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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

AMY COHEN, et al., :
 :
Plaintiffs, :
 :
vs. :
 :
BROWN UNIVERSITY, CHRISTINA :
PAXSON, as successor to :
VARTAN GREGORIAN, and :
JACK HAYES, as successor to :
DAVID ROACH, :
 :
Defendants. :



Case No.
92-CV-0197-JJM-LDA

VIDEO-RECORDED DEPOSITION OF JACK HAYES,
taken via Zoom video conference, by the Plaintiff,
before Sonya M. Wright (appearing via Zoom),
commencing at 9:00 a.m. CST, Saturday, August 15,
2020.

AMY COOPER - FIDELITY VIDEO SERVICES, INC.
SONYA M. WRIGHT - CERTIFIED SHORTHAND REPORTER

AMY COHEN vs BROWN UNIVERSITY, et al.
 JACK HAYES 08/15/2020

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1 defendants.

2 MS. KOLB: Staci Kolb for the defendant.

3 VIDEOGRAPHER: The oath will now be

4 administered by Sonya Wright, certified shorthand

5 reporter of Susan Frye Court Reporting, Des Moines,

6 Iowa.

7 MS. BULLOCK: Prior to the administering

8 of the oath, pursuant to federal court order in

9 Rhode Island, due to the COVID pandemic, all parties

10 have agreed to stipulate on the record that the

11 witness is remote and can be sworn in remotely.

12 COURT REPORTER: Would you raise your

13 right hand, please. Do you solemnly swear or affirm

14 that the testimony you're about to give will be the

15 truth, the whole truth, and nothing but the truth?

16 **THE WITNESS: I do.**

17 **JACK HAYES,**

18 **called as a witness, having been first duly sworn,**

19 **testified under oath as follows:**

20 EXAMINATION

21 BY MS. BULLOCK:

22 Q. Good morning, Mr. Hayes.

23 **A. Hello.**

24 Q. As I just said, my name's Lori Bullock.

25 Can you identify for the record who's in the room

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1 with you?

2 **A. Yes. I'm with Bob Corrente and Staci**

3 **Kolb.**

4 MS. BULLOCK: And, Ms. Kolb, can you

5 identify what law firm you are with?

6 MR. CORRENTE: If it's easier, because she

7 has her audio off, she is in my law firm.

8 MS. BULLOCK: Thank you.

9 Q. (By Ms. Bullock) Mr. Hayes, can you state

10 and spell your name for the record?

11 **A. Last name H-a-y-e-s. Jack Hayes.**

12 Q. Have you ever had your deposition taken

13 before?

14 **A. I have not.**

15 Q. I'm sure that your attorneys have gone

16 over this with you, but I'm going to go over some

17 ground rules just to give you a reminder. The first

18 and the most important is there is a court reporter

19 taking down everything we say, so for that reason,

20 you need to make sure to give affirmative answers to

21 every question. The court reporter can't take down

22 things like uh-huhs and huh-uhs, so yes or no. If

23 at any point in time I ask you "Is that a yes or is

24 that a no?" I am not trying to trip you up. I just

25 need to make sure the record is clear. Do you

Page 8

1 understand?

2 **A. I do. Thanks.**

3 Q. For that same reason, it's also very

4 important that we don't talk over each other.

5 Oftentimes, in natural conversation, you are going

6 to know where I am going with a question, I may know

7 where you're going with an answer, but because

8 someone's taking down everything we say, we need to

9 make sure that we allow the other person to

10 completely finish talking and then go ahead and

11 respond. This is particularly true in Zoom, where

12 it's impossible for -- if we're both talking at the

13 same time, it mutes each other out. Okay? Do you

14 understand?

15 **A. Okay. I do.**

16 Q. Most importantly, I want to make sure that

17 you understand my questions. There may be times

18 when I raise a question in a way that is not

19 necessarily the most clear, so if at any point in

20 time you do not understand my question, please ask

21 me to rephrase it or to reask it. If you answer my

22 question, I will assume that you understood my

23 question. Does that make sense?

24 **A. It does.**

25 Q. During the course of the deposition, one

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1 of your attorneys may object to a particular

2 question. When that happens, those objections are

3 being made for the record. You still need to answer

4 the question unless your attorney specifically

5 instructs you not to. So allow him to say

6 "Objection" and state his objection, and then you

7 just can go ahead -- right ahead and answer, okay?

8 Along that same vein, Mr. Corrente, as

9 you're defending the deposition, pursuant to the

10 other depositions, all objections are reserved

11 except for form objections. I would ask that you

12 state the form objection and briefly what it is on

13 the record at the time that you make it if you

14 choose to do so.

15 MR. CORRENTE: Great.

16 Q. (By Ms. Bullock) Thank you. If you need

17 to take a break for whatever reason, Mr. Hayes,

18 that's fine. Go ahead and ask me. The only thing

19 that I ask is that we not have a question pending.

20 **A. Okay.**

21 Q. That make sense?

22 **A. Yes.**

23 Q. My understanding, you're very busy. I

24 know we're here on a Saturday. So I am going to do

25 my best to make sure that we get through this

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1 MS. BULLOCK: That's fine.
 2 Q. (By Ms. Bullock) Did President Paxson
 3 share with you the charges of the committee?
 4 **A. She did.**
 5 Q. And we have here -- and I'll represent to
 6 you that President Paxson testified yesterday that
 7 this was the initial list of charges. Have you seen
 8 this document?
 9 **A. I have seen this document.**
 10 Q. And then she testified yesterday that this
 11 was not the final list of charges, that it was
 12 reduced before it was given to the committee. Did
 13 you have discussions with President Paxson about
 14 reducing the charges to the committee?
 15 MR. CORRENTE: I object to the form of the
 16 question. I'm not sure that that is an accurate
 17 recitation of what President Paxson testified to.
 18 Q. (By Ms. Bullock) Let's look --
 19 MR. CORRENTE: It's my understanding she
 20 said that Exhibit 5 was the initial draft and
 21 Exhibit 6 was the final charge to the committee.
 22 He's looking at Exhibit 6.
 23 MS. BULLOCK: I may have accidentally
 24 pulled up the wrong one, then. My mistake. Let's
 25 unmark that one.

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1 MR. CORRENTE: Did you say unmark that?
 2 MS. BULLOCK: I'd prefer to do this in the
 3 correct order, then. But hold on. Sorry. If you
 4 were sitting in front of me, I would just show you
 5 the document I have in front of me, but I have to
 6 get it pulled up.
 7 Q. (By Ms. Bullock) Okay. This was
 8 previously marked as Exhibit 5. We'll just mark
 9 this as Exhibit 4. So this is an initial draft of
 10 the charge on -- did you see -- have you seen this
 11 draft, Mr. Hayes?
 12 MR. CORRENTE: Let me get him Exhibit 5
 13 from Paxson.
 14 MS. BULLOCK: Okay.
 15 **THE WITNESS: No, I would not have seen**
 16 **this email.**
 17 Q. (By Ms. Bullock) Did you see the
 18 attachment, which was the initial draft of the
 19 committee on --
 20 **A. Is that what we have as Exhibit 6? Is**
 21 **that Exhibit 6?**
 22 Q. From Paxson's deposition, yeah. They are
 23 slightly different. So if you look --
 24 MR. CRAIG: Can you identify the Bates
 25 numbers?

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1 Q. (By Ms. Bullock) Yeah. If you look -- at
 2 the bottom of your page, Mr. Hayes, there's a string
 3 of numbers that say "Brown2020." Do you see that?
 4 **A. I do.**
 5 Q. Can you look at the one that says "26995"?
 6 **A. Yes, I see it.**
 7 Q. Have you seen this version of the
 8 committee charge?
 9 **A. Again, I don't believe I saw this version.**
 10 **I had conversations on this subject matter**
 11 **throughout, but I can't say for sure that I saw this**
 12 **version.**
 13 Q. If you see there in the second paragraph,
 14 the very last sentence, it says, "The goal should be
 15 to reduce the overall number of varsity sports to no
 16 more than 25."
 17 **A. I see that.**
 18 Q. Is that something that you and President
 19 Paxson discussed?
 20 **A. Yes. It was a conversation about what**
 21 **would be the right size, what would be the right**
 22 **number of sports, yes.**
 23 Q. How did you come up with 25?
 24 **A. In looking at the -- and this was a rough**
 25 **estimate or a conversation that didn't necessarily**

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1 **have specifics, but in looking at our operating**
 2 **budget compared -- and the number of sports we**
 3 **offered and the operating budgets of other schools**
 4 **in the league and the number of sports that they**
 5 **offered, that a significant reduction would be**
 6 **needed to be competitive. That was a number as a**
 7 **starting point that was put out there.**
 8 Q. Is that something that was shared with the
 9 committee?
 10 **A. I don't believe it was.**
 11 Q. Is that something that you shared with the
 12 committee?
 13 **A. I did not share a specific number with the**
 14 **committee.**
 15 Q. You also agree that one of the goals of
 16 the committee was to increase gender equity?
 17 **A. Yes. I would say one of the goals of the**
 18 **committee, in examining the number of sports we**
 19 **offer and whether or not to transition some of those**
 20 **sports to club sports, was always to be cognizant of**
 21 **the gender balance.**
 22 Q. Do you agree that the final combination of
 23 varsity teams that was announced on May 28th was
 24 able to get Brown closer to gender proportionality
 25 than it had ever been before?

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1 **A. Yes.**
2 Q. So we -- correct me if I'm wrong. I
3 believe there were committee meetings on March 10th,
4 April 17th, and May 14th. Does that sound right?
5 **A. That's correct.**
6 Q. Did you attend each one of those meetings?
7 **A. I did.**
8 Q. Were those meetings all virtual?
9 **A. The first meeting was not, although I**
10 **believe the president participated virtually, but**
11 **the first meeting -- and maybe one other committee**
12 **member, but I was in the room. Other -- I'm sorry.**
13 **Other committee members were virtual too, but I was**
14 **in the room.**
15 Q. You were in the room with?
16 **A. Kevin Mundt and Eileen Goldgeier and**
17 **Marguerite Joutz. The others who participated,**
18 **including the president, participated virtually.**
19 Q. You conducted those meetings over Zoom?
20 **A. Yes.**
21 Q. And did the president attend each of the
22 meetings virtually?
23 **A. I do not know about the April meeting.**
24 **May, I believe she -- by May, everyone was virtual.**
25 Q. So she -- you're not sure if she attended

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1 the April meeting, but she virtually attended the
2 March meeting and then the May meeting?
3 **A. I believe so, yes.**
4 Q. And in the April meeting, were you, again,
5 there in person?
6 **A. No. The April meeting was fully virtual**
7 **as well.**
8 Q. Prior to the start of the March meeting,
9 did you put together any information for the
10 meetings?
11 **A. I did. I worked with the president on**
12 **that. We put information together for the**
13 **committee. Success and win-loss records of teams.**
14 **Facility assessments. Community interest. Those**
15 **were the types of things that we put together.**
16 Q. How do you gauge community interest?
17 **A. Based on -- several factors we took into**
18 **account. Our ability to host events on our own**
19 **campus. The number of schools that offer the sport**
20 **throughout the country at the Division I level. And**
21 **then past history of attendance at games throughout**
22 **the years in different sports.**
23 Q. Was that criteria that was given to you,
24 or did you create that?
25 **A. We -- it wasn't given to me, but it was**

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1 one that we discussed back and forth. It was one
2 that -- it wasn't as straightforward necessarily as
3 a win-loss record, but it was a combination of
4 different factors that we felt were important.
5 Q. At some point, did you provide ratings for
6 each of the teams?
7 **A. We did.**
8 Q. Was that something you did alone?
9 **A. No. That was on -- for instance, on the**
10 **facility piece, we worked with our own facilities**
11 **department in athletics on gauging the interest --**
12 **gauging where we would evaluate each one of our**
13 **facilities. Without providing any context to what**
14 **we were doing, we just asked them to do that. And**
15 **then that's how we came to information like that.**
16 Q. I'm going to share with you -- this is an
17 email from Marguerite Joutz to you, Bates stamp
18 26721.
19 MS. BULLOCK: And then, Mr. Corrente, for
20 your own benefit, it includes the Excel spreadsheets
21 that were provided behind it, but those were
22 produced in native form, and so they do not have
23 Bates stamps on them.
24 MR. CORRENTE: Counsel, can you tell us,
25 since they don't have Bates numbers on them, how

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1 many pages in total you're including there?
2 MS. BULLOCK: Six pages total.
3 Q. (By Ms. Bullock) Do you have the document,
4 Mr. Hayes?
5 **A. I do.**
6 Q. So this was an email that was sent -- this
7 will be marked as Exhibit 5. This is an email that
8 was sent on February 20th. Is that around the time
9 that you were preparing information for the
10 committee?
11 **A. Yes.**
12 Q. This is a spreadsheet that was sent to
13 you, correct?
14 **A. Yes.**
15 Q. What was the purpose of this spreadsheet?
16 **A. I think the purpose of this spreadsheet**
17 **was just to show what the funding levels are for all**
18 **of our sports, but it was not information ultimately**
19 **shared at the committee level.**
20 Q. And was the funding level part of -- did
21 the funding levels play a role in the decision of
22 which teams to eliminate?
23 **A. It did not, and that's why that**
24 **information was not shared with the committee**
25 **members.**

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1 you know, I think we agreed earlier that the final
 2 layout of what teams were going to be eliminated
 3 from varsity status and promoted to varsity status
 4 didn't look the same between the committee on
 5 excellence in athletics and the final team layout --
 6 you know, makeup that was voted on by the
 7 corporation on May 21st, correct?
 8 **A. Correct.**
 9 Q. So did you do the analysis on the team --
 10 you know, the teams as they were going to be voted
 11 on on May 21st?
 12 **A. I did not. I did not. The only teams**
 13 **that were -- the only changes at that point were the**
 14 **addition of the two tennises.**
 15 Q. Did you do the analysis -- that same level
 16 and depth of analysis before the decision on -- was
 17 announced on June 9th to reinstate the men's track
 18 and cross country team?
 19 **A. I would say we did the same level of**
 20 **analysis with -- we were focused on proportionality.**
 21 **That's where we did our analysis.**
 22 Q. Do you have any documents reflecting that?
 23 **A. I have -- there is a -- the only documents**
 24 **I'm aware of are the anticipated rosters that the**
 25 **coaches provided to us for what they expected their**

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1 rosters to be for the 2020-'21 year. That was prior
 2 to June 9th, and then that was solidified with the
 3 roster declaration forms that came after. Later in
 4 the month of June.
 5 Q. But you didn't personally go back in and
 6 replug numbers into that spreadsheet, correct?
 7 **A. We did not.**
 8 Q. You said you relied on preseason rosters,
 9 correct?
 10 **A. I relied on the rosters that the coaches**
 11 **expected to begin the school year with, and then**
 12 **those were followed up with the roster declaration**
 13 **forms.**
 14 Q. And are those the same documents that you
 15 were talking about earlier in regards to emailing
 16 all of the coaches in May?
 17 **A. No. Those were what would the coaches'**
 18 **ideal rosters be. One was ideal roster. The next**
 19 **was, later on -- well, at the beginning of the next**
 20 **month, was what were their expected rosters going to**
 21 **be for the upcoming year.**
 22 Q. And when did you receive those expected
 23 rosters?
 24 **A. During the week -- they came in from**
 25 **different coaches, but during the week of -- that**

