

TAB C

15:48:17 1 UNITED STATES DISTRICT COURT
15:48:17 2 DISTRICT OF CONNECTICUT
15:48:17 3 * * * * *
15:48:17 4 STEPHANIE BIEDIGER, *
15:48:17 5 KAYLA LAWLER, ERIN *
15:48:17 6 OVERDEVEST, AND KRISTEN *
15:48:17 7 CORINALDESI, *
15:48:17 8 individually and on *
15:48:17 9 behalf of all those *
15:48:17 10 similarly situated; *
15:48:17 11 LESLEY RIKER on behalf *
15:48:17 12 of her minor daughter, *
15:48:17 13 L.R., individually and *
15:48:17 14 on behalf of all those *
15:48:17 15 similarly situated; and *
15:48:17 16 ROBIN LAMOTT SPARKS, * CIVIL ACTIO NO.
15:48:17 17 individually, * 3:09-cv-00621 (SRU)
15:48:17 18 Plaintiffs *
15:48:17 19 VS. *
15:48:17 20 QUINNIPIAC UNIVERSITY, *
15:48:17 21 Defendant *
15:48:17 22 * * * * *
15:48:17 23 Bridgeport, CT
15:48:17 24 May 5, 2009
15:48:17 25 4:00 p.m.
VIDEOTAPED DEPOSITION OF DONNA LOPIANO
- - -
- - -

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15:48:17 1 APPEARANCES:
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FOR THE PLAINTIFFS:

PULLMAN & COMLEY, LLC
BY: JONATHAN B. ORLEANS, ESQUIRE
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FOR THE DEFENDANT:

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VIDEOGRAPHER: DOMINIC BOUCHER,
Hamilton Communications

ALSO PRESENT: ROBIN SPARKS

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Videotaped Deposition of DONNA LOPIANO, a witness herein, taken on behalf of the plaintiffs herein, for the purpose of discovery and for use as evidence in this cause, pending in the United States District Court for the District of Connecticut, pursuant to Agreement, before Stephanie Moffett, Licensed Shorthand Reporter, No. 00461, and a Notary Public within and for the State of Connecticut, at the law offices of Pullman & Comley, LLC, 850 Main Street, Bridgeport, Connecticut, on the 5th day of May, 2009 at 4:00 p.m., at which time counsel appeared as hereinbefore set forth . . .

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THE VIDEOGRAPHER: We are now on record. This is the deposition of Donna Lopiano taken on behalf of the plaintiff in the case of Stephanie Biediger, et al versus Quinnipiac University. Case number CV-00621(SRU) filed in the United States District Court District for Connecticut.

Donna Lopiano.txt
Today is May 5th, 2009. Time on video
16:01:24 8
16:01:28 9 record is 4:01 p.m. This deposition is being held
16:01:33 10 at 850 Main Street, Bridgeport, Connecticut. My
16:01:37 11 name is Dominic Boucher representing Hamilton
16:01:39 12 Communications of 1442 Essex Road, Westbrook,
16:01:39 13 Connecticut.

16:01:40 14 would counsel please introduce
16:01:45 15 yourselves for the record?

16:01:46 16 MS. GALLES: Yes. I am Kristen
16:01:47 17 Galles. I am one of the counsel for plaintiffs in
16:01:50 18 the matter.

16:01:51 19 MS. GAMBARDELLA: I am Mary
16:01:51 20 Gambardella, and I represent the defendant
16:01:53 21 Quinnipiac University, and I have -- Go ahead, John.

16:01:58 22 MR. BARDAVID: Jonathan Bardavid
16:01:58 23 also for the defendants.

16:02:03 24 MR. HERNANDEZ: Alex Hernandez,
16:02:04 25 Pullman & Comley on behalf of the plaintiffs and

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16:02:05 1 later will be joined by Jonathan Orleans, also
16:02:09 2 Pullman & Comley on behalf of the plaintiffs.

16:02:12 3 MS. GALLES: And also, for the
16:02:13 4 record, I'd like to state that one of the
16:02:15 5 plaintiffs, Robin Sparks, is with us, and I guess
16:02:20 6 we're ready to --

16:02:23 7 MS. GAMBARDELLA: Rock and roll.

16:02:23 8 MS. GALLES: Okay. We want to make
16:02:24 9 some statements on the record, and then we'll swear
16:02:26 10 in the witness.

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So my understanding, Mary, from your discussion with John is that basically we're doing what you normally do. We're waiving all of the objections except as form and foundation and that we can -- if there are any, we can squawk about them later based on the transcript.

MS. GAMBARDELLA: Yes. That's the agreement.

MS. GALLES: Okay. All right. I guess we are ready to swear in the witness, Dr. Donna Lopiano.

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Thereupon:
DONNA LOPIANO, residing at 60 Harvest Moon Road, Easton, Connecticut, being first duly sworn, as hereinafter certified, was examined and testified as follows:
DIRECT EXAMINATION BY MS. GALLES:
Q. Dr. Lopiano, we've introduced everyone around the table, just so you know who is here listening in, and I also want to briefly explain to you that -- You've done lots of depositions and court testimony before, but this particular deposition is something they call a De Bene Esse deposition.

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18:47:04 22 what we have for EADA, like through the current
18:47:07 23 school year.
18:47:07 24 A. Okay. Sorry. Sorry. Okay.
18:47:08 25 Q. Not looking at what Quinnipiac proposes

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18:47:11 1 to do for next year.
18:47:13 2 A. Okay. I'm sorry. Go ahead.
18:47:14 3 Q. Okay. Going up through the 2008-2009
18:47:17 4 school year, okay --
18:47:19 5 A. Right.
18:47:19 6 Q. -- I believe you've stated your opinion
18:47:21 7 relating to Prong 1; but just in case you didn't, do
18:47:25 8 you have an opinion relating to whether or not
18:47:28 9 Quinnipiac satisfies Prong 1 of the Three Part Test?
18:47:32 10 MS. GAMBARDELLA: Object to form.
18:47:33 11 A. Quinnipiac is currently not in
18:47:35 12 compliance with Prong 1 of the Three Part Test, and
18:47:39 13 it has not been in compliance with Prong 1 for the
18:47:43 14 past 15 years.
18:47:45 15 Q. Now, let's move along to Prong 2.
18:47:54 16 A. Quinnipiac is not in compliance with
18:47:55 17 Prong 2. It has not added a varsity team for women
18:48:00 18 since the year 2000 despite the fact that it is
18:48:04 19 obvious that its recruiting market offers
18:48:09 20 opportunities for it to add teams.
18:48:12 21 You see, in the Northeast Conference,
18:48:13 22 all of its competitors or many of its competitors
18:48:18 23 are offering swimming and women's golf. Where's
18:48:25 24 my --

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18:48:27 25 Q. Dr. Lopiano, if you wanted to find out

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18:48:29 1 what sports Quinnipiac's conference offered or had,
18:48:35 2 what would you look at or who would you talk to?

18:48:38 3 A. Well, I looked at what Quinnipiac gave
18:48:41 4 me in terms of the squad sizes for all of its
18:48:46 5 sports.

18:48:47 6 Q. Okay.

18:48:48 7 A. And you would just look on a website and
18:48:51 8 you could see all the sports that the -- you know,
18:48:54 9 the Conference --

18:49:02 10 Q. So okay. Let's go back to what you were
18:49:04 11 looking at in terms of squad sizes, the NEC page.

18:49:12 12 A. Right.

18:49:12 13 Q. Okay. Can you tell from that which
18:49:14 14 sports other NEC schools offer that Quinnipiac does
18:49:19 15 not?

18:49:21 16 A. Swimming, bowling, golf. And then you
18:49:29 17 would also look not only at what the other
18:49:32 18 Conference schools -- You look at the other
18:49:34 19 Conference schools because they successfully are
18:49:37 20 meeting this unmet need. They here recruiting teams
18:49:40 21 just like Quinnipiac should be.

18:49:43 22 You're also obligated to look at what
18:49:46 23 are the high school sports that are being offered,
18:49:48 24 and you look at the high school; and those same
18:49:52 25 three sports are being offered. In addition, when

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21:05:52 22 Q. We'll get there. Anything other than
21:05:54 23 that which raises your suspicions that the numbers
21:05:59 24 were not really the numbers on the first day of
21:06:03 25 competition?

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21:06:04 1 A. Yes; that I felt that the changing of
21:06:08 2 the counting indicated an attempt to manipulate
21:06:19 3 those numbers.

