.** Yes.

16 **Q.** Let's look now at P319. This is an email that you sent  
17 to Dean Fitzsimmons; is that right? And also  
18 Director McGrath?

19 **A.** It is.

20 MS. HACKER: SFFA offers P319.

21 MS. CONLEY: No objection, Your Honor.

22 THE COURT: It's admitted.

23 (Plaintiff Exhibit No. P319 admitted.)

24 BY MS. HACKER:

25 **Q.** Ms. Yong, I don't want to spend too much time on this

1 one, but I just want to confirm, like all the other reports  
2 we've looked at, you pulled the reports in this document at  
3 the request of Dean Fitzsimmons?

4 **A.** I believe I did.

5 **Q.** So now that we've talked a lot through -- a lot about the  
6 data and statistics that you pulled together when you worked  
7 at Harvard, I'd like to move to talking about the time you  
8 spent reading application files. Okay?

9 So you read applications from 1982 to 1992, right?

10 **A.** That is correct.

11 **Q.** You spent a decade reading and scoring applications?

12 **A.** I did.

13 **Q.** In that time you read and scored hundreds of  
14 applications?

15 **A.** I don't know the exact number.

16 **Q.** Would it be in the hundreds at least?

17 **A.** Possibly, yes.

18 **Q.** While you were working at Harvard, you saw figures  
19 suggesting that Asian-American applicants have on average  
20 higher standardized test scores than other ethnic groups,  
21 right?

22 **A.** Possibly, yes.

23 **Q.** You do remember seeing those statistics?

24 **A.** I may have.

25 **Q.** In the hundreds of applications that you read, did you

1 find that Asian-American applicants were any worse at  
2 extracurricular activities than other races?

3 **A.** When I was evaluating applicants, I concentrated on each  
4 applicant. I didn't group them together in any way, shape,  
5 or form. So I would look at my applicants individually. I  
6 never had the time to go back and see what my Asian  
7 applicants were like versus my white applicants were like.  
8 So as a reader I concentrated on the individual applicant.

9 **Q.** But you didn't think that Asian-American applicants are  
10 not as good at extracurricular activities, right?

11 **A.** As I said, I looked at each applicant as an individual,  
12 not as a group.

13 **Q.** Ms. Yong, if you'll turn with me to your deposition to  
14 page 233. And I'll put it up on the screen. In your  
15 deposition you were asked: "Do you think that they are not  
16 as good at extracurricular activities?"

17 And you answered: "No."

18 Were you asked that question and did you give that  
19 answer?

20 **A.** Could you point me to this again? I'm sorry.

21 **Q.** Sure. It's page 233, lines 2 through 4.

22 **A.** Right.

23 **Q.** Were you asked that question, and did you give that  
24 answer?

25 **A.** I did.

1     **Q.** In the applications that you read at Harvard, did you  
2     find that Asian-American applicants had worse personal  
3     qualities than other races or ethnicities?

4     **A.** I did not.

5     **Q.** You don't remember specifically what you were told about  
6     how to use race in scoring an applicant's file other than it  
7     was just one of the factors you should look at among others,  
8     right?

9     **A.** That is correct.

10    **Q.** In fact, you don't know why Harvard uses race in the  
11    admissions process at all?

12    **A.** It's used as a tip just the way we would use a tip for  
13    concentration or area of the country they come from or  
14    lineage or athletic ability. It is a tip that you use after  
15    the entire applicant is reviewed. It's one of the many  
16    factors that go into it.

17    **Q.** I understand you to be saying that it is a tip that can  
18    be used in the admissions process, but my question is  
19    different.

20                You don't know why Harvard uses race as a tip in  
21    the admissions process at all?

22    **A.** It's to -- I do. It is to provide -- it's to provide a  
23    tip to students who have been disadvantaged by their  
24    background who come from areas that may not be as  
25    sophisticated as many other applicants, and they've had to

1 overcome more issues. So it's one of the many things we look  
2 at.

3 **Q.** Let's take a look again at your deposition, Ms. Yong.  
4 Flip with me to page 285. And I'm going to direct your  
5 attention to lines 20 to 23. I've got them up on the screen  
6 if that's easier to get to.

7 "QUESTION: Do you know why Harvard uses race in  
8 the admissions process?

9 "ANSWER: I do not."

