

1 MS. GAMBARDELLA: Your Honor, this is the
2 witness we'll be taking out of order. It's Mary Ann
3 Powers.

4 THE COURT: Please remain standing and raise
5 your right hand.

6 M A R Y A N N P O W E R S, called as a
7 witness on behalf of the Defendant, having been duly sworn
8 by the Court, testified as follows:

9 THE COURT: Thank you, please be seated.

10 MS. GAMBARDELLA: Your Honor, we just would like
11 to show a video of a competitive cheer competition
12 performed by Quinnipiac. It is one minute and 50 seconds,
13 it's Exhibit M and there's no objection, correct?

14 MR. ORLEANS: That is correct.

15 THE COURT: All right. That's fine.

16 MS. GAMBARDELLA: And then I'll have the witness
17 identify it for the record.

18 DIRECT EXAMINATION

19 BY MS. GAMBARDELLA:

20 Q. Ms. Powers, what are we about to see?

21 A. You're about to see Quinnipiac's cheerleaders
22 competing down at the Nationals, Daytona, Florida District.
23 This is the final stage. You have to be in the top ten to
24 make finals.

25 Q. Okay.

1 A. So, this was the final stage, day two at the
2 preliminary rounds.

3 MS. GAMBARDELLA: Jonathan, would you give the
4 judge a screen, please?

5 MR. ORLEANS: Do you mind if I watch it over the
6 witness's shoulder?

7 MS. GAMBARDELLA: No, fine. Let's all do that.

8 THE WITNESS: You should probably start that
9 from the beginning.

10 (Videotape played.)

11 MR. BARDAVID: That's it, right?

12 THE WITNESS: That's it.

13 MS. GAMBARDELLA: Thank you, Your Honor.

14 BY MS. GAMBARDELLA:

15 Q. All right. Before we get into more specifics about
16 that particular performance, Ms. Powers, can you just
17 explain to the court who you are?

18 A. I am Mary Powers. I have been the head coach of
19 Quinnipiac University Cheerleading for, just finished my
20 11th season.

21 Q. All right. And can you just briefly describe your
22 experience with cheerleading?

23 A. I cheered since -- do I have to go back that far?

24 Q. As a coach.

25 A. As a coach, I've coached since 1992. I started

1 coaching Pop Warner kids and moved to Allstar programs
2 which are independent gyms in the country that develop,
3 compete only cheerleaders, and then moved to Quinnipiac
4 University.

5 Q. When did you join Quinnipiac?

6 A. 1998 or, actually Quinnipiac College at the time, not
7 University.

8 Q. Right. And have you been coach of the cheer team
9 ever since 1998?

10 A. Yes, I have.

11 Q. All right. Can you describe briefly for the court
12 what it is we just saw again?

13 A. What you just saw was our team competing at College
14 Nationals in Daytona. It's really the finale, the
15 highlight to our season. We typically compete several
16 times throughout the season as well as cheer for women's,
17 men's basketball games. What you just saw is a routine
18 that is -- the coaches, we have about two minutes 15
19 seconds to add in various elements of, various elements
20 that we're scored on. Standing tumbling, running
21 tumbling, partners stunts, pyramids, basket tosses, jumps,
22 dance and choreography.

23 Those elements are all on a grid. For instance,
24 several of our kids are, in fact, that come to us are
25 level seven, eight and nine gymnasts, which is pretty high

1 level for gymnasts, for persons who have participated in
2 gymnastics their whole life.

3 For instance, in that routine when we're looking at
4 the tumbling portion of this routine, we want to look for
5 the high score on that score sheet on the grid. It's from
6 nine to 11. The more of my kids that are executing
7 layouts and pulls, the higher our score is going to be.

8 The same with standard tumbling, they will -- if we
9 execute a team with handsprings we would score between a
10 seven to nine, if they were perfect. If they were teams
11 standing tucks, which is a no handed back flip, it's on
12 the nine to 11 range.

13 And so, what we do all year long is we train our
14 skills. Some of our kids I think we started on this year
15 with, out of our 30 kids we started with about 14 standing
16 tucks and by the time we competed in our final
17 competition, we had, we took the floor with 17 standing
18 tucks. So we are training their gymnastics skills all
19 year long.

20 The other thing you saw in that video were partner
21 opportunities.

22 Q. Partner opportunities?

23 A. Partner opportunities, which is there's four
24 positions on our team, a main base, a support base, a back
25 spot and a flyer. Every single one of those positions is

1 conditioned with spring training according to what they
2 are going to be doing in partner stunting, and there's
3 grips and things they use to elevate that flyer in the
4 air, keep them in the air, catch --

5 Q. If you could slow down -- I was tired after the
6 video.

7 A. Okay, we have partners. The partners opportunities
8 is one of the elements, one of the elements in a
9 competition routine. And there's four girls involved in a
10 partner stunt group. We have a fox trot. Generally the
11 tallest, tallest member of the group because she has to be
12 able to reach the angle of the flyer when she's elevated
13 full out in the routine.

14 We have a main base. She is usually a shorter one of
15 our bases, has to process a lot of upper body strength,
16 good leg strength. And a support base and then a flyer.

17 Our fliers usually are, they don't necessarily have
18 to be small, they just have to be able to hold their
19 weight up in the air, have good core middle and be very,
20 very flexible, because we ask them to execute certain body
21 positions in the air, much like you would see, probably
22 you could see in ice skating, something you'd see an ice
23 skater do. Actually a lot of elements in cheerleading are
24 derivatives of ice skating. So we would have four
25 positions.

1 Q. What about gymnastics; are there elements -- you
2 mentioned gymnastics.

3 A. Gymnastics, there's several things that we score on a
4 score sheet. We score on standing tumbling, which is
5 just standing there and executing, whether a back hand
6 spring, is a hand spring when you go backwards, you're
7 hitting the ground first with your hands when you rotate
8 backwards. A standing tuck, you don't. You just flip.
9 You go straight and you flip and tuck.

10 Q. All right.

11 A. That's standing. And then there's running tumbling
12 which is typically what you would see in an Olympic event
13 when you watch floor exercise? That's what our girls are
14 trained in, that sort of tumbling, which is back hand
15 springs, falls, layouts, punch fronts, what you see on a
16 gymnastics floor. What you see when you see the floor.
17 It's not being on that bar, okay?

18 Q. And we didn't just look at sideline cheering
19 competition, did we?

20 A. No.

21 Q. What is the difference between sideline cheer and
22 competitive cheer?

23 A. Well, sideline cheer is I think what we all know you
24 see cheerleaders do at games when they supporting the
25 people that they are there cheering for, whether it's

1 basketball, football. It's simply you use signs, use of
2 poms, the calling of chants and cheers to inspire the
3 audience to call back and be involved. Become the sixth
4 man on the bench, per se. You're leading the crowd.

5 Competitive cheer is you are going for your own score
6 within your own right based on six to eight elements on a
7 score sheet that have been finetuned and finely honed and
8 choreographed and the skills have been worked on during
9 practice sessions all year long.

10 Q. Can you describe briefly for the court the activities
11 in which the current Quinnipiac cheer team -- let's just
12 take current now, not elevation to varsity level, okay?

13 A. Okay.

14 Q. The current activities in which they participate
15 which you could categorize as competitive cheer
16 activities?

17 A. That would be when they go to a competition and they
18 compete against at least one or several other teams.

19 Q. And they have been doing that, correct?

20 A. For ten years.

21 Q. For ten years, so during your tenure --

22 A. Well --

23 Q. Go ahead.

24 A. The first year I was there when I asked Jack if I was
25 going to be allowed to compete them, he told me, no, their

1 main mission was to support Quinnipiac athletics and the
2 girls who had already come from several all star programs
3 at that time had said, Coach, can't you see if you can
4 enter us in at least one competition? And I said that's
5 not what our athletic director is looking to at this point
6 in time. And they said, well, can at least we show some
7 of those elements at a game? Can you put together a
8 routine that we would be able to do at a game? And I said
9 sure. And Jack had happened to walk into that practice
10 before one of our final tournament games that year and he
11 saw the girls working on a routine and he saw them
12 actually doing a routine and he said to me what are you
13 doing? And I said they are doing a competitive cheer
14 routine. And he said is there anywhere you can use it? I
15 said we're going to do it at a basketball game and he goes
16 But is there anywhere else you can use it? I said, Like I
17 told you when you hired me --

18 Q. Compete?

19 A. -- compete.

20 Q. And so how has that changed over the years?

21 A. He said would you able to compete any time soon? And
22 I said as a matter of fact on Saturday, the University of
23 New Hampshire and Central Connecticut and Sacred Heart and
24 Southern Connecticut will be completing up at Southern
25 Connecticut's gym. And he said is it too late to enter?

1 I said no.

2 Q. So how far back are going with this conversation?

3 A. 1998.

4 Q. 1998, okay. So as the years have progressed,
5 strike that.

6 The last couple of years, on average, how many
7 competitive cheer competitions have the Quinnipiac team
8 participated in?

9 A. I would say at the very least three, at the very
10 most, including nationals, six.

11 Q. Okay.

12 A. And that's because we would, we've had -- our main
13 mission has been to be present for men's and women's
14 basketball games first, including tournament play. And so
15 several of the competitions fell on the dates that there
16 would be compete dates and so we were -- we went to
17 sideline cheer for basketball before we competed.

