

2019 LAWYERS OF THE YEAR

WILLIAM F. LEE
WilmerHale

William F. Lee is no stranger to high-profile legal cases.

The Boston lawyer — who has more than 200 trials and north of 100 appellate arguments under his belt — acted as lead trial counsel for tech giant Apple in the long-running litigation against Samsung; served as associate counsel to the independent counsel in the Iran-Contra investigation; and worked pro bono on behalf of the Boston Athletic Association in the wake of the 2013 Marathon bombings.

But his representation of Harvard University last year in the case challenging its admissions policies as discriminatory was more personal.

“The Harvard case may be at the top of the pile,” he says. “I am the child of immigrants, Harvard has been a big part of our family for many years, I’ve been involved in Harvard governance for the last 16 years, and at the end of the day this issue is so important.”

“This case was important for Harvard but much more important for higher education generally by demonstrating that the manner in which colleges and institutions are pursuing diversity and using race can be constitutionally acceptable if they are doing it the right way — and there is a right way.”

In the case, Students for Fair Admissions accused Harvard of relying too heavily on race as a factor in its admissions and specifically discriminating against Asian American applicants.

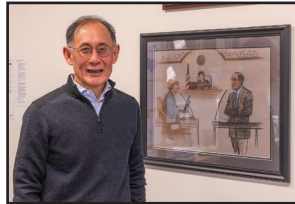
Figuring the case could go the distance to the U.S. Supreme Court, Harvard retained WilmerHale and Lee’s good friend, former Solicitor General Seth Waxman. But when the decision was made to seek a trial, Lee recused himself from his activities at the school and joined the legal team.

Last October, U.S. District Court Judge Allison D. Burroughs rejected the plaintiff’s allegations.

“The Court will not dismantle a very fine admissions program that passes constitutional muster, solely because it could do better,” she wrote. “For purposes of this case, at least for now, ensuring diversity at Harvard relies, in part, on race conscious admissions.”

Why did you decide to ask for a trial?

Harvard was specifically picked as the defendant for this lawsuit alleging intentional racial discrimination. The question of how to defend against that type of headline-grabbing accusation was a real challenge, and our most important decision was to lay open the



admissions process and let people see it. Sure, if you produce 100,000 emails there are going to be one or two that someone is not going to like in retrospect, but we thought that it was very important to pull back the curtain and show the court — and the public — how Harvard handles admissions. The details of the process are the best indication that nobody was discriminating against anybody.

What were some of the pivotal moments during trial?

There were three moments in the trial where I think everyone involved really understood what was at stake. First, the dean of admissions testified that Harvard receives about 45,000 applications each year. Of those students, 15,000 are truly qualified and would be a credit to the university. Harvard then picks just 1,600 — not the best of the whole pool of great people, but in an effort to assemble a class with the right community dynamic. It’s a different way of thinking about things.

Second, we presented evidence of the various categories of applicants and demonstrated that, in some categories, Asian Americans were accepted at a statistically significant higher rate than others. So that meant the plaintiff was essentially arguing that Harvard was discriminating against some Asian Americans and not others.

And third, a moment that I think captured the collective attention of the courtroom was during closing when I put up one of the slides from the plaintiff’s expert to show that if you followed their argument to its logical conclusion, the number of African American and Hispanic students on campus would significantly decrease. You could hear a pin drop when people realized that would be the impact.

What about student testimony?

We didn’t call any students ourselves out of a concern that it would look like we were putting the arm on them. However, a group of students took the initiative to ask to testify, represented by the Lawyers’ Committee for Civil Rights, and they had wonderful things to say about Harvard. The students were very compelling because they

demonstrated the diversity of the university and what can be achieved in bold relief. Judge Burroughs also repeatedly cited the testimony of the students in her decision.

Is Harvard making any adjustments to its application process as a result of the case?

Harvard makes adjustments to its admissions process on an annual basis and will continue to make changes. The result of the case and having everyone take a close look at the details spurred people to think about the process, and we’re making the types of adjustments that you would expect someone to make as more information comes in about the admissions process. Many people are worried about implicit or unconscious bias, and the admissions office is engaged in training in those areas.

What are the implications of the case and the decision for higher education generally?

This case was important for Harvard but much more important for higher education generally by demonstrating that the manner in which colleges and institutions are pursuing diversity and using race can be constitutionally acceptable if they are doing it the right way — and there is a right way.

In her decision, Judge Burroughs wrote that it may be possible in the future to de-emphasize race in admissions, adding “we are not there yet.” Do you agree that a race-free admissions process could be possible?

Society is moving and becoming more racially, ethnically and demographically diverse. By 2050, the country will be much more racially ambiguous than it is today and race will be considered in a different way. I look at my own experience to see how things can change. My parents came to the country from China in 1948, just a few years after the repeal of the Chinese Exclusion Act, and people have told me that I was the first Chinese American lawyer in the city of Boston in 1976. This is an issue that is going to evolve and develop.

— Correy E. Stephenson