

EXHIBIT A

WARD CONNERLY - OCTOBER 24, 2007

<p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN</p> <p>--000--</p> <p>COALITION TO DEFEND AFFIRMATIVE ACTION,) Case No. 06-15024 INTEGRATION AND IMMIGRANT RIGHTS AND) FIGHT FOR EQUALITY BY ANY MEANS) NECESSARY (BAMN), et. al,) Plaintiffs,) v.) JENNIFER GRANHOLM, in her official) capacity as Governor of the State of) Michigan, REGENTS OF THE UNIVERSITY OF) MICHIGAN, BOARD OF TRUSTEES OF MICHIGAN) Deposition Of: STATE UNIVERSITY, BOARD OF GOVERNORS OF) Ward Connerly WAYNE STATE UNIVERSITY, MARY SUE COLEMAN,) in her official capacity as President of) Wednesday The University of Michigan, LOU ANNA K.) October 24, 2007 SIMON, in her official capacity as) President of Michigan State University,) in his official capacity as Attorney) General of the State of Michigan, and) ERIC RUSSELL,) Defendants.) And) CHASE CANTRELL, et. al,) Plaintiffs,) v. JENNIFER GRANHOLM, and MICHAEL COX,) Defendants.)</p> <p>JAN BROWN & ASSOCIATES CERTIFIED SHORTHAND REPORTERS 701 BATTERY STREET, 3RD FLOOR SAN FRANCISCO, CA 94111 415-981-3498</p>	<p>1 INDEX OF EXAMINATION 2 PAGE 3 EXAMINATION BY MS. DRIVER 8 4 EXAMINATION BY MR. SAUER 156 5 EXAMINATION BY MS. DRIVER 159 6 REPORTER'S CERTIFICATE 166 7 8 9 EXHIBITS MARKED FOR IDENTIFICATION 10 No exhibits marked 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">1 3</p>
<p>1 2 3 4 5 DEPOSITION OF 6 WARD CONNERLY 7 WEDNESDAY, OCTOBER 24, 2007 8 9 10 11 12 REPORTED BY: MARY E. FERREIRA, RPR, CSR 10553 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 Scheff & Washington, 645 Griswold, Detroit, MI, 2 48226 313-963-1921 represented by George Washington and Shanta 3 Driver, Attorneys at Law, appeared as counsel on behalf of, 4 Plaintiff. 5 Cravath, Swaine & Moore, LLP, Worldwide Plaza, New 6 York, NY, 10019-7475 212-474-1000 represented by Jessica 7 Richman, Attorney at Law, appeared as counsel on behalf of 8 Plaintiff, Chase Cantrell, et. al. (Via telephone.) 9 Pacific Legal Foundation, 3900 Lennane Drive, Suite 10 200, Sacramento, CA 95834, represented by Alan W. Foutz, 11 Attorney at Law, appeared as counsel on behalf of the witness, 12 Ward Connerly. 13 Assistant Attorney General, P.O. Box 30736, Lansing, 14 MI 48909, represented by Margaret Nelson, Attorney at Law, 15 appeared as counsel on behalf of the Defendant, Michael Cox. 16 (Via telephone.) 17 Butzel Long, P.C., 350 S. Main Street, Suite 300, 18 Ann Arbor, MI 48104, represented by Robin Luce-Herrmann, 19 Attorney at Law, appeared as counsel on behalf of Defendant 20 Universities. (Via telephone.) 21 Davis, Cowell & Bowe, 595 Market Street, Suite 1400, 22 San Francisco, CA 94105, represented by Winifred Kao, 23 Attorney at Law, appeared as counsel on behalf of Plaintiffs 24 BAMN. (Via telephone.) 25</p> <p style="text-align: right;">2 4</p>

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<p>1 Cooper & Kirk, P.L.L.C., 555 11th Street NW, Suite 2 750, Washington, D.C., represented by John Sauer, Attorney at 3 Law, appeared on behalf of Defendant, Eric Russell. (Via 4 telephone.)</p> <p>5 ALSO PRESENT: Donna Stern - Legal Team 6 Randy Lopez - Chairman Sacramento BAMN 7 Ronald Cruz - Legal Team 8 Adarene Hoag - Plaintiff 9 Chris Sutton - Plaintiff 10 Monica Smith - Legal Team 11 Ben Lynch - Received Ph.D. from U.M. 12 Hoku Jeffrey - Chairman L.A. BAMN</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 MS. NELSON: This is Margaret Nelson on behalf of 2 Michael Cox.</p> <p>3 MR. FOUTZ: This is Alan Foutz representing 4 Mr. Connerly.</p> <p>5 MS. NELSON: Sorry, Alan, I didn't mean to cut you 6 off.</p> <p>7 MR. FOUTZ: Don't think we didn't notice.</p> <p>8 MR. SAUER: This is John Sauer on behalf of Eric 9 Russell.</p> <p>10 MS. RICHMAN: This is Jessica Richman for the 11 Cantrell Plaintiff.</p> <p>12 MS. LUCE-HERRMANN: Robin Luce-Herrmann on behalf of 13 the University defendants.</p> <p>14 MS. KAO: Winifred Kao, the BAMN plaintiffs.</p> <p>15 THE VIDEOGRAPHER: For the record, would all others 16 identify themselves except the deponent. We can start with 17 the gentleman over there and just go around.</p> <p>18 MR. LYNCH: Ben Lynch.</p> <p>19 MS. HOAG: Adarene Hoag.</p> <p>20 MR. LOPEZ: Randy Lopez.</p> <p>21 MR. SUTTON: Chris Sutton.</p> <p>22 MR. JEFFREY: Hoku Jeffrey.</p> <p>23 MS. SMITH: Monica Smith.</p> <p>24 MR. CRUZ: Ronald Cruz.</p> <p>25 MS. STERN: Donna Stern.</p>
<p>5</p> <p>1 OCTOBER 24, 2007 - WEDNESDAY 9:41 A.M.</p> <p>2 PROCEEDINGS</p> <p>3 --oOo--</p> <p>4 THE VIDEOGRAPHER: We are going on the record. This</p> <p>5 marks the beginning of videotape number 1, volume 1, in the</p> <p>6 deposition of Ward Connerly in the matter of Coalition to</p> <p>7 Defend Affirmative Action, et al., versus Jennifer Granholm in</p> <p>8 her official capacity as Governor of the State of Michigan, et</p> <p>9 al. In the United States District Court, Eastern District of</p> <p>10 Michigan, Southern Division, case number 06-15024. Also,</p> <p>11 Chase Cantrell et al., versus Jennifer Granholm and Michael</p> <p>12 Cox, case 06-15637.</p> <p>13 Today's date is October 24, 2007. The time is 9:41</p> <p>14 a.m. We are located at 1950 Mission College Boulevard, Santa</p> <p>15 Clara, California. The video operator is Frank Clare of Jan</p> <p>16 Brown and Associates, 701 Battery Street, Third Floor, San</p> <p>17 Francisco, California, 94111. The court reporter is Mary</p> <p>18 Ferreira of Jan Brown and Associates.</p> <p>19 Would counsel please identify themselves and state</p> <p>20 whom they represent, first with the counsel who are here in</p> <p>21 the room.</p> <p>22 MS. DRIVER: Shanta Driver for the Coalition</p> <p>23 plaintiffs.</p> <p>24 MR. WASHINGTON: George Washington for the Coalition</p> <p>25 plaintiffs.</p>	<p>5</p> <p>1 THE VIDEOGRAPHER: Thank you. If there are no 2 stipulations, the court reporter may swear in the witness.</p> <p>3 MS. RICHMAN: Excuse me, do you want us to identify 4 if there are other people --</p> <p>5 THE COURT REPORTER: Excuse me. Who is speaking?</p> <p>6 MS. RICHMAN: This is Jessica Richman. I have my 7 colleagues here with me, they're just going to identify 8 themselves for the record.</p> <p>9 THE VIDEOGRAPHER: You don't have to do that.</p> <p>10 That's all right.</p> <p>11 MS. RICHMAN: All right. Thanks.</p> <p>12 BE IT REMEMBERED that, pursuant to the laws</p> <p>13 governing the taking and use of depositions, on Wednesday,</p> <p>14 October 24, 2007, commencing at 9:41 a.m. thereof, at the</p> <p>15 Marriott Hotel, 2700 Mission College Boulevard, Salon 3, Santa</p> <p>16 Clara, CA 95054, before me, MARY E. FERREIRA, a Certified</p> <p>17 Shorthand Reporter, personally appeared</p> <p>18 WARD CONNERLY,</p> <p>19 called as a witness by the Plaintiff, who being by me first</p> <p>20 duly sworn, was thereupon examined as is hereinafter set</p> <p>21 forth:</p> <p>22 ---oOo---</p> <p>23 EXAMINATION BY MS. DRIVER</p> <p>24 Q. I just want to start by reiterating a couple of</p> <p>25 things, because it's so awkward with the phone, just that if</p>

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1 anybody does have an objection at any time, if they could
 2 state their name and then we'll stop talking so we can hear
 3 what you have to say and we can get a cleaner record that way
 4 and then return to the business of hand. That would be very
 5 helpful because there can tend to be, where there are people
 6 on the phone and there are a number of parties, a good deal of
 7 confusion over who is speaking and what they're attempting to
 8 say. As long as we're each speaking one percent of the time,
 9 I think we can show each other the respect and hear each other
 10 out a lot better.

11 The second thing is, Mr. Connerly, if there's
 12 anything that I ask you that is unclear at all in my
 13 questioning, feel free to let me know that --

14 **A. Okay.**

15 Q. -- and I'll try to rephrase the question in a way I
 16 can make it clear.

17 **A. I will do that.**

18 Q. We probably will enjoy each other's company for
 19 quite some time today.

20 **A. The whole day.**

21 Q. Probably all day. If there's a time when you need a
 22 break or you want to take a break or anything like that, if
 23 you could indicate to me, too.

24 **A. Okay, good.**

25 Q. Then we can proceed along that line. I assume we'll

1 segregation in education there would be inequality in the
 2 provision of education for certain groups of people on the
 3 basis of their race. Would you agree?

4 **A. I would agree that the court was saying that**
 5 **government-imposed segregation could never be separate. I**
 6 **think we need to, in looking at that first finding, make sure**
 7 **that we are clear on our terms about segregation,**
 8 **government-imposed segregation, as opposed to distinct**
 9 **neighborhoods or communities that evolve in a, quote,**
 10 **segregationous fashion.**

11 Q. Let me break that down because I think one of the
 12 points that you're making about the government involvement in
 13 the segregation I would make as a distinct point, so I want to
 14 go back to what I said.

15 **A. Sure.**

16 Q. Just to make sure, just to see if we have agreement.
 17 I would say that it was a fundamental finding of Brown vs.
 18 Board of Education that segregated education was unequal and
 19 that black people did not receive the same educational
 20 opportunities as white people under Jim Crow segregation.
 21 Would you agree with that?

22 **A. I would agree with that.**

23 Q. The reason for that was because the government
 24 provided more resources for the white schools and less
 25 resources for the black schools under segregation; would you

11

1 decide at some point to take a lunch break during the course
 2 of the day.

3 What I'm going to do is start by asking you a number
 4 of questions that I think are areas that we agree, just to
 5 make sure that as we progress in this deposition, because
 6 we've got a lot of areas to cover, that we have at least some
 7 understanding of what we mean by what we're saying and what
 8 we're making reference to. I think that will help us as we
 9 proceed --

10 **A. Okay.**

11 Q. -- through the course of the questioning.

12 **A. Sure.**

13 Q. I know from reading both your book and other things
 14 that you've written that you're somebody who supports Brown
 15 vs. Board of Education; is that true?

16 **A. That's true.**

17 Q. Brown vs. Board of Education was a seminal decision,
 18 life-changing decision; is that true?

19 **A. That's true.**

20 Q. And the findings in Brown vs. Board of Education,
 21 despite the fact that it's a short decision, were really
 22 three, I would say, and I'm going to list them and then ask
 23 you if you agree with what I'm saying.

24 The first finding in Brown vs. Board Of Education is
 25 separate could never be equal, that so long as there was

1 agree with that?

2 **A. I would agree with that.**

3 Q. A second point that's made in the Brown decision is
 4 that --

5 **A. Make sure I understand, I thought that was your**
 6 **second point.**

7 Q. No, I'm sorry, that was --

8 **A. Part of the first one still?**

9 Q. Part of the first one, yeah.

10 **A. Okay.**

11 Q. The second one is -- was that to justify a social
 12 policy of providing more resources for white schools and less
 13 resources for black schools, it was necessary to rely on an
 14 ideology that black people were inferior to white people.
 15 Would you agree with that?

16 **A. I would agree with that.**

17 Q. And the third point was that the involvement, in
 18 fact the prosecution of this policy by the government of
 19 separate and unequal education made it particularly pernicious
 20 and was what was struck down by the court; would you agree
 21 with that?

22 **A. I would agree with that.**

23 Q. The Brown decision was in 1954, and we know in
 24 particular this year with the 50th anniversary of the Little
 25 Rock school integration fight that to enforce Brown required

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<p>1 enormous government action; would you agree with that?</p> <p>2 A. Yes.</p> <p>3 Q. To integrate the schools of Little Rock required the</p> <p>4 sending of federal troops to Little Rock?</p> <p>5 A. Is there a question there?</p> <p>6 Q. Yes. Would you agree with that?</p> <p>7 A. Yes.</p> <p>8 Q. And in fact there was tremendous resistance to</p> <p>9 integration on the part of a whole number of southern white</p> <p>10 people in Little Rock; would you agree with that?</p> <p>11 A. Yes.</p> <p>12 Q. And beyond Little Rock, would you agree with that?</p> <p>13 A. Yes.</p> <p>14 Q. And you would agree that that use of governmental</p> <p>15 federal power, even in the form of troops, as was necessary in</p> <p>16 Little Rock, was a good thing?</p> <p>17 A. Yes.</p> <p>18 Q. Because without it there wouldn't have been -- we</p> <p>19 couldn't have achieved desegregation?</p> <p>20 A. Absolutely.</p> <p>21 Q. And it's -- in Little Rock and in other places in</p> <p>22 the south, we couldn't wait for attitudes to change on the</p> <p>23 part of those white people before we enforce the law. It was</p> <p>24 necessary to enforce the law even if that meant for whatever</p> <p>25 reason the white people still clung on to the idea that</p>	<p>1 MS. DRIVER: We have a little trouble hearing, so</p> <p>2 don't feel shy to shout.</p> <p>3 MS. NELSON: Would be please spell the names of</p> <p>4 those parties that you're referring to in those cases?</p> <p>5 MS. DRIVER: Yeah, Heman Sweatt is H-e-m-a-n,</p> <p>6 S-w-e-a-t-t. Ida and S-i-p-u-e-l.</p> <p>7 MS. NELSON: Thank you.</p> <p>8 MR. FOUTZ: I was just mentioning the fact since we</p> <p>9 don't have those cases in front of us, this is your</p> <p>10 representation of the court's rationale as opposed to what the</p> <p>11 text actually might be.</p> <p>12 MS. DRIVER: That's right. What I'll do is I'll</p> <p>13 state it and I'll see if you agree with the general premises</p> <p>14 of the rationale.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MS. DRIVER: Whether or not you read the cases,</p> <p>17 whether it makes sense to you given your long experience and</p> <p>18 growing up in the south at that time.</p> <p>19 Q. What the court said, in both of those decisions</p> <p>20 and their -- prior to Brown, their kind of building blocks</p> <p>21 coming up to Brown is in the case of Heman Sweatt, if he</p> <p>22 wasn't allowed entrance into the University of Texas law</p> <p>23 school and was provided with a law school education at a</p> <p>24 segregated black state-sponsored law school, that they were a</p> <p>25 series of intangibles that he would lose as a result of that,</p>
<p>13</p> <p>1 segregation was better; would you agree with that?</p> <p>2 A. Yes.</p> <p>3 Q. And in higher education in the south in the 1950s,</p> <p>4 there were a number of cases that came before Brown vs. Board</p> <p>5 of Education, including a case that was brought by a man named</p> <p>6 Heman Sweatt and a woman by Ida Sipuel, each of them</p> <p>7 challenging the segregation of their respective state law</p> <p>8 schools; are you familiar at all with those cases?</p> <p>9 A. I'm not familiar with the details of those.</p> <p>10 Q. In the case of Heman Sweatt he sued the university</p> <p>11 of Texas because they wouldn't allow him entrance into the</p> <p>12 university of Texas law school because he was black. And in</p> <p>13 the case of Ms. Sipuel, it was University of Mississippi Law</p> <p>14 School. I know you're not familiar with those cases, so I'm</p> <p>15 going to say, not to test out your understanding of the cases,</p> <p>16 but to say the rationale that the court used and to see if you</p> <p>17 agree with the rationale even if you don't, I'm not asking you</p> <p>18 about, you know --</p> <p>19 A. To pass the Bar.</p> <p>20 Q. That's exactly right. Not necessary for this?</p> <p>21 MR. FOUTZ: We understand this is your</p> <p>22 representation of the rationale.</p> <p>23 MS. DRIVER: Margaret, you repeat your name for the</p> <p>24 court reporter.</p> <p>25 MS. NELSON: Yeah, I did. Margaret Nelson.</p>	<p>14</p> <p>15</p> <p>1 of that segregation as policy. Some of those intangibles, the</p> <p>2 court said, would be -- and this is where I'll see if we agree</p> <p>3 on the premises -- the court said, look, if you don't get to</p> <p>4 go to the University of Texas law school, then you're not able</p> <p>5 to meet the people that you'll need to know later on in life</p> <p>6 who will be important political figures in the state of Texas</p> <p>7 because the flagship law school in the state of Texas gave you</p> <p>8 an opportunity to meet people who would be political leaders</p> <p>9 of the state of Texas. And I'm wondering if you would agree</p> <p>10 that attending, in the 1950s, a flagship law school in the</p> <p>11 south would give you political contacts, social contacts that</p> <p>12 you would not get if you were forced to go to a segregated</p> <p>13 all-black law school.</p> <p>14 A. Given the conditions that you attached to your</p> <p>15 question about the times, 1950s, I would agree with the</p> <p>16 premise as applied to that time.</p> <p>17 Q. Okay. And at that time, the court said that if you</p> <p>18 went to the University of Texas law school because it was the</p> <p>19 flagship school of Texas, you would have opportunities to earn</p> <p>20 larger sums of money and gain social advancement that just</p> <p>21 couldn't be duplicated if you went to a segregated, separate</p> <p>22 and unequal law school; would you agree that was true based on</p> <p>23 your experience in the 1950s?</p> <p>24 A. Well, I think we've learned a lot about that premise</p> <p>25 since then and whether it applies today. But you're not</p>

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1 asking me that.

2 Q. No, I'm not.

3 A. You're asking me about whether it applied at that
4 time.

5 Q. That's right.

6 A. And I'm not sure. I was born in 1939 and so I am
7 not certain what doors would have been opened by going to a
8 flagship institution that would not have been opened by going
9 to a lesser than flagship institution. So that would be my
10 answer.

11 Q. Okay. Would you agree that if you were black and
12 you were in Texas in 1950, 1951, '52 '53, the years prior to
13 Brown, even '54, '55, right after Brown, that if you went to
14 the law school that produced most of the judges in the state,
15 governors in the state, many of the mayors of the state, many
16 of the political leaders of the state, it would benefit you to
17 be able to make those social contacts and as a law student to
18 form those initial relations at the point of law school?

19 A. I believe that those contacts are useful. It does
20 not necessarily follow, however, that you can only gain those
21 contacts at a flagship institution. There are a lot of
22 successful people, decision-makers in our society, who do not
23 attend flagship institutions. And the other issue that's
24 involved in the scenario you're sharing with me is government
25 imposition. There was discrimination against people like me

1 A. It's not the only way to get those contacts, but
2 it's certainly one of the preferred ways of getting it and the
3 government should not deny you that opportunity based on the
4 color of your skin. That's what the court was saying.

5 Q. Okay. And you, for instance, I think -- please
6 correct me if I'm wrong on this. But as I remember from your
7 biography, met Pete Wilson at a relatively young age and that
8 bond lasted throughout your life; is that correct?

9 A. That is correct.

10 Q. And so those kinds of bonds can be useful. They can
11 give you an opportunity to influence somebody and somebody an
12 opportunity to influence you; is that true?

13 A. That's true.

14 Q. Yeah. And another rationale that the court put
15 forward is that if you were a young black person and you were
16 able to go to a school that produced the leaders of the state
17 and beyond the state, the future political leaders, that you
18 could gain a kind of confidence that you could not gain if you
19 didn't have the opportunity to compete with those people in
20 school directly; would you agree with that premise?

21 A. Would you say that again?

22 Q. Sure.

23 A. Yeah.

24 Q. That if you were a young black person, like Heman
25 Sweatt was, he wasn't that young, he was a veteran and taking

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19

1 to deny us the chance to that, even when we had earned it.
2 So all of those issues are merging into your
3 question, some of which you're stating and some of which
4 you're not.

5 Q. But we don't disagree -- tell me if we do, that as
6 of in the 1950s that the vast majority of political office
7 holders and, in fact, in many cases almost all, if not all,
8 the judges were white?

9 A. We don't disagree about that.

10 Q. And so if you wanted to be able to meet, as a young
11 person, as a student, those future white judges and office
12 holders and all of that, you had to go to the white
13 institution to do that?

14 A. Yes. You would -- unless you bumped elbows at the
15 local restaurant, which you could not go to.

16 Q. Like you might be serving them and they might --

17 A. Yeah.

18 Q. Remember you were the guy at the country club that
19 brought them their food?

20 A. Yeah, who's the guy with the white suit on.

21 Q. Yeah, yeah. And you would agree that, from your
22 experience in both politics and business, that making those
23 social contacts is important, provide you with opportunities
24 that you wouldn't -- that you would have less of if you didn't
25 make those social contacts?

1 advantage of the GI bill, that if you went to, at that point
2 the flagship school of Texas, the University of Texas, and you
3 were able to compete directly with -- in class and, you know,
4 arguing with people who would be the future leaders of Texas
5 who were your costudents, you could gain confidence about your
6 own ability to be a leader?

7 A. No, I don't agree with that. I don't know
8 Mr. Sweatt's background and whether he was academically in the
9 same realm as those who were admitted to the University of
10 Texas law school. If he is, if he was, then certainly that
11 would give him that confidence provided that he was able to
12 successfully compete.

13 But anyone who is put into a situation where they
14 would not be ready to compete, rather than gaining confidence,
15 they could become demoralized by that.

16 Q. Okay.

17 A. I don't know Mr. Sweatt's background in that regard
18 and whether -- the same thing applies to whether Mr. Sweatt's
19 white, black, purple or whatever.

20 Q. Let's leave this aside.

21 A. Okay.

22 Q. And make up a more general question. So you would
23 say if you were black and you were placed in a school that had
24 been segregated and you were qualified to be there, that that
25 would -- could increase your ability to measure yourself

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1 against other leaders and draw favorable conclusions about
 2 your abilities?

3 **A. Yes. If you were prepared to be there and you**
 4 **rightfully belong there and you're not discriminated against**
 5 **in getting there, I think that would accrue to your benefit by**
 6 **being able to go there and compete successfully.**

7 Q. Just so I can break down some of those points. If
 8 you were discriminated against and you still got there and you
 9 were qualified to be there, you would agree that would be of a
 10 benefit to you?