18 Q. And how, in your understanding how will that change
19 at the varsity level elevation?

20 A. My understanding is that we will compete within our
21 own right and that we will not be cheering at all,
22 sideline cheering at all for Quinnipiac male or woman's
23 basketball, men or women's basketball, but there will be
24 another team developed for that and that our main goal
25 will be to compete.

1 Q. All right. With respect to the competitive cheer
2 competitions in which the students have already been
3 participating, what are some of the institutions against
4 which they've been competing, if you can name some for the
5 court?

6 A. Last April we -- on April 9th of this past year, at
7 Daytona at the college nationals, we came in sixth in the
8 country. First place was Louisville, University of
9 Louisville. Second place was University of Maryland.
10 Third place was North Carolina State. Fourth place was
11 University of South Carolina. Fifth place was University
12 of New Hampshire. Sixth place was Quinnipiac. Seventh
13 place was University of Massachusetts. Eighth place was
14 University of Pittsburgh, Penn State, University of
15 Florida, University of Illinois, Providence, and about six
16 others did not make the finals.

17 Q. Do you know which of those universities, if you know,
18 have their competitive cheer team as varsity level?

19 A. At varsity level defined by -- well, there's two ways
20 of defining it by the athletic departments.

21 Q. Let's start with their athletic departments.

22 A. Currently I know that the University of Maryland is
23 compete only. University of Oregon, Fairmont, which is a
24 Division II school, Morgan, Fall State, Plymouth State and
25 that's what I know to date as far as --

1 Q. Got it.

2 A. -- varsity status.

3 Q. If you can look at -- just want to make sure you have
4 the right notebook -- Defendant's Exhibit H, to which
5 there's no objection, Your Honor?

6 THE COURT: Yes.

7 MS. GAMBARDELLA: All right.

8 BY MS. GAMBARDELLA:

9 Q. Can you tell me what is represented by Defendant's
10 Exhibit 8, that document?

11 A. Okay. This is the roster of all the teams that
12 competed down at College Nationals and on the preliminary
13 round hoping to make it to finals.

14 Q. Is Quinnipiac on here?

15 A. Yes, we are.

16 Q. Okay. Can you --

17 A. We are on the second page, fifth down at 156.

18 Q. Thank you.

19 A. We're all girl Division I.

20 Q. Okay. Can you go to Defendant's Exhibit J? There
21 are tabs there, Mary Ann.

22 A. Yes.

23 MS. GAMBARDELLA: Your Honor, I believe there's
24 no objection to -- oh, no.

25 MR. ORLEANS: I think this has an objection.

1 MS. GAMBARDELLA: There is an objection.

2 BY MS. GAMBARDELLA:

3 Q. Just let me ask the witness first what is represented
4 by Exhibit J.

5 A. Let me make sure I'm looking at the right one. Was
6 this the magazine?

7 Q. It's the magazine article. If you can just tell us
8 not what's in it but what it is, just identify it?

9 A. It's an article written about Quinnipiac's
10 competitive cheer after our performance in Daytona in
11 2008.

12 Q. All right.

13 MS. GAMBARDELLA: Your Honor, we move the
14 admission. There's been a claim in this case that this
15 team doesn't exist in terms of competitive cheer and this
16 is media recognition that we're providing a sample of.

17 MR. ORLEANS: Your Honor, the objection is
18 hearsay. The author appears to be a Jennifer Rene Smith.
19 Obviously I can't examine her. The article contains
20 statements from a member of the team at that time; she's
21 not here in court to be examined. It's clearly hearsay.

22 MS. GAMBARDELLA: I will limit the offering to
23 simply corroborate that this team in competitive cheer
24 activities has gotten some national recognition. In terms
25 of the specific statements, I'm going to ask her about

1 training and conditioning and you can cross Ms. Powers.

2 MR. ORLEANS: Well, there's another exhibit to
3 which I think there's no objection which is Quinnipiac
4 University's press release about the team's coming in
5 sixth in the competition that the witness was just
6 mentioning. I think that accomplishes the purpose that
7 counsel has suggested this exhibit is being offered for.
8 So I will maintain the objection, Your Honor.

9 MS. GAMBARDELLA: We would like to offer the
10 article, Your Honor, for that limited purpose.

11 THE COURT: Well, Exhibit J is hearsay so I'm
12 going to sustain that objection.

13 MS. GAMBARDELLA: All right.

14 BY MS. GAMBARDELLA:

15 Q. Let's go to Exhibit K. Can you tell us what that is?

16 A. Yes. That is our website's notation of the girls'
17 placement down in College Nationals this year in Daytona.

18 Q. All right. And there's a quote from you third
19 paragraph in, quote, "Quinnipiac has consistently remained
20 contenders with very large and well respected programs.
21 Our goal is to qualify for the finals and then move up in
22 the rankings, which we accomplished," end quote. You're
23 not talking about sideline cheering, are you?

24 A. No.

25 Q. And then there's a list of some of the competitors,

1 couple paragraphs down. And I think those are some of
2 them that you've already mentioned here today?

3 A. Correct.

4 Q. Can you briefly explain to the court what kind of
5 training is required to prepare the students for the type
6 of competition that you've just shared with the court?

7 A. The girls start training in September. We start them
8 with strength and conditioning two times a week, in
9 practice three times a week. They have tumbling
10 instruction once a week during the practice, but they also
11 tumble. They also do gymnastics at every practice. They
12 actually just work on all of the elements of what is
13 needed in a competition routine, which is -- we always
14 practice progression of safety first before -- we never
15 assume that the kids that are coming from high school
16 because the rules in high school are so very, very
17 different than they are in college, what they are allowed
18 to do at the high school level. It's very, very different
19 and much more elevated than what they are allowed to do in
20 college. So we follow the national progression rules and
21 practice safety drills first with the kids.

22 When we are teaching basket tosses, they take them
23 over to a gym off campus that has a harness and we put the
24 girls in a harness and they work with a gymnastics coach
25 on all of the backward basket tosses. I'm assuming you

1 know what that is.

2 THE COURT: I do.

3 BY THE WITNESS:

4 A. Okay. So we practice the safety of that and then we
5 have the girls who are going to be catching and throwing
6 that basket working on their leg conditioning and their
7 upper body strength conditioning all season long. Then we
8 do endurance training because it's very, very different
9 when you're running a routine. Even though it's two
10 minutes and 30 seconds, in those two minutes and 30
11 seconds, it's comparable to a hard sprint. You're using
12 every single body part. The girls are using, depending on
13 whether they are executing gymnastics in the routine and
14 then moving on to a basket toss with not even a two second
15 count between the element, they are just moving and it's
16 continuous. The body's in continuous motion. So we have
17 to practice endurance skills.

18 Q. So physical conditioning, that's required? Required
19 for them to compete?

20 A. Yes.

21 Q. All right. And you're paid a salary by Quinnipiac,
22 correct?

23 A. Yes, I am.

24 Q. All right. Are you on a one year contract?

25 A. Every year it's renewed.

1 Q. Every year it's renewed?

2 A. Yes.

3 Q. And the school has permitted you to use some of your
4 time on salary to train these students for competitive
5 cheer activities; would that be correct?

6 A. Yes.

7 Q. All right. Now, have you had discussions with Jack
8 McDonald about the elevation of competitive cheer at
9 Quinnipiac to varsity level next year?

10 A. Very few since the announcement.

11 Q. Okay. Since the announcement, have you and he
12 discussed what would need to -- in terms of competitions,
13 what might have to change to be elevated to varsity level?

14 A. We would have to compete more.

15 Q. Okay. And so you are going to compete more, is that
16 correct?

17 A. Yes.

18 Q. All right. How do you know that you will be able to
19 compete more? Are there enough competitions out there
20 that the students are ready for?

21 A. The schedule's already up for next year in almost
22 every venue except for the local ones. The local ones are
23 typically held in high school situations and the CIAC
24 offers those first. We hold one of those ourselves. We
25 host a tournament on campus where we bring in over 110

1 teams; high school, all star and college teams. So CIAC
2 approval doesn't really happen until September.

3 Q. You'll now be full-time?

4 A. That's my understanding, correct.

5 Q. Full time coach, correct? And you'll be totally
6 devoted to competitive cheer activities, you personally,
7 correct? Is that your understanding?

8 A. That's my understanding.

9 Q. What about scholarships? Have you had specific
10 conversations with Mr. McDonald yet about scholarships?

11 A. Just that there would be -- no, not a lot of details,
12 just they would be forthcoming next year.

13 Q. Okay, great. How do you know that there's sufficient
14 interest at Quinnipiac for varsity level competitive
15 cheer?

16 A. By January I had already answered over 100 emails and
17 since January I've already answered over probably 50 more,
18 and the kids who sent in their deposits and have asked,
19 sent me videos of their gymnastics skills and their
20 stunting and pyramid skills.

21 Q. So by --

22 A. I would say right now I'm confident that I have over
23 62 kids trying out right now.

24 Q. So you're talking about the incoming class?

25 A. Yes.

1 Q. What has been the expression of interest amongst the
2 current students in competitive cheer?

3 A. Currently I know that 18 are returning.

4 Q. Okay. All right. You know, you understand that you
5 have been given 40 roster spots to fill for competitive
6 cheer for next academic year?

