

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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STEPHANIE BIEDIGER, ET AL : No. 3:09cv-621 (SRU)
: 915 Lafayette Boulevard
vs. : Bridgeport, Connecticut
: :
: June 22, 2010
QUINNIPIAC UNIVERSITY :
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BENCH TRIAL

B E F O R E:

THE HONORABLE STEFAN R. UNDERHILL, U. S. D. J.

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I N D E X

WITNESSES:

MARK THOMPSON

Cross Examination by Mr. Brill.....318
Redirect Examination by Mr. Hernandez.....354

JEFF WEBB

Direct Examination by Ms. Galles.....371
Cross Examination by Ms. Friedfel.....423

1 (9:05 O'CLOCK, A. m.)

2 THE COURT: Good morning. Should we start with
3 the motion in limine?

4 MR. HERNANDEZ: Yes, Your Honor. I'm prepared
5 to address that for the court on behalf of the plaintiffs.

6 The defendants had filed this motion, this claim
7 with respect to two of the plaintiff's witnesses, expert
8 witnesses Mr. Webb and Ms. Yiamouyiannis, and I'll deal
9 with them in turn.

10 First of all, they move to preclude Mr. Webb
11 from testifying about what constitutes a varsity sport. I
12 take that to mean that they are moving to preclude him
13 from testifying about what constitutes a varsity sport
14 within the meaning of Title IX and/or OCR. He's not being
15 called as an expert witness in these fields so I do not
16 anticipate that that will be an issue.

17 THE COURT: Okay, all right.

18 MR. HERNANDEZ: The next, they next move to
19 preclude testimony about whether Quinnipiac's competitive
20 cheer should be properly counted as a varsity sport. They
21 didn't qualify it and I'm looking at the bottom of page
22 two of their motion. I take that to mean, I take the
23 adjective "properly" to mean under Title IX slash OCR
24 compliance. Again, Mr. Webb is not an expert, he's not
25 being called as expert in Title IX or OCR compliance. I

1 don't anticipate that that will be an issue.

2 Lastly, they move to preclude testimony about
3 the NCSTA, the National Competitor Stunts and Tumbling
4 Association, or its meet format. He is prepared to
5 compare and contrast the rules and format of his
6 organization with those of the NCSTA, but as far as
7 offering an expert opinion as to whether the NCSTA rules
8 constitute a sport, he's not, he's not testifying about
9 that.

10 He's going to be testifying that in his view the
11 competitive cheer community is of varying minds and I
12 use -- many, many different minds about whether cheer
13 should be considered a sport at all, so I don't anticipate
14 that the substance of their motion will be an issue.

15 They are also objecting to the testimony of
16 Ms. Yiamouyiannis. She is testifying primarily as a
17 expert in what the requirements are under NCA, under the
18 NCAA. I take it from their motion that they are moving to
19 preclude Ms. Yiamouyiannis from testifying about the, what
20 the rules are for cross country and/or track. She's not
21 being called as an expert with respect to those particular
22 areas.

23 She is, however, going to inform her opinion
24 about what the NCAA requires by way of reference to what
25 the rules are in cross country and in and outdoor track

1 but she's not going to be giving an expert opinion about
2 those particular sports, so --

3 THE COURT: Okay.

4 MR. HERNANDEZ: So to the extent that there are
5 objections about specific questions posed to the witness
6 regarding opinion, I'd invite counsel -- we'll bring the
7 witness, they can bring their objections.

8 THE COURT: That was going to be my suggestion.
9 Okay. All right? Very good. So, in effect the motion in
10 limine is denied largely as mute but without prejudice to
11 raising objection to specific inquiries made of either of
12 these witnesses.

13 MR. BRILL: Unless the court has something else
14 to address preliminary, I was thinking of the privilege
15 issue. I have one or two also preliminary matters.

16 THE COURT: Well, okay. On the privilege issue,
17 I have reviewed the materials supplied to me --

18 MR. ORLEANS: Excuse me, Your Honor. I don't
19 mean to interrupt. If you're going to address, may I just
20 go out in the hall and bring Ms. Galles and Mr. Webb into
21 the room because --

22 MR. HERNANDEZ: I'll get them.

23 THE COURT: Sure.

24 MR. ORLEANS: If you just give us one moment I
25 think they are out there.

1 MR. BRILL: I can make use of the one minute for
2 two very quick points, Your Honor.

3 THE COURT: Sure.

4 MR. BRILL: First of all, we did receive
5 yesterday an amicus brief from the United States.

6 MR. HERNANDEZ: Yes.

7 MR. BRILL: I assume the court saw it. And we
8 would like an opportunity to respond to that. If we can
9 have until the end of the week.

10 MR. HERNANDEZ: To respond to the brief or to
11 respond to the motion?

12 MR. BRILL: No, the motion. I can see the brief
13 is being filed and we accept it. We'd like to respond to
14 the substance of the brief.

15 THE COURT: That's fine.

16 MR. BRILL: And secondly, there was some
17 discussion yesterday about Mr. Seely, the women's ice
18 hockey coach. We had spoken to them. He can be available
19 to come in Thursday and testify briefly. He was on our
20 witness list as a possible witness. I just want to advise
21 the court and the plaintiffs that we will make him
22 available, and there's no need to worry about hearsay or
23 nonhearsay. The emails are going to come in at this
24 point.

25 THE COURT: Okay. All right, well, in terms of

1 the privilege issue, I have a little trouble reviewing it
2 based on what I've seen in part because I don't know the
3 relationship and/or the positions of some of the folks who
4 are the addressees of the communications. I will say that
5 the, the substance of the communication that begins
6 with -- it's dated May 4, 2010 at 10:56 a. m. -- does not
7 appear to me to be a privileged conversation.

8 The other one appears to be privileged, assuming
9 that it hasn't been waived by CC'ing someone who's not in
10 the attorney-client relationship. In other words,
11 Mr. Webb, Mr. Bill Seely, S-E-E-L-Y, Jim Lord or Bill
12 Boggs, I don't know who these people are.

13 MS. GALLES: Would you like me to address that,
14 Your Honor?

15 THE COURT: Sure.

16 MS. GALLES: Mr. Jeff Webb is the CEO and those
17 other gentlemen are management employees of Mr. Webb's
18 organization.

19 THE COURT: All right.

20 MS. FRIEDFEL: Your Honor, may I -- I think
21 there's a dispute as to that because Jim Lord is copied on
22 that email, I believe.

23 THE COURT: Yes.

24 MS. FRIEDFEL: And Mr. Lord testified at his
25 deposition that he is only employed by Varsity Brands for

1 purposes of obtaining their benefits package and that he
2 receives his salary from them, he's on their payroll;
3 however, he's the conduit to AACCA, which is I think it's
4 American Association of Cheerleading Coaches or something
5 like that, and that he's the executive director of that
6 organization and he does not actually have a formal
7 position with the Varsity Brands.

8 THE COURT: Well --

9 MS. FRIEDFEL: I don't want to dispute this. I
10 just want to make the record clear for Your Honor.

11 THE COURT: Fair enough. I think if these folks
12 are all either current employees or paid by Varsity, then
13 that's sufficient to secure the privilege with respect to
14 the April 13, 2010, 3:50 p. m. communication. But the
15 other one seems to me -- and I'm happy to hear any
16 argument on that but it does not appear to be related to a
17 legal, the provision of legal advice or the request for
18 legal advice, or seems to be --

19 MS. GALLES: Your Honor, we would just take the
20 position that this is all part of developing a legal
21 strategy and that was part of the background working
22 discussion related to creating that legal strategy. So --

23 THE COURT: Well, I understand why you take that
24 position. I don't agree.

25 MS. GALLES: Okay.

1 MR. HERNANDEZ: So that one should be disclosed.
2 I don't think it's a significant document. I don't think
3 it's going to cause the defense to jump up and down.

4 MS. GALLES: Sure, Your Honor. We just wanted
5 to -- obviously we're sort of the conduit for that and
6 they wanted it asserted and that's what we did.

7 THE COURT: I appreciate that. Okay. And just
8 for the record, I am going to grant the motion for leave
9 to file an amicus brief by the United States, which is
10 Document 153.

11 MS. FRIEDFEL: Your Honor?

12 MR. HERNANDEZ: Yes.

13 MS. FRIEDFEL: With respect to the waiver of the
14 privilege by the disclosure to Ms. Galles, I was going to
15 address that issue but I do want to note that they took
16 the position they were redacting the document solely at
17 the direction of Varsity Brand's attorney and they were
18 just doing it for expediency sake and they weren't maybe
19 as concerned about it, but Mr. Orleans had the documents
20 in full form to send to you. So it's not like they
21 redacted the version and just took the redacted version
22 because they were acting at the instruction of Varsity
23 Brands' attorney. They kept the fully, the full document
24 and not only with Ms. Galles but then Mr. Orleans saw it.
25 So it doesn't seem to me they were really maintaining a

1 privilege.

2 MR. HERNANDEZ: In light of representations made
3 to me about the circumstances under which it was turned
4 over and in light of the expedience that was been kind of
5 imposed upon this case, in part by my decision to speed up
6 the trial by a week, I don't see a problem with the way
7 it's been handled.

8 All right. Are we ready to go?

9 MR. ORLEANS: Yes, sir.

10 THE COURT: We have Mr. Thompson I think?

11 M A R K T H O M P S O N, called as a witness on
12 behalf of the Plaintiff, having been previously duly sworn
13 by the Court, testified as follows:

14 THE COURT: You're still under oath.

15 THE WITNESS: Yes.

16 MR. BRILL: We're on the clock?

17 THE COURT: We're on the clock.

18 CROSS EXAMINATION

19 BY MR. BRILL:

20 Q. Good morning, Mr. Thompson.

21 A. Good morning, Mr. Brill.

22 Q. I'd like to give a little bit more of your background
23 than you were able to give yesterday. Will you tell me he
24 how long you've been at Quinnipiac and what positions
25 you've held during the course of your employment?

1 A. Sure. I've been at Quinnipiac University for 12
2 years. First appointment was as associate within the
3 school business which I held that position for five years.
4 I was five years within the school of business, and then
5 last two years I've had health position, senior vice
6 president for academic and student affairs.

7 Q. Who do you report to?

8 A. I report to the president of the university, John
9 Lahey.

10 Q. What is the President's cabinet at Quinnipiac?

11 A. The President's cabinet includes the vice presidents
12 and senior vice presidents who are responsible for the
13 major function of the university.

14 Q. Now, you testified yesterday about your span of
15 authority over three or four different areas. Could you
16 just much describe very briefly for the court your
17 management philosophy with respect to those different
18 areas?

19 A. Given the breadth of responsibilities I have, my
20 philosophy is that we seek to hire the folks who clearly
21 have the experience and the ability to take on the duties
22 and responsibilities without significant oversight on my
23 part. My leadership philosophy is that you trust the
24 folks that you have hired. You look at their expertise
25 and you have some assurance they can carry out these

1 duties and responsibilities. I intervene in case -- we do
2 manual reviews and so forth but I do certainly intervene
3 in cases where I feel that there is an issue that needs to
4 be addressed.

5 Q. Would you apply any different philosophy with respect
6 to the coaches in carrying out their responsibilities than
7 you do, for example, with the department chairman or a
8 faculty member?

9 A. No, it would be the same type of handling of
10 leadership and management of those folks.

11 Q. Can you take a look at Exhibit B N, which is in the,
12 I'm going to be using mostly the defendant exhibits this
13 morning, if you have those handy.

14 (Pause)

15 A. Yes.

16 Q. Could you identify that document?

17 A. This is the EADA report that was submitted by
18 Quinnipiac University.

19 Q. This is the --

20 A. Excuse me, iPad report.

21 Q. What is the iPad report?

22 A. iPad report is our required government document that
23 all colleges and universities submit.

24 Q. Does this report contain the undergraduate
25 enrollments for men and women for 2009, 2010?

1 A. Yes, it does.

2 Q. Now, going back to the process of setting the
3 roster --

4 MR. BRILL: Your Honor, I'm trying to make this
5 quick so I'm not going to like go over the numbers, but if
6 you have a question about where we are?

7 THE COURT: I think I can read.

8 MR. BRILL: Okay, fine.

9 BY MR. BRILL:

10 Q. What was your, what was your approach when you first
11 took over responsibility as senior vice president for
12 academic and student affairs, what was your approach to
13 going about taking over responsibility for the athletic
14 department?

15 A. With respect to roster management?

16 Q. More in general, more generally.

17 A. More broadly, it would be the same concerns I'd have
18 over the same things that are important to me with respect
19 to my areas of responsibility, that I have to have a
20 thorough understanding of the operations of the
21 department, any needs that they have, what goals and
22 strategies they have in place, ways that I can support
23 them and certainly in the areas of compliance and
24 adherence to law and regulations, being sure we are -- in
25 fact our house is in order.

1 Q. And did you have any concerns that you developed as
2 you took over responsibility for the athletics area?

3 A. I did, and it came as a result of the filing of this
4 lawsuit and also the ruling on the preliminary injunction.

5 Q. What were those concerns?

6 A. I had three concerns with respect to roster
7 management in particular. And I in reviewing what had
8 happened, my feeling was there were three issues.

9 One issue was that the person who was responsible for
10 athletics and recreation prior to me I feel did not give
11 sufficient oversight to what happened especially with
12 respect to Title IX compliance and roster management.

13 And, secondly, I don't think the coaches were
14 properly trained in Title IX compliance.

15 And the third issue I had was with respect to roster,
16 claims for roster manipulation, that was of particular
17 concern to me. My findings in reviewing that were that
18 two of our coaches out of, I think we had 18 at the time,
19 two of our head coaches did engage in some adding/deleting
20 that I considered to be inappropriate.

21 I did immediately, because the men's baseball coach
22 and men's lacrosse coach, I did immediately speak to both
23 of them, told them it was not acceptable and it was not in
24 compliance with Title IX, it would not be accepted going
25 forward. And I asked for an explanation as to why they

1 did it. Their explanation was that they -- basically what
2 it boiled down to, they had a tough time making a
3 leadership decision, management decision, to cut certain
4 players from the roster and keep them off the roster as a
5 way of appropriately manage it. Essentially what it
6 boiled down to was they had some of the players that they
7 liked personally and did not want to burn them by not
8 including them on the team.

9 But, in any event, there is no -- my finding was
10 there was no wide spread manipulation. It was limited to
11 those two teams. There was certainly no university policy
12 of padding or manipulating or ceiling or floors. And the
13 problem as I found it was addressed immediately and I was
14 given every assurance that things are in order.

15 Q. And when you set about to take over responsibility
16 for the roster management program, what was your overall
17 approach, if I can ask you that, general terms?

18 A. It started with my own education with respect to both
19 NCAA regulations and Title IX compliance, including the
20 help of an expert in the field and, then again, I was
21 very -- I thought it was very important to understand in
22 particular from the head coach's perspectives, given they
23 are closest to the sport that you're responsible for and
24 meet the circumstance you might be faced with, to hear
25 directly from them any concerns and get their input in

1 terms of what an appropriate roster size would be.

2 In addition, at a head coaches meeting I informed
3 them very specifically about my expectations around
4 compliance, not just with Title IX but compliance more
5 broadly in all aspects, and told them that they will be
6 held accountable for their actions but we would go through
7 an appropriate process to look at NCAA average squad
8 sizes, NEC squad sizes in some cases, that I would get
9 their personal opinions.

10 What we basically went through were three mental
11 processes of back and forth and personal meetings with the
12 coaches that ultimately set the roster numbers for '09,
13 '10. I felt that we, that I personally went out of my way
14 in this case, given that I did have concern to insure that
15 the process was appropriate and that we ended up with
16 numbers that did represent in fact genuine opportunities
17 for all athletes.

18 Q. Dr. Thompson, yesterday the plaintiffs introduced a
19 set of charts of various roster targets beginning in I
20 think June through September. Is there someone on your
21 staff that you had prepare those charts for you?

22 A. No, I did those myself.

23 Q. Each one of those charts?

24 A. Each one, yes.

25 Q. And when you talk about roster numbers, just to

1 clarify, were you talking about caps for the men's teams
2 and minimums for women's teams?

3 MR. HERNANDEZ: Objection. Leading.

4 THE COURT: I'll allow it.

5 A. Absolutely not. My process was to insure that for
6 each team that the number that we ultimately arrived at
7 given all of the input that I described before represented
8 what was a genuine opportunity for the athletes to be
9 participating on that team.

10 Q. And what did you tell the coach, both in the
11 individual meetings and the June 2nd meeting, about what
12 you expected of them with respect to the target roster
13 targets once they were developed?

14 A. Well, start with the discussion again questioning
15 them around their budget facilities, their coaching staff
16 and so forth to make sure that they understood the breadth
17 of the question I was asking with respect to insuring that
18 in fact they had resources to be able to offer input for
19 athletes.

20 Once that number was set and following a lengthy
21 process of talking and thinking about what resources were
22 in place, once that number was set, I told them very
23 clearly they are being held accountable for having that
24 number on their roster. I felt it was appropriate to do
25 that, again, given that we clearly are expected to comply

1 with Title IX, and I felt that the process was sufficient
2 in terms of receiving their input directly in terms of
3 what they felt was an appropriate number.

4 Q. Did you tell any of them that their jobs were at risk
5 if they did not meet their roster targets?

6 A. No, I did not tell them that. I did tell them they
7 would be held accountable for achieving the number on the
8 roster.

9 Q. Did you ever mention the terms "at will employment"
10 in any of your discussions with the coaches?

11 A. No, I did not.

12 Q. Incidentally when was the change at the university
13 from employment contracts to at will employees?

14 A. The decision to go to at will employment for folks
15 who are in administrative positions which would include
16 head coaches in this, as part of that, in that category,
17 was actually made January or February of 2009. This was
18 actually before any decisions with respect too cutting of
19 teams or budget cuts and so forth.

