

No. 21-707

In the **Supreme Court of the United States**

STUDENTS FOR FAIR ADMISSIONS, INC.,
Petitioner,

v.

UNIVERSITY OF NORTH CAROLINA, ET AL.,
Respondents.

**On Writ of Certiorari Before Judgment to the
United States Court of Appeals for the Fourth Circuit**

JOINT APPENDIX VOL. II of IV (JA405–JA1042)

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JA405

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA**

Case No. 1:14CV954

[November 9, 2020]

STUDENTS FOR FAIR ADMISSIONS, INC.,)
)
Plaintiff,)
)
vs.)
)
UNIVERSITY OF NORTH CAROLINA, et al.,)
)
Defendants.)

**Volume 1
Pages 1-225**

**EXPEDITED TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LORETTA C. BIGGS
UNITED STATES DISTRICT JUDGE**

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* * *

KRETCHMAR – DIRECT

[pp. 67:14-70]

Q. Would you also agree -- and I can refer you to the top of the following page -- that UNC, in its evaluation of candidates for admission, does not seek to maximize the average SAT score or eventual GPA of the entering class?

A. I would agree with that.

JA407

Q. That's an accurate statement as to how the admissions process works at UNC, correct?

A. That's not one of our goals, correct.

Q. If we go a couple pages down on this document, there's a section that's actually entitled "Race, Ethnicity, and National Origin." Mr. Weir will scroll to that here in a second.

Do you see that section?

A. Yes.

Q. And this section indicates that race, ethnicity or national origin may be used at any stage in the admissions process, correct?

A. Correct.

Q. That's the guidance that admissions officers are given?

A. Yes.

Q. And if you go down a little further in this section, we see again a reference -- and it's the top of the next page -- that "...the University...aims to enroll critical masses of students who identify themselves as members of groups the University deems underrepresented." Is that accurate?

A. I see that sentence, yes.

Q. And is that an accurate reflection of what the admissions process does?

JA408

A. We are trying to enroll a diverse class to achieve the educational benefits of diversity, yes.

Q. And in particular when it comes to racial diversity, the university does focus on underrepresented minorities?

A. That is one of the things we focus on, yes.

Q. And sometimes in the admissions office that's abbreviated to URM?

A. Occasionally, yes.

Q. And URM, for purposes of the admissions office, it says here in this document, is defined specifically, correct?

A. According to this document, I believe it is, yes.

Q. And it's defined to include those who identify themselves as African American or black, correct?

A. Yes.

Q. As well as American Indians or Alaskan Natives?

A. Correct.

Q. As well those who identify as Hispanic, Latino or Latina, correct?

A. Yes.

Q. The next section in this document refers to socioeconomic status. Do you see that?

A. Yes, I do.

JA409

Q. And the statement in this document is that: "The University works strongly to attract and retain disadvantaged students, regardless of race."

Do you think that's true?

A. I do.

Q. And that: "This is," in fact, "a critical component of the institution's obligation to the State of North Carolina and, indeed, to the nation."

Do you agree with that statement?

A. Yes, I think socioeconomic diversity is important to us.

Q. And you would agree with me that the University of North Carolina, in this document and elsewhere, prioritizes socioeconomic diversity in its admissions process, correct?

A. I don't know if I agree with prioritizes. Relative to what? I'm not sure I would be in a position to say.

Q. Well --

A. It's important to us.

Q. I'm sorry. I didn't mean to interrupt you. Was your answer it is something that is important to you at the admissions office?

A. Yes, yes.

Q. Okay. Now --

MR. STRAWBRIDGE: And we can take the document off the screen.

JA410

Q. (By Mr. Strawbridge) You've read admissions -- I'm sorry. When applicants provide their admissions documents to UNC, there's a lot of information in those files, correct?

A. Yes.

Q. And some of that information relates to things that we just saw. For example, students generally provide or you can discern the gender of a student from the admissions file, correct?

A. That's true.

Q. And the same thing with respect to their race or ethnic identification, should they choose to disclose that information?

A. Should they choose to report it, yes.

Q. You can generally identify whether or not they're the child

* * *

[pp. 71:22-79:4]

Q. And readers are responsible for reviewing those files and assigning a number of ratings, correct?

A. We do have ratings, yes.

Q. And the ratings that are assigned by the reviewers include the program rating?

A. Correct.

Q. Performance?

JA411

A. Yes.

Q. Extracurricular?

A. Yes.

Q. Personal qualities?

A. Yes.

Q. As well as essay?

A. We no longer rate the essay score.

Q. When did you stop rating the essay score?

A. I believe two years ago.

Q. Up until two years ago, the readers would have assigned a score for essay, correct?

A. Yes.

Q. Starting with program, that rates the course of study that a particular applicant has taken; is that fair?

A. It's a rating of the rigor of the course of study, specifically with respect to college-level courses pursued during high school.

Q. So that refers to things like AP classes or international baccalaureate classes?

A. Correct, in addition to dual enrollment.

Q. In other words, a student who is both enrolled in high school and taking college courses at a local college, for example?

JA412

A. Right.

Q. And is the numerical rating that's assigned for program hinged specifically to the number of those classes they've taken?

A. To a certain extent. The "10" captures any student who has taken ten or more, and the lower end of the scale is similarly compressed. So a "1" is actually someone who has taken no college-level courses, and I believe a "2" is someone who has taken one or two.

Q. Beyond the number of courses of college-level or advanced courses that an applicant has taken, is there any other factors that go into the program rating?

A. No.

Q. Performance rates the academic performance of an applicant, correct?

A. Correct.

Q. And that rating -- and I should have said this before. Both program and performance are assigned on a ten-point rating?

A. Yes.

Q. So a "10," for example, on performance would be a student who achieves straight As?

A. Yes.

Q. And a "9" would be a student who has one or two Bs on their transcript?

A. Correct.

JA413

Q. Extracurriculars is another rating that's assigned?

A. Yes.

Q. On the same ten-point scale?

A. I think it's a five-point scale now, but I'm not entirely sure when that change was made, two or three years ago.

Q. So within the last couple years?

A. Yeah.

Q. Perhaps since the last time you and I spoke?

A. Maybe.

Q. In any event, extracurriculars rate an applicant's activities outside of the classroom; is that safe to say?

A. Yes.

Q. Whether that's a club or work?

A. Any kind of extracurricular activity: Family responsibilities, work, school activities.

Q. Are there any other ratings that are assigned? I have essay here in my outline, but I think we have already discussed the fact that that's no longer assigned.

A. The PQ rating.

Q. Oh, personal rating, yes. Thank you very much.

Is that also rated on the same five-point rating that we discussed earlier?

JA414

A. It has been. I believe now it's a three-point scale.

Q. Okay. So it's been even further compressed?

A. Yes.

Q. And what would be the ratings that are actually assigned for the PQ rating?

A. 1, 3, 5, 7, 10 was what it was previously.

Q. Would it now just be -- do you know what the three are now?

A. I think it's 3, 5, 7.

Q. Okay. After assigning those -- well, strike that.

UNC, I think you testified, provides training to its admissions officers; is that correct?

A. Correct.

Q. One of the things that UNC does as part of its training is some rough quality checking to try to make sure that the ratings are being assigned on a roughly fair and evenhanded basis?

A. I would say that's true, but our ratings don't equal a decision. So we're probably more concerned about the quality of the decision than we are the ratings.

Q. Any occasion in the past have you reviewed, you know, first reads in part to make sure that the ratings seem to fall within the realm of what you think are reasonable ratings?

JA415

A. I mean, it's one thing we look at. But, again, I don't think we spend a lot of time worrying about whether people are completely aligned with the ratings.

Q. After a reader reviews the application, assigns these ratings, and completes their review, they make a tentative admissions decision, correct?

A. The first reader would make a decision on the file, yes.

Q. And at that point in time, as they're reviewing the file, assigning their rating, they can consider, among other things, the race of the applicant, correct?

A. Race is one factor that we consider among many, yes.

Q. And then for some applications a second reader will review the file, correct?

A. Yes.

Q. And at that point, the second reader basically can engage in a complete review of the file; is that right?

A. Yeah, they do another comprehensive holistic review, and they can either agree or disagree with the decision of the first reader.

Q. And as part of that review, they can take race into account, correct?

A. Yes.

Q. Eventually, as the process proceeds, the admissions decision will proceed to the phase known as school group review?

JA416

A. Yes, decision review, school group review.

Q. And that review process involves a smaller number of admissions officers in the office reviewing the tentative admission decisions?

A. It typically involves more experienced readers reviewing decisions, yes.

Q. And what they actually do is they divide up the high schools who have -- from whom the applicants have come to UNC, correct?

A. In some cases. I think in out of state. We sometimes look state by state. It depends.

Q. Let's just talk about the in state just to keep it simple.

A. Okay.

Q. For the in state, for example, one reader will review all of the admissions decisions with respect to applicants from a particular high school?

A. They will review them, yes.

Q. And during that stage, readers can engage in the full holistic review of the file; is that right?

A. That's right.

Q. And that means that they can consider an applicant's race at the school group review stage, correct?

A. Correct.

JA417

Q. And you've participated in the school group review process before?

A. I have.

Q. And during the school group review process, if a reviewer wants to know something about the applicant, they can easily access all the information in the applicant's file?

A. The same way they would on a first read or a second read, yes.

Q. So they can obtain information about the race or ethnic identity of the applicant?

A. Yes.

Q. And school group review reports used to include in a summary report at the beginning the applicant's race, correct?

A. I believe that's true, yes.

Q. Up until, you know, sometime after 2012, 2013? Does that sound right?

A. I believe that's right.

Q. Now, remind me again -- I apologize. I forgot already. What is your actual title?

A. Associate director of research in the Office of Undergraduate Admissions.

Q. And with -- your role in research includes other responsibilities at the university besides reading files, correct?

JA418

A. Correct. In addition to reading files and helping recruit applicants, I respond to external and internal data requests. I might conduct surveys, focus groups. I've studied whether the factors we take into account when we read applications predicts student success at Carolina. I help with the yield model.

Q. And so you were the primary person in the admissions office that processes and analyze data regarding admissions applications?

A. I would certainly say I was one of the people doing that, yes.

* * *

[pp. 81:3-84:6]

Q. And one of the things that you would do with the data that you had access to in the admissions office is respond to requests for various analysis of UNC's applicant pool, correct?

A. Yes.

Q. And sometimes you would run analysis of that data in the form of studies about what that data shows?

A. That's fair to say, yes.

Q. For example, you helped with studies that the admissions office did that attempted to control for various factors and predict enrolling students' first-year grade point average?

A. Yes.

JA419

Q. You also did a study that attempted to control for various information in the data and look at the effect of taking college-level classes when you're in high school?

A. That's true.

Q. You've also done studies attempting to control for other factors in the data that would be useful in predicting the reliability or usefulness of something you called grit factors?

A. Yes, I was looking at the predictive validity of grit or noncognitive characteristics, yes.

Q. Grit was a measure of a student's consistency of interest and perseverance of effort; is that right?

A. That was how it was defined by Duckworth who created -- who defined the concept and created the measurement scale, yes.

Q. You've also done studies with the data controlling for the various factors to determine the reliability of ratings that the staff assigns?

A. I did, yes.

Q. You've done studies controlling for the other factors in the data to determine the effect of a second read versus a first read on an application?

A. I didn't personally conduct that study. The graduate assistant who was working with me at the time did that for her master's thesis.

Q. Were you involved at all in that study?

JA420

A. In helping her access the data and understand the data.

Q. And, in fact, with respect to that study, UNC actually made some adjustments to its admissions process as a result of that analysis?

A. I don't think only -- it wasn't entirely based on that analysis. I think it helped inform that decision, but that wasn't the only reason. That's my understanding.

Q. And so after that analysis, which may have factored into the decision, UNC went from reading every file twice to only reading certain portions of files twice; is that right?

A. That may be true, but it's my -- I remember that we -- we switched from year to year over the years, so it might have been that we didn't read every file twice prior to that point in time. So we've kind of gone back and forth several times over the years.

Q. At least with respect to that data, it was used to inform a decision to make alterations to the process?

A. I couldn't speak to how much it was used. I mean, that information from that analysis was passed along to the leadership team, and I couldn't speak to how much they used that or relied on that to make the decision.

Q. In your time in the data office or in your time in the research role at UNC, you've never conducted any studies controlling for all other factors in the data to determine the effect that race was having on the likelihood of admissions at UNC; is that correct?

A. Well, I wasn't -- I didn't conduct any studies looking at probability of admission. Most of mine were focused on predicting first-year GPA and whether the factors we took into account actually were related to student success. So I have not conducted a study that looked at probability of admission.

And as a reader, knowing that we do a holistic review, an individual review without specific weights on any factor, I'm not sure I would have felt like that analysis informed how we read applications.

Q. My question is: You've never done that analysis, correct?

A. That's correct.

Q. And no one in the admissions office has ever asked you to do that analysis, correct?

A. Not that I can remember.

Q. In fact, you never heard any discussions in the office about the possibility of doing that kind of analysis, other than perhaps with respect to this litigation?

A. I guess that would be a fair statement.

* * *

[pp. 86:4-97:17]

Q. The admissions office used to run and distribute core reports; is that correct?

A. I don't know if I would agree with "distribute." It's my recollection that they, again, were retained on a secure site that only certain people had access to.

JA422

Q. Let's talk a little bit about what a core report is.

A. Okay.

Q. A core report was a snapshot of where the admissions decision process was at any particular point in time?

A. A snapshot of what particular data?

Q. Data about the admissions process.

A. I mean, that's somewhat vague. I think it has a count of applications. So, yes, by demographics it helped us see where we were at any one point in time relative to years past.

Q. Including the number of applications received?

A. Correct.

Q. As well as the number of students who had been tentatively admitted?

A. At one point in time I believe it did, as well as the number who had been read by that date in time.

Q. And then there was also something known as a core report comparison. Are you familiar with that document?

A. So the terminology is -- it's changed so much, so I'm not -- and we called it so many different things, so I don't know if I could say for sure. If you could describe it, I guess.

Q. Sure. Let me just ask generally, was there also a version of the core report that would show the

JA423

information you just described but also compare it to a prior year's activity?

A. Yes, we did benchmark against prior years on a number of different variables.

Q. Can we look at PX67? It's in your notebook. I think we're going to pull it up on the screen here.

(Pause in the proceedings.)

Q. All right. There's a cover e-mail here. You can see that; is that correct?

A. Yes.

Q. And this is an e-mail from you to Ashley Memory?

A. Correct.

Q. From April of 2015; is that right?

A. Yes.

Q. Who is Ms. Memory?

A. She was our communications director at the time.

Q. Okay. And you're just noting that you're up more out-of-state than in-state applications; is that right?

A. Yes.

Q. And that you're down 17 ½ percent for AA, correct?

A. Right.

Q. Does that refer to African Americans?

A. Yes.

JA424

Q. And so if we look at the attachment of this -- I understand that this was -- this was attached to an e-mail you sent to Ms. Memory. But is this the basic format of the core report that we're looking at here? We've got the spreadsheet on the screen, if that helps.

A. It's a little small. Yeah, I think -- it may have changed slightly over the years, but this is the basic format at that point in time.

Q. And so in this one, it is a comparison report, correct?

A. It does show year over year, yes.

Q. 2015, which is the current year, is on the left side, correct?

A. Yep.

Q. And 2014, which is the prior year, is on the right side?

A. Correct.

Q. And then there's a series of columns that track the change, correct?

A. Yes.

Q. And so the core report here lists, among other things, some information about the testing of the applicant pool; is that right?

A. Yeah, the applicant and the admitted and the enrolling.

Q. Right. And it also includes information about ethnicity, correct?

JA425

A. Yes.

Q. It also includes information about gender?

A. Yes.

Q. And residency?

A. Correct.

Q. As well as citizenship?

A. Yes.

Q. And legacy status, correct?

A. Correct.

Q. This report does not show anything about socioeconomic status?

A. At this point in time it doesn't appear that it did, but I believe we include first-generation status and fee waiver on our application reports now.

Q. And this document, at least at the time it was circulating, didn't include information about disability?

A. I don't know that we easily track that information, so no.

Q. It doesn't include any information about veteran status?

A. No.

Q. It doesn't include any information about religion?

A. Again, we don't track that information, so it would be difficult to report it.

JA426

Q. It doesn't include any information about political affiliation?

A. No.

Q. I want to look at another example. Let's go to PX58.

The cover e-mail here, do you see that, Ms. Kretchmar?

A. Yes.

Q. You're copied on this e-mail, correct?

A. Correct.

Q. Is this the graduate assistant you referred to, Ms. Prasertpol –

A. Yes.

Q. -- who used to work in your office and helped out with some of the studies we've discussed?

A. Right.

Q. This was an e-mail sent on December 2013, correct?

A. Yes.

Q. And went to UGA Associates, correct?

A. Which is the leadership team.

Q. So who would be on that -- who would receive these reports?

A. At that point in time, I believe it would have been Steve Farmer, Barbara Polk, Michael Davis, Jared

JA427

Rosenberg, I think. I'm not sure who else. Maybe Yolanda Keith.

Q. All right. And if we look at the attachment to this report, here we can see up in the upper left hand the document is labeled "Core Report Year-on-Year Comparison," correct?

A. Yes.

Q. This one is dated December 4th, 2013; is that right?

A. Right.

Q. And if you look just briefly down the left side of this report, it basically contains the same information as the report we were just looking at?

A. It looks that way.

Q. Okay. If you go down to the very bottom and look at the last spreadsheet here, there's a number of tabs. Do you see that?

A. Yes.

Q. Those tabs have dates on them?

A. Correct.

Q. And so when this document was sent around, was it sent as a cumulative collection of prior reports?

A. I mean, it looks like she did. I don't remember if -- again, it's not my recollection that we distributed these by e-mail often, and I'm not quite sure why she was. It's -- I remember that they mostly sat on the secured drive

JA428

that certain people had access to, but I'm not 100 percent sure.

Q. In any event, if you look at the tabs, it indicates that there were a number of reports generated between October 17th and December 4th?

A. I see that, yes.

Q. And even when it sat on the secured drive, to the best of your memory, these were reports that were generated on a weekly or biweekly basis; is that fair?

A. I think that's fair.

Q. Among the responsibilities that you had at the admissions office was -- was to occasionally have responsibilities with respect to review of information about race-neutral alternatives?

A. I was a member of a working group that was charged with exploring race-neutral alternatives, yes.

Q. Before that, in 2009, were you asked to prepare a literature review regarding what other universities were doing regarding race-neutral alternatives?

A. Yes, I was.

MR. STRAWBRIDGE: And if we can just bring up PX17 quickly.

Q. (By Mr. Strawbridge) This is an e-mail dated January 10th, 2014; is that correct?

A. Yes.

JA429

Q. And you're referencing a literature review of the now dated race-neutral admissions research; is that correct?

A. It looks like I was passing it along to a colleague across campus and trying to note that I hadn't updated it fully since I first conducted the lit review -- literature review.

Q. And if you look up in the "Subject" line, it indicates it was a literature review of race-neutral research up to 2009, correct?

A. Yes.

Q. So this was the 2009 task that we were just discussing; is that right?

A. Right.

Q. If you can just briefly look at the review, is that -- the attachment there, is that the literature review that you did in 2009?

A. It looks like it, yes.

Q. And it was your understanding that Steve Farmer requested this review?

A. Yes. I think I was reporting to Barbara Polk at that point in time. I believe that I understood the request came from him. It might have come through Barbara. And I know that when I completed the lit review, I did pass it to Barbara and not to Steve, who I assumed shared it with Steve.

Q. And when you were asked to prepare this document, Mr. Farmer did not tell you why he wanted it, correct?

JA430

A. I don't think he gave a specific reason. But as someone who works in admissions and was familiar with the *Grutter* case, I think I would have had some general sense of why he was asking, but I don't remember him specifically saying why.

Q. In this literature review, you do not come to any conclusions about whether race-neutral alternatives could work at UNC, do you?

A. I think I tried to summarize the conclusions that others came to in the research; and I believe I did write that no viable race-neutral alternatives, in my opinion, in my review of the literature had been found at that point in time.

Q. With respect to "would work at UNC," did you write that?

A. I'm sorry.

Q. Did you write that with respect to UNC in particular?

A. I -- I wrote that with respect to the research that I had reviewed in the literature review.

Q. But you didn't do any specific analysis in this of what was being done at UNC?

A. I mean, I understood from reading *Grutter* that in the majority opinion they had instructed universities to pay attention to natural experiments occurring in other states where affirmative action had been banned and also other research, and so this seemed like a reasonable first step before doing anything specific to UNC.

JA431

Q. Do you know whether or not this document, in fact -- strike that.

You don't know whether this document was shared with anyone else at UNC in 2009, do you?

A. Anyone other than Barbara?

Q. Correct.

A. I -- I firmly believe Steve saw it. I couldn't say with 100 percent, and I have -- I couldn't speak to who else they might have shared it with. I don't know.

Q. Now, you mentioned that you -- strike that.

You also assisted UNC with an analysis that was presented in an amicus belief filed with the Supreme Court in the *Fisher* litigation; is that correct?

A. I think I would reword that and say that an analysis that I completed at Steve Farmer's request was later used. I didn't know at the time that it would be used for that purpose. That's not why I conducted it.

Q. You did it at his request, correct?

A. Yes.

Q. And you understand that it subsequently was part of what was referred to in the amicus brief?

A. Yes.

Q. And you're saying Mr. Farmer didn't tell you why he wanted that done?

JA432

A. I mean, again, it was like the lit review. I had a general sense of why he might be asking me to do that kind of analysis, but...

Q. Before that model, you had not done any other modeling at UNC with respect to race-neutral alternatives at UNC; is that correct?

A. I had not personally, no.

Q. And if we look at PX7, there's a couple of covering e-mails on -- well, let me just say for the record, this is an exchange that you had with Steve Farmer in July of 2013?

A. Yes.

Q. And I think from the cover e-mails what you guys are passing on there is the actual results of the work you did back during the time of the amicus brief in 2012, correct?

A. Right.

Q. And that analysis is sort of summed up in the portion of the chain that's dated May 25th, 2012?

A. Correct.

Q. And you had -- the process that you used to create this analysis you haven't used for any other purpose in the admissions office, correct?

A. I mean, we -- we followed up with other percent plans, so I don't -- I'm not sure if I would agree with that statement.

Q. Did you use the particular formula or analysis that you used here in those later efforts?

JA433

A. Not the same exact process, no.

Q. Now, you mentioned the working group on race-neutral alternatives, correct?

A. Yes.

Q. That was a group that was formed in November of 2013; is that right?

A. Yes.

Q. And it met for the first time in December of 2013?

A. I believe that's correct.

Q. Is it fair to say that committee met four or five times over the course of the following two years?

A. I don't know that it was convened for two years. I couldn't say the exact number of times we met. I know that there was -- it took some time to get the data for a number of reasons, and we didn't meet while we were waiting to get the data.

Q. The report that you ultimately drafted for the working group included the literature review?

A. Part of the literature review, yes.

Q. And is it fair to say that the final report that the working group produced didn't have very many changes from the 2010 lit review you did?

A. I think I added three or four more recent references to more recent research.

Q. Would you agree that you didn't add a whole lot?

A. I would agree that I didn't conduct another full lit review at that point in time.

* * *

[pp. 107-112:4]

THE COURT: I appreciate it.

Q. (By Mr. Strawbridge) We looked earlier at the reading document, and it references to the term "critical mass," correct?

A. Correct.

Q. You remember looking at PX108 and how it referred to that document -- or referred to that term -- I'm sorry -- "critical mass"?

A. Yes.

Q. At one point critical mass came up in the work of the Working Group on Race-Neutral Alternatives; is that right?

A. I know that from looking at agendas. I don't remember the specifics of the conversation, but I have no reason to believe that that conversation didn't take place.

Q. Let's look at DX40.

A. I don't think I have PX40.

Q. It's DX40.

A. DX40. Okay.

Q. Do you see that document?

JA435

A. Yes.

Q. This is an agenda from the December 19th, 2013, meeting of the working group?

A. Yes.

Q. And one of the questions on here is: "How will we know when we've reached 'critical mass'?" Correct?

A. Correct.

Q. You don't have any recollection of actually discussing that question at the meeting, do you?

A. I don't have a recollection of the specifics of the conversation, no.

Q. You don't remember having -- you don't recollect having the discussion at all, correct?

A. Not at that meeting.

Q. You've worked in the admissions office for 17 years now?

A. Eighteen.

Q. Eighteen. And during your first 15 years in the office, the admissions office had not had any discussions with its employees about using race to achieve critical mass, had they?

A. I would agree that critical mass isn't language that we use in our everyday work, but to the extent that critical mass is aiming toward certain ends, achieving educational benefits of diversity, those are things that we talk about frequently. So I think our readers and

JA436

our staff understand what we're aiming for when we say we're trying to build a class of students who bring diverse backgrounds and perspectives. So even if we haven't used that terminology, I think it's part of the understanding of what we do in our work and what we're trying to achieve.

Q. Ms. Kretchmar, you've never actually discussed what critical mass would be in the admissions office, correct?

A. I'm not sure I understand your question. Like define it, specifically write down a definition? I'm not sure beyond what I just answered. We've had discussions about what we're trying to achieve by achieving critical mass.

Q. You, during your time in the admissions office, have not had a discussion specifically about how you use race to achieve critical mass and that term?

A. I guess that would be fair to say.

Q. And you don't recall having that conversation during your time on the Working Group on Race-Neutral Alternatives, right?

A. I think -- based on the agenda I just saw, I think we must have had some discussion about how we would know when we achieved critical mass.

Q. Do you recall any conversation?

A. I couldn't say at that specific meeting, but I know I've been a part of other conversations where that kind of topic arose.

JA437

Q. During your time on the race-neutral alternatives committee, do you recall having any discussion as to what would constitute a critical mass at UNC?

A. Again -- I mean, other than how I've answered the question already, I don't know.

Q. And you don't recall any specific discussion as to how the university defines that term, do you?

A. I mean, other than what I just explained. I mean, I think we define it in terms of the ends that we're trying to achieve. We aren't aiming for a specific number or a quota, but we are trying to create an environment on campus. I could go through what I understand to be the educational benefits of diversity.

So I think we think of critical mass in terms of its outcomes, and I think one of the ways that we try to determine if we've achieved it is by asking our students whether we've created the environment for them that they say they want in terms of studying and living alongside people who are different from them.

Q. You remember giving a deposition in this case, right, Ms. Kretchmar?

A. Yes.

Q. You gave that deposition. You took an oath to tell the truth?

A. Yes.

Q. Reviewed your deposition?

A. Yes.

JA438

Q. And you actually signed an errata sheet noting any errors in your deposition?

A. Yes.

Q. I have a copy of your deposition there. I'm going to ask you to refer to page 168 of your deposition transcript. We'll show it on the screen, but you can look at it in the --

A. I'm sorry. What's the exhibit number?

Q. It's a separate bound volume sitting next to you.

A. Oh. What page? I'm sorry.

Q. 168.

A. Okay.

Q. Line 10. "Question: In all your work on the race-neutral alternatives committee, you don't recall having discussion about what would constitute critical mass?"

"Answer: Do you mean how other people define critical mass or what --

"Question: To how the university defines critical mass.

"Answer: I don't. I don't recall that conversation."

A. Right. And I --

Q. Were you asked those questions, and did you give those answers at your deposition?

A. I did. And I would say, in preparing for this trial I was shown the agenda that said we discussed critical mass; and I have no reason to believe we didn't, even though I don't recall the specifics of the conversation. So I think that's consistent with what I said then.

Q. Do you remember whether you were shown that agenda at your deposition?

A. I don't believe I was. I don't recall though. I don't remember. Can you tell me?

Q. Can you turn to page 169? I'm sorry. Strike that.

What about your time on the committee for race-neutral strategies? At least as of March 2017, you didn't recall any recollection there as to how the university defines critical mass, did you?

A. I don't remember specific conversations, no.

* * *

ARCIDIACONO – DIRECT

[pp. 141:5-162:25]

Q. Did you do any descriptive analysis that involved comparing applicants that had similar academic qualifications?

A. I did.

Q. Did you prepare this slide?

A. I did.

Q. Can you explain what it is?

JA440

A. So what we're trying to do is just create a summary measure of the academic strength of the applicant, and so here what we're going to do is take their SAT score -- we're going to try to equally combine their SAT score and their high school grades. And, of course, SAT scores are on a 1600-point scale, and grades here are more on a 4-point scale. So in order to combine them, we calculate a z-score for each, and then we add them together. And this is just a sort of quick way of summarizing the strength of the applicant on academics.

Q. And this metric that you created, what do you call it?

A. I call it an academic index.

Q. And you constructed this with the data that UNC produced?

A. That's correct.

Q. And it's meant to be a summary statistic, you said?

A. Just a summary of their academic qualifications, yes.

Q. Have others used this type of summary statistic?

A. Other people have created things like this in terms of an academic index. Harvard, for example, has one. It has slightly different weights than the one I have here, but it's just a quick way of summarizing the strength of the applicant. And, in fact, the whole Ivy League does. And then I've used something like this in my past papers just to illustrate -- as a way of having a summary measure of academic ability.

JA441

Q. Do other economists use this type of summary statistic in this area?

A. They do.

Q. So why did you create this academic index?

A. Well, what I'm interested in doing is in seeing how people who have similar grades and test scores -- how they're treated differently in the admissions process.

Q. Did you create this academic index for every applicant in the data set?

A. No, and the reason for that is for about 5 percent of in-state applicants and for about 30 percent of out-of-state applicants some of the information is missing. So you don't have the information on either SAT or the high school grades. And really, I shouldn't say it's always because it's missing. You had to be graded on a 4-point scale, so that explains what is going on out of state. It may be graded on a 100-point scale. So we're only looking at the people for whom we have these -- these measures.

Q. Is that set of applicants for which -- whom you created the academic index -- are they representative of the in-state and out-of-state pools?

A. They seem to be pretty representative.

Q. Did you do any analysis of whether it is representative of the entire pool?

A. I did.

Q. What do the data on this slide show?

JA442

A. So what this slide shows is compares the admit rates in my full sample, both in state and out of state, to the ones where they actually had an academic index, so the 95 percent of applicants who I created an academic index for in state and the 70 percent out-of-state applicants for which I created an academic index.

Q. Let's look at the second panel on this slide, the out-of-state applicants there. How do admit rates in the full sample compare with those for whom you've created an academic index?

A. They're very close. They're just a tiny bit higher in the first row, but that's pretty much the same.

Q. Then they're similar overall in -- within race?

A. That's right.

Q. Does UNC use an academic index?

A. They do not.

Q. So this was just a summary statistic that you created to help aid your analysis?

A. Yes, it's purely motivational to set up what the basic patterns in the data are.

Q. After you created this academic index for these applicants, what did you do with it?

A. So what I'm going to do is then see how that academic index relates to the other ratings. You know, so do people who get high values on this academic index -- do they also get higher ratings? And then look to see, given the same sort of academic index, what is

JA443

your probability of being admitted and how does that vary by race.

Q. And how did you arrange them in order to compare applicants with similar academic qualifications?

A. I'm going to break it up into ten deciles, and so the way you want to think about that is that the top decile, which is going to be the tenth decile, these are the people who have -- they're at the 90 to 100 percent, you know, in terms of their ranking on the academic index; and then we're going to take the next 20 percent -- sorry -- next 10 percent to get the ninth decile and keep on going down.

Q. Have you conducted any analysis about whether higher academic indexes are associated with higher UNC ratings?

A. I have.

Q. Did you prepare a slide?

A. I did.

Q. What is on the slide?

A. This slide shows for in-state applicants -- I should have also clarified, all these deciles are done so that this is 10 percent of in-state applicants in there. We're not doing out-of-state/in-state comparisons.

Q. Thank you for that clarification.

A. Think about 10 percent of the data being in that top decile and so on.

JA444

But what this slide is showing is the share you get above the median rating on each of UNC's ratings by academic decile.

Q. So just to make sure I understand what you mean by deciles, if we look at the first column, academic decile, that 10 underneath that, the 10 -- that's the one you said is the top decile?

A. That's right. They're the ones who have the highest academic indices.

Q. So those would be the people between the 90th and 100th percentile among a ranking of all the academic indexes?

A. Among all the ranking of the academic indexes for in-state applicants for whom we had an academic index.

Q. Thanks again for the clarification.

What, then, do the numbers in the first column mean as you look downward?

A. So if we think about -- oh, in the first column? So that's just going to -- the academic decile column, we're just moving down. So we've got the top 90 to 100 percent. Then you've got the 80 to 90 percent and so on.

Q. If we look at the program column right next to that, in the very top cell right there, which would be the tenth decile, what does that 88.7 figure mean?

A. That means that if you're in that top 10 percent of the academic index, over 88 percent of the time you're going to have a rating in the program rating that's

JA445

above the median. So it's likely -- very likely you're going to have a high program rating.

Q. Okay. Let's stick with that column. What do the data in this column show regarding the program rating?

A. Well, every time you move down a decile -- so we're starting at that tenth decile, you move down to ninth -- the share of applicants getting above the median rating goes down. So you can see it goes down from 88.7 to 74.6, then down to 65.2. Every time it's going down.

Now, what that means is that people who do better on the academic index also tend to do better on the program rating. So these things are positively correlated.

Q. And if we look at the next column, performance, do we see the same pattern?

A. You see the exact same pattern. The highest number there is in the top one for academic, Decile 10. So over 84 percent of the top decile is getting above the median rating on the performance rating, but by the time you get down to the lowest decile, Decile 1, it's less than 2 percent.

Q. And if we look to the next column over, the same pattern?

A. The same pattern for activities. You don't get -- it's a little bit more compressed, but it's the same pattern where, again, as you move down the table, you're getting lower and lower values.

Q. And then if we look at the essay rating?

JA446

A. Same exact -- same pattern.

Q. Personal quality rating?

A. Same pattern.

Q. Did you do a similar analysis with out-of-state applicants?

A. I did.

Q. And did you prepare a slide showing your analysis?

A. Yes.

Q. And what do the -- at a high level here, what did the data on this slide show?

A. Well, it's repeating the same table we just looked at, but this time for out-of-state applicants. So we look at the share above the median rating for each of UNC's ratings by these academic index deciles.

Q. And is there the same relationship between the academic index and UNC's ratings for out-of-state applicants as there were in state?

A. There is, yes. So, again, let's look at the program rating. In that top decile, we have 85.9 percent getting above the median rating. If you go down one decile, it's 79 percent, and the numbers just keep on going down to the lowest decile, which is 15.3 percent.

Q. Similar patterns for performance rating for out-of-state applicants?

A. Similar patterns. You start off at 82 percent. By the time you're at the end, you're at less than 4 percent.

JA447

Q. Then we move over to the extracurricular activity rating. Same pattern?

A. Same pattern. More compressed, but the same pattern.

Q. And then again with the essay rating?

A. Again with the essay rating and again with the personal quality rating.

And so what this means is that when we think about these academic index deciles, you could view it and it's just about academics, but it is a bit more than that because it's positively correlated with all of UNC's ratings as well.

Q. So what's the overall takeaway here?

A. Well, the overall takeaway is that higher academic -- higher scores on test scores and grades are also associated with higher UNC ratings.

Q. On both the academic and the nonacademic UNC ratings?

A. On both, everything from program performance to personal qualities, and that holds both in state and out of state.

Q. Did you analyze how racial groups are distributed across the deciles?

A. I did.

Q. And did you prepare a slide from that analysis?

A. I did.

JA448

Q. And what do the data in this slide show?

A. So this slide shows the number of in-state applicants in each academic index decile.

Q. And the first column there -- I guess it's actually the second column -- sorry -- where it says "White," what does that show?

A. That shows the number of white applicants in each of those deciles. And so generally the numbers are higher for the "White" column because in the applicant pool there are a lot more white students.

And what you see there is that, with the exception of moving from Decile 10 to Decile 9, once you get to Decile 9, the number of applications are falling. So at Decile 9 we're talking about 4,180 applicants, but by time you get to the lowest decile, it's down to 1,848 applicants. The fact that it's falling means that white applicants are disproportionately in the higher academic index deciles.

Q. As we move to the right of the column, what kind of pattern, if any, did you find with regard to Asian American applicants?

A. Well, Asian Americans also disproportionately have high academic indexes. There you can see that we start off with 1,139, and then as you move down, you're getting lower and lower numbers. There's a slight jump between the fifth and the fourth decile that goes against that trend, but otherwise, the numbers are always going down. So we started off with 1,139, and then it goes down to 376.

JA449

Q. Let's move over one column more for African American applicants. Again, this is in state. What kind of a pattern do you see there?

A. Really the reverse. So there are very few African Americans in that top decile. There were 67. And then as you go down the deciles, the numbers grow substantially all the way to the lowest decile where there's 2,462 African Americans. So African Americans disproportionately have lower test scores and grades.

Q. Move over one more column, Hispanic applicants. Again, this is in state. And what kind of a pattern do you see there?

A. Well, it's similar to what's going on with African Americans, but it's a bit muted. So for Hispanics, we have 128 applicants in the top decile, and then generally it's growing as you move down deciles. There's one exception when you move from Decile 8 to Decile 7, but besides that, it's growing as you go down the deciles. So you end up -- you start off with 128, but by the time you get to the bottom decile, it's 582.

Q. Overall, what does the distribution of applicants across deciles tell you about academic qualifications?

A. Well, there are large cross-racial differences in terms of UNC's applicant pool in state.

Q. Did you look at this same data on a percentage basis?

A. I did.

Q. And did you prepare a slide?

JA450

A. I did.

Q. And what do the data show in this slide?

A. This slide shows the percentage of in-state applicants in each academic index decile.

Q. So starting at the top decile, what do you see there?

A. So in the top decile, 10.7 percent of white applicants are in the top decile. Keep in mind that the sum of all those numbers is going to equal 1. So we're looking at the share of whites who are in each decile.

Q. And when you say the sum of all of those numbers, you mean in that first column?

A. In that first column, number 1.

Q. If we added all that up, it would total a hundred percent?

A. Yeah.

Q. Okay. Thank you.

And what else do we see if we look across on that top decile?

A. So 10.7 percent of whites are in the top decile. Almost 20 percent of Asian Americans are in the top decile. Unfortunately, less than 1 percent of African Americans are in the top decile, and less than 4 percent of Hispanics are in the top decile.

Q. What happens as you move downward by decile?

A. Well, if you move downward by a decile, then we're going to see shifts. So, for example, for Asian

JA451

Americans, the numbers are, you know, generally going down in terms of those shares, and similarly for whites. Once -- if you get outside the tenth decile, the numbers are all going down on the shares. And then for African Americans and Hispanics, they're going up, again because they disproportionately represent lower academic index deciles.

Q. So what happens when you get to the bottom decile?

A. When you get to the bottom decile, you have a little over 5 percent of whites, 6 ½ percent of Asian Americans, over 32 percent of African Americans, and a little less than 17 percent of Hispanics.

Q. We've been discussing what your academic index deciles reveal about the relative academic qualifications of applicants. Did you consider admit rates across deciles?

A. I did.

Q. And did you prepare a slide to show that analysis?

A. I did.

Q. What's on this slide?

A. So this slide shows in-state admission rates by academic index decile and race.

Q. If we look over to the column on the far right where it says "All Applicants," what does the data here tell us generally about the academic qualifications of in-state applicants?

A. So the academic index is clearly strongly correlated with admission to UNC. So those in that top decile

JA452

have an admit rate of over 98 percent, and in the bottom decile, it's less than 1 percent. And you can see that if we just started at that bottom decile, less than 1 percent, the numbers in blue there are showing how much it goes up by moving up to the next decile. So you go from .89 percent to 5.44 percent. That's a 4.55 increase, and then it just keeps going up from there until you get to the top.

Q. Is the same thing true across racial groups; that is, are higher academic indexes correlated with admission for all racial groups?

A. They are. The general pattern is going to be you start off very low in the first decile, but by the time you get to the top, the tenth decile, admissions are in the -- at least above 97 percent.

Q. Overall, does this slide reveal anything about admit rates as between racial groups?

A. It does. So --

Q. And what does it show us?

A. Well, when you're in the -- I should say it really depends on what decile we're talking about, because when you're in the very top decile, pretty much everybody is getting in. They all have admit rates, you know, above 97 percent.

But once you get outside of that top decile, then you start to see differences begin to emerge. It's always going to be the case after the top decile that African Americans will have the highest admit rates. The

differences are not going to be so large at the ninth decile because, again, most people are getting in.

Q. Are there some deciles where there's greater disparities?

A. There are. So if we look at, for example, the fifth decile, there you can see that whites and Asian Americans have admit rates that are below 30 percent, but the African American admit rate is over 40 points higher, at 71 percent, and the Hispanic admit rate is almost 54 percent.

Q. How is that, when African American and Hispanic applicants have higher admit rates in the fifth decile?

A. Well, you can have higher –

Q. I'm sorry. I want to look down at the bottom first. If you look down at the row on the very bottom that says "Total," what are the overall admit rates by race?

A. So the overall admit rates are similar to what we were looking at before in that whites in state and Asian Americans in state have admit rates above 50 percent. African Americans have admit rates 30 percent and Hispanics almost 41 percent.

Q. So how is that, that African American and Hispanic applicants have the lowest admits rate when they actually have higher admit rates throughout all deciles?

A. Well, it has to do with how applicants are distributed across these deciles. So, you know, over half of African Americans are in the bottom two deciles where admit rates are much lower. Whites and Asian

JA454

Americans are more clustered at the higher deciles where admit rates are higher.

Q. Did you do a similar analysis for out-of-state applicants?

A. I did.

Q. And did you prepare a slide showing that analysis?

A. I did.

Q. What did the data show on this slide?

A. So it shows out-of-state applicants in each academic index decile by race.

Q. Are the patterns similar to what you showed for in-state applicants?

A. They're generally similar. The white numbers bounce around a little bit more, but there are, again, very -- you know, fewer white applicants in that bottom decile. For Asian Americans, the number of applicants in the top decile is at 1,900, and then it's going to keep falling from 1,900 down to 493. And then you can see for African Americans the reverse pattern of what's happening with Asian Americans. In the top decile, we have 123 African American applicants, and that rises down to 2,674 in the bottom decile.

Q. Did you look at shares by race in the same manner of what you did for in-state applicants?

A. I did.

Q. And what do the data in this slide show us?

JA455

A. They show broadly similar patterns to what we saw in state. The white one is a little flatter here, but, again, whites -- their share in the bottom decile is 6.77 percent. You know, for Asian Americans, we start off with almost 17 percent in that top decile, and then the numbers just keep falling until we get to the bottom decile with 4.4 percent.

And then African Americans sort of -- have sort of a reverse pattern to Asian Americans in that less than 2 percent are in the top decile and, in fact, less than 2 percent are also in the next-to-the-top decile. But by the time you get to the bottom, 39 percent of African American applicants are in the bottom 10 percent for out-of-state applicants.

For Hispanics, it's a little bumpier, but it's still Hispanics are slightly disproportionately represented in the bottom deciles.

Q. Did you identify any overall patterns in this slide with regard to out-of-state applicants?

A. Well, you can see that the African Americans are disproportionately in those bottom deciles. Asian Americans are disproportionately in the top. Whites are a little bit higher at the top than at the very bottom and Hispanics a little bit higher in the bottom than at the very top.

Q. Did you also analyze admission rates by academic index decile in race/ethnicity for out-of-state applicants?

A. I did.

JA456

Q. Did you prepare a slide?

A. I did.

Q. What did the data show in this slide?

A. So this slide shows the out-of-state admission rates by academic index decile and race.

Q. Let's start again, like we did last time for in-state applicants, by looking at the column on the far right where it says "All Applicants."

What does that show generally about the academic qualifications of the out-of-state applicants?

A. Well, the first thing to notice is that the numbers are a lot lower here because the out-of-state admissions is so much more competitive. But it shows the same pattern where basically if you're in that bottom decile, you're probably not getting in, so .4 percent admissions rate. But then as you move up -- every time you move up a decile, you see an increase in admissions chances. It's still going to be very low when you move from the first to the second, 0.4 percent to 1.5 percent to 2.6 percent and so on, but it's always going to be increasing. And then by the time you get to the top, you're at almost 47 percent.

Q. Now, this pattern you see there with regard to all applicants, how the academic index positively correlates with admission, do you see this same pattern not only overall, but with regard to each racial group?

A. You do. There will be an occasional blip here or there moving from one decile to another as a lower admit rate, but that's the general pattern.

JA457

So you can see it for whites. You would start off with .49 percent admit rate in that first decile, and it goes all the way up to 41.6 percent, increasing every time. For Asian Americans, it's increasing every time, except the second to the third decile where the difference is .28 versus .25 percent, so hardly anything. And African Americans and Hispanics you see are always increasing.

Q. Do we see the same racial disparities within deciles that favor African American and Hispanic applicants in terms of admit rates?

A. Given the same academic index deciles, you're going to see higher admit rates generally for African Americans and Hispanics, at least once you get outside of the, you know, lowest decile where hardly anybody is -- anybody is getting in.

Q. And I think before you looked at the -- for in-state applicants, you looked at the fifth decile. Why don't we take a look at that for comparison here. What does that data show?

A. The numbers are really striking here. The white admit rate is 2.9 percent. The Asian American admit rate is 1.4 percent; and then you see for African Americans, it's 39.6 percent; and for Hispanics, it's almost 16 percent. That 39.6 percent is bigger than all the numbers in the white and Asian columns, except those at the very top.

Q. Did you do anything to further analyze the academic indexes in admissions?

A. I don't believe so.

JA458

Q. I'm sorry. I don't mean from this slide. I don't mean to confuse you.

A. I feel like I'm being set up here.

Q. Sorry. Did you analyze how admission by academic decile might work out?

A. Okay. Yes. So –

Q. And did you prepare a slide?

A. Yes.

Q. Okay. Thanks. So what did the data show in this slide?

A. So this slide shows the number and share of in-state admits only if you're admitting from the top deciles. This is not what UNC does. UNC takes into account lots of characteristics. But it says if we just base it on the academic index alone, which doesn't possibly correlate with UNC's ratings, what would the class look like.

Q. And this is in-state applicants here, right?

A. This is in-state applicants.

Q. So what did the data show in the first row of this slide?

A. So this is showing the actual number of admits for the people who are in the decile analysis. So we have 18,080 admits, and the share just refers to just to the share among these four racial groupings. So the sum of the shares should add up to 1.

JA459

Q. And then what does the second row show?

A. The second row shows what if we just admitted from the top deciles until we filled the class. And here again, we're only looking at these four racial groups, so the sum of the number of admits is going to be the same here.

And then what you can see is that the number of white students would go up from, you know, a little over 18,000 to over 19,000. Asian Americans would go up from a little over 3,000 to over 3,400. This comes at the expense of African Americans and Hispanics. So for African Americans, it falls from 2,275 to 1,055; and for Hispanics, there's a loss from 1,414 to 1,031.

Q. Did you do a similar exercise with out-of-state admits?

A. I did.

Q. And did you prepare a slide on that?

A. I did.

Q. What did the data show in this slide?

A. So it's going to repeat the analysis of the previous slide, but this time out-of-state. So the first row is again going to show the actuals. So this is the actual admits for that decile sample. And then it says, well, what if we just took people from the top deciles until we filled the class. And there you can again see that whites and Asian Americans would increase and then pretty substantial drops for African Americans and Hispanics.

JA460

Q. And how would that affect the racial composition of the admitted group?

A. Well, the share African American, you know, would fall from 12.7 percent to 1.9 percent. The share Hispanic would fall from 14.1 to 8.2, and then you would see corresponding increases for whites and Asian Americans.

Q. Now, UNC doesn't actually make admissions decisions based solely on academic qualifications, correct?

A. That's correct.

Q. So what was the point of this analysis here?

A. The point of this analysis is just to get an idea as to what's in the data and how strong you have to be on other things to sort of make up for what we're seeing on the academic -- on the academic front.

Q. So let's stop for a moment there and look backward. What has your descriptive analysis, as you referred to it, shown so far?

A. Well, the descriptive analysis has shown that whites and Asian Americans seem to be stronger on a lot of the things that are associated with admission at UNC. They're going to have higher test scores, higher grades, typically, and higher ratings on UNC's system. And then when we look at -- with, again, the one exception being the personal quality measure that African Americans and Hispanics do better on.

Then when you look at conditions under the same academic qualifications just with this rough measure,

the academic index, you can see pretty wide disparities in admit rates across races. With African Americans, you see you have the highest admit rates by quite a bit, followed by Hispanics, and then we have Asian Americans and whites.

Q. Does your analysis thus far reveal the effect that race has on admissions decisions at UNC?

A. No, this is just suggestive. We have to actually do the modeling to try to capture the actual effects of race.

Q. So what did you do to determine whether UNC's racial preferences are driving African American and Hispanic admit rates?

A. Well, I'm going to put together a model of UNC's admissions decisions and see what happens to -- what happens to the role race plays as we account for all these different factors.

* * *

[pp. 176:23-178:23]

Q. So can you explain to us what controls or variables are in those models?

A. Well, we're going to start off with just some very simple controls: Your race, whether or not you're female, whether you applied early or regular decision. That's going to turn out to matter. And I should also say that these models are estimated both in state and out of state separately, whether or not you're an alum of UNC.

And then things that are somewhat related to disadvantage status, such as whether you're a

first-generation college student, whether you applied for waiver of the application fee. And then, you know, some people we don't actually have that information on whether they had a fee waiver, so you include a control for a missing.

And then you have controls for which admission cycle because, you know, maybe -- UNC may be becoming more competitive over time as more and more people apply. So that's going to take that into account. So that sort of makes up Model 1. That's a baseline.

And then in Model 2, we're going to add a lot of things that are related to academic measures, and so this is going to include things like your SAT scores. And I do math and verbal separately, allowing for the effects to be different across those two. I should also mention that not everyone has an SAT math score. You may have an ACT score, so I'm going to convert those ACT scores into math scores -- into SAT scores.

But even then there will still be some people who have neither, and so here, for that small set of people, I'm also going to include an indicator where they are missing that SAT score. And you'll notice that that variable there says missing SAT times race/ethnicity, and so what I'm doing there is I'm having separate variables for each of those. There's a good reason for doing that, and that is effectively, if I just had one variable for that, just missing SAT, what that would mean is the model would say, hey, what SAT score can sort of rationalize the admissions decisions for people who are missing SAT.

By doing it interactive with race, then it's saying what SAT score can rationalize the admissions decisions of African Americans, what SAT score can rationalize the admissions decisions for Hispanics and so on. And that's actually somewhat important here because it is the case that the test scores are different across different racial groups.

There are different ways to sort of view these missing SAT scores. It could be it just happened to not be recorded in the data, or there could be that they came up with the idea that they truly were missing and they would come up with an idea of what they might be, given the rest of the information there. But I'm not posing anything here. I'm just allowing the model to tell me what those implied SAT scores would be for those who are missing it and allowing it to be different across races.

* * *

[pp. 210:1-223:22]

Q. Did you prepare a slide that shows those methods that you used to quantify the effect of UNC's racial preferences on admissions decisions?

A. I did.

Q. What is shown on this slide?

A. So this slide shows the four ways that I'm going to talk about measuring the effects of race on the admissions decisions –

Q. Can you talk a little -- I'm sorry. Go ahead.

JA464

A. -- today.

Q. Can you provide a brief description of those four methods?

A. Sure. So the transformational analysis is going to say we can take someone who has a particular probability of being admitted, and I could do that for any probability you like, and just with the coefficients that I've shown you, we could do those calculations now for any probability that you like and say -- suppose that probability was for a white male who was not first-generation college, maybe they have a 10 percent chance of getting in, I can say what their probability of being admitted would be if they were instead treated as an African American or treated as an Hispanic.

Q. And your models allow you to isolate the effect of any one variable in that manner, correct?

A. Correct.

Q. And so that's how -- that's -- you're describing there your -- the one listed at the top, your transformational analysis?

A. That's right.

Q. Can you describe for us how your analysis works involving the average marginal effect?

A. Yes. So what the average marginal effect is going to do is now we're going to be looking at the full set of minority applicants. We want to say, if they were instead treated as white applicants, what would happen to their probabilities of admission.

So what we're going to do there is take the model, get their predicted admissions probabilities with and without the bump you get for race. Then when we look at the difference there, that gives you the marginal effect for each underrepresented minority applicant. And we can average those, and that gives you, you know, the average marginal effect.

Q. So that's the average marginal effect analysis.

Now can you give us a description of the third method you have on there, this -- what says "Admitted URMs Analysis"?

A. That's right. So here what we're doing is we say we know that this set of underrepresented minorities was admitted to UNC, and that tells you some information about those applicants because they had to be good enough to get in, given how UNC values particular characteristics. So we know that they've been admitted under a regime with racial preferences.

So now let's take those racial preferences away. What's the probability they would be admitted now. These are the people who would have actually benefited from racial preferences. I mean, if you were an African American reject, you may have gotten a bump, but it wasn't enough to get you in. This is the one where we're talking about people who were actually admitted and saying, well, how would that change if they were instead treated as whites.

Q. Let's look at the fourth one there, capacity constraints analysis. Can you give us a basic description of what that analysis involves?

JA466

A. Yes. So the fourth analysis is fundamentally different from the first three in the following way: With the first three, you're talking about an effect for a particular applicant. You may be averaging it across all applicants, but we're looking at it from the perspective of an individual applicant. If you actually got rid of racial preferences, now some of those students that we said wouldn't get in, right, and that means that some spots get opened up. When we do capacity constraints analysis, we're holding the number of admits in the model fixed. So we're going to admit the same number of people, just remove racial preferences and then see how the composition of the class changes.

Q. So what you mean by that is you look at for a given year, for example, however many students UNC actually admitted, and you're going to use the model in your analysis to figure out, okay, what would end up happening across that whole class if you took away racial preferences?

A. Exactly.

Q. Thank you for those descriptions.

Let's -- having talked through at a high level what each one of those analyses involves, let's take a look at the results of your analysis.

So starting with the first one, that transformational analysis, did you prepare a slide discussing the methodology you used?

A. I did. And this is a slide that you know that I prepared the slide because there's a bunch of math on it here. But what we can do is we can consider someone

JA467

who had a particular chance of being admitted, and the way that works is there's always going to be some set of observables that we can use that would correspond to a particular probability of admission.

Now, the way this works is that logit analysis has a particular expression, a mathematical expression for what that probability of admission is, and that's this $\exp(A)$ over $1 + \exp(A)$. That gives you the probability of admission. "A" is the admission index that we've been talking about. This is sort of how we're ranking all of those applicants based on their observables. So there's a particular value of A that would give you a 25 percent chance of getting in. It turns out that that value of A, if you did the math here, would be a little over a negative one. So how do we get --

Q. Can I stop you there for a minute?

A. Yeah.

Q. So is this working sort of in the opposite direction that the model normally goes? Normally you have that index and it produces a probability of admission.

A. Yes.

Q. And now you're saying, "Okay, I can go the other way. The math allows me to go the opposite direction." Just like addition and subtraction are opposites and they undo each other, here you're saying, "I've got a percentage. I can work back to find the index."

A. That's right. And I can do this for any percentage just with the coefficients I've already shown you. So, you know, if you wanted to do it for somebody who had

JA468

a 1 percent chance of getting in, with the coefficients I've shown you, you could back it out and calculate that formula.

Q. So please continue with your explanation of the methodology.

A. So what A here represents is the admissions index associated with a 25 percent chance of being admitted. Now, what we can do is then give you the racial preference and see how your admissions probability would change.

So, for example, if we considered an in-state white male who is not first-generation college, we can just add to the admissions index the coefficients on African American from my preferred in-state model. I'm sure you all remember this, but that number was 3.542. Okay. We can add that to the A and recalculate what their probability of admission would be. So if you plug it into that formula, you'll get .92. And so that tells you that if you took that white male, not first-generation college applicant with a 25 percent chance of getting in and flipped on the racial preference for being African American, your new probability of admission would be 92 percent.

Q. Thank you for the explanation.

Did you prepare a slide that shows how this analysis worked out?

A. I did.

Q. So let's take a look here. At a high level, what is -- what do the data in this slide show us?

JA469

A. So we're going to be looking at particular applicants of particular probabilities of admission and saying what -- if we changed their race, how would that affect their probability of admission.

Q. So if we start with -- let's say we start with the second row, actually. So if we look at "Original Admit Probability" where it says 25 percent, if we just look at that 25 percent, is that the one you were just talking about when you walked through your methodology?

A. It is.

Q. And you explained how you used the formula to figure out the index, figure out the new probability of admission, and you said it was 92. And that's shown in the second column right there?

A. That's correct.

Q. Okay. And that's if you changed -- that hypothetical applicant you started with who was a white male, not first-generation college, whose chance of admission was 25 percent, and if you changed just race to African American, held all the other factors the same, then the probability of admission is 92 percent?

A. That's correct.

Q. What would happen with that same applicant if you switched his race to Hispanic?

A. Then it would be almost 71 percent.

Q. Let's go up a row then, and there -- what's the applicant you're starting with?

JA470

A. Now we're starting with someone who has a 10 percent chance of admission. And here we can see that if we gave this applicant the bump associated with being African American, it would go up to 79 percent; and if we did it for Hispanic, it would go up to almost 45 percent.

Q. And now, you carried out this analysis with different factors, different characteristics of the original applicant, right?

A. That's right.

Q. Because, as we've seen, you showed various coefficients before that show that there are differences between first-generation college and not first-generation college, for example, differences between male and female, correct?

A. Correct.

Q. Okay. So let's go down to where it says white, female, not first-generation college. Can you tell us what the data in your table show there?

A. Yes. So this is for white, female, not first-generation college who has a 10 percent chance of admission -- characteristics that would give them a 10 percent chance of admission based on their observables and says that they would have a 70.6 percent chance of admission if they were instead treated as African American.

Now, that 70.6 percent chance is less than the 79.3 in the first row, and that's reflected in what I was saying when I was describing the coefficients, that

JA471

African American females get less of a bump than African American males in state.

Q. And then what do we see when we go over one more column?

A. Well, then the bump is 40.86 percent.

Q. And that's --

A. The bump -- I want to clarify that. It's not the bump. That's their admissions probability if they were treated as Hispanic. The bump would be the gap between the two, which would be 30 percent.

Q. Thank you.

Let's continue on down another row. So now we have a white, female, not first-generation college applicant with a 25 percent chance of admission. What happens to her admission probability if she's then treated -- or her race is changed to African American?

A. So it goes up to 87.8 percent; and if we change it to Hispanic, it would go up to 67 -- basically 67 1/2 percent. And, again, the numbers are slightly lower for the reasons we already discussed.

Q. Thank you.

Let's move down once more: White, male, first-generation college. So this is like the first row, except instead of not first-generation college, it's a first-generation college applicant --

A. That's right.

JA472

Q. -- their chance of admission. What happens if that applicant changes race to African American but holds everything else the same?

A. So if we start off with 10 percent, it goes up to 57.9 percent. That's a substantial increase when we're talking about over 47 percentage points. But it's also significantly smaller than for not first-generation college, and that reflects the peculiar way that racial preferences operate, not just at UNC but at other places as well, of getting bigger bumps for those who are -- bigger racial bumps for those who are not disadvantaged.

Q. And if we look all the way to the column on the right, the third cell there, if that white, male, first-generation college applicant with a 10 percent chance of admission was then race switched to Hispanic, everything else is kept the same, the probability of admission then is what?

A. Over 35 percent.

Q. Let's go down one more. Can you tell us about this row?

A. So now our base is 25 percent. For changing to African American, it would be over 80 percent. Treating it as Hispanic, it would be over 62 percent.

Q. Let's look at the last set. This is for white, female, first-generation college applicant with a 10 percent chance of admission. What happens if her race is changed?

A. So now we're moving from 10 to 46, and that's in contrast because, again, African American women don't get as big of a bump as African American men. African

American first-generation college students don't get as big a racial bump as non-first-generation college. So that's why for all the 10 percent numbers, for African American that number is going to be the smallest at 46 percent, which is still a 36-percentage-point increase. And then for -- if we treated it as Hispanic, it's 31.8 percent.

Q. And then let's look at the last row. Starting from a white, female, first-generation college applicant with a 25 percent chance of admission, what happens if everything else is kept constant but her race is changed?

A. It increases to 72 percent if she's treated as an African American and 58 percent if treated as an Hispanic.

Q. Did you do a similar transformational analysis for out-of-state applicants?

A. I did.

Q. And did you prepare a slide showing the results of your analysis there?

A. I did.

Q. So let's look -- since we started the last time with a white, male applicant who is not first-generation college at a 25 percent probability of admission, let's start there again, that second row. Can you -- can you tell us what happens there if his race is changed to African American or Hispanic?

A. Well, now it's going up to above 99 percent. So virtual certain admit if they're African American. And then for Hispanic, it's 87 percent.

Q. And if we look above the first row, if we start from a white, male, not first-generation college applicant whose admission probability is 10 percent, what happens to his chances of admission if his race is changed and everything else remains constant?

A. Well, it's not much lower than it was at 25 percent because you're already now in the tails of the distribution, right. So it's still -- at 10 percent, that's the base, it would go up to 98 percent out of state. The out-of-state preferences are simply enormous.

Q. And what is the result if that applicant has his race changed to Hispanic?

A. It goes up to 69 percent.

Q. Let's look down further, and we'll see if we see the same type of patterns. If you start from a white, male, not first-generation college applicant -- I'm sorry -- white, female, not first-generation college applicant with 10 percent chance of admission, what happens to her chances of admission if her race is changed and everything else is kept constant?

A. Here you don't see much difference because we don't see a differential treatment for black females out of state. So the number is pretty much identical to what it was for males at 98 percent; and for Hispanics, it's 76 percent.

Q. If we go down to white, female, not first-generation college with a 25 percent chance of admission, what happens there?

JA475

A. It goes up by just a little bit because there's not that much room for it to increase to over 99.4 percent; and then for Hispanic, it's above 90 percent.

Q. Keep going down: White, male, FGC, so first-generation college applicant, with a 10 percent chance of admission. These are a little bit lower, right?

A. That's right. This is, again, because you're not -- black applicants are not getting the full first-generation college bump. So now that 10 percent initial admit probability goes up to 93 percent, still a dramatic swing of, you know, 83 percentage points; and for Hispanics, it goes up to 45 percent. The fact that the Hispanic numbers -- I haven't been highlighting that, but Hispanics don't get as big of a first-generation college bump either, particularly out of state, though it's not as stark as it is for African Americans.

Q. Let's go down to the 25 percent row, and we see, I think, a similar pattern to what you just mentioned in the row above that?

A. Yes.

Q. A little bit lower than they are up top?

A. That's right. So there's so much compression at the top there that you're not going to see big differences there once you get above 96 percent or something like that. So it's a 97.6 percent chance of admission if they were treated as African American and 71 percent if treated as Hispanic.

Q. Going down a little further, white, female applicant is not -- I'm sorry. White, female applicant who is

JA476

first-generation college and 10 percent chance of admission, everything else is held the same and her race is changed, what happens to her admissions probabilities?

A. Again, gender doesn't matter for this one for African Americans. It's 93.7. That's a lot different than it was for whites. For Hispanics, it's slightly different at 54 --54 percent.

Q. Down one more: White, female, first-generation college applicant with a 25 percent chance of admission, what happens to her if her race is changed?

A. Almost 98 percent, 97.8 percent; and then for Hispanic, it's 78 percent.

Q. Looking back on that analysis overall, what's the upshot there? What's the takeaway?

A. Well, the upshot is that, you know, these are very large preferences. So, you know, if you're somebody who, you know, had some particular chance of admission, you know, like 10 percent, you're going to see those go up quite a bit.

Now, there are caveats to that, the caveats being, you know, the model predicts really well, and so what that means is we might not have a ton of people at those particular points, and that's really what motivates the next analysis.

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JA477

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA**

Case No. 1:14CV954

[November 10, 2020]

STUDENTS FOR FAIR ADMISSIONS, INC.,)
)
Plaintiff,)
)
vs.)
)
UNIVERSITY OF NORTH CAROLINA, et al.,)
)
Defendants.)

**Volume 2
Pages 226-386**

**EXPEDITED TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LORETTA C. BIGGS
UNITED STATES DISTRICT JUDGE**

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JA478

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* * *

ARCIDIACONO – DIRECT

[pp. 229:24-248:7]

Q. Yesterday when we broke for the day, you had just completed discussing your transformational analysis, correct?

A. Correct.

JA479

Q. Let's turn to the second method of calculating the effect of racial preferences that you identified yesterday.

Did you prepare a slide showing your methodology for your average marginal effect analysis?

A. I did.

Q. What do you illustrate in this slide?

A. So this basically takes all the components we've been talking about before, all your characteristics -- race, your scores on UNC's ratings, test scores -- and combines that into the admissions index that we've been talking about before, and that's going to give you a probability of admission. Probability of admission with race is actually just the status quo. That's going to sort of match the averages in the data.

And then we're going to turn off the effects of race and calculate your probability of admission without race, and then we're going to look at that. The difference between those two gives you the marginal effect of race. So then we can do that -- average that across, say, all African Americans, and that would give you the average marginal effect.

Q. Thank you.

What is it that the average marginal effect of racial preferences have shown us?

A. They're showing us how admissions probabilities would change for all African Americans who applied.

JA480

Q. Is the average marginal effect a metric that economists commonly use to quantify the effect of a variable on an outcome?

A. So it's certainly common in the case of models like this, where you're doing a logit model where the outcome is discrete. It's probably the standard way of doing it.

Q. And did you prepare a slide showing the results of this analysis?

A. I did.

Q. What does your slide show?

A. So this shows the average marginal effects. It also shows your admission probability with racial preferences. That's the status quo, what your admissions probability without racial preferences would be. That's turning off the effects of race. And then the difference between the two is what is the marginal effect of race.

Q. Let's look at the first panel of this slide. That's in-state applicants, correct?

A. Correct.

Q. And what does that -- what does the first column show there?

A. That's the status quo, so with racial preferences in place. So that 30.5 percent, that was the admit rate that we saw for African Americans, and the 41 percent was the admit rate for Hispanics in state.

JA481

Q. And then if we move over one column, what did the data show on the second column?

A. Well, that shows how the average admit probability would change once racial preferences are removed. So now the number falls for African Americans to 17.8 percent and for Hispanics to 31.2 percent.

Q. And then if we move to the third column, what did the data show there?

A. This is the marginal effect of race, and that's just the difference between the two. This is how much race is explaining of admissions probabilities.

Q. Let's take a look at the second panel of the slide. This is now out-of-state applicants, correct?

A. That's correct.

Q. And what do the data in the first column show there?

A. Well, this is the status quo because now we're in an environment with racial preferences. So this is just matching the admit rate we see in the data. So my model exactly matches that admit rate for African Americans and for Hispanics. So that's 17.1 percent. For Hispanics, it's 20.3 percent.

Q. And then when we move over one column, what did the data show there?

A. Well, this shows what the admit probabilities would be without racial preferences, and you can see that it's very stark. So for African Americans, it falls to 1.5 percent; and for Hispanics, it falls to 6 percent.

JA482

Q. If we move over once more again to the third column, what did the data there reveal?

A. That's just the difference between the first two columns. So that's the 17.1 minus the 1.5, and that's how you get the 15.6.

Q. Now, does it make a difference here in the out of state -- with regard to out-of-state applicants that the base number is so low there?

A. Yes. So if you look at that average marginal effect of race, it's a little bit higher out of state than in state, but it explains virtually, you know, like over 90 percent of out-of-state admissions where it explains a much smaller share of in-state admissions.

Q. Did you prepare a slide illustrating this effect?

A. I did.

Q. So can you tell us what you show in this slide?

A. So this is a marginal effect of race/ethnicity on the probability of admission just looking at in-state applicants.

Q. And starting on the left, the in-state African American applicants, what does the bar chart show?

A. So the second column just illustrates the 30.5 percent. That's the status quo, the probability of -- average probability of admission for African Americans in the in-state example. The first bar shows what would happen if we took racial preferences away. Now the probability is 17.8 percent, and then the 12.7 percent number is the difference between the 30.5 and

JA483

the 17.8. And that roughly accounts for 41.7 percent of in-state African American admissions.

Q. Let's move over, then, to the bar chart to the right for Hispanic applicants. And, again, this is in state, correct?

A. That's correct.

Q. What does the bar chart show there?

A. So with racial preferences, that's the status quo, 41 percent admit rate. The bar for Hispanics with no racial preferences -- that's where we take away the bump the Hispanics receive -- lowers the admissions probability to 31 percent. The difference is 9.7 percent, and that accounts for roughly 23.8 percent of Hispanic admits.

Q. Did you prepare a slide showing similar analysis for out-of-state applicants?

A. I did.

Q. Let's move on to that.

MR. MCCARTHY: If you could go to 39. This is 39? Sorry. Yep. Thanks. Sorry for the confusion.

Q. (By Mr. McCarthy) What does the slide show for out-of-state African American applicants?

A. So it shows a marginal effect of race on the probability of admissions. It's basically the same slide that we had for in state, now for out of state.

So if we look for African Americans in the first panel -- first panel, second column, the 17.1 percent

corresponds to the actual admit rate for African Americans out of state, and that's an environment where racial preferences are in place. The first column without racial preferences turns off those racial bumps, and now the average admit rate would be 1.5 percent. So that accounts -- the marginal effect of race is then the difference between those two, 15.6 percent, and that accounts for over 90 percent of African American admits.

Q. If we move over to the right, the bar chart for Hispanic applicants, what does that show?

A. Same thing for Hispanics. We see that the status quo is 20.3. If we take away racial preferences, you're down to 6 percent. The difference between the two is 14.2 percent. So it's accounting for 70 percent.

Q. What then does this analysis tell you about UNC's racial preferences?

A. That the racial preferences are extraordinarily high, especially for out-of-state applicants.

Q. Did you do a similar average marginal effect analysis with Professor Hoxby's preferred model?

A. I did.

Q. And did you prepare a slide showing that analysis?

A. I did.

Q. What's depicted in this slide?

A. This is the average marginal effect of racial preferences for Professor Hoxby's Additive Model 9.

JA485

She has two different versions. This is the one that she pays the most attention to.

Q. And before we talk about the data, I should note here that there are not separate analyses for in-state and out-of-state applicants, correct?

A. That's correct. She's working with a slightly broader data set because she's including some of the people that I cut from my analysis.

Q. Does that miss out on some of the full picture of UNC's racial preferences?

A. Well, yes, because the out-of-state preferences work so differently from the in-state preferences.

Q. Let's look at the slide. What did the data show in the first column?

A. The first column show the actual admit rate for out of state and in state combined. So this is 24.3 percent for African Americans, 27.9 percent for Hispanics.

I should also say one thing more about Hoxby's -- Professor Hoxby's preferred model here. It doesn't have UNC's ratings in the model. So, in my view, this is going to be underestimates of how largely effective racial preferences are.

Q. Thank you for the clarification.

Let's move over to the second column. Can you tell us what the data show there?

A. The second column shows that, according to Professor Hoxby's model, if we turned off the effects of racial preferences, what would the average admit

probability be for African Americans and Hispanics. And so for African Americans, it falls to 11.7 percent; and for Hispanics, it's 16.6 percent.

Q. And moving over to the third column, what do the data show there?

A. It's the difference between those two columns. So 24.3 minus 11.7 gives you the average marginal effect, which is going to be 12.6 percent for African Americans and 11.2 percent for Hispanics.

Q. What is the takeaway from your average marginal effect analysis on Professor Hoxby's preferred model?

A. That even in Professor Hoxby's preferred model the racial preferences are quite large.

Q. So now we've gone through your second mode of analysis in terms of quantifying the effect of racial preferences, correct?

A. Correct.

Q. So we're going to turn to the third way you mentioned for calculating the effect on racial preferences. Did you prepare a slide showing your methodology for determining the effect of racial preferences on admitted URMs?

A. I did.

Q. And can you explain that methodology for us?

A. I'll give it a shot. So the goal here is to determine the probability that an underrepresented minority who is admitted to UNC when racial preferences were in place would still have been admitted if they had been

JA487

treated as a white applicant. And so the idea here is that you know something else about the person if they've actually been admitted, if there's something about their unobservables that push them over the edge.

Now, what's nice about the setup of these models is that you can find the probability that you would be admitted without preferences given that you were actually admitted with racial preferences, and that turns out to follow right out of what's called Bayes' Rule.

And what Bayes' Rule says is that effectively the equation -- what's written on the left, that's a conditional probability. This is conditional on being admitted with racial preferences. What's the probability having been admitted without racial preferences? And what Bayes' Rule allows you to do is to break that up into a couple of pieces.

So what's up -- we look at that first equation there. What's in the numerator is what's called the joint probability. That's the probability that you would have been admitted both with racial preferences and without racial preferences. And the denominator, it's just the probability of being admitted with preferences.

The nice thing here is that we actually know something about that numerator because if you were admitted without racial preferences, you surely would have been admitted with racial preferences. If you were going to clear the threshold without the bump, you'd clear it with the bump. And so that means that the

JA488

numerator just becomes the probability of being admitted without racial preferences.

And that -- both the things in the numerator and denominator are things that my model predicts. That's effectively what went into some of that marginal effect calculation: The probability of being admitted with racial preferences, the probability of being admitted without racial preferences.

So from here we can actually get for each individual underrepresented minorities admitted what their probability of being admitted would be if we took away those preferences.

Q. And so your starting point here, then, is it an applicant who was actually admitted? Correct?

A. Yes. So their probability of admission is a hundred percent, and now we're thinking about how that would change if we took those preferences away. What's the -- what would change if we took those racial preferences away. So we know that they cleared the threshold for admission when racial preferences were in place; and now if we take away that, what's the probability that they would still clear that threshold.

Q. Did you prepare a slide showing the results of this analysis?

A. I did.

Q. And at a high level, what did the data in this slide show?

A. So this shows the effect of racial preferences on admitted underrepresented minorities. So when we

JA489

look at that first row, the first row shows the average admit probability for previous admits. So you're starting with a hundred percent and saying, "Okay. Well, according to the model, what would their probability be if we took away those preferences?" Well, on average now for African Americans, it would be 57.8 percent.

Q. So does that mean that they drop from a hundred percent admission to 57.8 percent chance of admission?

A. On average, yes. We're averaging across all admitted in-state African Americans there.

Q. Thank you for that clarification.

So then what is the number below that in the first column where it says "Share with greater than 50 percent drop" on the left and then 42.7 percent African Americans in state?

A. So what that's showing is how many -- we start off with a hundred percent, so that was your for-sure admit. This is the share of admitted African American in-state students who would have seen their probability of admission fall from that hundred percent to something less than 50 percent. So we have a certain admit. Now what fraction would be more likely -- more likely than not be rejected, and that's the 42.7 percent.

Q. If we move over to the second column, this is now Hispanic applicants in state, correct?

A. Correct.

Q. What did the data reveal there?

JA490

A. So here racial preferences are not as strong for Hispanics in state, so the numbers are higher. We're starting off again with a hundred percent, and if we take away the racial preferences, 75.8 percent would be the average admit probability for those who were admitted when racial preferences were in place.

Q. And then when we look down that column?

A. So this says almost 22 percent would have moved from a certain admit to now without racial preferences more likely than not being rejected.

Q. Let's look at the set for out-of-state applicants, the third column there for African American applicants. What does that show us?

A. Well, here's where the numbers are most stark, and what it shows is that the average admit probability for previous African Americans falls from a hundred percent when racial preferences are in place to 8.7 percent. And then in the second row, almost 95 percent would move from, you know, certain admission to now more likely than not rejections.

Q. Let's move to the last column, the fourth one over there for Hispanic out-of-state applicants. What does the data reveal there?