21:06:20 4 Q. Okay. Doctor, my question is this --

21:06:21 5 A. You couldn't -- There was no
21:06:24 6 consistent -- For 15 years, there was no consistent
21:06:26 7 way that it was counted even when they were counted
21:06:29 8 as a combined team. You're talking about the EADA
21:06:33 9 report?

21:06:35 10 Q. Are you talking about counting those
21:06:37 11 sports more than once, indoor, outdoor track and
21:06:41 12 cross country?

21:06:42 13 A. I'm talking about the way that when they
21:06:44 14 were counted as combined, they were counted in two
21:06:47 15 different ways, and there was no way you could tell
21:06:50 16 whether that was an accurate count or not.

21:06:53 17 Q. Okay. So, Doctor, here's my question.
21:06:54 18 You agree with me that schools are permitted to
21:06:57 19 count athletes who participate in more than one
21:07:04 20 sport once for each sport for which they participate
21:07:06 21 in, correct?

21:07:07 22 A. As long as they're the same -- they're
21:07:09 23 one sport and they're not like indoor and outdoor
21:07:13 24 track where it is -- They can't count indoor and

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21:07:16 25 outdoor track separately because that's one sport.

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21:07:18 1 Q. I thought -- Go ahead -- you said during
21:07:19 2 the deposition -- And if not, we'll go to some
21:07:22 3 materials -- that a school can count indoor and
21:07:25 4 outdoor track and cross country as three separate
21:07:29 5 sports?

21:07:29 6 A. I said historically, when you look back
21:07:33 7 over a period of years before attempts were made to
21:07:37 8 manipulate roster management, that when they were
21:07:40 9 counted as separate sports, it was a mathematical
21:07:44 10 wash as to its effect on participation percentages.

21:07:49 11 Q. Okay. The question is not about that.

21:07:50 12 A. The indoor -- Yeah. But no. I pointed
21:07:53 13 out that in the -- in the clarification with regard
21:07:57 14 to the three part -- with regard to Prong 1, that it
21:08:02 15 was very specific that the issue was, how many
21:08:06 16 participants were there in each sport? And so it is
21:08:12 17 very valid that I contend that indoor and outdoor
21:08:19 18 track are absolutely the same sport. They should
21:08:21 19 not be counted separately.

21:08:22 20 Q. Okay. Aside from what you think should
21:08:25 21 happen, Doctor, what is your authoritative source
21:08:28 22 that provides that a school may not count indoor
21:08:32 23 track, outdoor track and cross country track as
21:08:35 24 three separate sports?

21:08:37 25 A. Just the words and regulations.

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21:08:39 1 Q. Show me the words and the regulation.
21:08:42 2 A. It -- I read them to you. It said that
21:08:44 3 you had to count -- All right. Let's go to a
21:08:49 4 regulation. '79.
21:08:57 5 MS. GALLES: That's '96. '79, '96.
21:09:14 6 A. In '96, "An athlete who participates" --
21:09:18 7 Q. You need to direct me to where you're
21:09:20 8 reading.
21:09:30 9 A. I changed my font, so the pages aren't
21:09:33 10 the same here. Clarification of Three Part Test --
21:09:37 11 MS. GALLES: Is it part of the
21:09:38 12 letter or clarification?
21:09:42 13 THE DEPONENT: Clarification.
21:09:43 14 A. Three Part Test, Part 1. Three Part
21:09:44 15 Test, Part 1. On page 3.
21:10:04 16 Q. Of what document?
21:10:06 17 A. This is --
21:10:08 18 MS. GALLES: 1996 clarification.
21:10:11 19 A. Okay. Document Number 3. And it says,
21:10:15 20 at the bottom of the page --
21:10:17 21 Q. Of which page?
21:10:18 22 A. Says 3 in the middle and says attachment
21:10:21 23 F 8 of -- 8 of 17.
21:10:23 24 Q. Great. I'm with you.
21:10:24 25 A. In the middle of the page, in the

21:10:28 1 paragraph under this definition --

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21:10:29 2 Q. Yup.

21:10:29 3 A. -- it says -- the last sentence, last

21:10:32 4 three lines, "An athlete who participates in more

21:10:35 5 than one sport will be counted as a participant in

21:10:38 6 each sport in which he or she participates." So the

21:10:42 7 question is whether or not indoor or outdoor track

21:10:46 8 is a sport. That's the issue. Are separate sports.

21:10:49 9 And my contention is, they are absolutely the same

21:10:52 10 sport that are played -- where the athlete

21:10:56 11 participates in a winter and a spring season.

21:10:58 12 Q. Other than your personal contention,

21:11:01 13 where is the authority --

21:11:02 14 A. It wasn't a personal contention.

21:11:04 15 Q. Okay.

21:11:04 16 A. I gave you seven different reasons.

21:11:06 17 Q. I understand the reasons. Where is the

21:11:09 18 authoritative --

21:11:11 19 A. Right there.

21:11:13 20 Q. I understand. Do you have any --

21:11:15 21 A. More than one sport.

21:11:16 22 Q. Do you have any document authored by the

21:11:19 23 OCR or any judicial opinion that says, definitively,

21:11:24 24 indoor, outdoor track and cross country can never

21:11:28 25 count for separate sports for purposes of Title 9

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21:11:32 1 compliance?

21:11:33 2 A. It was my testimony in the Colorado

21:11:34 3 State case that indoor and outdoor track were the

21:11:37 4 same sport; and in that case, it seems that -- I

21:11:41 5 don't know whether the Court accepted it or not, but
21:11:44 6 that's exactly, you know, my testimony. And they
21:11:49 7 seemed to have ruled in favor. So is the expert
21:11:53 8 right when that happens?
21:11:55 9 Q. Wait a minute. You're saying --
21:11:57 10 A. In Colorado State, I testified that
21:11:58 11 indoor and outdoor track were one sport.
21:12:01 12 Q. Right.
21:12:02 13 A. The plaintiffs prevailed. Does that
21:12:05 14 mean I'm right?
21:12:06 15 Q. I don't know. I don't know why the
21:12:08 16 plaintiffs prevailed. Do you have a copy of the
21:12:10 17 opinion with you?
21:12:11 18 A. I don't, but do I have a -- I do not.
21:12:19 19 Q. In fact, I'm going to show you -- Just
21:12:23 20 looking for the first page. This notebook is not
21:12:39 21 cooperating.
21:12:40 22 A. Three rings never cooperate with me.
21:12:48 23 Q. I'm just looking for the first page,
21:12:51 24 Doctor.
21:12:52 25 A. From where?

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21:12:53 1 Q. Of this manual.
21:12:55 2 A. Can I see the manual?
21:12:56 3 Q. I'm going to show you the NCAA manual --
21:12:59 4 2008-2009 NCAA Division Manual.
21:13:04 5 A. Yes.
21:13:05 6 Q. Okay? On page 289 of that manual, are
21:13:09 7 indoor, outdoor track and cross country listed as

21:13:14 8 separate sports? Donna Lopiano.txt

21:13:16 9 A. No. They're listed as separate
21:13:17 10 championships. Is that where you're looking?

21:13:19 11 Q. Yeah, separate championships.

21:13:20 12 A. Separate championships. They're not
21:13:20 13 separate sports. They're separate championships.

21:13:24 14 Q. Okay. Where in this -- well, so there
21:13:25 15 were separate championships for those three sports,
21:13:31 16 correct?

21:13:31 17 A. Yeah.

21:13:31 18 Q. Have you ever seen the high school
21:13:33 19 participation survey conducted by the National
21:13:36 20 Federation of State High School Associations?

21:13:38 21 A. Yeah, I've seen it.

21:13:42 22 MS. GALLES: Could we have that
21:13:43 23 marked?

21:13:44 24 MS. GAMBARDELLA: Yup.
21:13:45 25 (Whereupon, the High School

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21:13:45 1 Participation Survey was marked as Defendant's
21:13:45 2 Exhibit A for Identification.)

21:14:11 3 Q. Are not those three sports listed
21:14:13 4 separately?

21:14:14 5 A. Oh, there's no question that you'll see
21:14:17 6 cross country, indoor track and outdoor track listed
21:14:22 7 separately as championships. My point is, they are
21:14:25 8 the same sport conducted in different seasons, and
21:14:28 9 it's fine to have an indoor track championship, an
21:14:31 10 outdoor track championship, just like there's a long

21:14:36 11 course swimming championship and a short course
21:14:40 12 swimming championship. It does not mean they are
21:14:43 13 not the same sport.

21:14:44 14 Q. Where has the OCR ever determined that
21:14:48 15 those three sports are indeed the same sport for
21:14:53 16 counting participation opportunities?