20 Q. How did that come about?

21 A. It came about as a result of a review of our Human
22 Resource policies at the university and we decided that it
23 was inconsistent with what our corporate practices in
24 terms of issuing contracts to administrative employees.
25 In addition we were putting in place an annual fee process

1 as part of what we were doing. But the decision to do
2 that was completely unrelated to anything having to do
3 with decisions regarding discontinuance of any of the
4 teams in the athletics department.

5 Q. And are there any coaches that do have employment
6 contracts?

7 A. There are four coaches that do have rolling five year
8 contracts. Those are the men's and women's head
9 basketball coach and men's/women's head ice hockey
10 coaches. Those are sports of emphasis on our campus and
11 in order to secure highest quality head coaches for these
12 particular sports, we feel it's an appropriate practice
13 for those four.

14 Q. If you would look at Exhibit B R? Now, I think this
15 actually went in yesterday as a plaintiff's exhibit.

16 THE COURT: I believe it did. I don't hear any
17 objection.

18 MR. HERNANDEZ: It's already in.

19 MR. BRILL: Excuse me.

20 MR. HERNANDEZ: It's already in.

21 BY MR. BRILL:

22 Q. So, Dr. Thompson, there's reference in this email to
23 giving the coaches a roster memo. Can you tell us what
24 the roster memo referred to?

25 A. Roster memo was part of formulizing the process to

1 insure that in fact it was clear on the part of the
2 coaches that they are being held accountable and also I
3 wanted to have confirmation, written confirmation from
4 them or something that they signed indicating in fact they
5 did give consideration to that roster number and that it
6 did represent genuine opportunity for the participants on
7 the team, that they had sufficient budget to carry it out
8 and again to bring more formality of the introduction of
9 setting roster numbers.

10 Q. And if you turn your attention now to Exhibit B O,
11 can you identify these as the letters that were signed by
12 the coaches as to the rosters?

13 A. Yes, those are copies of the letter.

14 Q. Now, I notice that the letters are all dated July 22
15 but were some of them in fact revised after that day?

16 A. They were as a result of additional input from
17 coaches with respect to their roster numbers.

18 Q. Did all the coaches sign?

19 A. No.

20 Q. Which coaches did not sign?

21 A. The volleyball coach and the softball coach did not
22 their letters.

23 Q. Now, I want to go through a number of email
24 communications fairly quickly just to show the
25 correspondence that you had with the various coaches and

1 I'll begin with B X. This is competitive cheer and I
2 don't need to go into these in any detail but just to put
3 them into the record, can you tell us very briefly what
4 communications you had with the competitive cheer coach
5 about the roster size and whether you made any adjustments
6 based on the input of the coach?

7 A. This, originally our plan was to have 40 on the
8 competitive cheer team and this was a request by the coach
9 in response to my invitation to have a personal meeting
10 with each head coach. Ultimately we set the roster at 30.
11 Her concern was that was not a large number number.

12 Q. The coach wanted a larger number?

13 A. Yes.

14 Q. And did she explain why?

15 A. She did, for several reasons. One is that she was
16 familiar with the schools that we're competing against and
17 the size squads they had, which are typically 36 to 42,
18 somewhere in that neighborhood.

19 And an additional concern on her part was that it's a
20 high injury sport and she wanted to have sufficient
21 players in the event that someone became injured.

22 And also, she was looking for multiples of six, so
23 her request was actually to have 36 and the reason for the
24 multiple of six was because they apparently practice in
25 groups of six.

1 Q. And why did you reject her request to have a higher
2 roster at that point?

3 A. It was a couple of things. Being that it was the
4 first year, wanted to insure that things went relatively
5 smoothly. There was sufficient resources. In addition, I
6 also was aware of the ruling by Judge Underhill in the
7 preliminary injunction that he felt that 40 would seem to
8 be too high of a number.

9 Q. Now, could you turn your attention to Exhibits B Y
10 through C A. And again just tell us briefly about the
11 communications you had with the women's basketball coach?

12 A. The women's basketball coach for 2009, '10, my intent
13 was to set the roster at 15. She requested an additional
14 two players as walk ons. She felt that the number of 17
15 at the time was what she needed in order to field a
16 competitive team. In response to that request I did ask
17 her the questions I ask of all coaches who made requests
18 with respect to resource availability, budgets and so
19 forth, and I did grant her the increase to 17 as a result
20 of her request.

21 Q. And did she subsequently ask for further adjustment
22 in the roster?

23 A. She did. She asked for one additional player and
24 again it was a situation of concern about the
25 competitiveness of the team and I did grant that

1 additional player later on.

2 Q. Now, on women's ice hockey, if you turn your
3 attention to C B, do you recall conversations with the ice
4 hockey coach Mr. Seely?

5 A. Yes, Coach Seely actually I believe my intent was
6 again looking at my primarily plan which I presented, the
7 intent was to set the roster at 27 initially. Coach Seely
8 came to me me again at my invitation to talk about how he
9 felt about that, the number 27. He indicated to me during
10 the course of our conversation that he felt 26 was
11 appropriate and his reasoning was he had already
12 identified 25 student athletes to play on the team and
13 actually that day was added a 26th person visiting on
14 campus, so I set the roster at 26 as an as a result of her
15 inquiry.

16 Q. Did he agree to that number?

17 A. Yes, he did.

18 Q. If you look at Exhibit C D through C E, which relate
19 to women's soccer, can you tell us what conversations you
20 had the women's soccer coach?

21 A. Dave Clark was the women's soccer coach. The plan
22 was to set his roster at 27. He expressed no concern at
23 that point about 27. His concerns were around questions
24 with respect to training, Title IX compliance and so
25 forth, so it was limited to that.

1 As a result of not expressing concern at that time I
2 left the roster at the number 27.

3 Q. Did he ever come to you during the course of the year
4 to say that number was too high or unmanageable?

5 A. No, he came to me more recently in terms of giving
6 his input at my invitation for setting the roster numbers
7 for next year.

8 Q. And did you in fact adjust the roster for women's
9 softball for next year based on his input?

10 A. Women's soccer?

11 Q. I'm sorry, yes.

12 A. Yes, I did. He said, well, as discussed yesterday he
13 felt 27 was not a manageable number after years of
14 experience and he indicated he had hope for a reduction of
15 one to two players to reduce the roster from 27 to 25 as a
16 result of his concern.

17 Q. Okay, on women's softball you said that the softball
18 coach was the one of two coaches who did not sign the
19 letter?

20 A. Yes.

21 Q. Did you have communications with Germaine Fairchild
22 the softball coach about the roster size?

23 A. I did.

24 Q. Can you just tell us briefly what these
25 communications were?

1 A. It was both written communications and emails that
2 are in C F, but if the face to face conversation that I
3 had with Coach Fairchild enforcement roster number was she
4 felt that 20 was a number that she could provide an
5 opportunity, a genuine opportunity for her players. The
6 reason she stated she did not sign the roster letter was
7 despite her feeling that 20 was a manageable number, she
8 felt by signing the number it would be in conflict with
9 the testimony she gave at the preliminary injunction
10 hearing, where she recollected saying that 17 to 19 would
11 be a preferred number. But she did not express any
12 concerns about 20, but that's the reason she gave for not
13 signing the letter, in concern about her prior testimony.

14 Q. Did there come a time where Coach Fairchild wanted to
15 change the roster either by adding or deleting athletes?

16 A. Yes.

17 Q. Tell us what happened.

18 A. As we approached the first day of competition for the
19 softball team, I believe it was on a Saturday, late in the
20 day on Friday which is the day prior to the first day of
21 competition, I received a request that she wanted to add a
22 21st player. I denied the request because she did not
23 provide me with a rationale as to why she wanted to do it.
24 It was a last minute request that I didn't feel I had
25 sufficient information to make the decision to add the

1 player. It turned out later in that past she followed the
2 first week of competition, the issue was that she needed
3 an additional catcher particularly for practice where she
4 had an injury for one of her catchers, and not having the
5 secondary catcher would have simply, in her words, torn up
6 the other catcher by over utilizing the person. So my
7 decision was to add the 21st player once I understood what
8 the rationale was, I had concern about the welfare and the
9 well being of the catcher who she thought may be injured
10 as a result of not adding the second person.

11 Q. Just to be clear, even though this was a women's
12 team, the women's team coaches didn't have the right
13 automatically to add players to the teams?

14 A. No, absolutely not.

15 THE COURT: I take it, Mr. Brill, that you're in
16 effect offering C T?

17 MR. BRILL: C F through C H actually.

18 MR. HERNANDEZ: No objection.

19 THE COURT: All right, very good.

20 (Whereupon Defendant's Exhibit CF through CH was
21 marked full.)

22 BY MR. BRILL:

23 Q. Turning your attention to C I which is volleyball,
24 did you have any conversations with Coach Sparks about the
25 roster number of volleyball?

1 A. I did. And it was again same invitation that went to
2 all the coaches and her originally intent was to set the
3 roster at 14 which is in the NCAA average squad size but
4 as a result of conversations it was set at 12.

5 Q. Did Coach Sparks subsequently request either adding
6 or increasing or decreasing that roster?

7 A. Yes. Coach Sparks wanted to add a 13th player. I
8 don't remember the exact time but -- I don't remember it
9 as well as I do the softball situation but it was a
10 request that came out of 13, to add a 13th player but no
11 rationale that made it clear to me as to why she wanted
12 that, to add a player, and I denied that request.

13 Q. If you'd look at Exhibit C J through C K on men's
14 basketball, again can you briefly tell us the
15 conversations you had about the size of the men's
16 basketball roster?

17 A. Tom Moore, the head coach, made a request and as a
18 result of more information with how we handle who should
19 be included and who shouldn't be, questions around
20 injuries, players on full scholarship, for example,
21 whether or not they should be included. Not taking that
22 into account, he felt that 15 was the appropriate size for
23 his team. When he found out additional information with
24 in terms of who should count and who know shouldn't and
25 had an injured player who was on scholarship and another

1 player, I can't remember the situation but it was a
2 similar situation where the person had an account but
3 clearly couldn't play, he requested an increase to 17 and
4 his concern was he wanted to be able to field a
5 competitive team and given this was a sport of emphasis
6 for us -- excuse me -- I increased the number to 17.

7 Q. And looking at Exhibit C L through C O on men's ice
8 hockey, again --

9 A. This was actually a lengthy exchange with Ran Pecnold
10 (ph) who is our head coach for the men's ice hockey team
11 who wanted to increase his roster to 30, was I think
12 intended to be set at 28 if I remember correctly. I
13 denied the request because I didn't feel that there was
14 any need to add those players. After speaking with him
15 several times it became clear that his concern was that
16 he, again being a sport of emphasis, he wanted to be able
17 to field a competitive team.

18 In addition to this, in our conversations he shared
19 with me something I didn't know and that was that the
20 locker facilities at our new sports center included 30
21 lockers for both men's ice hockey and women's ice hockey,
22 and given the input and his concerns about competitiveness
23 of the team, I ultimately did agree to increase his number
24 from 28 to 30 as a result, with the assurances that there
25 would be a genuine opportunity for 30 players.

1 Q. And looking at Exhibit C P, which is men's lacrosse,
2 do you recall conversations with the men's lacrosse coach?

3 A. Yes, I do. And this was a situation actually to look
4 back at my notes from June until, where we ultimately
5 ended up. My recollection in this case was that Eric
6 Becca (ph) who is our head coach for lacrosse requested an
7 increase. My intent was to have it at 39. He had
8 requested a roster size of 41, again, around concerns
9 about fielding a competitive team and I did grant his
10 request to have that set at 41.

11 Q. Now, you finalize the, you remember when the roster
12 numbers were actually finalized for the '09, '10 year?

13 A. It was shortly after the letters were issued, the
14 letters were issued I believe July the 2nd, it was shortly
15 before that numbers were finalized at that point.

16 However, again, there were some changes that occurred as
17 situations came up, as we got close to the first date of
18 competition for some of the teams. And part of that was
19 my own process in terms of learning more clearly my own
20 learning curve in terms of counting and so forth.

21 Q. And yesterday you were shown an exhibit dated
22 September 1st of 2009, and again I have the defendant's
23 exhibit number But you were shown a plaintiff's exhibit
24 with a roster plan of September 1st. Was that the final,
25 was that the day when you finally reached the final roster

1 plan for the year?

2 A. Yes, I believe that is correct.

3 Q. So the entire process took June, July and August?

4 A. It was a three month process, yes.

5 Q. Now, did you do anything to monitor the rosters after
6 that, those final numbers were established at the
7 beginning of September?

8 A. Yes, I made it very clear to all of the head coaches
9 as well as the administrative staff and in athletics, I
10 wanted final approval over any changes to the rosters
11 throughout the academic year. So I did monitor very
12 closely in terms of the individual cases. Every case that
13 came up was reviewed by me personally to insure that it
14 was an appropriate request.

15 Q. And how did you evaluate the requests that came to
16 you?

17 A. Tracy Flynn would provide me -- generally what would
18 happen is Tracy Flynn would provide me information with
19 respect to the situation.

20 Q. Who's Tracy Flynn?

21 A. Tracy Flynn is our compliance officer in athletics or
22 in some cases the head coaches would email me directly
23 with the situation if they wanted my input, so through one
24 of those two avenues, information was provided me to allow
25 me to make a decision on a case by case basis.

1 Q. Did you apply different standards for women's and
2 men's teams?

3 A. No.

4 Q. Let me call your attention to Exhibit B V?

5 A. B V?

6 Q. B as in boy, V as in Victor. What, this is an email
7 that you sent out on November 12th to Jack McDonald, Tracy
8 Flynn and Robert Tipson?

9 A. Yes, correct.

10 Q. Who is Robert Tipson?

11 A. Yes, Jack McDonald is on our athletic director, Tracy
12 Flynn, Bob Tipson are both compliance officers.

13 Q. And what led to this email?

14 A. I had a concern regarding one case, I don't remember
15 what it was in particular that did not feel -- it came to
16 my attention so I wanted to clarify it one more time that
17 it was my expectation that all requests would be approved
18 by me.

19 Q. Now, there's a reference in the first paragraph to
20 the Title IX presentation?

21 A. Yes.

22 Q. What is that referring to?

23 A. I made arrangements for all of our head coaches and
24 our administrative staff in athletics to have Title IX
25 training. The original intent was to have it in

1 September. Unfortunately the person who was scheduled had
2 a family situation and that preclude her from being there
3 on that day but it did occur in early November.

4 Q. I'd just like to direct your attention to several
5 examples of email correspondence regarding deletions and
6 additions. And I'm not going to go through these in any
7 great detail but if you could look at Exhibit C Q to begin
8 with.

9 A. Yes, I have it.

10 Q. C Q, just tell us very briefly what the situation was
11 there.

12 A. This is a request that came from our field hockey
13 coach. Her request was to -- sorry, I have to read this
14 one briefly.

15 (Pause)

16 She wanted to add a player to her spring roster for
17 remainder of the spring season and it was someone she
18 wanted to give an opportunity for a try out for the
19 upcoming year, and I did approve that request.

20 Q. If you look at Exhibits C R through C S, C U and C X,
21 those are four separate exhibits that all pertain to the
22 men's lacrosse team and I don't think we need to go
23 through these in any detail but, again, do you have any
24 general understanding of the changes that were made to the
25 men's lacrosse team and approved by you?

1 A. Yes, and I think this is an example of the
2 seriousness that the head coaches took with respect to my
3 request to approve this and with respect to Title Nine
4 compliance.

5 Q. Was the men's lacrosse coach one of the coaches you
6 felt had not understood?

7 A. Yes, he's one of the two coaches I felt had engaged
8 in some inappropriate action and I addressed immediately.
9 But in effect he's asking about the, in this email he had,
10 he had a student who was away for a semester coming back
11 in January as a student so he wasn't a student in the fall
12 semester, and another student coming in as a transfer
13 student, both of whom he wanted to add to the team. The
14 41 that he had in his roster included some walk ons and
15 his question was if I make a request to add these two to
16 my team, should I delete two walk ons and my response was
17 yes.

18 Q. And if you look at Exhibit D E which is the women's
19 soccer, communications with the women's soccer team coach?

20 A. Did you say E E?

21 Q. D as in David, E as in Edward.

22 A. Yes, I have it here.

23 Q. And actually Dave Clark, the same coach who
24 complained subsequently that 27 was too high, correct?

25 A. That is correct.

1 Q. Can you tell us what this communication, what you
2 recall about the communications with Mr. Clark?

3 A. In this email he indicates he had three players
4 trying out for the team during spring semester, he wanted
5 to add one of these players to the roster so she could
6 play in the upcoming games. He indicated that by this
7 point in the season he had seven seniors who were not
8 playing and essentially was down to 17 active players. As
9 a result of his explanation, I did approve his request to
10 add the one player to the team.

11 Q. Now, now there are -- were there other examples of
12 such communications?

13 A. There's more examples than you probably need to go
14 through, that's obviously up to you, but there are several
15 examples of correspondence between myself and head coaches
16 along these lines.

17 Q. Now, turning your attention to the spring of this
18 year, Dr. Thompson, did there come a time when you talked
19 to the coaches about the process for setting the rosters
20 for the upcoming academic year?

21 A. I did -- there was a meeting of all the head coaches
22 that occurred, my recollection is that was in May.
23 Purpose of the meeting was twofold; one was to get their
24 input as a collective group as to how they felt in '09,
25 '10 and addressing any concerns that they had.