11 **A. Sure.**

12 Q. And if you successfully graduated from there, then
 13 you would have the benefit, two benefits. First, the benefit
 14 of having attained an education that would open up doors for
 15 you that would have previously been closed; would you agree
 16 with that?

17 **A. You said two benefits.**

18 Q. Yeah, so first benefit is you're -- you know, you go
 19 to a school that had been previously segregated --

20 **A. Um-hum.**

21 Q. -- and you graduate from there and now you would
 22 have, as a black person, doors open to you that had previously
 23 been closed to you?

24 **A. Probably, but not necessarily.**

25 Q. Okay. Good point. So you could still face

1 Thank you.

2 **MS. DRIVER: Q. As a result of de facto**
 3 **segregation?**

4 **A. Yes.**

5 Q. Like the south in the north, including places like
 6 Los Angeles, there were schools that were exclusively or
 7 nearly exclusively black or Latino, and those schools were
 8 underresourced and understaffed and received less government
 9 resources; would you agree with that?

10 **A. I would agree with that.**

11 Q. And there were white schools that were
 12 overwhelmingly white that received more resources, had better
 13 buildings, newer textbooks, more resources and that was
 14 because the government afforded them more resources; would you
 15 agree?

16 **A. I would agree with that.**

17 Q. And like the south, in the north, to justify that
 18 discrimination in the allocation of resources, there was an
 19 ideology developed that said that black and Latino are
 20 inferior and so it's not worth putting resources, precious
 21 societal resources into black and Latino schools?

22 **MR. FOUTZ: I'm going to object. The question lacks**
 23 **foundation. It assumes facts not in evidence. Calls for**
 24 **speculation. Legal conclusion. And you can answer it unless**
 25 **you would like to have the question read back.**

21

23

1 discrimination?

2 **A. Sure.**

3 Q. Okay. And second point would be that if you went to
 4 such a school and you were black and the school had been
 5 previously -- had excluded you, had excluded all black people
 6 and therefore would have excluded you, you would be in a
 7 position to make the point not just for yourself, but for all
 8 black people that we're equal, that given the same
 9 opportunities and that we can achieve at the same level?

10 **A. Yes.**

11 Q. Okay. In the north, now we're moving ahead to the
 12 1960s, it became clear that while there wasn't Jim Crow
 13 segregation, there were not signs that said black only and
 14 white only, there wasn't legal segregation --

15 **A. Um-hum.**

16 Q. -- there were something the courts called "de facto"
 17 segregation. Do you agree there was de facto segregation in
 18 many areas of life in the north?

19 **A. Sure.**

20 Q. And de facto segregation in education starting with,
 21 say K through 12 education, meant that they were separate and
 22 unequal segregated public schools in many places in the United
 23 States?

24 **MR. FOUTZ: As a result of de facto segregation?**

25 **MS. DRIVER: As a result of de facto segregation.**

1 **THE WITNESS: I would like to have either that**
 2 **question read back or framed in a way that I can respond**
 3 **because I do want to respond to that.**

4 **MS. DRIVER: Okay. Great.**

5 Q. And I definitely want to hear your response, so
 6 I'll put the question one way. If you disagree, of course you
 7 should respond --

8 **A. Um-hum.**

9 Q. -- as you see fit. I said in the north, like the
 10 south, to justify the social and political governmental policy
 11 of giving more resources to the white schools and less
 12 resources to the black and Latino schools, there was an
 13 ideology that was developed that said white people are
 14 superior and black people are inferior and, therefore, when we
 15 have precious resources to allocate as a government, we're
 16 good to allocate them to the people who are superior, who are
 17 white, and deny equal -- those equal resources to people who
 18 are inferior, who are black; would you agree with that?

19 **A. I can't agree with that, Ms. Driver. I've often**
 20 **wondered whether the unequal schools are driven by race as**
 21 **much as they are by class. It's been my experience over the**
 22 **years that cities, counties put more money into neighborhoods**
 23 **based on their perception of what that neighborhood**
 24 **contributes to the overall community.**

25 **Neighborhoods in which I lived, predominantly black,**

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<p>1 had lousy streets, structure was terrible, schools were bad, 2 no shopping facilities, no effort to bring in that 3 infrastructure. It wasn't because we were black in my view. 4 It was because of the perception that we don't contribute that 5 much to the bottom line of that community, so there is 6 neglect, just gross neglect of the community.</p> <p>7 So I wouldn't say it was driven by the ideology that 8 they're inferior. It's been my perception it's based on 9 class.</p> <p>10 Q. When you were growing up and there were poor white 11 neighborhoods, you would say that they were treated 12 identically to poor black neighborhoods?</p> <p>13 A. Pretty much.</p> <p>14 Q. That was true in the north and the south?</p> <p>15 A. I wouldn't say the south.</p> <p>16 Q. Okay.</p> <p>17 A. We're talking about the north.</p> <p>18 Q. Okay. So you would say in the north, in terms of 19 provision of services and education, that differences between 20 white and black should not be attributed to de facto 21 segregation, to institutional policies that were based on 22 race?</p> <p>23 A. Say that again.</p> <p>24 Q. Okay. In the north, you agree that there was de 25 facto segregation in education?</p>	<p>1 A. No. I think, as I have said to you, it was more of 2 an issue of the tax base. This community generates a tax base 3 of X amount and so we will put X resources into that community 4 because it's one of our finer neighborhoods.</p> <p>5 Q. Um-hum.</p> <p>6 A. It's not number of -- it wasn't because of some 7 conscious strategy based on black inferiority in my view.</p> <p>8 Q. And certainly some of the school districts, like 9 Denver, which was a school district that was found by the 10 courts to practice de facto segregation, argued, no, no, no, 11 we weren't segregating based on race. This was simply a 12 question of tax base and who contributed what and all of that.</p> <p>13 And the court said that's just a pretext. Would you agree 14 that in many instances, including in Denver and other places, 15 it was just a pretext?</p> <p>16 A. I think in some cases it was, Tucson perhaps or 17 Denver and other places. But your question was the north.</p> <p>18 Q. Okay.</p> <p>19 A. And I think that's overly broad.</p> <p>20 Q. Did you think it was -- did you think it was a 21 pretext in terms of what the Los Angeles school board was 22 saying?</p> <p>23 A. I'm not sure.</p> <p>24 MR. FOUTZ: Is there a particular point in time 25 you're referring to?</p>
<p>25</p> <p>1 A. Um-hum.</p> <p>2 Q. And so that segregation, I think you were agreeing, 3 was based on race, those differences in educational 4 opportunity, not just on class, we already covered this, but 5 on race as well?</p> <p>6 A. I think that there was -- that a lot of those 7 differences were based on race, but not as a result of some 8 ideology.</p> <p>9 Q. Okay. And so they were based on race, why -- and 10 you think there was no government ideology to defend those 11 policies?</p> <p>12 A. I don't think so.</p> <p>13 Q. Do you think black people in the north, that the 14 problem of black inferiority, that I know is of great concern 15 to you today, did not exist in and amongst northern black 16 people?</p> <p>17 A. We didn't have a problem of black inferiority, we 18 had a problem of white perception of black inferiority, but we 19 didn't have a problem of black inferiority.</p> <p>20 Q. Okay. But you would say there was a white 21 perception in the north of black inferiority?</p> <p>22 A. Sure, sure there was.</p> <p>23 Q. And would you say that that white perception of 24 black inferiority in the north was used to justify the 25 allocation of resources in education in the north?</p>	<p>25</p> <p>1 MS. DRIVER: Q. In the 1960s?</p> <p>2 MR. FOUTZ: If you know.</p> <p>3 THE WITNESS: I'm not sure about the 1960s in Los 4 Angeles. I'm not sure.</p> <p>5 MR. FOUTZ: Okay. You're saying it could have been 6 a pretext?</p> <p>7 THE WITNESS: It could have been.</p> <p>8 MS. DRIVER: Q. Okay. In higher education, as of 9 1965, if you were to have gone to the University of Michigan 10 or University of California Berkeley or UCLA and you had 11 visited their law schools, you would have seen next to no 12 black students; would you agree with that? If you know.</p> <p>13 A. 1965?</p> <p>14 Q. Um-hum.</p> <p>15 A. Yeah, I think I would agree with that.</p> <p>16 Q. And, in fact, in 1965, the University of Michigan 17 law school did not have a single black law student, Latino law 18 student, Asian law student at it; would you agree with that?</p> <p>19 MR. FOUTZ: If you know.</p> <p>20 THE WITNESS: You said a single. I don't know that.</p> <p>21 MS. DRIVER: Q. If I said under five, would you 22 agree with that?</p> <p>23 A. I don't know that either, but I would not disagree 24 with that based on a very fuzzy understanding of the 25 circumstances in that state at that time.</p>

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<p>1 Q. Okay. Would you agree, I know you know a lot more 2 about California, would you agree that that was true at the 3 University of California UCLA, that in 1965 there were less 4 than five black, Latino, Asian law students at UCLA?</p> <p>5 A. I wouldn't quarrel with that if you say that's what 6 it was. It sounds consistent.</p> <p>7 Q. Does it sound consistent with you that would have 8 been the case at University of California Berkeley, Boalt 9 Hall?</p> <p>10 A. '65, it does.</p> <p>11 Q. And at the undergrad level at those three schools, 12 the University of Michigan, would you agree, if you know, that 13 there were just a tiny number of black, Latino, and 14 native-American students, less than two percent; would you 15 agree with that?</p> <p>16 A. I would agree with that.</p> <p>17 Q. And would you agree that the same was true for UCLA 18 and for -- first for UCLA?</p> <p>19 A. I would suspect that to be the case.</p> <p>20 Q. Okay. And would you agree or suspect it to be the 21 case at U.C. Berkeley?</p> <p>22 A. Yes, I would.</p> <p>23 Q. And if the dental school, UCLA, 1965, if I told you 24 that there were no black dental school students, would you -- 25 if you know, would you agree with that?</p>	<p>1 discrimination, that might have contributed to that rather 2 than overt discrimination at that time.</p> <p>3 Q. Okay. If I told you that -- well, let's start with 4 the University of California. You think -- what do you think 5 the reasons for the University of California at UCLA 6 undergraduate program having next to no black or Latino 7 students in 1965?</p> <p>8 A. I think part of it was the legacy of discrimination 9 nationwide. I think part of it was a lack of understanding 10 among black people of what we had to do to get into the 11 pipeline. We didn't have a lot of parents who had gone to 12 college and graduated and knew how to -- knew what to tell us 13 to do. We didn't have all of that history to guide us into 14 college going, so it was learned as we go. We also didn't 15 have the income in many cases.</p> <p>16 Q. Okay.</p> <p>17 A. The colleges did not have outreach programs to come 18 to us and tell us what was required. My own high school -- in 19 high school I never saw a U.C. presence at the school. And so 20 I would say that there were a lot of factors, other than 21 conscious discrimination on the part of the institution, to 22 deny us access whether it was based on ideology of inferiority 23 or whether it was just complacency on their part. I would 24 agree that it created the de facto circumstance that you 25 described. But where we're disagreeing, Ms. Driver, on</p>
<p>29</p> <p>1 A. I would not disagree with you.</p> <p>2 Q. Yeah. And at most of the medical schools in 3 California, if I told you that there were less than one 4 percent black medical students, would you find that shocking?</p> <p>5 A. No, I would not find it shocking.</p> <p>6 Q. Would you take issue with it?</p> <p>7 A. No, I would not take issue with it.</p> <p>8 Q. And --</p> <p>9 A. Meaning I would not quarrel with the statement that 10 you've made.</p> <p>11 Q. Because you may not know the exact number, but it's 12 -- but you do know that it was -- what we're talking about is 13 next to none?</p> <p>14 A. Right.</p> <p>15 Q. Yeah. And those figures that -- those universities 16 did not practice Jim Crow segregation, they didn't say, by 17 law, we're not going to let you come here; would you agree 18 with that?</p> <p>19 A. I would agree with that. I'd -- yeah, I would agree 20 with that.</p> <p>21 Q. But in practice there was discrimination against 22 black and Latino and other students; would you agree with 23 that?</p> <p>24 A. No, no. There could have been a whole series of 25 circumstances, including history and the legacy of</p>	<p>31</p> <p>1 whether there was deliberate discrimination involved here.</p> <p>2 Q. Okay. I just want to go through a few of the points 3 that you listed. When you say the legacy of discrimination as 4 being one of the factors, can you say what that -- what those 5 words mean to you?</p> <p>6 A. Well, as a black man born in the south, coming out 7 of that era, the cage is open often but you don't know how to 8 fly through it. You don't know that you're going to be 9 welcome. You don't know whether there is a trap on the 10 outside there that the minute that you fly out somebody's 11 going to say, I got ya --</p> <p>12 Q. Uh-huh?</p> <p>13 A. -- little birdie. You don't know all of that.</p> <p>14 There was a certain reluctance, there was a certain reluctance 15 to enter institutions, not just colleges, but all kinds of 16 institutions. There's a reluctance to go there because you 17 didn't know how you would be treated.</p> <p>18 Q. Um-hum.</p> <p>19 A. And you also had a certain amounts of self-doubt 20 about whether you could compete, and you didn't want to 21 embarrass yourself or your family. A lot of family pride, 22 much greater than there is now. So all of these factors 23 converge to thwart the movement of people out of slavery, Jim 24 Crow, into the freedom that we had ostensibly been given.</p> <p>25 Q. Um-hum. And those factors that you were just</p>

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1 talking about, that sense that even when the cage was open
 2 that if you flew out you might be flying into a trap.
 3 **A. Um-hum.**
 4 Q. The self-doubt that you might have because there
 5 were so few role models and so few other people that you had
 6 seen who had done what you were trying to do that that
 7 self-doubt that came from having so little contact with people
 8 of other races and trying to assess yourself, the lack of
 9 opportunity you had, the kind of black inferiority that was
 10 out there, that you're saying affected decisions that young
 11 black people made, do you think that those things were true
 12 for many black people who were -- who lived outside of the
 13 south or other areas where there was Jim Crow segregation?
 14 **A. I think it was true for the overwhelming majority of**
 15 **black people. To be black was to be part of a national**
 16 **community.**
 17 Q. Okay.
 18 A. I could walk down the streets of Kansas City or
 19 Philadelphia and never have met the person approaching me.
 20 But if he or she is black, we nod because we're part of a
 21 national community.
 22 Q. Um-hum.
 23 A. And so the afflictions of those in the north were no
 24 different from those in the south. We all felt the same
 25 limitations even though the cage had been opened.

1 **A. Well, during my twelve-year sentence as a regent, I**
 2 **tried to get to the bottom of whether there was deliberate**
 3 **discrimination on the part of the campuses, and I found no**
 4 **evidence of that.**
 5 Q. Okay. But what you did find evidence of was that
 6 there was, at least as of 1965, no -- very few black students
 7 in attendance at that university at any level. The
 8 professional schools, the undergraduate, at any of those
 9 levels?
 10 A. That's correct.
 11 Q. And whether it was intentional or whether it was
 12 just taken as being ordinary and was unchallenged on the part
 13 of the UCLA administration, the effect was next to no black
 14 students being there?
 15 A. Over and over reliance on a standardized test, but
 16 your conclusion I would not disagree with.
 17 Q. Okay. So it might have been because the admissions
 18 criteria were biased in some way would you say?
 19 A. Not, not biased in a sense that they were wanting to
 20 retard the number of black kids that were admitted, but biased
 21 in the sense that they -- by relying on the standardized test,
 22 they did not take into account a lot of individuals, black,
 23 white, Hispanic, who may not do well on those tests; and,
 24 therefore, the numbers would be reflective of that fact who
 25 might be going to underperforming schools where they had lousy

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1 Q. Um-hum. Mr. Connerly, I am a little bit younger
 2 than you are.
 3 **A. Use it wisely, my Dear.**
 4 Q. Not a lot, but I spent a part of my life growing up
 5 in Philadelphia. It wasn't until twelve years old that I knew
 6 there were white people in Philadelphia, that there were only
 7 black people there before that because our areas were so
 8 segregated in the city --
 9 A. Yeah.
 10 Q. -- that you didn't even know that, so I hear what
 11 you're saying. And so when you say that you think that these
 12 northern institutions did not intentionally segregate these
 13 northern universities, let's start with UCLA --
 14 A. Did not necessarily intentionally.
 15 Q. Okay. So some of them you think they did
 16 intentionally segregate?
 17 A. There might have been some in the north.
 18 Q. Yeah.
 19 A. California perhaps lesser than other places, but I
 20 would not say there were none.
 21 Q. Okay.
 22 A. Because I'm sure there were.
 23 Q. And would you, would you -- in the case of, starting
 24 with UCLA, do you know or did you ever have an opinion as to
 25 whether they were intentionally segregating?

1 teachers. There are just a whole host of factors that could
 2 account for that, other than conscious discrimination.
 3 Q. But they weren't seeking out black or Latino
 4 students, UCLA was not --
 5 A. We're talking about 1965?
 6 Q. Um-hum?
 7 A. I cannot say with any certainty what they were doing
 8 in 1965.
 9 Q. Okay. U.C. Berkeley, would you say that they were
 10 intentionally, in 1965, keeping black or Latino students out?
 11 A. I can't say for certain, but I have strong doubts
 12 about whether that was the intention.
 13 Q. Okay. But it was certainly the result of whatever
 14 they were doing?
 15 A. It was a result of what was happening, not
 16 necessarily of what they were doing.
 17 Q. Okay. When I say they, I mean the admissions -- the
 18 administration of U.C. Berkeley?
 19 A. Or the society.
 20 Q. Okay. Let's say the society in general, I think
 21 you've made clear that there could be hesitations on the part
 22 of black people to apply and -- but in terms of the
 23 institution, do you know if there were hesitations to accept
 24 those that did apply?
 25 A. I don't know in '65.

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1 Q. But what you do know is very few black students were
 2 there?

3 A. Yes.

4 Q. And as of 1965, neither UCLA, nor U.C. Berkeley
 5 seemed -- the administration seemed to be taking much in the
 6 way of active policies to correct that situation?

7 A. I think that was the case in '65, I think.

8 Q. Okay. And at the University of Michigan, much the
 9 same, there were few black students and there might have been
 10 hesitations on the part of black students to apply and I
 11 understand that. But the university itself was not taking
 12 active measures to do the outreach, to seek out those
 13 students, to correct that problem; would you agree with that?

14 A. I would say that I doubt that they were, but I can't
 15 -- you're saying that they were not. I can't say, yeah, I
 16 agree with Ms. Driver.

17 Q. Right.

18 A. Because I don't know.

19 Q. Right?

20 A. I don't know.

21 Q. But when you say you doubt that they were, you doubt
 22 they were actively seeking out black students and failing to
 23 come up with a single one of the law school?

24 A. Institutions tend to move very slowly and one can
 25 pretty much find a pattern in 2007 of what they were doing in

1 undergraduate programs and professional school programs and at
 2 U.C. Berkeley, both in its undergraduate programs and graduate
 3 school programs; at the University of Michigan, its
 4 undergraduate programs and its professional and graduate
 5 school programs because the universities undertake a set of
 6 policies to consciously increase the number of black and into
 7 later on, Latino and women students?

8 A. Yes.

9 MR. FOUTZ: I'm also going to object to the
 10 question. It's a compound question. It's vague and ambiguous
 11 and assumes facts that are not in evidence and lacks
 12 foundation.

13 MS. DRIVER: Okay.

14 MR. FOUTZ: So.

15 MS. DRIVER: It's already been answered. I'll
 16 continue.

17 Q. To the best of your recollection, in adopting
 18 those policies, the University of California Los Angeles never
 19 admitted that it had practiced discrimination. In other
 20 words, it wasn't forced to implement policies to increase
 21 black and Latino students and women students because of a
 22 court order, if you know.

23 A. Well, you ask whether they admitted. I guess I
 24 should ask you to ask it again. I thought I heard two
 25 questions. I'm not sure.

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1 '65 because they move -- it's like a freight train being
 2 turned around. So if they were not outreaching in 2007, it is
 3 not likely that they were in '65.

4 Q. Okay.

5 A. It's on that basis that I would say I tend to agree
 6 with you, not being wheezily here, I just want to make sure
 7 you understand what I'm saying.

8 Q. Uh-huh. At some point, and it varies a little bit
 9 in terms of the exact year, but at some point UCLA, U.C.
 10 Berkeley, the University of Michigan start to attain large,
 11 larger numbers of black students; would you agree with that?

12 A. Yes.

13 Q. And for almost all of those three universities, that
 14 moment comes about in the late '60s or early 1970s; would you
 15 agree with that?

16 A. I agree with that.

17 Q. Because of those late changes, the universities
 18 start to adopt a set of policies to address the -- to increase
 19 the number of black students and then as we go more into the
 20 '70s, Latino and Asian students and in the case of the law
 21 schools of each of those three universities, women students as
 22 well; would you agree with that?

23 A. Would you say that again, please.

24 Q. Sure. I think I said at some point those numbers
 25 change, the number of black students at UCLA, both in its

1 Q. Okay. Sure. To the best of your recollection, the
 2 University of California Los Angeles --

3 A. Um-hum.

4 Q. -- the decision of the University of California Los
 5 Angeles to implement policies to increase the number of black
 6 and Latino students did not come about because of a court
 7 order?

8 A. That's correct.

9 Q. And the same, the University of Michigan's decision
 10 to institute policies to increase the number of black and
 11 Latino and women students did not also -- was not fomented by
 12 a court order?

13 A. I'm not certain about the University of Michigan.

14 Q. Okay. Do you know for U.C. Berkeley whether it was
 15 the result of a court order or not?

16 A. I believe it was not.

17 Q. Okay. So in each of those, at least the University
 18 of California at UCLA, the decision to begin using affirmative
 19 action policies didn't come about because of court action, as
 20 best as you know, by black or Latino students or their
 21 parents?

