

1 A F T E R N O O N S E S S I O N .

2 (1:40 O'CLOCK, P. M.)

3 MR. ORLEANS: Plaintiffs call Robin Sparks.

4 R O B I N S P A R K S, called as a witness on
5 behalf of the Plaintiffs, having been duly sworn by the
6 Court, testified as follows:.

7 THE COURT: Please be seated.

8 DIRECT EXAMINATION

9 BY MR. ORLEANS:

10 Q. Good afternoon, Ms. Sparks.

11 A. Hi.

12 Q. Are you okay?

13 A. Yeah.

14 Q. Would you tell the court a little bit about your
15 background?

16 A. I'm originally from Indiana. I did my undergraduate
17 degree at Allstate University. I did my masters degree in
18 public administration from the Maxwell School at Syracuse
19 University.

20 From there I received what is now called a
21 Presidential Management Fellowship. I went to Washington
22 DC where I worked at NASA. I spent a year then on the
23 House Appropriations Committee as a -- I forget what the
24 term is. They sent me up there. NASA paid my bills.
25 Came back to NASA.

1 Then was asked by Diane Fineststein to join her staff
2 where I was in charge of Appropriations of the State of
3 california. Was there until the Republicans won the
4 Senate and I lost my job, but the FBI called me because I
5 had turned them down before and I went to work at the FBI.

6 Was there for about four years, I guess, all
7 together, in the midst of which I was asked to be a
8 legislative director in the House of Representatives for a
9 Congresswoman from California. Did that.

10 The FBI kept calling so I eventually went back. And
11 my last jobs there were writing speeches for the director
12 in charge of the crimes subcommittee.

13 And then I met a boy, moved to New York, worked in
14 non profit part-time while I had my daughter. And then
15 had just transitioned into, back to full-time work, a
16 position in a school where I worked at the University of
17 Albany where I was Director of Internships and Special
18 Programs, I think was my official title. I was helping
19 graduate students find jobs in public policy. I was
20 developing their, on my own, developing a marketing
21 program and anything else that the dean decided he wanted
22 me to do.

23 Q. And in this period of time when you were at the
24 University of Albany, when was that?

25 A. That was in 2007.

1 Q. Okay. And you said you were living in New York?

2 A. Yes, in Troy, New York.

3 Q. Okay. In Troy, New York. You're currently the
4 volleyball coach at Quinnipiac University?

5 A. Yes.

6 Q. How did you come to be hired as the volleyball coach?

7 A. I was very involved with youth volleyball and
8 development of volleyball in upstate New York. Actually I
9 had been starting in Washington DC, I started one of the
10 largest clubs now in Washington DC, Northern Virginia
11 Volleyball Association.

12 Then I moved to New York. My husband and I were very
13 involved in developing club volleyball. I ended up being
14 in charge of the eastern half of New York State for youth
15 volleyball, or club volleyball. Ran a club, coached high
16 school, sat on the United States Volleyball Association
17 National High Performance and Elite Development Committee.
18 So I've been really involved.

19 I was on a bus going to the Empire State Games where
20 I coached the Adirondack teams, I got a phone call from
21 Jack McDonald out of the blue and he said, "Hi, I'd like
22 to talk to you about a volleyball job at Quinnipiac."
23 First thing I think I said --

24 Q. Hold on just a second. Give me a chance to ask a
25 question maybe.

1 A. That's all right.

2 Q. The Empire State Games, is that a high school
3 tournament?

4 A. Empire State Games is in New York State. It's
5 athletic competition for scholastic and open, so it's
6 adults as well. The team I was coaching was the girls
7 scholastic team from the Adirondack region, which was
8 high school kids. Could be as young as eighth grade if
9 they were capable of making the team, up until -- if they
10 had graduated from high school they were no longer allowed
11 to apply for scholastic at that time.

12 Q. How had you learned to be a volleyball coach?

13 A. I played actually in D C on an adult team that was
14 with USA Volleyball. We traveled, went to nationals and
15 the like. My coach had previously been a college coach.
16 His name is Dean Chumway (ph). He still played when he
17 was in his 60's. And he cornered me and said you need to
18 be a coach. And I was like, what? He said you really
19 should be a coach. I know this club nearby, they need
20 somebody to coach their 18s team; would you be willing to
21 do it? I said okay. And that's how it started.

22 Q. Take any courses --

23 A. I have.

24 Q. -- relating to coaching?

25 A. Yes, I have been at the U. S. Olympic Training Center

1 for two different courses on high performance
2 development. I've completed USA Volleyball's impact
3 certification and they have a coaching accreditation
4 program and I've gone through two of the three levels in
5 that.

6 I'm also licensed in New York State to coach. I had
7 to -- I did not have to take all the courses they required
8 because I had so many courses in coaching, I wrote it up
9 to the State Department of Education and they granted me a
10 license.

11 Q. Okay. Now, you said you were on a bus to the Empire
12 State Games when you got a call from Jack McDonald?

13 A. Yes.

14 Q. Did you know who he was?

15 A. No.

16 Q. Would you describe that conversation for us, please?

17 A. Well, first I think I said, what? And he said he
18 would like to talk to me about the job. He had gotten my
19 name from Sue Medley. And I told him I was sitting on a
20 bus full of high school students and could I call him back
21 because I obviously -- I was on a school bus at that
22 point.

23 Q. So he told you he was the athletic director at
24 Quinnipiac?

25 A. Yes.

1 Q. And he told you what the job was?

2 A. Yes.

3 Q. Okay. And who was Sue Medley?

4 A. She had been the interim coach the previous year.
5 She's also someone I've known a long time. I've known her
6 since she started the program at the University of Maine
7 and she is someone who I worked with at the High
8 Performance Program in New York.

9 Q. When you say that she was the interim coach, do you
10 mean she was the interim coach at Quinnipiac?

11 A. Yes.

12 Q. So, when you got this call from Mr. McDonald, were
13 you interested?

14 A. Yeah.

15 Q. Why were you interested?

16 A. Well, it was a chance to move into the college
17 coaching ranks. That's something I had always dreamed of
18 doing and so it was completely -- it was shocking but, of
19 course, it was very interesting to me.

20 Q. And would you then describe the process by which you
21 were recruited and hired by Mr. McDonald?

22 A. Well, I called him back, I believe, the next day when
23 I was not surrounded by fifty teenagers, talked to him
24 about the program a little bit. He had said they were
25 looking for a full-time coach, I had come highly

1 recommended. He encouraged me to come down for a visit
2 the next week informally to see the campus. I knew -- I
3 had heard of the school. The reputation is that it was
4 very pretty in the Northeast from kids that I coached in
5 high school, but that's really all that I knew at that
6 time.

7 I said, you know, we would consider it, could I get
8 back to him, I needed to talk to my husband. I talked to
9 Ron, and he and I made a trip the next week. It was the
10 end of July. Drove down there one afternoon. You know,
11 in the meantime I'd done some research on the school, just
12 so I knew what the school was like.

13 Q. And when you came to Quinnipiac, did you meet with
14 anybody from the Athletic Department?

15 A. Yes, I met with Jack McDonald and then -- my husband
16 and I both met with him, and then we had lunch with he,
17 Tracey Flynn, Becky Kohley, the field hockey coach, and
18 Michael Cole (ph), the tennis coach.

19 Q. And just so that we are clear, Mr. McDonald is the
20 athletic director?

21 A. Right.

22 Q. And who is Tracey Flynn?

23 A. The senior administrator and I believe the associate
24 director of compliance. I'm not sure I got to him.

25 Q. Now, going into these meetings, did you have any

1 concerns about Quinnipiac's commitment to volleyball?

2 A. Yes.

3 Q. And why was that?

4 A. I obviously had talked to Sue a little bit, so I knew
5 that the program had been in transition and under a bit of
6 stress. I also, I'm on line and there's plenty of
7 volleyball chat rooms and I always kept an eye on the
8 coaching transactions blogs just because I talk to coaches
9 all over the country and it had been discussed extensively
10 there.

11 Q. Did you ask Mr. McDonald about that subject?

12 A. Yes.

13 Q. What did Mr. McDonald tell you about Quinnipiac
14 University's commitment to volleyball?

15 A. He admitted that in the past it had not been great.
16 They upgraded their programs one at a time from when they
17 made the transition from Division II to Division I. So
18 they went full-time head coaches one sport at a time.
19 Volleyball had always seemed to lag behind. There hadn't
20 been a champion for it. There had been a number of issues
21 and problems and probably well shared -- I'm not sure if
22 he said well shared between coaches and administration but
23 he admitted the administration support was not there for
24 the program in the past.

25 Q. Okay. You mentioned that sports had been upgraded.

1 I'm not sure that I understood your testimony. Was this
2 in connection with Quinnipiac going Division I?

3 A. That was my understanding.

4 Q. Okay. And when did Quinnipiac go to Division I, if
5 you know?

6 A. Ten years ago.

7 Q. But when Mr. McDonald described to you these problems
8 with or issues with respect to the commitment to
9 volleyball in the past, you know, what did you say to him
10 about that?

11 A. I was concerned about moving my family and to take a
12 job that wasn't secure, for a program that wasn't secure.
13 If the program was still in flux, I wanted to know that
14 ahead of time. It may not have precluded me from taking
15 the job but I felt like I needed to know if it was a
16 secure program now. He assured me that there had been
17 quite a debate about whether or not to keep volleyball as
18 a sport at Quinnipiac, but that those discussions had
19 happened over the past year. They had been put to rest.
20 They were going forward with a full-time head coach and
21 that -- it just took them a long time to get all the
22 approvals to get a full-time head coach. Hence, the
23 reason they were not able to advertise for the job when
24 the market is really open for coaching positions.

25 Q. Did he say anything about his expectations of you in

1 terms of the program's competitiveness?

2 A. He wanted to see -- I actually, I asked him those
3 questions. He wanted the program to be in a Top Four
4 within four years. He wasn't expecting, you know,
5 without -- there's only five scholarships and 12 are
6 permitted at Division I, so he wasn't -- there was not an
7 expectation that I needed to win the conference right
8 away. I asked about the University's commitment to
9 increasing scholarships, and he had said yes, you know,
10 you have to prove yourself. And I was good with that.

11 Q. Is that a reference to athletic scholarships?

12 A. Yes.

13 Q. For the volleyball team?

14 A. Yes.

15 Q. Okay. Did he mention any other benefits of coming to
16 work at Quinnipiac?

17 A. Yes. We talked quite a bit about what the atmosphere
18 was like in the department, the fact that people who went
19 to Quinnipiac to work stayed, and stayed for a long time.
20 We talked about the tuition benefit that the university
21 offers which, having been at the University of Albany
22 where there isn't one, I was very interested in. It was
23 not just for myself, it would be a benefit for my children
24 and my husband, that they would get free tuition. That
25 was something we took seriously into consideration because

1 my husband was getting ready for a masters and my younger
2 stepdaughter was a junior in high school at the time.

3 Q. Did you ask Mr. McDonald anything about getting a
4 multi-year contract from Quinnipiac?

5 A. Yes, I did, in fact. It was something -- I talked to
6 a number of other coaches before I came to Quinnipiac
7 to -- that's a standard question I would ask and that was
8 one that was recommended to me and I asked for that, if I
9 could have a multi-year contract to demonstrate their
10 commitment to the program as well. He said that the only
11 programs that got multi-year contracts were basketball and
12 ice hockey and even he didn't have a multi-year contract.
13 However, unless I did something horrible or broke NCAA
14 rules, there was no reason to think that my contract would
15 not be renewed.

16 Q. Did you feel reassured by this conversation with
17 Mr. McDonald about the University's commitment?

18 A. Yes.

19 Q. During this visit to Quinnipiac that you've been
20 describing, did you discuss the University's commitment to
21 volleyball with anyone other than Mr. McDonald?

22 A. Yes, it came up at lunchtime.

23 Q. Okay. And that's the lunch that you mentioned
24 earlier?

25 A. Correct.

1 Q. Can you tell us what was said at lunch about the
2 University's commitment to volleyball?

3 MS. GAMBARDELLA: Your Honor, could we get a
4 foundation, make sure there's no hearsay involved? Is it
5 the Mr. McDonald lunch?

6 BY MR. ORLEANS:

7 Q. It's the lunch with Mr. McDonald, Ms. Flynn and two
8 faculty members?

9 A. Two coaches.

10 Q. Two coaches.

11 A. And my husband.

12 MS. GAMBARDELLA: Well, anything by the other
13 two coaches would be hearsay but I'm happy to concede no
14 hearsay with respect to representatives of the parties.

15 MR. ORLEANS: The coaches are certainly
16 employees of the University working in the Athletic
17 Department. I'm not sure that it's all that clear that
18 their statements wouldn't also be admissions of the party.

19 MS. GAMBARDELLA: Coaches are --

20 THE COURT: Probably not. I mean they'd have to
21 be -- why don't we just try and limit --

22 MR. ORLEANS: Let me see if I can focus the
23 question.

24 BY MR. ORLEANS:

25 Q. At lunch, did Mr. McDonald or Ms. Flynn say anything

1 further about the University's commitment to volleyball?

2 A. It was a conversation among all of us, so I don't
3 know that I could remember specific words that were used.
4 I know I can remember the flavor of the conversation and
5 being asked specific questions by other coaches and
6 Ms. Flynn, but I'm not sure that I can tell you exactly
7 who asked which question.

8 Q. Okay. Would you do the best you can and tell us what
9 Ms. Flynn asked you, if you remember?

10 THE COURT: Well, questions are not hearsay so
11 it doesn't matter who asked a question.

12 MR. ORLEANS: Okay, that's a good point. Thank
13 you, Your Honor.

14 BY MR. ORLEANS:

15 Q. You can tell us what questions you were asked by
16 others. You have to be a little more careful about
17 statements others made about the University's commitment
18 to volleyball.

19 A. Okay. I was asked about my commitment to making the
20 program better. I was asked if I saw this as a long term
21 opportunity. It was my understanding they had had four
22 coaches in four years prior to my getting there, so
23 stability, I think, was something they were asking me
24 about quite a bit. I was asked why I would want to take
25 that job and move my family and just, you know, transition

1 there. So I was asked questions along those lines to see
2 what my commitment level was to the longterm stability and
3 turning around of the program.

4 Q. And were there any further statements at that lunch
5 by Mr. McDonald or Ms. Flynn about the University's
6 commitment, beyond what you had heard from Mr. McDonald?

7 A. You know, I'm not going to remember exact statements.

8 Q. Okay, that's fine. Now, at some point were you
9 offered the position?

10 A. Yes.

11 Q. How long after the visit that you've been describing
12 did you actually get an offer?

13 A. I had to come back to meet the team, so I came back
14 down a week and-a-half or so later in the evening to have
15 pizza with the team, and I met with one of the other
16 athletic directors there, Billy Mecca. Tracey Flynn was
17 in the office. Jack McDonald was on the office. So I had
18 a meeting with the team, they got a chance to ask me
19 questions, I got a chance to get to know them a little
20 bit, and then the offer came shortly after that when I was
21 back in New York.

22 Q. Okay. Now, you had said that the first visit was in
23 late July?

24 A. Correct.

25 Q. So, when you met with the team, was that during

1 preseason practice for the team?

2 A. No, it was prior to preseason, so it wasn't the whole
3 team; it was those who could.

4 Q. Whoever was around?

5 A. Yes.

6 Q. And you accepted the position?

7 A. When the offer was made, I accepted the position if
8 they would find somewhere for me to live and put me up in
9 the Fall, because I was going to have to give two weeks'
10 notice and be there and there was no way I was going to be
11 able to move my family because the season was starting.
12 And to give two weeks' notice to get there would be after
13 the start of pre season.

14 Q. So your family stayed in Troy and you worked in
15 Hamden for the Fall?

16 A. Correct.

17 Q. Other than that, did taking this position involve any
18 particular sacrifice on your part?

19 A. Yeah, it was a pay cut.

20 Q. About how much, do you recall?

21 A. About 15,000.

22 Q. What was your evaluation of the volleyball team at
23 that point?

24 A. I think the team itself, we were missing some key
25 positions, so I knew we would have our work cut out for us

1 that season.

2 Q. How many athletes did you have at that point?

3 A. Ten.

4 Q. And, of course, you hadn't recruited any of those
5 kids, right?

6 A. No, no, I did not.

7 Q. Aside from coaching the athletes that you had on the
8 team that existed when you got there, what else did you do
9 in terms of building the program once you arrived?

10 A. First thing I did was to try to start a recruiting
11 program. There had not been any that I could find record
12 of since -- that was before I got there. So, my first job
13 was to, I knew I needed a center, so I was spending hours
14 on the internet talking to people, looking for athletes to
15 fill that position, along with the other positions we
16 needed to fill. I knew I needed to bring in a big class
17 that first year so that we could get our numbers up and
18 balance out our positions. So I spent a lot of time with
19 that, planned practices, do some scouting reports, tape
20 exchange with other teams. They would ask for a game
21 film, I'd have to make copies of it, send that out. Make
22 out the vacancies and start planning next year's schedule.
23 I had to make sure we had itineraries for every trial we
24 did. There's compliance reports and budget things you
25 have to do. I was quite busy.

1 Q. Was there much of a recruiting program in place when
2 you arrived?

3 A. There was none.

4 Q. What did you have to do to really establish a
5 recruiting program?

6 A. Started responding to athletes, I think was the first
7 thing. And then I did a lot of research and sent a lot of
8 emails out to athletes all over the country to try to
9 express, you know, our interest in them, would they be
10 interested in coming to Quinnipiac. And I really thought
11 it was important to get our name out so I spent a lot of
12 time making sure the juniors club circuit knew where I
13 was.

14 Q. Now this was the Fall of 2007?

15 A. Yes.

16 Q. So, we're talking about recruiting athletes who were
17 then high school seniors who would enter in the Fall of
18 2008?

19 A. Correct.

20 Q. So, that would include Stephanie Biediger and Kayla
21 Lawler, would it not?

22 A. Correct.

23 Q. Did any of the athletes that you were recruiting,
24 were their parents asking you about Quinnipiac's
25 commitment to volleyball?

1 A. Yes.

2 Q. And what did you tell them?

3 A. I told them the things that had been shared with me,
4 that the University was committed to restarting the
5 program. I was hired to rebuild the program and make it
6 successful. They hired me full-time; that demonstrated
7 their commitment to the program. I talked about bringing
8 in a group to leave a legacy. That was what the case was.
9 It was going to be a lot of hard work but they needed to
10 know that that's why I was there, was to restart that
11 program.