1 As I mentioned yesterday the primary concern was the
2 timing with respect to setting of the roster for the
3 upcoming year so they could effectively recruit and so
4 forth, which I will address. And then the second reason
5 was to, again, make a personal invitation to have each one
6 of them provide me input with respect to their individual
7 team and how things went in '09, '10 and any input they
8 had with respect to setting numbers for '10, '11.

9 Q. During the course of the year, was there any coaches
10 on a men's team or women's team who came to you to tell
11 you they felt their roster size was either too large or
12 too small?

13 A. During --

14 Q. During the course of the year?

15 A. No.

16 Q. And how did the meeting that you held with the
17 coaches in the spring, was there any --

18 A. No.

19 Q. -- discussion along those lines?

20 A. No, not at the meeting. You're talking about the
21 large --

22 Q. The large meeting?

23 A. No.

24 Q. Now, did you have email communications with coaches
25 about their roster sizes for the up coming year?

1 A. I did.

2 Q. I'm just going to ask you to look briefly at Exhibits
3 B W.

4 MR. ORLEANS: That is B as in boy.

5 MR. BRILL: B as in boy, W as in wind. I'm not
6 going to go through these individually. I just want to
7 identify them for the record, and then D Y through E K, if
8 you would just flip though those exhibits.

9 A. D as in dog?

10 Q. D as in dg, Y as in year. E as in Edward, K as in
11 kite.

12 A. (Pause)

13 Yes, I recognize all these emails.

14 Q. All right. I don't want to go through them right
15 now. I have a few specific questions about the process of
16 setting rosters for the next year. Before I do, I'm
17 sorry, I want to go back in time because there's one thing
18 I forgot to ask you about.

19 For the process of setting the rosters for '09, '10,
20 there's no email correspondence but did you speak with the
21 track and field and cross country coach about any
22 adjustment to the preliminary roster number that you had
23 suggested?

24 A. Yes, I did. My primarily plan was based on NCAA
25 average squad sizes which I think were 38, if I remember

1 correctly, somewhere in that neighborhood for the track
2 indoor and outdoor track.

3 I met with the prior coach who's no longer with us,
4 Sean Green (ph) and he indicated to me that the NCAA
5 average squad sizes for track include both track and field
6 which we don't have here. So my response to him was what,
7 given that information what do you think is the
8 appropriate roster size? And his response was 30, so I
9 reduced from my plan based on his input down to 30 for
10 both indoor outdoor track teams.

11 Q. Coming back now to this spring, can you just tell me
12 if you remember what sports you adjusted the roster sizes
13 on for this coming year? And actually, maybe it will be
14 easier for you if I refer you to Exhibit B Q.

15 Again this might be -- I'm not sure if this is
16 already in evidence as a plaintiff's exhibit but I'm going
17 to refer to it with the defendant's exhibit number and
18 this is 2010, '11 roster comparison to the current year.

19 A. Yes.

20 Q. And could you just describe briefly the changes that
21 you made, and any conversations you had with the coaches
22 about those changes?

23 A. Would you just like me to roll through this?

24 Q. If you can just do it briefly. There was not too
25 many.

1 A. All of the changes came at the request of the coaches
2 and their input, so that was the only reason I made the
3 change. Men's basketball was increased by two as a result
4 of coaches input. Again, this was his concern about
5 competitive team and some injuries that he had, so that
6 changed from 17 to 19.

7 The change in men's soccer -- excuse me, women's
8 soccer we addressed with Coach Clark indicating he felt 27
9 was not the number that he felt was appropriate. He
10 requested a reduction from one to two and reduced down to
11 25.

12 Women's lacrosse coach, Caro, C-A-R-O, actually
13 requested an increase in her roster to 36. I asked her
14 questions about that. I had significant concern with such
15 a significant increase and whether or not her budget could
16 handle that and coaching staff and so forth. And in the
17 course of our conversation, it became clear to me that her
18 budget was such that that was too high of a number. And
19 the thing that really prompted me to come to a decision
20 not to meet her request was she indicated she had 30
21 uniforms. And so I told her, and I think there's an email
22 actually, I questioned her on that, did she mention that
23 she add 30 uniforms. But as a result of her input and
24 after my questioning, I decided that 30 was an appropriate
25 number for that team and I did not grant her request to go

1 to 36.

2 On the cross country, women's cross country and
3 indoor/outdoor track, these requests came from the head
4 coach, Carolyn Martin. She did indicate in her email to
5 me her reasons for wanting to increase it. That was again
6 having to do with fielding competitive teams, but she did
7 indicate to me that this wasn't an issue where she'd have
8 to recruit, she already identified athletes that she felt
9 wanted to join the team but also actually represented
10 higher quality than what she had on the team for the '09,
11 '10 year. I did question her extensively with respect to
12 the impact on her budget, the coaching staff and so forth
13 and she indicated to me that everything was sufficient to
14 be able to provide opportunities for this number of
15 females on these teams, but I did increase her operating
16 budget by, I think it was, I know it was \$10,000. I think
17 her original budget was 50,000-dollars or thereabouts, and
18 increased it to about \$60,000.

19 Q. And actually if you take a look at Exhibit 81 which
20 you were shown yesterday, which was, that's a Plaintiff's
21 exhibit, which was correspondence with Coach Martin?

22 A. I don't think I have that one here. This is -- oh,
23 I'm sorry.

24 Q. (Hands witness)

25 A. Thank you. Yes, I have it.

1 Q. If you would look at her email to you, that begins at
2 the bottom of the first page and continues at the top of
3 the second page that Mr. Hernandez did not direct your
4 attention to that portion of the exhibit. Is this -- is
5 this what you were referring to when you said that she'd
6 already given you have information about her recruiting
7 and projected athletes for the following year?

8 A. Yes.

9 Q. And, in fact, with respect to any teams that you
10 decided to change the rosters from '09, '10 to '10, '11,
11 had you notified the coaches of your decisions before the
12 final letters were sent out in early June?

13 A. I did. Most coaches knew within a couple of weeks
14 after the meeting with head coaches what their number was
15 going to be. The only hold-up on the final roster numbers
16 was actually the softball coach's not being available.
17 She wanted to talk, unfortunately she was out of town and
18 she indicated she would contact me for a personal meeting
19 when she got back, which hasn't occurred yet, but I felt
20 the email information communication we had gave me
21 sufficient information to make that final determination.

22 Q. And in fact, of the coaches on the women's teams that
23 requested an increase that you granted, that is, in the
24 track and field team and the competitive cheer team, did
25 the coaches indicate to you the state of their recruiting

1 at the time that they requested the increases?

2 A. I didn't hear the last part.

3 Q. Did the coaches advise you of the state of their
4 recruiting for next year at the time that they requested
5 the increases?

6 A. Yes, they gave me information with respect to her
7 recruiting, where they were with it.

8 Q. And what did they tell you?

9 A. Essentially they had identified students who could
10 participate and were competitive and so forth so I had no
11 concerns with respect to anyone they were recruiting. The
12 only other one I didn't cover was softball, and that, I
13 did reduce that from, from '08, '09 was reduced from 22 to
14 20, I believe, and 20 was a number again that coach felt
15 was an appropriate number but she had a concern about
16 signing the letter, as I mentioned before. I did reduce
17 the roster from to 20 to 19 for the upcoming year based on
18 some of the conversations I had with coach.

19 Q. I'm not sure we discussed competitive cheer. If we
20 didn't --

21 A. Competitive cheer, the coach requested an increase to
22 36 for reasons I stated before, with respect to it being a
23 high injury sport and that they do practice in groups of
24 six. So any increase, if I increased it 32, 33, would not
25 have made sense or appropriately address the coach's

1 concerns. And she also indicated to me again what the
2 average squad size was or the schools she was competing
3 against and I did agree to increase that number to 36 as a
4 result of her input and reasoning.

5 Q. Now, going back to Exhibit B Q, which was the roster
6 chart that you prepared for this coming academic year?

7 A. Yes.

8 Q. There is a column for NCAA squad size.

9 A. Yes.

10 Q. Where was that information derived?

11 A. That comes from this communication from the NCAA.

12 Q. What weight, if any, did you give to the NCAA squad
13 size information?

14 A. Well, I think the coaches' input was more significant
15 but this certainly weighed heavily on this decision. I
16 would question any request that was significantly below or
17 over what the NCAA average squad size is.

18 Q. Now, I notice on the projected roster for 2010, 2011
19 if you include volleyball, with 14?

20 A. Yes.

21 Q. And is it the university's intention to eliminate
22 volleyball if the injunction in this case is lifted?

23 A. Yes.

24 Q. And did you look at what the resulting gender
25 distribution of athletes would be without the volleyball

1 team?

2 A. Yes, I did.

3 Q. And do you have those numbers handy?

4 A. I'm sorry, I don't have the number.

5 Q. Well, in general terms what did you find?

6 A. In general terms, given that the team is a relatively
7 small team, does not make a substantial difference in
8 terms of where the number is, including the team, but it
9 does represent substantial proportionality and in
10 comparison with our full-time undergraduate population.

11 Q. Now, I know you mentioned you granted a budget
12 increase in the track and field teams. Did you give any
13 other teams budget increases for next year?

14 A. I did, I increased the budget of the competitive
15 cheer team by \$10,000.

16 Q. Now, with respect to the budget of the competitive
17 cheer team, was the coach held to her budget for the first
18 year?

19 A. No, she wasn't. This, again, is as we alleged more
20 about travel schedule, the extensive recruiting and so
21 forth, we'll make adjustments as we go forward to support
22 team appropriately. It's not unlike any team, once we
23 decide to do something, whether it's an academic program
24 or an athletic team, we're fully committed to insuring
25 there are appropriate resources to support it.

1 Q. And have you let her know that for this coming year
2 that the same basic process would be in effect?

3 A. I haven't spoken to her directly. I believe that the
4 athletic director has though.

5 (Pause)

6 BY MR. BRILL:

7 Q. I have just a few more questions, Dr. Thompson.

8 Did you participate in the head coaching and hiring
9 of the head coaches for the track or competitive cheer
10 teams?

11 A. I did not participate in the hiring of the
12 competitive cheer head coach. My role in the hiring
13 process for the track coach was Carolyn Martin was
14 identified as the candidate that was preferred by the
15 athletics department. My only role in that was to offer
16 her the position and a salary for the job.

17 Q. Did you know the background of either of those --
18 well, I'll say with respect to Carolyn Martin did you, did
19 you know that she'd been at the university for any length
20 of time?

21 A. Yes, Carolyn Martin actually is an alumna of our
22 university. She's been there a very long time and she
23 actually ran track while she was a student and also served
24 in an assistant coaching role, so she certainly had
25 significant experience not only in track but at Quinnipiac

1 University specifically.

2 Q. Did you ever make any suggestion to any coach of any
3 women's team that the coach increase their roster for this
4 coming year?

5 A. No.

6 Q. So, any adjustments to the roster were based solely
7 on the coach's input?

8 A. All the adjustments to all rosters, decreases or
9 increases, came as a result of the coaches and based on
10 their experience of the previous year and in response to
11 my questions in terms of budget facilities, support, so
12 everything came from coaches.

13 Q. The last question I have is you were asked the
14 question on direct examination about whether you
15 investigated or knew of the university investigating
16 allegations of discrimination by Coach Sparks the
17 plaintiff in this case?

18 A. Yes.

19 Q. Can you tell us why, why you did not investigate
20 yourself or authorize anyone else to investigate such
21 allegations?

22 A. Because it was my personal decision not to engage in
23 a conversation with the plaintiff given that we're in the
24 middle of litigation.

25 MR. BRILL: That's all I have. Thank you.

1 THE COURT: All right, any redirect?

2 MR. HERNANDEZ: Your Honor, I have some brief
3 cross on Mr. Brill's direct.

4 THE COURT: Very well.

5 REDIRECT EXAMINATION

6 BY MR. HERNANDEZ:

7 Q. Sir, as I understand your testimony, part of your
8 process in educating yourself about roster management at
9 Quinnipiac University included learning how the roster
10 management program had been run before you came on board,
11 is that correct?

12 A. That is correct.

13 Q. All right. And so you wanted to know, among other
14 things I take it how roster management target numbers had
15 been set prior to 2009?

16 A. Actually I didn't get into the determination of
17 roster numbers prior to -- my concern was more about how
18 it was being implemented.

19 Q. Okay.

20 (Pause)

21 THE COURT: I think it's the projector.

22 BY MR. HERNANDEZ:

23 Q. Just so we're clear here, sir, is it your testimony
24 that your policy with respect to adjustments to the target
25 roster management numbers was applied evenly to the men's

1 teams and the women's teams?

2 A. Was it my practice with respect to input? Is that
3 what --

4 Q. No, decisions to make changes to those numbers?

5 A. Yes.

6 Q. All right. And you understand, sir, that the women
7 student athletes at Quinnipiac University were the under
8 represented sex at QU in terms of athletics?

9 MR. BRILL: Object --

10 A. What year?

11 MR. BRILL: Yes, I object to the form of the
12 question. It's not clear.

13 MR. HERNANDEZ: All right.

14 BY MR. HERNANDEZ:

15 Q. Sir, you had an opportunity to read Judge Underhill's
16 decision in this case?

17 A. Yes, I did.

18 Q. And do you understand that as part of that decision
19 there was a finding that the women's student athletes at
20 Quinnipiac University were under represented at QU as far
21 as athletic participation?

22 A. Prior to 2009, '10, yes.

23 Q. Okay. And as part of your claimed remedial steps in
24 2009, 2010, it's your testimony that you applied the
25 roster management policies to the men's and women's teams

1 the same?

2 A. When I took responsibility as effective July 1st,
3 2009, I treated both men's and women's coaches and teams
4 the same.

5 Q. All right. But you understand, however, that at
6 least according to the finding of Judge Underhill, the
7 women's -- the women were under represented at Quinnipiac
8 University?

9 A. I'm looking forward. I'm not sure what you mean by
10 looking back. My personal feeling is that we have been in
11 compliance with Title IX all along. The issue of prong
12 one came as a result of the decision to eliminate teams.

13 Q. All right. So it's your testimony that in your view
14 Quinnipiac University has always been in compliance with
15 Title IX?

16 A. I believe that's the case as long as I've gone back
17 to look.

18 Q. And that's based upon your understanding of Title IX?

19 A. Yes, it's, my personal view was we were in compliance
20 but we were not in prong one prior to 2009, '10.

21 Q. And it's your understanding, your belief anyway based
22 on what you've learned about gender equity at Quinnipiac
23 University, that in applying that to what you know about
24 Title IX you believe Quinnipiac University has always been
25 in compliance?

1 A. I don't know. I can't speak going back to our
2 history starting in 1929 and I know the law was initiated
3 in the early 1970s, so I can't go back that far.

4 In terms of my own review of things, my focus at this
5 point is are we in compliance today and are we insuring
6 that we're in compliance going forward. That's my
7 responsibility that I accepted when I took on the
8 additional role effective last July.

9 Q. Give me a date, how far back do you think Quinnipiac
10 University has been in compliance with Title IX?

11 MR. BRILL: Objection, Your Honor. It's really
12 irrelevant.

13 THE COURT: Yes, I'm not sure where we're going.

14 MR. HERNANDEZ: I'll move on, Your Honor.

15 BY MR. HERNANDEZ:

16 Q. Sir, you stated that you adjusted Coach Martin's
17 budget, is that correct?

18 A. Correct.

19 Q. She coaches four teams according to Quinnipiac
20 University, is that correct?

21 A. Yes, correct.

22 Q. And you adjusted her budget up ten thousand dollars?

23 A. Yes, that's right.

24 Q. The \$10,000, which team was that for?

25 A. Again, as I explained to you yesterday, the coach has

1 discretion over how that is allocated across teams and how
2 they utilize it for different purposes so there's no line
3 item budgets under the team budget with respect to certain
4 number as to recruiting, certain number has to go for
5 uniforms and so forth.

6 So in hiring people, as I mentioned before, it's a
7 matter of having faith in the coaches based on their
8 expertise and how they performed that they can
9 appropriately allocate their budget across the various
10 needs and in a way that supports the team effectively.

11 Q. Did you take any steps to determine how Coach Martin
12 allocated that \$10,000 across the four teams she has to
13 coach?

14 A. She hasn't allocated it yet because she hasn't
15 received it yet.

16 Q. Okay. Did you put any conditions on how she was
17 going to allocate that \$10,000 across these four teams?

18 A. No. As I said, it's my expectation that a coach will
19 take the responsibility of effectively utilizing the
20 resources across their various needs.

21 Q. And as I understand it, one of the problems that you
22 found when you took over is that you thought that there
23 was insufficient oversight on the coaches, is that
24 correct?

25 A. I did have a concern about a lack of oversight, yes.

1 Q. Okay.

2 A. Of course it's been corrected as a result of my
3 taking it over. I take this very seriously.

4 Q. Okay. And as I understand it from your direct
5 testimony, you identified three issues with roster
6 management; one, insufficient oversight. Two,
7 insufficient training of the coaches. And, three, roster
8 manipulation, and by that I mean dropping and then adding
9 after the first date of competition, is that correct?

10 A. Yes, I indicated I don't -- I think we're trying to
11 indicate there was wide spread manipulation. I don't
12 believe that's the case. I did see cases that the two
13 coaches, the men's baseball team and the men's lacrosse
14 coach did do some things as a result of their concern over
15 some players they had a personal relationship with. But
16 it was not, I don't believe their intent was to not comply
17 we have Title IX. It was more a personal issue in concern
18 for these individual students.

19 But those issues have been corrected and I feel very
20 strongly that, again as I said before, our house is in
21 order going forward.