A. So these are not as striking as what we saw for African Americans, but still much larger than what we are seeing for the in-state applicants. So for Hispanics, we're moving from a hundred percent now to 29.2 percent. The average admit probability for Hispanics that were admitted under racial preferences, their average probability of being admitted if we took those

racial preferences away would be 29.2 percent. And 78.4 percent would move from people who were admitted with racial preferences to now more likely than not would be rejected.

Q. What, then, do you conclude from this analysis about UNC's racial preferences?

A. Well, it's just another way of illustrating, you know, just how large those racial preferences are, particularly when we're looking out of state. I mean, it's hard to describe those out of state, you know, from an economist's perspective, you know, not a legal perspective as narrowly tailored.

MR. FITZGERALD: Objection to offering testimony about the legal standards.

MR. MCCARTHY: That's fine, Your Honor.

THE COURT: Sustained.

Q. (By Mr. McCarthy) Let's look at your fourth mode of analysis here, and that one is capacity constraints analysis. So do you --

A. Yes, this one is a little different from the other three. So for the first three analyses, we're really talking about changing particular individuals' race or removing preferences for particular individuals and seeing what would happen. When we talk about capacity constraints analysis, if we actually remove those racial preferences for one group, less students would be admitted if we don't do anything else.

And so what the capacity constraints does is it adjusts so that we're going to hold the number of people

admitted fixed. So now it's like, okay, if we really did get rid of racial preferences, that's not going to lower the admit probabilities quite as far as what we've seen here because a few more spots are now going to open up at UNC once we take those preferences away. So what the capacity constraints analysis does is it's going to fill those seats.

Q. Did you prepare a slide to explain this methodology?

A. I did.

Q. And I think you've already explained some of this, but can you make sure we understand your methodology?

A. Yes. So without racial preferences, you would see the probabilities of African Americans and Hispanics go down, so fewer spots are filled. So accordingly, we're going to want to adjust each applicant's probability of admission up so that we reach the same number of admitted applicants as what we see in the data.

And this works out quite nicely with these models because these models basically are threshold models. You have to clear a threshold in order to be admitted. If more spots are opening up, then the threshold we have to clear is just a little bit lower, and so we can just adjust the threshold on this admissions index, and that's going to give you the new probabilities of being admitted. We adjust that threshold to the exact point where the number of admits is going to line up with what we see in the data.

Q. To match what actually happened in terms of the admissions at UNC?

JA493

A. Exactly.

Q. Did you prepare a slide showing the results of this analysis?

A. I did.

Q. And at a high level, what is shown in this slide?

A. So this is going to show the change in the number of in-state students by race when we remove racial preferences.

Q. What's in the first row?

A. So the first row is really the status quo. So that's the number of admits from our in-state data for whites, for Asian Americans, African Americans, and Hispanics. So it shows roughly 18,000 -- a little over 18,800 white admits.

Q. And then what do you show there in the second row?

A. In the second row, we've now adjusted to take into account -- we turn off all the racial preferences, and then we adjust the threshold for admission such that the number of admits is the same as what we had in the status quo.

Now, if you added up all those numbers across those four columns, you wouldn't get exactly the same number, and the reason is we've got a couple of groups that are not on this table because the numbers are just smaller. So, for example, Native Americans and Pacific Islanders aren't on here and neither are people who are

JA494

missing their race. But those are smaller groups. Just showing the four main categories.

Q. And then what's shown in the third row?

A. The third row is the difference between the two.

I should also mention this is over the entire six-year period, okay. So if you were talking about a particular admission cycle, you'd want to divide that by six.

So what it shows here is for whites the number of admits increases to over -- by over a thousand. For Asian Americans, it increases by almost 150. And that's balanced off mostly by drops for African Americans of about 840 and Hispanics of 258.

Q. Did you do a similar analysis for out-of-state applicants?

A. I did.

Q. And did you prepare a slide showing the results there?

A. I did.

Q. What does this slide show?

A. Well, this slide shows the same thing that was on the previous slide except now for out-of-state applicants. So the first row is, again, the status quo, the number of admits by race, our out-of-state example; and in the second row, we're taking away the racial preferences and adjusting for capacity constraints so that the total number of admits is exactly the same. In the final row, we're looking at the difference between the two, and that difference gives you, you know, how

JA495

-- over the six-year period how many admits of different races there would be relative to the status quo.

Q. So what are the numbers in that third row?

A. Well, the numbers are going to be a lot larger here because the racial preferences out of state are much larger. So for whites, it's increasing by almost -- by over 1,900 admits; for Asian Americans, like 5 -- over 560 admits. For African Americans, you see a drop of almost 1,400 admits; and for Hispanics, a drop of, you know, 1,800 admits.

Q. I think you misread the last one. What's the last one?

A. Oh, sorry. 1,080. That's --

Q. Thank you.

And, again, I think you may have said this, but just to be clear, this is over the six-year period, correct?

A. Over the six-year period. So for a particular admission cycle, you would want to divide that by six.

Q. Did you compute the total number of admissions affected by racial preferences between the out of state and in state together?

A. I did.

Q. Did you prepare a slide on that?

A. I did.

Q. And what does this slide show?

JA496

A. Well, this shows the change in the number of students overall. So we're basically taking the differences that we had on the previous two slides and then adding them together.

So in the first row, we've got the change for in state. For in state, we saw an increase of 1,024 for whites; and then for out of state, we saw 1,924. So that puts it at 2,948 total.

And to be clear, the way we're doing these capacity constraints, we're holding the number of in-state admits fixed and the number of out-of-state admits fixed when we do all these calculations.

Q. Thank you.

And can you tell me the final numbers there in the third row for the other races?

A. So for Asian Americans, the total increase would be 709 over the six-year period. For African Americans, it would be a drop of 2,239; and for Hispanics, it would be a drop of 1,341.

Q. Thank you.

We've just now walked through four different kinds of analyses that you've done regarding the effect of UNC's racial preferences on admissions, correct?

A. Correct.

Q. What is the overall takeaway from those four different statistical analyses?

A. Racial preferences are quite large, especially for out-of-state applicants, and would have a substantial

JA497

effect -- removing them would have a substantial effect on the racial distribution of the class.

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ARCIDIACONO – CROSS BY MR. FITZGERALD

[pp. 299-300]

ensure that the admissions rate for African Americans tracked the overall admissions rate?

A. No, I -- but it is true for single-race African Americans over a particular period of time.

Q. And you asserted that Harvard manipulated the admissions process for that group with 99.8 percent confidence?

A. Yes.

Q. And to be clear for the record, I'm not agreeing with that assertion in this case, just restating what you asserted in the Harvard matter, correct? Understood?

A. That's correct.

Q. Can we agree that in this case you make no assertion that UNC engaged in such manipulation and racial balancing, correct?

A. That's correct.

Q. And, in particular, you are not offering any testimony in this case that UNC used the weightless process to affect racial balancing, correct?

A. Correct.

JA498

Q. And yesterday you testified about measures of academic strength. And I'll try to give you topic sentences as I change topics, but forgive me when I don't.

When you testified about measures of academic strength, can we agree that you are not offering expert testimony in this case about the proper metrics that should be used to measure academic preparedness? Correct?

A. Correct.

Q. And you agree that you are not offering testimony in this case about the proper metrics that should be used to measure academic excellence, correct?

A. Correct.

Q. And we can agree -- and you're not offering testimony about how UNC should evaluate the quality of its admitted students with respect to its overall admission, correct?

A. I'm sorry. Can you repeat the question?

Q. Yeah. I'll try to put it in English this time, so I apologize.

You are not offering testimony here today about how UNC should evaluate the quality of its admitted students, correct?

A. Correct.

Q. Now, approximately how many hours, ballpark, have you worked on this matter to date?

A. A thousand.

Q. And part of your work was to review the allegations in the complaint, particularly Count I, correct?

A. Correct.

Q. And the complaint in Count I implies that the school group review process may have been a pretext to engage in improper racial balancing, correct?

A. I'd have to review the complaint.

Q. Let me ask you this: You testified yesterday that you are

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[p. 302]

issue, in your reports and your deposition and your testimony you are offering no opinion here as to whether or not school group review was the mechanism used by UNC to allegedly insert racial preferences into admissions, correct?

A. Correct.

Q. Now, I'm going to change topics to economic modeling for a moment. I'd like to talk about the process of building and using an economic -- econometric model in the abstract before we talk about this case.

Can we agree that the idea of econometrics is to use empirical data to test the theories of how things work?

A. Yes.

JA500

Q. And you want to test things rather than assume them, correct?

A. Correct.

Q. And, first, an economist frames the question to be answered, correct?

A. Correct.

Q. So if someone said, What will happen if we tax gasoline? Will people drive less and how much; that's the question hypothetically you would frame, correct?

A. Correct.

Q. The second thing one does is to gather empirical data, correct?

A. Correct.

* * *

[pp. 308-309]

If we're talking about the last person admitted and -- the last two people admitted, one of them is stronger on test scores than the other one, then I would agree that the other one is probably stronger on the unobserved parts. But we've seen that that's not true overall.

So if you take those ten bikers and they finish in that way, the ones with the five nice bikes, maybe they finished fastest in part because of the bike, but also because they were stronger bikers.

JA501

Q. So let me just change my hypothetical. The ten bikers finish in a dead heat. Do you agree with me that the five with the old, clunky bikes are much more likely to have a higher biking ability? Correct?

A. In that case, yes.

Q. And their unobserved ability ran counter to the observables, correct?

A. In that example, yes.

Q. Now, sir, the nature of the unobservable factors themselves will determine whether they run in the same direction or a different direction as the observables, correct?

A. I don't think there's much content to that statement. I mean, the unobservables can run counter to the observables. It's possible and it's -- so by definition, then, I suppose there are going to be some things that would operate that way.

Q. So the answer to my question would be yes?

A. Yes.

Q. Thank you.

Now, would you agree that there are unobservables in UNC's admission process, correct?

A. Yes.

Q. Significant ones, correct?

A. Not that significant, considering how accurate the models are.

JA502

Q. Did you agree with me at deposition that with regard to some of the observables that unobservables do play a role in UNC's admission process?

A. Oh, I definitely agree with that.

Q. And in some examples, the unobservables are incredibly strong, correct?

A. Well, they're -- yes, there will always be some that are incredibly strong in the unobservables.

Q. And some of what was unobservable to you was, in fact, observable to the UNC admissions officers, correct?

A. Correct.

Q. And that would include things about the applicants such as letters of recommendation, correct?

A. Correct.

Q. And those would be read by the admissions officers before they make the decision, correct?

A. Correct.

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[p. 312]

If we can now go to page 21. And I don't know if the quality of your screen is very good, but does it say there that "law schools have access to information about students that are unobservable to researchers and that also are likely to affect student outcomes"? Do you see that?

A. Yeah.

Q. And is that part of your working paper?

A. Yes.

Q. And it indicates here that those students who are similar in terms of observables, but who go to law schools of differing quality, likely also differ in terms of these unobservable factors. Do you see that?

A. Yeah. I totally agree with the whole statement.

Q. And the students attending more elite law schools have higher unobserved ability. Do you see that?

A. Yeah.

Q. And in that factual -- in that situation, when the observables ran in the opposite direction, you assume that the reason some folks got into better schools were the unobserved qualities of the applicant, correct?

A. So what we're talking about here is two people who had the same LSAT scores, one who went to a better school than the other; and it's likely that, given the same LSAT scores, that person who went to the better school was stronger on the unobservable. That I will agree with.

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[pp. 314-318]

underestimates because we typically think that observables and unobservables run in the same direction. So that means I'm underestimating. If I actually put in that where we had the unobservables be

JA504

there, then my numbers would be higher. For the purposes of my model --

Q. Sir, my question to you is: Did you say that in your report? If Mr. McCarthy wants to ask you on redirect why, that's fine.

But I'm just asking you: Did you state in your report that you assumed observables and unobservables run in the same direction?

A. I have to clarify the question, though, because when I estimate the model, that's not what I'm doing.

Q. I'm asking you whether you wrote in your report -- I'll get to your models --

A. Yes, I wrote it in the report. Sorry.

Q. Now I want to talk to you about a model's accuracy of predicting an outcome.

You gave a lot of testimony yesterday and today about your model's accuracy predicting outcome, correct?

A. Correct.

Q. Now, would you agree with me that a model's accuracy in predicting an outcome does not indicate that that model accurately measures the coefficient? Yes or no?

A. Can -- it's possible that it doesn't accurately measure the coefficient, yes.

Q. Let me give you a hypothetical. This is not UNC. There is a school that admits a thousand students a

JA505

year. Let's assume that hypothetical. And during the process, as they make near final decisions, they have to sort of true-up the size of the class. They don't want too few. They don't want too many. Understand?

A. Yes.

Q. And if there's a model in the process weighing whatever is important for that school -- SAT, GPA, ZIP code, whatever it is -- they produce a model, and at the end they right-size it. And if they have 1,100 admits and they want 1,000 admits, they'll just do a random lottery and throw 10 percent out.

Do you understand that?

A. Okay.

Q. If you took their provisional decisions and bake that into the model and have the model predict the likelihood of someone getting in, including the tentative decision, the model would be very accurate, correct?

A. That's correct.

Q. But it wouldn't measure the coefficient of ZIP code, race or SAT score very well, correct?

A. In the example that you gave, yes.

Q. Thank you.

I have one question on overfitting. I think we agree on this, but just to be clear, do you agree with me that your Model 7 is overfit?

A. Yes.

JA506

Q. I'd like to talk to you about the academic index. You testified about your academic index, which is part of your decile analysis, correct?

A. Correct.

Q. And the academic index is a weighted average of SAT scores and GPA, correct?

A. Correct.

Q. And you testified in this case and the case brought against Harvard by the same plaintiff, correct?

A. Yes.

Q. And in that case, you also used an academic index, correct?

A. Correct.

Q. But Harvard actually calculates an academic index, however it uses it -- but Harvard calculates an academic index because it's part of the Ivy League, correct?

A. Correct.

Q. And to be clear, UNC is not in the Ivy League, correct?

A. Correct.

Q. And UNC, as part of its admission process, does not calculate an academic index, correct?

A. That's correct.

JA507

Q. By the way, have you been involved in any way in the lawsuit involving Yale brought by the Department of Justice?

A. I have not, though I was flattered that they used the same analysis.

Q. Separate and apart from your statistical analysis, you described some narrative analysis, including decile analysis, correct? I think you used the word "descriptive."

A. Descriptive analysis, that's correct.

Q. You will agree with me that the decile analysis by itself is insufficient to show that the differences of admission rates are the result of racial preferences, correct?

A. Correct.

Q. Do you agree with me that UNC is a highly selective school?

A. I think it is highly selective out of state. I think in state it's not as selective, not as selective as out of state. Still selective.

Q. Do you still think UNC as a whole is a highly selective school?

A. If you combine out of state and in state, that's reasonable.

Q. And let me talk to you briefly about legacy preference.

JA508

Do you agree with me that the number of underrepresented minorities admitted to UNC is minimally affected by the legacy preference?

A. It does not have a big affect, yes.

Q. Let me talk to you about the admissions process.

Did you indicate yesterday that the UNC admissions process is holistic?

A. I did.

Q. And do you agree that that's a fair description?

A. It is.

Q. So any testimony you might offer about the process being formulaic or not is not intended to contradict the fact that the process itself is holistic, correct?

A. That's correct.

Q. When you say that the admissions process is formulaic, can we agree that you're not offering testimony that any admissions officer was specifically and intentionally following a formula?

A. I agree.

Q. And some of the charts -- I won't try to find them or describe them -- showing the various different formulas you used would be complete -- completely strange to an admissions officer who didn't sit in on this trial, correct?

A. That I don't know.

Q. You testified yesterday that you believed the admissions decision is guided by a formula. Do you recall that testimony?

A. It's guided by an implicit formula, yes.

Q. And just so we're clear, you are not saying that individual decision-makers are paying attention to that formula, correct?

A. They are paying attention to the components of that formula, and you could say however you want about how all those

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[p. 323]

coefficient go up a lot more if I used the zero -- I'm sorry -- "1" on the performance rating because you can see the other coefficients are negative there. So that's all about -- it's all about how those comparisons are relative to the baseline category.

Q. Can we agree with this: You can do things with models to make the coefficients go up and down? Correct?

A. It depends on the coefficients. You can't do that unless you did it in a really bizarre way with regard to race. Here on the performance measures, you always can choose -- you have to choose one group to normalize the coefficient to be zero.

Q. Now I'm going to turn to what the question is.

JA510

Would you agree with me that the question in this case for Count I is whether race is the dominant factor in the admissions process?

A. Whether race is --

Q. The dominant factor --

A. -- a dominant factor in the admissions process.

Q. The dominant factor in the admissions process.

A. No, it's a dominant factor in the admissions process.

Q. So your belief is the question is whether or not race is a dominant factor in the admissions process?

A. I mean, it's a dominant factor for many applicants, but so are other things as well.

Q. And you have not testified as to whether or not there are

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[pp. 325-329]

Professor Hoxby calculates this, she sets all the SAT scores to zero. That's not right, but I don't know how, you know --

Q. Did you make any effort to try to determine whether or not SATs and grades were a more important factor in the admissions process than race? A simple yes or no, please.

A. No.

JA511

Q. Now, let's discuss the difference in terminology between a dominant factor and a determinative factor.

Do the two words mean something different to you?

A. A little bit.

Q. Then for this purpose, I'm going to take dominant and predominant, and we'll use those interchangeably. Can we agree on that?

A. Sure.

Q. And would you agree that showing that something is the dominant factor is harder than showing it as a determinative factor?

A. Yes.

Q. And let me give you an example. Suppose there was a hypothetical school unlike UNC. Let's assume that the school was entirely one dimensional and focus on that. The school's admissions officers didn't care about verbal scores; they didn't care about athletics, leadership. If the applicant cured cancer, they don't really want to know. They just want the SAT score from them.

Now, let's assume that for that class all they cared about was the math score, and anyone who applied who got an 800 on the SAT math score is admitted, and let's assume that anyone who got a 780 or lower on the math score is denied.

Do you understand?

A. Yeah.

JA512

Q. And then, because they had more than enough seats after they let in all the folks with 800 scores, they turned to the people who scored 790, and they had 100 seats left and there were 200 applicants with a 790. Understood?

A. Yeah.

Q. And for those folks, they flipped a coin. They just said 800, you're in; 780 or below, you're out; and 790, you took the exam, you flipped the coin and heads, you're in. Understood?

A. Yep.

Q. For all the applicants with scores of 800, the SAT score was the dominant factor, correct?

A. Correct.

Q. It was also a determinative factor, correct?

A. Correct.

Q. And for all the folks who scored 780 or below, SAT was the dominant factor, correct?

A. Correct.

Q. And it was also a determinative factor, correct?

A. Correct.

Q. And for the folks who scored 790, the SAT would be the dominant factor, correct?

A. Yes.

Q. And the coin flip would be determinative, correct?

A. Correct.

Q. Sir, as I think we're both -- Professor, as I think we're both keenly aware, neither you nor I will determine what the law is in this case. Judge Biggs will decide that, of course. But I want to understand your state of mind as you prepared reports and gave your testimony.

Do you understand whether it makes a difference under the law whether a factor is dominant versus determinative for purposes of this case?

A. I do not.

Q. Do you recall how you --

A. Well, actually, I want to take that back because you can have very small racial preferences, and that would be determinative for, obviously, the person right on the margin, and then I would not say it was dominant. A dominant factor would be that it has to be a much larger group.

Q. So you would agree with me that the dominant factor test is a much harder test than a determinative factor test, correct?

A. Well, yeah, because any racial preferences would be determinative for some people.

Q. Now, do you recall how you framed the relevant question you were to address in your initial expert report in January 2018?

A. No, I don't.

JA514

Q. And can we pull up -- you started out with your first report saying the question that you were to address is whether race is a predominant factor in UNC's admissions process. That was your assignment as you described it in your first report, correct?

A. Correct.

Q. Do you recall how you described your assignment in your second report in April 2018?

A. No.

MR. FITZGERALD: And if we could pull up that report, the question here on page 4.

Q. (By Mr. Fitzgerald) You discussed dominant factor in April?

A. That's right.

Q. Can we turn to your June 2018, your final report, and how you framed your assignment? Did you change your standard in your final report to whether or not race was a determinative factor?

A. So to clarify, determinative for many would be dominant. Determinative -- you can be determinative without it being dominant, and this clearly says determinative for many African Americans and Hispanics. So that's just a word choice thing.

Q. Let's go back to the first one. Your January report -- if we could pull it up, PX117 -- asked whether -- "Is race a predominant factor in UNC's admissions process?" correct?

A. Correct.

JA515

Q. In your third report, “dominant” became “determinative” and “admissions process” became “decisions,” correct?

A. I’m using these -- “determinative” for many -- that’s the key -- because if it was small, it could be determinative without being dominant. In my mind, these are all words for saying the same thing.

Q. So let me ask you this: Do you agree with me that you changed from “dominant” to “determinative” in your third report? Correct?

A. I agree that I changed from “dominant” to “determinative” for many.

Q. And you agree with me you changed from “admissions process” to “many decisions” in your third report?

A. I see those things as being the same, but yes.

Q. Were you trying to change the standard as you went from report to report to report?

A. No, I was definitely not trying to change the standard.

Q. Now, you talked today about whether or not the important question is whether we assess decisions via a person who is an applicant versus the whole pool. Do you recall that?

A. Correct.

Q. You gave the example of the basketball recruit for whom the

[p. 331]

Q. I'm saying the entire admissions process is all the people who applied. You would agree with me if "the entire admissions process" means all the people who applied to be admitted or denied -- if you look at that process, you will agree with me that race is not the dominant factor in that process for UNC?

A. I can say that I agree, but I would have to clarify that of course it's not a dominant factor for white students, you know. So I don't know what that --

Q. I'm asking you across the whole process.

A. Like you said, across the whole process means people of all races and such.

Q. You agree with me --

A. And so it's a dominant factor for minority students in terms of their chances of admissions, but when we're talking about the whole process and we're including all the white applicants and everybody else, there's -- it's the analogy to the basketball. Basketball is not a dominant factor if we're going to define it in the way you are defining it. It would be impossible for it to be a dominant factor.

Q. So you will agree with me that across the whole process of admissions, considering all races, race is not the dominant factor?

A. Yes.

Q. Thank you.

Now, sir, in your rebuttal report, you did an analysis of

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[pp. 339-344]

allowed to answer the question as best he can.

THE COURT: And I agree with that. I think he ought to be allowed to answer the question, and if he needs to in some way elaborate on his answer -- sir, I'm going to ask you if you need to elaborate on your answer, just take your direction from me.

THE WITNESS: Okay. Thank you.

THE COURT: All right. Yes, sir.

MR. FITZGERALD: Thank you, Your Honor.

Q. (By Mr. Fitzgerald) Now, as I understand it, Professor Arcidiacono, when you created your model, you tried to model the process the admissions counselors followed, correct?

A. I tried to develop a model that approximates that process, yes.

Q. And one of the factors -- or lots of the factors that you try to capture in your model are the things that the admissions officers saw, correct?

A. Correct.

Q. So one thing that the admissions officers look at is SAT scores, correct?

A. Correct.

JA518

Q. Another thing that the admissions officers look at are ACT scores, correct?

A. Correct.

Q. Another thing the admissions officers look at is high school GPA, correct?

A. Correct.

Q. With regard to standardized tests -- let me just stop there and put before you Defense Exhibit 500.

MR. FITZGERALD: Or, actually, go to the other page.

Q. (By Mr. Fitzgerald) I realize this is not a proportional graph, but does this show the various things that might be available for a reader to look at, including missing fee waiver, that sort of stuff?

A. So there's an issue about how to think about those missing things. The question is do they see it and I just don't have it in the data, or do they not see it and have figured out another way of getting at it through the other channels. So that's -- I don't know the answer to that.

Q. Fair enough. So on things that they may or may not see, let's put that to the side. Your model wants to approximate what they actually see, correct?

A. Yes.

Q. And where you have it, if you saw a GPA, if it wasn't missing, you would but the actual GPA in to reflect what the admissions officer sees, correct?

JA519

A. That's correct.

Q. Now, some students take the SAT but not the ACT, correct?

A. Correct.

Q. And some students take the ACT but not the SAT, correct?

A. Correct.

Q. And, in fact, you understand that the North Carolina public school students are required to take the ACT in their junior year, correct?

A. Actually, I did not know that, but...

Q. And then some students take both the SAT and the ACT, correct?

A. Correct.

Q. And some students may take either test more than once, correct?

A. Correct.

Q. And if a student took the SAT twice, you understand that UNC would use the highest score for each component, correct?

A. It's been a while, so I don't really remember. But I would assume that's the case, yes.

Q. And do you understand that if an applicant only took the ACT, that UNC converted the ACT score into an SAT score, correct?

JA520

A. I'm actually not sure how they dealt with that.

Q. And you understand that you have an apples-to-oranges problem if an admissions offer is looking at one applicant whose score is an ACT and another applicant whose score is an SAT, correct?

A. Correct. And I think that's true also because of the different sections on those exams.

Q. And do you agree with me that the College Board, who I think produces the SAT, and the folks who produce the ACT publish a concordance table each year? Is that correct?

A. That's correct.

Q. What that would do -- and I'm making up these numbers; I'm not following a concordance table -- is they said that an SAT this year that results in a score of 32 will be treated like an SAT score of 1300, correct?

A. That's correct.

Q. So that an admissions officer would no longer have to look at a 32 and a 1300 and wonder how they compare. They would be looking at two 1300s once it's converted, correct?

A. Correct.

Q. And UNC followed that process of translating an ACT score to an SAT score without regard to race, correct?

A. That's correct.

Q. You did something different, didn't you, sir?

JA521

A. I did it both ways, but my preferred model I did it the -- a different way.

Q. And in your preferred model, you broke it down by component, correct?

A. That's correct.

Q. And you also broke it down by race, correct? You gave different credit to students based upon their ACT score depending on whether or not they were white, black, Hispanic or Native American, correct?

A. I predicted their ACT scores using lots of information, including race. So from that perspective, correct. But I also did other models where I did not do that, and it did not change my findings.

Q. So I'm going to ask you about what your preferred model did, and let me give you a hypothetical. Assume there are three applicants named Joe. One Joe happens to be white, one Joe happens to be Hispanic, and one Joe happens to be black, okay. Now assume that each of the three applicants go in and take the ACT test on the same day.

Understood?

A. Yeah.

Q. Now assume that each of the three Joes -- one white, one black, and one Hispanic -- answer all the questions identical. They each get the same right answers. They each get the same wrong answers.

Do you have that?

A. I do.

JA522

Q. And they end up with the exact same ACT score, correct?

A. Correct.

Q. In the UNC process of what admissions officers see, that admissions officer, if they were looking at a screen with applicant one, Joe who happens to be white; applicant two, Joe who happens to be black; applicant three, Joe who happens to be Hispanic, they would see the identical ACT score as converted, correct?

A. That's correct.

Q. Now, I'm going to ask you to look at DX311 on your screen, 311E. If you can take a look at that. I'll tell you the question while you are looking at it so you know what's coming.

Is this a printout of the log file generated when you run the code you used to clean the UNC applicant data? And if it helps, I think the code file is up at the top, UNCcleaner4N.log.

A. Well, I clearly didn't produce this log file. I would have to see more information to know whether it's an accurate representation of it, but I'm happy to proceed as though it was.

Q. Sure. And if need be, we brought a computer, and we could run you a log file for you -- it would take 10 minutes -- if you want to verify it. I will represent to you this is a printout of the log file that you produced to us.

A. Okay.

Q. And is this in part the code that does the conversion from ACT scores into SAT verbal and math scores that your model runs?

A. I can't tell because I can't see what else is on the screen. I'm not sure when we convert it -- converted it.

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[pp. 348-350]

weight all these different factors. So to the extent that African Americans are getting lower ACT scores, but that's a noisy measure, we're also including that in this regression. And that coefficient is attenuated, so the mapping is not as clear.

And that's why I actually do it both ways in my model, both using these imputations and I also used Professor Hoxby's way where we used the concordance table; and it really doesn't change my findings.

Q. I would like to focus my questions specifically on how you did it in your preferred model. Do you understand that?

A. Yes. And I'm saying it's more complicated than that because of the -- it doesn't mean it ends up disfavoring black students in here because the distribution of ACT scores is different for black students than white students.

Q. Let me frame this question, sir. In this hypothetical, there are two students named Joe, one white, one black. They got the identical score on the ACT test. When the white applicant in your model would get -- let's say 1300 is the SAT score. The black applicant

JA524

would have 8.1 points lower score given for his SAT verbal than a white applicant, correct?

A. That's correct.

Q. And then continuing down this list on the verbal score, when an Hispanic applicant scored exactly the same on the ACT score, when his score was converted to an SAT score --

A. Even then I want to take that back because I need -- you have to show me all the coefficients in the regression because I don't -- there may be other -- other variables in there as well, interactions and such. I don't know without seeing the rest.

Q. Let's cover this part, and then you can look to see for others. But for the SAT verbal, the Hispanic applicant would have 3.36 points deducted from his SAT score, correct, at that stage in the process?

A. All else equal, yes.

Q. And then for the Asian American applicant scoring exactly the same on the ACT test, he or she would have a minus 1 point -- would have 1.4 points deducted, correct?

A. Correct. This is on a 1600 point -- well, 800-point scale, yes.

Q. And then for an applicant who's identified here as American Indian, for scoring exactly the same on the ACT, that applicant would be given 5.6 points lower, correct?

A. Correct.

JA525

Q. And then for someone who was a Hawaiian or Pacific Islander heritage, for scoring exactly the same thing on the ACT, he or she would receive more than 24 points lower score in your model, correct?

A. Correct.

Q. Even though the admissions officer would see exactly the same score as he or she looked at it, correct?

A. The admissions officer would see all the components of the score.

Q. And the admissions officer would not see a score that had a penalty of minus 24 on the SAT verbal for being Hawaiian, correct?

A. The admissions officer would see all the ACT components of the score and then do with that information whatever they wanted to do.

Q. If you understood that the admissions officer was given a concordance table or concordance program that converted the ACT score into a number, let's call it 1300, you know, they would see 1300 for a white applicant, they would see 1300 for a Hawaiian applicant, but your model had 1300 for the white applicant and 1276 for the Hawaiian applicant, correct?

A. I don't think that's all they would see.

Q. They would see those numbers for the SAT score, correct?

A. And they would see what they got on the components of the score.

JA526

Q. But if they had converted apples to apples to an SAT score, the SAT score that would appear on the page the admissions officer --

A. I'm agreeing they see that score. I'm saying that they see more information than just that score.

Q. I recognize that. I'm asking you with regard to the SAT

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[pp. 357-363]

results across the different races.

Q. It will --

A. So that means that the method that I'm using is no more racially biased than the concordance table from that perspective.

Q. Is it your testimony that a concordance table that treats people equally by race is no different -- is no less -- no more advantageous than your model which takes points off for being black, Hispanic --

A. Because of the regression to the mean, yes.

Q. There's no regression to a mean about --

A. Yes, it is, because when I -- okay. I think we need to take a step back to say what I'm doing here.

What I'm doing here is I'm taking your SAT verbal score, and I'm regressing it on your ACT score, okay. There's going to be a coefficient that's on that SAT score -- on that ACT score. That coefficient is going to

JA527

be smaller than the coefficient you're going to get from that concordance table, and that's the regression to the mean.

Q. So, sir, let's put aside the merits of doing your own concordance by regression or adopting the one that the admissions officers actually use.

Let me start here. Let me go through these numbers. The number deducted for a black applicant who went through was minus 8.1, correct --

A. Correct.

Q. -- for SAT verbal?

For an Hispanic applicant for the same ACT score, the deduction is minus 3.36, correct?

A. That's correct.

Q. For an Asian American applicant on SAT verbal, the deduction is minus 1.4, correct?

A. That's correct.

Q. For the Hawaii/Pacific Islander, the deduction is minus 24.15, correct?

A. Correct.

Q. And, sir, I'm going to turn now to the math scores at page 87, 88. And there we see the deduction for the identical ACT score being converted to an SAT score for black is minus 13.5, correct?

A. Correct.

Q. For Hispanic is minus 7.77, correct?

JA528

A. Correct.

Q. And for Asian, it's a plus 10.83, correct?

A. Correct.

Q. For American Indian, it's a minus 2.1, correct?

A. Correct.

Q. For Hawaii/Pacific Islander, it's minus 25.6 for the SAT math, correct?

A. Correct.

Q. Now, obviously -- to put the two together and figure out the net change, will you agree with me that if you take from the first chart of the deduction for SAT verbal where blacks received a penalty of minus 8.1 and then if we look to the bottom slide where the SAT math penalty is minus 13.5, that totals about 22 points, correct?

A. Correct.

Q. And then if we look at the Hispanic entries, the penalty for the SAT verbal is minus 3.36 and the penalty for Hispanics on the math score is minus 7.7. So that totals approximately minus 11, correct?

A. Correct.

Q. And then if we look at the Asian American applicants, we see that they received a penalty over the SAT verbal of about minus 1.4, but a bump on the SAT math of about 10.8, correct?

A. Correct.

JA529

Q. So that totals out to 9.

If we look at Native American, do we see an SAT verbal penalty of minus 5.6 and then an SAT penalty for math of minus 2.1? Does that come out to approximately minus 8? Correct?

A. Correct.

Q. And then if we get to Hawaii/Pacific Islander, we have a verbal penalty of minus 24 and change, correct?

A. Correct.

Q. And a math penalty of 25.6 negative, correct?

A. Correct.

Q. And that adds up to approximately a minus 50 for being Hawaii/Pacific Islander versus being white for the same score on the same test, correct?

A. Correct.

Q. In addition, your model also takes into account gender, correct?

A. Correct.

Q. And the penalty for being female on the SAT verbal for getting the exact same score is minus 9.5, correct?

A. The coefficient is minus 9.5, correct.

Q. And the penalty for being female on the SAT math component is minus 13.97, correct?

A. The coefficient is minus 13.97, correct.

Q. You don't like saying "penalty"?

JA530

A. I don't because, again, I don't think that this process penalizes them as a group because of the way the regression works. And that's shown because I use her measures and I get the same answers. So if I was doing this in this biased way, why would I get the same answer when I use her scores?

Q. Sir, I'm just going to go through and make sure we understand each other correctly. If an applicant were a black female, under your model she would receive a penalty for being black of 22 points on the SAT and a penalty -- slightly larger penalty of 23.6 for being female, so a total penalty of about 45 points, correct?

A. I don't view it as a penalty, but that is what you get when you add those coefficients.

Q. And are you aware that in the course of your process over the six years that the folks who only had ACT scores numbered more than 50,000?

A. I'm not sure.

Q. Are you aware that for the year 2018, you converted ACT scores, SAT scores for about 42 percent of the African American applicants?

A. I was not aware of that. I don't know whether that's the case.

Q. Are you aware that you converted to an SAT score for about 45 percent of the Hispanic applicants?

A. No, I'm not aware of that. That -- I don't -- yeah, I don't think that -- I don't have any evidence of that on either account.

JA531

Q. Would you agree with me that these racial penalties applied when converting ACT scores to SAT scores were not plain on the face of your reports and charts that were introduced today?

A. One, it's not a penalty; and, two, it is true I didn't show the slide that showed her way of doing the test makes no difference to the model.

Q. And, sir, so you're telling me that if every African American woman in the year 2018 who scored exactly the same as a white male on the same test was given a score 45 points lower, then you do not consider that a penalty?

A. Because that's not what's happening. That's what's -- you're -- you're missing the regression to the mean. If you were correct, then when we use her test score methodology I would get a different answer. I don't. So that is clearly a mischaracterization of how the process works.

Q. Let me ask you this, sir, and let's see if this is a fair characterization: A UNC admissions officer receiving a concordance score for a white male applicant and a black female applicant at the same time would receive the same score if the people scored the same on the test, correct?

A. For the total SAT, correct.

Q. And in your model, it models an admissions officer looking at a score that would be 45 points lower total for the SAT, correct?

JA532

A. That's not the right comparison. Again, it's not the right comparison because the way that the conversion is working here is very different.

Q. They would receive -- your model would have the admissions officer see a 45-point difference between the white male applicant and the black female applicant for getting the same score, correct?

A. No, no. There's much more to this story than that. That's -- that's the point, is that what they're going to see is they're going to see all the information. They're going to see all the components of their ACT score. They're going -- there's just much more information. They don't see -- obviously, they don't see the 45-point difference. That's clear. The issue is, is taking all the information that they have, what is the appropriate score to put in there.

Q. Let me try this one more time. Let me just make sure we're on the same page. Let's talk about the actual process at the moment and put your model to the side.

Two people, one white male, one black female, exact same score on the exact same test on the ACT. The UNC admissions officer, looking at the two files side by side, would see an identical score on the SAT, correct?

A. For the total SAT, correct. They would not have it separately by verbal and math, which is the whole point.

Q. Then your model is going to take the same two people, a white male and a black female who took the test on the same day and gave the same answers; and for those two applicants, your model has the

admissions officers looking at component scores, math and verbal, but there will be a difference between the white male applicant who will have a higher score than the black female applicant, correct?

A. I think -- according to those regressions, correct.

Q. Thank you.

Now I'm going to change topics to the transformation

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[pp. 366-367]

hypothetical applicants and you flip the switch so that their race changes, everything else remains unchanged, correct?

A. What I am assuming is that my model -- that the coefficients on race reflects the preference given to that race. So I am operating more in a color-blind world where I have accounted for all the other observed differences across those races, and this is -- I'm interpreting that coefficient as the preference given to that group. So those coefficients represent the preferences for the group.

Q. Is the answer to my question yes, that you're assuming everything else is unchanged?

A. When you say changing race, that's not what's going on. This is what -- through my lens, this is changing racial preferences. That's what's happening with these examples.

JA534

Q. So in one of these hypothetical examples where someone is treated in the model as if they are black and then you flip the switch to say now they're white, you're assuming that their background, where they grew up, where they lived, where they went to school, what access to programs they had, what kind of mentors they had, what kind of internship opportunities they had -- that their life in this model would be entirely unchanged by growing up from 0 to 18 with their race changed?

A. No, because that's why we have all those controls, to try to capture those things.

Q. If you treat someone as a black person instead of a white person 18 years into their life, do you think there's an adjustment for how different they would be treated?

A. Well, of course. The experiences of African Americans are different from the experiences of white Americans and of other groups. There's no question about that. The question is have I adequately captured the differences in terms of the observables between those groups and then what is left over. And when you continue to add controls, those race coefficients always go up. There's no evidence -- now, it may be that UNC should value things differently, but there's no evidence that this thing is not a preference.

Q. And your -- your theory about these transformation examples is premised on the idea that correlation equals causation, correct?

A. My theory is that using -- I -- I'm not sure how to interpret that. You know, I'm capturing the admissions

process. It accurately predicts, you know, over 90 percent of the time. I don't feel like I -- you know -- yes. I'm sorry. Say the question again. Obviously, correlation does not imply causation.

MR. FITZGERALD: Can I have one moment, Your Honor?

THE COURT: Yes.

(Pause in the proceedings.)

MR. FITZGERALD: Your Honor, I would just ask for a pause. I believe it was mentioned to Ms. Blay and to counsel

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ARCIDIACONO – CROSS BY MR. HINOJOSA

[pp. 370:4-372:3]

Q. In your descriptive analysis when analyzing UNC admission rates by race by decile, you found that there were some white students in the lower five deciles who were admitted both in state and out of state, correct?

A. That's correct.

Q. And, in fact, in the lower five deciles, there were several hundred, over 2,000 if my math was correct, of white students admitted both in state and out of state. Does that sound correct?

A. I would have to look at the numbers, but I'll trust your math for the moment.

Q. I can certainly show you if you would like to see.

JA536

A. Sure.

Q. I can show you the numbers. So this is page 11 of 117.11 that was shown earlier. .1? Or 117.1.

A. Can you just scroll up so I can see where the -- this is in state. Okay.

Q. In state. And you see in the fifth decile for whites you had 3,880; for the fourth decile, 3,663; third decile, 3,310; second decile, 2,762; and the first decile, 1,848. Do you see that?

A. I do.

Q. I'm not going to ask you about the math in all of them. I think we'll get to 2,000 with just a few here.

And going over to your in-state admission rates by academic decile, which is page 13 of the same demonstrative exhibit --

A. Yeah.

Q. -- you have 29.56. So that was 29.56 of 3,880, which is 1,146. Does that sound right?

A. Yeah. My math isn't so great on the stand, but that sounds right.

Q. And then 17.8 of 3,663 in the fourth decile, that's 653? Does that sound correct?

A. I suppose.

Q. Well, I think the record will be able to reflect that, and certainly counsel can correct you on redirect if they want.

JA537

And then the third decile, which was 3,310, it was 7.76 percent that are admitted, which comes out to 256. Do you have any reason to disagree with that?

A. No.

Q. And at the same time that there were white students who were admitted in the lower five academic deciles, as you've described here -- and I certainly understand, you know, the Defendants take issue with some of those, perhaps.

But at the same time, you also -- both for in-state and out-of-state black and Hispanic students who you have rated in the top five deciles, there were several of those Hispanic and black students who were rejected or denied their application to UNC, correct?

A. That's correct.

* * *

ARCIDIACONO – REDIRECT

[pp. 376:20-382:1]

Q. Do you remember Mr. Fitzgerald's questions about your conversions?

A. I do.

Q. The ACT to SAT conversions for the applicants that did not -- that only took the ACT?

A. I do.

JA538

Q. And you indicated, I believe, that you had one way of converting these scores and Professor Hoxby had another way of converting these scores; is that true?

A. That's correct. I break out the SAT score by math and verbal, which means you have to have some way -- you can't use the concordance table for that, and she uses just the total SAT score.

Q. Just to make sure we understand, what is Professor Hoxby's method for converting ACT scores to SAT scores for students that only take the ACT?

A. It's what's called the concordance table. So this is -- will give you here is the score on the ACT and then here is what it corresponds to on the SAT.

Q. And then what is your method for converting ACT scores to SAT scores for students who took only the ACT?

A. I take the people who took both exams, and I estimate the relationship between the SAT math score and the controls, and I use those controls to then predict what their SAT math score would have been. And that's where sometimes we do see negative coefficients there, but because of, you know, how this prediction process works, on average the test scores are not going to look all that different across races between my method and her method.

Q. And, in fact, does Professor Hoxby's method of conversion result in higher or lower converted scores than your method?

A. It's hard to tell, you know.

JA539

Q. Do they have the same meaning?

A. Well, actually, I don't know whether they have the same meaning, but that's my suspicion, is that they do. I mean, I'd have to look through it to see.

Q. So in some cases, would Professor Hoxby's conversion be lower than yours and others be higher than yours?

A. That's right. It would depend on the score on the test for sure.

Q. But in some cases --

A. And when I say same mean, I mean by race.

Q. Yes.

A. It's got to have the same mean by race for these things.

Q. So for some applicants, Professor Hoxby's converted score would be lower than yours; and for some others, her converted score would be higher than yours?

A. Right.

Q. And now, I believe when you were speaking with Mr. Fitzgerald, you explained that you ran it both ways in your models, and it didn't change the results; is that correct?

A. That's correct.

Q. And did you -- is there a table in your rebuttal report that shows this?

A. There is.

MR. MCCARTHY: Mr. Lawrence, can you go to 117? I think it's page -- 117.2. I'm sorry. I think it's page 39.

Q. (By Mr. McCarthy) Is this the table, Professor Arcidiacono?

A. That looks like the table, yes.

Q. Can you see it okay there?

A. Yes.

Q. Can you explain for us what's on that table?

A. Okay. So in the first column is what we've always been working with, which is the status quo, and that doesn't depend on whether I'm doing this prediction using my methods to convert the ACT scores or Professor Hoxby's.

Q. Those are the status quo numbers we've seen several times?

A. Yes. And whatever method I use, my model is going to predict those on the nose.

So then in the next column, those are -- oh, those are the marginal effects of my preferred model.

Q. And we've seen those numbers today too, correct?

A. That's correct. So this is -- that 12.7 was the difference between the average admission probability and the probability without the racial preferences, okay. So higher numbers mean larger estimated preferences.

Q. Okay. So now we have -- you have two columns to the right of that. One says "Robustness (1)" and one says "Robustness (2)." Can you tell me what those two different things are?

A. So what "Robustness (1)" does is it just takes Hoxby's measures -- Professor Hoxby's measures of test scores, grades, and class rank and, I guess, replace mine with hers.

Q. So it adopts her methodology?

A. Completely.

Q. Okay. And what do you get there in terms of the average marginal effect of race?

A. It's slightly smaller. So instead of 12.7 percent for in-state African Americans, it's 11.9. Out of state, it's 15.6 for African Americans in my preferred model, 14.9 for hers.

Now, there's a key other difference here. This is not per se driven by those conversions that we were talking about because my preferred model also has interactions between missing GPA and grades, okay, whereas her model does not.

So in the second robustness column, I also interact the times when it's missing. So if you're missing your class rank, then we're going -- missing GPA, we're going to interact those variables with race; and so what that does is that allows you to have different values for those variables if you're missing race. Those values we think are actually in the data, just not in the data set, like they're able to see this sort of information. And

there the numbers are actually higher. So now the marginal effect in that second column is 14.2 percent for in-state African Americans, higher than the 12.7 in my preferred model, and 16.4 percent for out of state compared to 15.6 in my preferred model.

Q. And the point here is that your results are robust to alternative methods of translating these ACT to SAT scores?

A. That's right.

Q. I just want to make sure we look at something real quick here. So if we look in the second column, that average marginal effect of race, if we look, let's say, at out-of-state African American, that 15.6 right there, that represents the calculation you showed us before that was 17.1 with race to 1.5 percent without race, correct?

A. Correct.

Q. So when you remove racial preferences under your model, it went from 17.1 to 1.5, correct?

A. Correct.

Q. And if we do the same thing with Professor Hoxby's version, which is in the "Robustness (1)" column, right, it drops from 17.1 all the way down to 2.2, correct?

A. Correct.

Q. And that's why we have 14.9 is the marginal effect of race, correct?

A. Correct.

JA543

Q. So what does that tell you about the size of those racial preferences whether you use your method for translating those scores or Professor Hoxby's method for translating those scores?

A. They're going to be very large regardless.

Q. Thank you.

* * *

JA544

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA**

Case No. 1:14CV954

[November 12, 2020]

STUDENTS FOR FAIR ADMISSIONS, INC.,)
)
Plaintiff,)
)
vs.)
)
UNIVERSITY OF NORTH CAROLINA, et al.,)
)
Defendants.)

**Volume 3
Pages 387-603**

**EXPEDITED TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LORETTA C. BIGGS
UNITED STATES DISTRICT JUDGE**

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Patrick Strawbridge, Esquire
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JA545

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* * *

KAHLENBERG – DIRECT

[p. 399-403:3]

and instead shifted to socioeconomic alternatives.

Q. And in reviewing all the materials you just described, did you -- did you try to inform yourself as to the benefits that the University of North Carolina is seeking to obtain from its use of race in its admissions process?

JA546

A. Yes. So my understanding is the University of North Carolina is seeking the educational benefits of diversity that -- all kinds of diversity -- racial diversity, economic diversity, and all forms of diversity -- and that when students come to an institution with different life experiences, that the learning is richer and deeper. Students can be more creative in their problem-solving. Bias is reduced when students come to learn -- meet people of other races as individuals. And I think all of those are -- are important values that I -- that I agree with.

Q. Do you have an understanding as to whether UNC seeks benefits from diversity other than racial diversity in its admissions process?

A. Yes. So there's evidence from a number of UNC documents, as well as testimony from a number of the UNC officials, that they value diversity in many dimensions, racial diversity being a very important one, but socioeconomic diversity as well.

Q. And how would you say that UNC does in achieving racial diversity and other areas of diversity today compared to other colleges, in your experience?

A. Well, I would say it's a bit of a mixed bag. In terms of racial diversity, I think it's fair to say that UNC has as much racial diversity as many of its competitors. So, for example, the University of Virginia has 6 percent African American representation, 6 percent Latino representation; and UNC does better than that on racial diversity. When it comes to socioeconomic diversity, I would say UNC has a long way to go.

JA547

Q. Have you prepared some slides to discuss socioeconomic diversity at UNC?

A. I have.

Q. Are we looking at that slide right now?

A. Yes.

Q. What can you tell us about socioeconomic diversity at UNC, as far as your understanding?

A. Well, there are many ways to measure socioeconomic diversity, and one way to look at it is in terms of parental income of the student body. And as this slide suggests, UNC is -- has a lopsided income distribution among its student body.

So these are data from a study that Raj Chetty, a Harvard University professor, did on a number of colleges, including UNC; and he found that 60 percent of the students at UNC have come from the top 20 percent of the income distribution and just 3.8 percent from the bottom 20 percent of the income distribution. So another way of thinking about that is if you're walking around the campus at Chapel Hill, you are about 16 times as likely to run into a wealthy student as a low-income student.

Q. And what about how the student body at UNC compares to the median income in the state?

A. Yes, there's a large disparity in that as well.

If we can go to the next slide.

The medium household income for North Carolina residents as a whole is about \$54,000.

JA548

If we can go to the next slide. I'm sorry. Am I supposed to direct the slides or --

Q. This is fine. You helped prepare these slides. Go ahead.

A. Okay. And the median family income for UNC students is 135,000. And so, in other words, your median family income of UNC students is more than twice the median family income of North Carolina residents as a whole.

Q. Is there another way to think about the socioeconomic diversity at UNC?

A. Yes, there are other measures that we can look at. So one way to look at socioeconomic diversity is not just by looking at income, but looking at the level of parental education that -- well, the level of education that the parents of students have at UNC.

And there's a striking contrast here, where just 17 percent of UNC students are first-generation college students, meaning neither of their parents has a bachelor's degree; and by comparison, 72 percent of North Carolina adults over age 25 lack a bachelor's degree. So UNC is very far from being representative of the North Carolina population on -- in terms of parental education levels.

Q. And you mentioned earlier a book you had written regarding legacy admissions.

A. That's correct.

Q. Just for the record, what do you mean by legacy admissions?

A. Legacies are the children of alumni of an institution.

Q. And have you prepared a slide regarding the level of socioeconomic diversity with respect to alumni or legacy students at UNC?

A. I have.

Q. And what does this slide tell us?

A. So there are quite a few legacy students on campus at UNC and -- and, in fact, there are more legacy students than first-generation students, and that's -- that's remarkable given that there are 451 times as many adults without a college degree as adults in the entire world with a UNC degree.

Q. How does UNC's socioeconomic diversity compare to other leading public institutions?

A. Well, there are other institutions that do better on socioeconomic diversity. So to give you a couple of examples, UC Berkeley, UCLA, both highly competitive institutions that don't use race in admissions, have about twice as many students coming from that bottom quintile, the bottom 20 percent by income; and to me, that's an important issue.

* * *

[pp. 410:23-418:2]

Q. In this case, were you able to form an opinion as to whether there are available race-neutral alternatives to UNC's admissions process that would be sufficient to allow it to achieve the educational benefits of diversity?

A. I was.

Q. And what is that opinion?

A. In my view, UNC has available to it several possible race-neutral alternatives that could maintain racial diversity, in many cases expand socioeconomic diversity, which together would provide the educational benefits of diversity while maintaining strong academic standards at the same time.

Q. And let's just break that down a little bit.

How did you go about determining what constitutes an acceptable level of diversity for UNC's purposes?

A. Right. Well, this goes back to that important question of critical mass, you know, what do we define as success. And in evaluating race-neutral alternatives, the first place I would look for guidance is the findings or the statements of the institution. So in this case, UNC-Chapel Hill, what's its definition of critical mass, of how much diversity is necessary to achieve the educational benefits of diversity. And as I mentioned earlier, that -- that definition has not been forthcoming from -- from UNC. There's an absence of a definition of critical mass.

So given that, the fact that UNC has not provided a definition of success or critical mass, there are some other guideposts that one can look to as kind of rules of thumb, if you will. So one place to look is what the Supreme Court has said on this issue; and so in the *Grutter* decision in 2003, the Supreme Court said that University of Michigan Law School could use race in its admissions process in order to achieve a critical mass

of underrepresented minority students, which was about 14 percent underrepresented minority. So that's one guidepost to look at.

Another is to consider what other comparable institutions -- what levels of diversity other comparable institutions have. And so the University of Virginia, I mentioned, has a combined black and Latino representation of about 12 percent, 6 percent in each category; and so that's another guidepost to -- to look to.

And a third guidepost would be UNC's own level of diversity. The difference between my approach, of course, and UNC's is the one I outlined earlier, which is that I don't see the existing level of racial and ethnic diversity as a -- as an absolute floor that has to be maintained. We would need to know more about research that supports UNC's existing level of diversity, but it is something to look at. It is a consideration, given that UNC hasn't itself provided a definition of critical mass.

Q. And how did you go about identifying the race-neutral strategies that you considered in analyzing the options available to UNC?

A. Well, there are a number of states throughout the country that have stopped using race at their selective public colleges. Many of these institutions were the subject of a state initiative and referendum. So, for example, California voters have not -- have said that public institutions can't use race. Sometimes there are lower court decisions that at least temporarily require institutions to seek race-neutral alternatives. In the

case of Florida, there was an executive order from the Governor that -- that did -- required institutions to stop using race.

And the good news, from my perspective, is that none of these institutions gave up on diversity. They instead sought creative ways to try and achieve the educational benefits of racial and socioeconomic diversity without using race. So a number of different approaches popped up which I've already alluded to. Some give socioeconomic preferences. Some provide admissions to the top students in all the public high schools. Some increase their transfers from community colleges given the community colleges can be a rich source of diversity. So there's been a lot of creativity and ferment on race-neutral alternatives that we can draw upon.

Q. Are you, Mr. Kahlenberg, generally a supporter of socioeconomic preferences in college admissions?

A. I am.

Q. And why is that?

A. Well, there are a couple of reasons I would cite. First, as a basic matter of fairness, I think that universities in seeking to identify talent should consider not only the credentials that a student offers in terms of the strength of their essays, their grades, their SATs, their extracurriculars, but also what obstacles they've had to overcome in life to achieve that record.

And so if a student comes from a low-income family where the parents haven't had the benefit of a college

education, if that student -- those students live in neighborhoods that have concentrations of poverty that we know to have negative effects on academic achievement. If they go to a high school that's underresourced and has high poverty levels that are associated with lower levels of achievement, then we should, in fairness, consider those obstacles that students have overcome.

Now, obviously, in the American society, given our history of discrimination and segregation by race, it's no accident that African Americans and Latinos disproportionately fall into the -- the lower income categories, more likely live in more -- lower-income neighborhoods and attend low-income schools. And so one positive benefit of this approach of looking at obstacles and fairness is that it also produces racial diversity and disproportionately benefits those victims of discrimination. So that's the first reason, having to do with fairness.

Secondly, there are -- we've been discussing educational benefits of diversity, and I believe strongly that racial diversity brings educational benefits, but socioeconomic diversity does as well. According to the literature on the benefits of diversity, socioeconomic diversity adds a key component; and at institutions like UNC and a number of other leading institutions, that socioeconomic diversity is sorely lacking. And so the educational experience of students would be stronger if there were socioeconomic diversity, as well as racial diversity, on campus.

And the third reason I would cite has to do with the political sustainability of socioeconomic preferences

and socioeconomic affirmative action. So there's a long line of public opinion polls which indicate that Americans disfavor using race in admissions by about 2 to 1, and those same sets of individuals favor using socioeconomic status by about 2 to 1. And so for someone like me who has a concern about making sure that there is affirmative action in our public institutions, the socioeconomic preference alternative is much more politically viable as well.

Q. Besides increased socioeconomic preferences, are there other race-neutral alternatives to the way UNC runs its current admissions process?

A. Yes. So -- so one of the things that an institution like UNC could do is to eliminate what I would call the unfair preferences that tend to benefit wealthy and white students.

So UNC has a system, as we've been discussing, of legacy preferences, particularly for out-of-state students; and so providing those types of preferences for students who, by definition, are fairly advantaged educationally -- their parents are not only -- or a parent of theirs not only received a four-year degree but received a four-year degree at a very well-respected and elite institution. So the idea of keeping advantage on an already advantaged population I think is difficult to justify, and so removing that will disproportionately benefit students who come from less advantaged backgrounds and will disproportionately benefit underrepresented minorities, in particular.

Another unfair advantage, in my view, is the preference provided by UNC to the children of faculty

JA555

and staff. So this is yet another instance of heaping advantage upon advantage or heaping preference on top of already a fairly advantaged group disproportionately white.

The third area where UNC could -- could move in a direction of fairness and provide more racial and economic diversity is in suspending the preference it provides to those who apply early in the decision -- in the admissions process. Students who apply early receive a preference at UNC, and many of those students are being advised by counselors who are in the know. If those -- if a student in an underresourced school may not know about the advantages of applying early, they lose out. And so that was a third preference that UNC could discontinue providing and thereby increase racial and economic diversity on campus.

Q. Have any other universities done away with these types of additional considerations?

A. Yes. So in the case of legacy preferences, there are many highly competitive institutions that have said they -- they think it's unfair to provide advantages to the already advantaged. Oxford University, Cambridge University, Cal Tech, University of California at Berkeley, UCLA all have disbanded with legacy preferences; and UC Berkeley and UCLA also don't use the early admissions process which tends to advantage white and wealthier students.

Q. And just before we go any further, I want to ask you this question: Do you oppose the use of race in all circumstances by a college or university?

JA556

A. No, I don't. I think that in -- my reading of the evidence is that in most cases socioeconomic preferences or percentage plans, race-neutral alternatives generally, can provide the educational benefits of diversity, producing both racial and economic diversity; but in cases where there were no race-neutral alternatives that were viable, I would support using race in admissions.

Q. Is that an area where you disagree with Students for Fair Admissions?

A. It is, although I understand that's not an issue at this trial.

* * *

[pp. 424:1-460:11]

Q. Okay. And have you prepared some slides to discuss those simulations?

A. I have.

Q. This slide references Simulation 3; is that correct?

A. That's correct.

Q. Could you describe a little bit about how you went about constructing this simulation?

A. Yes. So Simulation 3 is a holistic socioeconomic status race preference -- race-neutral alternative. So as I was describing before, this is using Professor Arcidiacono's approach where he's employing the data from UNC's admissions process. So it includes all of UNC's ratings, the SAT scores and the like.

JA557

So -- and I'll just say this is fairly rare in the world of simulations. So when I worked with Professor Carnevale, he didn't have access to the ratings that an institution employed. And so this gives us a deeper level of understanding of race-neutral alternatives.

So as Your Honor knows, there are five aspects to the rating system that UNC employs: The rigor of the academic program, student performance (GPA -- high school GPA and whether it's improving), a rating for extracurricular activities, a rating for essay, and a rating for personal qualities. And we wanted -- or I wanted these ratings to be part of the simulation, and they are in the Simulation 3.

Q. Using that model that included that information, what adjustments, then, did you make?

A. Yes. So there were a number of adjustments. First of all, in order to be race-neutral, we're going to turn off the existing preference for race. I also turned off the race for -- or asked Professor Arcidiacono to turn off the race for -- the preference for gender, early action or being a legacy.

I also turned off the existing boosts that UNC gives to first-generation college students and students who have asked to waive their application fees because I didn't want to double count or be providing preferences on those criteria and didn't want to -- wanted to isolate the preferences that I'm suggesting for those that already are provided by UNC.

And then finally, I asked that athletic preferences be turned back on so that athletes would receive a preference under this race-neutral alternative.

Q. And why did you do that?

A. Well, in my experience, the athletic program at a lot of institutions is really important to the identity of the institution, and I think it would be seen as radical to eliminate that athletic preference.

Q. Having adjusted these preferences under Professor Arcidiacono's model of the existing admissions process, what was the next step in creating the simulation?

A. Okay. So the next step is to provide the socioeconomic preference, and at that point one has to make some decisions about how we're going to define socioeconomic status and what weight to provide to the preference.

So in Simulation 3, we look at -- define students as being from disadvantaged families if they are first-generation college, if they applied for a fee waiver, or -- for certain years we had this data -- whether they were eligible for free and reduced-price lunch for students who are in state. We had that information in state.

And in addition, I thought it was important, given the literature on what -- what constitutes obstacles to student achievement, to also consider the neighborhood that a student grows up in. So provided a preference to students who are from socioeconomically disadvantaged neighborhoods.

And each of these applicants would -- each applicant would receive one preference for each of these two possibilities. So there might be some students who would receive a preference for living in a

socioeconomically disadvantaged neighborhood, others for being from socioeconomically disadvantaged families, or if someone falls into both categories, then they would get two -- two bumps in the admissions process.

Q. And why did you use the socioeconomic status of neighborhoods and not just families?

A. Well, it's important, given -- given the literature on what imposes obstacles on students, to consider that -- that extra obstacle of the neighborhood, socioeconomic disadvantage. So we know from a wide variety of research that it's one thing to -- basically, you have one strike against you if you're -- on average if you grow up in a low-income family, and there's a second independent strike that comes into play when students live in high-poverty neighborhoods; and there's also a racial component to this in the sense that in the aggregate -- not in every case, but in the aggregate, low-income whites are more likely to live in middle-class neighborhoods than low-income African Americans and Latinos. So it would be unfair in the aggregate to African American, Latino students not to count -- and to all students who live in not disadvantaged neighborhoods not to count that factor.

Q. And how large was the boost that this simulation was giving to applicants who fell within one of the two categories?

A. So in this simulation, I asked Professor Arcidiacono to apply the equivalent of a legacy -- out-of-state legacy preference to each of those components.

JA560

Q. And what -- what was your understanding of the relative size of that preference compared to other preferences in Professor Arcidiacono's model?

A. So the legacy preference -- we're using his Model 4 to provide these preferences and the weights in Model 4. He found that legacy preference -- out-of-state legacy preference was smaller than the preference provided for African American students, but larger than the preference provided to economically disadvantaged students.

Q. And did you prepare a slide that shows the results of this simulation?

A. Yes.

Q. Why don't you begin by reminding us exactly what the -- what's being shown on this simulation with respect to both the status quo and what's otherwise reported.

A. Yes. So with each of these simulations, I think it's important to identify three areas of -- that are critical to achieving the educational benefits of diversity and maintaining high academic standards.

So we look at -- in each case at racial/ethnic diversity, socioeconomic diversity, and the academic characteristics of students; and in each case, the light blue line will be the status quo and the dark blue line will suggest the shares of students who are -- are part of the simulation.

And the -- I'll just mention the years will jump around a little bit because of data constraints. So this

JA561

simulation is from the class of 2016 to '17 -- admitted class of 2016 to 2017, where some of the simulations will be from earlier years.

Q. All right. And what can you say were the results of this simulation with respect to the level of racial or ethnic diversity in the admitted class?

A. So I view this is as a viable race-neutral alternative because the racial and ethnic diversity is -- achieved through this process is roughly comparable to the racial and ethnic diversity achieved under the status quo. So you can see that the African American share and the Hispanic share are roughly comparable to what they are today under the simulation.

Q. And what about the socioeconomic characteristics of this admitted class?

A. Right. Well, not surprisingly, given this is a socioeconomic preference, we see expanded socioeconomic diversity. So while racial diversity remains strong, the educational benefits of diversity in some fashion increases because we have much more socioeconomic diversity. So the share of students coming from disadvantaged families increases from 20 percent to 32 percent, and the share from disadvantaged neighborhoods also increases markedly.

Q. What about the academic characteristics of the class under this simulation?

A. The academic characteristics remain quite strong, and so the average SAT is 1320, just 15 points different than the status quo. And I have the percentile rankings in each of these slides next to the SAT. So we're moving

JA562

from between the 92nd and 93rd percentile in SATs to the 91st. High school GPA remains quite high at 4.69.

And I think what's -- what's really remarkable is that the academic standards remain very high even though this is a group of students who have had to overcome more obstacles -- more socioeconomic obstacles than the current class. So this is -- would include more children of bus drivers and -- and grocery clerks who manage to do very, very well academically even though they may not have had the income advantages or the educational advantages that come from -- on average that come from being in a more advantaged family.

Q. Let's talk about the next simulation. Did you prepare a slide with respect to that?

A. Yes. If I can just point out one more thing about Simulation 3 which I think is important.

Q. Okay.

A. The slice of the population will -- will move from simulation to simulation given -- given data availability, but I think it's important to point out that this is -- this is the entire class. So this includes in-state and out-of-state high schools, both, you know, public and private. So we've got the full array of students in Simulation 3. Some of the other simulations will have a slice of a population, but this has it all.

Q. If we can now move on to the next simulation. This refers to Simulation 13?

A. That's right.

Q. Can you just describe for the Court what adjustments you made compared to the last simulation we were looking at in modeling Simulation 13?

A. Yes. So Simulation 13, the way this is presented, the bolded material is what's new and different about Simulation 13 compared to Simulation 3. So we're refining the socioeconomic preference.

So it's the same as Simulation 3, but the major added component here is that we are going to provide a preference to students who come from socioeconomically disadvantaged high schools. So I mentioned before the distinction between growing up in a socioeconomically disadvantaged family and living in a socioeconomically disadvantaged neighborhood. A third component in all the academic literature is that attending a high-poverty school or a school where there are other attributes to the school will on average produce lower levels of academic achievement; and so if we can identify students who have done quite well despite the fact that they face this obstacle, that's -- there's something very special going on.

So we define socioeconomically disadvantaged high schools as those who are in the highest one-third in terms of percentage of free and reduced priced lunch. So the classmates we're talking about here are the highest one-third of non-English-speaking population and the highest one-third of percentage of single-parent families, and that information is derived from the census block. So that's the major innovation with Simulation 13.

And, again, you know, there could be a student who comes from a low-income family, lives in a disadvantaged neighborhood, but then is able to win, you know, scholarship to a highly accomplished private school. That student wouldn't receive the third bump, but a student who faced all three of these disadvantages, we want to recognize that -- that distinction.

Q. And really quick before we move on, were some of those adjustments made in response to the modeling of Professor Hoxby?

A. Yes.

Q. Can you explain which ones?

A. Yes. So Professor Hoxby raised some of the issues that are included here -- percentage of non-English-speaking population, percentage of single-parent families -- and so we thought her discussion of those issues warranted a refinement to Simulation 3.

In addition, Professor Hoxby discussed the preference for children of faculty and staff. And so in Simulation 3, we had not turned off the preference for children of faculty and staff; and in this one, we did turn off that preference, in addition to the preferences for legacy and other categories like that.

So one distinction -- one other distinction between Simulation 13 and Simulation 3 is that -- that we're limiting this to in-state applicants, which is the approach that Professor Hoxby takes throughout her process.

Q. And why are you limiting it to in-state applicants, or why do you understand Professor Hoxby to be doing so?

A. Well, Professor Hoxby I think is right in pointing out that 82 percent of UNC's population -- student population comes from in state, and so we're talking about the vast majority of students here through the in-state population.

Q. And did you mention there were also data limitations that required limiting this scenario to that population?

A. That's right. So Professor Hoxby, you know, relies, as I mentioned earlier, on the rich data in the NCERDC database of all the public high schools, and that's an important resource to try to tap into.

Q. The next slide shows the results of this simulation?

A. Yes.

Q. Why don't you describe for us your view as to how this simulation fares with respect to racial and ethnic diversity.

A. Yes. So I think this is another viable race-neutral alternative. Racial and ethnic diversity remains strong in this simulation. So African American shares and Hispanic shares are comparable to the current levels of diversity.

On this slide, we -- we added a consideration of the combined underrepresented minority admissions. So in most of the slides, this will include African Americans, Hispanics, and Native Americans in the combined

underrepresented minority population. Because in Simulation 13 the data were reported in a way that we couldn't separate out Native American students, this slide and this slide only, the 14.1 percent underrepresented minority population doesn't include Native Americans. It's just the African American and Hispanic mix, but in most of the cases, maybe all the cases subsequent, that will include Native Americans. But the combined percentages is comparable.

Q. And just really quick, when you -- when these -- on all of these measures when you're referring to status quo, what is the comparative group to the population that you're modeling here?

A. Well, we're always trying to compare apples and apples. In this case, the status quo numbers would be different than the first slide because this is in-state public and private high school, whereas the earlier one included out-of-state students.

Q. What does this simulation reveal with respect to the levels of socioeconomic diversity in the status quo versus the simulated admitted group?

A. Yes. So the educational benefits that derived from socioeconomic diversity are stronger in this stimulation than under the status quo. So we see a rise in disadvantaged families by almost ten percentage points. Disadvantaged neighborhoods have better representation, as do students coming from disadvantaged schools.

Q. And what can you say with respect to the results regarding the academic characteristics of the simulated class here?

A. Yes, once again the academic characteristics are very strong, very similar in terms of both SAT scores and high school GPA. And, again, I'll reiterate, this is particularly impressive, given that we're now -- we now have a student body that has had to overcome more hurdles in life than under the status quo.

MR. STRAWBRIDGE: Your Honor, I know it's almost 11:00, and so this is a convenient time from my examination if we want to take our morning break.

THE COURT: All right. We can do that.

Sir, you may step down.

Let us recess until 10 after 11:00.

(A morning recess was taken from 10:55 a.m. until 11:13 a.m.; all parties present.)

Q. (By Mr. Strawbridge) Mr. Kahlenberg, you prepared a slide for the next simulation that you reviewed?

A. Yes.

Q. This refers to Simulation 11. Can you describe the differences with respect to this simulation from the ones we've been looking at?

A. Yes. So Simulation 11 is also socioeconomics based on Professor Arcidiacono's model, but it makes a few adjustments. The first is that it includes not only those students who applied to UNC but other potential applicants using the NCERDC high school data that Professor Hoxby used.

So the disadvantage is that it does not include the holistic readings that UNC is able to employ, but it can

JA568

use other criteria in the model that mattered to UNC, like SATs and grades.

Because the -- one other distinction is that because we now have a broader set of students who are able to apply -- the applicants and the nonapplicants in the North Carolina database -- the size of the socioeconomic preference that is accorded to students does not need to be as large as under the earlier simulation because we can get the benefits of educational diversity with a smaller socioeconomic boost.

So this preference -- you know, each of the three potential boosts is about one-third as large as the out-of-state legacy boost in this simulation.

Q. And have you prepared a slide showing the results of this simulation?

A. I have.

Q. Can you describe what is shown on this slide for Simulation 11?

A. Right. So this simulation, which again includes the nonapplicants -- it's all the in-state public high schools -- students who attended in-state public schools -- actually sees an increase in -- in racial and ethnic diversity. So African American shares move from 8.5 percent up to 10.4 percent. Hispanic shares also increase, and the total underrepresented minority population, which in Simulation 11 does include Native Americans, moves from 16.3 percent to 17.7 percent.

JA569

Q. Just really briefly before we go on, can you just explain what the “1.5 SES Boost” in the upper left corner refers to?

A. Yes. So in Professor Arcidiacono’s model, there are logit coefficients he had that are associated with various preferences, and so the legacy preference is 4.71 increasing your chances of admission. It gets to the magnitude of the preference. And so the 1.5 refers to a preference that’s roughly one-third the size of a legacy preference.

Q. What does this simulation show with respect to the socioeconomic diversity versus the status quo?

A. So drawing on this larger population, we’re able to see a substantial increase in socioeconomic diversity. So 29 percent are disadvantaged under the status quo. That moves to 44 percent. Disadvantaged neighborhoods also see an increase, and disadvantaged schools see an increase as well.

Q. And what does this simulation show with respect to the academic characteristics of the status quo versus the simulated class?

A. Yes, the academic characteristics remain strong. The students are achieving SAT scores, you know, a couple percentiles different than the status quo. Again, remarkable given the large increase in socioeconomic diversity and the obstacles those students have faced. And high school GPA actually increases under this simulation.

Q. Now, Professor Kahlenberg -- I’m sorry. Mr. Kahlenberg, the simulations we’ve been looking at are

JA570

all variations on the model of UNC's current holistic admissions process with the adjustments you've described?

A. That's correct.

Q. Did you model some other types of simulation of race-neutral alternatives to UNC's admissions process?

A. Yes.

Q. And is that what we're going to look at next?

A. That's right. So UNC had modeled itself a number of percentage plans, and so we wanted to explore that race-neutral alternative where students at the top of various high school classes would be admitted. So this Simulation 8 that we're about to discuss is the top 4.5 percent of students in various high schools throughout North Carolina.

What's different about this approach than the UT-Austin percentage plan where students in the top 10 percent by high school GPA are admitted is that this is using -- this is a holistic approach. So it's the top 4.5 percent as UNC would consider them to be among the top students, so including those ratings on essay and extracurricular activities. So they're defined more holistically than simply grades as in the UT system. We turn off the same preferences as before: Race, legacy, early decision, first-generation status, fee waiver, and female applicants.

Q. And then using this top 4.5 percent metric, how did that affect the simulation's ability to generate enough

JA571

seats to compare to the existing admitted class at UNC?

A. Right. So there was a -- there was a shortfall because you don't have students in the top 4.5 percent of every high school who have applied, you know, and so some schools have so few applicants that you couldn't even reach the top 4.5 percent. And so about 30 percent of the seats were -- were vacant under this plan.

And so in order to make up -- to complete the rest of the class, we filled the remaining seats with top students across the board. These are the -- again, holistically rated by UNC, but the top students irrespective of what high school they come from to complete that 30 percent of the student body.

And this is analogous to what UT-Austin does. So UT-Austin doesn't say the top 10 percent plan will apply to every slot at UT-Austin. They allocate 75 percent of the seats for the percentage plan, and then 25 percent of the seats at UT-Austin are filled through other means. And we're following that rough model by saying 70 percent of the seats are filled through the top 4.5 percent plan, and then the other 30 percent will be filled using holistic ratings from the students that UNC considers to be the top students.

Q. And have you prepared a slide showing the results of this simulation?

A. Yes.

Q. Can you describe what we're looking at on this slide with respect to Simulation 8?

JA572

A. Yes. And I'll just point out that since the populations are shifting a little bit, this is in-state public and private schools because it's using the UNC data. So we do have the private schools in here.

So you can see that the racial diversity remains quite strong. African American shares increase by a percentage point; Hispanic shares stay steady; and the overall combined underrepresented minority shares remain -- remain identical to the status quo.

Q. And what does the simulation show with respect to the socioeconomic diversity of the simulated versus status quo classes?

A. So the socioeconomic diversity increases in all three respects: Disadvantaged family, disadvantaged neighborhood, and disadvantaged school.

Q. And what can you say about the academic characteristics under this simulation?

A. Under this simulation, the SAT scores, even with a more socioeconomically diverse class, remain quite high, within a couple percentage points of the SAT of this current class, and high school GPA remains strong as well.

Q. Now, you mentioned this simulation was based upon the current applicant pool at UNC?

A. That's correct.

Q. Did you -- did you run a modification of this simulation that would embrace the broader data set including high school students who had not applied to UNC?

A. I did.

Q. What can you tell us about this simulation?

A. So this is also a -- Simulation 9 is also a percentage plan. We take the top 4 percent through race-neutral admissions. So it's similar to Simulation 8, but now we're including the -- those who did not apply to UNC. Because we don't have those -- because they're nonapplicants, we don't have UNC's ratings for all the students, but we still have Professor Arcidiacono's Model 2 which tells us information about how -- what types of things UNC values in terms of SAT scores and grades and that kind of thing.

So we awarded admission to the top 4 percent by high school, and, following UT, we said 75 percent of the class would be filled this way and the remaining 25 percent with other top-performing students according to what -- again, to what UNC values, not with the ratings, but what UNC values otherwise.

