

1 (Whereupon the luncheon recess was taken at 12:35
2 o'clock, p. m.)

3
4
5 A F T E R N O O N S E S S I O N

6 (1:20 O'CLOCK, P. M.)

7 MS. GAMBARDELLA: Your Honor, we have a
8 preliminary housekeeping matter.

9 THE COURT: Sure.

10 MS. GAMBARDELLA: During the break, counsel and
11 I talked, what we have agreed is that when we reconvene,
12 which I think you said would be approximately 2:30?

13 THE COURT: Well, 2:30 or at the earliest,
14 three.

15 MS. GAMBARDELLA: Got it. Irrespective where we
16 are with Mr. McDonald, which should be substantially
17 completed if not completed, we've agreed, we have a
18 competitive cheer coach who has been here now for two
19 days. We've agreed, if it's okay with you, to take her
20 out of turn so she doesn't have to return tomorrow.

21 THE COURT: That's fine.

22 MR. ORLEANS: Fine with us.

23 MS. GAMBARDELLA: And we can probably finish
24 with her within the additional time constraints you have
25 this afternoon.

1 THE COURT: That's fine.

2 MS. GAMBARDELLA: Great.

3 BY MS. GAMBARDELLA:

4 Q. Okay. Mr. McDonald, I just wanted to, before we
5 continue with the decision-making process for next year
6 about the elimination of the programs, I want to just run
7 by you one more piece of the expert's testimony.

8 The expert testified that the NCAA caps
9 indoor/outdoor cross country track at 18 events for the
10 year, and that then if you eliminate outdoor track, all
11 you need to do is get your indoor guys, men's indoor or
12 women's indoor to just run the 18 events. What is your
13 response to that?

14 A. Frankly foolish, impossible, impractical and nobody
15 would want to do that, including the athletes.

16 Q. Can you explain to the court briefly why you have
17 rendered that opinion?

18 A. Well, 18 events in one season, you know, in the
19 indoor season is, what, December, January, February.
20 That's only 12 weeks. If anything, student athletes that
21 run middle or long distance, that's actually too many
22 events in that short span of time. So it's just
23 impossible to do. It's no solution. We will not be doing
24 it. We will run a normal indoor season. So that is just
25 hard to believe someone would say that.

1 Q. And, just briefly, has the admissions office made you
2 aware of the female/male enrollment breakdown based on
3 acceptance letters for next year?

4 A. Yes.

5 Q. And what is your understanding of the breakdown?

6 A. So we can prepare for future proportional numbers,
7 there is -- 63 percent women have made deposits to
8 Quinnipiac.

9 Q. Okay. And, again, we've already gone through that
10 people don't necessarily show up who put deposits?

11 A. No.

12 Q. Okay. Now, let's go back to the decision-making
13 process that is affecting next year. Can you -- you've
14 already testified on direct from counsel that there was a
15 dictate that budgets be cut.

16 A. Yes.

17 Q. Is that accurate? All right. Tell me who first
18 articulated to you personally that need?

19 A. My direct supervisor, Nel Bellemonte (ph).

20 Q. And what specifically did he say to you about budget
21 cuts?

22 A. That all departments will be asked to reduce their
23 budgets by five, ten percent. Position freezes, potential
24 salary freezes. At that point the salaries weren't
25 discussed as much but there was some clearly important

1 discussions on budget and cuts on budget that were going
2 to occur.

3 Q. Now, you've already testified that the first proposal
4 you made did not include elimination of athletic programs
5 to achieve that five to ten percent goal; do you recall
6 that remember?

7 A. That is correct.

8 Q. Why didn't you include athletic programs in that
9 first proposal?

10 A. It's just not what our business is about. Our
11 business is to give the student athletes a good
12 experience and, as athletic director, I know how important
13 each of those sports is to each of the kids, and that is
14 the last thing we would want to do.

15 Q. And then you testified that he came back and said,
16 no, programs have to be included. Do you remember
17 testifying to that?

18 A. Yes.

19 Q. Can you tell us more exactly what he said to you?

20 A. Well, I think at this point the initial university
21 budgets that were submitted, there appeared, because of
22 some projections in the economy, some projections and all
23 sorts of financial, the financial world was still sinking,
24 that the initial proposals were not going to be enough.
25 And we then were asked to consider the dropping of sports.

