

JOHN HARVARD'S JOURNAL

ARTS ARRIVE IN ALLSTON. Though attention rightly focuses on the engineering and applied sciences complex taking shape on Western Avenue, its smaller cousin, the 9,000-square-foot ArtLab maker space (sited around the corner, on North Harvard Street; see harvardmag.com/artlab-plans-17), is also well under way, as shown in these November views. As the fine print always cautions, these images are not to scale: the billion-dollar science facility appears to the right, and its humanistic neighbor—at roughly one-hundredth the investment—above. But as a harbinger of other potential arts and related facilities in the vicinity, the ArtLab looms large.

IN THIS ISSUE

- | | | | |
|----|--|----|---|
| 16 | Harvard Portrait | 24 | FAS: Faculty and Fisc |
| 18 | Accelerating Medical Research | 26 | News Briefs: <i>Policing and Students, Title IX, Public Attitudes toward Higher Education</i> |
| 19 | Surplus Surprise...and the Endowment's Evolution | 27 | Brevia |
| 20 | Yesterday's News | 30 | The Undergraduate |
| 21 | University People | 33 | Sports |
| 22 | Engaging Radcliffe with the World | | |

Admissions on Trial

The lawsuit that could determine the fate of affirmative action

HARVARD'S undergraduate admissions process was on trial in October and November, in a federal case that could ultimately change the shape of college admissions nationwide. At issue is whether the College's "holistic"

HARVARD PORTRAIT



Ruth Okediji

Ruth Okediji, Smith professor of law, traces her enthusiasm for intellectual-property law to a childhood love of literature and storytelling. When she was seven, her family immigrated to New York City from Nigeria. “I had never heard the word ‘race’ and had never been described as a black person,” she recalls. “I just kept feeling this hostility in the private school that my parents sent me to. When I couldn’t make sense of it, I started going to the New York Public Library. The books raised me.” She returned to Nigeria for college, then earned her S.J.D. from Harvard Law School in 1996; she joined the faculty in 2017 and became co-director of the Berkman Klein Center for Internet & Society. Intellectual-property law may sound arcane, but its machinery shapes the most intimate details of our daily lives, Okediji says. Everything from “the moment you wake up—the music on your alarm clock is under copyright—to singing in the shower, to forwarding email,” she explains. “You might watch a movie on Netflix and decide, ‘Oh, I really like this character, maybe I should make a video game of this character.’” Copyright law “transforms who we are as a people.” Okediji is concerned with how intellectual-property law nourishes some types of creation but erases others. “Copyright law is intimately bound up in the invention of the printing press. If you look at indigenous groups all over the world, their lifestyles and works of art and poetry are often not captured by the intellectual-property system,” she says. “It’s as though we’ve created a system that says, ‘It’s only when you come from a Western literary culture that your work matters.’ I feel profoundly moved by that injustice.” —MARINA N. BOLOTNIKOVA

admissions practices—which evaluate students not only for grades and test scores, but also for personal traits such as character—discriminate against Asian-American applicants. But the trial also provided the plaintiff, anti-affirmative-action group Students for Fair Admissions (SFFA), a platform to publicly dissect other Harvard practices that weren’t directly challenged in the case, including preferences for athletes and for children of donors and alumni. Such policies have been widely examined before—but the trial proceedings revealed new details about their use, and brought them under renewed public scrutiny.

The lawsuit, originally filed in 2014, is organized by SFFA’s founder and president, Edward Blum, a well-known political activist and opponent of affirmative action, who previously initiated *Fisher v. University of Texas*. In that case, ultimately decided in 2016, the Supreme Court upheld the university’s policies in a ruling specifying that college affirmative-action programs must be tailored narrowly and show that they accomplish a specific goal, and also that colleges must prove that race-based admissions policies are the only way to meet diversity goals.

The SFFA case was heard in Boston’s federal courthouse by U.S. District Judge Allison Burroughs, who is not expected to issue a ruling for several months; Harvard and SFFA will file additional documents in the case in December and January, and provide additional arguments in February.

Burroughs has already dismissed SFFA’s claim that race should not be a factor in college admissions, deferring to Supreme Court precedent on the issue; instead, she will rule more narrowly on whether Harvard’s admissions process discriminates against Asian Americans. Nevertheless, the legality of affirmative action may be considered by a higher court if the case is later appealed, as it may well be. Blum may anticipate a favorable audience, given the new majority on the Supreme Court, which he hopes will rule the use of race in admissions unconstitutional. Last summer, the U.S. Department of Justice withdrew Obama administration guidelines on the use of race in college admissions, and filed a statement of support for SFFA in the case. All the other schools in the Ivy League, plus nine other private universities, have filed a joint friend-of-the-court brief this summer defending the use of race in admissions.

