

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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STEPHANIE BIEDIGER, ET AL : No. 3:09cv-621 (SRU)  
 : 915 Lafayette Boulevard  
 vs. : Bridgeport, Connecticut  
 :  
 : May 12, 2009  
 QUINNIPIAC UNIVERSITY :  
 :  
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PRELIMINARY INJUNCTION HEARING

B E F O R E:

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

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

FOR THE PLAINTIFFS:

PULLMAN & COMLEY  
850 Main Street  
P.O. Box 7006  
Bridgeport, Connecticut 06601-7006  
BY: JONATHAN B. ORLEANS, ESQ.  
ALEX V. HERNANDEZ, ESQ.

FOR THE DEFENDANT:

WIGGIN AND DANA, LLP  
400 Atlantic Street  
P. O. Box 110325  
Stamford, Connecticut 06911-0325  
BY: MARY A. GAMBARDELLA, ESQ.  
JONATHAN BARDAVID, ESQ.

Susan E. Catucci, RMR  
Official Court Reporter  
915 Lafayette Boulevard  
Bridgeport, Connecticut 06604  
Tel: (917) 703-0761

## I N D E X

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Defendant's

Exhibit F.....(Full) 404

1 (9:30 O'CLOCK, A. M.)

2 THE COURT: Good morning. Are there any  
3 preliminary matters to take up before we continue with  
4 Mr. McDonald's testimony?

5 MR. ORLEANS: Not from the plaintiffs, Your  
6 Honor.

7 MS. GAMBARDELLA: Nor the defendants, Your  
8 Honor.

9 THE COURT: Very good. Sir, please.

10 J O H N M c D O N A L D, called as a witness  
11 on behalf of the Plaintiffs, having been previously duly  
12 sworn by the Court, testified as follows:

13 THE COURT: You're still under oath.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. ORLEANS:

16 Q. Good morning, Mr. McDonald.

17 A. Good morning, Jon.

18 Q. Do you have the exhibit books?

19 A. No, I don't.

20 Q. (Hands witness.)

21 A. Thanks.

22 Q. You have the last exhibit that we were looking at,  
23 the budget document. Would be number 38 and hopefully it  
24 would be in the back, tucked in the back of the book -- in  
25 the front? Thanks. I've been told it's been tucked into

1 the front.

2 A. There you go.

3 Q. I think we established yesterday that that's an  
4 operating budget document?

5 A. Proposed, yes.

6 Q. Proposals, okay. And the line that shows \$12,000 for  
7 the competitive cheer team for the upcoming -- or for the  
8 past year, that \$12,000 wasn't originally part of the  
9 varsity athletic budget, correct?

10 A. No, it was not.

11 Q. Where was that in the intermurals category?

12 A. There's a significant amount of outer line items in  
13 the Athletic Department that we have.

14 Q. And for purposes of doing this year's budget,  
15 obviously you moved that 12,000 over to the varsity  
16 athletics set of line items, and so you're showing an  
17 increase from that 12,000 of an additional -- I don't have  
18 it in front of me -- I think it's 38, is that correct?

19 A. That is right.

20 Q. But the 12, as I say, was not originally in the  
21 varsity athletics budget?

22 A. It was in the Athletic Department but not in the  
23 varsity lines.

24 Q. And, in fact, you still had to retain the 12, retain  
25 12,000 or add 12,000 to some other part of the Athletics

1 Department budget to fund the sideline cheer unit for next  
2 year, correct?

3 A. It wasn't 12 but we have put a sideline cheer budget  
4 together.

5 Q. Allocation?

6 A. Yes.

7 THE COURT: Just -- sir, I'm going to ask you  
8 move that mic away. We're getting a little feedback.

9 Thank you.

10 MR. ORLEANS: Sorry about that. Thanks, Judge.

11 BY MR. ORLEANS:

12 Q. How much have you allocated for the sideline cheer  
13 unit for the '09-'10 year?

14 A. Ten thousand dollars.

15 Q. Now, but that budget document also doesn't include  
16 scholarships, correct?

17 A. No, it does not.

18 Q. Okay. The volleyball team had five athletic, five  
19 full athletic scholarships at its disposal, correct?

20 A. That is correct.

21 Q. And what is the proposal for athletic scholarships  
22 for the competitive cheer team?

23 A. For scholarships?

24 Q. For scholarships.

25 A. We're planning to start with two per year. So next

1 year going to propose two.

2 Q. Now, when you say that next year you're going to  
3 propose two, do you mean that two members of the team, the  
4 '09-'10 team will receive scholarships or do you mean that  
5 in '09-'10, the coach will go recruiting and will award  
6 two scholarships for the following year?

7 A. Like all coaches, it's their decision. Having been  
8 through some new women's sports before, we have situations  
9 where they may award some of the scholarship money and it  
10 doesn't need to be two people. The coaches are allowed to  
11 break it up into a series of half scholarships or what  
12 have you. So it would be up to the new coach to decide to  
13 use those two this year either for current people, or to  
14 recruit with for actually the '10-'11 season.

15 Q. Okay, you said the new coach but it's really going to  
16 be the same coach who coached sideline this year, correct?

17 A. Correct.

18 Q. That is Ms. Powers; is that her name?

19 A. Correct.

20 Q. So your testimony then is that Ms. Powers will have  
21 the authority to use up to a total of two athletic  
22 scholarships in the '09-'10 year?

23 A. That is correct.

24 Q. If your proposal is approved?

25 A. Yes.

1 Q. Okay. But she hasn't gone out recruiting athletes  
2 for the '09-'10 year of varsity competition, has she?

3 A. She's been involved in the process of recruiting  
4 people assuming there's no scholarships. I mean she would  
5 have a competitive cheer team next year like she has had  
6 last year.

7 Q. Okay, but it wasn't going to be a varsity team --

8 A. No.

9 Q. Until after -- until March 4th, correct?

10 A. She's been recruiting, let's assume, without  
11 scholarships, which is a normal process for all coaches  
12 who have to recruit for nonscholarship athletes because  
13 they don't have enough scholarship money.

14 Q. Okay. And all the coaches of the varsity teams do  
15 some recruiting for non-scholarship athletes as well as  
16 for scholarship athletes, correct?

17 A. Absolutely.

18 Q. But Ms. Powers couldn't have been recruiting for a  
19 varsity team in the current year because by March 4th,  
20 applications had to be in and scholarships had generally  
21 been awarded, correct?

22 A. That is correct.

23 Q. Okay. Mr. McDonald, would you look at Exhibit 13 in  
24 the 1 through 20 notebook?

25 MR. ORLEANS: Your Honor, my notes aren't clear,

1 has this exhibit been admitted?

2 THE COURT: My notes indicate admitted in part;  
3 that is with respect to the '08-'09 year.

4 MR. ORLEANS: But not with respect to the 2007,  
5 '08 year?

6 MS. GAMBARDELLA: No objection.

7 MR. ORLEANS: No objection to that?

8 MS. GAMBARDELLA: No objection.

9 MR. ORLEANS: So that is now in evidence.

10 MS. GAMBARDELLA: That's my present to you  
11 today.

12 THE COURT: To be clear, Exhibit 13 is a full  
13 exhibit?

14 MS. GAMBARDELLA: Yes, I know.

15 THE COURT: All right, Exhibit 13 is full.

16 MR. ORLEANS: Thank you.

17 (Whereupon Plaintiff's Exhibit 13 was marked  
18 full.)

19 BY MR. ORLEANS:

20 Q. Mr. McDonald, would you just explain to the court  
21 what this document is?

22 A. This is a series of names that, as the year unfolds,  
23 where athletes are either added to their rosters or  
24 deleted from their rosters.

25 Q. And this is something that you require? Is this



1 information that the coaches are required to submit?

2 A. Yes.

3 Q. And this is information that you are required to  
4 maintain under NCAA rules?

5 A. Yes.

6 Q. So, the first four pages of the exhibit, which are  
7 bates numbered D0118 through D0121, show changes in status  
8 for the 2007, 2008 year, correct?

9 A. Yes.

10 Q. And just to make sure that we understand, we've got  
11 name columns and then there's a sports column showing  
12 abbreviations for the various sports, correct?

13 A. Correct.

14 Q. Okay. And then there's the date that a change  
15 occurred, correct?

16 A. Correct.

17 Q. And then there's an indication of what the change is,  
18 whether the person has been added to the roster or dropped  
19 from the roster, correct?

20 A. That is correct.

21 Q. If we're just taking, as an example, the first name  
22 is Kelly Calebrese (ph), that's WLA, women's lacrosse?

23 A. That is correct.

24 Q. And on April 16, 2008, Ms. Calebrese was deleted from  
25 the roster?

1 A. That is correct.

2 Q. Is that correct? And what does delete mean in this  
3 context?

4 A. It means a variety of things. It could be injury, it  
5 could be just quitting the team, cut from the team, any of  
6 those; maybe more.

7 Q. And this is all relative to the roster as of the  
8 first date of competition, correct?

9 A. Yes.

10 Q. Okay. Could I ask you to take a look, maybe you  
11 could keep a finger at Exhibit 13 and just go back to  
12 Exhibit 11. Do that you have in front of you, Mr.  
13 McDonald?

14 A. Yes, I do.

15 Q. Okay. This is a document that has been admitted into  
16 evidence, according to my notes.

17 THE COURT: That is correct.

18 MR. ORLEANS: Thank you.

19 BY MR. ORLEANS:

20 Q. What is this document?

21 A. This is the baseball squad list.

22 Q. Okay. Referring to the first, the first three pages?

23 A. Yes.

24 Q. Okay. And this shows the athletes on the roster as  
25 of the first date of competition, is that correct?

1 A. That is correct.

2 Q. And can we tell from looking at this document what  
3 was the first date of competition?

4 A. Well, I would think the dates we all sign is pretty  
5 much the day before or the day of the first date. That's  
6 September 27th.

7 Q. Okay. So, the report date on this squad list for  
8 baseball is September 27, 2007, and if you go to the third  
9 page, that's the date that it's been completed by Tracey  
10 Flynn and signed by you, correct?

11 A. Yes, and head coach.

12 Q. And also signed by the head coach?

13 A. Right.

14 Q. And so the information that is reported on the EADA  
15 reports for numbers of players on the squad as of the  
16 first date of competition is -- it comes from these squad  
17 lists, does it not?