22 A. What do you mean when you say "affirmative action"?

23 Q. I mean those policies that increase the number of
 24 black and Latino students.

25 A. Those policies could come in many forms.

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<p>1 Q. They could --</p> <p>2 A. And did.</p> <p>3 Q. And they did. Would you agree that those policies</p> <p>4 were affirmative action policies?</p> <p>5 A. What do you mean by "affirmative action"?</p> <p>6 Q. Why don't I let you define affirmative action and</p> <p>7 we'll see if we have the same agreement.</p> <p>8 A. Okay. Some of the policies came about as a result</p> <p>9 of the university recognizing that there are different</p> <p>10 communities of people, many of whom attend underperforming</p> <p>11 schools.</p> <p>12 Q. Okay.</p> <p>13 A. And so they reached out.</p> <p>14 Q. Okay. So you would say, just -- sorry to interrupt</p> <p>15 you, just so I can get a sum of the factors. You would say</p> <p>16 one thing that you would characterize as affirmative action</p> <p>17 policies are policies in which university administrations</p> <p>18 recognize that there were different communities of people and</p> <p>19 attempted to include those different communities within their</p> <p>20 student bodies?</p> <p>21 A. And that there were different people at different</p> <p>22 schools. There is a Grant Union High School, maybe we should</p> <p>23 go there.</p> <p>24 Q. Okay.</p> <p>25 A. There also were affirmative action policies that</p>	<p>1 integrated.</p> <p>2 Q. So going to a Grant High School --</p> <p>3 A. Very low income.</p> <p>4 Q. Okay. So you're saying it's majority black, but</p> <p>5 there are representative of some other groups, Asian, white,</p> <p>6 Latino, all different people are there, there would be the</p> <p>7 conscious decision on the part of the university to seek out</p> <p>8 low-income students of all races?</p> <p>9 A. I think there was a conscious decision to integrate</p> <p>10 the university.</p> <p>11 Q. Okay. And integrate you would say both racially and</p> <p>12 income -- you would say, we'll separate the two. You would</p> <p>13 say integrate the university racially first?</p> <p>14 A. Yes.</p> <p>15 Q. And then integrate the university by income level,</p> <p>16 include more --</p> <p>17 A. Less of that.</p> <p>18 Q. Less of that, but some of that?</p> <p>19 A. Some of that.</p> <p>20 Q. Okay. Because would you say that there were already</p> <p>21 some poor students at the university at the point that let's</p> <p>22 say UCLA or Berkeley started coming to a Grant High School or</p> <p>23 high school similar to that in California in the late 1960s,</p> <p>24 there were some poor students, but it was still racially not</p> <p>25 integrated?</p>
<p>41</p> <p>1 gave explicit extra points to students.</p> <p>2 Q. Okay. Let's hold on -- hold off on those. Let's</p> <p>3 start off on the first ones. So you're saying that they --</p> <p>4 the university administrations recognized that there were</p> <p>5 different communities of people and that they were located,</p> <p>6 some of them, in places in high schools in the undergraduate</p> <p>7 level --</p> <p>8 A. Right.</p> <p>9 Q. -- that they had never gone to before?</p> <p>10 A. Right.</p> <p>11 Q. And they ought to take positive action to go to</p> <p>12 those places and include students from those places in the mix</p> <p>13 of their student bodies?</p> <p>14 A. That was their, their desire to include students in</p> <p>15 their mix.</p> <p>16 Q. Okay. And that you would call an affirmative action</p> <p>17 policy?</p> <p>18 A. That's one form of affirmative action.</p> <p>19 Q. Okay. And would you say a second form of</p> <p>20 affirmative action was that in going to a Grant High School,</p> <p>21 which I have to say I am willfully ignorant about, but just</p> <p>22 using that as an example, was Grant High School an integrated</p> <p>23 high school?</p> <p>24 A. One might say that. Mostly black, a few Latino,</p> <p>25 white, a sprinkling of Asian, so I would say it was</p>	<p>43</p> <p>1 A. Well, I think there was an awareness after the 1964</p> <p>2 civil rights act that the university ought to try to integrate</p> <p>3 the campuses. And the legislature also was pressuring for</p> <p>4 that, beginning around that period.</p> <p>5 So there was a conscious effort to integrate and</p> <p>6 it's where -- that's where class and race begin to converge.</p> <p>7 Because if you wanted to integrate and you decided, well,</p> <p>8 where are the black people? Well, you're going to find them</p> <p>9 at places like Grant. Grant was one where they went, but</p> <p>10 institutions such as Grant would be places where they are to</p> <p>11 be found.</p> <p>12 Q. Okay. So you're saying if you made the conscious</p> <p>13 decision to integrate, which UCLA did, you had to go to</p> <p>14 majority black or black and Latino high schools in California</p> <p>15 and try to get students from there?</p> <p>16 A. Yes.</p> <p>17 Q. And at the level of professional schools, so you're</p> <p>18 already in college, you had to, if you were UCLA law school</p> <p>19 and you decided you were going to integrate, you had to</p> <p>20 consciously seek out black applicants to UCLA's law school; is</p> <p>21 that correct?</p> <p>22 A. Say that again.</p> <p>23 Q. You had to do outreach. You had to find black</p> <p>24 students. If you were the UCLA law school, you couldn't just</p> <p>25 go to high schools, you had to encourage college students,</p>

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<p>1 black college students to apply, correct?</p> <p>2 A. Yes, correct.</p> <p>3 Q. And if you're Boalt Hall you had to encourage black</p> <p>4 college students to apply to Boalt Hall?</p> <p>5 A. Yes.</p> <p>6 Q. And you had to find those students in places that</p> <p>7 were colleges that had black undergrads at them; is that</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. And so you probably wouldn't find many black</p> <p>11 applicants in UCLA if you were in the late 1960s at UCLA; is</p> <p>12 that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. If you were at Boalt Hall you wouldn't find many at</p> <p>15 Boalt Hall or UCLA to apply to Boalt Hall or UCLA; is that</p> <p>16 correct?</p> <p>17 A. The pool was very small.</p> <p>18 Q. Yeah. And the pool was very small if you went to</p> <p>19 Harvard or Yale or University of Michigan, any of the elite</p> <p>20 schools you would find very few black students; is that</p> <p>21 correct?</p> <p>22 A. Very small international pool.</p> <p>23 Q. So we're agreeing that this policy of consciously</p> <p>24 seeking integration required the universities to first make</p> <p>25 sure that there were black students that applied?</p>	<p>1 assign points on the bases of the racial classification. That</p> <p>2 form of affirmative action is what came to be known as the</p> <p>3 prevention treatment. There were explicit points given to</p> <p>4 students. U.C. San Diego had a form of that, UCLA had a form</p> <p>5 of that. Once they identified the black students, they had</p> <p>6 separate tracks for determining which black students would get</p> <p>7 in as compared to others.</p> <p>8 Q. If I understand things correctly, let me just take</p> <p>9 one step back. Right on through the early 1980s until about</p> <p>10 1985, isn't it true that every black student that applied to</p> <p>11 UCLA or U.C. Berkeley undergrad, that met the basic U.C.</p> <p>12 criteria for college admissions, were admitted?</p> <p>13 A. Pretty much. But therein lay a form of</p> <p>14 discrimination because the University of California's supposed</p> <p>15 to take the top twelve and a half percent. And because the</p> <p>16 pool of black students and Latinos graduating from high school</p> <p>17 is so small, in order to get the, quote, critical mass under-</p> <p>18 represented minority student, UCLA, Davis -- U.C. Davis, U.C.</p> <p>19 Riverside, U.C. -- not Irvine as much, but almost, would take</p> <p>20 every underrepresented minority that would apply. We even</p> <p>21 admitted some by special admission, which meant that they were</p> <p>22 not really eligible but in that six percent, that we allowed</p> <p>23 as admission by exception.</p> <p>24 White and Asian students, however, had to go through</p> <p>25 this competition, if you will, to determine who got admitted.</p>
<p>45</p> <p>1 A. That was one form of affirmative action.</p> <p>2 Q. And a second form of affirmative action was to</p> <p>3 determine whether or not those students could compete at those</p> <p>4 institutions?</p> <p>5 A. No, I'm not sure that that was a form of affirmative</p> <p>6 action.</p> <p>7 Q. Would you say that there was a form of affirmative</p> <p>8 action that was implemented, just taking one step back, to set</p> <p>9 up a set of criteria to assure that some of the black</p> <p>10 students, first at the undergraduate level, so from the high</p> <p>11 schools, and Latino students gained admission to the</p> <p>12 university?</p> <p>13 A. Please, again.</p> <p>14 Q. Yeah. After you succeeded in getting some black and</p> <p>15 Latino students to apply, then the next form of affirmative</p> <p>16 action or the next affirmative action program would be a</p> <p>17 program designed to assure that some of the black and some of</p> <p>18 the Latino applicants would actually get in?</p> <p>19 A. It was different from that. U.C. Davis admitted all</p> <p>20 black students.</p> <p>21 Q. Okay.</p> <p>22 A. U.C. Berkeley had a matrix.</p> <p>23 Q. Okay.</p> <p>24 A. Which they would go down vertically and classify the</p> <p>25 student by race and ethnicity. Going vertically they would</p>	<p>46</p> <p>47</p> <p>1 So there were some campuses and recognize there was campus</p> <p>2 autonomy. There was some campuses that would admit every</p> <p>3 underrepresented minority that applied.</p> <p>4 Q. For some period of time, both UCLA and Berkeley did</p> <p>5 that. Is that correct?</p> <p>6 A. Yes, for some period of time.</p> <p>7 Q. And they changed that policy and at UCLA and at U.C.</p> <p>8 Berkeley in the undergraduate programs they established what</p> <p>9 you're describing as a matrix; is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And at U.C. Berkeley, that changed in 1991. There</p> <p>12 was a new affirmative action policy that was implemented and</p> <p>13 that policy no longer used the matrix; is that correct?</p> <p>14 A. I think in some of the campuses it changed before</p> <p>15 that. I think the Bakke decision in 1978, which said that</p> <p>16 race could only be one of many factors. There were many</p> <p>17 campuses that tinkered with their admissions because race was</p> <p>18 not one of many factors and the general counsel advised that</p> <p>19 you better change this so that race is one of many factors,</p> <p>20 rather than the factor.</p> <p>21 Q. Okay. As of 1991, would you agree that at the</p> <p>22 University of California Berkeley, the affirmative action</p> <p>23 program was changed so that race would be considered as one of</p> <p>24 many factors?</p> <p>25 A. No. Race was still being used as the factor. The</p>

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1 matrix had the effect of giving so many points that virtually
 2 every underrepresented minority student that applied was
 3 guaranteed admission.

4 Q. But many, many, many underrepresented minority
 5 students who applied to U.C. Berkeley as of 1991 were being
 6 rejected; isn't that true?

7 A. There were many who were rejected, but they were
 8 ones who were outside the twelve and a half percent and they
 9 were outside the admission by exception.

10 Q. And there were many -- by 1991, you would agree that
 11 UCLA had adopted an affirmative action policy that treated
 12 race as one of many factors?

13 A. On paper it said race was treated as one of many
 14 factors. In reality, that was a different thing.

15 Q. And would you agree that the University of
 16 California, the law school Boalt Hall had, by 1991, adopted a
 17 policy, an affirmative action policy that treated race as one
 18 of many factors?

19 A. Every campus within the U.C. system was professing
 20 that race was being treated as one of many factors. But as
 21 the chair -- let me go on --

22 Q. Please.

23 A. As the chair of the educational policy committee.
 24 When I began to look into this, I discovered that what they
 25 were professing to do was greatly at variance with what was

1 A. Yes.

2 Q. A large number, in fact, a majority, large majority
 3 -- I'll start the question again so you don't make it so many
 4 different choices.

5 A very great majority of black parents and Latino
 6 parents, who didn't know how to apply for admissions to the
 7 U.C.s and didn't -- we'll start with that one.

8 A. Yes.

9 Q. Didn't know how to attain financial aid?

10 A. Correct.

11 Q. In many cases were poor, didn't have the money?

12 A. That's correct.

13 Q. And that there was a lack of outreach programs;
 14 would you say that was true?

15 A. I'd say that's correct.

16 Q. And that there weren't college recruiters in the
 17 black and Latino high schools?

18 A. That's correct.

19 Q. And you said that there was at best a complacency on
 20 the part of these university administrators and at worst, and
 21 in some cases, perhaps more than complacency, a conscious
 22 policy of keeping out black and Latino students; is that
 23 correct?

24 A. I conceded that there would be -- that there could
 25 be some of the that.

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1 actually happening.

2 Q. Okay. And we'll come to that. You become chair in
 3 1995?

4 A. 1995 I believe it was.

5 Q. Yeah. Okay. So we could say 1991, but let's just
 6 say 1995 then. You would say that every undergraduate
 7 program, every graduate program and every professional program
 8 at each of the different University of California campuses
 9 professed to use affirmative action policies that took race
 10 into account as one of many factors?

11 A. Yes.

12 Q. And that was true at the two flagship campuses, UCLA
 13 and U.C. Berkeley?

14 A. Yes.

15 Q. And it was true at their professional schools, in
 16 their law schools and their medical schools?

17 A. That's correct.

18 Q. Okay. Mr. Connerly, I just want to take one step
 19 back. In the history that we've gone through up until 1995,
 20 and then we'll start on -- go forward, you agreed that there
 21 were next to no black students at UCLA and U.C. Berkeley for a
 22 variety of reasons; is that correct?

23 A. Yes.

24 Q. And included in those reasons you said were the
 25 legacy of discrimination; is that correct?

1 Q. Okay. And you also agreed that it took the
 2 conscious, a conscious policy of seeking integration in order
 3 to start to get a significant number of black and Latino
 4 students at -- in the University of California; is that
 5 correct?

6 A. I said in response to your question that that was
 7 what the university was doing because it wanted to integrate.

8 Q. Okay.

9 A. Yeah.

10 Q. I'm sorry to interrupt you. Please finish. I'm
 11 sorry?

12 A. That's okay.

13 Q. So when they made the decision to integrate, and
 14 that's a decision that you support; is that correct?

15 A. That's correct.

16 Q. When they made that decision to integrate, they took
 17 conscious -- they had to implement a set of conscious
 18 policies to overcome the whole list of factors that you said
 19 were preventing large numbers of black or Latino students from
 20 coming, correct?

21 A. Appropriate to that time.

22 Q. Okay. Appropriate to that time.

23 A. Yes.

24 Q. And those policies included doing outreach; is that
 25 correct?

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<p>1 A. That's correct.</p> <p>2 Q. And those policies included looking at a student who 3 was going to an underperforming school, I think you said, and 4 making an individual determination as to whether or not that 5 student should come to U.C. Berkeley, even if their school was 6 an underperforming school?</p> <p>7 A. Less of that then, much, much, much more of that 8 now.</p> <p>9 Q. Okay. So some then -- we'll come to now.</p> <p>10 A. Yeah.</p> <p>11 Q. You said that included in those conscious policies 12 was understanding that a black or Latino student with a lower 13 standardized test score might -- still deserved to come to a 14 U.C. or UCLA because there were several factors that might 15 have gone into the attainment of that lower test score; is 16 that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And this -- these policies that I would describe as 19 being affirmative action policies, you would agree are 20 affirmative action policies; is that correct?</p> <p>21 A. I would agree that some of those are affirmative 22 action policies. I'm not sure that assessing the effect of 23 the standardized test score is affirmative action as much as 24 it is looking at what is sound educational policy.</p> <p>25 Q. When you say look at sound educational policy, what</p>	<p>1 scenes, I champion that as much as anyone.</p> <p>2 Q. Okay.</p> <p>3 A. But that really followed the period. We jump from 4 the '60s to now and back to the 70s and so on. That decision 5 was not just for black and Latino students, it's based on how 6 does the university build a quality institution. How does it 7 assess the potential of students? And my argument was you 8 assess that potential by looking at a whole range of factors, 9 comprehensive review. And by doing that you find a better 10 student body than if you just simply say, as the institution 11 was doing, here's a black student, we want a black student, 12 admit. The result may or may not be the same, but at least 13 it's a sounder educational policy to look at the students 14 individually rather than as the university was doing. And 15 that has been an evolving change because they're so slow to 16 move with reforms.</p> <p>17 Q. Okay. Let's take it period by period. So in the 19 18 -- after you're saying the 1964 civil rights act, we'll just 19 agree that's our demarcation point.</p> <p>20 A. Okay.</p> <p>21 Q. At the University of California Berkeley and at 22 UCLA, let's say for the remainder of the 1960s until the 23 1970s, they had a policy of assessing the meaning of the SAT 24 or ACT or other standardized test scores for black and Latino 25 students that took into account where those students went to</p>
<p>1 do you mean by that?</p> <p>2 A. I don't think that it necessarily follows that in 3 order to build a world-class university that you have to place 4 an overreliance on a standardized test. That, to me, is 5 placing an overreliance on it is unsound educational policy.</p> <p>6 Q. Okay. And so you would say in the case of black and 7 Latino students, not placing an overreliance on those 8 standardized tests was a sound educational policy; is that 9 correct?</p> <p>10 A. I would say in the case of any student placing an 11 overreliance on a standardized test does not allow the 12 institution to look at the merit of individual students.</p> <p>13 Q. And so in the 1960s and early 1970s and I think you 14 would say from then on, the universities' decision to look at 15 black and Latino students without placing, what you're calling 16 an overreliance on their test scores was a sound educational 17 policy; is that correct?</p> <p>18 A. Please, again.</p> <p>19 Q. You're saying that the University of California, 20 you'll say UCLA or U.C. Berkeley, those two universities, 21 because that's what we're more focused on, their decision not 22 to place great weight on the SAT scores or what you're calling 23 to overrely on the SAT or other standardized test scores of 24 black and Latino students was a sound educational policy?</p> <p>25 A. Well, that policy was an evolving one and behind the</p>	<p>1 school, what their background was, a whole set of factors so 2 that they would not overrely on that number; is that correct?</p> <p>3 A. No, I think, Ms. Driver, during that period they had 4 not begun yet to question the wisdom of or relying on the SAT.</p> <p>5 Q. Would you say they looked at the SAT scores, they 6 treated the SAT scores of black and Latino students 7 differently than the way they treated SAT scores of white 8 students?</p> <p>9 A. Yes. That really culminated with the Bakke 10 decision.</p> <p>11 Q. So we say from you're saying 1960 --</p> <p>12 A. '65.</p> <p>13 Q. '65 to 1978, that's the Bakke decision --</p> <p>14 A. Right.</p> <p>15 Q. -- they're treating the test scores of black and 16 Latino students at U.C. Berkeley and the equivalent of 17 standardized tests differently than those of white students?</p> <p>18 A. Yes.</p> <p>19 Q. And same thing for UCLA?</p> <p>20 A. Yes.</p> <p>21 Q. Thank you. That's one of those things when you're 22 trying to make a transcript that you have to make the person 23 say it. I apologize.</p> <p>24 A. Right. Right.</p> <p>25 Q. Okay. Mr. Connerly, let me ask you to let me know,</p>

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1 I know we've gone for a while, if there's a moment at which
 2 you would like a break?
 3 A. I'm okay. Thank you, though. Thank you for asking.
 4 Q. All right. Then I'm going to just continue on this
 5 early period just a little bit longer. And as a result of the
 6 outreach efforts of the universities, the consideration,
 7 different consideration of SAT scores, would you say there was
 8 also a different consideration of grade point averages?
 9 A. No, I think the university faculty and admissions
 10 decisions are driven by faculty, not by administration. The
 11 faculty sort of has the view that grades are inflated,
 12 universally inflated, so they don't really attach much
 13 importance to the grade point average. They didn't then, they
 14 don't now.
 15 The grade point issue started coming about toward
 16 the early part of my term when I really realized and the
 17 regents hadn't been engaged in all of this, frankly, that the
 18 honors courses was discriminating against certain high
 19 schools. U.C. had a written policy that certain high schools,
 20 if you went to that high school you were deemed more worthy
 21 than if you went to another high school. They had a list of
 22 schools that were the preferred schools based on their
 23 reputations. It just so happened that those were the schools
 24 that offered a lot of honors courses and that's how a student
 25 could get a 4.2 and a 4.3.

1 A. That's true.
 2 Q. And that was true at UCLA and University of
 3 California Berkeley at the undergraduate level and at the
 4 professional and graduate school level; is that correct?
 5 A. Yes. By any means necessary.
 6 Q. Okay. And this policy worked from the standpoint of
 7 achieving integration; isn't that true?
 8 A. Depends on what you mean by work.
 9 Q. Well, it significantly increased the number of black
 10 and Latino students, did it not, we'll take it up to 1978, '65
 11 to '78?
 12 A. Significant to terms of four or five students to say
 13 100. Yeah, that's significant.
 14 Q. That's significant, that's many hundreds of percent
 15 increase; is that correct?
 16 A. That's true. That's true.
 17 Q. And if you went to the University of California Los
 18 Angeles or U.C. Berkeley or any other selective school and you
 19 were a black or Latino student and you graduated, you
 20 increased tremendously your opportunities to go to law school
 21 or graduate school; is that correct?
 22 A. What do you mean by tremendously?
 23 Q. Well, if you went to -- I mean you doubled or in
 24 some cases tripled the chances, the probability that you would
 25 go to law school, medical school, graduate school?

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1 The schools that were not the preferred courses did
 2 not offer the honors courses. So the Ed policy committee
 3 began to ask, does this make sense, is this fair. It was only
 4 at that point, they early -- the mid-'90s, that the university
 5 began to question this whole question this whole business
 6 about honors courses and to devalue, if you will, some of the
 7 honors courses.

8 Prior to that, grade point averages were not a major
 9 consideration by the university because of that theory the
 10 grades -- a 4.0 at this school is not the same as a 4.0 at
 11 that school because that school inflates them.

12 Q. Um-hum. You're saying that in the promulgation of
 13 these original affirmative action policies from '64, '65
 14 through, until 1995, that there wasn't a different treatment
 15 of the grades or grade point averages of black and Latino
 16 students and white students?

17 A. The differences were much more explicit. They
 18 didn't need grade point averages to do it.

19 Q. Okay.

20 A. They just classified and...

21 Q. Okay. You said their aim was to achieve
 22 integration. So they looked at from 1964 through the Bakke
 23 decision, they looked at the race of students and they
 24 attempted to integrate by making sure that they admitted so
 25 many black and Latino students; is that true?

1 MR. FOUTZ: Objection. It's vague and ambiguous.
 2 It lacks foundation and calls for speculation.

3 THE WITNESS: It's when you start quantifying this
 4 about doubling and tripling and all of that, that I don't
 5 know. I think that if you were a graduate of U.C. and you
 6 want to go to one of the professional schools, your chances
 7 are greater than someone who did not go to U.C. possibly.
 8 Although, some professional schools are more interested in
 9 international students --

10 Q. Okay.

11 A. -- than they are domestic students of any kind. I
 12 have a hard time quantifying it, doubling and tripling.

13 Q. But you would agree that there was -- let's say you
 14 were a black student and you graduated from UCLA --

15 A. Um-hum.

16 Q. -- with a 3.5 grade point average.

17 A. Um-hum.

18 Q. -- and you were a black student and you went to the
 19 school that I actually went to for law school, Wayne State
 20 University, which you may or may not have heard of?