7 A. Yes.

8 Q. All right. Do you have any doubt that you'll be able
9 to fill those 40 spots?

10 A. No.

11 Q. All right. On what did you base that answer with
12 confidence?

13 A. I know that my current kids are already worried they
14 are not going to make the team because of the girls coming
15 in.

16 Q. Okay.

17 A. And we've ended every single year with an alternate,
18 back up positions in place. There's been a lot of
19 interest just in emails and kids coming down at
20 competitions to meet me, so some kids go to College
21 Nationals to watch it. Some kids come up to me at
22 competitions and we -- there's an exchange of phone
23 numbers and emails so they can contact me after they've
24 seen the kids perform. And they realize right in their,
25 close to their home town, there's a place for them to take

1 their competitive -- there's a lot of all star gyms in
2 Connecticut, so a lot of the kids competing all the time
3 want to be part of a college that is also competing and
4 doing well, so I get a lot of people, lot of kids coming
5 up to me all the time.

6 Q. Are you aware of a stereotype about cheer?

7 A. Of course.

8 Q. What's the stereotype in your understanding about
9 cheer?

10 A. I think it just goes to a frame of reference, and
11 that frame of reference would be, you know, I'm
12 approaching 50 and so that would be the kind of
13 cheerleading that I did, maybe, you know, the bobbie
14 socks, the pony tail and the skirt and the, you know, girl
15 in high school who was looking to be liked by all the
16 boys. And I don't know one young lady on my team that
17 that's anything she's grown with.

18 What's surprising to me to even hear it anymore, that
19 kind of frame of reference, there's no girls on my team
20 that I coach that's their, that's how they've grown up,
21 but yet the stereotype still exists. So you wonder who
22 perpetuates it really. Is it coming from some antique
23 notion from way back when, or is it that people don't want
24 to believe that it has any athletic capacity to it.

25 Q. Are they athletes?

1 A. They are 100 percent athletes, no doubt about it. I
2 have a lot of level eight and nine gymnasts on my team,
3 so --

4 Q. Have you spoken with your students on the team about
5 the fact that whether or not they'll count as athletes is
6 a subject of this lawsuit?

7 A. Not as a group. What I've said to them is we are --
8 you, you as a team and you as an individual and your
9 parents and your aunts, your uncles, your brothers and
10 sisters, most of you who are now competing and choosing to
11 do so, have come from a strong gymnastics background and
12 strong competitive cheer background, and so if the
13 stereotype that's brought, if that's put out there for
14 you, you know what you do and it shouldn't matter. What
15 you do is you just work hard and bring all of yourself
16 onto that mat and continue to train and to believe and to
17 succeed with your team, and you need to forget about the
18 rest of the world because women's sport, in general, I
19 mean I'm old enough that I've seen evolutions take place.
20 Right down from women's basketball to women playing hockey
21 at the college level, whoever would have thought? And so
22 that sort of thing has just continued to grow and grow and
23 grow. So why not cheerleading?

24 What I said to the kids is we've got to -- we know
25 that the venues are present out there all the time for us

1 to compete at. And I do believe what the -- we know, the
2 kids know that the Olympic committee is considering it for
3 the 2016 Olympics because Japan, Korea and France and
4 Australia want it, but they can't compete with the
5 Americans right now.

6 So the kids, I think the kids believe; they just
7 don't like -- I think what offends them more than anything
8 is other women kind of knocking them and their athletic
9 skills. And yet just as many as with the glass half full
10 and half empty, the other side of the glass is that there
11 are so many of their friends and roommates and athletes on
12 campus who do recognize what they do and have recognized
13 it then when they were in high school and in grammar
14 school or before here. So they are not looking for
15 permission, they just don't want -- I think the stereotype
16 is slowly but surely going away.

17 Q. Have you gotten a sense from observation or things
18 that you observe whether they are, from members of your
19 team or otherwise, the atmosphere on campus toward them
20 has taken somewhat of a negative turn since this lawsuit
21 began?

22 A. I was surprised to hear some of the things that I
23 heard. Because it's about irony. I mean it's ironic that
24 seem people make comments about the very people they
25 support when they do sideline cheer. That they would take

1 that time away from their academics and be the girl that
2 would support a team by cheering them on and by being
3 present at a time. And I think that offends them to a
4 degree that they've been supportive of other sports on
5 campus. One girl had said to me that, you know, she was
6 not going to wear her warm-up since the announcement
7 because somebody had yelled out --

8 Q. You can say it.

9 A. Really?

10 Q. Yeah, really. She's heard everything.

11 A. Cheerleaders are fucking up. But other girls were
12 telling me that the professors were coming up to them and
13 saying, great job, girls, we've been watching you for a
14 long time. Other girls were telling me that they felt bad
15 about what had happened to three other teams on campus and
16 they were more concerned about that than the elevation,
17 which I totally understood because I somewhat felt the
18 same way. And then there's girls who felt like they had
19 to defend and I asked them not to. I just asked them to
20 be emphatic and sympathetic to the other athletes who had
21 their programs cut.

22 Q. Okay. Can you quickly go Exhibit F, F as in Frank.

23 It's already been moved, Your Honor.

24 A. Okay.

25 Q. All right. Are you familiar with these materials?

1 A. Some of them.

2 Q. All right.

3 A. I haven't looked at this in a real long time.

4 Q. Okay. What is your understanding of what these
5 materials are?

6 A. This is Maryland's when they had made the decision to
7 make competitive cheer a part of their affidavits.

8 Q. Do you have these materials from the University of
9 Maryland in your possession as well?

10 A. I do not. I had when it was sent to us when we
11 examined it, I want to say it was in 2005.

12 Q. So, you've had these materials since 2005?

13 A. Yes. Maryland's correspondence has been with me
14 since I want to say end of 2004 to 2005.

15 Q. Just briefly, what's the significance of the
16 University of Maryland materials?

17 A. They were looking to see how many other teams across
18 the country were hoping to go with competitive cheer only.

19 Q. Who's "they"?

20 A. They were the coaches and the athletic department,
21 University of Maryland.

22 Q. Thank you.

23 A. Okay.

24 Q. And have you had any discussions with Mr. McDonald
25 about referencing these materials at all for next year?

1 A. Not specifically. We've talked about compliance
2 issues, but --

3 Q. Okay.

4 A. You know, how to make a program, get the program off
5 and going from try-out procedures to how many times we
6 were going to compete to budget issues to team position
7 issues to how we would handle the girls being on break,
8 when they would return.

9 Q. By the way, do you have an understanding of Title IX?

10 A. Yes.

11 Q. What's your understanding of -- let me ask you how
12 you gleaned your understanding of Title IX?

13 A. I gleaned my understanding of Title IX through what
14 our athletic department has educated us, and that is that
15 we look for equity between our athletes, male and female.

16 MS. GAMBARDELLA: May I have a moment, Your
17 Honor?

18 (Pause)

19 MS. GAMBARDELLA: No further questions.

20 THE COURT: All right. Cross?

21 MR. ORLEANS: Yes, Your Honor.

22 CROSS EXAMINATION

23 BY MR. ORLEANS:

24 Q. Good afternoon, Coach Powers.

25 A. Good afternoon.

1 Q. You've been waiting a long time?

2 A. It's okay.

3 Q. You've been waiting around for a couple days and I'm
4 sorry about that.

5 The last thing you said was you have an understanding
6 of Title 9?

7 A. Uh huh. (Affirmative.)

8 Q. Is it consistent with your understanding of Title IX
9 that Quinnipiac should cut an existing women's sport at
10 the same time it elevates competitive cheer, the status?

11 A. Is it consistent with what I've been taught or what I
12 believe? Or --

13 Q. Well, I asked with your understanding of Title IX?

14 A. With my understanding of Title IX?

15 Q. Yes.

16 A. Could you repeat the question, please?

17 Q. Is it consistent with your understanding of Title IX
18 that Quinnipiac University should cut an existing women's
19 varsity sport at the same time that it elevates
20 competitive cheer to the status of a varsity sport?

21 A. I really don't know how to answer that question
22 because I don't know if that's an opinion -- or I'm still
23 not sure, I guess, if you're asking me for my opinion.

24 Q. Well, I wanted to ask two different questions. I
25 wanted to ask first whether you understand it to be

1 consistent with Title IX or permitted by Title IX.

2 A. I don't know that that is consistent. I don't
3 believe that that is within the relms of, of what -- I
4 don't know if that is the way it's done, to tell you the
5 truth. I can't honestly answer that question.

6 Q. And secondly, let me ask you how you feel about it;
7 what's your opinion?

8 MS. GAMBARDELLA: Objection. She's not here to
9 render that kind of opinion. That is way beyond the scope
10 of my direct.

11 MR. ORLEANS: I think she talked a little in her
12 direct testimony about how she felt. I'm just trying to
13 get that.

14 THE COURT: I'm not sure it has adds anything.

15 MR. ORLEANS: I'll withdraw it.

16 THE COURT: My sense is nobody here is happy.

17 THE WITNESS: Right.

18 BY MR. ORLEANS:

19 Q. Has anyone told you, Coach Powers, that the
20 volleyball players who are the plaintiffs in this suit are
21 claiming that cheerleaders are just sort of bobby socks
22 flirt-with-the-guys kind of people?