On the trial’s first day, the courtroom was



Supporters of affirmative action protested in Harvard Square the day before SFFA v. Harvard went to trial...

that diversity is central to the University's educational mission. Applicants' "personal" ratings, he said, were determined by information conveyed to admissions officers through sources like teacher and guidance-counselor recommendations. He also stressed that race is never

pared to the College's current overall admission rate of less than 5 percent). The connection between these policies and the question of discrimination against Asian-Americans is not straightforward—but they were likely intended by SFFA to cast doubt on the fairness of Harvard's admissions process overall.

Throughout the trial, SFFA's and Harvard's arguments relied on conflicting testimony from two expert witnesses: for SFFA, Peter Arcidiacono, a Duke economist who analyzed admissions data and concluded that Harvard's process discriminates against Asian Americans through its use of a personality score for applicants; and for Harvard, David Card, a Berkeley economist who concluded that the data show no evidence of discrimination. The economists' models differ in a few key ways: Card's includes applicants' "personal" scores, while Arcidiacono's does not, because SFFA believes the scores are arbitrary and illegitimate. Card's model also includes "ALDC" applicants: students who are recruited athletes, legacies, relatives of major donors, or children of faculty or staff members, while Arcidiacono's does not. Because admission rates for these groups are dramatically higher than for other applicants, SFFA argues, they essentially go through a separate admissions process.

Another area in which SFFA and Harvard had opposite interpretations of the same set of facts was the recent increase in the num-

packed with journalists and members of the public, reflecting intense interest in elite institutions' admissions, and strong public feelings about the consideration of race in their decisions. The plaintiffs argued that affirmative action was *not* at issue in the trial: "The Supreme Court has held that race can be used in a narrowly tailored way to unlock the benefits of diversity in education," argued SFFA attorney Adam Mortara. Instead, he said, SFFA aimed to prove that white students were given an advantage over better-qualified Asian-American applicants through ill-defined "personal" ratings that invited implicit bias and discrimination: "Harvard is pushing down Asian Americans on this all-important, subjective 'personality' rating." Asian-American applicants on average perform better than whites on other measures used by the admissions office—academic and extracurricular—he said, but they receive substantially lower personality scores.

Mortara also argued that University officials have long known about the "statistically significant penalty on Asian Americans applying to Harvard." Reports by Harvard's Office of Institutional Research in 2012 and 2013, which were included in court documents filed by SFFA last summer, found that Harvard's admissions process had "negative effects" for Asian Americans. University officials have said those reports were "preliminary and limited."

In the University's opening statement, William F. Lee '72, Harvard's lead lawyer in the case (and senior fellow of the Harvard Corporation), argued that SFFA's claims of discrimination were unsupported; that Harvard's admissions process has been upheld as exemplary by the Supreme Court in the 1978 case *Regents of the University of California v. Bakke* (by using race only as a "plus" factor, and evaluating each applicant as an individual); and

the sole or determining factor in an applicant's admissions decision: "Instead, the evidence will confirm that, as permitted by the Supreme Court, race is considered as one factor among many in the Harvard admissions process; that when it is considered, it is considered flexibly; and that it is always used as a 'plus' factor."

In the weeks that followed, University officials—including former president Drew Faust, College dean Rakesh Khurana, director of admissions Marlyn McGrath, and others—provided testimony about the goals, processes, and priorities of the College's admissions system. Faust said that "there is no place for discrimination of any kind at Harvard," and stressed that one of her top priorities had been to improve access to Harvard for groups not previously represented—for instance, through the financial-aid initiative that makes attendance free for undergraduates whose families earn less than \$65,000.

SFFA, meanwhile, used Harvard's internal admissions data and emails to highlight the disparities in admission rates among different groups and the preferences given to applicants with ties to the University. The "Dean's Interest List" and "Director's Interest List," for example, include applicants linked to notable donors and alumni, or who are of special interest otherwise. Court documents showed that such applicants made up about 9 percent of the College classes of 2014 through 2019, and were admitted at a rate of 42 percent (com-



...as across the river, in Copley Square, supporters of SFFA gathered for an opposing rally.

ber of Asian Americans at the College. Mortara argued that beginning with the admissions cycle for the class of 2019, coinciding with the time the lawsuit was filed, "the Asian penalty [went down] substantially"—Harvard began admitting a higher share of Asian-American students. "Why is that? That's because when Harvard knew that someone was go-

ing to be looking into what's going on, they dialed down the Asian penalty. This is powerful, circumstantial evidence of discrimination." Lee later forcefully refuted that claim: "From the class of 2006 to the class of 2019, the percent of Asian Americans in the admitted class increased from 16.5 percent to almost 21 percent—an increase of approximately 25 percent....Last year—for the class of 2022—Asian Americans were almost 23 percent of the admitted class. The idea that being sued by SFFA is the reason these numbers have gone up is simply not true."