12 Q. Now, did you have an assistant coach during this
13 time?

14 A. No.

15 Q. Now, you mention putting together the schedule; that
16 would have been the schedule for the following year that
17 you were putting together?

18 A. Correct.

19 Q. Now, could you just explain to us briefly how the
20 coach is involved in setting up a schedule for
21 competitions?

22 A. The northeast conference will give you your
23 conference schedule, so that is established but that's not
24 nearly enough competition dates. We're allowed 28
25 competition dates. I knew going forward we probably would

1 not be a full compliment of players yet, because to bring
2 in eight or nine freshman with no upperclassmen just sort
3 of was going to be a very difficult situation. So I went
4 ahead and scheduled so we would have a lot of competition
5 dates. You're e-mailing coaches. You're looking at their
6 RPIs to make sure you're not playing someone too far ahead
7 of you. At least that's what I did. You wanted to have a
8 challenge but not one that was going to be demoralizing at
9 the same time, especially since I knew I was going to have
10 an incredibly young team. So, you're doing a lot of talk
11 like that, weighing different options.

12 And then at the same time I was playing in
13 tournaments because we stayed home twice for tournaments.
14 It's cheaper that way and it gives the team a chance to
15 play on campus, which I think is important. So I was
16 actively recruiting teams to come to Quinnipiac for those
17 tournaments as well.

18 Q. Were those tournaments -- now, we're talking now
19 about the planning that you were doing in the Fall of 2007
20 for the 2008, 2009 --

21 A. Correct.

22 Q. -- year? The tournaments that you're talking about,
23 were they tournaments that would occur in the Fall season
24 or in the Spring?

25 A. In the Fall.

1 Q. Okay. Now, I've heard, I think we've heard today
2 volleyball referred to as a Fall sport. What does that
3 mean?

4 A. That's when our championship segment is.

5 Q. And this is under NCAA rules?

6 A. Correct.

7 Q. Okay. Is there -- what does the team do outside of
8 the championship season?

9 A. We have -- you're either in a 20 hour segment or an
10 eight hour segment and what that means is how many hours a
11 week you devote to your sport. Outside of championship
12 segment, that's in the Spring semester, you can redeclare
13 a certain number of weeks, about four, depending on how
14 long -- you get to slot how many weeks between the two
15 segments, to go back into 20 hour. The rest of that time
16 you're in an eight hour, you're doing skill development,
17 lifting, agility, that kind of training. And then you go
18 back into a 20 hour.

19 Q. And what about competition, can you have matches or
20 scrimmages or any kinds of competition in the Spring?

21 A. In the Spring, there's normally very low key
22 tournaments, not necessarily -- officials can kind of
23 stipulate to the rules if you want to. It's really a
24 chance to scrimmage against other teams.

25 Q. Okay. And did you have such scrimmages in the Spring

1 of 2008, your first Spring there?

2 A. No, there was only four athletes on campus at that
3 point.

4 Q. Did you schedule scrimmages for this Spring, the
5 Spring of 2009?

6 A. Yes.

7 Q. And have those, have the events that led to this
8 lawsuit affected the plans for those scrimmages?

9 A. Yes.

10 Q. How so?

11 A. I was not allowed to work with the team anymore so --
12 we couldn't scrimmage anymore.

13 Q. Okay. We heard the players who testified this
14 morning testified a little bit about their academic
15 achievements; does the Northeast Conference recognize
16 academic achievement by athletes?

17 A. Yes.

18 Q. Were any of your players recognized this year for
19 their academic achievements?

20 A. Yes.

21 Q. How many?

22 A. This past season, nine out of 11.

23 Q. How about the season before?

24 A. Eight out of ten. A ninth made it but she was never
25 on the team past the first weekend.

1 Q. Do you have any idea how she was recognized by the
2 conference if she wasn't actually on the team?

3 A. No.

4 Q. Now how about the schedule for the Fall of 2009? You
5 testified a minute ago that you arranged that already.
6 If, if the preliminary injunction that we're asking for
7 today is granted, will you be able to maintain this
8 schedule?

9 A. It won't be the same one but I do believe we'll be
10 able to put together a competitive schedule. There's so
11 many schools in the northeast, that's really an advantage
12 of living here, that I'm confident that we'll be able to
13 put together a competitive schedule.

14 Q. Now, you testified a few minutes ago that that first
15 Fall your family stayed in Troy and you came here,
16 correct?

17 A. Correct.

18 Q. At some point did your husband and daughter move to
19 Connecticut?

20 A. Yes.

21 Q. Okay. When did that happen?

22 A. Last summer.

23 Q. Have you bought a house?

24 A. We did.

25 Q. Where's the house?

1 A. In Hamden.

2 Q. And your young daughter lives with you?

3 A. Yes.

4 Q. And you mentioned a younger stepdaughter; you have
5 stepchildren?

6 A. I have two stepdaughters.

7 Q. Do they live with you?

8 A. No. One was going to be a senior in high school so
9 she stayed in New York.

10 Q. Let me come back to recruiting for a second here.

11 When you, when you recruit athletes for the volleyball
12 team, did you promise them scholarships?

13 A. No, not -- I mean you start recruiting and when you
14 get to talking about scholarships, that's a long way down
15 the recruiting line, so you're starting off with a
16 conversation. I would call athletes. I like to talk to
17 them on the phone, get a sense of who they were, you know,
18 if I thought their personality would mesh with what we
19 needed to terms of personality along with their skill.
20 And as the conversation would develop, if we get to that
21 point, then we would talk about it and I would make an
22 offer on the scholarship, but that wasn't one of the first
23 things that was done.

24 Q. But at some point before an athlete would commit, the
25 athlete would want to know whether there would --

1 A. We would have a financial conversation, yes.

2 Q. And under NCAA rules, are you permitted to promise a
3 scholarship, a multi-year athletic scholarship?

4 A. No. I think there's a presumption that scholarships
5 would be renewed, if -- barring they are not bad students
6 or breaking certain rules. And then there's a certain
7 level of ethics and trust that you'll have with an
8 athlete.

9 Q. Right, but would it be correct to say then you can't
10 put put a multi-year scholarship promise in writing?

11 A. Correct.

12 Q. Could you explain to us just a little bit more about
13 why you considered it important to recruit so widely and
14 to devote so much effort to recruiting?

15 A. I'm pretty competitive, so I wanted to, I wanted to
16 win the conference. And I wanted -- and I knew to do
17 that, we needed to have some really, some athletes with
18 some really long experience and extensive experience
19 playing. Having been involved in help trying to develop
20 volleyball in the northeast, the northeast is actually one
21 of the parts of the country that's a little bit further
22 behind, I think, than other parts of the country, so I was
23 going out and looking for athletes with a lot of
24 experience and athletic ability and volleyball IQ to join
25 our program, while at the same time looking for northeast

1 athletes who are great athletes who never had that
2 opportunity who could compliment in incredibly well. So I
3 thought it was really important to get out and bring in
4 some really great athletes who knew the game incredibly
5 well.

6 I also spent a lot of time, because I felt it was
7 important to rebuild the reputation of Quinnipiac in the
8 volleyball community, so I was out wearing anything
9 Quinnipiac at a lot of tournaments and even at tournaments
10 where I wouldn't necessarily be looking for athletes. I
11 thought it was important for the University that I be seen
12 there because those kids will still be coming in as
13 students. So --

14 Q. When you're out on these recruiting trips and going
15 to tournaments and so forth, are you looking only at
16 seniors, high school seniors?

17 A. No, you're starting to identify younger athletes.
18 Volleyball, for good or not, athletes are starting to
19 commit as young as freshmen to go on to play Division I.
20 A lot of sophomores and many schools have done recruiting
21 in their junior class, well ahead of time.

22 Q. Now, when you were hired by Quinnipiac, were you
23 encouraged to run any summer volleyball games?

24 A. Yes, I was encouraged to run summer volleyball games.

25 Q. Did you do that?

1 A. I did. I ran two.

2 Q. We're talking about Summer of '08?

3 A. 2008, correct.

4 Q. Just briefly, a brief description of the two camps
5 you were in?

6 A. I ran one day camp. Quinnipiac did not allow us to
7 run overnight camps or I would have done that. I ran a
8 day camp for a week, fifth graders on up. I think we
9 might have had a fourth grader but it was open to any high
10 school athletes. And then I, by my choice, ran an evening
11 clinic where athletes could pay by the night. That's
12 something I did in Troy for athletes who may not be as
13 affluent so they can still get that kind of exposure and
14 get coaching and I thought it was pretty important to the
15 Hamden kids to have that option.

16 Q. Now, did Quinnipiac pay you to run those camps?

17 A. The money all goes into Quinnipiac and then you pay
18 people out of it and then whatever's left over, you can
19 pay yourself, but it goes to Quinnipiac's salary so taxes
20 are taken out.

21 Q. So how much, if you know, how much did you earn from
22 the camps in the Summer of 2008?

23 A. Last year? Probably between 2,500 and 3,000 last
24 year. It was small.

25 Q. Did you consider that successful?

1 A. For a first year and to get the word out, yes.

2 Q. Did you have camps planned for the Summer of 2009?

3 A. I did.

4 Q. And are you still planning to run those camps?

5 A. They were taken away when they took away the program.

6 Q. Okay. Could you salvage them if the preliminary
7 injunction were granted?

8 A. Yes. I just got an email from a mom on Friday
9 looking for a camp for their high school kid.

10 Q. Now, we heard the testimony and you were in the room
11 for the testimony of Mrs. Riker, correct?

12 A. Correct.

13 Q. Okay. Have you recruited a group of athletes to
14 enter Quinnipiac and play volleyball starting this Fall?

15 A. Had I? Yes.

16 Q. Yes. How many athletes had, before the announcement
17 the program would be canceled, how many athletes had given
18 you verbal commitments?

19 A. I was up to six and had a seventh possibility.

20 Q. Okay. Did you expect any more commitments?

21 A. Amongst that group but one still there -- she was,
22 two of them, all they wanted to do was just be on campus
23 but they had given me like everything that I want but I
24 refused to let an athlete say yes until they have actually
25 set foot on campus. I think that's important.

1 Q. How many athletic scholarships did you commit to this
2 group of incoming athletes for the Fall of 2009?

3 A. I was planning to use the balance of what I had, so
4 approximately two.

5 Q. So, I take it then that you're allowed to divide the
6 five total scholarships that you have, you're allowed to
7 divide up?

8 A. Volleyball is what's called a head count sport so
9 \$100 counts the same as \$40,000. Twelve athletes are
10 allowed to get athletic money.

11 Q. And Quinnipiac allowed you then to divide up --

12 A. I can divide it up.

13 Q. -- those scholarships. Okay. And I think you said
14 you had been told you would get more scholarships
15 eventually?

16 A. Eventually.

17 Q. But you didn't, I take it you didn't, hadn't been
18 authorized any additional scholarships for this coming
19 Fall?

20 A. Oh no, oh no.

21 Q. So, you said that you used what you had left which
22 was about two for the group coming in in the Fall of '09?
23 And how many scholarships are committed to returning
24 students?

25 A. Approximately three.

1 Q. How many total athletes do you, would you have
2 expected to have on the team this coming Fall?

3 A. I was hoping to be at 12 or 13, possibly 14, but that
4 was my hope.

5 Q. Do you conduct try-outs?

6 A. Yes.

7 Q. When do you have tryouts?

8 A. Every team team is required to have a try-out in the
9 Fall.

10 Q. Have any students in your -- in the time you've been
11 at Quinnipiac, have any students made the team from
12 try-outs?

13 A. In the first year one athlete did.

14 Q. What kind of turn-out do you usually get at the
15 try-outs?

16 A. This past year I had seven or eight athletes respond
17 to me and say they were interested. I asked the athletes
18 to come to one practice to watch and fill out the
19 paperwork and then there was a day of try-outs. Given all
20 that, only one athlete followed through and she did end up
21 trying out this year. We offered her a spot to stay as a
22 practice player. Her skill really wasn't up to the level
23 of skill of everyone else, so she declined.

24 Q. So she was offered the practice spot?

25 A. Yes.

1 Q. But did not stay with the team?

2 A. Correct.

3 Q. Where does the team play?

4 A. In the Burt Kahn Gym on the main campus.

5 Q. That's Burt Kahn?

6 A. Yes.

7 Q. And do you practice there also?

8 A. Yes.

9 Q. Suppose that the Burt Kahn Gym were not available for
10 volleyball, are there other facilities on campus where
11 your team could practice?

12 A. Yes.

13 Q. What other facilities are available?

14 A. There's a recreational center. Don't know if I have
15 the professional name. And the T D Banknorth Center.

16 Q. Let's talk about the recreation center. What's there
17 now?

18 A. Indoor tennis is there and there's a floor.

19 Q. Is there anything that you would have to -- that
20 would have to be purchased or otherwise acquired to
21 enable the team to practice in the tennis facility?

22 A. To run it as an individual program, you really would
23 need a sport court in there, a portable court that could
24 be put down and taken up after the season is over.

25 Q. And that's a floor?

1 A. Yes.

2 Q. Have you undertaken any investigation to determine
3 what it would cost --

4 A. Yes.

5 Q. -- to acquire a sport court to practice on at the
6 recreation center?

7 A. Yes.

8 Q. What did you find out?

9 A. AVCA, which is the American Volleyball Coaches
10 Association, has an agreement with Madaflax (ph) and it
11 would cost approximately \$11,000 to put their floor down,
12 their removable floor.

13 Q. And that's a floor that could be put down for --
14 withdrawn.

15 Is that a floor that would be removable between
16 practices so that the facility could be used for other
17 purposes?

18 A. It could be. Probably labor intensive to do it
19 everyday but that is possible. The standards, the hole
20 sleeves for the standards are already there.

21 Q. When you say standards --

22 A. The holes.

23 Q. That hold the net up?

24 A. Uh huh. (Affirmative.)

25 Q. If necessary, could you play competitions in the

1 sport court in the rec center?

2 A. Yes.

3 Q. And then you mention the T D Banknorth Center, is
4 that the Quinnipiac basketball arena?

5 A. Yes.

6 Q. And what would be necessary to enable the volleyball
7 team to practice or play in the basketball arena?

8 A. There would need to be sleeves and metal plates
9 installed so that the net systems could be put in there,
10 and then lights.

11 Q. And if the sleeves and plates were installed, would
12 the floor in the basketball arena still be usable for
13 basketball?

14 A. Yes.

15 Q. And do other schools in the northeast conference --
16 excuse me.

17 Do other volleyball teams in the northeast conference
18 practice or play in their school's basketball rinks?

19 A. All but one, is my understanding.

20 Q. And did you undertake any investigation to find out
21 what it would cost to put the sleeves and plates into the
22 basketball arena?

23 A. Yes.

24 Q. What did you learn about that?

25 A. To put one court in --

1 MS. GAMBARDELLA: Your Honor, could we get
2 foundation from where this information comes from?

3 BY MR. ORLEANS:

4 Q. Sure. How did you undertake the investigation?

5 A. To do this I called Sports Import. They are the
6 people that own our net system and who I worked with and
7 was planning to do some fixings of the net system. They
8 recommended who they use for installation and I called
9 them as well.

10 Q. Okay. And what did you learn about the cost --

11 MS. GAMBARDELLA: I'm going to object based on
12 hearsay and also these people are given quotes, they
13 haven't examined the Quinnipiac facilities, they don't
14 know anything about the facilities. They haven't come in
15 and examined anything. And so, to the extent they are
16 going to be relying on this to suggest that it's very
17 inexpensive to make these facilities suitable, I would
18 object.

19 MR. ORLEANS: Well, you know, Your Honor, I
20 suppose I could have tried to subpoena the provider of the
21 service, but it seems to me that the coach did exactly
22 what you would expect somebody to do. She investigated to
23 determine what this would cost and I think it's
24 sufficiently trustworthy to come in under the general
25 hearsay exception for whatever weight the court thinks is

1 appropriate.

2 MS. GAMBARDELLA: And I think it's being offered
3 for the truth of the matter asserted. I'm saying that,
4 aside from her inquiry, we haven't had an opportunity to
5 discuss what they were told to which they responded with
6 an estimate. We don't know if -- obviously they haven't
7 come and looked at the space, so --

8 MR. ORLEANS: We'll stipulate they haven't
9 looked at the space and Ms. Gambardella can cross examine
10 on --

11 MS. GAMBARDELLA: Your Honor, it's classic
12 hearsay. Classic.

13 THE COURT: Did you obtain a quote or did you
14 simply ask how much it would cost?

15 THE WITNESS: They gave it to me in writing, so
16 I asked them for a quote based on a brand new facility
17 that was probably did not have a basement. They asked if
18 it had a basement and I said I don't believe so. It's in
19 the basement.

20 MS. GAMBARDELLA: We have never received any
21 such document.

22 MR. ORLEANS: I don't have the document to
23 offer, Your Honor.

24 THE COURT: All right. Well, I'm going to
25 sustain the objection.

1 MR. ORLEANS: All right.

2 BY MR. ORLEANS:

3 Q. Now, Ms. Sparks, when did you learn that the
4 volleyball program at Quinnipiac is slated for
5 elimination?

6 A. March 4th.

7 Q. Of this past Spring?

8 A. Correct.

9 Q. How were you informed?

10 A. We had practice and I came upstairs from practice and
11 Tracey asked me to come down to the Athletic Director's
12 office. And then when I was in there Jack McDonald, Bill
13 Mecca and Tracey Flynn met with me and told me.

14 Q. Okay. What did they tell you?

15 A. They told me the program was being discontinued for
16 economic reasons.

17 Q. How did you respond?

18 A. I was angry. My first question was how much money
19 would I need to raise to keep the program going. Jack
20 responded you're not keeping the program.