18 A. That's what we're instructed to do, yes.

19 Q. And if you would just page through Exhibit 11, I  
20 believe -- would you just confirm for me that that  
21 includes squad list for men's and women's sports for 2007,  
22 2008 at Quinnipiac, understanding that we may be missing a  
23 couple because I actually recall that at the deposition,  
24 we went through this exercise and there were a few that  
25 were missing and they were produced later?

1 MS. GAMBARDELLA: Yes, correct.

2 MR. ORLEANS: And I don't think I've added them  
3 to the exhibit but we'll try and cure that. At the moment  
4 I don't need to question him about those other pages. I  
5 just want to establish what the documents are.

6 BY MR. ORLEANS:

7 Q. So, Mr. McDonald, could you just confirm that Exhibit  
8 11 is squad lists for Quinnipiac varsity men's and women's  
9 sports for 2007, 2008?

10 A. Yes.

11 Q. Thank you. If you then move on to Exhibit 12, is  
12 Exhibit 12 squad lists for men's and women's sports for  
13 2008, 2009?

14 A. Yes.

15 Q. Now, returning then, if we could, to Exhibit 13,  
16 would you go to the third pages of that exhibit? Are you  
17 there?

18 A. Yep.

19 Q. Okay. And if you would look down, look down the  
20 sports column until you get to the first entry for men's  
21 baseball?

22 A. Correct.

23 Q. That's Kyle Birdsal (ph)?

24 A. That is correct.

25 Q. Deleted on September 27, correct?

1 A. Correct.

2 Q. And we have one, two, three, four, five, six -- did I  
3 count right? Six young men who are deleted from the squad  
4 on September 27th, is that right?

5 A. That is correct.

6 Q. And that's immediately before the first date of  
7 competition in baseball that Fall, isn't it?

8 A. Yes.

9 Q. Okay. And then if you would back up to the second  
10 page of the exhibit and go down to the bottom of the page,  
11 toward the bottom of the page you see Mr. Birdsal six  
12 lines up from the bottom?

13 A. Yep.

14 Q. And we have the same six young men who are added back  
15 to the squad on October 1, 2007, right?

16 A. Yes.

17 Q. Okay. And that's after the first date of  
18 competition, correct?

19 A. That is correct.

20 Q. Okay. So you're not required to report to the EADA  
21 under the EADA, or to the NCAA, that these six young men  
22 were participants in baseball for 2007, 2008, right?

23 A. That is correct.

24 Q. Now -- just a moment, Your Honor.

25 THE COURT: Let me just try and clarify

1 something that --

2 MR. ORLEANS: Sure.

3 THE COURT: -- that is not clear to me at the  
4 moment. Birdsal is listed on the squad on Exhibit 11. In  
5 fact, all six of these young men appear to be listed on  
6 Exhibit 11. I understood the testimony to be that Exhibit  
7 11 is the document that is the source of the EADA report.  
8 So, I'm trying to figure out --

9 MR. ORLEANS: I understand, Your Honor. I think  
10 the problem is that we don't have the accurate first date  
11 of competition. I think, and we can count to be sure, and  
12 refer to another exhibit, I think that you will find if we  
13 count the number of athletes on the squad list and then we  
14 look at the EADA report, we will find that the number of  
15 athletes reported on the EADA is fewer than the number on  
16 the squad list reflecting the fact that these six athletes  
17 were deleted before the first day of competition and then  
18 added back after the first day of competition.

19 THE COURT: All right. Should we do that?

20 MR. ORLEANS: Sure, let's do that.

21 BY MR. ORLEANS:

22 Q. Mr. McDonald, I'm going to ask you if you would look  
23 at the squad list for baseball for 2007, 2008 which is the  
24 first, the first couple of pages of Exhibit 11?

25 A. Got it.

1 Q. Would you please count -- there's not a, there's not  
2 a number on the document that lists the number of athletes  
3 on the squad.

4 THE COURT: Well, I count 33. Somebody correct  
5 me if I'm wrong.

6 MR. ORLEANS: Give me a moment.

7 (Pause)

8 MR. ORLEANS: I also count 33.

9 BY MR. ORLEANS:

10 Q. Mr. McDonald, do you count 33?

11 A. I'll go with the judge and the attorney.

12 Q. That's because we are so good at math, that's why we  
13 became lawyers.

14 Now, the EADA report for 2007, 2008 is Exhibit 1.  
15 The information is also reflected in other exhibits but  
16 I'm not finding the roster numbers in that exhibit. Let  
17 me see if I can find another source of the EADA.

18 Exhibit 26. Have to go into the other notebook. I'm  
19 sorry, this notebook system is a little bit unwieldy,  
20 maybe because we had too many documents.

21 Mr. McDonald, are you looking at Exhibit 26?

22 A. Yes, I am.

23 Q. Okay. And is that the, is that EADA information for  
24 Quinnipiac University for the 2007, 2008 year?

25 A. Yes, it is. Looks like it's generated from their

1 website.

2 Q. Okay. And it reports the number of participants as  
3 of the day of the first scheduled contest for each of the  
4 varsity teams?

5 A. That is correct.

6 Q. And it reports for baseball 27?

7 A. That is correct.

8 MR. ORLEANS: Have we clarified the question?

9 THE COURT: We closed the loop. I just wanted  
10 to --

11 MR. ORLEANS: Thank you, Your Honor. Yes, I  
12 appreciate the suggestion that we close the loop properly  
13 on that.

14 (Pause)

15 MR. ORLEANS: I'm sorry, Your Honor. Give me  
16 just a moment. I need to count --

17 THE COURT: That's all right. Let me interrupt  
18 some more as long as we're doing this.

19 On the first page of Exhibit 11, the bottom  
20 right hand corner, there's the number 27 in a circle. Do  
21 you know why that number is there?

22 THE WITNESS: No, I don't.

23 THE COURT: You don't know whose handwriting  
24 that is?

25 THE WITNESS: I know it's not mine.



1 THE COURT: Okay.

2 MR. ORLEANS: The handwritten numbers in the  
3 lower right hand corner on the pages in Exhibit 11?

4 MS. GAMBARDELLA: They were on the documents  
5 but -- they may be Ms. Flynn's. They're not mine.

6 MR. ORLEANS: There were some of yours that were  
7 on some pieces of paper that I recall.

8 MS. GAMBARDELLA: No, they're not mine

9 MR. ORLEANS: Could I proceed, Your Honor?

10 THE COURT: Please.

11 BY MR. ORLEANS:

12 Q. There's another example of what we're guessing at  
13 here. Would you look at the 2007, 2008 squad lists for  
14 men's lacrosse? This is Exhibit 11, and it starts at  
15 bates numbered page D0317. And, Mr. McDonald, I counted  
16 and I counted 40 young men listed on, on the squad list.  
17 Do you want to doublecheck to be sure that I'm right?  
18 You'll take my word for it?

19 A. I certainly will.

20 Q. The judge is checking, I can see, which I think is  
21 wise.

22 MS. GAMBARDELLA: Can I just ask for  
23 clarification? Are you merely doing a count of the column  
24 on the left or are you taking into account cross-outs all  
25 the way to the right or anything of that nature? You're

1 just counting names on the left?

2 MR. ORLEANS: I am only counting names on the  
3 left.

4 MS. GAMBARDELLA: Thank you. Thank you, Judge.

5 THE COURT: I also got 40.

6 THE WITNESS: I got 40.

7 MR. ORLEANS: Okay.

8 BY MR. ORLEANS:

9 Q. If you look at Exhibit 26, 35 were reported as the  
10 number of participants for EADA purposes, correct?

11 A. That is correct.

12 Q. Okay. Now, let's go to Exhibit 13, if we could, the  
13 second page of the exhibit.

14 A. Okay.

15 Q. Bate number D0119. If you could look, again, toward  
16 the bottom of the page and you see a group of men's  
17 lacrosse players deleted just above Birdsal and baseball  
18 player, we have -- six -- am I counting right? Seven  
19 men's lacrosse players deleted on, well, on October 4th  
20 and October 12th, is that correct?

21 A. That is correct.

22 Q. Okay. And then moving up the page, we see the same  
23 seven -- or maybe not the same seven. Let me see, some of  
24 the same seven added back to the squad on the 15th and one  
25 on the 25th, correct?

1 A. That is correct.

2 Q. Now --

3 THE COURT: For what it's worth, there also  
4 appear to be eight men deleted from lacrosse in August and  
5 September on the next page.

6 MR. ORLEANS: Correct, I see them. But I don't  
7 think we have them added back after the first date of  
8 competition.

9 THE COURT: No, I think though that may account  
10 for the difference in those that you noted on the earlier  
11 page not being exactly identical.

12 MR. ORLEANS: Yes, correct.

13 BY MR. ORLEANS:

14 Q. Now, let me just ask you to continue, if you would,  
15 in Exhibit 13, the last two pages are the change in status  
16 list for 2008, 2009, correct?

17 A. Correct.

18 Q. Now, in this year, Mr. McDonald, weren't there a  
19 group of men's lacrosse players who were dropped from the  
20 team in the Fall for disciplinary reasons?

21 A. That is correct.

22 Q. Okay. And that group would be reflected on the last  
23 page, D0123, around the middle of the page there's a group  
24 of men's lacrosse players who were deleted on the 9th of  
25 September, 2008, is that right?

1 A. That is correct.

2 Q. Now, and as a result of their being dropped for  
3 disciplinary reasons, they were not reported as -- or  
4 excuse me, because you haven't filed your EADA reports for  
5 the '08-'09 year, correct?

6 A. That is correct.

7 Q. But you will not be required to report them as  
8 participants for '08-'09 because they weren't on the squad  
9 as of the first date of competition, correct?

10 A. That is correct.

11 Q. Okay. Were they -- did they, in fact, rejoin the  
12 men's lacrosse team at some point in the '08-'09 year?

13 A. Yes.

14 Q. And did they play?

15 A. Yes. I can't speak to all of them but I know some of  
16 them played.

17 Q. Okay. So they did get to participate?

18 A. Yes.

19 Q. And would you take a look through the change in  
20 status list for '08-'09 and tell me, if you can, where  
21 this change in status list shows those men's lacrosse  
22 players being added back to the roster?

