

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 - AFTERNOON SESSION

B E F O R E:

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

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(RECONVENED AT 1:45 P.M.)

THE COURT: My apologies for the delay.

MS. FRIEDFEL: Your Honor, we decided to mark the document that was disclosed to us earlier today, I believe that's Exhibit GM?

THE COURT: GM?

MS. FRIEDFEL: I think so. I'm just going to show a copy to the witness.

MS. GALLES: Your Honor, just for the record, we renew our objection in case, you know -- that the prior objection doesn't carry over, so --

THE COURT: Your objection on privilege grounds?

MS. GALLES: Yes, yes.

THE COURT: That's fine. All right. Do you have another objection to the document?

MS. GALLES: Well obviously, it's hearsay. But she's welcome to try to overcome that. I mean, it's an e-mail.

THE COURT: Okay. Are you objecting on --

MS. GALLES: Yes, we are objecting on the privilege and the grounds of hearsay.

MS. FRIEDFEL: May I proceed?

THE COURT: Sure.

1 J E F F R E Y W E B B, called as a witness for
2 the Plaintiff, having been previously duly sworn by the
3 Court, testified futher as follows:

4 CROSS-EXAMINATION

5 BY MS. FRIEDFEL: (CONT'D.)

6 Q. Mr. Webb, could you look at page 4 of the document I
7 just showed you, Exhibit GM?

8 A. Page 4?

9 Q. Yes, it says "4 of 5" at the top right corner. I
10 don't know if it's actually the fourth page. I think it
11 says -- it appears that the document is page -- paginated
12 2 of 5, 3 of 5, 4 of 5.

13 A. Oh, okay. All right.

14 Q. I'm sorry. I don't know --

15 A. Not the actual fourth page, but the paginated
16 version. Okay, got it.

17 Q. If you look at that e-mail, it appears to be an
18 e-mail from Terry Lakowski (ph.) to yourself, Bill Boggs
19 (ph.), Greg Web, Bill Seeley, and Jonathan White; is that
20 right?

21 A. Yes.

22 Q. Terry Lakowski is an attorney that you retained
23 regarding Title IX and other issues; is that correct?

24 A. That's correct.

25 Q. And she says in this e-mail: "I spoke to Karen

1 Morrison this morning" --

2 THE COURT: Well, it's not in evidence yet
3 because there's an objection.

4 MS. FRIEDFEL: Okay.

5 THE COURT: So before we -- well, in general,
6 I would like to get the document in before it's contents
7 are put into the record.

8 MS. FRIEDFEL: Okay.

9 THE COURT: So are you offering the document
10 or --

11 MS. FRIEDFEL: Yeah, I mean, I was offering
12 the document to show --

13 THE COURT: Well, okay. The objection is
14 hearsay.

15 MS. FRIEDFEL: Correct.

16 THE COURT: I already ruled on the privilege.
17 So how do you get around the hearsay objection.

18 MS. FRIEDFEL: The hearsay objection? I'm
19 not offering this for the truth of what the attorney told
20 them about her communications. I'm not saying --
21 offering it for the truth of what Karen Morrison did or
22 did not say, but more just to the fact that Karen
23 Morrison -- I'm sorry, that Ms. Lakowski was having
24 communications with Karen Morrison on behalf of Varsity
25 Brands about the issues that are discussed in the

1 document.

2 THE COURT: Okay. Well okay, you got a
3 couple things. You have two levels of hearsay. You got
4 the document, itself, and you've got the statement in the
5 document.

6 MS. FRIEDFEL: Okay.

7 THE COURT: It doesn't sound to me like you
8 really want the document as much as you want the subject
9 matter. So maybe you don't need the document.

10 MS. FRIEDFEL: I'm happy to question him for
11 that -- without mentioning the document, itself.

12 THE COURT: All right.

13 BY MS. FRIEDFEL:

14 Q. Mr. Webb, did Ms. Lakowski have communications with
15 Karen Morrison on behalf of Varsity Brands?

16 MS. GALLES: Objection, foundation.

17 THE COURT: If you know.

18 BY THE WITNESS:

19 A. I don't know for sure.

20 Q. Was Karen Morrison at the -- work at the NCAA?

21 A. I don't know Karen Morrison.

22 Q. You don't know her. Do you know if she works at the
23 NCAA?

24 A. I don't know that.

25 Q. You received this e-mail from your attorney; right?

1 A. Apparently so.

2 Q. And you didn't ask her who Karen Morrison was?

3 A. No, I did not.

4 Q. It didn't concern you about who she was
5 communicating with on behalf of your company?

6 A. No. During most of this time I was traveling and
7 I'm primarily just copied on this. This, primarily,
8 would have been to Bill Boggs, John White, you know, to
9 be honest with you, I don't --

10 Q. Do you know whether or not Varsity Brands has had
11 communications with the NCAA about cheer becoming an
12 emerging sport?

13 A. About six years ago.

14 Q. About six years ago. So you don't know, you were
15 completely unaware until right now, when I showed you
16 this e-mail --

17 A. Yes, that's correct. I don't recall seeing this
18 e-mail.

19 Q. And you had no knowledge that your company was
20 communicating with the NCAA --

21 A. No, I did not ask Ms. Lakowski to do that, no. The
22 last time -- no.

23 Q. Ms. Lakowski is here in the courtroom right now;
24 right?

25 A. Yes.

1 Q. There's a dispute about this document whether or not
2 it was privileged and whether or not it comes into
3 evidence; is that right? Or whether --

4 A. Yes.

5 Q. I'm sorry, whether or not it would be produced?

6 A. Yes.

7 Q. And you didn't talk to her at all about the contents
8 of the document?

9 A. No, I asked her what was in the document and she
10 said it was about a conversation --

11 MS. GALLES: No, you can't -- sorry. Sorry.

12 MS. FRIEDFEL: Withdrawn, your Honor. I'm
13 finished with the witness.

14 THE COURT: Okay. Redirect?

15 REDIRECT EXAMINATION

16 BY MS. GALLES:

17 Q. Mr. Webb, I just want to ask you about document FM,
18 which is the USA Cheer document that Ms. Friedfel
19 mentioned to you or showed you.

20 A. FM.

21 Q. F as in Frank, M as in Mary. It's the USA Cheer
22 items. I'm sorry, F as in Frank, N as in Nancy.

23 A. Oh, okay, thank you.

24 Q. I would like to direct you to the last page of that
25 document.

1 A. Okay.

2 Q. When was USA Cheer incorporated?

3 A. I believe the actual incorporation was in January of
4 this year.

5 Q. January of --

6 A. 2010.

7 Q. So USA Cheer, Ms. Friedfel asked you several
8 question relating to the reference to sport within the
9 USA Cheer --

10 A. Yes.

11 Q. -- articles. Are those references about Cheer as
12 sport, do they pertain to Cheer as it exists today or
13 Cheer as you hope or expect it may be in the future?

14 A. The documents? Are you -- I'm sorry, could you ask
15 the question again.

16 MS. FRIEDFEL: I just object, before the
17 witness answers. We object to the question as leading.

18 THE COURT: She's going to ask it again. I'm
19 sure --

20 MS. GALLES: Rephrase it, because he didn't
21 even understand it.

22 MR. BRILL: You didn't do very well.

23 MS. GALLES: Yeah.

24 BY MS. GALLES:

25 Q. Mr. Webb; and again, you previously testified that

1 you are the president of USA Cheer?

2 A. Yes.

3 Q. When -- so when the articles for USA Cheer were
4 filed, were the references to sport in the articles --
5 see now you flustered me. Just joking.

6 A. Okay. Try again.

7 Q. We'll try one more time. Okay.

8 Mr. Webb, the USA Cheer articles of incorporation,
9 do they reflect cheer as it is today?

10 A. It addresses side line cheerleading and its place
11 and the fact that it's important to keep it as it is, but
12 the actual -- the actual intent is to also provide it lot
13 of latitude based on where cheer develops in the future.

14 Q. So it is an aspirational document about where you
15 think cheer might go?

16 A. It is at least partially aspirational. And again,
17 designed to give as much latitude as possible to include
18 not only what exists in cheerleading today, but where it
19 may go, in which direction it may develop. From a
20 national standpoint and internationally.

21 MS. GALLES: I have no further questions.

22 THE COURT: Sir, you are excused. Thank you.

23 MR. ORLEANS: Your Honor, as soon as Mr.

24 Webb --

25 THE WITNESS: Sorry.

1 MR. ORLEANS: Take your time. No problem.
2 Your Honor, the plaintiff's call Jack McDonald to the
3 stand.

4 THE COURT: Please remain standing.

5 J A C K M c D O N A L D, called as a witness on
6 behalf of the Plaintiff, having been duly sworn by the
7 Court, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ORLEANS:

10 Q. Good afternoon, Mr. McDonald.

11 A. Good afternoon, John.

12 Q. Do you mind if I call you Jack?

13 A. Yes.

14 Q. You do mind?

15 A. O for 1.

16 Q. I'm comforted to know I'm not the only nervous
17 person in this the room right now.

18 Jack, you are the athletic director for Quinnipiac
19 University?

20 A. Yes.

21 Q. How long have you been in that position?

22 A. Just finishing 15 years.

23 Q. You testified in the preliminary injunction hearing
24 thin case; didn't you?

25 A. Yes, I did.

1 Q. As athletic director, you are responsible for the
2 overall administration of Quinnipiac's intercollegiate
3 athletic program?

4 A. Yes, and the recreation program.

5 Q. And the recreation program as well?

6 A. Yes.

7 Q. And do your responsibilities include oversight of
8 compliance with NCAA rules?

9 A. Yes.

10 Q. And how about Title IX compliance as well?

11 A. Yes.

12 Q. Do your responsibilities include oversight of
13 financial matters within the athletic department?

14 A. Yes.

15 Q. And use of facilities?

16 A. Yes.

17 Q. And your responsibilities include general oversight
18 from the administrative perspective of the teams;
19 correct?

20 A. Yes.

21 Q. And of the coaches?

22 A. That's correct.

23 Q. And you report to Dr. Thompson who testified
24 earlier; correct?

25 A. Yes.

1 Q. You've been reporting to him since around the middle
2 of 2009?

3 A. July of '09.

4 Q. I'd like to start by talking with you about the
5 National Competitive Stunts and Tumbling Association. Do
6 I have the name right?

7 A. Yes.

8 Q. And for convenience, I'll refer -- try to refer
9 to it as the NCSTA; all right?

10 A. Yes.

11 Q. What is that organization?

12 A. It's a governing body that was started at
13 Quinnipiac, announced our intent to add competitive cheer
14 in the spring of '09; and we discovered that there was
15 five or six institutions that were also already offering
16 competitive cheer or intended to; so we got together as a
17 group in the summer of '09 to start planning to have a
18 national governing body.

19 Q. Now you just referred to competitive cheer. When
20 you -- in March of '09, when Quinnipiac announced that it
21 would eliminate certain sports, including women's
22 volleyball, you announced that you would elevate
23 cheerleading to varsity status, wasn't that the
24 announcement?

25 A. I forget the exact terminology in the press release,

1 but there was clearly an intent to add competitive cheer.

2 Q. And prior to this past year, the 2009-2010 year, the
3 cheerleaders at Quinnipiac were sideline cheerleaders;
4 correct?

5 A. That's all we had, yes.

6 Q. And they were not treated or held out as varsity
7 athletes before this past year; correct?

8 A. No.

9 Q. And at the time you made the announcement -- and
10 when I say you, I mean the university. I don't
11 necessarily mean you, personally. But at the time that
12 the announcement was made, Quinnipiac had had some
13 communication with the University of Maryland; right?

14 A. Yes.

15 Q. About -- specifically on the subject of competitive
16 cheer?

17 A. That's correct.

18 Q. But at that time, there was no organization of
19 schools offering cheer as a varsity athletic endeavor?

20 A. No, there was not.

21 Q. And at the time that you made the announcement in
22 March, there was no agreement among the schools to create
23 such an organization; was there?

24 A. Not in March of '09.

25 Q. In fact, it wasn't until after the preliminary

1 injunction hearing in this case that the group of schools
2 that are now in the NCSTA began to talk about forming a
3 governing body; is that correct?

4 A. I'm not sure when that began, John, but it certainly
5 began right after the announcement of elevating the sport
6 to varsity.

7 Q. Who are the members, currently, of the NCSTA?

8 A. Well, clearly, Quinnipiac, University of Maryland,
9 Baylor University, Fairmont State, University of Oregon,
10 and we've recently added UMass Dartmouth. I may be
11 missing one.

12 Q. There are seven members now?

13 A. Yes, I think so, yes.

14 Q. Have there been other members who have dropped out
15 along the way?

16 A. No.

17 Q. And didn't the group meet -- Withdrawn.

18 You've been involved in the creation of this
19 organization from the very beginning; haven't you?

20 A. Yes.

21 Q. And by now I mean you, personally, you have
22 personally --

23 A. Yes.

24 Q. -- played a role, have you not?

25 A. Yes.

1 Q. And you serve on the governing board of the NCSTA?

2 A. We haven't called ourselves that yet, but there's
3 about five or six administrators that we've been talking
4 regularly.

5 Q. So there is not formally a governing board at this
6 time?

7 A. Not yet. But we certainly have a group making a lot
8 of decisions.

9 Q. And that's a group of administrators from the
10 various schools?

11 A. Yes.

12 Q. And the group met at the University of Maryland, was
13 it in November of 2009?

14 A. Well, our first -- we had a few conversations
15 before -- that was September was we call it the summit.

16 Q. The Cheer Summit?

17 A. Correct. But prior to that, to plan for that and
18 just literally schedule when, where and how much we're
19 going to talk about, we had a call or two in mid, late
20 summer of '09.

21 Q. And then you had the summit in September; correct?

22 A. That's correct.

23 Q. And then there was an announcement that was made in
24 January of 2010; correct?

25 A. There was an announcement made. The exact date I'm

1 not familiar with.

2 MR. ORLEANS: Let's see if I can make this
3 work.

4 BY MR. ORLEANS:

5 Q. Calling your attention to Plaintiff's Exhibit No.
6 43. Can you see it okay from there?

7 A. Yes.

8 Q. Because there's paper copy in the book?

9 A. No, I can see it perfectly.

10 Q. Okay. Do you recognize this, Jack, as a print from
11 the Quinnipiac University web site?

12 A. Yes.

13 Q. And the head line is: "University's announce
14 formation of National Competitive Stunts and Tumbling
15 Association," release date January 28, 2010; correct?

16 A. That's correct.

17 Q. And it lists the current members at that time. Now
18 it lists Fort Valley State as a member. Is Fort Valley
19 State still a member now?

20 A. I don't think they're still a member now.

21 Q. And the club team at Ohio State is not a member; is
22 it?

23 A. I don't know if Ohio State was ever officially part
24 of this group. At the time it might have been a
25 prospective member.

1 Q. But it's not currently a member; is it?

2 A. No.

3 Q. And this press release issued by the Quinnipiac
4 Sports Information Department?

5 A. Yes.

6 Q. And it includes -- you see the highlighted line
7 there: "The goal of the NCSTA is to usher stunts and
8 gymnastics into NCAA emerging sports status and
9 eventually a NCAA fully sanctioned varsity sport with a
10 NCAA sponsored national sponsorship"; is that accurate?

11 A. Yes, it is.

12 Q. Why is this organization called the National
13 Competitive Stunts and Tumbling Association rather than
14 the national competitive cheer association?

15 A. I think there's been significant discussion since
16 our announcements about the actual name of our sport and
17 the name of our governing body so as not to confuse fans
18 and athletes and coaches with what has traditionally been
19 side line cheer. So we had a lot of discussions and long
20 ones about what would be the name of our sport and what
21 would be the name of our governing body. We had a
22 conference call with the athletic directors from many of
23 these institutions in November to talk about the name of
24 the sport and sort of as an agreement to begin the
25 governing of the sport, we come up with a national

1 governing body name of NCSTA, but the institutions were
2 allowed to call the sport competitive cheer. But
3 basically, that's how we started at this point.

4 Q. In fact, there was some disagreement among the
5 various institutions about what the sport should be
6 called; wasn't there?

7 A. Yes.

8 Q. And currently Quinnipiac calls the sport competitive
9 cheer?

10 A. That's correct.

11 Q. I think Oregon calls it competitive stunt and
12 tumbling?

13 A. Something similar to the governing body name, yes.

14 Q. And the various institutions are allowed to call it
15 what they want; is that correct?

16 A. Certainly, obviously, what they want, but pretty
17 much it's competitive cheer or the name Oregon is using.

18 Q. I'm sorry if I asked you this already, but back in
19 March 2009, there was not a plan to organize a group like
20 NCSTA; was there?

21 A. In my mind, there was. I've been experienced for
22 many years in our Division I status, we actually formed
23 leagues before for some other sports at Quinnipiac. I've
24 been very actively involved in NCAA governance on sport
25 committees, championship cabinets, knowing full well that

1 for our sport to be recognized, these things needed to
2 happen.

3 Q. But you hadn't started working on it at that point,
4 I guess would be --

5 A. We started working on it the day we announced the
6 sport.

7 Q. At that time, you -- Withdrawn.

8 Let me rephrase.

9 In March of 2009, when you announced the elimination
10 of volleyball and other sports, you did not anticipate
11 that the varsity cheerleaders at Quinnipiac would have to
12 stop cheering at basketball games; did you?

13 A. I'm pretty sure by that point we knew that the
14 student athletes beyond competitive cheer would no longer
15 be on sideline cheer -- cheerleading.

16 Q. You had not, in March of 2009, developed a
17 competition format for competitive cheer; had you?

18 A. No.

19 Q. And you hadn't developed a scoring system for
20 competitive cheer?

21 A. The scoring system was coming with the formation of
22 the group.

23 Q. So the scoring system is something that's been
24 worked on through the NCSTA?

25 A. Yes.

1 Q. And I presume the competitive format as well?

2 A. Yes.

3 Q. In March of 2009, did you know about the process at
4 the NCAA for becoming an emerging sport?

5 A. Through the rise of other sports to the emerging
6 sport program, I was aware of how it happens and the
7 committees and the people involved.

8 Q. So did you know what -- and again, I'm talking about
9 March of 2009 now, did you know what NCAA committee you
10 had to be in touch with in order to begin that process?

11 A. I probably couldn't tell you the name of it, but I
12 knew there was a process that exist.

13 Q. You knew there was a process that existed?

14 A. Yes.

15 Q. To become -- to be recognized as an emerging sport?

16 A. Yes.

17 Q. Were you aware at that time that there was a process
18 for seeking a determination letter from the Office of
19 Civil Rights?