10 Were you asked that question, and did you give that  
11 answer?

12 **A.** I did at the time, but I've been prepping, doing a lot of  
13 recalling of my past life in preparing for this trial. So  
14 I've been thinking more about my training as an admissions  
15 officer.

16 **Q.** And when you say you've been thinking more about your  
17 training, I'm assuming that was in preparing for your  
18 testimony today with some of Harvard's lawyers?

19 **A.** It was.

20 **Q.** How much time did you spend preparing for today's  
21 testimony with Harvard's lawyers?

22 **A.** A few weeks.

23 **Q.** You spent a few weeks in full with Harvard's lawyers  
24 preparing for today?

25 **A.** Yeah. A couple of hours every few days for the last

1 couple of weeks.

2 **Q.** So you spent a couple of hours every few days over a  
3 couple of weeks. What would you say you spent 20 hours total  
4 preparing with Harvard's attorneys?

5 **A.** I'd have to sit down and think about it. But possibly,  
6 yes.

7 **Q.** The deposition you gave in this case was about a year and  
8 a half ago in March of 2017, right?

9 **A.** Yes.

10 **Q.** That was certainly closer in time to when you read  
11 applications at Harvard, though it's still been quite a while  
12 ago, right?

13 **A.** It's been over 26 years.

14 **Q.** And then after your deposition in March of 2017, you  
15 filled out something called an errata, right? You made  
16 corrections to your deposition. That was about a month after  
17 the deposition?

18 **A.** I guess, yes.

19 **Q.** And at that time you didn't tell us that your testimony  
20 about why Harvard uses race and admissions had changed?

21 **A.** I don't recall.

22 **Q.** But it's changed since you spent time preparing with  
23 Harvard's lawyers to testify today here in this case?

24 **A.** It has changed mainly because I've been thinking about it  
25 more carefully, recalling my training. Things are coming

1 back to me from the start of my career that I hadn't thought  
2 about in 26 years.

3 **Q.** Ms. Yong, you're aware that a gentleman named Ron Unz  
4 wrote an article claiming that Harvard discriminates against  
5 Asian-Americans in its admissions process, right?

6 **A.** I am.

7 **Q.** And then The New York Times issued a piece discussing  
8 that article around Christmas of 2012?

9 **A.** I don't know about The New York Times article.

10 **Q.** You know about the Unz article being publicized around  
11 the holidays in 2012, right?

12 **A.** I believe so, yes.

13 **Q.** I'm sure that led to some discussion internally at the  
14 admissions office?

15 **A.** That is correct.

16 **Q.** I'd like to turn to P238. I put that on the screen for  
17 you.

18 Do you recognize this as a series of emails that  
19 you and Dan Zupan, is that how you pronounce his name?

20 **A.** It is.

21 **Q.** So this is a series of emails that you and Dan Zupan  
22 exchanged in January of 2013, right?

23 **A.** It is.

24 MS. HACKER: SFFA offers P238.

25 MS. CONLEY: No objection, Your Honor.

1 THE COURT: It's admitted.

2 (Plaintiff Exhibit No. P238 admitted.)

3 BY MS. HACKER:

4 Q. Mr. Zupan was the director of information services who  
5 took over after you were promoted, right?

6 A. He took over after I left the office for a while, yes.

7 Q. What I'd like to focus on is the third paragraph here,  
8 and it starts with you saying: "Fitz is on a tear about this  
9 Asian-American thing."

10 "Fitz" refers, of course, to Dean Fitzsimmons,  
11 right?

12 A. It does.

13 Q. So apparently Dean Fitzsimmons was on a tear in January  
14 2013 about this Asian-American thing?

15 A. That's what it says.

16 Q. Then you continue: "He's in Florida on a development  
17 trip. So he's micromanaging everything. And yesterday had  
18 to sit in a meeting with MEM and RMW about four articles he's  
19 written."

20 Do you see that?

21 A. I do.

22 Q. "MEM" is a reference to Director McGrath, right?

23 A. It is.

24 Q. And "RMW" refers to Robin Worth?

25 A. It does.



1     **Q.** She was the director of international admissions, right?

2     **A.** That's correct.

3     **Q.** You referred in the sentence to four articles that  
4     Dean Fitzsimmons wrote. So let's take a look at P234.

5             Do you recognize this as an email that  
6     Dean Fitzsimmons sent to you and a number of others on  
7     January 19, 2013?