Whatever the outcome of the trial and its subsequent appeals, the case has produced wide-ranging discourse about what

the point of a college-admissions process ought to be, and what criteria are legitimate in achieving it. Watson professor of law Jeanie Suk Gersen has contributed regular commentary to *The New Yorker* on the subject. As SFFA did, she compares Harvard's current admissions policies with its efforts to limit the number of Jewish students enrolled in the 1920s. "[O]ne outcome of this month's trial," she wrote in October, "has been to heighten awareness of implicit racial biases. And, win or lose, Harvard's Asian problem, recalling the experience of Jews, will be a piece of the social history of an American minority group on its way to eventual, if not always enthusiastic, acceptance."

Elsewhere, students and other observers have argued that SFFA has used discrimination against Asian Americans to obscure its real aim in the case: to dismantle affirmative action and harm the disadvantaged groups who benefit from it. "[R]ecognizing that racism can affect how Asian Americans are perceived in college admissions cannot, and should not, be a referendum on the entire structure of race-based admissions policies," argued Elyse Pham '22 in *The Harvard Crimson*, in one of several op-eds by students on the subject. The questions of race, identity, deserts, and fairness that have been amplified by the trial are sure to live beyond the litigation. ~MARINA N. BOLOTNIKOVA

Accelerating Medical Research

NETFLIX has thrived in part because it knows what movies subscribers have watched—and which films similar viewers have enjoyed. Is there an analogy to this powerful recommendation protocol applicable to medicine? Nelson professor of biomedical informatics Isaac Kohane thinks so. During a Harvard Medical School (HMS) symposium on November 8, he outlined a tool that would encourage cancer "superresponders"—the patients who achieve gains in longevity not of a year or two, but of many times that—to share their health and therapeutic histories,

cancer treatment, making current miracle cures the standard of care by 2030.

That vision may now have a better chance of becoming reality. The symposium celebrated a \$200-million gift, the largest in HMS history, focused on four priorities:

- investments in the infrastructure and technology for basic and clinically applicable research;
- faculty appointments focusing on biomedical informatics (see "Toward Precision Medicine," May-June 2015, page 17) and data science, among other fields;
- grants to seed collaborations among HMS researchers and those at its 15 affiliated hospitals and other research institutions—an important step toward harness-

ing the latent power of the Greater Boston biomedical ecosystem; and

- a Longwood Medical Area "life lab," a counterpart to the facility in Allston, to support nascent biotechnology and life-sciences enterprises.

The gift, from the Blavatnik Family Foundation, builds upon prior support for biomedical re-

search from Len Blavatnik, M.B.A. '89, who has been a benefactor of science around the globe. A \$10-million gift to Harvard in 2009 split evenly between cancer-vaccine research and a "biomedical accelerator fund," to encourage development of ideas with commer-

cial potential, was followed by a \$50-million gift, in 2013, in support of translating basic science into therapies and a Harvard Business School fellowship program for life-sciences entrepreneurs. Those were mere preludes to the newest philanthropy, summarized in the news announcement this way:

School priorities supported by the gift include deepening fundamental discovery; accelerating the development of new treatments; spurring applications of data science toward the comprehension, diagnosis, treatment and cure of disease; recruiting data scientists, computational biologists, bioengineers and other experts; and catalyzing collaborative discovery across the broader Harvard life sciences ecosystem.

The presentations by Kohane and others illustrated some of the scientific and therapeutic potential. A separate panel discussion, moderated by MIT president emerita Susan Hockfield, a neuroscientist, demonstrated some of the leverage from bringing the expertise resident in Boston-area institutions—with their thousands of basic researchers, academic clinicians, and skilled technicians—to bear on common problems. Laurie Glimcher '72, M.D. '76, president and CEO of Dana-Farber Cancer Institute, and professor of systems biology Eric Lander, the president and founding director of the Broad Institute of MIT and Harvard (a leading center for genomics research), said it mattered not at all whether scientists conducted research at one venue or another. Both hailed the growth of an intellectually integrated "community" of life scientists. Glimcher also cited the collaborations



Coming together: Greater Boston biomedical and life-sciences panelists (from left) Eric Lander (Broad Institute), Vasant Narasimhan (Novartis), and Laurie Glimcher (Dana-Farber Cancer Institute), with moderator Susan Hockfield (MIT)

genomic data, lifestyle indicators, and more, so clinicians will know what drugs to try when they meet new but similar patients. Harnessing such patient data with therapeutic information and possible clues to further research, he said, would radically advance

search from Len Blavatnik, M.B.A. '89, who has been a benefactor of science around the globe. A \$10-million gift to Harvard in 2009 split evenly between cancer-vaccine research and a "biomedical accelerator fund," to encourage development of ideas with commer-