1 Q. What was the first sport that you proposed be cut?

2 A. Men's golf.

3 Q. And then at some point women's volleyball became the
4 topic of conversation, correct?

5 A. Yes.

6 Q. All right. Can you tell us how that proceeded?

7 A. Well, I think that women's volleyball became part of
8 this because of an university master plan of facilities
9 that was unfolding or, shall we say, even continuing since
10 we built the T D Banknorth Sport Center.

11 Q. Can you please explain to his Honor what you mean by
12 that facilities master plan, did you call it?

13 A. Yes.

14 Q. Please.

15 A. Quinnipiac has fortunately grown from 4,000 students
16 to about 7,000 students over the last 20 years or so
17 and --

18 Q. Push the mic --

19 A. Okay.

20 Q. Great.

21 A. And because of that growth in students, the need for
22 space for student activity, including athletics, was
23 clearly very high. We needed more space in student
24 activities, more space at the student book store, more
25 space just for other students. We expanded some athletic

1 facilities.

2 So, because of that, and because of the vacated Burt
3 Kahn court where men's and women's basketball was, the
4 university was looking at that space as a place to put
5 some of these activities or offices or meeting rooms or
6 what have you, so that the vacated Burt Kahn court became
7 a negotiating piece as to what are we going to do with it.

8 A lot of constituencies on compass were saying I want
9 this for chapter 11, I want it for an auditorium, I was it
10 for office space. So it became -- we're there saying we
11 need it for volleyball. We were very successful in
12 lobbying and proposing to the university that the Burt
13 Kahn court, for the need of space for volleyball. We
14 would then agree to build a volleyball-only gymnasium or
15 court.

16 Q. When was that discussed as a possible future
17 solution?

18 A. I would say past fall of 2008 we were actually
19 walking with some university officials looking at some
20 spaces outside the athletic center to say it could go
21 here.

22 Q. Was that actually a topic for possible future
23 exploration even before early '08, early academic year
24 '08?

25 A. Yes.

1 Q. When was that?

2 A. Probably for the last year and-a-half.

3 Q. Okay.

4 A. As the need for this expanded student activity space
5 was happening.

6 Q. So, the need for expanded space is not just for
7 athletic programs space?

8 A. No.

9 Q. It's university-wide, correct?

10 A. Correct.

11 Q. And so, continue with respect to this discussion
12 about facilities and the plan about facilities.

13 A. Well, as we were looking at this space, then we
14 started getting into some very preliminary discussion of
15 how much space do you need, what's the size of the court,
16 what's the size of the out-of-bounds area, how many seats
17 do you think you might need? We were going to use the
18 existing locker rooms. It basically became a gymnasium
19 box that we were going to add to our current recreation
20 and athletic facilities.

21 So we penciled in a location, it was all on. So, by
22 October, November, December, we were starting to feel
23 pretty good, asking the coach about the proper sizing and
24 what's the out-of-bounds space, the ceiling height, all
25 the things you need to build a first class facility. And

1 then things turned very poorly in December, January,
2 February.

3 Q. You mean in the economic --

4 A. Economically. And then the University put a freeze
5 on all sorts of things, including this additional space.

6 Q. Okay. So what building does the volleyball team --
7 well, this past year where were they practicing and where
8 were they having home competitions?

9 A. They were practicing and playing in the Burt Kahn
10 court, which was the old basketball gymnasium.

11 Q. Okay. And what are the reasons why that particular
12 space and that particular was appealing to the university?

13 A. It basically had a lot of space. I mean you can
14 imagine a game court with two side courts. I'm not going
15 to guess the square footage but it was a pretty good open
16 space that could be used for a variety of reasons. They
17 thought maybe of putting in some offices where the old
18 wooden seats were, maybe shrinking it into, instead of two
19 intermural courts, make just one. Maybe an auditorium.
20 But just a general meeting place for university functions
21 so that the other meeting space on campus, Alumni Hall,
22 those events that were there could move to the Burt Kahn
23 court and the spaces where the Alumni Hall was would be
24 used by the book store, campus activity, student activity,
25 what have you. Just normal master planning. I mean it's

1 very common.