23 A. Are you asking if they're not there?

24 Q. Yes, that's exactly my point. I think you'll find  
25 they are not there.

1 A. That's fine.

2 Q. Maybe we can short circuit -- can you agree with me  
3 they are not shown as being --

4 A. Also, before I would agree to that, I would think  
5 that I'm not sure this list, you know, look at the date  
6 with the most recent date of '08-'09, is what --

7 Q. It looks like the most recent dates of change are --  
8 March the 20th is the most recent one that I see and the  
9 second line, Palmieri, women's softball on page D0122.

10 A. Right, so I'm just not sure.

11 Q. You don't know if this list is complete?

12 A. That's what I'm trying to say.

13 Q. Okay. Does the department keep a different document  
14 called a season of competition used list?

15 A. I'm going to say I don't know. Certainly something  
16 that's a major part of our student athlete's life and  
17 coach's life.

18 Q. What's your understanding of what that term would  
19 mean, season of competition used?

20 A. Well, every athlete has four years of competition and  
21 they have five years to get it in. The reason for my  
22 hesitation, it's not a document that I sign like I do for  
23 these.

24 Q. All right.

25 A. But it is a very important piece of intercollegiate

1 athletics.

2 Q. And so an athlete that participates, plays in the  
3 sport during the championship season of that sport would  
4 have used a season of competition, correct?

5 A. That is correct. It's measured a little differently  
6 by sport but the basic theme is student athletes have five  
7 years to get four years of competition in.

8 Q. All right. And, again, for each sport there's a  
9 limit to the number of contests that the athlete can  
10 compete in during the championship season before being  
11 considered to have used his or her eligibility, is that  
12 correct?

13 A. Yes. Certain sports have certain ratios as to when  
14 you have exhausted that season. Some are in the -- but  
15 that's -- the answer to your question is yes.

16 MR. ORLEANS: Could we have this marked for  
17 identification as 39, please?

18 MS. GAMBARDELLA: No objection.

19 MR. ORLEANS: Thank you.

20 MS. GAMBARDELLA: You're welcome.

21 THE COURT: Exhibit 39 is full.

22 (Whereupon Plaintiff's Exhibit 39 was marked  
23 full.)

24 MR. ORLEANS: And here are a couple spare  
25 copies.

1 BY MR. ORLEANS:

2 Q. (Hands witness)

3 A. Thanks, Jon.

4 Q. Sure. Mr. McDonald, showing you Exhibit 39, that's a  
5 document produced by the defendant in the litigation that  
6 is headed Season of Competition Used. Do you recognize  
7 that?

8 A. Yes.

9 Q. Is it a document that is compiled by the Athletics  
10 Department?

11 A. Yes.

12 Q. May I see the original for a minute? I want to make  
13 sure that it's not one that I marked up.

14 No, it's not. I'm sorry, Your Honor. Just a moment.  
15 I have a copy that I marked up and need to find that one.

16 (Pause)

17 Now, do I understand correctly that this, the names  
18 listed on this document would be a list of the students in  
19 each sport who used a season of competition in the  
20 academic year 2008, 2009?

21 A. Yes.

22 Q. What does the column on the right, participated flag  
23 refer to?

24 A. Means they stepped on the field and competed for  
25 Quinnipiac.

1 Q. What if somebody doesn't have a "Y" in that column?  
2 Have they still used a season of competition?

3 A. I don't know. I did not fill out this report.

4 Q. Okay. Who would be most familiar with this report?

5 A. Tracey Flynn.

6 Q. Okay. Could I refer you to the third page of the  
7 exhibit? Do you see, a little more than halfway down the  
8 page that there starts a list of, of men's lacrosse  
9 players?

10 A. Yes.

11 Q. Let me call your attention to a number of players.  
12 I'm going to refer to them by initials in view of the fact  
13 they may be minors.

14 MS. GAMBARDELLA: Counsel, which document are  
15 you on? I'm sorry.

16 MR. ORLEANS: I'm on the third page of 39.

17 MS. GAMBARDELLA: Just to be sure.

18 MR. ORLEANS: Sure. It's D0045, the bate  
19 number.

20 MS. GAMBARDELLA: Thank you.

21 BY MR. ORLEANS:

22 Q. Four down, there's a senior with the initials AA  
23 who's added on January 21, 2009. See him?

24 A. Uh huh. (Affirmative.)

25 Q. I need a verbal, I'm sorry.



1 A. I'm sorry, yes.

2 Q. Yes. And then a couple down, couple more down,  
3 there's a junior with the initials BT, also added on  
4 January 21, 2009?

5 A. That is correct.

6 Q. And at the bottom of the page, initials GM, it says  
7 added on 1/21/2008 but I'm guessing that the eight is a  
8 typo; would you agree with me on that?

9 A. That's accurate.

10 Q. And if you go over to the next page, continuing down  
11 the list, a little off the middle there's a senior with  
12 initials PE added on January 21, 2009. And below him,  
13 another, a sophomore on January 21, 2009. And farther  
14 down, a junior TK added to the roster on 1/21/2009. Do  
15 you see all those?

16 A. Yes, I do.

17 Q. Is that the group of young men who had the  
18 disciplinary --

19 A. There's a variety of reasons why some of them, but  
20 most have them are familiar to me because of the  
21 disciplinary actions.

22 Q. And they have all competed this year, have they not?

23 A. Yes.

24 Q. Even they don't have a "Y" on the participation  
25 column on the right?

1 A. Yes. As I say, I'm not sure what criteria they used  
2 to put the "Y".

3 Q. And, again, they are on this list because having  
4 competed for Quinnipiac this year, they've used a season  
5 of eligibility, is that right?

6 A. That is correct.

7 Q. So if I went through this list, Mr. McDonald, and for  
8 each sport I counted the number of athletes listed in each  
9 sport, I could get a count of the number of athletes in  
10 each sport who used a season of eligibility in 2008, '09,  
11 is that right?

12 A. I would say I'm not sure, just because based on the  
13 submission of these Y's and A's and Q's, okay, but it's  
14 relatively -- this seems to be the sheet we use to  
15 establish seasons of eligibility.

16 Q. Okay. So you're not sure but if I wanted, if I  
17 really wanted to know how many students used a season of  
18 eligibility in each sport, is there a better document to  
19 go to than this one as a source?

20 A. No, there's not. But this doesn't show you if they  
21 competed in all the games, 20 percent of the games, or  
22 this doesn't help you with that.

23 Q. Right.

24 A. That's maybe where the letters come in.

25 Q. Okay. But if they didn't compete in all the games,

1 they may still, nonetheless, have used a season of  
2 eligibility under NCAA rules, correct?

3 A. Possible, yes.

4 Q. Well, I think you said earlier that it varies by  
5 sport, but in any sport there's a number of games you have  
6 to compete in to be considered to have --

7 A. Yes.

8 Q. -- used a season?

9 A. Yes.

10 Q. And it's not the majority of the games, is it, in  
11 most sports?

12 A. Most sports, if you played more than 20 percent of  
13 your season you have exhausted your year of eligibility.

14 Q. Okay. Now, in the current year, '08-'09, there were  
15 no athletic scholarships for cheerleaders, is that  
16 correct?

17 A. That is correct.

18 Q. I think you testified yesterday that your budget,  
19 your first budget proposal for the upcoming year reduced  
20 the Athletic Department budget by somewhere between five  
21 and 10 percent without cutting any sports, correct?

22 A. My first proposal was to not cut sports, yes.

23 Q. So you spread the pain around essentially?

24 A. Yes.

25 Q. And you achieved the five to ten, the five to ten

1 percent goal with that budget?

2 A. I think we did.

3 Q. Okay. But you were, your superior, that would be  
4 Mr. Bellemonte (ph) to whom you report, is that right?

5 A. Yes.

6 Q. He came back to you and told you that you had to cut  
7 volleyball, is that right?

8 A. The University needed to cut more as a campus, not  
9 just the Athletic Department. So --

10 Q. When you say the University needed to cut more as a  
11 campus, you mean reduce expenditures, correct?

12 A. Yes.

13 Q. But Mr. Bellemonte told you that you had to cut  
14 volleyball specifically, didn't he?

15 A. Told me that more cutting of sports was now on the  
16 block.

17 Q. Okay, I understand. And did he tell you that you had  
18 to cut volleyball?

19 A. Yes.

20 Q. Now, where will the varsity competitive cheer team  
21 practice?

22 A. They will practice in the same place they've been  
23 practicing for the last few years, which is the rec  
24 center.

25 Q. On the tennis courts?

1 A. Yes, Court Four.

2 Q. And they will be practicing more than the sideline  
3 cheer squad has been practicing this year, will they not?

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

5 Q. Okay. There will also be a sideline cheer squad next  
6 year, is that correct?

7 A. That is correct.

8 Q. Where will they practice?

9 A. They'll also practice in the rec center.

10 Q. On the same property?

11 A. Probably because of the storage of the mats and the  
12 state of the equipment, it will be in the same general  
13 area.

14 Q. So your plan is that the competitive cheer and the  
15 sideline cheer squads will share that space for practice  
16 purposes?

17 A. I would think so, yes.

18 Q. And where will the varsity competitive cheer squad  
19 compete when they have home competitions?

20 A. They'll have two places to compete. One is the older  
21 Burt Kahn court we referred to and then we are planning on  
22 maybe a competition or two or three in the T D Banknorth,  
23 but that's all based on the scheduling of all of the  
24 buildings.

25 Q. I understand. So you do expect the Burt Kahn court

1 to be available for at least part of the '09-'10 year?

2 A. Yes.

3 Q. Now, the Athletic Department at Quinnipiac has not  
4 asked the Department of Education Office of Civil Rights  
5 to review your plan to make competitive cheer a sport for  
6 Title IX purposes, have you?

7 A. No.

8 Q. Excuse me just a moment.

9 (Pause)

10 Mr. McDonald, there was some testimony yesterday  
11 about roster management and roster size targets, do you  
12 recall that?

13 A. Yes.

14 Q. When you at Quinnipiac set your squad size targets or  
15 your roster targets, did you consult with the coaches  
16 about that?