23 A. Has anybody told me they claim that?

24 Q. That's the question.

25 A. No.

1 Q. And certainly none of the volleyball players have
2 said anything to you to suggest that, have they?

3 A. No.

4 Q. In fact, you understand that this case is not about
5 whether the cheer squad are athletes; it's about whether
6 competitive cheer is ready to be counted as a sport for
7 Title IX purposes, right?

8 A. Correct.

9 Q. Now, counsel made some reference to the Maryland
10 materials which --

11 A. Uh huh. (Affirmative.)

12 Q. -- appear as Exhibit F. And you said that you have
13 those materials at some point?

14 A. I had certainly perused them but they were given back
15 to our Athletic Department for their own. They were sent
16 to us.

17 Q. You're aware then that there's a process by which a
18 sport can petition the NCAA to be recognized as an
19 emerging sport?

20 A. I am now aware of that, yes.

21 Q. And do you know whether any organization has
22 petitioned the NCAA on behalf of competitive cheer to be
23 recognized as an emerging sport?

24 A. I do not know that, no.

25 Q. Now, you're in touch with the competitive cheer

1 coaching community, aren't you?

2 A. It's pretty big, yeah, but I'm -- yeah, I would say I
3 am.

4 Q. And you get emails from the people at the University
5 of Maryland and from other competitive cheer coaches,
6 don't you?

7 A. I don't know that it's -- maybe once a month, we
8 might have a question for each other about a venue we're
9 all hoping to attend or about seeing them down at college
10 nationals, or about wishing them well on something I know
11 that they are doing, and the same courtesies are forwarded
12 back to myself.

13 Q. So you're in the network basically?

14 A. Of course.

15 Q. Fair to say?

16 A. Of course.

17 Q. So, if there had been a petition to the NCAA to
18 recognize competitive cheer as an emerging sport, do you
19 think you'd know about it?

20 MS. GAMBARDELLA: Your Honor, she's already said
21 she doesn't know. It's really speculative --

22 MR. ORLEANS: It's a different question.

23 MS. GAMBARDELLA: -- at this point.

24 MR. ORLEANS: Let me rephrase it.

25

1 BY MR. ORLEANS:

2 Q. Do you think being in the network of competitive
3 cheer coaches that if there had been a petition to the
4 NCAA to recognize competitive cheer as an emerging sport,
5 would you have heard about it?

6 MS. GAMBARDELLA: I'm going to -- whether this
7 witness has heard about it is irrelevant, but you know
8 what? I'm going to withdraw the objection. Go ahead, do
9 your best.

10 BY THE WITNESS:

11 A. I've heard that it's the intent for that to be
12 petitioned, to be quite frank.

13 Q. But you haven't heard that it's happened yet?

14 A. No.

15 Q. Okay. Now, you said that you have no doubt that you
16 can fill 40 spots on the team for next year?

17 A. No doubt.

18 Q. And that's based on, you have 18 out of the current
19 28 who are returning?

20 A. Uh huh. (Affirmative.)

21 Q. What have you told them -- excuse me. What have you
22 told the current group about the level of work that's
23 going to be required now that competitive cheer is going
24 to be a varsity sport?

25 A. That's a really good question because actually the

1 level of work my girls will have now is a lot less. They
2 will certainly have some different standards set forth, as
3 all the athletes do, as a collective group, especially
4 when it comes to all the compliance issues and it comes to
5 academics. They've never had to come in as freshman and
6 do Powers hours before. They've never been engaged in
7 positive play. We certainly involve the team in community
8 service. We did several things on our early years but
9 we've never been under athletics, done that with
10 athletics. But actually, my team had practiced three days
11 a week strength and conditioned two days a week, and even
12 if it was five basketball games in any one given week,
13 they've taken all five games and cheered on one bus on a
14 game and gone over to a competition to compete within
15 their own right and then still had a practice the next
16 day. So the girls actually hour-wise by compliance issues
17 will be held to 20 and under rather than the current
18 academic stress that's been on them for many, many years.

19 Q. What will the competitive season be?

20 A. It's my understanding that we will be trying out in
21 September and it will go to the end of April.

22 Q. So, from September to the end of April there's not
23 going to be a defined championship season and --

24 A. It's been defined that we will compete at least one
25 or two times before the end of the first semester and then

1 we will compete six to seven times after that.

2 Q. Okay. And do you expect to comply with NCAA rules
3 pertaining to recruiting?

4 A. I have not been -- I have not -- they have not
5 touched base with me on that yet.

6 Q. Okay. So you haven't taken the NCAA coaches
7 certification class?

8 A. No, I'm looking forward to it if given the
9 opportunity.

10 Q. Do you know that NCAA rules regarding recruiting
11 prohibit, at least for certain sports competition,
12 intercollegiate competition that is conducted in
13 conjunction with high school or prep school competition?

14 MS. GAMBARDELLA: Your Honor, this is not a NCAA
15 regulated sport.

16 MR. ORLEANS: Is that an objection?

17 MS. GAMBARDELLA: Yeah. There's no foundation
18 for relevancy to this particular question, what she knows
19 about NCAA. She's coaching a sport that's not NCAA
20 sponsored. We've already talked about that. And you're
21 asking her about NCAA rules when it may not even be
22 applied.

23 MR. ORLEANS: Well, let me try it another way.

24 BY MR. ORLEANS:

25 Q. You just don't know whether you're going to be

1 required to comply with NCAA rules and recruiting
2 regulations?

3 A. No, I do not know that yet. No, I don't.

4 Q. Do you know whether you're required to comply with
5 any other NCAA regulations, other than recruiting?

6 A. I know that we are --

7 Q. Other than recruiting was the end of the question.
8 I'm sorry.

9 A. I know that we will be asked to comply to what is set
10 forth for all Quinnipiac University athletes.

11 Q. Okay. And do you know whether Quinnipiac would risk
12 its Division I status with the NCAA if one of its varsity
13 sports were out of compliance with NCAA rules regarding
14 recruiting, for example?

15 MS. GAMBARDELLA: Your Honor, there's no
16 foundation that this would put this at risk.

17 MR. ORLEANS: I'm only asking her whether she
18 knows.

19 THE COURT: Yes, well --

20 THE WITNESS: I'm still not sure I know what
21 he's asking me.

22 THE COURT: That question may be better for
23 Mr. McDonald frankly.

24 MR. ORLEANS: That's fine, Your Honor. Thank
25 you.

1 BY MR. ORLEANS:

2 Q. You said something about answering 150 emails?

3 A. Yes, sir.

4 Q. Was that from 150 separate individuals?

5 A. Yes.

6 Q. But then you said that you expected to have about --
7 have over 62 kids trying out?

8 A. Correct, sir.

9 Q. And that's including the returning, the returning
10 class --

11 A. Yes.

12 Q. -- or that's in addition to -- okay.

13 In the past, what proportion of the students who have
14 tried out have made the team?

15 A. I think last year I had 58 kids try out and I took
16 34.

17 Q. So -- can't do the math that fast in my head. Is
18 it -- is it better than 50 percent? Is it better than 60
19 percent?

20 A. I guess I've never looked at it in percentiles. I've
21 looked at the skills, what they are able to do, are they
22 able to compete with the team for us to stay within the
23 grid on the score sheet and elevate the score.

24 Q. What are the criteria for making the team?

25 A. There's a score sheet involved and there's standing

1 and running tumbling, their position, their unique
2 position. If they are going to try a back spot, support
3 base or a flyer. Standing and running, tumbling, jumps,
4 jumps to a gymnast still which we call a double toe or
5 triple toe back. A dance portion, and a partner stunt
6 portion.

7 Q. And who does this? Is this all kids who try out run
8 through those various elements, depending on what position
9 they are in?

10 A. Well, they try out. We have a three day clinic prior
11 to that, so that we are sure that they are practicing
12 safety first. They might come from a high school that
13 might have a very different grip technique, for instance,
14 that we don't need to be safe and they are able to hold
15 that player in the air. Or they might say that they can
16 tumble without a back spot and they say that because they
17 want to make the team so badly. And even if they are on a
18 matted surface, sometimes when they're doing the back hand
19 spring, depending -- we can tell if their back hand spring
20 or if their no hand back hand spring needs proper training
21 before we let them move forward with that.

22 So, we have a score sheet and they come out in groups
23 of four. They come out in a stunt group as if they are
24 going to compete with that stunt group, and then we take
25 them through their jumps, their standing tumbling, their

1 running tumbling, their dance score.

2 Q. When you say "we" who is we?

3 A. My assistant coaches.

4 Q. How many assistant coaches have you had in the past?

5 A. Two.

6 Q. So you've had in addition to yourself --

7 A. Two.

8 Q. You've had yourself and two assistants and the three
9 of you watch these tryouts and score?

10 A. Either the three of us or I've brought in two coaches
11 from other colleges to judge it for us.

12 Q. Okay, all right. Now, I thought I heard you say that
13 you follow the national professional rules?

14 A. Federation rules. There's national, there's several
15 different rules. There's an AACCA set of rules which I
16 have to follow.

17 Q. I'm sorry, say that again?

18 A. AACCA certification.

19 Q. Is that the American Association of Cheerleading
20 Coaches and Advisors?

21 A. Yes.

22 Q. So there's a certification that you have to have with
23 them?

24 A. Yes.

25 Q. And they have a set of safety rules, am I right about

1 that?