22 Q. I think with respect to the women's soccer coach, you
23 indicated that you felt that 27 was too high, is that
24 correct?

25 A. For this upcoming year after a year of experience, he

1 felt that 27 was too high.

2 Q. What did he want to get down to?

3 A. He indicated in his email to me that he would like to
4 see a reduction of one to two players and I did reduce it
5 by two.

6 Q. Okay, and he got 25, is that correct?

7 A. That is his number for the upcoming year, yes.

8 Q. And just showing you Plaintiff's 60 in evidence, does
9 that indicate that Coach Clark said if he had his choice
10 he would have a roster of 22 to 24 players?

11 A. Yes, and then he goes onto say his hope was he could
12 reduce for the upcoming year from 27 by one to two
13 players.

14 Q. Okay and he's now down to 25?

15 A. Correct.

16 Q. He's one over what he, the max of what he wanted,
17 correct?

18 A. He's one, in terms of the beginning of the email,
19 yes.

20 Q. Did you take any steps, sir, to learn what the
21 process was for setting roster management target numbers
22 prior to July of 2009?

23 A. Well, I started to get an understanding of things
24 knowing that I was taking on responsibility and in
25 response to what's happening with respect to the lawsuit

1 and so forth. So I did start to think about and plan for
2 what I knew was going come become of my role effective
3 July 1st.

4 Q. Is that a yes?

5 A. Yes.

6 Q. All right. Sir, drawing your attention to your
7 testimony from May 14th, 2010. Copy for you. (Hands
8 witness) And referring counsel to page 15. Lines 19
9 through 25. Were you asked these questions and did you
10 give these answers?

11 Did you take any steps to learn about how the roster
12 management targets were set before July of 2009?

13 Answer: No.

14 Question: Did anyone tell you what the process had
15 been for setting roster management in target numbers prior
16 to July of 2009?

17 Answer: No.

18 Was that your testimony?

19 A. Yes, that's a different question than what you just
20 asked me a moment ago. The question you asked me was
21 whether I preparing for setting roster targets going
22 forward. This question, you asked me earlier --

23 MR. BRILL: Your Honor, I believe in all
24 fairness, he needs to show the witness the continuation of
25 that question and answer on the next page. It can't be

1 read aloud.

2 MR. HERNANDEZ: He has a copy of the transcript
3 in front of him.

4 MR. BRILL: Excuse me?

5 MR. HERNANDEZ: He has a copy of the transcript
6 in front of him.

7 MR. BRILL: I'll ask that the witness be allowed
8 to read the questions and the answers if he's intending to
9 impeach the witness with inconsistent testimony.

10 THE COURT: One, I don't have a transcript so I
11 can't decide. The witness already said his answer wasn't
12 inconsistent so I don't feel out of fairness it needs to
13 go further.

14 MR. BRILL: All right.

15 BY MR. HERNANDEZ:

16 Q. Coach Martin, you were relying on her, is that
17 correct?

18 A. Yes.

19 Q. All right. And do you know if she had ever been a
20 head coach before she took on the task of managing four
21 teams?

22 A. No, I don't believe she was.

23 Q. All right. Do you know if she had had any experience
24 in recruiting before she took on the task of coaching four
25 teams?

1 A. I don't know what role she played in recruiting as an
2 assistant coach.

3 Q. Do you know what sort of administrative support Coach
4 Martin was receiving?

5 A. In terms of clerical or secretarial support?

6 Q. Yes, sir.

7 A. There's a shared secretarial resource within the
8 athletics department for all of the head coaches.

9 Q. And did she have anyone -- did she have any increased
10 access to administrative staff as a result of her increase
11 in the women's track team?

12 A. No.

13 Q. I just want to make sure I understand this. Now,
14 compared to Coach Sparks, how many years has Coach Sparks
15 been a head coach at Quinnipiac?

16 A. Not sure. I believe it may be four years or so.

17 Q. Okay. And she would have also had five years
18 actively recruiting, is that correct?

19 A. That's one of her duties as head coach would be
20 recruiting, yes.

21 Q. And you understand that recruiting is a significant
22 aspect in Division I athletics?

23 A. In terms of fielding a competitive team, yes.

24 Q. Can you tell the court what Coach Powers' experience
25 is as a head coach in a Division I school?

1 A. I don't think she was a head coach in a Division I
2 school prior to taking on this. I believe that's the same
3 situation as Coach Sparks when she joined us.

4 Q. And she has no experience in actively recruiting for
5 a Division I school, is that correct?

6 A. That I can't tell you, I don't know.

7 Q. Well --

8 A. Other than her experience with Quinnipiac.

9 Q. You have no idea what her experience is as far as
10 recruiting?

11 A. No, I -- again, if I could give you an analogy. The
12 breadth of my responsibility is such that this would be
13 like me getting into minutiae with, micro management with
14 a department chairperson. The expectation is when you
15 hire somebody, they have the skills, capabilities and so
16 forth to carry out their duties effectively. I have that
17 confidence in my department chairs, my deans, all the
18 student affairs staff, all services staff, essential life
19 staff, the head coaches. If there's an issue or problem
20 brought to my attention, I address it; otherwise my
21 expectation is that they'll carry out their duties and
22 responsibilities as expected.

23 Q. Okay. And what about qualifications? You understand
24 now that Coach Powers is not NCAA certified for
25 recruiting?

1 A. Actually she is. After your question yesterday, I
2 questioned our athletic director about it. She did pass
3 her test in May.

4 Q. That would be May of this year?

5 A. Correct.

6 Q. All right. And I believe I asked you yesterday when
7 deposits were due. Did you take any steps to -- I believe
8 you said June 1st?

9 A. That is correct.

10 Q. Did you take any steps to verify that?

11 A. No, I believe it was June 1st.

12 Q. Would you be surprised to learn that it's May 1st?

13 A. I'm sorry, you're right. It is May 1st.

14 Q. All right. So she passed her recruiting test after
15 deposits were due?

16 A. Yes, she did. It was sometime in May.

17 Q. So she had no opportunity to recruit off campus for
18 2009, 2010?

19 A. Not that I'm aware of.

20 Q. And are there any men on the competitive cheer team?

21 A. No, there are none.

22 Q. All right. So the 36 competitive cheer athletes,
23 we're talking about women, correct?

24 A. Yes.

25 Q. All right. None of the male athletes are

1 participating -- well, withdrawn.

2 MR. HERNANDEZ: If I could just have a moment,
3 Your Honor?

4 THE COURT: Sure.

5 (Pause)

6 MR. BRILL: I have nothing on redirect, Your
7 Honor.

8 THE COURT: He's not done.

9 MR. BRILL: I'm sorry.

10 THE COURT: But that's good to know.

11 MR. BRILL: Up to this point.

12 BY MR. HERNANDEZ:

13 Q. Sir, I believe part of your answer was that when
14 Quinnipiac University decides to do something, you commit
15 the necessary resources; was that your testimony did I
16 hear?

17 A. That is correct.

18 Q. Is that correct? And did Quinnipiac University make
19 a commitment to restart its women's volleyball team?

20 A. Yes, we did, as a result of the temporary injunction,
21 the injunction hearing.

22 Q. I'm talking about a few years ago. A few years ago
23 Quinnipiac University actively recruited Coach Sparks,
24 actively recruited student athletes, made promises and got
25 them to come to the campus to play volleyball for

1 Quinnipiac University, is that correct?

2 A. The volleyball team has been sufficiently supported
3 by a budget, coaching staff, facilities, and the same
4 levels of support that are provided to every one of our
5 athletic teams.

6 Q. And in March of last year, that support was pulled
7 out from underneath their feet, correct?

8 A. We did make a budget decision last year with regard
9 to two men's teams as well as the women's volleyball team,
10 that we needed to eliminate those for budgetary reasons.

11 Q. So Quinnipiac University withdrew its commitment to
12 the necessary resources to support volleyball, correct?

13 A. Again, it was a budget decision with respect to three
14 teams. It was not limited to women's volleyball.

15 Q. Okay, I'm not talking about budget. I'm talking
16 about people. Living, breathing people. Quinnipiac
17 University withdrew the resources to support the women's
18 student athletes and Coach Sparks. Fair?

19 MR. BRILL: This is just argumentative. There's
20 no factual dispute here about this decision.

21 THE COURT: Well, it's cross. That goes to
22 prior testimony. I'm allow it.

23 BY THE WITNESS:

24 A. I don't feel good about telling any teams. My
25 primarily concern, my role in particular is with regard to

1 student well being and student welfare. So I wouldn't say
2 that -- I mean there are 40 employees as well and either
3 their positions were cut or were not refilled. So this is
4 a very tough decision process throughout the economic
5 crisis. This was not something that was done lightly. It
6 was one difficult consideration for well being. So it's
7 not something that I feel good about but it was a
8 necessary decision given our economic condition and our
9 budgetary situation at the time.

10 Q. And, sir, drawing your attention to your earlier
11 testimony, you said that after Coach Fairchild expressed
12 her concerns, you had meeting with her, is that correct?

13 A. Yes, I had several meetings with Coach Fairchild.

14 Q. And you discussed her concerns about the target
15 number?

16 A. Are you referring to last year or this upcoming year?

17 Q. All right. For 2009, 2010?

18 A. Yes, I did meet with her.

19 Q. All right. And what about with respect to an email
20 that she sent regarding the target roster number for 2010,
21 2011?

22 A. I did not speak to her directly. I offered to. Her
23 response was she was going to be out of town I think in
24 Texas for a period of time and she indicated to me she
25 would be getting back to me to have that personal meeting.

1 She's not done so yet.

2 MR. HERNANDEZ: I have no further questions,
3 Your Honor.

4 THE COURT: All right.

5 MR. BRILL: Nothing on redirect.

6 THE COURT: Very good. Sir, you're excused.

7 Thank you.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 MR. ORLEANS: Your Honor, before Mr. Webb takes
11 the stand, with respect to your ruling this morning on the
12 privilege question, defense counsel has quite reasonably
13 asked for a copy of the unredacted document that you ruled
14 was not privileged, and unfortunately we didn't bring it
15 with us. I wonder if it might be possible for your staff
16 to make a couple copies of -- one for each lawyer.

17 THE COURT: Tell you what, we can do that.

18 MR. ORLEANS: Of that one?

19 THE COURT: I was going to say I can return --
20 the unredacted were given to me for use in camera. I
21 don't intend to docket them in any way, even under seal
22 unless anybody thinks that's necessary for further review.
23 So I'll have my clerk during the next break make two
24 copies of the portion that were disclosed.

25 MR. ORLEANS: That would be useful. And then we

1 could have one and disclose one to the other side.

2 THE COURT: All right.

3 MR. ORLEANS: Thank you.

4 THE COURT: Sure. And you're calling Mr. Webb?

5 MS. GALLES: He's in the restroom.

6 THE COURT: This counts toward your time.

7 MR. BRILL: Can we have a two minute restroom
8 break?

9 THE COURT: You know what --

10 MS. GALLES: There he is.

11 THE COURT: We'll take our morning break. Why
12 don't we take 15 minutes, come back at one until 11.

13 MR. ORLEANS: May we strike Mr. Webb's location
14 from the record? It's a little more personal than we
15 expected.

16 (Whereupon a recess was taken from 10:25
17 o'clock, a. m. to 10:40 o'clock, a. m.)

18 MS. GALLES: Your Honor, plaintiffs would like
19 to call Jeff Webb who's the next witness. We do have one
20 housekeeping matter related to Mr. Webb though. It's
21 Exhibit Three of Mr. Webb's report which is Trial Exhibit
22 135, was supplemented before his deposition and
23 unfortunately the supplement which is just basically the
24 most recent list of teams was not included, and we've
25 provided a copy and showed it to the defense counsel.

1 I understand that when the point comes to admit
2 it, they may object, but at least for purposes of making
3 sure that all of the books and everything have the right
4 exhibit, maybe submit that to the books or however --

5 THE COURT: Sure.

6 (Hands Court)

7 MS. GALLES: -- it needs to be done. I made a
8 bunch of copies.

9 MS. FRIEDFEL: I've got it. Thank you.

10 THE CLERK: Actually I could use two more
11 copies.

12 MS. GALLES: All right, there you go.

13 THE COURT: This is replacing or supplementing?

14 MS. GALLES: Supplementing, because what's in
15 there is for 2009 and that was for 2010.

16 THE COURT: Very good.

17 Sir, please stand and raise your right hand
18 J E F F W E B B , called as a witness on behalf
19 of the Plaintiff, having been duly sworn by the Clerk,
20 testified as follows:

21 THE COURT: Please be seated, state your name.
22 Spell your last name for the record.

23 THE WITNESS: Jeff Webb. W-E-B-B.
24
25

1 DIRECT EXAMINATION

2 BY MS. GALLES:

3 Q. Mr. Webb, what is your current position?

4 A. I'm the Chairman and chief executive officer of
5 Varsity Brands Incorporated.

6 Q. And what is Varsity Brands?

7 A. Varsity Brands is a company that provides products
8 and services for all ages of cheerleaders and cheer
9 service.

10 Q. What is the Universal Cheer Association?

11 A. The Universal Cheerleaders Association is a division
12 of Varsity Brands and its primary purpose is to provide
13 training and competition opportunities for cheerleaders.

14 Q. So, as head of Varsity Brands you are the head of the
15 Universal Cheerleaders Association?

16 A. I am.

17 Q. And what is the National Cheerleader Association, or
18 NCA?

19 A. NCA is similar to the Universal Cheerleaders
20 Association, provides educational services for
21 cheerleaders. It's just a different brand with a slightly
22 different curb aluminum.

23 Q. And is it affiliated in any way with Varsity Brands?

24 A. Yes, it's also a division of Varsity Brands.

25 Q. So, as head of Varsity Brands are you also the head

1 of the National Cheerleader Association?

2 A. Yes, ultimately.

3 Q. Okay. What is the United Spirit Association?

4 A. United Spirit Association is also a division of
5 Varsity Brands. It is, it's a regional provider, West
6 Coast primarily, provider of educational services to
7 cheerleaders.

8 Q. Okay. And are you the -- is it affiliated in any way
9 with Varsity Brands?

10 A. Yes, it is. It's a division, a division of Varsity
11 Brands.

12 Q. Okay, and as head of Varsity Brands, are you
13 ultimately head of the United Spirit Association?

14 A. Yes.

15 Q. Why are there three separate organizations there as
16 opposed to one; is that historical or how did that happen?

17 A. Yes, these -- into these grew up separately. In
18 fact, the National Cheerleaders Association and United
19 Spirit Association at one time were part of separate
20 companies that were acquired by Varsity.

21 Q. How did you first get involved in cheerleading?

22 A. I was a cheerleader in my senior year in high school,
23 Dallas, Texas, and following that, I was a cheerleader at
24 the University of Oklahoma. And during the summers my job
25 was, my summer job was as an instructor for the National

1 Cheerleader Association at training camps throughout the
2 southeast and midwest.

3 Q. And what was your first job out of college?

4 A. I went to work as a director of external programs for
5 the National Cheerleader Association based in Dallas.

6 Q. And what were your responsibilities in that position?

7 A. I was responsible for developing the educational
8 curriculum for the high school and collegiate programs,
9 primarily in camp. I was also responsible for directing
10 the larger camps in the country.

11 Q. Why did you decide to take a job with a cheerleading
12 group outside of -- when you got out of college?

13 A. Well, throughout my -- again, my summer job was as an
14 instructor and I developed a real passion for teaching
15 cheerleading and training cheerleading and the NCA job
16 gave me a chance to do that, and also gave me a pretty
17 good living.

18 Q. How long did you work at the NCA?

19 A. I was there two and-a-half years.

20 Q. And what did you do after leaving NCA?

21 A. I started my own organization, Universal Cheerleaders
22 Association.

23 Q. And why did you start a new organization?

24 A. Well, I began -- I'd begun to develop a different
25 concept, nuance approach to cheerleading that was really

1 different than what NCA's historical approach had been,
2 and that approach included adding more athleticism,
3 entertainment to the traditional role of cheerleading.
4 And I felt that within the NCA confines, because it had
5 been there for 20 years and had its own, you know, format
6 and traditions, I didn't feel like I'd had the opportunity
7 to actually, to do that.

8 Q. All right. At some point in your -- well, what kinds
9 of things did you add to cheerleading as part of your
10 development of UCA?

11 A. Well, we added, you know -- well, what I most recall
12 now, we added a real athletic component and also
13 contained. And the idea that the concept that I really
14 came up with was that the sport was changing and becoming
15 more of an entertainment venue really, that cheerleading
16 was part of that. And a promoter of that can also change,
17 and we felt like it would be more effective for
18 cheerleaders to be more athletic, to provide entertainment
19 during the, kind of the dead spots, if you do --

20 Q. Excuse me, what do you mean by dead spots?

21 A. The boring parts of the game which we all are
22 familiar with. I think except for volleyball, of course.

23 Q. You mean basically half time, time outs?

24 A. Yes, half time, time outs, just pre-game, so on.

25 Q. And when did you start the UCA?

1 A. Our first games were the summer of 1975.

2 Q. I should ask when did you start working at the NCA?

3 A. That would have been January of 1972.

4 Q. Okay. And, again, what did you say for --

5 A. UCA started in the Fall of 1974 and our camps were,
6 the first camps were the Summer of 1975.

7 Q. Okay. For UCA?

8 A. For UCA.

9 Q. Now, at some point with the UCA, did you start
10 creating any kind of competitions for cheerleaders?

11 A. Yes, yes.

12 Q. Would you please explain the circumstances for doing
13 so?

14 A. Yes. We wanted to get more, have visability for our
15 concept and style of cheerleading and we were too small to
16 have kind of national footprint in conducting our camps
17 and we believed that the best way to get exposure for what
18 we were doing was to get cheerleading on television, our
19 type of cheerleading. And we, through a contact with a
20 new shoe company I was introduced to some television
21 production people and they came to one of our camps and
22 looked at what was happening, thought it was very visual
23 and said, well, we can -- we think this has television
24 opportunities but we need a format that gives us some
25 drama. And so we indicated why don't we create a

1 competition between cheerleading groups? And that's what
2 we did.