Q. And I trust you prepared a slide showing the results of this simulation?

A. I did. So because Simulation 9 includes nonapplicants, there's a different population. We don't have the private schools. We just have the in-state public schools from the larger NCERDC data. You can see that African American shares hold steady; Hispanic shares also are roughly comparable, as are the combined underrepresented minority shares.

Q. Are you able to explain, Mr. Kahlenberg, why there is such a large jump in the column that's labeled "White Admits" in this analysis?

A. Yes. This is an artifact of the data, so we're combining -- the status quo numbers are coming from UNC, and the simulation numbers are coming from the NCERDC. And there are differences between the two databases, but one of the relevant differences here is that in the UNC data, some of the students are -- do not have a race associated with them. They've declined to provide that or for whatever reason they don't have a -- not every student has a race accorded to him or her in the admitted student discussion. By contrast, the NCERDC database includes race for all -- all -- virtually all students, and so that's why we see the difference in the -- in the white admits.

Q. What does this simulation reveal with respect to the socioeconomic diversity of the simulated class?

A. So the socioeconomic diversity is -- unlike the other simulations, we don't see a big jump in socioeconomic diversity: Slightly fewer disadvantaged families, disadvantaged neighborhoods about the same, but we do see an increase, you know, with the percentage plan in disadvantaged school.

Q. And what do we see about the academic characteristics of this simulation?

A. Academic characteristics remain very strong. The SAT scores are roughly comparable; and high school GPA, which UNC says it values even more, goes up.

Q. I believe you mentioned earlier in your testimony that Professor Hoxby ran some of her own simulations with respect to race-neutral alternatives?

A. That's correct.

Q. Did you find any of her approaches viable for consideration by UNC?

A. I did.

Q. Can you describe an example of that?

A. Yes. So Professor Hoxby ran a number of simulations of various race-neutral alternatives, and I want to highlight this one, which I think is promising. So -- and -- more than promising. Viable.

So in this -- I'm sorry for all the jargon here, but this is her 750/20 simulation, which means that she sets aside 750 seats in the class for disadvantaged admits and defines disadvantaged as the lowest 20 percent using a complex formula that includes family, neighborhood, and school SES.

So this -- as I mentioned earlier, Professor Hoxby has a different way of presenting the data than I do and Professor Arcidiacono does. We -- we complete the entire class to show whether the simulation works about as well, and Professor Hoxby doesn't do that. So what she does with the 750/20 simulation is reports the racial characteristics and the SAT scores for the students who are admitted through disadvantaged segment of the admission system and then runs a lottery to see whether -- using current UNC admits to see whether you could create the precise level of racial and -- racial diversity and SAT score threshold as -- as the status quo.

And I suggested to Professor Arcidiacono that he make a few adjustments to the Hoxby plan. The primary one was to actually complete the class. So let's

not run a lottery, but let's see what the whole class will look like if we use this alternative.

Because Professor Hoxby used actual UNC admits to complete her class, the system was not race-neutral; that is to say, some of the UNC admits may have received consideration of their race in admissions. And so I didn't think that was an appropriate way to complete the class and, instead, completed the class with the most academically qualified students remaining using a measure of high school GPA and SAT, equally weighted, for the in-state public high school students. So that was the approach I took.

Q. And did you use the in-state public high school students because that was what Professor Hoxby used, or was there a different reason?

A. Yes, that was Professor Hoxby's approach.

Q. And you prepared a slide showing the results of this simulation?

A. Yes.

Q. What can you tell us about what this simulation revealed?

A. So the African American shares remained comparable; the Hispanic shares increase; and the combined underrepresented minority admits hold -- hold steady. So I think this is successful on that dimension of racial and ethnic diversity.

Q. What does this simulation reveal with respect to the socioeconomic diversity of the admitted class?

A. So the socioeconomic diversity also increases under the indicators that we have. I'd like to point out, though, that there are some anomalies in this socioeconomic data that's different than the other simulations.

So the first is given the -- you know, we're working with Professor Hoxby's data and then the -- the data that we had been relying on, NCERDC. So low income is defined two different ways in this simulation for the low-income family. For the status quo, the number is 12.5 percent based on the percentage of students in the UNC data who are eligible for a fee waiver -- who receive a fee waiver; and the results of the simulation are presented in terms of free and reduced-price lunch, so a different indicator.

So in theory, this should be fine because the way the College Board and UNC decide whether someone eligible for a fee waiver is whether they're eligible for free and reduced-price lunch. But I just want to acknowledge that it's possible that some students who are eligible for free and reduced-price lunch might not apply for the fee waiver. So that's not a precise apples-and-apples comparison.

The other thing I want to acknowledge is that the high school low-income comparison has a complication to it as well. That is that there was a -- an error that Professor Arcidiacono committed in defining the school code early on in this process. He fixed it for most of the simulations. But just in short, there -- high schools have a code associated with them, and then there's a separate piece of the code that relates to the -- there's kind of a prefix to the code. He accident -- or

JA578

inadvertently neglected to include the prefix, and so, as a result, I don't want to represent that these high school data are -- are precise in any way.

I will say, though, that I think we can be fairly confident that the socioeconomic diversity, even though -- will be strong in this simulation even though these particular indicators have some problems associated with them because, you know, the whole point of Professor Hoxby's exercise here was to give a boost to socioeconomically disadvantaged students. So she does it by setting 750 seats aside, which is 18.5 percent of the class. So given -- this, again, is an imprecise comparison. But we know that UNC currently has only 3.8 percent of students coming from that bottom 20 percent by income. Professor Hoxby is using a different measure of disadvantage, but she's talking about a quite disadvantaged population, the bottom 20 percent, which is different than, say, eligible for free/reduced-price lunch, which is 50 percent of the North Carolina population.

So -- anyway, I'm probably saying too much. But there's -- my point is that I think there is reason to believe that socioeconomic diversity would also be part of the picture here under the simulation, although I want to be clear these particular indicators are not as strong as the racial criteria or the academic criteria in this simulation, although the socioeconomic indicators in all the other simulations are quite precise.

Q. And what does this simulation reveal with respect to the academic characteristics?

JA579

A. Academic characteristics remain quite strong with respect to both SAT and high school GPA.

Q. And briefly, what is the declining percentile?

A. Just a two-percentile-point decline in SATs, and the GPA remains very high at 4.63.

Q. Before we move on, I just want to make sure -- this, perhaps, was implicit in your testimony, but do you find that all the simulations we have reviewed here, in your experience and understanding of what's possible for colleges out there, amount to available race-neutral alternatives to UNC?

A. Yes.

Q. Do you think that the alternatives we've been looking at here are feasible to be implemented?

A. I do. I mean, there are -- as I was explaining before, there are a number of universities now that have grappled with the transition from race-conscious admissions to race-neutral admissions, and a number of these universities employ socioeconomic preferences. They increase the weight associated with consideration of economic disadvantage. A number of them have employed percentage plans. So, in my opinion, these are feasible, workable race-neutral alternatives that UNC officials could -- could implement.

Q. You mentioned you had read the expert reports of Ms. Long in this case?

A. I did.

JA580

Q. Did she suggest that race-neutral alternatives had not been successful in replicating underrepresented minority representation at other schools that stopped using racial preferences?

A. So she spoke broadly about many of the race-neutral alternatives not keeping up with the demographics of the state as a whole, which is a different question than critical mass.

Q. And do you believe that there are universities comparable to UNC that have been successful in replicating underrepresented minority representation using race-neutral means?

A. Yes, there are a number of institutions that have been successful, flagship institutions, so the top institutions in the state.

So a colleague of mine at The Century Foundation conducted an analysis of 10 flagship universities that were required for various reasons to -- to move from a system of race-conscious admissions to race-neutral admissions, and she's found that in seven of the ten cases the institutions were able to maintain or increase both African American and Latino shares of the student body.

So these are -- include, you know, institutions like UT-Austin -- she was looking when they were -- you know, were completely race-neutral -- and other institutions: University of Washington, University of Florida, and a number of others.

There were three exceptions in her study, institutions that were not able to maintain both

JA581

African American and Latino shares at the same level as they had when using race. It was UC Berkeley, UCLA, and University of Michigan. Since then University of California-Berkeley and UCLA have admitted the most diverse classes they've ever had.

Q. Are there other race-neutral strategies available to UNC-Chapel Hill that have not been factored into the simulations you've just described?

A. Yes.

Q. And what would those be?

A. Well, there are a number, but I'm just going to highlight -- highlight three of them.

One has to do with the construction of a socioeconomic preference. You'll recall we looked at income. We looked at, you know, factors like eligibility for free and reduced-price lunch or fee waiver. We looked at first-generation college. But one of the aspects that I would have liked to have used in these simulations is wealth, that is, the net worth of individuals.

There is a broad body of research to suggest that, regardless of income, having higher wealth improves a chance -- a student's life chances and their chances to go to college and to participate in a higher-education experience. So it's unfortunate that we don't have enough data in this case to employ.

It's particularly significant that we don't have wealth data, given the exercise of trying to find race-neutral ways of producing not only economic

diversity but racial diversity. Because of the history of slavery and segregation in this country, the wealth gap between black people and white people is much greater than is the income gap. You know, we had the income indicators, but we didn't have the wealth indicators.

So research suggests that on average African American families make about 60 percent of what white families make, but when you compare the wealth differential, African American families' median household net worth is just 10 percent of the median net worth of white families. And the reason that would be relevant in a socioeconomic preference is there may be African American students -- and I should say the same gaps apply to Latino students.

There may be students who appear to be more advantaged because they are higher income, they don't qualify for free/reduced-price lunch, but typically, they may have very low wealth. That's a disadvantage that African Americans and Latinos face disproportionately that white families are much less likely to face. Obviously, this isn't the case all the time. There are some white families that have low wealth too. But, on average, not including wealth hurts African Americans and Latinos in the -- in the socioeconomic preference process; and so there is reason to believe that if we had wealth data available that we could have produced higher levels of racial and ethnic diversity using a socioeconomic preference.

Q. And is it possible for colleges to collect data about applicants' wealth?

A. Yes. So -- so normally wealth is a fairly private thing. We don't usually, you know, know much about the wealth of families, but in the case of colleges, especially, you know, somewhat expensive colleges like UNC, there is a great deal of information about family wealth. So any student filling out the FAFSA, for example, for student aid will have a place where they would indicate wealth. It's not for every student, but for many students we'll get that wealth data.

UNC also participates in a program that the College Board put together called the CSS Profile which provides -- which asks families for additional information about wealth that is not included in the FAFSA. So UNC has access to wealth data about students in a way that almost no other -- I should say institutions of higher education have access to wealth data that's almost unique in American -- in the American landscape. So I do think that's something UNC could do.

Q. And just briefly, have there been any examples of colleges using wealth data as part of a race-neutral approach to admissions?

A. Yes. So UCLA Law School has used wealth as a race-neutral indicator for some of the very reasons I've been describing, that it's a good indicator of opportunity and also has a positive racial effect when it's considered.

Q. What is the next additional strategy that was not factored into your simulations?

A. So better recruitment of applicants does not show up in at least a subset of these simulations. So you may

JA584

recall that Simulations 3, 13, and 8 all relied on actual UNC applicants. So this assumes that no new students will apply to UNC through better recruitment efforts.

Now, UNC has, you know, a number of good programs for recruitment. They have a program in which recent graduates go into high schools and have tried to encourage students to apply to UNC and to other institutions of higher education. They're doing some good work in this area.

But at the same time, we know from the applicant data that only 22 percent of applicants to UNC are first-generation college in a state where, as I've said before, 72 percent of students -- I'm sorry -- of adults above age 25 lack a four-year degree. So that suggests additional recruitment in those three simulations could have a positive impact on -- on racial/economic diversity and on -- you know, if we find high-achieving students who fit those categories, then on academic qualifications as well.

Q. What are the other race-neutral strategies that may be available to UNC that are not factored in your simulations?

A. So -- so these simulations all assume that UNC does nothing to improve the transfer of community college students. I mentioned earlier that the -- there are institutions that have sought to diversify through race-neutral means by recruiting more promising students in the community college sector. Because community colleges are less expensive, they tend to draw on a population that has lower socioeconomic status than four-year institutions, more likely to have

racial diversity than four-year institutions; and so increasing the transfer process of community college students to UNC could increase diversity.

Now, once again, UNC has some good programs in this area. They have what's known as the C-STEP program where they work with, I believe it's, about 14 of the 59 community colleges in North Carolina. And I applaud them for doing that, but -- but programs like that could be increased, enhanced, extended to try to increase racial economic -- racial and economic diversity.

So just to give you one comparison, about 5 percent of UNC students are community college transfer students. At UC Berkeley, you know, very elite institution with very high standards, 20 percent of the students are community college transfers.

So there does seem to be some -- some room for improvement. We didn't model that, you know, so I'm not representing to you that -- Your Honor, that -- you know, precisely what UNC could do. I just want to underline that the simulations we have provided so far do not assume any increase in community college transfers, and that's another race-neutral alternative that is available.

Q. Now, to the -- how in this litigation has UNC responded to your simulations?

A. Well, on the one hand, they -- you know, strictly speaking, they haven't responded. The Panter committee, which was designed to examine race-neutral alternatives, as of the end of discovery had not examined any of the race-neutral simulations that

either Professor Hoxby or I, in conjunction with Professor Arcidiacono, provided. So there's been no response from the -- the body that has been impaneled to review race-neutral simulations.

And Professor Hoxby herself has declared at her deposition that she is not opining on whether race-neutral alternatives are available. She's providing data about whether UNC can precisely match its racial demographics and precisely match its academic criteria, but is not opining on whether a race-neutral alternative is available.

Q. Did Professor Hoxby provide some criticisms of parts of your modeling approach?

A. Yes. So I would say, broadly speaking, Professor Hoxby had -- had two concerns. The first is that the socioeconomic preferences that I suggested were too large. In other words, that because my models provide a substantial boost to socioeconomically disadvantaged students, we would end up admitting some students who might not be able to do the work. That was the one -- that was one criticism.

The other main criticism, which wasn't fully articulated but was -- was mentioned a number of times, is that this would be just too expensive; that it's less expensive -- if your sole goal is racial diversity, it's less expensive to admit, you know, more economically advantaged underrepresented minorities than it is to move to a system that provides, you know, substantial consideration to socioeconomic obstacles under -- under consideration.

JA587

Q. Let me just ask you first, can you -- are you persuaded by concerns that your socioeconomic preferences in your models are too large?

A. I'm not persuaded. So in Simulation 11, the socioeconomic preferences that I am envisioning are smaller than the preferences based on race are today for African American students.

Now, there is literature for -- research from Georgetown professor Anthony Carnevale that looks at -- tries to quantify in terms of the SAT points the obstacle students face in terms of race and socioeconomic status, and he finds that the most socioeconomically disadvantaged students are on average projected to score 399 points lower on the SAT than the more advantaged -- socioeconomically advantaged students.

By contrast, when you look at students who are of the same socioeconomic status, African Americans are projected to score 56 points lower than white students. And so the disadvantages that are captured by socioeconomic status are, you know, in Carnevale's terms, seven times as large as the disadvantages associated with race per se.

Now, I want to be clear that if -- if the -- if the race number were zero, that would not mean that our society has gotten beyond racism. The -- you know, we know that African Americans and Latinos are disproportionately poor because of a legacy of discrimination and ongoing discrimination. So the fact that socioeconomic status captures most of the disadvantages here says nothing about how prevalent

racial discrimination is in American society, but it does suggest that race-neutral alternatives are promising and that -- that socioeconomic -- that if you're trying to devise a system that's fair and looks at economic -- looks at obstacles overcome, that the primary obstacles can be captured by socioeconomic status.

And so that's, I think, important context to consider Professor Hoxby's criticism of our -- of the multiple bumps -- you know, the two or three bumps for socioeconomic status, which in some cases are larger -- in Simulation 13 are larger than the race -- race preferences.

Now, as to the concern about whether, you know, unqualified students would be admitted because we're giving such a substantial socioeconomic boost, Professor Arcidiacono's analysis has found that there were only 20 students who received those three bumps who scored below 1000 on the SAT. So if UNC were to say, you know, "No matter how deserving these students are, we just think below 1000 on the SAT -- we don't think they'll do well here," they could decide not to admit those 20 students; and you would still have, you know, broadly speaking, the same results as the simulations outlined here. Twenty students out of 4,000 is not going to make much difference in the overall representation of groups.

So for all those reasons, I found that criticism unconvincing.

Q. And could you respond -- do you find -- the criticism about increasing socioeconomic diversity in the class

would be too expensive, do you find that criticism compelling?

A. I did not. So under the -- the guidelines we're all working under here from the Supreme Court, the burden is on the universities to prove their race-neutral alternatives don't work, not that no race-neutral alternatives are available.

And so, you know, one alternative for UNC in this case would be to provide some evidence that, you know, the socioeconomic preferences or the percentage-plan approach that I've been -- the simulations that I've offered would simply be not something that UNC could afford. UNC provided no such evidence of -- that these are unaffordable for them. So that would be the -- I think the most important point.

Although I did not myself do a -- you know, a complex analysis of the financial ability of UNC given the fact they did not provide any -- any research to suggest they couldn't afford this, I just make a couple of observations.

One is that UNC has an enormous endowment. It's \$3 billion. There are 22,000 institutions of higher education in the world. UNC's endowment is the 35th largest. So it's in the very, very top worldwide, richest of the richest universities. So -- so that's one factor to consider.

There's also testimony from Steve Farmer and others that if UNC couldn't use race in admissions, it remains committed to finding new and different ways to create racial diversity, which is an encouraging

indication that perhaps UNC would find the resources necessary to -- to make this possible.

UNC is justly proud of the fact that it has the Carolina Covenant program to cover the cost for students below 200 percent of the income -- the poverty level, and I guess I don't -- I'm not convinced that there's any -- that UNC wouldn't be able to find the resources necessary to make this change.

The last thing I'll mention is that in states where institutions had to move to race-neutral alternatives, you did see the state legislatures and governors step up with financial resources, new scholarship programs to make race-neutral alternatives viable. This happened even in cases where there were right-leaning Republican governors in office in Texas and Florida where both governors opposed the use of race, but once race wasn't allowed to be used, they felt it was their duty to provide additional financial resources to institutions of higher education to provide new scholarships to make the race-neutral alternatives work. So that's another observation I will make about the -- about UNC's concern these alternatives are too expensive.

* * *

KAHLENBERG – CROSS BY MR. FITZGERALD

[pp. 465-467:10]

Do you agree with me that you testified at the deposition that you would say that you were heavily involved in the editing of the complaint?

A. Yes.

Q. And that was true in the *Harvard* case as well --

A. Yes.

Q. -- that you were heavily involved in the editing of that complaint?

And would you agree with me that it is possible that you gave advice to SFFA on which schools to sue? Correct?

A. It's possible, yes.

Q. And did you state that in your deposition as well; that you could not recall, but it was possible you gave advice on which schools to sue?

A. The deposition was a couple years ago, but I'll take your word.

Q. Now, we can agree that you're not offering any opinion in this case on whether or not the school group review process was used to manipulate the racial composition of the admitted class, correct?

A. That's correct.

Q. And similarly, we can agree that you're not offering any opinion in this case on whether or not the waitlist process was used to manipulate the racial composition of the admitted class, correct?

A. That's correct.

Q. And we've talked about this before. I'll just touch upon this briefly just to be clear.

JA592

You do not have a degree in economics, mathematics or statistics, correct?

A. That's correct.

Q. And you've never worked in an admissions office, correct?

A. That's correct.

Q. And you've never worked in a university financial aid office, correct?

A. Correct.

Q. You've never worked in a university recruiting function, correct?

A. That's correct.

Q. And you have never managed a university endowment, correct?

A. That's correct.

Q. You have never served on the board of a higher education institution, correct?

A. That's correct.

Q. And I think we can agree that you did not personally design or run the simulations you're sponsoring, correct?

A. Yes. We had a clear division of duties where I would draw on my experience, you know, with race-neutral alternatives that have been used elsewhere and then instruct Professor Arcidiacono with kind of high-level

ideas. He knew the data. I don't claim to know that, and so that was -- that was the division.

Q. And it is fair to say that when you were asked at your deposition about the underlying computer program for the simulation you seek to sponsor, which was called Kahlenberg race-neutral model dot DO, you were not familiar with that program, correct?

A. That's correct. Just to reiterate, I know my lane, and I wasn't going to question Professor Arcidiacono's analysis of work papers and that sort of thing.

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[p. 471]

don't call it the academic index, but those are indicators that UNC relies upon.

Q. And as you sit here now, you know that UNC does not calculate an academic index, correct?

A. Correct.

Q. They don't use one; they don't have one, correct?

A. That's correct.

Q. Thank you.

Let me now turn to the simulations we talked about, and I'll try to keep us all straight on which simulation we're referring to. So we'll start talking about the simulations regarding percentage plans, and we'll talk about Simulation 5 first so we can keep track.

In your January report, you sponsored a simulation that Professor Arcidiacono ran that was called Simulation 5, correct?

A. That's correct.

Q. And to run this simulation, you asked Professor Arcidiacono to rank UNC's current applicants using his model, removing any preference that he believes was for race and certain other preferences and then admit the top 4.5 percent, correct?

A. So Simulation 5, you know, had some errors in it, so I'm not -- it's not top of mind, but that sounds generally correct.

Q. I want to walk through the process of how you got from Simulation 5 to Simulation 8.

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[pp. 481-482]

Q. And here 75 percent of the class is admitted if they have the top 4 percent class rank, right?

A. "Class rank" meaning the credentials in Model 2 that are desired by UNC.

Q. So it's not based upon the high school class rank. It's based upon the rank on an index that Professor Arcidiacono created in Model 2?

A. Correct.

Q. And we agree that's not the process UNC currently uses, correct?

A. That's correct.

Q. And importantly, when you calculate how the results will turn out when you do it differently under the 4 percent plan versus the holistic admissions plan, the assumption is made that 100 percent of the people who are qualified will apply to UNC, correct?

A. That's correct in this continuum. It's the other end of the continuum.

Q. It's everyone -- it's no one is let in the pool and no one let out of the pool; now everyone is in the pool, correct?

A. That's correct.

Q. Would you agree with me that it's an unrealistic assumption?

A. I think it's meant to provide parameters. So on the one end, only people who applied in the past will apply; at the other end of the spectrum, 100 percent will apply. I agree with you it's unlikely that 100 percent would apply.

Q. Would you consider it an audacious assumption?

A. I believe I used that language.

Q. And you used that when Professor Kretchmar made that assumption in a model. You criticized her for making that assumption which you called audacious, correct?

A. Well, I said there were advantages and disadvantages to the two approaches and, you know, assuming 100 percent is one extreme. That's right.

Q. My question is: Did you call that assumption when Professor Kretchmar made it audacious?

A. Yes.

Q. Now, just to be clear, that means that the model -- the simulation, when it calculates the results, assumes that every public high school valedictorian in the state will apply to UNC?

A. Everyone, yes.

Q. Everyone. Thank you.

And even with those assumptions, Simulation 9 resulted in a decrease in diversity for Hispanics of about 10 percent, from 5.9 percent to 5.3 percent, meaning 10 percent (indiscernible).

(Court reporter requests clarification.)

MR. FITZGERALD: I'm sorry. I'll say that again.

Q. (By Mr. Fitzgerald) Meaning -- when I say a 10 percent

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[pp. 485-498]

first-generation college, they applied for a fee waiver or they are eligible for free or reduced-price lunch, correct?

A. That's one bump for being in one of those categories. And we had the data on free or reduced lunch for certain years, not others, for Simulation 3.

JA597

Q. But if you fit into any one of these three categories, you received a bump, correct?

A. That's correct.

Q. Then if the person lived in a ZIP code in North Carolina with a median income, in the bottom third nationally, you added another bump, correct?

A. That's correct.

Q. And so an applicant could get up to two bumps, correct?

A. That's correct.

Q. And the bumps were significant, correct?

A. Sizable out-of-state legacy.

Q. And by your metric, it added -- each bump added 219 points on the SAT score as one measure, correct?

A. I don't remember the exact number, but that's possible.

Q. And that was netting out the current -- whatever current preference there was for socioeconomic diversity, correct?

A. With such specific numbers, it's hard for me without my report. For purposes of our discussion, I'll assume you're citing the report correctly.

Q. And if the bump was doubled, it could be 400 some -- well over 400 points on the SAT, correct?

A. That's correct.

JA598

Q. And this would provide a strong incentive for folks from a socioeconomically disadvantaged background to apply, correct?

A. That's correct.

Q. It would take away the preferences given to underrepresented minorities, correct?

A. Underrepresented minorities -- there would be many underrepresented minorities who would receive the new bump, of course.

Q. But an underrepresented minority who did not qualify for the SES bump would be worse off with this system, correct?

A. They would no longer receive the preferences, yes.

Q. Again, your assumption says that under those circumstances, no one joins the applicant pool from the SES group, correct?

A. Yes. So that's correct as we've been discussing the parameters here -- the model parameters rather than every particular possibility. So those are the two end points of the spectrum.

Q. I just want to be clear. You make two assumptions: That no socioeconomically disadvantaged people -- no additional people apply, notwithstanding that they may be getting more than 400 additional points -- SAT points credit when they apply, correct?

A. That's correct.

Q. And similarly, when any race preference is removed, you still have the same number of underrepresented minority applicants, correct?

A. That's correct.

Q. And on that premise, you calculate the results, correct?

A. That's correct.

Q. Are you aware that Professor Hoxby ran the simulation against student -- the student population in North Carolina, allowing other SES candidates to apply?

A. Yes, through the NCERDC, right.

Q. And then when she scaled it down to the size of the class, the SAT scores on average fell by 170 points; is that right?

A. I don't recall the exact numbers.

Q. Do you have any reason to doubt that the SAT scores fell to 1136?

A. This is for -- let me make sure I understand the question.

Q. When Professor Hoxby ran the simulation, the (indiscernible).

(Court reporter requests clarification.)

Q. When Professor Hoxby ran a simulation against this data but allowed additional SES applicants, the SAT scores fell, correct?

JA600

A. Correct.

Q. So these assumptions affect the results of the simulations, correct?

A. Yes.

Q. Thank you.

And let me turn to Simulation 13. In essence, this is the same situation where, again, the applicant pool is locked both ways. No one gets in the pool, and no one gets out, correct?

A. That's correct.

Q. And that's the assumption upon which you calculated the numbers that appear in the charts, correct?

A. That's correct.

Q. And we'll turn to Simulation 11. And that's another simulation involving an SES bump of 1.5, correct?

A. That's correct.

Q. And this one uses the NCERDC data, correct?

A. That's correct.

Q. That's based upon Professor Arcidiacono's Model 2, correct?

A. That's correct.

Q. And, again, this falls into the category where the assumption is made at the time you calculate what the

JA601

results will be that every high school student in North Carolina will apply, correct?

A. That's correct.

Q. And I'll turn now to the simulation that we'll call Modified Hoxby 750/20. You mentioned that you had a disagreement with how Professor Hoxby completed the class. Do you recall that?

A. That's correct.

Q. And one of the concerns you had was that she used the underlying admissions data to complete the class for the actual admissions, and since that was under a race-conscious decision, that introduced some element that lacked race neutrality, correct?

A. Yeah. I mean, I would argue it's a significant element to lack race neutrality in admitted students where race was used in the process. It didn't make any sense to me.

Q. What I'm trying to figure out is how the numbers are affected by different choices people make.

Will you agree with me, whether or not you agree with the decision that Professor Hoxby made on how to project how the class would be filled, the assumption she made was favoring the outcome of her race-neutral alternative, correct?

A. That's correct.

Q. And, again, when you approached it differently, you once again made the assumption that every top student in the state would apply to UNC, correct?

A. Yes.

Q. And so based upon those results -- based upon that assumption, you calculated the results that we went over this morning, correct?

A. That's correct.

Q. Will you agree with me that between the analysis in your reports and the analysis in Professor Hoxby's reports and your depositions that the waterfront of race-neutral alternatives has been covered in this case?

A. I think that's a fair statement, yes.

Q. Now -- pardon me. Excuse me just one second.

THE COURT: Yes.

(Pause in the proceedings.)

Q. (By Mr. Fitzgerald) Now, this morning I believe you testified that one of the schools that you believe are covered after going to race-blind admissions were the California schools, UCLA and Berkeley, correct?

A. That's right.

Q. Now, is it fair to say that UCLA and UC Berkeley went race blind as a result of Proposition 209?

A. That's correct.

Q. And that occurred in 1996, correct?

A. That's correct.

Q. And after that went into effect, would you agree with me that racial diversity dropped dramatically at both schools?

A. So, yes, it took them a couple years to get their race-neutral alternatives in place, so initially there was a very sharp drop.

Q. And then they -- after a couple of years, they did in good faith pursue race-neutral alternatives, correct?

A. So I would say yes and no. I would say, yes, they adopted a number of good programs that -- you know, a percentage plan, bigger socioeconomic preferences, community -- enhanced community college transfers. They did a number of good things, but I don't think they've done enough.

Q. And you'll agree with me that as of 2014, you advised the Supreme Court in your amicus brief that UCLA could not sustain the prior levels of racial diversity using their race-neutral alternatives, correct?

A. That's right. That's referencing a study I discussed earlier where seven out of ten were able to get up to prior levels of black and Latino representation and three at that time did not, and UCLA was one of them.

Q. And the three were the most -- the three most selective schools of the ten, correct? The three of the ten that did not achieve racial diversity following the elimination of race-conscious admissions were the three most selective schools out of those ten, correct?

A. I think that's right, but I don't think the selectivity is the key issue there.

JA604

Q. But you would agree with me that there were -- three schools that it didn't work in were UCLA, Berkeley, and Michigan, correct?

A. That's correct.

Q. And they were the three most selective schools in that study, correct?

A. That is true, although there may be other relevant factors here.

Q. And will you agree with me that you've stated that the three exceptions were universities that draw from a natural applicant pool and face a hard time enrolling black and Latino applicants who had competitors still applying racial preferences? Would you agree with that statement?

A. I do.

Q. And you will agree with me that when schools that attempt to go race blind are drawing on a natural applicant pool, it is harder, correct?

A. That's right. I mean, I would draw a distinction, I guess, between a state-level initiative which prohibits a particular set of universities from using race from any federal intervention which could have national implications. So a university that was told by a federal court that they couldn't use race would send a signal to lots of other universities that they better be careful about pursuing race-neutral alternatives. And so they would be in a different position than UC Berkeley, UCLA, and the University of Michigan where the rest

of -- all the competitors can still use race, but they can't. So it's an unlevel playing field.

Q. And you'll agree with me that if UNC voluntarily, separate and apart from this case, adopted a race-neutral alternative at any point, they would face competition from schools that had not done so, correct? Just like Berkeley and UCLA and Michigan, correct?

A. Except to the extent that, you know, a leading institution like UNC recognized that it could use race-neutral alternatives. I think that would send a signal as well to other universities that they ought to seriously explore these issues more vigorously than they have in the past.

Q. And you'll also agree with me that you stated in the past that percentage plans may not easily translate to public or private universities with natural pools of applicants? Is that fair?

A. I think -- you know, I don't remember when -- when I wrote that. I guess I feel now that there are -- there are ways to try to extend a percentage plan, but in states like North Carolina where 82 percent of the students are in state, then it's less of an issue anyway.

Q. But you'll agree that UNC does draw on a natural applicant pool, correct?

A. I do.

Q. And going back to the situation with California, putting aside -- you testified in the deposition in this case that UCLA and Berkeley were on the list of schools that had not achieved diversity, correct, racial

JA606

diversity, following the change in applications?
Correct?

A. Yes. This was as of -- the 2012 study found that UCLA, UC Berkeley, and University of Michigan had not yet achieved the levels of black and Latino representation that they had in the past.

Q. And in 2018, you testified that those two schools had not yet achieved racial diversity, correct, in the deposition in this case?

A. So if you're saying so, I'm guessing there's a slide that suggests I said that. I mean, I -- Berkeley has -- Berkeley and UCLA have just admitted their most diverse classes ever. Berkeley is 17 percent white. So if I said that in 2018, I may have been incorrect.

Q. And did you also say that in a report you filed in the *Harvard* case in 2017?

A. I'm sure I cited the 2012 study.

Q. And putting aside --

MR. FITZGERALD: And, Your Honor, I just make a note we object to updating information beyond the discovery record.

Q. (By Mr. Fitzgerald) But putting aside whatever may have happened in 2019 or '20, where we are, you'll agree with me it's been more than two decades since California and Berkeley ended their race-conscious admissions; and at least until a few years ago, whatever happened in the last couple of years, they went decades where their racial diversity failed to catch up, correct?

JA607

A. I think that's accurate. As I say, I think they could have done more, but that's accurate.

Q. Thank you.

And let me ask you this question, Mr. Kahlenberg: Would you agree with me that -- and have you said this before, that the pursuit of socioeconomic diversity could be expected to lower the rankings of universities when the funds they use to pay for such diversity are not available to be spent on other things that lead to higher rankings?

A. I -- yes, I think that's true if -- if we don't see a -- you know, a widespread adoption of -- of race-neutral alternatives. If an institution, in my view, kind of does the right thing and tries to open its doors to more students of humble backgrounds, that they could not do as well in the *U.S. News & World Report* rankings, I think that's accurate.

Q. And you'll agree with me that a change in *U.S. News & World Report* rankings could affect the applicant pool, correct?

A. It could.

Q. People like to go to schools with better ranks, correct?

A. Yes. I mean, I think people also like diverse environments, as we all know. So I think that would be an offsetting consideration as well.

Q. Well, if the school became less diverse and its rank fell, that would be a double negative, correct?

JA608

A. I'm saying if they adopted socioeconomic preferences and that meant it couldn't spend as much money on climbing walls and other things that might be attractive to students, there will be some students who might say, "This institution is open to all. I'd rather go there."

Q. And if they spent less money on faculty or retaining faculty, that would hurt the admissions, would it not?

A. I mean, it could potentially reduce the rankings to the extent that institutions are competing on prestige for *U.S. News & World Report*. And I think it's right to say that an institution which -- which opens its doors to more students has to make -- has to make choices, and if it's more important to be higher on the *U.S. News & World Report* than it is to be open to all students, that's a choice any university can make.

Q. But you'll agree with me that the *U.S. News & World Report* rankings can be affected?

A. Can be -- I'm sorry?

Q. Can be affected by a change in admissions policy if funds are spent on socioeconomic diversity, correct?

A. Yes.

Q. Now, you talked earlier today about financial aid. Are you aware that the university is one of only two public universities in the country that meets 100 percent of each admitted student's need?

A. So I know the Carolina Covenant program is well regarded. I've written favorably about it. I think it's a good program.

JA609

Q. And are you aware that the Carolina Covenant program takes care of 100 percent of the qualifying students' needs?

A. Yes.

Q. And you're aware that Carolina was the first public university to engage in that kind of program?

A. Well, I -- I remember when the UNC officials invited me to speak at a panel in 2006. I think this was around the time when they were trying to get other universities involved, so it wouldn't surprise me that they were one of the first.

Q. And we could agree that you spoke very favorably about the program, correct?

A. I would say I was mixed. So I spoke favorably about the financial aid program. I thought it was an important step. I was critical of UNC for not coupling the Carolina Covenant financial aid with a meaningful boost in the admissions process to low-income students. You can have the best financial aid program in the world, but if you're not letting people in the door, then it doesn't do as much good as if you do both things. That was my point at the time.

Q. But you agree that you characterized it as a positive effort to increase financial aid, correct?

A. Yes.

Q. And are you aware that the university has been ranked first among public universities in *Kiplinger's Personal Finance* magazine's ranking of best college values for 18 years?

JA610

A. I didn't know that, no.

Q. And are you aware that the university received the Jack Cooke award in 2017, which is given to a selective college or university with an excellent record of admitting, supporting, and graduating outstanding low-income students?

A. As I said, I think UNC does some good things. Could do more, though.

Q. You mentioned that you thought that some of these options were feasible. I recognize where the burden of proof is, but you mentioned it's feasible.

You'll agree with me that you have not done a quantitative analysis of what the financial cost of increasing the percentage of fee waiver, first-generation college, Carolina Covenant admits would cost, correct?

A. Right. I was in the posture of hoping to have a chance to examine the University of North Carolina's evidence on why it couldn't afford more socioeconomic diversity, and so I would have reacted to that. But in the absence, I didn't do an analysis, that's correct.

Q. And you haven't done any detailed analysis of what parts of the university's endowment are restricted, correct?

A. I've examined some information about that, but I haven't -- I didn't write anything in my report about that.

Q. Now, with regard to analysis, you'll agree with me that you've not done a quantitative analysis particular

JA611

to the state of North Carolina about the overlap between those people who

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[p. 500]

put that out there as another thing for -- another strategy that UNC could consider, but we didn't do a quantitative analysis.

Q. And you testified this morning about legacy preference. Do you recall that testimony?

A. Yes.

Q. And you'll agree with me that limiting a legacy preference is not a standalone race-neutral alternative, correct?

A. I don't really see any of these efforts as completely standalone. So if you provide a socioeconomic preference and then you don't provide financial aid, that's no good. I mean, you need to do both. I think there are -- you know, addressing legacy preferences would -- would have some impact on improving racial diversity and certainly socioeconomic diversity, but by itself -- I wouldn't advocate any of these things just by themselves.

Q. And are you aware that Professor Arcidiacono has testified that the number of minorities admitted to the university is minimally affected by legacy preference?

A. I heard that testimony, yes.

Q. And you brought up the topic of early admissions in your testimony today. Do you recall that?

JA612

A. Yes.

Q. And when you wrote your first report, do you recall indicating your concern that early admissions has a bad

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KAHLENBERG – CROSS BY MS. TORRES

[p. 504]

A. That's correct.

Q. And you agreed that there was a striking contrast between these proportions, correct?

A. I do.

Q. And for you, the striking contrast was informative for showing underrepresentation; is that right?

A. That's correct.

Q. I'm going to move to a different topic now briefly. You were retained in this case to examine how UNC could implement workable alternatives to considering race to produce the benefits of diversity; is that right?

A. Educational benefits of diversity. That's correct.

Q. And you would agree that the benefits of diversity include reducing isolation so that underrepresented minority students do not feel like representatives for their race; is that right?

A. I can agree with that.

JA613

Q. And you reviewed various sources that you talked about to formulate your conclusions, correct?

A. That's correct.

Q. And all the sources that you relied upon to formulate your opinions are cited in the three reports that you wrote for this case?

A. So broadly speaking, yes. I mean, because this is my area of work, it's possible there is something stuck in the back of my head, but anything I cited certainly would be part of what I

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FARMER – DIRECT

[pp. 518-521]

Q. I want to ask you some questions about this mission statement, and I'm actually going to direct you to the language that's above the highlighted portion where it talks about the university being the nation's first public university.

What does it mean to the university's mission that it's the first public university?

A. I think it's hard for most people at the university to think of the university without thinking of it as a public institution that's responsible to the people and that's here to serve the people of North Carolina. Our being public is integral to who we are. It's how we think of ourselves, and we make decisions based on our understanding of our responsibilities as a public university.

JA614

Q. And then the mission portion that you just read talked about “to teach a diverse community of undergraduate, graduate, and professional students to become the next generation of leaders.”

What is the importance to the university’s mission of teaching a diverse group of students?

A. We believe strongly, based on our experience and based on evidence, that if we’re going to prepare the next generation of leaders for our state and our country, we have to provide them the experience of learning and living alongside people from different backgrounds.

Q. Has the university received any recognition for having top academics?

A. We have.

Q. Can you describe that?

A. Well, we’ve been perennially ranked among the top five public universities by *U.S. News & World Report*. We have really high global rankings among all universities, public and private, worldwide.

Q. I want to ask you, then, about the competitiveness of admissions at the university. How selective is the university?

A. It’s hard to earn admission. It’s especially hard for nonresident students, but it’s also hard for North Carolinians. In a typical year, we’ll offer admission to 47 to 50 percent of the North Carolinians who apply and maybe 12 to 14 percent of the out-of-state students who apply.

JA615

Q. Approximately how many applications do you receive? And I'd like to focus your answers on the time period of 2013 to 2017.

A. I think in 2017, we received about 43,500 applications, roughly.

Q. And what is the size of the class?

A. At the time it was about 4,200, I believe.

Q. And you talked about a difference between in state and out of state. Can you describe how that works?

A. Well, we have a limit on out-of-state enrollment, and the limit is by policy of the Board of Governors of the university system. Enrollment in our first-year class is capped at 18 percent of the total. So we have fewer spaces for nonresident students with many more candidates from out of state, though. About two-thirds of our candidates in a typical year come from beyond North Carolina and about a third from within.

Q. I'm going to ask you some questions about the university's commitment to diversity. That commitment has been described here as a broad commitment to diversity. Do you agree with that?

A. I do agree with that.

Q. And can you describe what that means?

A. We're interested in enrolling great students who will make each other better, both because of the excellence of their achievement and their potential and because of their differences one from another. We don't think of diversity as limited by what we know. We are

JA616

willing to be surprised by the differences that our students bring to us when they apply for admission, and that's one of the reasons why it's important for us to consider candidates one by one, as individual people, each of them unique from everyone else.

Q. What would you describe are the benefits of diversity and having a broadly diverse class?

A. Well, the university's enumerated certain benefits of diversity. We've codified them, if you will, and are assessing ourselves against those specific benefits.

In general, the benefits are that students are able to experience different perspectives that will challenge them to think; that students will come up with more creative solutions than they would have come up with otherwise; that students will learn how to navigate in a complex and multicultural world so that they'll know more and they'll be able to do more when they leave us.

Q. You mentioned that this has been memorialized. I want to look at some university documents, and we'll start with DX6.

Do you recognize this?

A. I do.

Q. What is it?

A. This is the university's academic plan from 2003.

Q. What is an academic plan?

A. It's a statement of the university's goals and aspirations where academics are concerned.

JA617

Q. I'd like to look at page 17 of the PDF. Do you see where this says "Six overriding academic priorities will guide Carolina over the next five years"?

A. I do.

Q. Can you please read what Priority D states?

A. D says: "Increase diversity among faculty, students, and staff."

Q. And then if we could look at page 28 of the document, do

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[pp. 523-524]

institutional educational priority that recognize how much Carolina's learning environment is enhanced by students, faculty, and staff from multiple backgrounds and ethnicities interacting together."

Q. And based on your own experience, was that a value and commitment of the university in 2011?

A. It was.

Q. I'd like to now show you DX2 and see if you recognize this document.

A. I do.

Q. And this states at the top: "Resolution 2016-12. On Commitment to Diversity and Inclusion." What is this?

A. This is a resolution that Faculty Council unanimously approved in 2016.

JA618

Q. Were you at a meeting where this occurred?

A. I was at this meeting.

Q. Okay. And this was in 2016?

A. Yes, I believe it was.

Q. How much support did this statement have among the faculty?

A. Well, it passed unanimously.

Q. And I want to take a quick look at the resolution. If you could look at -- is that paragraph 2? Yep -- the highlighted portion and read that into the record, please.

A. "Therefore, the Faculty Council reaffirms its commitment to the values of diversity and inclusion. We recognize that student body diversity is a vital and necessary component of academic excellence, and we believe that we can achieve our educational, research, and service missions only by creating and sustaining a diverse and inclusive environment."

Q. Thank you. Could you read the first three sentences of the second paragraph, please?

A. "We are committed to promoting the many educational benefits, generation of new ideas, and the innovations that flow from a diverse student body. These benefits are a real and meaningful part of our pedagogy. It is our goal for our students to experience these benefits inside and outside the classroom as part of their educational experience by fostering the best conditions possible to maximize these results."

JA619

Q. And is this statement consistent with what you personally observed in terms of the faculty's commitment to diversity?

A. It is.

Q. We can set that one aside, and I want to now turn to PX3.

Do you recognize this document?

A. I do recognize it.

Q. I'm sorry. DX -- it's DX3, for the record.

What is this?

A. This is a report that Provost Jim Dean submitted to Chancellor Folt in 2017 about the educational benefits of diversity and inclusion at the university.

Q. Did you have any involvement in the preparation of this

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[pp. 527-533]

for racial and ethnic diversity?

A. Yes.

Q. Can you talk about that?

A. The world that our students will join is a multiracial world, and multiracial understanding is really a part of all of the benefits that are enumerated here. It's important that our students have the experience of learning and living alongside other

JA620

students of other races and ethnicities because that's the world they will join, and it's also important that they have that experience at the university because the conversations they have will be richer and the discoveries that they make will be better and the decisions that they make will be better informed as a result of their experience with students of other races and ethnicities.

Q. I'd like to now change topics and ask you some questions about the admissions process, and, again, I want to focus on that 2013 to 2017 time frame to describe this.

We've heard a lot in this case so far about data and statistics. Is that how you think about applications to the university?

A. I think about candidates to the university. I think about students who are applying to the university. You know, I -- and we think about people who are entrusting us to try to make sense of them, to appreciate the best in them, to consider them as fairly and as fully as we can, and then to make good decisions about them. And, yes, there are times when we use data. There are times when we pay attention to the whole, but our daily work is work meeting students, trying to understand them, and trying to treat them well and care for them one by one by one. So, yes, we think of data, but we think primarily of people and primarily of young people.

Q. What are you trying to achieve with the admitted class?

JA621

A. Well, we want to enroll students who can contribute to the excellence of the university, and we want to enroll students who together will be better than any of them could be alone. And the way that I put it to people often is that we're looking for great students who will make each other better, and we're looking for students who will form a community where people can thrive and people can learn and people can trust that others will see the best in them and want to work with them to help them do together, again, what they can't do by themselves.

Q. What is holistic review?

A. Holistic review means that we try to make sense of whole people. We try to make sense of candidates as human beings. We try to understand them as fully as we can given the limits that we face. You know, we're -- we're considering students through the applications that they submit. We don't get to live with them. You know, we don't get to teach them or coach them or mentor them. But within those limits, we try to consider students carefully one by one, and, you know, we try to care for students really one by one.

I mean, holistic admission really means that we focus on the best in young people, that we try to see the best in them, that we try make sense of them, where they come from, what they care about, what they're good at, what they've struggled at, what they can get better at, what difference they'll make in the lives of the people around them and in the lives of other people who are going to depend on them forever.

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So holistic admission, I know that sounds probably pretty expansive, but it really involves our considering students comprehensively, rigorously, sympathetically, individually, one by one by one on the basis of everything that we know about them, not one or two facts that we know about them, but everything that we know about them.

Q. Can you describe the role of the admissions office in furthering the university's mission as it relates to the educational benefits of diversity?

A. I think it starts with caring for young people and encouraging them. You know, the -- the university -- we have students who come to us from all walks of life; and if we don't treat them well, if we don't respect them, if we don't thank them for applying, if we don't honor their trust in us when they take a chance and apply for admission, if we don't do those things, if we don't care for people in the moment, they won't join us; and they shouldn't.

So we start by trying to care for young people as soon as we meet them and encourage them to think about the university. We encounter many students who have never thought about coming to Chapel Hill. We talk with many students who have never thought about going to college. And, again, our job is to try to see the best in them and try to care for them and encourage them and to demonstrate to them the university might be worth their time.

So we advance the educational benefits of diversity, first of all, by caring for people and in the act of caring to try to encourage people to think about joining us, the

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broadest pool of candidates we can find. If students don't apply, we can't admit them, and so we have to care for them and encourage them to think about coming and joining us.

Once they apply, we try to consider them, as I said, one by one, and we try to imagine the difference that they'll make in the lives of others and in the life of the university, and we try to imagine the capacity to which they would benefit from being a part of our community. And it's putting together that jigsaw puzzle of students who come from different places, who have different ideas, who have different backgrounds, who travel different paths. It's putting together that complex human community that helps the university advance and achieve the educational benefits that we're trying to provide to our students.

Q. Have you received any guidance from the faculty advisory committee on how to approach the admissions process?

A. We have.

Q. And I would like to look at DX9. What is this document?

A. This is the faculty advisory committee's statement on the evaluation of candidates for admission.

Q. And if we could look at the first paragraph of that, could you please read that into the record?

A. "In evaluating candidates for undergraduate admission, the University of North Carolina at Chapel Hill seeks to shape the entering class so that its

JA624

collective strengths will foster excellence within the University community; enhance the education of everyone within it; provide for the leadership of the educational, governmental, scientific, business, humanistic, artistic, and professional institutions of the state, nation, and world; and enrich the lives of all the people of North Carolina.”

Q. Does the admissions office follow that guidance?

A. We do.

Q. And I want to look at paragraph 3, please. That’s actually the middle paragraph here. Could you please read that highlighted portion?

A. “The qualities we seek in each class are those that foster such a community, including intellect, talent, curiosity, and creativity; leadership, kindness, and courage; honesty, perseverance, perspective, and diversity. Although we expect each successful candidate to demonstrate strength in many of these areas, we do not expect every candidate to be equally strong in all of them. Just as there is no formula for admission, there is no list of qualities or characteristics that every applicant must present.”

Q. Is that how it works in practice?

A. That is how it works in practice.

Q. And I wanted to look at the first sentence of the following paragraph where it says “In shaping the class....” It uses some language that sounds very similar to what you’ve said, which is that “...we

evaluate individual candidates rigorously, holistically, and sympathetically.”

Can you describe what you mean when you say you look at people sympathetically?

A. You know, students do a lot of work when they apply to Chapel Hill, and they do a lot of work just to get to the point of applying. They have other responsibilities. They have other cares. They have other things to do. They have people who depend on them.

We don't take for granted when someone takes the time and goes to the trouble to apply for admission at UNC, and we think that when a student does that, the student deserves to be treated with care and the student deserves to be treated sympathetically. I guess here by sympathetically we mean we want to understand people, we want to see the best in them, we want to give them the benefit of the doubt.

Q. Now I want to point to the last sentence there, and it talks about that “...we understand the context within which achievements have been realized and potential forged.”

What do you mean by that?

A. You know, no student lives in the air. No student lives in the abstract. Students are real people. They come from real families. They live in real neighborhoods. They go to real schools that are in real communities. We don't feel as though we can understand any student fully unless we try to understand as fully as we can the context within which

the student has lived and done his or her work because, again, students aren't -- they're not interchangeable parts. They're not numbers to us. They're people, and people have lives.

Q. Would you be able to do what's being described in DX9 if the only thing you knew about a candidate was their GPA and their SAT score?

A. No.

Q. Okay. I want to now turn away from that document and talk about the stages of review at a high level, and I'm just going to state that we will be hearing later from one of your associate directors who is going to go through the evaluation process in more detail. So I'm just asking really to orient the Court, and I think we've prepared a demonstrative for this,

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[pp. 536-539]

schools.

And so the school group review process involves a senior member of the team, a second reader, a Tier 2 reader, going through and looking at all of the decisions that have been made within each school that sent us candidates.

Q. Do the readers at school group review review files in any different way than they're reviewed at the earlier stages?

A. Their charge is to provide the same comprehensive and holistic, rigorous, sympathetic, individualized

review to any file that they evaluate that they would have if they had been a first or a second reader. School group review is an extension of comprehensive and holistic review.

Q. What are the purposes of school group review?

A. There are a couple. We have a lot of different people reading applications over a long period of time. They're working really hard. They're doing the best they can, but they're learning as they go along. They're entering information in the file.

And so one purpose of school group review is quality control. It's to make sure someone hasn't entered a rank in class incorrectly or a GPA incorrectly. Because the decisions are arranged within the roster of a school, the second reader -- excuse me, a school group reviewer can see if there are anomalous decisions or decisions that look anomalous within the school group.

So, for example, if we have 20 candidates from a school -- from a North Carolina school and we've offered admission to candidates who are Nos. 2 through 12 and we haven't offered admission to the candidate No. 1, it's important for us to take a look at candidate No. 1. There might be a really good reason why we're not offering admission to candidate No. 1, but we want to make sure. We want to make sure that before the decisions go out the door that we can defend them to counselors in schools. We want to make sure that we could defend them to families when they call. We want to make sure that we got things right. So making sure that we got things right is one purpose of school group review.

The other purpose of school group review is to make sure that we don't overadmit our class. Because what happens over the course of three or four months of reading, as people are making provisional decisions, we inevitably end up with more people we want than we have spaces, and so school group reviewers have to go through and they have to make difficult decisions within schools about candidates to move in one direction or the other. Sometimes candidates are admitted from -- or moved from a provisional admit offer to a waitlist offer or a denial offer. Sometimes students are moved from a provisional deny offer to a waitlist offer or admit offer. So there are files going in every direction as we're trying to get to the right number of admissions for the cycle.

Q. And you said that you were trained to get to the right number of admissions as it relates to in state and out of state.

A. That's correct, yes.

Q. Do you use any other numerical targets for any other categories as part of that process in the school group review?

A. No, we do not.

Q. And is that true at all stages of the process?

A. That is true at all stages of the process.

Q. And then it looks like the next step after school group review is that decisions are released. What are the potential options there?

A. A student could be offered admission, a student could be offered a place on the waiting list, or a student could be declined.

Q. And I see an option coming from the waitlist or from denial that there is an appeal. What is the appeal process?

A. Students may appeal a negative admissions decision, and that's anything less than an admission. They may appeal a negative admissions decision first to me, and then if I decline the appeal, they may appeal to the provost of the university.

Q. Let me talk to you now -- we can put this exhibit aside -- about the evaluation of candidates as it occurs during this process. I want to ask is there guidance that's provided to readers about evaluation of candidates?

A. Yes.

Q. And let's look at DX10. Do you recognize this?

A. I do. This is the reading document that we use to help train readers.

Q. And I think we've seen a prior version of this document. Can you describe the difference between the document that was used, I believe, with Dr. Kretchmar and this document?

A. We've had a version of this document I think since about 2006 or 2007, and it's been updated, revised periodically ever since.

Q. And for the one that we have up on the screen now, DX10, what year does this reflect?

A. 2016-2017.

Q. And if we can look at page 5 of this document where it talks about the evaluation process, could you please look at the first paragraph and read the first two sentences?

A. "In keeping with principles established by the Advisory Committee, the Office of Undergraduate Admissions assigns no fixed weights or points to any specific parts of the application for admission, and it uses no formula to assess the students who have applied. With the exception of the 18 percent limit on out-of-state enrollment in the first-year class, there are no quotas of any kind."

Q. Is that an accurate statement?

A. That's an accurate statement.

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[pp. 542-556]

I would defer to you if you want us to go ahead and get started or you would like to go ahead and take the afternoon break.

THE COURT: Why don't we take a 15-minute recess, and we will resume at 3:20.

MS. BRENNAN: Thank you.

(An afternoon recess was taken from 3:05 p.m. until 3:20 p.m.; all parties present.)

THE COURT: You may proceed.

MS. BRENNAN: Thank you, Your Honor.

Q. (By Ms. Brennan) Mr. Farmer, when we broke, I was about to ask you some questions about the consideration of race in the admissions process.

Is there any guidance in the reading document for readers about how race is considered?

A. There is.

Q. I'd like to look at DX10 that we were looking at previously, at page 7, and this is a section of the reading document entitled "Race, Ethnicity, and National Origin."

Could you please read the first paragraph?

A. "While race, ethnicity, or national origin may be used at any stage in the admissions process, it is never used as anything other than one part of the comprehensive, holistic, and individualized review afforded to each candidate. At no point in the process are candidates of different racial or ethnic backgrounds reviewed in separate groups. Nor does the University have explicit or implicit quotas for any particular racial group or ethnic group, or for underrepresented students as a whole, or for students of color as a whole."

Q. Is that all accurate in terms of the way that it works in practice?

A. Yes, that's accurate.

JA632

Q. And I want to ask you about specifically when it talks about “may be used at any stage.” What does that mean?

A. We want to treat students as whole people at every point along the way when we’re evaluating them; and so everything that we know about them, including if they choose to disclose their race or ethnicity, may be used at every point along the way in the decisions that we make about individual people.

Q. Is it fair to say that that’s not something unique about race in terms of it being able to be considered at every stage?

A. It’s true about everything that we consider about candidates or everything that we know about them.

Q. Now I want to look at the first sentence of the next paragraph. Could you please read that into the record?

A. “Within this flexible and non-numbers-based consideration of race, and in support of the cultivation of diversity broadly construed, the University also aims to enroll critical masses of students who identify themselves as members of groups the University deems underrepresented.”

Q. Is that an accurate statement?

A. That is an accurate statement.

Q. What does it mean that the university aims to enroll critical masses of students who identify themselves as underrepresented?

JA633

A. Critical mass is a complicated idea, a complex idea. It's really about the experience of students in our community, and it's about their ability to contribute fully to the experience of others and also benefit fully from the experience that we offer.

Q. How does that relate to the university's desire to provide educational benefits?

A. It's integrally connected to our desire to provide crucial educational benefits of diversity to our students. Our students have to feel free to be themselves. They -- they have to feel as though they can be the unique individuals they are. To the extent that people think of them as spokespeople for their race or to the extent that people stereotype them on the basis of their race, it limits their ability to contribute fully to the experience of others, and it also limits their ability to benefit from the education that we're trying to provide.

Q. That sentence also refers to groups the university deems underrepresented, and then the paragraph goes on to define what that is.

Which groups are considered unrepresented -- underrepresented?

A. American Indian students; Hispanic, Latino, Latina students; black or African American students.

MS BRENNAN: And could we just show the next portion of that paragraph?

Q. (By Ms. Brennan) And does this portion of the reading document set forth how that definition came into place?

A. It does.

Q. I want to now look at page 8 in the third paragraph and have you read this paragraph into the record, please.

A. "Consistent with the Supreme Court's decision in *Grutter*, the race or ethnicity of any student may -- or may not -- receive a 'plus' in the evaluation process depending on the individual circumstances revealed in the student's application. And, while a 'plus' that is awarded may be significant in an individual case and tip the balance towards the admission of the student, it is not automatically awarded, and not considered in terms of numeric points or as the defining feature of an application. Even if awarded, a 'plus' does not automatically result in an offer of admission. In alignment with the direction provided by the Supreme Court, including most recently in its decisions in *Fisher I* and *Fisher II*, the race and ethnicity of any applicant is always viewed in the context of everything else that the admissions committee knows about a candidate and in light of the range of contributions the candidate might make to the University community."

Q. Are the statements in that paragraph related to how the admissions process works accurate in practice?

A. They are accurate.

Q. And to what extent has the university attempted to ensure that its admissions program is compliant with legal standards?

A. Well, we seek the advice of counsel all the time, and we have for many, many years. We have actively

JA635

sought to align our practices precisely with the guidance that we've received as the law has been revealed to us in these decisions.

Q. I want to ask you about what information evaluators have when they're reviewing applications about race. How do evaluators know a student's race, typically?

A. They know a student's race if the student reveals the student's race to us, and they don't know the student's race if the student does not reveal the student's race to us. And the student reveals if he chooses to or she chooses to -- the student reveals race through The Common Application that the student submits to us.

Q. Just to be clear, does the university require information about race and ethnicity?

A. No, we don't.

Q. Do evaluators have information during their review of applications about how many students have been provisionally admitted based on race or ethnicity?

A. No, they do not.

Q. They do not now, but I want to ask during that -- that time frame that we're talking about, was that information available to anyone?

A. There was a period of time before 2015 when aggregate information was available to some people in the office.

Q. Has that changed?

JA636

A. It has changed. In 2015, we eliminated any reference to the number of students admitted with numbers disaggregated by race from the reports that we've produced.

Q. After 2015, what information do readers of applications have available to them about the numbers of provisionally admitted students about race or ethnicity?

A. They have information about the number of students who have applied. They don't have any information about the number of students who have been admitted. They don't have any information about the number of admitted students who have said that they intend to enroll.

Q. Are there times when someone in the admissions office needs to look at the numbers of provisional admits for any reason?

A. Yes, there are.

Q. And what happens when that occurs?

A. If a reader or someone who is involved in the reading process has a reason to learn how many students have been admitted with the numbers disaggregated by race, then that person has to recuse himself or herself from reading from that point forward.

Q. And why was that implemented?

A. It was implemented because -- although readers had never made decisions in light of information that they knew about the aggregate numbers of students who

JA637

had been admitted disaggregated by race, to be on the safe side, we implemented that recusal to make sure that there could be no confusion and there could be no misinterpretation of our practices.

Q. And even during the time when some may have had access to that type of information, did they ever use it to adjust individual decisions based on what they knew about the provisional numbers?

A. No.

Q. How can you say that with confidence?

A. Because we talked about the importance of paying attention to individual students, first of all, and extending the same individualized and comprehensive review that we extend to students at the beginning through to the very end of the process. We train people well. We check behind them to make sure that they were following our guidelines. And also, honestly, I've never heard that mentioned in the admissions office. I've never heard anyone give an instruction; I've never heard conversation about that. That simply wasn't what we did.

Q. I'm going to ask some follow-up questions about the consideration of race.

Are there applicants of all races who are rejected?

A. There are.

Q. Are there applicants who get in no matter what their race or ethnicity is?

A. Yes, of course.

JA638

Q. Are there candidates of different racial or ethnic backgrounds who are ever assigned automatic points based on that racial or ethnic background?

A. No.

Q. Do you ever negatively evaluate applicants on the basis of their self-disclosed race or ethnicity?

A. No, we do not.

Q. Do you ever negatively evaluate applicants because they choose not to share information about their race or ethnicity?

A. No, we do not.

Q. Are there ever any particular different standards or thresholds based on race in the admissions process?

A. No, there are not.

Q. When the document talks about race being a potential plus, is that something that can apply to students other than underrepresented minority students?

A. Yes, it can.

Q. Can you give an example of how that might happen?

A. I can give a complicated example. So -- this is an actual example. A student from Vietnam, who identified herself as Montagnard -- Asian and Montagnard, applied for admission. The student and her family had moved across the world, had settled in a part of North Carolina I'm sure they'd never heard of before, and the student thrived in her environment

JA639

despite the difficult circumstances, and the whole of her background was appealing to us when we evaluated her applications -- her application.

I think that story reveals sometimes how hard it is to separate race out from other things that we know about a student. That was integral to that student's story. It was part of our understanding of her, and it played a role in our deciding to admit her.

Q. Does the attempt to understand individual circumstances apply equally to applicants of all races?

A. It does.

Q. Overall -- to what extent do you take into account the overall contribution that each individual would make to the student body?

A. We strive to give every student an equal chance to demonstrate their capacity to make other people better, you know, better not just through what they've already achieved, but better because of the distance they've traveled or the distance that they will travel. And we try hard to extend that same level of care and that same level of consideration to every candidate who applies, no matter what the student's numbers are, no matter what the student's immediate credentials are.

Q. There's been a claim in this case of an implicit formula as it relates to race. What is your response to that?

A. That there is no formula. We don't think formulaically about complicated people, and every person who comes to us is complicated. We don't think

JA640

that students are a little bit of this and a little bit of that. We don't disaggregate them into parts and assign coefficients to them and then try to put them back together, because at the end of it we have to talk to the people we admit. We have to talk to the people we disappoint. We feel that we owe them -- that we have a duty to them to consider them as whole, complicated people, and not just subject them to some formula, implicit or explicit, that doesn't do justice to their achievements and their potential and to their uniqueness.

So that's a long way of saying I don't know what this formula is. We've never talked of formulas. I don't think our readers -- I don't think 40 people have an implicit formula. I suppose there's a way of discovering a formula for anything that a group does, but we don't consider students formulaically because we know they're people.

Q. There's also been a claim in the case that the university's admissions office has been overrating race. What is your response to that?

A. You know, I -- that's not true. You know, I heard the comments about some mythical automatic bump that some students get by virtue of their race. That's not the way it works. There's no automatic advantage for anybody based on their race.

Q. I want to turn now and ask you some questions about a slightly different topic. That's socioeconomic diversity.

Are there instructions in the reading document related to that?

A. There are.

Q. Let's look at DX10, page 8, and this talks about socioeconomic status. Could you had read this paragraph into the record, please?

A. "The University works strongly to attract and retain disadvantaged students regardless of race. This is a critical component of the institution's obligation to the state of North Carolina and indeed to the nation. As part of its broad effort to foster diversity within the scholarly community on campus, the University's admissions process takes into account the socioeconomic status of each candidate, with an eye towards increasing the number of disadvantaged students who are admitted and eventually enroll. As with other criteria considered by the admissions committee, relative disadvantage is assessed in ways that are both flexible and individualized -- a continuum of consideration rather than a simple on-off switch. Assessment of disadvantage must also in turn inform the University's interpretation of the candidate's scores on standardized tests and other academic indicators."

Q. Is this an accurate statement about the university's consideration of socioeconomic status?

A. It is.

Q. How do readers take socioeconomic status into account?

A. Well, as this paragraph suggests, they take it into account flexibly and in light of everything else that they know about the candidate because not every student who is socioeconomically disadvantaged is the

JA642

same student, and we feel that we owe students individualized consideration one by one by one.

Having said that, the university is trying to and has been trying to increase its enrollment of low-income students, especially low-income North Carolinians, and increase its enrollment of first-generation college students, especially first-generation college North Carolinians. We've had some success in those areas through recruitment, both of applicants and of admitted students, and we've also had some success by including statements like these in our reading documents and training readers in how to consider socioeconomic status appropriately and flexibly in the process.

Q. What information in the application speaks to socioeconomic status?

A. Well, there are a few things that are -- pretty clearly speak to it: You know, whether a student qualified for a waiver of the application fee; whether a student indicated -- and the student may indicate this -- whether the student indicated that the student qualified for free or reduced-price lunch; whether the parents are employed; if they're employed, how they're employed; how much education the parents have; where the students live; what high schools they attend; what students say about themselves; often what they're involved in outside the classroom, for example, working a job to put food on the table for younger siblings. So we have a variety of information. It differs from one candidate to another.

Q. Is the university considered need blind?

JA643

A. We are.

Q. What does that mean?

A. Need blind means that we will never hold against a student the student's inability to pay the full cost of her education/his education at Chapel Hill. That's what need blind means. Need blind does not mean that we're blind to the circumstances of students, that we're blind to the obstacles that they've overcome or the disadvantages that they've experienced.

Q. Do readers have access to all of the information that the financial aid office might get about an applicant?

A. No, readers don't.

Q. Why not?

A. Well, there are a couple of reasons. One is that we've been concerned over time that candidates for admission, and especially low-income candidates for admission, might be worried that if the admissions office had access to the financial information, they might -- despite our telling them over and over again that we will never hold against them their inability to pay, they might worry that we were really looking for students who could afford to pay. There's been a lot of conversation over the years in higher education through the College Board, through other resources of, you know, students being worried that colleges and universities might actually penalize them for being poor. And so we intend the separation between admissions and financial aid to reassure students that they don't have to worry about that with us.

JA644

Q. I believe you heard Mr. Kahlenberg's testimony.

A. I did.

Q. Did you hear his suggestion that the university should ask for wealth data from students on applications?

A. I did.

Q. What was your response to that?

A. I think what he said was an oversimplification of a very, very complicated set of circumstances. You know, we're concerned already that students are doing so much to apply for admission. We're concerned that the burden of applying falls disproportionately on low-income students. We don't want to ask students to do more in order to apply.

There's a lot of talk at the federal level about simplifying the FAFSA to provide actually less information to colleges and universities as a way of simplifying the process of applying for aid for low-income students.

We ourselves at UNC-Chapel Hill, although we required the CSS Profile, a more complicated form for new students, we don't require it anymore for students when they're renewing financial aid because we realize that the profile can be a burden and a barrier for low-income students, and we don't want to impose another barrier for students who might already be struggling to get to us.

Q. Does the reading document also address how other aspects of diversity should be considered?

JA645

A. It does.

Q. And if we can just pull that up. I think it's DX10, page 8. It talks about other aspects of diversity. You don't necessarily need to read this into the record.

Could you just state how other aspects of diversity are considered?

A. Our readers are happy to be surprised. They are happy to be surprised by things they've never seen, by perspectives they've never encountered, by experiences they've never read

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[p. 557:8-19]

Q. We can set that document aside, and I have a few more questions about the evaluation process and the admissions process generally.

How is legacy considered during the admissions process?

A. It's considered as one factor among many for nonresident candidates only.

Q. We heard some mention of children of faculty and staff. Is there a preference for children of faculty and staff?

A. There is no preference for children of faculty and staff.

Q. Do children of faculty and staff go through the same process as all other applicants?

JA646

A. They do.

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[pp. 567-572:1]

Q. (By Ms. Brennan) Okay. We can put that document aside.

I want to ask, when you present this type of information and tell stories of students, as you've described it, do you get feedback from anyone?

A. We get plenty of feedback.

Q. Can you describe the type of feedback you receive?

A. Well, you know, I think generally people in our community appreciate our students, and so some of the feedback we get is really positive. You know, people are glad that we have another class. They're glad that the class is diverse along many dimensions. They're glad that the class demonstrates excellence and potential. So we get positive feedback about the class.

But we get other feedback too; and there are times when students, faculty members, alumni, and others will express concerns about some of the things that they see in the profile that you just presented.

Q. In Mr. Kahlenberg's presentation, you may have heard a critique for not measuring critical mass specifically. Do you recall that?

A. I do.

Q. What is your response to that?

JA647

A. I think that critical mass, as I said earlier, is complicated, and I think that critical mass has to be assessed not exclusively in terms of numbers but really in the lived experience of our students: What they're learning, how they're thriving, what they're contributing to the learning and the thriving of others.

You know, meaningful representation is important in critical mass for the reasons that I've just described. It's important that students not feel isolated. It's important that students feel free to be all they are instead of feeling trapped into being one-dimensional, and it's important that students feel free from stereotype. All those things are important, and meaningful representation is important for those reasons. It's also important, though, that we pay attention to the experience of students once they have enrolled.

Q. Do you pay attention to the numbers?

A. We do pay attention to the numbers.

Q. Do you also pay attention to what's happening beyond the numbers, as you've described?

A. Yes, of course. Again, both are important. You know, meaningful representation is important, but so is the experience of our students, and the reason why the two are important is that they're interrelated.

Q. I want to ask you first some information about how you assessed how well you've done based on that feedback you've received and your own review.

JA648

What have you learned about students' desire for diversity?

A. Well, I've learned, I think, a lot in a lot of different ways. One of the things that I've learned just from the conversations on campus, from stories in the student newspaper, *The Daily Tar Heel*, from things that I've heard from faculty members that faculty members have shared, from surveys that the university has conducted of the experience of students on our campus -- one of the things that I've learned is that students wish there were more diversity, including more racial and ethnic diversity, on our campus, and the feeling is particularly pronounced among underrepresented students.

Q. How well has the university done with achieving racial and ethnic diversity in the student body?

A. You know, I think we've made progress. We've worked extremely hard. And when I say "we," I don't mean just the admissions office. I mean the university has worked hard, and I mean our students have worked hard. You know, our students help us recruit students to the university, and our students are the best recruiters to the university. So we've worked really hard, and we have made some progress.

But I think we -- we have work to do and we -- we're not where we want to be. I've honestly never heard a person say at the university that we're where we need to be. So I think people appreciate the experience that they have, but I think people recognize that their experience could be better, and it's our job to try to provide the best possible experience that we can.

JA649

Q. Are there any URM groups in particular that the university has had particular challenges enrolling?

A. Well, first of all, the underrepresented students who are applying and enrolling at the university are incredible students. They are incredible students, and we, or any university, would be lucky to have them. And we have to compete for these students. These students have other choices. They don't have to come to UNC. So, yes, we've had to work hard to recruit American Indian, Hispanic, Latino, Latina, Latinx students, black or African American students. We've had to work hard. In some years, we've done better; we've had more success than in others.

Q. Do you have any examples of a particularly challenging year with respect to any of those groups?

A. Yes. I think it was 2013 and -- you know, I think for the first time in a long time the enrollment of African American men in the first-year class had fallen below a hundred. And when the university published the results of the profile of the class, the shape of the class, I -- I think the low enrollment of African American men caused a lot of harm. It caused a lot of hurt. There was a story about it in *The Daily Tar Heel*.

As I recall, three wonderful young men came and sat on the front steps of Jackson Hall where the admission office is located, which is named for the university's first black tenured faculty member, and they made a video that they released publicly. And it was heartbreaking to watch, but it was terrific because they were speaking of their experience. And it wasn't

long after that that a group of American Indian students on campus produced a similar video.

And, you know, I remember that fall in particular being a really tough one for our students and leading students to feel that they needed more than we had been able to give them.

Q. Have you received other feedback from minority students on campus about their experiences?

A. Yes.

Q. Generally, what does that feedback tell you?

A. Well, again -- and I just want to say this again. We have incredible students. The underrepresented students on our campus are fantastic, and, you know, generally, I think -- they chose the university. They love the university, but life at the university sometimes is hard for them. You know, I think they feel isolated. Actually, I don't feel that. I know that. I -- I know that underrepresented students sometimes are in the excruciating position of being expected to be the spokesperson for their group. I know sometimes that they feel lonely, and I think it's hard for students to thrive under those circumstances. That our students have thrived under those circumstances is a tribute to them, to their academic preparation, and to their resilience. But, again, I think the experience has not always been what we want it to be or what students deserve it to be.

* * *

[pp. 574-588]

Q. I want to turn to a new topic now and ask you some questions about race-neutral strategies and in particular about some things that may already be happening at the university.

Has the university found any alternatives to completely replace consideration of race as a factor in the admissions process?

A. We have not.

Q. Has the university nonetheless tried to adopt some race-neutral strategies to increase its enrollment of underrepresented minority students in conjunction with holistic review?

A. We have.

Q. I want to talk to you about some of those efforts, and I would like to start with recruiting. Has the university done any diversity-specific recruiting efforts?

A. Yes.

Q. And could you talk about the university's general approach to recruiting underrepresented groups?

A. We want to reach out in every way that we know how and to the extent that we can to make sure that any student who would benefit from the experience of joining us at the university or any student who might contribute to the experience of others is at least thinking about UNC. So we start engaging with students really early in their high school careers.

JA652

We offer a lot of hospitality to students. In other words, we welcome them to campus, and when we do that, we try to do it in an appropriate way for students. And we host special sessions, for example, Spanish language sessions, on campus. We have a team of students who are reaching out to prospective students all the time by telephone.

We travel to students in their communities. For example, in a nonpandemic year, admissions offices visit every high school that's served by a member of the Carolina College Advising Corps. We go to all hundred counties in North Carolina.

We partner with the Office of Diversity and Inclusion to operate Project Uplift, which is a big pipeline program that happens in the summer, and it is available to rural, low-income, underrepresented first-generation college and other students.

And then we recruit students after they're admitted. So we have special events for them on campus. We partner with the Black Student Movement. We have partnered with Hispanic students and with American Indian students to sponsor special events for those groups, and we have special events on campus for first-generation college students as well.

Q. I want to ask you about some of the signature programs the university has to enhance recruitment and enrollment of diverse students. You mentioned Project Uplift.

I want to ask about another program, Carolina College Advising Corps. What is that program?

A. The Carolina College Advising Corps is our effort to serve as many students in North Carolina as we possibly can. So we hire recent graduates of UNC-Chapel Hill. We train them as college and scholarship and financial aid advisors, and then we place them in underserved schools across the state of North Carolina where they work with any student who seeks their help and where they try to help principals, counselors, and teachers create a college-going culture.

Q. And you heard Mr. Kahlenberg talk about the lack of information that some students may have about things like early action. How does that program address those types of issues?

A. The advisors that we place in schools are very well trained. In effect, they go to a four- or five-week boot camp in Chapel Hill in the summer before they enter the field. They are trained by admissions officers at the university, financial aid officers at the university; and each of them has a contact in the admissions office, so they can always reach out with questions.

So in all 79 of our partner high schools, there is a young, well-informed, energetic college advisor who can help low-income students, first-generation college students, underrepresented students, any student in the school make sense of the things that Mr. Kahlenberg was talking about.