8     **A.** I do.

9             MS. HACKER: SFFA offers Exhibit P234.

10            MS. CONLEY: No objection.

11            THE COURT: Admitted.

12            (Plaintiff Exhibit No. P234 admitted.)

13     BY MS. HACKER:

14     **Q.** We also see in the To line Director McGrath and Robin  
15     Worth who were both mentioned in the last email we looked at,  
16     right?

17     **A.** Yes.

18     **Q.** We also see Sally Donahue, right?

19     **A.** Yes.

20     **Q.** And Dean Fitzsimmons writes to you and these others,  
21     subject: "Enjoy the following four drafts."

22             Do you see that?

23     **A.** I do.

24     **Q.** If we flip to the fifth page of this document, what we  
25     see is a draft of something called "Facts About

1 Asian-Americans At Harvard."

2 Do you see that?

3 **A.** I do.

4 **Q.** But you don't remember Dean Fitzsimmons writing the four  
5 articles he sent you in this email?

6 **A.** Could you --

7 **Q.** You don't remember these articles that Dean Fitzsimmons  
8 sent you, right?

9 **A.** Not specifically, no.

10 **Q.** So you don't remember whether or not this was published  
11 or publicized in any way?

12 **A.** I don't recall.

13 **Q.** At some point after Mr. Unz's article came out you became  
14 aware of a website called "Harvard Not Fair," right?

15 **A.** Yes.

16 **Q.** And that was website related to this case that was  
17 eventually filed, right?

18 **A.** Yes.

19 **Q.** Does it sound right that that happened in about April of  
20 2014?

21 **A.** I don't recall exactly when.

22 **Q.** Let's take a look at P283 together. This is an email  
23 between you and Grace Cheng on April 23, 2014, right?

24 **A.** It is.

25 MS. HACKER: SFFA offers P283.

1 MS. CONLEY: No objection.

2 THE COURT: It's admitted.

3 (Plaintiff Exhibit No. P283 admitted.)

4 BY MS. HACKER:

5 Q. Ms. Cheng was an admissions officer; is that right?

6 A. She was.

7 Q. These emails -- again, we're seeing in April of 2014.  
8 And what I want to start with is the second email where you  
9 say: "The guy who financed the *Fisher* case is looking for  
10 Asian-American kids who were rejected from Harvard."

11 Do you see that?

12 A. I do.

13 Q. So by this point in time you were aware of the Harvard  
14 Not Fair website, right?

15 A. Yes.

16 Q. And then Ms. Cheng responds to you: "P.S., I chair Z  
17 docket, which is all of California except for LA and  
18 San Fran. Land of Asians-Americans. You can single-handedly  
19 blame me if you need to. I've got a great response. I can  
20 tell you Friday. Easily defensible. My hobby is quickly  
21 becoming telling people they are ridiculous."

22 You don't recall Ms. Cheng's great response, do  
23 you?

24 A. I do not.

25 Q. And surely you don't think claims of potential

1 discrimination should be treated as ridiculous. They should  
2 be treated with respect and investigated, right?

3 **A.** I take all claims of discrimination very seriously. And  
4 I know the Harvard admissions process. And Grace and I  
5 know -- well, I assume she knows -- it's a very careful  
6 process, and nobody discriminates in that office.

7 **Q.** So you'd agree that claims of potential discrimination  
8 should be treated with respect and investigated?

9 **A.** They should be taken seriously.

10 MS. HACKER: Pass the witness.

11 EXAMINATION

12 BY MS. CONLEY:

13 **Q.** Good afternoon, Ms. Yong.

14 **A.** Good afternoon.

15 **Q.** How are you?

16 **A.** I've been better.

17 **Q.** Now, you retired from Harvard in 2015?

18 **A.** I did.

19 **Q.** And what was your position at the time you retired?

20 **A.** Special projects administrator.

21 **Q.** And before holding your position as a special projects  
22 administrator, there was a point in time when you read  
23 application files?

24 **A.** There was.

25 **Q.** And when was the last time you read application files in

1 the Harvard admissions office?

2 **A.** 1992.

3 **Q.** And was 1992 the last time you participated in  
4 subcommittee meetings?

5 **A.** It was.

6 **Q.** And was 1992 the last time you participated in full  
7 committee meetings?

8 **A.** It was.