21 A. I have heard of.

22 Q. Your chances of going to a law school would be
 23 significantly improved if you graduated from UCLA?

24 A. Yes, I would agree with that.

25 Q. And they would significantly be improved if you went

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<p>1 to University of California Berkeley over and against Wayne 2 State, same grade point average; would you agree with that? 3 A. No. I think the national pool of black students is 4 so small that UCLA and -- UCLA and Berkeley are viewed as the 5 brand names that a black student from anywhere has a pretty 6 good chance of getting in to one of the professional schools 7 because of supply and demand. 8 Q. But you would agree that you have a significantly 9 better chance if you go to -- we already said yes to UCLA, but 10 you wouldn't say that for U.C. Berkeley? 11 A. I'm not -- I misunderstood your question about UCLA. 12 I'm not sure that it's -- I'm not even sure that it's 13 significantly better at UCLA. I think that are so few black 14 students who are interested in graduate school or the 15 professional schools that Wayne State would not necessarily be 16 at a disadvantage than Berkeley. 17 Q. Okay. 18 A. You may know a little bit more about the process 19 having gone to Berkeley, you may know some people who would 20 look more favorably at your application because you know them. 21 But a black student, when you qualify it by a black student, 22 I'm not sure that being a Berkeley grad gives you any greater 23 access. It's the fact that you're black that gave the access, 24 not because you went to Berkeley rather than Wayne State. 25 Q. Mr. Connerly, are you aware of a book called The</p>	<p>1 A. I thought it was even more than that. 2 Q. Okay. So at least that much you would agree? 3 A. Yes. 4 Q. And there were 45,000 students I think they say were 5 a part of the study. Would you agree with that? 6 A. I would agree with that. 7 Q. And you don't have any reason to think that they 8 lied in saying that you would increase your chances of going 9 to a law school, all law schools, any law school if you went 10 to a select university rather than a university that was not 11 selective as an undergraduate? 12 A. No, I wouldn't suggest for a moment that they lied, 13 but I would suggest that different people can draw different 14 conclusions from the same data. 15 Q. And you would disagree with their conclusion that 16 that improved your chances, that going to a select university 17 improves your chances of going to a law school if you're black 18 or Latino, you would disagree with that conclusion? 19 A. I would say that there are far -- there are a lot of 20 circumstances that would qualify that. We were talking about 21 UCLA and U.C. Berkeley and whether a black student who went to 22 UCLA or U.C. Berkeley as an under grad would have a better 23 chance than a black student transferring in from Wayne State. 24 I'm saying I'm not so sure about that because the pool of 25 black students is so small.</p>
<p>61</p> <p>1 Shape of the River? 2 A. Yeah, Bowen and Bok. 3 Q. And you've read the book? 4 A. I've wandered through the river quite a bit. 5 Q. Okay. Good. You know it's a contention of theirs 6 that you increase your chances significantly of going to a law 7 school if you've gone to a selective undergraduate university, 8 would you agree with that? 9 MR. SAUER: I didn't catch the titles or the authors 10 of the book. 11 MS. DRIVER: The book is called "The Shape of the 12 River." I think Mr. Connerly established for us that the two 13 authors of the book are William Bowen. 14 THE WITNESS: And Derek Bok. Thank you. 15 MS. DRIVER: That was Mr. John Sauer, correct? 16 MR. SAUER: That's right. 17 THE WITNESS: But it's not the bible. 18 MS. DRIVER: Q. No, it's not the bible. But they 19 did extensive scientific research to create that book; isn't 20 that correct? 21 MR. FOUTZ: If you know. 22 THE WITNESS: Yeah, they had a large body of data 23 upon which they drew. 24 MS. DRIVER: Q. These data from two dozen select 25 universities; is that correct?</p>	<p>63</p> <p>1 Q. Right. UCLA is a selective university at the 2 undergraduate level; is that correct? 3 A. Indeed it is. 4 Q. And U.C. California Berkeley is a selective 5 university at the undergraduate level, correct? 6 A. Yes. 7 Q. And the Bok and Bowen study followed students who 8 were students from 1971 and 1988 and 1951, correct? 9 A. Yes. 10 Q. In the students they follow from 1971 and 1988, so 11 in the post-affirmative action era and in the post-affirmative 12 action, post-Bakke era, they concluded that if you were a 13 minority student, a black or Latino student, and you went to a 14 selective university, that you had a better chance of being 15 able to go to a graduate or professional school than a black 16 student that did not go to a selective university. All I'm 17 asking is do you agree with that conclusion of theirs? 18 A. I have said I'm not in full agreement with that. 19 Q. Okay. I take that to be a no. They conclude in 20 their study and they have data that says that 90 percent of 21 black students that apply to a graduate school or a law school 22 that have gone to a selective university get in to a law 23 school or a graduate school. Do you have any reason to doubt 24 that conclusion of theirs? 25 A. 90 percent -- again, what are you --</p>

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<p>1 Q. Who apply from a select university. In fact, the 2 more selective the university the higher up your chances go of 3 getting in, are able to get into a law school or a 4 professional school?</p> <p>5 A. I have no reason to doubt that or question that.</p> <p>6 Q. And at the same time they say that a much smaller 7 percent of black students that attend nonselective 8 universities are able to get into a law school or professional 9 school; do you have any reason to question that?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. That's their conclusion.</p> <p>13 Q. We've got five minutes until the end of the tape. 14 And Mr. Connerly, is it whether or not you're black or white 15 or Asian or Latino, isn't it true that there are doors that 16 are open to you if you go to UCLA or University of California 17 Berkeley, that the -- let me put it a different way. 18 Isn't it true that whatever race you are, if you go 19 to University of California Berkeley or UCLA, the degree that 20 you obtain is more valuable in terms of the income level upon 21 graduation, if you look at students in the aggregate?</p> <p>22 A. Ms. Driver, I'm not sure about that. I know that 23 UCLA and U.C. Berkeley would say that. But I'm not so sure 24 about that. I went to a community college and to Sac State, 25 not household names at all. I know so many other people, very</p>	<p>1 experience in your anecdotal experience that there might be 2 reason to pause and doubt that a U.C. Berkeley or UCLA 3 undergraduate degree is worth more or a degree from Harvard is 4 worth more or other highly selective universities, in the Bok 5 and Bowen book, they establish that black students who go to 6 those select universities earn, for black males, twice as much 7 as black males who graduate from nonselective universities. 8 So they've done the scientific study. They've asked people 9 how much did you make. They've looked at tens of thousands of 10 people and they've come to that conclusion. So that's 11 science, not an anecdote, and based on science, they've 12 established that you make double as much.</p> <p>13 A. Bowen and --</p> <p>14 Q. Bok.</p> <p>15 A. Bowen and Bok, but there were a lot of people who 16 disagreed with Bowen and Bok. Thernstroms.</p> <p>17 Q. But the Thernstroms don't disagree on this point?</p> <p>18 A. I don't know about that.</p> <p>19 Q. They don't disagree on the aggregate. They don't 20 disagree that if you look at students that go to highly 21 selective universities and you compare their incomes to 22 students who go to nonselective universities that in the 23 aggregate the income levels of minority students that go to 24 those selective universities is higher?</p> <p>25 MS. RICHMAN: This is Jessica Richman for the</p>
<p>1 successful people, who did not go to a brand name, whose 2 incomes are every bit as large, if not larger than a lot of 3 those who went to the brand name. So this is one of those 4 things that I've noodled over a long time and I'm just not so 5 sure that that's a valid premise.</p> <p>6 Q. But we could -- and I understand what you're saying. 7 In a particular individual case there might be somebody who 8 went to Sac State and makes a lot of money and somebody who 9 graduated from University of California Berkeley and they're 10 currently homeless, and so you could -- un, there are those 11 kind of anecdotes out there, but there are ways to attain 12 scientific data to tell us if a University of California 13 Berkeley degree is more valuable in the aggregate, than a 14 degree from another university. You would agree that there is 15 scientific ways to make that determination?</p> <p>16 A. I think that there are survey techniques that would 17 allow one to conclude that your chances of being hired on that 18 first job are greater if you walk in and say I graduated from 19 Harvard than I graduated from Sac State -- bless you. I think 20 that.</p> <p>21 But beyond that first job, it has been my experience 22 and I have served on a lot of boards, including the California 23 State Chamber of Commerce, beyond that first job, I'm not sure 24 that it matters.</p> <p>25 Q. If I were to say to you, I understand from your own</p>	<p>1 Cantrell plaintiffs. Ms. Driver, with all due respect, I'm 2 not clear on what your question is. It sounds like you're 3 just reiterating the conclusions of the "Shape of the River" 4 book. I just want to make clear for the record that you're 5 not -- you're not testifying here about the conclusions of 6 that book or what the implications of them are or what they 7 were in fact.</p> <p>8 If you have a specific question for Mr. Connerly 9 that you have to ask him in his capacity, not as an expert, 10 but as a witness who is testifying to his anecdotal 11 experience, please go forward and ask that question. But 12 right now it's not clear to me what it is that you're asking.</p> <p>13 MS. DRIVER: It's -- I'm not asking Mr. Connerly -- 14 Mr. Connerly's had a lot of experience thinking about -- 15 looking at these things, in fact was in a position to make 16 determinations based on a set of these conclusions. And so 17 I'm asking Mr. Connerly whether he knows or has any reason to 18 doubt that students who go to more selective universities, 19 black and Latino, earn in the aggregate more than students 20 that go to nonselective universities.</p> <p>21 MS. RICHMAN: You're asking that based on his 22 experience, his observations of the students that he has come 23 in contact with?</p> <p>24 MS. DRIVER: I'm asking him that based on his 25 knowledge. It may be based on the student he's come into</p>

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1 contact with, it may be based on his reading, it may be based
 2 on his experience as a regent.

3 THE WITNESS: Based on my experience as a regent, I
 4 have serious doubts about that.

5 MS. DRIVER: Q. One more question then we're going
 6 to run out of the tape so it will be a good time for a break.

7 A. Okay.

8 Q. You said that what you didn't have a doubt about was
 9 that your opportunity for a first job might be different and a
 10 first job -- and you would stand by that?

11 A. I would stand by that.

12 Q. And a first job can make a huge difference, can it
 13 not?

14 A. It may if you handle it right.

15 Q. Okay. If you have -- would you agree if you
 16 graduated from a selective university and there were
 17 businesses and, you know, courts, to be clerks for a judge or
 18 what not, and they only sent representatives to selective
 19 universities that you'd have a better chance of being hired if
 20 you went to one of those?

21 A. I agree with that.

22 Q. So that could give you a big leg up; is that
 23 correct?

24 A. On that first job?

25 Q. Yes.

1 we are on the record.

2 MS. DRIVER: Q. Mr. Connerly, I want to go back to
 3 where we left off. You would agree that the decision made by
 4 selective universities to integrate their student bodies
 5 beginning in let's say 1964, since that the benchmark we've
 6 worked out, has resulted in the creation of a much larger
 7 number of black lawyers?

8 A. I would agree that the decision to reach out has,
 9 among other things, has resulted in a larger number of
 10 lawyers, black lawyers.

11 Q. Okay. Latino lawyers?

12 A. Latino lawyers.

13 Q. Women lawyers?

14 A. Women lawyers, yeah, although I think that there
 15 were other factors that probably account for the increase in
 16 the number of women lawyers more so than blacks. For example,
 17 after 209 passed, the number of women lawyers at Boalt Hall
 18 went up.

19 Q. Okay.

20 A. While the number of black lawyers went down.

21 Q. Okay. And you would agree that the decision made by
 22 selective universities starting in 1964 to integrate has
 23 resulted in the significant expansion of the number of black
 24 judges; you would agree to that, yes or no?

25 A. I'm not sure that I would attribute it solely to

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1 A. Yes.

2 MS. DRIVER: Okay. We should take a break now and
 3 give the gentleman a chance to keep you looking so photogenic.
 4 Maybe ten minutes, is that fine?

5 THE WITNESS: Ten minutes.

6 MS. DRIVER: Mr. Foutz?

7 MR. FOUTZ: Yes. We should figure out what time to
 8 break for lunch. Do you want to come back at quarter to 12:00
 9 or have a late lunch?

10 MS. DRIVER: Could we come back at quarter to 12:00,
 11 Mr. Connerly, and go maybe until say 12:30 and then break for
 12 lunch; would that be okay?

13 THE WITNESS: Sure, or I can stay and work through
 14 lunch, whatever you want to do.

15 THE VIDEOGRAPHER: Can we decide this while changing
 16 tape.

17 MR. FOUTZ: We don't need to be on the record.

18 THE VIDEOGRAPHER: Let me go off the record. This
 19 is the end of tape number 1, volume 1 in the deposition of
 20 Ward Connerly. It is 11:39 a.m. We are off the record.

21 (Whereupon, a recess was taken at 11:39 a.m.)

22 THE VIDEOGRAPHER: This is the beginning of tape
 23 number 2, volume 1 in the deposition of John Connerly --

24 THE WITNESS: Ward.

25 THE VIDEOGRAPHER: Ward Connerly. It is 12:00 p.m.

1 their decision to integrate. Black lawyers may have found
 2 their way without their decision. We don't know, we'll never
 3 know.

4 Q. We increase the pool of attorneys, correct, the
 5 number of attorneys, because of the decision of all let's say
 6 majority white institutions, law schools, to integrate; would
 7 you agree with that? We increase the number of black
 8 attorneys?

9 A. I think, I think that there is some effect as a
 10 result of the decision to try to integrate, but I am not sure,
 11 and this is a quarrel that I have with those who are on the
 12 other side of the argument of mine, as to whether that's a
 13 result of the efforts to integrate or whether it's a result of
 14 the efforts to eliminate discrimination.

15 Q. Okay. And would you say it's because of the efforts
 16 to eliminate discrimination?

17 A. I would say it was probably a result of all of those
 18 things.

19 Q. Okay. So some part the decision to integrate, some
 20 part the decision to eliminate discrimination?

21 A. That's correct.

22 Q. And so today we, as of 1965, we had less than one
 23 percent of the attorneys in this nation were black and today
 24 we have close to seven percent and that's clearly an increase;
 25 you would agree?

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<p>1 A. Yeah, that's an increase.</p> <p>2 Q. And same with Latino attorneys. There weren't even 3 statistics kept as of 1965 on Latino attorneys and now we know 4 that the number of Latino attorneys is significantly above 5 what both by perception and by record we have as of 1970; 6 would you agree with that?</p> <p>7 A. Yes.</p> <p>8 Q. And because there are more black lawyers and Latino 9 lawyers, there has also therefore been the ability to increase 10 the number of black judges; would you agree with that?</p> <p>11 A. Sure.</p> <p>12 Q. And there in fact has been an increase in the number 13 of black and Latino judges from today over against 1965; would 14 you agree with that?</p> <p>15 A. Yes.</p> <p>16 Q. And the same thing is true for black doctors, would 17 you agree with that?</p> <p>18 A. I'm not sure about the increase in black doctors. 19 But let's just say I agree with your facts. I haven't looked 20 at the data.</p> <p>21 Q. Okay. I think black doctors it was about two 22 percent in 1965 and now it's about eight percent. Does that 23 correlate with your understanding?</p> <p>24 A. I wouldn't quarrel with that.</p> <p>25 Q. Okay. And so there's been really the creation of a</p>	<p>1 A. -- and a lot of other things. I can't make a 2 blanket statement.</p> <p>3 Q. Okay. Let me change the question then. Would you 4 say that increased opportunity is a benefit to the whole 5 society?</p> <p>6 A. Without question.</p> <p>7 Q. In the case of black and Latino doctors, there is 8 also, you would agree, a specific benefit that has been 9 derived by black and Latino communities because many black and 10 Latino doctors practice in those communities?</p> <p>11 A. The argument is that they -- once they graduate and 12 they go to practice, they practice in, quote, their 13 communities. I'm not so sure, given the nature of the health 14 care industry and the people who are on the specific plans, 15 whether that premise is a valid one or not.</p> <p>16 Q. Okay. Let's leave this area and finally move ahead. 17 Let's go to 1995. Can you give me first the years of your 18 being a regent in the University of California, for the 19 University of California?</p> <p>20 A. I often say that I was sentenced to a twelve-year 21 term. And in 1993, March 1 of '93 and it happily expired in, 22 and I know you would concur, in March of 2005.</p> <p>23 Q. And you began a campaign at some point in the early 24 part of your regency to secure the passage of two measures, 25 one of which was called SB-1 and the other, which was called</p>
<p>73</p> <p>1 significantly larger black middle class, there is now, let's 2 say, a significantly larger black middle class than there was 3 in 1965; would you agree with that?</p> <p>4 A. To be certain.</p> <p>5 Q. And at least part of that can be attributed to the 6 decision made by selective majority white institutions to 7 integrate starting in 1964?</p> <p>8 A. Part of that.</p> <p>9 Q. Part of that, yes. Some portion you would attribute 10 to that?</p> <p>11 A. Yes. Yes.</p> <p>12 Q. Okay. I'd like to -- and you would agree that 13 that's -- that those increased numbers and that greater 14 integration is a benefit to the society as a whole?</p> <p>15 A. Yes.</p> <p>16 Q. And in the case of the increased number of black 17 people that have attained positions of political power you 18 would say that that is, that having more black judges, more 19 black congressmen, more black mayors during the 30 years is a 20 benefit to the whole society?</p> <p>21 A. Depends on a lot of other factors, not just having 22 more black here and more black there necessarily benefits or 23 having more white here or more white there necessarily 24 benefits. It depends on the quality of the people --</p> <p>25 Q. Okay.</p>	<p>75</p> <p>1 SB-2?</p> <p>2 A. That's correct.</p> <p>3 Q. Those measures were pass in the July 1995?</p> <p>4 A. July 20th.</p> <p>5 Q. Okay. Can you just describe for me what SB-1 was 6 and what SB-2?</p> <p>7 A. SB-1 prohibited the University of California from 8 using race in the admissions area. It says the university 9 could not provide preferential treatment in the use of race, 10 gender, ethnicity, national origin and admissions. SB-2 11 provided the same thing, only in the venues of employment and 12 contracting.</p> <p>13 Q. And why did you seek the passage of SB-1 for the 14 purposes of this case, we'll just focus on this, not on SB-2, 15 but of SB-1?</p> <p>16 A. As a black man born in the deep south in 1939, 17 keenly familiar with racial discrimination, I have always felt 18 that it was wrong morally for government agencies to 19 discriminate against people on the basis of color of my skin.</p> <p>20 Q. And -- sorry.</p> <p>21 A. And when I discovered, as a member of the board of 22 regents, at the time I was chairing the finance committee, 23 which is the major oversight committee of the university, that 24 we were not using race as one of many factors, but we were 25 using race effectively as the factor. Not only did that</p>

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1 offend me as a person with that history, but I felt we were a
 2 lawsuit waiting to happen. So I then drafted the language
 3 that became known as SB-1 and 2 and steered it through the
 4 board of regents on July 20th of '95.

5 Q. And when you say that race was being used as the
 6 deciding factor or main factor --

7 A. Um-hum.

8 Q. -- on what did you base that? How did you come to
 9 that conclusion?

10 A. First of all, there was a report developed by Jerry
 11 Cook, who was a statistician, who brought in very compelling
 12 information that the University was using the race to the
 13 detriment of his son at the University of San Diego law school
 14 or medical school.

15 I also had the matrix of Berkeley which I mentioned
 16 to you about earlier, which classified students on the basis
 17 of these factors, race and ethnic background, and awarded
 18 extra points on the basis of that, 250 if you were Latino. A
 19 larger number if you were Chicano and even a larger number if
 20 you were black.

21 As I talked to the general counsel, I said how can
 22 race be one of many factors when we're awarding specific
 23 points? How can race be one of many factors when U.C. Davis
 24 for example is admitting all underrepresented minorities
 25 regardless of their academic performance. How can it be one

1 Latino students, first at Boalt Hall and UCLA starting in
 2 1997, law school? Sorry.

3 A. I would agree with that.

4 Q. You would agree that starting in 1998 the
 5 implementation of SB-1 led to a precipitous drop, a large drop
 6 in black and Latino and native American and undergraduate
 7 students at UCLA and University of California Berkeley?

8 A. I would agree with that. Although, I was surprised,
 9 to a large extent by that because the chancellors had been
 10 saying race was one only one of many factors.

11 Q. And you say you were surprised by that. Were you
 12 disturbed by that?

13 A. It's not for me to be disturbed as a regent. It was
 14 my job to make sure that the process is fair and there is a
 15 value that I believe in, which is that everybody should be
 16 treated equally and fairly. And so for me to be disturbed by
 17 a drop in one is to suggest that I really don't believe in the
 18 value that I was espousing.

19 Q. And when you say everyone's to be treated equally
 20 and fairly, you mean everyone is to have the same access to
 21 higher education and the opportunity to go to University of
 22 California Berkeley or UCLA? What do you mean by that term?

23 A. By that term I mean that when the University of
 24 California sets its standards, whatever those standards happen
 25 to be, then the University needs to apply those standards

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1 of many factors when UCLA is using the same matrix as
 2 Berkeley. How can it be one of many factors when U.C. San
 3 Diego gives bonus points when you declare yourself as an
 4 underrepresented minority or not.

5 Q. Can you -- so to you, that point system, seemed to
 6 you to be, you would say, you said I think illegal --
 7 potentially illegal; is that correct?

8 A. In my view and in the view of the general counsel it
 9 was illegal. And in the fullness of time, the Supreme Court
 10 in the Grutter and Gratz decisions ruled that it was illegal.

11 Q. Okay. Did you ever ask anybody why it was that
 12 these points were being assigned?

13 A. I did and the response was that was the only way we
 14 could get diversity given the academic achievement gap between
 15 underrepresented minorities and Asians and whites, especially
 16 Asians.

17 Q. Okay. What did they describe this academic
 18 achievement gap as being?

19 A. Standardized test scores.

20 Q. And just standardized test scores?

21 A. Largely standardized test.

22 Q. And you would agree that the passage of SB-1 and
 23 then its subsequent implementation first in the law school and
 24 graduate school level in 1997 and the undergraduate level in
 25 1998 led to a significant drop in the number of black and

1 equally to all of the students without regard as a '64 civil
 2 rights access, without regard to their race, color or ethnic
 3 background.

4 Q. Okay. Were you disturbed that the implementation of
 5 SB-1 meant that a significant number of Latino and black
 6 students who had previously been able to gain access to the
 7 University of California Berkeley or UCLA were now being
 8 excluded?

9 A. As a black man, it bothered me that in a race-blind
 10 system, black students were not able to compete as favorably
 11 alongside Asians and whites.

12 Q. My question's a little different. It's were you --
 13 did you take note of the fact first that there had been this
 14 big drop in black and Latino students admitted?

15 A. At Berkeley and UCLA?

16 Q. Yes. Yes, at Berkeley and UCLA, yes, at those two
 17 schools.

18 A. But not within the overall U.C. system, not in the
 19 community colleges.

20 Q. Okay.

21 A. Not in the state college system.

22 Q. Okay.

23 A. So I as a regent knew there was something happening
 24 here, this aggregation as you look at the data, this
 25 disaggregation was occurring because you take the preferences

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1 away from certain students there's going to be a consequence.
 2 Only a fool would not be aware there was going to be some
 3 consequence.
 4 Q. And you said you were surprised by how dire the
 5 consequence was?

6 A. I was surprised by the effect at Berkeley and UCLA.
 7 Q. Okay. And at Berkeley and UCLA, this enormous drop
 8 of black and Latino students at those two universities meant
 9 that there was a significant lessening of opportunity for
 10 black and Latino students to attend those universities; is
 11 that correct?

12 A. No, that's not correct. It meant that there was a
 13 serious academic achievement gap, which we were not aware of
 14 -- it doesn't mean we wouldn't have done it anyway. It means
 15 that was not fully disclosed to us by the chancellors and the
 16 other people at the time we were debating about the extent to
 17 which race was being used.

18 Q. Mr. Connerly, in the 1960s when these -- when UCLA
 19 and U.C. Berkeley decided they were going to integrate,
 20 reached out to black and Latino students, considered their
 21 standardized test scores differently than they did white
 22 students, you agree that it was -- that they succeeded in
 23 integrating; is that not true?

24 A. I agreed that when they decided to reach out that
 25 they, taking other measures as well, that they increased the

1 admitted, a 1080, even a 780 was acceptable for an
 2 underrepresented minority.

3 Q. You didn't ascribe a lot of value to those test
 4 scores, did you?

5 A. Well, I attribute some value to them. I think that
 6 they're over -- there's an overemphasis on those test scores.

7 Q. And you knew that there was a test score gap between
 8 black and Latino students and white students in 1995, did you
 9 not?

10 A. Sure, I did.

11 Q. And so the question was why did that test score gap
 12 -- why did it exist? And why do you think that test score
 13 gap, in 1995 when you were deciding what to do, why did you
 14 think that test score gap existed?