2 Q. The university's basically busting at the seams
3 space-wise?

4 A. Yes.

5 Q. With respect -- you were in court when Ms. Sparks
6 testified along the lines of how easy it would be, and I
7 am paraphrasing, to simply take existing facilities, and I
8 think the two facilities mentioned were the rec center and
9 the T D Banknorth facility, how easy it would be to
10 accommodate the volleyball team there. Do you recall that
11 testimony?

12 A. Yes.

13 Q. Okay. Do you agree with it?

14 A. No.

15 Q. Okay. Tell us why.

16 A. Well, I think clearly the ease would be something for
17 a floor, but to be a first class Division I program,
18 there's more than just a floor that needs to go into the
19 rec center. The seating, the score boards, there's media
20 statistic areas. So, no, it really was a -- it really
21 would be almost -- what's the word -- not a Division I
22 atmosphere if we did that.

23 Q. What's the importance of having a Division I
24 atmosphere?

25 A. I think that's why the kids we heard in the testimony

1 yesterday, that that's what they wanted. That's what the
2 families want. We would much have preferred to have that
3 court that was designed specifically for volleyball than
4 to have a rec court converted to a volleyball court.

5 Q. So it's not just about the floor?

6 A. No.

7 Q. What about the other facility she testified about?

8 A. Five or six -- well, now maybe seven, eight years
9 ago, when we were programming the T D Banknorth sports
10 center at one point, we knew the university was busting at
11 its seams, we knew the general sentiment, that people had
12 their eye on the Burt Kahn court. It's like as soon as
13 someone leaves, they want their office. Well, as soon as
14 the athletic varsity teams left, there were many that
15 wanted the space in the Burt Kahn court.

16 So we proposed to include some volleyball facilities
17 in the T D Banknorth Sports Center. And probably for a
18 few months I actually saw some plans drawn where there
19 would be a volleyball locker room and volleyball coaches
20 office and storage and all of the support things that
21 would go along with it.

22 Q. So, what would have to be done to that facility to
23 make it suitable to host a Division I volleyball program?

24 A. Today?

25 Q. Now.

1 A. Well, today would require, you know, like we said
2 yesterday, obviously doing some infrastructure with the
3 actual installation of the court, but we need a coach's
4 office, you'd need an athletic trainer, you'd need the
5 locker rooms, you would need the things that would go
6 along with it. When the decision was made in that master
7 plan and the building was built then without volleyball,
8 to add it now would be, I think, very troublesome.

9 Q. Did the University in its early exploration of
10 possibly building out other space for volleyball to keep
11 it or building an additional facility to keep it, obtain
12 any quotes over the past year, year and-a-half, to
13 accomplish those things?

14 A. I'm sure a quote was established when we were going
15 to build that additional volleyball court as part of the
16 athletic and rec center. I don't have the exact price. I
17 didn't hear it. But clearly the number was probably
18 higher than the economy would allow.

19 Q. It wasn't \$11,000, I take it?

20 A. No.

21 Q. Okay. Was it even in the thousands of dollars range?

22 A. It was in the millions.

23 Q. And what is the volleyball season per NCAA
24 guidelines?

25 A. The championship season is in the Fall.

1 Q. Okay. And so when is the season officially over for
2 volleyball pursuant to NCAA guidelines?

3 A. The championship season ends at Thanksgiving or
4 thereabouts. I know the NCAA championship goes a little
5 longer and that's a nontraditional season that happens in
6 the second semester.

7 Q. You were asked about whether or not Quinnipiac has
8 ever done any -- and I don't remember if the word was
9 official or formal, so I'm sorry if I've forgotten the
10 exact words but the tenure of the question was whether or
11 not you did any formalized surveys to ascertain student
12 interest in particular athletic programs. Do you remember
13 being asked that?

14 A. Yes.

15 Q. And you said no, there was no survey of that calibre,
16 correct?

17 A. That is correct.

18 Q. What are the methods that Quinnipiac uses to
19 ascertain student interest in particular athletic
20 programs?

21 A. The methods are, and it's quite clear and that's
22 absolutely why we're doing cheerleading, it's very
23 uncommon, is quite regularly students would come to me to
24 ask for certain things, whether it be an intermural golf
25 or intermural lacrosse or club ice hockey or whatever,

1 rugby. There's all sorts of things. So it's really the
2 measuring those that come and ask for it. And in this
3 case, over the last probably five years, the only team
4 that's asked to be varsity or recommending themselves to
5 be varsity was the competitive cheer group.