21 Q. Do you remember anything further about that
22 conversation?

23 A. Yes.

24 Q. Go ahead. Tell us what else occurred in that
25 conversation.

1 A. I was pretty angry because they had made -- I had
2 moved my family here. Oh my gosh -- they had just paid my
3 relocation fees within the year. I hadn't even had a
4 chance to show what I could do as a coach, having only had
5 one recruiting class. They reiterated that I'd done a
6 great job, I was a good citizen at Quinnipiac -- I think
7 that's what Jack said. They thought this had nothing to
8 do with cost. They were willing to make phone calls
9 wherever to help me get a job. I told them that that
10 would not be that easy, given the fact that we just bought
11 a house and you can't turn around and sell the house.
12 They -- I think -- I can't remember exactly. I think it
13 was Jack or Billy asked that doesn't your husband work, it
14 shouldn't be that bad, and I explained to them that, no, I
15 was the primary bread winner in our family, this was that
16 bad, and that we would lose our house in July because we
17 sunk all of our savings into purchasing a home when we
18 thought we would be here for quite a while.

19 Q. Were you told -- go ahead, I'm sorry.

20 A. Oh, I asked if I could keep working with the team
21 because if I was going to have to help them find places to
22 transfer to, I knew it was really important that I get
23 fresh film of them. They'd been lifting. We changed
24 their technique. They were different kids than they'd
25 been in the Fall. I got a commitment for that.

1 We talked about -- I'm sorry, I'm just trying to make
2 sure I cover everything we talked about. They asked me
3 if, you know, there was anything they could do right then.
4 I told them I didn't really feel like teaching my class
5 anymore but I didn't to have do it that week.

6 They asked -- they finally then told me that they
7 were cutting two men's sports and elevating cheer to a
8 varsity position. I told them I found that completely out
9 of the spirit of Title IX and that upset me greatly.

10 I -- we continued to have a conversation and Jack
11 finally asked me if there was anything else he could do,
12 and I told him, yeah, you can tell me all the Title IX
13 violations around the department and he goes I don't think
14 I can do that. I said, no, there's not anything else. I
15 understood they were the messenger. I did not -- this was
16 not a personal, that I was angry with them, but because
17 they had explained it, that they had done everything that
18 they could, and I believed them.

19 Q. Now, you mentioned that you taught a class at
20 Quinnipiac; what class did you teach?

21 A. I teach public relations for 11, which is sports
22 event management.

23 Q. And do you teach that in both the Fall and the Spring
24 semester?

25 A. Just in the Spring. Well, I didn't teach this past

1 Fall.

2 Q. Is that in a particular school at Quinnipiac?

3 A. The School of Communications.

4 Q. Okay. Is that part of your position as coach?

5 A. No.

6 Q. And you also mention Title IX. Now, at the time that
7 you had this conversation with Mr. McDonald and Ms. Flynn,
8 were you knowledgeable about Title IX?

9 A. Yes.

10 Q. How did you come to be knowledgeable about Title IX?

11 A. It's -- I've always been interested in womens issues.
12 I worked in public policy in Washington, and so it's been
13 something that I personally have just educated myself and
14 followed. I don't consider myself an expert but it's
15 something that I'm very interested in.

16 Q. Let me get that clear. Do you consider yourself to
17 be an expert?

18 A. No.

19 Q. But you're generally familiar?

20 A. Yes.

21 Q. Before you were told that the volleyball team was to
22 be eliminated, did you have any concerns about
23 Quinnipiac's compliance with Title IX?

24 A. Yes.

25 Q. And could you just explain what were the nature of

1 the concerns that you had?

2 A. I had looked at that the EADA reports.

3 Q. Now, what's EADA?

4 A. Equity Athletic Disclosure Acts reports, the
5 Department of Education and Office of Civil Rights, I
6 believe. Tracey Flynn had sent them to all of us in the
7 Fall, the women coaches at least, so I had looked at them
8 and looked at those reports and educated myself on those
9 issues.

10 Q. And what did you see in looking at those, at the
11 reports that Ms. Flynn had sent you in the Fall?

12 MS. GAMBARDELLA: Objection to the timeframe for
13 which reports you're talking about.

14 MR. ORLEANS: Well, let me ask that question.

15 BY MR. ORLEANS:

16 Q. The reports that Ms. Flynn sent you in the Fall that
17 you're testifying about, what period of time did they
18 cover?

19 A. 2007, 2008.

20 Q. Okay.

21 MS. GAMBARDELLA: Thank you.

22 BY MR. ORLEANS:

23 Q. What did you determine from looking at those reports?

24 A. I knew that we, our proportionality was way off.

25 Q. Can you just explain what you mean when you talk

1 about proportionality?

2 A. One of the prongs for Title IX is that your ratio of
3 male/female athletes needs to be close to your ratio of
4 male to female students on campus and we were not.

5 Q. Okay. Now, going back to the meeting where you were
6 informed that the team was to be eliminated, how was the
7 team then informed?

8 A. They asked me to get the athletes together as soon as
9 as I could. I knew we had a lot of night classes, but
10 they said they were going to make that announcement that
11 night so I needed to try to get the kids together before
12 the night classes. So I texted, text-messaged all the
13 athletes to meet us at 5:00 o'clock to have a meeting with
14 the administration.

15 Q. And where did that meeting take place?

16 A. In the study hall room in the Athletic Department.

17 Q. Okay. And were all of the members of the team
18 present?

19 A. No. Erin Overdevest did not get there.

20 Q. Okay. You were in the courtroom this morning and
21 heard the testimony of Ms. Lawler and Mrs. Biediger about
22 that meeting?

23 A. Yes.

24 Q. Is that testimony accurate?

25 A. Yes.

1 Q. Okay. Do you have anything that you want to add
2 about what occurred at that first meeting when the
3 students were told that the program was to be eliminated?

4 A. You know, I think it was incredibly emotional.
5 Sorry.

6 Q. It's okay.

7 A. It was, you know, I was frustrated there was no
8 Kleenex in the room. And I just, it was just
9 heartbreaking. I don't think I can say anything else.

10 Q. What, if anything, did you tell the students that you
11 would do to support them going forward?

12 A. At that meeting?

13 Q. At that meeting.

14 A. Oh, you know, I think at that meeting they were
15 worried about me and I told them not to worry about me.
16 They needed to worry about themselves first, that I would
17 do anything that I could to help them. I don't think I
18 made any promises at that point. It was mostly just being
19 there.

20 Q. Now, you heard the testimony -- go ahead.

21 A. (Pause)

22 Q. You heard the testimony about the students preparing
23 a power point in hopes of a meeting with President Lahey?

24 A. Yes.

25 Q. Were you involved in that?

1 A. No.

2 Q. And you heard the testimony about the students
3 contacting Channel 8?

4 A. Yes.

5 Q. And were you involved in that?

6 A. No.

7 Q. Did you make any contact with media at that point?

8 A. The night before I had talked to the New Haven
9 Register because one of the athletes had contacted them.
10 And when the Register called the University, they would
11 not confirm that the program had been cut and I just, I
12 wasn't going to leave the kids hanging by themselves so I,
13 that's when I did call the reporter back and tried to be
14 as balanced as I could in my comments.

15 Q. And when you say the night before, the night before
16 what?

17 A. The night that we lost our program.

18 Q. So, the night of March 4th you had a conversation
19 with a reporter from the Register who called you?

20 A. Yes.

21 Q. Now, could you describe what occurred over the next
22 few days after March 4th? This was right before Spring
23 break, wasn't it?

24 A. Yes.

25 Q. So, would you describe what occurred over the next

1 few days specifically in connection with you and the
2 nature of the volleyball program?

3 A. So, wait a minute, does that mean like what I did
4 personally, or --

5 Q. Yes. Were there any meetings that occurred? Did you
6 have discussions with anybody about what you were going to
7 do?

8 A. That night, you know, I stayed on campus. I got home
9 after my daughter was in bed, so I was probably on campus
10 with the kids just being there for them until probably
11 around 8:00 o'clock at night, eight or nine. Went home,
12 to just be home. I did personally a lot of research that
13 night and didn't sleep.

14 The next day I came to campus. There was a staff
15 meeting where they talked about it and I attended the
16 staff meeting and I thought it was very important to be
17 professional and be there. I was in my office all day so
18 the kids did come find me and have questions at times
19 about different things and I would answer questions for
20 them. You know, I knew they were working on things and I
21 was letting them be -- I thought it was pretty important
22 that they process things the way they needed to but I was
23 there to offer them support upstairs. I'd walk them
24 downstairs from my office.

25 I had conversations with Tracey Flynn, Jack, Billy.

1 I talked to a lot of people the next day.

2 Q. Okay. Could you describe your conversations with
3 Tracey Flynn on or around March 5th after you had learned
4 about the elimination of the program?

5 A. Yeah. Tracey is a wonderful person and I know she
6 was really, really upset about what happened. And I feel
7 bad because I think she was in a really tough spot. She
8 was pretty afraid --

9 MS. GAMBARDELLA: Your Honor, we have what
10 Tracey Flynn said and several witnesses' conclusions about
11 Tracey Flynn's state of mind.

12 BY THE WITNESS:

13 A. Tracey told me that she felt handcuffed, that she was
14 worried about her job and she needed it. Tracey told me
15 Quinnipiac had a major problem with proportionality, that
16 we needed to get a subpoena and an injunction as quickly
17 as we could. Quinnipiac had done nothing to do planning
18 for cheerleading, so they had no written plan. Tracey
19 told me she would not tell me anything I couldn't discover
20 on my own but would support me. We talked about
21 proportionality. We talked about cheerleading being
22 elevated. She told me she had seen a memo prior to it
23 being released.

24 Q. When you say a memo, what do you mean?

25 A. The memo announcing the cut of volleyball and

1 elevating of cheerleading. It had said originally we are
2 going to elevate the sport of cheerleading to varsity
3 status and she took the word "sport" out of the memo. She
4 told me about the practice and policy of coaches adding
5 and deleting players around the first date of competition
6 for the EADA reports, and she told me she thought that
7 policy was bullshit. She --

8 Q. Stop there for a second. Could you describe more
9 specifically what she told you about -- and I don't want
10 to mischaracterize your prior testimony -- about adding or
11 deleting athletes around the first day of competition?

12 A. She said if we subpoenaed those records, it would not
13 take an idiot to figure out what's going on here.

14 Q. Did you have an understanding what she was referring
15 to?

16 A. Yes.

17 Q. What was your understanding of what she was referring
18 to?

19 A. That male coaches were dropping athletes prior to the
20 first day of competition and adding them back within
21 days or weeks of -- afterwards so they did not count
22 towards roster management numbers.

23 Q. Now, when you say male coaches, do you mean --

24 A. Male teams, I'm sorry.

25 Q. And what about coaches of womens teams; did you have

1 any understanding --

2 A. We did not talk about it at that time. I had
3 knowledge from conversations I'd had with female coaches
4 about the numbers, the roster numbers being large for some
5 teams prior, like a long time prior to that.

6 Q. Okay.

7 A. I do think -- well.

8 Q. Go ahead. Is there something you wanted to add?

9 A. You know, everybody was quite emotional, I think, in
10 those first few days and, you know, I don't think I talked
11 to anybody else on campus, frankly, about it. I was a
12 little bit all over the place. And, you know, shortly,
13 you know, I was encouraged to look at legal issues and I
14 didn't know what exactly all that would undertake, so I
15 started looking at all that later that day.

16 Q. Okay. Could you describe the impact that the timing
17 of this announcement had on you and your team in terms of
18 what options were available to you?

19 A. March is really late for all of us to make
20 adjustments for the Fall. Much as I encourage my athletes
21 they should explore all their options, as I should,
22 because that's the adult thing to do, the reality is for
23 the athletes, the first time period is in November and,
24 yes, there's another signing period starting in the
25 beginning of April but most programs are completely done

1 on an individual level by March. There, of course, would
2 be some options, but whether or not they would be the
3 right academic options for these athletes was another
4 issue. They are a very bright team and academics are very
5 important to them, as they are to me. I think, you know,
6 transferring applications for the kinds of schools a lot
7 of these kids had weighed against us, the deadlines were
8 pretty quick or shortly thereafter. I don't have a group
9 of kids that make snap decisions. So they did so much
10 research before ever committing to Quinnipiac, to ask them
11 to do it again within a week's time was a little tough.

12 Q. And what about you? What were your prospects for
13 finding another coaching job at that point?

14 A. Not good. For coach, head coaching jobs, normally
15 coaches are let go for a variety of reasons normally,
16 because they are not doing what the administration wanted
17 them to do, at the end of the season which is November.
18 And then a lot of interviewing goes on at the American
19 Volleyball Coaches Association Conference and the
20 championship tournament in December. There's a lot of
21 them.

22 After that, and sometimes there are a second round
23 because you back-fill and that happens January, beginning
24 of February. After that, there's not a lot of Division I
25 jobs that are open. There's some Division II, not even a

1 lot there. It's mostly assistants jobs at that point.

2 For me, the difficulty was that they would need to be
3 within driving distance of my family. If I want to stay
4 in coaching, there hasn't been anything in commuting
5 distance come open because I have watched, and I'll have
6 to leave my family if I'm going to stay in coaching.

7 Q. Have you actually applied for any coaching positions?

8 A. Yes.

9 Q. Where?

10 A. Toledo, Cornell, Spring Hill, Franklin Pierce.

11 Q. And what are your prospects for any of those
12 positions; do you know yet?

13 A. No.

14 Q. And would you be able to live in Hamden with your
15 family if you took any of those positions?

16 A. No.

17 Q. Now, let me just go back a minute to something you
18 were saying before. You mentioned roster management, I
19 think?

20 A. Yes.

21 Q. Just explain what, in your understanding, what is
22 roster management?

23 A. It's a technique that departments can use to keep,
24 try to achieve gender equity.

25 Q. And what does it involve?

1 A. They set targets for your roster size and you try to
2 meet them.

3 Q. So there's a target roster size for each team?

4 A. Yes.

5 Q. Now, I take it that after you learned on March 4th
6 that the program was to be eliminated, I think we had
7 earlier testimony that Spring break started a couple days
8 after that. How long is the Spring break?

9 A. A week.

10 Q. Were most of your team members gone during Spring
11 break?

12 A. They were all gone.

13 Q. At some point after they returned, did Mr. McDonald
14 give you any instructions about your presence in the
15 Athletic Department?

16 A. On that Monday after practice.

17 Q. And so the first Monday back?

18 A. I think it was first Monday back.

19 Q. What did he tell you?

20 A. That I was not to work out with the team anymore. He
21 said it made people in the department feel bad to have me
22 around. They felt sorry for me and it made them very
23 uncomfortable, and it was his job to protect the
24 department. They also thought that if they were seen with
25 me, they might lose their job.

1 Q. Did he say anything else about why he was asking you
2 to stay away from the department?

3 A. I asked him if someone higher up had asked for that
4 to happen and he said no. I asked if it was because I had
5 asked for the EADA reports and he said no. And he told me
6 that I needed to take care of my family and find another
7 position and I told him those kids were my family and
8 that's what I was doing, was trying to take care of all of
9 us.

10 Q. Do you remember anything else about that
11 conversation?

12 A. I told him that I needed to keep my office because I
13 had office hours because I taught, and he thought that I
14 would be able to do that. He was going to call the
15 provost. I reiterated that I thought it was really
16 important that I worked with the kids. They needed help
17 transferring. There's game films to be done, you know,
18 talking to coaches, all kinds of things. He thought they
19 could handle it themselves.

20 I'm trying to think what else we talked about.

21 I'm getting a blank.

22 Q. That's okay.

23 A. Yeah, I think that's -- I think I told him that I
24 thought, you know, I was a professional, my contract was
25 until June 30. I thought I should show up, that that was

1 my job, was to continue to do my job. He felt that I
2 could do it from home and I didn't need to be there. I
3 thought the fact that other people weren't comfortable
4 meant they needed to grow up. I worked in, you know, with
5 people I wasn't always comfortable with in my career but
6 you have to grow up, you have to be a professional and
7 deal with it. But he reiterated that I needed to be out
8 of the office.

9 Q. Okay. Ms. Sparks, are you familiar with the process
10 involved in getting new sports recognized by the NCAA?

11 A. I'm familiar with it, yes.

12 Q. You're not an expert in it, I take it?

13 A. No.

14 Q. Could you just tell us a little bit what your
15 familiarity is, what your understanding is of that
16 process?

17 A. I'm at a Northeast Conference head coaching rep on
18 the committee for the ADEA, and sand volleyball became an
19 emerging sport this year, so I've been at many meetings
20 where we discussed the process of how we got sand
21 volleyball to become an emerging sport. I talked to head
22 coaches and got their opinions on it, to be able to come
23 back to the Head Coaches Committee to let them know where
24 our conference schools felt about elevating the sand
25 volleyball. I know that for, at least for sand

1 volleyball, you had to have -- I forget what schools, but
2 there are a number of schools that had to apply to have it
3 done. They are delaying the implementation of it for a
4 year because the rules and the regulations and scholarship
5 and all this needs to be developed, but they are in that
6 process.

7 Q. Okay. Is it your understanding that the NCAA has a
8 process for recognizing emerging sports that any sport can
9 take advantage of?

10 A. Correct.

11 MR. ORLEANS: May I just have a moment, Your
12 Honor?

13 (Pause)

14 BY MR. ORLEANS:

15 Q. You mentioned a minute ago, Coach Sparks, that you
16 had asked for EADA reports?

17 A. Yes.

18 Q. What -- can you elaborate on that?

19 A. There are reports that are, the universities across
20 the country are required to file with the Office of Civil
21 Rights and they are legally required to make them
22 available to those who request.

23 Q. And when did you ask for them?

24 A. The 4th is Wednesday. The 9th of March.

25 Q. How did you go about asking for them?

1 A. Put it in writing to Tracey and to Jack.

2 MR. ORLEANS: I'm sorry, Your Honor, I'm a
3 little bit disorganized. I thought we had this on our
4 list. Here it is. How should we handle this, Your Honor?
5 There's a document in the original, in the exhibit
6 notebook that I would like to show the witness.

7 THE COURT: Well, the simplest way to do it is
8 just take the notebook of originals.

9 MR. ORLEANS: You don't mind my giving her the
10 entire notebook, even though not every exhibit has been
11 admitted into evidence?

12 BY MR. ORLEANS:

13 Q. All right. This is one through 20.

14 (Hands witness.)

15 Coach Sparks, would you just take a look at Exhibit
16 20?

17 A. Okay.

18 Q. Is that a copy of your request to Mr. McDonald for
19 EADA reports?

20 A. Yes, it is.

21 Q. And did you receive any response to this request
22 prior to the filing of this lawsuit?

23 A. Mr. McDonald emailed me that he would pass it up the
24 chain.

25 Q. And other than that email that he would pass it up

1 the chain, did you receive any further response?