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1 **first week of June. Before the decision to reverse**
 2 **track.**
 3 MS. BULLOCK: Can we take a quick
 4 three-minute break, three to five minutes?
 5 VIDEOGRAPHER: Off the record at
 6 12:34 p.m.
 7 (Recess taken from 12:34 to 12:47 p.m.)
 8 VIDEOGRAPHER: On the record at 12:47 p.m.
 9 Q. (By Ms. Bullock) Mr. Hayes, you had said
 10 that you received roster declarations from the
 11 coaches, correct?
 12 **A. Roster declarations come later in the**
 13 **process. That's the formal part. But I did get**
 14 **what their expected rosters were going to be from**
 15 **them during that week -- that first week in June. I**
 16 **don't recall the actual date of being in receipt of**
 17 **the forms themselves.**
 18 Q. And did you receive -- I guess, how did
 19 you receive that information from the coaches?
 20 **A. By phone, and in some cases, when we were**
 21 **tracking down the coach themselves, became time**
 22 **consuming, the sport administrator would get -- who**
 23 **supervises that sport would get those numbers from**
 24 **the coaches.**
 25 In addition to not just asking for the

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1 numbers, we requested the actual names of the
 2 students, both those that would be returning and
 3 those that would be entering as first-year students
 4 or transfers in the upcoming year. So we had both
 5 the numbers of participants but the actual names of
 6 the participants.
 7 Q. As we sit here today, are you certain that
 8 you received all of the teams' information before
 9 the decision to reinstate track was made?
 10 **A. I would say yes, that's fair to say.**
 11 Q. Do you have any documentation that shows
 12 that?
 13 **A. I don't know if I have that. I don't**
 14 **know. But I know that in order to make the decision**
 15 **about whether track could be reinstated, the main**
 16 **concern was could we meet the requirements of**
 17 **proportionality, so I needed to know what the**
 18 **rosters were going to be for every sport.**
 19 Q. Do you know how -- did the committee make
 20 an ultimate recommendation of which teams should be
 21 eliminated on May 21st and which teams should be
 22 elevated?
 23 MR. CORRENTE: Can I just ask, to clarify
 24 the record, which committee are you talking about?
 25 MS. BULLOCK: The committee on excellence

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1 included in there, and we spoke in the morning and
 2 had that conversation.
 3 Q. So the email says that you went back and
 4 you looked at AI and allocating slots for that. At
 5 any point in time, was the analysis run to determine
 6 if adding tennis back was going to affect the
 7 proportionality at all?
 8 A. No, because I knew that if we were adding
 9 it back, we were adding both the men's and the
 10 women's, so that the proportionality would either
 11 not change or change slightly.
 12 Q. So you didn't conduct any analysis? You
 13 just --
 14 A. I did not.
 15 Q. When you found out about the final
 16 determination on the teams that would be eliminated
 17 from varsity status and then promoted to varsity
 18 status, did anyone report to you what percentage of
 19 the women female -- the student-athletes were
 20 expected to be -- you know, there was expected to be
 21 on those remaining varsity teams?
 22 MR. CORRENTE: Objection to form. You can
 23 answer.
 24 **THE WITNESS: Could you repeat the**
 25 **question, please?**

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1 Q. (By Ms. Bullock) Sure. So when you
 2 received the information about the final lineup of
 3 teams that was voted on by the corporation on
 4 May 21st, did someone report to you also what
 5 percentage of female student-athletes there would be
 6 for the remaining varsity teams?
 7 A. Well, we had the information from the
 8 spreadsheet so we were able to look at which sports
 9 would now -- now that it had been voted on, we knew
 10 which sports that we would have and what the
 11 percentages would be based on -- at that point,
 12 based on the ideal number.
 13 Q. And when you say "the spreadsheet," which
 14 spreadsheet are you referring to?
 15 A. The one that we've been looking at earlier
 16 today where we have a baseline and then a final
 17 number. We were able to -- we used the numbers from
 18 there. And, again, because I knew that the
 19 percentages were within -- the proportionality
 20 percentages were within the variance prior to the
 21 tennises being added back in -- I knew that because
 22 those rosters were comparable, adding them back in
 23 wasn't going to change the percentage breakdown very
 24 much and was not going to change the variance very
 25 much.

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1 Q. Okay. So I'm going to show you -- this is
 2 Bates 502 and 503. I'll mark this as Exhibit 13.
 3 MR. CRAIG: Are you able to identify a
 4 date of this document? I know it's from a native
 5 document.
 6 MS. BULLOCK: It is. Sorry. Just one
 7 moment. In order to do that, I'm going to have to
 8 stop sharing my screen.
 9 MR. CORRENTE: While you're at it, if you
 10 can find anything marked 503, that will be helpful
 11 because we have 502, and then our next document is
 12 another spreadsheet, which does not have a Bates
 13 number.
 14 MS. BULLOCK: Okay. And it may not have a
 15 Bates number. 502 was the native form. 503 -- I
 16 guess it's probably not 503. You're right,
 17 Mr. Corrente. 502 just says produced in native
 18 form. So it is a two-page spreadsheet, but we don't
 19 have a Bates number for the second page because it
 20 was produced in native form to us. So I have the
 21 502 from the produced in native form. No,
 22 defendants never indicated a date. This is -- this
 23 was just thrown in.
 24 MR. CRAIG: In the native document,
 25 there's no date?

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1 MS. BULLOCK: No, there is not. I can --
 2 here, I'll pull it up in its native form. I PDFed
 3 it to make it a little easier to -- this is the
 4 native form that we received from defendants.
 5 MS. LABINGER: If I could interject, I am
 6 opening the document on -- as a native document on
 7 my screen, and it says created 4/20/2019; author,
 8 Christina Paxson; last modified May 20, 2020.
 9 MS. BULLOCK: Is that in the properties?
 10 MS. LABINGER: That's in the properties,
 11 the info page. I'm not sure I'm capable of -- I can
 12 try to do a screenshot and forward that to everybody
 13 if you'd like.
 14 MR. CRAIG: Apologies. I didn't mean to
 15 send us down sort of a rabbit hole. I was just
 16 curious if it was there.
 17 MS. BULLOCK: I guess I will represent
 18 that --
 19 MS. LABINGER: I can do a screenshot. Let
 20 me just do that. That much I'm capable of doing.
 21 It will take me a moment.
 22 Q. (By Ms. Bullock) So this was last edited
 23 on May 20th, as Ms. Labinger said. This is what we
 24 received, and it indicates final. This is the last
 25 iteration of this spreadsheet that plaintiff was

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1 able to locate in the discovery. And you had
 2 indicated that you had done the calculations, but if
 3 you'll look here, Mr. Hayes, at the top, it says,
 4 "Converts to club." And men's and women's track is
 5 still included. I'm sorry. Men's and women's
 6 tennis is still included in those along the top.
 7 **A. Okay. I see that.**
 8 Q. So I believe that this is the last of
 9 this. Does that --
 10 **A. Yes. So it does say that men's and**
 11 **women's tennis is transitioned at the top, but --**
 12 **and it shouldn't, but down low, the two tennis teams**
 13 **are included now in the numbers.**
 14 Q. Okay. And that's what I just wanted to
 15 clarify to make sure because that seems as though it
 16 may just be left up there in error, then?
 17 **A. I believe it was.**
 18 Q. And we haven't -- so this is the last
 19 version of this that we have received. Was there
 20 another version of this done --
 21 **A. I do not --**
 22 Q. -- after May 20th?
 23 **A. I do not believe there was.**
 24 MS. LABINGER: Lori? Did you get my
 25 email?

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1 MS. BULLOCK: Yes. Yes, I did.
 2 MS. LABINGER: I became very low tech. I
 3 took a picture of it and emailed it to you. Maybe
 4 you can publish it. And then I'm going to get mute
 5 again.
 6 MS. BULLOCK: I will put this up. One
 7 second. Possibly. Just so the record is clear.
 8 This is not going to let me do this.
 9 Matthew, does it suffice for you if I send
 10 this to you?
 11 MR. CRAIG: I mean, if you want to just
 12 open the info tab in the native document you were
 13 showing before. It may not also matter to your
 14 questioning. I'm just -- you know, we know the
 15 document that you displayed is 502, and so --
 16 MS. BULLOCK: Okay. Here.
 17 MR. CRAIG: The document is what the
 18 document is.
 19 Q. (By Ms. Bullock) I can do that. It
 20 doesn't let me play -- okay. So you see here last
 21 modified May 20th, 2020? This is the last iteration
 22 of this document that we have received. And you
 23 just said you did not go back in and run the numbers
 24 again.
 25 **A. I did not use this document again.**

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1 Q. Is there any reason why Brown University
 2 didn't get sailing up and running as a varsity sport
 3 before eliminating other women's varsity sports?
 4 **A. No. We added women's rugby in 2014. That**
 5 **was the only addition since. It had just continued**
 6 **to operate as a very successful club program. Maybe**
 7 **one of the reasons also that would also contribute**
 8 **to it is facility-wise, they didn't have a sailing**
 9 **facility until two years ago.**
 10 Q. And then in the spreadsheet that we were
 11 just looking at, I just want to make sure, this,
 12 again -- these are not -- these are not the Cohen
 13 numbers for compliance, the average of the beginning
 14 of the season and end of the season roster numbers,
 15 correct?
 16 **A. In -- which one?**
 17 Q. Is there a column here that represents
 18 that?
 19 **A. That represents the Cohen numbers?**
 20 Q. Yes.
 21 **A. The Brown plan, because in the Brown plan,**
 22 **you can see that -- if you go down on the women's**
 23 **numbers there, cross country and track are separated**
 24 **and they are separate counts.**
 25 Q. Okay. And these numbers, again,

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1 represent -- I guess, what do these numbers
 2 represent?
 3 **A. So if you look at the Brown plan, let's**
 4 **take women's cross country and track. Those two**
 5 **numbers of 56 -- 58 and 26 -- do you see those two**
 6 **numbers?**
 7 Q. Yes.
 8 **A. So those total 84 cross country, track and**
 9 **field participants for the women. If you go over to**
 10 **the left, in that first column, on that average,**
 11 **which is significantly higher, where women's cross**
 12 **country, track, and field all is one number as -- I**
 13 **believe it says 129, that is a much higher number.**
 14 **That's an EADA count. So the first column is an**
 15 **EADA count. The last Brown plan column is a consent**
 16 **decree count.**
 17 Q. And these are projected rosters, correct?
 18 **A. They are projected.**
 19 Q. This is not based off the 2019-2020 roster
 20 numbers?
 21 **A. Well, I think all projected numbers are**
 22 **based on where you think your roster has been and**
 23 **where it may be in the upcoming year, but at the**
 24 **time of this document on the 20th, this is a**
 25 **projected number with the only input from the**

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1 coaches at that point being what their -- from the
 2 email of what their ideal roster would be.
 3 Q. Would you agree with me that roster
 4 projections can sometimes vary pretty greatly from
 5 the actual roster numbers?
 6 MR. CORRENTE: Object to the form. You
 7 can answer.
 8 THE WITNESS: I would say, yeah, roster
 9 projections can change, but there is -- there needs
 10 to be a baseline or a snapshot of where you start,
 11 and when we have that, that's how we end up managing
 12 our compliance on proportionality, is start -- to
 13 get to a starting point and then manage the rosters
 14 accordingly.
 15 Q. (By Ms. Bullock) Are you permitted to use
 16 preseason rosters when reporting to the EADA?
 17 A. We do not use preseason rosters. We use
 18 the rosters at the first date of competition.
 19 Q. Have you seen the June 6th statement
 20 from -- the public statement from President Paxson?
 21 A. I have.
 22 Q. Do you need me to pull it up to -- for you
 23 to be able to reference it?
 24 A. Sure. Sure. I'm familiar with it, but
 25 that would be helpful.

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1 MR. CORRENTE: Just so the record's clear,
 2 I've handed the witness Exhibit 2 from the Paxson
 3 deposition, which I think is the statement in
 4 question.
 5 Q. (By Ms. Bullock) Real quick before we move
 6 on to that, in looking at the spreadsheet on 502, am
 7 I to understand, then, the final recommendation
 8 would have achieved a percentage of 52.8 percent
 9 women, correct?
 10 A. That's correct.
 11 Q. Go ahead and share my screen here. So you
 12 said you are familiar with this statement, correct?
 13 A. I am.
 14 Q. Did you help draft any of this statement?
 15 A. I saw a version of it. I did not help
 16 draft it.
 17 MR. CRAIG: Lori, are you going to mark
 18 this as an exhibit?
 19 MS. BULLOCK: I can mark it as --
 20 MR. CRAIG: That would be cleaner, yeah.
 21 MS. BULLOCK: Exhibit 14.
 22 MR. CRAIG: Thank you.
 23 THE WITNESS: When I say "version," I saw
 24 a draft of it.
 25 Q. (By Ms. Bullock) Saw a draft of this?

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1 Okay. And I will represent to you -- actually,
 2 let's go -- this is page 6 of the document. Can you
 3 read for me the portion here in red?
 4 A. "Since the announcement of the athletics
 5 initiative, there have been requests to restore
 6 men's track, field, and cross country; however, if
 7 these sports were restored at their current levels
 8 and no other changes were made, Brown would not be
 9 in compliance with our legal obligations under the
 10 settlement agreement. We continue to closely
 11 examine Brown's legal obligations."
 12 Q. At the time when this statement was made,
 13 were you already considering reinstating men's
 14 track?
 15 A. Yes. Considering.
 16 Q. Had the decision been made?
 17 A. I don't believe so.
 18 Q. I'll represent to you, yesterday President
 19 Paxson testified that when she made the decision to
 20 reinstate men's track and field and cross country
 21 that she was confident that Brown would be in
 22 compliance with the settlement agreement because you
 23 had told her that you could take care of it through
 24 roster management. Does that sound correct?
 25 A. It does.

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1 Q. And what did you mean by -- when did you
 2 tell her that you would take care of it through
 3 roster management?
 4 A. Well, throughout the days following the
 5 announcement and when the questions continued
 6 most -- mainly about cross country, track, and
 7 field, I anticipated that there may be a
 8 conversation about this, so I reviewed where our
 9 numbers were and then began to ask the coaches
 10 exactly, not an estimate, "What is your roster going
 11 to be in the fall? Give me the names of -- you
 12 know, include the names of those returning and the
 13 incoming students" so that we had -- I wanted to see
 14 was there a way that we could remain within the
 15 variance if we brought track back.
 16 Q. What did you mean by "roster management"?
 17 A. Roster management is looking at the men's
 18 rosters and capping them. And making adjustments
 19 based on roster -- that's the main element of roster
 20 management. Roster management is to continue to
 21 look at the flow of where women's rosters are and
 22 where men's rosters are and where that puts us in
 23 terms of the variance, and so that's an ongoing
 24 process.
 25 Q. Does it also mean looking at the women's

Page 118

1 rosters?