Q. Do you recall what year the program began?

A. We began in 2007. We earned the grant that launched the program, I believe, in 2006. I think that's right. It's been a long time.

JA654

Q. Since the inception of the program, has the program grown to its current levels?

A. Yes. We received the grant for this program in March. We hired our first advisors pretty much immediately, and we had four advisors serving eight schools in August of 2007. We planned to expand to another ten, but what happened is that communities around the state learned about the program, and they wanted advisors, and so we started raising money so we could expand the program. And it's expanded steadily ever since then.

You know, as I mentioned, we have 79 partner schools now. We have close to 60 advisors. The program costs about \$3 million a year. We -- we raised the money for it. We do this as a service to schools and students across North Carolina, and the program really is huge, and it has a big impact. You know, the corps serves about 20 percent of all black or African American students in public high schools in North Carolina. It serves about 50 percent of all American -- American Indian students in North Carolina. It serves a large share of Hispanic, Latino, Latinx students and a lot of low-income students. So we've been really pleased that it's been able to expand in the way that it has.

Q. Has the university been in the process of expanding it as rapidly as it reasonably can?

A. Yes. There have been times when we've -- it's been a stretch to expand as fast as we have, but we wanted to do it. So as we have been able to raise the funds to do it, we've expanded it.

Q. I want to ask about the American Talent Initiative. What is that?

A. The American Talent Initiative, or ATI, is an effort by the Aspen Institute in conjunction with Bloomberg Philanthropies to encourage the colleges and universities in the country with the highest graduation rates to recruit more low-income students.

Q. When was that program started?

A. I believe that program was started in 2015 or 2016.

Q. And the university was a founding member of that?

A. We were a founding member. I think we were one of 30 or 40 initial members of ATI.

Q. I'm going to ask you about C-STEP. You've heard a little bit about C-STEP, but can you describe in your words what C-STEP is?

A. C-STEP is our effort to work in partnership with community colleges so that faculty and staff there can identify extraordinarily promising low- to moderate-income students who would be great at Carolina, but who aren't thinking about even trying to join us or for that matter even thinking about going to a four-year college or university. The program identifies students very carefully one by one. There's no formula for identifying C-STEP students. The admissions office at UNC considers students carefully and individually in concert with faculty and staff at the community college partners who know the students well.

But when students enroll in the program, we promise them admission to Carolina if they participate

JA656

fully in the program and if they graduate with an appropriate associate's degree from their community college.

Q. What is the eligibility for the program?

A. Typically -- and it varies a little bit, but we aim for students who are at or below 300 percent of the federal poverty guidelines indexed by family size. So that's students who -- if it's a household of four, the household is roughly 70, \$75,000. Most C-STEP students, though, are Carolina Covenant scholars. Most are low income.

Q. Does the university provide support for participants?

A. We do. We provide support for participants as soon as they join the program. So we send academic advisors from UNC-Chapel Hill to the community colleges to meet with students and encourage them and help them make sure that they're taking the appropriate prerequisite courses. We bring C-STEP students to campus before they're ever enrolled in UNC.

The theory behind C-STEP is that -- the real barrier for community college transfer students isn't intellectual. It's emotional and social. So what we wanted to do was to get students comfortable on the campus before they ever enrolled, so that instead of their having to make a great leap from their community college to Carolina, they could just take a step and get to Carolina.

Q. Is this also a program that the university is interested in growing?

JA657

A. It is, yes.

Q. Can you talk about that?

A. Yes. And we have grown. So we launched C-STEP in 2006 with 3 partner colleges and 8 students, and today we have 14 partner colleges and 400 students. It costs money to run the program. We have three staff members in the Office of Undergraduate Admissions whom the admissions office funds, but we also provide support to the community colleges. The reason why we do that is that we know community colleges have too much to do, and we know that they are constrained in their resources, and so we want to make it as easy as possible for our community college partners to serve their students well and to work with us to identify great people who will come and make the university better.

Q. In your view, could more rapid or aggressive expansion of this program wholly replace the consideration of race as a factor in admissions?

A. No, I don't think so.

Q. Why not?

A. You know, I should say, too, that C-STEP students aren't the only community college students we enroll. We enroll other students from the community colleges of North Carolina. Community college enrollment at UNC-Chapel Hill has grown substantially. Five years ago about 30 percent, maybe 28 percent of our transfer class was from North Carolina community colleges. Last year it was 45 percent. This year it will be higher

JA658

than that. So we've grown community college enrollment generally.

The number of C-STEP students is fairly small. If we doubled the number of partners in the scheme of a 19,000 student -- undergraduate student body, the numbers of students would still be fairly small. The students are terrific, and they make us better, and we're glad to have them, but we don't consider that or the expansion of that program to be a viable way to replace the consideration of race or ethnicity in comprehensive review.

Q. I'm going to now turn and ask you some questions about the university's financial aid.

What kind of a commitment has the university made to financial aid?

A. We promise to meet the full demonstrated need of every undergraduate student who's eligible for federal aid.

Q. How common is that among public universities?

A. There are only two of us.

Q. Which universities commit to that?

A. UNC and the University of Virginia.

Q. What kind of dollars does the university put into this commitment?

A. I think in 2016-2017, we spent around \$260 million on student aid. I think close to 160 million of that went to undergraduate students. I think 27, 28 million of that went to first-year students. Of the aid that we

JA659

awarded to undergraduate students, \$86 million of it was institutional funding. That is funding that the university itself committed.

Q. Do you recall what percentage of the first-year entering class received scholarship or grant money or typically does?

A. In that year 41 percent, and the percentage continues to rise.

Q. How much of the university's available scholarship and grant funds are need based?

A. About 93 percent.

Q. And I believe you heard Mr. Kahlenberg's testimony about the numbers of low- and moderate-income students at UNC. What is your response to that?

A. I have two responses. The first is when you look at UNC-Chapel Hill in the context of the leading research universities in this country -- and we typically consider ourselves alongside -- for broad benchmarking, alongside other public universities in the Association of American Universities. There are 36 public research universities in the group.

When you look at the enrollment of low-income students across that group of schools, as measured by students' eligibility for federal Pell grants, which is one way of identifying low-income students, we're in the middle. When you look at change over time, though, when you look at the increase in low-income students at UNC-Chapel Hill between 2007 and '8 and 2017 and

JA660

2018, we're near the top. So we're in the middle, but we're getting stronger.

Q. Can you talk about the Carolina Covenant?

A. Yes.

Q. What is that program?

A. The Carolina Covenant is our promise to students -- low-income students, students who are at or below 200 percent of the federal poverty guidelines, again indexed by family size. It's about \$52,000 a year for a family of four. It's our promise to those students that if they come to Carolina and they're willing to work 10 or 12 hours a week in a work-study job, like that young man I was talking about earlier -- if they're willing to work 10 or 12 hours a week in a work-study job, they can graduate from UNC debt free.

Q. What has been the impact of the program?

A. It's had a profound impact on the university because it's brought great students to the university who have made other students better. Its impact on the lives of individual students I think also has been profound.

There's so many testimonials of Covenant students. The young woman I mentioned -- I was talking about earlier who came to the first-generation college event with her meemaw, she was a Carolina Covenant scholar. Some of the other students that I've talked about are Carolina Covenant scholars.

Their ability to focus on their studies, their ability to work in an office like the one where I work where people are looking out for them, it's really improved the

JA661

success of students on our campus, and I think it's also improved their happiness.

Q. What percentage of incoming first-year students are eligible for the Covenant scholar program?

A. In a typical year, maybe 13 to 15 percent.

Q. Has that grown over time?

A. It has grown some, and it's bounced up and down some. It's a little higher now than it has been and probably not as high as it will be following COVID.

Q. Does the university at this point set a cap on the number of students who can participate in the program?

A. No.

Q. What kind of an institutional commitment does this require?

A. It's a huge commitment. The university has been proud to make that commitment, but it's a struggle to keep it because it's expensive to support students. A nonresident -- an out-of-state Covenant scholar, for example, gets \$40,000 a year in institutional grant funding from the university. A resident Covenant scholar gets about 12 ½, \$13,000 a year in institutional grant funding from the university. The difference, of course, is because it costs less to attend if you're a resident student.

The university spends probably in a given year, as I mentioned, 80 to \$90 million on student aid that it could spend on something else, but that it chooses to

JA662

spend on student aid because we think it's the right thing to do and we think that it strengthens our student body.

Q. Are there limits on the university's ability to expand that commitment in the way that Mr. Kahlenberg suggests?

A. The university faces really serious financial challenges, and those financial challenges make it hard for us to expand financial aid at will.

Q. Can you talk about the sources of funding for financial aid at the university?

A. Some of the funding for student aid for need-based aid comes from the tuition that students pay. In effect, we return a share of the tuition that students pay back to students in the form of need-based aid. We don't use tuition revenue for merit aid, but we do use it for need-based aid.

We have some private money that people have donated over time to endow need-based scholarships for students. We have other money that the university has to work very hard to find every year -- and sometimes it's touch and go -- to make sure that we can continue to meet our commitment to students, but we've always found a way.

Q. And there was a suggestion to just tap into the endowment. What's your response to that?

A. I don't think that's how endowments work. The university does have a substantial endowment. My understanding is that 90 percent or more of it is

JA663

restricted; in other words, people gave the money to the university for a particular purpose. In effect, there's a contract for the money to be used for that purpose.

I think the university has -- well, the other thing I should say is that the university doesn't spend the endowment. The university spends the income on the endowment. So the endowment is a fund of money that's kept aside to generate revenue in perpetuity, forever; and the university takes whatever revenue the endowment generates and distributes it for the restricted purposes that the endowment has in place.

There's some money every year that's generated by the endowment that's not restricted. I believe that's about 6 or 6 ½ million dollars a year. There are many demands for that money, and much of it is already going to need-based student aid.

So there's a limit on what the endowment can do. I appreciate how it seems when someone hears the word "billion" attached to a resource that the university has, but the endowment doesn't work in quite the way that I heard described here today.

Q. I'm going to ask you whether the university has been recognized for affordability or financial aid efforts.

A. We have been.

Q. Can you talk about some of those recognitions?

A. Sure. We -- every year, every other year *Kiplinger's Personal Finance* magazine rates universities, public and private, in the country on the basis of their value. And Kiplinger's definition of value includes the quality

JA664

of the student body; it includes the success of students in the student body, the rates at which they graduate; it includes the amount of financial aid that the university provides to students; and it includes the university's tuition and fees, with lower being better than higher. So for 18 consecutive years -- in fact, every time Kiplinger's has done this ranking of colleges and universities in the United States, UNC-Chapel Hill has been the best value among public universities.

Q. Has the university received other recognition in this area?

A. We have.

Q. Can you describe that?

A. In 2017, we received the Jack Kent Cooke prize for excellence in educational equity. We were the first public university to receive this prize, which recognizes the college or the university in the United States that's doing the best job for outstanding low-income students.

Q. Having overseen both the recruiting and the financial aid aspects, are these areas that have been priorities for the university already?

A. Yes. I mean, I would just say if they weren't priorities for the university, we wouldn't be able to do what we do. You know, if these weren't priorities for the university, we wouldn't be meeting the full demonstrated need of students. If these weren't priorities for the university, we wouldn't have the Carolina Covenant. If these weren't priorities for the university, the university wouldn't let its admissions office, much less encourage its admissions office, to run

the Carolina College Advising Corps. It wouldn't allow us to compete for grants for the C-STEP program. Yes, these things have been priorities for the university for a very long time.

Q. I want to turn to another topic now and ask you about the university's consideration of race-neutral alternatives.

What is your understanding of whether the university has an obligation to consider race-neutral alternatives?

* * *

[pp. 593-599]

witness.

THE COURT: Well, I don't know what you're going to raise.

MR. STRAWBRIDGE: We have concerns about the divergence of the trial testimony from the record that was made at his deposition.

THE COURT: That you can't address on cross?

MR. STRAWBRIDGE: Well, I mean, I think that there ought to be some concerns about the ability to inquire into discovery of a 30(b)(6) witness's testimony at the deposition. This is -- again, I don't necessarily want to say too much. I can address it on cross, but I actually think the entire line of questioning has crossed a line into improper inquiry.

JA666

THE COURT: All right. Well, sir, why don't you step down and step outside so that I can hear this argument, please.

(The witness left the stand and the courtroom.)

THE COURT: Yes, sir.

MR. STRAWBRIDGE: Thank you, Your Honor.

We took Mr. Farmer's deposition in June of 2017, and we specifically asked him about his efforts regarding these spreadsheets. He testified at the time that he could not remember how he went about calculating this information. He could not remember how -- what his standard was for whether it would be successful. He was basically unable to provide any substantive information about how he did this. He also said -- I mean, I should note, at the time that we took his deposition, he had been identified by UNC as a 30(b)(6) witness on its consideration of race-neutral alternatives.

So I am troubled by the fact that now he's got these spreadsheets up and he's testifying in great detail about how he went about reconstructing this analysis when he was unable to say so at his deposition.

MS. BRENNAN: Your Honor, we didn't intend to go into it much further than what I've already asked him, just basically that he did an analysis, which they were aware from the deposition. They have the spreadsheets, so they had the opportunity to see what was depicted in terms of the analysis. You know, he's not really deviated from just explaining what is shown on those Excel spreadsheets. So I think this is proper

potentially for cross-examination, but I don't think it precludes him from talking about what he actually did on some spreadsheets that they have had as well.

THE COURT: All right. I am going to overrule your objection, and you can address this on cross-examination.

MR. STRAWBRIDGE: Thank you, Your Honor.

THE COURT: All right. Let's call him back in.

How much longer? Let me ask you.

MS BRENNAN: Your Honor, I don't think I will quite finish with him today. I'll have a little bit of direct remaining in the morning. So I'm happy to stop, you know, whatever time makes sense.

THE COURT: Well, we can use these 15 minutes. So why don't we bring him back in.

MS BRENNAN: Okay. Certainly.

(The witness returned to the courtroom and the witness stand.)

THE COURT: You may proceed.

Q. (By Ms. Brennan) Mr. Farmer, did the work that you did here as part of this analysis suggest to you a race-neutral alternative that you believed could be adopted at the university?

A. It did not.

JA668

Q. All right. I'd like to ask you what the next step was for the university's consideration of race-neutral alternatives.

A. In 2009, I asked Dr. Jennifer Kretchmar in the admissions office to conduct a thorough review of the literature on race-neutral alternatives.

Q. Why did you task that to Dr. Kretchmar?

A. Well, Dr. Kretchmar has a Ph.D. in educational psychology. I had hired her years before. I had worked closely with her over the years. I knew her to be among the smartest, most intellectually curious people I had met at the university; and I thought this would be a perfect assignment for her. I knew she would do it well, and I knew she'd produce great work.

Q. Did she produce a report as a result of this assignment?

A. She did.

Q. Let's look at DX37, please. What is this document?

A. This is Dr. Kretchmar's literature review.

Q. And if we could just take a look -- scrolling through the document, is this -- how many pages was the document, approximately?

A. Thirteen.

Q. And that includes a couple of pages of references at the end?

A. It includes the bibliography, yes.

JA669

Q. Did you review this when you received it?

A. I did.

Q. What did you think?

A. First of all, I thought it was very well done, as I expected it would be, and I thought that the literature review strongly demonstrated that schools like the university had not found race-neutral alternatives that worked well.

Q. I want to ask you now about what the next step was for the university in terms of considering race-neutral alternatives.

A. The next step was in 2012 when Dr. Kretchmar and I worked together to try to model the impact of a top 10 percent plan on the share of the first-year class that was composed of North Carolinians.

Q. Okay.

MS BRENNAN: Can we take a look at DX38, please.

Q. (By Ms. Brennan) What is this document?

A. This is the summary document of that study.

Q. And can you walk us through this?

A. As the first paragraph says, this top 10 percent policy that we simulated would have yielded a first-year class -- and just to be clear, that's not the entire first-year class; that's the share of the first-year class composed of resident students -- a first-year class with

JA670

a higher percentage of underrepresented students, 16 percent versus 15 percent.

Then it also says that under the same policy, every academic indicator, other than the share in the class ranking in the top 10 percent, would have declined. And as you can see here, we found that the average SAT, critical reading and math combined, would have been 1262 as opposed to 1317.

And there was other information underneath this summary that was also concerning to us.

Q. What was that information?

A. What we found was that when we compared the students who would have been -- who were admitted to the university through comprehensive review but would not have been admitted through the top 10 percent plan, and you compared those students to the students who were not admitted through comprehensive review but would have been admitted through the top 10 percent plan, there was a difference in the average SAT score of about 130 points.

Q. And why is a drop in SAT score across a population something that you consider with respect to race-neutral alternatives?

A. Well, I should make one thing clear. I mean, test scores aren't the only things that we care about, and it's true that we don't set out to maximize the average SAT in the first-year class. That's not our goal.

It's also true that when you compare two people one to another, a difference of 60 points on the SAT

JA671

probably isn't a material difference, especially if you're able to assess each of those two candidates on many dimensions, not just on the mechanical dimension of the SAT. So it's just important to remember all of that.

The real impact of testing is across big populations, and so although a difference of 60 points between two people might not be a significant difference, a difference of 60 points across a population of 30-some hundred is actually a very significant difference. It's not a small difference. It's a big one. And the reason why it's big for the big group and not for the two people is that the bigger the group, the more significant the difference.

Q. Did the university determine as a result of this analysis that there was a race-neutral alternative it could adopt?

A. We did not determine -- we determined that this race-neutral alternative was one that we could not adopt.

Q. Was this study reported outside of the admissions office?

A. It was.

Q. Can you describe that?

A. Well, it appeared in the university's amicus brief, and it also was discussed at the Advisory Committee on Undergraduate Admissions.

Q. You mentioned the -- an amicus brief. Was this analysis specifically prepared for the purpose of the amicus brief?

A. It was prepared in conversation with faculty members at the law school who were preparing the university's amicus brief. I don't know that I would go so far as to say it was prepared explicitly for it, but I had talked with the faculty members who were working on the amicus brief because they were asking about how admissions worked at the university. So I talked with them and described the process. And because the case at hand was *Fisher*, I decided that it would be helpful to model a top 10 percent plan like the one that was being used at the University of Texas and like the one that was at the heart of the *Fisher* case.

Q. And did you consider this part of your consideration for the purposes of admissions work --

A. I did.

Q. -- of race-neutral alternatives?

A. Yes, I did.

MS. BRENNAN: Your Honor, that would be a good stopping point, if that's acceptable.

* * *

JA673

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA**

Case No. 1:14CV954

[November 13, 2020]

STUDENTS FOR FAIR ADMISSIONS, INC.,)
)
Plaintiff,)
)
vs.)
)
UNIVERSITY OF NORTH CAROLINA, et al.,)
)
Defendants.)

**Volume 4
Pages 604-758**

**EXPEDITED TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LORETTA C. BIGGS
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

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JA674

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For Intervenors:

LAWYERS' COMMITTEE CIVIL RIGHTS UNDERLAW
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Genevieve Bonadies Torres, Esquire

NORTH CAROLINA JUSTICE CENTER
Jack Holtzman, Esquire
Emily P. Turner, Esquire

* * *

FARMER – DIRECT

[pp. 618-623]

admissions practice result in the needed diversity to
enhance the student experience?”

The second is: “What is critical mass and has the
University attained it?”

JA675

And the third is: "Are there race-neutral alternatives that could potentially provide similar results to the current policy? If so, what are those alternatives?"

And then, finally, there were recommendations and next steps led by Bobbi Owen and Kara Simmons.

Q. Did this meeting occur?

A. It did.

Q. And was this the agenda that was followed at the meeting?

A. This was the agenda.

Q. What was the next step -- you can put that exhibit aside -- for the university with respect to the consideration of race-neutral alternatives?

A. I asked Barbara Polk to convene a working group to explore race-neutral alternatives to our current practices.

Q. And I want to look at PX10.

And if you can blow up the bottom e-mail first.

We'll start at the bottom which is an e-mail from Barbara to you dated September 17th, 2013.

Do you recall this e-mail?

A. I do.

Q. What was this in reference to?

JA676

A. Ms. Polk was trying to form the committee and was thinking of potential members and was asking for advice.

Q. Okay. And at the top e-mail, is this your response?

A. It is.

Q. And you gave her some advice, essentially?

A. I did.

Q. What was the context of this?

A. Well, again, Ms. Polk was asking for specific people, and I was encouraging her to think about what she wanted the group to do, what the purpose of the group would be, what the goals for the group would be, and then based on all of those considerations, what skills and perspectives and what level of expertise and commitment the group would need in order for her to achieve the purpose of the group.

Q. And it looks like this e-mail was sent September 19th, 2013?

A. That's right.

Q. Were invitations ultimately sent out for members to join the group?

A. There were.

Q. And if we could look at PX14. This is an e-mail that's from Ashley Arthur, and it says it's sent on behalf of Steve Farmer.

Who is Ashley Arthur?

JA677

A. Ashley Arthur is my wonderful assistant.

Q. And could you read the subject of the e-mail?

A. "Invitation to join a work group on race-neutral alternatives in admissions."

Q. Okay. And if we could look at the second paragraph of the e-mail where it says "Towards this end..." could you read that?

A. "Towards this end, I am writing to ask you to participate in a working group that will consider a range of alternatives to our current practices. This group will be led by Barbara Polk, Deputy Director of Undergraduate Admissions, and will include members of our faculty and staff. The group will be small in number but will enjoy strong support from the Office of University Counsel, from the Office of Undergraduate Admissions, and from other University administrators."

Q. I want to stop you there and ask you a little bit about the composition of the group.

Why did you choose Barbara Polk to lead the group?

A. Barbara -- excuse me -- Ms. Polk was a very experienced member of our team. She had been responsible for leading the evaluation of candidates previously. She knew many people around the university, and I thought she would do a great job with the project.

Q. Why did you invite members of faculty and staff to join the group?

JA678

A. I thought it was important that we broaden participation in our efforts to consider race-neutral alternatives beyond the staff in the admissions office.

The first modeling in 2007 I did myself. Then Dr. Kretchmar completed the literature review in 2009. Then Dr. Kretchmar and I worked together on the top 10 percent simulation. And all of this work so far had been carried out by people within the admissions office, and I thought it was important, because this was a university issue and because we would benefit from the expertise of other people with different perspectives, that we bring faculty and staff beyond the admissions office into this work.

Q. Were you a member of the group?

A. I was not.

Q. Why not?

A. I thought it was important that I not be involved because I wanted other people's perspectives. I had been involved previously in the simulations, and I thought it was important for others, and not me, to be involved this time.

Q. Did you follow the efforts of the group?

A. I did.

Q. How closely did you pay attention to what they were doing?

A. Very closely. At the time, I was meeting with Ms. Polk every week or every other week. She kept me informed about the progress of the group. I tried not to

intervene and at the same time I was interested, and I offered thoughts when she asked for them or when I thought they would be helpful to her.

Q. I want to direct your attention to the next paragraph in the e-mail which starts with “The group will be charged with the following specific tasks.” Could you read the tasks for the group?

A. Task 1: “Identifying reasonable alternatives to race-conscious practices in admissions.”

Task 2: “Evaluating each alternative to determine whether it will yield an entering class with equal or greater diversity, academic quality, and extracurricular achievement and potential.”

Task 3: “Presenting its findings to the Advisory Committee on Undergraduate Admissions.”

Q. You can set that aside.

What approach did the group take to its work?

A. My understanding is that the group began, again, by reconsidering the literature. Dr. Kretchmar completed her literature review in 2009, but the group began by thinking about what others had tried to do. And then the group identified a broad range of alternatives before narrowing in on the ones that it felt to be most workable.

Q. Did they -- what did they do in terms of data?

A. That was complicated. The previous work that we had done had focused on applicant data only; in other words, the records of people who had actually applied

JA680

for admission to the university. And after reading the literature, I think the group had some concerns that limiting decisions only to the candidates who had applied to UNC might produce incomplete results. They wanted to understand as many students as they could who might apply, not just the students who did, and so they sought data -- high school data for students who were attending public high schools in North Carolina.

Q. Where did they obtain that data, if you know?

A. In effect, they obtained the data from the Department of Public Instruction through an intermediary that's been referred to a couple of times so far this week.

Q. Did the group, after doing its review, produce any written work product?

A. It did.

Q. Did you receive a draft of that?

A. I did.

Q. When did you receive a draft?

A. I believe it was in early October of 2014.

Q. Did you review that draft?

A. I did.

Q. And did you talk with anyone about it?

A. I did. Ms. Polk and Dr. Kretchmar and I met together and talked about it.

JA681

Q. Did you later receive a more final draft?

A. I did.

* * *

[pp. 629-631]

working group members.

Does this look accurate to you?

A. It does from my recollection, yes.

Q. And who does this include from around the campus, generally speaking?

A. Patrick Akos, who was the professor in the School of Education; Taffye Clayton, who at the time was head of Diversity Inclusion; Lou Perez was a professor, I believe, in history; Debby Stroman, who at the time, I believe, was an instructor in the Kenan-Flagler Business School; Catherine Pierce, who was chief of staff, I believe, to Jack Boger, the dean of the law school; Dr. Kretchmar; Ms. Polk; and Dr. Lynn Williford, who was the head of the Office of Institutional Research and Assessment; and the consultant to the group was Kara Simmons from the Office of University Counsel.

Q. Okay. Scroll to the next slide. This restates the charge of the committee; is that right?

A. Yes.

Q. Okay. And this is -- is this consistent with the charge that was in the e-mail?

JA682

A. Yes.

Q. Okay. We can move on to approaches.

Does this slide summarize the approaches that the working group considered?

A. It does.

Q. And what are those approaches?

A. The literature review, review of the work of peer institutions, and then research that the working group itself had conducted.

Q. And what are some of the approaches that they looked at in their own research?

A. For resident students, the group considered a top 10 percent plan, the group considered a top 4.5 percent plan, a top percent plan that also took into account some socioeconomic indicators, a plan that focused on the strength of the student's high school curriculum, and a plan that focused on standardized testing.

For nonresident students, the group focused on a top 10 percent plan, a plan that included top 5 percent plus testing, and then a group that considered grades plus testing.

And then for all students, they considered a program that had just been developed at the time by a professor, I believe, at Clemson University called Application Quest.

Q. If we can go to the next slide, please.

JA683

Does this share with the committee what some of the findings were for the various plans?

A. Yes.

Q. And if we can go on to the ultimate conclusion, which I think is the final slide of the report.

Could you please read the conclusion slide?

A. It's the working group's conclusion: "No identifiable race-neutral approach was found that would result in an admitted class that's academically as qualified while also maintaining or enhancing racial/ethnic diversity.

"Therefore, the working group recommends that the Office of Undergraduate Admissions continue to use race/ethnicity as one of many factors when selecting the admitted class of first-year students."

Q. Based on your review of their work, including the white paper, did you agree with this conclusion?

A. I did.

Q. Did you, nonetheless, believe that further review was warranted?

A. I did.

Q. What was the next step that the university took to consider race-neutral alternatives after the working group's work?

A. Dean Panter convened the Committee on Race-Neutral Strategies.

Q. What was the origin of that group?

JA684

A. That group grew out of the university's understanding that we have an obligation to review periodically alternatives to the use race or ethnicity in admissions, and it proceeded from conversations, I believe, with Provost Jim Dean and others.

Q. How involved have you been with the work of that group?

A. I've been staffed to that group, and I've been to almost

* * *

[pp. 633-638]

that it wanted to complete, and it got to work on those tasks.

Q. And we're going to hear more from Dr. Panter, who was the chair of the group on Monday, so -- but I do want to ask -- just ask you a couple more questions about the group.

As of the interim report in 2018, did the group plan to look at the expert work in this case?

A. Yes.

Q. And did they intend to consider the expert reports of both sides?

A. Yes.

Q. As of the interim report, had the group identified any race-neutral alternative that it believed could eliminate holistic admissions and the consideration of race as a part of that?

JA685

A. No.

Q. I want to ask you a couple of questions about what would happen if the university were to identify such an alternative. And I want to look at Exhibit 54, which is -- this is the interim report. Do you recognize this?

A. I do.

Q. So is this the interim report of the Committee on Race-Neutral Strategies from May 2018?

A. Yes.

Q. And I'm going to go down to one of the attachments in the report, which is some minutes, and we're going to look at page 36.

So this is the -- are these the minutes of one of the meetings?

A. Yes.

Q. Which meeting is this?

A. This is from November 30th, 2016.

Q. And are you noted as being present at this meeting?

A. Yes.

Q. And I want to look at page 37, which is a continuation of those minutes, and ask you about this particular statement.

Could you read that into the record?

A. "Mr. Stephen Farmer stated that the admissions office will adopt any alternative or combination of

JA686

alternatives that can be proven to be workable and effective in maintaining or enhancing both diversity and quality.”

Q. Do you still agree with that statement?

A. I do.

Q. I want to ask you about a couple things in that statement. First is the concept of workable.

Has there been any discussion in the group about workable?

A. Yes, there has been.

Q. What has been discussed?

A. Well, really at a high level what's been discussed is what steps we would need to take to turn a theoretical model into something that we could actually execute and practice.

Models, of course, are challenging and they require expertise, and we respect that expertise. And members of the committee are developing models of their own, but at the end of it all, we have to do the work. We have to consider real students, and we have to make decisions about them. And so workability involves, in one sense, the ability to translate a theory into a practice.

And then the second part of workable is just the expense of it. There are things that theoretically we might be able to do that we can't in practice do because we don't have the resources to do those things.

JA687

Q. I want to ask you also about the concept of effective. And there's been a critique in this case of the framing of the issue. Did you hear that?

A. I have heard that critique.

Q. And, in particular, there's been a critique of framing the issue as maintaining or enhancing levels of diversity.

What is your response to that?

A. We've always intended the term "maintaining" to be a starting point. That's -- that's a way of framing the investigation. The fact of the matter is that we've never found an alternative that came close, but maintaining has been a starting point for us, not the absolute. We don't think of this -- we don't think of this process in terms of absolutes. We are testing hypotheses; we're considering the results; and we're trying to decide whether those results are acceptable.

Q. Would the university consider in good faith everything that was a serious possibility?

A. Yes.

Q. Mr. Kahlenberg stated his belief of a lack of commitment to the process. What is your response to that?

A. We are committed to this process. We have been committed to this process. We have spent an enormous amount of time, as we should. We have worked really hard to get better over time, as we should. We've worked hard to learn from the examples of others, as we should. This committee alone has met dozens of

JA688

times since it was formed. The faculty members have research agendas of their own. They have worked together. They have work to do outside of the work of this committee, and yet they're working when this committee isn't meeting to help this committee achieve its work.

I -- with respect, I would say that I don't agree with that characterization of our efforts to consider race-neutral alternatives.

Q. Has the university been perfect?

A. No. We -- we're a human institution. You know, we -- we work hard to get better. We don't want to rest. The people I work with in the admissions office work incredibly hard, and they do not want to rest.

We make mistakes. When we do, we try to make them right. When someone suggests to us that we don't know something that we should learn, we try to learn it so we can do a better job.

So, no, we're not perfect and we need to be better still, but we're working extremely hard, and we're doing the best that we can.

Q. Mr. Farmer, I asked you at the beginning of your examination a bunch of questions about the university's mission. How central to that mission is diversity at the university today?

A. Diversity is at the heart of the university's mission. Diversity is at the heart of the excellence of the institution. Diversity is at the heart of our ability to prepare young people to go out into the world and do

JA689

what only they can do, what the world needs for them to do. It's integral to everything we do.

Q. Mr. Farmer, I asked you a number of questions about the admissions process. Are you proud of the students that you enroll through that process?

A. Yes, I'm very proud of the students we enroll, and I'm grateful to the students we enroll. We have incredible young people at the university, and they're not perfect either. They're trying to get better too.

But, yes, I am proud of them and I'm grateful for them, grateful that they chose UNC, grateful that they do what they do for one another every day.

Q. I asked you a series of questions about the university's implementation of race-neutral strategies. Have those efforts been real and meaningful?

A. Yes, they have been. Whether it's financial aid or our support for first-generation college students or the academic and personal support that we provide to low-income students through the Carolina Covenant, or our attempts to enroll more community college transfer students and to see them succeed to the fullest extent possible on our campus, or our revising the way that we teach so that more students can succeed at the highest level, or partnering with communities across North Carolina through the College Advising Corps to help every young person we come into contact with have a fighting chance at finding a school that will serve them well, these approaches have made a difference.

Q. And I asked you a series of questions about the university's consideration of race-neutral alternatives.

JA690

In your experience, being at the university for many years and thinking about these issues, can the university currently stop considering race as a factor in its admissions process?

A. No, we cannot.

MS. BRENNAN: Thank you.

MR. STRAWBRIDGE: Just one minute while we set up, Your Honor.

THE COURT: Yes.

* * *

FARMER – CROSS

[pp. 642:7-13]

Q. During the 20 years that you have worked in the admissions office, UNC has always used race as a factor in admissions, correct?

A. Yes.

Q. And race is one of the factors that UNC's instructions instruct readers to consider when they're looking at a file?

A. We instruct readers that they may consider race.

* * *

[pp. 657:1-25]

Q. You testified that in the fall of 2015, after this lawsuit was filed, the university changed its practice with respect to the data we've seen on the core reports?

JA691

A. Yes.

Q. And the change was -- was that it removed information about the racial composition of the class that had previously been available to people reading applications, correct?

A. To some people, yes.

Q. And, in fact, you imposed a requirement in your office that anyone who looked at that data had to be recused from the reading process?

A. Yes.

Q. If you were so confident before that date, despite never doing -- running any numbers, why was it necessary to instruct readers to recuse themselves and to stop looking at that data?

A. I was confident in what we were doing. I was less confident in how others would interpret what we were doing.

Q. Oh, because this order was given after the lawsuit was filed, wasn't it?

A. It was.

Q. And you knew that your admissions process was going to be subject to discovery, correct?

A. Yes.

Q. And you wouldn't want anybody to get the wrong idea?

A. That's correct.

[pp. 658:8-660:1]

After 17 years in the office, you are unable to say how often race makes the difference in whether or not a student is admitted to the University of North Carolina?

A. That's true.

Q. You can't say whether it makes a difference in only a dozen cases each year?

A. I can't.

Q. You can't say whether it makes a difference in a hundred cases each year?

A. I cannot give you a number.

Q. That means you can't even say whether it makes a difference in thousands of cases a year?

A. I can't give you a specific number, no.

Q. As a long-time admissions director at the University of North Carolina -- and I think you've testified this way, but please correct me if I'm wrong -- you're familiar with the Supreme Court's decision in *Grutter v. Bollinger*, correct?

A. I am.

Q. And you believe that UNC's use of race is tied to achieving critical mass?

A. I do.

JA693

Q. But you cannot point to any document in the UNC admissions office that attempts to define critical mass, can you?

A. I cannot.

Q. And you don't even know -- or at least as of your deposition in this case you did not even know whether anyone had figured how out to measure critical mass?

A. I believe I said in my deposition, and I believe I said yesterday as well, that there are assessments of critical mass that involve both numbers and qualitative considerations.

Q. You are not aware of any discussions at UNC, or at least you were not at your deposition, about what a numerical threshold might be for critical mass, correct?

A. That's correct.

Q. And you were not even aware of a numerical range, correct?

A. That's correct.

Q. At least as of 2017, the only formal attempts by UNC to determine if it had obtained critical mass that you can identify were some climate surveys conducted of the student body, correct?

A. I recall saying that, yes.

Q. And as of 2017, you had not looked at the results of any climate surveys conducted more recently than 2006?

A. That's correct.

JA694

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[pp. 661:19-664:3]

Q. I'd like to talk a little bit about the various efforts made at UNC to discuss race-neutral alternatives.

The first time you ever remember looking at what an alternative to UNC's system would be regarding the use of race was in 2007, correct?

A. That's not correct.

Q. And what do you think constituted an effort by UNC to consider race-neutral alternatives before that date?

A. I think our paying attention to the natural experiments that were going on in California constituted the consideration of a race-neutral alternative. And, in fact, I believe we were instructed in that direction by the Department of Education.

Q. Are you aware of responses to interrogatories that the University of North Carolina submitted in this case?

A. I'm aware that there are responses.

Q. Are you aware those interrogatories included requests for UNC to identify the efforts it had made to consider race-neutral alternatives?

A. I'm not aware specifically of that in the moment.

Q. Did you help prepare the interrogatory responses for UNC in this case?

A. I believe I did.

JA695

Q. And do you know whether those interrogatory responses make any mention of these ongoing discussions you just referred to prior to your 2007 analysis?

A. I don't recall.

Q. Speaking of the 2007 analysis, you testified about that spreadsheet we saw yesterday, correct?

A. I did.

Q. That was an exercise that at least at your deposition you deemed as mechanical?

A. Yes.

Q. It was not, for example, an analysis of how UNC's admissions policies work if a holistic process like it is today had simply declined to consider the race of an applicant?

A. That's correct.

Q. You do not remember what your standard that you used in that analysis was for determining whether or not an alternative result was sufficient for UNC's needs?

A. No, with a qualification.

Q. And what is that qualification, sir?

A. In the model that I ran that weighted socioeconomic status most heavily, I saw that the share of the first-year class composed of underrepresented students would fall from about 18 and a half percent to about 12 percent. And so although it does not establish a

JA696

standard, I observed that there was a decline -- a substantial decline in the population of underrepresented students using that method.

Q. At your deposition did you testify that you do not think you could replicate that study today?

A. I did testify to that.

Q. Did you -- with respect to the completion of that study, you don't recall discussing it with anybody in the admissions office, do you?

A. I don't recall specifically, no.

Q. Or sharing it with the faculty Advisory Committee on Undergraduate Admissions?

A. Not at the time.

Q. Or preparing a written report or documentation of it?

A. I did not.

* * *

[pp. 667:7-24]

Q. And, in fact -- I think I heard you testify to this -- UNC does not seek to maximize the average SAT score or the eventual GPA of the entering class, correct?

A. That's right.

Q. UNC, in fact, admits dozens of students each year with a combined SAT score below 1000, correct?

A. Yes, usually.

JA697

Q. And notwithstanding those scores, you do not believe that UNC has ever admitted a student capable -- incapable -- I'm sorry -- of thriving at UNC, do you?

A. Yes, because we believe we've considered candidates one by one on the basis of all of their strengths.

Q. And you have not felt that despite admitting dozens of students with SATs under 1000 points that any of them were incapable of thriving at UNC?

A. I do not believe that they were incapable of thriving because we considered them one by one on the basis of all of their strengths.

* * *

ROSENBERG – DIRECT

[pp. 678-680]

readers. It included making sure that files were distributed to readers on a regular basis. It included ensuring that we completed the review of our applications on time and ultimately released our decisions on time.

Q. And how long did you hold the position of senior assistant director in admissions?

A. Until the summer of 2015.

Q. And what position did you take at that point?

A. Associate director of admissions.

Q. And were you still focused on evaluation at that point?

JA698

A. Yes.

Q. How did your responsibilities change?

A. So my responsibilities had changed at that point, and I became a member of the senior leadership team as part of our undergraduate admissions office. I continued to manage evaluation but at a higher level, so making sure that our philosophy was upheld. I took on more supervisory roles within the office, so I had more direct reports at that time. I continued to supervise our seasonal leaders, and I really became responsible for not just the day-to-day involvement, but the overall philosophical direction of the review, as well as the enrollment process of students over the summer.

Q. And that is your current role, correct?

A. Yes.

Q. Who do you report to?

A. Stephen Farmer.

Q. And do you have any staff that report to you?

A. Yes.

Q. How many staff?

A. Right now I have six direct reports.

Q. And do those direct reports have any staff that report to them?

A. Yes.

Q. How many staff report to them?

JA699

A. I have one staff member that I directly supervise that has -- I believe it's eight direct reports that report to her. Another staff member that I supervise has the seasonal readers that report to him, and that can vary. This year it's 27. The rest of the individuals that I supervise do not have any direct reports.

Q. Thank you.

I'd like to talk a little about the goals for the first-year admitted class. What is the end goal of the application evaluation process?

A. Sure. It's to admit a smart, caring, diverse group of students who are going to come to campus and help build upon the community that we already have and enhance both the academic environment as well as the social environment on campus.

Q. You mentioned diversity. What is your understanding of the university's definition of diversity?

A. Sure. The university's definition, as well as the undergraduate admissions office's definition, of diversity is thinking that a diverse group of students on campus can be beneficial. And when we think about diversity, we think of it in very broad terms. So it's not just race or ethnicity, as many people might think of when they first think of diversity. It also includes socioeconomic status, first-generation college status. It can include things such as political beliefs, religious beliefs. It also includes diversity of thoughts, experiences, ideas, and talents.

Q. And why does diversity matter?

JA700

A. Diversity matters because overwhelmingly over the years, through surveys and feedback from our students is that our students ultimately want to learn and be with students that are different from them. And what has really come to light through our surveying and feedback and discussions is that we really believe in the educational benefits of diversity and our student body firmly believes in the educational benefits of diversity.

Q. Thank you.

I'd like to talk a little about the identity of the application readers.

In the time period from 2013 to 2017, which we'll generally focus on here, about how many readers of applications were

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[pp. 690-706:9]

A. It -- it could run the gamut. Everything. Sometimes it's just logistical questions, such as, "I'm looking at a transcript. I don't know how to interpret this curriculum." Other times it may be "I'm unsure which GPA to enter." And some other times it may be trying to get our advice about how to read a particular applicant.

Q. And during a typical admissions cycle, approximately how many e-mails with questions from readers would you estimate that you receive?

A. Hundreds.

JA701

Q. What are the goals -- as the head of the evaluation process, what are your goals for reader training?

A. So our goals for reader training are to introduce our readers to our individual, comprehensive and holistic review. Our goal is for them to understand that when they read an applicant, they're reading the entire applicant, not just the test score, not just the GPA, not just an essay. They're a whole person.

And when we read the application, we want them to understand the context in which they come from, so the context of their homelife and environment, the context of their school life and environment. We want to train readers to meet our applicants where they are and understand that they all come from different walks of life and that context is extremely important to consider as you make the decision.

Q. Why is that context so important?

A. The context is important because different students -- or I think one way to think about it is success can be defined differently in different environments, and so it's important to understand that some students won't have the curriculum that other students have simply because their high schools don't offer it, that other students -- some students may have a lot of test prep options, while other students may not. Many students have struggled and gone through a lot of adversity, and that could potentially impact a particular part of their academic record.

We always want to make sure that we're, you know, admitting applicants that we feel would be successful and be a part of the Carolina community, but it's also

JA702

important to understand that in the context in which they come from because no two applicants are the same.

Q. I'd like to turn now to the application review process.

A. Uh-huh.

Q. At a high level, what is the overall guiding principle for review of an application for admission?

A. Sure. The overall guiding principle is that each application deserves an individual, comprehensive and holistic review.

Q. What is the first thing that you do when you begin to review an application for admission?

A. Sure. So we read electronically, and so the first thing I do after I open an application that's in my queue is I look at what's called the reader dashboard.

Q. And what information is contained on the reader dashboard?

A. On the reader dashboard is going to be some factual information about the applicant, so obviously name, where they're from, what high school they attend. It does tell us race and ethnicity. It will tell us if they are a first-generation college student. Sometime during that time frame we also added if the student was receiving a fee waiver. As well, we'll see their SAT and ACT score. That's -- that's -- that's primarily the general information that we'll home in on at first.

Q. And why are you looking at that the dashboard information first?

A. It just initially tells me who the applicant is, where they're from, what high school they go to. It provides a little about bit of context. Most of the context will come later as we open up the application, but it just gives you a little bit of a preview of what you may be about to see.

MS. VAN GELDER: Your Honor, at this time I'm going to ask Mr. Rosenberg to go through an application, and it is a highly confidential document, so I would ask to turn off the feed, and if there's nonattorneys in the room --

THE COURT: Yes.

If there are people in the courtroom other than attorneys, I would ask that you step out as well.

(Spectators left the courtroom and audio privacy settings were turned on.)

(Sealed portion of trial testimony occurred next and appears under separate cover filed with the court.)

MS. VAN GELDER: Your Honor, I'm not going to show any more pages of the exhibit, although we'll continue talking about the application process, but I don't think it will involve the confidential information.

THE COURT: All right. So are you suggesting we can allow these others to listen?

MS. VAN GELDER: Yes.

THE COURT: All right. If you can do that, Debbie.

THE CLERK: Okay.

(Spectators were allowed to return to the courtroom and the audio privacy settings were turned off.)

Q. (By Ms. Van Gelder) Mr. Rosenberg, how are the SAT and the ACT test scores considered during the application evaluation process?

A. Sure. So the test scores are one of many data points that we can think about and consider. We look at testing, again, in concert with the entire application. So the test score is just a number or an isolated score. It doesn't tell us everything we need to know. It's important that we understand, again, the context of the applicant and everything about them to consider their test score appropriately.

Q. When are below-average test scores more likely to affect an applicant for admission negatively?

A. A lower test score might impact a student more negatively if other data points in the application are tending to point in the same direction, so in concert perhaps with lower academic performance, a weaker program perhaps. We sometimes will see lower SAT scores in concert with poorer writings, say, looking at the reading or verbal score along with the essay.

So, yes, it can have a negative effect on some applicants.

Q. Have you denied admission to applicants with high test scores?

A. Of course.

JA705

Q. And have you granted admission to applicants with low test scores?

A. Of course.

Q. If an applicant -- during the 2013 to 2017 time frame, if an applicant submitted only ACT scores, how would readers look at that?

A. Sure. So at the time students could submit either an SAT or an ACT or both. Students -- that was up to the student. We required one or the other. What we would do is we would concord the ACT score to its SAT equivalent and, in essence, recalibrate everyone on an SAT scale. So we were able to compare everyone using a similar standard. And so our readers had a concordance chart, and so that was published, that they would have. And so, for example, if a student scored a 30 on the ACT, that equates to about a 1340 at the time, or mid 1300s generally, and so that student would, in essence, be thought of as having a 1340 SAT score.

Q. And that concordance table that you referenced, where did that come from?

A. It's published by the College Board. SAT and ACT work to try to concord their scores together, but it is published by the College Board for SAT concordance.

Q. If it is disclosed, how are race and ethnicity considered during the evaluation process?

A. Sure. So if it's disclosed, similar in a way to SAT and ACT, it's one of many factors, it's one of many characteristics that we know about an applicant. We

JA706

consider, again, the entire applicant individually, comprehensively and holistically. To the extent that race and ethnicity informs their upbringing, their background, some students may talk more about it; others may not.

But to the extent that we do consider diversity in our class, race and ethnicity would be one of many factors that we think about when reading an application, just as we would a first-generation college student or a fee waiver or low socioeconomic student.

Q. Does the admissions office ever assign automatic points for race in the reading process?

A. No.

Q. Do you review candidates of different racial backgrounds separately or differently?

A. No. Everyone goes through the same evaluation process.

Q. After you've assigned all the ratings to an application, what do you do next?

A. After we assign all of the ratings, the next thing I will do -- or we would do is typically compose the comment that we mentioned earlier where we summarize the information that we've reviewed and also arrive at a provisional decision for that applicant at that time.

Q. And what information is important for the comment to contain?

JA707

A. Sure. So the comment will typically contain the strengths and weaknesses perhaps that the applicant is presenting to us, again relative to our applicant pool. We will also talk about relevant context. So typically in a comment we will share any stories, or we might mention background information that we've learned about a student's family or educational history. And so we will then take -- given that context and given the strengths and weaknesses that we've pointed out about that applicant, we would then use that information to arrive at our best professional judgment of an admissions decision.

Q. And in 2013 to 2017, what admissions decisions were available to the reader?

A. Sure. So for the early action deadline, a reader could choose to admit, defer, or deny an applicant. And for the regular decision deadline, they could choose to admit, waitlist, or deny an applicant.

Q. How do the ratings that were assigned during the reading process play into that admissions decision?

A. The ratings do not equal a decision at all.

Q. What value do the ratings have?

A. The ratings are valuable to us as really more of -- as an internal discussion, so, for example, a way of having a quick way to understand what an application may look like or represent without having to read the entire application.

Q. Are there any minimum ratings that are required for admission?

JA708

A. No.

Q. Do the readers sum up or total the ratings in any way?

A. No.

Q. How does disclosed race or ethnicity affect the ultimate decision to admit or deny or defer or waitlist an applicant?

A. It can affect the decision in the same way any other part of the application can affect the decision, and it's thought about, again, in concert with all of the other information we have about an applicant. So in considering their socioeconomic background, considering their educational opportunities, considering any contextual stories, all of those things, we will also think about race and ethnicity as we think about all of that information about an applicant as we make a decision.

Q. What happens once the first reader of an application makes his or her decision?

A. So the first reader will make their provisional decision, and then the application at that point would move on a predetermined path, depending upon the residency of that applicant and the first decision that is given.

Q. And what are the options for the predetermined path?

A. Sure. So if a student is a North Carolina resident at that time, if a student -- excuse me -- if a reader voted admit or deny on a North Carolina resident, that

JA709

provisional decision would stand, and the application would go into a completed queue, if you will, where it would sit for a period of time. If the first reader voted defer, which is really, in essence, a borderline application -- we might see that as borderline -- it would then go for a second read.

If the applicant was an out-of-state student or a non-North Carolina resident and the first reader voted admit or defer, the applicant would go for a second read. If they voted deny, it would go, again, to that evaluation complete queue or area.

Q. Are there any other circumstances when an application might receive a second read?

A. Yes. A first reader at the time could also designate any application to get a second read if they just felt unsure or had further questions and wanted another opinion.

Q. And who conducts the second read of applications during this time frame, generally speaking?

A. Sure. It would be a small number of readers, typically very experienced readers who have been with us for some time and have proven themselves to be both effective and efficient.

Q. And what is the process for conducting a second read of an application?

A. So when a second reader receives an application, they will also look at the dashboard first, but they will also have the benefit of seeing the first reader's ratings. We typically ask them not to read the comments or look

JA710

at the decision until they've gone back and gone through the entire application. They will typically reread the application from beginning to end, just the way the first reader did, and they will update a rating. If they feel that a first reader has incorrectly rated someone or missed something -- for example, they missed courses -- they will update the rating. They will then enter their own comment. There's a place for the second reader to put their summary, and then they will also come up with a provisional decision.

Q. And is the Tier 2 reader's decision the active decision at that point?

A. Yes, that is the decision that will be -- that provisionally stands at that period of time until such time if it's changed or released.

Q. In 2013 to 2017, approximately how many applications would you estimate were read twice?

A. I would estimate it's probably somewhere in the 40 percent range. It would vary a little bit from year to year.

Q. What happens after the second reader -- this Tier 2 read process is completed?

A. So after that process is completed, as I said, the application would go to a virtual queue where it would be held; and then at the conclusion of our individual reading period, we would review our decisions before releasing them to students.

Q. And is that the school group review process?

A. Yes.

JA711

Q. The Court has already heard a lot about that a bunch. I won't have you go through all that.

What happens once the school group review process is completed?

A. Sure. Once the school group review process is completed, we get ready to release our decisions to our applicants, typically all at the same time in the afternoon, and they're released to students.

Q. I'd like to take a look at Plaintiff's Exhibit 65 and talk a little bit about the reporting that's available to the admissions office.

So you see that there's an e-mail from Dr. Kretchmar to you --

A. Yes.

Q. -- attaching a report, and we'll take a look at the exhibit or the -- yeah. Thank you -- the attachment to the e-mail.

Mr. Rosenberg, do you recognize this sort of report?

A. Yes.

Q. What is it?

A. This is a prior year comparison report that simply shows us how our applicant pool has changed from one year to the next, and it allows us just to track data points of demographics about our applications.

Q. And in the 2013 to 2017 time frame, to the extent this report was circulated or produced, who had access to it?

JA712

A. Senior leadership.

Q. Did seasonal readers have access to a report like this?

A. No.

Q. Did the staff who were readers have access to a report like this?

A. No.

Q. Does the admissions office still complete these prior year comparisons in this form?

A. In this form, no.

Q. In the 2013 to 2017 time frame, did seasonal readers or admissions office staff have access to any reports showing the racial and ethnic breakdown of the provisionally admitted class?

A. Not to my knowledge, no.

Q. Did they have access to any reports showing the breakdown of demographics of the provisionally admitted class?

A. Not to my knowledge, no.

Q. Why not?

A. So when we're reading applications -- because they're read randomly and in any random order, we typically do not want readers to know specifically what our admit rates look like from day to day and week to week. Part of the reason is that we don't want readers to change how they're reading from Wednesday to

JA713

Friday because they learned something on a Thursday. We would like to use the decision review to review everyone equally and fairly at the same time and adjust decisions at that point. So we don't want to influence readers in any which way simply because our admit rate might look higher or lower on a particular day, because it could simply be a product of the applications that we have randomly read up to that point.

Q. When do readers learn of the racial and ethnic makeup of the first-year class?

A. In the summer after our reading is completed, our waitlist is disbanded, and our class is fully enrolled.

Q. Mr. Rosenberg, as the leader of the evaluation team, what are your observations regarding readers' compliance with the reader policies and training that you provide?

A. I think they do a great job. I do think they follow the guidelines and policies and do everything they can to support our offices and the university's mission.

Q. And what are your observations regarding the readers' consideration of race and ethnicity in the admissions process?

A. I do think they look at it appropriately.

Q. And why are you confident that readers comply with policies and training and properly consider race and ethnicity in the holistic admissions process?

A. In my role, as both a second reader and as someone who participates in the decision review, I have the

JA714

opportunity to read behind everyone multiple times, many, many times throughout the year. So throughout the year, I am constantly seeing or reviewing files that first readers have read. I'm reading their comments. I'm understanding how they got to their decisions.

And then when we get to decision review, I open hundreds of applications and read comments and understand the thought process behind different people's decisions. And so over time I can gain confidence in individual readers, that they are considering all aspects of an application, that they've done that individual, comprehensive, and holistic review, and that they are appropriately considering race as one of many factors they can think about when reading the application.

MS. VAN GELDER: Thank you, Mr. Rosenberg. I don't have any further questions.

THE COURT: Since it is about ten minutes -- I'm assuming it will take you will longer than ten minutes to cross?

MR. WEIR: Yes, Your Honor.

THE COURT: All right. Sir, you may step down at this time.

We will recess, and we'll resume at 1:20.

(A noon recess was taken from 12:20 p.m. until 1:20 p.m.; all parties present.)

THE COURT: For the record, if you would give me your name.

JA715

MR. WEIR: Yes, Your Honor, Bryan Weir.

THE COURT: Thank you. You may proceed.

CROSS-EXAMINATION

BY MR. WEIR:

Q. Good afternoon, Mr. Rosenberg.

A. Good afternoon.

Q. We haven't actually met yet. As I just said, I'm Bryan Weir. I represent the Plaintiff here, Students for Fair Admissions.

So I want to start a little bit just talking about process, which you went through with Ms. Van Gelder a bit ago, just cover a little ground we've touched on.

When a reader reviews an application, they read the entire application file, correct?

A. Yes.

Q. And everything -- they're trained to -- to consider everything in that application file because everything matters in the application file; is that correct?

A. Yes.

Q. And second readers, they conduct the same type of read as a first reader would in that way?

A. Yes.

Q. So for a second reader, everything in the application matters?

A. Yes.

JA716

Q. And that's also true for the school group review process?

A. Yes.

Q. And just a quick question about that process. UNC used to have race displayed on the actual SGR reports, correct?

A. Yes, a long time ago, uh-huh.

Q. And UNC removed race from those reports after the Office of Civil Rights complaint, correct?

A. Yes.

Q. But at least during 2014 to 2017, a reader could still click through the SGR report and learn the applicant's race, correct?

A. If they opened an application on that report, yes.

Q. And so the race of the applicant was just one click away?

A. Yes.

Q. And you personally, when you conducted SGR review, would look at -- had occasion to look at an applicant's race, correct?

A. Yes.

* * *

JA717

DAVIS – CROSS

[pp. 746:3-748:13]

Q. As part of the recruitment process -- you had a chart up -- in Phase I, identify the prospect pool. As part of that, UNC-Chapel Hill purchases data from the College Board and from ACT, correct?

A. Yes, that is correct.

Q. And I believe you called that Search in your direct exam?

A. Yes, that's correct.

Q. And in deciding what types of data to purchase from the College Board and from ACT, UNC is looking for talented students that based on the information available may indicate that those students could potentially be admissible to UNC and might be interested in coming to UNC; is that right?

A. Yes, that's correct.

Q. And at that stage, the only real information that UNC has about those students is their test score and their self-reported GPA; is that right?

A. Yes, by and large, that's the information.

Q. And those two data points, that is, test score and self-reported GPA, are not the only data that UNC is able to get, but that's the only data that to you signifies how potentially admissible a student may later be, correct?

A. Would you mind repeating that question?

JA718

Q. Sure. Those two data points, that is, test score and self-reported GPA, are not the only data that UNC can purchase, but that's the only data that to you signifies how potentially admissible a student may later be; is that right?

A. I'm not aware of other data we could purchase.

Q. All right. Well, you recall your deposition, I take it?

A. That is correct, yes.

Q. And I'm looking at page 53, lines 16 through 20.

Question: "And that's the only data that you are able to get from College Board and ACT?"

Answer: "It's not the only data that we are able to get, but it's the only data that to me signifies how admissible a student may later be."

Do you recall that question and that answer?

A. I see. Yes, I do.

Q. And is that the accurate?

A. So we do receive other data from the College Board and ACT when we purchase those students based on this criteria.

Q. Right. But the only data that to you signifies how potentially admissible a student may later be are the test scores and self-reported GPA, correct?

A. Correct, because we don't have information on, like, the student's extracurricular activities, their writing, their letters of recommendation. We don't have any of

JA719

those other -- we don't have indication of those other components of the student's application.

Q. Right. But at least at that point, it would be accurate to say that those two data points are the ones that to you signify how admissible a student may later be; is that right?

A. How potentially admissible, yes.

Q. And there's no additional data that you could get from the College Board or ACT that you believe would go into whether or not a student is potentially admissible, correct?

A. Correct, not that I'm aware.

Q. And, of course, UNC does not purchase data on students that it does not believe would be potentially admissible; is that right?

A. Correct. So we're not buying students, for instance, that have a C average in high school.

* * *

JA720

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA**

Case No. 1:14CV954

[November 16, 2020]

STUDENTS FOR FAIR ADMISSIONS, INC.,)
)
Plaintiff,)
)
vs.)
)
UNIVERSITY OF NORTH CAROLINA, et al.,)
)
Defendants.)

**Volume 5
Pages 759-925**

**EXPEDITED TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LORETTA C. BIGGS
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

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JA721

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NORTH CAROLINA JUSTICE CENTER
Jack Holtzman, Esquire
Emily P. Turner, Esquire

* * *

PANTER – DIRECT

[pp. 780-788]

Q. Can you talk about that?

A. Sure. This is a commitment that is the most fundamental commitment that we have at our university. It's a major part of our university mission in that we are -- we are the center for scholarship and creativity, and we are -- our mission is to serve a

JA722

diverse set of students who are undergraduate students, professional students, and graduate students so that we prepare them for their futures in -- in society, as leaders in society, and as people who are entering a workforce where there are jobs that are not even conceived of at this point.

Q. In your capacity as working with the Educational Benefits of Diversity and Inclusion Working Group, are you familiar with the report that the provost prepared?

A. Yes.

Q. And we've taken a look at that report already in this case. Are you familiar with the educational benefits that are articulated in that report?

A. Yes, I am.

Q. And are you in agreement that those are the educational benefits that the university seeks to accomplish?

A. Yes, I am, and I think it serves as an excellent frame for us as we -- as we think about the educational benefits that flow from diverse student bodies.

Q. As someone who has had the opportunity to be a professor at the university for many years, have you had the opportunity to personally observe the educational benefits of diversity?

A. Yes. And that's the beauty of teaching, and I think I -- I observe that regularly, and it's -- I just -- as an example, I would just say that when you have students coming together around a meaningfully conceived intellectual pursuit like a project or maybe a

JA723

semester-long project and students are together working around this project, hammering it out and working to -- and contributing in all the ways they contribute and carrying that through, there is nothing like seeing that process emerge; and that is what is really the most wonderful aspect about being in a role like a professor role.

Q. Has your own research contributed to your belief in the importance of these benefits?

A. Yes.

Q. Can you talk about that?

A. Yes. I -- I do work -- I'm regularly talking to students, so I -- in the educational benefits of diversity and -- the educational diversity project, I saw evidence of that in -- in findings that we had. But in other work, for example, the work on the Finish Line Project, where we regularly talk to students, first-generation college students, students coming into college during classes, navigating different spaces on campus as they exit the university, these are all the kinds of conversations that show -- provide good evidence around these educational benefits.

Q. Based on your experience, is racial and ethnic diversity specifically important to achieve the university's goals?

A. Yes.

Q. I'm going to turn now and ask you about some of the ways that the university has attempted to assess the educational benefits of diversity.

JA724

Prior to the formation of the Educational Benefits of Diversity Working Group, had the university engaged in efforts to assess these benefits?

A. Absolutely, yes. Would you like --

Q. Can you describe some of the ways that the university approached that?

A. Sure. So I would -- there are three kind of components to this -- the way that we assess educational benefits of diversity. There's -- sort of one component is around -- it's longitudinal. It assesses students as they're arriving and early on and in sophomore year and senior year and as alumni and even if they stepped away and came back. These are assessments that our university developed, and they also tie to -- we are part of a system, so often they tie to our system assessments, and also they tie to national assessments.

We also have a component that is focused specifically on the academic experience, and so that goes into -- so we have a lot of departments in the college and in the university that undergraduates take courses -- where they take courses; and each of those departments, each of the majors -- a BS, a BA or whatever the major is -- is required to provide information about how students are learning in those areas.

In addition, every student who comes to UNC-Chapel Hill, every undergraduate, takes courses in our general education curriculum, which I'm very proud of, and it is -- and that's about a third of the courses that students take when they're achieving --

JA725

when they're going through their careers as undergraduates. And they -- and every aspect of that is being evaluated for -- looking at how it's working, is it working fairly across different groups and across the university.

And we also have in -- each department has tools that they can use, and the faculty have tools that we've created so they can look to see how is our department doing. This is often in concert with the Office of Institutional -- Institutional Research and Assessment, how is a department doing. I call them -- one of the first things I did in my role -- the state of the department.

So you can see at any point how are our students. Are they engaging in high-impact practices that we care about, like study abroad, internships, undergraduate research? Are they taking the first-year seminars? What are they doing and can we -- can we see how they're -- what courses are they taking before they drop a major? All of these bits of information are important for our director of undergraduate studies to report in to our departments, and we have multiple forms of looking at those -- that information.

And then finally I just want to say one piece, which is a very key piece. It's we do research also regularly on -- on the classroom and how we can train our faculty. In my area, we have the -- really the nation's top experts on inclusive teaching, and we have -- we have projects -- there are research projects and there are scholarships around ensuring that the classroom is a space where everyone is going to thrive and the learning is maximized.

So an example is we have a high -- there's a person, Carl Wieman, who is the Nobel Prize winner physicist at Stanford, who talks about what you need to have in a classroom to encourage learning, and we have implemented that in a full way at UNC. It's starting in the sciences and moving outside with high structure, active learning, where we take advantage of the fact that people are together -- not in COVID times necessarily, but there's a COVID version of this. But people are together and that the learning is existing at the -- the students have certain kinds of activities. There's accountability. There's a certain level of work. It's a design -- it's a backward design of what you want everyone to be learning, and you build the -- you build the course and the structure from that.

So we have trained faculty. Over time we have trained many faculty too, and we have summer institutes and other ways to do -- and faculty learning communities where they have redesigned their courses so they can implement these high-structure, active learning kinds of procedures and approaches. We've had multiple grants and ways to do this, and we continually do this.

And our faculty -- it increases learning in -- for our students, and that's why we do it. It's a structural way that we are changing how students learn. It's an important aspect of our assessment.

Q. Okay. I want to follow up on some of the things that you've talked about.

You talked about these longitudinal assessments. Are you referring to surveys?

JA727

A. Well, we have surveys, and then sometimes we do cohort kinds of studies which we'll follow students through. There are different kinds of -- you know, pros and cons for each of these approaches, but we are -- we have both.

Q. Okay. With respect to some of the surveys, does the Office of Institutional Research and Assessment play a role in administering this?

A. Yes, they do. They're very -- certain surveys. So they -- they are very helpful in, I would say, that first component where we are talking about our national surveys and our regular -- surveys that involve, for example, our system office as well.

But they are -- they are our partner all the way through all of this, and they're even our partner -- even. They are our partner also for our assessment of gen ed and our new general education curriculum, which has been designed to really express the intent of faculty in learning and what we think is best for our students overall as they move through Carolina and graduate. They are also helping in that and partners in assessing that when it comes and is fully implemented in 20 -- in about two years.

Q. And I don't know that we've actually heard of that office in this trial yet, so could you just briefly describe at a high level what the Office of Institutional Research and Assessment does?

A. Oh, yes. So every university has an office like this. It is an office that -- that reports about the functioning of the universities and often provides tools to examine so that you can see -- be transparent about how the

JA728

university is doing on certain metrics and also reports into our system office. We have -- we're part of a system, so also reports key information to our system regularly. And then when you have certain surveys, sometimes you'll want it to be from a different office so that it -- and that's the office that Institutional Research provides also.

So there are multiple reasons for an office like this. The director is a wonderful partner, and she has a wonderful staff who work with all of us on these topics.

Q. I want to ask, has the university done any climate surveys?

A. Yes, it has.

Q. Do you recall what the most recent climate survey was?

A. I -- so the topic of climate comes up at multiple levels. So it's in surveys that are around undergraduate education and also in surveys around faculty and staff. So let me clarify.

Q. Let me be a little more specific.

Could you talk about a climate survey addressing diversity issues in 2016?

A. Yes. That one was administered by the -- UCLA, the Higher Education Research Institute, and so -- and that was -- that was outsourced, really, to that group because they're experts in that area.

Q. And the information and assessments that we've been talking about, do those help the university

JA729

understand how well it's achieving the educational benefits of diversity?

A. Yes. And it's really -- by having multiple methods, we're able to see this across the dimension of time and also the dimension of -- we can see this in -- in surveys asking questions of students directly or -- and also in their behaviors in the academic setting.

I focus really on the academic setting, but really college is not just the academic setting. It is everything around in the dining halls and the residence halls and the fields, all around campus where people are just -- where they are, where they're talking, where they're being together.

Q. In addition to more formal surveys, does the university also seek information from its students informally?

A. Yes, we regularly have -- we have various kinds of ways for students to express themselves for -- and come and speak. We -- I do a lot of work with students and expressing through focus groups and other areas. But there are programs -- we have an Office of Diversity and Inclusion, for example, where there are programs that are being put on regularly in that area for students to come and just talk. Our students are part of Faculty Council even. They have a role there. They have -- they are -- they have lots of ways of expressing themselves, and they do, fortunately.

Q. I want to ask you about course evaluations. Does the university do anything through its course evaluations to understand the educational benefits of diversity?

A. Yes. So this is something that we -- I would just say that's our understanding. I think I would consider the course -- we call them student evaluations of teaching, and they are about each course. You can also roll them up and understand overall how we're doing -- how a department is doing or how the university is doing overall.

But we do quite a lot. Because my area is in psychometrics

* * *

[pp. 791-796]

than others because of that kind of change.

But in general, we use our information regularly because we're feeding it back to the faculty; and we have learning -- faculty learning communities, which are faculty coming together with a facilitator to talk about how to design your courses; and we have -- we have institutes; and we have trainings.

And as I mentioned before, we have some of the top people in the country on inclusive teaching in a classroom. Who are you not reaching and how to bring people in, that is a very important piece, and that's why it's a very important aspect of what we do.

Q. I want to ask you about whether there are intentional efforts by the college to achieve the educational benefits of diversity in terms of the student interactions.

Does the college do anything to promote student interactions?

JA731

A. We -- we have programming -- regular programming. We have -- so our mission of the college is: "Think. Communicate. Collaborate. Create. ...for meaningful lives." And for that, it's -- each piece of that was -- we were very careful to think about that.

It's about critical thinking and what it means to be -- to use -- to make leaps and to be able to create and think; our communication and -- across all forums, so being writing and oral and visual and digital kinds of ways of communicating.

Collaborating, we value collaboration so much that we put it as one of our reoccurring capacities in our new general education curriculum. You cannot have a course in our new general education curriculum coded this way unless you have collaboration as part of what goes on in that course. So it's implemented in that way.

And then create. We are valuing the creation -- we think that putting people together to think about a program creates and allows people to innovate and problem-solve, and that is where we at its creation -- we think they invent, they create through performances, through exhibits, all the different ways. So that's the creation.

And then for meaningful lives, we -- we really think -- you know, this is about -- about a student's own trajectory through life and the different kinds of careers a person might have. I tended to have one, but many people have multiple careers. They have multiple spaces that they're operating in for work and -- and it affects everyone and it affects our community. So we use for meaningful lives to think about the broad sense.

JA732

And so we implement this -- these are -- we are thinking about this all the time. The fact that our faculty have developed a new general education curriculum that -- that ensures that every one of our students has a first-year seminar type of experience, a faculty member in a small class in their first year, we value that experience. We saw that not everyone was achieving that experience for whatever reason. Whatever hypotheses we might have about that, we changed that. These are all -- we saw that students didn't have the experience of right away seeing that you have to bring multiple people to the table to address a major difficult topic. We have done that for our new general education curriculum with a new type of interdisciplinary course.

These are all kinds of changes and aspects that we implement through our curriculum. That's our faculty's intention, and that creation with community and stakeholders involved is our intention. That is how that is really part of the fabric of what all incoming students will experience for generations until the next new general education curriculum is developed.

Q. I want to turn now and ask you some questions about an exhibit related to the Educational Benefits of Diversity Working Group. You should have an exhibit binder on the floor next to you if you want to look at any of the exhibits. We're also going to be putting them up on the screen, so whichever is easier for you is fine.

A. Okay.

MS. BRENNAN: Aaron, if you could please pull up DX5.

JA733

Q. (By Ms. Brennan) The DX exhibits should be at the front of the binder, and let me know when you have that in front of you, please.

A. I have it in front of me.

Q. Do you recognize this document?

A. Yes, I do.

Q. If we can turn to the second page of the document, what is this document?

A. This is a -- I'm sorry. This is a report that was created for -- to describe the activities of the Educational Benefits of Diversity and Inclusion Working Group.

Q. And if you look at what's in front of you on the screen, it talks -- it says "Overview." Could you please read that into the record?

A. Yes. "Overview. In December 2017, Provost Robert Blouin convened the Educational Benefits of Diversity and Inclusion Working Group (the EBD Working Group). The group's charge is to coordinate and enhance the assessment of the University's ongoing efforts to realize the educational benefits of the diversity and inclusion for its undergraduate students.

"This report summarizes the EBD Working Group's progress during the 2017-2018 academic year and forecasts some of its future activities."

Q. Thank you. And if you look back at the group's charge, is that consistent with your understanding of what the group's charge is in the second sentence?

JA734

A. Yes, it is.

Q. Okay. And I want to just move down the page to the next paragraph where it talks about the five different educational benefits of diversity.

Does that come from the provost's earlier report?

A. Yes, but a different provost. This was the Provost James Dean, who is now the president of the University of New Hampshire.

Q. And do these five benefits provide a framework for this new Educational Benefits of Diversity and Inclusion Work Group.

A. Yes.

Q. Could you please read the final paragraph on the page that starts "The EBD Working Group..."?

A. Yes. "The EBD Working Group oversees and coordinates assessment of the University's many efforts to realize these educational benefits of diversity for its students. This work entails, among other things, the broad collection of data about the University's progress toward achieving these benefits. The EBD Working Group strives to ensure the use of methodologically sound assessment tools to ensure that the University's efforts in this area are deliberate, continuous, ongoing, and aligned with the University's mission and strategy. We examine data regarding the educational benefits of diversity and inclusion; we use it to measure and assess the University's efforts to achieve the educational benefits of diversity; and we apply the resulting insights to improve continuously both the

assessment and the provision of the educational benefits of diversity and inclusion.”

Q. Is that paragraph consistent with how it has worked in practice?

A. Yes, it is consistent.

Q. I want to have you turn to the next page, which says “Working Group Members.”

Does this list the members of the group?

A. Yes, it does.

Q. And how are you selected or chosen to be on this committee?

A. I believe I was selected because I -- of my role and because of my expertise overall in assessment.

Q. Are there others on the committee that bring different types of expertise?

A. Yes. So Dr. Alexander was the chief diversity officer of the Office of Diversity and Inclusion. She is a professor in nursing and regularly gave presentations to Faculty Council and the community around diversity and inclusion.

I would -- Stephen Farmer, who is the vice provost of enrollment and undergraduate admissions, and this is also an important area for -- obviously, for understanding the educational benefits of diversity and inclusion.

Felicia Washington, the vice chancellor for our workforce unit overall. This is about really the end --

the -- being admitted to undergraduate is really that path all the way through life, and that is what we're -- she represents in this

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[pp. 803-813]

tied to either areas that we're interested in as a university, also our university system is also interested in. We will use these items as well. And then also we tie into national surveys so that we can benchmark and we can be part of a collaborative with other universities that use this similar instrument. So that helps us so that we can do our benchmarking later and it's useful.

So examples of this is -- the Cooperative Institutional Research Program is one of the kinds of benchmark ones. More of the SERU, which is Student Experience in the Research University -- those are examples. It, again, taps people as soon as they come in and throughout and then as they're leaving -- as they're applying for their degree, we have -- there's an exit survey at that point as well, and there's even follow-up there.

Q. I want to take to you the next page of the document on page 5 where it talks about student perspectives. Here it talks about the initial consideration of data yielding strikes and striking insights, and I want to ask you about some of those.

Can you read into the record starting with the second sentence of that paragraph through the end of the paragraph?

A. Yes. Starting with “Students...”?

Q. Yep.

A. “Students newly admitted to UNC-Chapel Hill have expressed overwhelmingly their interest: (1) to engage with a broad range of ideas, perspectives, and visions that differ from their own; (2) to gain “better at leading, serving, and working with people with different backgrounds; and (3) to deepen their appreciation, respect, and empathy for other people. Our students want” to work -- “to study alongside students who differ from them, because they know that doing so will help them get ready for a complex world, and ready for the lives that they want to lead.”

Q. Is that an initial conclusion that this group reached based on the data it had reviewed?

A. Yes.

Q. And then I want to look at the one in the second paragraph. If you can read that, please, “Data from....”

A. “Data from recent Senior Exit Surveys suggest that Carolina is meeting those student expectations. Our graduating seniors reported that they have experienced the educational benefits of diversity throughout their time at Carolina, both within the classroom and in extracurricular activities.”

Q. Is that also a conclusion that the group reached based on data that it reviewed as part of its initial work?

A. Yes.

JA738

Q. And then I want to look at the next paragraph, please. If you could read that.

A. "Some data from the 2016 HERI Climate Survey...suggested that the extent to which students reported they had benefited educationally from UNC's diversity varied depending on the number of years in school. The percentage of students who reported that they had been challenged to think differently about issues due to interactions with people whose race/ethnicity was different from their own was 6 to 10 percentage points higher for seniors compared to first-year students. The percentage of students who reported that exposure to diverse people and ideas at UNC improved their ability to understand people" -- sorry -- "whose race/ethnicity was different from their own followed the same pattern. While these data were gathered from a cross-sectional as opposed to a longitudinal study, the trends are consistent with other research demonstrating that the benefits of diversity and inclusion increase with the quantity and quality of interactions students have with different people and perspectives."

Q. So what does this suggest in terms of whether students are achieving educational benefits of diversity at the university?