9 **Q.** And after 1992 did you have any responsibilities relating  
10 to admissions policies or practices?

11 **A.** Only as how they would affect the database.

12 **Q.** And since 1992 did you ever provide any substantive input  
13 as to any admission policies or practices?

14 **A.** Only as to how they would affect the database.

15 **Q.** Since 1992, from 1992 to 2015, was your role in the  
16 Harvard admissions office limited to maintaining the database  
17 and generating data reports?

18 **A.** It was. In addition to maintaining our relationship with  
19 third-party vendors like the College Board and the ACT and  
20 the Common App.

21 **Q.** With respect to your relationships with those vendors,  
22 was that primarily a data-related function?

23 **A.** It was.

24 **Q.** Ms. Hacker asked you a series of questions about the  
25 one-pagers that you prepared in your time in the admissions

1 office.

2 Do you recall those questions?

3 **A.** I do.

4 **Q.** Let's take a look at Tab 7 in your binder, which is  
5 Plaintiff's Exhibit 154.

6 Are you there?

7 **A.** I am.

8 **Q.** And is that an example of a one-pager that you discussed  
9 with Ms. Hacker?

10 **A.** It is.

11 **Q.** Okay. And can you just walk Your Honor through the  
12 categories that are included on the one-pager?

13 **A.** It goes through the total number of applicants. There's  
14 a breakdown by gender, by geographic region, by area of  
15 study, by lineage status, financial aid status, disadvantage  
16 and fee waiver, citizenship, and ethnicity.

17 **Q.** And do all one-pagers contain this information?

18 **A.** The one-pager -- this is a template of the information  
19 that I would give. And they all have that information on  
20 there.

21 **Q.** If you looked at the total number at the top, if you  
22 wanted to know how many white applicants were reflected in  
23 the one-pager, could you figure that out?

24 **A.** By adding together the number of students and, I guess,  
25 subtracting -- I mean, the number of minority students and

1 subtracting them from the total.

2 **Q.** I'm sorry. Does the total number represent the total  
3 number of admitted students in the pool?

4 **A.** It represented every student who has applied or been  
5 admitted, yes.

6 **Q.** And can you take a look at Plaintiff's Exhibit 149.

7 Are you there?

8 **A.** Yes.

9 **Q.** Is that a one-pager?

10 **A.** That is not a one-pager. That is a -- I don't know what  
11 to call it, but it's a set of statistics. It has nowhere  
12 near the amount of information that a one-pager generally  
13 has.

14 **Q.** And can you turn to Plaintiff's Exhibit 153. Is that a  
15 one-pager?

16 **A.** That is not a one-pager. Like the other one, it's got  
17 nowhere near the information that a one-pager would reflect.

18 **Q.** Now, earlier you mentioned that you haven't attended  
19 subcommittee or full committee meetings since 1992. That's  
20 right?

21 **A.** That is correct.

22 **Q.** Do you know how, if at all, the one-pagers you generated  
23 are used during the admissions process?

24 **A.** I do not.

25 **Q.** And during Ms. Hacker's examination, you stated that you

1 would provide one-pagers to Dean Fitzsimmons?

2 **A.** That is correct.

3 **Q.** And you would provide them to Director McGrath?

4 **A.** Yes.

5 **Q.** Is there anyone else you would provide one-pagers to?

6 **A.** Director Donahue and as we saw to Roger Banks for  
7 ABAFAOILSS.

8 **Q.** And when were the ABAFAOILSS meetings?

9 **A.** In January after the early-action letters had gone out  
10 and in May after the students had replied.

11 **Q.** And so what kind of one-pagers -- what information did  
12 the one-pagers that you provided to Roger Banks have on them,  
13 the ones that you would provide for the ABAFAOILSS meetings?

14 **A.** They had the same information that we went over, but they  
15 would be for the set class. So is the EA numbers were set.  
16 They were -- the one-pagers were meant to be a dashboard and  
17 to provide information, a descriptor of the applicants and  
18 admits.

19 **Q.** But the one-pagers that you provided in connection with  
20 ABAFAOILSS were provided once admissions decisions were  
21 final?

22 **A.** That is correct.

23 **Q.** Can you turn to Tab 6, which is Plaintiff's Exhibit 182.  
24 That's the subcommittee docket target sheet that you were  
25 taking a look at with Ms. Hacker.