17 A. Yes.

18 Q. You asked them for their views on what they think  
19 would be appropriate for their sport?

20 A. Yes and no.

21 Q. Want to explain that?

22 A. Be glad to. The roster management clearly was a  
23 commitment to improve our proportional numbers and it's  
24 like the setting of a budget or like the setting of  
25 scholarships or like any other policies. Sometimes it's

1 my role with discussion of, shall we say, senior  
2 administration to develop policies. And in the roster  
3 management thing, clearly it was a policy that it was the  
4 institutional responsibility to increase proportionality,  
5 and ask any coach whether they wanted to have something to  
6 deleted or something added probably would create  
7 significant stir. As the NEC certification showed, we  
8 were committed to improving opportunities for women and  
9 that setting of roster management was one of the ways to  
10 do that. So we set up this roster management policy in  
11 '07-'08. Some discussions with coaches, some looking at  
12 stat sheets to see how many people really did play  
13 throughout the season, but it's really a, shall I say, not  
14 a consistent evaluation of every sport. They are all  
15 different, unique and good sports.

16 Q. So, would it be fair to say then that it's a, it's an  
17 executive decision; you may consider what people have to  
18 say but ultimately you have the advice of your senior  
19 administrators make the decision as to what those targets  
20 are going to be?

21 A. The certification of the Student Welfare Committee  
22 was deeply involved in establishing roster management as a  
23 priority as well as looking at the numbers. For example,  
24 I may have said yesterday, or maybe in deposition, for  
25 example, there's things like what we call like sports.

1 Soccer and soccer are the same. Track and track. Ice  
2 hockey and ice hockey, they are exactly the same locker  
3 room's coaches, that we discovered that some of them were  
4 different in the number of men and women on those teams.  
5 So we, like, for example, asked the soccer coaches to say  
6 you guys get in a room and whether it's ten on both teams  
7 or a thousand on both teams, we want both teams to be  
8 equal.

9 So, when I said that the coaches were involved, some  
10 were because of their -- they were what we call like  
11 sports and then there's certain sports that are completely  
12 different.

13 Q. Okay. In arriving at the roster targets that you  
14 established for Quinnipiac, do you consider squad sizes  
15 and other Northeast Conference schools?

16 A. That particular document, no, we didn't. There are  
17 other more reliable documents that I would use,  
18 particularly the one from the NCAA, that sort of gives us  
19 a guide. That's more a wide range of schools. Its  
20 Division I, what is we compete against. Those numbers are  
21 established from consistent reporting to the NCAA.

22 The NEC -- no, I'd say the same for the NEC survey in  
23 all phases of it. It's a nice survey done by an athletic  
24 director and compliance person in a couple hours. It's  
25 not the detail of the EADA or squad list, so I think the



1 NEC survey really was created for a salary survey and  
2 everything else was thrown in, so I don't consider this a  
3 reliable source.

4 Q. All right, I'm not sure that I understood. Let me go  
5 back just to the first question and then we can talk about  
6 the document. Is it -- withdrawn.

7 When you set your annual squad size targets for  
8 Quinnipiac, do you consider squad sizes at other NEC  
9 schools as useful information?

10 A. No.

11 Q. Do you consider squad sizes in the NCAA Division I as  
12 useful information?

13 A. I would say that's a little more reliable, yes.

14 Q. You would consider that more reliable? Okay. Would  
15 you take a look at Exhibit 10? Let me just ask, is this  
16 the NCAA squad size information that you would consult?

17 A. We would, yes. We have looked at this often.

18 Q. Okay. And this particular chart or pair of charts  
19 reflects average squad size without regard to whether the  
20 school has a football program, correct?

21 A. Yes.

22 Q. Is there --

23 A. Yes.

24 Q. Is there another survey or chart that you consult  
25 that reflects Division I schools that don't have football

1 programs?

2 A. For this purpose I don't see the need to do that.

3 Q. Okay. All right, fine. And if you would go back to  
4 Exhibit 9, let me see, I'm not sure that you're looking at  
5 the same document I am -- yes, you are. Fine. Thank you.

6 What is this document, Mr. McDonald?

7 A. This is the NEC survey that we spoke to a moment ago.

8 Q. Okay. It says 2008-'09 Athletic Department annual  
9 report. What Athletic Department is that a reference to?

10 A. The Commissioner of the league asked us to fill  
11 out -- it's probably a 25 page report to go over all  
12 phases of support for your Athletic Department.

13 Q. And this chart reports squad sizes for each school in  
14 the Northeast Conference and for each sport they offer,  
15 correct?

16 A. That is correct.

17 Q. And do you have any reason to think it's not  
18 accurate?

19 A. Yeah I do.

20 Q. Go ahead and tell me why you think it's not accurate.

21 A. I'm just sort of picking a sport here. Let's just  
22 take men's soccer, and I'll use Sacred Heart which is  
23 right here in this community because we know their men's  
24 soccer program is 35 there.

25 Q. Sacred Heart is SHU down in the left column?

1 A. Yes, it is.

2 Q. And soccer, they show 35 for men?

3 A. Correct.

4 Q. Okay.

5 A. And so much of what they do using student athletes  
6 within their institution instead of recruiting from  
7 enrollment so that's a good example, that there are many  
8 others here that the numbers are just totally different,  
9 and I don't think I'd go to any conference. I don't go to  
10 ECAC hockey for their surveys, I don't go to Great  
11 Washington lacrosse for their surveys. I'd go to anything  
12 that I would refer to as the NCAA.

13 Q. Okay.

14 A. But the fact of using that -- I'm just picking one  
15 out here, that that's a very, very high number. And I  
16 understand why they do it. It's certainly their -- that's  
17 okay for them to do that.

18 Q. And it's the highest of any Northeast Conference  
19 school according to this, according to this chart?

20 A. Yes, there's some here -- I'm not looking at all the  
21 same time but, again, as I said, this would be the last  
22 document I'd go to when dealing with --

23 Q. Fair enough.

24 A. -- important numbers like this.

25 Q. Do you know when this document is compiled? I think

1 you said it's compiled by the Commissioner of the  
2 Northeast Conference?

3 A. It's sent by the Commissioner and it's submitted by  
4 each athletic department.

5 Q. So each athletic department supplies its own numbers?

6 A. Correct.

7 Q. They go back to the Commissioner's office and then  
8 they are compiled into this chart at the Commissioner's  
9 office?

10 A. Correct. The deadline for this is usually the middle  
11 to end of September. Most of the seasons in some years we  
12 already experienced here that some of these people have  
13 not even submitted their squad list at this point, so I  
14 don't consider this reliable.

15 Q. Okay. Now, Mr. McDonald, coming back to the question  
16 of scholarships momentarily, you have committed to honor  
17 the existing scholarships for volleyball players who are  
18 students at Quinnipiac, correct?

19 A. Yes.

20 Q. And that's about three scholarships that you're  
21 committed to?

22 A. I know the program is five and if there's anybody on  
23 the current program that's part of that five, we will  
24 certainly honor it.

25 Q. Okay. And then if you add two scholarships in

1 '09-'10 for cheer squad members, obviously there's not  
2 going to be a net savings in the scholarships money,  
3 correct?

4 A. No. I'm not sure of your question though.

5 Q. My point is that if volleyball has five scholarships  
6 added to it, or allocated to it, correct?

7 A. Correct.

8 Q. And if three of those scholarships are going to be  
9 honored, and two scholarships are going to be allocated to  
10 cheer, five equals five, doesn't it?

11 A. There's no relationship between the two at all.

12 Q. Well, the money's the same, is it not? Five full  
13 athletic scholarships are five full athletic scholarships;  
14 would you agree with me?

15 A. Yes, but comparing one sport to the other is not fair  
16 to the sports. This is about volleyball and adding  
17 cheerleading.

18 Q. I'm just comparing dollars.

19 A. Yes, but it's, you know, a lot of varsity sports that  
20 we have with scholarships.

21 Q. Mr. McDonald, if an athlete lacks sufficient skill or  
22 talent to compete at the Division I level but is kept on a  
23 team to meet roster management goals, do you consider that  
24 that athlete gets a genuine participation opportunity in  
25 the sport?

1 A. Could you ask that question again?

2 Q. Sure. If an athlete lacks sufficient skill or talent  
3 to compete at the Division I level, but is kept on a team  
4 in order to meet roster management goals, do you consider  
5 that that athlete gets a genuine participation  
6 opportunity?

7 A. Absolutely.

8 Q. And if an athlete is not on the squad the first day  
9 of competition but is added to the roster after the first  
10 day of competition and plays regularly, do you consider  
11 that that athlete gets a participation opportunity?

12 A. Absolutely.

13 Q. I just wanted to clarify something that came up  
14 yesterday. We were talking about the baseball roster and  
15 you said that the first day of competition for baseball  
16 was in September, do you recall that?

17 A. Yes.

18 Q. Thank you. Now, Fall is not the championship season  
19 for college baseball, is it?

20 A. No, nor are many other sports.

21 Q. Okay. So the first day of competition isn't  
22 necessarily in the championship season for a sport?

23 A. That is correct.

24 Q. So baseball is really played year round?

25 A. Baseball, softball, lacrosse.

1 Q. And you heard the testimony yesterday about  
2 volleyball; they have their championship season in the  
3 Fall and they also have competitions in the Spring?

4 A. That is correct.

5 Q. And that would be similar to baseball having  
6 competitions in the Fall and having its championship  
7 season in the Spring, correct?

8 A. That is correct.

9 Q. Mr. McDonald, in the last two years, '07-'08 and  
10 '08-'09, Quinnipiac has not conducted any formal surveys  
11 of student interest in athletic participation, has it?

12 A. We weren't required to.

13 Q. Okay, and so the answer is no?

14 A. No.

15 Q. Have you undertaken any systematic effort to assess  
16 student interest in particular sports?

17 A. No.

18 Q. Mr. McDonald, would you take a look at Exhibit 14,  
19 please? Do you have that in front of you?

20 A. Cheerleading page?

21 Q. Yes. Could you just explain to the court what that  
22 exhibit is?

23 A. This looks to be a cheerleading website. The  
24 beginnings of it looks like it's broken up into different  
25 pages.

1 Q. Well, in fact, it's the Quinnipiac University  
2 cheerleading website as it existed before mid April, is  
3 that right?