20 A. Yes.

21 Q. Now would it be fair -- Withdrawn.

22 The NCSTA, as we stand here today, is not
23 incorporated; is it?

24 A. No.

25 Q. And it has no staff, no employees of its own;

1 correct?

2 A. That's correct.

3 Q. It receives staff support from the various
4 organizations --

5 A. That's correct --

6 Q. -- from various institutions?

7 A. It's is very common in a lot of our sports.

8 Q. And it doesn't have -- I think you said it doesn't
9 after formal board of directors; correct?

10 A. We certainly have a group of people making
11 decisions.

12 Q. But the question was does it have a formal board of
13 directors?

14 A. No.

15 Q. It doesn't have a set of bylaws; does it?

16 A. Bylaws are being worked on.

17 Q. So they are in process now?

18 A. Yes.

19 Q. And does it have a committee structure?

20 A. Again, five or six of us, we are the decision makers
21 and --

22 Q. Are there sub committees to your group?

23 A. Not quite yet.

24 Q. So would you disagree with me if I referred to it as
25 still a work in process in many ways?

1 A. Almost -- yes, yes.

2 Q. You would disagree?

3 A. I would say the work in progress is almost done.

4 Q. Do you have a web site yet?

5 A. No.

6 Q. You are planning to have one, though, right?

7 A. Yes.

8 Q. And within the last month, the group agreed on the
9 roster sizes -- the maximum roster size and the travel
10 roster size for the coming year; correct?

11 A. Yes.

12 Q. There are no schools in the Northeast Conference,
13 other than Quinnipiac, that are part of NCSTA; is that
14 right?

15 A. That is correct.

16 Q. In fact, other than Quinnipiac, there are no schools
17 in Connecticut that are part of NCSTA?

18 A. At this point, correct.

19 Q. And there is only one other school in New England,
20 that being UMass Dartmouth, that is part of the NCSTA?

21 A. That is correct, at this point.

22 Q. Other than UMass Dartmouth, the closest NCSTA member
23 is the University of Maryland in College Park; is that
24 right?

25 A. That's correct.

1 Q. Let me show you Plaintiff's Exhibit 41.

2 MR. ORLEANS: How do you work the up and
3 down? I'm trying to make it a little smaller so we can
4 get a little more of it.

5 BY MR. ORLEANS:

6 Q. Can you read it that the size, Jack, or is that
7 too small now?

8 A. Yes. A little larger would help, --

9 Q. Let me see if I can do better.

10 A. That's fine.

11 Q. You can't just quite get the whole document in.

12 Do you recognize this document as the 2009 and '10
13 schedule and results for the Quinnipiac competitive cheer
14 team?

15 A. Yes.

16 Q. And you'll see that I've highlighted a couple of the
17 events. The All Girl Collegiate Competitive Cheer event
18 Friday, February 5th at Kennesaw State University in
19 Georgia. That was the first competition ever held uses
20 the NCSTA meet format; correct?

21 A. That's correct.

22 Q. And also use the NCSTA scoring system; right?

23 A. That's correct.

24 Q. That was in February of this year?

25 A. Yes.

1 Q. And also in February of this year, on February 28th,
2 at Quinnipiac, you had a meet with Quinnipiac, Maryland,
3 UConn, Western Connecticut and Babson; correct?

4 A. That's correct.

5 Q. And that one also used the NCSTA meet format; am I
6 right?

7 A. Yes.

8 Q. And of all the competitions that the Quinnipiac
9 University competitive cheer squad was in, in 2010, those
10 are the only two that used the NCSTA meet format; am I
11 right?

12 A. Yes, you are.

13 Q. Now the meet format that was used this past spring
14 in 2010 is being revised somewhat for the 2010-2011
15 season; is it not?

16 A. That's correct.

17 Q. And the NCSTA is planning its first -- its first
18 national championship to be held next spring in 2011;
19 right?

20 A. That's correct.

21 Q. And all of the NCSTA schools will participate in
22 that meet; will they not?

23 A. Yes.

24 Q. So there's -- the regular season doesn't result in
25 anybody being eliminated from post season competition,

1 this year at least?

2 A. That's correct.

3 Q. In -- when I say "this year," I mean the coming year
4 2010-2011.

5 Not much suspense about who's going to qualify for
6 the championship, I guess this time?

7 A. There are other sports that have regional
8 championships and in a similar format. The suspense will
9 be significant once the student athletes get there.

10 MR. ORLEANS: I want to take just a minute
11 and, your Honor, I'm conscious of time and will try not
12 to spend too much time on this. But I would like to go
13 through Plaintiff's Exhibit 98. For this one, it might
14 be helpful actually if you took out the paper, because
15 it's -- it's this notebook right here. The one on the
16 bottom.

17 BY MR. ORLEANS:

18 Q. Can we make that work?

19 A. We're making it. Yep.

20 Q. This is a collection of e-mails that -- and minutes
21 that relate to the NCSTA. And I would just like to go
22 through it and have you identify for the record so that
23 the judge knows what we've got here.

24 The first couple of pages feature an e-mail chain
25 among you, Kelly Cunningham, Nancy Post and Renee

1 Baumgartner. Can you just say who those people are?

2 MR. BRILL: Can you give the Bates numbers
3 for each of those.

4 MR. ORLEANS: It starts D 15458, Exhibit 98.

5 MR. BRILL: I have it.

6 BY MR. BRILL:

7 Q. Can you just explain to Judge Underhill who those
8 three --

9 A. Starting to the top this was from me on Monday,
10 April 12th, which was a few days after we met in Daytona.
11 Kelly Cunningham is the assistant athletic director for
12 compliance in Maryland. Nancy Post is the associate
13 athletic director, and Sieman (ph.) was administrator at
14 Baylor who just -- they are adding competitive this
15 years. Renee Baumgartner is the senior administrator and
16 associate athletic director at Oregon. And this really
17 was to set up -- setting up a meeting with Karen Morrison
18 at the NCAA.

19 Q. And this is April 12th, 2010 and you're suggesting
20 to Kelly, Renee and Nancy that there be a conference call
21 with Karen Morrison of the NCAA; correct?

22 A. That's correct.

23 Q. And the acronym CWA there refers to the Committee on
24 Women's Athletics?

25 A. That's correct.

1 Q. And that's the committee with the primary
2 jurisdiction over emerging sport status at the NCAA; am I
3 right?

4 A. That's correct.

5 Q. Now if we can go to the next e-mail in the chain.
6 This starts at 15522.

7 Do you see that one?

8 A. I think -- my number at the bottom doesn't seem to
9 coordinate with what you just said. 15459?

10 MR. ORLEANS: Oh, no.

11 THE WITNESS: Is that right?

12 MR. ORLEANS: No, that is not right. Oh,
13 I -- it's separated by a yellow sheet. Here we go.

14 THE WITNESS: Oh, it's separate e-mail.

15 MR. ORLEANS: The first one is a three page
16 chain, but I'm done with that one and now I'm on to the
17 next chain.

18 THE WITNESS: Okay.

19 BY MR. ORLEANS:

20 Q. 15522, still part of Exhibit 98, is dated April
21 27th, 2010 and it's an e-mail from you to Renee
22 Baumgartner; right?

23 A. That's correct.

24 Q. It says, "Notes from meeting in Dayton," but I
25 think you meant Daytona.

1 A. That's correct.

2 Q. That's a reference to an NCSTA meeting you had in
3 Daytona Beach, Florida?

4 A. Yes.

5 Q. When members of the NCSTA were at the NCAA college
6 nationals; right?

7 A. That's correct.

8 Q. And you say: "Renee, here you go, I would consider
9 these drafts and not final."

10 And what's the "these"? Is that minutes of the
11 meeting?

12 A. That's probably the notes on the next page.

13 Q. Your notes.

14 A. Trying to be -- you know, again, there were four or
15 five of us at the meeting and we reviewed, again
16 re-reviewed our, you know, bylaws, procedures, policies.

17 Q. And you say: "I also sent along what Nancy sent us
18 today."

19 If you look at the list of attachments,
20 Mr. McDonald, one of the attachments is NCSTA outline of
21 competitive cheer.docx and another attachment is NCSTA
22 meeting April 2010. Do you see those two attachments?

23 A. I'm looking at them.

24 Q. If you go one page, the next page that we see is
25 headed: "National Competitive Stunts and Tumbling

1 Association, Outline of competitive cheer"; is this the
2 document from Nancy Post?

3 A. John, I'm not familiar with which one of these is
4 from whom.

5 Q. Let me just suggest that you go through one, two,
6 three pages and you'll see one that's headed, NCSTA
7 meeting.

8 A. Yes.

9 Q. So let me ask you now, having seen that, does that
10 refresh your recollection at all, Mr. McDonald as --

11 A. I'm going to be not sure, but I think the
12 second one headed, NCSTA meeting, was from me.

13 Q. Okay. So that would be your notes of the meeting
14 in --

15 A. Right.

16 Q. -- Daytona in April?

17 A. That's correct.

18 Q. It appears that at that meeting you discussed a
19 number of matters relating to the plans for the NCSTA;
20 would that be --

21 A. Yeah, --

22 Q. -- a generalization?

23 A. Regarding the organization of the sport.

24 Q. If you go to the last page of your notes, it's Bates
25 number D 15528. You see the heading there, "Roman 4,

1 NCAA emerging sport status"?

2 A. Right.

3 Q. And it says, "Timeline for submission, spring
4 2011"?

5 A. That's correct.

6 Q. Is that still the plan, that you will submit an
7 application --

8 A. Some time between now and then, yes.

9 Q. Now backing up just a sec to the Nancy Post
10 document, the Outline of competitive cheer, what was the
11 purpose of that document?

12 A. I think in the -- both Nancy and I were probably
13 coordinating taking notes together. I had asked her to
14 make sure that, you know, what I wrote is similar to what
15 was discussed and approved and voted on.

16 Q. Let me just ask you then about the section entitled,
17 "Minimum competitions." It says, "Teams will compete
18 annually in a minimum of six competitions"; is that still
19 the expectation for NCSTA members?

20 A. I believe we revised that to six to eight is -- but
21 that's what we discussed in April.

22 Q. In April. And in April, you discussed that half of
23 those would have to use the NCSTA format?

24 A. Yes.

25 Q. And also, that any competition must include at least

1 one collegiate opponent?

2 A. Yes.

3 Q. I don't have anything further on that collection.

4 So if you go to the next separator page.

5 A. Okay.

6 Q. The next e-mail is dated April 29, 2010 from you to
7 the add -- a group of NCSTA administrators; correct?

8 A. I think I might have missed something, John.

9 Q. Are we getting there?

10 A. I'm looking at an e-mail dated May 10th.

11 Q. Let's see if we missed one.

12 A. Sorry.

13 Q. Or if there's a problem with -- here you go.

14 A. Oh. Okay, thanks.

15 Q. Sure.

16 So 15547 is an e-mail dated April 29th from you to
17 Baumgartner, Cunningham, Post, Kristi Kiefer at Fairmont
18 State; is she an athletic administrator at Fairmont
19 State?

20 A. Yes.

21 Q. And the subject is "Today's Minutes" and the first
22 attachment listed is: "NCSTA conference call April 28th,
23 2010"; do you see that?

24 A. Yep, yes.

25 Q. And your message is: "First draft, good call today,

1 we're inching closer."

2 So are you the author, then, of the notes that
3 follow?

4 A. Again, yes, I was the author usually subject to
5 approval by the group.

6 Q. Now this is -- these notes appear to be notes of a
7 conference call with Karen Morrison -- with a number of
8 the NCSTA administrators and with Karen Morrison from the
9 NCAA; correct?

10 A. That's correct.

11 Q. And in that call you discussed the required contents
12 of an emerging sport proposal to the Committee on Women's
13 Athletics; is that right?

14 A. That's correct.

15 Q. And in the middle of the page there is a listing of
16 the things that Ms. Morrison told you should be included?

17 A. That's correct.

18 Q. And one of the items in that list is an
19 interpretation from OCR; correct?

20 A. That's correct.

21 Q. And that's not something that the NCSTA has yet;
22 correct?

23 A. That's correct.

24 Q. And that's -- Withdrawn.

25 Do you have a letter of support from each NCAA

1 division at this point?

2 A. I don't know what you mean by --

3 Q. I'm just reading from the list of items that ought
4 to be included that you got from Ms. Morrison, right
5 under interpretation from OCR it says, "one letter of
6 support from each NCAA division"?

7 A. You know, John with all the talk, I'm not familiar
8 with that term, nor do I know what it means.

9 Q. Okay. Fine.

10 But Ms. Morrison did tell you that that
11 interpretation from OCR was an important point; didn't
12 she?

13 A. Yes, she did. And we certainly have put that as
14 priority one and there's a significant effort undergoing
15 now regarding a national inter because of the national
16 nature of the sport.

17 Q. If you could move to the next e-mail chain after the
18 yellow separator page, you should see page D 15565?

19 A. Correct.

20 Q. May 10th, 2010, e-mail from you to Kelly Cunningham
21 and others?

22 A. Correct.

23 Q. Is everybody on this list associated with an NCSTA
24 school?

25 A. Yes.

1 Q. And you say: "I have attached what I think we
2 talked about today"; and the attachment is agenda and
3 minutes from a conference call on May 10; correct?

4 A. Yes.

5 Q. And you authored this document; didn't you?

6 A. Yes. Again -- again, the authoring and then it gets
7 edited if there's comments.

8 Q. I understand. But this is not an edited version; is
9 it? This is the version that you first sent to everyone?

10 A. John, I --

11 Q. Since it came from your e-mail?

12 A. Yeah, it probably is. If it came from my e-mail,
13 then this is not edited yet.

14 Q. And looking then at the first page of the agenda and
15 minutes, it indicates in Roman I, discussion of a
16 national championship. There were some concerns -- I'm
17 paraphrasing -- but there were some concerns among the
18 coaches about having the NCSTA national championship the
19 same weekend as the NCA in Daytona?

20 A. Yes.

21 Q. But ultimately, I know that you -- that the group
22 did decide to hold its national championship in Oregon on
23 the same weekend as the NCA championship in the spring of
24 2011; correct?

25 A. That's correct.

1 Q. Also, at this call on May 10th, it appears that
2 there was discussion about holding a coaches meeting at
3 the University of Maryland on May 18th and 19th; is that
4 right?

5 A. Yes.

6 MR. ORLEANS: And let me just interrupt for
7 one second here.

8 Excuse me, your Honor. This doesn't have a
9 sticker on it, but this is a copy of FG; is it not? Just
10 trying to save a little time.

11 BY MR. ORLEANS:

12 Q. Mr. McDonald, showing you a document that I will
13 represent to you is a copy of Defendant's Exhibit FG, I'm
14 trying to save you the trouble of plowing through those
15 books.

16 A. That's fine.

17 Q. Do you agree that this is the cover page, at least,
18 of the recommendations that came out of that coaches
19 meeting at the University of Maryland?

20 A. Yes.

21 Q. So the coaches did meet and came up with a set of
22 recommendations that they made to the administrators?

23 A. Yes.

24 Q. And that was on May 18th and 19th?

25 A. Yes.

1 Q. Returning now to the agenda and minutes of May 10th.
2 At Roman V there's a reference to you having asked about
3 getting some is approval from OCR. Is that accurate? Is
4 that a subject that you raised on this call?

5 A. Yes, I did.

6 Q. And it appears that the decision was that Oregon
7 would take the lead on that; is that right?

8 A. Yes, as I said earlier, we wanted a national inter
9 because of the national nature of the sport.

10 Q. There was also an issue about coaches who own
11 or work for cheer clubs; correct?

12 A. That's correct.

13 Q. And that was a subject that had come up with our
14 deposition of Coach Powers; right?

15 A. I'm not sure I was there for your deposition, but --

16 Q. It's an -- let me -- let me ask the question a
17 little differently. At Quinnipiac, one of the assistant
18 coaches has an interest in a private cheer club; correct?

19 A. Correct. As an NCAA compliance overseer of, you
20 know, all coaches we have to be watch -- careful as to
21 where they have other employment, vis-a-vis, being a high
22 school coach, running a golf club and coaching a team, so
23 very similar to those kinds of question that is we need
24 to be aware of.

25 Q. It would be a violation of NCAA recruiting rules for

1 a college coach who had not passed the recruiting exam to
2 be using the position at another entity to recruit;
3 wouldn't it?

4 A. It really has nothing to do with the recruiting
5 exam. It's more other employment, are you involved with
6 prospective student athletes. So the recruiting exam has
7 nothing to do with this agenda item.

8 Q. Apart from the recruiting exam, it would be a
9 violation of NCAA rules, would it not, if a college coach
10 were using a position at a high school or a club, a
11 sports club to talk to and recruit student athletes?

12 A. I'm not saying what's unusual -- is it a violation,
13 but it's important that we knew what the policies were.
14 And our cheer coaches knew what they were so that they
15 could stay in line with NCAA policies.

16 Q. And at this time in May, Coach Powers, the head
17 competitive cheer coach at Quinnipiac, had not yet passed
18 the NCAA recruiting exam; am I correct?

19 A. I know she's passed it, John. The actual timeline
20 of when these events occurred, I'm not familiar with.

21 Q. Do you know whether she had passed it before May 1st
22 of this year?

23 A. I think it was in May.

24 Q. You think it was in May of this year?

25 A. Yeah. And I think, just so you know, the exam is

1 for off campus recruiting, not for on campus recruiting.

2 Q. Understood.

3 If we could move to the next set of pages. It's
4 actually a single page. It's an e-mail from Coach Powers
5 to you, dated May 19, 2010; correct?

6 A. 15422?

7 Q. 15422. This is Coach Powers' reporting in to you on
8 returning from the meeting at the University of Maryland
9 we talked about a moment ago; isn't it?

10 A. Yes.

11 Q. Move on to the next one.

12 This is a document pertaining to the NCSTA
13 conference call on May 25th, 2010.

14 MR. BRILL: What's the Bates number on that,
15 please.

16 MR. ORLEANS: D 15859. I'm sorry. Does the
17 copy that we gave you not correspond to what I'm doing?

18 MS. FRIEDFEL: No, it doesn't.

19 MR. BRILL: You skipped one, I think.

20 MR. ORLEANS: Because I was going to
21 apologize if --

22 MS. FRIEDFEL: No, no need.

23 MR. ORLEANS: -- if we messed up the books.

24 BY MR. ORLEANS:

25 Q. All right. Jack, looking at the May 25th, 2010

1 document, there's no cover e-mail for this one which is
2 either an oversight on my part or it may be that there
3 wasn't one; but do you recognize this as the notes from
4 the NCSTA conference call on May 25th?