2 A. No.

3 Q. Did you receive the EADA reports that you requested
4 prior to the filing of the lawsuit?

5 A. No.

6 MR. ORLEANS: Your Honor, I'll ask that that be
7 admitted.

8 MS. GAMBARDELLA: It's not -- I'm not sure how
9 it's really relevant but I'll waive any objection.

10 THE COURT: Okay. Exhibit 20 is full.

11 (Whereupon Plaintiff's Exhibit 20 was marked
12 full.)

13 BY MR. ORLEANS:

14 Q. Now, Coach Sparks, could you take a look at the
15 exhibit that is behind Tab 8? Or I should say that I
16 think we may have confused our numbering between eight,
17 nine and ten, but I'm going to try and separate that out
18 with this witness and have her properly identify those
19 three documents.

20 You have that in front of you?

21 A. Yes.

22 Q. Okay. Do you recognize that?

23 A. Yes.

24 Q. Is that something that you created?

25 A. Yes.

1 Q. All right. Could you explain what it is, please?

2 And there are two pages -- let me start with the top page
3 and you can explain the next page.

4 A. There was documents that were supplied -- I don't
5 know the right word -- from the University over this, and
6 I was looking for things to do and Dr. Lopiano requested
7 that I compile them in a form, so I took the information
8 and put it into a chart.

9 Q. Okay. So you -- this is a summary of data that you
10 obtained from other documents?

11 A. Correct.

12 Q. Okay. Could you just explain what the columns are on
13 the first page of Exhibit 8 for identification?

14 A. Yes. The Q. U. current is the current roster
15 management targets.

16 Q. Now, when you say "current," is that --

17 A. 2008-9.

18 Q. 2008-9?

19 A. Yes. Proposed is from the letter from Janet Judge,
20 there was a chart there.

21 Q. Okay. You understood that to be --

22 A. '09-10.

23 Q. -- roster management targets for Q. U. '09-10?

24 A. Yes.

25 Q. Okay?

1 A. The NEC average came from a chart of NEC squad sizes.

2 Q. Stop there for a second. Would you look at the
3 document that's behind Tab 9; that's been marked as
4 Exhibit 9 for identification?

5 A. Yes.

6 Q. Is that the document you're referring to that has NEC
7 squad sizes?

8 A. Yes.

9 Q. Okay.

10 THE COURT: Exhibit 9 is full and Exhibit 10 is
11 full.

12 MR. ORLEANS: And exhibit 10 is full. Thank
13 you, Your Honor.

14 (Whereupon Plaintiff's Exhibits 9 and 10 were
15 marked full.)

16 BY MR. ORLEANS:

17 Q. Okay?

18 A. Yes.

19 Q. So the next column is NCAA average?

20 A. Correct.

21 Q. And what's the source of that information?

22 A. It's a chart the University supplied.

23 Q. Okay, and is that the chart that is marked as Exhibit
24 10?

25 A. Yes.

1 Q. Two page chart, there's a page for men and a page for
2 women, I think?

3 A. Yes.

4 Q. All right. Then continuing on through the chart that
5 you created, the summary, the column that says Q. U.
6 current versus NEC, what's that?

7 A. Just the difference between the Q. U. current column
8 and the NEC average column.

9 Q. Okay. And Q. U. proposed then is the difference
10 between the original --

11 A. Q. U. proposed column and the NEC average column.

12 Q. Okay. And what about the last two columns?

13 A. They are the same comparisons but using NCAA average
14 column instead.

15 Q. Okay. Now, if we can go to the next page of Exhibit
16 8 for identification?

17 A. Yes.

18 Q. How is this chart different from the first page of
19 Exhibit 8?

20 A. The difference is that the 2005, 2006 gender equity
21 report that the NCAA has has a chart with roster sizes for
22 NCAA schools, Division I, that don't have football. So
23 that was the source document.

24 Q. So you used that information? Where did you obtain
25 that information?

1 A. (Pause)

2 Q. Was there a document that you looked at?

3 A. There was. It was -- it's a big fat document.

4 Q. Hold on.

5 MR. ORLEANS: May I have just a moment, Your
6 Honor?

7 (Pause)

8 BY MR. ORLEANS:

9 Q. I'm just showing you this document. I'm sorry, I
10 don't have a copy but I'll bring it to you in a moment.

11 Is this the document that contains the NCAA
12 nonfootball schools information that you just referred to?

13 A. I looked at it electronically so I don't think these
14 are the charts that I saw, no, because I had 2005, 2006
15 and that's 2006, 2007.

16 MR. ORLEANS: Your Honor, I'd like to offer into
17 evidence the first page of Exhibit 8 as a summary.
18 Obviously the materials upon which it is based are in
19 evidence by stipulation. Since I don't have the
20 underlying data for the second page, I won't offer it at
21 this time.

22 MS. GAMBARDELLA: Your Honor, here's the
23 objection. This chart was created for use by the expert.
24 There is information on here which was never before
25 disclosed to us. And I get the first two columns, that's

1 easy enough. Q. U. current proposed for next year. In
2 terms of everything else, it was never disclosed to us the
3 specific documents from where that information was
4 obtained. It was used by the expert extensively in
5 deposition, and part of the issues, you know, we've had in
6 this case is the specificity and sufficiency of the
7 disclosures.

8 It also contains information on the bottom with
9 respect to a number of other teams that no foundation has
10 been laid for this witness to have put that information on
11 there.

12 So, we haven't had an opportunity to see about
13 the accuracy of these numbers, what it reflects, why they
14 are relevant. And that's why we had that disclosure
15 order.

16 MR. ORLEANS: Your Honor --

17 MS. GAMBARDELLA: I would like the opportunity
18 to check the accuracy of the chart before it comes in.
19 I'd like an opportunity to check the accuracy of the chart
20 now that that's been disclosed before it's moved into
21 evidence.

22 MR. ORLEANS: Your Honor, I'm not sure that I
23 fully understand counsel's objection that something hasn't
24 been disclosed. The documents on which this chart is
25 based on, the chart is a summary, are Quinnipiac

1 University documents that are in evidence and that have
2 been marked as Plaintiff's Exhibits 9 and 10.

3 She referred also for the Q. U. proposed column
4 to a letter from Janet Judge which I believe has been
5 stipulated into evidence as Plaintiff's Exhibit 3. So all
6 of the foundation documents were well known, are in fact
7 in evidence, and the chart itself was also disclosed. It
8 was marked as an exhibit at the Lopiano deposition.

9 MS. GAMBARDELLA: To which we objected. We
10 objected at the Lopiano deposition.

11 MR. ORLEANS: I understand there was an
12 objection but --

13 THE COURT: All right. What's the information
14 that you believe is not substantiated by another exhibit
15 in the record?

16 MS. GAMBARDELLA: Here's the problem, Your
17 Honor. You may recall that we had a conference call with
18 the court --

19 THE COURT: No, no, that's not my question. My
20 question is you said, you suggested there's information at
21 the bottom about teams --

22 MS. GAMBARDELLA: Oh, yes. Ice hockey, Q. U.
23 does not run a full team. Members of the NEC seem to be a
24 mixed bag. And there's stuff under that that has nothing
25 to do with volleyball over which this witness was a coach.

1 So that information is on there gratuitously. I'm not
2 sure the foundation for this witness to have provided that
3 information.

4 THE COURT: Okay. So, except for the notes, if
5 you will, on the bottom --

6 MS. GAMBARDELLA: We'd like to check the
7 numbers.

8 THE COURT: Well, of course. You'll have that
9 chance and it can be corrected or stricken, if need be,
10 but if page one is as it appears to be, simply a
11 compilation of information from other admitted exhibits,
12 it would seem to be admissible.

13 MS. GAMBARDELLA: Yes, but in my own defense,
14 Judge, which is why I started on the path that I started,
15 you may recall we had an issue with the expert witness
16 disclosure where I got disclosures such as NCAA manual,
17 Northeast Conference website, and one of the problems we
18 had with it was, wait a minute, we're talking a lot of
19 documents we produced; from what specific document, what
20 specific section was this derived? This is the first time
21 we're hearing specifics about that, so we would like to
22 check the accuracy of the numbers and that's why I went
23 down that path.

24 THE COURT: Of course, so I'm going to admit it
25 subject to --

1 MS. GAMBARDELLA: Thank you.

2 THE COURT: -- any correction that you come up
3 with. So Exhibit -- the first page of Exhibit 8, other
4 than the notes at the bottom, is admitted as a full
5 exhibit subject to any correction upon comparison with
6 the --

7 MS. GAMBARDELLA: Right, so notes on the bottom
8 are not part of the record.

9 THE COURT: Unless I --

10 MR. ORLEANS: Your Honor, if I might lay a
11 foundation for the notes at the bottom, have the witness
12 explain what they are and how she knows the information
13 that's contained in them, the court can rule on the
14 admissibility of the notes on the bottom. Would that be
15 all right?

16 THE COURT: Fine. At this point I'm admitting
17 what I just said, and if you want to seek to lay the
18 foundation for the notes, feel free.

19 (Whereupon Plaintiff's Exhibit 8 was marked
20 full.)

21 BY MR. ORLEANS:

22 Q. Let me see what I can do about that.

23 Coach Sparks, see the notes at the bottom of Exhibit
24 8?

25 A. Yes.

1 Q. Talking about the first page now. When you say "Ice
2 hockey is not a member of the NEC, this comparison is not
3 relevant, I do not have the EADA roster numbers," what do
4 you mean?

5 A. Quinnipiac's hockey teams do not participate in the
6 Northeast Conference. They participate in the ECAC. I'm
7 not sure what it's called. It's the East Coast Athletic
8 Conference maybe. So that there are some Northeast
9 Conference schools that run ice hockey. It's just not the
10 same conference. Like the ice hockey doesn't belong to
11 that conference.

12 Q. So, your point here is just --

13 A. Just to explain that since the chart was comparing
14 the conference averages with Quinnipiac, if Quinnipiac's
15 not in the conference for that sport, it didn't seem
16 relevant.

17 Q. So the comparison --

18 MS. GAMBARDILLA: Sorry, I didn't mean to
19 interrupt.

20 BY MR. ORLEANS:

21 Q. So, the comparison between Quinnipiac's squad size
22 and the conference average squad size, the Northeast
23 Conference average squad size, in your view was not a
24 relevant comparison because Quinnipiac's not in the
25 conference?

1 A. Correct.

2 Q. Okay.

3 MS. GAMBARDELLA: Your Honor, so I'm going to
4 ask it all be stricken. That's a legal conclusion that
5 this witness is not entitled to make.

6 MR. ORLEANS: She's just offering --

7 MS. GAMBARDELLA: It sounds to me like she's
8 suggesting that there should be some negative impression
9 of roster numbers because of this ice hockey thing. I'm
10 not sure, if it's not relevant, I'm not sure why it's even
11 on here. I'm not sure why it's mentioned and I'm not sure
12 why this witness is talking about ice hockey.

13 MR. ORLEANS: Your Honor, it's simply
14 explanatory. I'm trying to lay a foundation for the notes
15 and I'm just trying to explain what the note means and why
16 it's there.

17 THE COURT: Right. I don't hear a formal
18 objection.

19 MS. GAMBARDELLA: Foundation. I don't believe
20 there's been a foundation for that particular note to be
21 let in on this particular exhibit.

22 THE COURT: I'll allow it. I mean it's a matter
23 of public record whether ice hockey is in the Northeast
24 Conference or the ECAC.

25 MS. GAMBARDELLA: No, I understand. It's the

1 statement that the comparison is not relevant. I'm still
2 not sure --

3 THE COURT: What I took that to mean -- and if
4 this isn't what it means, then counsel can let me know.

5 MS. GAMBARDELLA: Your guess is as good as mine.

6 THE COURT: There's an NEC, Northeast Conference
7 average column, and --

8 MS. GAMBARDELLA: Right.

9 THE COURT: -- because ice hockey doesn't
10 compete in the Northeast Conference, the number that's
11 listed there technically is not a Northeast Conference
12 average. It's an average for ECAC.

13 MR. ORLEANS: I think the witness's testimony is
14 she didn't have the ECAC numbers, so the number that's
15 there is the Northeast Conference number.

16 THE COURT: Notwithstanding the fact that --

17 MR. ORLEANS: Notwithstanding the fact that
18 Quinnipiac doesn't play in that conference. And she's
19 just pointing out that in her chart, for whatever worth
20 that has to a person who's reviewing the chart.

21 THE COURT: I don't see a great problem with
22 that.

23 MR. ORLEANS: All right.

24 BY MR. ORLEANS:

25 Q. Let's take the second one. This is a footnote that

1 refers back up to indoor track.

2 A. Correct.

3 Q. You see that, the pound sign?

4 A. Correct.

5 Q. And you say here Quinnipiac University does not run a
6 full team; what do you mean by that?

7 A. Quinnipiac doesn't have sprinters or field events
8 with their track team.

9 Q. Okay. With the indoor track team?

10 A. Correct.

11 Q. And when you say members of the NEC seem to be a
12 mixed background of full and partial teams, what do you
13 mean by that?

14 A. Just that's what it seemed to be to me, that some
15 were more full and some of them were not.

16 Q. And when you say it seemed to be that way to you,
17 based on what?

18 A. The spread of the numbers and the size of the
19 rosters.

20 Q. So, is this again an explanatory note for someone
21 who's reviewing the data to understand what's there?

22 A. Yes.

23 Q. All right. And the next note, the -- I don't even
24 know what to call that sign.

25 A. The ampersand sign.

1 Q. The ampersand sign?

2 A. Yes.

3 Q. This refers back to the outdoor track?

4 A. Correct.

5 Q. And when you say that Quinnipiac mens outdoor track
6 doesn't run a full team, what's the basis for that
7 statement?

8 A. It's the same thing, that it's not sprinters and
9 field events.

10 Q. Okay. And then, finally, the ampersand sign, that's
11 a reference to mens lacrosse?

12 A. Yes.

13 Q. And is that line then similar to the first note that
14 we discussed, your pointing out that Quinnipiac is not
15 competing in the Northeast Conference in mens lacrosse?

16 A. At this time, correct.

17 Q. At this time. Okay.

18 MS. GAMBARDILLA: Your Honor, I'm going to move
19 to strike all those notes. Just, for example, Quinnipiac
20 has sprinters in indoor/outdoor track. She's not the
21 coach.

22 THE COURT: All right. There's nothing to
23 strike because they were not admitted. He's now going to
24 offer them.

25 MR. ORLEANS: I was going to move their

1 admission.

2 THE COURT: Now you have a objection to the
3 offer. Okay. What's the response to the objection?

4 MR. ORLEANS: I'm sorry, Your Honor?

5 THE COURT: What's the response to the
6 objection?

7 MR. ORLEANS: The response to the objection,
8 Your Honor, the chart is a summary and the notes explain
9 entries in the chart so that the reader of the chart can
10 better understand what information is contained. To the
11 extent that the notes offer the witness's conclusions, she
12 can be crossed examined on them and the defense certainly
13 can offer other information if they think the information
14 is inaccurate.

15 THE COURT: What is the, what's the significance
16 of the NEC average column on this chart?

17 MR. ORLEANS: We are attempting to show that
18 the, by comparing the Quinnipiac proposed roster sized
19 targets with existing roster sizes in the NEC, where
20 Quinnipiac mostly competes, and elsewhere, that
21 Quinnipiac's roster size targets are either not realistic
22 or are subject to or intended to be manipulated, so that
23 they, the roster size targets do not present a true
24 picture, an accurate picture of womens participation
25 opportunities. And that's our, that's our theory, and the

1 information here is intended to support that argument.

2 I was about to ask the witness just to give an
3 example by taking a line going across and explaining what
4 the entries mean, but I think the court probably
5 understands what the entries, what the entries mean.

6 MS. GAMBARDELLA: Your Honor, he's entitled to
7 do that; I just don't understand why it's this witness.
8 This is not -- he has not laid a foundation for this
9 witness, so now what I think I hear him saying is you
10 should conclude that because ice hockey is not a member of
11 the NEC, that the fact that the NEC -- I don't know where
12 the NEC average comes from but the fact that those numbers
13 are identical is irrelevant, and so it shouldn't be
14 probative at all. I'm going to go with saying, look, you
15 know, there are teams that are pretty close. We've
16 already pointed out to the court that some of the
17 information she just gave you about track is inaccurate.
18 He can talk to the athletic director all day tomorrow if
19 he would like about these numbers and where they come
20 from. It's not this witness.

21 THE COURT: Okay, hears the problem. The first
22 page of eight, other than the notes, is in evidence.

23 MS. GAMBARDELLA: No, I understand that.

24 THE COURT: And so all we're doing is deciding
25 whether the explanatory notes, which are presumably

1 intended to make the chart more accurate, should be
2 admitted or not. It seems to me that it makes sense to
3 admit those notes and then if you want to challenge it
4 with other evidence, demonstrate somehow that it's wrong,
5 get a stipulation of some sort, you should feel free. But
6 I'm going to go ahead and admit the notes and give them
7 whatever weight it turns out they deserve at the end of
8 the case.

9 (Whereupon Plaintiff's Exhibit 8, as described
10 above, was marked full.)

11 MR. ORLEANS: If I could just have a moment,
12 Your Honor?

13 (Pause)

14 BY MR. ORLEANS:

15 Q. Just a couple more questions, Ms. Sparks.

16 Do you have to take any NCAA certification classes as
17 a coach to be a Division I coach?

18 A. I have to pass a test, yes.

19 Q. And what's involved in that?

20 A. It's a test so that -- it's a lot of stuff. It's to
21 certify you were recruiting off campus, so it's over
22 recruiting rules, some academic eligibility. There's a
23 great big book that you have to know certain chapters on.

24 Q. Does volleyball as a sport have a national governing
25 body?

1 A. Yes.

2 Q. What's the national governing body?

3 A. USA Volleyball.

4 Q. Okay. And is volleyball recognized as a sport by the
5 NCAA?

6 A. Yes.

7 Q. The NCAA has a championship volleyball tournament for
8 women?

9 A. Yes.

10 Q. Were you interested in getting into that
11 tournament?

12 A. Everybody's interested.

13 MR. ORLEANS: I have nothing further, Your
14 Honor, at this time.

15 THE COURT: Why don't we take our afternoon
16 break before cross. Let's take about 15 minutes and come
17 back at 3:25. We'll stand in recess.