2 A. Absolutely.

3 Q. Do they have a set of competition rules?

4 A. No, competition rules are changed from venue to
5 venue. The NCA, which is the college nationals that we
6 attend, they have their own set of rules for both safety
7 and for -- it's within time restrictions on the routine.

8 Because it's telecast by FOX Sports or ESPN, there's, you
9 know, television rules in order for performance
10 productions.

11 Q. So NCA, that is the National Cheerleaders Association
12 right?

13 A. Yes.

14 Q. And that event that you have mentioned in which you
15 competed is sponsored by the NCA-slash-NDA, correct?

16 A. National Cheer and Dance.

17 Q. NDA is National Dance Alliance?

18 A. Yes.

19 Q. So the event is the National Cheer and Dance --

20 A. Correct.

21 MR. ORLEANS: H, is that correct?

22 MS. GAMBARDELLA: I don't know. Are you talking
23 about the schedule? I think it might be -- H, try H.

24 THE WITNESS: Are you talking about the
25 actual --

1 MR. BARDAVID: The NCA roster.

2 MS. GAMBARDELLA: That's H.

3 BY MR. ORLEANS:

4 Q. So that's the NCA/NDA Intercollegiate Cheer and Dance
5 Championship that was held in April of this year, correct?

6 A. Correct.

7 Q. Okay. Now, what do you have to do to enter this
8 competition?

9 A. We either receive a bid by going to camp or by
10 submitting a video of your skills, a skills tape of
11 basic --

12 Q. Of the team?

13 A. Yes.

14 Q. Okay.

15 A. They basically have all the same elements that are
16 our score sheet that we have already discussed here today;
17 from gymnastics to partner to pyramids to basket tosses to
18 jumps.

19 Q. And is there a fee, an entry fee that you pay?

20 A. There's a registration fee, yes.

21 Q. Okay. How much is that?

22 A. It's per participant.

23 Q. Okay. So how many participants did you take?

24 A. We took 26.

25 Q. Okay. And what was the fee per participant?

1 A. Per participant, it was -- it's for their hotel.

2 That fee is for their hotel and their fee per participant
3 is \$100.

4 Q. Okay, and that covers -- there's no separate entry
5 fee to compete in the event?

6 A. No.

7 Q. Other than a hotel cost?

8 A. No -- well, air fare.

9 Q. Air fare, which the team -- which was paid by
10 Quinnipiac, I assume?

11 A. In essence. I suppose you could say that.

12 Q. Well, it wasn't?

13 A. I run a competition every single year.

14 Q. Oh, and you raise money at the competition that you
15 run at Quinnipiac, which is then used to pay those kinds
16 of expenses?

17 A. That is paid for college nationals.

18 Q. And what about the next year for the competitive, the
19 varsity competitive team? Will you will be expected to
20 raise funds through the competition you sponsor to pay for
21 things like --

22 A. I know that I was to hold that competition and we
23 have not discussed the revenue on that yet.

24 Q. So you don't know?

25 A. No.

1 Q. Now, on Exhibit H, this, the NCA collegiate cheer
2 championship, Quinnipiac was in the all girl I Division,
3 correct?

4 A. All girl Division I, yes.

5 Q. You said you had to send a tape to get in. Do you
6 have any idea how many schools sent tapes?

7 A. I have no idea.

8 Q. Okay. And in the first round, this is the -- there
9 are two rounds, right? A preliminary and then a final?

10 A. Preliminaries and finals, yes.

11 Q. And how many schools competed in the first round?

12 A. In our division?

13 Q. In your division, yes.

14 A. Eighteen.

15 Q. I'm only counting 16 on this schedule, are there --

16 A. Very well could have been 16. I thought it was 18, I
17 apologize.

18 Q. That's okay. And how many made the finals?

19 A. Eight.

20 MR. ORLEANS: And there was actually another
21 video that was marked as an exhibit, I don't know that we
22 objected to --

23 MS. GAMBARDELLA: It's more of the same and
24 didn't --

25 MR. ORLEANS: No, I understand, but it's in

1 evidence anyway because it was not objected to. It was
2 offered.

3 MS. GAMBARDELLA: I didn't put it in.

4 MR. ORLEANS: I thought everything that wasn't
5 objected to was stipulated in at the outset. Okay, it
6 doesn't matter.

7 BY MR. ORLEANS:

8 Q. Let me just ask you, I think I've seen another video
9 of the preliminary competition.

10 A. Sure.

11 Q. Is that video available on the Quinnipiac website or
12 somewhere?

13 A. Yes.

14 Q. In the preliminary competition, the team opened with
15 a crowd response segment, didn't it?

16 A. Absolutely, yes.

17 Q. So, in the preliminary round there was some cheering
18 and then the tumbling and gymnastics, correct?

19 A. Correct.

20 Q. And then in the final round, it was tumbling and
21 gymnastics?

22 A. Correct.

23 Q. Now, forgive me if counsel already asked you this.

24 Of the teams in the competition in Daytona Beach, 2009 NCA
25 competition, how many of those teams were exclusively

1 competitive cheer teams?

2 A. Exclusively --

3 Q. Yes, I'm sorry, I'm talking about your --

4 A. I haven't even asked the ones that did not make
5 finals, as we did. Competitive only was University of
6 Illinois, Ohio State, Maryland, University of Florida,
7 Cadshaw, University of Maryland, six out of the 16.

8 Q. And you're confident that those teams were
9 competitive only; did no sideline cheer?

10 A. Hundred percent confident.

11 Q. Now, I know you said that there are a bunch of, there
12 are a bunch of --

13 A. Oh, North Carolina State. That would be 17.

14 THE COURT: Well, actually you said Maryland
15 twice.

16 THE WITNESS: Okay, thank you, .

17 MR. ORLEANS: You're more awake than I am at
18 this point, Judge.

19 BY MR. ORLEANS:

20 Q. I think you said a moment or two ago there are a
21 number of organizations that have different competitive
22 rules?

23 A. Do you mean as far as the venue itself?

24 Q. Well, I'm actually trying to understand what you
25 said. I asked you about rules and you mentioned the

1 National Cheerleaders Association, which has one set of
2 rules that would apply to this championship that we were
3 just discussing?

4 A. I think I meant to say score sheets because sometimes
5 the score sheet changes from event to event?

6 A. What does that mean, the score sheet?

7 A. The actual score sheet that you're scored on.

8 Q. So there may be different weights to the different
9 elements?

10 A. No, they don't give different weight to the different
11 elements -- well, in some instances they do. At the
12 college nationals, they have a collegiate image score but
13 I know that's set in place by Fox, I think, to satisfy the
14 sport networks for uniform purposes, because there has
15 been some uniform deductions given and they don't want
16 that. So they have now what is a collegiate image score
17 on the score sheet to make sure we're all on the same page
18 for family viewing.

19 Q. Well, is it true, isn't it, there are several
20 organizations that sponsor collegiate cheer competitions?

21 A. No, there's two -- collegiate or you mean nationals?

22 Q. Okay, I was starting with intercollegiate
23 competitions. There are several organizations, are there
24 not?

25 A. I know of two that sponsor --

1 Q. What are the two that you know of?

2 A. UCA, National Cheerleading Association, and NCA.

3 Q. Okay. And NCA is the organization that we've been
4 discussing that sponsors the collegiate cheer and dance
5 championship; this year it was in Daytona Beach in April,
6 correct?

7 A. Every year it's in Daytona.

8 Q. And then UCA sponsors a college cheerleading and
9 dance team national championship, this year at Disney in
10 January, correct?

11 A. Correct. And the difference usually in between which
12 colleges decide to go where or get their bids to either, a
13 lot of the time is based on football, and because a lot of
14 those teams go to, we don't go. We don't hold our trials
15 until September. We have basketball programs. Those
16 teams that go or are competing are competing because they
17 are at the end of their bigger season, being football. So
18 they go to UCA in January.

19 Q. Ms. Powers, do me a favor. Wait until I ask you a
20 question and then answer the question.

21 A. Thank you, sir.

22 Q. And let Ms. Gambardella ask you to amplify, okay?

23 A. Okay.

24 Q. Thank you.

25 But there's no reason that a school couldn't,

1 schedule permitting, enter both the UCA and the NCA
2 championships?

3 A. No, they won't allow you to enter both.

4 Q. You have to pick one or the other?

5 A. Absolutely.

6 Q. All right. And there's also an United Spirit
7 Association; are you familiar with that organization?

8 A. No.

9 Q. That runs a collegiate, this year ran a collegiate
10 nationals championship in Anaheim in March.

11 A. What I do know is anybody calling it collegiate
12 nationals, it has been taken up within its own, that has
13 been -- NCA and UCA have exclusive rights to college
14 nationals and there's companies coming up and calling them
15 collegiate nationals but they are not. It's just a title
16 that they are bringing to entice, and we've all been made
17 aware of that in competitive cheer.