5 A. Yes, I do.

6 Q. And you participated in that call?

7 A. Yes, I did.

8 Q. Are you the author of these notes or was it someone
9 else?

10 A. No, I was not. Kelly Cunningham -- I think this
11 meeting or one of the previous meetings I was cut short,
12 so I asked someone else to take the notes.

13 Q. But you were a participant?

14 A. Yes.

15 Q. And did you review these?

16 A. Yes.

17 Q. And are they accurate, as far as you know?

18 A. Yes, as far as I know. They are accurate and pretty
19 good and show good progress.

20 Q. If you look at the second page under Roman Numeral
21 II, it looks as though you -- the group has increased --
22 decided to increase the minimum number of NCSTA meets
23 from three to four for each participating school; is that
24 correct?

25 A. That's correct.

1 Q. And if you would go to page five of those minutes.
2 And Roman V, updates. It appears that Oregon is not or
3 as of May 25th, a month ago, was not in a position to
4 seek OCR review immediately and advised the group that
5 that review by OCR would be sought at some later date; is
6 that right?

7 A. Yes. That's accurate what it says. I'm not sure --
8 this is clearly an important process, but --

9 Q. I beg your pardon?

10 A. This is clearly an important item, so --

11 Q. Yeah. Was that an accurate statement of what
12 occurred?

13 A. Yes. Yes.

14 Q. And as we sit here today, a month -- not quite a
15 month after the May 25th call, has anyone from NCSTA
16 taken a step to seek OCR review?

17 A. This is still at the University of Oregon.

18 Q. Okay, all right. If the University of Oregon had
19 taken a significant step to seek OCR review, you would
20 expect to know about it; wouldn't you?

21 A. Oh, absolutely.

22 Q. Then do you have D 15867 there? It would be a
23 couple pages past where we are.

24 A. E-mail? Yes.

25 Q. Yes. It starts with, "Begin forwarded message"?

1 A. Yes.

2 MR. ORLEANS: Is that also part of what
3 defense counsel has?

4 MR. BRILL: Yes, thank you.

5 BY MR. ORLEANS:

6 Q. This is an e-mail from Kelly Cunningham to a group
7 of NCSTA affiliated administrators and coaches; correct?

8 A. That's correct.

9 Q. And it says: "Attached are the minutes and update
10 of recommendations from our call."

11 And if you then move two pages to D 15869 there is a
12 document headed NCSTA conference call, June 10, 2010; are
13 you there?

14 A. 15869?

15 Q. Yes.

16 A. Yes.

17 Q. I'll ask you, are these the notes or minutes from an
18 NCSTA conference call that occurred on June 10th, 2010?

19 A. Yes, they are.

20 Q. And you participated in that call?

21 A. Yes, I did.

22 Q. And you reviewed these notes and they are accurate;
23 are they not?

24 A. Yes.

25 Q. Now attached to the notes is a document that is

1 headed, "Report of the NCSTA," and it appears to be a
2 list of what are called action items. They are actually
3 also referenced in the minutes of the meeting; right?

4 A. That's correct.

5 Q. I just want to make sure I'm characterizing it
6 accurately.

7 So among the decisions that were made on June 10th,
8 was the decision to limit the regular season travel squad
9 to 28 student athletes; correct?

10 A. That's correct.

11 Q. And moving down that page to item 4, there's a
12 decision to limit the post season team competition squad
13 to 24 athletes plus four alternates; correct?

14 A. That's correct.

15 Q. And on the next page, Bates number D 15872, there
16 was a decision to seek to establish competitive cheer as
17 an individual sport rather than a team sport; correct?

18 A. That's correct.

19 Q. And that's within the NCAA differentiation between
20 team and individual sport?

21 A. Effective length of the playing season, things like
22 that.

23 MR. ORLEANS: Your Honor, I hope I didn't
24 take too much time with those. I just wanted to make
25 sure you were aware of the contents of that set of

1 documents.

2 THE COURT: Okay.

3 BY MR. ORLEANS:

4 Q. Now in this past season, Jack, the spring 2010
5 season I'll call it -- well, do you recall when the
6 Quinnipiac cheer team had its first competition in the
7 academic year just finished?

8 A. Yes, we had an inaugural event in the first week of
9 December.

10 Q. The first week of December?

11 A. Yes.

12 Q. Was that a competition or --

13 A. Sort of an exhibition program, get the campus aware
14 of our new sport and it was a very good opportunity for
15 us to see competitive cheer for the first time.

16 Q. So I think I probably then should refer to it as the
17 2009-2010 season. In the 2009-2010 season, the
18 Quinnipiac team competed against sideline squads; did it
19 not?

20 A. A variety of different teams, yes.

21 Q. And competed against -- we know you competed against
22 Maryland which bills itself as a varsity squad, right?

23 A. Yes.

24 Q. And that's a competition only team?

25 A. Yes.

1 Q. But you also competed against sideline teams and
2 club teams; did you not?

3 A. That's correct.

4 Q. And that will also be true in the coming year; will
5 it not?

6 A. That's correct.

7 Q. And it's also the case that in the 2010-2011 year,
8 not all of Quinnipiac's competitions will be in the NCSTA
9 format?

10 A. That's correct. If I could add that --

11 Q. There's no question. I'm sorry, Jack.

12 A. That's fine.

13 Q. I'm sure your lawyers are going to ask you some
14 questions?

15 A. No, that's fine.

16 Q. If you will just confine yourself to answering my
17 questions, I would appreciate it.

18 With respect to the plan by NCSTA to submit a
19 proposal to the Committee on Women's Athletics for
20 emerging sport status, you need ten schools to sign on to
21 a proposal; correct?

22 A. That's correct.

23 Q. And you don't have ten yet; do you?

24 A. Not yet.

25 Q. Changing the subject a little bit, now talking about

1 the EADA reports. You are involved in the submission of
2 Quinnipiac's EADA reports; aren't you?

3 A. Yes.

4 Q. And in fact, you're listed on the reports as the
5 responsible officer, I think?

6 A. Yes.

7 Q. And you're aware that OCR doesn't allow schools to
8 count cheerleading as a varsity sport when submitting
9 their EADA data, right?

10 A. We don't have cheerleading. It's competitive cheer,
11 I mean, so --

12 Q. This is what I wanted to get clear?

13 A. Yes.

14 Q. You were here in court yesterday, right?

15 A. Yes.

16 Q. And you saw and heard the testimony --

17 A. Right.

18 Q. -- about the EADA instructions?

19 A. Correct.

20 Q. Which include an instruction that in order to count
21 cheerleading for EADA purposes, a school must have
22 obtained a determination letter from OCR; right?

23 A. Yes.

24 Q. And you're aware of that instruction in the --

25 A. As it relates to cheerleading, yes.

1 Q. And so I take it then that it is Quinnipiac's
2 position that it's offering something different and
3 therefore that rule doesn't affect you?

4 A. I think that's something we need to answer -- get
5 answered.

6 Q. Have you sought an OCR determination letter for
7 Quinnipiac?

8 A. Again, the national group, NCSTA is certainly
9 working on that as a group.

10 Q. So NCSTA is working on it but hasn't sought it yet;
11 correct? It's a yes or no.

12 A. No.

13 Q. I'm not correct?

14 A. No, we haven't sought it yet.

15 Q. Thank you.

16 A. Sorry.

17 Q. And Quinnipiac has not sought an OCR determination
18 on its own; has it?

19 A. No.

20 Q. To your knowledge, has any school in the NCSTA
21 sought a determination letter from OCR?

22 A. I know Maryland has sought an answer and their
23 answer has been it's up to the institution to define and
24 support the event -- the sport as a sport; but that's not
25 something that Quinnipiac or the national body could use.

1 Q. I'm going to go to Exhibit 145. I'm anticipating an
2 objection.

3 MS. FRIEDFEL: Very clairvoyant.

4 BY MR. ORLEANS:

5 Q. I would like to show you, Jack, a document that's
6 been marked as Plaintiff's Exhibit 145. Do you recognize
7 this as an EADA report from the University of Maryland?

8 MR. BRILL: Objection, your Honor. This
9 document is hearsay. The part that's not showing --

10 MR. ORLEANS: I'll be glad to show it.

11 MR. BRILL: -- contains a statement by
12 Maryland with respect to alleged advice to them by the
13 Office of Civil Rights. We don't know the circumstances
14 under which that legend was put on there, what advice was
15 given to them by the Office of Civil Rights; and this
16 document was just added to the exhibit list a day or two
17 ago. I can say that I, personally, have spoken to the
18 attorney at length, director of University of Maryland
19 about this and there is a long story here which we were
20 prepared to take their depositions in Maryland to get on
21 the record had this been raised as an issue. But the
22 document --

23 We have no objection to this going in for the
24 top portion of the document; but it -- it's clear hearsay
25 to say that the Office of Civil Rights requested

1 something from them. Because we don't know the
2 conversations that were had, we don't know what
3 representations were made to the OCR or exactly what OCR
4 said to them or why. And frankly, if it comes in for the
5 truth of that, then we would ask for leave to continue
6 the file to take depositions of the Maryland --
7 responsible Maryland officials; because -- and I'm
8 representing this to the Court, what I can say is that it
9 was not what Mr. Orleans is presenting it to be.

10 MR. ORLEANS: Well, your Honor, with respect
11 to the hearsay objection --

12 MR. BRILL: I'm sorry, I left out there's
13 also a bunch of other EDEA reports. I don't know if they
14 are going to be offered. But there was no -- at least
15 this is last year's report. Before the NCSTA was formed.
16 What we got was a package of EADA reports for a group of
17 the NCSTA schools, most of which, the vast majority of
18 which didn't even compete in varsity competitive cheer
19 last year. And whatever was said last year under the
20 circumstances that existed last year really don't have
21 relevance -- I mean, even if this were not hearsay, it
22 doesn't reflect conversations that OCR has been having or
23 decision that is it might make based on the new format
24 and the new organization.

25 MR. ORLEANS: Your Honor --

1 MR. BRILL: Any slight relevance is far
2 outweighed by the prejudicial suggestion that OCR has
3 given an opinion to Maryland which frankly is simply not
4 the case.

5 MR. ORLEANS: Your Honor, with respect to the
6 hearsay objection, the entire collection of documents are
7 government records. I will represent to the Court that I
8 downloaded these reports from the Office of Civil Rights
9 web site where they are available to the public. These
10 are reports that are required to be submitted by
11 institutions that receive federal funds. They are filed
12 with the Department of education Office of Civil Rights
13 and they are available to the public on the web site.

14 MR. BRILL: And --

15 MR. ORLEANS: Insofar --

16 MR. BRILL: I don't dispute that.

17 MR. ORLEANS: Can I finish? I waited for
18 you.

19 MR. BRILL: I'm sorry.

20 MR. ORLEANS: Insofar the objection is a
21 hearsay objection, I think that the government records
22 exception disposes of that argument.

23 Insofar as what it's being offered for, the
24 documents are being offered to show that Maryland has not
25 received a determination that competitive cheer may be

1 counted. I'm not trying to offer any evidence about any
2 other conversations Maryland may or may not have had with
3 the Office of Civil Rights. I don't know about those.

4 And the documents -- the remainder of the EADA
5 reports which are contained in the exhibit are being
6 offered to show that in -- and it's all limited to
7 2008-2009 because these reports are filed in October of
8 2009 and we don't have reports yet for the current year.
9 But I would offer the document simply to show that none
10 of the schools now in the NCSTA at that time, for
11 whatever probative value that has, listed cheerleading or
12 competitive cheer as varsity sports on their EADA
13 reports.

14 MR. BRILL: Your Honor, I don't object to
15 that document for that limited purposes as long as
16 there's no suggestion that the statements about what was
17 requested by the OCR are accepted for the truth. We
18 would -- in fact, we don't dispute that as of October
19 15th, 2009 or indeed through today that Maryland has not
20 received a letter from the Office of Civil Rights
21 advising it that it can count competitive cheer as a
22 sport. That's not disputed here. What I do dispute is
23 admitting a document to show that there was advice or
24 request from the Office of Civil Rights not to include
25 it.

1 And as far as the rest of the NCSTA membership,
2 all those documents are completely irrelevant to the
3 extent the schools weren't even claiming to be
4 participating in competitive cheer during that period of
5 time.

6 THE COURT: Mr. Orleans, we seem to have
7 double hearsay. The report is a government report, but
8 the statements in the notes appear to be hearsay
9 statements.

10 MR. ORLEANS: I see the point, your Honor.
11 Wouldn't that be true of most government records? The
12 information has to be reported to the government from
13 somewhere. And the exception doesn't go that far?

14 THE COURT: Well, this is --

15 MR. ORLEANS: Cover the second layer?

16 THE COURT: I think it's different because --
17 for two reasons: One, presumably the data is data that
18 the participants are required to provide to the
19 government so there's a duty to collect it. Which gives
20 it some credence. Whereas, the statement in the note
21 is -- doesn't fall, doesn't appear to fall within that --
22 the scope of that duty. What's more, the fact that it
23 mentions a request suggests that it's repeating an out of
24 court statement as opposed to merely pulling the data
25 required from the report.

1 MR. ORLEANS: Your Honor, I see where you're
2 going and with that in mind, I will withdraw the offer of
3 the document and accept Mr. Brill's proposed stipulation
4 that Maryland, that the University of Maryland has not
5 received a determination letter from OCR.

6 MR. BRILL: Yes, we would agree to that.

7 THE COURT: Very well.

8 BY MR. ORLEANS:

9 Q. I'm sorry if I asked you this already, Jack, but it
10 is the case, isn't it, that Quinnipiac has never in the
11 past reported competitive cheer as a varsity sport on its
12 EADA submission?

13 A. No.

14 Q. No, it has not?

15 A. No, it has not. I'm sorry.

16 Q. I keep asking the questions in an awkward way. I
17 apologize.

18 I think you heard Mr. Thompson testify earlier that
19 the cheer squad was not held to its expense budget in its
20 first year of varsity operation?

21 A. Having had many other sports start and evolve in
22 Division I, its -- there's no question that it's an
23 evolving process. But there are certain policies that
24 are adhered to, but frankly, coaches and our financial
25 people did a great job supporting them in the first year.

1 Q. So you did hear that testimony?

2 A. Yes, I did.

3 Q. And that would explain how that squad was able to
4 fly to competitions in Georgia and Florida on a \$50,000
5 travel -- on a \$50,000 expense budget; right?

6 A. That's correct.

7 Q. Now you would agree, wouldn't you, that for a
8 Division I coach, recruiting is very important?

9 A. Yes.

10 Q. And you heard Dr. Lopiano say yesterday that
11 arguably it's the most important thing that a head coach
12 does, at least after instruction?

13 A. Yes.

14 Q. And with respect to competitive cheer, even though
15 it's not an NCAA sport, you are following NCAA rules; is
16 that right?

17 A. Yes.

18 Q. So certainly, for the year that is coming, the
19 2010-2011 academic year, recruiting is by and large over;
20 is it not?

21 A. I wouldn't say that's done at all until they the
22 first day of classes in September.

23 Q. You are saying recruiting continues right through
24 the summer?

25 A. It sure does, in terms of people and -- this is I

1 would say, definitely in competitive cheer, but certainly
2 in all sports.

3 Q. Accepted students' deposits were due to be paid to
4 Quinnipiac by May 1st, correct?

5 A. There's no question.

6 Q. So some coaches with holes in their rosters may
7 continue to recruit through the summer to try to fill
8 some holes; right?

9 A. It's very possible.

10 Q. I want to talk a little bit about the roster
11 management process, implementation at Quinnipiac.

12 That's something that Dr. Thompson is in charge of;
13 right?

14 A. That's correct.

15 Q. But you're also involved?

16 A. Yes.

17 Q. You work closely with him on that?

18 A. Yes, I do.

19 Q. And Dr. Thompson testified that he took that very
20 seriously?

21 A. Yes, he did.

22 Q. And that he expected the coaches to hit their
23 numbers; correct?

24 A. Yes, he did.

25 Q. So did you expected the coaches to hit their

1 numbers?

2 A. Yes.

3 Q. And that is at least in part because QU wants to
4 maintain Title IX compliance on the proportionality test;
5 correct?

6 A. That's correct.

7 Q. So -- and in order to do that, you really can't let
8 the men's squads get any larger than their targets or let
9 the women's squads get smaller than their targets; is
10 that right?

11 A. Basically, yes.

12 Q. And I take it that after the evidence that was
13 presented at the preliminary injunction hearing which
14 suggested that there might have been some manipulations,
15 the name of the game was, you know, was no more games
16 with drops and adds, get to the target number and stay
17 there, is that a fair characterization?

18 A. Yes.

19 Q. In the summer of 2009, last summer, did any of the
20 coaches express concerns to you about the fact that they
21 didn't get their targets until after the recruiting
22 season was essentially done?

23 A. No.

24 Q. No?

25 A. They had been aware about roster numbers in general

1 anyway, so they knew their -- the numbers with important.
2 It wasn't like a roster management just happened. They
3 were very close all the time.

4 Q. Didn't any of the coaches tell that you they were
5 taken by surprise by their roster numbers?

6 A. There was some concern by an athlete or two. But I
7 immediately let them know they needed to make a request
8 to Mark.

9 THE COURT: You said by "an athlete or two,"
10 did you mean "a coach or two" or --

11 BY THE WITNESS:

12 A. No, a coach about an athlete or two.

13 THE COURT: Oh, I see.

14 BY MR. ORLEANS:

15 Q. Excuse me just a moment, your Honor. Sorry.

16 Coaches who get roster targets that are higher than
17 the number of athletes they've recruited have to hold
18 tryouts or take walk-on's; correct?

19 A. Could you repeat that question again.

20 Q. Coaches who get roster targets that are bigger,
21 bigger numbers, higher, than the number of athletes that
22 they've recruited for their squads have to have tryouts
23 or walk-on's or some way to fill those slots; right?

24 A. Yes.

25 Q. And at Quinnipiac, is it more often the case that

1 women's teams have to fill out their rosters by holding
2 tryouts or allowing walk-on's?