15 A. First of all, I had no firm knowledge of the extent
 16 to which it was being used by the university.

17 Q. Separate --

18 A. But separate and apart from that --

19 Q. Yeah.

20 A. -- I'm not sure why there is that gap between
 21 underrepresented minority students on the one hand and Asian
 22 and white on the other --

23 Q. But --

24 A. That are lot of theories on that. I don't know.

25 Q. And you know the gap exists?

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1 numbers. I was agreeing with you at every step as you framed
 2 those specific questions. Now we're getting to the tough
 3 ones.

4 Q. And you said at that time you agree that they were
 5 giving a different kind of consideration to the test scores of
 6 black and Latino students; did you not?

7 A. No, I don't recall agreeing to that. I agree that
 8 standardized test scores -- standardized tests were things
 9 that I felt -- was something that I felt needed to be
 10 modified.

11 Q. Okay. We're going to come back to the modification
 12 part.

13 A. Okay.

14 Q. But I recall your testimony as being that you knew
 15 and understood or at that point that the test scores of black
 16 and Latino students were looked at in a different way than the
 17 test scores of white students?

18 A. That's true.

19 Q. Correct?

20 A. Okay.

21 Q. And that policy was continued right into 1995,
 22 wasn't it?

23 A. I think that -- yeah. In 1995, we discovered, I
 24 discovered when I went on the Board of Regents that a 1480
 25 might be required for a white and Asian student to be

1 A. It sure does.

2 Q. And you know that the reason for the gap is not
 3 biological.

4 A. That's right, it's not.

5 Q. Right. And that means that at least to some part
 6 the reason for that gap has to be social, correct?

7 A. To some extent. It probably is a very large extent.

8 Q. Okay. So it's -- this gap that we both agree
 9 exists, you would say is in large part created by social
 10 factors; is that correct?

11 A. Yes.

12 Q. And you would say one of those factors -- would you
 13 agree that one of those factors would be the quality of the K
 14 through 12 education you received?

15 A. Yes.

16 Q. And you would say that another one of those factors
 17 was -- could be the income level of your family?

18 A. Yes.

19 Q. And you would say another one of those factors might
 20 be access to test prep courses that you had been able to take?

21 A. Absolutely.

22 Q. And you would say another one of those factors might
 23 be the character of the questions asked on the test?

24 A. Yes.

25 Q. And those are -- would you say or did you know in

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1 1995, did you suspect that there was anything biased or
 2 discriminatory about the results of the SAT test?
 3 A. Ms. Driver, I asked the academic senate that very
 4 question. Their response was, Regent Connerly, we have gone
 5 through and looked at those tests and we have purged, their
 6 word, we have purged all the bias out of it. We believe that
 7 the tests have great predictive value. We believe, if
 8 anything, they overpredict the number of underrepresented
 9 minority student.

10 My response was, I don't care if you use how
 11 gracefully you can fall off a log for admission, as long as
 12 you do it equally and that you don't have a system that biases
 13 one or another and that you don't place an overreliance on the
 14 standardized tests.

15 Q. Did you ever call for the elimination of the use of
 16 standardized tests --

17 A. No.

18 Q. -- in admissions?

19 A. No, I felt that would be inappropriate for a regent
 20 to do. We have a system of what is called "shared governance"
 21 at the University of California. There are certain areas that
 22 regents do not tread into.

23 Q. But they tread -- you treaded into how they made
 24 admissions decisions; did you not?

25 A. I not only tread, I jumped in with both feet.

1 that are being admitted and the test scores of white and Asian
 2 students.

3 A. Okay.

4 Q. Correct so far?

5 A. Yeah, correct.

6 Q. And you notice that the university is giving so many
 7 points to black and Latino students and native American
 8 students that they are not giving to white and Asian students
 9 as part of the admission -- as part making admission
 10 decisions?

11 A. There was no correlation between the points and the
 12 standardized test performance.

13 Q. My question's a little different than that.

14 A. Okay.

15 Q. So far we've described what you witnessed
 16 accurately; is that right? That black and Latino and native
 17 Americans --

18 A. That is an accurate description.

19 Q. Right. Did you ever ask anyone did those points sum
 20 up what admission officers had come to understand was the bias
 21 that existed in the test score gap and a way to offset it?

22 A. I think I answered that but I'll do it again. The
 23 admissions people said that there was no bias in the
 24 standardized test. The faculty said that there was no bias.
 25 I did ask questions about is it really relevant for you to use

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1 Q. Okay.

2 A. And the question of whether the University should be
 3 using race as a factor because that's an overarching policy
 4 question.

5 Q. But the use of a standardized test is an
 6 overreaching policy question, too, is it not?

7 A. No, I think that is something that the faculty has a
 8 better handle on whether this method or that method is a
 9 better approach to admission. They're the ones who are
 10 supposed to be doing the due diligence to determine the
 11 validity of the standardized test.

12 Q. Okay. But -- and did you ever ask did that point
 13 system that you were describing, did you ever ask if that
 14 summed up all of the ways that the university had determined
 15 those test scores were biased against black or Latino
 16 students?

17 A. Again?

18 Q. Okay. You're saying the university is assigning
 19 points according to race and there are two things that you
 20 know. Standardized tests are the significant determinate
 21 according to you in whether or not you get in to University of
 22 California Berkeley or UCLA.

23 A. Okay.

24 Q. And you notice that there's a disparity between the
 25 test scores of black and Latino and native American students

1 the standardized test and to rely on it to the extent that you
 2 do.

3 Q. Um-hum.

4 A. They felt, they, the academic senate, that, yes, it
 5 was relevant.

6 Q. And did you ever say to yourself, maybe those points
 7 that are being given to black and Latino and native American
 8 students are a way to compensate for the bias that exists in
 9 standardized tests? Did you ever think that?

10 A. No --

11 MR. FOUTZ: Objection. I'm sorry. I need to
 12 object. It lacks foundation. It misstates earlier testimony.

13 THE WITNESS: I would have to conclude that there
 14 was a bias and the people that we have hired to make judgments
 15 about that were telling us that there was no bias.

16 MS. DRIVER: Q. Okay. But you concluded that there
 17 was a bias and --

18 MR. FOUTZ: A question?

19 MS. DRIVER: Q. Did you conclude that there was --
 20 A. I concluded that there was an overreliance on the
 21 standardized test. I did not conclude that there was
 22 necessarily a bias.

23 Q. I thought we already established that you agreed
 24 that there was a bias in standardized tests?

25 A. No, no, I didn't say that there was a bias in the

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1 standardized test. I said there was an overreliance on the
 2 use of the standardized tests of the university in my view
 3 which tends to have an effect on underrepresented minority
 4 students, perhaps greater than other students. I'm not saying
 5 the questions for example in the standardized tests are
 6 biased, which is really what you're saying I said.

7 Q. No, I think we went through this. I want that
 8 there's obviously a test score gap between black and white
 9 students --

10 A. That's right.

11 Q. -- Latino and white student?

12 A. Right.

13 Q. Native American and white student?

14 A. Right.

15 Q. That test score bias meant that using standardized
 16 test --

17 A. Well --

18 Q. -- would discriminate against and bias against black
 19 and Latino students; would you agree with that?

20 A. Ms. Driver, you took a very significant departure
 21 there when you said there is a disparity in the test scores,
 22 then you said that bias.

23 Q. Okay.

24 A. I'm not saying that there is a bias in the tests.

25 Q. I'm not saying there's a bias in the tests. Here's

1 against black, Latino and native American students?

2 A. I would agree that that is going to produce a
 3 different result than would otherwise be achieved if we did
 4 not overrely on those tests or if we eliminated the test
 5 altogether.

6 Q. Right. So if we eliminated the test altogether, we
 7 would take out a -- we would take out the bias that black and
 8 Latino and native American students suffer because the
 9 standardized test is used and we know in the aggregate they
 10 score lower?

11 A. I'm realizing now that I need to pause on some of
 12 these words that you're using because they are prejudicing the
 13 discussion. I'm not saying that there is a bias in the test.
 14 I'm not saying that there is discrimination by using them. I
 15 am saying that there is a different result when you apply
 16 those tests and that they should not be -- there should not be
 17 an overreliance on them. But I am also saying that
 18 underrepresented minority students are just as capable of
 19 excelling at those tests as Asians and whites are and we
 20 should not throw out the test as long as the faculty believes
 21 that they have predictive value just because there is a
 22 different performance with the test. We should make sure that
 23 they don't have questions, for example, that are inherently
 24 biased. But not to conclude that they should just be thrown
 25 out or that they're going to discriminate by their mere usage.

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1 what I'm asking. You have black, Latino and native American
 2 students --

3 A. Okay.

4 Q. -- who you would agree in the aggregate are lower on
 5 standardized tests --

6 A. Right.

7 Q. -- than white or Asian students?

8 A. Right.

9 Q. So using standardized tests to make admissions
 10 decisions, would, if uncorrected, discriminate or bias --
 11 let's say first discriminate against black and Latino and
 12 native American students?

13 A. No, no.

14 Q. Would you say that --

15 A. They will perform differently if that standardized
 16 test is used, but it does not mean since you and I have agreed
 17 it's not genetic that they can achieve on the standardized
 18 test just like whites and Asians can.

19 Q. But we know they don't. We know that doesn't
 20 happen, that's what I'm saying. We know that that doesn't
 21 happen and that leads to my second question. So since we both
 22 know and we have already agreed that black, Latino and native
 23 American students score lower on these standardized tests,
 24 then if you were to use those tests as part of an admission
 25 system, would you agree that that admission system is biased

1 Q. Mr. Connerly, did you ever ask anybody if those
 2 points were to make up for the bias that black, Latino and
 3 native American students suffer in an admissions process that
 4 relies on standardized tests given that black and Latino and
 5 native American students score lower than white and Asian
 6 students?

7 A. There you go again. You're using term "bias". I
 8 have not said that the tests are biased. The faculty did not
 9 tell me the tests were biased. There's a different result as
 10 a result of different groups taking those tests, but the word
 11 bias is pretty significant and I talked to the faculty about
 12 whether these tests are biased. There is a big debate in
 13 academia on whether the tests are biased, that's the term
 14 biased. The faculty says, no, they're not biased. There is a
 15 different result that is obtained when they're applied, but
 16 that's not because of any bias, any inherent bias in the test
 17 they say.

18 Q. And let's go through it one more time. And you
 19 would say that the results of how you do on a test are
 20 determined in part by the K through 12 education that you
 21 received, correct?

22 A. Correct.

23 Q. And you would say that it's in part due to whether
 24 or not you had access to a test prep course, correct?

25 A. Correct.

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<p>1 Q. You would say that it's in part attributable to your 2 socioeconomics, correct? 3 A. Correct. 4 Q. So if you learned that white applicants had more 5 access to test prep courses, came from higher socio economic 6 backgrounds and went to more privileged K through 12 schools 7 than black, native American and Latino applicants then you 8 would assume the use of those tests would give an unfair 9 advantage to those white students, wouldn't you? 10 A. You could assume that that would give some advantage 11 to those in those circumstances if you make the next 12 assumption, which is that all of those factors that you 13 mentioned square up with race -- 14 Q. Okay. 15 A. -- and they all don't. 16 Q. Okay. If you found that accessibility to test prep 17 courses squared up with race, then you would say if you 18 learned that black, Latino and native American students had 19 less access and less ability to take test prep courses than 20 white students -- 21 A. Don't forget Asian, by the way, you have to include 22 white and Asian. 23 Q. Well, one of the joys of being the person who gets 24 to ask the question -- 25 A. But I have to answer your question.</p>	<p>1 question. 2 A. Okay. 3 Q. Do you need me to repeat it? 4 A. Yeah, yeah. 5 Q. Yeah. So if you learned, and if it were true -- 6 let's say if it were true. 7 A. If it were true. 8 Q. That the test scores of black students in every 9 socioeconomic category, from the richest to the poorest -- 10 A. Okay. 11 Q. -- were lower than the test scores of poor white 12 students, of lower income white students -- 13 A. Okay. 14 Q. -- then you would say, and middle income white 15 students and rich income white students, then you would say 16 white students had an advantage over and against black, Latino 17 and native American students if the tests are used in 18 determining admissions decisions? 19 A. Yes, that logically follows. 20 Q. Okay. So there could be some correlation between 21 the points that were given to -- if you gave points to black, 22 Latino and native American students to compensate for the 23 advantage that was given to white students under the -- let's 24 just use one of my models. We had the black students of all 25 income levels scored lower on standardized tests than white</p>
<p>93</p> <p>1 Q. You do. But you can answer my question yes or no. 2 If you found that access and availability and opportunity to 3 take test prep courses that native American, black and Latino 4 students had in the aggregate less opportunity to do that than 5 white students in the aggregate, you would say that white 6 student had an advantage over and against black, Latino and 7 native American students, would you not? 8 A. Given the ground rules that you've established, I 9 will say, yes. 10 Q. Okay. 11 A. Given the ground rules that you've established. 12 Q. And if you were to discover that black students of 13 every socioeconomic category, from the richest to the poorest, 14 scored lower on the SAT than poorer white students, you would 15 say white students have an advantage over and against all 16 black, native American and Latino students if the test is used 17 in the admissions process, would you not? 18 A. Whatever happened to this dialogue approach that you 19 and I were going to have at the outset? 20 Q. You're still having it? 21 A. No, you're framing your questioning in such a way to 22 be logical and to be consistent. I have to respond to your 23 questions yes or no and that's not, that's not capturing the 24 nuances on a lot of these issues. 25 Q. I understand. This is definitely a yes-or-no</p>	<p>95</p> <p>1 students of all income levels, even the poorest white student 2 scores higher. 3 A. Okay. 4 Q. Okay. Then if you gave points to level the playing 5 field, because you're using these standardized tests, that 6 would be fair, wouldn't it? 7 A. No. 8 MR. FOUTZ: I object. That's an incomplete -- 9 MS. DRIVER: Why wouldn't it be fair? I'm sorry. 10 MR. FOUTZ: Let me state my objection. It's an 11 incomplete hypothetical. It lacks foundation, it assumes 12 facts that are not in evidence and calls for speculation. 13 MS. DRIVER: Q. Okay. Now, Mr. Connerly, we're 14 back to the dialogue. Tell me why, why wouldn't that be fair? 15 A. Ms. Driver, there are certain principles that are 16 important to some of us and to me there is one that rises 17 right to the tippy top. 18 Q. Okay. 19 A. That's that every government agency that deals with 20 its citizens has an obligation to treat those citizens 21 differently -- treat those citizens differently -- or treat 22 those citizens equally as that citizen interacts with that 23 government agency, not to try to presuppose different 24 treatments somewhere else and to try and compensate for that 25 someplace else. Once you start doing that, then you're doing</p>

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1 what the court says you're not supposed to do and that's cure
 2 societal ills by using race.

3 So I cannot agree with you that that is the fair
 4 thing to do, because I can't make all of those suppositions
 5 that you are about -- this being used to compensate for, I
 6 can't do that.

7 Q. Okay. Let me ask you this, then. If you have an
 8 admission system that uses standardized tests as a primary
 9 factor in determining who gets into the university and black,
 10 Latino and native American students of the highest income
 11 level to the lowest income level score lower on those tests
 12 than white students with low income levels, then you would
 13 have to say that white students have an unfair advantage in
 14 attaining admissions to those universities so long as those
 15 standardized tests are used, wouldn't you?

16 A. I would say that white students have an advantage.

17 Q. Okay.

18 A. I would --

19 Q. Sorry to interrupt you. Go ahead.

20 A. I would say that white students have an advantage
 21 based on the statistics before us, as we're looking at them.

22 Q. Okay.

23 A. One would -- but I cannot then say an unfair
 24 advantage because we're talking logic here, okay. Logic would
 25 not -- would say, gee, there might be other factors, some of

1 A. All right.

2 MS. DRIVER: Since we're breaking a little late, can
 3 we say 1:30 to come back?

4 MR. FOUTZ: Yes.

5 MS. DRIVER: Thank you. That's okay with everyone?
 6 Great. Let's go off the record.

7 THE VIDEOGRAPHER: It is 12:47 p.m.; we are off the
 8 record.

9 (Whereupon, a recess was taken at 12:47 p.m.)

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1 which we don't even want to think about. The possibility that
 2 white students are brighter. We don't believe that. But that
 3 is one of the things that when you pose these kind of
 4 questions logically, there's some racist out there who would
 5 throw that into the equation, you know that and I know that,
 6 but that's not the reason.

7 So I conclude that black students and
 8 underrepresented minority students can learn those tests just
 9 as white students can. They can take -- in fact, we
 10 considered providing the funding for, in our outreach efforts,
 11 for black students to take, and Latino and native American
 12 students, to take those standardized prep classes the way that
 13 a lot of others do.

14 So there are a lot of mitigating factors there that
 15 would give me pause about just going down this path and
 16 agreeing with all these questions that you throw out there.

17 Q. Okay. Let's do this. I'm sorry, because I know
 18 I've taken us over and you've given us a good breaking point,
 19 which is getting into another area which is the, you know,
 20 cause of let's say this achievement gap, that's what I think
 21 you were calling it?

22 A. Um-hum.

23 Q. -- in terms of standardized tests. I think it's a
 24 somewhat different area of what I was just raising, but why
 25 don't we come back to that after lunch?

1 OCTOBER 24, 2007 - WEDNESDAY 1:38 P.M.
 2 PROCEEDINGS

3 --oOo--

4 THE VIDEOGRAPHER: We are back on the record at 1:38
 5 p.m.

6 MS. DRIVER: Q. Mr. Connerly, where we left off --
 7 actually, I'd like to refer you now to a document and it
 8 begins at Coalition page 3329 -- 3229. It's the minutes of a
 9 U.C. regents committee on educational policy that occurred on
 10 July 19, 1997.

11 I want to refer you to this document and,
 12 specifically, what I'd like to refer you to is page 20 of
 13 these minutes which we have down as Coalition 3248. The page
 14 number's on there, bottom left.

15 THE WITNESS: What number is that again?

16 MS. DRIVER: 3248.

17 THE WITNESS: 3248?

18 MS. DRIVER: Um-hum.

19 MR. SAUER: Sorry to intrude again, I apologize.

20 Just a question of procedure. Are we planning to have the
 21 whole bundle of Coalition documents introduced as an exhibit
 22 or subdocuments, just out of curiosity?

23 MR. WASHINGTON: No, absolutely not, John. We may
 24 refer to a few in the course of the examination but we're not
 25 going to offer them by any means.

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1 MR. SAUER: You don't intend on attaching them on
 2 exhibits?

3 MR. WASHINGTON: Not unless you want to run up the
 4 court reporter's bill.

5 MR. SAUER: I have no desire to do that. That's
 6 fine with me. I have no objection.

7 MS. DRIVER: Q. Okay. Mr. Connerly, you were
 8 describing what I was raising about the test score gaps
 9 between black students at all income levels compared to the
 10 ability of white and Asian students from the lowest income
 11 levels to score higher as being a hypothetical. This actually
 12 came up before the regents, did it not?

13 A. Yes, it did.

14 Q. On page 20, you, yourself, responses and I'm just
 15 going to read out loud from the very first paragraph, the
 16 middle of the paragraph, and tell me if this is an accurate
 17 minute taking of what you said. It says, "Regent Connerly
 18 believed that the most haunting finding of the task force
 19 report was the fact that the average SAT score for
 20 African-Americans in the highest income category is below that
 21 of white and Asian-Americans with the lowest incomes."

22 Is that an accurate first -- because these are
 23 minutes and they sum up things, is that an accurate statement
 24 of your response?

25 A. Yes, it is.

1 A. I can't believe that you would frame the question
 2 that way unless you have some purpose to distort what I'm
 3 saying to you. I've said it over and over again, Ms. Driver,
 4 that there is shared governance at the university. The
 5 faculty determines whether the standardized tests are going to
 6 be used, not the regents. The faculty had said to the regents
 7 over and over again that there's no bias in these tests, that
 8 that bias has been purged. The regents do not overrule the
 9 use of standardized test. I had said personally I think that
 10 it is wrong for the university to overly rely on those tests
 11 as a matter of educational policy.

12 Q. Mr. Connerly, you were prepared, as you put it, to
 13 jump two feet into the admissions process and you were
 14 prepared to eliminate the single thing that could correct the
 15 bias using standardized test, which is taking race into
 16 consideration, and you're telling me that you made the
 17 decision to go forward and use a criteria for admission that
 18 you knew gave an unfair advantage to white people and did or
 19 said nothing about that?

20 MR. FOUTZ: Objection. Lacks foundation. Misstates
 21 earlier testimony, is an incomplete hypothetical and assumes
 22 facts that are not in evidence.

23 THE WITNESS: And most importantly the document that
 24 you gave me and upon which you're relying is July 17, 1997 and
 25 is an outreach report coming from a task force that I created

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1 Q. So you had knowledge of what you were describing
 2 previously as a hypothetical I was making about the gap in
 3 test scores between black students and white students as being
 4 a racial divide?

5 A. There was never any question in my mind based on the
 6 questions that you posed to me that I've acknowledged that
 7 there is an academic performance gap on the standardized test
 8 score.

9 Q. And you were prepared to go forward and use as a
 10 measure for admissions standardized tests -- in fact, I think
 11 you said it was the overwhelmingly most important factor in
 12 admissions decisions in standardized tests, you were prepared
 13 to use a measure that you knew gave white students an
 14 advantage?

15 MR. FOUTZ: Objection. Lacks foundation. Assumes
 16 facts not in evidence. Misstates earlier testimony.

17 MS. DRIVER: Q. You know that the scores of white
 18 students, even the lowest income of white students are higher
 19 than black students; is that not correct?

20 A. That is correct.

21 Q. You know that, that is correct?

22 A. Yeah.

23 Q. You know that if you use that as a measure to
 24 determine who gets into the University of California, you're
 25 giving white students an advantage?

1 in my SB-1. It follows, by two years, the resolution that was
 2 adopted by the regents to change from a system of race-based
 3 admissions to race neutral, two years.

4 So for you to say that I was willing to jump in when
 5 I didn't even know what the outcome was at the time is a
 6 really a mischaracterization of the facts.

7 MS. DRIVER: Q. July 1997 you knew the outcome in
 8 the law school, didn't you? You knew the outcome --

9 A. We had already adopted SB-1, Ms. Driver.

10 Q. You had and you knew what the outcome was. You knew
 11 at Boalt Hall law school that black students would be
 12 virtually driven out of the law school?

13 A. Wrong.

14 Q. You knew in 1997?

15 A. No.

16 Q. One black student would be admitted at Boalt Hall,
 17 did you not, Mr. Connerly?

18 A. I had no idea what the effect would be. Besides, my
 19 actions were driven by the value I stated to you.

20 Q. Mr. Connerly, those admission letters went out in
 21 April 1997. You already knew the outcome. You knew that it
 22 would mean the elimination of black students from Boalt Hall
 23 law school, the virtual resegregation of Boalt Hall law
 24 school, didn't you?

25 MR. FOUTZ: I object to this line of questioning,

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1 Ms. Driver. These are not questions. They're not questions
 2 at all. You're badgering Mr. Connerly. You're not even
 3 asking him any questions. So if you would like to ask him a
 4 question with a proper foundation about what he knew, please
 5 do so. Otherwise, I think we're about done with your
 6 testimony.

