

Exhibit 5

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION

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STUDENTS FOR FAIR ADMISSIONS,
INC.,

Plaintiff,

vs.

Civil Action No.
1:14-cv-14176

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (HARVARD CORPORATION);
and THE HONORABLE AND REVEREND
THE BOARD OF OVERSEERS,

Defendants.

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- HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY -

DEPOSITION OF RAKESH KHURANA, a
witness called by the Plaintiff, taken
pursuant to the applicable provisions of
the Federal Rules of Civil Procedure,
before James A. Scally, RMR, CRR, a
Notary Public in and for the Commonwealth
of Massachusetts, at the offices of
WilmerHale, 60 State Street, Boston,
Massachusetts, on Thursday, April 27,
2017, commencing at 9:06 a.m.

1 interests, how they want to contribute to each
2 other's learnings, and their desire to contribute to
3 society's well-being in consideration of their
4 applications to Harvard.

5 Q. Would you favor increasing the weight given
6 to legacy admissions if it resulted in decreasing the
7 racial diversity of the student body on campus?

8 MS. ELLSWORTH: Objection.

9 A. I would prefer having as diverse a group of
10 students who come from a variety of different
11 backgrounds and interests and want to study a variety
12 of different subjects, learn from each other, hear
13 each other, understand each other, and who share a
14 desire to contribute to the well-being of society.

15 Q. So would you favor increasing the weight of
16 legacy if it would decrease racial diversity?

17 MS. ELLSWORTH: Objection.

18 A. I would need to know much more about the
19 variety of different characteristics of those
20 students that you're talking about.

21 Q. Which students, the legacies or the racial
22 diversity?

23 MS. ELLSWORTH: Objection.

24 A. Both of them.

1 Q. You can't answer that question?

2 A. I can't answer that question.

3 Q. Have you ever heard anyone at Harvard raise
4 concern that its admissions process disadvantages
5 Asian-Americans?

6 A. Yes.

7 Q. Who has raised that concern with you?

8 MS. ELLSWORTH: Remind the witness
9 not to disclose the contents of
10 communications with counsel or advice
11 of counsel. If you can answer the
12 question without doing so, you may.

13 A. I've heard it discussed as a general topic.

14 Q. By who?

15 A. I can't recall specific people.

16 Q. Have you ever reviewed any analysis by the
17 university's Office of Institutional Research as to
18 the extent to which Asian-Americans are disadvantaged
19 by the admissions process?

20 MS. ELLSWORTH: Objection.

21 A. I may have.

22 Q. And what are you thinking of when you say you
23 may have?

24 A. I see a variety and saw a variety of

1 different reports when I became dean.

2 MS. ELLSWORTH: If you're going to
3 move into a document, can we take a
4 break? We've been going for a little
5 over an hour.

6 MR. STRAWBRIDGE: Yeah, we can
7 take a break.

8 (Recess: 4:34 p.m. to 4:41 p.m.)

9 ([Exhibit 10](#), February 2013

10 PowerPoint presentation Bates stamped
11 HARV00031773 through 31858, marked.)

12 BY MR. STRAWBRIDGE:

13 Q. I've handed you a document that's been marked
14 as [Exhibit 10](#). Can you look through that and see if
15 you recognize that document? And I can direct you to
16 a particular part of the pool -- or the document.
17 I'm sorry. It's starting on the page with the Bates
18 suffix of 804 through 810. (Pause.)

19 Have you had a chance to look at that?
20 Specifically to 804 to 810, did you have a chance to
21 look at that?

22 A. I did.

23 Q. Okay. Before we broke, I asked you whether
24 you had reviewed any reports from the Office of

1 Institutional Research about whether Harvard's
2 admissions process affects or disadvantages Asians.

3 Do you recall ever seeing this document?

4 A. I may have seen some of these tables, but I
5 can't say for certain that I saw this document.

6 Q. What do you recall about seeing some of these
7 tables?

8 A. That there was an examination of looking at
9 the admittance of students.

10 Q. And which tables in particular do you think
11 you've seen before?

12 A. I can't tell you specifically.

13 Q. Okay. And what do you remember about this
14 examination?

15 MS. ELLSWORTH: Objection.

16 A. Just that I didn't think that this was --
17 analysis was done appropriately.

18 Q. And why didn't you think that?

19 A. There's limitations, a lot of limitations to
20 doing what are called fitted models like this.

21 Q. Okay. Let's back up a little bit. When do
22 you specifically remember seeing some of these
23 tables?

24 MS. ELLSWORTH: Objection.

1 A. I believe that as I familiarized myself with
2 the office of the dean of Harvard College, that I
3 read a variety of different analyses and perused
4 several reports.