3 A. I don't know if it's more men or women.

4 Q. This is Plaintiff's 86. Let me try to get this so
5 you can see all of it.

6 I don't remember if this one is already in evidence.
7 86?

8 THE CLERK: It's in.

9 MR. ORLEANS: That's in already? Okay.

10 BY MR. ORLEANS:

11 Q. Jack, this is a document -- the cover page actually
12 is an e-mail to you from Dr. Thompson. It's dated
13 September 1, 2009. And this is the attachment. It
14 appears to be to show the roster sizes for this year that
15 we've just completed, 2009-2010. Let's start with men.
16 There's a column for the final plan, there's a column for
17 the preliminary plan. I guess that was an earlier
18 version?

19 You need to answer verbally. Sorry.

20 A. Yes.

21 Q. And then you got a column showing the difference and
22 a column showing the NCAA average squad size. And then
23 the final column for the men that's highlighted shows the
24 comparison to the NCAA average squad size. Correct?

25 A. That's correct.

1 Q. And I see that the Quinnipiac men's -- Quinnipiac
2 baseball is four -- the target is four less than the NCAA
3 average squad size; correct?

4 A. That's correct.

5 Q. Soccer is three smaller; correct?

6 A. Yes.

7 Q. Lacrosse is three smaller?

8 A. Yes.

9 Q. Cross country is two smaller?

10 A. Yes.

11 Q. And ice hockey is two larger?

12 A. Correct.

13 Q. Did it cause you any concern that so many of your
14 men's -- your targets for men's teams were just a little
15 smaller than the NCAA averages?

16 A. I think Dr. Thompson mentioned this morning that
17 each one of those decisions on a number was after lengthy
18 discussion with each of the coaches.

19 Q. And he also mentioned that the NCAA average squad
20 sizes were taken into account; didn't he?

21 A. Yes.

22 Q. My question you to is, did it cause you any concern
23 that most of your men's squad sizes were a little bit
24 lower than the NCAA averages?

25 A. No.

1 Q. Okay. And now let's look at the women's. I can't
2 move it because we have to be able to see what the sports
3 are. You got the same basic setup for the women;
4 correct?

5 A. Yes.

6 Q. And we can see that for women's basketball, the team
7 is three larger than the NCAA average; right?

8 A. Correct.

9 Q. For field hockey it's two larger. For soccer it's
10 one larger. For tennis it's one larger. For lacrosse
11 it's two. For cross country it's two. For ice hockey
12 it's one. And for softball it's one. Was I -- I did
13 read all those correctly?

14 A. Yes, you did.

15 Q. And let's just talk about indoor track and outdoor
16 track briefly. For indoor track, the squad size is seven
17 smaller than the NCAA average; correct?

18 A. Correct.

19 Q. But the NCAA average includes teams that enter field
20 events which Quinnipiac doesn't do?

21 A. That's right.

22 Q. And the same for the outdoor track?

23 A. Correct.

24 Q. My question is, did it cause you any concern that
25 the Quinnipiac women's teams targets were consistently

1 just a little bigger than the NCAA average squad size?

2 A. For the same reason as the men, no.

3 Q. And now let me show you Exhibit 142. Now the left
4 column is under men and under women, the left column is
5 the target for the upcoming year; correct?

6 A. That's correct.

7 Q. Do you recognize the document as the targets for the
8 coming year?

9 A. Yes.

10 Q. And we can see that your basketball team is slated
11 to be -- your men's basketball team is slated to be
12 larger than the NCAA squad -- average squad size and the
13 same for the women's team; correct?

14 A. Yes.

15 Q. And your men's ice hockey team is scheduled to be
16 larger than the NCAA average squad size; correct?

17 A. That's correct.

18 Q. And those are basketball and ice hockey are your
19 sports of emphasis?

20 A. Yes.

21 Q. Men's baseball is going to be two smaller than the
22 NCAA average; right?

23 A. Yes.

24 Q. Soccer is going to be five smaller?

25 A. Yes.

1 Q. Tennis is right at the average. Lacrosse is going
2 to be four smaller than the NCAA average?

3 A. Correct.

4 Q. Cross country is going to be two smaller than the
5 NCAA average?

6 A. Correct.

7 Q. Did it cause you any concern that your men's teams
8 are consistently set up just a little bit smaller than
9 the NCAA average?

10 MR. BRILL: Objection, your Honor.
11 Misstating the evidence.

12 THE COURT: Lacrosse is --

13 MR. BRILL: Two of the teams are larger and
14 one is the same.

15 MR. ORLEANS: I'll amend the question. I
16 think he's answered it, but I'll amend the question to
17 say many of your men's teams are smaller the NCAA
18 average? And the answer is.

19 BY THE WITNESS:

20 A. Am I concerned, is that the question.

21 Q. Yeah, that's the question?

22 A. For the reasons already stated, no.

23 Q. And then on the women's side, the basketball team is
24 three larger than the average, the field hockey team is
25 one larger?

1 A. Yes.

2 Q. The soccer team is one smaller than the average.
3 Tennis is one larger, lacrosse is three larger, cross
4 country is seven larger than the national average. Ice
5 hockey is three larger than the national average.
6 Softball is one smaller than the national average. And
7 volleyball is one smaller than the national average.

8 Now with respect to the women's squad sizes,
9 obviously, some are larger and some are smaller. With
10 respect to the ones that are larger, slated to be larger
11 than the national average, did it cause you concern that
12 they were slated to be larger than the national
13 average?

14 A. No.

15 Q. You've increased the prospective size of indoor and
16 outdoor track from 30 to 35 as against NCAA average squad
17 sizes of 38 and 37 for indoor and outdoor respectively;
18 right?

19 A. Yes.

20 Q. But you're still not entering field events, are you?

21 A. No.

22 Q. You heard Dr. Thompson's testimony about his
23 interaction with Dave Clark the coach of the women's
24 soccer team?

25 A. Yes, I did.

1 Q. Did Dr. Thompson discuss that issue with you before
2 he gave -- before he made a decision?

3 A. Most all the time, it's I think Dr. Thompson, myself
4 and the coaches involved are part of the same e-mail
5 chain. Many times I will -- coach will request it to me,
6 I will send it to Mark to say that, you know, I support
7 this or I don't. And Mark ultimately makes the final
8 decision, but I'm always aware of both the request and
9 the decision.

10 Q. So you knew that Coach Clark thought that 27 was not
11 a manageable number for his soccer squad?

12 A. Yes.

13 Q. And that he wanted a roster of 22 to 24?

14 A. Correct.

15 Q. And -- but that he said he would work with what the
16 school needed; correct?

17 A. That's correct.

18 Q. Let me show you -- I will move these e-mails as
19 quickly as I can. This is an e-mail, this is Plaintiff's
20 Exhibit 88. And it's an e-mail back and forth between
21 you and Carolyn Robin who is the same person as Carolyn
22 Martin; correct?

23 A. Correct.

24 Q. And on February 15th, 2010, Coach Martin wrote to
25 you about her desire to drop some -- drop three athletes

1 from her cross country roster and add three athletes to
2 train with the team for the spring; correct?

3 A. This is men's cross country or --

4 Q. This is men's cross country. Right. I'm trying to
5 move quickly, but what she says is she lost Rich Klauber,
6 he transferred?

7 A. Correct.

8 Q. And her two graduating seniors Dan Martin and Tyler
9 Dinnan, she would like to be able to replace with two
10 other athletes to train with us; right?

11 A. That's correct.

12 Q. So she asked you whether it would be possible to add
13 three athletes so that we can better prepare next year's
14 team; right?

15 A. That's correct.

16 Q. And your response was, "I'm assuming that your
17 numbers will stay the same if Mark approves this"; right?

18 A. Yes.

19 Q. So you thought, you believed when you sent that,
20 that the three athletes added to practice for the spring
21 after the competitive season wouldn't count as
22 participants for Title IX purposes; right?

23 A. I'm assuming that if all was cleared, that they
24 would not -- they would be part of the add or drop
25 process that gets approved by Tracey Flynn and ultimately

1 Mark.

2 Q. And was it your assumption that if you dropped
3 someone and added someone, that with a net gain of zero,
4 that that wouldn't increase the number of participants
5 who had to be counted?

6 A. Well again, because this is a sport that ended and
7 cross country now had a non-traditional season in the
8 spring, so that -- so it's a tad different than just
9 dropping and adding in the middle of a season. But
10 ultimately, what that e-mail showed was the communication
11 in support of the roster policies.

12 Q. But I take it then that the answer to -- my question
13 was whether you thought that dropping three and adding
14 three would increase the number of participants that had
15 to be reported and I take it that the answer is you
16 thought that it would not increase that number?

17 A. That's correct.

18 Q. And similarly, since this is a multi-page, can you
19 get your hands on Plaintiff's Exhibit 90?

20 A. Is this the same one?

21 Q. If it's got numbers, is 90 in here?

22 A. Yes.

23 Q. Great.

24 Okay?

25 A. Yes.

1 Q. Exhibit 90 is an e-mail chain between you and is it
2 pronounced "Danny"?

3 A. Yes.

4 Q. And Danie Caro?

5 A. Yes.

6 Q. And Danie Caro is the coach of the women's lacrosse
7 team; right?

8 A. That's correct.

9 Q. So go to the back, the last page first and we'll
10 work our way up. Do you recall the exchange that's
11 reflected in these e-mails?

12 A. Yes.

13 Q. If I can paraphrase, it appears that Coach Caro is
14 asking you about a student who was studying abroad in the
15 fall, this is in September that coach writes to you:
16 "I've got a student that's studying abroad. I would like
17 to add her to the roster when she gets back. Am I going
18 to have to drop someone in order to stay at my number?"
19 Right?

20 A. Yes.

21 Q. And you wrote back that you were in Maryland and you
22 wanted to know if the student coming back from your --
23 was on scholarship?

24 A. That's correct.

25 Q. And you said that if she's on scholarship she's

1 going to count. But if she's not on scholarship, she's
2 not going to count, right? Well, let me withdraw that.
3 I want to be fair.

4 You said, you think if she's on scholarship, she'll
5 count?

6 A. That's right.

7 Q. And so I take it that what you thought was that if
8 she was not on scholarship, she wouldn't count?

9 A. I'm not sure what I meant at the time. But it
10 clearly was sort of looking for more information to help
11 both Tracey and Mark make a decision for this question.

12 Q. If you go then to the first page -- she wrote back
13 you to on September 14th, Coach Caro wrote back: "She's
14 a non-scholarship player"; right?

15 A. That's correct.

16 Q. And then if you go to the first page of the exhibit,
17 you then said: "My hunch is that if she was not on the
18 roster for the first date of competition, and she was not
19 on athletic aide, she wouldn't count"; right?

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

21 Q. So that was your belief at that time?

22 A. That was my hunch.

23 Q. Do you recall whether you ever had that confirmed or
24 not?

25 A. I don't. This clearly, again, went to the same

1 review process.

2 Q. Showing you Exhibit 91. This is an e-mail from
3 Coach Clark on September 17th of 2009 about player who
4 wanted to quit the team asking if he had to replace her
5 to keep his roster at 27 or could he continue without a
6 27th player. Right?

7 A. Yes.

8 Q. And the e-mail was sent to Tracey Flynn and to you?

9 A. Yes.

10 Q. Right? And Ms. Flynn then responds later that day,
11 if you can't stop someone from quitting, "You hit your
12 target number as of the first day of competition. You
13 met your obligation"; see that?

14 A. Yes.

15 Q. Is that an accurate statement of the policy of the
16 athletic department at that time?

17 A. It's an interpretation from Tracey, yes.

18 Q. Let me talk just a minute about how you count and
19 report runners. Prior to this year, Quinnipiac had
20 women's cross country, indoor and outdoor track and also
21 had men's cross country, indoor and outdoor track; right?

22 A. That's correct.

23 Q. And when you did your EADA reports, you treat -- for
24 purposes of whether you were going to use duplicated or
25 unduplicated counts -- do you understand what I mean by

1 duplicated and unduplicated counts?

2 A. Yes.

3 Q. For purposes of your EADA reports, you would treat
4 the men's and women's cross country and track programs
5 the same; wouldn't you?

6 A. That's correct.

7 Q. So even -- your reporting may had varied from year
8 to year whether it was duplicated or unduplicated, but it
9 was always the same for the men's and women's teams; is
10 that right?

11 A. That's correct.

12 Q. But now that you have a men's cross country program
13 but no men's track, but you have women's cross country,
14 indoor and outdoor track, you are going to multiple count
15 some of the women but you're not going to multiple count
16 any of the men; am I right?

17 A. That's correct.

18 Q. So if I can go back for a min -- you haven't filed
19 the 2009-2010 EADA report yet; have you?

20 A. No.

21 Q. And that will be filed in October?

22 A. That's correct.

23 Q. So if we can just look at the women's -- the female
24 runners for the year just ended. There are 18 cross
25 country runners; right?

1 A. Yes.

2 Q. And they are all required by their coach to run
3 indoor and outdoor track; are they not?

4 A. I don't know the answer to that.

5 Q. Do you know that they all do run indoor and outdoor
6 track?

7 A. I couldn't say for sure.

8 Q. You couldn't say for sure. Okay. Let's just -- I'm
9 going ask you to accept, I just want to do a quick little
10 math exercise with you. I'm going to represent to you
11 that all of the cross country runners run indoor and
12 outdoor track. Those 18 girls are going to count for 54
13 participation slots; right?

14 A. 18 times 3?

15 Q. 18 times 3, that's right. And if you similarly
16 assume that of the 30 indoor and outdoor track athletes,
17 18 on each squad are cross country runners and the other
18 12 run only indoor and outdoor track, and that's 12 more
19 girls who are going to count for 24; right?

20 A. Again, there are many athletes that might go
21 overseas, student teaching, nursing. I would say that
22 you're -- I'm not sure that's exactly true, not all the
23 same people. You might not have all 18 running indoor
24 and outdoor track.

25 Q. That information is part of the record as to who

1 actually ran and who actually -- in fact, you could have
2 a girl who, due to -- who was on the roster for cross
3 country, indoor and outdoor track and receiving a
4 scholarship, say, so that she counts. And if she were
5 injured, but receiving aide, she might never run at all
6 and she would still count three times; right?

7 A. I'm not sure. Again, I'll defer to Tracey in terms
8 of the exact how these -- that special occurrence counts.
9 But to say that all same 18 in cross country
10 automatically run indoor and outdoor track, I don't know
11 if that's true.

12 Q. Am I correct that at Quinnipiac there are no
13 multiple sport athletes, other than the female runners?

14 A. There may be one or two athletes that may try a
15 second sport, but --

16 Q. There was one girl who was on the ice hockey team
17 for most of the year and then went to field hockey,
18 right?

19 A. Right, right.

20 Q. Are there any others you are aware of?

21 A. There's none I'm aware of. But I'm not going to say
22 it doesn't happen.

23 Q. You are not aware of somebody who plays soccer in
24 the fall and softball in the spring?

25 A. I'm not aware, but I wouldn't say it doesn't happen.

1 Q. And you'd agree with me, wouldn't you, that there's
2 more difference between, for example, playing soccer in
3 the fall and softball in the spring on the one hand than
4 there is between running the 800 meters indoors and the
5 800 meter outdoors?

6 A. That's a matter of opinion.

7 Q. And Quinnipiac doesn't have an outdoor track;
8 correct?

9 A. No.

10 Q. And the Quinnipiac indoor track is not suitable for
11 competition?

12 A. No.

13 Q. No, it is not or no --

14 A. No, it isn't. Sorry. Tricked me again.

15 Q. That's because I asked the questions in the
16 negative.

17 Does Quinnipiac have plans to construct an outdoor
18 facility?

19 A. Not at this time.

20 Q. Does Quinnipiac have plans to improve its indoor
21 facility?

22 A. Not at this time.

23 Q. So there's no plan at this time to make the indoor
24 facility suitable to host competitions?

25 A. No.

1 MR. ORLEANS: May I just have a moment, your
2 Honor. I'm almost finished.

3 THE COURT: Fine.

4 BY MR. ORLEANS:

5 Q. Jack, let me just show you a copy of Plaintiff's
6 Exhibit 147. This is an e-mail from you to Rick Seeley;
7 correct?

8 A. Yes, it is.

9 Q. And it's dated April 7th of this year. It says:
10 "This is helpful. It might be good we meet with all to
11 review this so all are aware."

12 And the attachment --

13 MR. BRILL: Your Honor, I'm not sure when I'm
14 supposed to jump in to object. I'll make my objection
15 now. This is hearsay. It's being offered for the truth
16 of the contents. It's a letter sent by Mr. Seeley making
17 out-of-court statements; and in fact, the plaintiffs had
18 Mr. Seeley on their witness list. They asked to speak to
19 him. And after speaking to him they took him off the
20 witness list. They can't now put in the statements by an
21 out-of-court declaration. It's rank hearsay.

22 THE COURT: Well --

23 MR. ORLEANS: May I respond?

24 THE COURT: Sure.

25 MR. ORLEANS: Your Honor, defense counsel

1 represented not three and a half hours ago that the
2 defense is going to be calling Mr. Seeley in any event.
3 But it's not hearsay. It's an admission. Mr. Seeley is
4 a coach. We've been told he's an administrator. He's an
5 employee of the university. He is speaking here in
6 connection with his function for the university. And the
7 statement by Mr. Seeley, therefore, is not hearsay.

8 MR. BRILL: Your Honor, he is not -- he does
9 not represent the university for purposes of binding the
10 university. In fact, the plaintiff's took the position
11 when they asked to speak to the coaches, they told us
12 that their position was that coaches were not -- that
13 they didn't have to get our permission to speak to the
14 coaches as officials of the university, but they, as a
15 courtesy, asked us if we objected. In fact, they,
16 themselves, approached a coach, Coach Fairchild, and
17 spoke to her and called her as a witness in this very
18 case without permission of the university. Coaches not
19 sufficiently lie in the organization to be somebody that
20 binds university. They are an employee of the university
21 three, four, five levels down from the top of the
22 university.

23 In any event, Mr. Seeley will be here and if
24 there's -- if he could be cross examined at that time
25 about statement that is he may have made in the e-mail,

1 that's appropriate. But he can't be -- I don't --
2 obviously, your Honor has to make a ruling, but it seems
3 to me there's no basis for admitting it on the grounds
4 that its an admission against its interest by the
5 university.

6 THE COURT: It seems to me it's hearsay, but
7 as a practical matter, if he's coming and he's going to
8 be available for him to be examined on at that time, I
9 wonder why it can't be used now. In other words, do you
10 want to have plaintiff recall Mr. McDonald at that point
11 to ask him about the document after it comes in?

12 MR. ORLEANS: I only have a couple questions,
13 your Honor. I -- we, certainly, admit it conditionally
14 to it being linked up, assuming Mr. Seeley will admit
15 it's his statement, then I think the problem will be
16 solved.