A. It suggests that they are. And this was done cross-sectionally, but it also shows in longitudinal research as well.

Q. I want to ask you, setting the document aside for a moment, has the group reviewed any information that would suggest to the university that the university has

achieved all of the educational benefits of diversity that it wants to achieve; in other words, that it's done working?

A. We are not done. We are not done. So there is a lot of work to do in many different spaces where -- and I would just say that overall I think in the academic space we have a lot of work we are doing. So, yes, we have a lot of work we would like to do.

Q. And I want to turn to the next page, which is page 6 of the document, and look at the section that talks about future progress. This -- if you could read the first sentence.

A. Yes. "Future Progress. The work of the EBD Working Group, like the University's efforts to realize the educational benefits of diversity and inclusion, is ongoing and deliberate. The Group will" --

Q. Is that -- I'm sorry. You can finish.

A. "The Group will continue to meet during the summer and ongoing throughout the academic year."

Q. Okay. Is that consistent with how it worked in practice?

A. Yes.

Q. And then it talks about review of existing assessment methods. Could you describe what the university -- what this committee has done there?

A. Okay. So --

Q. Or maybe I should rephrase my question to what the group plans to do going forward.

A. With these assessments?

Q. Right, where it talks here about the review of existing assessment methods.

A. Uh-huh. So we are working to make sure that we are regularly apprised of all the assessments on our campus. Because we have a decentralized campus -- we have the medical school on the campus, but we have different kinds of units that are -- professional schools that are out and each with their own structures, it's important for us to have an understanding of the assessments in all of those areas. So we are continually making sure now that we have our -- we have frameworks to help us with this to make sure that we are -- we are apprised of all of the work that's being done in the different spaces across campus.

Q. And the second paragraph refers to benchmarking. What is the intent there? If you look down at "We will benchmark our current methods...."

A. Yes. So it is very helpful to have -- be a part of a collaborative where we're using common assessments. And usually we -- we get information where we will have two comparator schools, and we can see where we're falling relative to these other schools and to identify areas of action based on what we are seeing from them. And we think this is an important aspect, to regularly look at how we fare compared to other schools, especially our peers.

Q. I want to move down the page and look at the section called "Assessment Plan." So here it talks about the development of an assessment plan. Is that what

JA741

you were describing with respect to the different stages of experience?

A. Yes, it is.

Q. Okay. Could you read the second paragraph of this into the record, please?

A. Yes. "The assessment plan will reflect our commitment to use assessment of institutional data as part of" our -- "of continuous efforts to improve as a University. It also will reflect our recognition that regular, intentional assessment of the University's efforts to realize the educational benefits of diversity and inclusion is an institutional best practice. Our object is to be a national leader in the field of providing, constantly assessing, and improving the delivery of the educational benefits of diversity."

Q. Was that your understanding, that this group intended to try to be a national leader in this area?

A. Yes.

Q. Okay. I want to look -- just move away from that. We're going to come back to it in a second. But if we can look at page 82 of the document. This was attached. It's just further back in the document.

What is this?

A. Okay. This is the assessment plan, just a -- it's a mapping of the different phases that we have, really, for students -- and I would like to just say that these are the kinds of documents that can be updated if we have new information about how we think about these phases -- but outreach and recruitment programs,

admissions, orientation, and it goes on to later stages of students' careers. And then it talks about mapping really for each of these areas and time points for a student as they're coming into Carolina, what kinds of assessments do we have and how -- how often do we -- you know, what is the cycle of assessment as well.

Q. And then I wanted to go back to page 7 of the document where it talks about reporting and communication. Could you read this into the record?

A. Yes. "Reporting and Communication. The EBD Working Group will provide regular reports to the Chancellor and to the Diversity and Inclusion Executive Council, and will welcome response and suggestions, as well as the opportunity to meet and discuss assessment findings and recommendations."

Q. And is that your understanding of how this group will report out?

A. Yes.

Q. What is your assessment of this committee's work?

A. It's very important work because it -- it just -- it makes sure that we're being just intentional around our -- around all of the different efforts that exist around campus. As I mentioned, because of our decentralized structure, it is very difficult to ensure that we are knowing exactly what is going on in all spaces, and that's what we're intending to do.

And the assessment plan overall gives us a way to make sure that we are covering and mapping all of our -- all of the stages of being a part of a Carolina student

with what -- the constructs that we're most interested in understanding, and those are -- and unless we do that systematically, we can miss areas, and we also might not have, you know, the best measure that exists out there currently or something. So we are -- we are making sure that we are assessing and not leaving areas without having proper assessments.

Q. Have you observed a sincere commitment to this effort on the part of the group?

A. Yes, it is sincere.

Q. Okay. I just want to quickly take a look at a few of the items that we've been referencing that are attached to the minutes for this group.

MS BRENNAN: Aaron, if you could please pull up page 36 of the document.

Q. (By Ms. Brennan) Do you recognize this? This is an addendum, and I guess let's go to the actual page, page 38 and then 39.

A. Okay. Yes. So this is about the admitted student questionnaire, and it's -- looks at the items that students who are -- who have been admitted to Carolina are -- there's a survey that's distributed; and they are expressing, among other things, their responses and agreement or disagreement to certain kinds of questions. And these are the items that are -- that are asked. This is one set of the items that are asked that relate to educational benefits of diversity and inclusion.

JA744

Q. Okay. And then I want to look at page 42 of the document, please, and this is -- it says it's a "HERI 2016 Survey Presentation." Do you recall that?

A. Yes.

Q. And let's look at page 48. This says it's selected highlights and has some information here.

What is this?

A. These are also -- they're similar -- so we try to ensure that we -- we, within ourselves, have internal consistency within the institution in a set of items and has the framework we talked about in terms of educational benefits. So these are similar types of items, but they're asked in a different kind of assessment to different -- for students who are in a different stage of their undergraduate career.

Q. And is this an example of the type of data that this committee is reviewing?

A. Yes.

Q. Okay. And then if we could turn to page 63 of the document.

A. I recognize it.

Q. I see your name on this.

A. Yes.

Q. What is this?

A. So this is the -- these are some of the earlier psychometric analyses of the student evaluations of

teaching that I was talking about before. We get them every semester, and we can aggregate them over many semesters. They represent every student's end-of-semester evaluation and understanding of what they experienced in that semester with a particular professor in a particular course.

MS BRENNAN: And can we look at page 72 of that document?

Q. (By Ms. Brennan) Does this reflect some of the potential items for those reviews?

A. Yes, these are items that are included as a part of the core set of student evaluations of teaching in the student evaluations of teaching larger set of items.

And we look -- we look carefully to see if there is differential item functioning, that is, those items function differently based on different attributes of students, faculty, and the courses. This is also -- also called measurement invariance, seeing that the measures are invariant across the different groups.

Q. To put a couple of examples out there in the record, could you just read the first three examples of the potential variables?

A. Sure. One of the items is: "The diversity of my classmates enriched my learning in this course." Another one is: "I increased my ability to work on a team with students from different backgrounds and perspectives." Another one is: "This course exposed me to points of view different from my own."

Q. That's all I have on this document, so we can set that aside.

MS. BRENNAN: Your Honor, I'm about to change topics. If this is a good time for a morning break, we can do it now or whatever Your Honor would prefer.

THE COURT: I think that's fine. I think we will take a morning recess, and let us resume at five after 11:00.

You may step done.

THE WITNESS: Thank you.

(A morning recess was taken from 10:50 a.m. until 11:05 a.m.; all parties present.)

THE COURT: You may proceed.

MS. BRENNAN: Thank you, Your Honor.

And may Dr. Panter remove her mask?

THE COURT: Yes.

Q. (By Ms. Brennan) Dr. Panter, I want to turn to asking you

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[pp. 849:24-851]

Q. Was there an intent to review and learn from the expert work in this case?

A. Yes.

Q. Did that include the expert reports of both sides?

JA747

A. Yes.

Q. I want to ask you had you had a chance to review the expert reports around this time frame of the May 2018 report in order to assist the lawyers?

A. Yes.

Q. And had -- so you had personally reviewed those reports?

A. Yes.

Q. Was there an intent to have the whole committee undertake that exercise at some point?

A. Yes.

Q. If there was something that you had seen that appeared promising, would you have taken it to the committee?

A. Yes.

Q. As of the interim report, there was a plan for -- for a deeper dive with respect to those reports? Is that fair?

A. Yes, that's correct.

Q. And has the committee as a whole looked to litigation to obtain information generally?

A. Well, yes. We are following everything. We're trying to follow everything. So it's the social science literature, the legal literature, and then just actions within -- within the system. So -- so we're looking, and we're regularly updating where we are based on what we're

JA748

seeing. And, you know, there is -- we're look -- there's information coming out, and so we are bringing it to bear to this process. There's a lot we can learn and are learning from reading the literature and from seeing what others do.

Q. I now want to talk to you about the Student Experience Subcommittee, and that's the one that's listed, and their review is summarized on page 7 of the report. Do you see that?

A. Yes.

Q. Could you read the first paragraph?

A. Yes. "The Student Experience Subcommittee. This Subcommittee analyzed existing university survey instruments that are regularly administered to undergraduate students at UNC-Chapel Hill and looked at evidence regarding campus climate, psychosocial development, student engagement, and learning outcomes. It also conducted a review of the higher education and social sciences literature on student engagement, perceptions of campus climate, sense of belonging, psychosocial development and learning outcomes."

Q. Are those activities that they have undertaken?

A. Yes.

Q. And then it talks, going forward, about some modeling efforts as well. Could you describe those in your own words?

A. Yes, we -- we started with -- we started in the realm of student affairs, which is -- there was a survey that is generally administered to students called the

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[pp. 855-859]

when modeling admissions data over time using all potential variables that could be available during holistic review; (c) using the strength of student and academic data from existing undergraduate survey administrations -- locally at UNC-Chapel Hill and nationally across institutions that vary on multiple dimensions -- to understand campus climate as a function of race/ethnicity; and” then finally “enhancing national data collections efforts, where possible, with supplemental relevant survey items, thereby contributing to the national dialogue about the role of race/ethnicity in the campus climate.”

Q. Does that accurately reflect what the key directions were at the time of the interim report in 2018?

A. Yes.

Q. And the next paragraph talks about documentation and presentation of efforts and how it’s going to be distributed.

Could you just describe sort of at a high level how this work is getting reported out?

A. Yes. So what we do is -- the committee on undergraduate admissions -- Advisory Committee for Undergraduate Admissions meets twice a semester. Every time it meets there is an update. I might give the

JA750

update. There are different updates. Dr. Shuford sometimes gives the update, depending on where we made progress. We make those updates. And then every two years we have a reporting out where we're reporting especially to the chancellor and the provost on -- with reports.

Q. How regularly are you planning to be reporting out as of this report?

A. It's -- well, we're reporting -- so these are descriptions of our activities, and we're on a regular schedule of every two years, as well as if there was something that we learned earlier than that, we would report that out earlier.

Q. I now want to set the document aside and ask you a few more questions about the work of this committee.

What are your impressions of the work of this group?

A. I mean, we've done a tremendous amount of work that -- it's an absolutely committed group of people who are together to make a major effort at meeting the charge. We are -- it's a very -- it's a difficult charge, and we are working to ensure that we are addressing it with everything we could bring to the question. And we're taking spaces where we see that there might be a promising space and ensuring that we are devoting analytic attention and -- attention to it through literature reviews and through studying and through data, and we're learning from our areas. But at the same time we're listening to the literature, and we're listening to reports about how well certain kinds of plans are -- operate at this time.

So these are the kinds of things that are -- just we are taking in the information from the overall literature in the nation, as well as working with the data that we have about the admissions process, and trying to have a deep dive about -- an understanding of the holistic process we have and whether we can -- removing race and ethnicity from this question -- overall from this process can generate a class that is about the same in academic preparedness and racial/ethnic diversity.

Q. There's been a criticism made in this case about the fact that the committee, and the Data Analytic Subcommittee specifically, had not run any simulations of race-neutral alternatives at the time of the interim report.

What is your response to that?

A. I -- so it's an interesting kind of statement because it implies there's a certain type of analysis -- there's one analysis that should be a set of analyses that are -- describe the answer, and what I think our committee has shown through our literature review and following up from prior work is that there isn't quite an answer at this point, and we really wanted to understand our -- our admissions process very well. And this is one approach to understanding this -- this entire process and whether we can remove race and ethnicity from the admissions process and generate our outcome that we may have.

Q. Why has the university taken this particular approach to this question instead of just running simulations?

A. Well, I think it's because we can contribute overall to an understanding of this question. If there's actually a solution, we would like to be able to rigorously examine what that might be, and we would like -- we understand that we would not be the only institution that would potentially benefit from a solution that we might develop. So we think locally it's important for us to understand, but also we think some of the kind of work that we're doing might help with the dialogue nationally overall. So this is our -- we are concentrating on understanding for our university if there is a solution, because we haven't seen one yet.

Q. And at the appropriate time, would the university run simulations as needed?

A. Yes, that's -- yes.

Q. But as of the interim report, that was not something that the --

A. Yes. As of the interim report date, yes.

Q. I want to ask you now about the ultimate question that the committee was charged with and what it had concluded as of the date of the interim report.

Had -- at that time had the university identified any potential race-neutral alternative that looked like it might work about as well?

A. At the time of the report, no.

Q. What do you understand that concept to mean, "about as well"?

A. It means that really within -- that we would look for a solution that would allow us to talk about an incoming student body that is approximately -- is academically prepared at approximately the levels that we are -- have seen in the past, and we -- that the racial diversity of our class and the diversity really defined more broadly of our class is about the same as we have seen in the past, and that we can -- that if there was a solution that would be -- that's a solution for -- that that's what we're trying to aim for, and we -- that's what we're trying to do with this committee.

Q. Would the committee be willing to take a close look at any alternatives that came relatively close in terms of achieving its objectives?

A. Yes, that's what the committee is there to do.

Q. I want to ask you about the concept of workability. Has there been discussion in the committee about that? Or let me ask: Had there been discussion about that concept as of the interim report?

A. Yes. I think we think about that -- yes, as of the interim report, we've thought about that a lot. We thought about the idea of we have this set of goals to produce a class with these kind of -- with comparable levels of academic preparedness and diversity, as well as wanting to make sure that we have a solution that is one where -- that is feasible, is practical, that is one -- practical, is one where we could -- maybe the data that we are using lines up with the natural process of the -- of the student who applies to college; that we could be using it regularly and easily; that

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PANTER – CROSS

[pp. 867:25-869:12]

Q. At your deposition, your opinion was that even if the student body were comprised of 20 percent African American students, 20 percent Hispanic students, 20 percent Asian American students, you would not -- you would be unable to say whether UNC was sufficiently diverse, correct?

A. If I said that at the deposition, then correct.

Q. Shall we go to the deposition?

MR. MCCARTHY: Mr. Lawrence, page 296. It's 296 at line 14. And this will go over to the next page.

Q. (By Mr. McCarthy) "Question: How much of this issue relates to what UNC sometimes refers to as compositional diversity? In other words, if the -- if African American students made up 20 percent of the campus populations, and Hispanics did 20 percent, and Asian students 20 percent, and white student the rest, would that be a factor that would -- that should bear on whether or not this university continues to use race in admissions?"

"Answer: Well, I like to think of that question in reference to the paper, the Garces and Jayakumar 2014 educational research paper" -- wrong way -- "on dynamic diversity and the understanding that numbers are a part of it. But really, the other piece that's a critical piece is the context of the institution and the interactions that are ongoing and the nature of the interactions and the context of the -- of what occurs for

students on this campus. So it is a partial -- numbers are necessary, but not sufficient kind of -- under -- to our understanding of dynamic diversity, and I think we should really think about different ways that are in different spaces that our students are being supported and are having positive, meaningful interactions across race.”

Was that -- were you asked that question, and did you give that answer?

A. Yes, I did.

Q. In fact, you were unable to state whether UNC would be sufficiently racially diverse if all of the major racial groups were at equilibrium and had the same share of the campus population, correct?

A. Correct.

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POLANCO – DIRECT

[pp. 871:21-876:18]

Q. And briefly why does race-conscious admissions matter to you?

A. It matters to me because I think it’s an important lens through which to evaluate students, look at the different things that they bring to the table with their identities; and there’s distinct things that have to go -- do with someone’s racial or ethnic background that could be barriers when it comes to accessing higher education. So I think it’s important to look at it and consider it during admissions.

JA756

Q. And when did you graduate from UNC?

A. I graduated in the spring of 2016.

Q. And what did you study?

A. I was a global studies major, health and the environment, and I minored in geography.

Q. And did you receive any awards or recognitions during your time at UNC?

A. Yes. While I was at UNC, I was a Morehead-Cain scholar, which is a full merit-based scholarship to UNC. So I -- that was one of the ways in which I could attend UNC. I was also a Global Gap Year Fellow, so I took a gap year before college. And I was inducted into the Order of the Golden Fleece, which is our highest honorary society at UNC; and my junior year I received the Martin Luther King Jr. award for my advocacy work for all students -- equity for all students on campus.

Q. And can you describe some of the advocacy work that you engaged in which led to this recognition?

A. Yes. I did a lot of extracurricular work outside of my studies organizing and advocating for students on campus of all backgrounds, and so when it comes to education equity and advocacy, that was something that I advocated for a lot and organized around.

Q. And can you share with us whether you've remained involved with UNC since graduation?

A. Yes, I have remained involved. I donate to the Morehead-Cain Foundation. I also donate to Carolina

JA757

Covenant, which is a need-based scholarship at UNC, part of UNC's commitment to meet 100 percent of demonstrated financial need. So I would have been a Covenant scholar had I not been a Morehead-Cain scholar. So I still support in those ways.

I'm also keeping track of the Latinx community there. I go back and do some speaking with students, some mentorship, and also I've loved to watch the development of the Carolina Latinx Center. It was a collaborative when I was there. We had a multipurpose room in a dorm, and now there's potentially a center with dedicated staff and funding. So I've got my eyes on that, too, hoping to see some -- some better resources for students who are currently there.

Q. And what have you pursued professionally since graduating from UNC?

A. Since graduating, I committed myself to starting my small business, So Good Pupusas. They're a traditional Salvadorean food. So I started a small business with my mom and my family, and we have a partner nonprofit, Pupusas for Education. So we sell pupusas, and a portion of those proceeds go toward scholarships for undocumented students and students with DACA. I am not an undocumented person, but I -- I'm very cognizant of the rights that I have as being born in the United States, being a citizen, so I've been involved in those sorts of educational efforts.

And currently I'm the executive director at SEEDS in Durham. It's a two-acre community garden, youth development center. So I'm still at the intersection of

JA758

youth development and education access and equity. So I'm pretty happy with where I am right now.

Q. And can you describe the demographics of the youth that you serve as part of SEEDS?

A. Yes, we serve primarily BIPOC youth -- black, indigenous, students of color -- who attend Durham Public Schools. I attended Durham Public Schools as well. So we aim to serve students who attend Title I schools who benefit from free or reduced lunch. So we aim to, you know, provide after-school programming for them and some youth development around food and nutrition and gardening and farming. So I work with a lot of students who come from a similar background that I do.

Q. And as you're aware, this case involves UNC's ability to consider race or ethnicity in admissions. Do you identify with a particular race or ethnicity?

A. I don't identify with a race in particular, but I do identify ethnically as Latina or Hispanic, and when I can, I choose to self-identify as Salvadorean American.

Q. And where did you grow up?

A. I grew up in Durham. I was born in LA, but we moved to Durham right before my first birthday. So I grew up in Durham, went to Durham Public Schools, graduated from Northern High School in Durham, and was raised there with my three older sisters and my parents, and still live there now.

Q. And did growing up as a Salvadorean American impact the experiences that you had prior to college?

A. I think so. I think that my identities played a big part in my -- in my formation of myself. You know, there was challenges to being Latina and to being a woman of color in Durham, at school. Like, it was something that -- you know, I couldn't hide that part of my identity, and sometimes that made -- that made it so people had prejudice towards me and might have treated me differently because of the way I looked.

And so I had some challenges with working with some of my teachers, my counselors on my educational goals because it wasn't something that I think they were used to, but I still found that there were also a lot of educators and teachers who were supportive of me and who encouraged me and saw potential in me, believed in me, wrote recommendation letters for me. So, you know, I think that there has been challenges, benefits and disadvantages and advantages to being Salvadorean American.

You know, from my parents, I've learned such a strong value from my education, even though they didn't receive one. You know, that was my priority, and I learned so much about being resilient from them. I learned about advocacy because I had to advocate for them, interpreting or translating sometimes, helping them navigate the systems like the healthcare system or other sorts of systems. So I learned to advocate for them and also for myself through those processes. And, yeah, they -- I think more than anything my parents and my family instilled in me a very deep empathy for others and care for others. Even when we didn't have a lot, we always had enough to share.

JA760

So, yeah, all of those things were very formative for me in making me who I am.

Q. And when did you apply to UNC?

A. I applied to UNC in the fall of 2010.

Q. And did you choose to share about your ethnic identity in your application to UNC?

A. Yes, I self-identified. I checked a few boxes, and I also wrote about it a lot in my essays and in some other parts of my application.

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[pp. 877:11-886:18]

Q. (By Ms. Torres) Okay. And so you talked about the diversity within the Latino community. Did that break down any stereotypes based on your personal experience?

A. Uh-huh, yes. For me, I mean, I feel like I held a stereotype that, like, educated Latino males didn't exist and -- I mean, it feels a little embarrassing now. But having learned that at UNC, being exposed to it, that was the first time that I -- that I experienced that.

So it helped show me another story, a different narrative so that I could -- I could see that even if I hadn't directly experienced it or seen it myself, that, of course, it exists and here they are on campus being part of not just my extracurricular activities but my education as well, in my classes with me, you know, organizing with me. That was -- that was a completely new experience for me.

JA761

Q. And you spoke earlier about UNC's recruitment program. After being admitted to UNC, did you participate in any recruitment programs?

A. Yes. After being admitted, you -- I got involved in anything that I could around recruitment because I felt like I was recruited to be at UNC. I felt like UNC wanted me to be there, and I -- I had many encounters with current students who encouraged me to come to UNC. So I wanted to give back in the same way. I loved my school. I wanted other students to see that they could go there, too, and that it could be a place for them.

So I got involved with Project Uplift, as well as a counselor. I got involved with the Carolina Hispanic Association pretty quickly and was part of the *Dia de Bienvenida* there. I did Tar Heel Target, where you go back on your fall break and talk to students at your -- the high school that you came from from back home.

So anything that the university needed -- like, if they needed pictures and quotes for, like, admissions brochures, I was like, yes, I want students to see that there is -- that we exist here and to see representation so that they can want to come here too; they can see themselves here.

Q. Thank you.

Now, while attending UNC, what was your view regarding whether there was adequate representation of students of color on campus?

A. It became pretty apparent once I arrived on campus that there were much, much less students of color than

JA762

I thought. From the programs, it seemed like there's a lot of students and -- but once you're on campus, it's such a huge campus and so many students that it's still -- the representation still feels low.

And so I -- that's why I got involved in recruitment efforts and went back to my high school and talked to students and helped students, you know, applying to college and to UNC, because I knew that we needed to better recruit students to come to Carolina and be part of the community there to -- to improve conditions even for students of color there, because that's the type of work that we did as student activists and student organizers was, you know, how do we make Carolina a better place for ourselves and our peers.

Q. And how did the lack of representation make you feel as a student?

A. It -- it made me feel -- it definitely made me feel some impostor syndrome. My first year was really challenging being in spaces that were predominantly white, even bigger spaces like 300-student classrooms. So it was -- it was difficult.

I often felt alone and a bit invisible in some spaces because I was, again, just the only -- the only person in some of those spaces -- the only Latina in some of those spaces. And, you know, it kind of makes it hard to speak up because I don't want to be the -- or I don't want to be the student that is called on to speak on Latino issues or immigrant issues, and that still happened sometimes. And it was uncomfortable because I didn't want to be a speaker for my whole

JA763

community just based on my experience. It felt like tokenization a lot.

And so -- which is why, you know, I feel like it's important to recruit around that, so that, you know, there are more students there to create that community, to create that safety and comfort for students like myself so that we can go back out into some of these other spaces where we sometimes feel -- were made to feel foreign, made to feel other or like an outsider. You know, I don't -- I didn't want to feel like that, and I didn't want others to feel like that either.

Q. And while at UNC, what helped ease your sense of discomfort?

A. Anything that reminded me of home, food, the events that I would go to, not just for Latino community but with the black community, the indigenous community. Just being welcomed into a space, being fed. Often being fed made me very comfortable.

And just feeling like I could be myself in spaces and seen and appreciated for who I was just helps build that resilience to go back out into my classes and into the greater Carolina community and be able to show up better -- show up better in those spaces because I felt like I had a community to re -- like, rejuvenate me and back me up. I felt like I had somewhere to belong.

So that all really made a difference to how I was able to navigate Carolina.

JA764

Q. And just to clarify, how would you describe the student demographics of those spaces where you were able to regenerate?

A. I definitely sought out spaces with students of color, you know, students from a similar racial or ethnic background from my own even if it was not the exact same. I found a lot of -- a lot of safety in communities of color, and so I sought them out.

Q. And are you familiar with UNC's history of racial discrimination?

A. Yes, I'm familiar with some of its history.

Q. And does that history of discrimination continue to have lingering effects on campus today?

A. I would say that it does still today have lingering effects and that we've -- I think that I've seen some progress over the last couple of years.

For example, I -- you know, I took a lot of classes in geography. I was in what was then Saunders Hall; and Saunders is a name associated with the Confederacy or the white supremacy movement of the past. And, you know, going into that building with that name, it's a constant reminder of the history and the legacy at UNC. And while I was a student there, the -- that building was renamed to Carolina Hall, and so some progress there.

And I was also a student there when Silent Sam was still up. Silent Sam is a Confederate monument that was on North Campus; and so I went to a couple of protests there, one where I witnessed a black

woman, one of my peers who was also a Morehead-Cain scholar, talk about that history there and why it mattered to her and how it made her feel as a black woman on campus to see this statue of Silent Sam and be reminded of the words that were said there when that statue was being put up. You know, there was mention of whipping a black negro wench, and that is something that is impactful for anyone to hear.

And to know that that legacy is still there, it does not make students of color, it did not make me feel safe and supported by the university that these symbols still remained and what they represent still lingers around at the university. And so it's -- it's definitely cause for discomfort there. But it has since been taken down and removed in 2019, and so that took -- that was a result of years and years of student advocacy and organizing.

And so we see the progress happening, and I'm happy to see that. I'm proud. I'm proud of my school for that, and I try to contribute in whatever way I can too.

Q. And can you briefly describe the racial demographics of the students that are leading that progress that you just described?

A. Yes. It's mostly black and brown students, indigenous students at UNC who are -- who are, on top of being students, also doing advocacy and organizing work to improve conditions at the university for themselves and their peers.

Q. And based on your personal experience, how would a reduction in the number of black and Latino students on UNC's campus affect the educational experience?

JA766

A. A reduction in the number of black and Latino students, I think that would be harmful. I think it would be harmful for the student body. It would be harmful for the communities of color there to see a reduction in those numbers. For our community to be made even smaller, it would make it harder for the students who are there to mobilize and organize and advocate since there, you know, are -- are limited numbers already.

Like, we want to see those numbers go up. We want to see that representation increase so that there are more students who can do some of this work together to improve conditions at UNC.

So I don't think -- I wouldn't be happy about it. It would be something I would be upset about. I wouldn't want to see a reduction in those numbers.

Q. And based on your experiences working to recruit students and being part of recruitment programs, how would such a reduction affect recruitment of the students of color?

A. Well, if there's less students at the university, there are less students to do the recruitment. There's less of a community to see, that is present, that you can be a part of. I think it would definitely affect a prospective student's view of the university if there's not a community there they can see themselves a part of and supported by.

I still work with students who are applying to college, and that's one of the things that we look at is are you going to be able to find a community here to thrive, to support you. Because it's so much more than

JA767

just academics. It's your whole being, how you show up in those spaces, so it has to also have holistic supports.

Q. And we focused on your ethnic identity up until this point.

Do you also identify with a particular socioeconomic status?

A. Yes. I -- I think I grew up low-income, and I'm still -- I still identify as low-income. This job as the executive director is my first full-time salaried job with benefits, so I think I'm on my way up. But, you know, we as a family, we've been low to middle class.

Q. And based on your experiences as a student at UNC, how are the benefits of racial diversity similar or different from the benefits of socioeconomic diversity?

A. I think there are benefits to both of those identities. They're both -- they can be a marginalized identity, so it's important to consider considerations around both.

I think that there are distinct experiences about your race or ethnicity that are different from class, because I could walk around UNC and maybe not visibly be low income. That might not be something people can see about me right off the bat, but my -- my race, my ethnicity, my brown skin is not something that I can hide. It is part of my identity that everyone sees and that everyone makes -- has their own prejudices and makes their own assumptions about me and the way I look, and so it's -- they're different.

I think the considerations around both are important as far as the barriers students experience in

JA768

accessing and thriving in college, but I am really in support of race and ethnic considerations around admissions and, you know, who those students are, what their backgrounds are, and how they show up and make up our whole student body.

Q. And you talked about now leading SEEDS as the executive director.

How has UNC's racial diversity prepared you for the work that you do today?

A. The work I do today, I'm working with diverse students from Durham Public Schools, students with different backgrounds from my own -- similar but also different backgrounds from my own. And I think that the diversity -- the ethnic and racial diversity I experienced at UNC helped me have more of an understanding of people from different backgrounds that are different from my own, which makes me better -- be able to better show up for the students that we are now serving who come from diverse backgrounds and who are from different racial and ethnic backgrounds.

And so how do I serve, you know, an indigenous student or a black male student as best I can? I -- I can't speak to their experiences myself because I don't have those lived experiences, but having made friends and loved people from different backgrounds and different ethnicities made it so that I had an awareness; and that awareness, along with empathy, makes it so you can better be understanding of students' experiences and what their challenges are so that we can do -- I can do my job as best I can and show up for them and help close some of those opportunity

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gaps or achievement gaps that they might be experiencing. You know, I've had a lot of exposure that I can now apply in my job.

* * *

WARD – DIRECT

[pp. 888:6-908:22]

Q. And what is your current occupation?

A. I'm currently the executive director of College Bound.

Q. And what is College Bound?

A. College Bound is an academic mentoring program that's located in Washington, DC. We work with public school students to make sure that they complete high school and college, and we do that through academic mentoring centers. And we launched a virtual component, so we support them through college completion as well.

Q. How long have you held that position?

A. I've been at College Bound now as executive director for about a dozen years.

Q. We'll get back to talking about College Bound in a little while, but I wanted to --

A. All right.

Q. -- ask you a few questions ahead of that.

Are you a UNC-Chapel Hill graduate?

JA770

A. I'm sorry. Could you repeat yourself, please?

Q. Sure. Are you a UNC-Chapel Hill graduate?

A. Oh, absolutely. Yes.

Q. And what years did you attend?

A. I was a full-time student at the University of North Carolina-Chapel Hill from 1980 through 1984.

Q. All right. And what did you get your degree in?

A. My undergraduate degree was radio, television, and motion pictures.

Q. And how do you identify racially?

A. Could you repeat the question, please?

Q. Yeah. How do you identify racially?

A. Oh, as an African American.

Q. And where did you grow up as a child?

A. I grew up in eastern North Carolina in a small town called Enfield in Halifax County.

Q. And how long did you live in Enfield?

A. I lived in Enfield my entire life, and then I went to college. I moved to DC, and then I bought a house back in Enfield about four years ago, and I split my time between Enfield and Washington, DC.

Q. And who lived in the household when you were growing up in Enfield?

A. I'm sorry, David. I did not hear you.

Q. Who lived in the household with you when you were growing up?

A. Oh, I lived with my mother and my two sisters.

Q. And how would you describe the town of Enfield when you were growing up?

A. Very small town, probably around 3,000 people. It was divided by Highway 301 and the train line. I guess that's CSX Railroad. One side of the track was the white side of town. The other side of the town was the black side of town. So it was a very segregated town. In my neighborhood, I lived with teachers and principals, nurses. There was a black-owned store in my neighborhood. So we were quite segregated during the time. Farming community, so lots of people had gardens and those kinds of things. But a very small, rural town.

Q. And just thinking about the community first, not yet the schools, did you ever observe or experience racial discrimination growing up?

A. Oh, absolutely. When I was probably about 6, my mother, she called to my sisters and I to come and get in the car. So we jumped in the back seat; and she rode us north of town less than a mile; and on the left-hand side of the road, there was a cross burning that -- the Klan was actually burning a cross.

At the time it really didn't have a lot of significance for me, but later in life, maybe around fifth grade or someplace around that, we were watching -- I don't know if it was *Roots* or something like that, but they showed a Klan crossing -- a Klan cross burning, and it

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just came back, you know, like a ton of bricks. And I remember asking my mom, you know, that day after school had I seen that before -- had I seen it before or something like that, and she said, "Yeah."

And it was interesting because I don't know if it was her deliberate attempt for us to -- for her to teach us that, you know, hate existed or to show us that, but I do remember experiences like that.

I remember being maybe 9 going to a 4-H summer camp. She sent me to the local doctor to have a physical to go to summer camp, and there were two sides of the office. One side had all African American folks, as I can recall, and it was pretty crowded. The other side had one white lady, and there were lots of seats. So I just went in and sat on that side with the one white lady.

And when I got home that day, my mom asked me, she said, "Where did you sit today when you went to the doctor's office?"

And I said, "On the left side," and paid no more attention to it.

Years later in conversation, I would discover that prior to, I guess, me being born, it was segregated in that the left side where I sat was all white -- where the white patrons would sit. The right side is where the black patrons would sit. And I think that this was after segregation or after this had sort of become the law, but it was still the practice, and because I was a kid, I didn't know. I just sat where there were empty seats. We laughed about it later.

JA773

But at the time I looked at the -- I remember the look from the black folk that they gave me, and it meant nothing because I was a kid, but there was this look, like "What is he doing?"

So it was a very racially segregated town, and those things were pretty much a part of everyday life.

Q. And did you work when you were growing up in Enfield?

A. So my first job, obviously, was with my grandfather. He had a farm, so I would help him out. But my first real job was at Beavans drugstore.

Sam Beavans, who I believe went to pharmacy school at Carolina, was probably what we would call today a liberal person. He had the drugstore in town or one of the two drugstores in town, but he always hired, like, some of the young black students to work there.

And I remember calling Sam's wife, Nina, who was on the school board at the time, asking about summer jobs; and she told me that she wasn't a part of the summer jobs program, that she was actually on the school board, and they didn't do the summer jobs. And maybe a day or two later Mr. Beavans called my grandmother and asked her could I come to work at the drugstore.

And so he hired me at the drugstore, and that was another space where I saw just this race piece play out, because the white patrons would come in and they would bring their prescription bottles to be refilled or they would bring their prescriptions, and they would act as though I were not there, and they wouldn't give

me the bottles or they wouldn't give me the prescription.

And Mr. Beavans would actually make them wait until he had finished whatever he was doing, and then he would instruct them to give their bottles or their prescriptions to me. And this act, for me, it was a piece of him making them see me, but also realizing that they were having to conduct business in a civil manner.

So it was really interesting, you know, some of those lessons that I learned in my youth that sort of play out now in my adulthood.

Q. So focusing on the schools now, what schools did you and your sisters attend?

A. We started school at the all-white school. When we started school -- well, when I started, and my sisters as well, they still had two schools in my hometown. So they were practicing what was called voluntary desegregation. I think Halifax County was probably one of the last places in the state to desegregate.

So my mom, along with about five other families, sent me and my siblings to the all-white school, and none of the white kids went to the all-black school. But I was one of three students -- three black students in my first- and second-grade class.

By the time I got to third grade, they had struck down this voluntary desegregation, and they just established one public school system in the city, and at that point all of the white students, except for maybe one or two, went to what was called private academies. They were just racially segregated academies, and they

JA775

were several of those around that popped up in the outskirts of town: One over in Whitaker, just in different parts around Enfield. And that's where all of the white students went.

And I remember once asking my mom could I go to the academy, and she just laughed. And she was like, "Boy, they're not for black kids."

And so it was -- again, there was this lesson, you know, early on in life that, you know, there was a deliberate segregation, you know, amongst the races here.

Q. And did you ever -- once you started going, well, at the white school, did you ever experience or observe any racial discrimination there?

A. As early as first grade there were lots of situations where -- there was one black girl in my class, Diane Link. There were two black guys, Milo Scott and myself. So Milo and I would play together, but none of the white girls would play with Diane. They would pick at her. They'd make her cry. It was horrible.

I remember being at the water fountain once, and this kid came and tried to push me to jump line, and because around the water fountain it's slippery -- and I just held the water fountain because he was trying to push me out of the way to get in front of me, and he fell, and I was actually punished because he tried to jump line.

In second grade, they had two reading groups. They had, like, the blue jays and the eagles. And in my neighborhood, as I said earlier, there were teachers and

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different folk like that in the neighborhood, so we played school in my neighborhood like that as a pastime. And I was one of the younger kids in the neighborhood. I was the youngest in my family, so I was always a student. I was never the teacher when we played school.

And I loved school. And so when I went to school, I was really prepared for school. I was prepared for school. I was already reading, and so I was by far one of the most proficient readers in the class, and we were grouped -- the three black kids were with the blue jays -- I think that was the name of it -- and I could read better than anyone in the class. So I remember the teacher having to move me from the blue jay group to the eagle group because those were the better readers.

So at an early age, you know, there was this separation or this -- this -- these challenges that we face, you know, in segregating -- you know, in desegregating the schools.

Q. I think you mentioned that you still live in Enfield; is that correct?

A. That is correct. And, yeah, the town remains segregated.

Q. In what ways? So how does Enfield compare today compared to when you grew up?

A. So the 2020 Enfield, as opposed to the 1960s version of this wonderful town, most of the white folk who own the stores, they've educated their kids and their kids have moved away. So the stores and a lot of the houses have gone vacant because they are dying off and their

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kids have no desire to come back to live here. The town is largely black now, probably 75, 80 percent African American.

And it's interesting because the neighborhoods, even the house that I ended up buying, was a house that no black folk had owned until I bought that house about four years ago. So these neighborhoods that were largely all white where blacks were excluded are now black neighborhoods, and there are very few whites that live here. The ones that are here are older or have migrated from New York or New Jersey because the real estate property here tends to be affordable.

But it's still a challenge. The school systems still suffer. Right now our kids are facing virtual learning, so they are learning from home. And the reality is that a lot of the students don't have Wi-Fi. So what I've done with my sister and my mom is we have a restaurant that we bought a couple years ago, and we've turned that into a learning pod for students because it has Wi-Fi. So students who don't have Wi-Fi at home can actually come to our coffee shop or the café and actually have Wi-Fi. And I've worked with the Halifax County Schools to actually sending someone there to staff the building so the kids can come in and have Wi-Fi.

So still poverty. They still don't do as well as other places, you know, academically on standardized tests, SAT, those kind of things, and they struggle.

Q. And how do those schools compare to the -- I'm sorry. I thought you said something.

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How do those schools compare to other schools, if you're aware, in Halifax County?

A. So the interesting thing is that in Halifax County there's still this racial divided schools. So there's no longer voluntary desegregation, but there are three school systems that exist in this one county. So there's Roanoke Rapids Schools. There's Weldon City Schools and Halifax County Schools. Halifax County Schools really encompasses south Scotland, Enfield, and a lot of the rural areas. Weldon has the Weldon City Schools.

And Roanoke Rapids, because of the demographic, which tends to be largely white, more affluent, more employment, higher incomes, the schools tend to do better. Scores are better. Completion is better. Reading and writing test scores, standardized test scores tend to be better as well. So there's still this divide here in the county with the haves and have-nots.

Q. All right. So I'm going to switch back to the time when you were getting ready to apply to UNC.

How did you do in high school?

A. Oh, I loved school. I told you earlier that we played school, like, you know, kids play Nintendo and video games now. We played school. And I'm serious about this. We played school. And I remember the guy who loved to play school most, Steve, Steve ended up being a superintendent. He taught school and was a principal and then ended up being a superintendent. I was always a student. So I loved school. So when I went to school, I thrived. I did incredibly well in school. I graduated valedictorian and actually received a full

scholarship to go to Chapel Hill. I received a Pogue Scholarship to go to Chapel Hill.

Q. And why did you apply to UNC?

A. Oh, certainly because of the rigor. I knew that Carolina was a rigorous school. I had wanted to go to Duke; and then as I got older and wiser and started just sort of looking at the school, Carolina was a far superior, better choice for me. Also, the valedictorian the year before me and the previous year had gone to Carolina, so they sort of set a standard.

I was also at a college fair and happened to meet a representative from the university, and he was talking about this scholarship, the Pogue Scholarship. So I got an application. I applied for the scholarship, and that sort of sealed the deal.

I had done really well on PSATs, so I got information from Oberlin College and lots of other colleges and really had looked at Oberlin. I was really impressed because they were the first school in the nation to allow women and black students to matriculate there. So that was really impressive. But at the time people just didn't go that far away from home for college, and being a first-generation college student, it sort of made sense for me to stay in state. And when Carolina gave me a full academic scholarship, it was a no-brainer.

Q. And I think you said you attended UNC from 1980 to 1984; is that right?

A. Yes, sir. I was a full-time student there August 1980 through May 1984.

Q. Pretty exciting times basketball-wise?

A. Carolina was insane. My first year one of my first friends was Sam Perkins, and we remain friends to this day, and he's actually my fraternity brother now. So early on I hung out with the basketball players and forged some really great relationships with James Worthy and those guys. As a matter of fact, we just did a fundraiser here to provide Wi-Fi for students to have hotspots at their houses and stuff like that, and James sent me money for that. So there was this opportunity at Carolina to forge some amazing relationships, and basketball was certainly a cornerstone of that.

So my first year at Carolina we were runner-up in the big dance, and then my sophomore year we actually won the national championship. So basketball was a big deal at Carolina.

Q. So how was the campus climate like? I mean, was it as joyous as it was inside the arenas?

A. So it's interesting, because when there was a game -- even football, basketball, those kinds of games -- something we won, people would toilet paper trees. They would do all those kinds of things. There was this comradery that we were all Tar Heels.

But when it came to some other things at the university, we were very much divided. You know, there were issues, you know, about the retention and recruitment of black faculty and staff. So we certainly -- we protested, and we marched and those kinds of things. We rallied around Sonja Stone, who was the first woman of color or black woman to receive tenure at the university. So we rallied around her because she

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had all of the credentials, but she had been denied or, we felt, looked over. We also rallied around the workers because the workers didn't receive the benefits that they deserved. And there was also issues with recruitment and retention of the black students.

So there were some challenges in a lot of those bases, even so much -- so bad that on one occasion, David, there was an advertisement for a Klan rally in The Pit. This advertisement was in *The Daily Tar Heel*, which is a newspaper that our student fees pays for. So there was certainly some challenges on campus that, you know, were on the other end of the spectrum from, you know, this "Go Tar Heel" type of mania.

Q. And when you say "we" were rallying around recruitment and retention of black faculty, around Sonja Stone, and you know the workers there at UNC, what was the racial makeup of that group? Who were leading it?

A. So it was definitely led by the Black Student Movement, and my roommate at one point was actually president of the Black Student Movement. But white students rallied around that as well. I remember when the notice went out for the Klan rally at The Pit, white students showed up as well. We tended to be or for the most part Carolina tended to be welcoming for differences, but there were some occasions where, you know, racism and the ugliness of racism and I guess the messages of racism just reared its ugly head.

Q. And there might be a mention of this already in the record, but can you describe what The Pit is?

JA782

A. The Pit is the area -- it's a recessed area outside of the student union. So it's in the main part of campus, so right beside the undergraduate library is The Pit. So The Pit is in front of the student store, which is in front of the union; and this is the area where step shows -- like my fraternity, Alpha Kappa Psi, when we would join the fraternity, we would do something called step shows, which are like dances and cheers and chants. We would meet in The Pit to do these. When the dancers or any other types of groups on campus would have performances, they'd meet at The Pit. So The Pit was a central -- or a gathering spot on campus for students, and it remains that to this day.

Q. And did you ever participate in any type of extracurricular activities or hold any positions?

A. Is this high school or college?

Q. Oh. Sorry. In college. Any campus activities or --

A. Absolutely. So I was a member of the Order of the Bell Tower. They were interested in doing some alumni outreach, also doing student care packages, those kinds of things.

I was also a member of Campus Y, and Campus Y did a lot of community activities. Campus Y was really big in the anti-apartheid effort. Campus Y also had mentoring programs in the Carrboro and Chapel Hill area for underprivileged kids.

I, of course, was a member of Kappa Alpha Psi, Incorporated, which was really big on service.

And one of the things that probably shaped a lot of this was me being the mic man at Carolina, and the mic man is like the hype man at the football games. He works with the cheerleaders to lead cheers, to lead the crowd, and to keep the spirit up during football games. And I was, of course, the first black person or first African American who was selected as mic man. So that was quite a big deal.

Q. Can you describe your experience as the first black mic man at UNC?

A. Yeah. It was very similar to being, you know, that black kid in those classrooms. You know, there were the epithets that were thrown at me. There was the nastiness of racism that happened. There were the nasty letters that were sent home to my mom, because at the time you could get a student's information in the registry. So somebody even got my home address, and they were sending, you know, articles home to my mom and those kinds of things. So there was a lot. There was the name-calling.

And it ended up -- because I sort of saw myself as -- if you can think about Bill Maher. I sort of saw myself as a Bill Maher before there was a Bill Maher. What I saw the mic man as was as a chance to foster some conversations about inclusion, about race and about alumni and about healing. And, obviously, the administration didn't see it that way because I was fired. And I was called into one of the dean's office, and he told me, he said, "Well, what you're going to do is you're going to resign and say that, you know, your academics don't allow you to continue as the mic man."

JA784

And I was astonished because nothing like that had ever happened to me. I was valedictorian. I was involved in everything. I was a popular guy. I had never been told that I was going to do something so deliberate like that before, so I was really astonished.

And I remember going to talk to Dean Renwick, and Dean Renwick was a black dean at the university. He started the Minority Student on Advising group. He started the preorientation, so he provided lots of supports on the university campus for students of color. So I just thought it would be a really good idea to go and talk with Dean Renwick.

And when I sat down with Dean Renwick, what he told me is, "Kenny, you don't want to fight the university on this. Just go ahead and let them have it. Just let them have it."

And so this was, I think, that Friday. That Saturday I went to the game, and I noticed that the speaker that was supposed to be turned to the students so I could lead the cheers, the speaker was actually turned the opposite direction and stuff like that. So the sabotage or the, you know, "you're not going to be successful" was already in the works. And so at that point I just decided to quit because there were -- it just wasn't worth me fighting at that the point. It was my senior year. I just thought that, you know, it wasn't worth the fight.

Q. I just want to just clarify something for the record. You mentioned as a mic man that you had experienced name-calling from others. What do you mean by that?

A. Name-calling was like the N word, like those kinds of things, like name-calling. So there was the -- because, again, they never had a black mic man. So there was some of the N word. It was some of the -- other words that were used.

And be cognizant of the fact, too, I went to school in Chapel Hill during the '80s, and so during the '80s, 18-year-olds could drink. So before the games, everyone had keg parties, like all the fraternities at frat court had keg parties. Students brought flasks to the game. Students drank openly at the games. I think everyone had blue cups and stuff like that. So a lot of this were folks who had been drinking who sort of let out some of that vileness.

I'm not going to attribute it to alcohol, but I think that, you know, it was a space during that time where people were drinking. So I think that they were more casual with what they would say or some of the things that they did.

Q. And you mentioned, you know, quite a few instances of discrimination and racism. What sort of counterspaces or places were available to you that helped you and your peers recover from --

A. So what's interesting, because I also said, David, I loved learning, is school for me was always the go-to. And I didn't say it earlier, but prior to becoming the executive director of College Bound, I taught school for 15 years. So school for me was a safe space, and in my classroom, I would venture to say I created a safe space for students. And you would think that in a university environment that those classrooms would be safe

JA786

spaces, and some of those classrooms weren't safe spaces.

I remember being in classrooms where I felt like I was the token black or the spokesperson for all black folk. I remember being in a classroom with an English professor who gave us the option to write about anything, and I wrote about the letter from the Birmingham jail by Martin Luther King, and he attacked the content. He didn't attack my writing, and I think I'm a pretty good writer. As a matter of fact, now I write grants for a living, right, so I think that I write well. But he attacked my writing. And when I went to some of these other kids that I knew and asked them about my paper, they were like, "No, this is a great paper. It was the content."

So it was that -- that space where you would think you would find refuge that you wouldn't find refuge. So I found it at Campus Y. I found it at Campus Y with like-minded folks there. I found it at the Black Student Movement because there were like-minded folk there.

I found it in the classroom of Dr. Sonja Stone because when I was pledging Kappa -- she's a member of Delta Sigma Theta, which is another one of the Divine Nine. There are nine black fraternities and sororities. And so she's a member of one of those sororities. And so I walked into her class -- and as a pledge, there are certain clothes you wear, certain things you carry with you -- she recognized it immediately, and she said to me, "I see you, scroller." And a scroller is what Kappas call their pledges.

JA787

So to be seen in a class was so important to be validated, to learn about yourself; and I took a number of classes in African American studies and African American literature to learn about Langston Hughes, about African American music. So in those classes, there were professors there who met me, gave me what I came to Carolina for, which was the academic rigor.

And, again, as I said, I took lots of classes in, you know, African American studies; and I think that it prepared me so much that when I went to take the practice exam for history -- and I wasn't a history major -- I passed the practice exam easily because I had taken all of those courses, and I learned and studied so much at Carolina.

I remember Dr. Darnell Hawkins' class. He was another black professor who taught a class on climate delinquency. And in Dr. Hawkins' class, a lot of my white counterparts, they resented, I think, the facts. They attacked him as a person, and they attacked him as a professor. They didn't attack the information, but they would attack him, and so much so that I remember him having to stop a lesson or a lecture one day to tell them, "Hey, look, if you hate my class that much and you can't digest this information, then I suggest that you drop the class because I know you don't do this to my white counterparts." Then he went through this exercise of sharing everywhere that he had studied, his background, his degrees, what he had written, what he had done, because it was such a vile attack on him.

I remember just being in that class where he talked about the data. He talked about the inequities. We took

a field trip to Polk Youth Center in Raleigh, and we saw for ourselves the -- the overrepresentation of black and brown youth who were locked up in those spaces.

So the classroom for me was a space where I found I think most of the support or the solace, in addition to my fraternity. My fraternity brothers were amazing. There were these group of black men who encouraged each other. We studied together. We went home together. I remember the semester or maybe a couple of weeks before my grandmother died, my best friend, who ended up being my Line Brother, came with me to Enfield that week before my grandmother passed. Fast-forward, you know, 20, 30 years; his grandmother passed in Charlotte. I was there with him.

So there were these relationships that we made that sustain me up to this day, and there are just really amazing relationships with some really phenomenal people. Excuse me.

* * *

[pp. 912:23-915:21]

So did all of your black friends at UNC come from the same wealth backgrounds? Did your white friends come from the same wealth backgrounds?

A. Absolutely not. I mentioned my best friend Joe earlier. Joe's great grandfather, he seized a Confederate ship in South Carolina and gave that ship to the Union Army. I don't know anybody in Enfield, North Carolina, who has that life story.

JA789

One of my other really good friends, her father was one of the first black architects in the country. So in this pool of black folk, there are Ranaes, Amys, or a lot of these other folk who were third-, fourth-generation college students. So there was this diversity there that helped shape me as well.

And then there were students like the Morehead scholar from New York who just gave me a whole other perspective of my blackness, the way other black folk saw me. When I first came up to Chapel Hill even before I received the Pogue, I met Matt Whitted, Teresa Artis, and Michelle Shiver. Michelle and Matt are doctors now. Teresa is an attorney. These were just some of the pillars I think for me or some of the standards of blackness that, you know, I didn't have necessarily growing up, but that I had when I went to Chapel Hill. And I met them as -- I was 16 when I met them. I knew then that Carolina was where I wanted to go because they looked like me, but they were smart. They were, like, incredibly smart, and they just sort of wrapped their arms around me and embraced me. So even within that diversity there was this nurturing that happened, and it continues.

I was on a call on Saturday with Teresa for one of our students, Ogden, who just, unfortunately, died. So there's this space there where all of these folks I went to undergrad with, we're together celebrating his life. So there's much diversity, continues to be that diversity within our -- within our space.

Q. So why was it important that, you know, black students, for example, coming from different

JA790

socioeconomic backgrounds were able to associate with one another, as you observed?

A. I think it's incredibly important because we're not a monolith. And even today when I have conversations with folk who don't get it, they think that we're all the same, and we aren't. We're not this monolith. People have different experiences. They bring different things to the table, and we grow and we support one another in the space.

A couple years ago I received the Harvey Beech Alumni Award, and look at me, being an educator, receiving that award. No educators have received that award before. Like, the folks before me who had received that award were corporate folks. They had given back thousands of dollars to the university and those kinds of things. But the BAR, the Black Alumni Reunion, who puts on that event every year, they saw the need to recognize someone who was in the community who was doing this work. So that diversity still exists.

And even, I guess, two years ago I received the university Diversity Award for the work that I'm doing to sort of create diversity and inclusion at the university, because the university still struggles in that space.

Q. Now, as the executive director of College Bound, I think you mentioned that you currently work with students who seek to go to college. Can you describe some of the work -- I know you mentioned some of the mentoring, but can you discuss some of the other work

that you've done with the students as part of College Bound?

A. So it's interesting that you would ask about, you know, ethnic diversity before this or racial diversity, because I look at College Bound as that. Like, we have students in College Bound that I would venture to say probably would go to college without us. Their parents are college educated. Their parents have found out about us. They know that we have this diverse scholarship program, so they put their kids into our program. Our kids end up mingling and helping other kids who are like me, first-generation college students, who will be first-generation college students who don't understand it, put a face on it. So there is that piece that sort of happens in College Bound.

* * *

[pp. 917:22-921:4]

Q. Do you also assist students in applying to college?

A. Oh, absolutely. So the application process is critical. So we have what we call college coaches, and the college coaches work with our students to apply. We also have a partnership with Deloitte. So we do SAT prep because we know that prep a lot of times helps to dictate scores on these standardized tests -- on these standardized exams.

So it doesn't mean anything about how smart you are or whatever. It's a lot about what you have been exposed to. So this sort of levels the playing field. We just make sure our kids get the test prep that other folks pay thousands of dollars for. We do that for our

kids for free. And what we see is that because of test prep -- and they haven't learned any additional information. It's the test prep. But their scores go up 2 or 300 points from pre- and post-test.

Q. Is it all about the test?

A. I think it's about how to take the test -- that's what we've seen -- because I think that our students work with -- the Deloitte practitioners work with our students on how to take the test. So they give them the nuances on how to take the test.

Our kids bring to the table certain things that they've learned, you know, at home, that they've learned in the streets, they've learned at school that I think make them a great fit for any college; and what we're seeing with our students is that their graduation rates from college are on par with white students. So what we're trying to do is just make sure that our kids have access because we're quite confident with what they can do once they can get there.

Q. Based on your experiences and working with today's youth, which included assisting students in applying to Carolina, what is your impression of the effect a ban of UNC's affirmative action program would have on students of color?

A. It's interesting because I think sometimes I romanticize Chapel Hill, right, because I was there and I made relationships and I'm still in touch with Teresa and Patsy and Lisa and all of these folks. So I think sometimes I romanticize it.

My kids don't have that as a lens; and often when we visit, we leave and they're like, "Wow. Where are the black people?" Because that's what they see when they go on these campuses. So they see there's this need for diversity, and I think if we didn't have the small numbers that we have, it would be even more challenging to get them to go there because I don't know that kids are wanting to go someplace where every day you have to prove to someone that, you know, I belong here.

And it's interesting because I just remember being at Carolina and there were forces that tried to make me feel like I didn't belong, and I think when there are other options, kids will sometimes go for those other options. So I think that is why increasing those numbers is incredibly important for the university.

Q. I'll represent to you that in this case Plaintiff has suggested that simply substituting socioeconomic status for race can help counteract losses due to racial diversity.

Based on your school and life experiences, do you agree with such an assertion?

A. Absolutely not. When I'm with Joe, people don't know my economic background or his. What they see are two black men.

When I was in Russia with Rick, I was by far better off than any of the Russians that I met economically. What they saw was my black skin, which was why while I was on the R-bot in Moscow I got called the N word. And the irony is that Rick had never been in the

JA794

space where a white person had called a black person the N word, and he turned red.

And I turned to Rick, and I said, “Did you hear what that guy called you?”

I wasn’t even going to wear that label. I was there as an ambassador for the U.S. Government with an exchange program through the State Department, and the fact that you are living in Russia and you’ve heard this epithet used in America and you think that you can somehow apply it to me, I gave it to Rick.

I said, “Hey, Rick. Did you hear what that guy just called you?”

I just kept walking. I was seething. I was mad. I was disappointed. I was hurt. But I’ve been called the N word in Chapel Hill, and it reminded me of being near the Silent Sam statue with my friends. We’re going to Franklin Street, which is where all toddlers go, and this white kid comes by on a bike and calls us the N word.

So socioeconomic? Our socioeconomic had nothing to do with that. That’s skin color and race, and those things are perceptions and how people see you.

* * *

JA795

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA**

Case No. 1:14CV954

[November 17, 2020]

STUDENTS FOR FAIR ADMISSIONS, INC.,)
)
Plaintiff,)
)
vs.)
)
UNIVERSITY OF NORTH CAROLINA, et al.,)
)
Defendants.)

**Volume 6
Pages 926-1115**

**EXPEDITED TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LORETTA C. BIGGS
UNITED STATES DISTRICT JUDGE**

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JA796

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* * *

HOXBY – DIRECT

[p. 929]

Q. And have you been retained by UNC as an expert in this case?

A. Yes, I have.

JA797

Q. Professor Hoxby, did you prepare a set of demonstrative slides to assist you in providing your testimony?

A. Yes, I did.

MS. FLATH: Your Honor, this is DX506. We provided a hard copy, as well as an electronic copy for the court reporter.

THE COURT: Thank you.

Q. (By Ms. Flath) Professor Hoxby, if you'll turn to Slide 2.

Can you briefly describe your educational background?

A. Yes. I was an undergraduate student -- well, I was a high school student at Shaker -- I was a high school student at Shaker Heights Public High School outside of Cleveland.

And then I was an undergraduate at Harvard University from 1984 to 1988. And then I got a master's degree at the University of Oxford in England from 1988 to 1990. And then I got my Ph.D. at MIT, the Massachusetts Institute of Technology, and that was another four years. So I got my degree in 1994.

Q. And your Ph.D. is in economics, right?

A. That is correct. All of my degrees are in economics.

Q. After you received your Ph.D., where did you work?

JA798

A. I was hired by Harvard University as an assistant professor, and I remained at Harvard University for 13 years,

* * *

[pp. 936-995]

And I am the head of the Economics of Education Program at the National Bureau of Economic Research. It has a little fewer than 200 members, and they are economists who specialize in education research from around the world, as I mentioned.

Q. Thank you. Let's turn to the questions you were asked to provide -- to address in your work here.

Turning to Slide 3 of DX506, at a high level what questions were you asked to address in providing expert testimony in this case?

A. Well, the first question that I was asked to address is whether the Plaintiff's allegations regarding UNC's admissions process, especially the allegation of whether race/ethnicity were dominant factors in the admissions process -- whether those allegations were, in fact, true.

Q. What else?

A. The second question that I was asked to address is whether there were potential race-neutral or race-blind alternatives to the current admission process that would allow UNC to attain its current levels of racial and ethnic diversity and academic preparedness.

Q. And what was the third topic you addressed?

JA799

A. I was asked to respond to the opinion of expert Peter Arcidiacono and Richard Kahlenberg.

Q. Thank you.

Turning to Slide 4, at a very high level, what did you conclude with respect to the first two questions you were asked to consider?

A. My first conclusion was that -- I did careful empirical analysis. I established that UNC's admissions decisions appeared to be fully consistent with the holistic admissions process and that UNC's processes could not be explained by a formula based on verifiable variables. In other words, UNC's process was not (indiscernible).

(Court reporter requests clarification.)

Q. Professor Hoxby, could you just repeat the last word?

A. I -- in other words, UNC's process does not appear to be formulaic.

Q. Thank you.

What else?

A. In addition, on -- with regard to the first question, I concluded that race and ethnicity are not dominant factors in the UNC admissions process.

Q. Thank you.

What was the second opinion at a high level that you reached?

JA800

A. With regard to the second question, I conducted really exhaustive simulations of race-neutral alternatives, well more than a hundred, trying to address all of the suggestions made by Plaintiffs about what might be plausible race-neutral alternatives and trying to bring the data to analyze each one of the alternatives as well as I could, including some alternatives that they did not suggest but that I thought would test the limit of what was possible under a race-neutral alternative.

And after conducting all those simulations and trying to ensure that the conditions were as positive as possible for the race-neutral alternatives -- in other words, using really generous assumptions that would favor the alternatives -- I concluded that in no case could one of the race-neutral alternatives allow UNC to attain its current levels of racial and ethnic diversity as well as academic preparedness.

Q. Thank you. And thank you for the pacing. I think that's working a bit better for our court reporter. So much appreciated.

Let's turn to your first opinion that you just discussed.

Plaintiff has alleged in the complaint that although UNC claims to use race and ethnicity as only one of many factors in a holistic system, statistical evidence establishes that race is a dominant factor in admissions decisions.

If that allegation is correct, what will the data show you in terms of a formula?

JA801

A. The data would show me two things at least. The first is that a formula or a regression -- multiple regression, which is what we do in statistical analysis -- that multiple regression would reveal to me that a model or regression could explain most of the decision between admissions and rejection. So that's the first thing that I would be able to see from the regression analysis.

The second thing that I would be able to see from the regression analysis is that when I decomposed the explanatory power of the regression model, a lot of the variation would be explained by race and ethnicity.

Q. Thank you.

Let's turn on Slide 6 to some of the regression models that you created using the UNC admissions data.

What does this slide show with respect to the regression models you built to assess the question of whether the UNC admissions system is holistic or formulaic?

A. This table shows nine different models, starting with a model at the top which is very barebones because it only includes SAT scores, ACT scores, and race and ethnicity factors.

What -- what I'm doing as I work my way down the table is I'm adding more and more variables to the model. For instance, in Row 2 I'm adding subscores on the SAT and ACT. Then I'm adding a student's class rank in high school and a student's high school GPA. Then I add a student's sex or gender. Then I add

JA802

whether the student is a resident of North Carolina, which is important because UNC is a state public flagship university. Then I add UNC's -- whether the student met UNC's minimum coursework requirements and, for instance, whether the student was also a child of a faculty or staff member. Perhaps I don't need to cover every variable that I added, but those are important.

The next row I add is whether a parent was an alum of UNC and whether the student applied in the early action phase of UNC's admissions process or whether the student applied -- as opposed to the regular admissions phase. Then I add parents' education, foreign citizenship for the student, and whether the student applied using a fee waiver. Fee waivers are given to low-income students, so that fee waiver variable would indicate a student himself or herself low income.

And then in the very final row, I add the within-high school GPA rank. This is added for a special reason. It's because at the very end of the UNC admissions process, there is a phase called school group review in which admissions officers look at a student in a sort of listing compared to his or her high school classmates who also applied to UNC. And the way in which they are listed is in order of their high school class rank with the higher ranked students appearing at the top. This school group review process, therefore, does make use of within-high school class rank. So it could be considered an important factor in the admissions process at UNC.

Q. Thank you.

In performing your analysis and building your models, how did you determine which variables to include in the model reflected in Rows 1 through 9?

A. Well, anytime we build a model, what we are attempting to do is to replicate or understand the behavior of actual human beings. That's the goal of all model building of this work that I conduct. So the way I look at it is what does an admissions officer see? What does an admissions officer consider? So I need to know something about that process, and I also need to know what sort of data or variables they would be seeing, viewing when they see a student application. I know that many of the variables that are on this -- that are in my models are seen by admissions officers and are considered by admissions officers. So that's my very first criterion.

I also want to take account of any other variable that an admissions officer might consider but might be more (indiscernible).

(Court reporter requests clarification.)

Q. What was that last phrase? You cut out. You were doing very well until that last phrase. Right after "I also want to take account of any other variable that an admissions officer might consider."

A. Right. I want to take account of any other variable that an admissions officer might consider, even if it -- even if it is not something that would appear on the front page of the application. For instance, whether the student is -- has an alumni parent or not, it's not obvious that admissions officers would take account of

that, but it is certainly possible that admissions officers would take account of it.

Q. Thank you.

Professor Arcidiacono testified about your decision to exclude the UNC ratings variables.

Why did you make that decision?

A. I excluded the UNC ratings variables because they are evaluative variables or what an economist would call "endogenous variables." Endogenous means that the variables are determined within the process itself, within the admissions process itself.

And it may help if I give you an example of other endogenous, or evaluative, variables that are more familiar to people. For instance, imagine that we have some people who show up at a hospital and they're all having chest pains, and they go in for an evaluation in the emergency room. At some point in that evaluative process -- excuse me -- that evaluative process, a nurse or a physician starts to write down an intermediate evaluation of what -- of how the person is faring with their chest pains. That is part of the evaluation process.

So if we found that the nurses and the physicians sent some people straight to the ICU to get triple bypass surgery and we saw that they sent some people home with aspirin, we might be able to predict who went to the ICU and who was sent home with aspirin by looking at that intermediate evaluative variable where the physician says this person is having a

JA805

terrible heart attack or this person seems fine and really is just having, you know, a digestive instance.

Okay. So that's -- that intermediate variable might do a good job of explaining why some people go to the ICU and why some people get sent home with aspirin, but it's very important to realize that it's not really something that the patient had coming in to the emergency room. That's not something that is -- that's not something that's a factor that everyone could look at the same way and say is a verifiable objective factor. It is, in fact, an evaluative, or endogenous, variable that is determined in the middle of the process of evaluation at the hospital.

If we go back to the ratings variables at UNC, we will see that they are very similar to the hospital example that I just gave. The ratings variables do not come in with the student's application. They are intermediate variables that are determined within the application process as a trained admissions officer looks at the student application and makes some decision about how to evaluate this student. So, therefore, we have the same problem that a student who gets high ratings will be more likely to get in and a student who gets low ratings will be less likely to get into UNC, but those are not verifiable objective factors. And statisticians are trained not to put that kind of variable into a multiple regression. It's an elementary mistake.

Q. Thank you.

Now, the chart on Slide 6 has a column for R-squared with a range of values for your various

models. Before we turn to the specific interpretation of R-squared, let's talk about the concept of it generally.

Do you recall Professor Arcidiacono testifying that a pseudo R-squared of 0.2 to 0.4 is considered an excellent fit?

A. I do recall that testimony, yes.

Q. So let's turn to Slide 7.

And do you recall that Professor Arcidiacono prepared a slide referencing a particular test by Professor Dan McFadden?

A. Yes, that's correct.

Q. And what's your response to that citation?

A. Well, both R-squared and pseudo R-squared are measures of the goodness of fit of a model, and pseudo R-squared is designed to be analogous as possible to R-squared, the difference being that R-squared is for a linear model in which the outcome is something that moves continuously.

For instance, in the case of admissions, a linear model would be a model that fits a student's probability of admission. For instance, I might have a 24 percent probability, 25 percent, 26 percent, 27 percent. We can see that variable moves continuously.

In contrast, if we are trying to study the admissions rejection decision, that's a binary model, a yes-no type of model. Either the student gets admitted or the student is rejected. So that's a nonlinear model.

And then we can get even much more complicated and have something called a multinomial model, which just means multiple choices.

And Daniel McFadden in his paper was seeing the introduction of the rapid transit system, or BART system, in the Bay area and in -- in that -- in those circumstances, there were many choices. A person could take the BART; a person could drive; a person could bicycle; a person could walk. There were many, many choices in the model that he was analyzing, a very complex model. Essentially, the more choices you have in a multiple-choice model, the harder it is to get a R-squared or a pseudo R-squared that is (indiscernible).

(Court reporter requests clarification.)

Q. Was the last word you said "high"?

A. High, yes.

Q. Thank you. Please continue.

A. The reason why pseudo R-squared will be lower in a model that has more choices is that the choices interact with one another in a complicated way. Let me give you an example.

For instance, in the model that Daniel McFadden was considering, if it is a rainy day, people might be less likely to walk; they might be less likely to bicycle; and they might also not prefer to take the BART because they have to stand at a -- you know, at a BART station in the open rain.

JA808

So that's -- I've just given you one example of a factor that can have quite complicated influences in a multiple-choice model, but you can start to imagine all kinds of factors in your own lives that might affect which mode of commuting to use every day.

So the result is in a multi-quiz model, pseudo R-squared or the explanatory power of the model will tend to be quite low because there are so many complicated factors and because the choices interact with one another in a complicated way.

So then going back to Daniel McFadden's words, what he was saying was that in the context of the model that he was considering, this transportation choice model, is pseudo R-squared between .2 and .4 might be considered an excellent fit for that model in those circumstances, but we are not in those circumstances with the UNC admissions decision.

Q. Thank you.

Now let's turn back to the UNC admissions process.

Looking at Model 9, which was the last row of the chart we discussed on Slide 6, what was the R-squared?

A. The last row, Model 9, which I regard as my preferred model because it includes all of the factors I think an admissions officer might consider, the R-squared -- or pseudo R-squared is .428 --

Q. And turn --

A. -- which suggests --

Q. Go ahead.

JA809

A. -- which suggests that the model explained about 42.8 percent of the admission rejection decision.

Q. And is that indicated on your chart on Slide 8?

A. Yes, it is. Slide 8 shows that 42.8 percent of the admissions decision is explained by my preferred model.

Q. And what does that tell you about whether the UNC admissions process is holistic or formulaic?

A. It says that the admissions decision must be holistic and cannot be formulaic.

I think it's important for people to focus on the other side of the pie chart, the blue side of the pie chart. Often it's easy for people to get caught up in the part of the decision that is explained by the model and forget about all of the parts that are not explained by the model; but that part that's not explained is important. In this case, it is the majority of the admissions decision, 57.2 percent of the admissions decision.

And the reason I say it's important is that it is not that the admissions decision is somehow absent in that part. It isn't absent. This isn't something that isn't happening. It's something that's happening, but we, as statisticians, econometricians, do not know what is happening in that part. It's that the admissions officer is looking at the whole application, looking over that -- all of the material that's there -- the essays, the letters, the personal statement, the context for the student -- and that is what is going into that 57.2 percent. So it may be not observable by the statistician, but that

JA810

doesn't mean it wasn't observed or considered carefully by the admissions officer. And so that 57.2 percent shows us that most of the process must be holistic.

Q. Holistic; is that right?

A. That's correct.

Q. Thank you.

Let's turn now to the role of race within the admissions process and Slide 9.

You mentioned decomposing a model. In your opinion, what is the proper econometric method to answer the question of what role a specific factor plays in UNC admissions decisions?

A. The Shapley decomposition was invented by Shapley in the 1950s as a method to demonstrate which factors are playing an important role in a model. The Shapley decomposition decomposes R-squared or pseudo R-squared into (indiscernible).

(Court reporter requests clarification.)

Q. What was the last word? Into?

A. Buckets. Buckets or bins. Shares, I suppose you could say.

So the Shapley decomposition takes the explanatory power of the model and puts it into buckets for various factors. For instance, race and ethnicity might be in one bucket, and test scores might be in another bucket, high school GPA, class rank could be in yet another bucket.

The Shapley decomposition has been around since the 1950s and is still the only method that satisfies three axioms that statisticians require. Those are efficiency, monotonicity, and equal treatment of factors, and because it is the only way of decomposing R-squared or pseudo R-squared that satisfies those conditions, it has been used since the 1950s straight through to today because it is -- it's really the only decomposition method that is accepted.

Q. If, hypothetically, a factor, or bucket, such as race plays a dominant role in the admissions process but only with respect to a subset of applicants, would the Shapley decomposition reveal this effect?

A. Absolutely. The Shapley decomposition is designed to show the marginal effect of any factor reliably. And if, in fact, the factor was important, even for a subset of applicants, but it was important for them, the Shapley decomposition would definitely show that. And that's because in the Shapley decomposition what's happening is that -- perhaps the best way to think about it is the following:

We take all of the other variables; we hold them constant; and we take in and out some factors. So we take -- we put in an indicator for being African American and then we take it out. Then we rotate all of the other factors and hold them constant at a different level, and we put in African American and take it back out again. Then we do that again, rotating all of the other factors so that they're held constant at a different level. We put in African American. Then we take it out.

JA812

And we do that with every possible factor, not, of course, just an indicator for being African American, but every possible factor, all of the possible permutations. That's essentially what the Shapley decomposition does. It says we will hold everything constant at every other possible level, and we will try putting in a factor and taking it back out again.

So as long as a factor is important for any subset of students, it's going to show up in the Shapley decomposition value.

Q. Thank you.

Let's turn now to your opinions after applying the Shapley decomposition to your models in this case.

Does Slide 9 show your analysis of the contribution of race to your Model 9 -- sorry. Excuse me -- Slide 10, Model 9. I'm sorry about messing that up.

A. Yes. Slide 10 does show the Shapley decomposition results, and I think we should probably focus on my Model 9, which is shown at the bottom of the table that's on the slide. You will recall that the pseudo R-squared of that model is .428, showing that the model is explaining 42.8 percent of the admissions rejection decision.

And if we look at the share of the total admissions decision contributed by the race and ethnicity variables all together as the group -- all together as a group of variables, that's 1.2 percent of the total admissions decision, according to the Shapley decomposition.

JA813

Q. And after performing this analysis, what is your conclusion with respect to the role of race within the UNC admissions process?

A. My conclusion is that race and ethnicity explain only a very small share of the admissions process, in this case less than 5 percent.

Q. You also performed the Shapley decomposition to look at the impact of test scores within the model; is that right?

A. Yes, that's correct.

Q. And is that shown on Slide 11 of DX506?

A. It is indeed, yes.

Q. What did you conclude from this analysis with respect to the contribution of test scores relative to the contribution of race?

A. I think we should look at Model 9 again, which is the most complex or elaborate model, my preferred model. And you can see that in Model 9, test scores -- those are ACT scores and SAT scores -- explain 9.8 percent of the admissions rejection decision. So in comparison to race and ethnicity, test scores are a more important factor in the admissions decision by several times, but it's also the case that test scores do not explain most of the admissions decision, only about 10 percent of the admissions decision.

Q. Thank you. Now, did you perform additional analyses to test the results of the Shapley decomposition on other models?

JA814

A. Yes, I did.

Q. And is that on Slide 12?

A. Yes. Slide 12 contains some alternatives of other modeling choices that seem very reasonable to me. For instance, I think it is reasonable to estimate a separate model for in-state students and for out-of-state students.

Can I elaborate on that?

Q. Please.

A. So the way that UNC conducts admissions, according to my understanding, is that in-state and out-of-state students are considered at the same time by the admissions staff. There is not sort of one room for the in-state students being considered here and the out-of-state students would be considered in a room down the hall with a different admissions staff. They are all considered together.

So that is a reason for modeling the admissions process as one process, but I think it is fair and reasonable to say that admissions officers may view in-state and out-of-state students quite differently because of the fact that UNC has a requirement to admit a certain percentage of its students from the in-state pool. So, therefore, I did estimate a separate model for in state and out of state.

If I look at the in-state Shapley decomposition, race and ethnicity explain 1.2 percent of the admissions decision. Test scores explain about 15 percent for that in-state group of students. If I look at the out-of-state

Shapley decomposition, race and ethnicity explain 5.1 percent of the admissions decision and test scores explain 18.9 percent of the admissions decision.