7 MS. DRIVER: Q. Mr. Connerly, the number of black
 8 students that were admitted into Boalt Hall law school in
 9 April 1997, you're aware of that number, aren't you?

10 A. Generally, yeah.

11 Q. And that number was one, wasn't it?

12 A. That's right.

13 Q. So you knew it in July of 1997, did you not?

14 A. But the question is whether I knew it in 1995 --

15 Q. No --

16 A. When SB-1 was adopted.

17 Q. Okay. Thank you. I'm sorry. Let me make my
 18 question clear then. You knew it in July 17, 1997, didn't
 19 you?

20 A. July 17, 1997, we knew that the numbers were going
 21 to be very sparse, but we did not know what the number was
 22 because the admissions process was still not complete. There
 23 were still students who had been accepted, but we didn't know
 24 whether they were going to -- admitted, but we didn't know
 25 whether they would accept the offer or not.

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1 Q. But you knew the admissions figures had fallen off
 2 dramatically, didn't you?

3 A. Sure, I knew that.

4 Q. And if you -- given what you did know now in July of
 5 1997, would you have still gone forward with SB-1?

6 A. Yes.

7 Q. Mr. Connerly, the -- I'm going to finish reading you
 8 this quote of yours.

9 A. Okay.

10 Q. You said that you had faith -- it says, finishing
 11 this paragraph, "He stated his faith, what when his term as
 12 regent ends in 2005, there will be a large supply of students
 13 of every color and ethnic background on the university's
 14 campuses, all of whom have earned the right academically to be
 15 there"?

16 A. It doesn't say "have". All of whom earn the right.

17 Q. Earn the right. Thank you. In fact, when you left
 18 office as a regent, there were still -- there was still
 19 significantly fewer black and Latino students at UCLA and U.C.
 20 Berkeley than there had been during the period of using
 21 affirmative action; isn't that true?

22 A. Yes, but there was students, quote, of color and
 23 different ethnic backgrounds and greater number at the greater
 24 overall U.C. campuses than there were before we eliminated
 25 preferences.

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1 Q. Um-hum.

2 A. You're only focusing on UCLA and Berkeley.

3 Q. Yeah, those are the two I'm focusing on. At those
 4 two units, that decline has not been declined has it?

5 A. No, they have not been reversed.

6 Q. Okay.

7 A. Because the academic gap of which we spoke has not
 8 been eliminated.

9 Q. Mr. Connerly, did you ever discern what caused the
 10 academic gap?

11 A. I think there are a lot of factors. I think some of
 12 them are -- the fact that we have a 70 percent drop-out rate
 13 in some urban city schools among black kids; we have families
 14 that are -- fathers that aren't there. We have mothers that
 15 aren't -- home schooling their kids and telling them to do
 16 their A B Cs and multiplication tables, we have lousy K
 17 through 1 schools for some of them. There are a host of
 18 factors that influence that underperformance.

19 Q. That host of factors mean that if you use
 20 standardized tests as a criteria for admission, then you know
 21 that you're going to be giving white students a preference
 22 because irregardless of their income levels, you know their
 23 scores are going to be higher?

24 A. The Academic Senate of the University of California
 25 says that the use of standardized tests does not contain any

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1 inherent bias against underrepresented minority students.
 2 That is the advice upon which we rely.

3 Q. Those same people told you, those same
 4 administrators, those same faculties told you that race was
 5 one factor amongst many but you questioned that, didn't you?

6 A. I questioned whether they were being honest about
 7 it.

8 Q. Did you question what they told you about the bias
 9 of the test?

10 A. I sure did.

11 Q. You did?

12 A. Over and over again.

13 Q. Okay. Did you ever yourself make the proposal to
 14 eliminate using the test?

15 A. No, but I conferred with Dick Atkinson on many
 16 occasions. Atkinson and I and others talked about diminishing
 17 the influence of the test.

18 Q. Did you ever make a proposal to the regents to
 19 eliminate the use of any standardized tests in admissions at
 20 the University of California?

21 A. No, I did not, and in retrospect, I would not do
 22 that because the faculty was telling us that the test did not
 23 contain an inherent bias and it was a reliable predictor of
 24 academic success.

25 Q. But you knew better?

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<p>1 A. Why did you say I knew better, I didn't tell you 2 that? 3 Q. Yeah, did you? 4 A. I said I had some misgivings about the overreliance 5 about the standardized test over the admission process. 6 Q. You said before when I raised the hypothetical with 7 you that if black and Latino students of all income levels did 8 worse on the test than white students, the lowest income 9 levels, that that gave an advantage to white students. So you 10 knew white students had an advantage so long as the test was 11 being used without affirmative action, didn't you? 12 A. No, you didn't say -- that wasn't the question you 13 framed about affirmative action. 14 Q. That was exactly -- well, you knew white students 15 had an advantage, you agreed to -- 16 A. I agreed that white students had an advantage and I 17 corrected you on this unfair advantage, the word unfair if you 18 will recall. 19 Q. Right. Okay. Without affirmative action, that 20 advantage that white students had meant that black students 21 and Latino and native American students were being denied 22 admission and that white students were being given an 23 advantage in gaining admission; is that correct? 24 A. No, that is your conclusion. My conclusion is if 25 there was underperformance of blacks and Latinos with respect 109</p>	<p>1 Q. That's right? 2 A. Um-hum. 3 Q. April 2003 was the oral argument. The Supreme Court 4 decided in June of 2003 that the use of race in an admission 5 system as a factor was legally permissible in order to achieve 6 a diverse and integrated student body; is that not true? 7 A. That's true. 8 Q. And you knew that in California if you eliminated 9 race as a factor in admissions, that at UCLA and U.C. Berkeley 10 the flagship schools, that racial diversity and integration in 11 terms of access to black, Latino and native American students 12 would not be possible? 13 A. I wouldn't say would not be possible. I would say 14 it would not be the result at the level that the university 15 and many others, such as BAMN, desired appropriate or 16 necessary. There's still diversity. 17 Q. There's not a significant number of black students 18 at those universities, correct? 19 A. That's true. That's not the same question of 20 whether it would be possible or not. 21 Q. In our earlier discussion, you said there were 22 several factors that were involved in creating the segregation 23 of the U.C.s in the 19 -- prior to 1964. 24 A. Um-hum. 25 Q. And you agreed that using conscious measures were 111</p>
<p>1 to the standardized test, if the faculty is saying there is no 2 inherent bias in the test, then the answer, of course, is to 3 improve the performance of black and Latino kids with respect 4 to the standardized test. 5 Q. Okay. At some point in your tenure as being regent, 6 it came to your attention that the achievement gap was 7 actually widening, not growing; is that correct? 8 A. That's correct. 9 Q. And that the achievement test was growing in terms 10 of underrepresented minority children, the gap between their 11 performance, including on standardized tests and those of 12 white students increasing; is that correct? 13 A. That's correct. 14 Q. And that given that -- let me actually take one step 15 back. There was a discussion about this at a regent meeting 16 in May 2003; do you recall that? 17 A. Many regents meetings. 18 Q. Many regents meetings. And by then it was evident 19 that the number of black and Latino and native American 20 students was falling off -- was continuing to remain low at -- 21 A. At Berkeley and UCLA. 22 Q. Yeah, good. At about that time there was -- the 23 Grutter and Gratz case that you referred to were before the 24 U.S. Supreme Court? 25 A. Okay.</p>	<p>1 needed to bring about integration, correct? 2 A. Yes. 3 Q. Didn't you learn from the whole experience of 4 Proposition 209 that without using race-conscious measures, 5 those universities would be resegregated? 6 A. I didn't learn that at all. 7 Q. Even though that was the outcome? 8 A. I object to the term "segregated". Segregation -- I 9 lived in segregation, Ms. Driver, you did not. I lived in 10 segregation. 11 Q. I actually did. 12 A. The government imposed it. The government imposed 13 it. That's different from the university ending up having 14 more students of one background than another by reason of 15 applying standards that the faculty has determined not to 16 contain any inherent bias based on race. 17 Q. You agreed that segregation in the north, de facto 18 segregation, had the same result as legally-sponsored 19 segregation earlier, did you not? 20 A. I think it had the same result. 21 Q. If you, by removing the only policies and programs 22 that co -- that succeeded in integrating the University of 23 California, you created the conditions in which the government 24 -- in which there was the resegregation, the beginnings of 25 resegregation of the University of California Berkeley and 112</p>

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<p>1 UCLA; is that not correct?</p> <p>2 MR. FOUTZ: Objection. Lacks foundation. Assumes</p> <p>3 facts not in evidence.</p> <p>4 THE WITNESS: Segregation, in my view, is a paradigm</p> <p>5 created by the government, which the government segregates</p> <p>6 people based on their race. It says you will go here and</p> <p>7 you will go there. It's a government sanction.</p> <p>8 MS. DRIVER: Q. If the government casts a blind</p> <p>9 eye, it pretends that objective standards are being used, when</p> <p>10 it knows that those standards are in fact discriminatory,</p> <p>11 that's governmentally sponsored discrimination, isn't it,</p> <p>12 Mr. Connerly?</p> <p>13 A. No, if the government is saying we want everyone to</p> <p>14 be treated according to the same standard, everyone to be held</p> <p>15 to the same standard, that is not the government's action to</p> <p>16 create segregation. That is not at all the same as the</p> <p>17 government segregating people on the basis of the color of</p> <p>18 their skin or race.</p> <p>19 Q. But if the government chooses a standard that it</p> <p>20 knows is biased of one group over and against another, then</p> <p>21 the government is sanctioning discrimination, isn't it?</p> <p>22 MR. FOUTZ: Objection. Lacks foundation.</p> <p>23 Misstatements earlier testimony. Assumes facts not in</p> <p>24 evidence.</p> <p>25 THE WITNESS: Those of us who supported this</p>	<p>1 Q. Programs targeted at black and Latino students were</p> <p>2 outlawed, correct?</p> <p>3 A. Right, but not race targeted.</p> <p>4 Q. And those targeted programs that you're talking</p> <p>5 about, ten years after the ban on affirmative action did not</p> <p>6 result --</p> <p>7 A. Ban on preferences.</p> <p>8 Q. -- did not result in a significant increase in black</p> <p>9 and Latino enrollment at U.C. Berkeley or UCLA; is that</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And there were other things that were tried, weren't</p> <p>13 there, Mr. Connerly?</p> <p>14 A. Yes, many things.</p> <p>15 Q. And none of them altered the fall, the decline of</p> <p>16 black and Latino and native American students at U.C. Berkeley</p> <p>17 and UCLA, did they?</p> <p>18 A. That's right, they did not.</p> <p>19 Q. And, in fact, what the university of Michigan argued</p> <p>20 in the Grutter case, that you had to have race-conscious</p> <p>21 programs in order to maintain integration and diversity, at</p> <p>22 least in the time that you were regent and at least until</p> <p>23 today, has been borne out in California; is that not true?</p> <p>24 A. That is not true. As you may have noticed, the</p> <p>25 number of black students at UCLA has gone up this year</p>
<p>13</p> <p>1 government action to allow the standardized test to be used</p> <p>2 believed then, and I believe now, that people who are black or</p> <p>3 Latino or native American are just as capable of meeting those</p> <p>4 standards as white and Asian kids are.</p> <p>5 Asian kids, in many cases, are just as low income,</p> <p>6 they have the disadvantage of language often not being --</p> <p>7 English not being spoken at home, they have just as many</p> <p>8 obstacles. And so I would have to conclude that blacks and</p> <p>9 Latinos are genetically incapable of meeting those standards</p> <p>10 to arrive at the conclusion you are, and I don't conclude</p> <p>11 that. I think they're just as capable.</p> <p>12 I said this in educational policy meetings. If the</p> <p>13 problem is that Asians are taking these advanced prep courses,</p> <p>14 let's provide the funding so that blacks and Latinos can have</p> <p>15 access to the same courses.</p> <p>16 Q. Targeted funding for blacks and Latinos to have the</p> <p>17 same funding for those courses was outlawed by high voltage in</p> <p>18 2000?</p> <p>19 A. We were talking about providing that to students who</p> <p>20 were low income students and the underperforming schools, 150</p> <p>21 of them, which -- with whom University of California had</p> <p>22 contracts to try to help those students to get -- to gain</p> <p>23 access to Berkeley and UCLA.</p> <p>24 Q. But targeted programs --</p> <p>25 A. Not race targeted.</p>	<p>113</p> <p>115</p> <p>1 dramatically as a result of scholarships being offered by the</p> <p>2 Black Alumni Association to those students who were admitted</p> <p>3 by the University of California Los Angeles.</p> <p>4 Q. And when you first heard the admission figures at</p> <p>5 UCLA, your response, and I just ask you to look at Coalition</p> <p>6 document, it's page 3426.</p> <p>7 A. Okay.</p> <p>8 Q. We're just talking now about this is an article that</p> <p>9 was written when the numbers of black admissions came out at</p> <p>10 UCLA in April of 2007. It said UCLA had offered 392</p> <p>11 African-American students the chance to come to UCLA up from</p> <p>12 249. Your response, if you go down to the paragraph that's</p> <p>13 the third from the bottom or the second from the top was, "One</p> <p>14 of three things must be happening, Connerly said. Black kids</p> <p>15 have either gotten extremely smart or extremely competitive in</p> <p>16 a way they weren't five or six years ago or there's been a</p> <p>17 deliberate, carefully orchestrated effort by a lot of</p> <p>18 admissions people to conspire to increase those numbers or</p> <p>19 they found a proxy for race."</p> <p>20 That is an accurate quote by you?</p> <p>21 A. That's an accurate quote, sure.</p> <p>22 Q. So your response to the increase in numbers was that</p> <p>23 there had to be affirmative action programs being utilized; is</p> <p>24 that correct?</p> <p>25 A. Preferential treatment.</p>

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1 Q. But that's --
 2 A. One form.
 3 Q. Race had to be included as a part -- as a
 4 consideration in the admissions of students; is that not
 5 correct?

6 A. That is correct.

7 Q. In fact, if race wasn't being used or you couldn't
 8 find the proof of it, you said that they must be using
 9 something that was a proxy for race; isn't that true?

10 A. That's true.

11 Q. So you didn't think for a minute that an admission
 12 program that didn't take race into account could succeed in
 13 increasing numbers, did you?

14 A. In one year that dramatically with the standardized
 15 test score disparity that there is with the academic
 16 achievement gap between black students and white and Asian
 17 students, in my view it was impossible for that gap to be
 18 narrowed in one year.

19 Q. Even though you, yourself, had expressed that in
 20 April 2003 or May 2003 that you had great faith that this gap
 21 could be closed by the time you were no longer a regent in
 22 2005?

23 A. That's right.

24 Q. You lost that faith?

25 A. I lost that faith.

1 Mr. Connerly, when you proposed, when you supported
 2 I-200 in Washington in 1998, you knew that the number of black
 3 and Latino students at the University of Washington was going
 4 to drop just as it had at U.C. Berkeley and UCLA if that
 5 proposition succeeded, did you not?

6 A. No, no. The jury was still out on California. It
 7 still is for that matter.

8 Q. So you didn't know that?

9 A. No, I didn't know that. In early 1998?

10 Q. You wouldn't have predicted that the same result
 11 would have happened?

12 A. No, I couldn't apply what was happening in
 13 California to what was happening in Washington because we
 14 didn't even know what was really going to happen in
 15 California. We had one year's experience in the admission
 16 cycle, but that's all we had.

17 Q. And when the numbers came in from Washington, the
 18 number of black and Latino students did indeed fall at the
 19 University of Washington because of I-200, did it not?

20 A. You mean in 2000 or 1999 or whenever?

21 Q. In 2000, 2001, yes.

22 A. The numbers fell.

23 Q. Yes. And so when you came to Michigan to bring the
 24 proposal to, you knew the same result would occur in Michigan,
 25 did you not?

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1 Q. Between 2003 and when did you lose that faith?
 2 A. All along I began to have some doubts as to whether
 3 that gap could be closed unless some very strong medicine were
 4 taken by students who were not performing by the K through 12
 5 system, by the outreach programs that the legislature was
 6 pulling back on.

7 In 2002, 2003, the legislature began to pull back on
 8 its funding of outreach programs. So I began to have some
 9 doubt well into that cycle that we would ever get to the point
 10 where we needed to be.

11 Q. So would you say by 2005 you had lost faith that it
 12 would be possible to have this kind of increase at UCLA or at
 13 Berkeley without race-conscious programs?

14 A. No, not without race-conscious programs, but without
 15 some other actions being taken, like the Black Alumni
 16 Association for example and the funding that they're
 17 providing.

18 Q. That program, the Black Alumni Program, is a
 19 race-conscious program, isn't it, Mr. Connerly?

20 A. It's by private association.

21 Q. Uh-huh. That program had nothing to do with the
 22 increase in admissions numbers, did it?

23 A. Not in the admissions numbers, no.

24 Q. Um-hum. That's what we were talking about in April.
 25 Okay.

1 A. I did.

2 Q. And you knew that in Michigan the Supreme Court had
 3 found that the policy being used by the University of Michigan
 4 in Grutter was legal at a federal level; isn't that true?

5 A. For those who wanted to use it.

6 Q. And if you got a state ban, you knew that even those
 7 who wanted to use it wouldn't be able to use it, didn't you?

8 A. I knew that, but I also knew that the only way we're
 9 going to close this academic gap between black and Latino on
 10 the one hand and Asian and white on the other, is not to keep
 11 papering over it with preferences, but to apply the tough love
 12 that's necessary to get black and Latino students up to the
 13 bar. That was a value judgment then, it's a value judgment
 14 now.

15 Q. Mr. Connerly, there was no question in your mind
 16 when you brought Proposal 2 that the University of Michigan
 17 would be virtually resegregated as the University of
 18 California Berkeley and UCLA have; is that not true?

19 A. I did not bring Proposal 2. I supported Proposal 2,
 20 but I did not bring Proposal 2, that's a mischaracterization
 21 of the facts.

22 Q. When you supported Proposal 2; is that correct?

23 A. That's correct.

24 Q. That was the outcome you wanted; is that correct?

25 A. No, that wasn't the outcome I wanted. I wanted to

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1 be sure we could get black students and Latino-American
 2 students that were not performing well academically on a path
 3 to performance. I believe we will not do that as long as we
 4 perform the remedies that you obviously support and that is
 5 preferences. That does not solve the problem. They patch up
 6 the problem, Ms. Driver, they don't solve the problem.

7 Q. Um-hum. You call them preferences, but you know
 8 that the main standard that's used in admissions gives an
 9 advantage to white students and disadvantage to black students
 10 and yet you never talk about white preferences, do you,
 11 Mr. Connerly?

12 A. Yes, I do. I've eliminated legacies that I think
 13 are white preferences, Ms. Driver.

14 Q. Where have you eliminated legacies?

15 A. In your book of clippings, you will find one about
 16 the regents eliminating legacy admissions as a result of a
 17 resolution offered by Regent Connerly. I know that you've
 18 seen it because it's in your binder.

19 Q. And you thought in California that it was fine to do
 20 something to make it more possible for poor students to attend
 21 the University of California; isn't that true?

22 A. I sure do.

23 Q. And you think that poor students might need programs
 24 and assistance getting in to the University of California,
 25 UCLA, to Berkeley because they have lower test scores than

1 Q. And if you -- because poor students tend to go to
 2 worse schools, you have families that have less access to the
 3 income that they would need to have them go to a U.C. Berkeley
 4 or a UCLA -- --

5 A. Yeah.

6 Q. -- know less about the admissions process, know less
 7 about financial aid, all of those things, you think that it's
 8 a proper thing to do to -- for government to see that those
 9 disadvantages that poorer student have are compensated for
 10 through the admissions process?

11 A. I don't know what you mean by that, by compensated
 12 for. I don't know what you mean by that.

13 Q. That the admission process takes into account that
 14 poorer students have those disadvantages and that as part of
 15 an admissions decision, their income level is taken into
 16 account?

17 A. Only in the context if you look at comprehensive
 18 review for example, it's not just because they're poor, it's
 19 in the context of what they achieve given that adversity.

20 Q. Okay. So if they achieve, given that adversity,
 21 begin a standard, that means they can compete at University of
 22 California Berkeley or UCLA, then you think taken into account
 23 their income level as a factor in comprehensive review is
 24 permissible?

25 A. Their income level and whether they've had a parent

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1 students with higher income levels; isn't that true?

2 A. I think poor students, it's not a matter of their
 3 test scores, they don't have the financing to be able to get
 4 themselves into the game at all.

5 Q. And they don't have always the same academic
 6 preparation; isn't that true?

7 A. That's true.

8 Q. And there isn't really a level playing field between
 9 rich and poor in this country, is there?

10 A. Well, now you're making statements that while one
 11 can agree that a rich kid has a much greater opportunity than
 12 a poor kid, that's not a judgment I'm going to make in the
 13 context of this.

14 Q. But it's a judgment that would have to be made in
 15 making a determination to give poorer students some advantages
 16 in an admission system?

17 A. Not necessarily. My view is shaped by the belief
 18 that it is the function of government to make sure that low
 19 income people have opportunities that are not otherwise
 20 available, not to level some playing field.

21 Q. Okay.

22 A. But they have opportunities. If it weren't for
 23 that, why is the government in the business of providing
 24 public institutions. It's largely to help people that can't
 25 do it on their own.

1 go to college and all of those kind of factors.

2 Q. In fact, you think it's desirable for the government
 3 to take that into account?

4 A. I do.

5 Q. And yet when it comes to race and the government is
 6 taking into account disadvantages that exist because of
 7 racism, you think that should be legally barred?

8 A. You're stating it's because of racism. My view and
 9 the Supreme Court has also said that you cannot use race to
 10 cure societal ills, you know that.

11 Q. I'm not arguing what the Supreme Court said. I'm
 12 just saying --

13 A. I'm telling you my views.

14 Q. I'm saying the proper use of government?

15 A. I'll tell you my views.

16 Q. Okay.

17 A. I think given my own history and my own set of
 18 beliefs that it's wrong for the government to use a person's
 19 skin color, where their granddaddy came from, their, quote,
 20 race, in any facet of America's public life, that's my belief.
 21 And I think that the consequences of doing that create
 22 problems that require you then to use race more to compensate
 23 for the consequences.

24 We're dealing with racism, we're dealing with
 25 history of people like me having their skin color used against

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1 them. I do not believe it's appropriate or desirable public
 2 policy for the government to continue doing that, even though
 3 I might be, people like me might be on the different side of
 4 that equation. You and I can differ about that from now until
 5 the end of time we will have differences about that. But I
 6 know it is undesirable. There are also effects of that, that
 7 a lot of people, Rick Sander, who I'm sure you know, and
 8 others are saying that there are negative effects associated
 9 with that. We're just going to differ about that.

10 Q. Mr. Connerly, apart from race, is there any other
 11 factor that you think the government should be prescribed from
 12 using to -- in admissions procedures?

13 A. Those immutable traits of all of us, race, whatever
 14 that is, and increasingly it's harder to define it, race,
 15 color of my skin, gender, where my ancestors came from, my
 16 ethnic background, the government shouldn't use it, my
 17 religion. The government shouldn't use that. My sexual
 18 orientation, I don't believe the government should use that.

19 Q. And -- but you do believe that there is still
 20 racism?

21 A. Sure there's racism. Nobody has a monopoly on it
 22 either, by the way.

23 Q. And you believe that there are inequalities in the
 24 living standards achieved by black people as a whole and white
 25 people?