6 Q. And what about -- you were asked some questions about
7 recruiting, the timing of recruiting. Is there -- are
8 there also recruiting efforts on campus during
9 orientations and things like that?

10 A. Yes.

11 Q. Can you describe the kinds of recruiting efforts that
12 are exerted during orientation for an incoming class, for
13 example?

14 A. Well, yesterday while I was here in court, I was
15 supposed to be at a Junior Open House for juniors who are,
16 parents who are thinking about Quinnipiac. And so that it
17 begins with that one in May, and then there will be three
18 open houses for the seniors in the Fall. And then there's
19 also what they call Student Admitted Day in March so the
20 parents who have been accepted, and the families and the
21 student athletes, will come and meet us. At each one of
22 those five or six events, the athletic department has a
23 scheduled meeting, seminar, Q and A time with me and/or
24 the coaches. So we're very actively involved with the
25 admissions office.

1 Q. Are there also inquiries made by students who are --
2 at the time periods they are considering whether or not to
3 come to Quinnipiac?

4 A. Yes.

5 Q. In terms of athletic programs?

6 A. Yes.

7 Q. Is that one way you ascertain interest in particular
8 athletic programs?

9 A. Yes, it is. We also have a, quote unquote, little
10 thing on the website that says I want to do baseball or
11 basketball or different sports. But, yeah, that's what we
12 do.

13 Q. Okay. I just want to briefly touch on competitive
14 cheer because I don't want to be duplicative with what the
15 coach has already testified to.

16 So, why elevate now to varsity level the cheer team?

17 A. Well, there's two reasons. One is they want to be
18 and they've been successful and they've been competing for
19 a while. It was also something that we looked at
20 seriously between the NCAA certification process when we
21 said that we would increase opportunities by four to
22 seven percent and competitive cheer and some other sports
23 were considered. And then, as well as, and the most
24 recent news was our mandate to get to our number if we
25 were to drop a woman's sport.

1 So clearly, all of the -- cheerleading didn't come
2 out of the blue. It's been on the radar. We had
3 discussions even about elevating the coach prior to this
4 situation, but economy and budgets didn't allow. So her
5 salary has gone from, I don't know, maybe \$3,000 to its
6 current level of 20 over the last six years because of
7 this competitiveness, time commitment, what have you, so
8 cheerleading has always been on the -- has always been
9 there.

10 Q. You were asked a question by counsel about whether or
11 not the University has had the Office of Civil Rights do
12 an advanced assessment of whether or not your competitive
13 cheer program as elevated to varsity level would pass
14 muster for their purposes in deciding whether or not it
15 would count for Title IX purposes. Do you remember that
16 question?

17 A. Yeah, I do.

18 Q. Okay. Why didn't you get an advance assessment from
19 the Office of Civil Rights?

20 A. We didn't do it when we had an indoor/outdoor track.
21 We didn't do it when we had field hockey and lacrosse and
22 we didn't do it when we had women's ice hockey. So -- and
23 nor did I know that that was a requirement. The
24 University of Maryland added the sport. We had their
25 documentation from, again, our previous self study. We

1 had their documentation -- if anything, Maryland was
2 recruiting us to join their ranks. So we saw what the
3 Department of Education sent to them. So that's why we
4 didn't do it. It wasn't a book of criteria that says this
5 is what you do when you add a woman's sport.

6 Q. Were you aware of the Office of Civil Rights
7 Guidelines with respect to when a sport, any sport can be
8 counted for Title IX compliance purposes?

9 A. Yes, little bit. Basically using what Maryland sent
10 to us.

11 Q. Has the Office of Civil Rights ever audited the
12 University?

13 A. No. I would tell you back in 1997, '98, we went to
14 the Office of Civil Rights in Boston to discuss with them
15 our standings and let them know some of our plans. So
16 that was a self -- but, no, there's nobody that's come to
17 our office at all.

18 Q. Are you -- as part of your responsibilities as
19 athletic director, do you keep up with Office of Civil
20 Rights documents, communications and advisories with
21 respect to the multi-part test for determining whether
22 something qualifies as a sport?