So we see this same pattern as we saw before when we looked at all of the students together, that race and ethnicity plays a very small role, 5 percent or less.

Q. Now, we talked earlier about whether the UNC ratings variables should be included in the model. Setting aside your position on whether they should be, did you run a model that includes the UNC ratings variables and observe the results?

A. Yes, I did. Even though I do not believe this is a correct model, I did test a model in which all of those ratings variables were included, and I did a Shapley decomposition using that model as well. So I believe this is the model that is preferred by Professor Arcidiacono.

And in that, if I include all of those ratings variables, then for the in-state students, race and ethnicity explain 1.6 percent of the admissions decision, and for the out-of-state students, race and ethnicity explain 6.2 percent of the admissions decision. So the takeaway is really the same whether or not those ratings variables are included.

Q. Finally, does running the Shapley decomposition on any other version of your preferred model show a different result?

A. No, it does not. I always end up with the Shapley decomposition showing that race and ethnicity explain around 5 percent or less of the decision. And I should

JA816

say that the final model described on this slide as the multiplicative model is a very complex model. It essentially allows every factor to be considered differently based on the student's race and ethnicity. Let me give you an example so that it doesn't sound like technical jargon.

If I have a student who is Hispanic, say -- this model would allow an Hispanic student's test scores, GPA, class rank -- all of those things to be considered somewhat differently by the admissions officer who knows that the student is Hispanic. This would be a world in which admissions officers try to take race and ethnicity into context whenever they look at any other factor on a student's application. It's, therefore, a very complex model, and the Shapley decomposition shows that race and ethnicity explain only 5.6 percent of the admissions decision.

Q. Thank you. Now, did you also use a Shapley decomposition on Professor Arcidiacono's preferred models?

A. Yes, I did.

Q. And is that analysis reflected on Slide 13?

A. It is, yes.

Q. Can you walk us through that analysis, please?

A. So Professor Arcidiacono's preferred model, as I understand it, is what he calls Model 4. It is a model that does include those ratings variables, and I performed a Shapley decomposition on that -- on that model.

And when I performed that Shapley decomposition, I saw that for in-state students, 2.7 percent of the admissions decision was accounted for by race and ethnicity; and on the out-of-state students, 6.7 percent of the admissions decision was due to race and ethnicity in Professor Arcidiacono's preferred model.

This might also be a good time to talk a little bit about what is desirable in a model as regards to R-squared.

Q. Did you say R-squared?

A. R-squared.

Q. So Professor Arcidiacono testified that his preferred model, Model 4, both the in-state and out-of-state version, had R-squared of roughly .7 in state and .5 out of state.

Why doesn't his higher R-squared indicate that his model is a better or more accurate model because of that higher R-squared value?

A. R-squared is not a way of measuring the accuracy of a model, and maximizing R-squared is not a desideratum or goal when we are modeling. Maximizing R-squared is simply not something that we, as serious statisticians, would consider trying to do. In fact, an easy way to maximize R-squared is simply to put a lot of random variables into a regression, garbage variables. With enough random variables, I guarantee that I can create a model that has an R-squared of .99. I just have to add enough garbage. So clearly that cannot be the desideratum.

JA818

Instead, what we are trying to do with models is be accurate. That means that the model predicts as well out of sample as it predicts in sample. In other words, I use one sample of data to estimate the model, my model now. Then I take it to another very similar set of data, and I see whether the model still performs well. If it performs equally well in sample and out of sample, then it is an accurate model and predicts well. That is the measure of accuracy. That is our goal.

Q. Thank you.

So we'll turn, I think a little bit later, to a little more about the concept of accuracy. But to summarize what you've just talked about and testified regarding the Shapley decomposition, what is your takeaway with respect to the role of race in the UNC admissions process?

A. Race simply cannot be a dominant factor in the UNC admissions process because it plays a minor role regardless of which model one uses, whether it is my preferred model -- the pie chart that's shown on the left of this slide -- with 1.2 percent, or we divide that into an in-state and out-of-state version -- that's in the middle pie chart -- where we see 1.2 percent and 6.2 percent, respectively, for in state and out of state, or whether we take Professor Arcidiacono's most preferred model where we see 2.7 percent for in state and 6.7 percent for out of state.

I think the message is the same regardless of these model choices. Race and ethnicity is not playing more than -- it's just not playing a large role across the admissions.

JA819

Q. And, Professor Hoxby, did you say model --
“regardless of these model choices”?

A. That’s right. Regardless of these model choices, race and ethnicity is not playing a dominant or even close to a dominant role in the admissions.

Q. And when you referred to this slide, were you referring to Slide 14?

A. I was referring to Slide 14. Thank you.

Q. Thank you.

Let’s turn now to another analysis that Professor Arcidiacono discussed in his testimony, his decile analysis based on his academic index.

Did you prepare a slide on this?

A. Yes.

Q. And is that Slide 15?

A. Slide 15.

Q. Perfect.

A. Yes, Slide 15. Thank you.

Q. What is the first reason you find Professor Arcidiacono’s decile analysis to be misleading?

A. Well, first, I think I should say that it is all based on an admissions index that Professor Arcidiacono invented. I myself don’t like to call it the academic index because it’s not actually used by UNC, or any other college or university of which I am aware. So I

JA820

like to think of it as Professor Arcidiacono's index, which is fine, but it's idiosyncratic to him.

Okay. So Professor Arcidiacono creates this index using only test scores and grades. And according to his index, he puts people into decile -- puts students -- puts applicants into deciles according to his index, and each decile contains 10 percent of the student applicants to UNC.

But the thing that's very misleading about this table is that some of those deciles are very important to the UNC admissions process, and some of them are almost irrelevant to the UNC admissions process.

So, for instance, Decile 10, where students have highest test scores and grades, is very important to the UNC admissions process because so many of UNC's actual admits come from that one decile. And the same thing is true of the deciles just below, Decile 9 and Decile 8. Then there are deciles in the middle where some applicants end up getting admitted, but, by no means, these are not nearly as important to the admissions process. And then those would be Deciles 4 through 6 for in-state students and 5 through 7 for out-of-state students. I tend to call these the on-the-bubble deciles or on-the-bubble students. And that's -- that's a colloquial expression to refer to the fact that these are students who might be tipped just sort of one way or the other way, depending on some small factor, being tipped into the admitted or rejected by some small factor. Deciles 1 through 3 are essentially irrelevant to the UNC admissions process regardless of whether looking at in state or out of state.

JA821

Q. Why, in examining whether race is a dominant factor, should you look at -- should you not look at a small subset of admitted students?

A. You do not want to look at a small subset of admitted students, not -- not just for considering whether race and ethnicity is a dominant factor, but for considering whether anything is a dominant factor. And I think I -- it would help if I gave you an example that's a little bit removed, and then I'll move back to race and ethnicity.

So let's say that a student is a very good violin player and might contribute substantially to UNC's student orchestra. I could find a student who was just on the bubble of being admitted or rejected, really just going back and forth, really close to the edge; and if the admissions officer were to realize that that student was a good violinist, it might tip this student from rejection to admission.

Now, you could say in that one student's case that being a -- that playing the violin was something that determined whether the student was rejected or admitted, and that would be true for that one student, but it would certainly not be true that we would say that UNC's admissions process is dominated by violin playing.

Similarly -- did I -- was I heard?

Q. You're heard.

A. Similarly, we could look at some students who are just on the bubble of being rejected or admitted, and those students' contribution to the racial and ethnic

JA822

diversity of UNC might be influential when the admissions officer was trying to make that rejection/admissions decision, just tipping them one way or the other way; but that does not mean that race and ethnicity is playing a dominant role throughout the admissions process with regard to the whole pool of applicants.

That's why we have the Shapley decomposition. It's there to help us. It's a scientific way of understanding the answer to this question.

Q. Thank you.

Can you please explain your last bullet point on Slide 15?

A. So Professor Arcidiacono tends to not consider that there are many factors that may be observable to the admissions officers but are not observable to us, the statisticians. These are -- it's important to realize that we call these unobservable factors, but we don't really mean that they're not observable to anyone. What we mean is that they're not observable to us, the statistician.

So an example would be the quality of the student's writing in his or her essay, or it might be personal qualities that come across in the letters or essays. Those are unobservable factors, and they are important in the admissions process. You'll recall that they explain about 57 percent of the admissions process, unobservable factors.

Well, when we put people into deciles and assume that the only things that matter are test scores and

grades, as this decile analysis does, we are essentially pushing those unobservable factors to the side and pretending that they don't exist, whereas they still do exist. In fact, they're more important than the observable factor.

So when we look at someone, say, in Decile 5 for the in-state students, the student who is admitted from Decile 5 is going to probably be a student whose unobservable factors look unusually good. That's because we know that the students in Decile 5 do not have unusually high test scores and grades, but some of them are still admitted. So it must be that their unobservable factors are what makes them attractive to admissions officers. It could be violin playing. It could be their contribution to racial and ethnic diversity. It could be that they're a genius debater in high school. We don't know what it is, but there is something there that the admissions officer can see for the students who are admitted from, say, Decile 5.

And when -- in Professor Arcidiacono's analysis, he tends to treat these unobservable factors as though they didn't exist, as though it were just random which students got admitted from Decile 5. And this is across the board. It doesn't matter what race. There are students who are white and Asian admitted from Decile 5, but many students are rejected from Decile 5 who are white and Asian, so there must be other factors that are unobservable to the statisticians but can be seen by the admissions officers.

Q. Let's turn now to another analysis that Professor Arcidiacono presented in his testimony to the Court:

The calculation of average marginal effect on the probability of admission.

Does Slide 16 present a response to that analysis?

A. It does, yes.

Q. Can you please give us an example of an econometric context in which it makes sense to calculate the marginal effect?

A. Sure. If we were in a randomized control trial -- and I think I'm going to use a medical example because that's easier for most people. Say we have a real drug and we have a placebo, and we divide a large sample of people -- let's say 10,000 people get the real drug and 10,000 people get the placebo -- and then we see what happens. That's a classic drug trial.

It's important in this context that people be randomly assigned either to the real drug or to the placebo, and it's also important in this context that I said there were 10,000 people in the drug arm of the trial and 10,000 in the placebo arm of the trial. The reason why both of those things are important is that it is fair to assume, according to the law of large numbers, that the people getting the treated -- the real drug and the people getting the placebo are the same on all other characteristics on average.

Okay. So now I have my drug trial, and I can see how the people with the real drug do in terms of their health, and I can see how the people with the placebo do in terms of their health. And that is the marginal effect of the drug, holding everything else constant, because I created two groups that were going to be the

same. And I might take that marginal effect averaged over the 10,000 people who, in fact, got the drug compared to the people who got the placebo, and that average marginal effect would be a perfectly reasonable thing to report in such a context.

Q. Do you believe that the marginal effect is applicable in the context of UNC admissions decisions?

A. No, it's not in the way that Professor Arcidiacono uses it, and that's for a very simple reason. When we look at UNC admissions data, it is not a randomized control trial. The data are not generated by an experiment, a true experiment or any type of experiment. They're generated by real behavior of real people and many students to UNC. Therefore, all other things are not held constant. They're just to give you an example so that we can think about this.

If we think that a student -- if we know that a student is Hispanic in the applicant pool, we cannot say all other things are constant. An Hispanic student might be likely to have parents' education being somewhat different, perhaps lower, than non-Hispanic students. An Hispanic student might be more likely to come from a high school that was less highly resourced. An Hispanic student might have had less access to AP classes and programs in his or her high school. We cannot put all of those things in constant.

When we sort of flip a student from being white or Asian to being an underrepresented minority, other things move too, right? That's correlation, and that correlation means that it is not like the drug example where we held everything else constant and we just

turned the placebo into the real drug back and forth, everything else staying the same.

In the UNC admissions example, once we start to put a student's race, we also move all of the other things because that's just the way the data are. And so, therefore, this average marginal effect cannot be interpreted in the same straightforward way as I proposed in the drug example that I gave you.

Q. And that criticism of improperly flipping a switch, so to speak, on race, while holding all other factors constant, apply to Professor Arcidiacono's transformation examples?

A. Yes, all of his transformation examples are essentially trying to do the same thing. They're trying to flip a student's race, say, from white, African American, or the other way around; and in each case he's calculating an average marginal effect and suggesting that it somehow is going, thus the marginal effect of switching race, but, in fact, that's not just a sensible statistical thing to do under these circumstances.

Q. On this slide, you also refer to Professor Arcidiacono's, quote, shares. Professor Arcidiacono testified that the share of out-of-state African American applicants admitted due to racial preferences was 91.1 percent. And we see that on -- is this the table you prepared in the bottom right corner reflecting that?

A. Yes. This table shows that, yes.

Q. So what does this analysis that you did relating to Professor Arcidiacono's calculation of shares show? Let's focus on that 91.1 percent.

A. So just to be clear so that we can all focus on the same number, that 91.1 percent is in the very bottom row of the table, showing what Professor Arcidiacono calls the share due to race and ethnic preferences, and that's the 91.1 percent in the African American applicant column, okay?

All right. So it -- I think the way it -- it would be easy to interpret this as 91.1 percent of the admissions decision was due to race and ethnicity in the case of African American applicants; but, in fact, because this is not a proper statistical way to calculate the share of the admit/reject decision that's according to race and ethnicity, those shares add up to far more than a hundred percent.

For instance, we can see that the share due to SAT preferences that's in the top row is 100 percent, and then the share due to GPA preferences is 21.1 percent. The share due to the essay writing preferences is 100 percent. The share due to the personal quality rating preferences is 100 percent. It all adds up to 543.4 percent, the decision.

Well, there's a pretty obvious way in which this cannot be the right way to divide up the admissions decision into shares or buckets, or whatever you wish to call them, because you can't possibly divide something up into more than 100 percent of the total.

So this -- this method that he has of calculating shares is not statistically valid. It's essentially why we

do the Shapley decomposition. That is the right way to understand the marginal effect of any type of factor or group of factors. This type of analysis is simply incorrect.

Q. And we just spoke about the share in quotations for African American applicants and admits.

Does the same conclusion apply with respect to Hispanic students?

A. Yes. So the -- the so-called share due to race and ethnicity preferences for Hispanic applicants is 70.2 percent.

Q. And what's the total, according to Professor Arcidiacono's measure of shares for Hispanic applicants?

A. It is 557.4 percent.

Q. Let's turn now to Slide 17.

Professor Arcidiacono emphasized not just the marginal effect of racial preferences, but the average marginal effect.

What's your response to that point?

A. Well, we move on to look not at the average marginal effect, but, instead, at the median marginal effect. Even if we accept this shares analysis, which I do not, we would still want to look at how the median student is affected. That would mean half of the students were above, half of the students were below. With the average marginal effect, it grossly exaggerates the role of outliers. And let me give an

example because I think that will help with our understanding.

Let's say I have a student who Professor Arcidiacono's model predicts has a 10 percent probability of being admitted to UNC, and I do his shares analysis and flip the student from being one race to another race, and his model says that this student's probability of admission goes from 10 percent to 90 percent. Okay. That's an 80 percent increase, according to his modeling. That means I could have 80 other students, according to his model, lose just 1 percent in their probability of admission to UNC.

For instance, I could have students who go from 68 percent to 67 percent. I could have 80 students like that, and they are completely offset by this one student in his model who goes from 10 percent to 90 percent.

So we can see that this student with a very big change in the models predicted admissions probability outweighs 80 students, potentially. And, in fact, that does happen in his model, because if we look at the median marginal effect, as he defines it, then what we see is that it is very, very small compared to the average marginal effect, showing that the average is dominated by outliers.

Q. And is that reflected on the two charts on the right of Slide 17?

A. Yes. So let's look at the in-state chart which is on the top on the right-hand side of this slide. So Professor Arcidiacono's so-called marginal effect of race is 12.7 percent. This is from his Table 3.3 for in-state students who are African American; but if we look at the median

JA830

marginal effect of race for African American in-state students, it's only 1.2 percent, demonstrating that the average must be highly influenced by outliers.

We can see that the same thing is true if we look at out-of-state African American students -- those are shown on the chart that's just below -- or if we look at Hispanic students where, for instance, on the in-state students, the so-called marginal effect of race drops from 9.7 percent, if we consider the average, to 2 percent, if we consider the median, again showing that outliers are dominating these statistics that he is calling shares.

Q. Thank you.

On Slide 18, do you have one final criticism of Professor Arcidiacono's calculation of average marginal effect?

A. Yes. It is that those of us who do modeling, we always need to have a kind of humility because our models only explain part of the way the world works, and we need to pay attention to the fact that many of the things that happen in the world cannot be explained by our models. That's particularly true here in the admissions decision where so much of the admissions decision appears to be nonformulaic or holistic, and, therefore, our models are only picking a part of the admissions decision to begin with.

When Professor Arcidiacono chose marginal effect, he's only reflecting changes in the probabilities predicted by his model, sort of pushing aside the fact that the model only explains a share of the admissions rejection decision, so when a -- you may recall when we

JA831

were discussing the last slide, I said the student could be predicted by the model to have a 10 percent probability of admission or predicted by his model to have a 90 percent probability of admission. That was -- I kept saying "within the model," essentially. In fact, that student may have had a completely different admissions probability than 10 percent or 90 percent because the model is only explaining a share of things.

So if you -- if you always say things within the model, you keep ignoring the fact that the model doesn't explain everything. You are, in fact, doing a sort of injustice to the data because you're not trying to fully explain what's really happening in the world.

Q. Thank you.

Let's turn now to a concept you raised before of accuracy of a model. And let's turn to Slide 19, please.

Professor Arcidiacono focused on your discussion and calculation of mean squared error in assessing the fit of a model.

Did you also do an entirely separate test for overfit?

A. Yes, I did the correct test for a nonlinear model, which is due to Bilger and Manning, and I believe you'll be able to find that in my report.

As I said before, admit/reject is not a linear model. It is a choice model where we're going admissions/rejection. There are two choices. That's our binary model. Then for nonlinear models, the best measure of overfitting is due to Bilger and Manning cited in my report.

JA832

I did those tests, yes.

Q. Did Professor Arcidiacono respond to that analysis?

A. Well, he did not do Bilger and Manning tests, so far as I know.

Q. Okay. Thank you.

Which -- so looking at Slide 19 -- you might have said this before, but how do you calculate the accuracy of a model, in your opinion?

A. The accuracy of a model is how well it performs out of sample compared to how well it performs in sample. That's -- when you say a model is accurate is that we estimate it on one set of data and we then try it out on another set of data to see whether it still predicts accurately. If it does not predict as well out of sample as in sample, we say that a model is overfit and cannot be used to predict accurately. So that's -- it's a relative measure.

Even if your model does -- has a very high R-squared in sample, if it then predicts worse out of sample, it isn't an accurate model. And I mentioned before that I can always maximize the R-squared of a model in sample. It's very easy to get it to be a very high number. So then the test would be whether that apparently very high R-squared model, when I take it out of sample, does it still do well -- just as well. That's what we're looking for. In fact, people often split their data into two halves, and they estimate the model on one half of the data, and then they test, or validate, the model on the other half of the data to ensure that their model is not overfit.

Q. Would it also work if you tested one year of data in sample and multiple years out of sample?

A. Yes, that would also work. So, for instance, I could estimate the model on the 2014 admission cycle at UNC and then use another admission cycle like 2015-'16 or 2016-'17 as my out-of-sample data and test the model to see whether it performs equally well on those other years of admissions decisions.

Q. Now, if I understand what you just testified, you said this is a comparative measure. In other words, does that mean we can look across the row for, say, Model 4?

A. Yes. What you want to do is look across the rows because what matters is the difference between in sample and out of sample. That's what matters.

So, for instance, if we look at Professor Arcidiacono's Model 4 for in-state students that's shown in the little table that's on the top left, we can see that his Model 4, which I believe is his preferred model, has an in-sample mean squared error of .055 and an out-of-sample mean squared error of .074, and that's a pretty big difference. It's going up by almost -- .074 is quite a lot larger than .055. That difference, in level terms, is .019.

Q. Professor Arcidiacono testified that you could look at the out-of-sample error for one of his models, say Model 7, and compare it to the in-sample error for your Model 9.

Do you agree with that?

A. No, that makes no sense, and the reason it makes no sense is that all measures of whether a model is overfit have to do with this relative comparison for the same model in sample versus out of sample. Okay. So if we look at his Model 7 instance, the in-sample mean squared error is .028. The out-of-sample mean squared error is .093. That's a massive difference in mean squared error in sample versus out of sample. So we know that that model is grossly overfit. Okay.

The fact that --

Q. Please continue.

A. The fact that the out-of-sample mean squared error in that grossly overfit model is .093 is essentially irrelevant to any sort of comparison with another model because what we know now about his Model 7 is that it is grossly overfit. So it does have a -- a slightly lower out-of-sample mean squared error than my preferred Model 9, but that's just another way of saying he was maximizing R-squared even at the expense of showing a very, very inaccurate model. You can always get a lower mean squared error by maximizing R-squared, but that does not -- that is not a measure of the accuracy of the model. That Model 7 is grossly overfit and very inaccurate.

Q. Let's turn to Slide 20.

Professor Arcidiacono testified that you were wrong in presenting mean squared error across models in terms of a percentage.

What's your response to that criticism?

A. Well, I think you can present the in sample versus out of sample in many different ways. If we look at this table, the key thing always to see is what is the in sample versus what is the out of sample, and are they different. And if they are about the same in terms of mean squared error, then your model is not overfit, whereas if it goes up between in sample versus out of sample, then your model is overfit.

Now, how you want to look at those differences between the in-sample number and the out-of-sample number, you can do it however you like. They're just two numbers. Okay. So I could look at Model 4 and say it goes from .055 to .074, and that difference is .019. Okay. That's one way to look at it. Or I could take that .019 and divide it by the in-sample mean squared error. That would be as a way to sort of standardize it so I could compare across models, but it's still the same difference in mean squared error.

It doesn't matter how you present it, and no one is trying to hide anything here. We have in-sample mean squared error. We have out-of-sample mean squared error. You need to look at those two numbers. That's what tells you whether a model is overfit.

Q. Professor Hoxby, does this discussion of overfit change your conclusion that race is not a dominant factor in the UNC admissions process?

A. No, because my own preferred model, Model 9, which is not overfit, as you can see from the statistics -- it does about as well out of sample as it does in sample -- shows, according to the Shapley

decomposition, that race and ethnicity do not play a major role in admissions.

And I might mention that we earlier looked at Professor Arcidiacono's preferred model, which is his Model 4. His model is somewhat overfit. It's certainly overfit, but it is not grossly overfit. And we also saw that when we used his preferred Model 4, the Shapley decomposition demonstrated that race and ethnicity play a small role in admissions.

Q. Thank you.

MS. FLATH: Your Honor, this might be a good time for our morning break.

THE COURT: Yes, I agree. All right. Let us take a break. We will return at 20 after 11:00.

MS. FLATH: Thank you.

(A morning recess was taken from 11:08 a.m. until 11:20 a.m.; all parties present.)

THE COURT: You may proceed.

MS. FLATH: Thank you, Your Honor.

Q. (By Ms. Flath) Professor Hoxby, can you please turn to Slide 21 of your demonstratives?

A. Yes.

Q. Professor Arcidiacono testified that his model, including his preferred model, was extremely accurate, over 90 percent. Do you recall that?

A. Yes.

Q. Setting aside any disagreement you might have with his definition of accuracy, what happens if you remove racial preferences from his preferred model and recalculate the accuracy using his approach?

A. So I do not agree with his definition of accuracy, which I think is novel and nonstandard; but even if we accept it, then we can just take his model -- his preferred model, which is Model 4, and assess its accuracy with the racial preferences and then removing racial preferences. So literally, when we remove the racial preferences, I am zeroing out all of the coefficient on race and ethnic variables, so I am just removing the impact of those variables from the model.

All right. So let's say we do that with the in-state students. His so-called accuracy is 92.1 percent with the racial preferences, with these race and ethnicity variables, and it falls to 91.1 percent without those race and ethnicity variables. So that is the reduction in his so-called accuracy of 1 percent. And if we look at the out-of-state students, it's not all that different. The reduction in his so-called accuracy is 1.9 percent.

So even if we accept this oddly defined accuracy notion, it doesn't really change what we are learning about from his model -- preferred model, which is that it is not race and ethnicity variables that are generating the so-called accuracy; it is other variables that are generating the so-called accuracy. Race and ethnicity are contributing almost nothing.

Q. And by "almost nothing," you mean contributing almost nothing to the accuracy of his model?

JA838

A. Yes. Race and ethnicity are contributing almost nothing to the so-called accuracy of his model, accepting his definition of accuracy.

Q. Thank you.

Did you analyze the allegation in the complaint that the school group review process is used to manipulate the racial composition of the admitted class?

A. Yes, I did do that analysis.

Q. And did you prepare a slide showing the results of that analysis?

A. Yes, I did. I believe that is Slide 23.

Q. Great. Starting with the first row, what does Slide 23 show us with respect to the school group review process?

A. Let me explain what is being shown on Slide 23 first so that everyone is on the same page.

What I did in order to analyze the school group review process is I looked at the class of students who would have been admitted before school group review, and then I looked at the class of students who were actually admitted after the school group review process. I looked at the racial composition of the before SGR and the after SGR class of students.

So, for instance, let's take the first row. This is for African Americans, and I'm breaking it up separately by the admissions year. In the 2013-2014 admissions year, 10.1 percent of the students were African American before school group review, and 10.1 percent

JA839

of the class was African American after school group review. There was no change.

In the 2014-'15 school year, the percentage of students who were African American was 9.3 before school group review and fell by 0.3 percent after the school group review process.

Similarly, in 2015-'16, it was 10.1 percent African American before school group review, and it fell very slightly by 0.1 percent. That's the first row of this.

Q. And what did your analysis show in general with respect to Asian applicants?

A. Looking at the second row, we can see that in 2013-'14 the number of Asian students rose after school group review from before to after. It also rose in 2014-'15, and again in 2015-'16 it rose after school group review. So it appeared that school group review was moving -- if anything, it was moving race and ethnicity towards being just a little bit more Asian.

Q. And what did you conclude with respect to Hispanic applicants?

A. With respect to Hispanic applicants who are shown in Row 3, you can see that in 2013-'14, it dropped after school group review; there was no change at all in 2014-'15; and there was a very small change in 2015-'16, but it was a negative change. The percent that were Hispanic dropped just a little bit.

Q. And what about with respect to white applicants?

A. White applicants are shown in the bottom row of this table, and you can see that in 2013-'14 it was a

JA840

small positive change after school group review, so the class was very slightly more white; in 2014-'15, something similar happened, the class became slightly more white after school group review; and in 2015-'16, there was no change.

I should mention, though, that if we look over this table as a whole to understand it as a whole, these are all very small changes. We're not seeing big changes in the percentage of the class belonging to any racial or ethnic group in the school group review process, suggesting that race and ethnicity is actually not playing any sort of important role in the school group review process, because, otherwise, we would expect these numbers to jump more substantially somewhere.

Q. Thank you. Now, as a result of all of these analyses you testified about this morning, did you find empirical evidence that race is the dominant factor in the UNC admissions process?

A. No. I concluded that race and ethnicity could not be a dominant factor in the admissions process, and I feel that every approach that I tried to understand or analyze that question brought me to the same conclusion that race and ethnicity were playing a small role in the UNC admissions process.

Q. Thank you.

Let's turn to your second opinion regarding race-neutral alternatives, and let's turn to Slide 25.

At a high level, what is your process for testing a race-neutral alternative?

A. Okay. So testing a race-neutral alternative is a process that has several different steps to it. The first step is deciding what the alternative is. So in many cases we were following suggestions from the Plaintiffs or suggestions that might have only been tangentially referred to by the Plaintiffs, but still trying to test any alternative that the Plaintiffs had considered. So we have a -- that's the first step is to think about what is the alternative admissions process.

Once we've decided --

Q. When you say "referred to by the Plaintiff," do you mean in the complaint?

A. Yes, in the complaint the Plaintiffs referred to some race-neutral alternatives they thought would be useful, and so we took up each and every one of those possibilities. And we tried to also use the race-neutral alternative that was as close as possible, given the papers, journal articles, and books that they had referenced in the complaint. I believe we also took up a number of race-neutral alternatives that were not suggested by the complaint but that were suggested later in Mr. Kahlenberg's reports.

Q. Thank you. So after you have decided the race-neutral alternative, what do you do next?

A. The next step is that we have to decide who would apply a race-neutral (indiscernible).

(Court reporter requests clarification.)

Q. Was the last word you said "alternative"?

A. Under this race-neutral alternative, yes.

I think the most obvious example here idea is that if we were to move from UNC's current admissions process to a top 10 percent plan, like that of Texas, we would expect a different set of students to apply, potentially, in the case of Texas, in the top 10 percent of their high school class based on class rank. So we do have to make a decision about who would apply, and that requires a model. So that's step number one.

Step number two is to determine who would be admitted under the race-neutral alternative. And for that, I would be using the same sort of admissions models we've been discussing already today. They are not perfect admissions models because, of course, we did not know everything about a student that an admissions officer can see, but they do -- they do the best that we can do in trying to understand and mimic the UNC admissions process as well as we can. Not perfect, but that's what we're trying to do.

And then the final part of any race-neutral alternative simulation is that we have to decide -- or we have to figure out who would enroll. It's also extremely important and it's been overlooked, because I do not think UNC really cares very much about who else was in the pool (indiscernible).

(Court reporter requests clarification.)

Q. Professor Hoxby, let me help where you were.

Why is it important to consider who would enroll as part of a simulation?

A. Right. It's very important to consider which students would actually enroll because what students

experience at UNC is their fellow students in class, in their dorms, in social life. They do not experience the students who were admitted to UNC and who decided not to enroll. So we also have to do this last step where we look at the group of students who are admitted and we figure out what percentage of them would enroll at UNC, a very important step.

Q. Regardless of whether we talk about the matriculation phase today, did you run a matriculation model for every race-neutral alternative that you simulated?

A. Yes, I did. And I believe that it's very important to both compare what the admitted class looks like under the race-neutral alternative to the actual class that's admitted and to compare the predicted matriculated class or enrolled class to the actual enrolled or matriculated class. In every case under every race-neutral alternative simulation, I looked at both the admitted class and the matriculated class.

Q. After you've gone through this process, how do you compare the results of a simulation against levels of academic preparedness and underrepresented minority diversity?

A. Well, I was asked -- we sort of go back up to the top. I was asked to conduct race-neutral simulations and conclude from those race -- or draw conclusions of evidence from those simulations about whether there was an alternative that would allow UNC to attain its actuals in terms of racial and ethnic diversity and academic preparedness. So following that guidance, I compared the results under each alternative to what

JA844

UNC actually achieves right now, and I tend to call those the actuals.

Q. The actuals; is that right?

A. Yes, I call them the actuals.

Q. In terms of measuring academic preparedness, do you use average SAT score?

A. I use average composite SAT scores. And I should add that ACT scores are translated into SAT scores using the same concordance tables that UNC and all other colleges and universities use. So when I say SAT scores, I do not mean merely the students who take the SAT, but the students who take either the ACT or the SAT where they're all being put into the same basis. But, yes, I do use SAT scores as an indicator of academic preparedness.

Q. And why even for in-state applicants do you consider average SAT as compared to average SAT and GPA?

A. Okay. So the difficulty with using GPA in addition to SAT is that different high schools have quite different grading standards. This is really obvious in the data. And, therefore, if we use GPA in addition, what we tend to do is just create a misleading error because we cannot compare a 3.0 from one high school to a 3.0 in another high school and assume it's the same thing.

I wish to say very clearly that I do not consider the SAT or the ACT to be perfect measures of academic preparedness, not at all. These tests are imperfect.

JA845

They have issues. There are issues around bias in these tests. There are issues regarding test retaking. So they are not perfect academic indicators, but they are standardized across high schools, and so they are the way that most economists and statisticians do try to judge academic preparedness. As imperfect as they are, they are better than the alternative -- they are better than other types of indicators.

Q. So to be clear, do you offer any judgment or opinion on whether UNC should consider implementing an alternative admissions process that results in a decline in racial diversity?

A. I was asked to offer an opinion on whether UNC could use a race-neutral alternative to attaining current levels of academic preparedness and race and ethnicity, and I really don't have any opinion on what decline UNC -- that's not what I was asked.

Q. And the same holds true for any decline in average SAT score, even if it's a decline of, say, 10 SAT points on average?

A. I was asked whether UNC could use a race-neutral alternative to attain its current levels of academic preparedness, and that's what I am prepared to give evidence on.

Q. Against that backdrop, how do you consider the concept of workable in assessing race-neutral alternatives?

A. I tried any race-neutral alternative that seemed workable to me in the following sense: One, you can rely on data that UNC could actually gather. That was

the first criterion. And then the second criterion was that it should be an alternative that I believed a real admissions office would implement, even assuming that it might be hard for the admissions office to implement it in the first few years. I was willing to consider that, but I didn't want to consider alternatives that appeared to me to simply be unimplementable.

Q. Let's talk a little more specifically about how you approached these hypothetical simulations.

Turning to Slide 26, in creating a simulation, what assumptions did you apply?

A. Well, what I was trying to do at a high level was consider if every race-neutral alternative that I considered was the best possible chance of attaining the actuals, of attaining what UNC is actually achieving now. And so, inevitably, when one is going through this type of procedure, one has to make some assumptions, and I always tried to make them, you know, matter, that would favor the alternatives or make the race-neutral alternative look as good as possible. In that way I think you could say that I chose assumptions to kind of give each race-neutral alternative a ceiling, its highest possible level that is realistic of being able to achieve the actual. But I made several assumptions to try to do that.

Q. What was the first assumption you made with respect to the applicant pool?

A. So the first assumption that I made is a very important one. I assumed that even under the race-neutral alternative all of the people (indiscernible).

JA847

(Court reporter requests clarification.)

Q. You assumed even under the “race-neutral alternative”? Was that the right word?

A. Yes, that was the right word. Thank you.

Q. Please continue.

A. Even under -- I’m sorry. Please do interrupt me if you can’t hear me, because I really -- I’m really sorry if you cannot. I know how frustrating that must be.

Even under the race-neutral alternative, I assume that all of the students who currently apply to UNC would continue to apply. Now, this is an important assumption, and it is very much favoring the race-neutral alternatives. And let me explain why.

When Texas and California moved to having race-neutral admissions processes, in fact, many students who had previously applied to the University of Texas or Texas A&M or Berkeley stopped applying, and they stopped applying because they were less favored under the race-neutral alternative than they had been favored under the previous admissions system. And so it is not the case that all students will continue to apply.

For instance, I can imagine that there might be a very high-achieving African American student who might be applying to UNC now and would say, Gosh, UNC has moved to a race-neutral admissions system; my contribution to racial and ethnic diversity will not be considered; and, furthermore, the racial and ethnic diversity of the UNC class might decline, and so,

JA848

therefore, I will apply to Duke instead; I'm not going to apply to UNC anymore.

What I have assumed is that all of the students who apply now would continue to apply under a race-neutral alternative. I think you can see that that is optimistic for the race-neutral alternatives. This is really a big assumption that I make here to favor the race-neutral alternatives.

Q. What else did you assume with respect to the applicant pool that would apply under a race-neutral alternative?

A. Under any race-neutral alternative, we know that some students who would not have been -- who would not have had a high probability of admission before will have a significantly higher probability of admission. I'm going to call those the newly eligible student because they are the students who are made more eligible for admission by the race-neutral alternative than under the current admissions system.

What I assume is that 75 percent of the highly qualified, newly eligible students, in fact, apply to UNC. This is also an optimistic assumption because it's assuming that there is a very high rate of newly eligible students immediately saying to themselves, Gosh, I think I can get into UNC maybe now by putting that in under the old admission system; I'm going to surge forward and apply and do all of those things, even though there may be not very much data to support someone like me having been successful in UNC admissions in the past. It's an optimistic assumption.

JA849

Q. Now, you used in all of your simulations the NCERDC data. How did that data influence your assumption on test scores?

A. In north -- the NCERDC data are taken straight from the administrative records of North Carolina public schools. They're administrative data. One of the things that happens in North Carolina is that in March of their junior year, all students, with very few exceptions, are required to take the ACT. That's what I'm going to call the mandatory ACT test. In addition, nearly all students who are in the NCERDC data have ACT scores from that March of their junior year of testing. I should add that many of them do not prepare for that mandatory test taking. It's just something that comes along in their junior year, and they kind of have to do it.

Q. Professor Hoxby, if you might just slow down a tiny bit. I think that will help the court reporter and our video connection. I'm sorry to interrupt. Please continue.

A. No, please do remind me. I tend to speak quickly by nature, and so I'm -- I need to be reminded and I don't mind at all.

So that's the mandatory March-of-the-junior-year test taking for which most students do not prepare, especially students who do not believe that their ACT score is going to make an important difference in admission to college.

If a North Carolina student believes that he or she is going to be applying to UNC, then typically that student would either retake the ACT, so two testings of

the ACT, or might take the SAT after having that mandatory ACT testing. There are even some students who take the SAT or ACT more times than two, who take them multiple times.

What I'm assuming, again to try to favor the race-neutral alternative, is that -- is that a newly eligible student would take the test at least twice, so either retaking the SAT -- sorry -- retaking the ACT or taking the SAT after having taken the ACT.

Now, why does that matter? This sounds a little bit technical, but it does matter because if we think about a student who would not have considered applying to UNC before and then we put that student's data into the simulations, that student would probably have had a higher ACT or SAT score if he or she was actually applying to UNC. So what I do is I add 40 SAT points to the score of any student who only took the ACT once in the mandatory testing, and that helps boost the race-neutral alternatives relative to the actuals. It helps make the race-neutral alternatives look better.

I should say that that 40 points is not just something that is ad hoc; rather, it comes from very serious research conducted by ACT about the effect of retaking the exam.

Q. You spoke a little earlier about why it's important to consider who would enroll under a new -- under any admissions process.

What did you assume with respect to current enrollment probability?

A. What I did for this part of the procedure was that I assumed that current enrollment probabilities would continue to hold. This is not a particularly complicated part of the procedure. I have a very simple model of what is the probability that a student will enroll conditional on that student having been admitted. Even though I said this is simple, it is not something that we can just ignore. And let me give you an example.

UNC is a very selective university, but it is not the most selective university in the United States; and, therefore, students who have extremely high test scores, grades, and other qualifications such that they might be admitted to one of the top private universities in the United States -- let's just say Princeton, as an example -- have a somewhat lower probability of matriculating at UNC if admitted than a student who might have qualifications that are more squarely in the middle of the student body at UNC. And, therefore, I cannot just assume that every student has an equal probability matriculating. Students who are more likely to have good alternative opportunities are a little less likely to actually matriculate at UNC.

Q. So let's turn now to the very simulations that you ran.

On Slide 27, you describe your -- you describe your approach as exhaustive. In what way do you consider your approach to have been exhaustive?

A. Well, first, I did try to consider every race-neutral alternative plan that was proposed or suggested, even hinted at in any way by the Plaintiffs in the complaint

or in any other expert report. So that's the first way in which I considered it to be exhaustive.

And you will see that I considered 82 different socioeconomic plans, five top X percent plans, two geography-based plans, and then a bunch of additional concepts that were suggested by Mr. Kahlenberg. So that's the first way in which it was exhaustive.

The second way in which it is exhaustive is that I tried very hard under each one of those plans to allow for a wide range of possibilities about how a plan would actually be implemented. I think we're going to talk about that later in some detail, but I was -- I was trying to allow for a wide range of possibilities.

And then the third way in which I tried to be exhaustive is I tried -- I've already emphasized that I chose assumptions that try to get me to something that was like a ceiling for each plan; but, in addition, on two important occasions, I created a way of doing the race-neutral alternative which was purely designed to maximize the power or the ability of the race-neutral alternative to attain the actual.

These two -- these two demonstrations were -- they're not -- in some sense they're not truly race-neutral because I was simply going out there to say, Can I come up with a race-neutral alternative that will attain the actuals using all of the data that I had at my disposal? And so it was our -- they are -- they were really just designed to try to make a race-neutral alternative work as much as possible, regardless of any of the other suggestions.

Q. And based on this exhaustive approach, how many simulations resulted in attaining UNC's actuals measured in terms of average SAT and underrepresented minority representation?

A. Zero.

Q. Let's turn to something that the Court has heard about: Socioeconomic status-based plans. And I will do my best to not trip over that phrase. If I call it SES at times, that's going to be why.

Mr. Kahlenberg testified about socioeconomic status-based plans at some length. But at a high level, how do you describe the logic behind this approach as a race-neutral alternative?

A. The idea of an SES-based plan is that there are going to be some socioeconomic indicators that will be correlated with this condensed race or ethnicity. And so if we say that the race-neutral alternative has to be blind to the race -- in other words, it cannot use race and ethnicity variables -- we might be able to use these other variables in combination to come up with a proxy for race and ethnicity that might help UNC create a class that was racially and ethnically diverse even though admissions officers would not know anything about a student's race and ethnicity. And these types of proxies depend on the idea that socioeconomic variables are correlated or highly correlated with a student's race and ethnicity.

Q. And you list certain socioeconomic status indicators on Slide 28. Would all of these indicators be available to a need-blind admissions office?

A. Yes, with a certain amount of work, I think, involved. These are not currently in the hands of any admissions office so far as I know in the United States, but they could be available to the admissions office.

For instance, when I say the percentage of adults with educational attainment ranging from essentially none to a doctoral degree, that's something about the neighborhood in which a student lives. And so currently I do not believe UNC admissions officers have that kind of data at their fingertips, but they could have it if they had a data officer, or someone like that, who tried to bring in data to contribute to that process.

Similarly, the mean number of dependents or the percentage of families headed by a single parent. I also looked at whether people owned their own homes and their house value if they did own a home. These are not variables that UNC has right now, but they are potentially variables that they could have if they made enough effort.

Q. Did you empirically test the correlation between socioeconomic status indicators and race using data in this case?

A. Yes, I did. I did it both in the Carolina Connect data -- so that's the data from the applicants at UNC -- and I also did

* * *

[pp. 998:16-1008]

Let's turn now to some of the specific socioeconomic status-based simulations that you tested.

JA855

On Slide 30, do you list how you go about doing that?

A. Yes. The first step which is listed under Point 1 is that I construct an SES index measure for every applicant. And this SES index measure is going to be based on all of those socioeconomic variables that we've just been discussing, some of which we didn't get a chance to discuss, but there are a lot of them. Okay. So I have to create an SES index for each applicant.

Then the next step is because I want to test the full range of every race-neutral alternative -- so I don't want to just create one version of it and test that and then leave all the other versions on the cutting room floor; instead, I define a range of emphasis -- that's the weight that the SES index gets in admissions -- and I also define a threshold for what will be considered to be a low SES student. So I can give you a simple example.

A simple example would be that I say about 750 places in the admissions -- in the admitted class are going to be set aside for low SES students. That would be the emphasis, but I could increase the emphasis and make it 1,000 students or I could decrease the emphasis and say we get 500 students. That would be the range of emphasis.

And then there's also a threshold. So I have to decide what is a low SES student. That's not actually an obvious one to answer. It's not obvious. So I want to consider a range. Do you have to be in the bottom 20 percent based on SES? Could you be in the bottom 25 percent? Do you need to be in the bottom 15 percent? That's the threshold. So I'm moving the threshold

around. I'm moving the emphasis around. That way I get to test the full range of what this race-neutral alternative could do. I'm not testing this one little case.

Q. For each SES simulation you ran, how many versions did you test using these different ranges of emphasis and threshold?

A. 20.

Q. So for each of the 82 different socioeconomic status-based simulations, you ran 20 versions?

I'm sorry. I think I messed up the math.

For each simulation you ran 20 versions?

A. That's right; for each simulation I ran 20 versions, yes.

Q. This is why lawyers should not do math.

What did you do next in creating your socioeconomic status-based simulation?

A. Okay. So now we have -- we now have -- we sort of set out what we're going to do. We created the SES index. We've decided we're going to look at all of these different ranges of emphasis and thresholds, and we really get to stress test this race-neutral alternative. And now we have to predict which students would be admitted, and that's what I call the SES -- or the SES -- it's not just SES, but that's the part of the process where I'm trying to use the SES index to admit the class, giving extra favorability to the low SES students in the -- in admission to the class. And I do that in a way that's very favorable to the race-neutral

alternative because what I am assuming is that the students are admitted by UNC from that SES-disadvantaged class -- disadvantaged applicant pool in order of being the most qualified for UNC to the least qualified for UNC.

I know this part is a little confusing. Let me just say perhaps I had decided that there should be 750 students set aside for low SES students, 750. So I start with the most qualified low SES student, and I just keep admitting students until I get to 750 students from the low SES pool.

Now, this really favors the race-neutral alternative because I'm basically assuming that all of these low SES students -- not all of them, but a lot of them are applying to UNC, and that when UNC is doing its admissions process, it's paying a lot of attention to things like test scores and grades. So it's going to make the race-neutral alternative to achieve the actuals which are average SAT scores. So this part of the process is very favorable to the race-neutral alternative's ability to achieve the outcomes.

Q. And what's your final step?

A. The final step is what I call "completing the class." So we just described how we admit the students who are in the 750 who are low SES, but we still need to admit the rest of the UNC class. And this is a kind of tricky thing to do.

So it's tricky because what we want to do is be absolutely as realistic as possible, but we clearly cannot assume that every student who would have been admitted now under the current process would be

admitted in the future to UNC because there would be simply fewer seats for them.

So what we do to complete the class is that we take a random draw from the -- from the current students who get admitted to UNC. So we know that UNC, under the current process, thought they were a good applicant, would randomly draw students and use those students to complete the class, because we don't want to -- we want to be as close as possible to what UNC is actually doing, but we don't know which students would end up being admitted or not admitted under a future scenario. We don't just complete the class by drawing randomly once. We randomly draw a hundred times in a row in order to try to figure out what that -- what the rest of the class would probably look like in a realistic kind of way.

Q. Now, Mr. Kahlenberg testified that that "completing the class" phase, as you just described it, was not race-neutral.

Is that true?

A. In some sense it is not, but it is also by not -- I -- it is designed to be favorable towards the race-neutral alternative. Let me explain why.

So you'll remember that I gave you the example of the student before who was African American and very high achieving who might decide not to apply to UNC after the race-neutral alternative was put in place. A student might decide to apply to Duke or Princeton or whatever other college. So that student is still going to be there in the pool of admits when I am starting to

randomly pull out students and assume that they are admitted to UNC.

In actuality, a high-achieving African American student would probably be less likely to be in the pool of applicants because the student would have decided, I prefer to go to another school; maybe it's more race conscious or has a more racially diverse class.

So by allowing that student to still remain in the pool of students from which I'm choosing randomly a hundred times, I have favored the race-neutral alternative because I have kept the racially diverse underrepresented minority applicants in the pool of applicants, even when they might have actually dropped out under the race-neutral alternative. This will help the race-neutral alternative look good because it will mean that I can achieve both higher racial and ethnic diversity and higher test scores of completing the class in the way I do.

So I'm not disagreeing with Mr. Kahlenberg, but I think he doesn't -- he wasn't being very clear about the logic of whether this favored the race-neutral alternative or somehow didn't. I'm not sure what his logic was.

Q. Turning to Slide 31, I think you covered many of these assumptions, but did you make additional assumptions specific to the SES plans?

A. Yes. So the first favorable assumption for the SES plans was that I assumed that if we could identify -- first of all, I assumed that UNC could identify all socioeconomic disadvantaged students. I actually consider this to be a pretty optimistic assumption

JA860

because, in fact, there is no admissions office in the United States, to the best of my knowledge, who is doing something as sophisticated as UNC would be required to do to identify all socioeconomically disadvantaged students.

This would be a huge data effort and a huge analytic effort at UNC. It is possible for sure, but it is not something that anyone is doing now. So that is the assumption I made, and as I say, it's optimistic.

The second assumption that I made is that UNC would be able to get the socioeconomically disadvantaged students who apply at the same rate as current well-qualified applicants. Again, this is pretty optimistic because this is saying essentially we get a poor student from a high school where almost no one has ever applied to UNC in the past, very rare to see applications from that high school, and we assume that that student has the same probability of applying to UNC as a student from, say, North Carolina, you know, Academy of Math and Sciences. That seems to me like a pretty optimistic assumption. Because for some students it's very natural to apply to UNC. It's something all their peers are doing. It's something their high school counselor is used to doing. And I'm assuming that somehow the student who is from that high school -- almost no one does this. It just kind of instantly turns into an applicant.

The second thing -- can I go on?

Q. Please.

A. Okay. The second thing I did was assumed that UNC chose to admit the highest scoring student. So I

JA861

think we talked about this a little bit when discussing the previous slide, but this is also -- it's not an optimistic assumption. It's just an assumption that favors the race-neutral alternatives because it allows the race-neutral alternative to have its best shot of achieving the actuals, so essentially assuming a way -- some of the things that we know UNC would actually consider -- UNC does not just admit the highest scoring students. That's not the way the real process works, but I assumed that it was in order to favor the race-neutral alternative and to give it its best shot at trying to hit the actuals.

And then I also assumed that the current admitted applicants would continue to enroll exactly in the way that they are enrolling now. Again, this favors the race-neutral alternative. There may be people who are put off by the fact that the racial and ethnic diversity of the university would have changed or the admissions process would have changed. In fact, we have seen that in places like Texas and California. It is not the case that all students are just indifferent to the admissions process or to the makeup of their peers at college.

So, again, this really favors the race-neutral alternative.

Q. Great. Let's talk now, as we've already discussed the "completing the class" phase, about some of the categories of SES-based simulations that you ran.

So turning to Slide 32, please explain the various SES indices you used.

A. Okay. So every SES index has to have a kind of logic to it because you're taking many, many variables --

SES-based variables, and you're trying to combine them so in some way that would be serving for a proxy for being -- it's a good indicator for being low SES, and it also needs to be a (indiscernible).

(Court reporter requests clarification.)

Q. Professor Hoxby, if you could just slow down a little bit more.

A. I'm sorry. Let me go back and say that every SES index is going to have to have some logic to it. That's because we have a lot of SES variables that we are including, and we can include them in a fairly complex, elaborate way; and so, therefore, there needs to be some kind of a logic for how we translate many SES variables into an index.

So two of the indices that were suggested by an article referenced in the complaint are the four-year college index and the two-year college index.

So here's the logic of the four-year college index. Basically, it says if this socioeconomic variable predicts that a student is less likely to apply to a four-year college or enroll in a four-year college, we are going to assume that that socioeconomic variable is bad for college enrollment. So we'll give that socioeconomic variable more weight in the index.

And if it -- if a -- if a variable, instead of having parents who have a graduate education, predicts that students are more likely to apply to a four-year college, we will say having parents with a graduate education is going to suggest that you are not a low SES student. Okay.

So we're using the probability of a student going to a four-year college to help us understand which variables put a student at a disadvantage in the college admissions process, in the college preparation process, in sophistication about college going. We're really using that indication of four-year college to help us put the proper weights on the various socioeconomic variables.

Q. Is that --

A. The two-year college -- I'm sorry.

Q. I was going to say, does the two-year college index follow the same logic, just tailored to attending a college for two years rather than four?

A. Yes, it follows exactly the same logic. The only difference is that the outcome that is helping us make these decisions about the weights is whether a student attended a two-year college or not.

Q. At a high level, how do you construct what you call a striver index?

A. So a striver index was also suggested by -- or hinted at by one of the -- or possibly two in the complaint. A striver index is the difference between the actual test score that a student achieves and the predicted test score that a student achieves. The striver index is meant as an intuitive matter to -- to suggest that a student is outperforming the expectations that we would have for a student based on his or her socioeconomic background. So I think that's the -- that's the logic of the word "striver"; this person is striving beyond his or her socioeconomic background.

Q. And, finally, you talk a little bit about both your composite proxy as well as the very favorable index you created. Is that the race-predicting index?

A. Yes. So the race-predicting index is specially designed to try to allow socioeconomic variables to do the best possible job substituting for race and ethnic indicators. In some ways, it's not really a logical index. It's an index that I put out there simply to see what could I achieve with socioeconomic variables regardless of whether there's some nice logic like there is with the striver index or the four-year college index. It's just designed to maximize the possibility that socioeconomic variables can substitute.

So in some sense it's not really a race-neutral index because I need to use race in order to construct it. I'm literally just trying to predict race and ethnicity using

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[pp. 1013-1033]

and ethnicity so that, therefore, this exercise is really trying to test the absolute ceiling of what could be achieved by a socioeconomic index in a race-neutral alternative. Otherwise, though, the exercise is the same.

Q. And what is your conclusion after running these simulations based upon that race-predicting index with respect to whether this alternative would replicate UNC's actuals?

A. So in no case out of the 20 cases that I used to stress test this race-predicting index was I able to see that

UNC could attain its current racial and ethnic diversity and its current level of academic preparation, and this is for a fairly simple reason that we have discussed a little but during the morning, and, that is, that although socioeconomic variables are somewhat correlated with race and ethnicity in the state of North Carolina, they are not highly correlated with race and ethnicity in the state. And, therefore, it's simply not possible -- even when you use all of them together in the way that maximizes their power, it's simply not possible to proxy very well for race and ethnicity not being there in the application there.

Q. Thank you.

Let's turn now to some of the critiques you offer on Mr. Kahlenberg's approach to socioeconomic status-based simulations. Are those listed on Slide 35?

A. They are, yes.

Q. And can you give us an example of an unrealistic assumption that you believe Mr. Kahlenberg makes?

A. Well, I think that the most unrealistic assumption and the one that has very, very large effect is that Mr. Kahlenberg frequently fails to allow for the fact that the applicant pool would change if the admissions process changed. This has a very important effect on the outcomes of his simulations because it creates an unrealistic environment in which none of the newly eligible students who would be guaranteed admission or would have had their admissions probability go up by a great deal decide to apply. So that means we're never adding newly eligible students to the pool who might be less qualified, and also we're never changing

JA866

the racial and ethnic composition of the applicant pool because we're keeping it the same.

And that's -- this is terribly unrealistic. Certainly has not happened in other states like Texas and California where plans have been changed to race-neutral alternatives; the admissions pool does change.

But, more importantly, this assumption creates a kind of mechanical effect, that Mr. Kahlenberg's simulations tend to have very similar racial and ethnic diversity to the actual admitted pool, and they tend to have very similar test scores to the actual admitted applicant, because if you keep all of the students the same and you just change the purported admissions process, there's -- the admissions -- the pool of admits is only going to change. So we see that all the time in Mr. Kahlenberg's simulations that assume that the pool of applicants doesn't change.

Q. What other criticism do you have with respect to Mr. Kahlenberg's general approach to SES-based simulations?

A. Well, my second main criticism is just that the boosts for having -- having low SES, which he -- he defines in various different ways, depending on his simulation; but in each case, the boost to having low SES is extremely large, unrealistically large, so large that it would essentially remove the ability of UNC to practice holistic admissions at all. In some cases, the boost is so great that a student would, in effect, have hundreds of SAT points added to his or her composite ACT score, in the 400, 500 range -- it depends on the

JA867

simulation, but it could be as high as 800 points added to the student's SAT score.

Q. And what's your final criticism of Mr. Kahlenberg's simulations?

A. I'm not sure this is my final criticism, but another important criticism of Mr. Kahlenberg's SES simulations is that I do not believe that the question at hand is whether an SES plan can boost socioeconomic diversity. I believe that the question at hand is whether an SES-based plan can attain the current levels of racial and ethnic diversity in academic preparation.

I think there's no doubt in my mind that an SES-based plan that gives very large boosts to students who are low SES could indeed change the socioeconomic composition of UNC's class. And I am not the one who is at all adverse thinking about the importance of socioeconomic diversity, but that does not appear to be the question at hand.

Q. So to summarize on socioeconomic status-based plans, do you disagree with the general logic of such a simulation?

A. I believe that all of Mr. Kahlenberg's SES-based simulations are misleading and that they do not lead us to evidence on which we could reliably, you know, indicate to UNC that it could have an SES-based plan. I think they're just wrong in some of their assumptions and would potentially send UNC down a path that would -- where it would not get at all what Mr. Kahlenberg predicts.

JA868

Q. Turning now to another category of race-neutral alternatives that you tested, let's talk about place-based race-neutral alternatives.

And turning to Slide 36, I think a percentage plan is probably a little simpler than what we've just discussed, but as a general matter, what is a top X percent plan?

A. Well, the most famous top X percent plan in the United States is Texas' top 10 percent plan in which students who are ranked in the top 10 percent of their high school class are automatically admitted to the Texas flagship universities, Texas A&M or University of Texas at Austin. So it's a very clear plan. That's normally what people think of when they think of a top X percent plan. It defines a group of students, and they get automatic admission, assuming that they can show that they are in the top X percent.

The reason why I've kept using the word "X" is that we don't know what that percentage would be before we actually look at the data for a state because what might be possible in Texas with top 10 percent might not be possible in North Carolina because it just has a different population and the size of its state flagship university is different as well. So it really just depends on the number of students who are eligible and the number of seats that are available at the flagship university.

Q. So you ran a top X percent plan and used the top 7.95 percent for admitted students; is that right?

A. That's correct, yes.

JA869

Q. And that's shown on Slide 38?

A. It is.

That 7.95 percent was picked so that we would fill the normal number of admission places or slots at UNC. So the 7.95 percent is not arbitrary; it's just a number that comes out if we're trying to fill all those admission slots with top-ranked students in North Carolina high schools. And that's what I'm showing on this chart.

Q. So having admitted the top 7.9 percent of North Carolina public high school students, what happens to the average test score under this simulation?

A. So the test score of an average student who is admitted at UNC drops by 77 points, not exactly the same across different racial and ethnic groups. For instance, if we look under African American, African Americans' test scores dropped by 129 points and Hispanic students' test scores dropped by 99 points. You'll notice the changes for white and Asian students are smaller.

Q. Now, if we look at the bottom blue bars showing the results of racial diversity, walk us through what would happen under this 7.95 percent plan.

A. So under this 7.95 percentage plan, the prediction is that there would be sort of mixed results on racial and ethnic diversity. I think it's first worthwhile looking at the underrepresented minority students, and you'll see there that there are 67 more African Americans predicted to be admitted but fewer Hispanic students and fewer Native American students, so those

almost offset one another so that the total number of URM's is not actually changing very much.

If we add up all of those categories, you will see that there are more white students admitted and fewer Asian American students admitted; and while those don't completely offset one another, though, they do somewhat offset one another. So, again, not a big change in the total number of the combined group of white and Asian American students. So just a sort of mixed pattern of results overall.

Q. As a general matter, what is the necessary precondition for a percentage plan like this to be able to produce racial diversity?

A. The logic of a percentage plan like this is that students are segregated in their high schools. If every African American student attended an all-African American high school and every Hispanic student attended an all-Hispanic high school, and so on for each one of the other racial and ethnic groups, then when we admitted 7.95 percent of the students from each high school, what we would end up doing is representing the racial and ethnic diversity of the state of North Carolina. That's just -- it's a matter of math, basically. It's just the math behind it.

Now, the reason why that 7.95 percent plan does not end up giving us something that looks just like the racial and ethnic composition of students in North Carolina is that students are not attending all one-race, one-ethnicity high school in the state of North Carolina.

JA871

Q. Let's turn now to the percentage plan that you simulated with respect to enrolled students on Slide 39.

A. Ms. Flath, may I point out, with regard to the last point that we were making about high schools, that the more desegregated North Carolina's high schools become in the future, the worse that a plan like this would work in terms of achieving racial and ethnic diversity.

So these plans really do depend not only on having a high level of segregation currently, but also maintaining that high level of segregation into the future.

So I just wanted to make clear that that's an important point, in my opinion.

Q. Thank you.

A. So the --

Q. So let's look now -- 7.95 changes to 7.29; is that right?

A. That's correct because we're now looking at enrolled students. So when we look at enrolled students, we have to change the percentage a little bit to make the percentage of students who are automatically eligible under the plan fit into the number of seats that UNC has, but I don't think that difference between 7.59 and 7.29 is terribly important.

Q. And what happens to the average test scores for enrolled students under a percentage plan?

A. For enrolled students, the average student has test scores that are 76 points lower. Again, I think it's really worthwhile looking at the differences for some different racial groups. For instance, African Americans' test scores fall by 122 SAT points and Hispanics fall by 96 SAT points. Both whites and Asians have smaller decreases in their test scores of 63 points for whites to 39 points for Asian Americans.

Q. And what happens to racial diversity under this simulation?

A. Under this simulation, much as with the admitted students at whom we were looking on the previous slide, we have a sort of mixed bag of results. There are 55 more African Americans, but that's somewhat offset by a fall in the number of Hispanics and Native Americans. They don't completely offset one another, but there isn't a very big change in URM's overall. And then whites and Asians also largely offset one another so that there is hardly any change in the number of whites and Asians in the class if you look at them as a group, although there's something of a little trade between whites and Asians there. But, overall, race and ethnic diversity really doesn't change much.

Q. Let's talk specifically now about Mr. Kahlenberg's percentage plans.

And on Slide 40, you refer to percentage in quotes. Why is that?

A. Well, because Mr. Kahlenberg's main percentage plan is one that is not based on class rank, for instance, like the Texas plan or other plans in the United States or the ones that I was considering. Instead, what Mr.

JA873

Kahlenberg is assuming is that UNC estimates Professor Arcidiacono's Model 4 and then applies that model to the students who apply to UNC, only the students who apply to UNC. There are never ever any other students considered in this top X percent plan.

Those students are then ranked according to Professor Arcidiacono's Model 4 prediction of their probability of being admitted to UNC. So just think of it as largely an academic index, mostly just test scores and grades.

And then he says -- Mr. Kahlenberg says, Let's take the top X percent of students based on this model-based prediction. I think it's just as easy to think of it as maybe being just test scores and grades. He admits them based in that order for each high school. So for each high school, it might be 4.5 percent -- the top 4.5 percent of that high school, but based on that index that only UNC can compute. So this is not based on something that a high school itself would actually know or that a student himself or herself would actually know because it has to be computed by UNC essentially.

Q. Are you aware of any university that has implemented a top X percent plan that is not based on high school class rank?

A. No. And the type of plan that Mr. Kahlenberg is assuming could be implemented is problematic in the following way: If the student does not actually apply to UNC, then the UNC index cannot be computed. So all the students in the state of North Carolina -- or at least all those who thought they had some plausible

possibility of being admitted to UNC would need to apply first, have UNC make this calculation first, then UNC would presumably have to report it to the high school and tell the high school, These students in your high school are automatically eligible for admission at UNC and these other students are not.

So that's one of the reasons why I do not think this is a realistic plan to implement, because it does require the application of massive numbers of students to UNC and then UNC actually doing this modeling before getting back to the students and telling them whether they're eligible or not or for admission.

Q. When you say that Mr. Kahlenberg fails to properly account for capacity constraints, what do you mean?

A. I mean that in conducting this model, Mr. Kahlenberg did not take account of the fact that UNC cannot admit -- it has a certain limited capacity to admit students and to enroll students. It does not have an expendable or contractible number of seats, and that sort of reasoning or that sort of logic was not incorporated in his percent plans so that they have a kind of unrealistic way of coming up with numbers that are based on -- that a class that could be far too large or too small.

Q. And, finally, when you say Mr. Kahlenberg overweights test score and GPA when completing the class, what do you mean?

A. Well, Mr. Kahlenberg has some of the same -- the same issue arises in Mr. Kahlenberg's simulation as the rows in some of my simulations. In other words, we admit some students because they qualify under the

disadvantaged stage of the process. In his case, they're admitted through this top 4.5 percent, say, based on the UNC index; but then that's not enough students to fill out the UNC class, so he needs to complete the class by some means. And instead of trying to do that in a realistic way, the way I tried to do it using students who were admitted to UNC because I know that they are the sort of students who UNC would like to have in its class -- instead, he just ranked students according to their grades and test scores, equally weighted grades and test scores, and just numbers them in order from the top student with top grades and test scores in North Carolina just going on down, and then he just completes the class like that.

Now, the problem with doing that is that it assumes that every single person in North Carolina with top grades and test scores would apply to UNC and that they would always be admitted to UNC, and we know that neither of those things is true.

Q. Let's turn now to the other form of a place-based race-neutral approach, a geography-based plan.

To your knowledge, has any university implemented a strictly geography-based admissions plan?

A. No.

Q. So this is entirely theoretical?

A. This is entirely theoretical, and it's not just theoretical, but it's actually quite difficult to think about how you would implement such a geography-based plan. I did want to consider geography-based plans carefully, but we had to spend

a great deal of time thinking about how could you actually implement such a plan because many of the sort of vague proposals that are out there in the ether are not actually at all realistic or implemental. So we tried really hard to come up with the best -- the best implementation we possibly could given the suggestions that have been made.

Q. And so if a percentage plan, a top X percent plan, uses a high school as its geography measure, what do these broader geography-based plans use?

A. In some ways the idea of the high school class rank-based plans are very helpful for thinking about these geography-based plans because they try in some ways to mimic this high school idea: Instead of using a high school and ranking students, we're going to take a small level of geography and rank students. Sometimes people suggest that ZIP codes are used or those ZIP-plus-four codes are used, but those turn out to be impossible to use. We looked into that. There are just too many ZIP codes basically.

But a census tract could be used. A census tract is a well-defined unit of geography. It corresponds to a large neighborhood in the United States, and the Census designs tracts very deliberately, so that they, in fact, do have some amount of neighborhood integrity. So it is a pretty good geographic unit to use.

Once we have a census tract, then we still need to order students from top rank on down and then admit students in that same order.

Now, the difficulty -- if I might go on?

Q. Please do.

A. The difficulty is, of course, that not all students in a census track attend the same high school, so they don't actually have -- they're not all ranked in the same class with one another. Some of them might attend one high school, and the others might attend another high school. So now we have to rank students on something.

So what I ranked them on was a combination of test scores and grades equally weighted, and this tends to favor the geography-based plans' ability to attain the actuals in terms of academic preparation. As you can see, we're really just choosing students based on their grades and test scores, so the people who are admitted under the geography-based plan are going to look like they have high levels of academic preparedness.

Q. And turning to Slide 42, I think you basically just walked us through that process. Is that what you did to test this Census Track plan?

A. Yes. Here is the idea. I also need to give some priority -- the idea of a geography-based plan -- I should take us a step back just so that we all understand what the logic of it is.

The idea of a census track plan or any geography-based plan is that coming from certain neighborhoods in the state of North Carolina puts a student at a disadvantage, and that the way we understand how disadvantaged this student is is by looking at the historical admissions rate to UNC among well-qualified applicants.

JA878

So, for instance, let's say we found a neighborhood and even though it had numerous well-qualified potential applicants in the past, students were not applying to UNC, or they were not getting admitted to UNC. So that's its historical admissions.

And the way that a geography-based plan works is that you take the census tracks, or neighborhoods, that are most disadvantaged based on this measure, and you give them first priority. So we're first going to take students from those most disadvantaged census tracks, and then we're going to move through the other census tracks from the most disadvantaged to the most advantaged. We keep taking students from the top of each one of those census tracks until we fill up all of the seats at UNC.

Q. And having done this, what were the results of your simulation using census tracks?

A. So it's a very significant decrease in the racial diversity of UNC's admitted group of students and enrolled group of students.

Q. So the other geographic simulation that you ran replaced the census track with a race-predicting index; is that correct?

A. Yes. So I tried to -- to be clear, the first geographic plan that I tested was really suggested by the complaint and some articles that have been referenced in the complaint. So I took what was in those articles and tried to implement it. But just because it was referenced in the complaint doesn't mean it could be the most successful geographic-based race-neutral alternative.

So then in my Simulation No. 2, I said to myself, Well, let's forget about exactly what was referenced in the complaint. Maybe that wasn't the most successful geographic plan. After all, it was purely theoretical. I'm going to try to come up with the most successful geography-based plan that I possibly can, and by that I mean, I am again going to create a race-predicting index to maximize the number of the nonrace variables for race and ethnicity, but now I'm also going to use geography variables.

So I added in a bunch of geography variables to that earlier race-predicting index to make it not just sensitive to socioeconomic factors -- they are still there; so socioeconomic factors are being considered -- but, in addition, there are a lot of geography factors that are being considered now.

Q. And as a result of your simulation using this race-predicting index, including geography variables, what did you conclude?

A. Again, I concluded that UNC would see significant decrease in racial diversity in both its admitted class and its enrolled class.

Q. And you talked earlier about the logic of a percentage plan and that it will only produce racial diversity if the underlying community remains racially segregated.

How does that principle apply to these broader geography-based race-control alternatives?

A. Yes, there is a definite analogous logic. Again, it's all based on the logic of segregation. If every black

student lived in an all-black census track and every white student lived in an all-white census track, and so on for Hispanics and Asians, and Native Americans and so on, then when we did a geography-based plan, such as the first one I examined, the first simulation, what we would find was that UNC's class would have the same racial and ethnic composition as North Carolina's student population, and that's because of that segregation. That's just a matter -- it's just a matter of the math. It would just pop out.

So if North Carolina has desegregated census tracks, that's the reason why these geographic plans do not -- do not allow UNC to mimic the racial composition of North Carolina's students. Also, for this same reason, it means that the more North Carolina becomes desegregated over time, the more such a plan would automatically break down in terms of its ability to attain racial and ethnic diversity at UNC.

Q. Thank you.

So, Professor Hoxby, just to summarize where we are, we've now touched upon each of the categories of race-neutral alternative simulations that you ran affirmatively.

Did Mr. Kahlenberg suggest additional concepts or strategies that you also evaluated empirically?

A. Yes. Each additional strategy that he suggested I attempted to evaluate as well as I possibly could.

Q. And is that reflected on Slide 45?

A. Yes. So perhaps I could go over the first one briefly.

Q. That would be great.

A. The first one -- the first one that Mr. Kahlenberg suggested was that UNC could make partnerships with disadvantaged high schools. I believe that UNC's staff may have already discussed a relationship like that.

But when I tried to do a prediction, I wanted to create a specific type of simulation to try to see what could be achieved -- what could be achieved under such a plan. So I did 16 different simulations focusing on disadvantaged high schools that had been judged to be disadvantaged based on my previous SES indicators, though I was deliberately saying, Let's find out -- Let's find which are the low SES on average high schools in North Carolina; let's assume that UNC does partnerships with them; let's assume that UNC is available to draw an unusually large number of students from those high schools and bring in those students to UNC.

And what ends up happening under scenarios like that is that UNC has an admitted class and an enrolled class with substantially lower test scores.

Q. And what was the other strategy suggested by Mr. Kahlenberg that you tested on an empirical basis?

A. The other the simulation that I tested was the idea that community college transfers would account for a large share of the UNC class. And here I was being very generous with this race-neutral alternative in the sense that I assumed that of all of the students who expressed an intention to go to community college in the NCERDC data instead of going to a four-year college or university, that UNC would be able to find

JA882

all of the most well-qualified community college students in this state and get all of them to transfer to UNC, so starting with the most well-qualified community college students and then just, you know, working its way down to fill up some of its seats with community college transfer students.

So this was very generous to the community college plan, and, nevertheless, it still resulted in substantially lower test scores for the UNC class.

Q. And did you also look at potential transfers from North Carolina State University?

A. Yes, I did, because I considered that to be the -- the other university in the state of North Carolina where there might be the most students who would be qualified to go to UNC, but who, for whatever reason, would not have applied or been admitted to UNC.

So this would be -- it's a less aggressive plan in some ways than the community college transfer plan because we're talking about another, you know, wonderful state public university; but even so, if, instead, UNC went and tried to pick up all of the best qualified students from North Carolina State University and bring them to UNC, it would still result in substantially lower test scores.

Q. So, Professor Hoxby, after this exhaustive approach to simulations, did you find any that reached the actual levels of underrepresented minorities and average test scores achieved by UNC through its race-conscious holistic admissions process?

A. I tested 109 simulations, and I was never able to achieve the actuals. In other words, both (indiscernible).

(Court reporter requests clarification.)

Q. Professor Hoxby, if you could repeat that just after “the actuals.”

A. In my 109 simulations, I was never able to achieve UNC’s actual levels of racial and ethnic ethnicity and its level of academic preparation as measured by test scores, and this was despite my making very generous assumptions that were favorable to the race-neutral alternatives, so that I thought I was really estimating what I would call the ceiling of what was possible -- realistically possible to reach a race-neutral alternative.

Q. Thank you.

All right. My final topic to cover with you: Your research is cited in the complaint, is that right, some of your prior research?

A. That’s correct, yes.

Q. And so let’s -- actually, we’ll pull up complaint paragraph 126.

And, Professor Hoxby, with the limitations of technology -- we would normally show this to you on the screen. I’ll read it just for ease.

Paragraph 126 states: “One study found that between 25,000 and 35,000 socioeconomically disadvantaged high school seniors obtain an SAT or

ACT in the 90th percentile or higher and had a GPA of A minus or better. Nearly 6 percent of this group is African American and nearly 8 percent is Hispanic. A great many of these socioeconomically disadvantaged students 'undermatch' by applying to and enrolling at colleges and universities less selective than the ones to which they could

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HOXBY – CROSS

[pp. 1036:19-1037:11]

Q. I'd like to first discuss race-neutral alternatives.

You are not offering any opinion on whether any particular race-neutral alternative is workable for UNC, correct?

A. I was asked to opine on the question of whether any workable race-neutral alternative could attain UNC's current actuals in terms of ethnic diversity and academic preparedness.

Q. Understood.

And I think we had a discussion similar to this at your deposition. And you are not offering an opinion on whether UNC actually could or should adopt a plan that might be slightly lower or higher than its actuals, correct?

A. What I've tried to opine on and talk about is whether I am aware or can find any workable race-neutral plan that attains UNC's current actuals in

terms of racial and ethnic diversity and academic preparation.

Q. So it's about whether they meet the actuals? That's what your opinion is about, correct?

A. Correct. That's what I was asked to find evidence on.

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[pp. 1043-1045]

A. That is my opinion based on the evidence, yes.

Q. And you take issue with the size of the effect of race that Professor Arcidiacono finds at UNC, correct?

A. I take issue with whether the evidence that he provided gives evidence of the true effect of race and ethnicity in the admissions process.

Q. It's your position that race explains only 1.2 percent of admissions decisions, correct?

A. Well, it depends on the model, but in my preferred model, it explains 1.2 percent of the admissions decision; but in some other models, such as Professor Arcidiacono's preferred model, it explains somewhat more, but always less than 10 percent and usually ranges between 1 percent and about 6 percent, depending on the model.

Q. So in your -- okay. At the same time, you conclude that there is no evidence that a race-blind alternative would allow UNC to maintain its current racial diversity and also its current academic standards, correct?

JA886

A. I did my absolute best to consider every race-neutral alternative that was suggested or proposed to me, either in the complaint or elsewhere, and none of the race-neutral alternatives I tested attained the current levels of academic preparedness and racial and ethnic diversity.

Q. Your two conclusions are in tension with one another, aren't they, Dr. Hoxby? On the one hand, you conclude that race has a very small effect in admissions at UNC; and on the other hand, you say it's impossible for a race-neutral alternative to fulfill the job that race is doing. How do those two fit together?

A. Those two conclusions are not at all in tension with one another. And, in fact, as a logical matter, they -- they actually make a lot of sense together, and I would be glad to explain that in a little bit more detail, if you like, just to make sure you understand what I mean.

Q. If race is having only a small effect on admission, it should not be that hard to find a substitute, should it?

A. The first part of your sentence and the second part of your sentence are -- they don't actually go together. So the first part of your sentence is is race and ethnicity only playing a small role in admission? Yes, it is only playing a small role in admission. It's tipping some students who are sort of just on the bubble, as I described previously, from being rejected by the admissions office to being accepted by the admissions office. That could mean it's playing a small role in admissions that's not playing a role for very many students and even then just tipping some back and forth who are close -- who are on the bubble anyway.