3 Q. Okay. And so when you added that competition format
4 for television, did you think you were changing
5 cheerleading or creating a new sport?

6 A. No, absolutely not. We were trying to, again, get,
7 you know, visibility and promotion of our style of
8 cheerleading.

9 Q. Okay. And when you started working with these
10 television folks, about what time was that?

11 A. 1980.

12 Q. Okay. And eventually did any colleges participate in
13 these competitions?

14 A. Yes, several years later.

15 Q. Okay, and were these like the football cheerleaders
16 or what we might in this trial call sideline cheerleaders?

17 A. Yes, these were the classical, the only cheerleading
18 squads that the schools had.

19 Q. How many competitions a year were offered for these
20 college teams?

21 A. One.

22 Q. Is that -- so how many competitions a year -- like if
23 you're the, you know, the University of Florida or
24 whatever, how many competitions a year did they have to
25 compete in?

1 MS. FRIEDFEL: Objection. Could we get a
2 clarification of the time period?

3 MS. GALLES: He just said in the 1980's.

4 MS. FRIEDFEL: Okay so we're still in the
5 eighties. Thank you.

6 BY THE WITNESS:

7 A. One.

8 Q. Now, do you still conduct and provide the competition
9 opportunities for the college groups?

10 A. Yes.

11 Q. And do colleges still attend your events?

12 A. Yes.

13 Q. Okay. How many events does the Universal Cheer
14 Association put on for colleges each year?

15 A. One.

16 Q. And the National Cheerleading Association, how many
17 events does it put on for colleges each year?

18 A. One.

19 Q. And is that called the NCA Nationals?

20 A. Yes.

21 Q. Okay. How long have you been -- the Universal Spirit
22 Association, does that still run any competitions for
23 cheerleaders?

24 A. The United Spirit Association?

25 Q. Thank you for correcting me.

1 A. Yes, it does have competitions for cheerleaders.

2 They have one for colleges.

3 Q. Okay. And is that still the case through the -- as
4 we stand here in court today in 2010?

5 A. Yes.

6 Q. So, have UCA, NCA and United Spirit Association --
7 did I get it right that time?

8 A. Yes.

9 Q. Thank you. So they have been running one competition
10 a year since, ever since the 1980s? College competition?

11 A. NCA, UCA started their college competitions about
12 1990.

13 Q. Okay. And you're still running those competitions?

14 A. Yes.

15 Q. Okay. And at any time during running any of those
16 competitions, United Cheerleaders Association, National
17 Cheerleaders Association or United Spirit Association, did
18 you think that you were running a sports competition?

19 A. No.

20 Q. Over the years from when you first started the
21 competitions in the 1980's through this school year, have
22 you changed the way you conduct or run these competitions
23 at all?

24 A. The competitions are essentially the same. Rules
25 may, may vary slightly but they are essentially the same.

1 Q. Could you please describe for us -- let's take the
2 Universal Cheerleader Association, their college
3 competition, could you please describe for us what is
4 involved?

5 A. Each team that enters -- and it's open to anybody.
6 Each team that enters submits a videotape during the fall
7 of their cheerleading team in action leading a crowd.
8 They have classical responsibility; that can be everything
9 from being on the sideline at football games, it can be
10 pep rallies, it can be alumni functions where they really
11 are demonstrating their spirit leading competitions and
12 they get a score for that.

13 Then when the teams sign up to enter the actual
14 physical competition which takes place in the middle of
15 January, that crowd score goes with them, and then they,
16 in Orlando they perform a two minutes, two and-a-half
17 minutes, two minutes and 15 second routine that includes,
18 again, a cheer or chant, some type of crowd leading
19 component, and then also a minute and-a-half of dance,
20 routine with dance moves and acrobatics.

21 Q. So, is there any other component of the competition
22 for any given time?

23 A. No.

24 Q. Okay. Now, the National Cheerleaders Association,
25 okay, do you run that national event?

1 A. Yes.

2 Q. And where does that take place?

3 A. Daytona Beach, Florida.

4 Q. And could you please describe what that competition
5 or what that event looks like?

6 A. Again, the teams sign up. It's open to anybody.
7 They come to Daytona and the first day they present with,
8 again, a portion of the routine that precedes the dance
9 routine separately. It goes with the first. That
10 includes kind of a spirit leading traditional performance
11 where they meet the crowd, they do signs and flags and
12 megaphones and solicit a crowd response for their score.

13 Q. How long is that?

14 A. That is approximately a minute long.

15 Q. Okay.

16 A. And then that's followed by an approximately two
17 minute routine that is the dance routine with acrobatics.

18 Q. So is that the entire performance of the cheerleading
19 squad at nationals?

20 A. Yes.

21 Q. So is the entire performance three minutes or less?

22 A. Yes.

23 Q. And just to clarify, when you say that, you mention
24 that anyone can enter; does this mean any college
25 cheerleading team anywhere in the country can enter the

1 event?

2 A. Yes.

3 Q. Do they have --

4 A. I'm sorry, speaking of the NCA?

5 Q. Yes, NCA.

6 A. Yes.

7 Q. Do they have to go through any kind of qualifying
8 rounds to earn a right to go or just anybody, all-comers?

9 A. Anybody.

10 Q. Now, let's back up to the Universal Cheer
11 Association. Is that the same for the Universal Cheer
12 Association?

13 A. Yes.

14 Q. Okay. Now, at the Daytona event, are there different
15 divisions or just everybody who shows up?

16 A. There are different divisions.

17 Q. And could you please explain what the different
18 divisions are for all the events that take place at
19 Daytona?

20 A. In general the divisions are divided into size of the
21 school, and then also whether it's coed or all female.
22 And then there's also division based on ability level
23 which would be like intermediate or advanced so you have
24 this matrix of divisions.

25 Q. And is there also a dance competition that goes along

1 at the same time as the cheer competition?

2 A. Yes, there is.

3 Q. Is there also a mascot competition that goes along
4 with --

5 A. Yes.

6 Q. And could you please describe for us the basis of the
7 dance competition that goes along the same lines?

8 A. The dance competition is for separate dance or pompom
9 teams. That's what they are referred to. Approximately
10 two minute routine. All dance with no acrobatics allowed.

11 Q. Okay. And what about the mascot routine? What does
12 that involve?

13 A. The mascot routines are generally, you know, team or
14 a routine for a couple minutes and it's more of a skit.

15 Q. Now, next year are you going to be adding a division
16 for -- let me back up.

17 Do you know what the NAIA, at National Association of
18 Intercollegiate Athletics is?

19 A. Yes.

20 Q. Do you know what the NCAA is, the National Collegiate
21 Athletic Association?

22 A. I do.

23 Q. And so next year are you going to be starting a
24 division for NAIA schools?

25 A. Yes, we're discussing it and it looks like we're

1 going to do that.

2 Q. Is that something that's going to start next year?

3 A. Next year.

4 Q. Is that going to be for the traditional sideline
5 cheerleader, the NAIA schools?

6 A. Yes. To the best of my knowledge all the schools
7 that participate have the classical cheerleading function,
8 spirit.

9 Q. And these NCA Nationals in Daytona, has Quinnipiac
10 ever participated?

11 A. Yes, they have, yes.

12 Q. Before this year, to your knowledge, before this year
13 had Quinnipiac ever entered NCA as a varsity or sport
14 cheer team?

15 A. No.

16 Q. Now, who is the -- do you have a Director of College
17 Programs for the Universal Cheerleader Association?

18 A. Yes.

19 Q. And who is that?

20 A. John White.

21 Q. Do you have a director of college programs for the
22 National Cheerleaders Association?

23 A. Yes.

24 Q. Who is that?

25 A. Bill Boggs.

1 Q. And do they report to you?

2 A. Yes.

3 Q. Now, over the years of running these competitions,
4 UCA, NCA, have you and your staff, meaning your directors
5 of college programs, developed a relationships with the
6 teams and their coaches?

7 A. Yes.

8 Q. Okay. So do either you or those two gentlemen that
9 you mentioned have familiarity with the types of teams and
10 the coaches who coach them?

11 A. Yes, with every single one of them.

12 Q. Okay. Mr. Webb, I would like to -- well, as part of
13 running those competitions, do you or your directors of
14 college programs keep track of the types of teams that
15 enter, for example, whether they call themselves --
16 whether they are classical cheerleading teams or whether
17 they call themselves a varsity sport cheer team?

18 A. Yes.

19 Q. Okay. Mr. Webb, and do you and your directors of
20 college programs, is that something that you keep in the
21 ordinary course of your business?

22 A. Yes.

23 Q. And why do you keep track of that information?

24 A. Well, beginning about six years ago, the University
25 of Maryland declared that it was attempting to develop

1 this cheerleading squad to be considered a sport and was
2 especially, as I say, working a fine line and we felt that
3 that was potentially a new direction, something we should
4 be aware of and we should follow to see what the effect
5 might be.

6 Q. Okay. And before the last year or two, had any
7 school that entered any of your competitions ever called
8 itself a varsity sport besides Maryland?

9 A. Until a couple years, only Maryland.

10 Q. Okay.

11 A. Couple years ago.

12 Q. Okay, I'd like you to turn to Exhibit Three in your
13 report, which is Exhibit 135.

14 MS. FRIEDFEL: Your Honor, we object to the use
15 of this exhibit. When Mr. Webb was deposed about this
16 document he testified that he did not know how it was
17 prepared, he didn't know what arrangement was used to
18 prepare it. The designations as to whether something was
19 sideline, competitive or club was not made by him. They
20 were made by his employees and his employees aren't here
21 and I can't cross examine them to find out what the basis
22 of their knowledge is.

23 MS. GALLES: Your Honor, I do believe that she's
24 slightly mischaracterizing the deposition but what
25 Mr. Webb said was he personally did not create these

1 charts but that his directors of college programs created
2 them and they have personal knowledge of every single team
3 on here, they were created in the ordinary course of
4 business, he has personal knowledge of many of these
5 teams. But otherwise we would have -- there are several
6 hundred or thousand, you know, Varsity employees but they
7 ultimately report to Mr. Webb and I really don't think
8 there's any dispute regarding the content of which teams
9 are sideline cheer. These are business records of Mr.
10 Webb's organization.

11 THE COURT: Let me make sure I understand the
12 objection. What's the objection?

13 MS. FRIEDFEL: The objection is, well, for one,
14 I wasn't able to thoroughly question him about the
15 document in the course of his expert disclosure because
16 when I asked him if he created the document or if he knew
17 what information was used, he testified that I believe
18 this was created by John White and Bill Boggs.

19 And I said did they rely on any documents in
20 preparing this?

21 I'm sure -- they have knowledge, I'm sure they
22 just went to the actual registration list. That's what
23 they do. Yes, they would have knowledge of this.

24 And I said, my question was would they rely on
25 documents.

1 And you said they relied on their registration
2 list. And he said that's what I assume, I didn't ask them
3 how they got it, this is what they do, they work with this
4 all the time. And I'm sure they just went, I would assume
5 they just went to the registration documents and I'm sure
6 that's accurate.

7 So he didn't know. He's assuming that they went
8 to registration documents, he didn't know for sure.

9 And when I followed up with Ms. Galles she
10 emailed me and told me that they looked up registration
11 documents for the identities of the teams that competed at
12 their competition.

13 If that's what they want to put it in for,
14 that's fine, I have no objection. They have a business
15 record of who competed in their competition. But she also
16 told me that the basis of the categorization, whether it
17 was sideline or competitive, it was based just on their
18 knowledge and what they happen to know from their
19 communications and their knowledge of the coaches. But I
20 can't ask him questions about that because they are not
21 here.

22 MS. GALLES: She certainly could have chosen to
23 depose any of those gentlemen, that this is their boss and
24 this information was provided or created in the normal
25 course of business for him, for their Varsity Brands, and

1 he ultimately is the head of Varsity Brands.

2 THE COURT: All right, I take it the objection
3 is a hearsay objection?

4 MS. FRIEDFEL: Yes, Your Honor.

5 THE COURT: Sir, was this document created --
6 why was it created?

7 THE WITNESS: It was created because we had --
8 I'd asked in our meetings with our collegiate directors,
9 and there are only three, I asked them to track the teams
10 that participate and the way they are categorized so we
11 can watch how things develop. This is based originally
12 beginning five or six years ago in Maryland, saying
13 they're trying to move to a sport.

14 This was done exactly the way that I would ask
15 for a report. There's no way I would sit there and
16 develop this report myself. These are vice presidents of
17 our company who in the typical course of business provide
18 me this exact format, this exact report. I'm highly
19 confident it's accurate.

20 THE COURT: So it was prepared for your
21 business, not for your expert report.

22 THE WITNESS: Were certainly both.

23 MS. GALLES: Well --

24 THE COURT: Well, okay.
25

1 BY MS. GALLES:

2 Q. Let me back up. The first part of these deal --
3 these are for 2009, are they not?

4 A. Yes.

5 Q. Okay, and you weren't asked to provide some kind of
6 expert report before winter or spring of this year, were
7 you?

8 A. That is correct.

9 Q. So those were prepared long before you were ever
10 asked to participate in this case, were they not?

11 A. Yes.

12 MS. FRIEDFEL: Your Honor, I'd also like to
13 point out with respect to the supplement that Ms. Galles
14 identified earlier as the 2010 nationals, when I
15 questioned him about this document at his deposition it
16 includes a bunch of columns before the school names that
17 say classical and group, and when I asked him what some of
18 these meant he couldn't tell me. I asked him what CD
19 meant, he didn't know. I asked him what MA meant, he
20 didn't know.

21 THE COURT: Well, okay, but that's a different
22 problem. You know, a witness isn't always expected to
23 know everything about every business record. The question
24 for admissibility is not --

25 MS. FRIEDFEL: Fair enough.

1 THE COURT: It's is this a business record, so
2 that's what I'm trying to sort out.

3 Sir, give me a better sense who prepares this,
4 when and why.

5 THE WITNESS: Yes. These lists are prepared
6 again by the directors of our collegiate programs and
7 again we have one for the three separate collegiate
8 programs. These are developed for the Universal Spirit
9 Association, National Cheerleader Association. These are
10 the primary national competitions. And these, again, are
11 executives in the company. They are charged with knowing
12 everything about every one of their accounts, the colleges
13 they work with.

14 So, for instance, from the National Cheerleaders
15 Association report, Mr. Boggs would be responsible for
16 knowing every coach, knowing the type of team it is,
17 knowing what their environment is at their school, knowing
18 how they classify themselves. That's his responsibility.
19 It's his only responsibility. All he has is college. So
20 for college he only has the college competition and then
21 the four to five camps that are run. So he is charged
22 with having a -- just a very, very deep knowledge of each
23 one of these programs.

24 THE COURT: Okay. Is the information
25 classifying sideline, club or sport taken from an

1 application or a registration document submitted by the
2 team or is that an evaluation made by someone who works --

3 THE WITNESS: That would be taking the actual
4 registration and Mr. Boggs and Mr. White would clarify
5 with the team what they are. But, but again, again, Your
6 Honor, these directors know every -- there aren't that
7 many teams, 150 teams or 200 teams. They knew every
8 single team. They know every coach. They know the
9 purpose of their program. They can tell you all kinds of
10 detail.

11 THE COURT: I understand.

12 MS. GALLES: And I can clarify one other point,
13 Your Honor.

14 BY MS. GALLES:

15 Q. What the UCA -- are only sideline teams even allowed
16 to participate by rule of the UCA?

17 A. Yes.

18 MS. GALLES: So it's another reason why we know
19 the accuracy of that.

20 MS. FRIEDFEL: As to the UCA but not NCA.

21 MS. GALLES: Right.

22 THE COURT: Okay.

23 MS. GALLES: Again we say if they wanted to
24 depose Mr. Boggs, they certainly could have.

25 MS. FRIEDFEL: It's not our obligation to depose

1 every employee.

2 THE COURT: All right, all right. We're trying
3 to figure out if it comes in or not. Let's figure out if
4 it comes in.

5 I'm still uncertain whether this information of
6 the sideline sport club clarification that the team
7 indicates on a registration form or whether it's simply
8 your employee understands that Armstrong State College is
9 a sideline squad.

10 THE WITNESS: On the actual NCA registration I'm
11 not sure. It's not the kind of detail that I would be
12 involved with, and what I would do is rely on my directors
13 for the accurate information which, Your Honor, we take
14 from the registration. And, again, I can't emphasize
15 enough they are, they are in constant contact all year
16 long with these different programs and these different
17 coaches. Not only are they responsible for getting, for
18 promoting their participation in our programs, these
19 directors also serve as a resource for those colleges.
20 They come to us any with any particular problems they may
21 have or to help them, you know, to help them with issues
22 with their team and their administrations.

23 THE COURT: Does the NCA group competitors,
24 according to this sideline, club or sport classification,
25 do you have a sport --

1 MS. GALLES: There's more background to that
2 that if you'd like me to lay it, Your Honor --

3 THE COURT: All right.

4 BY MS. GALLES:

5 Q. Okay. Before last year, did any team besides
6 Maryland even represent itself to be a varsity sport to
7 your team?

8 A. It was Maryland and possibly Fairmont State and
9 that's it.

10 Q. So is this the first year, last year or this year,
11 the first year, the first time that any of these teams
12 even represented themselves as something other than a
13 sideline or a club team?