23 A. Yes. It's one of the most supportive parts of our
24 position. It's been a changing situation for many, many
25 years, but it's one of the bench marks of being in

1 intercollegiate athletics that you need always to be aware
2 of anything that you do, this has to be considered.

3 Q. And as part of that, have you reviewed this document,
4 it's from the United States Department of Education Office
5 of Civil Rights. It's date-stamped January 16th, I think
6 it's '96. That starts with Dear Colleague. It's
7 Defendant's Exhibit B, as in boy, for identification.

8 (Hands witness)

9 THE COURT: Actually B is a full exhibit.

10 MS. GAMBARDELLA: It is? Great. Thank you. Is
11 my notebook up there, Jack, or is it just plaintiff's
12 exhibits?

13 THE CLERK: It's right here.

14 MS. GAMBARDELLA: Thank you so much. Thank you
15 so much.

16 BY MS. GAMBARDELLA:

17 Q. Can you look at Defendant's Exhibit B, which is an
18 exhibit? Do you recognize the document?

19 A. Yeah, it's been a while but yes. I mean --

20 Q. Okay. Go to page 2 of 17.

21 A. Okay.

22 Q. Bottom paragraph. "In addition, the clarification,"
23 which is this document, "does not provide strict numerical
24 formulas or cookie cutter answers to the issues that are
25 inherently case and fact specific. Such an effort not

1 only would belie the meaning of Title IX but at the same
2 time, deprive institutions of the flexibility to which
3 they are entitled when deciding how best to comply with
4 the law."

5 And then I just want to read one more section to you
6 and then I'm going ask you about your understanding.

7 Bottom of page three. "OCR focuses on the interests and
8 abilities of the under-represented sex only if the
9 institution provides proportionately fewer athletic
10 opportunities to members of one sex and has failed to make
11 a good faith effort to expand its program for the
12 under-represented sex."

13 And one more section, I'm sorry. Page four -- one,
14 two, third full paragraph from the top, third or fourth
15 line in. "An institution can choose to eliminate or cap
16 teams is a way of complying with part one of the three
17 part test."

18 Last line of that paragraph, "Ultimately Title IX
19 provides instructions with flexibility and choice
20 regarding how they will provide nondiscriminatory
21 participation opportunities."

22 Now, what is your understanding of what the OCR is
23 intending to convey in those sections?

24 A. It's always been each institution, whether it be
25 academic majors or athletic teams, but in this case

1 particularly athletic teams, has the right to pursue what
2 sports it would like to have. For example, Quinnipiac
3 doesn't have football. So in this case, the OCR says, in
4 my mind, and says that you have the ability to pick the
5 sports you want, provided you meet the criteria of, that's
6 been set forth by the Office of Civil Rights. So --

7 Q. If you go to page 15. "OCR will determine whether
8 there is sufficient unmet interests among the institution
9 students." And then it goes on, and then there are some
10 bullet points that you can review.

11 "OCR will look for interests by the under-represented
12 sex as expressed by the following indicators, among
13 others."

14 Going through those bullet points, which one of those
15 indicators are utilized by Quinnipiac in assessing the
16 unmet interests of female students?

17 A. Well, clearly number one, is the request by students
18 and admitted students a particular sport be added.
19 Request an existing club sport be elevated. I mean -- so,
20 you know, again, most all of them, you know, most all of
21 them fit in some ways.

22 Q. Okay. Can you look at Defendant's Exhibit C?

23 A. Yes.

24 MS. GAMBARDELLA: Is this exhibit, Defendant's
25 Exhibit C, is it in?

1 THE COURT: It's full.

2 MS. GAMBARDELLA: All right, thank you.

3 BY MS. GAMBARDELLA:

4 Q. Looking at Defendant's Exhibit C, this is U. S.
5 Department of Education frequently asked questions sheet.
6 And question five is Who counts as a participant and how
7 are the unduplicated counted participants calculated. And
8 then it says, "Participants are students who, as of the
9 day of a varsity team's first scheduled contest, are
10 listed on the varsity team's roster, and receive
11 athletically related student aid and practice with the
12 varsity team and receive coaching from one or more varsity
13 coaches. Any student who satisfies one or more of the above
14 criteria is a participant."

