

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  
 :  
 : April 17, 2009  
 QUINNIPIAC UNIVERSITY :  
 :  
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HEARING

B E F O R E:

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

A P P E A R A N C E S:

FOR THE PLAINTIFFS:

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1 (2:50 O'CLOCK, P. M.)

2 THE COURT: Good afternoon. We're here in the  
3 matter of Stephanie Biediger v. Quinnipiac University.  
4 Could I have appearances, please?

5 MR. ORLEANS: Your Honor, for the plaintiffs,  
6 Jonathan Orleans and Alex Hernandez from Pullman & Comley.

7 MS. GAMBARDELLA: For the defendant, Mary  
8 Gambardella and John Bardavid from Wiggin and Dana.

9 THE COURT: All right, thank you.

10 I wanted to start by setting a date for the  
11 preliminary injunction hearing. How does the week of  
12 May 11th look?

13 MR. ORLEANS: I beg your pardon, Your Honor?

14 THE COURT: The week of May 11th?

15 MR. ORLEANS: I believe it's okay with  
16 plaintiffs. May I have just a second?

17 (Pause)

18 MR. ORLEANS: Yes, Your Honor, we can do that  
19 week.

20 MS. GAMBARDELLA: Your Honor, anything but that  
21 Monday would be fine.

22 THE COURT: Let me press you a little bit on  
23 Monday. That's my best day that week.

24 MS. GAMBARDELLA: I can move it.

25 THE COURT: You're sure?

1 MS. GAMBARDELLA: Yes.

2 THE COURT: Let's set it down for Monday at  
3 9:30. I have most of Tuesday available as well and my  
4 hope is we can finish it in those two days.

5 MS. GAMBARDELLA: That was 9:00 a. m., your  
6 Honor?

7 THE COURT: Let's make it 9:30.

8 MS. GAMBARDELLA: All right, thank you.

9 MR. ORLEANS: Monday, the 11th is the Monday?

10 THE COURT: Monday, May 11th at 9:30. And we'll  
11 have to talk about what we're going to do between now and  
12 then. Mr. Orleans, with that preliminary injunction  
13 schedule set, what type of temporary relief are you  
14 seeking?

15 MR. ORLEANS: Your Honor, with that schedule set  
16 for the preliminary injunction hearing, it seems to me  
17 that it's probably not wise for us to push on the  
18 Temporary Restraining Order for all of the relief that we  
19 have requested in our papers. We would certainly like to  
20 see our plaintiffs -- and if I may, Your Honor, may I just  
21 point out that Stephanie Biediger, Kayla Lawler and Erin  
22 Overdevest are here in the courtroom, along with Coach  
23 Robin Sparks who sits at counsel table.

24 THE COURT: Very good.

25 MR. ORLEANS: We would certainly like to see the

1 members of the team given permission to practice with  
2 their coach, which has been denied them since early March.

3 THE COURT: All right. Let me press you on  
4 that. I received the defendant's memorandum just before  
5 taking the bench and I went through it quickly. My  
6 recollection is there's a representation that the team has  
7 been permitted to use the gym. Is that --

8 MS. GAMBARDELLA: Your Honor, if I may, in the  
9 original papers what was represented was they weren't  
10 allowed in the gym, period. We're responding to that.  
11 But to be totally forthright with the court, what I'm now  
12 hearing may be a reference to the fact that the coach,  
13 she's being paid through June 30th, through her contract.  
14 She was asked not to work on campus. The reason for that,  
15 and I'll just state it for the record, is that, according  
16 to my clients, there was more time spent trying to get  
17 other coaches to join this effort and other students to  
18 join this effort than there was coaching. So, if the  
19 claim now is being modified that they are not being denied  
20 gym time but it's being denied time with the coach, we'd  
21 like to be heard on that.

22 MR. ORLEANS: Let me respond to that in two  
23 ways, if I might, Your Honor. Prior to March 4th, the  
24 team was scheduled for practice in the gym on a daily  
25 basis at 12:30 for three hours, two or three hour blocks.

1 I've got the schedules with me. After March 4th, the team  
2 was not scheduled for practices in the gym. Intermural  
3 volleyball is now scheduled in the gym in the evenings but  
4 that's intermural volleyball, it's not practice for the  
5 team.