4 A. That looks familiar, yes.

5 Q. And it reports the, it lists the members of the  
6 cheerleading squad, doesn't it?

7 A. Yes.

8 Q. And if you look at the page that's labeled page five  
9 of six up in the upper right hand corner of the page?

10 A. Okay.

11 Q. You see the second paragraph there about  
12 competitions, starts Do you enter competitions, and  
13 then --

14 A. Yes.

15 Q. -- it goes to say that "Quinnipiac University  
16 cheerleaders have been competing for the past six years.  
17 However, our main goal is to support both the men's and  
18 women's basketball teams." Did I read that correctly?

19 A. Yes, you did.

20 Q. Now, if you would go on to Exhibit 15?

21 MS. GAMBARDELLA: Fifty or 15?

22 MR. ORLEANS: Fifteen. I'm sorry. We don't  
23 have that many.

24 MS. GAMBARDELLA: Thank God.

25 MR. ORLEANS: I'm with you on that. I'm very



1 happy not to have 50.

2 BY MR. ORLEANS:

3 Q. Mr. McDonald, is this at least a portion -- I'll  
4 represent to you that I tried not to leave anything out,  
5 but -- of the current website for the competitive cheer  
6 squad?

7 A. This is the roster page of the new competitive cheer  
8 website.

9 Q. Okay. And this website went up on, around the middle  
10 of April, correct?

11 A. Yes.

12 Q. Okay. Sometime after this lawsuit was filed?

13 A. Don't know the answer to that.

14 Q. Okay. Now, do you know whether the, whether the  
15 roster that is listed here for competitive cheer in 2008,  
16 2009 is the same roster that is listed for, that was  
17 listed on the old website for cheer?

18 A. No, I don't.

19 Q. You don't know. Okay.

20 I note that the roster -- I'm still looking at  
21 Exhibit 15 -- seems to be almost but not quite exclusively  
22 freshmen and sophomores. Do you notice that? See that?

23 A. I do now.

24 Q. Okay. Do you know whether there's a reason that the  
25 roster is all freshmen and sophomores except for one -- I

1 think there are two juniors. Except for two juniors?

2 Three?

3 A. To answer the question, the only thing I can say is  
4 that for every year for all of our teams, we have what  
5 they call a Senior Day and we didn't have a Senior Day for  
6 cheerleading this year because she had no seniors, so I  
7 would sense that that's why probably why you don't see a  
8 lot of upperclassmen.

9 Q. Because they don't stay on the team if there's not a  
10 Senior Day for them?

11 A. Once in a while a team sort of cycles out that they  
12 don't have seniors, or very few. That's just a phenomenon  
13 of all teams.

14 Q. Now, coming back to a little bit of your testimony  
15 from yesterday about the adding of women's sports, we were  
16 talking about the prongs of the Title IX test for equal  
17 athletic opportunity; do you recall that?

18 A. Yes.

19 Q. You have an understanding what prong two is?

20 A. Yes, I do.

21 Q. And that's the, that refers to the -- well, why don't  
22 you give me your words?

23 A. Prong two is a history of program expansion.

24 Q. History of program expansion. And is it your  
25 contention, Mr. McDonald, that Quinnipiac University

1 satisfied prong two in the current year and in 2007, 2008,  
2 because it has added five women's sports in the 14 years  
3 that you've been at Quinnipiac?

4 A. That is correct.

5 Q. Now, you testified a minute ago that you didn't  
6 consider the squad sizes of other Northeast Conference  
7 schools to be particularly useful in setting your roster  
8 size targets, correct?

9 A. Correct.

10 Q. What did you consider in setting your roster size  
11 target of 40 for the competitive cheer squad beginning  
12 this Fall?

13 A. It's actually pretty simple. Two factors. One, I  
14 think, and again, you can probably count better than I,  
15 but currently there are 31 and 32 on the Quinnipiac  
16 cheerleading team. University of Maryland I think had 36.  
17 But the real reason was when the team competes nationally  
18 and the team competes, there are 25 athletes on the floor  
19 competing. They are all there, like nine in baseball and  
20 11 in football and six in ice hockey. There's 25  
21 competing.

22 So, if you were to take the squad sizes of any  
23 sport -- and we don't have football but I'll use it as a  
24 first example. My alma mate, Boston College, has 11 on  
25 the field, they have 120 on the sideline. My ice hockey

1 team has six on the ice and the squad size here shows 27  
2 and 28. The volleyball team puts six on the floor and  
3 anywhere from ten to 15 on the roster. So, you could go  
4 through any sport and you would find that there is at  
5 least double, if not triple, the number of people that  
6 compete that are on the roster.

7 So, based on that, based on Maryland with 36, based  
8 on Quinnipiac currently had 32, that was the reason.

9 Q. Football is kind of a special case, isn't it?

10 A. Football is a sport. Football reports to the NCAA,  
11 it reports to the EADA.

12 Q. And in hockey, I don't know if you're a hockey guy  
13 but you have these interchanging lines, don't you? Nobody  
14 plays the entire game?

15 A. Nobody reads the rule of the game under the EADA  
16 either, so we need to report numbers the way the law asks  
17 us to.

18 Q. Would you agree with me that there's -- withdrawn.

19 Is it fair to describe the cheerleading unit this  
20 year, which involved both sideline and some competition,  
21 correct?

22 A. Correct.

23 Q. Is it fair to describe it as intermural?

24 A. No.

25 Q. Okay.

1 A. Would you like an explanation?

2 Q. No, I'm actually just looking for a word. It wasn't  
3 varsity, it wasn't club, it wasn't intermural. I'm not  
4 sure what word to use to describe it.

5 A. I think the appropriate analogy would be club.

6 Q. Okay. Is there more work involved in being a  
7 Division I varsity athlete than in being a club athlete?

8 A. Having -- not knowing club sports, I can't speak to  
9 that but I would tell you that to be an NCAA Division I  
10 athlete is significant, and so I can't speak to club  
11 sports but I never was an athlete or a coach.

12 Q. Okay. Do you expect that for the members of the  
13 varsity competitive cheer team, that being a member of the  
14 varsity competitive cheer team next year will be more  
15 demanding physically and in terms of time than it was to  
16 be a member of the squad this year?

17 A. I would hope so.

18 Q. And certainly more demanding than it would be to be a  
19 sideline cheerleader?

20 A. I don't know the answer to that question, but  
21 certainly because of the travel and because of the  
22 competitions, I would think that it will be a different  
23 level.

24 Q. Okay, and because of training time too?

25 A. All of the above.

1 Q. Mr. McDonald, you heard Coach Sparks' testimony  
2 yesterday about her conversations with you around the time  
3 she was hired?

4 A. Yes.

5 Q. Do you recall her asking you about the school's  
6 commitment to volleyball?

7 A. Yes.

8 Q. Okay. And what did you say to her at that time?

9 A. Told her how excited I was about it, that we now had  
10 an opportunity to hire a full-time coach. We had the  
11 opportunity to recruit and got our scholarships back and  
12 that I looked forward to tremendous success under her  
13 leadership.

14 Q. Did you give her any assurance that the school was  
15 committed to the volleyball program?

16 A. I certainly did, just because we were elevated to  
17 full-time, we got our scholarships back, so yeah, I was  
18 pretty excited about it. There were some pretty rough  
19 days prior to Robin getting here because the program was  
20 in significant flux, and we stayed the course and were  
21 able to get it back to a status that was, we considered,  
22 Division I.

23 Q. And when you told Coach Sparks after Spring break  
24 this year that you didn't want her around the Athletic  
25 Department, I think those might not have been your words

1 but in substance, what did you explain to her was the  
2 reason for that?

3 A. There was a, a significant -- well, I mean this is  
4 2009. There's a significant economic discomfort for  
5 everybody everywhere all the time. And when we had to  
6 ask, number one, and we did drop the sport, and there was  
7 a, quite a -- and a sport is not just one employee, it's  
8 12 students, it's 24 parents. In three different sports  
9 we were dealing with upwards of 50 people, students and  
10 coaches, who just saw their sport disappear on them.

11 So, there was considerable anxiety level in the  
12 department. So Robin and the coaches were incredibly  
13 uncomfortable with what was going on, so we felt it  
14 best -- and people were fearing for their jobs. As bad as  
15 March 4th was, and it was real bad, there were still other  
16 employees that were being told their contracts were not  
17 being renewed. I mean we had six or seven or eight  
18 full-time employees that also, their contracts were not  
19 renewed. So the time at the department was, I'd say,  
20 rough.

21 And so Robin became -- everybody wanted to support  
22 her, but at the same time didn't want to be risking any  
23 discomfort or being part of anything that could be  
24 considered, shall we say, risky. So I had asked Robin for  
25 the sake of her discomfort and for those that were in this

1 department -- I did have some staff members come to me  
2 saying we want to support Robin but -- and so I said, you  
3 know, you've got a young daughter, go home, take care of  
4 her, take your computer home, take yourself home and let's  
5 do as much as you can from home.

6 Q. Okay. And so your decision to ask her to do that  
7 didn't have anything to do with any concern that she was  
8 organizing opposition to the decision, did it?

9 A. You know, that's all second, third-hand rumor, but  
10 you know, that was not why, the ultimate reason. Some of  
11 these things trickled out a little bit afterwards but that  
12 wasn't a criteria for me.

13 Q. And, in fact, this is page 111 of the deposition --  
14 you recall being deposed at my office?

15 A. Yes.

16 Q. A week or so ago?

17 A. Yes.

18 Q. And you recall, Mr. McDonald, that I asked you about  
19 this decision, "So it didn't have anything to do with any  
20 sense that she was organizing opposition to this  
21 decision?" And you responded, "Absolutely not. It was  
22 more the comfort level of those that were still around"?

23 A. I stand by both statements.

24 Q. Okay.

25 (Pause)



1 Mr. McDonald, would you look at Exhibit 28, please?

2 You have that in front of you?

3 A. Yes, I do.

4 Q. It's a multi page document. You may need to take a  
5 minute to go through it. No, wait a minute, I see what's  
6 happened here. Okay, it's actually a shorter document  
7 than I thought -- six pages.

8 Could you take a look at that and tell me if you  
9 recognize it?

10 A. I do.

11 Q. What is it?

12 A. It's the men's cross country and track website with I  
13 guess the corresponding links for roster schedules and  
14 you've got the women's here as well, yes. So that's what  
15 it is.