2 **A. Looking at the women's rosters in the**

3 **sense of where the coaches have said their rosters**

4 **are going to be. And then managing where the men's**

5 **rosters can go.**

6 Q. Do you also manage where the women's

7 rosters can go?

8 **A. By requiring them to increase their**

9 **numbers of the roster?**

10 Q. Yes.

11 **A. No. We do not.**

12 Q. President Paxson made the statement that

13 if men's track and field were reinstated and no

14 other changes were made that they would -- that

15 Brown would not be in compliance with the

16 settlement. Did you understand that to be true?

17 **A. If you just brought cross country, track**

18 **and field back in, I did not see how we could be**

19 **within the variance, so I would -- yes.**

20 Q. Other than roster management, were there

21 other changes that were contemplated to be made?

22 **A. No.**

23 Q. Did you think about adding another women's

24 team back in?

25 **A. I was more focused on the numbers**

Page 119

1 **themselves, numbers of participants, so in the email**

2 **that we looked at earlier that I wrote where I**

3 **communicated with Sam Menco, I used equestrian as**

4 **an example, but I put in parentheses 32**

5 **participants.**

6 I did not have a conversation about

7 bringing equestrian back. I was just using that as

8 an example that if we were going to bring track

9 back, we were going to have to look at where the

10 women's numbers were as well as managing men's

11 roster numbers accordingly.

12 Q. I'd like to show you something. It's not

13 an exhibit. It's more of a demonstrative. So I'm

14 not going to mark it.

15 MR. CORRENTE: I don't mind you showing it

16 to him, but I think in order to make sure we have a

17 complete record of what went on, anything you show

18 him and ask him to comment on, we need to have a

19 copy of it in the record.

20 MS. BULLOCK: Okay. I can do that. I'm

21 going to -- to make it a little cleaner, I'm going

22 to use the PowerPoint version. So we'll mark this

23 as Exhibit 15.

24 Q. (By Ms. Bullock) I'm going to represent to

25 you this is the spreadsheet that was in 502 prior --

Page 120

1 and as we established, that was never adjusted prior

2 to the reinstatement of men's track and field,

3 correct?

4 **A. Correct.**

5 Q. I can make it bigger. If we add back in

6 the men's track and field teams and cross country

7 here, that leaves us at 48.8 percent women, making

8 no other changes to the spreadsheet.

9 **A. Okay.**

10 Q. So is it your understanding -- would you

11 agree with me that 48.8 percent is not in compliance

12 with the consent decree, correct?

13 **A. That's correct.**

14 Q. And there was no other changes made other

15 than roster management, correct?

16 MR. CORRENTE: I object to the form of the

17 question. "Roster management" by its terms implies

18 a whole series of ongoing changes in order to ensure

19 that they remain in compliance, so that question

20 doesn't make any sense.

21 MS. BULLOCK: And I just want to -- I want

22 to make sure because he said he was doing it through

23 roster management.

24 MR. CORRENTE: Right. And he defined

25 roster management as a whole series of ongoing

Page 121

1 changes to make sure that the university stays in

2 compliance, so to say no other changes were made

3 except for roster management is the same thing as

4 saying so no other changes were made except for all

5 the changes that were made. It doesn't make any

6 sense.

7 MS. BULLOCK: I think the record's pretty

8 clear. We'll leave it.

9 MR. CORRENTE: I think so too.

10 Q. (By Ms. Bullock) I'm going to -- you

11 testified earlier that you, either on the phone or

12 sit down -- sorry. I hear an echo -- sit down with

13 the coaches and go over their rosters for the

14 upcoming season, correct?

15 **A. Correct.**

16 Q. I'm going to pull up -- and you also

17 testified that you -- as part of the process, you

18 obtained ideal rosters from the coaches, correct?

19 **A. Earlier in the process, yes.**

20 Q. You said back in May, right?

21 **A. Yes.**

22 Q. And I just want to make sure. This is a

23 40-page series of emails that begin at Bates 26388,

24 ends at 26427.

25 MR. CRAIG: So it's not entirely

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1 Q. And he let you know currently there are 42
2 sailors. 30 of them were mainly competing each
3 weekend at the varsity level. Correct?
4 **A. Yes.**
5 Q. 14 males, 16 females. And then just
6 looking at their incoming freshmen for 2020-2021, if
7 you look at the next page here, he states, "I think
8 the numbers we're talking about to have a strong
9 varsity coed team are 12 males plus 18 females." Do
10 you see that?
11 **A. I do.**
12 Q. So that would be where the coaches' ideal
13 for 12 and 18 came from, correct?
14 **A. Yes.**
15 Q. From all those various spreadsheets? Yes?
16 **A. Yes.**
17 Q. And if we look down, he says it looks like
18 that's comparable to other schools, and these are
19 schools in the Ivy League, correct, Yale, Harvard,
20 and Dartmouth?
21 **A. They are.**
22 Q. Do you know what the roster is -- that you
23 intend to carry for sailing next year are?
24 **A. We intend -- well, if we end up having a**
25 **program in this upcoming academic year, I believe**

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1 **the plan is to have 25 women and 10 men.**
2 Q. And what is the reason that that is so
3 much different -- you know, that the female side,
4 that you're adding seven women?
5 **A. Because he has women that are on the team**
6 **right now that -- plus he has students that he's**
7 **adding, and he's going to manage the group. He's**
8 **going to make a decision as to who's on the varsity**
9 **and who's on what would be the yacht program or the**
10 **club team, and based on the numbers that he has**
11 **coming in and the students that he has in the**
12 **program right now, his plan was to increase that**
13 **number to 25.**
14 Q. Was that his plan or was he told to
15 increase it to 25?
16 **A. He wasn't told to increase it to 25. He**
17 **knows that he's going to have a large group on that**
18 **team, and this is the number that he's going to work**
19 **with.**
20 Q. Would you agree with me that's more
21 females than the other Ivy League schools that are
22 listed here?
23 **A. Three more than Yale.**
24 Q. Would you also agree with me that the
25 proportionality between the male sailors and female

Page 152

1 sailors, that Brown's proportionality will be quite
2 a bit bigger than the other Ivy League schools
3 listed here?
4 **A. I do.**
5 Q. Did you tell Mr. Mollicone that he could
6 have one man for every 2.5 women?
7 **A. I did not. I did not.**
8 Q. Do you know if anyone else told
9 Mr. Mollicone that he could have one male for every
10 2.5 women?
11 **A. No one else would have had a conversation**
12 **with him about the roster. Now, that's what the**
13 **numbers are here in the 25 and 10, but there was**
14 **never a formula based on how many women there would**
15 **be versus how many men you could have. There was**
16 **not a formula used. And there was not a formula**
17 **communicated to him.**
18 Q. And it's Brown's intention to count those
19 25 women twice, correct?
20 **A. That's correct.**
21 Q. Do you know if the other Ivy League
22 schools count their women twice?
23 **A. I don't believe Harvard and Dartmouth do.**
24 **I believe Yale does and Stanford does.**
25 Q. You would agree with me that there's not a

Page 153

1 uniform way that this is done?
2 **A. I agree with that.**
3 Q. Do you know what the average size for a
4 sailing team is?
5 **A. Do not.**
6 Q. And you would agree with me that Stanford
7 has eliminated its sailing team, correct?
8 **A. It has.**
9 Q. Are there any limit sizes placed on the
10 rosters for sailing?
11 **A. Are there any limit sizes that -- limits**
12 **put on by the institution?**
13 Q. Actually, no. By the Intercollegiate
14 Sailing Association. Do you know?
15 **A. I do not know.**
16 Q. By the Ivy League, do you know?
17 **A. I do know. There would not be.**
18 Q. I'm going to show you -- one moment. Let
19 me find it here. We'll mark this as Exhibit 20.
20 This is an email that's Bates stamp 24889, an email
21 from Mr. Mollicone to yourself on June 3rd of 2020.
22 Do you see that?
23 **A. I do.**
24 Q. It says, "On Monday, June 1st, all the Ivy
25 League head sailing coaches had a meeting to discuss

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1 roster limits for the individual
 2 regattas/competitions, and a maximum number of 12
 3 student-athletes was agreed upon." Do you know what
 4 he means by that?
 5 A. I believe what he is talking about there
 6 is travel to regattas, how many people can attend,
 7 and how many students you would travel with to a
 8 particular event. It's not about team rosters.
 9 It's about travel rosters.
 10 Q. Thank you. At this moment, as we sit
 11 here, is there a varsity sailing team?
 12 A. Yes, there is.
 13 Q. Is there a varsity sailing team even
 14 though there isn't a formal roster?
 15 A. There is a varsity sailing team because
 16 all operations going forward are under NCAA
 17 compliance, which had not been the case before, and
 18 that -- through the admissions and financial aid
 19 process, which would be something that is monitored
 20 by -- in a manner through intercollegiate athletics.
 21 The roster -- I would say the roster declaration
 22 form, similar to other teams that we have,
 23 involves -- includes students from the previous year
 24 and incoming students.
 25 Q. Has the varsity -- has the sailing team

Page 155

1 had its first season as a varsity team yet?
 2 A. That will happen assuming -- take the
 3 COVID piece out. That would begin in the 2020-'21
 4 academic year.
 5 Q. But as we sit here today, have they had
 6 their first season as a varsity team yet?
 7 A. Have they completed their first season?
 8 No.
 9 Q. Have they started it?
 10 A. Well, the way we begin on July 1 with the
 11 admission process, with the compliance process, yes,
 12 it's underway.
 13 Q. Has the competitive season started?
 14 A. We have not had a competition yet in any
 15 sport for 2020-2021.
 16 Q. As we sit here today, would the
 17 competitive season have started but for COVID right
 18 now?
 19 A. It would not have started yet for sailing
 20 or any of our other sports for the 2020-2021 year.
 21 Q. Have you ordered uniforms for the varsity
 22 team for sailing?
 23 A. We have -- all those things have started
 24 to take place.
 25 Q. Have you actually ordered uniforms?

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1 A. Because of COVID, I can't say we have
 2 because all orders, because of COVID, have put on
 3 hold -- been put on hold. We have gone through the
 4 exact same ordering uniform process for sailing as
 5 we have for every other varsity program, which is a
 6 different process than sailing had in years past.
 7 When they were a club team.
 8 Q. Are you aware that Coach Mollicone intends
 9 to hold tryouts before competition begins?
 10 A. That would be -- that would not be a
 11 surprise. Other sports do that as well. They're
 12 not required to, but teams do.
 13 Q. Have you told Coach Mollicone that he has
 14 to limit the number of men that he has on his team
 15 for sailing?
 16 A. We have.
 17 Q. Have you told him that there's a cap on
 18 the number of men that he can have?
 19 A. We've told him that we would start out
 20 with a cap of ten, and, like we do with other
 21 coaches, those numbers can be reviewed if coaches
 22 want to add students as we monitor where the rosters
 23 are and where we are in compliance to the
 24 proportionality and the variance that we're required
 25 to maintain.

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1 Q. Do you have any written -- well, hold on
 2 one second. I'm going to mark -- just one moment.
 3 Sorry. Just a second. Having some technical
 4 difficulty. Can we take, like, a three-minute break
 5 so I can figure out why my computer's not operating
 6 properly.
 7 VIDEOGRAPHER: Off the record at 2:58 p.m.
 8 (Recess taken from 2:58 to 3:05 p.m.)
 9 VIDEOGRAPHER: On the record at 3:05 p.m.
 10 Q. (By Ms. Bullock) I'm going to share with
 11 you, Mr. Hayes -- this is Bates -- can you see that?
 12 A. I can.
 13 Q. It's 3608 through 3609, previously marked
 14 in the Mollicone deposition, but we're going to mark
 15 it here as Exhibit 21.
 16 MR. CORRENTE: What number was it in
 17 Mollicone?
 18 MS. BULLOCK: No idea.
 19 COURT REPORTER: Number 3.
 20 MS. BULLOCK: Exhibit 3. Thank you,
 21 Sonya.
 22 Q. (By Ms. Bullock) Can you see it on the
 23 screen, Mr. Hayes?
 24 A. I can only see the part of the address
 25 from me. I can only see what was the very top part.

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1 **Now I can.**

2 Q. Perfect. Okay. Is this something that

3 you prepared at the request of Ms. Goldgeier and

4 Mr. Green?

5 **A. It is.**

6 Q. Is this the only written plans for sailing

7 that exist?

8 **A. Written plans to transition the program**

9 **from club to varsity? It is.**

10 Q. And this wasn't something that you created

11 prior to elevating the corporation meeting on the

12 21st where they were elevated to a varsity team,

13 correct?

14 **A. It is not.**

15 Q. Mr. Hayes, you testified earlier that you

16 were a student-athlete, correct?

17 **A. I was.**

18 Q. And you also obviously manage an entire

19 department of student-athletes, correct?

20 **A. Yes.**

21 Q. What are the benefits of being a

22 Division I varsity athlete?

23 **A. Number of benefits. Personal development.**

24 **Leadership development. In many cases, it's a**

25 **complement to what students do academically. It's**

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1 **helpful in time management, as athletics has been an**

2 **important part of their experience prior to entering**

3 **college. And so there are a number of benefits that**

4 **students can obtain by participating in**

5 **intercollegiate athletics.**

6 Q. And you agree with me that those benefits

7 are far beyond just playing a sport, correct?

8 MR. CORRENTE: Object to the form.

9 Q. (By Ms. Bullock) You can answer.

10 **A. I do.**

11 Q. Do you get to meet people as a

12 student-athlete that you might not otherwise get to

13 meet?

14 MR. CORRENTE: Object to the form.

15 **THE WITNESS: You have the opportunity. I**

16 **think some students take advantage of it more than**

17 **others, but the opportunity is there.**

18 Q. (By Ms. Bullock) And you make lifelong

19 relationships with your teammates, correct?

20 **A. Yes.**

21 Q. Do Division I varsity athletes put in a

22 lot of work to play at that level?

23 **A. They do.**

24 Q. Do they make sacrifices?

25 **A. They do.**

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1 Q. What are some of the sacrifices that they

2 make?

3 MR. CORRENTE: Objection. Form.

4 **THE WITNESS: There's a commitment.**

5 **There's a time commitment. So there are things**

6 **socially they may not be able to participate in.**

7 **There are travel opportunities that they may not be**

8 **able to participate in.**

9 Q. (By Ms. Bullock) Anything else?

10 **A. Not that I can think of.**

11 Q. Do some of them manage their diets pretty

12 strictly?

13 **A. Some do. I mean, as I'm sure many**

14 **nonathletes do.**

15 Q. Do student-athletes at Brown have any

16 restrictions placed upon them about what type of

17 social activities they can engage in?

18 **A. No.**

19 Q. Do they have restrictions on drinking?

20 **A. Maybe on -- prior to competition, days**

21 **before competition, but overall, no.**

22 Q. Have you seen any studies or data on how

23 many CEOs in the country are former Division I

24 student-athletes?