15 All right. What's your understanding of what that
16 means?

17 A. It's relatively very accurate as to what we do.

18 Q. And for purposes of your EADA reporting, do you
19 follow those guidelines?

20 A. Yes, as we've said before.

21 Q. Exhibit D?

22 THE COURT: D is not in evidence.

23 MS. GAMBARDELLA: All right. Just for the
24 record, Your Honor, this is an October 18th, it's stamped
25 October 18, 2001, U. S. Department of Education, Office

1 for Civil Rights, letter to Ms. Suzanne Martin of Michigan
2 High School Athletic Association.

3 My only question about the document is if this
4 is a document that Quinnipiac has obtained in connection
5 with its exploration of competitive cheer for Title IX
6 compliance purposes. It's not offered for the matter
7 asserted.

8 MR. ORLEANS: Your Honor, I'm not sure how it
9 could not be offered for the truth of the matter asserted.
10 May I voir dire the witness on the document just very
11 briefly?

12 THE COURT: Well, it hasn't been offered yet, I
13 think. Is there a question to the witness?

14 MS. GAMBARDELLA: Well, the question is is this
15 part of the materials that Quinnipiac has looked at in
16 exploring the elevation to varsity competitive cheer and
17 their state of mind about whether or not it would pass
18 muster under OCR, is this part of the materials.

19 THE COURT: Okay. Is there an objection to that
20 question?

21 MR. ORLEANS: There's no objection to the
22 question, no.

23 THE COURT: Okay. Sir, you can answer that.

24 THE WITNESS: I'm not familiar with this
25 particular case. Certainly our coach can tell you a lot

1 more. She has been very active in supplying information
2 to us.

3 MS. GAMBARDELLA: Okay, I'll deal with it --

4 THE WITNESS: I certainly heard about Michigan
5 but I can't say -- our bench mark has been the University
6 of Maryland.

7 MS. GAMBARDELLA: Okay, then I messed up the
8 exhibits.

9 THE COURT: Ms. Gambardella, when you have a
10 chance, the first page says one of four. I have three
11 pages.

12 MS. GAMBARDELLA: Is that D, Your Honor?

13 THE COURT: Yes. And I can't tell that. The
14 hole punch was put in right where that appears on the
15 second and third page.

16 MS. GAMBARDELLA: We'll see what we can do about
17 that. No problem.

18 THE COURT: Okay. Let me just tell counsel who
19 are here for the 2:00 o'clock, we're going to be hearing
20 that argument next door in Judge Hall's courtroom,
21 Courtroom Number 2 which is down the hall this way, if
22 you'd like to get set up down there. Thank you.

23 MS. GAMBARDELLA: That's a lot of lawyers.

24 Thought we had a lot of lawyers.

25 (Pause)

1 BY MS. GAMBARDELLA:

2 Q. Okay, Exhibit F, it's the Maryland materials.

3 A. Okay.

4 Q. Are these materials that you're familiar with?

5 A. Yes.

6 Q. Okay. Are these materials part of the materials that
7 the University is looking at in exploring its elevation of
8 competitive cheer and its counting for Title IX purposes?

9 A. Yes.

10 Q. What is the reason that these materials were obtained
11 by the University for that purpose?

12 A. Again, through the NCAA certification process, when
13 it was identified that we needed to increase our
14 opportunities for women, competitive cheerleading was
15 clearly one of the sports we strongly considering.
16 There's a thing in our business called Coach Talk and then
17 they talk to each other and the University of Maryland
18 administration contacted us and said would you like more
19 information? We did ask, we would like to receive
20 confirmation on its standing with OCR, and ultimately
21 these materials started coming from this point to the
22 certification process in 2006.

23 MS. GAMBARDELLA: I'm going to move its
24 admission for that.

25 MR. ORLEANS: Your Honor, we have -- may I voir

1 dire the witness very briefly on this?

2 THE COURT: Sure.

3 VOIR DIRE EXAMINATION

4 BY MR. ORLEANS:

5 Q. Mr. McDonald, this is a document that you received
6 from the University of Maryland, correct?

7 A. Yes.

8 Q. Okay. And you're not the author of the document?

9 A. (Shaking head in the negative.)

10 Q. It wasn't addressed to you when it was originally
11 written, correct?

12 A. Correct.

13 Q. And no copy was sent to you when it was originally
14 written, correct?

15 A. No.

16 MR. ORLEANS: Your Honor, I have no objection to
17 the offer of this exhibit for the limited purpose that it
18 is something that Quinnipiac considered in making the
19 decisions that it's made, but I object strenuously on
20 hearsay grounds to its admission for the truth of any
21 statement that's contained within it.