JA887

The second part of your statement is about whether it is easy to replace race and ethnicity in the admissions process. And the answer to that question is going to be based on whether there are good proxies for race and ethnicity that can be used instead of race and ethnicity to make even those on-the-bubble types of decisions.

And some of the evidence that we've been examining today has shown that there is no good proxy for race and ethnicity in North Carolina because socioeconomic variables and other variables that we examined, such as geography, are not terribly good at substituting for race and ethnicity. So when we put the blinders on, even if it was only -- it was only affecting a small number of decisions, we now can't get it at all.

Q. Dr. Hoxby, you would agree, wouldn't you, if race was having zero effect on admissions decisions at UNC, then it would be easy to find an alternative for race, correct?

A. I don't see how that question fits together again. So I believe the question was --

Q. I'm sorry. Go ahead.

A. So I believe that your question was, the first part, if race was having zero effect on admissions -- right, that was the first part of the question or the condition? And then the second part of the question, it would be easy to find a race-neutral alternative? Wouldn't the admission process already be race-neutral at that point?

JA888

Q. It would be. And if you took race out of the equation, it would make no difference, right?

A. Well, I think you just said it wasn't in the equation.

* * *

[p. 1046:1-24]

Q. So the point is this, Dr. Hoxby: The smaller the effect of race, the easier it is to replace in the process, correct?

A. No, that's not correct.

Q. So if the -- if race was having --

A. The --

Q. -- a .1 percent effect on admissions decisions, it might still be hard to replace?

A. You would need to have something that was a proxy that was a good substitute for race and that .1 of the admissions decisions in which it made a difference; and if you didn't have any ability to proxy for it, that .1 of the admissions decisions would surely change. And we don't know what other admissions decisions would also potentially change because it -- you can't just say it's this one -- it's this one person or something like that. It isn't that simple. Race and ethnicity can play a role across the whole pool of applicants, and we don't get to identify the individuals necessarily that it would have tipped them back and forth between admit/reject.

Q. So to be clear, your testimony is if race were affecting only .1 percent of admissions decisions at

UNC, it might still be hard to find a race-neutral alternative, correct? That's your testimony?

A. That attained the same actuals in terms of racial and ethnic diversity and academic preparation, yes.

* * *

[p. 1054]

class.

Q. Yes. Sorry. Thank you for the clarification.

He's usually talking about the admitted class is your point, correct?

A. Right. And I don't believe Mr. Kahlenberg ever does any simulations looking at the enrolled class. It's always just the admitted.

Q. Just to clarify, my question is about whether or not he reports GPA as one of his results when comparing his simulations to UNC's actuals.

And he does, correct?

A. Yes, he does.

Q. Now, when you were speaking with Ms. Flath about how you do not report GPA, I believe your explanation was that different high schools have different grading standards; is that correct?

A. Yes. Yes, that was my explanation.

Q. And that's certainly true with the data that UNC has provided to the parties in this case, correct?

A. Well, UNC's Carolina Connect data, the admissions data, is perhaps not the best way to look at that question. The NCERDC data, which has data for every public high school student in North Carolina, would be our best way to try to understand whether different high schools have different grading systems because it's just a much more comprehensive data set.

Q. Well, you're aware, though, that UNC's applicant data

* * *

[pp. 1063:13-1064:10]

Your models of SES-based simulations were testing for racial diversity but not for SES diversity, correct?

A. Yes, I was asked to test -- see whether UNC could choose -- could attain -- sorry -- its racial and ethnic diversity and its current level of academic preparedness.

Q. So your assignment here was not to consider the benefits of diversity beyond racial diversity, correct?

A. That was not in my assignment, no.

Q. You are aware that UNC officials have testified here that SES diversity is very important to the university, correct?

A. I'm not aware of that specific testimony, but I am aware of the fact that UNC has at various times made statements that would suggest that socioeconomic diversity was desirable in the class.

JA891

Q. UNC actually claims to prioritize SES diversity as a, quote, critical component of an institution's broader obligation to the state of North Carolina, correct?

A. I assume that the quotation that you've given me is correct, yes, Mr. McCarthy.

Q. But, again, you never analyzed in your race-neutral alternatives how they would advance socioeconomic diversity, correct?

A. That is not in my assignment.

* * *

[pp. 1071-1073]

of being admitted would decide not to apply, but there would probably be some reduction in the probability of applying by students who were disfavored by the new alternative admissions plan.

Q. In your view, then, the URM applicants that would be less likely to apply under a race-neutral system would be the weaker ones relative to the overall pool of URM applicants, correct?

A. No, no, no, it's not that simple. I'll give you an example, and then I'll explain the logic.

The example might be the state of Texas or, for that matter, maybe University of California at Berkeley. And so when Texas or California moved to top X percent plans or race-neutral plans, the students -- some students realized that they would have a lower chance of admission at one of those flagship universities.

For instance, let's say that I were a high-scoring student and I had gone to a very competitive high school. So even though I have gotten really good grades; I have good extracurriculars; I have high test scores, I was at the 12th percentile in my high school in the state of Texas. So I'm a person who is not likely to get into the University of Texas or Texas A&M. That sort of student is less likely to apply.

It's worth noting, though, that that student is not particularly underqualified. In fact, part of the reason why that student might not apply is that that student has good outside opportunities; in other words, good opportunities outside of University of Texas and Texas A&M.

So, in fact, when you change to a race-neutral alternative and you're predicting who is going to apply to the school, generally speaking, the people who are going to have their admissions chances reduced will be less likely to apply, and the people who have their admissions chances increased will be more likely to apply; but it is not the case that the people who have their admissions chances reduced are particularly low achievers or have low academic grades. In fact, it often goes the opposite direction.

Q. I want to make sure I understand. Actually, strike that.

Did you do any modeling to predict how the applicant pool might change under these various race-neutral alternatives?

A. What I did was try to make a very generous assumption about who would apply under the

race-neutral alternatives. So, yes, we did look at the data to try to understand what percentage of newly eligible North Carolina -- in other words, well-qualified North Carolina students would apply, but we -- there's no way, really, to model this perfectly.

So what we did was we looked at data from other states that changed to race-neutral plans, and we looked at data from the state of North Carolina to try to get a generous answer to this question, knowing that until you actually do it and switch to a race-neutral alternative, you're probably not going to know exactly how the applicant pool would change. So I tried to just be generous.

Q. Thank you. My question --

A. (Indiscernible.)

(Court reporter requests clarification.)

Q. I didn't hear you, and I'm not sure the court reporter did.

What was the last part?

A. The more generous I am in assuming that the applicant pool would increase, the more it helped the race-neutral alternatives look good and attain the actuals. So I tried to be generous with regard to those assumptions.

Q. Thank you.

That wasn't really my question, though. My question was more specific to modeling.

You didn't actually do any statistical modeling to predict how the applicant pool would change, did you?

A. I wouldn't call it modeling. I would call it looking at data to try to understand what was likely to be the reasonable percentage of the well-qualified applicant pool.

Q. Thank you.

Under the -- strike that.

By your reasoning, wouldn't disadvantaged students be more likely to apply in a system -- a race-neutral system involving SES status?

A. Yes. If low SES status meant that a student was

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[pp. 1096-1097]

think you were saying that it would go up in terms of the SAT score on the y-axis, that green dot, but you don't know how much because you hadn't actually looked into it?

A. It would change in terms of racial and ethnic diversity. I don't know what that would look like.

Q. So --

A. I do know --

Q. Go ahead. Sorry.

So the SAT score would go up, and it would change in terms of racial or ethnic diversity and table -- or Exhibit 13, Table 1, shows us that. That's that model

that you did of purely test scores, and we can see what happens there. Test scores go up dramatically and URM representation goes down dramatically.

So if we're going to use something sort of like that as our benchmark for the disadvantaged stage when evaluating a hypothetical plan of 2,000 seats and 50 percent SES index, then that green dot, if we go back to Slide 33, is going to move up quite a bit, and it's going to move to the left quite a bit, correct?

A. I don't know exactly what it would do with race and ethnicity because that's not obvious.

But what I -- I think that -- I think that what we're missing here a little bit is a reminder of the fact that, as I discussed this morning with Ms. Flath, when I consider the race-neutral alternatives, I make assumptions that are deliberately quite favorable for the race-neutral alternatives. And one of those assumptions, and a key one I discussed this morning, is that the student in the disadvantaged stage are admitted based on their test scores. This favors the race-neutral alternative relative to the actuals because it naturally means that I'm admitting more students who are high test scoring. And we discussed that this morning.

So, yes, if you want to exaggerate that kind of assumption that I made and exaggerate it and exaggerate it and exaggerate it and exaggerate it, then, of course you're going to get a kind of high-scoring class that looks very different, but that's merely taking an assumption that was meant to sort of test a reasonable ceiling and then blowing it up to an extent that is -- it's

a little -- it's a little beyond what anyone would consider to be reasonable, I guess, and also totally changes the nature of what we should be looking at as a comparison.

Q. So let's go back to Exhibit 13, Table 1. You said you weren't sure what would happen in terms of racial diversity, but you did tell us before that if we moved towards that sort of a plan, you knew the SAT scores would go up quite a bit. And I think the answers are actually somewhat clear or point in a sharp direction if we look at these panels here on 13-1.

In the actuals, the percent of admitted students who are URM is 8.8 percent African American and 5.9 percent Hispanic.

* * *

[p. 1106]

actually figure out the numbers there.

I think it's also important to understand that UNC cannot -- remember, my assumptions were very positive towards the race-neutral alternatives, so I assumed that a lot of students apply under this race-neutral alternative and that they not only get in, but that a lot of them matriculate.

So in this world in which we're getting half of the class purely based on their test scores, that we really have to think hard about would all of the high school students in the state of North Carolina be applying? Would they be equally likely to apply? Would they want to matriculate?

I think you have to look at the data to know the answers to those questions, and I tried to look at realistic models, whereas I would describe that as so unrealistic that I'm not sure I could opine very much on a world like that because it would be a world in which there was a lot of leaps of faith and some of them were really big leaps.

Q. So you just mentioned, you know, one of the reasons why we don't know is because of things like not knowing what would happen with matriculants, but you actually did this same model as Exhibit 9, Figure 7, that underlies this scatter plot. And that's Exhibit 9, Figure 8, in your opening report, correct?

A. Absolutely, for matriculants.

Q. Right.

A. Should I pull that up?

* * *

[pp. 1112-1113]

data, the students who come up in the applicant pool aren't necessarily replicating the patterns of the students who showed up previously. The modeling just isn't that simple. I can give you some examples, if that would be helpful to you, so that you can help -- so that I can help you understand why it is that I think that we would really need to do the data analysis and not just -- not just look at the patterns.

Q. If it's not theoretically impossible and the trend lines were pointing in this direction, why didn't you consider this option before and do the data analysis?

A. Because I wanted to have some amount of realism. I would certainly be not disinclined to do an analysis with 2,000 students. I think, though, that the reason that it's not a terrific idea to do an analysis with 2,000 students who are admitted strictly based on test scores to UNC is that, as I mentioned earlier, the assumptions that were generous toward race-neutral alternatives start to become very -- I'm not quite sure what the right word is here, but leaps of faith become very big leaps.

Like, for instance, assuming that all the top-scoring students in North Carolina apply to UNC is a very generous assumption, and the more we rely on that very generous assumption, the more it seems like a big leap of faith. We keep believing that that would be true. It's kind of like saying that every top-scoring student in North Carolina -- those who could probably go to Duke, those who could go to Harvard, those who could go to Stanford and University of Chicago -- they're just going to keep applying to UNC under the race-neutral alternative. And that may -- that's a very big leap of faith, and we're starting to rely on that leap of faith too much.

So I tried to make assumptions that, as I said, were favorable while still staying within the realm of some amount -- so I can try to be favorable, but that doesn't mean I should try to be ridiculously pie in the sky. I think I still owe it to people to try to choose assumptions that are favorable -- are not so favorable that we're starting to make things up. I don't think that's my role as an expert. I think I need to be responsible to the data and to the truth.

JA899

MR. MCCARTHY: We can break there, Your Honor.

THE COURT: I think that's a good stopping point.

MR. MCCARTHY: And I apologize again for misunderstanding your direction.

THE COURT: How much longer do you believe that your examination of Dr. Hoxby will be tomorrow?

MR. MCCARTHY: Your Honor, I think it will probably be -- I think it will probably be around 90 minutes --

THE COURT: All right.

MR. MCCARTHY: -- something like that. We got through -- I basically got through a significant portion of it,

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JA900

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA**

Case No. 1:14CV954

[November 18, 2020]

STUDENTS FOR FAIR ADMISSIONS, INC.,)
)
Plaintiff,)
)
vs.)
)
UNIVERSITY OF NORTH CAROLINA, et al.,)
)
Defendants.)

**Volume 7
Pages 1116-1307**

**EXPEDITED TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE LORETTA C. BIGGS
UNITED STATES DISTRICT JUDGE**

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JA901

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* * *

HOXBY – CROSS

[pp. 1142-1144]

it would be translated that way into a binary variable, but since I can't see the example, it's very difficult for me to judge.

Q. You reported that the pseudo R-squared of your preferred Model 9 is .428, correct?

A. Correct, yes.

Q. I'd like to look at Professor Arcidiacono's reply report now. Why don't you take a moment to find Professor Arcidiacono's reply report.

A. I have that in front of me. Thank you.

Q. Great. Please turn it to page 25. And when you get there, you'll see Table 2.3 at the top of that page. Do you see it?

A. I do.

Q. Great. Professor Arcidiacono tested the accuracy of your preferred Model 9; and in that table, he reports that your preferred Model 9 accurately predicted 85.1 percent of UNC's admissions decisions, correct?

A. Well, Professor Arcidiacono's method of computing accuracy here is a little unusual. I can describe it to you. So normally with a binary model what happens is that -- as I say, a binary modeling does not actually produce admit/reject admissions. What it produces is a probability of admissions or rejection.

So usually when we compile count statistics, which it sounds like you might have been describing to me before in that example, the count statistics are based on a 50 percent threshold. So we would say if I have a greater than 50 percent probability of being admitted, I'm going to (indiscernible).

(Court reporter requests clarification.)

Q. I'm sorry, Dr. Hoxby. You said -- I'm sorry to interrupt. I'm trying to help the court reporter.

JA903

You said if there's a greater than 50 percent probability of admission?

A. Right. Let's say the model predicts that a person has a greater than 50 percent probability of being admitted, then the researcher might say, "I assign that person to having been an admit." Okay. The person wasn't necessarily actually an admit, but that would be what the modeling suggested. If a person is less than 50 percent predicted probability of being admitted, then the researcher might say, "I assign that person as a reject according to the model." That is a fairly standard way of computing count statistics --

Q. Thank you.

A. -- which are -- but that's not what Professor Arcidiacono is doing.

Q. My question was a yes-or-no question. Does Professor Arcidiacono report there that your preferred Model 9 accurately predicted 85.1 percent of UNC's admissions decisions?

A. Professor Arcidiacono has a novel and nonstandard definition of accuracy that is not based on the sort of counts that I've just described. I can tell you exactly how he computes it, but it is novel and ad hoc.

Q. Let's turn to your Slide 17. Do you have it in front of you?

A. I've got it in front of me. Thank you.

Q. Great. Thank you. In this slide, you take the position that the median marginal effect is a better

JA904

metric for evaluating the magnitude of UNC's racial preferences than the average marginal effect, correct?

A. Yes, because the average marginal effect can give much undue weight to outliers, whereas the median would not give such undue weight to outliers.

Q. The admit rate for all applicants to UNC is about 25 percent, correct?

A. Yes, I believe that's about right. It differs somewhat from year to year.

Q. It's less than 50 percent both for in-state applicants and out-of-state applicants, correct?

A. Yes, that's my understanding.

Q. For out-of-state applicants, it's less than 15 percent, correct?

A. Yes, for out-of-state applicants, the admit rate is lower.

Q. And for out-of-state African American applicants, the admit rate is around 16 or 17 percent, correct?

* * *

[p. 1151]

academic index deciles are the ones at the top because, as you put it, most of the admits at UNC come from the very top deciles, correct?

A. For instance, for in-state students, 75 percent of the admits come from the top deciles, Deciles 7 through 10;

JA905

and for the out-of-state applicants, 80 percent of the admits come from the top three deciles: 8, 9, and 10.

Q. And you claim that Professor Arcidiacono improperly focuses on the deciles, quote, on the bubble, correct?

A. Yes, I believe that is an improper focus because it's focusing on part of the admissions pool that is on the bubble between admissions and rejection where even small differences in a student's qualification or characteristics can make a difference; and while that is part of the admissions decision, to focus on it unduly is to overemphasize the importance of those marginal decisions and the marginal characteristics that might make a difference. If one was using race and ethnicity, say, minimally overall in the admissions process, then you are most likely to find that it would affect a student's admission decision for a student who was right on the bubble. It's not wrong --

Q. And that's the -- I'm sorry. Go ahead.

A. It's not wrong to look at those students, but one should not describe them as representative of the admissions process because they actually play a fairly minor role in the

* * *

[pp. 1169-1171]

the model makes the modeling much more accurate for African American in-state admits, correct?

JA906

A. According to Professor Arcidiacono's novel and nonstandard measure of accuracy, yes, it does change the number from 86.2 to 65.6.

Q. And these numbers are the same ones underlying the analysis that you did that we just showed. And if you look down to out of state now -- you can see the header there -- the accuracy for out-of-state African American admits was 74.6 percent when the model was estimated with racial preferences, correct?

A. Yes, with Professor Arcidiacono's novel model of accuracy, which I do not accept. That is highly nonstandard.

Q. When race is taken out of the model, the accuracy for out-of-state African American admits falls to 17.9 percent, correct?

A. With the same proviso that I just gave you in answer to your last question.

Q. This drop -- this drop in accuracy illustrates that the model has a very difficult time predicting out-of-state African American admits after racial preferences are taken out of the model, correct?

A. Well, the way that Professor -- I really have to go back to what Professor Arcidiacono -- there isn't an easy answer to this question because this measure of accuracy is so novel. What Professor Arcidiacono is doing is something that is fairly ad hoc, and so I don't know that I would conclude that.

The reason is I discussed earlier with you how in a logit or probit or choice model, we might decide to

JA907

divide the students, those with an above 50 percent probability of being admitted and those with a 50 percent probability of being admitted, and then compare them to actual admits and rejects. That would be what we would call a count statistic. We can also have an adjusted statistic, but that's good enough, I think, as an explanation.

What Professor Arcidiacono does to get his accuracy measures is something quite odd. He estimates these predicted probabilities of admission, and then he ranks all of the students from the highest predicted probability to the lowest predicted probability, and he admits a class about equal to the size of UNC. And since that is a very nonstandard thing to do, it's difficult for me to describe that as -- in the way that you described it. You said this shows that the model is inaccurate for African Americans once we take out racial preferences.

I would say I would have to think about the way in which this novel way of assessing accuracy plays out differently for African Americans, Hispanics, whites, Asians. It's so nonstandard that it's very difficult for me to say that it is actually a notion of accuracy in the way that your question asked. It's just -- it's an exercise for sure, but I -- I just don't feel comfortable using this measure of accuracy because of this peculiar way in which the predicted probabilities are used, which could come out very differently for students of different races.

Q. Let's turn to your Slide 16.

A. I have it in front of me. Thank you.

JA908

Q. Great. On the right-hand side is your critique of what you call Professor Arcidiacono's "share due to" analysis, correct?

A. Yes, that's part of the critique.

Q. That table comes from Exhibit 1 of your reply report, correct?

A. Yes.

Q. Let's go to your reply report, Exhibit 1.

A. Can I have a page number?

Q. It's in the appendix at page 52 of the PDF, so it's, I guess, the 52nd page of the document. I guess it's the first exhibit in your reply report.

A. Yes, I have the page in front of me. Thank you.

Q. Thank you.

The first panel is looking at in-state applicants, correct?

A. That's correct.

Q. And the first column shows your "share due to" calculations for African American applicants, correct?

A. Yes, uh-huh.

Q. And as you explain in the footnotes at the bottom of this

* * *

[pp. 1176-1179]

A. That is right in following his methodology, regardless of the fact that I do not agree with it.

Q. The second-to-last number in this first panel, that 41.7, gives the share due to race according to Professor Arcidiacono, correct?

A. Yes, according to Professor Arcidiacono's methodology, with which I do not agree.

Q. Okay. And the first table on this -- in this first column here, that SAT number, that's higher than the number for removing race, correct?

A. It is.

Q. And that means that in Professor Arcidiacono's model, the average marginal effect of changing all African American SAT scores to 400 is larger than the effect of turning off the effects of racial preferences, correct?

A. Given this unusual method that he's using to calculate shares, comparing across different factors is a very difficult thing to do because the marginal effects are computed holding all other things constant. You're now saying I need to compare them where you're moving only one, and you're not moving any of -- you're not taking account of the cross-correlation with any of the others.

That's why we don't do things this way. It ends up with improper statistics, like saying that these shares could add up to 432 percent of the total explanation. That's why we use things like a Shapley decomposition.

Q. Let's look at the GPA one again, turning GPA to 1.0. The "share due to" number there is 32.8 percent, correct?

A. Yes, if we accept this novel standard.

Q. I understand your qualifications, Dr. Hoxby.

That number is lower than the number for removing race/ethnicity, which is 41.7 percent, correct?

A. Yes. But as I explained to you in one of my last answers, that is not probative.

Q. Let's look at the next entry for percentile preferences. The percent there is 30.8 percent, correct?

A. Yes.

Q. And that's lower, again, than the average marginal effect of turning the race to zero, correct?

A. No, because you are misinterpreting average marginal effect, and I -- if you want to do it -- and, again, that's fine, but this is why you must do a Shapley decomposition. You cannot come up with shares like this.

MR. MCCARTHY: Your Honor, Dr. Hoxby has stated this over and over again.

THE COURT: Well, she is responding to your question. She is not required to respond to your question the way you want her to respond to your question. You ask the question. She's doing the best she can to respond to the question. So if she needs to repeat a statement in order to do so, I'm going to allow her to do so.

MR. MCCARTHY: I understand, Your Honor. Okay.

Q. (By Mr. McCarthy) Let's look at the ones for Rows 5, 6, and 7. This is the essay, personal quality, and activities ratings -- extracurricular activities ratings, I should say. And those figures are all lower than the "share due to" figure for race/ethnicity, correct?

A. The numbers in the table are definitely lower. As I say, that does not tell us about the average marginal effect, as I believe you wish me to interpret it.

Q. Let's look down -- this is, again -- let's look down to out-of-state applicants; and, again, this is Exhibit 1 of your reply report. If we look down there, we say the share due to race/ethnicity preferences is 91.1 percent, correct?

A. Yes, according to this novel metric of share. It's not the average marginal effect.

Q. And that is higher than the "share due to" reported there for GPA preferences, which is 21.1 percent, correct?

A. The number 91.1 is indeed higher than some of the other numbers in the table.

Q. For example, higher than the share due to percentile preferences, which is 46.4 percent, correct?

A. I do not accept that the shares can be interpreted as average marginal effect. If they could, it would add up to more than a hundred percent.

JA912

Q. Higher than the share due to program rating preferences, which is 14.9 percent, correct?

A. Yes. I'm happy to discuss every number on the table with you, but my answer is going to be the same. I do not interpret these shares as being average marginal effects. They add up to more than a hundred percent.

Q. Higher than the share due to activities rating preferences, which is 36.5 percent, correct?

A. 91.1 is a number that is higher than the 36.5 percent. Is that the question you're asking me?

Q. Yes. Higher also than the share due to performance rating preferences, which is 33.4 percent, correct?

A. Given the novel and unusual definition of share here, I would say the numbers that you are reading from the table are correct, but that these so-called shares do not represent average marginal effects, which is why they add up to more than a hundred percent.

MR. MCCARTHY: No further questions, Your Honor.

THE COURT: All right.

MS. FLATH: Your Honor, may I have five minutes to consider redirect?

THE COURT: You may.

(Pause in the proceedings.)

MS. FLATH: Your Honor, I'm ready whenever you and the witness are.

JA913

* * *

HOXBY – REDIRECT

[pp. 1181-1182]

change in overall accuracy for African Americans in state?

A. It goes from 92.2 percent in this accuracy measure to 88.5 percent.

Q. Thank you.

And now turning to the other category that Mr. McCarthy covered with you, out-of-state African Americans, what happens to the overall accuracy of Professor Arcidiacono's model when you turn off racial preferences as he did following his methodology?

A. It goes from 91.0 percent to 86.0 percent.

Q. Thank you. You can put that aside.

Professor Hoxby, if race was the dominant factor in the UNC admissions process, do you believe that your empirical review of the admissions data would have revealed that fact?

A. Yes, because I was very careful to understand the explanatory power of models and also to break down that explanatory power into models that do ethnicity, as well as other factors. It might help to explain that if the process were truly formulaic, you could achieve perfect (indiscernible).

(Court reporter requests clarification.)

Q. Dr. Hoxby, can you repeat the very last portion of your answer after “it might help to explain...”?

A. It might help to explain that if the process were truly formulaic, you would be able to find a model that fully explained the admissions process. That’s just the math.

Q. Thank you.

And if there was a realistic and feasible race-neutral alternative that would be able to attain UNC’s actual levels of racial diversity and average test scores, do you believe you would have found it through your analysis?

A. Yes, I believe so, because I made very favorable assumptions toward the race-neutral alternatives. So I was definitely giving them -- I was definitely giving them the favorable situation in which to compare to the actuals.

And in addition, I considered a very wide range of possibilities for how UNC would implement these race-neutral alternatives; for instance, how much emphasis it would put on socioeconomically disadvantaged students.

Q. Do any of the questions Mr. McCarthy asked you change either of those opinions?

A. No.

MS. FLATH: No further questions, Your Honor.

THE COURT: All right. Anything further?

MR. MCCARTHY: No, Your Honor.

JA915

THE COURT: All right. Anything further?

MR HINOJOSA: No, Your Honor.

THE COURT: All right. I believe that we have now finished your testimony. I want to thank you for working as hard as you did to assist us in -- under these circumstances

* * *

LONG – DIRECT

[pp. 1184-1218]

BY MS. FLATH:

Q. Dr. Long, thank you for appearing remotely. At the outset I'll note we have had a few issues with the video technology, so if you can speak relatively slowly with a few pauses, that will help the court reporter and all of us. But thank you in advance for your patience that I know will help all of us get through this.

A. Absolutely.

Q. Can you please state your name for the Court and where you work?

A. Yes. My name is Bridget Terry long, and I am the dean of the Harvard Graduate School of Education.

Q. Thank you.

Did you prepare a set of slides to assist in providing your testimony today?

A. Yes, I did.

MS. FLATH: Your Honor, that's DX507. We've provided hard copies.

THE COURT: Yes.

Q. (By Ms. Flath) Dr. Long, I'd first like to talk about your background, certain aspects of which are highlighted on Slide 1. Can you give us a brief, 30-second description of your personal background through high school?

A. Sure. So my family is actually from southern Virginia, but I grew up -- born in Baltimore, moved to the Midwest, where I went through public education before going to Princeton as an undergraduate. Education was always very important in my family. My parents were nontraditional college students, meaning they went as older students, my father after the Air Force. And so we took -- education was, again, just vitally important. My parents worked very hard so that I could have opportunities and not take for granted what was made available to me.

Q. Did you receive a degree from Princeton?

A. Yes, I did.

Q. And what was that?

A. I completed my bachelor's degree at Princeton, and I majored in economics.

Q. Please walk us through the rest of your educational background.

A. Sure. After Princeton, I went to Harvard University, and I was in the Department of Economics where I got

JA917

both -- my master's degree, and I completed my Ph.D. in 2000.

Q. And after receiving your Ph.D., where did you work?

A. So after completing my degree in the economics department, I moved over to the Harvard Graduate School of Education, where I've been a faculty member since 2000.

Q. And what positions have you held at the Harvard Graduate School of Education?

A. So I -- as a faculty member, I have focused on research and teaching. I moved from assistant professor, was promoted to associate professor, and then received tenure as a full professor, and then more recently received an endowed chair, which is an honor, the chair professor of education and economics.

Since reaching that level, I also serve as faculty director of the research doctoral program. This is our DDP, indicating a Ph.D. program. I moved further into academic leadership and administration as academic dean for four years. This is the second highest level at the Graduate School of Education. So I was in charge of academic programs, student supports. And then for the last two and half years, I have served as the dean of the Graduate School of Education.

Q. Thank you.

Have you been appointed to any positions in the education space?

A. Yes, I have. So I was appointed by President Obama and confirmed by the United States Senate to serve on

JA918

the National Board of Education Sciences. This is the board that oversees and advises on the research functions of the Department of Education, part of IES, or the Institute of Education Sciences. I served as a member, vice chair, and then I served as the chair of that board for two years.

Q. Thank you.

Generally speaking, what does your research focus upon?

A. So my research, using economics as my field, has focused on college access and success, so the transition from high school to higher education and then into the labor market.

Q. And I think you mentioned this, but what types of courses have you taught at both the graduate and undergraduate level?

A. So my courses have mostly been at the graduate level -- but I have welcomed undergraduate -- and they have focused on the economics of higher education broadly, so the factors that influence whether students apply, enroll, what determines their outcomes in higher education, as well as looking for -- at the supply side, so how higher education institutions make decisions, how they grapple with limited resources, how they try to improve student success. And in my courses, another important part has been policy, whether that's federal policy, state policy, individual initiatives, and policies to try to support students.

JA919

Q. Thank you. Dr. Long, we're hearing you well. If you could speak just a tiny bit slower, I think our court reporter would appreciate it.

A. I'd be happy to do that. And thank you for letting me testify virtually. It's difficult circumstances, so I appreciate the opportunity to appear before you this way.

Q. We're glad to have you.

As a result of your professional background, do you have other experience with issues relating to higher education and college admissions?

A. Yes, I do. I have served on admissions committees at the Harvard Graduate School of Education; but more than that, I have taught many years, 16 years, I think, to be exact, about issues with admissions, the problem of universities grappling with how to decide which students to choose given the admissions tools that they have. Many of my students have worked in admissions, so I've invited their perspectives, and I've also taught in professional education, so sitting admissions officers. And then, finally, I've consulted with colleges and universities who have been grappling with ways to improve their admissions processes in particular to try to help low-income students.

Q. Thank you.

And have you published academic papers in your areas of study?

A. Yes, I have published many papers.

JA920

Q. Have you testified as an expert witness in litigation before?

A. No, I have not.

Q. Have you testified to Congress before?

A. Yes, I have testified four times to congressional committees, most recently to the Senate Health Committee, which is the committee that focuses on education. I did so in late September related to FAFSA, or the federal financial aid form.

Q. Thank you. Let's turn to the specifics, the topics you were asked to opine upon here.

At a very high level, what questions were you asked to consider in this case?

A. Sure. So first I was asked to survey the universe of race-neutral alternatives that either have been implemented by universities or hypothesized in the academic literature or that were mentioned in the complaint.

The second thing I did was, based on that survey, I opined whether some of these potential race-neutral alternatives should be considered by the university, as well as I highlighted important factors to keep in mind as they were -- as they consider or evaluate these alternatives.

And then finally, I was asked to review and respond to some of the opinions and assertions by Mr. Kahlenberg.

JA921

Q. And to help the Court frame your opinions and testimony today, are there certain topics you will not be discussing?

A. Yes. And so as outlined on the slide, my -- while I make recommendations based on the research literature, I am not making an evaluation if any particular race-neutral alternative or simulation, what the impact of that might be at the university.

Second, I am not suggesting or telling the university what they should absolutely implement or do. Again, I'm presenting the evidence of possibilities and recommendations on what they might consider.

And then, finally, I do not speak at all about what the current role of race and ethnicity is within the university's admissions process.

Q. Thank you.

Let's turn to Slide 4 of DX507; and with respect to the first question that you considered, at a high level what opinion did you reach?

A. So based on my survey of the research, both what universities have attempted to do as well as what have been hypothesized by academics in the literature, I opined on those results and again highlighted key factors that help to determine the effects of possible race-neutral alternatives.

Q. And briefly, what -- when you say you did a survey, what do you mean?

A. So I looked extensively throughout the literature. There are -- there have been years -- over a couple of

decades of research reports that have been published in peer-reviewed journal articles, which is the highest standard in our field, book chapters, policy reports, as well as working papers, conference presentations. So I looked very broadly to try to capture any evidence, discussion or research related to the scope of my work.

Q. And just to be clear, when you use the word “evidence,” you’re discussing those external sources, not any of the evidence produced by UNC in the litigation, correct?

A. That is correct.

Q. Thank you.

Turning to your next slide, Slide 5, which you titled “Key Factors in Assessing Race-Neutral Alternatives,” please explain what you consider those key factors to be.

A. Yes. So the really important thing in looking at the research and experience of universities is that the details matter; the quality, the relevance of the evidence being paramount in helping us decide just how convincing the evidence is, what we know, what we might suspect, and what has not been answered.

And when I say the quality of the evidence, first I’m talking about the data: So are the data detailed? Are they comprehensive? Are they the kind of measures that an admissions committee might use or have as they are making decisions?

The second is studies oftentimes will make assumptions, and so I look at whether or not the study

JA923

is characterizing something that is feasible for an admissions committee -- for the process, again, information they might have.

And then in studying what is the impact of some of these potential race-neutral alternatives, it is important to look not only at the short-term effects, so what might happen one year after a policy is implemented, but also the long-term effects over time, in particular because there can be indirect effects. By this I mean when you change a policy, you may also be changing incentives and student behavior or family behavior, which is going to influence who ends up in the applicant pool; and it's important to take that into account if you're really going to understand the impact of a policy.

Q. Thank you.

A. The second --

Q. Please go ahead.

A. Should I -- okay. And I hope my pace and clarity is coming through.

Okay. The second very important thing to take into account is the context and the institutional characteristics. So as we find in many parts of education, it's not one size fits all. A policy that might work well for one institution, one district, may not work well for all districts. And we need to pay attention to contextual factors, such as, you know, what state is the institution in, what's the composition of the communities around this institution as well as the characteristics of the college or university. Those two

factors, both context and institutional characteristics, can influence how we interpret the results from any kind of study.

Q. And keeping these factors in mind, walk us through the conclusions that you reached as a result of your survey of the literature and the experience of institutions that have implemented race-neutral alternatives.

A. Yes. So the first conclusion builds from what I just said, and that is you can see, given many studies, many different simulations, that the effect of any race-neutral alternative seems to be related to institutional characteristics and context. We see different results in different places because of these -- these factors. So context and institutional characteristics matter.

The second is a general statement about proxies. Proxies are only going to reproduce racially and ethnically diverse student bodies if that proxy tracks closely with race or ethnicity, or if it's highly correlated with race or ethnicity is another way of saying that. The degree --

Q. Just briefly --

A. I'm sorry.

Q. Just to be sure we're on the same page, what do you mean by a proxy?

A. Sure. So if we are looking at race-neutral alternatives, so if we are not going to consider race or ethnicity, we are using some other measure; and I'm

calling this, just summarizing it from the literature, a proxy.

Now, that proxy is only going to reproduce racial and ethnic diversity if it's tracked closely with the thing that we're no longer measuring, i.e., in this case race. So, again, whether or not a proxy is successful as a race-neutral alternative -- so using some alternative measure, but not race or ethnicity, that measure is only going to be as successful in recreating racial and ethnic diversity if it is highly correlated with race.

So my third conclusion is when you look at the efforts of selective universities, things that they have tried, as well as simulations, what you find is the race-neutral alternatives, again, that have been tried or hypothesized have not been successful in accomplishing their intended goals.

Q. And how do you define successful?

A. So I am drawing from the literature and how researchers have looked at this question. Oftentimes they're looking at it from are we able to replicate the level of racial and ethnic diversity that the institution had previously, but you also see researchers investigate issues of academic rigor in the admissions process. So this comes out in some of the research about Texas.

So I am not being -- I'm not defining narrowly success. I'm just drawing from the research and how researchers have used multiple measures and how universities have spoken about -- you know, reflected on whether or not they feel a race-neutral approach has been successful.

JA926

Q. And what was the fourth conclusion that you've got here on Slide 6?

A. Sure. So the fourth conclusion is the fact that there are many research studies that are hypothesized ideas, simulations, thought experiments about what might be possible; but many of them are not feasible or they would be incredibly difficult for institutions to actually try to implement. So looking at those details, you know, this category -- again, I think most of them are much more thought experiments than things that we could actually implement.

Q. So with these conclusions from your survey in mind, what was your next opinion that you reached in this case?

A. Yes. My next opinion -- so based on this review, I did identify race-neutral alternatives that I suggested the university consider, but I also included other factors that they should consider as they explore these alternatives.

Q. And the Court has heard from both Mr. Kahlenberg and Professor Hoxby, so some familiarity with the concept of a race-neutral alternative at this point. But generally, what categories of race-neutral alternatives do you discuss in the context of this opinion?

A. So the two main ones that I recommended the university consider: First are place-based admissions preferences, and then the second category are focused more on socioeconomic status.

Q. Thank you.

JA927

Let's start with those place-based race-neutral alternatives. And if you turn to Slide 8 of DX507, can you please walk us through this slide?

A. Okay. First, just to start, to define place-based alternatives, the percentage plans that were implemented by Texas, but also California, Florida, they are giving preferences based on some geographical location. So percentage plans were based on, you know, having a class rank in the top 10 percent in Texas, for example, but they could also be defined based on some other geographical marker, such as a ZIP code. We could give preferences across ZIP codes as an alternative way in our admissions processes.

Q. And what other conclusions or considerations do you highlight with respect to these place-based race-neutral alternatives?

A. Yes. So there is rich literature here with many people exploring these issues, and the basic conclusion is that place-based race-neutral alternatives only work if you have a high degree of segregation.

So I've shown on the slide what you need in order for it to work is high schools that are mostly made up of one ethnicity or another -- so you have the green, the orange, and the blue -- so that when you're giving preferences by those geographical areas or high schools and you're drawing together a student body, you get racial and ethnic diversity. So segregation is a really important factor in determining whether or not place-based alternatives reproduce racial and ethnic diversity.

JA928

Q. Let's talk now about some of the institutions that have implemented percentage plans.

On Slide 9, can you please explain your conclusions with respect to those concepts?

A. Yes. So my first conclusion is that universities that have actually tried to implement percentage plans have struggled to maintain racial and ethnic diversity.

Q. Which institutions?

A. Shall I give you an example?

Q. Yeah, that would be great.

A. Yeah. So, again, this is very rich literature. Most -- or a great deal of research has been done on the experience in Texas, where they implemented a percentage plan in the late 1990s; and the consensus across many different researchers using many different data sets has been that they've only had limited success.

And there's an important caveat here. So researchers have looked, after they implemented the percentage plan, and one measure of whether or not that plan had been successful was to compare the student body composition both before and after the policy.

A key factor that you have to keep in mind when you're studying policy in the real world, particularly education policy, is that when you change your policy, the world keeps spinning. Many, many things are changing at the same time. You know, we unfortunately, or fortunately, don't have the

JA929

circumstance if we were in a laboratory -- a science laboratory where we could change one thing and hold everything else constant. We are studying these policies within a larger context in social science, and this is what economists spend a great deal of time trying to isolate, what is the impact of the policy given all the other changes that are going on.

So coming back to the Texas example, when they implemented the percentage plan, there were other things that were changing at the same time in the state. What several researchers have noted in the discussion of their analysis is that the composition of the population was also changing at the same time. In fact, the percentage of students who were coming from black and Latinx backgrounds was increasing at the same time that Texas was implementing the percentage plan.

So the question that researchers have highlighted -- and, again, this has been seen in multiple studies -- is: When we see after the percentage plan that there was a similar racial and ethnic diversity level, do we take that as a success, or how much of that was related to the changing population? In fact, if the population of students of color is increasing, some would expect, at least directionally, diversity at that university should have increased if that race-neutral approach was successful.

So this is what I mean when I say limited success with a real asterisk there and question mark about how much was this the policy versus how much was this the changing conditions of the state.

JA930

Q. Dr. Long, are you aware that Mr. Kahlenberg recently testified that certain of the California schools, including UC-Berkeley and UCLA, just enrolled their most racially diverse classes ever?

A. Yes, I am aware of that. And so California is another case that implemented a percentage plan in the late 1990s different than Texas -- it was the top 4 percent of students -- but really strong consensus across researchers that they were not successful in maintaining a high level or similar level of racial and ethnic diversity.

So now Mr. Kahlenberg has noted the fact that their diversity levels are going back up. But realize, this has been a 20-year gap. So it's 20 years that the race-neutral approach that California was using did not produce the racially and ethnically diverse student bodies they had previously.

It really calls into question -- given everything that has changed in California over the last 20 years, I don't think that we give credit to a policy -- a 20-year-old policy that now all of a sudden -- you know, I think there is a lot of skepticism that it is responsible for California having a racially -- you know, more diversity than they have had in the past.

And, you know, we'll have to see long-term whether that trend sustains or not. You know, one blip compared to 20 years of data where it has not reproduced high levels of racial and ethnic diversity really makes us call into question, you know, the details of that.

JA931

Q. What was the next point that you made on the slide?

A. So the second point is that institutions that have implemented percentage plans have also expressed concerns that it limits their ability to consider certain factors in admissions. So with a percentage plan, you're giving preferences to you being in the top 10 percent of your high school.

At university -- at UT-Austin in particular, officials there complained that it was giving away too much of their freedom. They felt very hamstrung in terms of filling the class and that they had to ignore these other important factors of academic achievement. And so they successfully petitioned the state legislature, I believe in 2009, so after about 10 years of being with this percentage plan, to get more flexibility and move away from the percentage plan because it was hurting some of their other institutional goals.

Q. And, Dr. Long, in your role as a trained economist, do you also consider yourself to be a bit of a social scientist?

A. Absolutely. Economics is strongly in social science, yes.

Q. So why, from that perspective, do the indirect effects of a policy change matter?

A. So this, again, is getting to, you know, we have a policy that is meant to change one thing, but we've changed the entire ecosystem. And so, as I said in my background, I spend a lot of time studying how people

JA932

make decisions and their behavior. Others have as well. It's a big part of economics.

And what people found, in particular with Texas, is when you all of a sudden said, "We are going to give preference according to being in the top 10 percent," there were some families for whom their child might have been top 11 percent, top 12 percent, and they had all of a sudden this incentive to change high schools because then their students, if they chose the right high school, would get these admission preferences. So you have several studies that actually document this kind of behavior.

So, again, when we have a policy, we're not changing just one thing, and we have to consider how we might be changing incentives and behavior. And so this is a -- this is something that researchers have found have actually mitigated the intended effects of the percentage plan policy.

Q. Thank you.

Let's turn now to the other form or category of a place-based race-neutral approach that you mentioned, geography-based plans.

What considerations did you highlight with respect to geography-based plans?

A. Yes. So the geography-based plans are an extrapolation. In particular, there is a paper done by actually a colleague of mine at Harvard which is really a thought experiment about what if we gave preferences according to ZIP code. But it is a paper that is completely hypothetical, and she doesn't present any

quantitative evidence about what the effects of this might be. So, again, this is really in the category of a thought experiment about what this might mean, but without any kind of evidence on how this might impact diversity.

But, again, similar to the percentage plan, in order for it to be successful, there would have to be a high level of segregation across ZIP codes in order for that -- that kind of preference to produce a racially and ethnically diverse student body. And, in fact, we have greater concerns about a ZIP code-based plan than a percentage plan that families would again game the system or their behavior would change according to these preferences, because in the case of ZIP codes, you could easily change ZIP codes to try to better the chances for your child without even changing their school, without changing your job. It would be easier to make those kinds of adjustments in order to give preferences for your child. And so, again, we worry even more with this geography-based plan that there would be problems.

And then finally, as I noted before, the feeling of admissions committees not -- or having to ignore other important indicators about a student's achievement or leadership, having to disregard that under this plan, that same problem would exist in this kind of geography-based plan.

MS. FLATH: Your Honor, this might be a good breaking point for the lunch break.

THE COURT: All right. Let us recess until 1:30. Thank you.

(A noon recess was taken from 12:27 p.m. until 1:30 p.m.; all parties present.)

THE COURT: You may resume.

MS. FLATH: Thank you, Your Honor.

Q. (By Ms. Flath) Dr. Long, let's turn to Slide 11 of DX507.

A. Okay.

Q. Before we turn to the slide and start talking about the socioeconomic status-based plans, how does your research and professional experience relate to issues of socioeconomic status and access to higher education?

A. Yes. So much of my work and why I went into economics has been motivated by trying to better support and improve the outcomes for low-income students. I think this comes from just my background and trying to understand hardworking people -- we don't want to waste the wonderful potential -- and how can we make our systems better in supporting low-income students.

So my research started with focusing on affordability, obviously a concern for low-income students. I did a number of research papers on financial aid; and then I moved to focusing on academic preparation, which is another challenge that low-income students face; supports, how to help them prepare for college; and then moved on to really focusing on information -- in the role of information and helping to support low-income students with their choices and navigating higher education.

So I would really say the bulk of my work has focused on low-income students or, thinking more broadly, lower socioeconomic status students and their families.

Q. Do you recall when the idea of using socioeconomic status as a proxy for race first started to be discussed with respect to college admissions?

A. Yes, absolutely. So this surfaced as an idea in the early 2000s. So this is after I finished my Ph.D. I was an assistant professor deep in research; and as we got better data -- so the last 20 years especially we've gotten such better data to understand what is happening to students, what's happening in institutions. And the observation of just how underrepresented low-income students are at selective institutions was highlighted. And then the idea was put forward to give admissions preferences to low-income students to help diversify selective institutions in terms of socioeconomic status.

There was then the leap to say, well, if we had preferences according to SES, we might also be able to accomplish our goal in terms of having racial and ethnic diversity. So this was very attractive to myself, and I think to many in the field, that maybe we could accomplish these two different goals, having diversity by income and having diversity by race and ethnicity, kind of in one policy, and that it would be much cleaner. And so you saw a number of people using all kinds of data, looking at all kinds of institutions to explore whether or not this was a possibility. You know, it was the state of let's look at the evidence and see what's possible.

JA936

But very, very quickly, again, researchers from across the board, economists, sociologists using lots of different data sets kept coming to the same conclusion, that you couldn't get racial and ethnic diversity from an SES-based plan.

Q. So let's turn now to Slide 11. Can you please explain this to us?

A. Sure. So, again, this was such an attractive idea. When the results were coming out that you couldn't accomplish racial diversity with an SES plan, there was investigations into why that was the case to better understand what's behind this policy, and so that's what this slide is presenting.

So in order for an SES-based plan to work, whatever measure you're using -- and people have tried lots of different ways of measuring socioeconomic status -- has to be very highly correlated with race in order for you to get diverse outcomes. Now, it's well known that, unfortunately, many African American families are low income. Many students applying to college who are black are coming from low-income backgrounds. It's also the case for Latinx students. And as you can see from the slide -- this is just pulling some data from the U.S. Census for the United States, and you can see that many families of color are low income.

But the key to an SES-based admissions policy is looking at the whole pool of students who are coming from low-income backgrounds; and when you do that, you realize, even though many low-income students are black or Latinx, the majority of low-income students are white. So if you were going to have a policy that

gives preferences according to SES, you're still going to be choosing more white students than you are students of color.

So the punch line is, you know, these SES-based plans, what people were finding in their simulations are explained by the fact that most poor students are white.

Q. So turning to Slide 12, what considerations did you highlight with respect to socioeconomic status-based plans?

A. So to make clear, no university has actually implemented an SES-based plan that has replaced an holistic, race-conscious admissions approach. So there has been a movement to try to increase the representation of low-income students at selective institutions, a very important goal, but they have not been used in actual practice to replace race-conscious admissions.

A second thing that I concluded from this -- and, again, because this has not actually been done by a university, many of these studies are hypothetical. They are simulations. Some of them are thought experiments, and while they are interesting and kind of push the field thinking about this theoretically, they provide limited insights about what might actually be feasible for colleges and universities to implement.

For example, many of the hypothesized kind of plans and approaches that researchers have put forth require data that an admissions committee wouldn't have or they're making assumptions that are not reasonable for the real world. When they are putting

JA938

simulations together about how admissions might work, they're using models that just don't -- don't look at all like what real admissions offices and how they do their work, what they look like.

Would you like for me to give you an example?

Q. An example would be great.

A. Okay. So -- so one very nice study, but, again, hypothetical simulation, really a thought experiment, is by Carnevale. So they're using this detailed data. It's not administrative data. It's an external data set where it was designed for a different purpose, so it gives a great deal of information about wealth and background. And they make -- so, again, data that an admissions committee would not have.

In that study, they make the assumption that students would apply to all 190-plus selective colleges and universities. Students don't apply to 190 universities.

They then make the assumption that the universities would then take this large pool of students and rank them and then somehow a sorting mechanism would work to figure out who should go to what college.

That's what I mean, it's a thought experiment, but it does not at all resemble applications by students or how universities make their decisions, and it's also based on data that admissions committees don't have access to.

Q. So let's -- before we turn to your third opinion, one more question on sort of your affirmative review. You

JA939

reviewed percentage plans, geography-based plans, and socioeconomic status-based plans and observed no institution has been able to successfully implement them, but yet you recommended that UNC consider them. Why is that?

A. Yeah. So this is a weighty, important matter. It is something where we have over two decades of people thinking about these issues, trying new things; and so as the university approaches this issue, my hope and in the role that I'm playing is to give them an overview of the best of what we know: What are the lessons from the research; what have people tried; and, importantly, what have been some of the determinates that affect the outcome of the different race-neutral approaches that people have considered.

So I recommended to the university to consider those race-neutral alternatives, but I was also clear in sharing the lessons learned from universities and from the research about why these have not been successful, things they might consider, because I think it's important as we go about our work whenever we're trying to have a policy or a program to have some understanding about the factors that might increase the success; or if we're finding that it doesn't work, why that might be the case, to understand the mechanisms underneath.

So, again, my role -- the scope of my role was to just provide those lessons and the full knowledge to give a comprehensive review of the lessons that are learned. So while I'm not optimistic, because we have not seen these race-neutral approaches work for other institutions, here are things to try, here are things to

JA940

consider, here are some of the complexities that are involved that other universities or researchers have found.

Q. So let's turn now to Slide 13 to your final opinion in the case.

A. Yes. So my final opinion is, responding to Mr. Kahlenberg's assertions, I find that he makes a number of overstatements about race-neutral approaches and about the potential success that these alternatives might have for the university.

Q. And before we turn to your view of his conclusions, do you know Richard Kahlenberg?

A. We have interacted in the past. In fact, around the time when I was writing my first expert report, he invited me to be on a working group with him that focused on community colleges and finances. I think there's overlap because we both have done a great deal of work and paid a lot of attention to how to help low-income students.

Q. Turning to Slide 14, keeping in mind that you did not review the empirical results of his simulations, at a high level what are your critiques of his opinions in this case?

A. Yes. So I paid particular attention to his interpretation of the evidence and the research that's already out there. I find that he overstates how effective race-neutral alternatives have been or would be because he's not paying attention to the details. In particular, he fails to account for the quality or the relevance of the research or the particular data used,

JA941

and I also find that he doesn't pay particular attention to context and how important the context of the university and the institutional characteristics are and how that influences the results of any kind of race-neutral approach.

I also find that some of the statements that Mr. Kahlenberg makes really could not be implemented because they're not feasible, in particular data that just are not available to admissions offices. So in reality, they would have -- they would not be able to implement what he suggests.

Q. Moving to your first critique regarding his views on the effectiveness of the race-neutral approaches, can you please walk us through Slide 15?

A. Yes. So Slide 15 is attempting to summarize a bit more of the details about the research that I chose to be more convincing, that the field has put more weight on versus some of the less rigorous studies that Mr. Kahlenberg cites in his work.

So if you look on the left in blue, some of the more rigorous studies, for example, are using much more detailed data. So the M. Long -- that's Mark Long, no relation -- the M. Long and Tienda study, which is focusing on Texas, is using a great deal of administrative data from Texas, detailed data that institutions have, looking both pre- and post-policy change; and they also consider these indirect effects, which include how we think about whether or not a percentage plan has been successful.

The Bowen paper -- or book uses data from 18 different selective institutions, three of them being

public institutions, which would be relevant here, and they tried multiple simulations, multiple ways of defining SES and how it might be used in admissions process. So it's a very thorough investigation of an SES-based plan.

And the Reardon paper there, again, using really comprehensive data with the explicit purpose in the paper of trying to replicate what data admissions offices have in their work, it is also considering not only indirect effects, but it considered what would happen if more than one university changed their policy, if it wasn't just one, but multiple, because this would change the whole ecosystem. And we need to consider those effects as we try to predict what would happen with different policies.

In contrast, if you look on the right side of the slide in brown -- I mentioned the Carnevale study just a moment ago, the unrealistic expectation that the students are going to apply to all the 193 colleges and then using very limited data, data that was actually collected for a different purpose, not data that an admissions committee would have.

The Gaertner study is focused on the University of Colorado at Boulder. This is a study where it's only using one year of data from one cohort, and it's not using the entire set of applicants. It's using a subset; and the paper is not really clear of how it determined that subset, is it representative of the entire group of applicants.

And then it's a study that is taking place during an unusual year, so 2009. We have -- we get very

concerned about that because 2009 is when we were going deep into a recession, and we know students' educational decisions change in a recession, their family situation changes in a recession. So it's hard to extrapolate from a subset of one year of data during a special year that this has some kind of general reliable effect that might apply elsewhere.

They're also in that study using an SES measure that is not feasible. In fact, the authors admit in the study -- they write that these are data that admissions committees don't ordinarily have. And then UC-Boulder is different from UNC-Chapel Hill in terms of characteristics, which is another issue that comes up in the Kahlenberg/Potter.

So, again, these are some examples of how the details matter greatly and whether the evidence that we find is convincing or not.

Q. You mentioned Kahlenberg and Potter. Let's turn to Slide 16, which discusses that.

A. Yes. So Slide 16 summarizes a number of institutions that Kahlenberg and Potter discuss in their chapter, and reorganizes it according to one institutional characteristic, so their acceptance rate, their acceptance rate being one leading indicator of their selectivity.

So to be clear, this paper -- I believe it was a book chapter. It's not a peer-reviewed journal article, meaning it hasn't gone through a referee process at the same level as a number of the articles that I use. There are a number of tables looking at different cases of institutions, but there's not the same level of rigor in

considering indirect effects, short term, long term, what else was going on in these cities during the time of these policy changes. So it's just a very different piece of work.

But if we take as given their conclusions, Kahlenberg and Potter, Kahlenberg, in particular, deems certain institutions have been successful using race-neutral approaches while others have not: Michigan, UCLA, and UC-Berkeley. And what you see is the more selective institutions, the ones that are the most similar to UNC-Chapel Hill, are the ones who were not successful with the race-neutral approach.

Q. Your final critique of Mr. Kahlenberg relates to his definition, effectively, of socioeconomic status. Can you walk us through your opinion on that front?

A. Yes. The first point I want to make is that in an admissions practice, what institutions are striving to do is be need blind. This is an important part of practice. It means that when someone applies to the college or university, we aren't taking into account their ability to pay. The worry would be institutions would have some incentive to only accept students who can afford to pay. That means less financial aid for them. They might be more likely to come and persist. So, again, the standard that colleges and universities have -- they strive for in order to be as fair as possible to low-income students is to be need blind.

So the first thing I would note is if we moved to an SES-based plan, we are going counter to this goal of protecting low-income students in admissions. So that's the first thing that I would underscore. It's a

JA945

fundamental change to how admissions committees do their work or how they strive to do their work to not disadvantage low-income students.

But the second major point is that Mr. Kahlenberg relies on a broad definition of SES that requires information on a family's wealth that is not available to admissions offices and so could not actually be implemented. So -- I'll pause there.

Q. You've got two points underneath this observation. Can you please explain those?

A. Sure. The first is, yes, if we are to measure socioeconomic status and to do a good job with it, we do strive to include measures of wealth because income can change from year to year. But wealth is really a measure of the safety net, of the stability of a family; that when crises or emergencies hit or you're trying to make more investments for your child, for your family, that really comes from wealth. So income, generally speaking, is not a sufficient measure for SES. Unfortunately, though, wealth information is not available to colleges and universities for many applicants, which makes it problematic in trying to implement an SES-based program.

Q. Your next slide, Slide 18, discusses the FAFSA in some detail. What is your experience with the FAFSA?

A. So a great deal of my research has focused on the FAFSA. As I mentioned, I was just asked to testify before the Senate Health Committee about the FAFSA. This is the second time I've been asked to do so.

JA946

In my work and in trying to find ways to support low-income students, one observation that has been made by many educators and nonprofit organizations is that the FAFSA has been a barrier. So I have spent a great deal of my time, several of my largest projects have focused on ways to try to increase low-income students using the FAFSA or ways that we might simplify the whole federal financial aid process to better match students with the financial aid that is available to them. So I am very familiar with the FAFSA and have worked with it a great deal.

Q. Can you please walk us through your slide here?

A. So the first point is Mr. Kahlenberg makes the assertion that universities could use the FAFSA, again, this federal financial aid application, to get information about wealth. That's just not true.

So the first issue is many students don't complete the FAFSA. Again, this has been a major focus in my work. Many students don't know that the FAFSA exists. Many low-income students, families we have spoken to in my work, they don't realize you need to fill out the FAFSA in order to get information about financial aid eligibility. So this has been a major problem in higher education policy, not everyone completes the FAFSA. It is also the case for upper-income, middle-income folks. If they're not applying for financial aid, many of them also do not complete the FAFSA. So one problem -- one major problem is not everyone completes the form.

The second major problem in terms of trying to measure wealth using the FAFSA is the FAFSA has

JA947

several wealth questions, but anyone who makes less than \$50,000 does not have to complete them. This has been part of the process of trying to simplify the form for students. The low-income students get to skip those wealth questions or, really, anyone who has made less than \$50,000. So we would have no information from that category of students.

The third point is the wealth questions -- and, again, there are just a few that are on the form. One thing the FAFSA tells families to do is to exclude their home value. So there was a decision made -- a policy decision made not to count a family's home as part of their assets, but we know for most families, that is the most important source of wealth that they have, their home value. And I have some unpublished research where we actually see when that change was made, families could easily hide savings by paying off their mortgage, adding to their home value. But we get no information about home value from the FAFSA.

And then the final point is even on the FAFSA, the income information, the wealth information that is shared, it's very, very limited. First, it's only one year of information. It gives us just one small snapshot of the financial circumstance of a family. And the second point is it focuses on one prior year.

So let me give you an example. So if we have a student who was applying to college right now and they hoped to start next fall, Fall 2021, it used to be that they would report their family income and those wealth measures for the year 2020. There was a change in the way that we do financial aid several years ago where it is prior-prior year, which means they report their

JA948

income from 2019. So, again, a high school senior applying for financial aid in admissions right now to attend college in Fall 2021 is reporting now 2019 family income information.

That's the gap in the prior-prior year. Certainly lots of things, as we've seen in 2020, can change for a family in between those time zones; but that's the only piece of information that we get from the FAFSA in trying to gauge financial need, financial aid, and in this case, as Mr. Kahlenberg is putting forth, trying to gauge SES.

Q. Dr. Long, we've heard your testimony that based upon the

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BRENNAN – DIRECT

[pp. 1254:9-1257:8]

A. I am a 2019 graduate of the University of North Carolina and have been involved in this case since my sophomore year.

Q. And what did you study while at UNC?

A. At UNC I studied political science -- well, ultimately landed on political science.

Q. And can you describe your involvement in any activities while at UNC?

A. Yeah. My first two years at UNC I participated in student government. I was drawn to student government after reading about the legacy of student self-governance at UNC, and it was something I was involved in at high school.

JA949

The second two years at UNC I participated -- I was a member of the Board of Directors for *The Daily Tar Heel*, which is the independent student newspaper at UNC, and I was chair of the governance committee.

Q. And what have you pursued professionally since graduating from UNC?

A. Since graduating, I have pursued a career in communications and education policy. I'm currently an education Fellow at National Geographic.

Q. And you said that you've been involved in the case since your time at UNC. Why did you choose to get involved in this case?

A. When I first became involved in this case, it was my understanding that it was about the importance of racial diversity on campus generally and, in particular, increasing racial diversity on campus. For me, learning in a racially diverse environment was important, and so the opportunity to not only protect that environment but to potentially increase the amount of diversity was appealing to me.

Q. Thank you, Mr. Brennan.

And do you identify with a particular race or ethnicity?

A. Yes. I identify as African American.

Q. And does that identity intersect with any other salient identity?

JA950

A. Yes. I am also queer and a member of the LGBTQ community, and I would say that my family comes from relative affluence.

Q. And prior to attending UNC, where did you grow up?

A. I moved around a lot, but spent most of my childhood in Lexington, Kentucky.

Q. And can you describe the racial demographics of the neighborhoods where you grew up?

A. In most of the neighborhoods where I grew up, we were one of few black families. They were mostly white neighborhoods, and, as a result, my schools were also mostly white.

Q. Did your racial identity impact your experiences growing up?

A. It did in a number of ways. You know, first of all, my mother has a collection of black Santa Clauses, which many of my white friends were confused by but seemed normal to us.

Also, you know, there was always the conversation: Expectations that my parents had for my brothers and I in terms of how we interact with the police, how we interact with the society knowing that our skin color was different. You know, when I'm running down the sidewalk in our mostly white neighborhoods, you know, I have to be aware of the fact that I might be seen as someone that does not belong; and when faced in those situations, we smile, we deescalate, and we try to move on.

Q. And how did those racialized experiences impact your perspective prior to college?

A. Well, I think in a couple of different ways. You know, first of all, there were certain expectations I think that people had of me because of the color of my skin; and I think I often found myself trying to buck those expectations, trying to be something or do something that people did not expect from someone who was -- who was black.

I mean, my -- my classmates would ask me questions like, "Well, you know, why are you acting like an Oreo or acting white?" the implication being that because I was quick to raise my hand to answer questions or grasp material, that that was somehow acting white.

So, you know, I would say every experience that I had prior to college was informed by the color of my skin, and so my perspective going into college was similarly so.

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[pp. 1258:3-1259:4]

And can you provide any examples of how your racial identity has shaped your perspective in ways that are similar or different from your socioeconomic setting?

A. Well, I actually -- I actually don't see much of a link between the two. You know, like I mentioned earlier, if I'm running down the neighborhood and, you know, I don't have my cell phone on, whatever, people don't see

me as someone that is relatively affluent; they see me as a black man. And so all of the implications that go into those interactions are completely irrelevant to my socioeconomic status. I don't really think that -- socioeconomic status in race in terms of how I interact with the world and perceive the world, they certainly have impact, but I don't think they're very connected.

Q. Thank you.

Turning to your application to UNC, when did you apply to UNC?

A. I applied to UNC in the fall of 2013.

Q. And did you choose to share about your racial identity as part of your application?

A. I did.

Q. In what ways?

A. I indicated my racial ethnicity when asked on the application. I also wrote about my perspective as an African American student as part of the essay.

Q. And when you say that you identified it when asked, are you referring to the demographic check box in --

A. Yes.

* * *

[pp. 1260:3-1269:4]

Q. And what other colleges offered you acceptance for enrollment?

JA953

A. I was accepted to Yale University, the University of Pennsylvania, Wake Forest University, Davidson College, Vanderbilt University, University of Kentucky. I think that's it.

Q. And what convinced you to accept the offer to UNC?

A. UNC offered a lucrative scholarship opportunity that was very appealing. I also was drawn to, like I mentioned earlier, UNC's history of student self-governance and, you know, I think that -- and I also kind of was attracted to a lot of the kind of student activism that was kind of being led by black students on campus.

Q. And was racial diversity important in your decision-making?

A. Oh, yes. It was important to me that I attend a diverse school and have a diverse learning environment because I -- you know, at that point I understood how valuable a diverse learning environment could be.

When I was taking a look at UNC, I was, on the one hand, heartened by some of the programs that they had where they were trying to increase diversity on campus and support communities of color, but I was also concerned by the fact that they had very few African American men enrolled on campus and, you know, I -- for me, that was a flag.

Q. And what ultimately convinced you to go?

A. You know, I think I was convinced by the fact that not only were they moving in the right direction, but just the energy on campus with respect to -- you know,

JA954

the students were trying to organize for a safer, more inclusive campus. You know, that work being led by people of color, women of color specifically, was very inspiring to me; and so kind of ultimately as I weighed those different scholarship opportunities and different whatever, going to a public school, UNC, just seemed like the right fit for me.

Q. And while you were at UNC, did you interact with students of different racial backgrounds?

A. Yeah, almost immediately after coming to UNC, I was kind of surrounded by different opportunities to interact with folks. You know, when I was first coming to campus, of course there is the kind of open house opportunity where everyone comes out with their clubs and every -- you know, what they're doing and trying to let you know about their work; and so I learned so much about different cultures that were on campus, the different religions represented on campus during those sorts of activities.

But there were also, I think, instances that were less fun, frankly. You know, while I was at UNC, three Muslim students were shot and killed within their home in Chapel Hill, and that was very jarring for campus. And, you know, during that time many of the Muslim students were kind of doing a lot to be visible and to educate folks about Islam and everything else. And so, you know, during that time also I was learning about how, you know, folks of different races interact differently. You know, I presumed that I knew all of that because I was black, but, like, I -- I just -- I learned so much from just the huge amounts of diversity on campus, more than I ever thought I would.

Q. And can you describe any examples of how racial diversity in the classroom impacted the classroom discussion?

A. Yes. I -- so two examples come to mind -- three. The first is from my English 105i class. It was a class focused on -- I think it was law, and there was a topic actually on affirmative action that came up as a discussion point in class. I was, I think, the only -- I was the only African American student in the class, and one of the white students in the class made a comment along the lines of, you know, "Oh, we shouldn't have affirmative action because then all of the black students on campus are going to think that they don't belong here."

And to me, it was a really offensive thing for him to say, that in many circumstances I would have pushed back on. However, being the only African American student in the class, I did not want to kind of cause any kind of issue. I didn't want to try and represent the perspectives of all African Americans on campus. I did not want to get into a fight with this kid, so I just kind of let it go. And, you know, for me, reflecting on that experience, I wish that maybe I had spoken up.

But, you know, later in college -- it was funny. I actually had a somewhat similar experience in a class that was kind of a combination of UNC and Duke students on U.S. social movements, and, you know, this class was much more diverse and including kind of some folks that I knew from previous classes and activities. And the topic was voter suppression in the South, kind of post-voting rights for African Americans. And she -- the professor was asking us to kind of

JA956

provide our opinions on, you know, given that black folks have the right to vote, why are so many not voting.

And the answers that my classmates were coming up with were intelligent and, you know, smart answers, but they seemed to be missing, like, the elephant in the room, which I provided as being the fact that black communities were being terrorized at the time by the Klu Klux Klan and intimidated through violence out of not voting. And I felt like it was important to make that point so as to not whitewash that history, but I also felt more comfortable making that point because I knew that there were others in the class prepared to back me up and that I would not have to, like, single-handedly convince the white students in my class that terrorism at the hands of the KKK was a significant factor in low voter turnout rights in South black communities.

Q. And when you say there were others in the class who would back you up, can you describe the racial demographics of those students?

A. Yeah, other students of color, other black students in that class. And I think that specifically made me feel much more comfortable engaging in a dialogue about racism, racial discrimination.

Q. And do you recall the professor's reaction to your comment?

A. She didn't react much in the class, but later she reached out to me and thanked me for raising that point and, you know, letting me know that she was hoping someone would -- and, you know, for me, that

JA957

was very validating because, you know, speaking up in class is a -- especially, like, these classes where everyone is really smart, it's an intimidating thing. So I felt very validated and just, like, I had done the right thing when my professor kind of reached out to say that.

Q. And how would you describe the level of African American students generally at UNC during your time there?

A. I would say -- I'm sorry. Can you repeat that question?

Q. How would you describe the level of black students at UNC during your time there?

A. Yeah, I think that it would -- I think that there were not enough African American students on campus, frankly. Like I mentioned earlier, for black men, even worse. And so, you know, I think that it's low and could be improved.

Q. And you described your English 105 class earlier and your discomfort with speaking up. Do you think that if there were an end to affirmative action programs, that would put an end to the type of comments that you heard in class?

A. No, I think it would -- I think it would probably increase the kinds of comments.

Q. Why?

A. Well, I think it would decrease the number of African American students on campus, which would I think affect -- it would make it less likely that someone

JA958

would be confronted or pushed back on who had these sorts of opinions or less likely that perspectives from African Americans would be present in the classroom discussion.

Q. And were there any other experiences on UNC's campus where you felt targeted based on your race?

A. Yes. There is at least one occasion that I can remember where -- and this is something that has happened to me many times, walking down the street with a group of friends and a random stranger decides to yell the N word at me. And, like I said earlier, in the moment, you smile, you deescalate. It's hurtful, though.

And I remember afterward calling my grandmother, who I always call for things like this, and then also just kind of reaching out to some of the other African American students in my program. And, you know, I think that, like, being able to seek community in that way was important for me as I'm trying to, like, maintain my sense of, like, self-confidence, self-worth, like, in the face of these verbal attacks.

Q. And just to clarify for the record, when you say that this has happened many times, how frequently did that happen at UNC?

A. It's happened more than once at UNC. I can't remember the exact number.

Q. Thank you.

Are you familiar with UNC's history of racial discrimination?

JA959

A. I am somewhat familiar, yes. I -- you know, when I was a student on campus, there was a lot of controversy over, for example, renaming buildings and statues that were erected in honor of members of the KKK, other racists; and, you know, I think many students of color on campus were hyperaware that we were sleeping and attending class in buildings named after people who bragged about their racism. So I just -- you know, I think we were all pretty hyperaware. Then, of course, me, I also engaged in some bit of archival research on campus, and so I was maybe a little bit more familiar than the average person on the history of racial discrimination.

Q. And when you say that black students were hyperaware of this history, how do you think it impacted their participation in classrooms?

A. Well, I guess I'm not sure. I guess I could say how it impacted my participation in class, which is that it meant being aware of the context that we were in. I mean, I think -- I think that black students -- me, I was always -- I was always careful. I was always -- did what I needed to do. I was always wanting to dot the i's because, you know, I -- this campus -- I just needed to -- I just needed to do what I needed to do.

Q. And during your time at UNC, did you see any progress made in the racial climate?

A. Yes. So there were many, many protests and rallies and efforts by students to try and take down the statues, rename the buildings; and many of them were successful while I was a student there.

JA960

There were also efforts by members of the administration, like Vice Chancellor Crisp and Chris Faison, to try and create a more supportive and inclusive environment for African Americans on campus. So there were certainly examples of progress while I was there.

Q. And can you describe the racial demographics of the individuals that were leading that progress on campus?

A. This is all led by black women. You know, I -- maybe it had to do with the numbers, I don't know, but I -- you know, all of the major, significant progress that was made with respect to racial diversity, racial inclusion on campus while I was a student at UNC was led by women of color.

Q. And I'm going to turn now to represent to you that there's a discussion in this case about reducing the number of black, Latino, and Native American students on campus.

Do you have any sense of how the reduction in black, Latino, and Native American students would have impacted your experience at UNC?

A. Well, first of all, I think it would have reduced the amount of activism that we were just describing. I don't think that there would have been, you know, the same level of -- of, you know -- of organizing and activism by students of color to try and create a more inclusive environment at UNC if we were to reduce their numbers on campus.

Q. And I'll represent to you now if there was an increase in the number of blacks, Latinx, and Native

JA961

Americans students at UNC, do you have a sense of how that increase would have impacted your experience at UNC?

A. Well, I think it would have -- you know, first of all, on the African American activism side, I think it would have increased that. I also think it would have provided more community for those students of color who were on campus. You know, like I mentioned earlier, when I encountered situations that made me uncomfortable, folks saying racial slurs to me, I sought community with other students of color on campus, and so I would -- I would -- I think it would stand to reason that more students of color on campus would provide more opportunities for that sort of community, yeah.

* * *

[pp. 1269:14-1270:1]

Q. How has UNC's racial diversity prepared you for this work?

A. Well, right now I work with young people all around the world who are trying to solve problems in their community. I support them through grants, skill training. And I think that the ability to connect with anyone, to make friends with anyone, to understand how different cultures and different races and things like that intersect and interact with one another -- you know, I think that all of the skills that I gained as a result of learning and working and living with people who are wildly different from me at UNC led to, I think, me feeling much more comfortable and confident doing that as part of my job with National Geographic.

JA962

And so, you know, I'm very thankful for some of those skills.

* * *

ORNELAS – DIRECT

[pp. 1274:3-1290:21]

A. My name is Laura Ornelas.

Q. Where are you from?

A. I am from Chapel Hill, North Carolina.

Q. Can you describe your educational background for the Court?

A. Yes. I completed high school in Chapel Hill, North Carolina, at East Chapel Hill High School and then attended UNC-Chapel Hill for my undergraduate degree.

Q. And when did you graduate from UNC?

A. From UNC, I graduated in May of 2017.

Q. And what did you study there?

A. I double majored in Hispanic linguistics and Latin American studies with a minor in linguistics at UNC.

Q. And are you one of the Student-Intervenors in this case?

A. Yes, I am.

Q. And generally speaking, why is racial diversity on UNC's campus important to you?

A. I believe that racial diversity expands and encourages further learning in the environment, and that is important to me.

COURT REPORTER: Can you speak louder, please?

MS. TURNER: Me?

THE COURT: If you need to pull that mic closer to you, that might be helpful.

MS. TURNER: I can also orient myself this way. Is that better?

THE COURT: It is better, uh-huh.

MS. TURNER: Okay. I apologize.

Q. (By Ms. Turner) Can you describe your parents' educational background?

A. Yes. So my mother completed her -- what would be equivalent to high school degree in Mexico, and my father completed what would be equivalent to a middle school education in Mexico as well.

Q. And what do your parents do?

A. My father owns a restaurant in Chapel Hill, and my mother is a homemaker, and the restaurant is their primary source of income.

Q. Now, as you're aware, this case involves UNC's ability to consider race and ethnicity in its admissions process.

Do you identify with a particular race or ethnicity?

JA964

A. I do. I identify as Hispanic and Latino.

Q. And I believe that you testified you attended East Chapel Hill High School; is that correct?

A. Yes, that is correct.

Q. And were you on a particular academic track there?

A. Yes. I was on track to not only complete the North Carolina requirements to graduate high school but also to attend college.

Q. And what kind of courses did that mean that you took on that college track?

A. While in high school, I was -- I had the opportunity to take honors and Advanced Placement courses.

Q. Can you describe the racial and ethnic makeup of your high school?

A. My high school was primarily white, with the second largest population probably being Asian and Asian Americans, and followed by Latino and Hispanic students and African American students.

Q. And what was the racial and ethnic makeup of the students who were in your AP and honors courses that you were taking?

A. My honors and AP courses primarily consisted of white students and Asian American or Asian students.

Q. So were there many other Hispanic or Latino students in your AP and honors courses?

JA965

A. Not many. If I was lucky, there were maybe two or three, but oftentimes I found myself being the sole representative for my ethnic group.

Q. And how did the experience of being one of a few or the only Hispanic or Latino student affect your sense of identity while you were in high school?

A. While I was in high school, I think it made me feel like I needed to limit how much of my culture and identity I portrayed in my -- in my classrooms, and I tried to assimilate as much to the people around me.

Q. I'm now going to ask you some questions about your experiences applying to college.

When did you apply to UNC-Chapel Hill?