21:15:02 17 A. Okay. So you're telling me that the OCR
21:15:08 18 says -- I'm not answering -- Here's what I'm not
21:15:13 19 answering -- asking -- understanding about your
21:15:15 20 question, that the OCR doesn't say specifically that
21:15:21 21 cross country is a sport, indoor is a sport, outdoor
21:15:24 22 is a -- Doesn't go there. It says this is what a
21:15:27 23 sport is.

21:15:28 24 Q. Right.

21:15:29 25 A. And it gives a definition of a sport

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21:15:32 1 just like it tries to give a definition of a sport
21:15:36 2 for -- for -- Cheerleading is a good example. So
21:15:40 3 when they say is there a federation that governs the
21:15:44 4 sport, there isn't a cross country federation, an
21:15:47 5 indoor track federation, an outdoor track
21:15:49 6 federation.

21:15:49 7 There's USA track and field, and it
21:15:52 8 has -- in different seasons, it runs events like
21:15:56 9 cross country, like indoor, like outdoor. Just like
21:15:59 10 there's one swimming federation, and it has long
21:16:03 11 course and it has short course; and so I don't think
21:16:08 12 it's the function of OCR to legislate what -- the
21:16:16 13 name of the sport.

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21:16:17 14 It is the function of the federation --
21:16:18 15 the national governing body to say, these are our
21:16:23 16 sports and this is what we -- this is the sport and
21:16:26 17 this what we tell ourselves and this is what this
21:16:29 18 championship is and this is what this season is. I
21:16:31 19 can't say any more than that.

21:16:33 20 Q. So it's your testimony that a school is
21:16:35 21 not permitted under Title 9 to ever count those
21:16:39 22 three sports as anything other than one sport?

21:16:42 23 A. I said -- And I'll repeat what I said --
21:16:44 24 that it is not permitted to count indoor and outdoor
21:16:47 25 track as separate sports. I gave you specific

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21:16:51 1 circumstances under which I thought it would be
21:16:52 2 allowable to count cross country separately from
21:16:56 3 indoor and outdoor track, and I can say that again.

21:16:59 4 Q. No.

21:17:00 5 A. Okay.

21:17:00 6 Q. You gave me the conditions under which
21:17:01 7 cross country can be counted separately. And have
21:17:04 8 you interviewed any of the coaches at Quinnipiac of
21:17:08 9 any of those sports?

21:17:10 10 A. I have not.

21:17:11 11 Q. Have you gone to any source, other than
21:17:13 12 the website, for information about those three
21:17:17 13 sports, those three athletic programs at Quinnipiac?

21:17:22 14 A. I've gone to the EADA reports.

21:17:25 15 Q. Okay. Well, the EADA reports only show
21:17:27 16 that Quinnipiac counted those sports separately in

21:17:33 17 certain areas?
21:17:34 18 A. And inconsistently.
21:17:36 19 Q. I understand. Okay.
21:17:37 20 A. Right.
21:17:37 21 Q. I'm asking you now if you've gone to any
21:17:39 22 other source of information about those athletic
21:17:42 23 programs at Quinnipiac other than schedules for
21:17:45 24 2008-2009 and the rosters off of the websites?
21:17:50 25 A. And the EADA reports.

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21:17:52 1 Q. Other than that?
21:17:53 2 A. Okay. Well, it's very significant
21:17:54 3 because you have an opportunity in the EADA reports
21:17:57 4 to go cross country, indoor, outdoor or combined,
21:18:01 5 and --
21:18:02 6 Q. I --
21:18:02 7 A. -- what is Quinnipiac saying? It's
21:18:05 8 saying that it's one sport cross country, indoor
21:18:08 9 track combined with this participation. Quinnipiac
21:18:11 10 is saying it.
21:18:12 11 Q. We'll get to the -- we'll get to the
21:18:12 12 chart in a second, Doctor. Other than the EADA
21:18:18 13 reports, what did you rely on other than the
21:18:21 14 schedules you pulled online and the rosters you
21:18:25 15 pulled from the websites?
21:18:27 16 A. That's what I relied on.
21:18:41 17 Q. You now agree, however, if a sport is
21:18:44 18 indeed separate, an athlete that participates in
21:18:48 19 more than one sport can be counted once for each

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21:18:52 20 sport? We have no disagreement there?
21:18:53 21 A. If it -- If --
21:18:54 22 Q. If it's a different sport.
21:18:56 23 A. If it's a different sport, they are
21:18:59 24 counted separately.
21:19:00 25 Q. Okay. Thank you. Is it your belief

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21:19:08 1 that the roster numbers represented on the
21:19:11 2 Quinnipiac website represent the numbers of
21:19:15 3 participants on the first day of competition?
21:19:21 4 A. It is my understanding that the EADA
21:19:23 5 reports represent the number of participants on
21:19:26 6 first day of competition.
21:19:28 7 Q. I'm asking you about the website roster
21:19:30 8 numbers. Do you have an --
21:19:32 9 A. It does not -- It does not say --
21:19:33 10 Q. Okay.
21:19:33 11 A. -- when they were put up there, so I
21:19:35 12 cannot tell you by looking at the website.
21:19:37 13 Q. Right. So you have no idea sitting
21:19:39 14 here, based on that information or any other
21:19:41 15 information you were given, what the time frame is
21:19:43 16 for the snapshot represented by the roster numbers
21:19:46 17 online?
21:19:47 18 A. That is correct.
21:19:48 19 Q. Okay. And you agreed with me that there
21:19:53 20 is no legal requirement that EADA reports be
21:19:56 21 modified throughout the year to reflect changes in
21:20:02 22 the participant numbers?

Donna Lopiano.txt
21:20:03 23 A. That is correct.
21:20:07 24 Q. Is it permissible under Prong 1 to
21:20:11 25 achieve proportionality by attempting to cut men's

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21:20:15 1 programs when women's programs are also cut, in your
21:20:19 2 opinion?
21:20:21 3 A. Okay. So --
21:20:22 4 MS. GALLES: Objection to form.
21:20:24 5 A. So give me the hypothetical, so that --
21:20:27 6 Q. All right. Let's say a school wants to
21:20:31 7 meet proportionality. Okay?
21:20:33 8 A. Right.
21:20:33 9 Q. But they need to cut an athletic program
21:20:37 10 that females participate in for any variety of
21:20:40 11 reasons.
21:20:40 12 A. That's right.
21:20:40 13 Q. Okay? Is it permissible for a school to
21:20:43 14 achieve proportionality by cutting men's athletic
21:20:44 15 programs at the same time to make sure
21:20:48 16 proportionality remains?
21:20:50 17 A. Yes.
21:20:51 18 Q. Is it permissible for a school to cut
21:20:54 19 men's teams and, at the same time, substitute
21:20:57 20 another female athletic program to attempt to
21:21:01 21 achieve proportionality under Prong 1?
21:21:04 22 MS. GALLES: Objection.
21:21:06 23 Q. Forget cheerleading.
21:21:07 24 A. A school --
21:21:07 25 Q. A sport.

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21:21:09 1 A. Yeah. Yeah. No. A school can have any
21:21:11 2 kind of combinations it wants in terms of valid
21:21:15 3 participation numbers to meet the proportionality
21:21:19 4 test.

21:21:19 5 Q. Right.

21:21:19 6 A. You can go up and down on either side.

21:21:22 7 Q. Sure. Did you testify tonight that you
21:21:34 8 disfavor -- Strike that. Did you know that
21:21:39 9 Quinnipiac was eliminating men's athletic programs
21:21:44 10 for next academic year?

21:21:48 11 MS. GALLES: Objection; foundation.

21:21:51 12 A. It -- It looked to me that on the Janet
21:21:53 13 Judge proposal, that it was suggesting that outdoor
21:22:01 14 track be eliminated. I don't consider that to be an
21:22:04 15 elimination of the program, however, because the
21:22:07 16 indoor track participants, as well as your cross
21:22:12 17 country participants, could participate in the same
21:22:16 18 events that they would have participated in in the
21:22:21 19 same number, had there been an outdoor track team.

21:22:23 20 Q. What about the golf team, the men's golf
21:22:27 21 team?

21:22:28 22 A. What about it?

21:22:28 23 Q. Did you read Janet Judge's letter?

21:22:32 24 A. Yeah. But what's the point?