17 MR. BRILL: I guess we will proceed on that
18 base. I'm not sure that cures the hearsay problem, but I
19 agree with the practicalities of recalling
20 Mr. McDonald.

21 THE COURT: I'm going to allow this
22 examination and if it turns out that the document doesn't
23 come in for some reason, then I'll strike it. So it's
24 not admitted, but you can use it.

25 MR. ORLEANS: Okay.

1 BY MR. ORLEANS:

2 Q. Mr. McDonald, really I just want to ask you if you
3 received this communication from Mr. Seeley?

4 A. Yes, I did.

5 Q. And this was prompted by his request to -- or
6 withdrawn.

7 This was prompted by his notification to you and
8 Tracey Flynn that he would -- that there were six girls
9 who would not be returning to play hockey next year;
10 correct?

11 A. That's correct. And I -- any time there is a
12 student athlete that's been asked -- the scholarship
13 won't be renewed or they're quitting, it's really
14 important that I and Tracey know who they are and why
15 it's happening.

16 Q. And did you ask him to provide some kind of detailed
17 explanation --

18 A. That's what the e-mail said.

19 Q. This is his explanation?

20 A. This is the response to that.

21 Q. You were here yesterday. Do you recall Mr. --
22 Dr. Thompson being shown a letter to Robin Sparks from
23 you -- excuse me, with an envelope?

24 A. The campus envelope.

25 Q. Yeah, the campus envelope?

1 A. Yes.

2 Q. Did you send out the roster target letters to the
3 coaches on or about June 9th?

4 A. Yes.

5 Q. And the exhibit that we saw was a copy of the letter
6 that went to Coach Sparks; correct?

7 A. Correct.

8 Q. It is true, isn't it, that there is currently a
9 schedule of volleyball competitions set for the fall?

10 A. Yes.

11 Q. And you have returning students by which I mean
12 students who have already -- who were coming as
13 sophomores or juniors or seniors who are on the
14 volleyball team; correct?

15 A. Yes.

16 Q. And who are receiving athletic scholarships?

17 A. Yes.

18 Q. And the school is committed to maintaining the
19 scholarships for those kids regardless of what happens;
20 isn't it?

21 A. Yes.

22 Q. That's how you've treated other athletes on other
23 teams that were eliminated?

24 A. Yes.

25 Q. And you also have freshmen coming to Quinnipiac in

1 the fall who were recruited by Coach Sparks and are
2 coming with athletic scholarships to play volleyball;
3 correct?

4 A. Yes.

5 Q. But I think that you told me previously that you
6 weren't -- you don't know what the university's policy is
7 going to be as far as honoring scholarships of those
8 kids?

9 A. We have made sure Coach Sparks informs the
10 prospective student athletes with exactly what's
11 happening with volleyball.

12 Q. As far as you know, Coach Sparks has informed anyone
13 that she recruited to come to enter as a freshmen in the
14 fall that the future of the volleyball team is uncertain,
15 right?

16 A. Yes.

17 Q. You didn't tell her she needed to tell the students
18 that their scholarships might be withdrawn; did you?

19 A. I forget exactly what was said about that, but we
20 wanted to have her and the prospective student athletes
21 and the families be aware of what's happening.

22 Q. And by be aware of what's happening, you mean be
23 aware that the program might be eliminated; correct?

24 A. That's correct.

25 MR. ORLEANS: Nothing further for this

1 witness, your Honor.

2 THE COURT: All right. Why don't we take a
3 ten minute recess and come back for cross. We will be
4 doing any direct through this witness?

5 MR. BRILL: Yes. Although not much of one.

6 THE COURT: All right. Fair enough. We will
7 stand in recess until 3:45.

8 (RECESS At 3:35 P.M.)

9 (RECONVENED AT 3:47 P.M.)

10 MR. BRILL: Jack, I'm going to try to make
11 this as quick and painless as possible, but there's a few
12 things I want to go over.

13 CROSS-EXAMINATION

14 BY MR. BRILL:

15 Q. You were shown Exhibit 1 during your direct
16 examination. I put part of it on the screen here and
17 call your attention to the highlighted portion. Were you
18 aware at the time Coach Martin was requesting an increase
19 in the roster for next year that she was planning to
20 expand the number of athletes that included sprinters as
21 well as a high jumper?

22 A. She has talked about that possibility. I'm not
23 aware of this specific e-mail. But --

24 Q. I see.

25 A. But...

1 Q. Now when the decision was made to eliminate the
2 volleyball team last spring, what, if any, was the budget
3 concern that the University had with respect to the
4 volleyball team?

5 A. The major reason as we testified last time was that
6 we were hoping to have a new facility built for
7 volleyball and some intermural basketball and volleyball
8 activities. The current Burt Kahn Court is going to be
9 used more by student activities and campus events and
10 special events that the campus wants to hold because our
11 current special events facility is being turned into a
12 student center. So it's a little bit of a domino effect.
13 The University was planning to build a third field house
14 gymnasium for volleyball and the economy just brought
15 that to a halt.

16 Q. There was no suggestion that the operating budget
17 for the competitive cheer team was less than the
18 operating budget would have been for the volleyball team;
19 was it?

20 A. No.

21 Q. And just skipping over to a few topics, you were
22 asked about some rules changes that were being made with
23 respect to the NCAA -- NCSTA competition format for next
24 year?

25 A. Yes.

1 Q. Is that unusual for sports to be changing rules from
2 one season to another?

3 A. As athletic administrator, we probably get no less
4 than maybe five to ten rule award policy changes per
5 sport of our 18 sports. It's very common for the coaches
6 to change things like the three point line in basketball.
7 It's very common. We just changed no icing in ice hockey
8 during a penalty a month ago. So it's very common for --
9 as an athletic administrator to see and approve or argue
10 with policy changes.

11 Q. You were also asked about the championship format
12 for the NCSTA. For the NEC conference championships, are
13 there any sports in which every team in the conference is
14 eligible to participate --

15 A. There's many. All of the six track and fields for
16 men and women. Men's and women's golf. I might be
17 missing some others, but there are many of them that all
18 of the conference members are eligible to participate.

19 Q. And I'm not sure you testified to this, but in
20 addition to the meeting of the administrators of the
21 NCSTA, did the coaches also meet throughout the year?

22 A. They did meet at the summit in September of '09 with
23 us administrators; but frankly, since then, they've
24 either been on a conference call with the administrators
25 or they have met on their own. They have been very

1 diligent and they have been meeting weekly as coaches and
2 then they would then formulate a list of proposals and
3 discussion points that the administrators would then have
4 a call to approve, discuss and move forward.

5 Q. And were those recommendations, for the most part,
6 reflected in the exhibits that --

7 A. Most everything we've seen today is as a result of
8 proposals by the coaches to the administrators.

9 Q. Have you been involved in the formation of
10 conferences with respect to other sports in the course of
11 your career?

12 A. A few times. As everybody knows, Quinnipiac was
13 Division II until 1995. For example, when we went
14 Division I in 1998, we didn't have a conference for our
15 ice hockey program. And nor did we have a women's ice
16 hockey program. So in 1998, I was deeply involved in the
17 formation of a men's ice hockey conference, UConn,
18 Fairfield, Army, Holy Cross, so that we could have a
19 conference for men's ice hockey at Quinnipiac. And all
20 of the discussions that we just had regarding the NCSTA,
21 I used my experience both with that as well as my NCAA
22 committee experience to help the NCSTA get going.

23 So women's ice hockey team, which we added in
24 1998, also came on as a sport without a conference and we
25 had to find it a conference. We had to find it a

1 schedule. And very similar to the schedule we see here
2 today for competitive cheer, so that was a two year
3 process to get women's ice hockey up and running.

4 Men's lacrosse was a sport without a conference
5 for probably my whole ten years in Division I. We've
6 recently found a conference for it. But that, too,
7 needed leadership, committee conference affiliation. So
8 I was also deeply involved with that.

9 Q. And then some of those sports that you mentioned you
10 compete against schools that are outside of the New
11 England area?

12 A. Yes. We find that the men's lacrosse, particularly
13 men's lacrosse and men's, women's ice hockey take us
14 into, shall we say, markets that the northeast conference
15 does not. Ice hockey traditionally is a, you know, New
16 York to Boston kind of markets, because the ECAC would
17 play Harvard and Dartmouth and Brown and Princeton. So
18 we kind of got the northeast covered pretty well. Men's
19 lacrosse and women's lacrosse, particularly men's
20 lacrosse as an independent in the early days, that brings
21 us to the New York to Washington, D.C. market so we can
22 play schools look Loyola and Maryland and like that.

23 So my experience with all of these other sports
24 that we sort of elevated or started at Quinnipiac, really
25 helped in the formation of the competitive cheer NCSTA.

1 Q. Now as Mr. Orleans pointed out, some of the teams
2 that are other members of the NCSTA are located quite a
3 distance from Quinnipiac. Has the University considered
4 whether that could be an advantage or disadvantage in
5 terms of entering into this sport?

6 A. I think as I just said, our experience with ice
7 hockey, but particularly our past league in men's
8 lacrosse we played Ohio State, we played Notre Dame,
9 University of Denver, we played Air Force Academy, that
10 got Quinnipiac into a whole new world of demographics and
11 markets not only for the athletic department it but for
12 the entire University. Now with the success of that,
13 having the opportunity to go to Maryland and go to Oregon
14 and go to Baylor, is only going to help Quinnipiac
15 tremendously in terms of our being seen all over the
16 country.

17 Q. I would say you're playing with the big boys, except
18 I guess it's the big girls?

19 A. Big boys and girls, yes.

20 Q. Now you were asked a question about men's -- about
21 men's squads being larger and women's squads being, I may
22 have this backwards, but any efforts to keep men's squads
23 smaller and women's squads larger during the roster
24 management process. Do you recall that?

25 A. Yes.

1 Q. Did the same principals apply in the opposite
2 direction, in other words, men's squads couldn't be
3 smaller than the target numbers and women's squads
4 couldn't be larger?

5 A. I think we -- through the discussions with Mark and
6 through the policies and vetting with the coaches, we
7 just picked and all agreed -- I mean all, meaning the
8 coaches, myself and Mark Thompson on what the number
9 would be. There was no sort of blanket attempt to make
10 all the men's smaller or all the women higher.

11 Q. You were asked questions about tryouts and walk-ons.
12 In your experience in college athletics, is it common for
13 teams, even with teams with many recruited athletes, to
14 have tryouts and walk-ons?

15 A. Yes. Men's ice hockey holds an open and fair
16 tryout. Clearly our numbers might sometimes prohibit
17 that. But when possible, we like to give tuition paying
18 parents and their student athletes a fair and open tryout
19 for as many sports as possible.

20 Q. I would like to direct your attention to Exhibit 88
21 that you were questioned about by Mr. Orleans.

22 I believe this is an e-mail about adding three men
23 to the --

24 A. Oh, yes.

25 Q. -- cross country team during the spring.

1 A. Yes.

2 Q. It's -- incidentally, Did the men's cross country
3 team compete at all during the spring of 2010?

4 A. No.

5 Q. You were asked about whether you felt you had to
6 report these three athletes when they were added to the
7 team. Do you recall that question?

8 A. Yes.

9 Q. Is it your understanding that there's any reporting
10 required to either the EADA or to -- under the EADA or to
11 the NCAA of any athletes other than those that are on the
12 roster as of the first day of competition?

13 A. No.

14 Q. And could you look at Exhibit 91, please, that you
15 were asked about by Mr. Orleans. And looking at that
16 document, this was the one where the coach, I think it
17 was the women's --

18 A. Soccer.

19 Q. -- soccer coach asked if she had to maintain the
20 roster at 27?

21 A. Yes.

22 Q. But wasn't she, in fact, asking to add a player to
23 the team?

24 A. He --

25 Q. He, yeah.

1 A. Ask that question again? I'm --

2 Q. Well, there was a portion of the e-mail that Mr.
3 Orleans didn't point out to you and what was it that the
4 coach was asking for?

5 A. "I would like to add another keeper, if possible,
6 but need clarification what I can and cannot do in this."

7 Q. Another keeper being a goal keeper?

8 A. Yes.

9 Q. Can you take a look at Exhibit EW, please, this is
10 one that we haven't looked at before. it's a Defendant's
11 Exhibit, so I'm not sure if you have one of the books
12 next to you.

13 A. Schedules or statistics?

14 Q. Yes. Can you identify those documents?

15 A. I'm looking on this top page is field hockey
16 statistics.

17 Q. Just in general, you don't have to go through them
18 one by one, do these represent the final season
19 statistics for various sports at Quinnipiac?

20 A. Without looking at each one individually, it looks
21 like most of them are the final season, yes.

22 Q. And who maintains that information?

23 A. These are maintained by the sports information staff
24 who take stats at each game and the software sort of
25 accumulates, statistics, names, bats, hits, home runs,

1 saves, goals, whatever that sport keeps as a record.

2 Q. And would these records indicate any athlete that
3 participated in any one of those sports during the
4 season?

5 A. Yes.

6 Q. Now you were asked about a lot of documents relating
7 to the NCSTA, I'm not going to go through all of that
8 again with you, but I would like you to look at Exhibit
9 ET because there's one or two e-mails that Mr. Orleans
10 did not ask you about.

11 THE COURT: Same book. ET.

12 MR. BRILL: ET.

13 THE WITNESS: I start at EQ.

14 THE COURT: keep --

15 THE WITNESS: There we go. Okay. "Season of
16 competition."

17 MR. BRILL: I'm sorry, it's FT. It's either
18 a typographical error or my eyesight is going back. FT.

19 BY MR. BRILL:

20 Q. If you would look at the beginning of that document,
21 I think starts with Bates number 13358 through 3360.

22 A. Yes.

23 Q. And does this reflect the discussion that took place
24 at the administrators meeting in September?

25 THE COURT: All right, wait a minute. I'm --

1 FT is 13365.

2 MS. FRIEDFEL: I think they are in a
3 different order.

4 MR. BRILL: 133 --

5 MS. FRIEDFEL: Here. This is strange. Okay.
6 The document must have been replaced, your Honor. It
7 didn't get replaced in mine.

8 THE WITNESS: It looks like this was an
9 e-mail I sent that I pasted with the minutes of the
10 September meeting at the bottom of it. If this is the
11 one to Colleen Morgan.

12 MR. BRILL: 13365 through 13367.

13 THE WITNESS: Oh, okay.

14 MR. BRILL: Is that correct?

15 THE COURT: That's what I have.

16 MR. BRILL: I have an old version of it in my
17 notebook. I apologize, your Honor.

18 BY MR. BRILL:

19 Q. And -- are your notes an accurate summary of what
20 took place in that September --

21 A. I am not looking at 13365, but I do see the same
22 meeting minutes.

23 THE COURT: Just leave -- where's the first
24 page? You have the old one.

25 MR. BRILL: Oh.

1 THE WITNESS: This is what you're referring
2 to.

3 MR. BRILL: Yes. Okay, we will change the
4 Bates number in the original -- we can. But it's the
5 same document. For some reason, there's two different
6 versions of it.

7 BY MR. BRILL:

8 Q. You are looking at a document, Mr. McDonald, that
9 is -- that has an e-mail dated November 17th, 2009 from
10 you to a number of individuals?

11 A. Yes.

12 Q. And this attaches the unofficial minutes of a
13 meeting that was held at University of Maryland in
14 September?

15 A. Yes.

16 Q. Was that the so-called cheer summit?

17 A. Yes.

18 Q. And on the next page, can you just go through very
19 briefly the items that are listed and tell us whether
20 decisions were made on those --

21 A. Under the term; "competitive cheer policies"?

22 Q. Yes.

23 A. Yes. To the development of any sport at NCAA sport
24 or really any sport, the things listed here, like, length
25 of season, maximum number of coaches, number of contests,

1 equivalencies, roster size, the floor surface, the
2 recruiting season, these are basically the components of
3 how you build a sport. So we at the cheer summit a
4 discussion of what are we going going to do, are we going
5 to be fall or spring or fall and spring. So we, as a
6 group of administrators and the coaches were there, had
7 very good discussions regarding, okay, this is sort of
8 the very beginnings of the components of a competitive
9 cheer program.

10 Q. And the decisions that were made at that meeting
11 with respect to those items, did those decisions apply
12 during the 2009-2010 season?

13 A. Some of them did. Yes. There was some refinement
14 as you've seen in some of the discussions today, some of
15 these things may have changed a bit. But this was the
16 beginning of -- really the beginning of the competitive
17 cheer as a varsity sport.

18 Q. In particular, did the length of season apply?

19 A. Yes.

20 Q. Did the number of contests apply?

21 A. It did.

22 Q. Why don't you go through the test and tell us
23 quickly of those items applied during the '09-10 season?

24 A. Most of these were designed after -- I know the
25 length of the season was to mirror the basketball season

1 which was usually the NCAA we use 122 or 132 days, so
2 that's sort of where we started from. I'm pretty sure we
3 were within that number. Most sports are. Maximum of
4 coaches, three paid, one volunteer. Most of us weren't
5 there. But number of contests, we had eight.

6 THE COURT: That's the minimum number.

7 BY THE WITNESS:

8 A. Minimum number of -- I'm sorry. The other line. I
9 have number of contest, Monday after Thanksgiving.

10 Q. It says, "Minimum number of contests, eight"?

11 A. Right.

12 Q. "First day of competition, Monday after
13 Thanksgiving"?

14 A. 12 equivalencies was the scholarship number; roster
15 size, 35; competition surface, normal cheer mats;
16 certified trainer, all practices and competitions. So
17 these -- this, again, is our very, very first meeting.
18 But we then as a group agreed that this would be our
19 starting benchmark.

20 Q. Now Jack, there were some questions about off-campus
21 recruiting and Coach Martin -- I'm sorry, Coach Powers'
22 certification. Was she able to do any recruiting during
23 the '09-10 year without an off-campus recruiting
24 certification?

25 A. Coach Powers did a significant amount of recruiting

1 on campus. As we all know cheer, cheer leading, dancing
2 is a very, very popular item throughout everywhere around
3 the country, every time a university had an admissions
4 open house, sophomore, junior open house, the amount of
5 student athletes that she dealt with during those events,
6 because of the public awareness of Quinnipiac's new
7 varsity sport, she did quite a bit -- not to mention
8 visits by families to see her specifically, so she did
9 quite a bit of recruiting this past year on campus.