6 The coach was asked not to practice with the  
7 team, was instructed that she could not practice with the  
8 team. If the suggestion is that that request is somehow  
9 justified because the university was concerned about her  
10 efforts to oppose discrimination, it seems to me that that  
11 is on its face retaliatory and not permissible.

12 Moreover, Coach Sparks is a faculty member at  
13 the university. She teaches a class, she has an office.  
14 In that capacity, we would submit that she's entitled to  
15 be on campus in her office preparing for her class. And  
16 since this program ostensibly is not dead until the end of  
17 this academic year, she ought to be able to practice with  
18 her team. The team members are being harmed by losing the  
19 opportunity to practice with their coach.

20 MS. GAMBARDELLA: I'm sorry --

21 THE COURT: Go ahead.

22 MS. GAMBARDELLA: Two points on that. Number  
23 one, I don't think anything I said even remotely suggests  
24 retaliation. What I said, in case I wasn't clear, was  
25 this. The university, as an employer, as it is entitled

1 to do, is trying to manage and avoid disruption. That's  
2 number one. It was in good faith believed that in the  
3 context of her duties as coach, there was disruption.

4 Number two, with respect to formalized practices  
5 in the gym, a temporary restraining order is not suitable  
6 for that kind of relief. This is a Fall sport. Between  
7 now and May 11, to suggest that the team will be so  
8 irreparably harmed that this court should issue a  
9 restraining order, a mandatory injunction, telling the  
10 school they can't -- they must have them practice,  
11 irrespective of what else is going on in the gym,  
12 irrespective of what other resources have already been  
13 affected -- this is not just a matter of the status quo.  
14 There were other programs that were disbanded, too. Men's  
15 programs. What do we do with them?

16 THE COURT: Okay, but let me just try and cut  
17 through. And I understand that both sides are  
18 understandably concerned about the situation and the  
19 litigation, but it seems to me that we're talking about a  
20 period of approximately three weeks. It would, I think,  
21 behoove everybody if this little issue about practicing  
22 with the coach in the gym for whatever time they had been  
23 scheduled for could be resolved. I believe -- I really  
24 don't want to have a TRO hearing on the question of --

25 MS. GAMBARDELLA: Practice.

1           THE COURT: -- practice with the volleyball team  
2 at the gym. That being said, I also think it would be in  
3 everybody's interest if the university permitted that  
4 practice to proceed for the next three weeks or so until  
5 the hearing. At that point, if nothing more, it's  
6 mitigating the situation. It's putting a little bit of  
7 oil on water. It's letting everybody do their thing  
8 without presumably any great disruption to the university  
9 because this was the plan until recently.

10           So, I'm going to request of the university that  
11 they consider permitting this voluntarily to occur. That  
12 is, to have regular practices as they would have had up  
13 through the hearing date or through a ruling date, and I'm  
14 going to rule quickly.

15           MS. GAMBARDELLA: May I inquire of opposing  
16 counsel what is the representation on the record as to how  
17 many practices would normally transpire in three weeks in  
18 April for a Fall sport.

19           MR. ORLEANS: The representation is, Your Honor,  
20 my client will correct me if I'm wrong, that there would  
21 be daily practices through May 2nd, which is the week  
22 before finals and they don't practice during the week  
23 before final exams or during finals weeks. So we're  
24 really just talking about the time period between now and  
25 May 2nd, this coming week.

1 MS. GAMBARDELLA: Just this week?

2 MR. ORLEANS: Just the coming week, five days.

3 MS. GAMBARDELLA: Okay. So I guess my only  
4 concern then is I will take your request to my client. I  
5 will impress upon them Your Honor's wishes in this regard  
6 and your opinion in this regard and give that deference,  
7 of course, as I always would, but I have to check whether  
8 or not we're bumping anybody else. That's my only  
9 concern.

10 What I am more than happy to do is advise  
11 opposing counsel -- today's Friday -- Monday, if you give  
12 me until Monday to see whether or not that's feasible. If  
13 we're only talking about the next five days, I would then  
14 submit to Your Honor I find it hard to fathom that harm  
15 would be so immediate, dangerous and irreparable, that if  
16 they miss some daily practices -- how long a day? An  
17 hour, two hours?