18 (Whereupon a recess was taken from 3:10 o'clock,
19 p. m. to 3:25 o'clock, p. m.)

20 CROSS EXAMINATION

21 BY MS. GAMBARDELLA:

22 Q. Good afternoon, Ms. Sparks. Do you prefer Mrs. or
23 Ms.?

24 A. Doesn't matter.

25 Q. Okay. Doesn't matter, all right. I'd like to start

1 with Plaintiff Exhibit 8.

2 Ms. Sparks, when you compiled the NEC or NCAA
3 averages or when you extracted the averages, did you do
4 any research as to whether or not the schools whose
5 averages are reflected in that chart comply with prong one
6 of Title IX?

7 A. No.

8 Q. Did you do any investigation to discern whether or
9 not any of the schools whose averages are reflected in
10 those numbers implement the use of roster management to
11 attempt to achieve Title IX compliance?

12 A. No.

13 Q. Would you agree with me that averages include numbers
14 that encompass broad ends of a spectrum? In other words,
15 there could be a school with a team of -- and I'm not even
16 going to pick a sport -- 30 for whatever reason; 30 is
17 their number. And then a team in another part of the
18 country, same athletic program, with ten, correct?

19 A. Yes.

20 Q. And that's how they get the average, correct? That's
21 how you got the averages.

22 A. I'm not understanding what --

23 Q. What is your understanding of the NCAA average?

24 A. That I merely took the information Quinnipiac
25 supplied and put it on the chart.

1 Q. So you have no foundation for understanding how the
2 average was arrived at, is that correct?

3 A. I merely took that chart.

4 Q. Okay. So you're not regurgitating the numbers from a
5 chart?

6 A. From the chart Quinnipiac supplied, yes.

7 Q. I understand that, but the chart Quinnipiac supplied
8 reflects information provided in response to requests by
9 the plaintiff, correct?

10 A. I don't know.

11 Q. Okay. Now, did you review roster numbers -- strike
12 that.

13 Did you determine or did you do any research as to
14 the percentage of schools across this country who are in
15 compliance with prong one of Title IX?

16 A. No.

17 Q. Did you do any research into the number of schools
18 across the country who use roster management as a tool to
19 try to achieve Title IX compliance?

20 A. No.

21 Q. Have you ever coached an indoor track team?

22 A. No.

23 Q. Have you ever coached an outdoor track team?

24 A. No.

25 Q. Have you ever coached an ice hockey team?

1 A. No.

2 Q. Did you testify on direct that the indoor -- let me
3 see if I have the note right. It's not in the note but
4 you said one of the track teams at Quinnipiac does not
5 have sprinting events; did I hear that correctly?

6 A. Correct.

7 Q. What do you mean by that?

8 A. I've had conversations with the cross country coach
9 that he's requested sprinters and field events to make a
10 full team.

11 Q. And field events, he's requested sprinters?

12 A. And field events.

13 Q. And field events. And what led you to -- I'm going
14 to strike that for the moment.

15 Do you know how NEC averages are arrived at?

16 A. No.

17 Q. Do you know who is surveyed by the NEC to come up
18 with these averages?

19 A. No.

20 Q. Are NCAA averages binding on any particular school in
21 this court's consideration of Title IX compliance?

22 A. I have no idea what you mean by that.

23 Q. Well, you are Title IX knowledgeable, you testified
24 on direct, correct?

25 A. I know some about it, yes.

1 Q. Are NCAA guidelines binding on this court, in your
2 knowledge?

3 A. I still don't understand. I still am not
4 understanding what you mean.

5 Q. Well, are NCAA averages binding on this court in
6 determining whether or not Quinnipiac's roster sizes
7 proposed for next year would be realistic or not?

8 A. I'm sorry. I'm being dense because I'm just not --

9 Q. What's the importance of NCAA averages?

10 A. It tells the average side of a squad.

11 Q. Any other significance?

12 A. So that if you want to know what the average size of
13 a squad is, you can look at that number.

14 Q. Would you say that men's rowing could be considered a
15 sport for Title IX compliance purposes?

16 A. I'm not -- if it's -- I'm not sure if it's on the
17 list that's been approved by NCAA or not.

18 Q. That's my next question. Is it an NCAA listed sport?

19 A. I would need the list in front of me. I don't know
20 that offhand. I know that womens rowing was emerging at
21 one time.

22 Q. Emerging but not an NCAA recognized sport, correct?

23 A. Once you are on an emerging sport list, you have to
24 start following NCAA rules. So, once you get on that
25 list, you have to, you have to comply with all the NCAA

1 rules.

2 Q. Is it your understanding that only NCAA sponsored
3 sports can count as sports for Title IX compliance
4 purposes?

5 A. I'm not positive on that.

6 Q. I think that about does it for Exhibit 8.

7 Now, let's go back to your testimony about your
8 contract with the school and the discussions leading up to
9 your signing of the contract with Quinnipiac to coach
10 woman's volleyball, okay?

11 First, as a preliminary matter, isn't it true,
12 Ms. Sparks, that every Division I coach needs to be NCAA
13 certified?

14 A. No.

15 Q. Okay. In order to do recruiting off campus, don't
16 you have to be NCAA certified?

17 A. Correct.

18 Q. So, let's talk about your discussions that you went
19 through with Mr. McDonald and Ms. Flynn about the
20 commitment to rebuilding the volleyball program. Do you
21 remember your direct testimony on that?

22 A. Yes.

23 Q. Thank you. After you had those discussions, did you
24 execute a contract with the University? A written
25 contract?

1 A. A signed contract, is that what you're asking?

2 Q. Yes. Did you sign a contract?

3 A. Yes.

4 Q. What was the duration, the term of the contract
5 period?

6 A. One year.

7 Q. Was there any term in the contract that guaranteed
8 you it would be renewed?

9 A. I only had Jack's word on that.

10 Q. Okay. Let's try that -- let me ask it again. Was --
11 do you have a term in that written contract that
12 guarantees you it would be renewed?

13 A. I testified to that earlier. No.

14 Q. Okay. And the discussions you had with Mr. McDonald
15 were prior to your finally executing the contract, the
16 ones that you testified to earlier, correct?

17 A. Do you mean --

18 THE COURT: Which came first, the discussions or
19 the signing of the contract?

20 THE WITNESS: Those kinds of discussions
21 happened before and after I signed the contract.

22 BY MS. GAMBARDELLA:

23 Q. Before you signed the contract, you understood there
24 was a commitment to volleyball, correct?

25 A. Correct.

1 Q. You signed a contract that gave you a one year term
2 without any guarantee in the written document for renewal
3 of the contract beyond the one year, would that be
4 correct?

5 A. Yes.

6 Q. And then you moved your family, correct?

7 A. After signing a second one, yes.

8 Q. What do you mean a second one?

9 A. I had a second contract.

10 Q. Understood. Did the second contract provide for a
11 one year term?

12 A. Yes.

13 Q. Was there any guarantee in the second contract that
14 it would be renewed beyond that one year, in the contract?

15 A. In the contract, no.

16 Q. Now, you said that you took a \$15,000 pay cut to come
17 to Quinnipiac and you moved your entire family from -- was
18 it Troy, New York?

19 A. Correct.

20 Q. And where were you at the time just before
21 Quinnipiac?

22 A. University of Albany.

23 Q. Albany?

24 A. Uh huh. (Affirmative.)

25 Q. Did you have a written contract with the University

1 of Albany?

2 A. I don't know that it's a contract. I had an offer
3 for the, a written offer on the job but I don't know that
4 they do contracts.

5 Q. Why did you take a pay cut to go to Quinnipiac?

6 A. Because the opportunity to coach a Division I -- it
7 would have been really difficult to jump into that and
8 just to jump into Division I. I would have probably had
9 to start with a Division III and work my way up. It was a
10 great opportunity to do my passion full-time. We knew
11 they were offering tuition benefits with it, which was
12 huge. I was hoping, and I executed this Spring, teaching
13 on the side, so I had an adjunct position. And then if I
14 really, really worked hard with summer camps, I knew I
15 could make up the difference.

16 Q. Now, you testified on direct that you were asked
17 about making the program better, the volleyball program at
18 Quinnipiac. Do you remember that? Was there a discussion
19 about how you could make the program better?

20 A. With whom?

21 Q. With Mr. McDonald, with Ms. Flynn?

22 A. Yes.

23 Q. Okay. Better than what?

24 A. What it had been in the past.

25 Q. What was your understanding of what it had been in

1 the past?

2 A. A little bit more than a recreational program for a
3 while.

4 Q. Okay. And so you understood that your opportunity
5 was to try and build that program up beyond that level,
6 correct?

7 A. Yes.

8 Q. And is it your testimony today that you really had an
9 understanding that no matter what might happen, that
10 volleyball would never be cut?

11 A. Yes.

12 Q. Okay. But you have nothing in writing in that
13 regard, correct?

14 A. No.

15 Q. How did your team do last year?

16 A. We were vastly improved from the year before.

17 Q. Did how did your team do competitively last year?

18 A. We were competitive with everyone we played against.

19 Q. Okay. Is there some some kind of status or -- I
20 might not be using the right terminology, but where did
21 you rate in terms of the competitions in which you played?

22 A. We -- there are many stats that you can look at to
23 rate your competitiveness. You are in the top three in
24 every statistical category since Quinnipiac has been
25 keeping stats for their volleyball program. So we were

1 top seated agents for aim and the top three tactical
2 percentage, hitting percentage, games, all of those. Our
3 final record was not what we would have wanted. We lost
4 27 games by two or three points, we started five freshman.
5 I was very happy.

6 Q. You lost 27 games out of how many?

7 A. Our final record was five and something. The games
8 are the individual -- they should have been called sets
9 because they change from games to sets.

10 Q. You lost 27 games out of how many?

11 A. Sets?

12 Q. Well, what's the difference between a set and a game?

13 A. There can be up to five --

14 THE COURT: Just a second, I know there is a
15 miscommunication going on.

16 MS. GAMBARDELLA: Yes.

17 THE COURT: The point is there were 27 sets lost
18 by two or three points.

19 MS. GAMBARDELLA: Two or three points.

20 THE COURT: This is not a win/loss reference.

21 This is the number of sets within a particular --

22 THE WITNESS: Match.

23 THE COURT: -- match. Right.

24 BY MS. GAMBARDELLA:

25 Q. Okay. How many matches did you lose last year?

1 A. We were five and -- I'm not sure -- I actually do not
2 know how many we lost.

3 Q. Did you hear one of the plaintiffs testify that we
4 didn't do very well?

5 A. Our record was not as high as we would have wanted,
6 no.

7 Q. Now, Ms. Sparks, were you aware that other coaches'
8 contracts were not going to be renewed for next year as
9 well?

10 A. When? Are you asking like right now?

11 Q. Are you aware of that right now?

12 A. Yes, one.

13 Q. And who's the coach whose contract is not being
14 renewed?

15 A. The golf coach.

16 Q. Men's golf?

17 A. Correct.

18 Q. Correct? Now, you testified on direct that you are
19 not allowed to guarantee scholarships beyond one year in
20 writing, correct?

21 A. Correct.

22 Q. All right. Do you know why that is?

23 A. NCAA rules.

24 Q. Do you know why the NCAA has that rule?

25 A. I wasn't part of making those rules, no.

1 Q. So that's your way of telling me, no, you don't,
2 correct?

3 A. Correct.

4 Q. All right. Then you said there was a presumption
5 there will be renewed. What do you base the presumption
6 on?

7 A. Jack McDonald doesn't like to take scholarships away
8 from athletes once they've had them.

9 Q. I see. Summer volleyball camps are not for college
10 students?

11 A. No.

12 Q. Okay. Now, let's talk about your conversation with
13 Tracey Flynn that you testified to earlier. What's your
14 understanding of Tracey Flynn's responsibilities at the
15 University?

16 A. She's in charge of compliance. She's senior womens
17 administrator.

18 Q. What do you mean by in charge of compliance?

19 A. She ensures that we follow NCAA rules.

20 Q. You were friendly -- you are friendly with Tracey
21 Flynn, or you were?

22 A. I like Tracey very much.

23 Q. You were friendly with her, correct?

24 A. Correct.

25 Q. Did you guys have lunch together?

1 A. No.

2 Q. You talked every once in a while?

3 A. Yes.

4 Q. Do you think it's all that unreasonable for the
5 person in charge of Title IX compliance to be concerned
6 with how this lawsuit might turn out?

7 A. No.

8 Q. Now, you said you talked to Tracey Flynn about roster
9 management, correct?

10 A. Briefly, yes.

11 Q. Well, you said on direct that Tracey Flynn told you
12 that there was a practice of adding deletes and it was
13 bullshit, I think were your words?

14 A. Correct.

15 Q. Correct. What year was she talking about?

16 A. She was encouraging me to pursue that issue and she
17 did not reference a year. She just said there was a
18 practice.

19 Q. Okay. And so she didn't reference a year in
20 particular?

21 A. No. She talked about this on March 4th or 5th.

22 Q. When you came to Quinnipiac for academic year 2007,
23 were you told about the implementation of roster
24 management at Quinnipiac?

25 A. I learned about it; I wasn't told about it.

1 Q. Okay. How did you learn about it?

2 A. From the women's lacrosse coach.

3 Q. Did you ask anything in the Athletic Department about
4 what that meant?

5 A. I had a conversation I think with Jack Kendracy (ph)
6 about what they wanted me to do.

7 Q. What did they want you to do?

8 A. Get 15 players on my team.

9 Q. Did they tell you why?

10 A. They said that was the number that was our target.

11 Q. Did he tell you why roster management was being
12 implemented at Quinnipiac University?

13 A. No.

14 Q. To this day do you know why roster management was
15 implemented at Quinnipiac University?

16 A. Yes.

17 Q. Why?

18 A. Because their gender equity report from 2006 said the
19 numbers were way off and they needed to increase
20 opportunities for women.

21 Q. And they are trying to do that with what they are --
22 what they articulated was they are trying to do that with
23 roster management, isn't that correct?

24 A. No one had said that to me.
25

1 Q. Do you know if that's not the case, Ms. Sparks?

2 A. In terms --

3 Q. Ms. Sparks, haven't you heard testimony in this
4 lawsuit -- you were at all the depositions, right?

5 A. Yes.

6 Q. Okay. Have you heard the testimony of Mr. McDonald
7 that the implementation of roster management for academic
8 year 2007 was specifically for the purpose of improving
9 Quinnipiac's numbers?

10 A. Yes.

11 Q. You heard that, right?

12 A. Yes.

13 Q. Do you have any facts that you can offer as evidence
14 today to indicate that is not true?

15 A. That they were not --

16 Q. That that's not the real reason?

17 A. I'm just not understanding exactly what you're asking
18 about evidence.

19 Q. What facts -- are you contending that that's not
20 true?

21 A. That what's not true?

22 Q. That Quinnipiac introduced roster management in an
23 effort specifically to improve its numbers?

24 A. That's what Jack said.

25 Q. Do you know whether or not that's -- he was being

1 truthful?

2 A. No.

3 Q. Did you -- were you present for Tracey Flynn's
4 deposition?

5 A. Yes.

6 Q. Didn't she say the same thing?

7 A. I don't recall.

8 Q. That's fine. Acceptable.

9 Do you think Tracey Flynn is competent at her job?

10 A. I have no reason to believe otherwise.

11 Q. Do you think that if Tracey Flynn saw a practice that
12 would be contrary to Title IX compliance or the spirit of
13 Title IX compliance, do you think she's the kind of person
14 that would try to take care of it?

15 A. Tracey told me she was worried about losing her job
16 and retaliation, so --

17 Q. When did she say retaliation? That's not a word you
18 used on direct. When did she say that?

19 A. We talked about -- she talked about losing her job,
20 doing this could lose her job.

21 Q. I see. And I'm going ask you again, Ms. Sparks,
22 given her position in the University, isn't it reasonable,
23 given that we are human beings, that she might fear loss
24 of her job depending on how this lawsuit turns out?

25 A. I don't know if that's reasonable or not.

1 Q. And you were angry when you found out that the
2 volleyball team was going to be eliminated, correct?

3 A. Of course.

4 Q. Did you tell other coaches how angry you were?

5 A. I don't know that I told everyone specifically but I
6 think -- I mean I talked to so many people right
7 afterwards, I probably said I was angry.

8 Q. When you say --

9 A. Can't imagine I wouldn't have.

10 Q. I'm sorry, I didn't mean to interrupt you. I'm
11 sorry, Judge, I didn't mean to interrupt.

12 THE COURT: She said "I can't imagine I wouldn't
13 have."

14 BY MS. GAMBARDELLA:

15 Q. When you say "so many people," you mean at school?

16 A. Well, I talked to people outside of school.

17 Q. Okay. When you say you talked to so many people,
18 does that include people at school?

19 A. I just want to make sure of the question. Let me get
20 through who I talked to in the days --

21 (Pause)

22 I'm not sure that I said that I -- well, I think --
23 I'm trying to think to be accurate.

24 I spoke to three, maybe four coaches and
25 administrators, and that's about all I talked to right

1 afterward.

2 Q. So you talked to people at school about your anger;
3 do I have that correctly?

4 A. I think I might have expressed being hurt and angry
5 and upset, yes.

6 Q. Yes. Did you ever go into the Athletic Director's
7 offices and say loudly, "It's not over."

8 A. No, not like that. I never would have said that.

9 Q. Did you say --

10 A. No.

11 Q. -- it's not over?

12 A. No.

13 MS. GAMBARDELLA: Excuse me, Judge.

14 (Pause)

15 MS. GAMBARDELLA: Your Honor, I would like to
16 show the witness a document before I move its admission.
17 It's premarked as Plaintiff's Exhibit L.

18 BY MS. GAMBARDELLA:

19 Q. (Hands witness.)

20 Mrs. Sparks, is that an email that you authored and
21 sent to a student represented by Defendant's Exhibit L?

22 A. In response to her email, yes.

23 Q. That is your email, correct?

24 A. Correct.

25 MS. GAMBARDELLA: Your Honor, we move its

1 admission.