1 Do you recall that?

2 **A.** I do.

3 **Q.** When you were working in Harvard's admissions office, who  
4 did you provide docket targets sheets like this to?

5 **A.** This specific information only went to the dean and the  
6 two directors.

7 **Q.** And did you ever provide docket target sheets like  
8 Plaintiff's Exhibit 182 to the subcommittee chairs?

9 **A.** The only information I would give the subcommittee chairs  
10 is the information on the second column. So if you were the  
11 chair of a docket, you would get a piece of paper that said  
12 that your target would be 93. And I would also include the  
13 EA admits and previous admits for that class so you would  
14 know what your wiggle room was.

15 **Q.** And would the subcommittee chairs or the docket chairs  
16 receive any of the other information on that particular  
17 exhibit?

18 **A.** No. Just the numbers for their docket.

19 **Q.** And would any admissions officers receive any of that  
20 other information on that Plaintiff's Exhibit 182?

21 **A.** No, they did not.

22 **Q.** Now, Ms. Yong, can you take a look at Tabs 1, 2, and 3 in  
23 your binder. They're Defendants' Exhibits 30, 31, and 33.  
24 We'll look quickly one by one.

25 What's at Tab 1, which is Defendants' Exhibit 30?

1     **A.** It is the breakdown of numbers with the overall class for  
2     apps, admits, and matrices for the classes of 1980 to 2018.  
3     And then a breakdown for African-American app, admits and  
4     matrices for those classes.

5     **Q.** Take a look at Tab 2, which is Defendants' Exhibit 31.  
6     What is that?

7     **A.** That's the same format only for Hispanic-American  
8     applicants.

9     **Q.** And let's take a look at Tab 3, which is Defendants'  
10    Exhibit 33.

11    **A.** And that's the same thing only for Asian-American  
12    applicants.

13    **Q.** And who created those three documents?

14    **A.** I believe I did.

15    **Q.** And where do the data from the documents come from?

16    **A.** They came from our database.

17           MS. CONLEY: Your Honor, we offer Defendants'  
18    Exhibit 30, 31, and 33 into evidence.

19           MS. HACKER: No objection, Your Honor.

20           THE COURT: They're admitted.

21           (Defendant Exhibit No. 30, 31, 33 admitted.)

22    BY MS. CONLEY:

23    **Q.** Ms. Yong, you said you worked in the Harvard admissions  
24    office for 33 years?

25    **A.** I did.

1     **Q.** During those 33 years, how many times have you seen an  
2     admissions officer or anyone in the admissions office  
3     demonstrate a bias against an applicant because of his or her  
4     race?

5     **A.** I have never seen that.

6     **Q.** And during those 33 years, how many times have you heard  
7     an applicant's race described as a negative factor?

8     **A.** I have never heard that.

9     **Q.** And during those 33 years, were you ever aware of any  
10    effort to reach a target number of admitted students from a  
11    particular racial or ethnic background?

12    **A.** I -- never.

13    **Q.** And during that timeframe, were you ever aware of any  
14    effort to limit the number of admitted students from a  
15    particular racial or ethnic background?

16    **A.** Never.

17    **Q.** Ms. Yong, in your 33 years in the admissions office, have  
18    you ever seen anything to substantiate accusations of bias  
19    against Asian-Americans in the admissions process?

20    **A.** I have never.

21    **Q.** Have you ever seen anything to substantiate accusations  
22    of discrimination against Asian-Americans in the admissions  
23    process?

24    **A.** I have never.

25    **Q.** Earlier you told Ms. Hacker that you attended Harvard

1 College; is that right?

2 **A.** That is correct.

3 **Q.** From your time working in the admissions office, do you  
4 understand that the college considers a variety of different  
5 factors and aspects of an applicant's background when  
6 evaluating an applicant for admission?

7 **A.** I do.

8 **Q.** And do you believe that you benefited from Harvard's  
9 admissions policies which take these things into account?

10 **A.** Most definitely.

11 **Q.** And why do you believe that you were benefited or you  
12 benefited from Harvard's admissions policies?

13 **A.** I snuck a look at my profile when I first started  
14 working, which everybody does, and I could -- I knew I was a  
15 capable student and able, but from the surface of it, you  
16 wouldn't be able to really distinguish me from any other  
17 solid applicant.