18 MR. ORLEANS: Two to three hours per day.

19 MS. GAMBARDELLA: A couple hours per day the  
20 next five days, they're going to suffer from irreparable  
21 harm. However, that being said, I will convey Your  
22 Honor's request.

23 THE COURT: All right. Is it possible to get  
24 that done now? Do you have someone you can call?

25 MS. GAMBARDELLA: I can make a call. I forgot



1 my bar card; they took my phone.

2 MR. ORLEANS: I can use my phone.

3 THE COURT: Let's just get that part sorted out.  
4 That may lower the temperature a little bit and may not be  
5 a bad thing.

6 MR. ORLEANS: I will make the representation  
7 according to the schedule, which is available through the  
8 internet, that nothing else has been scheduled for the  
9 gym. That doesn't mean something's been scheduled that  
10 hasn't been posted.

11 MS. GAMBARDELLA: That doesn't anticipate the  
12 reaction I may get, which motivated the request to begin  
13 with, that this not occur, that the plaintiff coach be  
14 canvassed that this is not an opportunity to elicit  
15 litigants. She can do that on her own time. She's an  
16 American, she's got First Amendment rights, she can do  
17 that. What she cannot do is, on my client's dime, on our  
18 salary, is to utilize work time to do anything but  
19 practice with the team.

20 THE COURT: Well, okay. I mean I think that  
21 point's been made. The litigation has been filed and, you  
22 know, whether I have, what, five plaintiffs or ten  
23 plaintiffs, the same issues are going to get litigated. I  
24 don't think there's any great advantage to anybody in  
25 adding names to the caption of the case, but maybe I'm

1 wrong.

2 MR. ORLEANS: The only -- we anticipate possibly  
3 adding another recruit, a current high school student who  
4 has been recruited to play at Quinnipiac but we're not  
5 anticipating adding any more Quinnipiac current students  
6 to the caption. All Coach Sparks wants to do is practice  
7 with her team. She's not looking to use the time to do  
8 any more organizing.

9 THE COURT: All right, I appreciate that. Why  
10 don't you make your phone call and --

11 MS. GAMBARDELLA: Well, the only reason I  
12 hesitate, is there any other interim relief I need to  
13 discuss? I'd rather not make five phone calls.

14 THE COURT: I don't believe so.

15 MR. ORLEANS: I don't -- we'd like some sort of  
16 continued assurance -- as I understand it, Your Honor, up  
17 until now, the team, although they haven't been allowed to  
18 practice, they've still had access to the weight room,  
19 they had access to the trainers. We don't want that to  
20 change.

21 MS. GAMBARDELLA: My clients have no intention  
22 of altering the status quo and I mean status quo today,  
23 not status quo in February. But if -- and so what I'm  
24 hearing now is an acknowledgement they've been given gym  
25 privileges and we have no intention of revoking that.

1 MR. ORLEANS: I'm not sure that gym privileges  
2 accurately describes it but, in any event, what we're  
3 looking for is the opportunity to practice.

4 MS. GAMBARDELLA: My client has no intention of  
5 altering that status quo.

6 THE COURT: Okay. Why don't you make your phone  
7 call quickly, if you could, and then there are logistical  
8 issues we have to take up.

9 MS. GAMBARDELLA: Am I representing to my client  
10 if we can work something out for the next five day? Five  
11 weekdays, right? Counsel?

12 (Pause)

13 MR. ORLEANS: Let me look. If the court will  
14 indulge me, I'll look at my calendar.

15 MS. GAMBARDELLA: That would be great.

16 MR. ORLEANS: It was so much easier in the days  
17 we had paper calendars rather than Blackberries.

18 (Pause)

19 MR. ORLEANS: We're talking about Monday, April  
20 the 20th through Saturday, April 25th. We'd like to be  
21 able to practice everyday in that period. The following  
22 week is the week before finals so there won't be any  
23 practice.

24 MS. GAMBARDELLA: And if my client reaches some  
25 voluntary agreement in this regard, you're withdrawing

1 your TRO request?