16 Q. And this is part of the Quinnipiac University  
17 Athletic Department website?

18 A. Yes.

19 Q. Who's responsible for the information on the website?

20 A. We have an office of athletic communications and/or  
21 sports information that handles this working with the  
22 coaches, keeping this up to date, as well as the  
23 operations side, the scheduling of events.

24 Q. And it's part of the normal operation of the Athletic  
25 Department to --

1 A. Very much so.

2 Q. -- to keep this website up to date?

3 A. As best as possible. There's parents looking  
4 everyday.

5 Q. And you do your best to make it accurate?

6 A. I'd say more so than best. I hold the coaches  
7 responsible not for its input but so the data is correct  
8 and, as I said, there's tuition paying parents looking at  
9 this everyday.

10 MR. ORLEANS: Okay. Offer this.

11 MS. GAMBARDELLA: This is 28?

12 MR. ORLEANS: This is 28, it's the men's --

13 MS. GAMBARDELLA: No objection.

14 THE COURT: All right. 28 is full.

15 (Whereupon Plaintiff's Exhibit 28 was marked  
16 full.)

17 MR. ORLEANS: No objection? Good. I'm sorry,  
18 Your Honor, I couldn't hear --

19 THE COURT: It's full.

20 MR. ORLEANS: Thank you.

21 BY MR. ORLEANS:

22 Q. Now, if you would go onto Exhibit 29, Mr. McDonald,  
23 this one is a little thicker. Just tell me if you  
24 recognize this document.

25 A. Looks like you printed all the schedules and most, if

1 not all the sports.

2 Q. Again from the Quinnipiac University Athletic  
3 Department website?

4 A. Yes.

5 Q. Okay. And similar to the other document, does your  
6 Office of Communications --

7 A. Yes.

8 Q. I'm mangling the title, but an effort is made to keep  
9 this accurate and up to date?

10 A. Including rain-outs in baseball.

11 MR. ORLEANS: I'll offer this.

12 MS. GAMBARDELLA: No objection.

13 THE COURT: Twenty-nine is full.

14 (Whereupon Plaintiff's Exhibit 29 was marked  
15 full.)

16 THE COURT: I'm assuming you're not offering the  
17 handwriting, or maybe you are.

18 MR. ORLEANS: I'm not offering the handwriting.

19 THE COURT: All right, very good.

20 MR. ORLEANS: Thank you for noticing that, Your  
21 Honor. I had not registered it myself.

22 BY MR. ORLEANS:

23 Q. Mr. McDonald, with respect to the submission of EADA  
24 reports, are you familiar with an assurance of compliance  
25 that has to be signed on behalf of the University?

1 A. Yes.

2 Q. Is that something that you sign?

3 A. Not sure the terminology. There are documents that I  
4 sign, coaches sign, and even the president of the  
5 University signs.

6 Q. Would you look at Exhibit 31, please?

7 A. Sure.

8 Q. Do you recognize that as the assurance of compliance  
9 that is required to be signed in connection with the EADA  
10 reports?

11 A. I don't know this document.

12 Q. Okay. All right. Mr. McDonald, do you recall  
13 receiving a request from Coach Sparks for the University's  
14 EADA reports?

15 A. Yes, I do.

16 Q. For a period from, I think 1996 to the present?

17 A. I do.

18 Q. Okay. And what did you do with that?

19 A. I think that was accurately reported yesterday that I  
20 told Robin, again, email or not, that any time those kinds  
21 of things come in, we send it up to administration.

22 Q. And are you aware of whether those reports were  
23 ultimately delivered to Ms. Sparks and her counsel in  
24 connection with this litigation?

25 A. Seems like they were but -- I know that once counsel

1 got involved they would handle it.

2 Q. Okay, and I'm not asking to reveal any discussions  
3 with your counsel. Would you just look at Exhibit 4,  
4 please?

5 MS. GAMBARDELLA: We don't have an Exhibit 4.

6 MR. ORLEANS: Do we have an extra set? We did  
7 yesterday --

8 (Conferring with counsel.)

9 MS. GAMBARDELLA: Thank you very much.

10 MR. ORLEANS: It was about 1:00 o'clock in the  
11 morning that we put this together.

12 BY MR. ORLEANS:

13 Q. Do you have that, Mr. McDonald?

14 A. I do.

15 Q. Do you recognize this rather thick collection of  
16 documents as the Quinnipiac College Athletic Department  
17 EADA reports for the period, from the 1995, '96 academic  
18 year through the 2007, 2008 academic year?

19 A. I'll take your word for it. Looks like they are all  
20 there, yes.

21 Q. No, actually I think, as it turned out, there were a  
22 few that were missing, but it's a series of EADA reports  
23 spanning that --

24 A. Correct.

25 Q. -- that period of time, even if every year isn't

1       there.

2       A.     Correct.

3       Q.     And, in fact, you compile those reports and keep them  
4       in a notebook in your office, don't you?

5       A.     Yes.

6               MR. ORLEANS:  I'll offer these, Your Honor.

7               MS. GAMBARDELLA:  Your Honor, I'm not sure how  
8       many times we have to eliminate this.

9               MR. ORLEANS:  I just want the ruling for the  
10       record.  If it's going to be excluded --

11              MS. GAMBARDELLA:  It's excluded on two records.  
12       I'm not sure why we're spending more time litigating this  
13       when the court already ruled on the lack of probative  
14       value of an EADA report from almost 15 years ago and  
15       forward.

16              MR. ORLEANS:  Respectfully, Your Honor, I'm not  
17       going to repeat my arguments about the importance of the  
18       history.  I don't think -- we had not offered this exhibit  
19       in any formal way and just wanted the ruling on the  
20       record.

21              THE COURT:  I don't see a problem admitting the  
22       2007, 2008 report, which appears to be the last 18 pages.

23              MS. GAMBARDELLA:  That was the ruling.  We have  
24       no objection to that.

25              THE COURT:  The remainder, for the reasons I

1 previously stated, since this hearing is limited to column  
2 one, it does not appear to me to be of any probative  
3 value, so I would exclude that portion of Exhibit 4 other  
4 than the 2007, 2008 report.

5 MS. GAMBARDELLA: Right.

6 THE COURT: As to which I don't understand there  
7 to be a objection.

8 MS. GAMBARDELLA: No, no. Defendant maintains  
9 that it's a weight issue but you've already ruled on  
10 admissibility, so --

11 THE COURT: Fair enough. So I'm going to admit  
12 4 in part, which is the last 18 pages.

13 (Whereupon Plaintiff's Exhibit 4, as described  
14 above, was marked full.)

15 MS. GAMBARDELLA: That was the last 14 pages?

16 THE COURT: I believe it's 18. It says one of  
17 18, et cetera, at the top.

18 MS. GAMBARDELLA: Thank you. I got it. Thank  
19 you, Your Honor.

20 BY MR. ORLEANS:

21 Q. Mr. McDonald, you sent a memo to Mr. Bellemonte  
22 entitled budget cuts in Title IX, did you not?

23 A. Yes, I did.

24 Q. And you attached to it an article from the Journal of  
25 Sport and Social Issues?

1 A. I think that's what it's from but it's, what, sports  
2 writing in fiscal austerity, something like that?

3 Q. Yes, achieving Title IX gender equity in college  
4 athletics in an era of fiscal austerity?

5 A. That is correct.

6 Q. And it was an article from 1995 actually, wasn't it?

7 A. Yes.

8 Q. And did you -- you read the article, did you not?

9 A. Many times, not -- yes.

10 Q. One of the things that the author recommends to  
11 athletic departments that are faced with financial  
12 concerns is that they undertake a comprehensive Title IX  
13 audit. Is that not -- is that correct?

14 A. Yes.

15 Q. And has Quinnipiac undertaken a comprehensive Title  
16 IX audit?

17 A. Most recently. It was part of the certification we  
18 just completed.

19 Q. So that was back in 2006?

20 A. Yes.

21 Q. Okay. Would you turn to Exhibit 37, please?

22 A. What number?

23 Q. Thirty-seven. It was the last one. And I think we  
24 established yesterday this is the certification self  
25 study?



1 A. Yes.

2 Q. Can I refer you specifically to page 109 and through,  
3 from 109 up through -- I'm having trouble finding where  
4 it -- you see page 109?

5 A. Yes, the pages are a little messed up here but  
6 this -- this is in the student athletic proffer session?

7 Q. Yes, operating principle 3.1 gender issues?

8 A. Yes, my pages are a little messed up here, but --

9 Q. What I'm trying to --

10 A. I'm jumping around the pages but go ahead, I'll find  
11 it.

12 Q. What I'm trying to do, Mr. McDonald, is identify the  
13 part of the certification self study that would constitute  
14 the report of your comprehensive Title IX audit.

15 A. Okay, there are two things. There is a section  
16 somewhere in here that's student athlete, well, general  
17 and student athlete welfare. There was a separate  
18 subcommittee for that group. It was chaired by Joe Biden  
19 (ph) who is our faculty member. That report, and again my  
20 pages are messed up, there's a significant amount of  
21 spread sheets here that show a three year survey of  
22 important gender equity data for the athletic department,  
23 basically salary, scholarships and operating. The  
24 subcommittee went through, in addition to the three prongs  
25 of gender equity, there's an important 13 prong questions

1 and/or criteria that -- and it involves locker rooms and  
2 training rooms and practice time. So, anyway, the  
3 subcommittee went through all that. Somewhere in this  
4 document is what we call plans for improvement, which  
5 basically says these are the things that we have  
6 discovered and this is how we plan to improve them.

7 I'm not sure I answered your question.

8 Q. No, that's -- did that committee produce a report, a  
9 written report apart from what's in this --

10 A. No.

11 Q. -- certification self study?

12 A. No, this was clearly required by the NCAA.

13 Q. Let me come, since you said your pages are messed  
14 up -- they sure are. Okay. Let's see what we can do.

15 A. I used to know that book cold but the pages are a  
16 little bit --

17 Q. Let me call your attention, if I could, Mr. McDonald,  
18 to the table of contents.

19 A. Okay.

20 Q. On page three?

21 THE COURT: Page 142 is the plan for  
22 improvement.

23 MR. ORLEANS: I'll get to that in a second, Your  
24 Honor.

25

1 BY MR. ORLEANS:

2 Q. There's a chapter on equity and student athletic  
3 welfare which starts on page 109, correct?

4 A. Yes.

5 Q. And it includes a variety of materials, including the  
6 gender equity plan for improvement on page 142. It looks  
7 like the chapter goes through page 183?