21:22:33 25 Q. Did you -- Did you have an understanding

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21:42:12 17 Donna Lopiano.txt
MS. GALLES: Are we near a --
21:42:14 18
MS. GAMBARDELLA: We could take a
21:42:14 19 break.
21:42:14 20
MS. GALLES: -- breaking or
21:42:14 21 changing points?
21:42:16 22
MS. GAMBARDELLA: Sure. Sure.
21:42:16 23
THE VIDEOGRAPHER: Going off record
21:42:18 24 time is 9:41.
21:42:22 25
(Whereupon, a recess was taken.)

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21:49:00 1 (Whereupon, the New York Times Article
21:49:00 2 dated 4/4/04 was marked as Defendant's Exhibit F for
21:49:00 3 Identification.)
21:49:28 4
THE VIDEOGRAPHER: We are back on
21:49:42 5 record. The time will be 9:49. You may continue.
21:49:45 6 Q. Doctor, I've handed you, as Exhibit F, a
21:49:48 7 New York Times article dated April 4th, 2004
21:49:52 8 entitled "Thanks to Title 9, Cheerleading is Sport
21:49:56 9 at Maryland." Have you ever seen this article
21:49:59 10 before?
21:49:59 11 A. I don't think so.
21:50:00 12 Q. Well, you're quoted in it. Why don't
21:50:02 13 you go to --
21:50:03 14 A. That's not unusual.
21:50:05 15 Q. I know. Understood.
21:50:09 16 A. So --
21:50:09 17 Q. Hold on one second. The bottom of the
21:50:26 18 article, the last paragraph on the first page at the
21:50:29 19 bottom -- Sorry. Not the bottom of the whole

Donna Lopiano.txt
21:50:32 20 article -- "Fleece says that since Maryland created
21:50:36 21 its competitive cheer team last fall and number
21:50:37 22 0151" -- I have no idea what that is -- "and
21:50:41 23 notified Title 9 watchdogs at the Federal Department
21:50:44 24 of Education that it was doing so, she has heard
21:50:48 25 from more than 50 colleges or universities

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21:50:50 1 expressing interest in following that path."
21:50:54 2 Do you have any information to suggest
21:50:56 3 that the statement that Maryland notified Title 9
21:51:00 4 watchdogs at the Federal Department of Ed. that it
21:51:03 5 was going to count competitive cheer as a sport for
21:51:07 6 Title 9 is or isn't accurate?
21:51:10 7 MS. GALLES: Objection; foundation.
21:51:12 8 A. I don't know what it means.
21:51:13 9 Q. Okay. Well, let's read it again.
21:51:15 10 "Fleece says that since" -- And Fleece is Maryland's
21:51:21 11 cheer -- cheerleading coach, competitive cheer coach
21:51:24 12 -- "that since Maryland created its competitive
21:51:29 13 cheer team last fall and notified Title 9 watchdogs
21:51:33 14 at the Federal Department of Education that it was
21:51:35 15 doing so."
21:51:36 16 Do you have any information as to
21:51:38 17 whether or not that's true or untrue that the
21:51:43 18 Federal Department of Ed. was notified by University
21:51:46 19 of Maryland that it was going to count competitive
21:51:49 20 cheer as a sport?
21:51:50 21 A. I don't have any -- I'm reading what
21:51:56 22 you're reading.

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21:51:57 23 Q. You have no information to contradict or
21:51:58 24 support that statement?
21:52:00 25 A. No. What I'm saying is, it's very easy

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21:52:04 1 to notify anybody of anything, but asking them for
21:52:07 2 technical assistance or asking them to do a ruling
21:52:10 3 is not notifying somebody, Guess what? We have
21:52:11 4 cheerleading as a sport.

21:52:13 5 Q. Well, Doctor, what would be the purpose
21:52:14 6 in telling the OCR this is what we're going to do?
21:52:17 7 What would be the purpose in that?

21:52:20 8 A. Well, you know, without seeing the May
21:52:22 9 8th letter, without seeing the series of
21:52:25 10 correspondence between Yaou and OCR, I got that.
21:52:30 11 You know, even just seeing what I've seen, I got the
21:52:34 12 impression that she was, as she was starting the
21:52:37 13 program, trying to create a paper trail which
21:52:40 14 suggested that there was some authority exercised by
21:52:44 15 OCR blessing her program.

21:52:46 16 And I have never seen an OCR statement
21:52:49 17 saying Maryland is absolutely on point. They've
21:52:52 18 asked us to come in and review their program, and we
21:52:54 19 find that they have a valid cheerleading program. I
21:52:58 20 haven't seen anything like that.

21:53:00 21 Q. Doctor, you also haven't seen anything
21:53:01 22 to suggest that --

21:53:02 23 A. Yeah. Exactly right.

21:53:04 24 Q. Hold on. You've got to let me finish.

21:53:04 25 A. Yeah. But you're right. Either way, I

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21:53:05 1 haven't seen anything.
21:53:06 2 Q. You don't have anything to suggest that
21:53:10 3 OCR wasn't notified in advance, correct? Do you?
21:53:15 4 A. That's a nonsensical statement. I have
21:53:17 5 no information.
21:53:18 6 Q. Great. Great. All right.
21:53:21 7 A. I have no information either way.
21:53:22 8 Q. Great. So you have no information
21:53:24 9 either way.
21:53:25 10 A. Either way.
21:53:25 11 Q. So how do you know that she was trying
21:53:26 12 to create a paper trail?
21:53:28 13 A. I gave you my impression in looking at
21:53:31 14 the Exhibit, Exhibit E --
21:53:39 15 Q. Right.
21:53:38 16 A. -- Exhibit D and the context of these
21:53:41 17 two things. I don't see -- If I were an athletic
21:53:45 18 director and I wanted to say to someone I had OCR's
21:53:49 19 approval, I would show a letter from OCR saying,
21:53:52 20 Here is OCR's letter of approval, so this is suspect
21:53:56 21 to me.
21:53:57 22 Q. Okay. So that's suspect because you
21:53:59 23 would do it differently?
21:54:00 24 A. No, because I want to see a letter from
21:54:02 25 Gerald Reynolds, not Debbie Yaou saying that she's

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21:54:07 1 been telling Gerald Reynolds something. I want to
21:54:10 2 see Gerald Reynolds saying, We have examined the
21:54:13 3 Maryland cheerleading program, and it meets OCR's
21:54:15 4 guidelines in terms of cheerleading. And then I
21:54:17 5 would be happy to accept that the University of
21:54:20 6 Maryland has got it.

21:54:22 7 Q. Do you have any information that the
21:54:23 8 statement about a May 8th letter from the Department
21:54:26 9 of Education does or doesn't exist?

21:54:30 10 A. I have no information.

21:54:32 11 Q. Great. Okay. Now, in this article, on
21:54:35 12 the second page --

21:54:38 13 MS. GALLES: You're talking about
21:54:39 14 F?

21:54:40 15 MS. GAMBARDELLA: Yeah. Yeah.

21:54:40 16 Q. You're quoted, I think, for the first
21:54:44 17 time sort of in the middle of the second page. It
21:54:46 18 starts with, "Maryland had other existing
21:54:49 19 alternatives with demonstrated student interest,"
21:54:51 20 Donna Lopiano, Executive Director of the Women's
21:54:54 21 Sports Foundation said, "to try and manufacture a
21:54:58 22 sport and put a round peg in a square hole is
21:55:01 23 disingenuous."

21:55:05 24 Did you say that to the New York Times
21:55:07 25 reporter?

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21:55:07 1 A. It was -- what makes me hesitate, I
21:55:10 2 wasn't Executive Director -- Oh, in 2004? Yes, I
21:55:13 3 was. Good. I can't remember saying that, but I
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21:55:16 4 would imagine it's accurate. I trust the New York
21:55:19 5 Times to quote, but I can -- I can't say whether
21:55:23 6 that's accurate or not.

21:55:25 7 I believe in that statement -- And I
21:55:26 8 would say that -- again, I do not think that a
21:55:32 9 careful examination of any competitive -- so-called
21:55:36 10 competitive cheer program at the college level will
21:55:40 11 reveal that it has met all of those standards, and I
21:55:45 12 have not seen anything from OCR to alleviate my
21:55:49 13 concerns.

21:55:50 14 Q. You haven't seen any --

21:55:50 15 A. And I stand with that.

21:55:52 16 Q. You haven't seen anything from OCR that
21:55:54 17 says they audited Maryland and they're disqualified,
21:55:58 18 right?

21:55:58 19 A. Absolutely. Yeah. But you would think
21:56:00 20 that Debbie Yaou who continues to try to imply that
21:56:03 21 she somehow has some authority for this -- you would
21:56:05 22 think she would produce this letter at some point,
21:56:07 23 and I've never seen it.