2 MR. ORLEANS: Your Honor, objection. Relevance.

3 MS. GAMBARDELLA: Your Honor, this witness
4 suggested that she was told not to come to play with her
5 team in retaliation. She said what was told to her, and
6 was generic at best, this email goes directly to some of
7 the things that were going on that contributed to what the
8 coaches testified to.

9 MR. ORLEANS: Your Honor, it's a private email
10 between the coach and a student, in which the student
11 expresses some concern about the coach and the coach
12 responds. I'm having trouble seeing the relevance.

13 MS. GAMBARDELLA: Your Honor, this email is to a
14 member of the cheer team at Quinnipiac.

15 THE COURT: Well, it doesn't strike me as
16 especially relevant but I don't see any great reason to
17 keep it out either, so I'm going to admit Exhibit L as a
18 full exhibit.

19 (Whereupon Defendant's Exhibit L was marked
20 full.)

21 BY MS. GAMBARDELLA:

22 Q. Ms. Sparks, looking at what's what's been admitted as
23 Defendant's Exhibit L, there is a -- Judge, does everybody
24 feel comfortable not mentioning the student's name on the
25 record?

1 MR. ORLEANS: We have no objection to that.

2 We're happy not to mention the student's name --

3 MS. GAMBARDELLA: Okay.

4 MR. ORLEANS: -- in the record.

5 BY MS. GAMBARDELLA:

6 Q. There's an email from a student to you, March 5th,
7 "Hey, Coach, wanted to say how sorry I am about what
8 happened to your program. Just wanted to let you know
9 that you are in my thoughts."

10 Did you receive this email on or about March 5th of
11 2009?

12 A. Early, early morning, yes.

13 Q. Was this young lady a student in your class?

14 A. Yes.

15 Q. What's the class that you teach? What's the name of
16 the class?

17 A. Sports Event Management.

18 Q. Did you talk about this litigation in your class?

19 A. No.

20 Q. And so she tells you that she's sorry about what
21 happened to your program and your response is, "Thanks.
22 We won't go without a fight. They cut volleyball and
23 elevated cheerleading which flies in the face of the
24 spirit of Title IX. My mom could be a cheerleader but not
25 an athlete. It's been a long day and I know I'll have

1 lots of stories for all of you in class."

2 Did you write that?

3 A. Yes.

4 Q. Is this young lady a member of the cheer team?

5 A. Yes.

6 Q. You think that's appropriate to write to a student?

7 A. Yeah, I don't think there's anything wrong with that.

8 Q. Do you have any idea how she felt when she got that?

9 A. I was responding to her. I mean maybe it wasn't
10 clear what I meant by the, my mom and a cheerleader and
11 I'm happy to explain it, but I don't think I said anything
12 mean to her.

13 Q. Why didn't you just say thank you?

14 A. It was one o'clock in the morning and less than 12
15 hours after I just found out. It was really a nice email
16 to get from a student. I didn't even know she was a
17 cheerleader at the time but that's irrelevant. And I
18 responded.

19 Q. And what does "I will have lots of stories for all of
20 you in class" mean?

21 A. It just meant that it had been a long day, I'm tired,
22 I have no idea what's going on and, you know, it was just
23 a reference to stories.

24 Q. You meant about this litigation, didn't you?

25 A. No, I did not.

1 Q. Okay. Now, let's talk about your testimony about
2 EADA reports. What is your understanding of the number of
3 participants that is to be reported on EADA reports?

4 A. I'm sorry, I wasn't very focused. Could you ask me
5 that again, please?

6 Q. What is your understanding, if you have one, about
7 the appropriate number of athletic participants that is to
8 be reported on an EADA report?

9 A. Number of participants on -- on your first date of
10 competition.

11 Q. On your first day of competition. And would you
12 agree with me that squad sizes change over the course of a
13 season for a variety of reasons?

14 A. Correct.

15 Q. Do you have an understanding of whether or not
16 schools are required to modify their EADA report figures
17 throughout the season as these numbers change?

18 MR. ORLEANS: Objection. Lack of foundation,
19 Your Honor. She doesn't -- the witness doesn't complete
20 the EADA reports, doesn't submit the information. She's
21 not responsible for that.

22 MS. GAMBARDELLA: Well, she felt comfortable
23 telling us that the EADA reports show that the University
24 doesn't comply with Title IX. I think I'm entitled to
25 peruse her basis for that.

1 MR. ORLEANS: I don't think that makes her an
2 expert on how you measure --

3 MS. GAMBARDELLA: You're right, she's not an
4 expert. You're right.

5 MR. ORLEANS: We didn't offer her as an expert.

6 THE COURT: It may be more efficient to just
7 bring this up through a witness, another witness.

8 MS. GAMBARDELLA: I'm sorry?

9 THE COURT: It may be more efficient to bring it
10 up through another witness. Obviously she's --

11 MS. GAMBARDELLA: That's fine.

12 THE COURT: She's already indicated she has
13 essentially -- I don't want to overstate it, but not much
14 understanding of how these numbers are prepared.

15 MS. GAMBARDELLA: Great.

16 THE COURT: Is that fair?

17 THE WITNESS: Fair.

18 BY MS. GAMBARDELLA:

19 Q. Okay. Had you ever made a complaint to the
20 University prior to this timeframe, we're talking March,
21 about Title IX compliance while you were there?

22 A. No.

23 Q. Did you know how to make a complaint if you had one?

24 A. No.

25 Q. Did you know who Tracey Flynn was?

1 A. Yes.

2 Q. Did you know what her job was?

3 A. There's no written Title IX compliance like how you
4 go about doing it. Here, people told me that's how you
5 would do it but no one specifically said this is how you
6 go about doing it.

7 Q. Ms. Sparks, do you know what Tracey Flynn's
8 responsibilities were in 2007?

9 A. Yes.

10 Q. You knew where to ask for EADA reports, correct?

11 A. I asked Jack for them, yes.

12 Q. You knew where to go to ask for those documents,
13 correct?

14 A. Yes.

15 Q. And you got the documents off the website in which
16 they are publicly posted, correct?

17 A. (Pause)

18 Q. Or your lawyers did, right?

19 A. Some of the numbers came off there. I mean it's
20 really, when you go back looking, it's very difficult to
21 do that, but yes.

22 Q. Well, I didn't -- I didn't ask you how difficult it
23 was. What I'm asking is do you know whether or not your
24 attorneys got all off the website the posted EADA reports
25 for Quinnipiac University?

1 A. I think they are on there from 2000.

2 Q. And documents, additional EADA reports were produced
3 in this litigation, correct?

4 A. Yes.

5 Q. Do you know whether or not the golf coach was allowed
6 to retain his office through June 30th?

7 A. Yes, he was.

8 Q. And how do you know that?

9 A. I asked Jack.

10 Q. When you say that Jack took away your office, are you
11 suggesting that -- but you continued to teach, correct?

12 A. Correct.

13 Q. All right. And so are you suggesting you had no
14 computer or phone or anything available to you in
15 connection with your teaching responsibilities?

16 A. He said that I could -- how would you put it? I had
17 said that I really needed the office for office hours
18 because I was required to offer office hours. He had said
19 he would check with the provost to see if that was okay,
20 and I was told I could continue to come in to just do the
21 office hours. And so we never had a further conversation
22 about whether or not he got approval. I just quietly
23 would come into the room and leave quietly.

24 Q. So you were allowed to do the office hours?

25 A. I was.

1 Q. Okay. Now, let's talk about the cheer team at
2 Quinnipiac. Have you ever coached the cheer team at
3 Quinnipiac?

4 A. No.

5 Q. Have you ever seen them practice?

6 A. No.

7 Q. Are you sure about that?

8 A. Seen them practice?

9 Q. Yes.

10 A. I'm positive.

11 Q. Have you ever seen Mary Ann Powers, the coach, train
12 them?

13 A. No.

14 Q. Never had a conversation with her about what you may
15 have observed in the training of the competitive cheer --
16 I'm sorry, the cheer team?

17 MR. ORLEANS: Your Honor, before she answers, I
18 object to this line of questioning as beyond the scope of
19 the direct. I don't recall any testimony from Ms. Sparks
20 about the cheer team.

21 MS. GAMBARDELLA: I thought -- correct me if I'm
22 wrong -- she made a comment that competitive cheer is not
23 consistent with the spirit of Title IX, or something like
24 that.

25 THE COURT: That was in the exhibit that you

1 just admitted. I'm not sure it was on direct.

2 MS. GAMBARDELLA: No, it was something -- Your
3 Honor, it was definitely something else. It was
4 testimony. The exhibit I admitted --

5 THE COURT: Well, fine, whatever. I don't think
6 it's a big deal.

7 MR. ORLEANS: I just, I think that a line of
8 questioning about the cheer squad, we're going to have the
9 coach of the cheer squad here to testify and she can
10 testify about the cheer squad.

11 MS. GAMBARDELLA: If this witness wasn't
12 competent to testify about the cheer squad -- and I'm
13 sorry, I remember them eliciting testimony that she said
14 to somebody --

15 THE COURT: Fair enough. Ask your question. I
16 don't see a problem. I'm going to overrule the objection.
17 I don't see a problem asking this line of questioning.

18 BY MS. GAMBARDELLA:

19 Q. Have you ever spoken with -- I'm sorry if I got an
20 answer already. I lost track. Have you ever spoken with
21 Mary Ann Powers about what you observed during her
22 training or practice sessions with the competitive cheer
23 team?

24 A. No.

25 Q. I think that -- have you seen any competitive cheer

1 events in which Quinnipiac cheer team members have
2 participated?

3 A. Yes.

4 Q. What ones have you seen?

5 A. The videos online.

6 Q. Do you know whether or not they have competed
7 nationally with other competitive cheer teams, with other
8 university competitive cheer teams?

9 A. Do you mean --

10 Q. Do you know if Quinnipiac's cheer team has been in
11 competition with other universities' competitive cheer
12 teams?

13 A. I know they've been in competitions with cheer teams
14 that compete.

15 Q. What's the difference?

16 A. Well, there are sideline cheer teams that happen to
17 compete.

18 Q. Is it your contention that the competitions in which
19 the Quinnipiac cheer team has participated is only
20 sideline cheer competitions?

21 A. I wouldn't know that.

22 Q. Do you know any details about the training they
23 undergo in order to be able to compete?

24 A. Nope.

25 Q. Are you saying that they are not athletes?

1 A. Nope.

2 Q. Do you have any knowledge of the level of expressed
3 interest at Quinnipiac in having a varsity level
4 competitive cheer team?

5 A. No.

6 Q. If competitive cheer activities are not an NCAA
7 sponsored sport, do you know whether or not Tracey Flynn
8 would have responsibility to understand the details of
9 those activities at Quinnipiac before the elevation of
10 varsity?

11 A. I don't know how they were being overseen.

12 Q. Men's lacrosse is not part of the NCAA -- it's not a
13 NEC recognized sport or part of the averages, correct?

14 A. They are not a member of the NEC.

15 Q. I just want to briefly revisit Exhibit 8, and if I
16 can have a minute, Your Honor.

17 (Pause)

18 Focusing strictly on Q. U. current and Q. U. proposed
19 columns, right? Q. U. current would be academic year to
20 '08-'09, the one we just finished, correct? It's your
21 chart, right?

22 A. Yeah --

23 MR. ORLEANS: Your Honor, would Ms. Gambardella
24 please let the witness answer the question? She was
25 looking at the chart. Give her time, please.

1 MS. GAMBARDELLA: I will, I'm sorry. I'm
2 obviously getting too interested in time crunches here.

3 BY MS. GAMBARDELLA:

4 Q. I apologize, Ms. Sparks. Does Q. U. current in that
5 column refer to this academic year we've just finished?

6 A. The chart that they supplied, yes.

7 Q. I'm sorry?

8 A. The chart that Quinnipiac gave for '08-'09.

9 Q. No, I'm talking about Exhibit 8 --

10 A. Right.

11 Q. -- which you compiled.

12 A. There was a chart that the University supplied that
13 showed '08-'09 numbers and that's where that came from.

14 Q. So, Q. U. current on your chart reflects the
15 Quinnipiac's numbers from '08 to '09?

16 A. Yes.

17 Q. Great. Now, just running down the comparisons of

18 Q. U. current to Q. U. proposed, correct?

19 A. Uh huh. (Affirmative.)

20 Q. Baseball men's 27, and the proposed is only two spots
21 different, do you see that?

22 A. Yes. I'm sorry.

23 Q. Basketball is going to remain the same, see that?

24 A. Yes.

25 Q. Cross country, one spot down, correct?

1 A. Yes.

2 Q. Golf's been eliminated?

3 A. Correct.

4 Q. Ice hockey is the same?

5 A. Correct.

6 Q. Lacrosse is going to lose four men's spots?

7 A. Correct?

8 Q. Soccer, two?

9 A. Yes.

10 Q. Tennis going to gain one?

11 A. Yes.

12 Q. Indoor track is going to lose six men's spots,
13 correct?

14 A. Correct.

15 Q. And outdoor track's being eliminated.

16 Running down women's, basketball is going to remain
17 the same, correct?

18 A. Correct.

19 Q. Cross country is going to gain five womens spots,
20 correct?

21 A. Correct.

22 Q. Field hockey will lose one spot; ice hockey, two;
23 lacrosse, the same; soccer will gain one; softball will
24 lose three; tennis will gain three; and so on and so
25 forth. Do you see that?

1 A. Yes.

2 Q. Okay. What information do you have about the teams'
3 ability to play during this, any of these teams' ability
4 to play with those numbers this past year that we've just
5 completed?

6 MR. ORLEANS: Objection, Your Honor.

7 Foundation. I don't understand the question either.

8 MS. GAMBARDELLA: Well, this witness has made a
9 claim that I understand that because these roster numbers
10 are not the same as the averages, that that's somehow
11 probative as to whether or not you should find they are
12 realistic. If I'm wrong about that, I'm willing to
13 withdraw the question.

14 MR. ORLEANS: Your Honor, I don't know that this
15 witness has made any claim. We put this -- this is
16 information, the data that she compiled and put into chart
17 form. We put the information in through her but she has
18 not made a claim. We'll make our argument from the chart
19 at the appropriate time.

20 MS. GAMBARDELLA: I'll withdraw the question.

21 BY MS. GAMBARDELLA:

22 Q. Do you have any information regarding Quinnipiac's
23 teams as reflected by that chart the academic year we've
24 just completed and whether or not those were actually the
25 number of athletic participation opportunities that

1 existed as of the point recommended by the document you
2 took these numbers from?

3 A. I'm not quite sure what you're asking, I'm sorry.

4 Q. I'll withdraw the question.

5 MS. GAMBARDELLA: I have no further questions.

6 REDIRECT EXAMINATION

7 BY MR. ORLEANS:

8 Q. Coach Sparks, you were asked about the relationship
9 between assurances you received from Mr. McDonald about
10 Quinnipiac's commitment to volleyball and when you signed
11 your employment agreement. Do you recall that?

12 A. Yes.

13 Q. And I thought I heard you say that you got assurances
14 both before and after you signed the first contract?

15 A. Yes.

16 Q. Okay. Could you just elaborate a little bit on what
17 assurances you received from Mr. McDonald after you signed
18 your first employment contract?

19 A. Well, we have our review at the end of the year, so
20 last year my review, he talked about how pleased he was
21 with the progress we were making. He gave me a really
22 great review except for our record, which he understood I
23 didn't have a full team so it was kind of hard. He
24 reiterated that I was making the progress that they wanted
25 to see and to continue to make that progress and that they

1 were supportive of our program.

2 Q. And that was before you signed your second employment
3 contract?

4 A. Yes.

5 Q. Okay. Did you receive any further assurances from
6 Mr. McDonald about Quinnipiac's commitment to the
7 volleyball program after you signed your second contract?

8 A. He -- I think there was, between he and it may have
9 been Bill Mecca, just so incredibly pleased once the
10 athletes got here on the increased level of
11 competitiveness. I got a commitment from an athlete at
12 the end of February that I know Billy and Tracey were both
13 really excited about because of how it was going to help
14 our program in the future, and they were really excited
15 and pleased with where I was taking the program and
16 looking forward to seeing how we were going to do once
17 those kids grew up.

18 Q. Did they say anything about your being able to be at
19 Quinnipiac longer than just one more year?

20 A. Well, they --

21 MS. GAMBARDELLA: Objection, leading.

22 A. I'm sorry?

23 MS. GAMBARDELLA: Leading.

24 MR. ORLEANS: I'll rephrase.

25

1 BY MR. ORLEANS:

2 Q. Did they give you any reassurances about your
3 continued employment?

4 A. They were looking forward to seeing how I would
5 develop the freshmen when they were seniors. They were
6 really looking forward to seeing them further develop.

7 Q. And how about from Mrs. Flynn; did Tracey Flynn give
8 you any further assurances?

9 A. I think there were the same type of comments there.
10 You know, these were student athletes who were great as
11 students and just really good kids and had made huge
12 strides from what anybody had seen in volleyball at
13 Quinnipiac, so people were excited to see how competitive
14 they would be once they got older and more experienced.

15 Q. Now, you said you were aware that the men's golf
16 coach was not renewed?

17 A. Correct.

18 Q. Okay. If you know, was the men's golf coach a
19 part-time or full-time employee?

20 A. Part-time.

21 Q. You also testified on cross that your roster
22 management target for the current year was 15, is that
23 correct?

24 A. Yes.

25 Q. And did you consider that to be a realistic target

1 for the size of your squad this year?

2 A. I would like -- well, I think it might have been hard
3 to get to 15 this year. That's a number I would have
4 liked to carry, 15 or 16, frankly.

5 Q. You would. Okay. All right.

6 Now, you testified in response to Ms. Gambardella's
7 questions that you did express to some people in the days
8 immediately after you learned the program would be cut
9 that you were hurt and angry and upset, correct?

10 A. Yes.

11 Q. Did you tell any of those people that you were
12 planning to file a lawsuit?

13 A. No.

14 Q. Okay. And do you still have Plaintiff's Exhibit L in
15 front of you?

16 A. Yes.

17 Q. I'm sorry, that's Defendant's Exhibit L, I apologize.

18 Now, at the time that you sent this, that you sent
19 the email which is contained in Plaintiff's Exhibit L
20 (sic) on March the 5th, had you contacted counsel?