25 **A. I have not.**

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1 MR. CORRENTE: Objection. What does that

2 have to do with anything in this case?

3 MS. BULLOCK: This is discovery,

4 Mr. Corrente, and I can --

5 MR. CORRENTE: Yeah, I understand what it

6 is. I just -- I'd like you to tell me why a

7 sociological study about the link between Division I

8 athletics and economist CEOs is germane to this

9 case.

10 MS. BULLOCK: It's germane to this case

11 because it's one of the benefits of being a

12 student-athlete, that you learn how to succeed at

13 the top level.

14 Q. (By Ms. Bullock) Is that correct,

15 Mr. Hayes?

16 **A. It's a benefit of athletics. Many of the**

17 **benefits that we've discussed on camaraderie and**

18 **time management would be available at the**

19 **intercollegiate level and the club level.**

20 Q. Is playing a club sport the same as

21 playing a varsity Division I sport?

22 **A. No.**

23 Q. What benefits do you think you personally

24 got from being a student-athlete?

25 **A. Personal connections. Time management.**

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1 **Prioritizing responsibilities.**
 2 Q. You learned how to set goals and then do
 3 what you need to achieve them?
 4 **A. Yes.**
 5 Q. You learned how to work cooperatively with
 6 others?
 7 **A. I believe I did.**
 8 Q. At Brown, what services do varsity
 9 athletes have available to them?
 10 **A. There are services through academic**
 11 **support. There is the training room for medical,**
 12 **injury prevention and rehabilitation, and there is a**
 13 **strength and conditioning facility. Those would be**
 14 **examples of three resources that are available.**
 15 Q. Are those resources also available to the
 16 club athletes?
 17 **A. The strength and conditioning facility and**
 18 **the training rooms are not. The academic support**
 19 **for the programs that are being transitioned, we**
 20 **have said that we would continue for all of those**
 21 **students while they're at Brown.**
 22 **Teams that are transitioned, if any of**
 23 **them had an injury while competing at Brown, they**
 24 **would be permitted to continue to rehabilitate in**
 25 **the training room, with the use of the training room**

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1 **operation.**
 2 Q. But in general, you would agree with me
 3 that those academic services, the training room, the
 4 strength and conditioning, are not available to club
 5 sports, correct?
 6 **A. To the other club teams and in general,**
 7 **they are not.**
 8 Q. Have you had any students tell you how
 9 their team being eliminated from varsity status has
 10 affected them?
 11 **A. I have.**
 12 Q. What have they told you?
 13 **A. They're disappointed. I understand that.**
 14 **They're disappointed that the status of their**
 15 **program has changed.**
 16 Q. Have you ever looked at any of the studies
 17 about the benefits of college athletes for women
 18 specifically?
 19 **A. I have not.**
 20 Q. Is one of the benefits helping you gain
 21 confidence?
 22 **A. I would think it would.**
 23 Q. Does being a varsity athlete help hone
 24 your competitive abilities?
 25 **A. Gives the opportunity for it to do so.**

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1 Q. If you don't hone your competitive
 2 abilities, do you tend to stay at the Division I
 3 varsity level?
 4 **A. I think there's students who maximize the**
 5 **opportunity and all -- at all levels, I think**
 6 **there's students who maximize the opportunities and**
 7 **there's students that don't necessarily take**
 8 **advantage of all it has to offer.**
 9 MS. BULLOCK: Let's take a five-minute
 10 break. I think I'm almost done.
 11 VIDEOGRAPHER: Off the record at 3:17 p.m.
 12 (Recess taken from 3:17 to 3:26 p.m.)
 13 VIDEOGRAPHER: On the record at 3:26 p.m.
 14 Q. (By Ms. Bullock) Mr. Hayes, would you
 15 agree with me that you've told the students that are
 16 leaving the varsity team that they will not be able
 17 to compete at the Division I level anymore?
 18 **A. I've had those conversations.**
 19 Q. And when you say you had those
 20 conversations, you mean yes, you did tell them they
 21 won't be able to compete at the Division I level?
 22 **A. I did.**
 23 Q. Do you agree that you told the students
 24 that you would not pretend to suggest that a club
 25 program is equivalent to a varsity team?

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1 **A. Yes. As we talked about the transition,**
 2 **there are things that would continue to be benefits**
 3 **of participating at the club level, but I didn't**
 4 **want to mislead them to say that it would be exactly**
 5 **the same.**
 6 Q. Did you promise in Zoom meetings that
 7 Brown -- to the student-athletes that Brown would
 8 commit to preserving their coaches and their funding
 9 for the next two years?
 10 **A. That conversation was for a year for all**
 11 **sports and equestrian for two. The difference being**
 12 **that equestrian received an anonymous gift to help**
 13 **us fund that program for an additional year during**
 14 **the transition.**
 15 Q. Since you made those promises, isn't it a
 16 fact that Brown has now decided that it will not
 17 hire a women's skiing coach?
 18 **A. No. Brown is in a hiring freeze, which**
 19 **we've communicated to the students. Brown is in a**
 20 **hiring freeze, so that's why we have not made that**
 21 **hire.**
 22 **Additionally, we are waiting to see if**
 23 **we're actually going to have sports this year. So**
 24 **while the hiring freeze is part of it, club**
 25 **programs, their coaches are not active recruiters,**

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

AMY COHEN, et al.,

Plaintiffs,

vs.

BROWN UNIVERSITY, CHRISTINA
PAXSON, as successor to
VARTAN GREGORIAN, and
JACK HAYES, as successor to
DAVID ROACH,

Defendants.

:
:
: **COPY**
:
: Case No.
: 92-CV-0197-JJM-LDA

VIDEO-RECORDED DEPOSITION OF JOHN MOLLICONE,
taken via Zoom video conference, by the Plaintiff,
before Sonya M. Wright (appearing via Zoom),
commencing at 8:00 a.m. CST, Thursday, August 13,
2020.

AMY COOPER - FIDELITY VIDEO SERVICES, INC.

SONYA M. WRIGHT - CERTIFIED SHORTHAND REPORTER

Page 2

1 APPEARANCES

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Also present:

Jim Green, Brown University (via Zoom)

Page 4

1 P R O C E E D I N G S

2 VIDEOGRAPHER: On the record beginning the

3 video deposition of John Mollicone requested by the

4 plaintiffs in the matter of Amy Cohen, et al.,

5 plaintiffs, versus Brown University, et al.,

6 defendants, in the United States District Court,

7 District of Rhode Island, Case Number

8 92-CV-0197-JJM-LDA.

9 Today's date is August 13th, 2020, and the

10 approximate time is 8:08 Central Time. This

11 deposition is being conducted via Zoom video

12 conference in remote locations. My name is Amy

13 Cooper, certified legal videographer of Fidelity

14 Video Services, Incorporated, West Des Moines, Iowa.

15 Counsel will please identify themselves for the

16 record.

17 MS. BULLOCK: Lori Bullock for plaintiffs.

18 MS. LABINGER: Lynette Labinger for

19 plaintiffs.

20 MR. CRAIG: Matthew Craig for defendants.

21 MR. CORRENTE: Robert Corrente for the

22 defendants as well.

23 MR. GREEN: James Green for the defendants

24 as well.

25 VIDEOGRAPHER: The oath will now be

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11 3 - Email from Hayes to Goldgeier, 6/29/20100

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18 (433-434)

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20 6 - Student-Athlete Roster Declaration Form108

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25 REPORTER'S NOTE:

Exhibits were marked electronically and attached to

the electronic transcript.

(ph) indicates a phonetic spelling.

[sic] indicates the text is as stated.

Quoted text is as stated by the speaker.

Page 5

1 administered by Sonya Wright, certified shorthand

2 reporter of Susan Frye Court Reporting, Des Moines,

3 Iowa.

4 MS. BULLOCK: Sonya, before you administer

5 the oath, we need to stipulate on the record that

6 because of COVID-19 and the Rhode Island court

7 order, federal court order, this deposition is being

8 conducted via Zoom and the parties have agreed to

9 stipulate that the witness can be sworn in remotely.

10 MR. CRAIG: I confirm that we agree.

11 COURT REPORTER: Would you raise your

12 right hand, please. Do you solemnly swear or affirm

13 that the testimony you're about to give will be the

14 truth, the whole truth, and nothing but the truth?

15 **THE WITNESS: Yes.**

16 **JOHN MOLLICONE,**

17 **having been first duly sworn, testified under oath**

18 **as follows:**

19 EXAMINATION

20 BY MS. BULLOCK:

21 Q. Good morning, Mr. Mollicone. Could you

22 please state and spell your name for the record.

23 **A. Yes. John Mollicone, J-o-h-n,**

24 **M-o-l-l-i-c-o-n-e.**

25 Q. Have you ever had your deposition taken

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1 Jack Hayes, the athletic director.
 2 Q. (By Ms. Bullock) So do you report directly
 3 to Ms. Carhart?
 4 A. Yes.
 5 Q. And then does Ms. Carhart report to
 6 Mr. Sullivan?
 7 A. Yeah, or (audio cut out.)
 8 MR. CRAIG: Objection to form.
 9 (Reporter asked the witness to repeat the
 10 answer.)
 11 THE WITNESS: So my supervisor is Jeanne
 12 Carhart, and then above her is the deputy athletic
 13 director, Colin Sullivan, and then the athletic
 14 director, Jack Hayes.
 15 Q. (By Ms. Bullock) And did you say that
 16 Ms. Carhart reports to both Mr. Sullivan and
 17 Mr. Hayes?
 18 MR. CRAIG: Objection. Misstates prior
 19 testimony. And you can answer, Mr. Mollicone,
 20 unless you want the question read back.
 21 Q. (By Ms. Bullock) And what I was asking was
 22 did you say that Ms. Carhart reports to both
 23 Mr. Sullivan and Mr. Hayes?
 24 A. I am not sure if she reports to both. The
 25 chain of command is, you know, as I know it.

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1 Q. I was just trying to clarify because I
 2 hadn't quite heard the answer before either.
 3 Has any of that chain of command for you
 4 changed in the last six months?
 5 A. Not really. You know, I did have a club
 6 sports director that also was sort of a supervisor,
 7 but he left back in December so we've been without a
 8 club sports, you know, person for, you know, the
 9 last eight months.
 10 Q. And what was his name?
 11 A. Tim Phanthavong.
 12 Q. Can you spell that last name?
 13 A. Try. P-h-a-n-t-h-o-v-a-n-g [sic] maybe.
 14 Q. And so no one has filled the role that Tim
 15 was --
 16 A. Yeah. I believe somebody was hired within
 17 the last few months, but we've been elevated to
 18 varsity status since then so I haven't even met
 19 them.
 20 Q. Do you have anyone that reports to you?
 21 A. My assistant coach.
 22 Q. And who's that?
 23 A. Michael Zonneberg.
 24 Q. How do you spell Mr. Zonneberg's last
 25 name?

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1 A. Z-o-n-n-e-b-e-r-g. And I used to have
 2 another assistant coach that did weekends only, but
 3 he was terminated during the pandemic because he was
 4 a seasonal employee.
 5 Q. And who was that?
 6 A. His name is Daniel Rabin, R-a-b-i-n.
 7 Q. Do you know if Mr. Rabin will be brought
 8 back at the beginning of the school year at all?
 9 A. I don't --
 10 MR. CRAIG: Object to the form.
 11 THE WITNESS: -- expect him back this
 12 year. We don't have any competition happening this
 13 fall so he was only -- we only hired him to coach
 14 weekend competitions.
 15 Q. (By Ms. Bullock) Have you coached anywhere
 16 else?
 17 A. Not within the college sailing game. I've
 18 done other coaching outside of college, yes.
 19 Q. Where?
 20 A. Oh, I mean, private coaching. Clinics.
 21 Youth advanced racing clinics. You know, youth
 22 teams. A number of outside coaching things.
 23 Q. Has that all been while you were coaching
 24 at Brown?
 25 A. Yeah. In my time off, you know, summers

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1 and off season at Brown, yeah.
 2 Q. Did you coach anywhere before you started
 3 coaching at Brown?
 4 A. I think I did, you know, a couple of
 5 regattas for Boston University right after I
 6 graduated before I started at Brown. I coached the
 7 Moses Brown high school team in a couple of regattas
 8 while I was in college. And I was the head sailing
 9 coach at the East Greenwich Yacht Club for their
 10 racing team while I was in college and high school.
 11 So that was all -- all, you know, main coaching jobs
 12 before I started at Brown.
 13 Q. What are your general qualifications for
 14 coaching sailing?
 15 A. Well, I mean, I sailed at the highest
 16 level, you know, through youth sailing, high school
 17 sailing, college sailing. I was an all-American
 18 skipper at Boston University my senior year.
 19 Probably one of the top five or so sailors in the
 20 country that year.
 21 You know, I got asked by Brown to apply to
 22 be the head coach. They were looking for a new
 23 coach in 1999. You know, I think my resume was
 24 really strong as a sailor. They wanted somebody,
 25 you know, who had a lot of energy and wanted to

Page 18

1 coach the program, and, you know, I jumped right
2 into it and I've been doing it ever since.

3 You know, I think I've become one of the
4 top coaches in the sport. I was named the coach of
5 the year this year in the entire United States.
6 I've been nominated to be, you know, as coach of the
7 year for all of U.S. sailing a number of times.
8 I've won multiple world championships. I've been on
9 the United States sailing team. I won a silver
10 medal at the Pan American Games back in 2011. And
11 I've won over 15 North American and national
12 championships. So I think I'm pretty qualified to
13 coach the team.

14 Q. But you told me you received coach of the
15 year this year so --

16 A. Yeah. 2019-2020. Yeah.

17 Q. Can you tell me about any other
18 achievements you've had while coaching sailing at
19 Brown?

20 A. Let's see. I mean, I can give you a lot
21 of achievements for the program, or do you just want
22 individual achievements?

23 Q. Individual achievements for you as a
24 coach.

25 A. Yeah. I mean, I've --

Page 19

1 MR. CRAIG: Objection to form.

2 THE WITNESS: I've been nominated as coach
3 of the year for U.S. Sailing, which is the governing
4 body for our sport, United States. I've been named
5 to the New England Intercollegiate Sailing
6 Association honor roll as, you know, a standout
7 coach and sailor for New England. Like I said, I
8 was named coach of the year for the whole country
9 this year.

10 And -- you know, I think, you know, those
11 are the honors that stick out, you know, the most.
12 You know, we've been a club team over all these
13 years so there's been no honors with the university
14 or anything so ...

15 Q. (By Ms. Bullock) Can you tell me about
16 the -- you know, have you guys won any championships
17 as a team?

18 A. Yes. We won the women's national
19 championship for college sailing in 2019. We've
20 been in the top 5 in my time at Brown at the college
21 sailing nationals, depending on which nationals it
22 is, but I believe over 30 times since 1999.