2 MR. ORLEANS: With respect to that.

3 MS. GAMBARDELLA: Well, again, I don't want to  
4 make five phone calls.

5 THE COURT: What else -- if you receive that  
6 agreement, what other relief do you need between now and  
7 May 11th?

8 MR. ORLEANS: May I have a moment?

9 THE COURT: Sure.

10 (Pause)

11 MR. ORLEANS: Your Honor, thank you for your  
12 indulgence. After conferring with the clients, that's  
13 really the only thing we need between now and the 11th  
14 would be the ability to practice.

15 THE COURT: So the TRO would be withdrawn?

16 MR. ORLEANS: Yes.

17 MS. GAMBARDELLA: I appreciate that. If I may  
18 have a few minutes and borrow your phone? Unless Judge  
19 Garfinkel will let me use his.

20 MR. ORLEANS: There you go.

21 MS. GAMBARDELLA: Thank you, sir.

22 (Pause)

23 MS. GAMBARDELLA: Your Honor, as a showing in  
24 good faith, my clients are going to agree to arrange that.

25 THE COURT: Very good. Thank you very much.

1 And, as I said, hopefully that will help us move forward  
2 toward the May 11th hearing.

3 MS. GAMBARDELLA: And so I take it for the  
4 record that the request for temporary restraining order is  
5 withdrawn with prejudice at this time?

6 MR. ORLEANS: Yes -- with prejudice, I'm not  
7 sure what exactly what that means.

8 MS. GAMBARDELLA: Well, I don't want to come  
9 back Monday with another TRO.

10 MR. ORLEANS: We're not going to come back  
11 Monday with another TRO unless -- if the university honors  
12 its promise, we won't be back here until the preliminary  
13 injunction hearing.

14 Could I just get some clarification? Were we  
15 told what time?

16 MS. GAMBARDELLA: No, no, he said we'll arrange  
17 it.

18 MR. ORLEANS: Are we back on for 12:30 everyday?

19 MS. GAMBARDELLA: He didn't seem concerned about  
20 whatever time you needed to schedule.

21 MR. ORLEANS: Okay.

22 THE COURT: Good, thank you. Thank you both.

23 All right, let's talk some logistics for the  
24 hearing. First off, what discovery, if any, do the  
25 parties want to undertake between now and then?

1 MR. ORLEANS: Well, Your Honor, from the  
2 plaintiff's side, I think we want to do some expedited  
3 document discovery. We'll try to keep it limited but  
4 certainly there's statistical information which we'd like  
5 to get a hold of regarding participation rates, some  
6 information about this alleged reorganization plan, some  
7 information about the purported financial consequences of  
8 the reorganization, as it's offered its justification for  
9 the decisions that the university made. So we would be  
10 looking for some quick document discovery. We would keep  
11 it as limited as we reasonably could and I think we would  
12 probably like to take the depositions of the athletic  
13 director and the women's sports administrator before the  
14 hearing. Again, we'll keep those as short as we can.  
15 We're not trying to stretch this out.

16 MS. GAMBARDELLA: Your Honor, for the defendant,  
17 understandably I assume some expedited discovery would be  
18 in order but I am going to anticipate, based on what I've  
19 just heard, some significant discovery disputes about  
20 what's relevant and what is not relevant for the purposes  
21 of a preliminary injunction hearing.

22 You read the papers, I don't need to educate you  
23 about what's in the papers, but our argument is that they  
24 are entitled to do this. They are entitled to manage  
25 their roster. They have eliminated two men's sports as

1 well, and so I would like to consult with counsel on what  
2 during deposition is going to be asked. That is really --  
3 we're talking about the next academic year. They've  
4 played this year. This academy year, this volleyball  
5 season is over, as far as I understand it, so we're  
6 talking about the next academic year.

7 In terms of the roster for next year, I agree  
8 counsel's entitled to back-up information on whether the  
9 numbers are real, and therefore, whether the proportions  
10 meet prong one of the test under Title 9. Beyond that, I  
11 have no problem talking with counsel but I don't want to  
12 waive any disputes or any objections to the scope of the  
13 anticipated expedited discovery.

14 THE COURT: All right. Well, what was just  
15 mentioned seems relatively discrete, and the standard is  
16 reasonably calculated to lead to the discovery of  
17 admissible evidence. I didn't hear anything that struck  
18 me as obviously outside the range of what should be  
19 discoverable. I mean I haven't seen the requests yet, so  
20 who knows. But let me suggest this. Can the plaintiff  
21 pull together focused discovery requests and serve them  
22 Monday?