21 A. No. It was 1:00 o'clock in the morning.

22 Q. Okay. And did you know whether the student who had
23 emailed you and to whom you were responding was a member
24 of the cheerleading squad?

25 A. No, I did not know.

1 Q. Since March 5th, have you had any interactions with
2 this student?

3 A. Yes.

4 Q. Could you describe those interactions?

5 A. She's in my class. She's a good student. She
6 recently emailed me about obtaining an internship and
7 asking for some paperwork that I had, which I gave her. I
8 mean I have interactions with her like I did any of my
9 other students.

10 Q. Now, you said in this email to her that cutting
11 volleyball and elevating cheerleading flies in the face of
12 the spirit of Title IX. Did you think that she would know
13 what you were referring to when you mentioned Title IX?

14 A. I always assume kids know what Title IX is but that
15 may have not been the case.

16 Q. Had you discussed Title IX in your class?

17 A. Not in that class, no.

18 Q. Had you discussed Title IX in some other class?

19 A. Yes.

20 Q. In what other class had you discussed Title IX?

21 A. I've been asked the last two years to be a guest
22 lecturer in a study class about gender issues and the
23 like.

24 Q. All right, and was this student in any of those
25 classes, if you know?

1 A. No, I don't think so.

2 Q. Okay. When you said in this email my mom could be a
3 cheer leader but not an athlete, what did you mean?

4 A. My mom wanted to be a basketball player really bad.
5 Believe it or not, my grandmother played scholastic
6 basketball in Waneta, Illinois, and that's what my mom had
7 wanted to do. But in her high school, the only option if
8 you wanted to do anything athletic was to be a cheerleader
9 or a drum major and she couldn't be a basketball player.

10 To me, Title IX was about giving women opportunities
11 beyond that. That's what people were fighting for, so
12 that, you know, I could be a volleyball player, basketball
13 player, a cross country track runner, all those things,
14 and when they said they were getting rid of our sport and
15 elevating cheerleading, to me that seemed like we were
16 taking a step backwards on Title IX. That's what my mom
17 already could do and not what I was doing right now.

18 Q. And did you ever talk about this lawsuit in your
19 Sport Events Management class?

20 A. No.

21 Q. Incidentally, were you a cheerleader in high school?

22 A. I was. I actually come from a family of cheerleaders
23 and I did not cheer in high school because you could not
24 cheer and play volleyball or another sport at the same
25 time. But I did go to cheerleading camp and I did compete

1 when I was in junior high and my sister competed all the
2 way up through her varsity year.

3 Q. Thank you.

4 MR. ORLEANS: Nothing further.

5 MS. GAMBARDELLA: Very quickly.

6 RECROSS EXAMINATION

7 BY MS. GAMBARDELLA:

8 Q. Do you know whether or not over the past few years
9 the number of athletic opportunities provided to women
10 have increased at Quinnipiac?

11 A. In terms -- like --

12 Q. Numbers?

13 A. EADA or --

14 Q. No, the actual numbers of athletic participation
15 opportunities in the past few years, have they increased
16 at Quinnipiac?

17 MR. ORLEANS: Your Honor, I object to the
18 question. The defense has attempted strenuously to keep
19 out any information that goes back before 2007, 2008. I
20 don't think it's fair to ask this witness about the "past
21 few years" because of that.

22 MS. GAMBARDELLA: That's what I meant. I'm
23 sorry.

24 BY MS. GAMBARDELLA:

25 Q. 2007. Have the number of total athletic

1 participation opportunities for women at Quinnipiac
2 overall increased, if you know?

3 A. From 2007 to 2008?

4 Q. Yes. Do you know?

5 A. From -- because the official reports aren't out, you
6 wouldn't know if the 2007, 2008 went up to 2008, 2009.

7 Q. So, that's your way of telling me you don't know,
8 correct?

9 A. The information is not available, no.

10 Q. So, you don't know from any other source, correct?

11 A. I would have to have those numbers in front of me,
12 those reports, to know offhand. I'm sorry.

13 Q. You don't have to apologize. "I don't know" is a
14 perfectly acceptable answer.

15 And one last question: You didn't give all that
16 history about your mom in the email, right?

17 A. No. It was 1:30 in the morning.

18 MS. GAMBARDELLA: No further questions.

19 MR. ORLEANS: Nothing further, Your Honor.

20 THE COURT: Thank you, you're excused.

21 (Witness excused.)

22 MR. ORLEANS: Your Honor, could I -- before we
23 continue, could I ask about scheduling? It's 4:20. Our
24 next witness, as I've discussed with counsel, would be
25 Mr. McDonald. I don't know if we'll finish him. I don't

1 know whether cross of Mr. McDonald would become a direct
2 of Mr. McDonald.

3 MS. GAMBARDELLA: I think that's what we
4 discussed.

5 MR. ORLEANS: We discussed that in chambers and
6 I don't know how much time you have available for us
7 tomorrow.

8 THE COURT: Well, I was really hopeful we would
9 finish today. Obviously we're far from that. Tomorrow I
10 have hearings at 11:00 and 2:00, which could last anywhere
11 from 20 minutes to an hour each. Otherwise the day is
12 open. So --

13 MR. ORLEANS: May counsel and I have a moment to
14 confer?

15 (Pause)

16 MR. ORLEANS: All right, Your Honor, counsel
17 proposed that we would start Mr. McDonald now, get a
18 little ways with him at least, and then continue tomorrow
19 morning at 9:30 and we'll just be willing to recess while
20 you take care of the other business that's before the
21 court. And if it's okay with the court, then we'll
22 continue, you know, when the court's available.

23 THE COURT: All right, that's fine. That's
24 certainly what I would suggest. I wouldn't want to waste
25 the time that we have today.

1 But help me understand where we are in
2 plaintiff's case in general.

3 MR. ORLEANS: Well --

4 THE COURT: You have, in effect, Mr. McDonald
5 and your expert?

6 MR. ORLEANS: Correct.

7 THE COURT: And also the possibility of the
8 softball coach?

9 MR. ORLEANS: Right, possibly. The expert's
10 testimony is obviously key. We haven't all had time to do
11 our designations and cross designations. We'll try to
12 work out for you what we can agree to and what we don't
13 agree to. Through Mr. McDonald, I'd like to get some
14 parts of the plaintiff's case. I also anticipate the
15 cross of Mr. McDonald after his direct testimony. But
16 Mr. McDonald, I think, will essentially conclude the
17 plaintiff's case, reserving the right to call the coach
18 once we see how the rest of the evidence comes in.

19 THE COURT: Okay. The live case, meaning --

20 MR. ORLEANS: Yes.

21 THE COURT: All right, fair enough.

22 Mr. McDonald?

23 MR. ORLEANS: The plaintiff calls Mr. McDonald.

24 MS. GAMBARDELLA: He'd like to bring his water.

25 Is that all right?

1 THE COURT: Fine. Please raise your right hand.

2 J O H N M C D O N A L D, called as a witness on
3 behalf of the Plaintiffs, having been duly sworn by the
4 Court, testified as follows:

5 THE COURT: Very good. Please be seated.

6 MR. ORLEANS: If you'll indulge me, I just need
7 a minute to get myself together.

8 DIRECT EXAMINATION

9 BY MR. ORLEANS:

10 Q. Good afternoon, Mr. McDonald.

11 A. Good afternoon.

12 Q. Do you have the notebook of the plaintiff's exhibits
13 before you?

14 A. Yes.

15 Q. Would you take a look at Exhibit 3, please? Could
16 you just explain to the court what that document is?

17 A. This appears to be a response letter from Janet Judge
18 to you about this case.

19 Q. And you say it appears to be. Mr. McDonald, didn't
20 you, in fact, submit a declaration to the court
21 authenticating a copy of this --

22 A. Yes.

23 Q. -- document? So can I call your attention to the
24 second page? See the chart there on the second page?

25 A. Yes.

1 Q. What's reflected in that chart?

2 A. This is the proposed rosters for 2009-10.

3 Q. When you say proposed rosters, can I use the term
4 roster management targets?

5 A. Yes.

6 Q. Okay. And these are the roster management targets
7 for the varsity teams at Quinnipiac for 2009, 2010, is
8 that right?

9 A. Yes.

10 Q. With respect to the -- well, withdrawn.

11 Actually could you take a look at Exhibit 2, please?

12 See Exhibit 2, Mr. McDonald?

13 A. Yes.

14 Q. Do you recognize that document?

15 A. Not really. I think this comes from -- it's not
16 something I generate. It does look like the numbers are
17 accurate.

18 Q. Okay. Looking at the first column --

19 A. Yes.

20 Q. -- which has the letters in it, are those
21 abbreviations for sports teams?

22 A. Yes.

23 Q. And this is a document that's produced in the
24 Athletic Department at Quinnipiac; you know that much,
25 don't you?

1 A. Yes.

2 Q. And do the -- then the second column, that's labeled
3 participation?

4 A. Yes.

5 Q. What are those numbers?

6 A. This is a -- some of the current numbers on our teams
7 probably from the first day of competition squad list.

8 Q. So, as far as you know, are these the numbers that
9 Quinnipiac expects to report on its EADA report in the
10 Fall 2009 for the 2008-'09 academic year?

11 A. Yes.

12 Q. In fact, that is the title of the document, isn't it?

13 A. Yes.

14 Q. Okay. Now, I just wonder if we could compare the
15 participation numbers on Exhibit 2 with the roster
16 management targets on Exhibit 3. I take it -- I'm going
17 to target -- work from Exhibit 2. MBA is men's baseball?

18 A. Correct.

19 Q. 27 players on the squad on the first day of
20 competition?

21 A. That is correct.

22 Q. When was the first day of competition?

23 A. Usually in baseball it's the second, third week in
24 September.

25 Q. So, you do that back in the Fall?

1 A. Yes.

2 Q. Even though the game is mostly played in the
3 Spring?

4 A. Most sports are in the Fall even though they might
5 have their championship season in the Spring.

6 Q. And so the participation number for baseball for
7 this, for the current year is 27 and the roster target
8 next year is 25, correct?

9 A. Yes.

10 Q. For basketball, it's 15 and 15, correct?

11 A. Correct.

12 Q. For men's cross country, participation this year was
13 13 and the target for next year is 14, correct?

14 A. Correct.

15 Q. For men's ice hockey, participation this year was 32
16 and the target for next year is 28?

17 A. Correct.

18 Q. For men's lacrosse, participation this year was 39,
19 and the target for next year is 36?

20 A. Correct.

21 Q. For men's soccer, participation this year was 25 and
22 the target for next year is 23?

23 A. That's right.

24 Q. For men's tennis, participation this year was 11 and
25 target for next year is ten, correct?

1 A. Correct.

2 Q. Okay. And then I can't -- what's the line in that's
3 shaded in?

4 A. Looks to me like --

5 Q. Men's track indoor and men's track outdoor?

6 A. That's right.

7 Q. Okay. Men's track indoor, participation this year
8 was 22 and the target for next year is 14?

9 A. That's right.

10 Q. And for outdoor track, participation this year was
11 20, and and that's being eliminated for next year,
12 correct?

13 A. That's right.

14 Q. Now, just with respect to the athletes -- and I'm not
15 trying to engage in a discussion about how you count
16 participation opportunities but I just would like to know
17 whether there is overlap among the athletes who run men's
18 cross country, men's indoor track and men's outdoor track?

19 A. What do you mean by overlap?

20 Q. Are there some athletes who run all three?

21 A. There's some.

22 Q. Are there some athletes who run two of the three?

23 A. Yes.

24 Q. And are there some who run only one of the three?

25 A. Correct.

1 Q. Now, after the first day of competition, when --
2 well, withdrawn.

3 On the first day of competition, you count squad size
4 for purposes of the EADA reports, correct?

5 A. And the NCAA requires the squads to submit it before
6 the first day of competition.

7 Q. So for both, you have to have a -- you have to make a
8 count on the first day of competition, correct?

9 A. Correct.

10 Q. And that, those -- those are the numbers that you
11 report on the EADA, am I right?

12 A. That's the instructions of the EADA, that's their
13 instructions.

14 Q. Okay. After the first day of competition, players
15 may be dropped from a squad, correct?

16 A. Anything could happen, yes.

17 Q. Okay. Players may be added to a squad?

18 A. That is correct.

19 Q. Correct. And there's no requirement that that be
20 reported to the EADA?

21 A. It's not in their instructions.

22 Q. Okay. Would you agree with me, Mr. McDonald, that
23 if -- just taking a hypothetical example, if the EADA
24 report for men's baseball reflects that there were 27
25 participants on the first day of competition, but in

1 reality -- withdraw. I'm going to phrase this properly.

2 Would you agree with me, Mr. McDonald, that if the
3 EADA report for men's baseball -- and this is a
4 hypothetical question, I'm not claiming that these are
5 real numbers -- but if the EADA report for men's baseball
6 reports 25 athletes on the first day of competition and
7 sometime after the first day of competition several
8 athletes are dropped from the squad and do not play, that
9 the EADA report is not providing an accurate measure of
10 actual participation?

11 A. I can't say that is true. The EADA is what it is and
12 we do what we're asked to do.

13 Q. Okay. All right. Now, you have some familiarity
14 with Title IX, do you not?

15 A. Little bit.

16 Q. Is compliance with Title IX part of your
17 responsibility as Athletic Director at Quinnipiac?

18 A. Yes.

19 Q. If I refer to prong one of the Title IX test, do you
20 know what I mean?

21 A. Yes.

22 Q. What's your understanding of what prong one is?

23 A. Proportionally, the proportions are the same as the
24 University's gender proportions.

25 Q. And when you say the University's general

1 proportion --

2 A. Gender.

3 Q. Gender proportions.

4 A. Yes.

5 Q. So, would I be correct to say that prong one requires
6 that the proportion of women and men, women's and men's
7 participation opportunities in varsity intercollegiate
8 athletes should be the same as the proportions of women
9 and men in the undergraduate student body -- full-time
10 undergraduate student body, if I could add that?

11 A. To meet prong one, it's not a requirement of prong
12 one; it's a requirement to meet one of the three prongs.

13 Q. Okay.

14 A. But prong one is do you meet gender proportions.

15 Q. Okay, and is the description I just gave of gender
16 proportions, is that an accurate description?

17 A. Yes.

18 Q. Now, would you agree that Quinnipiac University is
19 not in compliance with prong one in its athletic programs
20 this year?

21 A. '08-'09?

22 Q. '08-'09, yes.

23 A. Yes.

24 Q. And would you agree that Quinnipiac University was
25 not in compliance with prong one in, in the previous year,

1 2007, 2008?

2 A. Yes.

3 Q. Would you agree that Quinnipiac University has not
4 added a women's sport since it added ice hockey in 1998?

5 A. I think that the year is off.

6 Q. Okay.

7 A. I think we added the tracks in '98-'99 and the
8 women's ice hockey was around somewhere 2001, 2002.

9 Q. I need the second volume of original plaintiff's
10 exhibits. Thank you.

11 Mr. McDonald, I'm showing you what has been marked as
12 Plaintiff's Exhibit 37 for identification. Do you see
13 that?

14 A. Yes.

15 Q. The front page says Quinnipiac University NCAA
16 Certification, Self Study, Final Report, May 2006?

17 A. That is correct.

18 Q. Do you recognize that document?

19 A. Yes, I do.

20 Q. What is it?

21 A. It's the self-start required by the NCAA Division I
22 institutions to go through a Division I certification.

23 Used to be every five years, now it's every ten. But we
24 just completed this process in May of 2006.

25 Q. Okay. And what does that mean, Division I

1 certification?

2 A. It's a requirement that the NCAA has asked Division I
3 members to go through a self study and a peer review visit
4 to make sure that your basic philosophies and policies are
5 in sync with the NCAA.

6 Q. How long has Quinnipiac been a Division I school?

7 A. This is our tenth year.

8 Q. And, in fact, you were on the steering committee that
9 conducted this study, correct?

10 A. Yes.

11 Q. And this is a document created as part of the
12 business of the University to comply with NCAA rules?

13 A. Yes.

14 Q. And it's available to the public on the Quinnipiac
15 University website, is it not?

16 A. Yes.

17 MR. ORLEANS: Your Honor, I'd offer this as a
18 full exhibit.

19 MS. GAMBARDELLA: Your Honor, in terms of the
20 purpose of this exhibit, here's what I understand or I
21 think I understand plaintiffs are about to do.

22 They are going to set out to prove, I think,
23 that in prior years -- we already admitted on the record
24 that we did not rely on prong one for compliance with
25 Title IX for this year we're just finishing and last year,

1 and I think what he's going to try to do is prove
2 noncompliance with any of the other two prongs in the
3 prior two years. There are two reasons why that is not
4 pertinent.

5 Whether or not it's pertinent with whether or
6 not we comply with prongs two or three has nothing to do
7 with whether or not we can achieve proportionality for the
8 upcoming year, number one. And, number two, these
9 plaintiffs don't have standing, at least not at this
10 procedural stage, to adjudicate prior compliance in prior
11 years. No one's complained about that in the complaint.
12 No one has articulated standing for adjudicating those
13 issues.

14 THE COURT: Well, what's the purpose of the
15 exhibit?

16 MR. ORLEANS: At the moment, Your Honor, the
17 purpose of the exhibit is a chart that appears on page 111
18 that shows when Quinnipiac added various sports. If I
19 could just ask Mr. McDonald how long it's been since they
20 added a woman's sport, we're not sure about what year ice
21 hockey was added, and there's a chart that's going to show
22 that.

23 But more generally, Your Honor, to respond to
24 the objection, as the court knows from the discussions
25 that we've had previously, you know, it's our position

1 that the University's current noncompliance with Title IX,
2 as well as its historic noncompliance with Title IX, are
3 relevant and material facts for the court to consider in
4 deciding whether the promise of compliance for the Fall is
5 adequate to defeat our claim for injunctive relief. And
6 I'm fully aware the court's rulings, we're not planning to
7 go deep into the past and I'm not planning to question
8 this witness extensively about prongs two and three. At
9 the moment I just wanted to get in something about the
10 University's history of adding women's sports.

11 MS. GAMBARDELLA: Your Honor, he's seeking to
12 refresh the witness's recollection with this particular
13 chart as to when they added -- was it women's ice hockey?

14 MR. ORLEANS: Yes.

15 MS. GAMBARDELLA: Okay. I'm changing my
16 objection to one of relevance to adjudicating prong two.
17 I don't have an issue with that. I'm not sure why we have
18 to move in the whole document.