14 A. Beyond Maryland and Fairmont State, yes.

15 Q. Okay, so it's really all about what they are doing
16 this year?

17 MS. FRIEDFEL: Further, Your Honor, when I
18 inquired about the documents that were used to prepare
19 this, Ms. Galles represented to me that the registration
20 forms did not contain any information about these
21 classifications and so I didn't pursue getting them
22 because if they didn't have the information, it wasn't
23 necessary.

24 THE COURT: Okay.

25 MS. GALLES: I believe Mr. Webb said he's

1 relying on his director of college programs who in the
2 course of his day to day activities it's his
3 responsibility to have intimate knowledge of each and
4 every one of these teams and, therefore, has personal
5 knowledge of what these teams are and has provided and
6 collected that information every year since Maryland and
7 provides it to Mr. Webb every year since Maryland, and --

8 THE WITNESS: This is our business to know this.
9 This is what we do.

10 MS. GALLES: It is their, we would represent it
11 is their business record. And also, despite their
12 objections to it, I really didn't think there's any
13 dispute as to who's a varsity team and who's not a varsity
14 team or purporting to be a varsity team in the litigation.

15 MS. FRIEDFEL: I don't know there's a dispute as
16 to the varsity teams, Your Honor, except with respect to
17 Oregon. The only other -- the question that really is
18 about club teams, I don't know about all the club teams in
19 the country. I only know about the teams that Quinnipiac
20 competes with.

21 THE WITNESS: We do.

22 THE COURT: The supplement we got today, NCA
23 2010, how did your business use that document?

24 THE WITNESS: We used it primarily again to
25 track the trends in cheerleading, where it is and what

1 it's becoming, so that we can be on top of that and
2 participate in it.

3 And, for instance, on the, on the club teams, we
4 have situations -- again I talked about this as being a
5 resource. We have situations, for instance, where you
6 have the actual cheerleading squad for Ohio State, for
7 instance, who cheers for football games and does all the
8 alumni functions, is under the athletic department as a
9 support group. They also participate in the UCA
10 competition. Well, we required at the UCA competition
11 only the teams that have run the full gamut. Full
12 cheerleaders, leadership, so on, participate.

13 NCA you have the Ohio State Club Team. Well,
14 there are some times during the year there are disputes
15 between these two teams and actually the Ohio State
16 cheerleaders may come to us and say these people are
17 misrepresenting themselves in the community and we have a
18 problem with that. Well, they look to us to help try to
19 solve that. So we have to know the dynamics, what's
20 taking place at every single one of these institutions.
21 And how they mesh together and what their role is. People
22 depend on us to do that.

23 So we track the type of team that this is at
24 each institution that we work with. So we use it for that
25 purpose and then, of course, again, as I said, we also use

1 it to track the trends on what is developing in
2 cheerleading for this very purpose.

3 MS. GALLES: So I guess in addition to our
4 believing this is a business record, obviously there was
5 at residual hearsay rule where Mr. Webb has, you know,
6 gone over in great detail about how this information is
7 collected and, you know, the degree to which he relies on
8 it in his business and his directors of college programs,
9 particularly Mr. Boggs, relies on it.

10 THE WITNESS: There's also been discussion over
11 the year about, it's again a trend that we are continuing
12 to track about whether the club cheerleaders should have
13 their own separate division and not be competing against
14 the classal cheerleaders as well. So it's incumbent upon
15 us to track how many club teams there are, if that's a
16 trend that's growing, that it's getting smaller. If it's
17 creating problems for the classical teams, if it's
18 creating internal problems at the universities. So we
19 track this information to have a handle, a very accurate
20 handle on whether, what the dynamic is at each
21 institution. It's part of our business.

22 THE COURT: Okay. Who prepared it?

23 THE WITNESS: Sir?

24 THE COURT: Who prepared these documents?

25 THE WITNESS: The National Cheerleaders

1 Association document was prepared by Mr. Boggs who's the
2 director of that program. And the UCA document was
3 prepared by Mr. White, who's the director of that program.

4 THE COURT: And when were they prepared?

5 THE WITNESS: I can't give you an exact date,
6 Your Honor.

7 THE COURT: Well, for example, the first one
8 says UCA College Nationals. Was that document prepared at
9 or about the time of the UCA College Nationals?

10 THE WITNESS: Yes, it would typically be. I
11 would assume it would be this type of report I would get
12 after the event takes place.

13 THE COURT: That was my next question. How was
14 the document used within the company?

15 THE WITNESS: Again it's used --

16 THE COURT: Circulated, I mean. Who gets it?

17 THE WITNESS: How is it circulated? If -- let's
18 take Mr. White. Mr. White would circulate it to Mr. Boggs
19 and to me, and that's probably it. Again, it's a small
20 group that deals with colleges because we also have high
21 school camps and high school competitions, so this is a
22 smaller program for us. There are only a limited number
23 of us that are actually engaged or involved directly in
24 the college program.

25 MS. GALLES: And I would say these are prepared

1 every year right after the competitions and have been done
2 long before this lawsuit, as I recall.

3 THE WITNESS: That's right.

4 THE COURT: Do you wish to voir dire anymore?

5 MS. FRIEDFEL: I do have one question, Your
6 Honor.

7 VOIR DIRE EXAMINATION

8 BY MS. FRIEDFEL:

9 Q. Mr. Webb, if you look at the UCA National colleges
10 speech, you testified a few minutes ago that under the
11 rules of the UCA college nationals, only sideline
12 cheerleading teams can participate, is that right?

13 A. Only -- only traditional cheerleading teams that,
14 that you know, are on the sideline but also deal with
15 school spirit. They are the classical cheerleading team,
16 that is right.

17 Q. But not competitive club teams?

18 A. Correct.

19 Q. And not competitive varsity sport teams?

20 A. Correct.

21 Q. Could you explain to me then why there's a column on
22 this page that says competitive team only, unless it was
23 prepared for purposes of this lawsuit?

24 A. I would imagine that this is the form that Mr. White
25 and Mr. Boggs would use and it's the same form.

1 Q. But it's not the same form. The next form has three
2 columns: Sideline, club and competitive?

3 A. I'm having a little trouble finding it. Give me a
4 second.

5 (Pause)

6 Yes, I'm not sure why. Competitive team is all
7 there.

8 MS. FRIEDFEL: That was my only question, Your
9 Honor.

10 THE COURT: All right. I'm going to admit these
11 documents as business records.

12 MS. GALLES: All right.

13 THE COURT: So 135 is full.

14 (Whereupon Plaintiff's Exhibit 135 was marked
15 full.)

16 BY MS. GALLES:

17 Q. Now, this particular year in 2009, 2010, I believe
18 you said that just because we had the long break there,
19 just want to make sure that before, before last year or
20 this year, that only Maryland and possibly Fairmont State
21 represented themselves as a varsity cheer team; is that
22 accurate?

23 A. Yes, that's my understanding.

24 Q. Now, this year -- for this year's 2009, 2010
25 competition, okay, was this the first year that any other

1 schools beside Maryland and possibly Fairmont State held
2 themselves out to be a varsity cheer sport team?

3 A. To the best of my knowledge, yes.

4 Q. At some point during this past year, did you become
5 aware that some schools, some additional schools were
6 calling themselves varsity sport cheer teams?

7 A. Yes.

8 Q. Okay. And did you take any action in response to
9 learning that, hey, there's these additional schools --
10 were these schools that had participated in NCA
11 Nationals before?

12 A. Yes.

13 Q. Okay. Did you take any action in response to
14 learning that?

15 A. The only action was to tell Mr. Boggs to continue to
16 follow the, you know, what was happening, get as much
17 information as he could from the schools, find out what
18 was the driving factor at their institutions so that we
19 could consider it at a later date.

20 Q. And at the NCA Nationals in Daytona, did -- did
21 Mr. Boggs or any other of your employees conduct any
22 meetings with these schools to talk about what they were
23 intending to do?

24 A. Yes. There was a, there was a meeting with these
25 particular schools.

1 Q. Okay. And as a result of that meeting, meeting with
2 those schools, have you been considering whether you're
3 going to, whether you're going to allow them to
4 participate against the other teams that have
5 traditionally been in your competition?

6 A. Yes, we have had discussions.

7 Q. Okay. And why have there been such discussions. Or
8 let me back up.

9 Did you think it would be fair -- have you received
10 any complaints from any of your usual participants, usual
11 teams about whether they should be competing against
12 schools that claim to be varsity sport teams?

13 A. Yes, according to Mr. Boggs there have been several
14 complaints.

15 Q. Okay. And did that trigger at all as to whether you
16 should allow these new sport cheer teams to continue to
17 participate?

18 A. Well, the complaints would have been one part of that
19 consideration. The fact that there would now be more than
20 just one or two would lead us to believe that at some
21 point a different division should be created to level the
22 playing field.

23 Q. Okay. So do you think it would be fair to have these
24 sport teams or the schools that purport to be sport teams
25 compete against the regular sideline teams?

1 A. I don't think so.

2 Q. Okay. Now, when schools like Maryland or Quinnipiac,
3 when they come and they show up at your event, at your
4 nationals, do they compete with your, the rules of your
5 organization?

6 A. Yes, they do.

7 Q. Are those sideline rules?

8 A. Those are rules that are primarily designed by the
9 classical sideline, so-called sideline cheerleaders, yes.

10 Q. And do they compete in the same format that you
11 talked about earlier, providing the cheer component and
12 the two and-a-half minute routine component?

13 A. Yes.

14 Q. Okay. Now, are you aware at all or have you become
15 aware at all of the organization known as the National
16 Competitive Stunt and Tumbling Association?

17 A. Yes.

18 Q. Okay, is that something that was just created this
19 year?

20 A. That's what I understand, yes.

21 Q. Okay. Do you have any understanding of what the
22 format is for those competitions?

23 A. Well, it's my understanding and our records confirm
24 that, that the teams or the schools who are part of that
25 organization first has to have competed in the traditional

1 or against classical cheerleading teams and sideline
2 teams.

3 Q. And using the sideline format?

4 A. Yes.

5 Q. Okay.

6 A. They also have created a different format that I
7 think is still in development, it's my understanding, that
8 they use in meets with each other.

9 Q. Okay. Now, this new format, do you know of any high
10 schools or amateur or club teams that use or have ever
11 used this new NCSTA format?

12 A. No.

13 Q. As far as you know, has anyone in the history of
14 cheerleading ever used that format before this year?

15 A. No.

16 Q. Do you know what USA Cheer is?

17 A. Yes.

18 Q. Okay. What is USA Cheer?

19 A. USA Cheer IS the generally accepted national
20 governing body or authority for cheerleading in the United
21 States.

22 Q. Were you involved in setting up that organization?

23 A. Yes.

24 Q. Okay. And as it currently is constituted, does it
25 govern sideline, sport or what does it govern?

1 A. It governs sideline, collegiate and high school
2 levels and it also, it IS also governing is what's called
3 allstar club cheerleading.

4 Q. Okay. At this point in time, is there any part of
5 USA Cheer that has anything to do with -- well, let me
6 back up.

7 I'd like to point out is USA Cheer the same thing as
8 USA Federation for Sport Cheering?

9 A. Yes.

10 Q. Okay. It's the same entity?

11 A. Yes, USA Cheer is the shorter --

12 Q. Version?

13 A. -- name.

14 Q. Okay. So do you know why the word sport is in the,
15 in the official name?

16 A. Yes. When we had decided that it was important to
17 create this governing entity for purposes of structure and
18 safety and so on, you know, we wanted to at least have the
19 flexibility so that if cheerleading developed some type of
20 outgrowth that it became a sport, it would be included as
21 well.

22 Q. Okay. Now, was part of that in order to present it
23 to Sport Accord?

24 A. I can't -- I can't remember if that was the full
25 intention but we wanted more flexibility to have this

1 organization part of the other types of international
2 federations.

3 Q. And what is the sport --

4 A. Like Sport Accord?

5 Q. What is Sport Accord?

6 A. Sport Accord, it's actually a private company. Its
7 main function is to provide a forum for communication
8 between many different types of international federations.

9 Q. All right. Is chess part of Sport Accord?

10 A. Yes.

11 Q. Is billiards part of Sport Accord?

12 A. I believe so, yes.

13 Q. Are there any other games or activities that you
14 would not ordinarily characterize as a sport that are part
15 of Sport Accord?

16 A. Sport accord takes the very broad general description
17 of sport. And I give you chess. It not only includes
18 your classical sports like international track and field,
19 the original sport, but again, very broad things like
20 chess.

21 Q. Okay. Now, when -- does Varsity Brands, does it have
22 anything to do with providing insurance for cheerleaders?

23 A. Yes.

24 Q. Okay, could you please --

25 MS. FRIEDFEL: Your Honor, I fail to understand

1 the relevance of the insurance issue. What's the
2 difference whether there's insurance required or not?
3 That has nothing to do with the case.

4 MS. GALLES: Well, we haven't been able to
5 examine him yet to demonstrate the relevance. Or would
6 you like me to just describe it?

7 THE COURT: Well, I'll allow a little of this.
8 We'll see where we're going to go.

9 BY MS. GALLES:

10 Q. Mr. Webb, does the NCAA provide catastrophic injury
11 for sport teams?

12 A. Yes, for on the field athletes.

13 Q. Okay. Does the NCAA provide catastrophic insurance
14 for cheerleading teams?

15 A. Yes.

16 Q. Okay. What kinds of cheerleading teams does it
17 provide insurance for?

18 A. The classical holistic cheerleading squad that,
19 again, involves all the school spirit activities as well
20 as compete.

21 Q. So when a cheerleading team comes and participates at
22 your events, at your competitions --

23 A. Yes.

24 Q. -- is the covered by the NCAA's insurance policy?

25 A. No.

1 Q. So, do these cheerleading squads as part of -- do
2 they have to obtain separate independent insurance to
3 participate in these competitions?

4 A. Varsity Brands provides that insurance for the
5 participating competitions.

6 Q. And, is that insurance only for during those events?

7 A. Travel to and from those events and at these events,
8 competitions or camps.

9 Q. And have you looked into how expensive that insurance
10 is if it were, if a school had to go out and get that
11 insurance for its competitive team?

12 A. If it was a separate team that wasn't, again,
13 classical cheerleading team which is covered by the NCAA
14 insurance, and it was not, you know, then, we have looked
15 just to compare the insurance rates that we're getting and
16 we can't even find where you can get it. So I assume it
17 would be very expensive but I'm not sure.

18 Q. But you looked into --

19 A. Yes.

20 Q. -- whether you can find arrange to find a way for
21 the teams to get it and thus far have not been able to do
22 such?

23 A. That is correct.

24 Q. What was the American Association of Cheer Coaches
25 and Administrators?

1 A. It's a nonprofit entity comprised of several thousand
2 cheerleading coaches across the United States and their
3 mission is to help promote cheerleading, to represent
4 cheerleading coaches and to create a safe environment for
5 cheerleaders to participate in.

6 Q. Okay. Do you have any role in the American
7 Association of Cheer Coaches and Administrators?

8 A. I'm the President.

9 Q. Okay, I would like you to look at what's Exhibit Six
10 in your report, please. I believe it's Exhibit 138 over
11 all.

12 A. Okay.

13 Q. This is entitled, it's a position paper of the
14 American Association and Cheerleading Coaches and
15 Administrators. Do you recognize this document?

16 A. Yes.

17 Q. And I'd like to direct you to the second page where
18 it says the best category for cheerleading?

19 A. I'm trying to find that.

20 Q. The second page of the --

21 A. Uh huh. (Affirmative.)

22 Q. It says the best category toward the end of the
23 article in position.

24 MS. FRIEDFEL: I'd just like to note my
25 objection because they're introducing this document.

1 Mr. Hernandez earlier represented this witness was not
2 going to be presenting any testimony about what is termed
3 a proper sport, and this whole article is about the
4 definition of a sport under OCR rules.

5 MS. GALLES: He's not representing himself as an
6 expert in Title IX, he's representing himself as an expert
7 in cheer. We haven't even tried to introduce it yet.

8 MS. FRIEDFEL: I'm just trying to follow the
9 judge's rule.

10 THE COURT: So, what's the objection?

11 MS. FRIEDFEL: The objection is to the extent
12 they are trying to use this position paper to present
13 Mr. Webb and his organize as experts on cheer and they're
14 saying that cheer is not a sport, that they earlier
15 represented that they were not going to be doing that.

16 MS. GALLES: Well, Your Honor, he's entitled to
17 represent what he believes and what his organization
18 believes and, indeed, the OCR guidelines, which he's not
19 going to be discussing the OCR guidelines. The OCR, ones
20 of those OCR guidelines is what do authorities in the
21 activity think and what do the organizations representing
22 the activity think, and so obviously what does the
23 American Association of leading coaches and administrators
24 think is relevant and important to that guideline.

25 Mr. Webb is certainly not going to be talking about these

1 OCR guidelines but the only way to find out what do these
2 organizations and what do the people who are experts in
3 cheer want or think, is to ask them.