18 Q. Is there a national governing organization for
19 competitive cheer?

20 A. I think we all follow NCA or UCA rules.

21 Q. And --

22 A. Because there's a safety handbook put for collegiate
23 cheer.

24 Q. Okay, so NCA puts out a safety handbook?

25 A. As does UCA.

1 Q. Is this the same document?

2 A. Yes.

3 Q. And both NCA and UCA are affiliated with a company
4 called Varsity?

5 A. Yes.

6 Q. Are they not? Do you know what that is?

7 A. Varsity is the name of the company. You're asking me
8 what it is?

9 Q. Yeah.

10 A. They do camps from -- they do camps. They sell cheer
11 apparel. They do competition routines. They do whole
12 competitions. They --

13 Q. So Varsity is a private profit-making company that
14 runs camps for profit and --

15 A. I don't know anything about the profits or --

16 Q. -- sells uniforms for profit, correct?

17 A. I would say -- I would imagine so, but I don't know
18 anything about the profits.

19 Q. Is there an organization of which the collegiate, of
20 which the colleges that sponsor competitive cheer teams
21 are members? Sort of like the NCAA for other sports, but
22 is there some sort of organization where educational
23 institutions are the members and they sponsor, those are
24 institutions that sponsor the competitive cheer teams?

25 A. I'm not understanding the question.

1 Q. Well, I asked you a moment ago if there was a
2 national governing body for cheer and you said everybody
3 follows NCA or UCA, correct?

4 A. Correct. Or if they are All Star, USAF.

5 Q. And All Star, that's a high school organization,
6 right?

7 A. No.

8 Q. Private clubs doing competitive cheer?

9 A. It's pretty intense training for kids starting at the
10 age of five and up.

11 Q. Okay. I'm not trying to denigrate the intensity of
12 it; I'm just trying to understand what it is. All Star is
13 some sort of organization of private clubs that do cheer
14 training for kids starting at the age of five?

15 A. Uh huh. (Affirmative.)

16 Q. And does it run, does it run through college?

17 A. Yes, they go up to what's called a level six.

18 Q. And how old are the competitors at level six?

19 A. They can be 18 years or older.

20 Q. Eighteen year old or older at level six, but they
21 don't have to be affiliated with a college or university?

22 A. No, they don't. You mean the actual member of the
23 team?

24 Q. Yes.

25 A. No, they don't.

1 Q. Well, so to come back, so now we've got, there are --
2 there are rules from NCA, there are rules from UCA, there
3 is a safety handbook that those two organizations
4 cooperate on, there's a separate organization that's the
5 All Star organization?

6 A. USAF.

7 Q. USAF. Is there any governing body for all this?

8 A. We follow the AACCA. As I said earlier, we follow
9 the AACCA.

10 Q. When you say "we" who do you mean?

11 A. You can't compete if you don't hold an AACCA
12 certification.

13 Q. That's for the coaches?

14 A. Uh huh. (Affirmative.)

15 Q. Okay.

16 THE COURT: Mr. Orleans, I'm going to ask a
17 couple of questions, if you don't mind.

18 MR. ORLEANS: That's fine. I don't always move
19 too quickly.

20 THE COURT: The competitions, you said you took
21 26 participants?

22 THE WITNESS: Yes.

23 THE COURT: To the nationals? Do all the 26
24 participate? Like did I see 26 women?

25 THE WITNESS: No, you saw 20. The amount you

1 can put on the floor at college nationals is 20. Locally,
2 regionally -- locally and regionally you can compete up to
3 36 people on the floor, but when it comes to college
4 nationals you're allowed to put 20, your 20 best on the
5 floor.

6 THE COURT: Okay. So the 40 that you're looking
7 at next year are going to be a single competitive squad,
8 not an A team and a B team?

9 THE WITNESS: No, this would be a single squad
10 and they would all compete locally and regionally, but
11 when it came down to that final competition, being
12 collegiate nationals, it would be like having, you go to
13 match and the other 20 would probably, you know, sponsor
14 your pyramids around the gymnastics skills, quite frankly,
15 the team position.

16 THE COURT: When did you first hear of the
17 possibility that competitive cheer would be made a varsity
18 sport?

19 THE WITNESS: Well, competitive cheer is a
20 varsity sport as named by several --

21 THE COURT: No, I mean at Quinnipiac.

22 THE WITNESS: When did I hear about it?

23 THE COURT: Yes.

24 THE WITNESS: I'm not sure.

25 THE COURT: And had you requested that status

1 prior to March 5th?

2 THE WITNESS: Had I requested that status? No.

3 It had been discussed with me several years ago, possibly
4 starting around 2005.

5 THE COURT: Had members of your squad requested
6 of you to seek varsity status?

7 THE WITNESS: Yes.

8 THE COURT: When was that?

9 THE WITNESS: It's been ongoing for a long time,
10 the girls asking to be compete only. I would think more
11 out of -- you know, just looking back to some of my
12 alumni, I think a lot of the reasons was their plates were
13 full, as all the kids at Quinnipiac. They have pretty
14 intense majors and they were cheering for men's and
15 women's basketball and they were competing as well, as
16 well as practicing. And so they had come to me many
17 times -- what I will say, I typically will lose several
18 kids a year up to this point. I will lose several -- it's
19 not uncommon for me to lose ten players, and the reason is
20 their plates were way too full. And I would often ask the
21 question, well, is it the sideline cheering you want or is
22 it the competitive end? And that question has been posed
23 to me. I would say it's 80/20, eighty percent want to
24 compete. They have been raised on competitive cheer, all
25 through the All Star program and through high school.

1 And the other kids, I know this year 37 girls
2 are not going to return because they wanted to cheer for
3 games, and there's been a couple kids who asked if they
4 could do both because they like the competitive end and
5 they don't feel like their studies stress them out so much
6 that they can't competitively cheer, cheer for games and
7 handle their academics.

8 But for the majority of the kids on my team, you
9 know -- and then there's the kids who know that they are
10 going to try to enter a competitive program. If they only
11 have a back hand spring, the likelihood of making the team
12 without a standing tuck and a back flip and having, you
13 know, a position that's going to be really tough for them
14 because it's kind of expected that at the collegiate level
15 to come in with a standing tuck at the very least, and if
16 you don't, you're not going to grab one of those
17 positions.

18 THE COURT: All right. Going back to the team
19 size issue, you said local competitions you can have up to
20 36.

21 THE WITNESS: Thirty-six, correct.

22 THE COURT: And who makes that decision? Who
23 limits the size of the team that's competing?

24 THE WITNESS: I suppose the venue in itself.
25 You know, they send you their set of rules and it's been

1 pretty standard you can have up to 36 on the floor, you
2 can have 36 kids taking the floor. That is standard. No
3 more.

4 THE COURT: Okay. Go ahead.

5 MR. ORLEANS: Are you --

6 THE COURT: Done.

7 MR. ORLEANS: -- done for now, Your Honor?

8 THE COURT: Yes.

9 BY MR. ORLEANS:

10 Q. You said you follow the American Association of
11 Cheerleading Coaches and Advisors. Do you look at that as
12 the governing body for the sport of cheer?

13 A. For the most part, yes.

14 Q. Okay. Are you familiar with the position of that
15 organization on whether cheer should be counted as a sport
16 for Title IX purposes?

17 A. I am not familiar with that, no.

18 Q. You know who Jim Lord is?

19 A. Yes, I do.

20 Q. Who is Mr. Lord?

21 A. Mr. Lord is the head of University -- UCA.

22 Q. Beg pardon?

23 A. UCA, I believe.

24 Q. And do you know whether he was Executive Director of
25 the American Association of Cheerleading Coaches and

1 Advisors?

2 A. I believe he would be.

3 Q. Okay. And do you go to the American Association of
4 Cheerleading Coaches and Advisors website from time to
5 time and look at what's on that website?

6 A. Do I go on it? I think the last time I was on it was
7 because they also post, they had posted the college safety
8 initiative, so I think I had gone on it to look up that.

9 I had navigated the site to look at the National Safety
10 Initiative.

11 Q. Did you ever see a copy of the American Association
12 of Cheerleading Coaches and Advisors' position paper
13 addressing the issue of cheering as a sport?

14 A. Who was it addressed to and by?

15 Q. Well, it's something that appears on the website. It
16 is the statement that appears on the website?

17 MS. GAMBARDELLA: Your Honor, I think this is
18 beyond the scope of my direct. I didn't ask this
19 witness's testimony about whether or not the Office of
20 Civil Rights could come in and scrutinize this. That's I
21 think what this court should decide.

22 MR. ORLEANS: I'm not understanding the
23 objection.

24 MS. GAMBARDELLA: The objection is it's beyond
25 the scope of my direct.

1 MR. ORLEANS: Well, the witness testified that
2 the closest thing to a national governing body she's aware
3 of for the sport of cheer is the AACCA and I'm trying to
4 bring out the position of the AACCA on cheerleading as a
5 sport.

6 THE COURT: I'll allow it.

7 BY MR. ORLEANS:

8 Q. So, my question is have you ever seen the position
9 paper of the AACCA on the issue of cheerleading as a
10 sport?

11 A. No, I have not.

12 MS. GAMBARDELLA: Your Honor, what date are we
13 talking about for that position paper?

14 MR. ORLEANS: It's not dated, the copy that I
15 have from the website.

16 MS. GAMBARDELLA: Is it an exhibit?

17 MR. ORLEANS: No, this is not an exhibit and
18 that's the only copy that I have.

19 MS. GAMBARDELLA: Thank you.

20 (Pause)

21 MS. GAMBARDELLA: And it's not dated?

22 MR. ORLEANS: It's dated April 16, 2009, which
23 is the date that I printed it off the website.

24 MS. GAMBARDELLA: Got you.

25 MR. ORLEANS: I don't know what date it was

1 issued.