22 MS. GAMBARDELLA: That's the limited purpose.

23 THE COURT: That's what you're offering it for?

24 MS. GAMBARDELLA: That's not for the truth of
25 the matter asserted, but it goes to their due diligence,

1 if you will, for lack of a better word.

2 THE COURT: All right, fair enough. Exhibit F
3 is full for those purposes.

4 (Whereupon Defendant's Exhibit F was marked
5 full.)

6 BY MS. GAMBARDELLA:

7 Q. All right. I want to jump to conversations that
8 Ms. Sparks testified about that you had with her prior to
9 her signing the first contract and then a second contract.
10 Do you recall that testimony, Jack?

11 A. Yes, I do.

12 Q. All right. Did you ever tell Ms. Sparks, in words or
13 in writing, that she would be assured that her contract
14 would be renewed for more than one year at a time?

15 A. No.

16 Q. Okay. How can you be so sure of that? You heard her
17 testimony.

18 A. Well, number one, university, including my own, all
19 salary is yearly. We certainly have intent for support
20 for everybody, like all the staff, but we are all given
21 one year contracts, with the exception of our basketball
22 and ice hockey coaches, but all employees receive an
23 annual contract.

24 Q. Did you ever make a commitment to Ms. Sparks as long
25 as she, and I forget her exact words, performed or I think

1 it was performed, she can be assured that contract would
2 be renewed after one year?

3 A. No, we had no -- there was no long term, you're here
4 forever, kind of discussion.

5 Q. Did you ever make assurances to Coach Sparks about
6 the long term commitment to volleyball, meaning -- she
7 testified on cross, I asked her, are you testifying that
8 you expected volleyball to be maintained indefinitely.
9 And do you remember me asking that? And she said yes, I
10 did.

11 Did you ever make any statements assuring her that
12 the volleyball program would be maintained indefinitely?

13 A. No.

14 Q. Okay. What did you tell her about the University's
15 commitment to volleyball at that time?

16 A. Clearly, number one, it's never my intent to drop any
17 sport. You've heard that already today. I think from
18 that perspective, her role as a volleyball coach was
19 excellent, well done. All of us in the Athletic
20 Department were very impressed with what she's been doing.
21 So I think in many cases like her, you know, we were
22 surprised it came to an end, but there was no -- it's not
23 my role to give any employee more assurances than the
24 university can provide and -- but this was no disrespect
25 to what she had done with the program. She'd done a

1 remarkable job. We looked forward to working with her
2 more, but there was never anything in writing or verbal --
3 and I have been asked these questions many times by other
4 employees so I don't think that at any point my -- my
5 support for her certainly was high but that doesn't mean
6 anybody's getting tenure or a lifetime contract because of
7 it.

8 Q. Do all your coaches have written contracts?

9 A. Yes.

10 Q. And what are the terms of every coach's written
11 contract?

12 A. July 1 to June 30.

13 Q. In terms of scholarships available for competitive
14 cheer next year, are those the final numbers or are they
15 subject to revision, if necessary?

16 A. I think with experience, everything is subject to
17 experience, but we're starting from this, the point we
18 mentioned, and every year things change.

19 MS. GAMBARDELLA: I need one moment, Your Honor.

20 THE COURT: Sure.

21 (Pause)

22 MS. GAMBARDELLA: No further questions at this
23 time, Your Honor.

24 THE COURT: Okay. I think this would be a good
25 time to break. The court reporter has got to move her

1 equipment next door. So when we come back, which would
2 be -- I'll tell you, it will be no sooner than 2:30, if
3 you want to get some fresh air, and it will be as soon
4 after 2:30 as I can get here.

5 MS. GAMBARDILLA: And you agree Ms. Powers --

6 MR. ORLEANS: We've agreed to that.

7 THE COURT: All right, thank you. We'll stand
8 in recess.

9 (Whereupon a recess was taken from 2:00 o'clock,
10 p. m. to 3:10 o'clock, p. m.)

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