5 Q. And so is it your testimony that you think
6 you saw these documents, you know, they were made
7 available to you in the office of the dean?

8 A. I can't say about these specific documents,
9 but tables like this.

10 Q. Do you -- do you specifically remember seeing
11 documents that analyzed what the effect of various
12 admissions variables were on Asian-Americans in the
13 admissions pool?

14 A. I think so.

15 Q. And specifically with respect to what appears
16 on page 810, or the page with the Bates suffix of
17 810, there's a question 3 that says, "Is there bias
18 against Asians in college admissions?"

19 Do you see that?

20 A. Yes.

21 Q. Okay. And do you remember reviewing some
22 presentation containing these tables or other similar
23 information that was addressing whether there was
24 bias against Asians in college admissions?

1 MS. ELLSWORTH: Objection.

2 A. I don't remember.

3 Q. You don't remember that?

4 A. I don't remember that.

5 Q. Do you remember in what -- were these on a
6 share drive, or were they emailed to you? Do you
7 remember how you were reviewing the tables that you
8 think look like the tables that are in this
9 presentation?

10 MS. ELLSWORTH: Objection.

11 A. I think there were a variety of reports in my
12 office, and I just remember reading them and going
13 through them.

14 Q. Like in a hard copy binder?

15 A. In a hard copy. I can't say how -- whether
16 they were in a binder.

17 Q. Okay. Do you remember discussing those
18 tables or that analysis with anybody else in the
19 office?

20 A. I don't recall discussing them with anyone
21 else in the office.

22 Q. Do you know whether you discussed them with
23 the interim dean who preceded you?

24 A. I don't believe I discussed them.

1 Q. Do you recall whether you ever discussed them
2 with Dean Hammonds?

3 A. I don't believe I discussed this with Dean
4 Hammonds.

5 Q. And you can't remember discussing it with
6 anybody?

7 A. I don't remember discussing these with
8 anybody.

9 Q. When you say there are a lot of problems with
10 a fit model such as these, what specific problems, if
11 any, do you recall thinking about when you looked at
12 tables like the ones in this report?

13 A. That models like this violate statistical and
14 hypothesis testing.

15 Q. Did you discuss any of that with people at
16 the Office of Institutional Research?

17 A. No.

18 Q. Do you think that the people at the Office of
19 Institutional Research understand statistical
20 modelling?

21 MS. ELLSWORTH: Objection.

22 A. I don't know.

23 Q. Do you assume that the people who do the
24 institutional research for the college and for the

1 university have some background in statistical
2 modelling?

3 MS. ELLSWORTH: Objection.

4 A. I do.

5 Q. Do you assume them to be competent at their
6 jobs?

7 A. I do.

8 Q. So you read these things, and it occurred to
9 you that you don't think this was a reliable
10 analysis, or you read something like this, you're not
11 sure if it was this report or something like this,
12 and you didn't talk to or otherwise engage with
13 anybody on it?

14 A. No.

15 Q. And the only time you remember seeing
16 something like this was just sitting in your office
17 catching yourself up on the things that the dean has
18 access to?

19 MS. ELLSWORTH: Objection.

20 A. I can't remember if that was the setting.

21 Q. Okay. Do you have any idea why these were
22 prepared?

23 A. I don't.

24 Q. Did you take any steps to find out why they

1 were prepared?

2 A. I did not.

3 Q. Did you take any steps to determine what a
4 proper analysis would yield with respect to this
5 information?

6 A. No.

7 Q. Did you -- have you since seen any analysis
8 from the Office of Institutional Research at the
9 university or the college addressing the question as
10 to whether there's bias in the college admissions
11 process against Asians?

12 MS. ELLSWORTH: I'll just remind
13 the witness to answer the question only
14 to the extent you can do so without
15 disclosing communications of counsel or
16 advice of counsel.