2 MS. GAMBARDELLA: I'm making sure it's not an
3 exhibit.

4 MR. ORLEANS: No.

5 BY MR. ORLEANS:

6 Q. Let me refer you to Exhibit 35, to which there is an
7 objection. I think you said that Jim Lord, you knew that
8 Jim Lord had been the Executive Director of the American
9 Association of Cheerleading Coaches and Advisors, correct?

10 A. I said -- you know what, he's been involved in
11 cheerleading since as long as I have, so I don't know how
12 many times he's changed his position within the company.
13 I'm sure if you're telling me that he has been, he has.

14 Q. Is he recognized in the community of cheerleading
15 coaches as an authority figure?

16 A. He is, but with the division of the UCA and NCA,
17 which we have attended, as I've told you, we enter NCA
18 collegiate national championships, that would be Bill
19 Boggs (ph), who is more the person that I speak to if I
20 have any concerns on score sheets or -- anything to do
21 with cheerleading, the athletic aspects of cheerleading.

22 Q. Would it surprise you to know that Mr. Lord's opinion
23 is that the acceptance of cheerleading as a Title IX
24 activity will not enhance cheerleading, nor increase
25 athletic opportunities for women?

1 MS. GAMBARDELLA: Your Honor, this is totally
2 unfair. This document is dated 1998. If you'd like the
3 witness to refer to it, it's only fair that she refer to
4 it. The document is 11 years old.

5 MR. ORLEANS: I think that was the date that
6 Quinnipiac last announced it was adding a women's sport,
7 counselor.

8 MS. GAMBARDELLA: Your question --

9 MR. ORLEANS: I'll be glad to show the witness.

10 THE WITNESS: Go ahead.

11 THE COURT: It's in this notebook.

12 MR. ORLEANS: It's in one of these notebooks,
13 it's Exhibit 35.

14 THE WITNESS: 1998?

15 MS. GAMBARDELLA: 1998.

16 THE WITNESS: I'd be happy to see this one.

17 BY MR. ORLEANS:

18 Q. And I'd just call your attention to the third
19 paragraph, which states the AACCA position on cheerleading
20 as a sport at that time.

21 A. Okay, I've read it.

22 Q. Okay? Do you agree with it?

23 A. Do I agree with it? I think a lot has changed in ten
24 years since this was put out.

25 Q. Okay.

1 MR. ORLEANS: I'll offer this, Your Honor.

2 MS. GAMBARDELLA: Your Honor, I have no idea
3 what probative value something somebody wrote in 1998 has
4 to do with Quinnipiac's program in 2007, -8 and -9.

5 THE COURT: All right, well, it's obviously
6 hearsay.

7 MS. GAMBARDELLA: And it's hearsay.

8 THE COURT: I'm going to keep it out on that
9 ground.

10 BY MR. ORLEANS:

11 Q. Do you have any reason, Ms. Powers, to believe that
12 the AACCA's position on cheerleading has changed,
13 cheerleading as a sport under Title IX has changed since
14 1998?

15 A. The AACCA and Jim Lord are two separate entities.
16 Just because he might have been on the governing body of
17 one at some given time does not mean that the positions
18 are constantly held and reflect each other at all times.
19 Competitive cheer is changing all the time. The rules
20 have changed in the past ten years since this was written.
21 The owners of -- Varsity NCA and UCA at one point had
22 merged, collectively merged, okay?

23 So, there's lots of changes since this document has
24 ran. It's like a corporation where management has changed
25 where they've been elevated to a new position. So I'm not

1 quite sure what you're asking me.

2 Q. Well, what I asked you was do you have any reason to
3 believe that the position of the American Association of
4 Cheerleading Coaches and Advisors on whether cheer should
5 be counted as a sport for Title IX purposes has changed
6 since 1998. I think it's a pretty straightforward
7 question.

8 A. I don't know. I think it's changed.

9 Q. You don't know. That's a perfectly acceptable
10 answer.

11 MS. GAMBARDELLA: Don't interrupt her. I'm
12 sorry, he interrupted her. If he doesn't like the answer,
13 he shouldn't interrupt.

14 THE COURT: The hour's getting late. I don't
15 know where you are. I do need to --

16 MR. ORLEANS: You need to leave, Your Honor?

17 THE COURT: I had a couple quick questions.

18 MR. ORLEANS: Why don't you ask your questions
19 while I check to see whether I have any more.

20 THE COURT: All right. On the question of
21 competitions, many sports at the collegiate level have a
22 fixed series of competitions. You play people in your
23 league.

24 THE WITNESS: Correct.

25 THE COURT: You may have a, a record that

1 qualifies you for some post season competition. Is there
2 any of that in competitive cheer? Or is it more you
3 decide, for whatever reason, to go to this competition or
4 that competition or whatever?

5 THE WITNESS: Your second, your second
6 situation --

7 THE COURT: Okay.

8 THE WITNESS: -- I know that our conference, the
9 NCA, there are coaches currently working on developing our
10 own competition within the conference.

11 THE COURT: And what criteria do you use when
12 deciding what competitions to enter?

13 THE WITNESS: Well, it's going to change but the
14 criteria we've had to use for the past ten years is when
15 we are not cheering for men's and woman's basketball. So
16 it's pretty hard to answer that question.

17 THE COURT: So, it's more of a scheduling --

18 THE WITNESS: It's been a scheduling issue
19 because cheering for men's and women's basketball has come
20 first, and there's many a time on Saturday where my girls
21 have done a double team back to back and there's been a
22 1:00 o'clock game but we have to be at the arena by 12:00
23 noon, and we don't finish the game until 3:00, there's a
24 half-hour break in between before the men's game starts at
25 4:00 and we're not done until 6:00, so we lost the

1 opportunity to compete. This has happened probably six
2 times this past year.

3 THE COURT: Are most of the competitions, do
4 they involve groups of schools, much as the nationals did
5 where you have 16 schools and eight make the final and you
6 pick one, two, three?

7 THE WITNESS: Again, I think everything is at
8 the mercy of the schedule. So this year, for instance, we
9 competed in the Alameda Open and we typically, because of
10 the scheduling of that event, it's usually typically eight
11 to ten teams on that day competing.

12 THE COURT: Let me try this. Do you compete --
13 for example, do you call up Fairfield University and say,
14 hey, let's have a meet, a competition or whatever, head to
15 head? Or is it more there's going to be six, eight, ten
16 ten, twelve --

17 THE WITNESS: Six, eight, ten, twelve. Is that
18 a good idea though?

19 THE COURT: I don't know. I'm just trying to
20 figure out how it works.

21 And then -- but there's no, for example, you
22 don't have to have achieved any particular outcome in any
23 competition in order to participate in nationals?

24 Nationals is open to anybody who sends in a tape that's
25 selected by --

1 THE WITNESS: The committee, yes, or through a
2 camp bid, yes.

3 THE COURT: Or -- I'm sorry?

4 THE WITNESS: Or through a camp bid. They've
5 gone to camp and received a full or -- partial or fully
6 paid bid.

7 THE COURT: Okay, all right.

8 MR. ORLEANS: Your Honor, I apologize to the
9 court and to Ms. Powers and counsel but, you know, I think
10 I probably have ten, 15 minutes left and I'm sure
11 Ms. Gambardella is going to want to do some redirect. I
12 think we've got to bring this witness back.

13 MS. GAMBARDELLA: I doubt it. I only have one
14 question.

15 THE COURT: Go ahead. Let's see if we can get
16 it done.

17 MR. ORLEANS: All right.

18 BY MR. ORLEANS:

19 Q. I think we've established, Ms. Powers, that there are
20 no NCAA eligibility rules for this sport?

21 A. No. I think that's correct.

22 Q. Okay. And you said you're going to have scholarship,
23 you've been told you'll have scholarships next year?

24 A. I've been told there is scholarships forthcoming,
25 yes.

1 Q. You have not -- have you promised scholarships to
2 any --

3 A. No.

4 Q. -- athletes for next year?

5 A. Not at all.

6 Q. And you already said that the rules or the score
7 sheets vary somewhat from venue to venue, is that correct?

8 A. Slightly. Not in the actual -- you know, an element
9 is an element. A gymnastics element, both standing and
10 running are elements. A partner element is an element. A
11 pyramid score is an element.

12 The things that change are possibly some of the
13 things like you could see in an ice skating championship
14 or in a gymnastics championship where it's more about the
15 choreography and how it becomes a subjective part of the
16 score, and how they work, the overall effect. Perfection
17 of routine, execution of routine. You know, the grid
18 doesn't vary on how they are going to, how they are going
19 to score the skill.

20 What I think is the variance is what's -- I'm a
21 certified judge and so when I judge an event, I might be
22 put on the category of tumbling or might be put on --
23 let's just say I'm put on standing tumbling. My eye has
24 to be at 20 girls to 35 girls, 36 girls on the mat, and
25 I'm watching to see how many execute a standing back tuck

1 and when they do and if they do, if they touch down and if
2 they touch down with hands is a deduction, and I have to
3 incorporate that deduction into my score as the team is
4 competing. So I might be able to start them at a grid
5 score of nine to 11 on the high end but, depending on how
6 many girls have touched down, it's a .5 deduction for
7 every time a girl touches down, I have to take that into
8 consideration when judging. And it's, quite frankly, the
9 same in a gymnastics meet or in an ice skating meet, which
10 is where I think the scoring has become comparative.