1 MS. DRIVER: Q. The Klan supported Proposal 2, did
 2 it not?

3 A. There were a lot of people that supported Proposal
 4 2, but they weren't associated with our initiative,
 5 Ms. Driver.

6 Q. And the Klan collected signatures on one of their
 7 web sites for Proposal 2, did it not?

8 A. That may be the case but I repeat they were not
 9 associated with our initiatives, with our campaign.

10 Q. I think they were directly associated with your
 11 campaign.

12 A. Well, you're wrong. You're absolutely wrong.

13 MR. FOUTZ: Let me just object here on the basis
 14 there was no question asked and your factual assertions are to
 15 be no part of this record.

16 MS. DRIVER: Q. Mr. Connerly, but for your -- let
 17 me take a step back.

18 Did you believe when Proposal 2 was proposed in
 19 Michigan, you knew that the vast majority of voters in the
 20 state of Michigan were white; is that true?

21 A. As they are in most states.

22 Q. And, in fact, previously when you went into the
 23 state of Washington you said that you in part went into the
 24 state of Washington because the majority of voters were white?

25 A. That -- when Ms. Foster, Heath Foster said that,

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1 A. There are inequalities among black people as a
 2 whole, among Latinos as a whole. There are inequalities among
 3 low income whites as a whole. And I would prefer to solve
 4 those inequalities when government gets involved on the basis
 5 of factors that have nothing to do with the person's race.

6 Q. In -- when you came to Michigan I know you said you
 7 didn't sponsor Proposal 2, but Proposal 2 would not succeed in
 8 getting on the ballot without you taking over the process?

9 A. Thank you very much.

10 Q. When did you take charge of the process?

11 A. I didn't take charge, but I was a significant
 12 player, if you will.

13 Q. And --

14 A. As were you.

15 Q. And that was after 2004 was it?

16 A. No, I would say that my presence was probably felt
 17 starting in the Fall of 2003.

18 Q. Okay. And your presence was one of the advantages
 19 of your presence was that other supporters associated with
 20 Proposal 2 were also associated with racism and
 21 discrimination; isn't that true?

22 MR. FOUTZ: Objection. Lacks foundation. Assumes
 23 facts not in evidence.

24 THE WITNESS: I don't know anyone who is associated
 25 with Proposal 2 who was associated with racism.

1 that is not something that I said.

2 Q. Okay.

3 A. That is not something that I said. I was invited to
 4 the state of Washington. I went there. We did not select --
 5 I did not select the state of Washington because it was white.
 6 That was not an accurate attribution on her part.

7 Q. Okay. And you selected the state of Michigan
 8 because the University of Michigan had succeeded at the
 9 Supreme Court in Grutter; is that correct?

10 A. I was invited to the state of Michigan and I went
 11 there with the expressed purpose of availing ourselves of that
 12 opportunity that the court allowed of its decision of Grutter
 13 and Gratz.

14 Q. And you knew the majority of voters were white?

15 A. How could one not know if one studies the facts?

16 Q. You knew that in California overwhelmingly white
 17 people had voted for proposal 209 and overwhelmingly black
 18 people and other minorities voted against it; is that correct?

19 A. Sure, I knew that.

20 Q. And you knew that had been the case in the state of
 21 Washington as well; is that not correct?

22 A. I knew the demographics.

23 Q. And you knew that in Michigan, because it was 83
 24 percent white that if there was the same outcome and there was
 25 an overwhelming vote by white people for it and an

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1 overwhelming vote of black people against it, the proposal
 2 would still pass?

3 A. It would be reasonable to conclude that.

4 Q. And you went into Michigan knowing, therefore, that
 5 you were putting white people in the position of banning the
 6 only programs that the University of Michigan had said, the
 7 one program the University of Michigan said it needed to
 8 maintain an integrated and diverse student body; is that
 9 correct?

10 MR. FOUTZ: Objection. Lacks foundation. Assumes
 11 facts not in evidence, also calls for speculation.

12 THE WITNESS: I have this abiding faith that black
 13 people can also be convinced that treating anyone differently
 14 because of race and skin color is wrong.

15 MS. DRIVER: Q. It's a little different --

16 A. I had that faith then, I have it now.

17 Q. It's a little bit of a different question what I'm
 18 asking. I'm not asking about --

19 A. I know, but it's a loaded question that you're
 20 framing on your terms.

21 Q. Okay.

22 A. I want you to understand my answer.

23 Q. I understand your answer. Let me go back to my
 24 question. You knew when you went into Michigan that you were
 25 putting white people in the position of being able to

1 MS. DRIVER: Q. How would you characterize your
 2 role in securing the passage of Proposal 2 in Michigan?
 3 A. Helped to raise most of the money that financed the
 4 campaign, probably 90 percent of the funds that were raised I
 5 in one way or another helped to raise by calling people and
 6 urging them to support it. I was there whenever they needed
 7 me and asked for advice on how do we deal with this idiotic
 8 issue about the Ku Klux Klan that you in a sleazy fashion
 9 raise and being there, being available as they needed my
 10 counsel.

11 Q. And you knew that in the campaign to get Proposal 2
 12 on the ballot that black signature gatherers were paid to lie
 13 to voters --

14 A. Wrong.

15 Q. About --

16 A. That's your characterization, that is wrong.

17 MS. LUCE-HERRMANN: Robin Luce-Herrmann.
 18 MS. DRIVER: I think she was leaving the call.

19 MR. WASHINGTON: Laurie Michelson is on for the
 20 University?

21 MS. MICHELSON: Yes, I am. Thank you.

22 MR. WASHINGTON: Okay.

23 MS. DRIVER: Q. You knew there was a report by the
 24 civil rights commission targeting voter fraud; isn't that
 25 true?

1 eliminate what the University of Michigan had argued in the
 2 Grutter case at the U.S. Supreme Court it had to have to
 3 maintain an integrated and diverse student body?

4 MR. FOUTZ: Same objections.

5 THE WITNESS: I knew that the people of Michigan,
 6 the people of Michigan, who include Arabs, who include, quote,
 7 whites, many of whom are Arab, who included blacks, Latinos,
 8 that the people of Michigan would vote, not that I would be
 9 putting whites in the position, as you characterize it, of
 10 eliminating this one precious program.

11 MS. DRIVER: Q. But white people were 83 percent of
 12 the elected?

13 A. I don't see it, maybe you do. I don't see them as
 14 white people who are going to the polls to vote. They are
 15 people of Michigan going to the polls to vote. BAMN and
 16 others, I would add, did more to call attention to race and
 17 the race of voters than we ever did.

18 Q. Mr. Connerly, when you were a part of the leadership
 19 of the campaign --

20 A. I was not a part of the leadership of the campaign.

21 Q. So I don't misspeak again --

22 A. Okay.

23 Q. -- how would you characterize --

24 MS. MICHELSON: Laurie Michelson.

25 MR. WASHINGTON: Laurie Michelson just joined.

1 A. I'm aware of that. I also knew it was wrong, that
 2 we were not involved in any kind of targeted voter fraud.

3 Q. And you knew that there was a decision by a federal
 4 court judge, Judge Tarnow, that found that Jennifer Gratz and
 5 others involved in the campaign clearly either knew or were
 6 disingenuous in their presentation of the ways in which black
 7 signature gatherers were lying to people to get signatures?

8 MR. FOUTZ: Objection. Lacks foundation. Assumes
 9 facts not in evidence.

10 THE WITNESS: I did not believe then and I do not
 11 believe now that there was any voter fraud in the Michigan
 12 campaign. There was a disagreement about the use of the term
 13 affirmative action. They were saying, many of these signature
 14 gatherers, that affirmative action could be maintained as I
 15 understand it in the aftermath of the election about Proposal
 16 2, that is true. It can be maintained. Socioeconomic
 17 affirmative action, race-neutral outreach could be maintained.

18 There was a charge that the term civil rights was
 19 being misappropriated.

20 Q. Mr. Connerly, you, yourself said affirmative action
 21 is race preference s in at least one if not more interviews;
 22 isn't that true?

23 A. I said in several interviews that affirmative action
 24 has become coterminous with race preferences the way it's
 25 being used.

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1 Q. When people are saying the term "affirmative action"
 2 they mean what you would call race preferences; isn't that
 3 true?

4 A. I can't say what all people mean.

5 Q. But that's what you meant; isn't that true?

6 A. When I used the term, and if you'll look, I went to
 7 great pains to say this campaign will not end all affirmative
 8 action. I said that ad nauseam.

9 Q. But you knew that the average voter would think
 10 exactly what you thought, that the term affirmative action and
 11 the term race preference are one; isn't that true?

12 A. That is precisely why I went to such great efforts
 13 to say that this will not end all affirmative action.

14 Q. And so you knew when those petition gatherers were
 15 going around and saying these programs are for affirmative
 16 action, they were lying, weren't they?

17 A. Ms. Driver --

18 MR. FOUTZ: Objection. Objection. Lacks
 19 foundation. Assumes facts that are not in evidence. We'll go
 20 with those for now.

21 THE WITNESS: I had not one idea of what the
 22 signature gatherers were saying to people, not a clue. I
 23 wasn't involved in that phase of the effort.

24 MS. DRIVER: Q. But if they were saying that your
 25 ballot measure that Prop 2 was for affirmative action, you

1 A. I also thought, however, that in the fullness of
 2 time it would help.

3 Q. How long?

4 A. To change.

5 Q. How long did you think?

6 A. I don't know, maybe ten years.

7 Q. But in California you had ten years --

8 A. And we were getting there.

9 Q. And there was no improvement?

10 A. Yes, there is. Yes, there is.

11 Q. Mr. Connerly, in terms of UCLA and U.C. Berkeley
 12 from 1995 to 2005 when you left those regents there was ten
 13 years and there was no improvement, next to no improvement;
 14 isn't that true?

15 A. That is true with regard to those two campuses, but
 16 those aren't the only two campuses in the nine-campus U.C.
 17 system.

18 MS. DRIVER: We have five minutes to the end of the
 19 tape and I propose we take a break and I have a few more
 20 questions for you and I think other people have questions.

21 Does that sound okay?

22 MR. FOUTZ: Sure. Ten-minute break?

23 MS. DRIVER: Should we take it now? Okay.

24 THE VIDEOGRAPHER: This is the end of tape 2 of the
 25 deposition of Ward Connerly, it is 2:38. We are off the

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1 would say that that was a lie; isn't that true?

2 A. No, I would not. I would say, yeah, make sure
 3 you're careful in how you characterize this because there are
 4 certain forms of affirmative action that will be preserved.

5 It's for a certain kind. It is not for certain other kinds.

6 Q. And you knew when those signature gatherers were
 7 saying this would help black students get into college, that
 8 they were lying, didn't you?

9 A. I --

10 MR. FOUTZ: Objection. Lacks foundation. Assumes
 11 facts not in evidence. Calls for hearsay and speculation.

12 THE WITNESS: I don't know what they said to people.
 13 I wasn't there.

14 MS. DRIVER: Q. But you knew it would not help
 15 black students, in any event, it was not going to help black
 16 students get into the University of Michigan to eliminate
 17 affirmative action.

18 A. We didn't eliminate affirmative action.

19 Q. Eliminating affirmative action programs that took
 20 race into account as a factor in the admissions process, which
 21 was the University of Michigan's system, you knew that
 22 eliminating that, which is what this law was conceived of to
 23 do, was going to lower, not increase, the number of black
 24 students that were admitted at the University of Michigan;
 25 isn't that true?

1 record.

2 (Whereupon, a recess was taken at 2:38 p.m.)

3 THE VIDEOGRAPHER: This is the beginning of tape
 4 number 3, volume 1 in the deposition of Ward Connerly. It is
 5 2:50 p.m.; we are on the record.

6 MS. DRIVER: Q. Mr. Connerly, just a couple more
 7 areas. First, I want to ask you a question about a term that
 8 I think was discussed a good deal at the regents meeting about
 9 let's say a consideration of a biproduct of Proposition 209.
 10 And that was something that has been described as hostile
 11 environment. Are you familiar with that term?

12 A. I'm familiar with it.

13 Q. And there have been several different commissions
 14 and studies done on campus climate at the U.C.s since the
 15 elimination of affirmative action?

16 A. Race preferences.

17 Q. Since, let's say since the -- so we can agree on a
 18 term, since the implementation of Proposition 209.

19 A. Okay.

20 Q. You've seen a number of those, you've seen the
 21 reports that have said that campus climate for minority
 22 students has become worse at the U.C.s since the
 23 implementation of Prop 209?

24 MR. FOUTZ: Objection. Lacks foundation. Assumes
 25 facts not in evidence. Calls for hearsay.

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1 MS. DRIVER: Q. Let me ask a straight question.
 2 Have you seen the reports that document that campus climate
 3 has become worse for black and Latino and native American
 4 students since the implementation of Proposition 209?

5 MR. FOUTZ: Same objections.

6 THE WITNESS: I haven't seen the reports, but I have
 7 heard some of the results.

8 MS. DRIVER: Q. Okay. And those results say that
 9 black and Latino and native American students face a more
 10 hostile environment now within the U.C.s than they did prior
 11 to the passage and implementation of Proposition 201; is that
 12 not true?

13 MR. FOUTZ: I'm sorry. Do you by any chance have
 14 any of these reports he can refer to?

15 MS. DRIVER: Q. There was a report that was
 16 recently put out that was a ten-year study by the University
 17 of California Regents on the effects of Proposition 209, have
 18 you seen that report or a summary of that report?

19 A. I've seen a summary.

20 MR. FOUTZ: But you don't have that report for him
 21 to look at, right?

22 MS. DRIVER: I don't.

23 Q. But you're familiar with that report?

24 A. I'm not familiar with the report, but I know of the
 25 report.

1 A. Because if there was any doubt at all as to whether
 2 SB-1 was created -- was contributing in any way to a hostile
 3 environment, I wanted it eliminated, especially in view of the
 4 fact that 209 was the law. And if those who were arguing that
 5 the mere presence of this initiative makes some students feel
 6 that they're not welcome, if that was the result I didn't want
 7 that. So I voted and I was told by Regent Hopkinson, that if
 8 you didn't vote for it she wouldn't vote for it and it
 9 wouldn't pass without my support. I said if this is keeping
 10 students away and making them think they're not welcome, I'll
 11 support it.

12 Q. Did you believe that it was the mere presence of the
 13 resolution that was keeping students away?

14 A. No.

15 MR. FOUTZ: Shall we go off the record for a minute?

16 MS. DRIVER: There appears to be a fire alarm.

17 THE VIDEOGRAPHER: We are off the record at 2:56
 18 p.m.

19 (Whereupon, a recess was taken at 2:56 p.m.)

20 THE VIDEOGRAPHER: We're back on the record at 3:05
 21 p.m.

22 MS. DRIVER: Q. Mr. Connerly, where we left off was
 23 you said a resolution came before the regents which you voted
 24 for in 2001 to rescind SB-1; is that correct?

25 A. That's correct.

1 Q. Let me ask you this. Contained in the report is the
 2 contention that campus climate has worsened, that black and
 3 Latino and native American students as in U.C.s, and that's
 4 because of the implemen -- passage and implementation of
 5 Proposition 209. What has been your experience with campus
 6 climate? What was your experience in terms of campus climate
 7 in the years in which you were a U.C. regent?

8 A. It depends on what you mean by campus climate. The
 9 term hostile environment to many meant that there weren't
 10 enough, if you were black, there weren't enough blacks on
 11 campus and therefore you felt that the environment was
 12 hostile. In other cases there were some who felt that it
 13 wasn't just a numerical thing, it was that the university
 14 didn't go -- didn't do enough things to make them feel
 15 welcome, a variety of things. So I don't know what you mean
 16 by that term.

17 Q. Okay. And you were concerned as a regent to make
 18 sure that the climate in the U.C.s was welcoming to black and
 19 Latino and Asian-American students; isn't that true?

20 A. That's true.

21 Q. In fact, in 2001 you voted with the rest of the
 22 regents to reverse the ban on affirmative action?

23 A. To rescind the resolution that eliminated race
 24 preferences.

25 Q. Okay. And why did you do that? Why did you vote?

1 Q. And you said that you voted for that resolution
 2 because I didn't -- you had been told that minority students
 3 felt that simply rescinding the resolution would make the U.C.
 4 seem more welcoming to minority students. Is that correct?

5 A. That's correct.

6 Q. Did you think rescinding the resolution would have
 7 any impact on campus climate, you, yourself?

8 A. I wasn't convinced that the argument was truthful to
 9 begin with. So I didn't know what effect it would have, but I
 10 didn't want to leave any doubt.

11 Q. Was there anything that you thought could have been
 12 done to improve the environment for minority students at that
 13 point?

14 A. Well, if the central point was that the lack of a
 15 critical mass created a hostile environment, the only thing to
 16 do is to do the heavy lifting to get more minority students
 17 enrolled.

18 Q. And could you see any short-term way to achieve
 19 that?

20 A. Restore preferences.

21 Q. And apart from that, could you see any short-term
 22 way to do that?

23 A. Not to increase the numbers short term like one
 24 year, two years, no.

25 Q. Ten years?

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1 A. Ten years I think that if we really all, your side,
 2 our side, took the issue to heart and worked on it, I think we
 3 could have some very significant results if we all worked on
 4 that.

5 Q. And in the ten years that have passed since the
 6 passage of Prop 209, has there been anything done, do you
 7 think, to improve the environment for minority students at
 8 University of California Berkeley or UCLA?

9 A. I have to keep qualifying when you say the word
 10 environment, has there been anything done to increase
 11 enrollment.

12 Q. Well, using that's the key to keep improving
 13 environment?

14 A. Then I think what the black law students -- Black
 15 Alumni Association is doing is helpful. I think that a lot of
 16 the student-oriented outreach programs is very helpful.
 17 Unfortunately, the legislature wanted to pull the plug, many
 18 in the legislature want to pull the plug on all outreach
 19 because they think that some of the outreach is wasteful
 20 spending, the governor believes that. But I don't agree with
 21 that. I think that a lot of the outreach programs, especially
 22 the student-oriented outreach programs are having great
 23 results. I've been to some of the, some of the places where
 24 U.C. Davis kids, for example, are interacting with nonprofit
 25 organizations, the Roberts Family Development Counsel, and

141 1 white kids, go there.

2 Q. But would you think it was appropriate for the U.C.s
 3 to get from the law school counsel or ETS the names of
 4 high-performing black and Latino students and target them for
 5 recruit to the U.C.s?

6 A. Say that again.

7 Q. Do you think it would be appropriate for the U.C.s
 8 or now for the University of Michigan to get the names and
 9 test scores from the testing companies of high performing
 10 black and Latino students and target them for recruitment
 11 to --

12 A. Have they -- for recruitment?

13 Q. For recruitment?

14 A. Before admission?

15 Q. Yeah, for recruitment.

16 A. What do you mean by recruitment?

17 Q. To apply and come if they're admitted?

18 A. I have no problem with that.

19 Q. If that increase in a significant increase in black
 20 and Latino student enrollees, that would be fine by you?

21 A. I have no objection to that. I do not pass a
 22 judgment on it. If it's part of the process of letting
 23 people, all people know that we welcome your admission
 24 application, we welcome your admission, we want you here, the
 25 outcome is, it's what it is.

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1 then programs are very helpful.

2 I think that is something that could be done, a lot
 3 more funding than they're giving it. Focus on the
 4 underperforming schools, that's where we need to help out; get
 5 more black kids to stay in school and not to drop out of high
 6 school. Those sort of things I think are what are required
 7 long-term, ten years or so, to change this problem of black
 8 underenrollment.

9 We have to also recognize that there are a lot of
 10 black kids who are making the choice to go to the HBCUs and
 11 that weakens the pool of those who are available to go to
 12 places like Berkeley and UCLA. They're also going to private
 13 institutions, Stanford and Duke and Princeton with full
 14 scholarships, full rides. There's a lot of competition for
 15 students who comprise a very, very small pool.

16 Q. Mr. Connerly, would you think it would be right for
 17 U.C. Berkeley or UCLA to target black and Latino students to
 18 give those full scholarships to?

19 A. No.

20 Q. Would you think it was right for UCLA or U.C.
 21 Berkeley admissions people to target black students and Latino
 22 students for -- to get them to apply and enroll in the school?

23 A. I know it's appropriate to go anywhere. If you need
 24 to go to a black church to tell kids to apply, if you want to
 25 go wherever black kids are or Latino kids or Asian kids or

142 1 white kids, go there.

2 Q. Okay. I have just one other question for you.
 3 Sorry, on this topic, on hostile environment. Were you
 4 surprised that black and Latino students from U.C. Berkeley
 5 and UCLA -- first of all, did any black and Latino students
 6 from UCLA and U.C. Berkeley report to you or did you read
 7 about statements that they made that suggested that they were
 8 experiencing a hostile environment?

9 A. I heard some of this at regents meetings when they
 10 would testify.

11 Q. And you believed the students?

12 A. I wasn't sure what they meant often by hostile
 13 environment. Hostile environment to me is when someone is
 14 deliberately trying to make me feel unwelcome. Hostile
 15 environment to me is not because I'm only one of a handful of
 16 black students in a certain environment. All my life I've
 17 been the only one or whatever and I didn't feel in a hostile
 18 environment. So it was the term -- I wanted to make sure I
 19 understood what they were saying.