21:56:08 24 Q. Doctor, let me ask you this.

21:56:10 25 A. Yup.

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21:56:10 1 Q. Obviously, the University of Maryland is
21:56:13 2 getting publicity on counting its competitive cheer
21:56:16 3 need for --

21:56:17 4 A. Yeah. Absolutely.

21:56:17 5 Q. -- competitive cheer team for Title 9,
21:56:18 6 right?

Donna Lopiano.txt

21:56:19 7 A. Absolutely.

21:56:19 8 Q. And if any of it's true, OCR was
21:56:22 9 notified that that's what they did do or were going
21:56:25 10 to do at some point?

21:56:26 11 MS. GALLES: Objection.

21:56:26 12 Q. If any of the statements are true, then
21:56:29 13 OCR was notified either before or after, correct?

21:56:33 14 MS. GALLES: Objection; foundation.

21:56:34 15 A. Absent a complaint, there's no reason
21:56:37 16 for OCR to -- Absent a complaint or request for
21:56:41 17 technical assistance, there's no reason for OCR to
21:56:44 18 come in and make any statement about Maryland's
21:56:47 19 program.

21:56:47 20 Q. Okay.

21:56:47 21 A. And I have never seen any, and I don't
21:56:49 22 mean to be -- How can I say this? My pessimism in
21:56:58 23 this area is based on, you know, 35 years of being
21:57:05 24 in athletics; and when you only have two schools in
21:57:08 25 the country who are, you know, supposedly doing

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21:57:12 1 competitive cheer on a basis that is supposedly a
21:57:19 2 full season, I find it hard to believe that they can
21:57:23 3 put together all of the pieces that come through.
21:57:27 4 And it almost makes me think that, you know, the
21:57:33 5 best thing that could happen is, somebody should do
21:57:35 6 a -- ask for a compliance review.

21:57:41 7 Q. Doctor --

21:57:41 8 A. We're going to be hypothetical. You're
21:57:42 9 going to say, well, I have no reason not to believe

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21:57:46 10 her, and I'm going to say --

21:57:46 11 Q. But, Doctor --

21:57:47 12 A. -- I have no reason to believe her.

21:57:49 13 Neither of us has any reason to take a position, so
21:57:52 14 it's tough.

21:57:53 15 Q. Doctor -- Okay. You said in this
21:57:55 16 article that Maryland was trying to manufacture a
21:57:58 17 sport?

21:57:58 18 A. Yeah, I believe they were.

21:58:00 19 Q. Okay. What do you base that on?

21:58:03 20 A. Absolutely. Four or five years ago, my
21:58:05 21 looking at their manufactured sports schedule and
21:58:10 22 finding that there was bogus competition, and -- so
21:58:13 23 I have no reason to believe otherwise. And I
21:58:16 24 suspect if I looked at it again today, I'd bet you
21:58:20 25 I'd find some bogus competition, so I may have to do

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21:58:23 1 that.

21:58:23 2 Q. But you haven't looked at it today?

21:58:25 3 A. I absolutely have not, which is why I
21:58:27 4 can't say to you other than --

21:58:29 5 Q. Right.

21:58:29 6 A. -- I suspect that this is the case.

21:58:32 7 Q. Suspect.

21:58:32 8 A. These are the reasons that I'm using.

21:58:34 9 Q. Right.

21:58:35 10 A. I've never seen an OCR letter. I don't
21:58:37 11 see how they can meet these standards. That's all I
21:58:40 12 can say. So I'm sorry.

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21:58:42 13 Q. Right. So your statement that you made
21:58:44 14 to the New York Times that Maryland was trying to
21:58:46 15 manufacture a sport was based on your suspicions at
21:58:49 16 that point looking at competition numbers. Am I
21:58:56 17 wrong?

MS. GALLES: Objection.

21:58:56 18 A. It was looking at the fact that nobody
21:58:58 20 else in the country was playing a sport, and that is
21:59:00 21 required under Title 9 that you demonstrate that you
21:59:03 22 can put together a competitive schedule.

21:59:06 23 Q. Understood.

21:59:07 24 A. So I --

21:59:08 25 Q. So you had your doubts about whether or

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21:59:09 1 not --

21:59:10 2 A. I think -- Yeah. I think that's exactly
21:59:12 3 what I said, that I think it is -- it was, at that
21:59:14 4 time, very disingenuous.

21:59:18 5 Q. So you still think it's disingenuous by
21:59:22 6 the University of Maryland, but haven't looked at
21:59:24 7 the University of Maryland data in four years,
21:59:27 8 right?

21:59:27 9 A. This was a statement in 2004, and I
21:59:30 10 trust I made it.

21:59:31 11 Q. I think you've --

21:59:32 12 A. I have not come back into the issue of
21:59:34 13 Maryland and cheerleading till just this week.

21:59:38 14 Q. Okay.

21:59:38 15 A. I have not looked into Maryland's

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21:59:42 16 schedule. I haven't had time to. And so I can't
21:59:45 17 say any more than that. I don't know what else to
21:59:48 18 tell you about it. It's like you're trying to bleed
21:59:50 19 this rock here.
21:59:51 20 Q. Well, I got to -- I'll tell you, I'm not
21:59:53 21 trying to bleed a rock.
21:59:55 22 A. Yeah. Yeah.
21:59:55 23 Q. But you've made some statements about
21:59:58 24 Quinnipiac that sound a lot like this.
22:00:01 25 A. Like what?

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22:00:02 1 Q. What you said about University of
22:00:03 2 Maryland. So I'm trying to get to the --
22:00:04 3 A. But wait a minute. Everything I've said
22:00:06 4 about Quinnipiac I've supported with data.
22:00:07 5 Q. Doctor, this isn't --
22:00:08 6 A. I have. No. No. No. I have.
22:00:10 7 Q. Doctor, this isn't a conversation. I
22:00:11 8 ask questions. You answer them.
22:00:13 9 A. But you started that conversation.
22:00:16 10 Q. Okay. Doctor, I'm not trying to bleed a
22:00:18 11 rock dry.
22:00:19 12 A. What I'm saying is, you started this
22:00:21 13 line of conversation. I was just finishing it.
22:00:24 14 That's it.
22:00:24 15 Q. Okay. Great.
22:00:25 16 A. Okay.
22:00:25 17 Q. You said just a few minutes ago that you
22:00:28 18 bet if you look at the University of Maryland data

Donna Lopiano.txt

22:00:31 19 now --

22:00:31 20 A. Yes.

22:00:31 21 Q. -- you'd come to the same conclusion?

22:00:33 22 A. Yes.

22:00:33 23 Q. Isn't that what you just told me?

22:00:35 24 A. Yeah. Now I'm going to need to do that

22:00:38 25 because I said it.

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22:00:39 1 Q. Well, you said it first, didn't you?

22:00:40 2 A. And I'm going to do it.

22:00:42 3 Q. Right.

22:00:42 4 A. So I hope I have another chance. You
22:00:45 5 give me another chance to testify in Court.

22:00:48 6 Q. Not tonight. Now, you then said, "I'm
22:00:56 7 not demeaning cheerleading skills, but is it a bona
22:00:59 8 fide athletic opportunity for women or a convenient
22:01:02 9 one for the athletic department"?

22:01:04 10 A. Right.

22:01:05 11 Q. You base that question on the same
22:01:07 12 information you just testified to, correct?

22:01:10 13 A. That's right. That's correct.

22:01:17 14 Q. What do you think requires more athletic
22:01:21 15 prowess, bowling or cheerleading?

22:01:25 16 A. Oh, athletic prowess is -- That's like
22:01:29 17 saying compare archery to cheerleading. Every sport
22:01:31 18 skill requires something different, and who is the
22:01:35 19 better athlete, the great -- the national champion
22:01:39 20 bowler or the national champion tumbler or --

22:01:43 21 Q. But if bowling were on that chart, would

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22:01:47 22 it be as suspect to you as competitive cheer?
22:01:48 23 A. No. There's a national sport
22:01:50 24 federation. It's an NCAA sport. It went through an
22:01:54 25 emerging sport process. It's been in colleges and

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22:01:57 1 universities for decades.
22:02:02 2 MS. GAMBARDELLA: You can mark it.
22:02:15 3 (Whereupon, the New York Times Article
22:02:15 4 dated 9/20/04 was marked as Defendant's Exhibit G
22:02:15 5 for Identification.)
22:02:19 6 Q. I've marked an article. Looks like
22:02:22 7 another New York Times article of front
22:02:26 8 September 20th, 2004?
22:02:28 9 A. Popular year for articles on
22:02:32 10 cheerleading.
22:02:33 11 Q. Seems that way. Yup.
22:02:34 12 A. Yup.
22:02:34 13 Q. Well, that's because it was the year
22:02:36 14 before that Maryland was the first university to
22:02:38 15 grant varsity status and athletic scholarships to a
22:02:43 16 competitive cheer team.
22:02:47 17 A. This is the same --
22:02:48 18 Q. I didn't ask a question.
22:02:50 19 A. No. No. No. No. But I'm reading
22:02:52 20 this. It's the same quote, isn't it?
22:02:54 21 Q. It's the same what?
22:02:56 22 A. It's the same quote.
22:02:56 23 MS. GALLES: Quote.
22:02:56 24 A. I'm just being requoted.
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22:02:58 25 Q. Right. Okay? So you were requoted in

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22:03:00 1 September of 2004 --

22:03:02 2 A. The same guy, too.