11 Q. But I think you did say earlier there was some
12 variation from venue in venue in the score sheets?

13 A. Variation, let me just clarify, it's not in the
14 undeniable skill. It's in the overall effect. Basically
15 it's the choreography of the routine.

16 Q. Okay. And but one thing that does vary competition
17 to competition and venue to venue is the number of
18 athletes competing?

19 A. No, there was -- in one, I said it varies in one. I
20 didn't say it varies in all. I said it varies in one. In
21 the college nationals they allow for 20 on the floor.

22 Q. And in other events you've entered, they allow for
23 36?

24 A. Yes.

25 Q. You said something about in your judging there was

1 some --

2 A. I said.

3 Q. Between 20 --

4 A. I said between 20 and 36.

5 Q. Okay. You've never had as many as 40 girls on the
6 team in the past, have you?

7 A. No, I have not.

8 Q. You've had 36?

9 A. I said last year I believe I took 34. It was my
10 highest I've ever taken.

11 Q. And are you familiar with the Quinnipiac University
12 Athletic Department website?

13 A. Yes.

14 Q. And I think we established with another witness that
15 there was a website for the cheer squad that was then
16 changed sometime in April to competitive cheer?

17 A. Correct.

18 Q. Are you familiar with that?

19 A. Yes.

20 Q. Were you involved in making that change at all?

21 A. No.

22 Q. Have you looked at the website both before and after
23 the change was made?

24 A. I have, and I would say right now we've got some more
25 work to do on it.

1 Q. But I want to focus on the roster. Would I be
2 correct that the list of girls who are currently listed as
3 being on the competitive cheer team is exactly the same
4 list of girls that were previously listed as cheerleaders?

5 A. Correct.

6 MR. ORLEANS: I'm almost finished, Your Honor.
7 I apologize for being slow.

8 BY MR. ORLEANS:

9 Q. Within the academic, within the college year from
10 September through May or June, there is no defined
11 competitive season for competitive cheer, is that right?

12 A. There has not been to date, no. We've had our
13 typical year when we begin to compete which has been
14 pretty standard.

15 Q. And the Northeast Conference, to which Quinnipiac
16 belongs, does not recognize competitive cheer as a varsity
17 sport, is that correct?

18 A. Are you asking me if I know that or --

19 Q. I'm asking you if you know that.

20 A. I don't believe so. What I do know is that two other
21 teams within our conference are looking to do the same.

22 Q. Okay. But they haven't done it yet?

23 A. They are working towards that.

24 Q. But they haven't done it yet?

25 A. No.

1 MS. GAMBARDELLA: Your Honor --

2 MR. ORLEANS: I'm asking a yes or no question.

3 THE WITNESS: It's okay. I'm fine.

4 MR. ORLEANS: She's holding her own just fine.

5 THE WITNESS: I'm really quite fine.

6 MR. ORLEANS: I have nothing further, Your
7 Honor.

8 MS. GAMBARDELLA: I have two minutes. I
9 promise.

10 Do you mind if I just do that, and -- take your
11 time.

12 MR. ORLEANS: You start while I'm packing up.
I'll try to be quiet.

14 REDIRECT EXAMINATION

15 BY MS. GAMBARDELLA:

16 Q. What is the standard competitive season for
17 competitive cheer?

18 A. I think the standard season for competitive cheer is
competing twice in the first semester and possibly six to
20 eight times in the second.

21 Q. All right. And one last question. If 36 and I think
22 you said most of the competitions are the maximum allowed
23 on the floor?

24 A. Uh huh. (Affirmative.)

1 Q. What does "on the floor" mean?

2 A. On the mat, on the matted surface.

3 Q. Okay. So why is 40 realistic?

4 A. Because we typically lose some kids from that roster.

5 Q. Right, so they get injured, they come back?

6 A. They get injured. The freshmen come in and it's
7 different than it was in high school for them. Flyers are
8 expected to go one body high and when they get to college,
9 if they are a flyer, we ask them to go two and-a-half
10 bodies high, and they are asked to do backwards rotating
11 stunts and they are not allowed to do that by high school
12 federation rules. So --

13 Q. But they all practice and participate, correct?

14 A. They all practice and participate, correct.

15 Q. Just like some other teams, some people play one
16 game, some people are on the bench, correct?

17 A. Absolutely.

18 MS. GAMBARDELLA: Nothing further.

19 MR. ORLEANS: Just one follow-up, Your Honor.

20 THE COURT: All right.

21 RECROSS EXAMINATION

22 BY MR. ORLEANS:

23 Q. Next year, in addition to the 40 that you intend to
24 have on the competitive cheer squad, there will also be a
25 sideline cheer squad, correct?

1 A. I'm being told they are making plans for that, yes.

2 Q. Do you know how many girls they will be looking for
3 for that?

4 A. I have no idea. I do know they will be seeking my
5 assistance in that matter, on deciding that.

6 Q. Nothing further. Thank you.

7 MS. GAMBARDELLA: Nothing further.

8 THE COURT: Thank you. You're excused.

9 THE WITNESS: Thank you very much.

10 (Witness excused.)

11 THE COURT: Quickly, we're going to return here
12 tomorrow morning at 9:30 and we're going to finish with
13 Mr. McDonald.

14 MS. GAMBARDELLA: Yes.

15 THE COURT: And have you two sorted out the
16 expert?

17 MS. GAMBARDELLA: No.

18 MR. ORLEANS: We have not yet, Your Honor. I'm
19 hoping to have our designations tomorrow morning.

20 THE COURT: That's fine. And I'm granting the
21 motion to extend the trial brief deadline until tomorrow.

22 MS. GAMBARDELLA: Not only smart but psychic.

23 THE COURT: At the close of business tomorrow.

24 MS. GAMBARDELLA: Thanks, Judge.

25 THE COURT: I would urge you to work out the

1 expert. I would like to take a look at that at some
2 point.

3 MS. GAMBARDELLA: Does it make sense for us to
4 get here by 9:00 and see what we can accomplish by 9:30?
5 So if you designate and cross designate, we can try to
6 have this done.

7 THE COURT: Great idea. All right, but once
8 you're done, you're done with your live witnesses, we
9 still have the issue -- I'll tell you, I'm inclined to
10 allow all three of these witnesses and if we need to, we
11 can come back Thursday morning, but I would rather have
12 more than less evidence, quite frankly, so --

13 MR. ORLEANS: Okay.

14 MS. GAMBARDELLA: All right.

15 THE COURT: So if we can get it done tomorrow,
16 wonderful. If not --

17 MS. GAMBARDELLA: I know you don't want to hear
18 this but am I going to be allowed to depose this witness?

19 MR. ORLEANS: Your Honor, the witness is a coach
20 at Quinnipiac. I think at this point asking for a
21 deposition of her own employee is basically -- is a little
22 beyond --

23 MS. GAMBARDELLA: Your Honor, we had already
24 been told that she wasn't put on the list on time because
25 they wanted to make sure we couldn't retaliate against

1 her. Now, what counsel is suggesting is I should take her
2 in a room and interview her with Mr. McDonald so we can be
3 accused of something else. I don't want to do it.

4 MR. HERNANDEZ: With all due respect, Your
5 Honor, that wasn't my representation. My representation
6 was we did not want to confirm her as a witness until we
7 had spoken with that witness and had gotten an affirmative
8 representation from the witness that she was, in fact,
9 willing to testify in court.

10 MS. GAMBARDELLA: The record speaks for itself.

11 MR. ORLEANS: I think I said that we were
12 concerned about retaliation.

13 MS. GAMBARDELLA: Thank you, Jonathan, because I
14 know I heard it.

15 MR. ORLEANS: But I don't think we said that she
16 was concerned.

17 MS. GAMBARDELLA: No, that is correct. What I
18 don't want is anything to be misconstrued or anything to
19 be off the record. That having been said, what I'm
20 willing to do is do an interview with counsel present
21 instead of a deposition.

22 THE COURT: Sounds fine. Sounds fine. You can
23 do that --

24 MS. GAMBARDELLA: We can do it tonight. We can
25 do it tonight.

MR. HERNANDEZ: The witness has left so --

MR. ORLEANS: We can try to reach her by .

MR. HERNANDEZ: Or by phone.

MS. GAMBARDELLA: Or early tomorrow. We'll work

MR. HERNANDEZ: We'll work it out.

THE COURT: Very good.

MS. GAMBARDELLA: Thank you.

THE COURT: But in terms of trying to get through tomorrow, are we optimistic we're going to get through --

MS. GAMBARDELLA: You can be. I have Tracey Flynn for a very limited purpose because we got through a lot, but I'm sure you appreciate why she has to be called for a limited purpose. And then we just have the three.

MR. ORLEANS: We have to finish Mr. McDonald and that shouldn't take too long.

THE COURT: Very good. All right, excellent.

We'll see you -- you'll be here at 9:00, I'll be here
9:30. Have a great night. We'll stand adjourned.

(Whereupon the above matter was adjourned at 4:45
o'clock, p. m.)

C E R T I F I C A T E

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

/S/ Susan E. Catucci

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