23 And, you know, women's nationals in the
24 last five years, we've been top three three times.
25 So we won it in '19. We were second in 2016. We

Page 20

1 were third in 2015. Coed national championship, we
2 almost won last year. We ended up finishing fifth,
3 but we were winning after 12 of 18 races. And we
4 had the women's college sailor of the year last year
5 from our program. We had eight all-American sailors
6 named from our program this year, which was tied for
7 the most in college sailing. And we had seven last
8 year. And I think I've coached over, you know, 80
9 all-American sailors in my time at Brown.

10 So, you know, we finished this past year
11 ranked number one in women's competition for two
12 years straight, and number 6 in coed competition.
13 We won the New England fall championship for coed
14 sailing. We've also had -- every year, there's been
15 an all-academic team for college sailing. We
16 haven't done one for this year. We usually have the
17 most of any team in college sailing.

18 Q. What are your responsibilities as a coach?

19 A. Yeah. I mean, I coach the team on the
20 water, at practice, weekend competitions. I
21 fundraise. I recruit. Administrative duties. You
22 know, meetings within the athletic department.
23 Meetings with kids on the team. Basically
24 everything. You know, so I do all the day-to-day
25 for the program.

Page 21

1 We have a new sailing center. I manage
2 that. We have 40 boats. So, you know, between
3 buying the boats, fundraising, maintaining them,
4 buying equipment for them, such as sails and parts,
5 all of our travel. You name it, I basically have
6 done everything over these 21 years because we've
7 been a club team.

8 Q. Are you responsible for player
9 development?

10 A. Yeah, absolutely. As one of the coaches,
11 yeah, that's what we do.

12 Q. Strategy?

13 A. Yeah.

14 Q. You said coaching the kids. Does that
15 include physical training of the athletes?

16 A. Yeah. Well, the physical training on the
17 water, in the boats. Out -- you know, off the
18 water, like strength and conditioning, physical
19 training, we usually -- you know, Brown would make
20 us have a certified trainer to work with them. So
21 we would do that, you know, at the university gym
22 and stuff like that.

23 Q. Who was that individual?

24 A. Oh, we've had various trainers. I
25 couldn't even remember all their names, but the last

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1 Q. You have to submit a roster to the
2 Intercollegiate Sailing Association?

3 A. Yes. What we have to do is any sailor
4 that competes in a competition, we have to register
5 them in a software program that college sailing has,
6 and that is essentially if they're eligible and when
7 their clock starts for eligibility and stuff.

8 Q. When is the competitive sailing season?

9 A. Yeah. The first weekend of competition is
10 normally the weekend after Labor Day. So usually
11 second weekend of September. And then we go all the
12 way through the end of October. We compete every
13 single weekend various events through the end of
14 October, and then the first two weekends of November
15 are usually our fall national championships. And
16 then we're done after that. There are some winter
17 regattas, but we typically don't do them.

18 And then February we get going again for
19 the spring season, and the first event could be the
20 last week of February or early March. And that
21 season goes through the end of April. And then the
22 national championships for the spring are usually
23 mid-May through early June.

24 Q. The regular competition season goes from
25 September to April with a break in December and

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1 January?

2 A. Yeah, pretty much.

3 Q. And then the championship season starts in
4 May?

5 A. Yes.

6 MR. CRAIG: Objection. Misstates prior
7 testimony.

8 THE WITNESS: Yeah.

9 Q. (By Ms. Bullock) You said the national
10 championships start in May?

11 A. There's --

12 MR. CRAIG: Objection. Misstates prior
13 testimony.

14 Q. (By Ms. Bullock) Sorry. What, sir?

15 A. There are fall national championships and
16 there are spring national championships. They're
17 different disciplines, you could say, all the
18 nationals. They're all a little bit different.

19 Q. I apologize. This is one of these fun
20 things about doing this on Zoom. I forgot to mark
21 that exhibit so we will mark that as Exhibit 1, the
22 Brown sailing 2019-2020 roster, for the record.

23 Just realized that. Who sets the sailing season?

24 A. The ICSA.

25 Q. And you said so there's the fall national

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1 championship, the spring national championship, and
2 I think you used the word there are different -- did
3 you say disciplines?

4 A. Yeah.

5 Q. Can you explain that to me?

6 A. Yeah. So in the fall, there's a women's
7 single-handed national championship. That's in a
8 single-handed boat, one person. It's called the
9 Laser Radial. And the --

10 Q. It's called, sorry, the what?

11 A. It's called the laser radial, r-a-d-i-a-l.
12 That's an Olympic-class boat. So in the end, the
13 top 18 women get to that national championship.
14 There's a men's laser national championship. That's
15 also a single-handed boat. That's also an
16 Olympic-class boat.

17 And then there's a match racing national
18 championship, which is in keelboats, which is
19 usually a four- to five-person-sized boat. And one
20 female is required minimum on that boat. So it's a
21 coed boat. So that's in the fall, the end of the
22 fall season in November.

23 In the spring, there's the women's
24 national championship, which is double-handed, two
25 people in a boat. In the end, it's the top 18 teams

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1 get to the national championship.

2 For the coed, there's a coed national
3 championship. Same deal, top 18 teams get to the
4 national championship. And coed is open. It can be
5 two males in a boat, two females in a boat, or one
6 of each. So you can do whatever you want. The coed
7 is you're ultimately putting your two best sailors
8 in the boat.

9 And then there's team racing, which is
10 three-on-three competition in double-handed boats.
11 Whereas all the other racing we do is all -- you
12 know, I always compare it to, like, NASCAR or
13 something. You're racing around a track and you're
14 trying to beat everybody else, and the first boat
15 that crosses the finish line wins. Team racing is
16 three on three. And that's coed. Okay?

17 And then we added a women's national team
18 race championship, which is supposed to start in the
19 spring of 2022. It was supposed to start in 2021,
20 but because of the pandemic, we're pushing it a year
21 later.

22 Q. So the women's national team racing is
23 not -- you said spring of 2022 that that should
24 start?

25 A. Yeah. That should be the first year of

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1 the most teams, we'll have opportunity to sail in --
 2 you know, we can sail in as many as eight regattas a
 3 weekend if we wanted to.
 4 Q. So how do you select which regattas to
 5 sail in which weekends?
 6 A. Yeah. So it's a draft system. It's based
 7 on how strong your team is based on the previous
 8 fall. So, for example, our schedule for this year,
 9 if it were to happen, was picked based on how we
 10 performed in the fall of 2019. Okay. And then we
 11 selected our schedule via draft system in December
 12 usually after that fall. That's how that works.
 13 All right.
 14 So every time you go and compete in a
 15 regatta, if it's a really strong event and you do
 16 well, your performance ranking improves within
 17 your -- that's how we do it in New England. Every
 18 conference does it differently.
 19 And so amongst all the teams in New
 20 England, a certain number of the events count in the
 21 fall, and in the end, whoever has the -- you know,
 22 the best performance ranking number gets the first
 23 pick in the draft, and then, you know, the second
 24 team gets the second pick and there's a -- you know,
 25 it's not always 1 through infinity on the picks. It

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1 varies. The first round could be the top four teams
 2 and the second round it's 1 through 8. So in the
 3 end, the best teams get the best pick. Okay?
 4 VIDEOGRAPHER: Ms. Bullock, this is the
 5 videographer.
 6 MS. BULLOCK: Yes.
 7 VIDEOGRAPHER: If you want to stop your
 8 screen share, then the recording will be the witness
 9 as a larger screen. Okay. Thank you.
 10 Q. (By Ms. Bullock) What are your objectives
 11 when you're selecting regattas?
 12 A. We want to be in the best events, you
 13 know, competitively, and we also want to have events
 14 that are easy to get to. So for us, you know, our
 15 average weekend for us, we're always in the top coed
 16 event. We're always in the top women's event. And
 17 then the rest are a mix of -- you know, there could
 18 be some lower-level women's events. There could be,
 19 you know, another varsity-level coed event or
 20 mid-level, you know, events that are close by.
 21 So it just -- for us, we're in a really
 22 great spot at Brown because we don't have to travel
 23 very much. Most of the regattas are between Boston
 24 and Yale so, you know, we're in a nice little bubble
 25 here. We don't have to go far. So we can be in a

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1 lot of events and get a lot of opportunity to
 2 compete.
 3 Q. So the regattas only happen on the
 4 weekends?
 5 A. Yeah. Except for the nationals. The
 6 nationals -- our spring national championship is
 7 over a two-week period straight, and some of the
 8 fall nationals are Friday, Saturday, Sunday.
 9 Everything else is weekend stuff.
 10 Q. So how many different competition weekends
 11 are there in a typical season?
 12 A. Yeah. So you're allowed to do 18
 13 competition weekends. That's a college sailing
 14 rule. For us, you know on average, we're doing nine
 15 in the fall, nine in the spring. And you have to
 16 manage it as your team. Some teams might do ten one
 17 semester and eight the other, but if you practice on
 18 a weekend with another team, that counts as a
 19 competition weekend. Some teams might do an
 20 organized practice in May before nationals, and that
 21 counts, so you have to kind of manage, you know,
 22 your weekends.
 23 Q. Any time you're doing something with
 24 another team, that counts as a competition weekend?
 25 A. On a weekend. Not during the week. So

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1 you can practice -- you know, we can have -- let's
 2 just say we're hosting a big regatta at Brown, and
 3 Stanford's in town from California and they fly in
 4 Friday morning. They could practice with us that
 5 Friday before that regatta.
 6 MR. CRAIG: Ms. Bullock, I'm not trying to
 7 interrupt sort of your flow and set of questions,
 8 but sometime soon, I think it would be helpful just
 9 to take a brief break, get some water and go to the
 10 bathroom, but it doesn't need to be right this
 11 second, so I want to defer to you if there's a set
 12 of questions you want to finish up, but I just
 13 wanted to flag.
 14 MS. BULLOCK: There's not a really natural
 15 breaking point for probably the next, I'm going to
 16 say, half hour so if we want to take just, like, a
 17 quick three-minute break, I'm going to -- we can go
 18 off the record.
 19 VIDEOGRAPHER: Off the record at 9:08 a.m.
 20 (Recess taken from 9:08 to 9:26 a.m.)
 21 VIDEOGRAPHER: On the record at 9:26 a.m.
 22 Q. (By Ms. Bullock) Mr. Mollicone, when we
 23 left off, you said Brown typically does 8 regattas
 24 in the fall -- sorry, nine regattas in the fall and
 25 9 regattas in the spring, correct?

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1 A. Yeah. I mean, it could be 10 and 8. You
 2 know, it varies year to year.
 3 Q. But 18 total?
 4 A. Yes. We have an 18 max limit for
 5 competition weekends.
 6 Q. Is that as a college?
 7 A. That's as the ICSA rules. That's an
 8 Intercollegiate Sailing Association rule, that no
 9 team can compete no more than 18 weekends.
 10 Q. And when you say "no team," does that mean
 11 the college as a whole?
 12 A. Yeah. If you're representing your
 13 college. Yeah.
 14 Q. You sort of already alluded to this, but
 15 does Brown ever attend more than one regatta in a
 16 weekend?
 17 A. Yes. Every weekend. For the most part.
 18 Q. What's the average number of regattas that
 19 Brown enters in a weekend?
 20 A. I would say, on average, four a weekend.
 21 Sometimes we could be in six or seven. We've been
 22 in as many as eight over the years. Sometimes we're
 23 in two. But I would say we probably average around
 24 four per weekend.
 25 Q. And then are there different events at a

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1 regatta?
 2 A. No.
 3 MR. CRAIG: Objection to form.
 4 THE WITNESS: A regatta is a regatta so
 5 it's -- every regatta could be different, but there
 6 aren't different events within a regatta.
 7 Q. (By Ms. Bullock) And how could the
 8 regattas be different?
 9 A. On a given weekend, you have a women's
 10 event. You have a coed event, which usually there's
 11 one of each. That's sort of the A level, varsity
 12 level, whatever you want to call it. And then you
 13 could have a keelboat event, which is in a totally
 14 different kind of boat, or you could have a team
 15 racing event, which is three on three. You could
 16 have a single-handed event.
 17 So it kind of varies. You know, some
 18 weekends there's lots of different types of things
 19 going on, but every weekend, there's always, no
 20 matter what, at least a coed event and a women's
 21 event.
 22 Q. So when you -- I just want to make sure I
 23 understand. So if a regatta -- the regatta would be
 24 a coed regatta or a women's regatta --
 25 A. Mm-hmm.

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1 Q. -- that weekend?
 2 A. Yeah. I mean, there's -- we're always in
 3 at least one -- you know, both of those every
 4 weekend, and then the rest are -- like I said, could
 5 be, you know, a number of different things every
 6 weekend going on, and we try to pick, like I said,
 7 on average, probably four events overall a weekend
 8 or sometimes more.
 9 Q. So in a single regatta, you wouldn't have
 10 team boat racing and single-handed racing?
 11 A. No. No.
 12 Q. How many total regattas does Brown enter
 13 each year?
 14 A. We've been probably anywhere from 70 to 90
 15 regattas a year.
 16 Q. Earlier you said, when you were talking
 17 about the scheduling and the draft, that there are
 18 A-level regattas. Are there -- what are the
 19 different levels of regattas?
 20 A. Yeah. There's A level, which I would say,
 21 again, we call it the varsity-level event. It's
 22 pretty much all varsity teams there. It's all the
 23 best teams. There's B level, which is -- and this
 24 is how we do it in New England. This is how we
 25 structure our schedule.

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1 B level is for teams that might not be
 2 good enough to get in the A level but also for
 3 A-level teams to send their next best team. Okay.
 4 So you're developing. Right.
 5 And then there's also C level, which is
 6 really like a true club program, student-run, you
 7 know, teams that aren't even good enough to ever get
 8 in the A level and maybe not even in the B level, or
 9 for us, we might send our newer sailors, or yacht
 10 club-level sailors to something like a C-level
 11 event.
 12 Q. If you're sending -- if you're attending,
 13 you know, on average four regattas in a weekend,
 14 which one do you go to?
 15 A. I either go to the A-level coed or A-level
 16 women's event, and I kind of rotate between -- back
 17 and forth between the women and the coed.
 18 Q. Do you have an assistant coach that goes
 19 to a different regatta than you?
 20 A. Yes. So I have two -- typically, I have
 21 two other assistant coaches every weekend, so
 22 there's three of us. One of us will be at the A
 23 level women's, one of us at the A-level coed, and
 24 the other one will be at one of the other events.
 25 Q. Are the various regattas that you attend

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1 sailing will make a decision on the spring until
 2 this winter, until we know. You know, we're sort of
 3 doing -- we basically need to have 75 percent of the
 4 teams able to compete in order to have a national
 5 championship. That's what we've decided. So we
 6 canceled the fall national championships because we
 7 don't have 75 percent of the teams, and the spring
 8 will be the same kind of thing.

9 Q. (By Ms. Bullock) Do you know how the draft
 10 will be conducted if there is a spring season?

11 A. Yeah. I think, like I said, we'll carry
 12 our performance ranking from last year, okay, since
 13 we don't have a fall season, and we'll redo the
 14 draft again for the spring.