22:03:04 3 Q. You got to let me finish the question.

22:03:06 4 A. Sorry. No. No. No. I was just
22:03:08 5 reading it, and it's okay.

22:03:10 6 Q. You question when Maryland promoted
22:03:12 7 cheerleading to varsity status when it could have
22:03:16 8 recognized a more traditional sport like women's
22:03:18 9 club teams in hockey and rowing. Do you see that?

22:03:22 10 A. Yeah.

22:03:23 11 Q. Okay.

22:03:33 12 MS. GALLES: Did we mark that as G?

22:03:35 13 THE COURT REPORTER: Yes.

22:03:36 14 (Whereupon, the Press Release was marked
22:03:36 15 as Defendant's Exhibit H for Identification.)

22:04:00 16 MS. GAMBARDELLA: Can you mark this
22:04:01 17 one, too, while you're at it?

22:04:19 18 (Whereupon, the Washington Times Article
22:04:19 19 2/16/05 was marked as Defendant's Exhibit I for
22:04:19 20 Identification.)

22:04:33 21 Q. Okay. We've marked as --

22:04:43 22 THE COURT REPORTER: H.

22:04:43 23 MS. GALLES: H, the Quinnipiac and
22:04:43 24 I --

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22:04:43 1 MS. GAMBARDELLA: Yeah. Thank you.
22:04:43 2 Q. -- H a press release from Quinnipiac's
22:04:47 3 website, "Cheerleaders Place 6th at National
22:04:50 4 Championships." Have you seen this press release
22:04:53 5 before?
22:04:53 6 A. No. Nope. That's good.
22:04:56 7 Q. It's great, isn't it?
22:04:57 8 A. Yup. Yup.
22:04:58 9 Q. The Quinnipiac University cheerleading
22:05:00 10 team placed 6th on April 11th in All Girl Division 1
22:05:04 11 at 2009 NCAA/NDA Collegiate Cheer and Dance
22:05:07 12 Championship in Daytona Beach, and then there's some
22:05:12 13 scoring; and then you see --
22:05:14 14 A. Do you know what All Girl Division 1 is?
22:05:17 15 Q. No. That's not how it works. I get to
22:05:19 16 ask the questions. All right?
22:05:21 17 A. Oh, okay.
22:05:22 18 Q. You don't know what it is?
22:05:24 19 A. No.
22:05:24 20 Q. Okay. Go down one, two, three -- it's
22:05:34 21 like the fourth paragraph down.
22:05:35 22 A. Right.
22:05:35 23 Q. All right? "Largest" -- Okay. "The
22:05:39 24 event was held" -- No. Sorry. One under that,
22:05:42 25 "other competitors in the division included the

22:05:44 1 University of Maryland." Do you see that?

22:05:47 2 A. Yes. Donna Lopiano.txt
22:05:49 3 Q. So these are the schools that were
22:05:53 4 competed with. Do you see that?
22:05:55 5 A. Does it say whether they were
22:05:57 6 competitive cheer squads?
22:05:59 7 Q. What did you think they were, rowers?
22:06:03 8 A. No; sideline cheer.
22:06:05 9 Q. Did you read Mr. McDonald's testimony
22:06:06 10 about the functions of the cheerleading team at --
22:06:09 11 A. This isn't about --
22:06:10 12 Q. Okay. Doctor --
22:06:10 13 A. This isn't about McDonald's testimony.
22:06:13 14 Q. I understand that. I'm going on to
22:06:14 15 another question. I'm sure you can handle the
22:06:17 16 switch in subjects.
22:06:18 17 A. Okay.
22:06:18 18 Q. Did you read Mr. McDonald's testimony
22:06:21 19 about the cheerleading team --
22:06:22 20 A. No. I told you I didn't recollect what
22:06:25 21 it was.
22:06:25 22 Q. Thank you.
22:06:26 23 A. But that wasn't my question.
22:06:27 24 Q. So you don't know, sitting here today --
22:06:27 25 let me ask you whether this is just the traditional

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22:06:32 1 cheerleading sideline team or competitive cheer
22:06:37 2 team, do you?
22:06:38 3 A. I have no idea. Can't tell from the
22:06:39 4 article.

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22:06:39 5 Q. NOW, the second thing I marked, I, first
22:06:45 6 page, "No longer on the sidelines, Maryland Team
22:06:47 7 Competes, but Doesn't Cheer." Then the second page
22:06:56 8 of the article, not that cover page but the second
22:07:00 9 page of the actual article, top of the page,
22:07:08 10 "Maryland administrators," do you see that?
22:07:13 11 MS. GALLES: I'm just going to
22:07:14 12 direct --
22:07:14 13 A. Second page? where are we?
22:07:16 14 MS. GALLES: I'm just going to
22:07:17 15 interrupt to direct the witness if you need to read
22:07:19 16 it before you testify about it.
22:07:20 17 A. I don't know where you are. I don't
22:07:21 18 know where you are. Where are you?
22:07:23 19 Q. It says at the top --
22:07:25 20 A. Is this I? we're looking at I right
22:07:27 21 now?
22:07:28 22 Q. Yeah.
22:07:28 23 A. Okay. I.
22:07:28 24 Q. Top right, it says page 3 of 4.
22:07:30 25 A. Wait a second. Wait a second. Okay.

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22:07:33 1 So this is Washington Times.
22:07:42 2 Q. Washington Times, February 16th, '05.
22:07:53 3 A. You're asking me what?
22:07:54 4 Q. Top of the page marked 3 of 4,
22:07:56 5 "Maryland" -- Go ahead. Just let me know when
22:08:01 6 you're there.
22:08:20 7 A. Okay. Now page 3 of 4.

22:08:21 8 Q. Yeah. "Maryland administrators say they
22:08:24 9 worked closely with the Department of Education
22:08:27 10 Office of Civil Rights before adding competitive
22:08:30 11 cheer as a varsity sport for the 2003-'04 school
22:08:33 12 year." Do you see that?

22:08:34 13 A. I do.

22:08:35 14 Q. Do you have any information that
22:08:36 15 suggests that is an inaccurate statement?

22:08:39 16 MS. GALLES: Objection; foundation.

22:08:40 17 A. I don't have any information to indicate
22:08:43 18 it's accurate or inaccurate.

22:08:44 19 Q. Great. Now, if you go down -- That
22:08:47 20 would be the first paragraph -- the fourth
22:08:51 21 paragraph, "Donna Lopiano, Executive Director of the
22:08:54 22 Women's Sports Foundation called the program
22:08:55 23 'disingenuous.'"

22:09:01 24 A. Seems like they're quoting me again.

22:09:04 25 MS. GALLES: It's same word.

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22:09:05 1 Q. "Ms. Lopiano cited the team's schedule
22:09:08 2 as evidence." That's different, right? You didn't
22:09:13 3 say that in the prior press release?

22:09:15 4 A. This is like 2005. I honestly can't,
22:09:20 5 you know -- No question I've said this disingenuous.
22:09:27 6 No question I would have raised the validity of its
22:09:30 7 schedule. I still raise the validity of its
22:09:33 8 schedule. You know, I don't know what else to tell
22:09:35 9 you.

22:09:35 10 Q. Going down the page, third paragraph up

22:09:37 11 from the bottom, you say again -- This is the same
22:09:41 12 quote, almost the same -- "There's nothing wrong
22:09:43 13 with that being a varsity sport as long as that's
22:09:46 14 what it is. It's just not developed yet and
22:09:48 15 Maryland is trying to manufacture it." Do you see
22:09:52 16 that?

22:09:52 17 A. Yeah.

22:09:52 18 Q. Okay.

22:09:53 19 A. I agree with that statement.