4 THE COURT: Well, okay. I'm going to, I'm going
5 to sustain the objection.

6 MS. GALLES: Okay.

7 MS. FRIEDFEL: Thank you, Your Honor.

8 MS. GALLES: Obviously we would ask -- we
9 disagree just for the record.

10 THE COURT: Yes, you don't have to do that. By
11 offering it --

12 MS. GALLES: Okay. Let me take one moment, Your
13 Honor, make sure I covered everything.

14 THE COURT: Sure.

15 (Pause)

16 BY MS. GALLES:

17 Q. Mr. Webb, why is cheerleading so important to you?

18 A. Well, cheerleading is something I have had a passion
19 for since I was very young man. And you know, I've been
20 able been fortunate enough over the past 30, 35 years to
21 take sort of a concept that I created and to be able to
22 transform this athletic activity into something that
23 millions of kids can participate in and I honestly believe
24 that as cheerleading exists today which is what we
25 originally envisioned when we started UCA, we began that

1 transforming process, we envisioned that the traditional
2 role of cheerleading with leadership, with spirit race,
3 combined with what we do on the field, entertainment and
4 an element of competition, we believe that the result
5 speaks for itself.

6 Most people tell you that cheerleading has grown
7 three to four times over the past 25 years and it involves
8 millions and millions of kids, and we know from the
9 feedback we get the impact it's had on so many lives and
10 it's because of the total experience, not just one. So
11 that's why it's important.

12 Q. And during any of these 30 years or whatever that you
13 have been running cheerleading camps, running clinics,
14 running cheerleading competitions, have you at any time
15 thought or considered that you were running varsity sport
16 competitions?

17 A. No.

18 Q. Okay. Now, do you have, do you have anything
19 against, you know, in the future something evolving out of
20 cheer that becomes a sport?

21 A. No, absolutely not. I mean if there is some type of
22 legitimate outgrowth of what has been classical
23 cheerleading and it provides a format for more kids to
24 participate, we're all about that. We totally support it.
25 Our issue is it has to be different enough that it's not

1 confused with cheerleading so it doesn't threaten
2 classical cheerleading because we know what it is, we know
3 how valuable it is. We get to participate.

4 So it has to be a different now. Maybe use some of
5 the disciplines or styles of cheerleading so there's no
6 confusion and that particularly means the name. You know,
7 we don't think there should be any way that cheer or
8 leader is used in any type of entity that is not
9 cheerleading because we think it creates confusion and we
10 think it risks classical cheerleading which we think is
11 very valuable.

12 Q. So most of the schools that are representing
13 themselves as competitive teams, are they skill just doing
14 classical cheerleading?

15 A. To which teams are you referring? I'm sorry.

16 Q. Whether you're participating in events or events just
17 like yours, are they still just doing what are considered
18 traditional cheerleading?

19 A. You're not --

20 Q. I'm not talking about NCSTA.

21 A. Okay, yes, yes. They may have a competitive element
22 which we support as recognition. It's not the main thing
23 but they are the classical teams. They may compete once
24 or device a year, but what they primarily do are the
25 traditional school spirit.

1 Q. Do you think it would be fair for schools that may
2 eventually evolve into something different to compete
3 against classical sideline cheerleading?

4 A. No. Different resources, different function. No, I
5 don't think it's fair.

6 Q. Okay. And do you have any financial reason to be,
7 for wanting to stop a school from evolving a new sport out
8 of cheerleading?

9 A. Absolutely not. The fact of the matter is we know
10 from our year long contacts. We conduct coach's meetings
11 at all of our camps and our events. We get feedback about
12 what's happening. We know those coaches want cheerleading
13 to continue like it is today. So we don't, and because,
14 again, the things I said, kids get out there. The fact is
15 that at the college level, they want to be at the games,
16 they want to be at the ball games, they want to be at the
17 tournaments.

18 MS. FRIEDFEL: Objection, Your Honor --

19 BY MS. GALLES:

20 Q. Stop when there's an objection. You have to --

21 MS. FRIEDFEL: I'm sorry to interrupt but he
22 can't testify what students want or don't want.

23 THE COURT: Let's get back to the question. It
24 was about whether you have a financial reason.

25 MS. GALLES: Yes.

1 A. And that's the whole context I bring that up. So we
2 know that, we -- based on that information, it is our
3 strong feeling that the kids who participate in classical
4 cheerleading now, you're not going to take an existing
5 team and take a competition. It would be adding another
6 team. Okay? If you add another team, then from a
7 business standpoint, that means we have more potential
8 customers to sell products and services to. So from a
9 business standpoint, you know, it's counterintuitive to
10 think we would be against it.

11 Q. So, but as you sit here today with your 30 some years
12 of experience in cheerleading, including cheerleading
13 competition, do you believe that those competitions are
14 sport?

15 A. No.

16 Q. Do you believe that they are varsity sport?

17 A. No.

18 MS. FRIEDFEL: Objection, Your Honor. This is
19 exactly what they said they were not going to use this
20 witness for.

21 MS. GALLES: He is allowed to talk about what
22 his 35 years, whether he believes his own activity is a
23 sport. He is not --

24 THE COURT: Well, you got that answer but then
25 he went on. So I'll sustain the objection.

1 MS. GALLES: Okay. Again, we would just
2 register for the record, Your Honor, the OCR factors and
3 indeed, asking that very question of the people most
4 knowledgeable is somehow you have to be able to represent
5 that factor and that's why we are offering that evidence,
6 so it's on there.

7 THE COURT: Okay.

8 MS. GALLES: May I have one moment to confer
9 with co-counsel to see if there's anything else?

10 (Pause)

11 BY MS. GALLES:

12 Q. I believe just one more question, Mr. Webb.

13 A. Okay.

14 Q. You've been involved in cheerleading for 35 years.
15 Is there, do you know if there's any kind of a consensus
16 or -- amongst various organizations knowledgeable about
17 cheer, including yours, about whether cheer is or should
18 become a sport?

19 A. Yes.

20 Q. And what is that consensus?

21 A. Well, our organization has a strategic partnership
22 with the NCAA and the National High School Federation and
23 both of the -- this is with the branding people of the
24 NCAA and, you know, the position with regard to classical
25 cheerleaders is they should remain that, they should

1 remain in their current role.

2 MS. GALLES: I have no more questions at this
3 time.

4 THE COURT: All right, let's take a five minute
5 recess and pick up with cross.

6 (Whereupon a recess was taken from 11:45
7 o'clock, a. m. to 11:50 o'clock, a. m.)

8 MS. GALLES: Your Honor, I'd like to take care
9 of one more duty I'm sorry I forgot to do before the
10 break.

11 BY MS. GALLES:

12 Q. Mr. Webb could you please turn to what's been marked
13 as -- I just had it out. The exhibit number 132, which is
14 what you have in front of you.

15 A. Number --

16 Q. No, it's Exhibit 132 in the bigger picture but it's
17 what you have in front of you?

18 A. Oh, the entire, yes.

19 Q. It's marked report of Jeff Webb?

20 A. Yes.

21 Q. Okay. Is that the expert report that you prepared
22 for this particular case?

23 A. Yes.

24 Q. Okay, and does it accurately reflect your views and
25 opinions relating to this case?

1 A. Yes.

2 Q. And one mention in there, since preparing this
3 report, have you learned that Oregon this semester moved
4 from, moved from sideline into competitive cheer?

5 MS. FRIEDFEL: Objection, Your Honor. That's a
6 question, Your Honor. I have a further objection to the
7 introduction of the report but I assume we're going to get
8 to that.

9 THE COURT: Yes, it is leading, so let's
10 rephrase it.

11 MS. GALLES: I'm sorry.

12 BY MS. GALLES:

13 Q. Is there any correction that you want to make in the
14 report relating to the University of Oregon?

15 A. Yes, I've learned that the University of Oregon is
16 attempting to or is part of the NCSTA and attempted to
17 create a separate type of cheerleading team.

18 Q. Okay.

19 A. Strictly competition.

20 Q. And again, I'm sorry, and this accurately reflects
21 your opinions relating to the issues in this case?

22 A. Yes, it does.

23 Q. Okay.

24 MS. GALLES: Your Honor, we would move to admit
25 Mr. Webb's report except for Exhibit six which you have

1 excluded as just a way of cutting short the testimony in
2 the case.

3 THE COURT: All right. Just to be clear, that
4 would be Exhibits 132?

5 MS. GALLES: Yes, sir, Exhibit 132 through 137.

6 THE COURT: 137.

7 MS. GALLES: Would not include 138 because you
8 already ruled on that.

9 THE COURT: Any objection?

10 MS. FRIEDFEL: Yes, we object to the
11 introduction of the report for a couple of reasons. One
12 is it includes some of the representations with respect to
13 what is or is not a varsity sport which the plaintiffs
14 earlier represented they were not going to try to
15 introduce evidence of.

16 And second, the report is filled with hearsay
17 and I'm not referring to the facts that the report in and
18 of itself is hearsay, which I understand you ruled with
19 respect to the Lopiano report yesterday. But it includes
20 statements that would not be admissible even if he were to
21 make them here in court today.

22 He talks about, in the report he talks about the
23 fact that the NCSTA meet format doesn't work. When I
24 asked him at his deposition, he testified he's never been
25 at a NCSTA meet. He never reviewed materials provided by

1 the NCSTA about their meet. And his opinion was solely
2 based on what his employee Bill Boggs told him based on
3 what Bill Boggs saw and what Bill Boggs was told by
4 parents at the NCSTA meet.

5 THE WITNESS: Bill Boggs was at the meet.

6 MS. GALLES: The judge has to --

7 THE WITNESS: I'm sorry, I'm sorry.

8 MS. GALLES: The judge has to --

9 THE WITNESS: I'm sorry.

10 MS. FRIEDFEL: And there are further objections
11 to some of the exhibits if you would like, Your Honor.

12 THE COURT: All right, well, I'm going admit
13 132. It seems to me that to the extent it contains
14 hearsay, an expert is permitted to rely on hearsay if he
15 or she would rely upon it in the ordinary course of their
16 activities. Here it seems to me that this witness fits
17 that bill. He's in the business of cheerleading and to
18 the extent that the example you just gave is something
19 that he's relying on in the ordinary course of his
20 business, it seems to me he can rely upon it in his expert
21 report as well. It seems to me you can also cross him on
22 that and I think it goes more to the weight than to the
23 admissibility.

24 MS. FRIEDFEL: We further object to Exhibit 134
25 which is the, regarding the insurance as completely

1 irrelevant. The types of insurance that are available for
2 sideline cheerleaders have nothing to do with competitive
3 cheer as a varsity sport.

4 MS. GALLES: I would address two points. Number
5 one, that information is directly off of Varsity's
6 website. It's the information that Varsity provides to
7 the schools that enter its competitions in order to notify
8 them that they are going to compete, they need to go out
9 and get insurance. And that was just one of the factors
10 that were established in terms of why cheer has presently
11 constituted as not a sport and also Quinnipiac's
12 representation that cheer is going to be so much less
13 expensive than volleyball. That, you know, that that's
14 not true and insurance is either very expensive or
15 impossible to get.

16 And so we would say, number one, it's irrelevant
17 because of that and it's admissible as part of the
18 business records that Quinnipiac -- or excuse me. That
19 Mr. Webb's company provides to the entrants in its
20 tournaments every year.

21 MS. FRIEDFEL: Just for the record, Your Honor,
22 the position taken is not that the competitive cheer team
23 would be less expensive than the volleyball team.

24 THE COURT: Okay. I'm going to sustain the
25 objection to 134. It does not appear to me to be

1 especially relevant.

2 MS. GALLES: Okay.

3 THE COURT: And I don't believe it's a business
4 record. The fact it's on the website doesn't make it a
5 business record.

6 MS. GALLES: I would say it becomes a business
7 record because it's what they provide in the course of
8 their business to the teams that enter their tournament so
9 that the teams can be aware of, hey, you don't have
10 insurance and we've arranged a way for you to get
11 insurance and this is the information so --

12 THE COURT: Okay, I understand.

13 MS. GALLES: Just so it's clear.

14 THE COURT: Any other objections?

15 MS. FRIEDFEL: Yes. As to the Exhibit 136, Your
16 Honor.

17 MS. GALLES: Actually we're going to withdraw
18 that exhibit. It's going to be dealt with with another
19 witness.

20 THE COURT: All right.

21 MS. FRIEDFEL: The only objection I have, Your
22 Honor to 137 is the extent it contains hearsay statements
23 about what was motivating other schools when they chose to
24 present, create competitive cheer teams. I assume it's
25 being offered for its truth.

1 MS. GALLES: 137 is sort of a guest editorial
2 that Mr. Webb wrote for the NCAA news which is sort of the
3 newspaper, or it used to be a newspaper put out by the
4 NCAA for its members. It's now all on line.

5 THE COURT: Well, the motivations for creating
6 competitive cheer team don't seem especially relevant to
7 me, so there's no harm in allowing it in is what I'm
8 saying.

9 MS. FRIEDFEL: If it comes in as his opinion on
10 these issues I don't have any particular objection so long
11 as it's not offered for the truth.

12 MS. GALLES: We basically wanted to offer it,
13 Your Honor --

14 THE COURT: Okay, it's in.

15 MS. GALLES: Okay, thank you.

16 (Whereupon Plaintiff's Exhibit 137 was marked
17 full.)

18 THE COURT: Cross?

19 CROSS EXAMINATION

20 BY MS. FRIEDFEL:

21 Q. Good morning, Mr. Webb.

22 A. Hi.

23 Q. Now, Quinnipiac University's varsity competitive
24 cheer team is not engaged in cheerleading, is that --

25 A. It's not what?

1 Q. Engaged in cheerleading.

2 A. I don't think so.

3 Q. Now, you testified earlier that your organization was
4 in discussions about whether or not the schools in the
5 NCSTA are permitted, were going to be permitted to compete
6 in your NCA competition, is that right?

7 A. No, asked to compete against the sideline teams.

8 Q. Against the sideline times teams, okay.

9 Now, isn't it true that the teams that are part of
10 the NCSTA have already told your organization that they
11 are not going to compete in the NCA championship next
12 year?

13 A. Most recently, yes. Before that they were going to
14 compete so at this point they've said they are not going
15 to.

16 Q. Right, so -- you are no longer in discussions about
17 whether or not, who they are going to compete against,
18 right? Because they've --

19 A. That is correct.

20 Q. Okay. Now, you also testified that you were not
21 aware of any team that had -- any club team, excuse me,
22 that had competed in the NCSTA format, is that right?

23 A. Correct.

24 Q. Well, isn't it true that Michigan State and Ohio
25 State's have both not only competed in the NCSTA meet

1 format but they have hosted competitions in that format?

2 A. I'm not sure about that.

3 Q. You don't know?

4 A. I don't know.

5 Q. And you've never been to a NCSTA meet, is that
6 correct?

7 A. Correct.

8 Q. And you've never reviewed the format of that meet?

9 A. I've been briefed on it by our collegiate director
10 Mr. Boggs who, one of his responsibilities was to go and
11 audit it and provide me with a brief of its content and
12 how it was conducted.

13 Q. All right. So, in your report where you say that the
14 NCSTA meet format didn't work, what is the basis of this
15 statement?

16 A. That was primarily from Mr. Boggs.

17 Q. And at your deposition, you testified that he, what
18 he told you was that he felt like it didn't really work,
19 that it wasn't that interesting, there weren't many crowds
20 and that didn't really provide the kind of venue in the
21 event they were hoping for, right?

22 A. That is correct.

23 Q. So he didn't tell you about any technical issue with
24 respect to how the competition worked, did he?

25 A. He did.

1 Q. He did?

2 A. Yes, he did.

3 Q. What did he tell you?

4 A. He told me that the format included individual
5 competition and tumbling, individual competition and
6 partner stunts, routine members and then an actual team at
7 the end that was identical to what the classical
8 cheerleaders do.

9 Q. Right, but that's not anything about why in any way,
10 shape or form the format didn't work, is it?

11 A. He felt like it didn't work from a, the way it was
12 perceived by the audience. He didn't feel like it was
13 very exciting. He didn't feel like it worked from a lens
14 that we would primarily look at on an event working which
15 would include not only the legitimacy of the competition
16 but crowd reaction, environment and so on. That's the way
17 we would look at it.

18 Q. Right. And you run your competitions for
19 entertainment purposes, is that what you testified
20 earlier?

21 A. That's one of the reasons, yes.

22 Q. One of the reasons, right. And the NCSTA is being
23 run as a varsity sport, is that right? That's what they
24 are, that's their claimed purpose?

25 MS. GALLES: Objection, foundation.

1 THE COURT: I'll allow it.

2 A. From what I've seen, they are attempting to develop a
3 format that would be considered a varsity sport.

4 Q. And the primary purpose of a varsity sport is
5 competition, isn't it? It's not entertainment.

6 A. Yes, I would think so, yes.

7 Q. Okay. Now, you testified earlier that you're the
8 president of the USA Cheer, is that right?

9 A. Correct.

10 Q. Now, I'd like you to take a look at Defendant's
11 Exhibit F N. It's in the binders that are next to you. I
12 believe it should be in Exhibit Binder three of three.

13 (Pause)

14 BY MS. FRIEDFEL:

15 Q. Now, one of the purposes of USA Cheer is to be
16 recognized by the U. S. Olympic Committee as the governing
17 body for sport cheering, is that right?

18 A. Yes.

19 Q. Okay. And the Olympic Committee is responsible for
20 the Olympic games, right?

21 A. That is one of their responsibilities.

22 Q. Right, and is there any dispute that the Olympic
23 committee is made up of sports?

24 A. No.

25 Q. Thank you. Now, if you look at, on page 3?

1 A. Page what?

2 Q. I'm sorry, on page four of the bylaws?

3 A. Okay.

4 Q. Paragraph F. One of the purposes of USA Cheer is to
5 coordinate athletic -- I'm sorry. I may have a wrong
6 paragraph here -- is to sanction and coordinate athletic
7 participation in competition, is that right?

8 A. Yes.

9 Q. And another purpose is to coordinate and provide for
10 a participation by athletics in national athletic
11 competition in cheer, is that right?