10 Q. Did you make the decision to promote coach powers to
11 a head competitive cheer coach?

12 A. Yes.

13 Q. And on what did you base that decision?

14 A. Well, 10 to 12 years of success as an athletic
15 department employee. She was part time sideline cheer
16 coach helping coordinating the spirit groups, helped us
17 with midnight madness. There was no better person to
18 take us to the next level of her competitive cheer.

19 Q. And did you make the decision to promote Caroline
20 Martin to head cross country and track and field coach
21 last summer?

22 A. Yes, I did. As I mentioned earlier, she was all New
23 England runner. Phenomenal success as an assistant coach
24 to both -- both the men's and women's teams, won eight or
25 nine conference championships. So when Shawn Green left,

1 the search, in my mind, was done.

2 Q. How does her salary compare to the salary of the
3 other coaches of the other teams?

4 A. Caroline's salary, two answers to that question:
5 One is it was the same as what Coach Green had, the
6 former cross country and track and field coach; it's a
7 also a little more than the other coaches because she's
8 coaching four sports for as many as nine or ten months.

9 Q. It's -- when you say a little bit more, can you give
10 us a range like 10 percent, 50 percent --

11 A. It's probably 30 or 40 percent more.

12 Q. And when coach Green was here, how many coaches --
13 first of all, was he the head coach also for all six
14 teams?

15 A. He was the head coach of five of the six track and
16 cross country sports. We had another person named Ed
17 O'Connor who was the head coach of men's cross country
18 and he was here as long as I was here. He has since
19 moved on to another role on campus. So we had a pooling
20 of six part time assistant coaches, but Shawn Green was
21 technically the head coach of five of the six track and
22 cross country sports. But in reality, for me, as
23 administrator, he managed the entire program.

24 Q. And what is the general practice, if there is one,
25 among Division I schools as to how many coaches there are

1 for men's and women's cross country and track and field
2 when a school has six teams?

3 A. Many, if not all, have a director of men's and
4 women's track and field and cross country. It's very,
5 very common, then they may have assistant coaches for
6 sprints and jumps and throws and distances. But it is
7 very, very common to have one person that manages your
8 track and field, cross country athletes.

9 MR. BRILL: I don't have anything further on
10 either cross or direct of this witness.

11 THE COURT: All right. Redirect?

12 MR. BRILL: I'm sorry, your Honor, I
13 forgot -- there was one exhibit I didn't get to. I
14 apologize.

15 THE COURT: That's all right.

16 MR. BRILL: I didn't get to the end of my
17 notebook. The most important exhibit.

18 BY MR. BRILL:

19 Q. Can you look at Exhibit FW, please. Can you
20 identify that?

21 A. Yes, this is -- is this the graphics page, the
22 branding page?

23 Q. Yes.

24 A. This is part of a conference call that was held last
25 Monday, I think the 14th. Actually, it was pretty

1 exciting to get this and see this. This really shows the
2 work of a branding company to help the NCSTA in our
3 branding, logos, potential uniforms, graphics, web pages.
4 It was pretty exciting to see, you know, almost a year's
5 worth of work come in to see --

6 Q. How did this come about? Did the --

7 A. One of the previous conference calls, May-June, we
8 all agreed that we would invest, I think, \$8,000 into
9 having a company design this branding image for the
10 NCSTA.

11 MR. BRILL: Thank you.

12 REDIRECT EXAMINATION

13 BY MR. ORLEANS:

14 Q. Jack, do you still have the page with the notes from
15 the September meeting?

16 A. Do we have -- is that --

17 MR. HERNANDEZ: I'm a little confused because
18 you don't have the same page number that we do. We have
19 it as FT. It's the notes from the September cheer summit
20 that you were asking him about. But --

21 MR. BRILL: I think it's the same notes, but
22 for some reason the Bates number is different.

23 MR. ORLEANS: Okay.

24 THE WITNESS: FT, right?

25 MR. ORLEANS: It's the one you were looking

1 at that has your notes from the --

2 THE WITNESS: We were referring to some
3 pasted minutes from the cheer summit. Yeah.

4 MR. ORLEANS: Okay. Right.

5 BY MR. ORLEANS:

6 Q. I just wanted to ask you, at the time of the Cheer
7 Summit in September at the University of Maryland, when
8 you were talking about the length of the season, you were
9 counting 132 days back from the final championship event,
10 parens, NCA. So at that point, you were planning that
11 the NCA event in Daytona would be your championship
12 event?

13 A. That was for this past year.

14 Q. Okay. Well, at that time, -- there's nothing in
15 these notes about a plan for any other championship
16 format; is there? That's a yes or no?

17 A. Nothing that -- no, no.

18 Q. Nothing in the notes?

19 A. No.

20 Q. Can you go to EW, please, which Mr. Brill asked you
21 about. And you testified that these show the -- these
22 are end of season results and statistics for the various
23 Quinnipiac sports teams; right?

24 A. Yes.

25 Q. And I think that what you said was they show

1 everyone who participated. Do you remember that?

2 A. Yes.

3 Q. And by participated, you mean got in a game; right?

4 A. Correct.

5 Q. So we're not arguing about the definition of
6 participant under EADA or Title IX. All you meant by
7 your testimony was this is going to show every athlete
8 that got in a game or a competition?

9 A. That's correct.

10 Q. Now you testified with respect to a number of sports
11 that Quinnipiac competes outside the immediate geographic
12 area; right?

13 A. Yes.

14 Q. And that's good because it helps you to market the
15 school outside the local area?

16 A. Yes.

17 Q. You mentioned, I think, lacrosse and hockey?

18 A. Particularly lacrosse, but hockey, yes, a little
19 bit. They are outside the northeast conference.

20 Q. But you do have lacrosse rivals that are within
21 Connecticut; do you not?

22 A. Yes.

23 Q. And you do have hockey rivals that are within
24 Connecticut?

25 A. Yes.

1 Q. And you also testified that there are a number of
2 NEC sports in which all the members of the conference get
3 to participate in the championship tournament?

4 A. Yes.

5 Q. Name those sports again, please?

6 A. Let's say all the six track and cross Country, three
7 for men, three for women, the two golf championships, I
8 think their bowling championship we don't sponsor it
9 but --

10 Q. I just wanted an example. If the Quinnipiac women
11 win the NEC cross country, they qualify to move on to
12 some sort of regional or national event; do they not?

13 A. Cross country is a tad different. You could use
14 golf or tennis is a better example.

15 Q. Okay.

16 A. That's not a function of the NEC or Quinnipiac, it's
17 the way NCAA runs their regionals. But let's just say in
18 golf or tennis they all participate in the tennis
19 championships, all 12 schools, in the winter, advance to
20 the NCAs.

21 Q. And the winner advances to an NCAA regional or
22 national championship?

23 A. Regional, usually.

24 MR. ORLEANS: Thank you, nothing further.

25 THE COURT: I have three quick questions.

1 Looking at FT, the minimum number of
2 contests, eight, what was the number of contests that
3 Quinnipiac competitive cheer participated in during its
4 last year? That is 9-10. It was less than eight.

5 THE WITNESS: I'm not sure. I don't want to
6 say without knowing for sure. I would -- I don't know.
7 It's near that number.

8 THE COURT: I vaguely recall another document
9 where we --

10 THE WITNESS: I know there's a refinement of
11 that policy in a most recent meeting we had that said six
12 to eight. Somewhere -- we had that in part of the
13 coach's recommendations from not too long ago.

14 THE COURT: I thought --

15 MR. BRILL: The coach will be testifying
16 next. He can clarify this for the Court rather than
17 taxing the memory of this witness.

18 THE COURT: All right.

19 THE WITNESS: Thank you, Ed.

20 THE COURT: With respect to the running
21 sports, you mentioned that it's common for a single
22 person to manage all of the teams? Do you --

23 THE WITNESS: Yes.

24 THE COURT: Do you mean coach all the
25 teams.

1 THE WITNESS: Coach, manage, direct with a
2 series of assistant coaches on the staff.

3 THE COURT: And it's common at Quinnipiac or
4 common in the NEC or common across the country.

5 THE WITNESS: It's common across the country
6 to be a director men's, women's, cross country, track and
7 field with assistant coaches to assist you in the
8 different --

9 THE COURT: Subdivisions.

10 THE WITNESS: Disciplines, yeah.

11 THE COURT: And looking at FW, who -- what's
12 the company that prepared that? Was that Nike?

13 THE WITNESS: I think it might have been.
14 Well, it's from a company out of Oregon; so everything in
15 Oregon has a swish on it.

16 THE COURT: Swishes on all the upper
17 right-hand corners.

18 THE WITNESS: Yeah, I'm not exactly sure of
19 the name of the company, but it was done and coordinated
20 with the Oregon administration.

21 THE COURT: Okay.

22 MR. BRILL: Can I ask one clarifying
23 question, your Honor?

24 THE COURT: Sure.

25 MR. BRILL: With respect to the minimum

1 number of competitions as eight, was that eight NCSTA
2 competitions or eight total.

3 THE WITNESS: No, I think we talked somewhere
4 there was eight total, and again, excuse me for being a
5 little bit foggy, and there was a statement in one of our
6 minutes that maybe half of them needed to be NCSTA.

7 MR. BRILL: Thank you.

8 THE COURT: Okay.

9 MR. ORLEANS: Thank you, your Honor.

10 THE COURT: Sir, you're excused. Thank you.

11 THE WITNESS: Thank you.

12 MR. HERNANDEZ: Plaintiffs call coach Mary
13 Ann powers.

14 THE COURT: Ma'am, please remain standing.

15 M A R Y A N N P O W E R S, called as a
16 witness on behalf of the Plaintiff, having been duly
17 sworn by the Court, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HERNANDEZ:

20 Q. Coach Powers, good afternoon.

21 A. Good afternoon.

22 Q. I would like to start by asking you about Quinnipiac
23 University's competitive cheer program.

24 A. Okay.

25 Q. As I understand it, as of March 2nd, 2009, there was

1 no competitive cheer program; is that correct?

2 A. That's correct, but we were a sideline team that did
3 compete.

4 Q. And how long have you been a cheer coach at
5 Quinnipiac University?

6 A. This is my 12th year.

7 Q. Did you first begin as a sideline cheer coach in
8 1999 at Quinnipiac?

9 A. 1998.

10 Q. I'm sorry, 1998.

11 A. Correct.

12 Q. And when did the sideline cheer team begin competing
13 against other schools?

14 A. Almost within that first year.

15 Q. And then, of course, we'll jump to March of 2009.

16 A. Okay.

17 Q. On March 3rd, 2009, were you told that Quinnipiac
18 University was now going to treat competitive cheer as a
19 varsity sport?

20 A. They told me that they were making competitive cheer
21 a varsity sport, Yes.

22 Q. Can you tell Judge Underhill about how you were
23 notified that you were going to be the competitive -- the
24 head competitive cheer coach?

25 A. I wasn't notified that I was going to be the head

1 competitive cheer coach. I was notified that competitive
2 cheer program had been elevated to varsity status.

3 Q. Now before -- who told you that they were going to
4 do that?

5 A. I received a phone call and I was on my way into
6 work, because Quinnipiac is my part time job and they
7 asked me if I could come down to the university. I was
8 called by Bill Mecca.

9 Q. Did you go down to the university?

10 A. I could not.

11 Q. Because you were on your way to your other job?

12 A. Yes, I was. I was on my way to my full-time job.

13 Q. Did they eventually notify you that cheer was going
14 to be made a varsity sport?

15 A. They asked me if -- I couldn't come down, they would
16 be calling me back again. Then I was called back by
17 Billy Jack and Tracey Flynn, I believe.

18 Q. Did they have you on speakerphone or something like
19 that?

20 A. I wasn't sure of that, but at one point I pretty
21 much knew that I was. I didn't know while I was talking.

22 Q. Were you driving at the time?

23 A. No, I hadn't quite left for work.

24 Q. What were you told?

25 A. I was told by Jack that he had something very

1 important to tell me, that he had had a very hard day, a
2 day that nobody really wants to quite go through, that he
3 had had three coaches in his office and that he had to
4 cut -- he had to tell three coaches that the programs
5 were being let go. And I asked what's that have to do
6 with me; and he said, well, the final call of the day, at
7 least I get to make one good one. And he said we're
8 making competitive cheer a varsity sport.

9 Q. Now before they notified you that they were going to
10 make competitive cheer a varsity sport, did anyone in the
11 athletic department consult with you about the prospect
12 of making competitive cheer a varsity sport?

13 A. I believe in 2003, Maryland had sent a packet, they
14 were doing press release kits when they made competitive
15 cheer a varsity sport in Maryland. They had sent press
16 kits out to everyone and we did receive one. And Jack
17 had reviewed it with me.

18 Q. And were any decisions made in 2003, after you
19 received the University of Maryland package?

20 A. No. He just said that he would like to think at
21 some point this might happen. He was going to keep a
22 close eye on it. I'm trying to remember what he said. I
23 think he might have called the university.

24 Q. And between that meeting with Jack in 2003 and March
25 3rd of 2009, were you consulted again about making

1 competitive cheer a varsity sport?

2 A. It was mentioned here and there that, you know, it
3 would be hopeful in the future. We're just going to keep
4 on looking at it and seeing where it's going. But it
5 wasn't -- there were brief conversations, at best.

6 Q. And were any plans about making competitive cheer a
7 varsity sport discussed in the fall of 2008?

8 A. No. Not -- with me?

9 Q. With you.

10 A. No.

11 Q. And then how about January-February of 2009. Were
12 there any discussions with you about the prospect of
13 making competitive cheer a varsity sport?

14 A. No, no conversations, no.

15 Q. And then on March 3rd, 2009, you get the big news?

16 A. Yes.

17 Q. So I take it that there were no discussions with you
18 about practice facilities for competitive cheer before
19 they announced it would become a varsity sport?

20 A. I don't understand the question.

21 Q. Well, you said there were no discussions with you
22 before cheer became a varsity sport?

23 A. I didn't say there was none. I think I said there
24 were few but they were brief. Basically, they were
25 looking at it, hang on, we're watching where this is

1 going.

2 Q. Okay. Let's break it down to January-February of
3 2009. Were there any discussions with you about where a
4 competitive cheer team would hold practices?

5 A. No.

6 Q. Were there any discussions in January-February of
7 2009 about what competitive cheer uniforms might look
8 like?

9 A. No.

10 Q. And in March of 2009, when you were told that you
11 would be the competitive cheer coach, varsity competitive
12 cheer coach, was there any discussion about whether you
13 had passed the NCAA recruiting test?

14 A. In what --

15 MS. FRIEDFEL: Objection, your Honor. I
16 think he's mischaracterizing her testimony. I don't
17 think she said that she was made the varsity coach in
18 March of 2009.

19 MR. HERNANDEZ: I'll rephrase the question.

20 MR. HERNANDEZ:

21 Q. In March of 2009, they told you competitive cheer
22 would become a varsity sport; correct?

23 A. Correct.

24 Q. Did you have any discussions with members of the
25 athletic staff about your status as far as whether you

1 had taken or passed the NCAA recruiting exam?

2 A. In March?

3 Q. Yes.

4 A. No.

5 Q. Did there come a time when you learned that
6 Quinnipiac University was going to hire a head coach for
7 competitive cheer?

8 A. There came a time several weeks later where they
9 told me that they were, quite frankly, looking for me for
10 the job. They felt confidently that I was the person
11 that belonged in that position.

12 Q. At the meeting where they told you that they were
13 going to make competitive cheer a varsity sport, at that
14 time, did they give you any indication that they were
15 looking at you to be the head coach?

16 A. No. You know, that meeting was just I think it was
17 probably -- it's my guess that it was an emotional day
18 for everybody. It was day's end. I had to be at work
19 and I had to be there quickly. I was emotional because
20 I -- it was a total surprise to me and to think that my
21 sport possibly could have reached this point. They
22 didn't -- they had emotions going because three sports
23 were cut, not just one.

24 Q. Now between March 3rd of 2009, when you learned the
25 competitive cheer would become a varsity sport and when

1 they told you that they wanted you to be the head coach
2 for varsity competitive cheer, had there been any
3 discussions with you about making that happen? About
4 making you the head coach?

5 A. From what date are you asking me?

6 Q. From March 3rd, 2009, when they told you it's going
7 to become a varsity sport, all right, and two weeks later
8 when they asked you to be the head coach, was there any
9 discussion in those two weeks about your becoming the
10 head coach for varsity competitive cheer?

11 A. As I think I just stated, they said they felt I was
12 a natural fit for them.

13 Q. Okay.

14 A. But it wasn't announced to me on the date that they
15 made the announcement that the sport was chosen.

16 Q. Okay. Do you know if the University solicited
17 applications for a head coach for competitive cheer?

18 A. I don't know that, no.

19 Q. Let me show you what's been received as Plaintiff's
20 Exhibit 82. Do you recognize this?

21 A. It looks like that is my employee contract.

22 Q. Well, I see you don't have your glasses on.

23 A. No, I don't. I'm like this. I'm sorry.

24 THE COURT: It's --

25 THE WITNESS: Oh, competitive --

1 THE COURT: Take that book and look at 82.

2 THE WITNESS: I'm glad I gave you all a good
3 laugh.

4 BY THE WITNESS:

5 A. Okay.

6 Q. Do you recognize Plaintiff's Exhibit 82?

7 A. It's a position announcement for a head coach --
8 head coach for competitive cheer.

9 Q. Okay. And do you recall if the position
10 announcement for head coach competitive cheerleading was
11 posted anywhere in the university?

12 A. I don't know.

13 Q. Were you given a copy of Plaintiff's Exhibit 82?

14 A. No.

15 Q. Let me just go over some of these things. It
16 appears that Quinnipiac University was looking for a head
17 coach of competitive cheerleading who had successful
18 cheerleading coaching experience, college level
19 preferred. And you had that; correct?

20 A. I believe so.

21 Q. And he were also looking for experience in
22 recruiting; correct?

23 A. It looks like that's what they're looking for, yes.

24 Q. Now had you had any experience in recruiting student
25 athletes for a Division I athletic program?

1 A. Well, I couldn't have had experience recruiting
2 athletes in a Division I program as pertains to sport
3 because we had never been declared that, but certainly,
4 over my years as a coach what had happened as this
5 program grew and became a competitive force to be
6 reckoned with at the national level, the kids that we
7 were getting hundreds of requests a year about our
8 program and I started having to ask for skill set videos
9 to be sent to me and whatnot. So a lot of the kids who
10 came were looking for their academics most certainly
11 first, but they were hoping for the opportunity to be on
12 a cheerleading team and compete on the team.

