

Exhibit 3

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STUDENTS FOR FAIR ADMISSIONS, INC.,

Plaintiff,

Civil Action
No. 14-14176-ADB

v.

October 17, 2018

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE, et al.,

Pages 1 to 241

Defendants.

TRANSCRIPT OF BENCH TRIAL - DAY 3
BEFORE THE HONORABLE ALLISON D. BURROUGHS
UNITED STATES DISTRICT COURT
JOHN J. MOAKLEY U.S. COURTHOUSE
ONE COURTHOUSE WAY
BOSTON, MA 02210

JOAN M. DALY, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 5507
Boston, MA 02210
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1 unqualified "I have a recollection of it," I think that is
2 important. And what he's disagreed with is how carefully he
3 reviewed it before he gave that testimony.

4 THE COURT: They're willing to stipulate that he
5 looked at it for six minutes. I will accept for the record
6 that he looked at it for six minutes.

7 The questions that follow about how familiar he is
8 with it, he's pretty clear that he is familiar with parts of
9 it, and he remembers things about it. So that's not
10 inconsistent. He says he remembers parts of it.

11 You ask him questions about what you want to ask
12 him. If it's a part that he remembers, he'll testify about
13 it. If you need to refresh his recollection on something in
14 here that he used to have a recollection of that part but no
15 longer does, you can do that.

16 But let's get into the document and see what he
17 remembers and what he doesn't. I will accept for the record
18 that he looked at it for six minutes.

19 MR. HUGHES: Thank you, Your Honor. What I'd like
20 to do is I'd like to offer P602 into evidence.

21 MR. LEE: I object. There's no foundation. There
22 will be another witness who actually prepared the document
23 who will be here to testify. But there's no foundation for
24 this witness.

25 THE COURT: I can hold off on the admitting of the

1 exhibit, but I'm going to let him ask him questions about it.

2 MR. LEE: I understand.

3 MR. HUGHES: Just so Your Honor is clear, he
4 testified in his deposition he had a recollection of it
5 independent of his deposition preparation. We'll get into
6 all of that. What I would prefer to do is actually show him
7 the color version of this, which is Plaintiff's Exhibit 9,
8 which I'd also like to offer into evidence, which I assume
9 Mr. Lee has the same objection to.

10 THE COURT: I assume this exhibit is going to come
11 in. I'm going to let you ask questions of him about it now
12 so that he doesn't have to be recalled once it's admitted.
13 My guess is Mr. Lee is also expecting the document to come
14 in.

15 MR. LEE: Yes. At some point, Your Honor. I think
16 having the color version is fine, and having him be examined
17 on the same basis Your Honor talked about, the non-color
18 version, is fine.

19 THE COURT: So now it's not going to be admitted at
20 the moment. I am going to let him be questioned about it.

21 What's your view on whether it's put up for the
22 studio audience here? It's a not-admitted exhibit.

23 MR. LEE: It's fine, Your Honor.

24 THE COURT: Okay. Karen, go ahead -- it's not
25 admitted at the moment, but we will put it up on the screen