18 And I believe that the tip for being  
19 Asian-American, for being from a City of Boston high school  
20 and from a first-generation student, neither of my parents  
21 graduated -- went beyond sixth grade. So all of those  
22 combined, I believe, helped me get into Harvard.

23 **Q.** Ms. Yong, did you benefit from Harvard's diverse student  
24 body while you were a student there?

25 **A.** I most definitely did. As I said, my parents didn't go

1 beyond sixth grade. And so I did not come from a very  
2 sophisticated background, and I was not exposed to many  
3 things.

4 And when I came to Harvard, I met people from all  
5 over the world. I met people from outside of Boston. I had  
6 never even met anybody from, like, Newton. That's how  
7 insular my upbringing was.

8 And the discussions we had about their interests,  
9 their discussions that we had about what it was like to grow  
10 up in different areas was just eye-opening and incredible.

11 MS. CONLEY: Thank you, Ms. Yong. No further  
12 questions.

13 MS. HACKER: We have no more questions for  
14 Ms. Yong.

15 THE COURT: You're excused.

16 THE WITNESS: Thank you.

17 MR. HUGHES: Your Honor, we've got 15 minutes left.  
18 Our next live witness is Roger Banks. I don't think we can  
19 get him done in 15. We can start him or we can start reading  
20 some of the depositions. I don't think we can get through an  
21 entire one, I'm informed, in 15 minutes, but we're happy to  
22 utilize the time, or we're happy to start again tomorrow.

23 THE COURT: I'm happy to defer to you all on it.  
24 We've been sitting long days. If we don't fully utilize the  
25 last 12 minutes of our day, that's fine with me.

1 MR. HUGHES: Let us start tomorrow with Mr. Banks.

2 THE COURT: Yeah. That's fine.

3 MR. HUGHES: I'll defer --

4 THE COURT: That's fine with me.

5 MS. ELLSWORTH: Mr. Banks is here, but we're fine  
6 to start tomorrow as well.

7 THE COURT: What do you want to do for tomorrow,  
8 9:30 or 10:00? Does anybody care? 9:30?

9 MR. HUGHES: 9:30 is great.

10 THE COURT: Where do you guys think we are in terms  
11 of time, are we ahead, on or behind schedule?

12 MR. HUGHES: I think with any luck, it will -- it's  
13 hard for us to know because the remaining significant witness  
14 in our case from our perspective is Dr. Arcidiacono. That  
15 will be a pretty robust direct, as you can imagine, several  
16 hours. I'm not sure how long Mr. Lee plans on  
17 cross-examining him.

18 If we could start him first thing Thursday and hope  
19 to finish Thursday or early Friday with him, then I think we  
20 could be done with everything, including the depositions  
21 hopefully by the end of Friday, assuming we have full days  
22 between now and then.

23 And that would let the Amici, who are  
24 participating, do their thing on Monday, which they've all  
25 indicated is the most convenient for them. And then I think

1 Harvard only has two witnesses in their case, but they can  
2 obviously correct me if I'm wrong.

3 MR. LEE: Your Honor, without trying to disagree on  
4 the granular portions of what Mr. Hughes says, I think we'll  
5 be done by next Friday, but I think it's going to take us to  
6 the end of the third week.

7 THE COURT: That's fine. Assuming we have time, I  
8 would like to have closings unless anybody -- I don't want to  
9 say "unless." Does anybody strenuously object to closings?  
10 We'll do them again after you submit your proposed findings  
11 of fact and conclusions of law.

12 MR. HUGHES: We certainly would love to have  
13 closings at the end of the evidence so we can focus on what  
14 we've all learned in the past by that time three weeks, and I  
15 think we talked about doing the second closing at the  
16 pretrial conference and that's --

17 THE COURT: Yes. That would be my preference, too,  
18 but I'm willing to entertain objections to that.

19 MR. LEE: That's good with us. And we're happy to  
20 do it next week. And I think from our perspective the most  
21 important thing is to have a second bite at the apple after  
22 Your Honor the proposed findings and conclusions.

23 THE COURT: Yes. I'm happy to give you that, too.

24 All right. I'll see everyone at 9:30, tomorrow.

25 Thank you.

(Court recessed at 3:36 p.m.)

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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 23, 2018

\_\_\_\_\_  
Joan M. Daly, RMR, CRR  
Official Court Reporter

\_\_\_\_\_  
Date

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