12 A. By athletes.

13 Q. By athletes, okay. And let's go then to page two of
14 the report where it says at 1.3 and -- right?

15 A. Page two?

16 Q. Page two of the report, article one definitions? And
17 it defines an athlete as one who's eligible under ICU
18 rules to compete in international athletic competition
19 sanctioned by the ICU?

20 A. Right.

21 Q. And that's the International Cheer Union?

22 A. Correct.

23 Q. And are you the president of the International Cheer
24 Union?

25 A. Yes.

1 Q. The athletes, they participate, in those competitions
2 they participate in a two and-a-half minute cheer routine
3 competition, is that right?

4 A. Yes.

5 Q. Okay.

6 A. And -- go ahead.

7 Q. And you further define an active athlete for purposes
8 of the USA Cheer bylaws --

9 A. Which, what are you referring to?

10 Q. Right preceding paragraph 1.2. I'm sorry.

11 A. Okay.

12 Q. As one who has within the last ten years competed at
13 an official national championship which was either
14 sanctioned or under the jurisdiction of the USACF, the NCA
15 or the UCA, correct?

16 A. Correct.

17 Q. And those organizations also sponsor competition in
18 that two and-a-half minute format, is that right?

19 A. Yes.

20 Q. Now, let's go to page five, paragraph 2.2, the bylaws
21 further state that USA Cheer supports the competitive
22 aspects and activities of cheer which function more as a
23 sport, is that right?

24 A. Uh huh. (Affirmative.) Yes.

25 Q. Now, if you could look at Exhibit F Q?

1 A. Okay.

2 Q. This is a letter that you wrote?

3 A. Uh huh. (Affirmative.)

4 Q. I'm just going to put this up on the Elmo so that
5 everybody can see it. One second.

6 Now, in this letter you wrote that the ICU has had
7 remarkable success in building its membership and
8 addressing its primary concerns which are to assist and to
9 support global development of cheer and to be an effective
10 voice in representing the athletes, coaches and officials
11 who make up our sport. Is that right?

12 A. Yes.

13 Q. And you refer to cheer as a sport eight times in this
14 document, didn't you?

15 A. Yes, in the general sense is how I meant it, which is
16 a very loose definition that would be used in terms of a
17 Sport Accord where you include even chess.

18 Q. So when you were testifying earlier that you didn't
19 think that cheer is a sport, you were using a different
20 definition of sport than you used in all these documents?

21 MS. GALLES: Objection, Your Honor. They
22 repeatedly said they did not want him testifying about a
23 definition of sport and now she's soliciting from him
24 exactly what she would not allow me to solicit from him.

25 THE COURT: Well, no, I think there's a

1 distinction between sport and varsity sport, and that's
2 why I drew the line in your examination, so I'll allow
3 this.

4 BY THE WITNESS:

5 A. Would you ask the question again, please?

6 Q. You were using a different definition a few minutes
7 ago when you testified that you don't think cheer is a
8 sport that you use in all these other documents where you
9 refer to cheer as a sport?

10 A. I'm not trying to be difficult. Please tell me
11 exactly what you refer to, what I said, when did I say it.

12 Q. A few moments ago when Ms. Galles questioned you she
13 asked you if you considered cheer a sport and you said no.

14 A. Yes, that is correct.

15 Q. Right, but in all these documents that relate to
16 cheer competition, you referred to cheer as a sport?

17 A. Yes, in the broad athletic activity sense, not in the
18 form of like a varsity sport.

19 Q. Right, but your testimony earlier was not a varsity
20 sport because the court didn't allow you to answer that
21 question, did it?

22 A. I don't understand what you mean by that.

23 Q. Withdrawn.

24 Now, let me see here. Okay. You testified earlier
25 that your, that the NCA is planning to or is in

1 discussions about sponsoring a separate division from the
2 the NAIA, is that correct?

3 A. Yes.

4 Q. And I'd like to direct your attention to Exhibit F O.

5 MS. GALLES: Your Honor, we object to F O and if
6 she proceeds to F P which apparently are press materials
7 from the NAIA, obviously there's no one here from the NAIA
8 or anyone competent to testify about the NAIA, so they of
9 course are hearsay, they are not relevant to any extent.
10 If she cares to characterize what the NAIA is doing, we
11 believe it would be a misrepresentation of that.

12 So basically hearsay and relevance. If they
13 want to talk about the NAIA is doing they can bring
14 somebody from the NAIA in.

15 MS. FRIEDFEL: Your Honor, I'm not offering it
16 for the truth. If you give me a little latitude --

17 THE COURT: What's the purpose of it?

18 MS. FRIEDFEL: The purpose of it is to show Mr.
19 Webb was aware that the NAIA was representing that their
20 competition in the NCA's competition is for their varsity
21 cheerleading teams, that he was aware of that. That's
22 all.

23 MS. GALLES: And again, Your Honor, we would say
24 that is irrelevant because whether a school wants to claim
25 that something is a sport and then call it that, who knows

1 why they may or may not be calling it, and of course as we
2 know and as we believe that schools are calling it a sport
3 simply to count it for Title IX purposes, not because it
4 legitimately is a sport, so if they want to get into a
5 side trial about what NAIA is or is not doing, that's
6 fine.

7 THE COURT: Why don't you ask him what he's
8 aware of and see whether we even need this document.

9 MS. FRIEDFEL: I'll back up a little bit.

10 BY MS. FRIEDFEL:

11 Q. In your Exhibit 5 to your report, it was entered into
12 evidence a few minutes ago?

13 THE COURT: 137.

14 MS. FRIEDFEL: Thank you, 137.

15 A. Okay.

16 Q. You indicate that one of your objections to varsity
17 competitive cheer teams is they cause confusion, is that
18 right?

19 A. Correct.

20 Q. And you think that they make some schools think they
21 can just count their sideline teams, is that right?

22 A. Yes.

23 Q. Now, as I -- if you look at Exhibit F O, you're aware
24 that the NAIA is representing that their teams are varsity
25 sports, is that right?

1 MS. GALLES: Same objection, Your Honor.

2 THE COURT: Well, why don't you just ask him if
3 he's aware without looking at them?

4 BY MS. FRIEDFEL:

5 Q. Fair enough. Are you aware that NAIA is representing
6 that the teams that will be competing in your, in the
7 competition that your organization is going to conduct are
8 varsity teams?

9 A. I believe from talking to, especially Mr. Boggs, that
10 the teams that are competing are their classical
11 cheerleading teams who also do all the sideline material.

12 Q. All right, but you understand that I'm not asking you
13 to make a judgment as to whether or not they should or
14 should not be characterizing them as varsity teams. I'm
15 just asking you are you aware of the fact that the NAIA is
16 representing that they are varsity teams?

17 A. Yes.

18 Q. Yes. And your company contracted with them to run a
19 competition for them, is that right?

20 A. Right.

21 Q. And you weren't concerned that that was going to
22 create confusion?

23 A. Yes, we have, we have registered that concern.

24 Q. Yeah, but you were still willing to take their money
25 and run that competition?

1 A. We're still talking about it. And there's that
2 amount of money, by the way.

3 Q. Now, sideline cheerleaders attend your company's
4 camps and clinics, correct?

5 A. Correct.

6 Q. And you train them in new skills and help them in
7 their learning how to be better cheerleaders, is that
8 right?

9 A. Yes.

10 Q. Okay, and you testified you run competitions that
11 those sideline cheerleaders attend?

12 A. Yes.

13 Q. And they buy your company's uniforms, right?

14 A. Some do.

15 Q. And I believe you testified at your deposition that
16 your uniform division is actually the most profitable?

17 A. That is correct.

18 Q. And you're concerned that if competitive cheer is
19 recognized as a varsity sport that competitive cheer teams
20 may try to prevent sideline teams from learning certain
21 skills in their routines, correct?

22 A. Yes.

23 Q. And you view varsity competitive cheer as a threat to
24 sideline cheerleading, is that correct?

25 A. What do you mean varsity competitive cheer? Are you

1 talking -- define that for me, please.

2 Q. What Maryland has been doing and Quinnipiac --

3 A. I view it as what, as a threat?

4 Q. As a threat to classical cheerleading.

5 A. It continues to call itself cheer which they don't
6 cheer and they don't lead, which creates confusion with
7 the classical cheerleader team. And if they perform the
8 same type of routine that classical cheerleaders have
9 provided as part of their entertainment component for 25
10 years, which further confuses things. Yes, I think it's a
11 threat because I think that what the sideline cheerleaders
12 do and the skills they use help them be more effective.
13 And, again, I think the fact that it's run three or four
14 times over the past 20 years validates that.

15 Q. And you think that if the schools have competitive
16 cheer teams, that the cheer teams may try to prevent the
17 athletic -- I'm sorry. May try to prevent the sideline
18 cheer groups from using some of those athletic elements
19 that you've introduced to clear, is that right?

20 A. I think it's a possibility.

21 Q. Right. And if sideline cheer teams weren't able to
22 participate or to use those athletic skills, they wouldn't
23 have as great a need to attend your camps and clinics to
24 learn how to execute those skills, would they?

25 A. That's not necessarily true. In the state of Ohio at

1 the high school level they can't do any stunts and our
2 enrollment is as large as it's ever been.

3 Q. Now, if you'll look at Exhibit F K.

4 A. Okay.

5 Q. Now, your NCA championship, you considered that to be
6 a pretty prestigious event in the cheerleading world,
7 correct?

8 A. Yes.

9 Q. And it's important for you to maintain that prestige,
10 right?

11 A. Sure.

12 Q. And, in fact, your rules prohibit any team from
13 competing in another national championship?

14 A. Yes.

15 Q. If they want to compete in your championship, right?

16 A. Yes.

17 Q. Now, if competitive cheer were to become an NCAA
18 champion sport, your national collegiate probably wouldn't
19 be that prestigious anymore, would it?

20 A. I think it would still contain the great majority of
21 the teams it does now because it's primarily classical
22 cheerleaders. I don't think it hurts prestige at all.

23 Q. Now, you testified earlier that you felt that it
24 would be unfair for sideline teams to compete against the
25 varsity competitive teams, is that right?

1 A. Yes.

2 Q. And was that because you think that they, the
3 competition would be uneven, because they wouldn't --

4 A. I think that the competition only teams have only one
5 focus, generally or probably going to have more resources,
6 and a lot more time to focus on that one aspect of
7 cheerleading. And the classical cheerleading teams have a
8 lot of other responsibilities and so it's only a matter of
9 time. And they are probably only going to compete once
10 during the year when these other teams are going to be
11 competing many times, probably, or a number of times. So,
12 yes, I don't think it provides a level playing field.

13 Q. If you'll look at Exhibit F J?

14 A. Okay.

15 Q. Now, these are results from your 2010 NCA college
16 national championship, correct?

17 A. Right.

18 Q. Now, if you'll look at the first page, it shows that
19 Quinnipiac University came in third, is that right?

20 A. Correct.

21 Q. And Quinnipiac's team is a varsity team, is that
22 right?

23 MS. GALLES: Objection.

24 BY MS. FRIEDFEL:

25 Q. They consider themselves a varsity team, is that

1 right?

2 A. I guess so.

3 Q. On your Exhibit 3 to your report you classify them as
4 a sport team, is that right?

5 A. Thank you.

6 Q. The University of New Hampshire, what kind of team is
7 that?

8 A. That's a classical cheerleading team.

9 Q. Right. And University of New Hampshire beat
10 Quinnipiac, right?

11 A. Yes.

12 Q. So they were formidable competitors, right?

13 A. Yes.

14 Q. And also if you look at the next page which is the
15 results from your all girl one A division, the University
16 of Maryland won that competition, right?

17 A. They did.

18 Q. And they consider themselves to be a varsity team, is
19 that right?

20 A. Okay.

21 Q. Is that correct?

22 A. The same as Quinnipiac, yes.

23 Q. Okay, and what about the University of Louisville;
24 what kind of team is Louisville?

25 A. They are a classical cheerleading team.

1 Q. They are. And what was the difference in the score
2 between Maryland and Louisville?

3 A. A couple of, you know, what, 20/100ths or whatever.

4 Q. So they were clearly formidable competition for the
5 University of Maryland, is that right?

6 A. Yes, and the only one.

7 Q. I'm sorry, what?

8 A. They were the only one that was really formidable
9 competition. That was a classical cheerleading team.

10 Q. Right, well --

11 A. In fact, the teams that you're describing have two of
12 the top three spots.

13 Q. Yes, Oregon and Maryland do have two of the top three
14 spots. And N C State has what kind of team?

15 A. N C State is, in this case I believe it's a club
16 team. I'm not sure if this is club or their sideline
17 team. They have both in competition.

18 Q. And the University of South Carolina?

19 A. It's a classical team.

20 Q. And Georgia?

21 A. Is a club team.

22 Q. And Michigan State?

23 A. I believe that's their club, they have both.

24 Q. Okay. So only two of the teams on this were actually
25 sideline teams?

1 A. Yes.

2 Q. Right?

3 A. Correct.

4 Q. Now, your NCA competition, you said divides the teams
5 into divisions, right? And that's based on the NCAA
6 division rules, right?

7 A. Generally speaking, the classification, that's one,
8 right. Second one is, it can be how the teams
9 classified themselves as whether they are advanced or
10 intermediate teams and also reference coed or all girl.

11 Q. So the people, the teams competing in the all girl
12 Division I that Quinnipiac competed against, those are all
13 NCAA Division I schools?

14 A. I do believe Kennisaw (ph) division is so I'm not
15 sure. And again, the divisions classically for NCA and
16 UCA, while they have some relevance to how NCAA classes,
17 we also have, they are really our own division so we can,
18 we can move teams back and forth. I don't believe
19 Kennisaw is a Division I team. I could be wrong.

20 Q. Okay. Now if we go to Plaintiff's Exhibit 135 which
21 is Exhibit Three to your report?

22 MS. GALLES: I'm sorry, could you please say
23 that again?

24 MS. FRIEDFEL: 135, his Exhibit 3.

25 MS. GALLES: Okay.

1 BY MS. FRIEDFEL:

2 Q. This document includes the teams that will compete at
3 your UCA nationals and your NCA nationals, is that right?

4 A. Yes.

5 Q. But it does not include every team that competes in
6 cheer, does it?

7 A. I'm not sure about that, it's the great majority.
8 There could be a few that participate at USA.

9 Q. Right, but are you aware that Quinnipiac University's
10 competed against Batsin (ph), Stoney Brook, Penn State
11 Club Team, Fairfield University, UConn Club and in this
12 case also college?

13 MS. GALLES: Objection, foundation. And in
14 terms of how she's characterizing that.

15 THE COURT: I'll allow it. He can answer it.

16 BY THE WITNESS:

17 A. I'll have to go to -- let me look.

18 (Pause)

19 Could you name the schools again, please?

20 Q. I'll withdraw that question.

21 A. Okay.

22 Q. Are you willing to admit there are schools in the
23 country that compete, competitive cheer or cheerleading,
24 participate in cheerleading competitions who do not attend
25 your competition?

1 A. I'm talking about classical cheerleaders. Is that
2 what you're talking about?

3 Q. We'll take them one at time. They are sideline
4 classical cheerleading teams that compete but that do not
5 attend your companies, NCA and UCA competitions.

6 A. There could be.

7 Q. Right, and there could also be club teams that
8 compete but they do not attend your company's
9 competitions, is that right?

10 A. There could be but I'm not aware of any. There could
11 be.

12 Q. Well, do you know that UConn has a club team?

13 A. No.

14 Q. No? Now, allstar cheer teams don't do any sideline
15 cheerleading, do they?

16 A. That is correct.

17 Q. And all they do is compete and train to compete?

18 A. That is correct. And perform, entertain, as well as
19 they put on exhibitions sometimes too.

20 Q. Okay, and your company sponsors allstar competitions,
21 is that right?

22 A. Yes.

23 Q. About what percentage of the allstar competitions
24 that are out there do you sponsor?

25 A. 50 percent.

1 Q. 50 percent, okay. Now if we look at Exhibit F V?

2 MS. GALLES: What?

3 MS. FRIEDFEL: As in Victor.

4 THE COURT: Just for planning purposes, let me
5 let you know, I have a commitment at 12:30 for one hour.

6 MS. FRIEDFEL: I'll finish this document and
7 then we can break.

8 MS. GALLES: B as in boy or V as in Victor?

9 MS. FRIEDFEL: V as in Victor.

10 MS. GALLES: Okay.

11 BY MS. FRIEDFEL:

12 Q. This was a document produced by you made in response
13 to a request, is that right?

14 A. Yes.

15 Q. And what is this document?

16 A. This is participants in the various Varsity Brands
17 divisions in the, primarily in the allstar space for the
18 past year.

19 Q. Well, the document says participants by division for
20 spring 2010, so that would be from January to date?

21 A. Yes.

22 Q. And it shows that you had 130,678 people participate
23 in allstar competitions in your company, is that right?

24 A. That is right.

25 Q. And more than 56,000 of those participants were

1 between the ages of 12 and 18, is that right?

2 A. Yes.

3 Q. So you'll agree with me that there is substantial
4 interest in cheer competition, is that right?

5 A. There is substantial interest in allstar competition,
6 yes.

7 Q. All right.

8 MS. FRIEDFEL: Do you want to break now, Your
9 Honor? I'm done with that document.

10 THE COURT: All right, sure.

11 All right, we'll take our lunch break until
12 1:30. We'll continue with the cross then. Stand in
13 recess.

14 (Whereupon the luncheon recess was taken at 12:30
15 o'clock, p. m.)

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C E R T I F I C A T E

I, Susan E. Catucci, RMR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/S/ Susan E. Catucci

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