22:09:55 20 Q. I understand. But if it's accurate that
22:09:58 21 Maryland worked closely with the OCR before adding
22:10:03 22 it, what does that suggest to you about OCR's
22:10:06 23 disagreement or agreement with your opinion that
22:10:08 24 they were trying to manufacture it as a sport?

22:10:11 25 MS. GALLES: Objection.

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22:10:12 1 A. It suggests to me that you believe that
22:10:15 2 it is accurate, that OCR somehow has blessed it, and
22:10:18 3 I don't believe it. So we have a disagreement.

22:10:21 4 Q. Okay. If it's accurate --

22:10:22 5 A. When you -- When you show me OCR -- any
22:10:25 6 OCR letter that says they've looked at it and this
22:10:28 7 is fine as a varsity sport, I am absolutely willing
22:10:31 8 to concede that this is it.

22:10:34 9 Q. Great.

22:10:34 10 A. I have never seen anything like that.

22:10:36 11 Q. Great. Hypothetical question. If the
22:10:38 12 top paragraph is accurate --

22:10:43 13 A. Yes.

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22:10:43 14 Q. -- then the OCR disagrees with you --
22:10:46 15 disagree with you?
22:10:47 16 A. A hypothetical to --
22:10:47 17 Q. Hypothetical.
22:10:50 18 A. Hypothetically, if -- Yeah. But -- But
22:10:50 19 look at what you're asking me to agree to. You're
22:10:54 20 asking me to agree to a hypothetical.
22:10:56 21 Q. I'm allowed to do that.
22:10:59 22 A. Am I wrong? You're saying, don't you
22:11:01 23 agree if hypothetically they did this, that they
22:11:03 24 would do that? That is not fair.
22:11:06 25 Q. Right. I'm allowed to ask an expert a

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22:11:09 1 hypothetical question. You should know that.
22:11:12 2 Hypothetically --
22:11:13 3 A. Hypothetically.
22:11:14 4 Q. -- if it's accurate that they consulted
22:11:18 5 with OCR in advance, do you know whether or not that
22:11:24 6 would --
22:11:28 7 A. You're right. Consult doesn't do it for
22:11:30 8 me. If you said, hypothetically, if they presented
22:11:34 9 a letter from Gerald Reynolds saying we have
22:11:39 10 investigated this program and we find that it is
22:11:42 11 fully in compliance with all of our guidelines
22:11:45 12 regarding the categorization of a sport, I am the
22:11:48 13 first person who would say this is a bona fide team.
22:11:52 14 Q. Right. The bottom line, Dr. Lopiano, is
22:11:54 15 that any time you were asked publicly --
22:11:58 16 A. Yes.

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22:11:58 17 Q. -- about competitive cheer as a
22:11:59 18 potential sport --
22:12:00 19 A. Yes.
22:12:00 20 Q. -- you have said things like suspect,
22:12:03 21 disingenuous --
22:12:06 22 A. Yes.
22:12:06 23 Q. -- and why aren't they looking -- why
22:12:08 24 aren't they looking at more traditional sports?
22:12:10 25 A. Yes.

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22:12:11 1 MS. GALLES: Objection; foundation.
22:12:12 2 You've only shown items from --
22:12:13 3 A. Yes. Absolutely. And I explained to
22:12:13 4 you what I've shown you.
22:12:14 5 Q. Forget it.
22:12:15 6 A. I've explained to you why.
22:12:17 7 Q. I got it. I get it.
22:12:19 8 A. You're right. Yeah. Yeah. Yeah.
22:12:19 9 You're absolutely right.
22:12:20 10 Q. Every time that you can recall sitting
22:12:22 11 here today, other than what I've shown you, if you
22:12:25 12 have an independent recollection, any time you were
22:12:28 13 asked publicly about your opinion with respect to
22:12:31 14 counting competitive cheer as a varsity sport,
22:12:35 15 you've used terms like suspect?
22:12:38 16 A. Suspect.
22:12:39 17 Q. Disingenuous?
22:12:41 18 A. Disingenuous.
22:12:43 19 Q. Manufactured?

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22:12:44 20 A. Yes.
22:12:44 21 Q. Right?
22:12:44 22 A. Yes.
22:12:44 23 Q. That's what you're doing now?
22:12:45 24 A. That's right. Because I have never
22:12:46 25 seen --

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22:12:47 1 Q. I didn't ask because.
22:12:47 2 A. -- an OCR statement --
22:12:47 3 Q. I didn't ask because.
22:12:46 4 A. -- to the contrary.
22:12:48 5 Q. Okay. Doctor, we will never leave this
22:12:50 6 room if you don't stick to the question. If your --
22:12:53 7 If Counsel wants to clean stuff up after, she can do
22:12:57 8 it. Okay?
22:12:59 9 You have used words like that every time
22:13:02 10 you were asked about competitive cheer as a varsity
22:13:06 11 sport counting for Title 9 compliance, is that
22:13:09 12 correct?
22:13:10 13 A. That's correct.
22:13:10 14 Q. Okay. And you're doing it now with
22:13:11 15 Quinnipiac, is that correct?
22:13:13 16 A. No. I -- In the case of Maryland, I
22:13:17 17 have explained to you what my concerns with that
22:13:20 18 program are. In the case of Quinnipiac, I've
22:13:23 19 explained to you what --
22:13:25 20 Q. Right.
22:13:25 21 A. -- my concerns are. It's that simple.
22:13:27 22 Q. Right. And you're relying --

22:13:28 23 A. There's no reason why I can't make a
22:13:31 24 statement --

22:13:31 25 Q. Didn't say you couldn't.

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22:13:32 1 A. -- of disingenuous or it is suspect
22:13:35 2 without -- I gave you the foundation for it.

22:13:38 3 Q. I didn't say you couldn't. I'm asking
22:13:40 4 you about your opinion.

22:13:41 5 A. And I told you how many times, yes, I
22:13:42 6 said it?

22:13:43 7 Q. Great.

22:13:43 8 A. Yes, I agree. I've absolutely said it.

22:13:46 9 Q. Okay. And you know as much about
22:13:49 10 Quinnipiac's competitive cheer program today that
22:13:53 11 you knew about Maryland's when you called it
22:13:56 12 disingenuous in those press releases. Would I be
22:14:01 13 right?

22:14:01 14 A. I guess -- What makes me curious is, I
22:14:04 15 have nothing against --

22:14:05 16 Q. You need to answer my question, Doctor.

22:14:06 17 A. No. No. No. I have nothing against
22:14:08 18 Quinnipiac starting a bona fide cheerleading
22:14:12 19 program, and I've never said in terms of Title 9
22:14:15 20 compliance -- That is out there.

22:14:18 21 Q. Right.

22:14:18 22 A. It doesn't count until it happens, and
22:14:23 23 Quinnipiac has not designated cheerleading as a
22:14:27 24 sport. It has not put it on the EADA. I can't even
22:14:30 25 look at it because it's not there yet.

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22:14:31 1 Q. Doctor, please try to answer my
22:14:33 2 question.
22:14:33 3 A. I thought I was being responsive. I'm
22:14:34 4 sorry.
22:14:35 5 Q. You were not. I'm sorry.
22:14:37 6 A. I'm sorry.
22:14:38 7 Q. Believe me, it's late. Try to be
22:14:39 8 responsive.
22:14:41 9 A. I was trying.
22:14:41 10 Q. You know -- Actually, you knew more
22:14:45 11 about Maryland's competitive cheer team when you
22:14:49 12 made the statement in those press releases than you
22:14:52 13 do about Quinnipiac's today because you didn't even
22:14:55 14 know Quinnipiac had a competitive cheer team --
22:14:58 15 MS. GALLES: Objection.
22:14:58 16 Q. -- correct?
22:14:59 17 MS. GALLES: Objection; foundation.
22:15:00 18 A. Absolutely correct, but I haven't said
22:15:03 19 anything bad about the Quinnipiac cheer team, have
22:15:05 20 I?
22:15:06 21 Q. So is it your opinion --
22:15:06 22 A. Have I said anything bad?
22:15:07 23 Q. Can you state now emphatically that
22:15:10 24 Quinnipiac's competitive cheer team could never
22:15:14 25 qualify under OCR tests for Title 9 compliance for

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22:15:19 1 next year?
22:15:20 2 A. I have no --
22:15:20 3 MS. GALLES: Objection; foundation.
22:15:22 4 MS. GAMBARDELLA: I'm asking if
22:15:23 5 that's her opinion.
22:15:24 6 A. Say it again. Say it again. Go ahead.
22:15:25 7 Q. Are you saying now that, in your
22:15:27 8 professional opinion, Quinnipiac could never -- its
22:15:30 9 competitive cheer team could never be Title 9
22:15:33 10 compliant for next year?
22:15:35 11 MS. GALLES: Objection.
22:15:35 12 A. I would never say that about any
22:15:37 13 program, that you could never be in compliance with
22:15:40 14 the requirements of OCR.
22:15:43 15 Q. Great. And if Quinnipiac's competitive
22:15:47 16 cheer team as it will exist in next year --
22:15:49 17 A. As it might.
22:15:50 18 Q. -- as it might exist --
22:15:52 19 A. Right.
22:15:52 20 Q. -- for next year could meet the OCR
22:15:57 21 test, then you'd agree with me that they could count
22:15:59 22 those 40 spots?
22:16:01 23 A. Oh, absolutely.
22:16:01 24 MS. GALLES: Objection.
22:16:02 25 A. Absolutely. If it existed in reality,

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22:16:04 1 absolutely.
22:16:06 2 Q. Great. Now we're making progress.
22:16:10 3 A. Good.