A. I applied in October of 2012, which was my senior year of high school.

Q. And when you began preparing to apply to college, did you have access to the same resources that your peers at East Chapel Hill did?

A. In theory, I had access to the same resources that were available at school, but I found that a lot of the knowledge that my peers were obtaining was coming from outside organizations or their parents or families.

Q. And why was your situation different?

A. My situation was different because I was -- I'm a first-generation college student, so not only was I trying to learn about the application process and how to navigate not only UNC's but other application

JA966

processes as well, but so were my parents. So it was a joint learning experience for all of us.

Q. And how did your ability to participate in extracurricular activities compare to that of your peers?

A. For the most part, I could join the clubs and organizations that were available at my high school, but many of my peers did not participate in work activities while in high school. So for me, I was primarily helping out at the family business at the family restaurant and spending a lot of time in that activity.

Q. And how did your access to prep materials or prep courses for SAT exams or AP exams compare to the access that your peers had?

A. So I had to be very conscious of -- about the resources that were available and their financial obligations or their financial costs. There were a lot of resources available that consisted of paying for them, and I did not always have the funds to complete those, so I relied on what was accessible.

Q. And the resources that you did access, how did you find out about them?

A. My greatest source of information for those were my peers and my friends who, either by accident or intentionally, shared that information with me.

Q. And you mentioned that you held a job while you were in high school?

JA967

A. I did. So through most of high school I worked at the family restaurant during the weekends and when I was not in school. My father did not allow me to obtain any other job until I was accepted to college because he very much thought that an education was incredibly important and wanted to have control over my schedule if I needed to complete other tasks to obtain my goal.

Q. And roughly how many hours a week did you work at the family restaurant?

A. At the family restaurant, I would say about 10 hours a week.

Q. And I think you mentioned that your experience working a job was different from your high school peers?

A. Yes. So my peers -- some of my peers also held part-time jobs. The funds that they received -- the income they received through those jobs was primarily to fund -- primarily for them to fund recreational activities and spend those on whatever they wanted at the time. My goal when going to work and receiving an income was to save up to be able to pay for all the tests and the applications that I knew were upcoming.

Q. You mentioned that you worked at your family restaurant in part to be able to have flexibility for your application obligations.

Once you were accepted to UNC, did you obtain an additional job?

A. I did. Once I was accepted to UNC, my dad allowed for me to obtain a different job, and I worked at a

JA968

dental office in their corporate offices completing various administrative tasks.

Q. And what did you use the income from that job for?

A. I then used that income to complete some of those and to submit my enrollment deposit and start paying off some of those miscellaneous costs associated with enrolling in college.

Q. And how long did you hold that position?

A. I held that position through the end of my senior year in high school and all through college.

Q. I'm going to ask you some questions now about your college application itself.

When you applied to UNC, what do you remember, roughly speaking, about your grades and your test scores?

A. I was primarily receiving As and Bs and I think a -- one or two Cs, and I remember thinking that my grades and test scores were primarily -- fairly average to the rest of my peers at my school, although I don't know how they would compare on a state or national level.

Q. And do you remember roughly where you were ranked in your class?

A. I believe I was ranked 106th in my class.

Q. And do you think that your rank, grades, and test scores alone adequately reflected what you brought to the table as an applicant to UNC-Chapel Hill?

JA969

A. I don't think they did. I think they -- they provide a part of me, but there was so many experiences and so many different factors of me that I wanted to present to the university and I think were important in considering who I was.

Q. Do you remember if you shared your ethnic identity in your application to UNC?

A. I do remember, and I did share that information with UNC.

Q. How did you share it?

A. I shared it through not only filling out the boxes in the application, but also in one of my essays I spoke about my identity.

MS. TURNER: Your Honor, I'm going to start discussing an exhibit which has been designated under seal, so I would ask that the audio and video be turned off for this portion.

THE COURT: We will do so.

(Audio privacy settings were turned on.)

(Sealed portion of trial testimony occurred next and appears under separate cover filed with the court.)

(Audio Privacy settings were turned off.)

Q. (By Ms. Turner) We've been talking about the application process, but now I'm going to ask you some questions about your experiences as a student at UNC.

While you were a student at UNC, did you have the chance to take classes with students from racially diverse backgrounds?

JA970

A. I did. I -- I was very happy to experience classes that had a much more diverse racial makeup, especially in comparison to the classrooms I had been in high school.

Q. Is there any class that stands out in your memory where having a diverse group of students was particularly meaningful for the learning environment in that class?

A. I do. I remember one class in particular my junior year of college. It was a class about the Latin American city where it brought together graduate students and undergraduate students, as well as -- and students who came from very many different cultural backgrounds.

Q. You just described some of the diversity that you encountered, I believe, including within Hispanic and Latino students at UNC.

Did you encounter any other types of diversity within groups of Hispanic and Latino students at UNC-Chapel Hill?

A. I did. I -- not only did the diversity range from the nationality that students associated with, I think one of the more eye-opening discussions I had were from students who were undocumented or had family who were undocumented. It is not an experience that I can say that I've lived through. My parents have always been documented during my life, so even though on paper we seem like we came from very similar backgrounds or had many similarities, I learned so much from their perspective and now can consider things that before had never even crossed my mind.

JA971

Q. And I'm going to ask you now about your own participation in the classroom. How did the level of diversity in a particular classroom affect your ability to participate in that class?

A. I found that in classrooms where there was more diversity I felt much more comfortable sharing my experiences and my opinions because either there was less background information that I needed to provide about my own experiences or everyone was in need of providing background information to the experiences that they were sharing about. So whereas prior my background didn't -- and my experiences were so different from my peers, it was now acceptable and encouraged to share those experiences.

Q. And when you said "prior," just for the record, did you mean in high school?

A. Yes, I meant in high school.

Q. And you testified earlier about how your high school experience of being one of a few Hispanic or Latinos affected your sense of identity.

Did your sense of ethnic identity change while you were at UNC-Chapel Hill?

A. Yes, it changed greatly. I -- I grew to embrace it to a degree that I had not been able to embrace it before. I think before I was trying to limit how much about my culture and background I shared with the world, whereas once I was able to encounter more diverse spaces and have more experience sharing my experiences and the way that I was brought up, I then

JA972

also felt more comfortable sharing it with people outside of those diverse spaces.

Q. I'm going to ask you some questions now about your activities outside the classroom. Were there any extracurricular activities you participated in at UNC that are particularly important for you?

A. Yes. So my main -- the activity that I dedicated the most time to in undergrad was participating in what was then called NC SLI, or NC Scholars' Latino Initiative, which was a mentoring program for high school students in the area and in surrounding areas that identified as Hispanic or Latino, and then they received a mentor from UNC, and we mentored them through about three years of their high school and our undergraduate career.

Q. Did you hold any particular leadership roles in SLI?

A. I did. After my first year as a mentor, I was -- I signed up to take on the leadership position of codirector of family engagement, where I developed curriculum and taught that curriculum to the families, parents and guardians of the high school students who were attending the program.

Q. And did your identity as Hispanic and Latina inform how you designed your programming as codirector of that project or committee?

A. It did. It greatly influenced it. I saw those parents and guardians as my own parents and my mom and dad, so I knew where they were coming from to a degree; and my objective was to teach them as much about the application process as possible so that they

JA973

could support their student. And many of the high school students who were participating would identify as first-generation college students as well, so I felt that if I could prevent everyone in the family from starting from scratch, it -- it was important.

Q. And why did you feel it was important that you facilitate conversations for the entire families of these potential college applicants?

A. I think -- at least for our culture, I think when -- and especially for a student that is first generation, it's not just the student going off to college. It's the whole family going off to college for the first time. The system and the way education is set up here in the U.S. is very different from that of other countries, especially Latin American countries, so I found that that program was a way to bridge some of the gaps in knowledge and potentially help parents understand that aspect of it and be more accepting of whatever their student decided to do, because I remember there being a lot of tension between my parents and I when we were trying to learn about this application process.

Q. Shifting gears a bit, while you were at UNC Chapel Hill did you feel that overall there was adequate representation of students of color?

A. I don't think so. I think there could be more. I still found myself in classrooms occasionally where I was one of very few students of color or I was the sole representative of -- of my ethnic group.

Q. And when you encountered that lack of representation, how did it affect you?

JA974

A. I think in some of those instances I retreated to some old strategies of -- of how I coped being in those spaces, found myself maybe participating less and not sharing as much of my opinion or experiences in those environments.

Q. And when you began reverting to those old strategies, were there any resources or spaces that helped you counteract that effect?

A. I think the community that I developed while working with NC SLI were friendships that carried outside of those organizations, really helped me analyze what those situations were doing to my -- to my -- to my actions in them and allowed me to move past the -- the hiding and the assimilation and encouraged me to share my experiences even though it may have been uncomfortable at times.

Q. Were there any other organizations that were helpful to you in that way?

A. I would say not necessarily organizations, but individuals on campus.

Q. And what was the racial or ethnic makeup of both those individual groups and SLI that you just described?

A. The undergraduates -- the UNC undergraduate population at SLI was primarily students of color or students who identified as Hispanic or Latino, but we were inclusive to all ethnic/racial identity groups within the organization, and most of the individuals that I found -- that I would consider helping through

JA975

me some of those times usually identified as students of color, people of color.

Q. Thank you. And I'm going to shift gears again and ask you some questions about your socioeconomic status. Can you describe your family's socioeconomic status while you were growing up?

A. Yes. While I was growing up, I would say my family consisted of lower to low-middle class. All through high school I received free or reduced lunch.

Q. And did you receive need-based financial aid at UNC when you attended?

A. I did. I did receive need-based financial aid. I was part of the Covenant scholarship program.

Q. And you've already testified that you're a first-generation college student?

A. Yes, that is correct.

Q. Are your socioeconomic status and first-generation college status important to you?

A. Yes, they are. Just like my racial and ethnic identity, I believe they are important parts to getting a full picture of who I am.

Q. And do they inform your perspective?

A. Yes, they greatly inform my perspective. I think having all those identity groups and the way they uniquely intersect in my life is important to how I view the world.

JA976

Q. And do you think that your perspective is the same as the perspectives of your peers who may have also been lower-income or first-generation college students but were not Hispanic or Latino?

A. I believe there can be overlap, but I don't think that it would be the same.

Q. Why not?

A. All my identities uniquely intersect in the way that I've grown up and the way that I've experienced the world, and someone who comes from a low socioeconomic status may be able to -- to identify with a lot of my experiences but won't identify with all of them. They -- we won't -- the world will see us differently, and we will see the world differently as well.

Q. Could you meaningfully separate your socioeconomic and first-generation college student status from your ethnic identity?

A. I could talk about them individually if needed, but I don't believe if I -- if the goal is to present a full picture of myself, I don't think they could be separated.

Q. I'm going to finish by asking you a few questions about the future.

Where are you currently employed?

A. I am currently employed at UNC at the Adams School of Dentistry within the dental hygiene program as their admissions counselor and student services manager.

JA977

Q. And did you hold any other jobs prior to that after graduating?

A. I did. Prior to my current position and after graduation, I completed two years with the Carolina College Advising Corps, which is a subgroup of the national College Advising Corps, and I worked in a high school in Charlotte, North Carolina.

Q. And can you tell us just a little bit about what the Carolina College Advising Corps does?

A. So the Carolina College Advising Corps places recent UNC grads in high schools with majority populations that are minority, low-income or underrepresented students in higher education; and their goal as college advisors in these high schools is to aid and advise the entire student population about the college application process, regardless of what school they wish to attend.

Q. Do you have any plans regarding your own education?

A. I do. I believe my time at the -- in the high school with the Carolina College Advising Corps greatly influenced it, and I'm hoping to obtain a master's in higher education administration, and I am currently completing those graduate applications.

Q. And long term, what are your goals for the future?

A. I am not exactly sure what position I'll be holding or where I will be holding a position, but my goal I think is still to help families navigate the college application process and gain more students that are minority, low

income, and underrepresented an entire education. I know how much I struggled -- and that was having such a supportive family with it -- that if I can help even just one more student, you know, navigate that process, I think it's important and it's where my passion lies.

Q. Thank you.

And do you think that the racial and ethnic diversity that you experienced while at UNC-Chapel Hill has helped prepare you to achieve that goal?

A. I -- I think it has. I think in comparison to the high school that I went, there was more racial diversity at UNC, and I think that increase in racial diversity increased the perspectives that I have on the world and how I think about different tasks and different -- different problems. And I can only imagine how much more I would have learned, how many more perspectives I would have gained had there been even more racial diversity.

* * *

WINGATE-BEY – DIRECT

[pp. 1292:5-1305:25]

A. Yes. I graduated from Charles Jordan High School in Durham, North Carolina, and then I went on to graduate from UNC-Chapel Hill with a degree in communications with a focus in media production and a minor in history.

Q. And do you remember what your graduating GPA was at that time?

JA979

A. Yes. I believe it was around 3.5 or 3.6.

Q. And this case involves -- you understand this case involves UNC's ability to consider race in admissions.

Do you identify with a particular race or ethnicity?

A. Yes, I identify as black or African American.

Q. Can you tell us a little bit about family experiences that you've had when growing up that affected your self-identity as being African American?

A. Yes. I grew up in a culturally black household, I'd say, from, you know, what we ate, how we celebrated, what we celebrated. We celebrated Kwanzaa. My dad, he was an inner-city DC kid. He was a Black Panther in his day. He was drafted into Vietnam as an 18-year-old. My mom is from rural North Carolina, and I remember her telling me about her small town that struggled with integration, specifically a story about, you know, when they were trying to integrate, the white people in town filled the pool with concrete so that the black residents couldn't use it.

Q. And how did your experiences, family discussions, experiences you had while growing up, those that are connected to your racial identity -- how did they affect your perspective prior to going to college?

A. Yeah, definitely informed the way that I thought about things, the way that I was raised, especially with school with that framing, you know, on my life. My parents always imposed upon me, you know, you have to be twice as good to get as far as my white counterparts or peers; and especially, you know, with

JA980

my parents, it kind of turned into, you know, just to be the best and to work as hard as possible. That's how I was raised.

Q. Let's talk about high school a little bit.

Were you involved in extracurricular activities?

A. Yes, I was -- I danced primarily. That was my main extracurricular activity. I did that my whole life. And then I was also in a few clubs, Key Club. I was in Spanish Honor Society, National Honor Society. Pretty involved, yeah.

Q. What sort of leadership roles did you play in those extracurriculars?

A. In -- I was dance team captain probably all of high school. And then for National Honor Society, I was vice president of that group, you know; generally on exec boards of different kinds -- you know, the different groups I was a part of it.

Q. And can you tell us about your high school grades, your class rank?

A. Yes. I was ranked in the top 10 percent. I graduated probably around 30 of a class of 400, 30-something. Class rank I think weighted was about 4.4, 4.5. I took about five APs, got 4s and 5s on those, 5 on my AP U.S. History exam. I definitely had rigorous coursework at Jordan and did well.

Q. That is Jordan High School?

A. Jordan High School, yes.

JA981

Q. And did you put all of that academic information in your Common Application to UNC?

A. Yes.

Q. So how did the rigor of -- the academic rigor at Jordan, how did that prepare you for being a student at UNC?

A. I was very prepared to go to UNC. Like I said, I took quite a few AP-level classes and definitely worked hard and had to study, and I remember being a first-year on campus and feeling like I was ready for the amount of coursework and the level of coursework that I was doing at UNC.

Q. Do you remember what your grades were as a freshman?

A. As a freshman? Yeah, I definitely -- freshman year I definitely had all As. I think I started with a 3.7 or something like that.

Q. So did you fill out a Common Application when you applied to UNC?

A. Yes.

Q. And was there an application question asking you to identify your race?

A. Yes.

Q. How did you answer that question?

A. I checked the box for black or African American.

JA982

Q. And was it important -- well, how important was it for UNC to know your racial identity?

A. I think it's important for -- for UNC to know -- for me, it was important for UNC to know I was black. I think it colors all of my experiences and can put some insight on my whole college -- I mean, my whole high school experience.

Q. And do you believe it was helpful for admissions reviewers to know the life experiences and racial backgrounds of other applicants as well?

A. Yes, I think it would be equally important to know the race of all -- all who are applying to UNC.

Q. I'd like to ask you about racial diversity at UNC itself.

What sort of interactions did you have with other students at UNC from other races, classes, other types of diverse backgrounds?

A. I was able to have a lot of experiences with different -- with multicultural students at UNC. I sought those out on purpose. I was a part of a dance team called Misconception. We were a hip-hop team, and we were predominantly black and other people of color on our team. And, you know, also at UNC I was able to meet and interact with those from Asian heritage that I had never really experienced in high school and growing up, specifically south Asian. I was able to meet Indian people and go into their homes and eat their family -- not eat their family -- eat their foods, meet their family, and learn about their culture. I just had a lot of

JA983

invaluable experiences like that with other people of color on UNC's campus.

Q. Any other examples of interactions that you had with students of other backgrounds?

A. Yes. There's also this program called Carolina United, which is a weeklong leadership camp where you have to apply. You go, and you talk about issues regarding race, sexuality, gender, religion. And you kind of discuss these, you know, big social kind of implications around these things, and you have these conversations, and you open up. It's one of the best things I did at UNC. Many people would say that. And it just makes you a more empathetic person, a more accepting person, and you can bring that back to the campus community with you and you just become a better member of the community, as well, I think, a better student.

Q. Can you describe any of the conversations that you had with other UNC students while you were there at the Carolina United event?

A. Yeah, we opened up a lot about kind of our experiences growing up in whatever intersection we grew up with, and I learned a lot about, you know, some of my Latina classmates and kind of their experiences, you know, maybe with immigration or with their parents who may not have been documented and how that shapes who they are and how they, you know, present themselves and how they come onto UNC's campus to be a part of that community.

JA984

Q. And how did -- those conversations while attending Carolina United, did they change any of your world views?

A. Yes. Getting to learn one-on-one from other people and your peers I feel like, for me, opened up my mind and made me able to think, you know, more critically about things and able to -- and made me a little bit more empathetic or even just more knowledgeable about some of the things other people are going through and what they come to the table with.

Q. So how did the racial and ethnic diversity that you experienced at Carolina -- how did that impact your education?

A. Yeah, you know, I think it made my education a lot richer. I -- the times that I was in classes that were racially diverse -- I had one class with a black professor -- black female professor and mostly black students. It was an African Americans before 1865 class, and the conversations that we were able to have, all being of a diverse background, were much richer, more constructive. Even the feedback from the teacher I think resonated more because, you know, I think we felt like we were in a safer space to kind of talk and really discuss and dive deep into, you know, the text we were reading, to relate back to our experiences: Our shared experiences, our different experiences. You know, having that diversity in a classroom made for a really, really rich learning experience.

Q. And to what degree did you encounter diversity within any racial group?

JA985

A. Yeah, that's -- you know, one thing that I really benefited from by going to UNC was getting to meet all of these different black people who were from different parts of the country or the state, and it really kind of helps -- I really learned that, you know, we aren't a monolith and that we all have very different experiences, but it also -- I also learned that, you know, the black experience runs through it. We just kind of built this, you know, community of -- of black people on campus, that we all were able to learn from each other and also share experiences with each other.

Q. Did -- did that diversity within the African American community -- are you aware of white students being aware of that?

A. You know, I -- I'm not sure, you know, how much they're aware of it, but I definitely think that they benefit from having different kinds of black people around them and in their classes to hear different kinds of -- you know, the experiences that we have that can be different or the same.

Q. So while you were attending UNC, what was your view regarding whether there was adequate representation of students of color at UNC?

A. I did not feel like there was enough diversity at UNC.

Q. Why? Why is that?

A. I would -- you know, while I said that I was a part of these groups and, you know, getting to meet, you know multicultural people, that was because I sought it out. I had to look for it, and I don't think you would

JA986

find that if you weren't looking for it. Specifically, I was often in classes -- like, you know, in the classroom as the only person of color, only black person in the room. So my social extracurricular time would be one way, but in the classroom where we're doing most of our learning, I would honestly sometimes be the sole person of color.

Q. And so let's talk a little bit about how that was reflected in the classes that you attended. Other than the one class where you said that you attended that had a large number of African American students, were most of your classes, some of your classes -- how many classes did you attend where the majority of the students were white?

A. Were white? Most of my classes. In most of my classes, most of the students were white.

Q. And -- and in most of your classes, about how many African American students were there? Were you the only one or was --

A. At times I was the only -- if my memory serves me, at times I was the only one or felt like I was the only one, and sometimes it -- maybe there were, like, 5 to 10 in a class of, like, 30. In larger lectures there would be more, but, you know, in the smaller classes, especially the further you get into your major, it kind of dwindles down.

Q. So in those classes where there were few -- where either you were the only African American or there were very few African Americans or students of color, how did that make you feel while you were in class?

JA987

A. Right. When you're the only person of color in a classroom, it can feel isolating, especially as the only black person it can feel isolating. You can also -- I also often felt like I was, you know, the token or the sole representative for my race or the fact checker for my race, which can be a bit of a burden, in class.

Q. And -- and did that -- how did that play out? Were there any specific classes where having to be the fact checker played out on any specific topics?

A. Yeah. Yes. I remember specifically in a polysci class I had where I was one of the only -- maybe the only black person in the room. Specifically, we were talking about the voter ID laws. They were kind of hot back in the -- when I was there. And I -- I was -- I felt like I had to be the person to speak up and say how a law -- racist law like that can inflict harm on people of color, black people specifically.

And those kinds of topics and having to be the one to be, like, "Wait a minute," or to kind of intervene, you know, in the discussion, they all kind of add up to being that one person in the classroom who's always having to be maybe -- maybe not the contrarian, but the interrupter, you know, to bring my perspective to the classroom; and it at times can be -- I already said this -- like a burden or a job you have to do. Also, you know, sometimes, depending on the topic in the class, you have to come in with your guard up already, and that's just not conducive to learning, you know.

Q. How did that feeling of having to be a spokesperson affect your participation in the class?

JA988

A. It doesn't really affect my participation. It's not something I'm unused to with the schooling that I had, high school to Carolina, but, you know, it's draining to have to come into class knowing that you're going to have to, you know, chime in to be the sole representative for your race to make a point, you know.

Q. Were there situations that helped ease your sense of isolation while you were at UNC?

A. Yeah, definitely my found community, like the dance team I was talking about and some other, you know, multicultural -- basically, you know, finding other black people on campus really helps feel like you're not the only one kind of going through, like, being the only person of color in the room.

Q. Any other -- any specific examples of -- of safe places where -- where you would go?

A. So could you --

Q. Let me rephrase that. Are there situations at UNC -- specific events or groups or places where you would go to kind of break out of that isolation, to reenergize?

A. Yeah. Definitely my -- my dance group, which was primarily black and people of color, and even my -- my found friends that included white people and, like I said, you know, my -- the Indian friends that I found kind of created this safe space for me to -- to kind of be away from being that spokesperson, that fact checker, where I can be amongst, you know, people who care about me. But those found families on campus to create that safe space.

JA989

Q. And were you on campus back when the Trayvon Martin decision came out?

A. Yes, I was.

Q. How did that affect you?

A. Yeah, that was a good example of looking to find those people that looked like me so that I could have a reprieve from the bad news. Yeah, I was on campus when that decision came out, and we immediately were just texting each other, like, "Where are you?" trying to find that comfort, you know, not where -- you know, other black people. We were all just trying to find each other so we could be away from whiteness for a second and just feel safe and to fellowship and just come together.

So, yeah, those kinds of spaces are really, really important when you're in a predominantly white space, to be able to find other people who look like you so that you can, I'll say it again, feel safe.

Q. So based upon your personal experience, do you think that a reduction in the number of black and Latino students on campus would affect the racial climate?

A. Yes, I think it would be harmful to students of color if there was less diversity on UNC's campus.

Q. Can you give an example of why you think that?

A. Yeah. Yes. I think if there -- if the -- if there was any less diversity, I think it would affect, you know -- for black people, I think that feeling of safety that you have on campus. I think retention rates would be

JA990

affected that are already low. Retention rates for black students would be affected if there was less diversity. I think that your Carolina experience of feeling welcomed or feeling like you belong on campus would be -- would significantly decrease the less black people you see on campus. You know, you need to see people that look like you to feel like you can belong somewhere, so if there was less diversity on campus, I just think it would be harmful from the social to the educational to the learning, all of those aspects.

Q. What sort of message to students of color might it send if UNC ended its consideration of race in its admissions process?

A. I just think it would -- it would just say that we aren't valued for the specific cultural experiences that we could bring to UNC as black people or any person of color. I think your race really colors your experience and what you can bring to the table or to a community and how you arrive to the community. I think it would just show that our contributions and what we -- yeah, what we bring would just -- aren't as valued if they stopped considering race.

Q. Are you aware of UNC's history of racism and exclusion?

A. Yes, very much.

Q. While at UNC, did you come into contact with any monuments or symbols of that racist legacy?

A. Yes. I was -- I was there when -- yes. I was there when the kind of momentum was building to bring

JA991

down Silent Sam, which is a Confederate memorial. It was a statue -- like, a huge statue on campus.

You know, I was also there when we were kind of -- the momentum was building to change the name of Saunders Hall, which is now Carolina Hall. But Saunders, he was a UNC alumnus, but was a member of the KKK. And I remember feeling -- you know, when we were calling for those things to be taken down or renamed, I just remember feeling ignored by UNC leadership. Even one of the Board of Trustees I think said to focus on something more important. And so to kind of have to walk past all of the racist wallpaper that is all over UNC every day adds to that feeling of not being valued on campus, especially for the contributions that I think black people have made to UNC's campus for so long and -- I'm sorry.

Q. Now, you -- you graduated in 2016?

A. Yes.

Q. Okay. What professional work have you pursued since UNC?

A. I -- I work in an advertising agency in New York called BBO New York, and I'm a producer there.

Q. And how did your exposure to racial diversity at UNC help prepare you for your work?

A. Yeah, I think a lot of what I learned at UNC about how to -- from people of other cultures, like, you know, how to -- not how, but, you know, to be more empathetic and more open-minded and more accepting I take with me to my job, especially since we -- you

JA992

know, we're an advertising agency. We make commercials that are seen nationally, so I think it's important for someone like me to be able to step into a room and -- and bring a perspective of diversity into my job so that -- that is much needed in the advertising world, which is pretty white and male.

* * *

JA993

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA**

Case No. 1:14CV954

[November 19, 2020]

STUDENTS FOR FAIR ADMISSIONS, INC.,)
)
Plaintiff,)
)
vs.)
)
UNIVERSITY OF NORTH CAROLINA, et al.,)
)
Defendants.)

**Volume 8
Pages 1308-1374**

**EXPEDITED TRANSCRIPT OF TRIAL
(EXCLUDES CLOSING ARGUMENTS)
BEFORE THE HONORABLE LORETTA C. BIGGS
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

For Plaintiff:

CONSOVOY MCCARTHY, PLLC
Thomas R. McCarthy, Esquire
Patrick Strawbridge, Esquire
James F. Hasson, Esquire
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JA994

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WATSON – DIRECT

[pp. 1312:1-1316:3]

A. Yes. I am a recent graduate of the University of North Carolina at Chapel Hill. I was there from August of 2016 until May of 2020, and I am currently a grad student at Princeton Theological Seminary.

Q. Can you tell us what your GPA was when you graduated from UNC?

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A. Yes. My GPA was a 3.9.

Q. And in what -- what did you major and minor in?

A. I majored in African, African American, and diaspora studies and minored in creative writing.

Q. And did you receive any school recognition or honors while you were at UNC?

A. Yes. I was a recipient of the Robert B. House Memorial Prize in poetry, and I was also a member of the Phi Beta Kappa Honors Society.

Q. Now, this case involves UNC's ability to consider race in admissions.

Do you identify with a particular race or ethnicity?

A. Yes. I identify as black/African American depending on if you're talking about race or ethnicity.

Q. Did you have any specific experiences growing up that you attribute to being African American?

A. Yes, quite a few. My entire upbringing was very much shaped by being African American: the foods that my family ate, the music we listened to, the types of churches that we attended, the conversations that my parents had to have with me when -- around the mid-2010s when the filming of, like, incidents of police brutality became very prevalent in media, talking -- conversations about my safety. There were also several -- more than several, just constant personal incidents in our family that were very much shaped by race.

Q. And what neighborhood did you grow up in?

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A. For most of my upbringing, I lived in Wichita, Kansas, in a neighborhood that was very close to Andover, which is a suburb. So it was a predominantly white neighborhood. We were one of very few black families or families of color at all in that neighborhood.

Q. And can you describe the interactions that your family had with their white neighbors?

A. Over the course of the years, we had several negative interactions with our neighbors. For the most part, it was that we didn't interact in the same ways that other neighbors were able to interact. The parties that people were invited to, the backyard barbecues that everybody shared, they weren't things that we were a part of.

There were also several incidents of just what seemed just like blatant racism. People in our neighborhood broke flowerpots on our front yard. They threw eggs at our house, things that would happen to us but wouldn't happen to other neighbors around us.

Q. And how did those experiences tie to your racial identity? How did they impact your world view prior to college?

A. They had a massive impact on my world view prior to college. I think that as I was preparing to go to school, I very much had a -- a defensive mind-set. Like, these really awful acts of racism were happening in not necessarily lethal ways toward my family but in lethal ways around the world; and I felt like I had an obligation to defend myself, to use whatever gifts I had to defend or to uplift the rest of African America, so to

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speaking. I was afraid when I was preparing to go to college.

Q. So you applied to UNC; is that correct?

A. That is correct.

Q. And what -- what aspects of UNC appealed to you when deciding where to apply?

A. So at that time, I was really, really interested in political science. So my first step was getting further east than Kansas, getting closer to DC where I thought the political action would be throughout my college career. But I was also really interested in UNC's political science department. I thought that it was pretty good, especially for a state school. I also wanted to go to a school where it seemed like the demographics would be a little bit more diverse than the high school that I went to, which was not very diverse at all. So, yeah, all those things were very important to me.

Q. So what -- can you expand a little bit about why being at a college with other African Americans was of interest to you?

A. Sure. So, like I said, in high school, I didn't have very many African American peers, and I just really thought that my learning experience and really my sense of self would be enriched by being around more people who had perhaps experienced some of the joys and struggles of blackness that I had experienced.

Q. And when you applied, what was your understanding of whether UNC considered race in its admissions policy?

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A. When I applied, I -- yeah, as far as I knew, UNC did consider race in its admissions policy. That was what I saw when I looked through the application, so yeah.

Q. And did that matter to you at all, that UNC considered race in its admissions?

A. I think that more than that mattering to me that they did, it would have mattered to me that they didn't. In my view from all of -- I applied to quite a few schools, and in my view, it seemed like that was the norm. That's what every college did, and that's what it meant to care about the race and ethnicity of the students coming in, to care about them as whole people. So it would have seemed really strange to me if UNC did not consider race or ethnicity.

Q. Okay. So "strange to you," what does that mean?

A. It would have been off-putting in that I think I would have felt like they didn't care, and I would have assumed that there was some sort of -- honestly, some sort of racist agenda behind it that would have made me unwelcome at the university.

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[pp. 1317:8-1320:17]

Q. So also in the Common App that you filled out, the Common Application, did you decide to state your racial identity?

A. I did. I said that I was black.

Q. There was a box in The Common Application that you were able to check off?

JA999

A. Yes.

Q. And was there any other -- any other way that you referred to your race in the Common Application?

A. Yes. In my Common Application essay, the main essay that I sent off to all schools, my -- the main subject matter of that essay was my race.

Q. Okay. Can you describe for us a little bit more about that essay?

A. Sure. So that essay was about a decision that I made to move high schools from a private school to a public school in order to -- to stand in solidarity with my brother, who had experienced a whole lot of racism in some really detrimental ways at the private school that we were at.

So I talked a lot about feeling like I was trying to fit into this Eurocentric world at this private school and going through this process of discovering my blackness as a high schooler, which very much continued to be a process when I was in college. But for me I think that essay spoke to how my world view had been shaped and the circumstances of my life had been shaped by my racial identity.

Q. And why did you choose to discuss your African American identity in that Common Application essay?

A. Well, most of the schools that I applied to -- probably all the schools I applied to I talked about my goals of going into public policy, going into politics, and doing something to bring more racial justice to the United States. And the reason that I was passionate

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about that, the reason that I cared about it was because of my own racial experience, which gave me the empathy to care about the experiences of other minoritized races; but in my own experience, my passions were shaped by that identity; and it really would have made -- my story and my goals wouldn't have made a lot of sense without that information.

Q. Why not?

A. I think it gives -- it gives reason to why I care so much. I had -- because of the racism that I've experienced, because of the wonderful, like, racial experiences that I've had, I have a -- I'm deeply invested. I have quite a stake in -- in the betterment of the lives of black people in America, and so the reason that I cared so much -- and in order to express, like, the passion that every college wants to hear about, they needed to know where this was coming from.

Q. I'd like to ask you about racial diversity at UNC itself.

What -- when you -- when you enrolled at UNC and in your first year and throughout the time that you were there, what interactions did you have with other students on UNC's campus who were different from you by race, by class, by other -- other backgrounds?

A. I can think of several groups that I was a part of that were really, really diverse in a lot of ways. My first year I was in one of the more diverse a cappella groups. Many of them are not. I was also a part of a student body president campaign that brought together a lot of different people from a lot of different backgrounds, but most poignantly, my undergrad experience was marked

by my time in my campus ministry, aptly named Every Nation Campus. We had a lot of people of a lot of nationalities and a lot of different races, socioeconomic statuses coming together for the purpose of worship; and that very much -- that was probably one of the most formative and important groups that I was a part of at UNC.

Q. And on a personal level, did you have any positive formative relationships that were created while you were there at UNC?

A. Certainly. My -- I'm smiling because my best friend is -- I met her when I was in a class called Ethics and Business in Africa my first year, and we came to get close when we both joined the same campus ministry on my -- in the middle of my second year.

She is a white South African student, and being in a relationship with her over the years has healed a lot of wounds that I think -- that I know that I've had because of the racism that I've experienced. I mean, we got to have some incredible conversations about -- about race and justice, especially because of her family's involvement in apartheid in South Africa. That definitely complicated and enriched our discussion, and I don't think had her -- had her ethnic and national and racial identity been different, and, likewise, mine, for those things, I don't think we would have been able to have those same enriching conversations and experiences that we've had over the years.

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[pp. 1321:9-1333:18]

Q. Now, while you were at UNC, how did that exposure to a diverse student body impact your education?

A. So as I mentioned before, I minored in creative writing, but that really took up a lot of -- most of my -- a lot of my academic time in my latter two years. So I was a -- I was -- I focused in poetry composition, and those classes are typically very small, 10 to 12 students. You write a lot of poems every week, and you critique them; you workshop them with each other.

Now, when I was in classes -- in poetry classes that had a lot of diversity in different ways -- I remember some classes where we were diverse even in age, in race, in gender, and sexuality. When I was in those classes with those different makeups, I was able -- we were all able to get a lot better feedback on our poems because we could hear how the art that we were creating impacted different people with different life experiences and different backgrounds. It was more likely that someone would be able to identify with the things that you were talking about.

On the other hand, I had a few classes where I was the only black student, and there was a white professor and mostly white students. A lot of my poetry talks about my black experience, and in those classes, I was unable to get the feedback that I needed to become better at my craft because people -- like, on a very basic level, people didn't understand the things that I was talking about. So I wasn't able to get past the surface to become a better poet, and those were always really

JA1003

frustrating moments for me when nobody under -- it seemed like nobody understood me in those classes.

Q. Now, did exposure to diversity on UNC's campus affect your leadership skills?

A. Yes. I was in a program called the Robertson Scholars Leadership Program. So we did a lot of -- it was a selective group, and we did a lot of training on leadership. So in some of those trainings and dinners and workshops that we would have, we would sometimes have discussions that went awry. Somebody would say something racially insensitive or insensitive to -- something like that, and there would always be a discussion that was sparked about how we should address those types of issues.

In those moments, I had to learn how to work with people who -- who might really not be for me or for my well-being and continue to be in a relationship with them and continue to work toward goals with them.

But also, outside of that, I was able to have conversations with the other black students and my cohorts about the things we could do to push the program to be more sensitive to minoritized groups; and I think that doing that background work, as well as listening to what people were saying in the room, really impacted my ability to lead diverse groups of people.

Q. Based upon your experience at UNC, did ethnic and racial diversity benefit other students besides yourself?

A. I think so. I had a good friend who identified as Asian American/Indonesian American, and during my

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final few months at UNC, we had a lot of conversations about what it -- how the black experience and the Asian experience interacted. And she told me about how just knowing me and having other black friends helped open her eyes to experiences that she hadn't considered before growing up in a predominantly white and Asian environment. She talked a lot about how she grew in compassion and in the ability to interact -- interact well with people who were very different from her.

Q. And what about other students' leadership skills? Were you ever in any situations while you were on campus where you got to see how ethnic and racial diversity helped other students' leadership skills grow?

A. Yes. Like I mentioned before, my first year I was a part of a student body president campaign with one student who -- the candidate was a white male, and he pulled together students from a lot of different backgrounds for his campaign, especially first-years. He did a really good job of pulling together first-years.

When I think about the rooms where we had discussions about campaign issues and about strategy and promotion videos and things like that, they were always very, very diverse; and I think that being able to have those different opinions in the room helped this candidate to be able to reach out to students of many different racial backgrounds, socioeconomic backgrounds, nationalities who were coming together to be a part of his campaign and eventually to vote for him.

Q. Ms. Watson, to what degree did you encounter diversity with any specific racial groups?

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

Q. Sure. So while you were at UNC, did you experience any situations where you encountered diversity within a given racial group?

A. Yes. I understand. I did. I -- one of the most beautiful things about coming to college was that I got to be around more black people than I had ever been around before, which isn't saying much considering my upbringing, but it was significant for me. And in that, I was able to diversify my understanding of what it meant to be black. Growing up in a neighborhood and in a school where I was always one of very few black people, I had created this monolith of blackness that said that to be black was to be like Hanna. It was to be like a Watson, which was not true.

When I was at UNC, I interacted with black folks from Sierra Leone, many Nigerian American friends, folks from Australia, from Ghana, folks who grew up in North Carolina, black folks who grew up in Colorado, people of different socioeconomic statuses, of different sexualities, different religious backgrounds. I had so many different experiences interacting with black people and all of their diversity. I was able to get a clearer view of -- I guess the idea that blackness is not a monolith, that there are a lot of important differences between black individuals.

Q. Did that affect any stereotypes that you may have had?

A. I think so. If nothing else, it helped to break down stereotypes I had harbored about people more recently connected to their African heritage, meaning those who

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aren't the descendants of slaves, yeah, and also just generally stereotypes about what it means to be black; that it was not -- it is not -- I could not equate that to what it meant to be myself, what it meant to be a Watson in Kansas.

Q. So you said that you interacted with black people from different socioeconomic backgrounds; is that correct?

A. Correct.

Q. So can you describe a little bit more about your interactions with African American students from other socioeconomic backgrounds than yourself?

A. Sure. When -- I think that interacting with black students of other socioeconomic backgrounds made me aware of the intersections of -- or the ways in which my own privilege interacts with my own minoritization. Having come from a fairly affluent school and a fairly affluent family, I think that it was helpful for me to be in classes, particularly my African American studies classes, where we would discuss experiences that people had that were very different from my own. I think it made me compassionate in a new way, helped me to understand that -- that the struggles that I've experienced through racism are not the only struggles that there are in the world, but still that race and socioeconomic status interact in very important ways for people.

Q. Now, while you were attending UNC, what was your view regarding whether there was adequate representation of students of color on campus?

JA1007

A. For the most part, actually completely, I never thought that there was adequate representation. Even when choosing to come to UNC, I was aware that UNC's black population was not reflective of North Carolina's black population, and I studied that a little bit in a class my first year -- a service learning course my first year.

But I just -- I remember feeling very much like if there were more black people at UNC, then there might be an even greater -- there might be an even greater view of the diversity of blackness that would make more room for me. There were many moments that I felt like I was not black enough because I didn't fit this monolith that many white students and just other students were telling me about what it meant to be black.

I think that -- excuse me. I was -- throughout my education, I was dissatisfied with the number of black people, people of color at UNC.

Q. Did that play out in any of the extracurricular activities that you participated in on campus, that lack of representation?

A. I remember having strange or uncomfortable social interactions related to my a cappella group when I was at UNC. A cappella is a whole wild world at UNC that is full of racism and division, and I just remember being seen as kind of the token black girl who was the one black person who wasn't in the black a cappella group, and there just wasn't -- it didn't seem like there was space for -- because of the inadequate number of people of color in that sect of -- in that sect of UNC,

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there wasn't space for any difference. People didn't accept that, and they got very uncomfortable with it.

Q. Now, how did the lack of representation make you feel in the classroom?

A. In the classroom the lack of representation was burdensome. I remember specifically my POLI 101 class or POLI 100 class at UNC. There were maybe 2-or 300 people in the lecture hall, and definitely fewer than 15 black people in the room.

When we would have discussions about America's racial and political history, just stereotypically all heads would turn toward the black people in the room; and in that I felt so much pressure to say the right thing because it seemed there was an expectation that I would be the representative for the race, that I would -- that I would be able to speak for every single black person in America, and that -- I think that pressure was undue and probably would have been relieved had there been a greater number of black people in the room.

Q. How did that experience, being in a majority white classroom, affect your participation in the class?

A. It depended on the day, but often my participation was marked more by my -- by my knowledge of being a minority in the room than it was by whether or not I actually had something to say. There were moments when I felt like I had to speak up because nobody else was speaking up for black people, even though I didn't know what to say. There were moments when I felt uncomfortable speaking about my own experience

JA1009

because of something else that a white student had said in the classroom.

Q. Were there times when some students -- or when you heard any sort of racially offensive statements while you were in class?

A. I don't remember any specific incidents, but I -- I don't remember any specific words, but I do remember one particular student in that POLI 100 class who would often say things that made several black students uncomfortable, and that was over the course of the entire semester.

Q. So how did you react to that, or did you?

A. In that early semester -- that was my first year -- I didn't really have much of an outlet to be able to share the difficulty of those experiences. I didn't yet have a super diverse friend group, so I didn't -- I internalized it a lot, and that was, of course, a very difficult time to do that. As I spoke earlier about the Keith Lamont Scott shooting and all the protests going on, it was a very tumultuous time to be black at UNC from the classroom to the -- to the police brutality that was going on across the country.

Q. Well, what at UNC helped ease your sense of isolation?

A. I think when I finally found my fit in this super diverse campus ministry, when I was able to make friends from many different backgrounds, and especially to make friends who were black and different than me and also similar to me in some ways, I felt like I had a place, a people that I could share my

JA1010

experiences with. And before I had that, it was -- life was a lot more difficult. It was a lot more difficult to be a student at UNC.

Q. Did -- your finding those safe spaces, did that impact in any way your participation in the majority white classes?

A. I think so. I think that having those safe spaces, being able to have conversations about what I was experiencing in class just made me more confident as a person. I became more settled in being able to say what was on my mind, to be able to share what I thought was important to the course discussion regardless of who else was in the room. So my academic experience was very much shaped by my social experience at UNC.

Q. Now, are you aware of UNC's history of racism and exclusion?

A. Yes.

Q. While you were at UNC, did you come into contact with any monuments or symbols of that racist legacy?

A. Yes. The Silent Sam statue, I don't know how familiar you all are with that. That -- the Silent Sam statue, this Confederate monument of an unknown Confederate soldier, marked my UNC experience. I mean, from the time that I got there -- it was like as soon as I arrived, there were protests around the statue trying to get it to be torn down. While I was there, there were moments when white supremacists came to the campus wielding guns to defend the statue. When I was an upperclassman, somebody -- a student pulled

JA1011

down the statue, and then there was a whole debacle about where the statue was going to go and all the anger in the student body about millions of dollars being given to continue to preserve it in a museum. So, yeah, this racist legacy is -- it pervaded my UNC experience.

Q. Were you aware of the controversy over the building names themselves?

A. To some extent. I wasn't deeply involved in them, but I was aware.

Q. And so what was your understanding about the names on some of the buildings on UNC's campus?

A. Well, I knew that some of the names were -- some of the buildings were named after figures who had intentionally perpetuated racism at UNC enough so that students felt very uncomfortable with learning in classrooms that were named after them. So I knew that there were efforts to get some of them changed. Like, what is currently Carolina Hall I believe used to be Saunders Hall, and that was a big issue while I was at UNC. They tried to get it renamed to Hurston Hall after Zora Neale Hurston. Yeah, that's kind of the extent of my knowledge of that.

Q. All right. And, Ms. Watson, so have you seen any progress by UNC from its history of racism to now with its official policy of inclusion and diversity?

A. I have seen progress, and I do have a lot of hope for UNC. I think that -- when I think about my own personal experience, I think that the honors college that I was a part of did a pretty good job of trying to

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listen to the experiences of black students and ask specific questions about how they could serve and help students to flourish at the university during times of really acute racial unrest, and I compare that experience to the histories that I had studied in several classes, going to archives at UNC and at Duke to study the different -- the different incidents of racism at UNC and how students had responded to them in the past. Comparing that to what was happening in my own life, it showed that UNC was not perfect, but there had been efforts to progress forward, and I appreciated that.

Q. Based upon your personal experience, how would a reduction in the number of students of color on UNC's campus affect its racial climate?

A. I think that that would -- I think it would be devastating. When I think about the -- the moments when there were white supremacists wielding guns around my campus and I was being told by my loved ones, like, "Stay in your dorm no matter what. Do not leave. This is not the time to fight this or to protest," I thought about why in the world they even felt comfortable coming to this space.

And, you know, in order for somebody to feel comfortable with those views, openly showing them in that way, in a violent way, I think it says something about the environment of UNC. What I mean to say is that if there were fewer black people, I would expect that even more incidents like that would happen because people who were not for black people, people who believed in white supremacy, people who were racist would feel even more comfortable, would feel like

JA1013

they have even more of a foothold on UNC's campus and continue to terrorize the students there.

Q. What message to students of color might it send if UNC ended its use of race in its admissions practice?

A. I think it would show that UNC didn't care about the racial experiences that students had and have and that, like me, have shaped many, many students. It -- yeah, it would show a lack of care. It would show a lack of awareness of the very real impacts of race in America and globally if they didn't ask those sorts of questions.

Q. Now, since you've graduated from UNC, what further academic studies have you started?

A. Yes. I am in my first semester at Princeton Theological Seminary, and I'm pursuing a master's in divinity.

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ACOSTA – DIRECT

[pp. 1336:11-1337:16]

Q. And how do you identify yourself ethnically?

A. I identify myself as a Mexican American.

Q. And where did you go to undergraduate school?

A. I went to UNC-Chapel Hill.

Q. And what year did you graduate with your bachelor's degree?

A. I graduated in 2017 with a degree in chemistry.

JA1014

Q. All right. Are you presently in school?

A. Yes. I'm a second-year medical student at UNC-Chapel Hill.

Q. All right. I wanted to first ask you some questions about your childhood, Mr. Acosta.

Where did you grow up?

A. So I grew up in Hendersonville, North Carolina, which is in western North Carolina, about 30 -- 30 minutes south of Asheville.

Q. And how long did you live in Hendersonville?

A. I lived there my whole life, so I guess -- I'm 25 now, but before I started college I was 17, so 17 years.

Q. And who did you grow up with in your family?

A. I grew up with my mom, my dad, and three younger brothers.

Q. And what education level did your parents attain?

A. So my mom did finish middle school, and my dad finished middle school, but he didn't finish high school. And this was both in Mexico.

Q. All right. And what do your parents do for a living?

A. So my mom is a homemaker, and my dad works for a factory.

Q. And when you went to school, did you qualify for a free lunch?

JA1015

A. Yes, yes, I did. Elementary school we got free lunches and breakfast.

Q. And were you the first in your family to attend college?

A. Yes, I was.

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[pp. 1339:8-1348:14]

Q. And did you ever personally observe or experience discrimination in the community based on your ethnicity?

A. Yes, I did. It was countless times that, you know, as a kid it would make you wonder, you know, why am I going through this and that. I don't know. It did leave a number on me as a kid, and now I do a little reflecting back on it.

But I think one key thing I remember in the community -- I was pretty young at the time, but we were driving, me and my mom, down to -- like beside the main street, and my mom was going the speed limit, and there's this anxious driver behind us. He was driving a truck. He was an older white male; and he reversed around, sped up, slowed down to be beside our car, and spit at the windshield where I was at, and told us, "Go back to Mexico, you spics," and just sped off.

And I don't know, like, as a kid, it just makes you wonder, like, why -- like, this is -- the way I am is a bad thing. So, I don't know, there's that and countless other stories, but I think that's like a big one that comes to my mind right now.

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Q. Now, you attended school in Hendersonville; is that right?

A. Yes, yes, I did.

Q. And what schools did you attend there in Hendersonville?

A. So I went to three: elementary school, middle school, and high school, so -- yeah.

Q. And what was the name of the high school you went to?

A. East Henderson High School.

Q. Now, did you ever experience discrimination or observe discrimination because of your ethnicity in the schools?

A. Yes, unfortunately, I did, I think at every level. I had one encounter with that in elementary school. Like, I recall we were banned from speaking Spanish for the remainder of a year. It was like an informal ban, but, you know, all the kids -- we were -- I don't know. Maybe we were troublesome. I'm not sure. But every time we'd get in trouble and, you know, we'd -- we would, like, hang out after class -- or not after class -- sorry -- during lunch and speaking Spanish. But teachers thought we were speaking bad about them, and they said we couldn't speak Spanish anymore because they couldn't understand what we were saying. So that was a little odd. I was pretty young at the time.

And then I remember another story, middle school, where I had a classmate who was white and another friend -- another classmate who was Mexican, and we

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were all sitting at the lunch table, and my Mexican friend brought the little jalapeños in a cup -- not a cup -- sorry -- in a can you can buy at the store, the jalapeños and carrots and all of those things. He had one of the carrots there, and my white friend wanted to play a prank on his sister. So he grabbed the carrot, put it on his sister's plate and swapped it out for the carrot she had on her plate. Then she ate it, got, like, really -- like, that was super, super hot and then started rubbing her eyes and then, you know, she had to go to the eyewash station. And after that, like, you know, they got in trouble, but my Mexican friend got suspended, but my white friend who did it didn't.

And then from that point, though, like, all the Hispanics from that grade level, we were all put in a classroom by ourselves, and it was sort of like -- I don't know, like, what the intention was there, but it was like a threat. But that's what happened after that incident, and we got a good talking to about that.

And then the last thing was probably in high school was, like -- you know, obviously, I had some issues going into -- like, going to high school to begin with, like, with the advisors and not wanting me to go into certain classes.

But I think the bigger thing was, like, when I was, like, playing basketball the first year, just receiving, like, all sorts of negative comments from the upperclassmen. At the beginning they thought I was Asian. They would call me chink and ching chong and all these different things and, like, would just chunk the ball at me at practice and kind of be, like, physically abusive, too, in the locker room, like push

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and shove me and call me names. And they found out I was Mexican, and they just changed their wording from chink and ching chong to spic and wetback and beaner.

I don't know. It was tough, but, like, you know, I would just be nice and hope for the best. But, yeah, I mean, it sucked looking back on it, but that's how it was.

Q. Now, do you feel whether your race is seen differently than your socioeconomic status?

A. I feel like there's -- like, from all those times I've been, like, you know, discriminated against, you know, the first thing they said or the first thing that came to their mind was about my color and who I was, right. Very rarely did I get anything about the economic status, like, just because people could hide that, I feel like, but being a minority group you can't really hide. So, yeah.

Q. And did you take a -- what type of coursework did you take at East Hendersonville High School?

A. I feel like I took all the, you know, rigorous courses I could take there, mainly consisting of honors and AP classes. I just tried to challenge myself as much as I could when I was there.

Q. Did you ever have any problems getting into any certain classes at East Hendersonville High School?

A. Yes, I did, mainly at the beginning when I was going from an eighth grader into a ninth grader. You know, I don't think the counselor -- that counselor at

the time didn't know what type of student I was, had her doubts and -- you know, I placed out of Algebra I. I was in the advanced math classes, and I was trying to take Algebra II or geometry, but she didn't let me. She was trying to tell me I wasn't ready for it and I had to take Algebra I again; I couldn't handle the rigor and all these other things. But, like, I was also the only Hispanic in that eighth-grade cohort, and she was the only one that told me those comments. And, you know, thankfully she's not there no more.

But it was just odd to me that, like, you know, in talking to my friends, like, "Are you all getting these comments from her? Is she telling you not to take it like I can't take it?" And they all would say no. So it was a little odd.

And then too, like, you know, there's an AP course, AP World, which is, like, the class that all the ninth grade high-achieving students are supposed to take to, you know, stay competitive, but they didn't let me into that one either. They just said I couldn't handle it, I wasn't ready to handle it yet, but -- yeah.

Q. And do you recall whether there were any persons of color in that world history AP course?

A. No, there wasn't any in that one. Yeah, no. Actually, no, there wasn't.

Q. And in the other advanced and AP courses that you took at East Hendersonville High, were --

A. So all the other, you know, AP maths and bios and language arts, like, there is very -- there was not any -- I was usually the only one in my -- one of my really

JA1020

good friends from UNC also was the other one for, like, the language arts courses. So it was like I was the math/science person. He was the language arts person. But, yeah, we were it, just me and him.

Q. And in high school what extracurricular activities did you engage in?

A. So I played basketball until my junior year. I played tennis for the majority of it. I did a lot of extracurriculars with other student groups at the school that did service-oriented things, and I think the most -- most of my amount of time was spent at the Boys & Girls Club toward the end, so volunteering there.

Q. And approximately how many hours did you volunteer?

A. Oh, man. Well, I definitely -- at least 300, upwards of that area. I didn't want -- I spent a good majority of my time there just because I enjoyed it so much. So I think it was over 300.

Q. Some of your academic qualifications are listed in Exhibit DI30 that's been entered or will be entered into this -- I think into the record in this case. But, generally speaking, how do you feel you did academically in your coursework in high school?

A. I feel like I did solid. I feel like I did, you know, as well as I could have. I finished sixth out of 200-and-something kids at the end of the day, and that -- I did well. I got As and Bs in every single one of my courses and did challenge myself as much as I could there, so I think I did good.

JA1021

Q. And I don't want you to disclose your specific SAT and ACT and AP scores here. They are identified in Exhibit DI30. But how do you feel you did on those standardized tests?

A. Knowing -- like, I didn't know the resources I had and, you know, that you actually had to study for it -- again, I didn't know what went down in the whole college thing, but I feel like I didn't do my best, but I feel like I did what I could with the resources I had. You know, I -- I think I would hear kids getting tutoring and buying all these books for it, and it just never, you know, occurred to me or it was something I thought I should have done. Even if I could have done, I probably would have felt guilty asking my parents for the money just because, like, you know, I was the first one to go, but there were three younger ones they've got to worry about. So, yeah, I don't think I did the best I could have, but, you know, I did what I could at the time.

Q. So just to be clear, you didn't know that you could participate in tutoring or that there were certain workbooks that could possibly help you, you know, study and improve your scores?

A. Uh-huh. I had no idea, none at all, just like -- I just heard people just taking it, and I was like, "I guess I've got to take this to get in." That's it. I didn't really study at all. No, I didn't study at all.

Q. Do you feel your college entrance exams reflect your ability to succeed in college?

A. I don't think they did. I'll be honest, the first semester was tough for me, but, you know, after that --

JA1022

like, it was all uphill. I didn't let that hold me back. At the beginning, you know, you hear the students bragging about the SAT, ACT and just feel like reflecting on that the first semester in college.

But, like, I mean, after that little phase runs out, it's really just -- college is a whole different ballgame. You're by yourself, and it's where, you know, your work ethic comes out. You know, if you're motivated, you get through it and everything. I feel like it's just one of those things that's meant for college admissions and is a factor, one of many, you know.

Q. Sure. And when did you first become interested in applying to UNC?

A. So I first became interested in applying to UNC, like actually, actually applying, the summer going into my senior year. I met a mentor of mine through the Boys & Girls Club. She was at Duke University. You know, I was telling her what I wanted to do with my life. She gave me kind of like an overview of where I could apply, and UNC was one of those. You know, I had only seen them, like, playing basketball, and you know, they had a good reputation as, like, the state college. You know, everybody wants to be a Tar Heel. So I just didn't put two and two together and actually apply until that summer because I had her guidance at that point.

Q. And what was the race or ethnicity of your mentor from Duke?

A. So she was Mexican American.

Q. And who filled out your application?

JA1023

A. So that was all me. You know, everything was on me.

Q. And how was that experience for you and how old were you?

A. It was very difficult. Like, definitely a lot of stress and, you know, having to do that with school at the time, preparing for exams, just feeling alone with all of it. You know, I recall talking to my buddy, the one who came here and was also, you know, I would say, like, the other minority with me that was high performing, you know. We were complaining about it, saying we want to give up, like maybe we shouldn't go to college. But, you know, having him around, we talked each other into finishing it out, but it was very difficult. Just a lot of questions, a lot for a 16-, 17-year-old kid that didn't know what to put and didn't want to put the wrong thing, you know.

Q. Were your families able to assist you with filling out the application?

A. No, they were not. You know, I just asked them to give me the documents, and I would take the rest from there. But, you know, I did try to get them, but they just didn't understand much of what was going on. English isn't their first language, so I just really had to research and do it all on my own.

Q. Now, when you applied, you requested a fee waiver for the application fee at UNC; is that correct?

A. Uh-huh, yeah. So that was brought -- I got a fee waiver for that and the SAT and I think something else. But, gosh, my

JA1024

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[pp. 1349:6-1354:24]

Q. (By Mr. Hinojosa) But I had just asked you about whether you had taken any classes where there was a greater level of diversity in the class.

A. Okay. So greater level of diversity was in my sociology courses. It was a little different for, like, a pre-med kid to be taking that, but I think for me, I wanted to get, like, the full picture.

So this class I was in is about society and health, and it was interesting because, like, you know, we have people from all different backgrounds. There was a stat about black females of each income level -- so lower, middle, and upper -- and they were comparing miscarriage rates and premature births to white women and Latino women and Asian women and the American. So they had it all. Like, the minorities were the ones that had the lower right, and the black females at every level was worse than a white female at the lower income -- the lowest income level.

I don't know. I think that that definitely did a number on me, like, reflecting on that, like, why is that. I remember people were getting in discussions about, like -- you know, no, like, racism is the most ordinary -- like, socioeconomic -- all these other things, but it's hard to -- the battle of the stats. And, like, even now as a medical student, there are so many things like that where race really does impact health outcomes; and, you know, like I said, it's sort of like a growing thing. We're just not sure in what way.

JA1025

But it was definitely, like, having that space back then, reflecting on that, and then, like, remembering those details now, you know, it's, like, allowed me to get a full scope of everything.

Q. Were the different perspectives that you were talking about offered by people of different races?

A. Yes.

Q. And did that help you think about things differently also in that moment?

A. It did. It did, and especially under the guidance of that instructor. You know, she was very amazing with what she does and her research, and the way she taught the class helped a lot, all of it.

Q. All right. Now, outside of the classroom, did you have opportunities to meet new friends and build relationships with people across races and ethnicities?

A. Yes. You know, I think outside the classroom there wasn't a whole lot of us, but, you know, the few that we did have, like, you know, we were -- we knew of each other. We would walk around and give each other head nods, and, like, you know, we'd always, like, greet each other. That's just the way the minorities were. We were close-knit, I believe, and I think it was cool that I could -- you know, I felt, like, nice knowing that I had those few around there.

Q. And did you have the opportunity to meet people that you had never met before of different races and culture?

JA1026

A. Yeah. You know, I had never met African people before. I had never met, you know, a lot of Indian people before, different Asians. Like, you know, I really got everything at UNC and really broke down a lot of things I had coming in about some people and helped me build, like, you know -- be a really overall diverse person with that, you know.

Q. Now I want to talk a little bit about diversity within diversity.

Did you personally have any stereotypes about more affluent Latinx students or more affluent white students?

A. Yeah. So, I mean, I kind of came in thinking the rich kids were stuck up, but now, like, once I got to meet people, it was like, you know, it all just boils down to how people are raised.

Like giving you an example, you know, I had an upper-income student who was white and, you know, probably -- one of my best friends now. But, you know, I convinced him to join this group I was in and, you know, the way he connected -- so the group was geared towards, like, mentoring at-risk Latino middle school students; and, you know, he was able to kind of change some perspectives he had about, you know, undocumented students and -- because he was born on the conservative side of things and, like, here he really had a space to, like, understand how these other kids are living their lives. You know, we took some trips to their neighborhoods, and he met with the family and, like, kind of got a good rapport with them, and -- you know, just because some students aren't as fortunate.

JA1027

I think that really changed the way he thought about things.

There were two Latino first-year students I recruited. I didn't know, like, their parents were pretty high-end, like CEOs of certain things; and, like, those Latinos I feel like were really cool in that they were really there to help out the program and kind of kept out their whole -- you know, all the riches they had. Like, they just -- I don't know. They did good in not, like, bragging about it and making people feel uncomfortable about the things they had and, like, what these kids didn't have like I had seen in the past. I don't know. I really thought it was cool just, you know, having that diversity within diversity, just breaking down the barriers and biases I had.

Q. Did it also break biases down they had about people like you?

A. Yeah, yeah, I think it did. Like I said, those Latino kids, like -- just everyone is different, you know. Everyone has got their own story and roles and stuff. Low income, middle income, high income, like, as long as they have the common goal, I think everything can work out.

Q. Now, at the medical school have you belonged to any organizations or associations?

A. So I was a copresident for the Latino Medical Student Association, and I was also in the student government. I was a VP for diversity and campus affairs. So those are my two big things. I did some other things here and there, but those are the big things.

JA1028

Q. You testified here today about some of the benefits of diversity that you've experienced at UNC.

What sort of impact do you believe this will have on you professionally when you graduate?

A. I think for me, it's going to allow me to be just like a -- just like a doctor that can critically think about certain issues and just keep everything in context because, like, you know, obviously -- you said professionally, right? Describe how it was going to help me professionally?

Q. Yes.

A. Okay. You know, like, as a kid, my mom -- we were on WIC and like, you know, having -- knowing what resources we had back then and, like, being able to see, like, you know, what ways we can improve low-income families, those resources, having those experiences.

But then also, like, hearing the different things about, you know, these stats on what populations are more at risk will allow me to put a little bit more focus and not miss certain key things when I'm building, you know, my differential or, like, one -- have a treatment plan and assessment with my patients in the future. So I really do think having all those experiences are going to help out in the long run.

And also, even when it comes to food, right, all these different students I have interacted with, like, had different cuisines and just being familiar with, like, what they eat and being able to fit that can help out in the long run.

JA1029

Q. Why is it important that state flagships like UNC remain visibly open to underrepresented students of color like yourself?

A. I think it's helpful because, like, UNC is so big and, like, I feel like they've got a lot of resources for this. And I remember, like, even applying to schools like -- there was a couple schools I stayed away from just because of their reputation and, like, not having as many Latinos around. I think UNC has got a cool thing in that, you know, they have a good opportunity to really retain the best of the best by remaining visibly open so they could really improve the state with the overall everything, you know.

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MWAMBA – DIRECT

[pp. 1356:10-1357:2]

A. I graduated in 2018.

Q. And what did you study there?

A. I studied global health with -- global studies with a focus in global health with minors in chemistry and human development.

Q. Did you receive any honors or scholarships while you were at UNC-Chapel Hill, besides the Robertson Scholarship?

A. Yes. I was also a Ron Brown Scholar captain, and I also graduated with distinction, and I was an Honors Laureate.

JA1030

Q. This case involves UNC's ability to consider race and ethnicity in its admissions process.

Do you identify with a particular race or ethnicity?

A. Yes, I identify with black/African American.

Q. And are you originally from the United States?

A. No. I was actually born in Lubumbashi, Democratic Republic of Congo; and at the age of 3, due to political instability, I went to Belgium where I lived for three years and then came to the United States at the age of 6.

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[pp. 1357:16-23]

Can you tell us a little bit about that?

A. Yes. So Spring Valley High School is actually a public school in Columbia, South Carolina; and in middle school, you're able to apply for specific magnet programs if your academic record allows. And so I decided to attend the math and science magnet, in which there were approximately 30 students, and I was one of two black students, with the majority of students being either Asian or Caucasian.

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[pp. 1358:7-1361:7]

A. Absolutely. Being primarily from a country in the DRC, Congo, where I was not a minority really did not allow me to see what it meant to be black and what blackness meant in the U.S.; and so when I initially

JA1031

came to North Carolina for middle school and then South Carolina for high school, I had a really big sort of shift in who I believed I was.

And, for instance, while I was in high school, you know, oftentimes my -- the fact that I was in advanced coursework, I was either the only black person or one of two, and so at times when I was with my friends or other classmates, people would make comments like, "Oh, you're not black black," or "You are an Oreo. You're black on the outside, but you're white on the inside."

And I really internalized that feeling, and I really wanted to separate myself from my blackness because if my peers were saying that there was something wrong with being black and that having white inside or not being too black was a good thing, then I really wanted to separate myself from that blackness and adopt as white of an identity as I could.

Q. And do you feel that your academic success affected how people treated you in relation to your race?

A. Yes. So I very much believe that my sort of high achieving and academic work resulted in a protective factor in the idea that, you know, I worked really hard at school, and people saw me not just as black Rimel but the really smart one. And so my identity as a black person was kind of stripped from me, and I really took on the identity of a very intelligent person, but that didn't always protect me because, you know, I was involved with a lot of extracurriculars in high school.

For example, I played lacrosse. So at times when I was in contact with people who didn't know me very

well or didn't know me at all is when that protective nature of my academic prowess sort of went away. I had people -- people's parents on the lacrosse field yell racial slurs or people that I was playing against who didn't know me sort of make judgments and comments about my race, whereas when I was in class, that wasn't really the thing.

Q. Overall, do you think that your racial and ethnic identity impacted the perspectives that you developed while you were growing up?

A. Yes. As I briefly mentioned before, I really did not want to align with my race. I didn't want -- as ashamed as I am to say it, I didn't want to be black. I -- I am sorry.

THE COURT: Take your time.

THE WITNESS: Thank you.

Q. (By Ms. Turner) Thank you.

A. I'm sorry.

Q. Yes. Go on.

A. I didn't want to be black. I -- you know, there was a point in my life where I asked my mom to give me relaxers so I could make my hair really straight because I really wanted that more Eurocentric look in high school. So even though it burned my scalp, I still did it because I didn't want to be aligned with my blackness. I didn't want my hair to be big. I wanted to be as far from it as possible because my environment wasn't one in which blackness was prideful.

Q. Thank you, Ms. Mwamba.

When you applied to UNC-Chapel Hill, did you share anything in your application about your racial identity?

A. Yes. So I shared my nationality -- my original nationality first, that I am from Congo, and I really wanted to also put that I am black/African American because I wanted the schools to contextualize my experience and to see that, you know, with all the things that I've done in high school and my life, my race was a very big part of that identity that I developed.

Q. And do you think that it was important for UNC to be able to consider your racial identity when they were considering your application?

A. I definitely do. I think one thing about coming to this country is seeing how really racialized everything is -- right? -- and how subjugation of particular groups across history has kind of brought us to where we are today. And I think that it's really important, at least for my application, that UNC see what -- who I am, you know, holistically and how the color of my skin and the texture of my hair impacted my upbringing.

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[pp. 1362:9-1363:15]

A. Yes, it has. I think -- excuse me. I believe that moving from a pretty low socioeconomic status to a higher one over time definitely gave me a greater perspective not only on what, you know, financial

stability meant in the U.S., but also what that looks like for someone like me, an immigrant, because although my father is and was making more money, he still had a lot of responsibility to other members of our family in Congo, you know, who relied on him, both his family and my mother's as well, because he was a primary breadwinner for those people. And, you know, we didn't really have that generational wealth built into our family, and so all the money that he made was spent, you know, kind of paying off debts from our initial time in the U.S. and funding other family members. So it's definitely given me a shift in perspective.

Q. And given what you just testified about, do you think that your socioeconomic experience is the same or different from students with a similar socioeconomic background but a different racial background?

A. I would argue that it's different, and I -- I believe I touched on that a little bit before. But although someone who may be in the same socioeconomic class as me now but different race might have had somewhat similar experiences, I still believe that my background and general racial identity has given me a unique perspective and unique life experiences that would not be the same.

Q. Can you meaningfully separate your socioeconomic identity from your racial and ethnic identity?

A. I'm sorry. I didn't quite catch the first part.

Q. Can you meaningfully separate your socioeconomic identity from your racial and ethnic identity?

JA1035

A. No. I say that I have a pretty intersectional identity, and it would be hard for me to take the two apart.

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[pp. 1364:9-1370:13]

Q. While you were a student at UNC, did you have the chance to take classes with students from racially diverse backgrounds?

A. I did have that opportunity, although quite a few courses -- given that, as I said before, I was pre-med, so some of my STEM courses did not have as much diversity as some of my other courses.

Q. Did the level of racial diversity in a classroom make a difference to your learning environment?

A. Absolutely. I -- when I think about the classes in which I was surrounded by more diverse people, I happily look back on the support that I received in class from my peers and also the sheer knowledge that I gained from them, from understanding and hearing their life experiences, you know, where they're from, where their parents are from, how their upbringing and whatever impacted their current knowledge and their perspectives.

And so when I compare that to courses in which there was less diversity, I oftentimes felt lonely because what happened in the classroom doesn't always end there, right? There are things happening on the outside world where the hope is that you go into the classroom and you forget all about that and you learn how these molecules interact with one another, but

JA1036

then the reality of it is you carry that with you into the classroom. So when things came up that were really impactful to me and my identity, I had to sit in those classes where I saw not many people who looked like me, and it just felt really lonely.

Q. Did the level of racial diversity in a classroom affect your ability to participate in that class?

A. Yes. So there were times when, you know, for me at least, I was the only either person of color, a black person, a black woman in a classroom; and there may have been instances in which a comment was made about black people or a comment was made about immigrants; and when I was one of only, if not the only, I felt that I had to speak up in defense of everything black and everything immigrant. And so that was very exhausting. So sometimes, you know, I'd take that leap, and I'd speak up and engage, but other times I was just so emotionally drained and tired.

And so when I had other people in the class who also came from diverse backgrounds and who were people of color, I felt way more supported. You know, sometimes you glance over and you look at this person who you know would also speak up, and you kind of head nod to each other because you know that they have your back, and you know they're also engaged to support the claim that you're making.

Q. Overall, do you think that there is adequate representation of students of color on campus?

A. No, not at all.

JA1037

Q. Are there any other instances you remember where the lack of representation of students of color made a difference to your experience?

A. Absolutely. Outside of the classroom this also happened. For instance, when I got back -- I studied abroad into Africa, and then when I came back in the fall of 2016 when President Trump was elected and there were tensions on campus, I remember going out to Little Frat Court at UNC to go to a party and being stopped at the front door by who I presumed was a fraternity member, a white male, and being told that my president says it's okay to kick out the N words; and then a separate incident a few months after when I went to another fraternity party and then being told that no slaves were allowed in.

And in those moments, really feeling defeated -- angry and frustrated, but also really defeated because around me there weren't really other people of color or other black people, and so you kind of feel like you're on your own and -- yeah.

Q. Did you get a chance to participate in extracurricular activities at UNC where you were in groups of students with more racially diverse backgrounds?

A. Yes. So I actually had the incredible opportunity to be a part of an online publication called "The Bridge," which is a publication that was created by two women of color, one who identified as black and the other as Latinx, who really wanted to have a platform for black and Latinx and Native American women to be able to express themselves artistically.

JA1038

And it was one of the few places where I felt really seen and understood and heard because, you know, you'd walk into a meeting of "The Bridge" and see just a plethora of black women, in particular, and Latinx women who were incredibly supportive and who had very unique and amazing life histories that made them diverse as well. So even within the black community you had such flagrant diversity and -- of experience and background.

You know, for the first time in my life, I really came to understand the livelihood of, you know, black Latinx women, who I never interacted with before, but their very unique outlook on life and experiences with that identity.

And so I felt really happy and really supported in that space.

And another -- another extracurricular that I was able to commit to was rugby, where I got an incredible opportunity to play with, you know, femme-identifying individuals who were of very diverse sexual orientations and even races as well, where I really came to understand the plight of people who are both similar and different to me.

And so those two spaces were very -- if those two places didn't exist for me at my time at UNC, I'm not really sure how long I would have lasted because they served to reignite my passion for education and for being around others and for learning in that environment.

JA1039

Q. You testified earlier about how your experiences in high school affected your racial identity and sense of self.

Did your sense of racial and ethnic identity change while you were at UNC-Chapel Hill?

A. Yes, I can very happily say that I grew more into myself at Chapel Hill, and I guess an example of that would be -- I know I touched upon the idea that I used to relax my hair a lot in high school and middle school, you know, for the purpose of appearing more Eurocentric.

I got to college. My second year I cut all my hair off, and I -- I grew it out, you know, in a way that I was proud because I had seen so many amazing, beautiful, you know, black women on campus who were proud of their hair and their crowns and who taught me how to take care of and love mine.

And so as I interacted with other black women, but also other women and people of color in general, I was able to be proud of my skin color and really be proud of my identity and not shy away from it, you know, be insulted at the idea of being an Oreo, because I'm black on the inside too, and that's great.

Q. Thank you.

And I'm sorry to bring this up again, Ms. Mwamba, but you described being called a slave.

Was the historical legacy of slavery at UNC-Chapel Hill a particularly salient issue while you were attending?

JA1040

A. Yes. So actually, while I was at UNC there were -- there were conversations about Silent Sam far before I got there as well, but I know that when I got to campus, those conversations really began to ignite again. Silent Sam is the Confederate monument on UNC's campus that brought a lot of emotional, psychological, and even physical stress to my community, at least the black community. And so while I was on campus, there were larger conversations happening about what it meant to have a Confederate soldier on UNC's campus.

And, you know, as a black person, you ask yourself does this school actually value my being here by allowing, you know, a statue that commemorates such a violent history towards black people. And so as those conversations were going on, there were also rallies, and, you know, I remember instances in which you'd get -- I'd get text messages from other black friends saying, "Hey, be careful. You know, the Sons of the Confederacy are on campus. If you can, go home another way, go home another route." Because the spaces were just really, you know, emotionally and physically violent surrounding Silent Sam.

Q. Thank you.

And just to finish, I'm going to ask you a few questions about the future.

What are you doing currently?

A. Yeah. So currently I am a research fellow at the Duke Global Health Institute, along with a research specialist at the Duke Department of Psychiatry and Behavioral Sciences, where I'm doing really awesome

research that deals with HIV among pregnant women in Moshi, Tanzania, and also deals with the impact of HIV and drug use on the anatomy of the brain.

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[pp. 1371:16-1372:11]

Q. More broadly, what are your long-term goals for the future?

A. Yeah, so I really hope to practice medicine. I'm not entirely sure of which specialty I want to go into, although from my past work I'm really passionate about infectious disease with medicine and research because I want to find clinical interventions and develop them that really work to address healthcare disparities both in the U.S. and outside of it borders.

Q. And do you think that your experiences with racial and ethnic diversity at UNC-Chapel Hill impacted your ability to achieve those goals?

A. Yes. I -- again, I look back on my time on UNC, though not perfect, and understand that the people that I met and the experiences that I've had have shaped my perspective as to what kind of doctor I want to be and as a doctor that, you know, has a really diverse patient population, who I know how to treat and how to talk to and how to care for, because I understand that their unique life experiences make them a holistic person, and I really want to address every part of their being, you know, not just the clinical

JA1042

part, but also the psychological and emotional aspects
of being who they are.

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