15 Q. And you would anticipate the scheduling
 16 would be just as it's been the past 20 --

17 A. Yeah, in December.

18 MR. CRAIG: Objection to form.

19 THE WITNESS: Yeah.

20 Q. (By Ms. Bullock) Do the -- you kind of
 21 answered this, but I just want to make sure I
 22 understand. Do the different levels of regattas
 23 play any part in your ability to qualify for
 24 championships?

25 A. Yes, they can. So the New England

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1 championship, for example -- so every conference
 2 does it differently, but in New England, your
 3 performance ranking, based on your regattas -- and
 4 really the A-level events are the ones that really
 5 count in that ranking if you want to have a good
 6 ranking. That might determine if you even get into
 7 the New England championship. Okay?

8 In New England, we have 40 or so coed
 9 programs. The top 18 get to the New England
 10 championship, and that's based on performance.

11 Okay? It's never a problem for our program, but
 12 there are programs on the bubble that have to go out
 13 and really try to do well in those B-level events
 14 that might make up the 17th and 18th spot at the
 15 New England championship.

16 So, you know, your performance ranking,
 17 it's important for your scheduling. Obviously, you
 18 want to get the best events. You want the best
 19 competition. That's how you get better. That's
 20 what helps your ranking performance-wise, your
 21 national ranking, getting you to the New England
 22 championship, which ultimately is how you get to the
 23 national championship.

24 Q. How many student-athletes does Brown
 25 typically send to one regatta?

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1 A. Yeah. It depends on the event. There's a
 2 lot of factors involved. One is the level of the
 3 event. Okay? If it's an A-level event, we're going
 4 to bring more people. You know, that's an event we
 5 want to win.

6 And so part of it is also the conditions
 7 and the weather forecast. Okay. So if it looks
 8 like it's going to be windy for the weekend, we're
 9 going to bring more players. We need more bodies.
 10 The windier it gets, the more weight you add to the
 11 boat. Okay. So we might swap out one person in the
 12 boat who's light for a heavier person if it looks
 13 windy.

14 Okay. So there's different role players
 15 based on the conditions. Pretty much every skipper
 16 on a team, the person that drives the boat, at the
 17 highest level, has three crews. Okay? And then big
 18 events, we'll bring multiple backup skippers as
 19 well. So I would say a big event, like a
 20 New England championship, a national championship, a
 21 fall championship, we could bring as many as 12
 22 student-athletes to the event.

23 Q. So that's for a championship. What about
 24 one of the A-level events?

25 A. Yeah. And, again, if it looked like it

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1 was going to be windy, we could bring as many as,
 2 you know, possibly 10 or 12. If -- there's
 3 sometimes we might sail a different group each day.
 4 So those things could happen too. As we sort of
 5 manage our team and avoid burnout and different
 6 opportunities for people here and there, you're
 7 trying to develop kids as well and give them
 8 opportunities at that level.

9 Q. If it's not windy, what would be the
 10 typical?

11 A. You know, I would say for the most part at
 12 an A-level event, we're always bringing at least six
 13 people. It's possible if it's light, only four
 14 people would sail, two in each boat, each division
 15 the whole time. It just depends. It varies weekend
 16 to weekend.

17 Q. In those B-level events, same?

18 A. B level, we'll do -- sometimes it's the
 19 same group of four or five or six kids. Sometimes
 20 we'll do a different group each day.

21 Q. When you say do a different group of kids,
 22 so the student-athletes that sail on Saturday don't
 23 necessarily have to be the same student-athletes
 24 that sail on Sunday?

25 A. Exactly. Or they could sail in a

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1 different event the next day. Or we might say,
 2 "You're going to sail Saturday in the B-level event,
 3 but we need you Sunday at the A-level event because
 4 it's going to be windy and we're going to bring you
 5 there." So it can change. The only big rule on the
 6 weekend stuff is you can't sail in two different
 7 events in one day, but you can change day to day.
 8 Q. So other than wind, how do you make the
 9 determination of which student-athletes you're
 10 sending to a regatta?
 11 A. You know, I would say early in the fall,
 12 we're trying to give different people opportunities,
 13 so we might mix it up a little bit in September.
 14 Maybe not always have who we think might be our top
 15 two sailors every weekend sailing in the A-level
 16 event. We want to provide opportunity and see how
 17 people do. Because the best way is to see how they
 18 do in the regatta and what the result is.
 19 But over time, you're going to send your
 20 best team to the A-level events. And that shakes
 21 out with regatta results, practice, team commitment.
 22 Like any other sport, right, your best players are
 23 going to start and play the most. So it shakes out
 24 that way, you know, after that first month of the
 25 year.

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1 Q. So if you send 10 to 12 kids on a windy
 2 day to one regatta, or student-athletes --
 3 A. Yeah.
 4 Q. -- what are the student-athletes doing if
 5 they're not in a boat sailing?
 6 A. They're dressed, ready to go most of the
 7 time. If they're not -- sometimes they're on the
 8 water as a reserve in case they have to go in.
 9 Sometimes they're down on the dock supporting their
 10 teammates when they come in -- we do a lot of
 11 switching boats. We rotate boats to make it even.
 12 Because sometimes the boats are not all perfectly
 13 the same. So every two races, you typically come in
 14 and rotate.
 15 And also you have to come in to get a
 16 break, you know, like -- sailing is unique in that
 17 it's not a two-hour game on a Saturday. It's all
 18 day. Okay. So these kids are -- they're gone all
 19 day on a Saturday competing, and then Sunday, it's
 20 most of the day. So they need a break here and
 21 there to use the bathroom. They get a quick lunch
 22 break. You get an opportunity to switch out crews
 23 or skippers if you need to.
 24 Sometimes there's no wind and you're
 25 sitting around half the day waiting for wind, and so

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1 they're doing homework and stuff like that.
 2 Q. And so you had said they can -- sometimes
 3 you'll send student-athletes to a different regatta
 4 for Sunday. Do they otherwise typically stay
 5 overnight between Saturday and Sunday wherever they
 6 are?
 7 A. Yeah. We don't have to travel very much.
 8 They're sleeping in their own beds almost every
 9 weekend. We do -- we do have to travel twice a
 10 semester to Maryland, okay, for a qualifier and a
 11 championship in the fall. We usually do -- the fall
 12 championship and a qualifier are down there. They
 13 rotate for coed and women's between New England and
 14 the Mid-Atlantic. So we'll go to Maryland twice in
 15 the fall. One time it's the women's team. One time
 16 it's the coed team.
 17 And then in the spring -- actually, the
 18 last event that we competed in the spring before the
 19 pandemic, we went down to Maryland for a women's
 20 event and a coed event in different locations. So
 21 we'll go down in the spring a couple times.
 22 And outside of going to Maryland,
 23 everything's in New England for us except national
 24 championships, and the kids are in their own beds
 25 90-plus percent of the weekends. And I would say

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1 the outliers on the weekend are Dartmouth and
 2 Bowdoin. If we have to go there, we'll stay a
 3 Saturday night at those venues.
 4 Q. But the students can go from one regatta
 5 on Sunday to a different -- or one regatta on
 6 Saturday to a different regatta on Sunday?
 7 A. They can, and we'll really only do that at
 8 the local events, like between Boston and
 9 Connecticut. You can't do that if they're up at
 10 Dartmouth, for example.
 11 Q. You do that very often?
 12 A. I mean, not very much, but we do it. You
 13 know, I would say it could happen, you know, to
 14 somebody -- at least a person or two, it could
 15 happen every weekend, every other weekend. It
 16 could.
 17 Q. Is it possible for every student-athlete
 18 on the team to compete every weekend?
 19 MR. CRAIG: Objection to form. Confusing.
 20 THE WITNESS: Is it possible? It would be
 21 difficult because there are enough regattas where
 22 every single kid could compete, but trying to get
 23 them all there at each event -- there's a lot of
 24 moving pieces -- would be tough, and you have to
 25 give kids weekends off. You know, college sailing's

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1 practices?

2 A. Not everyone. And I would say as a club

3 team in the past, if we had 42 kids on our roster

4 last year, 30-something of them were super

5 committed, you know, wanted to sail at the highest

6 level, wanted to sail every weekend, and there were

7 a handful of kids who, you know, they got into some

8 events and they competed, but they weren't at

9 practice every single day. We would kind of

10 consider them to be yacht club-type sailors.

11 Q. Do you anticipate that changing with

12 varsity, every student practicing?

13 A. Yeah. I mean, the varsity roster is going

14 to be -- we're going to be held to -- you know, to

15 certain numbers, and the kids that make that roster

16 are going to be -- you know, it's going to be --

17 their commitment's going to be a huge part of that,

18 and if somebody is not going to be committed,

19 they're not going to be on that roster and they

20 would be on the yacht club team.

21 Q. What is a yacht club sailor?

22 A. You know, I think it could be one of two

23 things. It's somebody who either doesn't want to

24 make the commitment to sail varsity and the time

25 commitment that it is, because it's a really big

Page 67

1 time commitment, or somebody's just not qualified

2 enough to be on the varsity team as a

3 student-athlete.

4 Q. Are the practices uniform for all of the

5 student-athletes that are participating?

6 MR. CRAIG: Objection to form. Vague.

7 THE WITNESS: I would say it varies day to

8 day. Some days we'll have -- with two coaches --

9 there's always two coaches at practice. Some days

10 we'll split into groups, and I might take the

11 women's team that's going to compete, you know, in a

12 women's event for the weekend and work with them.

13 The other coach might have everybody else. Or we

14 might bring everybody together and we all sail

15 together. It kind of varies, you know.

16 In general, the best way to get good at

17 sailboat racing is to have as many boats as possible

18 sailing against each other in practice, so for the

19 most part, we sail 18 boats for practice most days.

20 We have all 18 boats sailing on the same starting

21 line, the same racecourse, with each other as much

22 as we can.

23 Q. (By Ms. Bullock) So when you say you might

24 take the women's team and practice with them, do

25 you --

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1 A. Yeah.

2 Q. -- you mean the women who are going to

3 compete in the women's regatta that weekend?

4 A. Yes. Yeah.

5 Q. And so the other coach might be working

6 with the men and women who are going to be competing

7 in the coed regatta that weekend?

8 A. Yes.

9 Q. Do all of the students spend the same

10 amount of time actually in a boat sailing during

11 practice?

12 A. Yeah, for the most part, unless somebody

13 has to leave early for a class or something, yeah.

14 Q. Do you anticipate that changing at all at

15 varsity?

16 A. No. I think there will always be

17 conflicts. There's always kids who have a class

18 that runs late and comes into practice or they have

19 to leave early for a class, so those things are -- I

20 don't think those things will ever go away.

21 Q. When we're talking about the club team

22 being elevated to varsity status, is there a varsity

23 team at this moment?

24 A. As far as I know, there is, yes.

25 Q. Are all of the details about the varsity

Page 69

1 team finalized?

2 MR. CRAIG: Objection to form. Calls for

3 speculation. You can answer.

4 THE WITNESS: Yes. Could you please, I

5 guess, rephrase that question?

6 Q. (By Ms. Bullock) You just stated as far as

7 you know, the varsity -- there is a varsity team at

8 this moment, and I'm asking, is every detail about

9 the varsity team finalized right now?

10 MR. CRAIG: Objection to form. Vague.

11 THE WITNESS: Can you describe what you

12 mean by "every detail"?

13 Q. (By Ms. Bullock) Your roster.

14 A. No, not everything is finalized.

15 There's -- the school announced two days ago that

16 the kids aren't coming back now until maybe the

17 middle of October or October 5th for in-person

18 classes. The pandemic has really thrown everything

19 for a loop. Things are changing all the time.

20 There might be more kids that take a leave of

21 absence or go remote now. There's just a lot of

22 uncertainty. So the roster is changing all the

23 time.

24 Q. And we've already talked about, is the

25 schedule set?

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1 MR. CRAIG: Asked and answered.
 2 Q. (By Ms. Bullock) You can answer.
 3 A. **The schedule set for when? The fall?**
 4 Q. The competition season.
 5 A. **There's no competition this fall.**
 6 Q. And so that's, like the roster, changing?
 7 A. **Well, that's not changing. We've already**
 8 **been told by the Ivy League there's no competition**
 9 **this fall, and Brown's following the Ivy League**
 10 **so ...**
 11 Q. But there might be this spring, correct?
 12 A. **Yeah, TBD. Sure hope so.**
 13 Q. Do you have uniforms for the team, for the
 14 varsity team?
 15 A. **Yes.**
 16 Q. Practice clothes?
 17 A. **There's really no practice clothes. They**
 18 **use their own equipment to sail in, and we provide**
 19 **uniforms for them for competition.**
 20 Q. Do you know if that changes at all with
 21 varsity status?
 22 A. **Don't think so. We might get new -- you**
 23 **know, we might get some additional uniforms or**
 24 **change the style of them, but no. We just wear a**
 25 **pinnie that goes over their life jacket.**

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1 Q. Do you know if other varsity teams at
 2 Brown get practice clothes?
 3 A. **I have no idea.**
 4 Q. Do the students have access to the varsity
 5 trainers?
 6 A. **They will now, yes.**
 7 Q. But they don't yet?
 8 A. **No.**
 9 Q. Do you know, is there a varsity
 10 nutritionist or some sort of similar-type role?
 11 A. **We've been told that they're going to be**
 12 **hiring a nutritionist. I don't think there is one**
 13 **at the moment, but there will be, and they should**
 14 **have access to that nutritionist.**
 15 Q. But they don't right now?
 16 A. **No.**
 17 MR. CRAIG: Objection to form. Vague.
 18 Q. (By Ms. Bullock) Do the students have --
 19 student-athletes have access to any of the varsity
 20 academic services?
 21 A. **They're supposed to. They never have**
 22 **before so -- when we officially start being able to**
 23 **do team-related activity, they should have --**
 24 **they'll have access to all these things.**
 25 Q. But as we sit here today, you haven't --

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1 you are not permitted to officially start doing
 2 team-related activities, correct?
 3 MR. CRAIG: Objection to form. Misstates
 4 testimony.
 5 **THE WITNESS: That is correct. All we can**
 6 **do is our team meetings virtually.**
 7 Q. (By Ms. Bullock) So earlier when I asked
 8 is there a varsity team at this moment and you said
 9 as far as you know, do you consider the items we
 10 have been discussing, the roster, the schedule, as
 11 part of the varsity team?
 12 A. **Yes.**
 13 MR. CRAIG: Objection to form. Vague.
 14 Q. (By Ms. Bullock) So as we speak this
 15 moment, there's not actually a varsity team,
 16 correct?
 17 MR. CRAIG: Objection to form.
 18 **THE WITNESS: Yes, I believe that there is**
 19 **a varsity team at this moment.**
 20 Q. (By Ms. Bullock) As the varsity team,
 21 does -- sorry. Strike that.
 22 Does being elevated to varsity status
 23 change the types of regattas that Brown is able to
 24 enter?
 25 A. **No. We'll be competing in the same events**