19 THE COURT: For now can we stipulate that
20 woman's ice hockey was added as a sport at Quinnipiac in
21 1998?

22 THE WITNESS: I -- could I say something?

23 THE COURT: Well, I was asking the lawyers a
24 question.

25 THE WITNESS: Oh.

1 MS. GAMBARDELLA: I don't know that I can
2 because he just testified to one year and, in fact, we
3 looked, you know, so I don't know if there's another
4 explanation for the year in this chart. And he can
5 testify to that.

6 THE COURT: Have you looked at the chart, sir?

7 THE WITNESS: Yes.

8 THE COURT: All right.

9 MS. GAMBARDELLA: Thank you.

10 BY MR. ORLEANS:

11 Q. Mr. McDonald --

12 THE COURT: I'm going to hold -- I'm not going
13 to admit the document.

14 MR. ORLEANS: Hold in abeyance for the moment?
15 Okay.

16 THE COURT: Yes. So I'm not going to rule yet
17 on the objection, but I'm not going to let you have it in
18 yet.

19 BY MR. ORLEANS:

20 Q. Mr. McDonald, do you recall specifically when women's
21 ice hockey became a varsity sport at Quinnipiac?

22 A. Well, yes. Their first varsity game was, pretty sure
23 it was 2001, 2002.

24 Q. Okay.

25 A. The announcement may have occurred specifically when

1 we made the time announcement of the elevation of both
2 men's and women's ice hockey to sports emphasis, and I
3 think that's where this 1998 came from, but I can't --

4 Q. Well, we'll just come back to this at a later time.

5 Mr. McDonald, would you agree with me that as of
6 March 4th of this year there was sufficient interest and
7 ability in the current student body and in the likely
8 incoming class at Quinnipiac to field the varsity
9 volleyball team?

10 A. Yes.

11 Q. And is it the case that Quinnipiac University did not
12 consider competitive cheer a varsity sport before
13 March 4th, 2009?

14 A. No.

15 THE COURT: Let me just go back so the record's
16 completely clear, your prior question about volleyball had
17 to do obviously with women's volleyball.

18 MR. ORLEANS: Yes, it did.

19 THE COURT: That's how you understood it?

20 THE WITNESS: Yes.

21 MR. ORLEANS: Thank you, Your Honor.

22 BY MR. ORLEANS:

23 Q. Mr. McDonald, when did Quinnipiac first consider
24 competitive cheer a varsity sport?

25 A. Well, it's been with us for the 14 years I've been

1 Athletic Director. You just mentioned the document here a
2 second ago through the process, that we are very aware
3 that we have a commitment to increase our opportunities
4 for women, and that through this process there was a
5 number of sports that were considered that we could or
6 should add, and we did a significant amount of
7 investigation about, in this case, competitive cheer.

8 Q. I don't think you've quite answered my question,
9 Mr. McDonald. Let me try and rephrase it.

10 When did Quinnipiac University first hold out cheer,
11 competitive cheer, as a varsity intercollegiate sport?

12 A. When we first discussed it.

13 Q. No, when did you first hold it out -- isn't it the
14 case -- withdrawn. I'll rephrase it one more time.

15 Isn't it the case, Mr. McDonald, that on March 4th or
16 perhaps March 5th of this year, in 2009, Quinnipiac
17 announced to its students and to the world that it was
18 elevating cheerleading to the status of a varsity sport?

19 A. That is correct.

20 Q. And isn't it also the case that Quinnipiac had never
21 before March 4th or March 5th of this year announced to
22 its students and to the world that it was elevating
23 cheerleading to the status of a varsity competitive sport?

24 It's a yes or no question, Mr. McDonald.

25 MS. GAMBARDELLA: Well, Your Honor, that's

1 not -- if he can't answer it yes or no, he should be
2 permitted to explain his answer.

3 MR. ORLEANS: I think he could do that on his
4 examination by defense counsel.

5 THE COURT: He can say by way of answering the
6 question yes or no -- it's either yes or no or I can't
7 truthfully answer that yes or no. Those are the options.

8 THE WITNESS: Well, I'll take option three, I
9 can't --

10 BY MR. ORLEANS:

11 Q. You can't answer that yes or no?

12 A. Correct.

13 Q. Okay. Now, with respect to the University's plans
14 for the upcoming academic year as reflected in Attorney
15 Judge's letter, which is Exhibit 3, you're eliminating
16 men's golf?

17 A. Yes.

18 Q. And does that mean that the men's golf coach has lost
19 his job?

20 A. Yes.

21 Q. Was he a full-time or part-time coach?

22 A. Part-time.

23 Q. And you're eliminating men's outdoor track, correct?

24 A. Yes.

25 Q. And are there any coaches losing their jobs in

1 connection with that?

2 A. Yes. There's a possibility of a part-time track
3 coach losing their job.

4 Q. How are the track teams, men's and women's, currently
5 coached?

6 A. There's one full-time person for all six sports with
7 a series of six part-time people. Part-time male and
8 female cross country, part-time male and female indoor
9 track, and part-time male and female outdoor track, for a
10 total of six.

11 Q. And is it your testimony then that one of those six
12 part-time coaches may be let go in connection with the
13 elimination of indoor track?

14 A. Yes.

15 Q. Or outdoor track, excuse me. So, Coach Sparks is the
16 only full-time coach who has lost her job as a result of
17 this reorganization?

18 A. There has been a significant amount of other full
19 time employees but Robin is the only full-time coach.

20 Q. Only full-time coach.

21 Now, Mr. McDonald, is there currently an approved
22 budget for varsity sports at Quinnipiac for the upcoming
23 academic year?

24 A. It will actually be tomorrow.

25 Q. Okay.

1 A. The trustees approve the University budget tomorrow,
2 May 12th.

3 Q. Okay. And are you familiar with the budget that the
4 trustees are expected to approve?

5 A. Yes.

6 Q. Okay. Could we mark this as 30-A for identification,
7 please? Plaintiff's.

8 (Hands witness.)

9 MR. ORLEANS: Your Honor, just parenthetically
10 this is a document that was produced after the pretrial
11 conference on Thursday which is why it didn't already
12 appear on the plaintiff's list.

13 BY MR. ORLEANS:

14 Q. Mr. McDonald, showing you what we've marked as
15 Plaintiff's Exhibit 38 for identification, do you
16 recognize that?

17 A. Yes.

18 Q. Tell me what it is, please?

19 A. This is the budget that we submitted to the finance
20 office for approval and discussion over the last few
21 months.

22 Q. Okay. So there's, there's a column that says
23 approved 2008, 2009 budget; is that the budget for the
24 current academic year?

25 A. Yes.

1 Q. You see the column I'm talking about? And then
2 there's a column that says nine, ten, proposed?

3 A. Yes.

4 Q. The next column over, you see that one?

5 A. Yes.

6 Q. And then there's, then the next column which is
7 shaded and somewhat difficult to read, says LGM proposed
8 nine, ten budget? You see that?

9 A. I see the LGM. I'm having a tough time with the
10 numbers but I understand what that is.

11 Q. I'm sorry. This is what I was sent so it's the best
12 I've got.

13 A. I have it on my computer if you'd like it.

14 Q. Could you just explain to me what's the difference
15 between those two columns, the nine, ten proposed and the
16 LGM proposed?

17 A. As I mentioned, through this process, each year, and
18 particularly this year, you know, it's an Athletic
19 Department, you add or subtract percentages to the
20 previous year's budget. Just using men's basketball, it's
21 the very top of the list, or we just went through and we
22 added, subtracted or left the same some of the budgets.
23 We were told in your second column of nine, ten proposed
24 of 1.8 million, that that wasn't enough and that we needed
25 to take more. And the LGM proposed budget that we can't

1 read, is less than the second column.

2 So, there's some differences that occurred between
3 the nine, ten proposed and the LGM proposed.

4 Q. What does LGM stand?

5 A. LGM is the financial system of the senior vice
6 president of finance.

7 Q. The name? What's the name?

8 A. Lucille -- I don't know what the G stands for, I
9 think it's Giano Maratollo (ph).

10 Q. And is the nine, ten proposed column, the first nine,
11 ten proposed column, is that the proposal that you made
12 and delivered to your superior early in the budget
13 process?

14 A. Yes.

15 Q. Yes. Now, these figures don't include salaries, do
16 they?

17 A. No.

18 Q. And they don't include scholarships?

19 A. That is correct.

20 Q. What do these figures include?

21 A. These are, you know, there was the operating budget
22 of travel, administration, officials, meals, lodging, I
23 mean all of the things that -- what we refer to as the
24 operating budget.

25 Q. Okay. And apart from the operating budget and the

1 salaries and the scholarships, is there anything else that
2 goes into the budget for varsity sports?

3 A. Those three are clearly the ones that we are
4 responsible for. There are some on the University, you
5 know, security and things that they budget through their
6 department.

7 Q. And could you look at the second page --

8 A. Sure.

9 Q. -- of the exhibit, please? What's that?

10 A. This looks to be the previous year's process.
11 '07-'08 approved, proposed, the same -- very similar sheet
12 to what you saw for this process.

13 Q. Okay. So there's -- in the middle there's an
14 approved budget for '07-'08, which might have been
15 adjusted but apparently was not. There's a column for an
16 adjusted budget but the total at least is the same. You
17 agree with me so far?

18 A. Yes, it looks --

19 Q. Okay.

20 A. This page is approved '08-'09. Last column appears
21 to be in sync with the first column in the next page.

22 Q. So, there's a requested budget for '08-'09 and then
23 an approved budget for '08-'09 which carries over to the
24 next page, is that right?

25 A. Correct.

1 Q. Are these documents that you prepared?

2 A. I prepared numbers but to be submitted. I have my
3 own spread sheet that's submitted but the University has
4 its own master template for each department. So this
5 document I do not prepare but I did supply the numbers to
6 put in it.

7 Q. And you recognize it as a document that's prepared by
8 the University for part of its budgetary process?

9 A. Yes.

10 MR. ORLEANS: I'll offer this, Your Honor.

11 MS. GAMBARDELLA: No objection.

12 THE COURT: Exhibit 38 is full.

13 MR. ORLEANS: That would be 38.

14 (Whereupon Plaintiff's Exhibit 38 was marked
15 full.)

16 BY MR. ORLEANS:

17 Q. Now, Mr. McDonald, when you made your initial budget
18 proposal for the '09-'10 academic year, that's the
19 proposal that's reflected in the middle column of the
20 first page of Exhibit 38, correct?

21 A. That is correct.

22 Q. And you had been told before you made that proposal
23 that you needed to submit a budget with a five to ten
24 percent reduction in expenditures from the previous year,
25 correct?

1 A. In all three phases.

2 Q. In all three phases, meaning in the operating budget,
3 the salaries budget and the scholarship budget?

4 A. Scholarship, that's right.

5 Q. Well, with respect to the operating budget -- well,
6 withdrawn.

7 You developed a budget proposal that achieved that
8 objective of reducing expenditures by five to ten percent
9 without cutting any sports, isn't that right?

10 A. Initially, that is correct. I can't say five to ten
11 percent but we did propose a budget of somewhere around
12 5 percent.

13 Q. Okay. And on the operating budget at least, would
14 you agree with me that the difference between the
15 \$2,019,973 approved figure for '08-'09, and the \$1,887,196
16 figure for -- well, withdrawn. Withdrawn.

17 I thought you testified a minute ago that your
18 initial -- that this middle column reflected your initial
19 proposal, Mr. McDonald?

20 A. The '09-'10 proposed.

21 Q. Right.

22 A. That was, yes, that was one of the -- I shouldn't say
23 the first ones but it was sort of maybe the second to last
24 proposal before --

25 Q. All right. So this document, I'm noticing that this

1 document has zeros for men's golf, men's outdoor track and
2 women's volleyball?

3 A. That is correct.

4 Q. You see that in your proposal?

5 A. Yes.

6 Q. So, this is not the proposal that you initially made
7 that would have preserved all of those sports?

8 A. That is correct.

9 Q. Now, if you'd go to the second page which shows the
10 budget for '07-'08 compared to the '08-'09 budget,
11 cheerleading is not included in this budget, is it?

12 A. This is the varsity teams.

13 Q. Right, and cheerleading was not a varsity team in
14 '07-'08?

15 A. But this was part of the Athletic Department
16 budget.

17 Q. Well, what -- obviously there are other parts of the
18 Athletic Department budget besides this, correct?

19 A. That's correct.

20 Q. But that is the budget for the varsity teams,
21 correct?

22 A. Correct.

23 Q. And cheerleading is not on them?

24 A. That is correct.

25 Q. And for '09-'10, you put cheerleading on as a varsity

1 team?

2 A. Yes.

3 THE COURT: Let me interject, because if you
4 take the approved '08-'09 budget, last column at page two,
5 and compare that to the approved '08-'09 budget, first
6 page, first monetary column, there is a \$12,000 women's
7 cheerleading and that's the difference between the 2
8 million in '07 and the 2,019,000. So, that 12,000 was
9 that -- what was that in '08-'09?

10 THE WITNESS: Okay?

11 THE COURT: You can --

12 THE WITNESS: In the proposals for the future
13 year, we saw, you can see in the very last column for
14 percentage of increase, decrease, it was helping us divide
15 the budget, we put in cheerleading as a varsity sport to
16 help us project the budget for '09-'10 which, for
17 cheerleading, we plan to be a part of. So we just brought
18 in the budget for cheerleading that he spent in the
19 Athletic Department in '08-'09 but it wasn't listed as a
20 varsity sport in '08-'09 but we wanted to put it here so
21 we could show we're planning for it to be a sport along
22 with the others. Does that make sense?

23 THE COURT: Yes. The same column, makes sense,
24 you see a comparison between what you spent in '08-'09 and
25 '09-'10.

1 THE WITNESS: Right.

2 THE COURT: Right.

3 THE WITNESS: And this would happen in
4 operating, it will happen in salaries and it will happen
5 in scholarships.

6 BY MR. ORLEANS:

7 Q. So, you're expecting to spend \$50,000 on the
8 operating budget for cheerleading in '09-'10, as opposed
9 to the 12,000 that was spent in '08-'09, correct?

10 A. That is correct.

11 Q. And what about -- you know, we weren't supplied with
12 a document for the salaries. Do you recall what is going
13 to happen to salaries on the cheerleading line?

14 A. Yes.

15 Q. Okay.

16 A. And the reason we don't have it is because we haven't
17 submitted that. The University's going through the
18 operating right now. Obviously because of the salary
19 freeze, things won't be changing too much initially but
20 there is a proposal for a competitive full-time salary in
21 women's cheerleading.

22 Q. What would that amount be?

23 A. A little over 40, \$45,000.

24 Q. And that's a proposal but you don't have any
25 assurance that that's going to be approved, is that

1 correct?

2 A. That's also right. And also please know there is an
3 existing \$20,000 in part-time salaries that we're already
4 paying initially.

5 Q. And would you expect to continue to pay that, the
6 part-time salary, in the next year?

7 A. That would get encompassed into the full-time amount.

8 Q. All right. Do you anticipate there will be a
9 sideline cheer squad next year in addition to a
10 competitive cheer squad?

11 A. Yes.

12 Q. Do you anticipate that the same person will coach
13 both?

14 A. No.

15 Q. So, will there have to be a salary for the coach of
16 the sideline cheer squad?

17 A. Yes.

18 Q. How much do you estimate that would be?

19 A. We're going to be proposing \$10,000 and usually what
20 we do is, and again, that could be one person at ten, it
21 could be two at five or three at three. Again, we'll let
22 the sideline folks cheerleading and kickline and all the
23 other dance groups decide how they want to do that.

24 Q. So, in total, for competitive and sideline clear, you
25 would estimate the salary proposal that you're making that

1 hasn't yet been approved at between 50- and 55,000, is
2 that right?

3 A. There's another part-time assistant cheer coach
4 that's currently there. We pay her 3,000, \$4,000. That
5 would stay as an assistant competitive cheer coach.

6 Q. And I'm sorry, that's three or 4,000?

7 A. Yes.

8 Q. So, I'm just trying to get to a total. For next, for
9 this coming year if your proposal is approved, you will
10 have a full-time cheer coach at 40 to 45, a part-time
11 sideline coach at about ten, and an assistant competitive
12 cheer coach at about four, so we're looking at somewhere
13 between 54 and \$59,000 total?

14 A. But that wouldn't include the sideline cheer as part
15 of the budget. That's a completely separate area.

16 Q. So you don't expect, again, you don't expect that any
17 of the athletes who cheer competitively will also do
18 sideline cheers, right?

19 A. We're not planning that. We're budgeting
20 accordingly, so that sideline cheer budget will not be in
21 the varsity athletic line.

22 Q. Do you expect you would permit the competitive cheer
23 athletes to do sideline cheer?

24 A. It's going to be coach's question. You know,
25 sometimes athletes do, kids play varsity sports and

1 intermurals all the time, much to their coach's chagrin,
2 but that will be something that the coaches will work on.

3 Q. Okay.

4 A. But that's not the expectation. It's not the budget
5 for that.

6 Q. Now --

7 THE COURT: Mr. Orleans, it's just about
8 5:00 o'clock.

9 MR. ORLEANS: Yes, Your Honor.

10 THE COURT: And I've got a TRO hearing at 5:15.

11 MR. ORLEANS: No rest for the weary, Judge. I'm
12 happy to break now.

13 THE COURT: I wanted to ask one clarification
14 question. Going back to the \$20,000 for the women's
15 cheering, the first page of Exhibit 38, that \$12,000 was
16 competitive cheer expense for '08 and '09?

17 THE WITNESS: That \$12,000 was for both, because
18 we only had one cheer group. The sideline cheer and our
19 competitive cheer were one and the same group of people,
20 so they use that 12,000 really for both.

21 THE COURT: And the 50,000 though in the
22 proposal is only for the competitive cheer?

23 THE WITNESS: That is correct.

24 THE COURT: All right.

25 MR. ORLEANS: This is a fine time to break.

1 THE COURT: I propose we come back at 9:30.

2 MR. ORLEANS: We'll be here.

3 THE COURT: Fine. All right, thank you. We'll
4 stand adjourned.

5 (Whereupon the above matter was adjourned at 5:00
6 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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