13 Q. Okay. Now before March of 2009, had you had any
14 experience in doing off-campus recruiting?

15 A. Had I had -- before March 2009? No.

16 Q. Now it appears they were also looking for, under
17 responsibilities, someone with experience in team
18 management including NEC and NCAA rules and regulations.

19 A. Okay.

20 Q. Now before you were made head competitive
21 cheerleading coach, had you had any experience in team
22 management including NEC and NCAA rules and regulations?

23 A. Not adhering NEC and NCAA ruling regulations, no.
24 But I think to management of the team and of all the
25 other spirit groups at the same time, most certainly.

1 Q. Okay.

2 Now then, did there come a time when you learned how
3 many athletes would be on your first year's competitive
4 cheer team? And by first year, I mean 2009-10 academic
5 year?

6 A. I learned of my roster size right after the -- right
7 after the case last year.

8 Q. When you say right after the case last year, does
9 that mean right after the --

10 A. Well, it means, first of all, I don't believe the
11 contract came forth in my employment -- my official
12 employment as head coach until the middle of June -- I
13 mean the middle of July. However, it was that the point
14 meetings started coming fast and furious, I can't give
15 you an exact date, but I know it was predicated on what
16 had been set forth, the roster size had been set forth by
17 what the Court, I believe, had decided which was a team
18 size of 30.

19 Q. Okay. And what is your understanding as to what
20 role, if any, the Court played in setting the roster size
21 of 30?

22 A. I don't -- I didn't know why they had -- I had
23 thought the other universities that were sponsoring
24 competitive cheer, they were at 36. But I think they
25 were -- I -- I think they named it, they thought that was

1 a significant amount.

2 Q. You wanted 36; is that correct?

3 A. I didn't ask for 36. I asked for 32, so that I
4 wouldn't leave two athletes out of team position.

5 Q. Okay.

6 A. However, I did believe in the future to -- to
7 certainly have a level playing field up against Oregon
8 and Maryland and Baylor, knowing they would have 36, I
9 was hoping it would be allowed for me to have those
10 numbers, yes.

11 Q. Did you ask Mr. Thompson or Dr. Thompson, rather, if
12 you could have 32?

13 A. Yes, I did.

14 Q. Going forward?

15 A. Yes, I did.

16 Q. And what did Dr. Thompson tell you?

17 A. He told me that the roster size was set at 30 for
18 right now and we would revisit the situation in the
19 future.

20 Q. And did Dr. Thompson tell you why the roster number
21 was set at 30?

22 A. I didn't question him. I just accepted what he
23 said.

24 Q. Did he mention something about the Court ruling in
25 this case setting the roster number at 30?

1 A. I -- you know, I'm not sure that he said that. I
2 just --

3 Q. Okay.

4 A. When he said 30, I just went with what he said.
5 Maybe I assumed it was by the Court ruling, but that's
6 -- how I thought a roster size -- that was our roster
7 size had been reported to the papers at 40; and when I
8 received my roster size at 30, that came from, I think
9 Jack first and then I went to Mark and questioned could I
10 have 32 so two teammates wouldn't be out of position.
11 What Mark said, if I think I'm answering your question
12 correctly, is that the roster size was set at 30 and
13 it -- I don't know that he mentioned the Court ruling. I
14 think he possibly did. I'm not -- I'm not quite sure.

15 Q. Now I guess what I'm trying to figure out is why
16 earlier you mentioned that you believed that the roster
17 size for varsity competitive cheer was set at 30 by Court
18 ruling or Court order. If I understood you correctly.
19 Where did you get that idea from?

20 A. That the roster size -- that's maybe just maybe an
21 assumption on my part.

22 Q. Okay.

23 Did there come a time when you were presented with a
24 letter that you were asked to sign which certified that
25 30 student athletes for competitive cheer was a

1 reasonable roster number?

2 A. Yes.

3 Q. And I took this out of order.

4 MR. HERNANDEZ: Do you know the exhibit
5 number for the whole thing just so I can refer to it.

6 MR. ORLEANS: For the roster size letters?

7 MR. HERNANDEZ: For the record I'm --

8 BY MR. HERNANDEZ:

9 Q. Coach Powers, I'm putting up on the screen an
10 exhibit number which number we will determine shortly.
11 Do you recognize that letter?

12 A. I do. But I really need to get closer because I
13 don't have my distance glasses on.

14 MR. ORLEANS: For the record, your Honor, it
15 should be Exhibit BO, roster sizes for 2009-2010.

16 THE WITNESS: BO? Okay, yep.

17 BY MR. HERNANDEZ:

18 Q. Do you have BO roster target letter dated July 22nd,
19 2009 to you from Jack McDonald in front of you there?

20 A. Yes, I do.

21 Q. And you recognize this letter?

22 A. Yes, I do.

23 Q. Now did you have any input into the roster target
24 number of 30 that's reflected in Exhibit BO?

25 A. No, I did not.

1 Q. So you were told what your roster number was going
2 to be for that team; correct?

3 A. That's correct.

4 Q. And again, you thought it maybe should be a little
5 bit higher?

6 A. I felt that at least it should be at 32 because two
7 females were not going to have the opportunity to
8 participate the way as a coach I hoped that they could.

9 Q. When you were presented with Exhibit B0, had you
10 been told what your budget was going to be for '09-10?

11 A. I was told that my budget was going to be around
12 \$50,000; but because we were a new sport, I needed to
13 speak to administrators when I needed something and they
14 were going to see to it that the needs of the team were
15 filled.

16 Q. Now had you had any experience in budgeting funds
17 for a competitive team before?

18 A. My team was never competitive before, so no, I would
19 not have had any experience.

20 Q. And when you were a sideline cheer team that
21 competed, how often would you travel?

22 A. Again, the mission statement for sideline cheer at
23 the time was to be -- to support the athletic -- the
24 men's and women's basketball teams primarily first. So
25 the ability to travel, do you mean locally, regionally?

1 We were allowed to -- we were allowed to compete as long
2 as it did not interfere with the men's and women's
3 basketball program schedules.

4 Q. It would cost money to travel; correct? If you were
5 competing?

6 A. They were usually a bus trip, one or two towns over.
7 We didn't do much travel outside of that except for the
8 Daytona trip in 2005 down in Florida.

9 Q. And money for traveling by bus, did you have a
10 budget set aside for that? When you were a sideline
11 team.

12 A. It didn't happen often, maybe once or twice a year.
13 I'm sure they wanted to ensure the team's safety, so yes,
14 once or twice a year. And around 2007-8 we travelled a
15 little more by bus.

16 Q. My question is were you given a budget for that
17 travel?

18 A. My sideline team had a budget, Yes.

19 Q. Where did that money come from?

20 A. We had a budget. And I had to adhere to what was in
21 that budget and so I was allowed to use budget money for
22 the bus.

23 Q. Okay. Well, all right. You received the money from
24 the University; correct?

25 A. Correct.

1 Q. And there were some instances where you would raise
2 money through the sideline cheer team for travel; is that
3 fair to say?

4 A. There was times I would raise money?

5 Q. Yeah, did you ever sponsor events to raise money for
6 travel?

7 A. I sponsored an event for -- since 2004, at the
8 university.

9 Q. Okay. So there have been occasions where you raised
10 money for a team. Aside and apart from what the
11 University gave you?

12 A. I -- as I said, from 2004 until recently, I've held
13 an event yearly that's brought in over 110 competing
14 teams.

15 Q. Now then, you signed Plaintiff's Exhibit B0 on
16 August the 3rd 2009; is that correct?

17 A. Correct.

18 Q. And at that time you were agreeing that as head
19 coach of the competitive cheer team you confirmed that
20 "30 student athletes on the competitive cheer team is a
21 reasonable roster number that represents a genuine
22 opportunity for Division I experience for each team
23 member and that I have a sufficient budgetary allocation
24 to support this number"; correct?

25 A. I was agreeing I -- I kind of am a stubborn person.

1 I did express interest in two more athletes, but I
2 agreed.

3 Q. Now then, do you know if the NCAA recognizes
4 competitive cheer as a varsity sport?

5 A. No, it does not.

6 Q. Was the University able to purchase insurance for
7 the competitive cheer team for its competitions?

8 A. Do you mean starting this year or do you mean --

9 Q. Correct --

10 A. -- when we were sideline cheer.

11 Q. For 2009-2010?

12 A. We had to purchase insurance for the competitive
13 team, yes.

14 Q. Were you able to obtain that insurance through the
15 NCAA?

16 A. No. The NCAA only insures sideline cheer. But only
17 for sideline material, not competitive material.

18 Q. And were you able to secure insurance for the
19 varsity competitive cheer team for the calendar year
20 2009-10?

21 A. Yes.

22 Q. And where did that insurance come from?

23 A. That came out of my budget, as far as I understand.
24 If you want the name of the company, I don't quite
25 remember it.

1 Q. Do you remember how much that insurance cost?

2 A. I think it was around 3,000-and some-odd dollars.

3 Q. Did competitive cheer have an assigned locker room
4 in its first year, 2009-10?

5 A. No.

6 Q. Were you given any assistant coaches to help you
7 out?

8 A. I was given -- I have two assistants and volunteer
9 coach.

10 Q. Who were the two assistant coaches?

11 A. My two assistant coaches were Marie Kashuba and
12 Cheryl Thomes.

13 Q. I suspect the court reporter will ask you to spell
14 Ms. Kashuba's name?

15 A. K-A-S-H-U-B-A.

16 Q. And may as well go ahead and spell the other name as
17 well?

18 A. T-H-O-M-E-S.

19 Q. And who was your volunteer coach?

20 A. Toni Corvi.

21 Q. And just for the record, Toni, is that a male or --

22 A. No, it's a female. T-O-N-I. I'm sorry.

23 Q. That's all right. And Corvi, is that spelled
24 C-O-R-V-I?

25 A. Correct.

1 Q. Do you know if Ms. Kashuba, Ms. Thomes or Ms. Corvi
2 have taken the NCAA recruiting exam?

3 A. No, I'm the only coach on staff that has taken the
4 NCAA test.

5 Q. And you passed that recently?

6 A. Yes, I have.

7 Q. Congratulations?

8 A. Thank you, very much.

9 Q. When did you take the test?

10 A. June 10th.

11 Q. That was just a couple weeks ago?

12 A. Yes, it was.

13 Q. So you are now able to recruit off campus; correct?

14 A. Correct. I don't think I'm going to have to do a
15 lot of it, though.

16 Q. And for the very first year of competitive cheer,
17 2009-10, other than the freshmen, other than the incoming
18 freshmen, were the members of the competitive cheer team
19 former sideline cheer members?

20 A. Some of them were, yes.

21 Q. How many of them were former sideline cheer people?

22 A. How many of them?

23 Q. Yeah.

24 A. For 09-10?

25 Q. Correct.

1 A. I think around 16.

2 Q. And how many were incoming freshmen?

3 A. I believe 13.

4 Q. That comes out to 29; correct?

5 A. I had a graduate student on the team.

6 Q. Would that be Ms. Pacheco?

7 A. Yes, it would.

8 Q. When did Ms. Pacheco join the team?

9 A. Somewhere in early November.

10 Q. Early November?

11 A. Yeah, I think so. I think it was late October,
12 early November.

13 Q. Did you hold tryouts for this new varsity team?

14 A. I did.

15 Q. When were those held?

16 A. The first -- well, I didn't actually end up holding
17 the tryout, I'm sorry to renege on that, I held a clinic
18 to look at skill sets. But after two days it was pretty
19 clear amongst the pool of young ladies who had come to
20 the tryout who would fit position needed for the athletes
21 and who had the skill sets in tumbling.

22 Q. And when was this clinic held?

23 A. I want to say the very first week of September.

24 Q. And so as of early September, you pretty much knew
25 who was going to be on your squad; is that correct?

1 A. Correct.

2 Q. Except for Ms. Pacheco, she came in in November?

3 A. Well, we -- one of our athletes did leave the team
4 on October 9 -- October 11th. And so I did need to find
5 another athlete before our first contest report date.

6 Q. That turned out to be Ms. Pacheco?

7 A. Yes.

8 Q. Ms. Pacheco, she was a graduate student; is that
9 correct?

10 A. Yes, she was.

11 Q. Ms. Pacheco had previously been a sideline
12 cheerleader; correct?

13 A. I guess you could say that, yes.

14 Q. Well, that's my understanding. You're smiling.

15 A. No, no I'm just thinking it through. You know she
16 was a sideline cheerleader, but we were competing and she
17 was a gymnast that had nowhere to go like many of the
18 girls in our sport, so the reason she had joined the team
19 a few years back was because as a former gymnast with a
20 specialty in floor, she was hoping to compete. So she
21 did sideline cheer so that she could have the competitive
22 part of it.

23 Q. Okay. And so in October you lost somebody from your
24 30 person roster, correct?

25 A. Correct.

1 Q. And you were aware that Ms. Pacheco was a graduate
2 student on campus?

3 A. I was aware because she came to me and asked me if
4 there was any positions left when we had 30. And I told
5 her no, we had 30. And she said if anything ever
6 happens, I would really love the opportunity to compete.

7 Q. And was she given some financial assistance?

8 A. She was given a \$5,000 scholarship.

9 Q. This woman who quit, had she received any
10 scholarship money?

11 A. No, she did not.

12 Q. So the woman who quit, you did not consider to be a
13 scholarship-worthy athlete?

14 A. I guess I did not.

15 Q. Okay.

16 A. That's fair to say.

17 Q. But after you lost this non-scholarship-worthy
18 athlete, she was replaced by MS. pacheco --

19 A. Mm-hm.

20 Q. -- to fill your 30th slot; correct?

21 A. Correct.

22 Q. And you understood that you were expected to reach
23 that 30 person target roster management number; correct?

24 A. Correct.

25 Q. And in connection with securing Ms. Pacheco as a

1 member of your new team, you decided to award her a
2 partial \$5,000 scholarship?

3 A. Correct.

4 Q. Is there an intramural competitive cheer activity at
5 Quinnipiac?

6 A. No.

7 Q. Do you have scholarship funds available to you as
8 the head coach?

9 A. Yes.

10 Q. In 2009-10, how many full-time scholarships were
11 available to you?

12 A. Six.

13 Q. And did you use all six of those scholarships?

14 A. For 2009-10?

15 Q. Yes.

16 A. No, I did not.

17 Q. Did you consider payments that you made out of the
18 scholarship funds to be stipendize?

19 A. I do believe I couched it that way. I gave
20 scholarships that I felt reflected a lot of things; and
21 that I had to look to strategically recruiting in the
22 future without having had the ability to recruit before.
23 So we tried to put skill sets on a grid and we're hoping
24 to have the athletes pick up their skills just a little
25 bit more, especially in some of their tumbling skills;

1 but the other goal was to every single year raise the bar
2 and get those kids up so that we were giving them more
3 money.

4 Q. As I understand it, a Fulbright Scholarship is
5 around \$47,000, correct?

6 A. Correct.

7 Q. 47,500, correct?

8 A. Correct.

9 Q. But who's counting. And you had six of those to
10 give out?

11 A. Not six. It was not recommended that I use six that
12 year, not at all.

13 Q. My question was you had six available you to,
14 correct?

15 A. I had six available, correct.

16 Q. How many people actually received these stipendize
17 as you referred to them?

18 A. I think you just said it was a stipend. I think you
19 just said it was a stipend. I said my goal was to have
20 the kids reach a certain level and keep on seeing that
21 they were elevated to a little bit more money every
22 single year.

23 Q. Okay.

24 And how many people received --

25 A. Ten.

1 Q. -- payments?

2 A. Ten for 2010.

3 Q. How big were these payments?

4 A. Some were as high as 9,000 and some were as low as
5 3,000.

6 Q. Do you know, in total, how much money was paid out
7 to those ten female student athletes?

8 A. I would really have to have the sheet of paper in
9 front of me and look through it.

10 Q. Did the payments amount to a full scholarship?

11 A. Above a full scholarship.

12 Q. Did it amount to two full scholarships?

13 A. Just a little under, I believe, or maybe about one
14 and a half, actually.

15 Q. So 47,500 times one and a half is about what you
16 paid out; is that --

17 A. I think around 65,000.

18 Q. Fair enough. Okay.

19 I would like to talk to you about the schedule for
20 2009-10.

21 A. Sure.

22 Q. I think you mentioned that you held a clinic in
23 September of 2009; correct?

24 A. I held a two day clinic and was supposed to hold a
25 tryout on the day after the final clinic, but we made our

1 final cuts on the Thursday prior to the Friday -- tryout.

2 Q. And you began training, fair to say?

3 A. We were ready to enter our pre-season. We had
4 declared a 132 day season that year as our season length
5 for the sport. So we were already in the midst of
6 pre-season and when he -- the NCSTA was working on how to
7 determine how we were going to use those eight hours
8 while we were in pre-season.

9 Q. As I understand it, the NCSTA first held its very
10 first cheer summit in September of 2009; is that correct?

11 A. Correct.

12 Q. Did you attend that summit?

13 A. Yes, I did.

14 Q. Who else attended that summit on the part of
15 Quinnipiac University?

16 A. Cheryl Thompson and Jack McDonald.

17 Q. When you were training in the fall of 2009, had the
18 NCSTA made a determinations to how many practice hours
19 were appropriate?

20 A. No, the -- we were making our practice hour choice
21 based on the rules by the NCAA not by the NCSTA. We were
22 trying to follow compliance rules as any sport on campus
23 would.

24 Q. Did there come a time when you had your first date
25 of competition?

1 A. Yes, we did.

2 Q. When was that?

3 A. Our first date of competition was December 5th. But
4 two days prior to that there was inaugural event held at
5 the university.

6 Q. What was the inaugural event?

7 A. The inaugural event was something Jack has done when
8 he, for instance, he brought women's hockey on to campus,
9 he holds a ribbon cutting ceremony and it's basically to
10 have the school community, their parents, people involved
11 and want to see the kids, we actually did a little mini
12 exhibition, come and watch and see the team and welcome
13 them to varsity status.

14 Q. How long did this -- did you call it an exhibit
15 or --

16 A. I said, the team exhibited their skills.

17 Q. Exhibited their skills. How long did this
18 exhibition last?

19 A. I think it started around 6:30 and it was over by 8.

20 Q. And by exhibition, I take it there was no
21 competition?

22 A. No, no competition on December 3rd.

23 Q. When was the first date of competition?

24 A. December 5th.

25 Q. Who did you compete against?

1 A. I believe Stony Brook and Babson College.

2 Q. And where was that competition held?

3 A. At the Hartford Convention Center.

4 Q. And you have a ring binder upo -- your Honor, would
5 this be a good time to break for the day?

6 THE COURT: Well, I can go another 15 minutes
7 or so.

8 MR. HERNANDEZ: Okay. That's fine.

9 THE COURT: I think it would be useful to
10 finish the witness if we can.

11 BY MR. HERNANDEZ:

12 Q. If you can go to Plaintiff's Exhibit 41. It's in
13 one of your ring binders there. Do you recognize
14 Plaintiff's Exhibit 41?