23 MR. ORLEANS: Yes, Your Honor.

24 THE COURT: All right. And can the defendant  
25 object, if they wish to, by Tuesday?

1 MS. GAMBARDELLA: Yes, Your Honor.

2 THE COURT: And respond, either to the extent  
3 not objected to or to the extent those objections are  
4 overruled, by Friday?

5 MS. GAMBARDELLA: Obviously it depends on the  
6 breadth, not just the subject matter. So to the extent  
7 there's back-up documentation he's going to ask for, we'll  
8 respond and then we can indicate if there's some  
9 additional time needed to actually produce the  
10 documentation. We'll expedite -- we understand this is  
11 expedited. This is not an attempt to delay this at all.

12 THE COURT: Let's try and get your objections,  
13 if you have them --

14 MS. GAMBARDELLA: Yes.

15 THE COURT: -- by the end of the day on Tuesday  
16 the 21st, and I will hear those objections either  
17 Wednesday or Thursday, depending on how extensive they are  
18 and so forth. And hopefully we can get production Friday  
19 or Monday, which would leave a little time for  
20 depositions. Can each side be limited to 14 hours of  
21 deposition in between now and the hearing?

22 MR. ORLEANS: Absolutely, Your Honor. I don't  
23 anticipate using that much for the two witnesses. I would  
24 want to reserve the opportunity to perhaps come back to  
25 those witnesses again if the case isn't finally



1 determined?

2 THE COURT: Of course.

3 MR. ORLEANS: But for purposes of the  
4 preliminary injunction hearing, I think I can do my two  
5 witnesss in one day. I'll do my best to do that.

6 THE COURT: All right. So let's -- it sounds  
7 like it's more than necessary but let's limit each side to  
8 14 hours of deposition.

9 MS. GAMBARDELLA: Yes, Your Honor. I'm not sure  
10 I'm going to need it for an injunction in this case.

11 THE COURT: I'd like to get from you in advance  
12 of the 11th a sense of who your witnesses are going to be,  
13 how long they are going to take, what stipulations you can  
14 reach, what exhibits you're going to be submitting. I  
15 mean the typical pretrial logistics.

16 Obviously with a preliminary injunction hearing  
17 I'm going to urge counsel to do what you can to reach  
18 stipulations, to try and limit testimony, agree to the  
19 admission of exhibits, et cetera. So, in the first  
20 instance I'm going to ask you to try to do that on your  
21 own, but it seems to me we ought to have a pretrial  
22 conference at least a couple days before the 11th. What  
23 about 3:30 on the afternoon of the 7th?

24 MS. GAMBARDELLA: That's fine, Your Honor, for  
25 the defendant.

1 MR. ORLEANS: I can do that, Your Honor.

2 THE COURT: Okay.

3 MS. GAMBARDELLA: So would you want the  
4 submissions by the day before or the morning of the  
5 conference or --

6 THE COURT: It would be nice to have what  
7 amounts to a pretrial memo in effect the day before.

8 MS. GAMBARDELLA: Okay.

9 THE COURT: What else can we usefully do today?

10 MR. ORLEANS: I think we pretty well covered it,  
11 Your Honor.

12 THE COURT: All right, thank you both.

13 MS. GAMBARDELLA: I think we're fine.

14 THE COURT: All right. Let me urge you if you  
15 have any disputes that come up, scope of discovery, not  
16 getting documents produced in a timely way, trouble  
17 getting a date for a deposition, whatever it might be,  
18 please call me. If I'm not available, I'll get back to  
19 you as quickly as I can and we'll get this resolved right  
20 away.

21 MS. GAMBARDELLA: Thank you, Your Honor.

22 MR. ORLEANS: Thank you, Judge.

23 THE COURT: Thank you all. We'll stand in  
24 recess.

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1                   (Whereupon the above matter was adjourned at 3:20  
2 o'clock, p. m.))  
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## C E R T I F I C A T E

I, Susan E. Catucci, RMR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

**/S/ Susan E. Catucci**

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