8 A. Right.

9 Q. Is that entire chapter compiled by the committee that  
10 you were just --

11 A. Yes.

12 Q. Okay. Would it be fair to characterize this chapter  
13 as the report of the committee?

14 A. It certainly would be fair to characterize the  
15 report, audit, self study; you pick a word, it's it.

16 Q. All right.

17 MR. ORLEANS: Your Honor, I'm going to renew my  
18 offer of that section of this document.

19 MS. GAMBARDELLA: Which -- if you can just tell  
20 me which section?

21 MR. ORLEANS: It is the chapter on equity and  
22 student athlete welfare that begins at page 109 and  
23 concludes on page 183 or 84.

24 MS. GAMBARDELLA: Let me just doublecheck the  
25 pages.

1 (Pause)

2 MS. GAMBARDELLA: No objection.

3 THE COURT: All right, that section of Exhibit  
4 37 is full.

5 (Whereupon Defendant's Exhibit 37 was marked  
6 full.)

7 MS. GAMBARDELLA: Just also include the cover  
8 page.

9 MR. ORLEANS: Yes, absolutely. I'd like to  
10 include the cover page and the table of contents.  
11 Actually I'd like to include in the offer -- well, for the  
12 moment let's just go with the cover page and the table of  
13 contents. There's a whole opening section where it  
14 provides information about how the study was conducted.  
15 Do you have an objection to that?

16 MS. GAMBARDELLA: Well, I'm not sure what  
17 relevance it is, but --

18 MR. ORLEANS: It's really just background to  
19 understand what the report is.

20 MS. GAMBARDELLA: Okay. So what did you want to  
21 add?

22 MR. ORLEANS: The cover page and pages one  
23 through 22, just look at the table of contents. You can  
24 see what it is.

25 MS. GAMBARDELLA: No, I will not object to the

1 cover page through page five. I haven't had an  
2 opportunity to go through --

3 MR. ORLEANS: Fine. So the offer at this point  
4 is cover page through page five and the chapter that was  
5 already admitted.

6 THE COURT: All right, cover page through five,  
7 109 through 184, are all full.

8 MR. ORLEANS: Thank you.

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

11 MR. ORLEANS: All right. I have nothing further  
12 of this witness at this time.

13 THE COURT: All right. We're going to pick up  
14 with the cross and the cross can include direct, as a  
15 practical matter. Whether on cross or direct, there  
16 should not be leading of the witness.

17 MS. GAMBARDELLA: No, I understand.

18 THE COURT: All right.

19 THE COURT: I should note I have an  
20 11:00 o'clock proceeding. I've received word that one of  
21 the lawyers is running 20 minutes late so I intend to  
22 break at about 11:15, take care of that proceeding, which  
23 I'm hopeful will be relatively short, and then return.

24 MS. GAMBARDELLA: Okay. So do you want to see  
25 what I can do in the next 15 minutes?

1 THE COURT: You may start for the next 15  
2 minutes and I will advise you that we may to have break.

3 MS. GAMBARDELLA: No, just say the word. All  
4 right, Your Honor, I have everything in hand.

5 CROSS EXAMINATION

6 BY MS. GAMBARDELLA:

7 Q. Good morning, Mr. McDonald.

8 A. Good morning, Mary. Okay to say Mary?

9 Q. I can live with it.

10 All right. Can you briefly describe for the court  
11 your background in school athletics?

12 A. How far back you want to go?

13 Q. Not to elementary school, that's for sure. Why don't  
14 we start with your professional career. Well, let me ask  
15 you, do you hold any degrees?

16 A. Yes.

17 Q. Okay. What degrees do you hold?

18 A. I have a degree in economics and a degree in sports  
19 administration.

20 Q. All right. And when did you obtain your degree?

21 A. The economics degree was in '73 and the masters  
22 degree was in 2004 -- I'm sorry, 1984.

23 Q. And how many years' experience do you profess you  
24 have in administering school athletic programs?

25 A. I've been an athletic director for 19 years.

1 Q. And how many of those years were spent in post high  
2 school institutions?

3 A. All 19.

4 Q. Okay. And how long have you been with Quinnipiac?

5 A. Ending 14 years.

6 Q. All right. And can you briefly describe the last 14  
7 years what your primary responsibilities have been at  
8 Quinnipiac University?

9 A. It's basically overseeing the intercollegiate  
10 athletics program and the recreation program, the  
11 intermural program, and partially involved with the  
12 physical education program.

13 Q. And from where did you glean your understanding of  
14 Title IX?

15 A. It began at my first experience as athletic director  
16 at the University of Denver, at that time in '90 to '95,  
17 my senior administrator at the time was named Dianne Went  
18 (ph) and she was on the National Gender Equity Task Force,  
19 which has got a lot of names that everybody in this room  
20 knows. And she would go to these meetings. We'd have  
21 daily talks. Back in the late, or back in the seventies I  
22 was involved in adding women's track and field at Boston  
23 College as a coach. So it's been the renaissance of the  
24 AIW at Division I, NCAA. There's been an awful lot going  
25 on from -- the Title IX came in the seventies, and now

1 it's maturing and, frankly, a rule of thumb in 2009. So  
2 I've been involved with it my whole career.

3 Q. And in the 14 years that you have spent at  
4 Quinnipiac, would you agree that that was the case as  
5 well, that part of your responsibilities was to remain  
6 familiar with Title IX?

7 A. Familiar and adhering to, yes.

8 Q. Okay. Now, with respect to the 14 years, you were  
9 asked by counsel about the history of expansion of women's  
10 athletic programs and I think you answered that question.  
11 Can you just tell me again what athletic programs have  
12 been added for women during your tenure with the  
13 University?

14 A. Upon arriving in 1995, we've -- and just quickly, in  
15 14 years we've added five women's sports and two men's  
16 sports, so we've actually grown from 14 sports to 21,  
17 prior to this situation.

18 Q. Yesterday when your testimony was commenced, there  
19 was a discussion about when ice hockey, women's ice  
20 hockey, was added. You gave one year and then you were  
21 pointed to a chart in that self study which said 1998.  
22 Can you please explain for the court how to reconcile  
23 those answers?

24 A. In 1999 we made, shall we say, a national  
25 announcement, we hired Ben Smith, who was the Olympic



1 coach of the woman's ice hockey program. They won a gold  
2 medal not too long after that, to sort of take us to  
3 another level in women's ice hockey. So we hired Ben as a  
4 consultant. And at that time we elevated our men's ice  
5 hockey coach to full-time status. We announced we would  
6 be adding women's ice hockey and then that season began in  
7 2000, 2001.

8 Q. Okay, so the season didn't actually begin in 2000?

9 A. The announcement was in 1999.

10 Q. All right. Was it at varsity level when it was first  
11 introduced, women's ice hockey?

12 A. We had to spend a year as club, learning our ropes,  
13 six or eight or ten games. And then really in 2001, 2002,  
14 our first varsity game was against Colgate at Northwestern  
15 Ice Pavilion.

16 Q. Do you have an understanding whether or not the  
17 elevation of a woman's program to varsity level would  
18 count for purposes of prong two compliance? And I know  
19 you're a layperson, just your understanding?

20 A. Well, it is what it is. The word is history and  
21 program expansion and clearly in my history at Quinnipiac  
22 we've had significant expansion.

23 Q. And in addition to adding women's athletic  
24 participation opportunities, what other indicia of  
25 compliance with prong two would you contend Quinnipiac can

1 offer to the court?

2 A. Well, scholarships have clearly been increased  
3 significantly, and I would also add that the teams that  
4 we've added were team -- we have more team sports at  
5 Quinnipiac for women than we do for men and it just  
6 evolved, but that's the way it is. We have had salaries,  
7 scholarships and operating, the three things we referred  
8 to many times this week, all of them have increased  
9 significantly.

10 Q. We've already established for the court your  
11 understanding -- well, I think everybody agrees that EADA  
12 reports reflect numbers as of the first day of  
13 competition, correct?

14 A. Correct.

15 Q. And they don't have to be modified throughout the  
16 season as the roster changes?

17 A. We go with the instructions.

18 Q. Okay. I just want to jump before the break to  
19 Plaintiff's Exhibit 3. While I do this -- is this okay?  
20 And also put your finger on Exhibit 11, Jack.

21 Now, Exhibit 3, Your Honor, is that add/delete list  
22 and Exhibit 11 are the first date of competition squad  
23 lists in Quinnipiac University. All right?

24 Jack, I'm actually going to point you first to  
25 Exhibit 11. I'm sorry.

1 A. Okay.

2 Q. Now, you were asked to count in the left hand columns  
3 names, do you remember that?

4 A. Yes.

5 Q. And in the far right hand column there are cross-outs  
6 and there are indications of change in status. Do you see  
7 those columns in the far right?

8 A. Yes.

9 Q. All right. And at the bottom the number 27 appears,  
10 do you see that?

11 A. Yes.

12 Q. All right. And this corresponds with what was  
13 reported on the EADA report for that academic year for the  
14 first date of competition, correct?

15 A. Yes.

16 Q. All right. And so what is the significance of the  
17 column to the right change in status on this particular  
18 document?

19 A. I'm sure, and again, I would defer to Tracey, Tracey  
20 Flynn -- that some of these dates might link to the  
21 add/delete database.

22 Q. Right, and the bottom is 27?

23 A. Right.

24 Q. All right. Can you note -- and the documents I  
25 understand speak for themselves, but can you, can you

1 reference and connect the names that have cross-outs  
2 connected with them to the far right, whether or not they  
3 are the same names that correspond with Plaintiff's 13 who  
4 are deleted before the first day of competition?

5 A. I'm not doing it quickly -- oh no, I'm in the wrong  
6 sport. Were you looking at baseball?

7 Q. I think I am. Yes, I am.

8 A. Sorry, yes.

9 Q. The names match, right?

10 A. Yes, there's some similar names, yes.

11 THE COURT: Just to be clear, when you say  
12 cross-outs, you mean handwritten --

13 MS. GAMBARDELLA: Yes, I do, Judge.

14 THE COURT: Okay.

15 MS. GAMBARDELLA: Yes, I do.

16 BY MS. GAMBARDELLA:

17 Q. Same thing with -- if you go to Exhibit 11, there are  
18 a number of pages where in the far right there are  
19 handwritten cross-outs with handwritten numbers at the  
20 bottom, is that correct?