15 A. Yes, I do.

16 Q. What is Plaintiff's Exhibit 41?

17 A. This looks to be our season schedule.

18 Q. And I believe you mentioned that your first date of
19 competition was Saturday, December 5th at the Hartford
20 Civic Center; is that correct?

21 A. Correct.

22 Q. And are there different meet and competition formats
23 for competitive cheer?

24 A. There are different -- for competitive cheer?

25 Q. Okay. Let me rephrase the question. In 2009-10

1 competitive season for varsity competitive cheer --

2 A. Okay.

3 Q. -- did you compete under different meet formats?

4 A. Every -- we competed under different score sheets
5 and different scoring systems.

6 Q. And are there different organizations that run
7 competitive cheer events?

8 A. Different organizations? There's many different
9 organizations, yes, in our sport.

10 Q. And is Spirit Unlimited one of those organizations?

11 A. Yes, they are one of those organizations.

12 Q. And what types of competitive cheer organizations
13 competed at the Spirit Unlimited event?

14 A. I think the event was mainly all star, which is
15 competitive cheer. I think the bulk of that was all star
16 teams; and then they had a collegiate division and I
17 honestly can't tell you if they had a high school,
18 because I honestly don't know. We were scheduled to go
19 in the afternoon and I didn't pay attention to what the
20 morning schedule was.

21 Q. And what are all star teams?

22 A. All star teams are teams that compete only there is
23 no cheerleading, yet they are called cheerleaders, nobody
24 seems to know why.

25 Q. What age groups do those cover?

1 A. Those cover the age groups of I want to say two and
2 a half to level six teams are 18 and over. There's no
3 age limit.

4 Q. Okay. And this event at the Hartford Civic Center
5 on December 5th, what time did that start?

6 A. I don't know what time it started. I just know that
7 we competed I want to say around the eleven o'clock -- if
8 I remember correctly, it was anywhere between 11 and 1.
9 I can't remember by bus or by the time we arrived warmed
10 up, had our warm-up area and then competed.

11 Q. Were there non-collegiate organizations competing at
12 that event?

13 A. Not collegiate?

14 Q. Yeah. The all star --

15 A. It was mainly competitive -- it was mainly
16 competitive cheer teams there. Except -- there was a
17 collegiate division, though.

18 Q. And were there any young kids, I think you said they
19 start around two and a half years old. What were the
20 youngest ages there?

21 A. Well, when these competition companies hold
22 sessions, sometimes as you're arriving, the earlier
23 session is clearing out. So there's thousands of
24 competitive kids going in and out the door and their
25 parents. So I just am walking into a warm-up area and

1 I'm not focusing on, you know -- I'm focusing on my team,
2 getting them warmed up, getting them ready to compete. I
3 don't know. But I'm sure there's many, many, many teams
4 there.

5 Q. The Spirit Unlimited competition, what is Exiter
6 Unlimited?

7 A. Exiter Unlimited is a competition company.

8 Q. It's -- all right. And does Spirit Unlimited follow
9 the NCSTA scoring format?

10 A. Probably in the team routine, which is very
11 important -- well, you know, a good amount of the skill
12 sets in the team routine I'm sure are quite similar. But
13 not the -- the meet format and the scoring system the way
14 you assess skills and the points awarded to that are two
15 different things.

16 Q. Okay.

17 Does Spirit Unlimited follow the same scoring
18 systems as the NCSTA?

19 A. No.

20 Q. Different way of scoring?

21 A. Different way of scoring.

22 Q. Babson, is Babson a member of the NCSTA?

23 A. No.

24 Q. Stony Brook, are they a member of the NCSTA?

25 A. No.

1 Q. Were either Babson or Stony Brook varsity collegiate
2 competitive cheer teams?

3 A. No.

4 Q. What sorts of teams were they if they --

5 A. They are collegiate teams that are much like
6 Quinnipiac was in years prior, A sideline team that are
7 just becoming teams that are competing quite a bit; and
8 they compete a lot of the same skill sets in stunting and
9 tumbling that we do. On that score sheet, we are scored
10 on the same skill sets.

11 Q. So they are both sideline teams that compete, is
12 that fair to say?

13 A. They are sideline teams that compete the same skill
14 sets.

15 Q. And drawing your attention to the January 16th
16 competition, was there a competition held at Sacred Heart
17 University in Fairfield, Connecticut?

18 A. There was supposed to be one and we arrived.

19 Q. Did you compete at that event?

20 A. I can't say that we did. We were there as we were
21 supposed to be. The bus was ordered. We were on the
22 docket to compete against two other teams and they both
23 scratched the night prior.

24 Q. Who were the other teams?

25 A. I don't know. They didn't list them on a web site.

1 I don't know who the other teams were to be there.

2 Q. And do you know if those schools were varsity
3 collegiate competitive cheer teams?

4 A. No, they were not. They were sideline cheer teams
5 that compete.

6 Q. The Sacred Heart Pioneer Cheer and Dance Challenge,
7 what organization sponsored that event?

8 A. Sacred Heart University Cheerleading.

9 Q. Did they use the NCSTA scoring system?

10 A. No, they did not. But they were supposed to and
11 this wanted to compete against us last year at Quinnapiac
12 on January 30th.

13 Q. My question was on January 16th, Did they use the
14 NCSTA format?

15 A. Oh, I'm sorry, no. I misunderstood.

16 Q. So your answer was --

17 A. No, they did not use the NCSTA.

18 Q. Drawing your attention to the next competition,
19 February 5th, 2010, was that an all-girl, collegiate
20 competitive cheer held at Kennesaw State University,
21 Kennesaw, Georgia?

22 A. Yes, it was.

23 Q. How did you get Kennesaw, Georgia?

24 A. We flew.

25 Q. How many people did you fly?

1 A. We flew 34 people.

2 Q. 34?

3 A. Mm-hm.

4 Q. That sounds expensive. How much did that cost?

5 A. I think about \$18,000 for our hotel and airfare.

6 Q. \$18,000 for a single competition in Georgia?

7 A. No, it was a three-day competition. We were -- we
8 competed on Friday, on Saturday and on Sunday.

9 Q. Okay, so that was \$18,000 for one trip for 34
10 people?

11 A. Yes, it was.

12 Q. Now, who did you compete against at the Kennesaw
13 State University competition?

14 A. The University of Maryland, the University of Oregon
15 and Georgia.

16 Q. As I understand it, University of Maryland,
17 University of Oregon are members of the NCSTA?

18 A. Yes, they are.

19 Q. Were they members of the NCSTA in February of 2010?

20 A. In February of 2010? Yes.

21 Q. And what about Georgia?

22 A. Georgia's coach had been on some conference calls in
23 the late summer as he had heard of the governing body
24 being formed for us for competitive cheer and he was
25 hoping to have his administrators pick up the sport and

1 they had expressed interest. So we did come on a few
2 conference calls. But then later on -- and he -- the
3 reason he's on the schedule is because he had professed
4 an interest in competing in the NCSTA format and with our
5 teams.

6 Q. And do you know if Maryland, Oregon or Georgia
7 considered their competitive cheer squads varsity teams?

8 A. Georgia considers them an all-girl compete club team
9 and Maryland and Oregon consider themselves varsity
10 program.

11 Q. What is an all-girl compete team?

12 A. That's all they do is compete. That's what all
13 stars is. There's over 300 -- 300,000 kids in the United
14 States doing competitive cheer.

15 Q. And was the all-girl collegiate competitive cheer at
16 Kennesaw State, was that held under NCSTA scoring?

17 A. Yes, it was.

18 Q. Drawing your attention to Cheer Sport Nationals,
19 February 6th, in Atlanta, Georgia --

20 A. Okay.

21 Q. What is Cheer Sport?

22 A. Cheer Sport is, again, a competition company that I
23 believe they said that over 856 teams competed with over
24 750 of them being compete only teams that has varied
25 divisions. One includes special needs teams. One

1 includes -- the majority are all star compete kids. And
2 they do hold a collegiate division.

3 Q. These are -- these events are basically one day
4 apart; right?

5 A. Yes.

6 Q. The Ken saw and the Cheer Sport?

7 A. Yes.

8 Q. Did you score -- did you get a score at the all-girl
9 collegiate competitive cheer competition?

10 A. You mean, Cheer Sport? Do you mean --

11 Q. You competed on February 5th --

12 A. I know but you are calling it the all-girl
13 competitive -- are you talking about Kennesaw, the day
14 prior?

15 Q. Correct.

16 A. The Kennesaw -- the NCSTA meet format, did they have
17 a score?

18 Q. Yes.

19 A. Yes.

20 Q. Did that -- you competed against some of the same
21 schools the next day on February 6th; correct?

22 A. We did.

23 Q. And that would include Maryland and Oregon; correct?

24 A. Correct.

25 Q. Was there a ranking on the February 6th competition?

1 When you came in?

2 A. The February -- that would be the Cheer Sport
3 competition, which the cessation of that was February
4 7th.

5 Q. Yes.

6 A. Yes, I believe we came in sixth.

7 Q. My question to you was was your position, did you
8 advance -- were you seeded in any way as a result of how
9 you sport on February 5th when you competed on February
10 6th?

11 A. They are two separate companies. I mean -- they are
12 two different formats.

13 Q. Okay. So can I take it that the Cheer Sport
14 Nationals was not held under NCSTA scoring policies?

15 A. No, different scoring policy.

16 Q. And so irregardless of how you did at Kennesaw
17 State, you didn't actually advance vis-a-vis the other
18 schools when you competed the next day?

19 A. No, they are two separate competitive -- they were
20 two separate competitions.

21 Q. I think I understand.

22 Now then you proceeded to compete on February 7th;
23 correct?

24 A. That was the second day part of the cheer
25 sport event.

1 Q. And the schools that competed that the event, how
2 many of them were non-NCSTA schools?

3 A. Oregon, Maryland, Fairmont, Quinnipiac were the
4 NCSTA schools at the Cheer Sport. And then the majority
5 of the rest were all-girl competitive only club teams. I
6 think there were only two sideline cheer leagued teams
7 that compete competitive skills.

8 Q. And the sideline cheer teams, Did they compete
9 against you at either of these events?

10 A. The sideline cheer teams competed the same skills
11 that we competed against us, yes.

12 Q. Now then, your next competition, February 13th, at
13 Nonnewag High School, what competitive format was used
14 for that?

15 A. It was a -- it was based on two and a half minute
16 routine. I can't tell you whether they used an NCA score
17 sheet or -- probably An NCA score sheet.

18 Q. And NCA stands for what?

19 A. National Cheerleader Association.

20 Q. And that is different from the NCSTA organization;
21 correct?

22 A. Yes, it is.

23 Q. Were there any varsity competitive cheer teams,
24 other than Quinnipiac, that competed on February the
25 13th?

1 A. No, there were not.

2 Q. Yours was the only one?

3 A. Ours was the only one.

4 Q. What kinds of teams were the other organizations
5 that you competed against?

6 A. Well, Central Connecticut State University is a
7 sideline team that competes -- we met up against them
8 several times this year, so they compete quite often.
9 Eastern Connecticut State University is a sideline
10 cheerleading team that competes quite often. Western
11 Connecticut State University, I think we saw them almost
12 everywhere we competed this year in a lot of places; and
13 Westfield State is a CO-ED competitive only team under
14 varsity status at Westfield state.

15 Q. By co-Ed you mean boys and girls were on their team?

16 A. Men and women, yes.

17 Q. WCSU, Western Connecticut State University, you said
18 you saw them everywhere, but do you know what kind of
19 organization they are?

20 A. WCSU?

21 Q. Yeah.

22 A. They are a sideline cheerleading team that competes
23 quite often.

24 Q. Fair enough. Drawing your attention to the next
25 event, February the 28th, was that a Quinnipiac all star

1 competitive cheer challenge?

2 A. Okay.

3 Q. Was that hosted by Quinnipiac University?

4 A. Yes, it was.

5 Q. And was this a competition?

6 A. It was a two-day competition.

7 Q. And what are the schools that competed that the
8 competition?

9 A. On Saturday I ran an reason event down at Burt Kahn
10 gymnasium with high schools. We partner with Make-a-wish
11 for part of our positive play and I think we had 60 high
12 schools competing on day one, on Saturday. Connecticut
13 high schools are allowed to compete six times during
14 their season. They can pick four events -- they can pick
15 four schools they to have do their league and then their
16 state championships. So all the high schools in
17 Connecticut are allowed to compete at least six times.
18 So we host a tournament and we had tremendous response to
19 that tournament every single year. And on Sunday, we
20 hosted a all star event with a collegiate division. So
21 the second day was a collegiate division and all star --
22 which are compete-only teams.

23 Q. And what were the all star teams that competed at
24 that event on February the 28th?

25 A. What were they?

1 Q. Yeah. What were their names. Where did they come
2 from?

3 A. That day we had Connecticut Spirit All Stars, we had
4 Extreme All Stars, we had Northeast Tropics, we had
5 Liberty, we had Cheer Extreme, we had USA Wild Cats, we
6 had -- they were from a lot of places. I don't remember
7 all the programs that were there. Quite a bit.

8 Q. Were there any -- other than Quinnipiac University,
9 were there any collegiate varsity competitive cheer teams
10 that the event?

11 A. Yes, we had a collegiate division, but we divide it
12 had two ways. We did compete in meet format in our home
13 court against the University of Maryland; and the other
14 collegiate teams, I believe Babson competed against UConn
15 in the two and a half minute routine.

16 Q. And how long was the routine that you competed in
17 against University of Maryland?

18 A. Well, it's the new meet format, so it's a little bit
19 different. It's got the two and a half minute routine
20 that everybody loves and then we have chosen to bring new
21 elements into that meet format that take all the skills
22 that are involved in the two and a half minute routine
23 and allow -- the ran we have chosen to do this is to give
24 statistics for post season honors to our athletes in the
25 future; and because when you're watching a two and a half

1 minute routine, it's an amazing thing to see, the
2 athleticism, but when you break down the skill sets and
3 you look at the athletes and what they do best as in a
4 basket toss around, you can really see the strength and
5 reflexes of each and every player. So it's just really
6 different. We have a compulsory round where you are
7 looking at apples to apples. Maryland has to execute a
8 pyramid and we execute the same one. And the fans get it
9 because there's realtime scoring. Okay, so we have
10 different events with different heats; and it's more than
11 just two and a half minutes, although the two and a half
12 minute part is amazing and fun, but the skill set in the
13 two and a half minutes are all broken down so that we can
14 add a little bit more to the athletes and their team
15 position; and to the fan experience.

16 Q. February the 28th, was that held under NCSTA scoring
17 rules?

18 A. Yes, it was.

19 THE COURT: Mr. Hernandez, why don't we break
20 here.

21 MR. ORLEANS: Okay.

22 THE COURT: For the day. I want to spend a
23 moment discussing with counsel kind of where we are.

24 MS. FRIEDFEL: Can the witness be excused?

25 THE COURT: The witness can be excused.

1 MR. ORLEANS: I would expect tomorrow morning
2 we will finish with Coach Powers and then the defendant
3 will examine Coach Powers and we've been told that that
4 may take some time.

5 MS. FRIEDFEL: It may take less. I didn't
6 know they would go through this in as much detail.

7 MR. ORLEANS: It will be our intention to
8 call Dr. Amanies, our last expert. I don't actually
9 think she'll be terribly lengthy. I don't know about the
10 cross. But -- and after Dr. Amanies our final witness
11 will be Coach Sparks. And at that point, the plaintiffs
12 will be done. It's my understanding that the defendant
13 intends to call, after Coach Sparks -- after they have
14 cross-examined Coach Sparks, intends to call Tracey Flynn
15 the compliance officer and Coach Seeley. I'm confident
16 that we'll be finished by the end of the day on Thursday,
17 actually, the way things are going.

18 THE COURT: Okay. I can't remember if I
19 warned everybody about a break at three o'clock on
20 Wednesday.

21 MR. ORLEANS: No. You did not.

22 THE COURT: Okay.

23 MR. ORLEANS: How long will that break be?

24 Are we finishing early on Wednesday or does
25 that mean a break and come back on Wednesday, your Honor?

1 THE COURT: Ordinarily, I would say done for
2 the day. If we need to come back, I can probably be back
3 by 4:30 or 4:35. I apologize, it's a continuing
4 obligation I have every Wednesday; and I meant to mention
5 that to counsel and I apologize if I hadn't.

6 MR. BRILL: If we finish with Coach Powers,
7 Coach Sparks should not be a very lengthy witness, I
8 don't think.

9 MR. ORLEANS: I don't anticipate.

10 MR. BRILL: And Dr. Amanies, in view of this
11 morning's ruling, will certainly be less than two hours
12 if you -- possibly considerably less. There's no reason
13 why we shouldn't finish all three witnesses tomorrow and
14 assuming Thursday is a full day, then there should be no
15 problem finishing testimony on Thursday.

16 THE COURT: Good.

17 MR. BRILL: The question we talked about is
18 closing argument. I don't know. My suggestion at that
19 point, if we can finish the evidence on Thursday, then
20 let's come in from 9 to 11 on Friday and you'll each have
21 an hour.

22 MR. ORLEANS: That will be more than enough
23 time for me, your Honor. I don't anticipate taking an
24 hour.

25 THE COURT: I would be surprised if either of

1 you did, but I would have up to an hour.

2 MR. BRILL: Any time he doesn't use, I'll be
3 happy to.

4 THE COURT: So that sounds like it's going to
5 work.

6 MR. ORLEANS: I think we'll be okay.

7 THE COURT: Okay. I'm going to take a very
8 brief recess and take up the Made Stone matter when --
9 thank you.

10 (CONCLUDED AT 5:21 P.M.)

11 C E R T I F I C A T I O N

12 I hereby certify that the above and foregoing
13 is a true and correct of the transcript of the
14 stenographic notes of the proceedings, at the trial in
15 the above-entitled cause, heard before THE HONORABLE
16 STEFAN R. UNDERHILL, U.S.D.J., held at Bridgeport,
17 Connecticut, on the 22nd day of June, 2010.

18 Dated this 23rd day of June, 2010.

19

20

21 _____
22 VIKTORIA V. STOCKMAL
23 CRR, RMR
24
25