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22:16:24 4 THE COURT REPORTER: Excuse me?
22:16:28 5 I'm just going to ask that if you could please just
22:16:30 6 speak one at a time.

22:16:33 7 MS. GAMBARDELLA: I know. It's
22:16:33 8 getting late. We're really sorry.

22:16:33 9 THE COURT REPORTER: And it's
22:16:33 10 getting cut off.

22:16:33 11 MS. GAMBARDELLA: It's getting kind
22:16:33 12 of loosey goosey here. You're right. I apologize.

22:16:33 13 THE COURT REPORTER: Thank you.

22:16:33 14 THE DEPONENT: It's amazing you've
22:16:33 15 been at this for so long.

22:16:33 16 MS. GAMBARDELLA: The fact that
22:16:34 17 we've been at this for so long is so amazing.

22:16:37 18 Q. Now, you testified in a case called
22:16:39 19 Humphrey's versus Regents of University of
22:16:42 20 California, correct? That's one of the cases you
22:16:47 21 listed?

22:16:49 22 A. Yes. I don't know I testified in Court
22:16:52 23 on that case.

22:16:53 24 Q. Okay.

22:16:56 25 A. It might have been an expert report.

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22:16:58 1 Q. Right.

22:16:58 2 A. I don't know.

22:17:00 3 Q. You're absolutely right. You had an
22:17:03 4 expert report. Do you remember what was in that
22:17:07 5 expert report in terms of not the specifics, Doctor,
22:17:10 6 because I am sure --

23:00:20 2 first step.
23:00:21 3 Silly? Not really when you consider
23:00:23 4 there are NCAA schools that offer sailing, pistol
23:00:28 5 and bowling. It's not even a question of whether
23:00:31 6 cheerleading is a sport. It fits into the OCR's
23:00:35 7 definition." Then there's the four bullet points.
23:00:37 8 Quote from Mr. Orleans, "I've actually
23:00:40 9 changed my mind about it, said Jeff Orleans, the
23:00:42 10 Executive Director of the Ivy League who is
23:00:45 11 principal author of Title 9. It seems to look like
23:00:49 12 an athletic activity. It's physically demanding.
23:00:52 13 It's competitive, but it suffers from its origins in
23:00:54 14 girls cheering for boys. It looks enough like a
23:00:58 15 sport that we ought to let them experiment with it
23:01:00 16 being a sport."
23:01:02 17 Do you agree with that?
23:01:04 18 MS. GALLES: Objection; foundation.
23:01:06 19 MS. GAMBARDELLA: Whether or not
23:01:06 20 she agrees with it?
23:01:08 21 MS. GALLES: Agree with --
23:01:08 22 A. Do I agree with what?
23:01:09 23 Q. The quote that it seems to look like an
23:01:11 24 athletic activity, it's physically demanding, it's
23:01:15 25 competitive, but suffers from its origins in girls

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23:01:18 1 cheering for boys. It looks enough like a sport
23:01:20 2 that we ought to let them experiment with it being a
23:01:24 3 sport.
23:01:24 4 A. I agree with the first part of his

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23:01:26 5 statement.

23:01:28 6 Q. Which part?

23:01:28 7 A. In terms of it looks like an athletic
23:01:32 8 activity, physically demanding, it's competitive, it
23:01:36 9 suffers from its origins of girls cheering for
23:01:39 10 sports. And I think there's no question that they
23:01:41 11 have the opportunity to be considered a sport.

23:01:44 12 Q. Great. Thank you. That's all I needed
23:01:47 13 for that.

23:01:48 14 MS. GAMBARDELLA: Famous. Famous.
23:01:48 15 (Discussion off the record.)

23:01:49 16 (Whereupon, the Document Bates Stamped
23:01:49 17 D0244 was marked as Defendant's Exhibit K for
23:01:49 18 Identification.)

23:02:33 19 Q. Have you ever seen Exhibit K before
23:02:35 20 which is bates stamped D0244?

23:02:40 21 A. I believe it was the backup to -- Yup.
23:02:48 22 This is -- Yes.

23:02:50 23 Q. Average squad size NCAA Sports
23:02:53 24 Participation Division 1 men's team average squad
23:02:57 25 size, in the column at the very top -- You have to

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23:03:03 1 hold it this way -- the sports are listed. Can you
23:03:08 2 tell me what information is contained in this chart?

23:03:13 3 A. That for NCAA sports for which they keep
23:03:20 4 squad size records, these are average squad sizes in
23:03:24 5 Division 1 men's teams.

23:03:26 6 Q. Okay. And outdoor track, indoor track
23:03:29 7 and cross country are listed separately, correct?

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23:03:32 8 A. That's correct.

23:03:33 9 Q. And the squad size averages are

23:03:35 10 different for cross country than they are for indoor

23:03:41 11 and outdoor track, correct?

23:03:44 12 A. Absolutely.

23:03:45 13 Q. And indoor and outdoor track squad sizes

23:03:48 14 are different average squad sizes, correct?

23:03:50 15 A. Yeah. Mathematically, it's perfectly

23:03:52 16 understandable.

23:03:53 17 Q. How can that be if they're one sport?

23:03:55 18 A. They're not the same sports. I mean

23:03:58 19 there could be -- there could be schools that put in

23:04:01 20 squad lists -- Let's say somebody doesn't

23:04:07 21 participate in indoor and participates only in

23:04:10 22 outdoor. That's going to affect --

23:04:16 23 Q. We're listening to you.

23:04:17 24 A. Okay. That's going to affect the

23:04:19 25 computation of average squad size.

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23:04:23 1 Q. But if you add the numbers of these

23:04:26 2 average squad sizes per year -- Let's just take

23:04:29 3 indoor and outdoor track. Hard to read. But it's

23:04:32 4 over 60 combined, right?

23:04:35 5 A. Well, what does that have to do with

23:04:37 6 apple pie, though? What's the point?

23:04:40 7 Q. I get your point. You're suggesting

23:04:41 8 that even though they're not three different sports,

23:04:45 9 average squad size can vary?

23:04:47 10 A. Absolutely.

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23:04:48 11 Q. But they're different sports?

23:04:49 12 A. They're not different sports.

23:04:51 13 They're -- Indoor and outdoor -- Okay. So they're

23:04:55 14 different sports on this chart.

23:04:57 15 Q. Right.

23:04:57 16 A. They're two different columns, right?

23:04:59 17 what I'm saying is, if -- when you comprise these

23:05:03 18 charts, there are some schools who will have indoor

23:05:06 19 track. There are some schools who will not have

23:05:08 20 indoor track. So you shouldn't suspect that the

23:05:13 21 numbers are going to be the same because they're

23:05:15 22 going to have a different end, right?

23:05:21 23 Q. I don't have to answer questions. You

23:05:25 24 get to answer questions.

23:05:26 25 A. Trust me. It's a different end. That's

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23:05:28 1 why the numbers are different.

23:05:29 2 Q. All right.

23:05:29 3 A. But this is not unusual in terms of

23:05:32 4 squad lists being computed.

23:05:34 5 Q. All right. But I'm clear there's no OCR

23:05:37 6 advisories that talk about whether or not you can

23:05:40 7 count those sports, for Title 9 proportionality

23:05:43 8 purposes, one time, two times or three times?

23:05:45 9 There's nothing that says --

23:05:47 10 A. Are we going over this again?

23:05:50 11 Q. I just want to make sure.

23:05:52 12 A. You -- You promised not to have to go

23:05:53 13 over this again, right?