21 A. Yes.

22 Q. All right. Can you please just briefly explain to  
23 the court why athletic participant numbers change from the  
24 first day of competition in your experience at Quinnipiac?  
25 Let's stick with Quinnipiac.

1 A. It's the nature of athletics. Injuries, disciplinary  
2 action, we talked earlier about the men's lacrosse  
3 situation where athletes were disciplined. The first day  
4 of competition, I would say that in many sports in the  
5 Fall, athletes have accumulated some disciplinary  
6 sanctions that are occurring in the first day of  
7 competition, where a player who, particularly freshmen,  
8 sophomores who come back and don't follow the rules and  
9 might break a policy, that we have a strict policy that  
10 says if you, for example, drink alcohol and you're not 21,  
11 you miss a game. So you might see a significant number of  
12 people who cannot, are not allowed to compete those first  
13 games in the Fall because of some disciplinary issues,  
14 like the men's lacrosse.

15 Q. Okay. So let's take potential disciplinary issues,  
16 and I'm not going to have you list all the possibilities,  
17 but if an athlete is deleted prior to the first day of  
18 competition for a disciplinary issue, is it sometimes the  
19 case that they might be added back later?

20 A. Absolutely.

21 Q. And what would be the example of some of the reasons  
22 why they'd be added back later?

23 A. Well, for example, if they are disciplined and miss a  
24 game on that weekend, usually they are weekends --

25 Q. They paid their dues to society basically?

1 A. Yes.

2 Q. Okay.

3 A. But then there are other good reasons why. For  
4 example, they made the try-out or the coach might not have  
5 the person who made it go for the first game. You know,  
6 again, you ask me just about Quinnipiac but anybody who  
7 reads the sport page knows what, disabled lists and waiver  
8 wires, I mean it's just common, common practice in  
9 athletics for men and women that people, the teams are  
10 completely different from the beginning of the season to  
11 the end of the season.

12 Q. Can I take you back briefly to the introduction of  
13 roster management at Quinnipiac? Actually it's not going  
14 to be so brief. I don't want to lie --

15 A. Okay.

16 Q. -- for the record.

17 A. Yes, you can.

18 Q. What is roster management?

19 A. Well, roster management, as I explained, is the  
20 ability -- it sort of came on as gender equity evolved, as  
21 I mentioned, where there are schools who want to, have to  
22 either get to the numbers, show expansion, so they want to  
23 try to meet a prong so they have to sort of say, and  
24 there's some strict rules, there's roster management and  
25 then there's actual policies. And so schools will try

1 to -- and I know we're using track or tennis or some  
2 schools, for example, have women's swimming and they don't  
3 have men's swimming. That's a policy. Some schools have  
4 40-odd women swimming and there are allowed only 20 on men  
5 swimming. That's a policy.

6 So, I think that roster management isn't quite as  
7 strict. Roster management is sort of let's try to work  
8 within the department to try to increase opportunities for  
9 our reporting but also to increase opportunities  
10 consistent with the university's enrollment and with just  
11 basic athletic philosophy that you want to provide as many  
12 privileges as possible for women. So that's what it is.

13 Q. And when, and I think we've already established when  
14 it was first introduced at Quinnipiac but can you remind  
15 the court of the first year in which roster management as  
16 a policy was implemented?

17 A. It was a discovery in the self study process in 2006,  
18 so that was in '06-'07 we gave it a shot. We put it on  
19 paper. '07-'08, we put a little more teeth into it, and  
20 '08-'09 it's still evolving. So it's, at the end of the  
21 day it's still a process that's trying to attempt to get  
22 better, more opportunities for women.

23 Q. And so the goal of implementing roster management was  
24 to improve female athletic participation opportunities?

25 A. Yes.

1 Q. All right. And what more specifically in terms of  
2 Title IX compliance is the goal of roster management at  
3 Quinnipiac?

4 A. Say that again, Mary?

5 Q. Let me ask you how does proportionality fit in with  
6 that goal, achieving proportionality?

7 A. It's achieving gender equity and meeting the three,  
8 one of the three or all three prongs, but the requirement  
9 is only one of the three prongs, as we know it today. So  
10 it was clearly a plan for improvement in the self study to  
11 increase our opportunities for women, and roster  
12 management, without adding sports, was the first step to  
13 do that.

14 Q. Okay. And how did the coaches receive this news of  
15 the implementation of roster management starting in  
16 academic year '07?

17 A. I'd say fair to poor.

18 Q. Okay. Tell us what you mean by that.

19 A. As I said, no coach, no person, no employee likes to  
20 be told this is a new policy that you're going to have to  
21 adhere to. I mean I can go as simple as we're all going  
22 to wear Nikes and nobody can wear Rebox. There are  
23 certain times when coaches like to develop their own  
24 particular programs, so when you tell a coach that you  
25 need to hit a certain number, whether it be higher or



1 lower than normal, even though it can be a realistic  
2 number, they don't like to be told. They don't.

3 So I think it met with resistance but I would say  
4 that over the span of time, they understand it. They are  
5 trying to help, but they also fall into situations where  
6 athletes are disciplined, kids quit -- it's a moving  
7 target.

8 Q. Would the word resistant be accurate to describe some  
9 of their attitudes, at least the first year?

10 A. I don't know if resistance is a little too strong,  
11 but questioning, stubborn.

12 Q. Stubborn, okay.

13 A. Yeah, I don't think that anybody in the department I  
14 considered to be resistant.

15 Q. All right. Now, step back to 2007. Much has been  
16 made about Plaintiff's Exhibit 13, so would you mind  
17 turning to --

18 A. That's the delete page?

19 Q. The add/delete list for 2007, 2008. It's where I  
20 want to concentrate right now, and I don't think I'm  
21 understating the testimony is that these pages establish  
22 Quinnipiac's manipulation of rosters. Do you remember  
23 hearing that testimony yesterday?

24 A. Yes.

25 Q. Okay. Mr. McDonald, how do you respond to that

1 allegation?

2 A. I'm happy that there are people trying to get to the  
3 number. I mean they are trying to do what we've asked  
4 them to do based on the rules of the EADA. It's the first  
5 day of competition. No one said you can't do this and I'm  
6 not saying that this is right either.

7 Q. Right.

8 A. What I am saying is that coaches -- you've never seen  
9 add/delete lists for 1996 to 2006, but because of roster  
10 management, because of our commitment to improve the  
11 numbers, and I can also see other phases of our athletic  
12 department that may be, they work it hard and work the  
13 gray area. So I feel good not only -- not about the  
14 initial year but I also feel good about the improvements  
15 to '08-'09 and -- but there will always be add/deletes.

16 Q. I understand that. But I want to focus you  
17 particularly on add/deletes before the first day of  
18 competition and then adding back right after. Did there  
19 come a time in 2007 when you became aware that a couple of  
20 the coaches were doing that?

21 A. It was pretty obvious that, that this was happening  
22 in 2007, 2008. I'm not sure that you'll see a mass exodus  
23 or addition/delete to '08-'09.

24 Q. Okay, but let's stick to '07. When the University  
25 discovered, I mean you, okay? When the University,

1 through you, discovered that a couple of coaches had done  
2 this, did the University address it?

3 A. Yes.

4 Q. Okay. How did the University address it?

5 A. Well, it's pretty simple. From my end, the squad  
6 list, as you probably all saw, that needs to be signed by  
7 me. Number one, we count the number before I sign it. Is  
8 this the number that's listed in the book. And I can't  
9 tell you how many times I would say to the compliance  
10 person I'm not signing this until it's the number that's  
11 correct.

12 And, in addition to that, this mass on/off was made  
13 aware in meetings and hallway talk or in meetings with me  
14 that this is just clearly not -- not acceptable.

15 Q. Right. So it's not a policy Quinnipiac implemented,  
16 this is how you get around EADA?

17 A. No.

18 Q. Okay.

19 A. It's -- coaches find ways. It's just their nature.  
20 That's what we pay them to be, to be as good as they  
21 possibly can be and in this case -- and I don't mean to  
22 circle out some sports, but there's a lot of sports  
23 involved that we are disparately trying to reduce the  
24 obvious.

25 Q. And these add/delete reports, do they represent the

1 number of athletes who remained, for example, static  
2 throughout the season? These are just add/deletes,  
3 correct?

4 A. They are add/deletes.

5 Q. Okay, fine?

6 A. I mean, as we said earlier, there's a lot of these  
7 because on the first day of competition in September they  
8 are directly related to discipline actions by me.

9 Q. And nobody at administration told coaches, this is  
10 how you get around it, guys?

11 A. Not in this or any phase of our policies.

12 Q. In fact, as part of Exhibit 13 -- let's move now  
13 quickly through -- did you want to break, Judge?

14 THE COURT: I should break, but before we do  
15 that, I had one question to throw out. Looking at Exhibit  
16 11.

17 MS. GAMBARDELLA: Eleven?

18 THE COURT: How can I tell how many of these  
19 players have a full or partial scholarship? I see a full  
20 grant amount and then I see an equivalent award which  
21 appears to be a percentage.

22 THE WITNESS: When you see 1.0 --

23 THE COURT: That's a full scholarship?

24 THE WITNESS: I would consider that a full  
25 scholarship. And I'm just looking at baseball.

1 THE COURT: Right, no, I was, too.

2 THE WITNESS: Okay.

3 THE COURT: So there's a number of full  
4 scholarships. There's also a number of partial  
5 scholarships and there's a number of nonscholarship  
6 players?

7 THE WITNESS: Correct.

8 THE COURT: All right, fair enough.

9 All right. With that, let's take a recess.  
10 I'll be back as quickly as I can.

11 MS. GAMBARDELLA: Should we clear out or --

12 THE COURT: No, I'm going to go next door again.

13 MS. GAMBARDELLA: Okay, thank you.

14 (Whereupon a recess was taken from 11:20  
15 o'clock, a. m. to 11:55 o'clock, a. m.)

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