20 I've always had problems with this idea about a
 21 hostile environment. I've heard of people, whites, saying
 22 when a black moves into the neighborhood, it's going to create
 23 a hostile environment for them, just because a black person's
 24 moving in. I tried to -- I know you probably won't agree. I
 25 tried to live my life in such a way whether I'm one in a
 144 1 hundred or one in a thousand, I believe I feel welcome because

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<p>1 it's as much as my space as it is yours. I've tried to say to 2 the kids whenever I heard about the hostile environment and I 3 understood it was solely by reason of the numbers, that when 4 you're black and you're 6.7 percent of the population in 5 California and that number is declining, you better get 6 comfortable with the idea that there are going to be a lot 7 more people around that don't, quote, look like you.</p> <p>8 So the hostile environment is one that I think that 9 we as a society have to work on and to make sure that people 10 don't feel that they're threatened in any way because their 11 numbers are declining or increasing or black is moving in or 12 anything like that.</p> <p>13 Q. In your ten years as a regent, do you recall any 14 specifics that black or Latino students gave, specific 15 examples, in how they experienced a hostile environment?</p> <p>16 A. Well, again, at the regents meetings there were -- 17 there was often testimony from black students about not 18 feeling wanted or welcome at the university because there 19 weren't many faces like them.</p> <p>20 Q. And did they ever give you examples of what had 21 happened to them?</p> <p>22 A. That they were the only black in the class, let's 23 say, and they had to be the, quote, representative of their 24 race and that created a hostile environment for them. I've 25 heard of that example. That's the only one that comes to</p>	<p>1 MS. DRIVER: I do. 2 Q. If you go to Coalition page 3347. 3 MR. FOUTZ: 3347? 4 MS. DRIVER: Uh-huh. 5 Q. There's an initial statement that you made on 6 page 3348 saying, this is in an interview, saying that, 7 "Supporting segregation need not be racist, said Mr. Connerly. 8 One can believe in segregation and believe in equality of the 9 races."</p> <p>10 MR. FOUTZ: Hang on just a second. He's not there 11 yet.</p> <p>12 MS. DRIVER: Okay. I'm sorry.</p> <p>13 THE WITNESS: Which one is it again?</p> <p>14 MR. FOUTZ: 3347.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MS. DRIVER: Q. Okay. You see the statement, it's 17 kind of the third, if you can count, that is extremely 18 strange.</p> <p>19 MR. FOUTZ: It's on page 3348.</p> <p>20 MS. DRIVER: Q. It's the third little paragraph.</p> <p>21 A. All right.</p> <p>22 Q. That supporting segregation need not be racist, said 23 Mr. Connerly. One can believe in segregation and believe in 24 equality of the races." Do you recall making that statement?</p> <p>25 A. I do.</p>	
<p>1 mind.</p> <p>2 Q. Okay. You never heard anybody testify about an 3 increase in stereotyping?</p> <p>4 MR. FOUTZ: Objection. It's vague and ambiguous.</p> <p>5 THE WITNESS: Yeah, I think I have. Remember, now, 6 twelve years is a long, long time. There may have been a lot 7 of things I heard about, but I did hear about stereotyping. 8 It was sort of like that whole notion that I just mentioned 9 that someone in class who was the only black, they're supposed 10 to be the representative of their race, that is a form of 11 stereotyping.</p> <p>12 MS. DRIVER: Q. And did you ever hear students, did 13 any students ever say to you that they had been at other 14 campuses prior to coming to the U.C.s where they had been the 15 only black student in a class but that they had never 16 experienced the kind of racism and hostility from white 17 students that they had in the U.C.s?</p> <p>18 A. No, I don't recall hearing that.</p> <p>19 Q. Okay. Let me go on to one last area then. It 20 concerns a statement that you made in regards to a statement 21 that Trent Lott made in which he heralded -- which he made a 22 toast at a celebration for Strom Thurmon. Do you know the 23 statement that I'm referring to?</p> <p>24 A. I remember it vaguely.</p> <p>25 MR. FOUTZ: Do you by any chance have a record?</p>	<p>145</p> <p>1 Q. Is that an accurate representation?</p> <p>2 A. That's an accurate representation.</p> <p>3 Q. You were asked to explain this and on page 3349, in 4 the last quote from you on the page, there's a statement 5 attributed to you saying, "Supporting segregation need not be 6 racist. One can believe in segregation and believe in 7 equality of the races. So it doesn't necessarily make it 8 racist, but I think it's certainly a poor direction for this 9 nation to have pursued, namely segregation. I won't say that 10 he's racist, I don't think that he is. I think one could 11 believe in the equality of the races as he talked about and 12 believe that the races should remain separate and not have a 13 notion that black people are inferior, for example. But I 14 just cannot reconcile those words that he said. I don't know 15 what he could have meant by all of these problems."</p> <p>16 A. Right.</p> <p>17 Q. Those are true --</p> <p>18 A. Yeah, they're true.</p> <p>19 Q. Yeah. I'm going to first say that -- ask you a 20 question on this. First on the whole two lines -- on the 21 whole -- both the two parts that we read, you ended the second 22 one by saying, "I don't know what he meant by all of these 23 problems" and you're referring there to Trent Lott?</p> <p>24 A. Right.</p> <p>25 Q. And you're defending him as not being a racist in</p>	147

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1 this interview?
 2 A. Well, I said I don't think he is.
 3 Q. Okay. But you said that you did have cause to
 4 wonder about what he meant by that statement. Why did that
 5 raise concerns to you, the "I don't know what he could have
 6 meant by all of these problems"; what was it about the
 7 statement that raised concern to you?
 8 A. I'm not among those who rushes to call someone a
 9 racist. One has to earn that characterization from me. And
 10 when Trent Lott said that about Senator Thurman, that we
 11 wouldn't have all of these problems if he had been elected
 12 president, I didn't know what he meant, pure and simple. What
 13 are these problems that he's referring to?
 14 Q. And -- sorry.
 15 A. And -- fundamentally, let's not dance around this,
 16 let's go to what I was saying. I had just about a week before
 17 been dealing with some colleagues on the Board of Regents who
 18 were concerned about the fact that all of the black kids, as
 19 one said it, were sitting together in the cafeteria. And I
 20 said, I personally wish that were not the case. But we have
 21 to understand that the reason that many sit together is
 22 because they feel comfortable. Whites may not welcome them.
 23 They may feel isolated, so it's a comfort zone for them. It's
 24 their safe harbor.
 25 He used the term "segregation" I said I don't think

1 that because that does not comport with my understanding of
 2 the term segregation.
 3 Q. Okay. Because you're saying -- let me ask a
 4 different question. When the white people in the south in the
 5 Brown era defended segregation by saying it's just the way
 6 things are, people choose to live together, white people
 7 choose to live together and we don't have any problem with it
 8 and all of that, they were defending segregation, correct?
 9 A. Correct.
 10 Q. And when Trent Lott was praising Strom Thurmon, he
 11 was asserting that being for segregation, and you say this
 12 about him, didn't necessarily mean that he was a racist, even
 13 though the segregation that Strom Thurmon supported included
 14 white people making arguments that it was just free
 15 association?
 16 A. Let me share with you an experience that I've had,
 17 which has helped to shape my tolerance, if you will, on this
 18 issue.
 19 My wife is of a different, quote, race than I am.
 20 When we married in 1962, my in-laws objected to that marriage.
 21 They had come from Oklahoma, one from Oklahoma, one from
 22 Idaho. Their view is God had made the races differently and
 23 it was God's will that the races remain separately, separate.
 24 Not that one was inferior to the other, it was just the way
 25 that God intended it. He made horses and sheep and human

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1 it's segregation. Segregation to me has a very precise
 2 meaning. And when black kids or Chinese kids or kids who
 3 happen to be of one sexual orientation sit together, if that's
 4 the identity that they've taken, it's not segregation, it's
 5 their business. We still have freedom of association in this
 6 country. So I was mindful of that discussion about two weeks
 7 prior and when I was asked about segregation, my response was
 8 thus.

9 Q. And -- but you don't think, as you just stated, that
 10 the segregation that Strom Thurmon was calling for, that's
 11 what you meant by segregation?

12 A. Right, right.

13 Q. You wouldn't describe black students sitting
 14 together as segregation you just said?

15 A. I don't see it that way. To me, segregation is very
 16 precise. It's the government. In my history it's the
 17 government saying you can't go here and you can't go there and
 18 you must go to this school and you must live in this
 19 neighborhood and you must eat at this counter. That, to me,
 20 is segregation. You can't marry across lines of race, that's
 21 segregation.

22 The fact that there are people individually choosing
 23 to eat at this table when they have the freedom to go anywhere
 24 they want, to me, is a perversion of the term segregation,
 25 just as when you often use that term segregation, I object to

1 beings and they were supposed to be separate.
 2 By the time they died, these two people, my
 3 mother-in-law and my father-in-law, were the only parents that
 4 I had. To suggest that they were racist did not fit with the
 5 people that I grew to know. They grew up, Ms. Driver, at a
 6 different time, at a different place, different perspective,
 7 wrong perspective. It wasn't that they were racist, it was
 8 just the way they had been raised. They had subsequently came
 9 to change that view and I still believe that people can
 10 change.

11 So I don't rush out and say he's bad, he'd bad, he's
 12 a racist. Shun him. My view is, as I said in Michigan, if
 13 the Ku Klux Klan has changed their view, those on your side
 14 can portray me as a guy who is supporting the Ku Klux Klan,
 15 no, not at all. They're a hateful group. What I'm saying is
 16 if they've changed, God bless them. We want them to change.
 17 We should work every day of our lives to change them.

18 Q. Nothing changed about their position, Mr. Connerly.
 19 They knew that the passage of this proposal would mean the
 20 exclusion of black students from the University of Michigan
 21 and they supported that outcome?

22 A. I'm not supporting the Ku Klux Klan, I don't know
 23 about the Klan, you probably know more about them than I do
 24 because you've done the research. I have nothing to do with
 25 them. They are not part of our campaign. I'm explaining to

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1 you about my issue about this issue of segregation and there
 2 are people who believe in it who may not necessarily believe
 3 that blacks are inferior, just that blacks or any other group
 4 for that matter ought to be separated from others because
 5 that's the way God intended it. Flawed, very wrong,
 6 inherently a wrong philosophy.

7 Q. Mr. Connerly, you've raised a number of times in
 8 this deposition that you're black. It matters to you that I
 9 know that and I take that into consideration in appraising
 10 your life experience, what you know and what you say; isn't
 11 that true?

12 A. Ms. Driver, I couldn't care a horse patooty what you
 13 think about me. I couldn't care less.

14 Q. Okay.

15 A. I'm telling you that because it's obvious because
 16 sometimes that shapes things. I couldn't give a whatever of
 17 how you feel about me, believe me.

18 Q. I do believe you, Mr. Connerly. But when you say
 19 that when you raised in this deposition that you're black, it
 20 matters to you because it shaped how you view things; isn't
 21 that true?

22 A. To some extent.

23 Q. It's a factor in your life; isn't that true?

24 A. Not anymore.

25 Q. Oh, it's no longer a factor?

1 Q. But it's not relevant to have black students at the
 2 University of Michigan or the University of California at
 3 Berkeley or UCLA to give their experience as black people any
 4 more?

5 A. If they want to share their experience, that is
 6 totally relevant. Is it relevant for us to apply a different
 7 standard to admit them, no, that is not appropriate.

8 Q. To have them there, to have black students at the
 9 University of Michigan, you now know is extremely -- it has
 10 been made much more difficult by the passage of Prop 2, hasn't
 11 it?

12 A. Until we cure -- until we and they correct that
 13 academic gap, yes, it is more difficult.

14 Q. So they won't be there to give that perspective --

15 A. They are there. They may not be there in the
 16 numbers that you would like, but they are there.

17 Q. They're there in too small numbers, aren't they?

18 A. Is that really a question or what? I don't know if
 19 it's a small number.

20 Q. It is a question.

21 A. When they earn the right to be there, and I don't
 22 care what the standard is, make sure it's the same standard
 23 for everybody.

24 Q. This isn't a color-blind society, is it,
 25 Mr. Connerly?

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1 A. It is a factor that I every day recedes more and
 2 more from reality.

3 Q. Why --

4 A. What I'm sharing with you and the reason I bring it
 5 up is that, and I would urge you to look at the context in
 6 which I brought it up, is because others see that, don't treat
 7 me better necessarily or worse. But others see that and so
 8 what I was sharing with you, my perspective when we talk about
 9 slavery or we talk about Jim crow, I cannot ignore the fact
 10 that I was born in the deep south, a black child, who had to
 11 endure that. It is relevant for me to tell you that.

12 Q. It's relevant to who you are; isn't that correct,
 13 that you are black?

14 A. No, no, it's relevant for purposes of this
 15 deposition that I share with you my background. It's not
 16 relevant to who I am.

17 Q. Mr. Connerly, I can see that you're black, but the
 18 fact that you've raised it more than a dozen times in this
 19 deposition suggests to me that it's something that you wanted
 20 to emphasize; isn't that true?

21 A. No. I've told you no. You want to draw your own
 22 conclusions, I don't care. But as we're talking about Jim
 23 Crow and you're walking me through the tulips of the 1940s and
 24 1960s, it's relevant for me to give you my perspective as a
 25 black man.

1 A. I'm not trying to make it a color-blind society, I
 2 just want our government to be color-blind.

3 MS. DRIVER: I don't have any further questions for
 4 you.

5 MR. FOUTZ: Do we have any other questions from
 6 people on the line?

7 MR. SAUER: I would like to ask a very few
 8 questions. This is John Sauer representing defendant
 9 intervenor Eric Russell. I hope I'm not jumping in front of
 10 anyone else.

11 MR. FOUTZ: First-come, first-served.

12 MS. NELSON: I don't have any questions; go ahead.

13 MR. WASHINGTON: I think Margaret Nelson said she
 14 had no questions. The court reporter wasn't sure who talked.
 15 Margaret Nelson said she had no questions. I didn't hear what
 16 Robin said.

17 MS. MICHELSON: Laurie Michelson, I don't have any
 18 questions.

19 MR. SAUER: Jessica, is that all right?

20 MS. RICHMAN: That's fine.

21 EXAMINATION BY MR. SAUER

22 Q. Mr. Connerly, I want to start off by thanking you
 23 for your -- am I perfectly audible?

24 MS. DRIVER: You are. Thank you.

25 MR. SAUER: Q. Thank you. Mr. Connerly, I want to

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1 start off by thanking you for your very patient and very
 2 eloquent testimony today.

3 I just have a very, very few question. I want to
 4 refer back to something that you said maybe a couple of hours
 5 ago. You made a reference to somebody called Rick Sander.
 6 When you were referring to him, were you referring to a
 7 Professor Rick Sander of UCLA law school?

8 **A. That's correct.**

9 Q. Are you referring to, I think effects of the use of
 10 racial preferences in public universities, was I correct in
 11 understanding you to be referring to his empirical analyses of
 12 the sort of -- of the effects of the use of racial preferences
 13 in public universities, for example in his article systemic
 14 analysis of affirmative action in American law schools?

15 **A. Yes. His work is limited thus far to law schools**
 16 **and his conclusion is that race preferences are harmful**
 17 **because of the mismatch factor that is created with students**
 18 **who are essentially assigned to one campus and they're not**
 19 **able to compete at that campus and don't pass the bar and**
 20 **therefore don't go to work at the major law firms. That's the**
 21 **work I'm referring to.**

22 Q. Is it your understanding of that work or that
 23 empirical analysis that based on this mismatch of facts, that
 24 some of the negative effects of these racial preference
 25 programs include minority underperformance in law school?

1 A. My view is shaped by my own belief that the
 2 government should not discriminate against or in favor of any
 3 of its citizens. The effects of what might happen as a result
 4 of race-blind policies to me are secondary. The government
 5 should not discriminate against its citizens, for or against
 6 them, on the basis of race, sex, color, ethnicity, racial
 7 origin, sexual orientation, religion.

8 MR. SAUER: Thank you very much. I have no further
 9 questions.

10 MS. DRIVER: I just have a couple more questions
 11 just on what was gone over, but I want to give other people a
 12 chance. If there is anybody else who would like to say
 13 something first.

14 EXAMINATION BY MS. DRIVER

15 Q. Mr. Connerly, you don't know if the conclusions
 16 drawn by Mr. Sanders are true or false; is that correct?

17 **A. I don't know whether they're true or false, but they**
 18 **are consistent with the things that I saw prior to my vote on**
 19 **SB-1 and 2, as well as the effects of SB-1 and 2 and**
 20 **Proposition 209.**

21 Q. These very issues came up in the debate between the
 22 Thernstroms and Derek Bok and Bill Bowen in "Shape of the
 23 River"; isn't that true?

24 **A. That is true.**

25 Q. Didn't they document, Derek Bok and Bill Bowen in

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1 **A. Yes.**

2 Q. Is it your understanding these negative effects also
 3 include a lower minority graduation rates from law school?

4 **A. Yes, and that has -- that was the result by the way**
 5 **of race preferences at the University of California. There**
 6 **was a significant retention gap with respect to**
 7 **underrepresented minorities and Asians and whites, significant**
 8 **gap in graduation rates. Yet, in the aftermath of Proposition**
 9 **209 at U.C. San Diego for example, the graduation rate among**
 10 **blacks has doubled and the retention rate, the gap is**
 11 **narrowing to some extent and the graduation rate in the**
 12 **overall system, that gap is narrowing as well.**

13 Q. Is it your understanding of these effects that they
 14 include minority underperformance on the bar exams that are
 15 taken?

16 **A. Yes.**

17 Q. And is it your understanding of these negative
 18 effects include fewer black people actually becoming lawyers
 19 than would be the case absent the use of racial preferences?

20 **A. That is Professor Sanders' conclusion.**

21 Q. Would it be fair to say that your understanding of
 22 these effects based on this empirical analysis tends to
 23 confirm your view of a public university or at least public
 24 law schools should be race neutral in their admissions
 25 criteria?

1 "Shape of the River", document that the more selective school
 2 you went to, the higher chance you had of graduating if you
 3 were a black students without regard to your SAT scores?

4 **A. But the Thernstroms disagreed with that in many**
 5 **respects.**

6 Q. They did. But they didn't have anything like the
 7 quantitative data that Bok and Bowen had, did they?

8 MR. FOUTZ: Objection. Calls for speculation.
 9 Assumes facts not in evidence. Lacks foundation.

10 MS. DRIVER: Q. You've read --

11 **A. There weren't as many pages in the Thernstroms' work**
 12 **as there were in the "Shape of the River".**

13 Q. In fact, in "Shape of the River", didn't it say that
 14 90 percent -- that black students that attended the most
 15 select schools graduated at the highest levels? -- to the
 16 highest proportions?

17 **A. Again?**

18 Q. Let me go back. The Thernstroms contended that only
 19 50 percent of black students who went to -- who went to a
 20 four-year college, graduated; do you remember that?

21 **A. Yeah, I vaguely remember that.**

22 Q. And Derek Bok and William Bowen looked at that
 23 figure and they said, well, that's true. If you're a black
 24 student who goes to NCAA school that is a nonselective school,
 25 you only have a 30 or 40 percent chance of graduating; isn't

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1 that true?
 2 A. That's true.
 3 Q. But if you were a black student and you went to a
 4 highly selective school, like Harvard or Yale or University of
 5 Michigan, you had a significantly higher chance of graduating,
 6 in fact 70 or 80 percent; isn't that true?
 7 A. I believe that is.
 8 Q. And so black students that were the beneficiaries,
 9 that went to these highly selective schools benefited from
 10 being at those very selective schools, didn't they?
 11 A. I believe they did.
 12 Q. And, in fact, black students that went to highly
 13 selective schools graduated, Bok and Bowen said, at higher
 14 rates than even white students that went to nonselective
 15 schools; isn't that true?
 16 A. Yes, but this does not discount Rick Sanders' work.
 17 Q. Okay. But Mr. Sanders is saying that the graduation
 18 rate for black students that went to highly selective law
 19 schools is low and in fact --
 20 A. With preferences, you have to add that.
 21 Q. Okay. With, let's say with whatever Proposition 209
 22 was, what you call preferences, what I'll call affirmative
 23 action. But, in fact, looking at the longitudinal study that
 24 Bowen and Bok did, it showed exactly the opposite, looking at
 25 thousands and thousands and thousands of graduates, it showed

1 of graduating; isn't that true?
 2 MR. FOUTZ: I'm going to object on the grounds it's
 3 a compound question. It calls for speculation. It lacks a
 4 foundation. Assumes facts that are not in evidence and is
 5 argumentative.
 6 THE WITNESS: I don't know what they would have
 7 objected to or thought or whatever. I don't know.
 8 MS. DRIVER: Q. It's worth asking the black
 9 students that graduated, isn't it?
 10 A. Maybe, maybe not. That's really a statement on your
 11 part, isn't it?
 12 Q. Why wouldn't it be worth asking them, Mr. Connerly?
 13 A. It doesn't -- to me it's irrelevant. Preferences
 14 are wrong. Preferences are wrong. As I said just a moment
 15 ago, the effects of this approach or that approach are
 16 secondary to whether we believe as a society whether our
 17 citizens should be treated equally without regard to race,
 18 which is what the 1964 Civil Rights Act commands or whether we
 19 want to avoid that act. And you and I will differ on that
 20 point.
 21 Q. Mr. Connerly, it's -- you said earlier it's been an
 22 important achievement of the society to have integrated; isn't
 23 that true?
 24 A. It's a very important achievement for our society to
 25 have integrated.

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1 you had the best chance of passing the bar exam if you went to
 2 a highly selected law school, didn't I?
 3 A. All goes to prove that scholars will disagree.
 4 Q. And in terms of minority students themselves,
 5 Mr. Sanders, he didn't bother to interview large numbers of
 6 minority students, did he?
 7 A. I can't speak to that. I don't know what he did.
 8 Q. You read his study?
 9 A. I read the study.
 10 Q. You don't remember any of that in interviews?
 11 A. I don't remember any interviews, but I can't assert
 12 that.
 13 Q. Okay. Whereas in the Bok and Bowen studies, they
 14 talked to a number of black graduates and they said that they
 15 were very, very glad to have gone to those schools, didn't
 16 they?
 17 A. That's my recollection, too.
 18 Q. They didn't complain about being -- feeling inferior
 19 or underperforming, did they?
 20 MR. FOUTZ: If you know.
 21 THE WITNESS: I don't recall that.
 22 MS. DRIVER: Q. Yeah, they didn't say, oh, I wish I
 23 had gone to a school that matched my SAT scores or my LSAT
 24 scores and they didn't say that because they knew that if they
 25 had gone to such a school they would have had less of a chance

1 Q. And to have integrated at every level of the
 2 society; isn't that true?
 3 A. We can't integrate every level of society. There
 4 will be areas in our society where people of their own choice,
 5 of their own talents, of their own whatever, finances, we
 6 won't integrate them and I don't think it's the government's
 7 role to integrate every sector of American life. It's a
 8 government's role to make sure that as it interacts with its
 9 citizens it does not discriminate against them on the basis of
 10 those prohibited factors.
 11 Q. It's the government's duty to provide equal
 12 opportunity for all of its citizens, isn't it, Mr. Connerly?
 13 A. No, it's the government's duty, as it engages in
 14 transactions with its citizens, to make sure that it provides
 15 equal treatment with regard to those students. It is not the
 16 government's duty to make sure, as I am navigating the private
 17 economy, that I have an equal opportunity. That's not the
 18 government's duty.
 19 Q. Mr. Connerly, you said earlier that it was the role
 20 of government to try to achieve greater equality based on
 21 income; isn't that true?
 22 A. It's the government's duty -- what I said is it's
 23 the government's -- it's within the government's duty to try
 24 to help those who need help, not to provide equality,
 25 necessarily. But for those who lack the funding, lack money,

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1 it's the government's duty to try to give them prevention
2 against catastrophic health circumstances, to provide them
3 with access to education, that's the government's duty based
4 on income.

5 Q. And if people are denied access to education on the
6 basis of race, it's the government's duty to clear those
7 obstacles, is it not?

8 A. If they're denied access to public education because
9 of race, yes, it's the government's duty to clear that.

10 MS. DRIVER: I don't have any further questions.

11 THE VIDEOGRAPHER: This concludes the deposition of
12 Ward Connerly. The three original videotapes will be retained
13 by Jan Brown and Associates. It is 3:50 p.m. We are off the
14 record.

15 (Whereupon, the deposition concluded at 3:50 p.m.)

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18 WARD CONNERLY

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1 CERTIFICATE OF REPORTER

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3 I, MARY E. FERREIRA, hereby certify that the witness in
4 the foregoing deposition was by me duly sworn to testify the
5 truth, the whole truth, and nothing but the truth in the
6 within-entitled cause; that said deposition was taken at the
7 time and place therein stated; that the testimony of said
8 witness was reported by me, a Certified Shorthand Reporter and
9 disinterested person, and was thereafter transcribed into
10 typewriting, and that the pertinent procedure relating to the
11 notification of the witness and counsel for the parties hereto
12 of the availability of the original transcript of the
13 deposition for reading, correcting, and signing have been met.

14 And I further certify that I am not of counsel or
15 attorney for either or any of the parties to said deposition,
16 nor in any way interested in the outcome of the cause named in
17 said caption.

18 Dated: This 6th day of November, 2007.

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Mary E. Ferreira, RPR, CSR No. 10553

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