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1 **that we have in the past, and we may even add a few**
 2 **additional ones if our budget increases.**
 3 Q. How does it change the teams you'll be
 4 competing against?
 5 A. **It will be the same teams. We've been**
 6 **competing at the highest level of college sailing**
 7 **for almost the entirety of our existence, so we'll**
 8 **be sailing against mainly all the varsity teams.**
 9 Q. Does it change the number of boats you're
 10 able to enter into a regatta?
 11 A. **No.**
 12 Q. Does it change the number of competition
 13 weekends that you're allowed to participate in?
 14 A. **No.**
 15 Q. Does it change the number of students that
 16 you assign to each boat?
 17 A. **No. I will say, if I could go back on the**
 18 **number of competition weekends, that's a college**
 19 **sailing rule that we've always followed. The Ivy**
 20 **League may -- they've told me this in compliance**
 21 **that the Ivy League might dictate the number of**
 22 **weekends that college sailing Ivy League teams can**
 23 **compete in now, and we don't know yet that answer.**
 24 **So the Ivy League might supersede the ICSA on some**
 25 **things with sailing now that it's an Ivy League**

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1 sport. So they might tell us we can only do 16
 2 weekends of competition. We don't know yet.
 3 Q. Does it change the championships that
 4 Brown is able to compete in?
 5 A. No. The championships won't change.
 6 There will be one new additional championship.
 7 There will be an Ivy League women's championship now
 8 because now women's varsity is an official Ivy
 9 League sport.
 10 Q. Can you explain that to me?
 11 A. Yes. By having five varsity women's
 12 programs in college sailing now, you can potentially
 13 have an Ivy League championship for that sport. And
 14 there are now five women's varsity teams now that
 15 Brown's been elevated joining Harvard, Dartmouth,
 16 Yale, Cornell.
 17 Okay. For coed, we're the fourth Ivy
 18 League team. Cornell is women's varsity only. And
 19 we'll have a spring Ivy League championship in
 20 women's now. We just don't know when it's going to
 21 be. We haven't gotten that far yet.
 22 Q. That hasn't been created yet?
 23 A. You know, we've started talking about it.
 24 The Ivy League is just beginning to make amendments
 25 for the Ivy League rules for sailing and stuff like

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1 that and figuring out that championship and when
 2 it's going to be, but it's going to be a very
 3 meaningful championship now that will be added.
 4 Q. Would that happen in the spring?
 5 A. Yeah, that's the thought right now.
 6 Q. Will it be able to appear this spring if
 7 there's competition?
 8 A. Yes.
 9 MR. CRAIG: Objection.
 10 THE WITNESS: If there's competition,
 11 yeah, I believe so.
 12 Q. (By Ms. Bullock) Does being varsity status
 13 change the way Brown qualifies for championships?
 14 A. No.
 15 Q. Does it change the number of boats that
 16 Brown gets to enter into a championship?
 17 A. No.
 18 Q. Does it change how you structure
 19 practices?
 20 MR. CRAIG: Objection to form. Asked and
 21 answered.
 22 THE WITNESS: Probably not. You know, I
 23 think that there will be certainly a group at
 24 practice that -- there might be some people that
 25 could be on the yacht club team that might not be a

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1 part of the racing part of practice and they'll be
 2 sailing doing their own thing or something, but
 3 otherwise, it will be pretty similar.
 4 Q. (By Ms. Bullock) Will it change how many
 5 practices you hold?
 6 A. No, unless the Ivy League gives us
 7 different rules than the ICSA.
 8 Q. I'm going to ask one clarifying question.
 9 Is it your understanding that the Ivy League -- or
 10 that the varsity team is authorized but you haven't
 11 started the season yet, correct?
 12 A. No. We're in the summer right now.
 13 Q. That would be a detail that hasn't been
 14 finalized yet either, correct?
 15 MR. CRAIG: Objection to form. Misstates
 16 testimony.
 17 Q. (By Ms. Bullock) You can answer.
 18 A. Yeah. I mean, I guess I'll ask you to
 19 rephrase the question again because I'm not
 20 understanding what you mean.
 21 Q. Maybe it wasn't a very good question.
 22 Strike that. We'll move on. So what is your
 23 understanding of what will change for sailing as a
 24 varsity program?
 25 A. Yeah. So the added resources that we're

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1 going to gain are huge. We're going to get strength
 2 and conditioning trainers, nutritionist, sports
 3 psychology, academic resources, some publicity for
 4 our team that's much deserved, like brownbears.com,
 5 the Brown Daily Herald, the Providence Journal
 6 newspaper. Admission support, which is a huge
 7 thing. You know, we're losing recruits every year
 8 to Yale, Dartmouth, Harvard, Stanford because
 9 they're varsity programs and we're club.
 10 And, you know, hopefully some additional
 11 funding down the road. I don't think anything's
 12 going to change in year funding-wise because of the
 13 pandemic and we're probably going to have no
 14 competition but, you know, everything. Everything's
 15 going to be better. We're going to be finally given
 16 the -- in my opinion, the -- you know, the respect
 17 that we deserve as I think the top sport at Brown
 18 University and the state of Rhode Island.
 19 Q. You said admission support will change.
 20 What does that mean?
 21 A. Yeah. Like any varsity sport, you -- you
 22 know, your sport could help you through the
 23 admissions process, and it could make a difference
 24 on whether you get accepted or not, and we're going
 25 to have some more support with that.

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1 at Brown?

2 MR. CRAIG: Objection to form. Vague.

3 Q. (By Ms. Bullock) You can answer.

4 A. Yes. I think any athlete's making

5 sacrifices for their sport. Our kids do it, have

6 been doing it every day. I think sailing is the

7 most time-consuming sport in college athletics. Two

8 seasons, all day on the weekends. Practices all

9 afternoon on the water. It's cold weather a lot of

10 the time. So they've been doing it, and they'll

11 continue to do it.

12 Q. We already talked about your roster from

13 last year, right?

14 A. Yeah.

15 Q. That's Exhibit 1. And it lists the

16 students -- student-athletes by class, correct?

17 A. Yeah.

18 Q. I was going to say grade, but I don't know

19 if that's the proper term in college really. How

20 will your roster next year be different?

21 A. Yeah. We've been given basically a

22 proportion that we have to -- you know, we have to

23 adhere to. Right now it's -- if we have 25 females,

24 we can have 10 males. That's what we've been given

25 right now. And we can basically make anything work

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1 so that's what we'll make work. This year is going

2 to be -- who knows. We might not have enough

3 females, you know, certainly to have 25 or even

4 maybe even 20 given the pandemic and people taking

5 the year off or being remote. So we don't know how

6 it's all going to shake out yet for the number of

7 females we'll have all together, but we'll stay

8 within our proportions.

9 Q. Have you been given a specific proportion

10 beyond the 25 females and 10 males?

11 A. No.

12 Q. Who gave you that proportion?

13 A. Athletic director Hayes.

14 Q. Did he tell you why?

15 A. He just said that we have -- you know, we

16 have to make sure we comply with Title IX and we're

17 going to have the guys -- it's going to be a 2 and a

18 half to 1 ratio females to males. We knew all along

19 that we want to have more females anyway so, you

20 know, we'll abide by whatever's given to us.

21 Q. Are you adding a new women's team to the

22 sailing program?

23 MR. CRAIG: Objection to form. Vague.

24 THE WITNESS: Can you rephrase that?

25 Adding a new women's team?

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1 Q. (By Ms. Bullock) So if you look at the

2 roster here, it's all of the students together.

3 That's the sailing roster. Correct?

4 A. Yeah. We just -- listen, we were a club

5 team, and we just put everybody there together. You

6 know, we didn't say, like, we're going to have all

7 the women on -- you know, we're a club team, so, you

8 know, we've always -- our women have always been on

9 a women's team and a coed team. We just -- we had

10 them all on one page.

11 So yes, now we're going to have a women's

12 team and we're going to have a coed team, and the

13 women are going to be able to be on both because

14 they're competing in two different disciplines,

15 which they've always done.

16 Q. Would you agree that you intend to list

17 every woman who's on the women's team on the coed

18 roster as well?

19 A. Yes.

20 MR. CRAIG: Objection to -- same objection

21 to form. Calls for speculation.

22 Q. (By Ms. Bullock) Have you ever -- has

23 that -- have you done that in the past?

24 MR. CRAIG: Objection to form. Vague.

25 THE WITNESS: Yeah. I haven't had to do

Page 85

1 that in the past. We've been a club team so -- you

2 know, the school hasn't even asked us before for a

3 roster.

4 Q. (By Ms. Bullock) Will the events that the

5 sailing program attends change by maintaining two

6 separate rosters?

7 MR. CRAIG: Objection to form. Asked and

8 answered.

9 THE WITNESS: We'll be attending the same

10 events we've always attended. And hopefully adding

11 some additional ones.

12 Q. (By Ms. Bullock) Who made the decision to

13 have two rosters?

14 A. That's how -- you know, I mean, it was

15 ultimately the athletic director, but that's how

16 it's done on many of the top college sailing teams.

17 The women are on the women's roster and they're on

18 the coed roster and they're counting women's and

19 they're counting coed, you know, for the women, and

20 that's -- you know, that's how -- at the varsity

21 level, that's how college sailing works.

22 And, you know, the women have the benefit

23 of competing in the women's circuit and the coed

24 circuit. It's more opportunities for females. It's

25 a great opportunity for them. And, you know, they

Page 86

1 have the opportunity to compete in many, many, many
 2 national championships being a female. So I think
 3 that we're just doing what is being done at Yale and
 4 Stanford and Tulane and other top schools.
 5 Q. Did someone tell you that information
 6 about the multiple opportunities, many
 7 opportunities, or is that something you researched
 8 yourself?
 9 A. It's common knowledge within the college
 10 sailing world.
 11 Q. Is that how they do it at Harvard?
 12 A. I'm not sure what Harvard does.
 13 Everybody's a little bit different. You know, not
 14 everybody's doing it the same way. I just gave you
 15 examples of schools that are doing it.
 16 Q. Is that how they do it at Dartmouth?
 17 A. Not sure.
 18 Q. Didn't Stanford just cut its sailing
 19 program?
 20 A. They just -- yeah, they just downgraded to
 21 club.
 22 Q. Will there be separate practices for the
 23 women's team and the coed team?
 24 A. You know, probably not very often. There
 25 could be a time where we say we're going to bring

Page 87

1 the women's group down that's going to compete in
 2 the women's event for the weekend and do something,
 3 you know, they want to work on different. We do
 4 things like that.
 5 And as I said earlier, there will be times
 6 in practice where we do separate the group that's
 7 going to the women's event from the coed group
 8 because what they're doing is different, but for the
 9 most part, we're competing together, 18 boats.
 10 Makes you better. Makes the team better. Practices
 11 are better.
 12 That's the key in college sailing, is
 13 simulating what a regatta's going to be like, and if
 14 we have 18 teams at a regatta, we want to have 18
 15 teams in practice on the starting line, you know,
 16 competing. That's how you get better. So it
 17 varies, but a lot of the time, we're together.
 18 Q. Are you able to schedule any additional
 19 competition weekends for -- because you have a coed
 20 team and a women's team?
 21 A. No. It's based on the university name.
 22 So our institution, Brown, we're committed to 18
 23 weekends. It's not by your women's team or your
 24 coed team. It's by your school.
 25 Q. So in addition to the varsity team that

Page 88

1 we've been discussing, Brown will still have a club
 2 sailing team, correct?
 3 A. Yeah. We're going to call it the yacht
 4 club.
 5 Q. But is it your intention to put your best
 6 sailors on the varsity team and then the rest of the
 7 student-athletes will be on the club team?
 8 A. Yeah. I think it's going to be people
 9 that don't make the varsity team. We're going to
 10 have a tryout period, a two-week tryout period, so
 11 people that don't make it, people that aren't
 12 qualified, and people that don't want to be
 13 committed or showing the commitment level. I would
 14 say those three things or all of the above.
 15 Q. Will you be the coach of the club team as
 16 well?
 17 A. Yeah. I'm technically -- my title is
 18 technically the director of sailing, the Barry
 19 director family of sailing, so I'll oversee
 20 everything and, you know, be -- you know, I'm also
 21 the head coach too so ...
 22 Q. So does that mean you'll have double the
 23 duties that you have right now or that you had last
 24 year?
 25 A. Well, the duties have increased being a

Page 89

1 varsity sport for sure, but in terms of practice and
 2 stuff and managing the kids, it won't be any
 3 different. You know, we've always had sort of what
 4 we considered the varsity-level team, and we've
 5 always had what we consider sort of the yacht club
 6 rec sailing group, and they've all been at practice
 7 together and they've all been given, you know, some
 8 opportunities to sail on the weekends, so it's not
 9 going to be any different.
 10 Q. Will the student-athletes on the club team
 11 be permitted to compete in regattas with the varsity
 12 team?
 13 A. No. They won't be able to compete with
 14 anyone on the varsity roster. If they go to
 15 regattas, they're going to be club sailors only at
 16 those regattas. So they would go to a yacht
 17 club-level event, which we could call, like, a
 18 C-level event, something like that.
 19 Q. They will still compete, just at a
 20 separate regatta?
 21 A. Exactly. Yeah. Amongst the club group.
 22 You know, they can't sail with anybody on the
 23 varsity team.
 24 Q. So if there are women who are not
 25 varsity-level student-athletes, will you cut them

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

AMY COHEN, et al., :
 :
Plaintiffs, :
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vs. :
 :
BROWN UNIVERSITY, CHRISTINA :
PAXSON, as successor to :
VARTAN GREGORIAN, and :
JACK HAYES, as successor to :
DAVID ROACH, :
 :
Defendants. :



Case No.
92-CV-0197-JJM-LDA

VIDEO-RECORDED DEPOSITION OF KEVIN MUNDT,
taken via Zoom video conference, by the Plaintiff,
before Sonya M. Wright (appearing via Zoom),
commencing at 12:00 p.m. CST, Monday, August 17,
2020.

AMY COOPER - FIDELITY VIDEO SERVICES, INC.
SONYA M. WRIGHT - CERTIFIED SHORTHAND REPORTER

Page 46

1 Q. So it would be fair to say that increasing
 2 the overall budget was not a consideration? Sports
 3 budget?
 4 A. My committee was not told that that was
 5 part of a solution set.
 6 Q. Now, would you agree that one of the key
 7 goals of your committee was to increase gender
 8 equity, that is, to increase the fraction of varsity
 9 opportunities for women?
 10 A. Repeat that question again, please,
 11 exactly the way you stated it the first time.
 12 Q. Was one of the goals of your committee --
 13 withdraw that.
 14 In terms of analyzing the varsity lineup
 15 that your committee was recommending to Brown, was
 16 one of the factors or goals that the final
 17 combination of varsity teams had to satisfy the
 18 criterion of increasing the fraction of varsity
 19 opportunities for women?
 20 A. No.
 21 Q. Sorry. Looking at the wrong document.
 22 Did you -- were you invited to attend the
 23 meeting of the corporation committee on campus life
 24 to present the recommendations of your committee?
 25 A. Yes.