17 A. I'll be following the advice of counsel.

18 Q. Okay. So other than in communications with
19 counsel, you haven't seen any other Office of
20 Institutional Research products like this except for
21 this time you were in your office getting up to
22 speed?

23 MS. ELLSWORTH: Objection.

24 A. I don't think I have.

1 Q. And when you say -- I just want to make sure
2 I understand. Do you remember -- you remember that
3 there were problems with this type of analysis when
4 you picked this thing up and looked at it; correct?

5 A. I remember thinking I wouldn't use this kind
6 of -- I would have not approached this question this
7 way.

8 Q. Okay. How would you approach the question of
9 trying to determine whether an admissions process is
10 biased against Asian-Americans?

11 MS. ELLSWORTH: Objection.

12 A. I didn't -- what I was -- that's not the
13 question I would have been asking. That's not the
14 question I thought was being asked.

15 Q. But why -- what question did you think was
16 being asked?

17 A. How do you -- how does -- you build up a
18 model to understand whether the process we used
19 produces the class that we think we need and would
20 want and would most benefit from a Harvard College
21 education.

22 Q. Do you think Harvard should take steps to
23 ensure that its admissions process is not
24 disadvantaging Asian-Americans as a group?

1 MS. ELLSWORTH: Objection.

2 A. I think Harvard College should take an
3 admissions process that considers each student's
4 background, experiences, academic aspirations,
5 extracurriculars, contributions to their community,
6 the benefits they would derive from a four-year
7 residential experience, and their desire to
8 contribute to the well-being of society in evaluating
9 each application.

10 Q. Do you think that the Harvard admissions
11 process disadvantages Asian-Americans?

12 A. I don't know.

13 Q. You don't know?

14 A. I don't know.

15 Q. If it did, would it be something that would
16 concern you?

17 MS. ELLSWORTH: Objection.

18 A. I would be concerned if Harvard's admissions
19 process disadvantaged students along a variety of
20 different characteristics.

21 Q. Including race or ethnicity?

22 A. Including and not limited to race and
23 ethnicity.

24 Q. Other than the general conversations you

1 mentioned earlier, do you recall anyone else ever
2 raising with you concerns that Asian-Americans were
3 disadvantaged by the Harvard admissions process?

4 A. I can't recall.

5 Q. Do you know whether any student groups at
6 Harvard have ever raised concerns about whether
7 Harvard's admissions process disadvantages Asian-
8 Americans?

9 A. I don't know.

10 Q. You don't know if they have or not?

11 A. I don't know what you mean by "student
12 groups."

13 Q. Does Harvard have student affinity groups?

14 MS. ELLSWORTH: Objection.

15 A. Harvard -- yes.

16 Q. Are some of those student affinity groups
17 associated with nationalities or ethnicities?

18 A. Some of those student groups have missions
19 that advance the cultural interest of a variety of
20 different identities.

21 Q. And do you recall any of those student groups
22 raising concerns about whether the admissions process
23 at Harvard disadvantages Asian-Americans?

24 MS. ELLSWORTH: Objection.

1 COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

2
3 I, JAMES A. SCALLY, RMR, CRR, a
4 Certified Shorthand Reporter and Notary Public duly
5 commissioned and qualified in and for the
6 Commonwealth of Massachusetts, do hereby certify that
7 there came before me on the 27th day of April, 2017,
8 at 9:06 a.m., the person hereinbefore named, RAKESH
9 KHURANA, who provided satisfactory evidence of
10 identification as prescribed by Executive Order 455
11 (03-13) issued by the Governor of the Commonwealth of
12 Massachusetts, was by me duly sworn to testify to the
13 truth and nothing but the truth of his knowledge
14 concerning the matters in controversy in this cause;
15 that he was thereupon examined upon his oath, and his
16 examination reduced to typewriting under my
17 direction; and that this is a true record of the
18 testimony given by the witness to the best of my
19 ability.

20 I further certify that I am neither
21 attorney or counsel for, nor related to or employed
22 by, any of the parties to the action in which this
23 deposition is taken, and further, that I am not a
24 relative or employee of any attorney or counsel
interested by the parties hereto or financially
interested in the action.

My Commission Expires: April 8, 2022

James A. Scally, RMR, CRR
CSR/Notary Public