Page 47

1 Q. Did you attend?
 2 A. Via Zoom, yes.
 3 Q. Did you -- were you present for a
 4 PowerPoint presentation on the excellence in
 5 athletics to the corporation committee on campus
 6 life?
 7 A. If that presentation was a part of that
 8 Zoom call I just said yes to, then yes.
 9 Q. Okay. Let's make the next exhibit Exhibit
 10 4, and that starts Bates 509 continuing to 532.
 11 Now, I'm going to direct your attention to page
 12 Bates 516 -- I think that's the right one. Let's
 13 see. No. That's the wrong page. Yes, 524. If you
 14 could take a moment to review that page, and then if
 15 you want to read the entire PowerPoint, we can start
 16 at the beginning.
 17 A. I've read it.
 18 Q. Okay. So I had asked you whether that was
 19 one of the criteria of your committee, and you said
 20 that it was not. Bullet point number 4, "Gender
 21 equity. Increase the fraction of varsity
 22 opportunities for women." Does that refresh your
 23 recollection?
 24 MR. CRAIG: Objection. Misstates prior
 25 testimony.

Page 48

1 Q. (By Ms. Labinger) You may answer my
 2 question.
 3 A. Yes. It's what it says on the page.
 4 Q. Now, do you disagree that that --
 5 withdrawn.
 6 Does that refresh your recollection about
 7 the goals of your committee?
 8 A. The goals of our committee were to provide
 9 guidance and advice to different varsity sport
 10 constructs. What I mean by that is different
 11 combinations of varsity sports represented by the
 12 Athletic Director Hayes.
 13 And in that context, what we were looking
 14 to do was to definitely stay in compliance with
 15 Title IX's consent decree. I don't recall
 16 personally that we had as an objective to increase
 17 the fraction of varsity teams for women. I know
 18 that we were very focused, very focused, on staying
 19 within compliance, and we understood that if we
 20 eliminated a women's varsity sport that the 3 and a
 21 half percentage points would drop to 2 and a
 22 quarter, and we had to make sure that any program in
 23 the various roster structures stayed, then, within
 24 that narrower band.
 25 So if we have a class that's 53 percent

Page 49

1 female, we could go no lower than, you know, 51 and
 2 a quarter. And -- or whatever the math is. I
 3 didn't do that right. But -- so we were more
 4 focused on that, on staying in compliance. This
 5 says what it says. I personally do not recall that
 6 this was one of our criteria.
 7 Q. Fair enough. I'm sorry, Lori. Can you
 8 just put that back up one second?
 9 Did you assist in the preparation of this
 10 PowerPoint, which is Exhibit 4?
 11 A. I did not.
 12 Q. Thank you. I'd like to take about a
 13 five-minute break.
 14 MS. BULLOCK: Amy, you were muted.
 15 VIDEOGRAPHER: How frustrating. I clicked
 16 it but it didn't take. I said 1:22 p.m.
 17 (Recess taken from 1:22 to 1:28 p.m.)
 18 VIDEOGRAPHER: On the record at 1:28 p.m.
 19 Q. (By Ms. Labinger) As chair of the
 20 excellence in athletics committee in the spring of
 21 2020, did you task anyone to take minutes?
 22 A. I did not, no. If minutes were taken,
 23 they were taken by Marguerite Joutz, I think is the
 24 way her name is pronounced, who attended the
 25 meetings. I did not task anyone on my group to take

Page 50

1 minutes, no.
 2 Q. Did you take any notes?
 3 A. No.
 4 Q. If you know, did anyone else?
 5 A. I don't know.
 6 Q. Let's --
 7 A. May I say one more thing about that? I
 8 want to just give you a sense of how that committee
 9 works since you asked the question. Information --
 10 I want -- I'm going to say this again. We were not
 11 a decision-making body and we were not the ones
 12 designing these athletic programs so -- and the
 13 information was so confidential, we were concerned
 14 it would get out ahead of us.
 15 So the athletic director and President --
 16 they would bring in various scenarios and they would
 17 bring in the competitiveness charts. They'd bring
 18 in the rankings in the Ivies. They'd bring in all
 19 the data you've seen. You've got I don't know how
 20 many thousands of pages. And then we would discuss
 21 it as a group and we would provide feedback as a
 22 group.
 23 And then the president and the athletic
 24 director would take that feedback, and then they
 25 would go back to work, and we would meet again and

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1 we would have the same kind of discussions with
 2 refined structures in the athletic program, women's,
 3 men's, where would it leave us in terms of slots,
 4 proportionality, etcetera. So it was not a lot of
 5 people taking notes. Plus the fact I'd like to
 6 remind you, all of this was done over Zoom, so I
 7 couldn't see if anyone was taking notes anyhow.
 8 Q. When you say "slots," are you talking
 9 about admission slots or spots on the roster?
 10 A. Both.
 11 Q. Okay. But when you used the word "slots,"
 12 are you speaking specifically about admission slots?
 13 A. I just answered your question. Both.
 14 There's admission slots and then there's slots
 15 allocated to rosters.
 16 Q. All right. Let's mark as the next
 17 exhibit, 5, which is Bates 699 to 710.
 18 MS. BULLOCK: Mr. Mundt, do you need that
 19 bigger?
 20 THE WITNESS: It would be nice.
 21 MS. BULLOCK: Yeah. I can do that.
 22 THE WITNESS: Was it the glasses that gave
 23 me away? I can read it. I'm okay. This is another
 24 one that -- you know, I don't know what we're going
 25 to discuss here, but I'd like to read it from the

Page 52

1 bottom up, please. Wait a minute. Is this all in
 2 one email? I'm -- oh, the materials for today.
 3 Okay. Okay. I got it. Thank you.
 4 Q. (By Ms. Labinger) And just to be clear,
 5 I'm not going to ask you about all the specific
 6 numbers but just as an overview.
 7 A. Thank you. Okay. I'm familiar with this
 8 material. I don't think you need to keep scrolling.
 9 Q. Okay. So if we start this -- again, this
 10 is Exhibit 5. If we start at the cover email, it
 11 refers to attaching materials for today to you, and
 12 Jack, I take it, is the athletic director; is that
 13 right?
 14 A. I think you know that. Yes, he is.
 15 Q. Well, see, we're just making a record so
 16 it's not what I know.
 17 A. Yes, Jack Hayes is the athletic director.
 18 Q. Thanks. It's for clarity reasons.
 19 A. I understand.
 20 Q. Thank you. Appreciate it. So we have a
 21 PowerPoint date of April 17, 2020, for a meeting of
 22 your committee. This refers to a meeting today on
 23 April 8. So did you have a meeting with the
 24 president, Athletic Director Hayes, and yourself to
 25 discuss these materials outside of the full

Page 53

1 committee meeting?
 2 A. I don't recall.
 3 Q. Okay.
 4 A. Would you state what you said earlier?
 5 The PowerPoint was what date? A week later?
 6 Q. April 17. Do you want me to --
 7 A. No. That's all right. I don't recall.
 8 It's possible that the president had a pre-call with
 9 me and Jack to just talk about these scenarios, but
 10 I don't recall specifically.
 11 Q. There were a lot of different scenarios,
 12 right?
 13 A. Depending on your definition of "a lot,"
 14 yes. We looked at many. We were trying to solve a
 15 very complex problem.
 16 Q. And every one of them included adding
 17 sailing, coed and women's, correct?
 18 A. If my memory is correct, yes, each
 19 scenario included adding two more -- converting
 20 those to varsity sports, correct.
 21 Q. And so would it be fair to say that right
 22 from the beginning of your committee, it was
 23 understood that those teams were being elevated to
 24 varsity status?
 25 A. No, that would not be a correct statement.

Page 70

1 that showed here's how we're going to reach
 2 2.25 percent, with you, where you could see team by
 3 team by team here's what I'm going to do?
 4 MR. CRAIG: Objection to form. Are you
 5 referring to the entirety of the committee process?
 6 MS. LABINGER: I'm referring to this
 7 conversation that Mr. Mundt just referred to.
 8 MR. CRAIG: Okay.
 9 THE WITNESS: Athletic Director Hayes told
 10 me -- if you're talking about the conversation about
 11 putting back in men's track and field and cross
 12 country, he said that if he -- when he went back and
 13 reworked -- I've already said this -- roster
 14 sizes -- okay. I told you, nipping and tucking.
 15 So when we first looked at the elimination
 16 of men's track and field, it was predicated on
 17 putting roster sizes to the Ivy League average of
 18 the last five years' championship teams, in which
 19 case almost every one of our rosters, women and men,
 20 were in deficit.
 21 So by eliminating sports and keeping the
 22 same number of recruited athlete slots, we could
 23 repopulate those slots, women's and men's, with a
 24 more representative squad size of the championship
 25 teams. You recall that earlier in this

Page 71

1 conversation, I said reducing sports was necessary
 2 but not sufficient. Part of improving the
 3 competitiveness was then resizing the rosters.
 4 So when he first looked at that scenario
 5 where you took out men's and women's -- pardon me,
 6 women's -- men's cross country and track, field,
 7 when you took that out, he was keeping the roster
 8 sizes, okay, at the optimal. Understand?
 9 Q. (By Ms. Labinger) Yes, I understand what
 10 you're saying.
 11 A. Okay. Then when he was challenged with
 12 how do we bring back in men's track and field and
 13 cross country, he said, "I've got to go back in and
 14 redo all those roster sizes." And it was that math
 15 that he represented to me allowed us to do it and
 16 stay within the 2.25.
 17 Q. And my question to you was, did he ever
 18 show you his work?
 19 A. No. Nor do I think it's my job to ask the
 20 athletic director at Brown to show me his numbers.
 21 Q. Well, you had seen a large number of
 22 numbers and reviewed them over several months in the
 23 spring, correct?
 24 A. And? So?
 25 Q. Is that correct? You did, right?

Page 72

1 A. That's a fact.
 2 Q. Okay. But this time, you were not -- you
 3 were not shown any more numbers, correct?
 4 A. Correct. I personally did not ask the
 5 athletic director to prove to me with his math that
 6 we could do that. I didn't think that's my place.
 7 He has a boss called the president of Brown
 8 University.
 9 Q. And would you agree with me that, sitting
 10 here today, you've never seen those numbers that
 11 show that they can get into compliance at
 12 2.25 percent?
 13 A. What I would say is that I've never seen
 14 the exact resulting roster sizes versus the original
 15 optimal roster sizes that we thought we could get
 16 to, okay, because once again, once we added back in
 17 those -- I don't know -- 50 or 60 men's slots, he
 18 had to do a lot of alteration of roster sizes. I
 19 never saw those final specific numbers. I took it
 20 at his word that he had run those numbers with his
 21 team correctly to say we would be within compliance.
 22 Q. Okay. I was just asking you whether
 23 you've ever seen a set of numbers since you had that
 24 conversation with Director Hayes.
 25 MR. CRAIG: Asked and answered.

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1 Q. (By Ms. Labinger) Can you just answer the
 2 question?
 3 A. No. I mean no, I haven't seen the
 4 numbers.
 5 Q. And it's a bad question. I apologize.
 6 But thank you for clarifying it. I'm going to
 7 take -- let's take a 10-minute break, help me
 8 collect my thoughts and see if we can wrap this up.
 9 VIDEOGRAPHER: Off the record at 2:10 p.m.
 10 (Recess taken from 2:10 to 2:25 p.m.)
 11 VIDEOGRAPHER: On the record at 2:25 p.m.
 12 Q. (By Ms. Labinger) I want to go back to
 13 Exhibit 2, which is 26042 to 043. And, Mr. Mundt,
 14 can you read -- if you can scroll up, please -- the
 15 first -- actually, would you read the last paragraph
 16 of President Paxson's email to you of June 5 at
 17 12:55 p.m.? Out loud.
 18 A. Sure. I didn't know I was going to have a
 19 reading test. I'm nervous. "Honestly, if we were
 20 not under the consent decree, we could bring back
 21 men's track and field and stay in compliance with
 22 Title IX (as it is applied to every other
 23 university). I have been thinking about using this
 24 as a moment to petition the court for relief."
 25 Q. And can you read the first sentence of

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

AMY COHEN, et al.,
Plaintiffs,
vs.
BROWN UNIVERSITY, CHRISTINA
PAXSON, as successor to
VARTAN GREGORIAN, and
JACK HAYES, as successor to
DAVID ROACH,
Defendants.



:
:
:
:
: Case No.
: 92-CV-0197-JJM-LDA

VIDEO-RECORDED DEPOSITION OF CHRISTINA PAXSON,
taken via Zoom video conference, by the Plaintiff,
before Sonya M. Wright (appearing via Zoom),
commencing at 8:00 a.m. CST, Friday, August 14,
2020.

AMY COOPER - FIDELITY VIDEO SERVICES, INC.
SONYA M. WRIGHT - CERTIFIED SHORTHAND REPORTER

Page 10

1 I promise you.

2 MS. BULLOCK: So we will stipulate for the

3 record that the parties have agreed that due to

4 COVID and the Rhode Island federal court order, this

5 deposition is being conducted remotely and the

6 witness is being sworn in remotely.

7 MS. KAPLAN: We agree with that.

8 VIDEOGRAPHER: Officially the oath will

9 now be administered by Sonya Wright, certified

10 shorthand reporter of Susan Frye Court Reporting,

11 Des Moines, Iowa.

12 COURT REPORTER: Would you raise your

13 right hand, please. Do you solemnly swear or affirm

14 that the testimony you're about to give will be the

15 truth, the whole truth, and nothing but the truth?

16 **THE WITNESS: I do.**

17 **CHRISTINA PAXSON,**

18 **called as a witness, having been first duly sworn,**

19 **testified under oath as follows:**

20 EXAMINATION

21 BY MS. LABINGER:

22 Q. Good morning. My name is Lynette

23 Labinger. As I mentioned, I'm one of the attorneys

24 for the plaintiffs in this case. And can you

25 clarify, are there any other attorneys or other

Page 11

1 persons in the room with you, President Paxson, at

2 this time?

3 **A. Yes. Bob Corrente is in the room with me.**

4 Q. And you understand that we're here on a

5 motion by the women athletes at Brown claiming that

6 Brown is not complying with the Cohen consent order;

7 is that correct?

8 **A. Yes.**

9 Q. And you understand that as president of

10 Brown, you became a named defendant in the lawsuit

11 once you took the position as president?

12 **A. Yes.**

13 MS. KAPLAN: Object to form, but you can

14 answer.

15 MS. LABINGER: Did you want to, Lori, make

16 a stipulation about objections? You had a --

17 MS. BULLOCK: Yeah. Yesterday, Robbie, we

18 stipulated pursuant to typical form in Rhode Island,

19 all objections are hereby reserved, except for form,

20 but we'd ask that you make the nature of your

21 objection known at the time. It also makes it just

22 cleaner for the record.

23 MS. KAPLAN: Okay. So I had a form

24 objection to that. I'm happy to explain why if you

25 want.

Page 12

1 MS. BULLOCK: Yeah.

2 MS. LABINGER: It should be one word.

3 MS. KAPLAN: Objection to form. The

4 explanation is the sentence is unclear about the

5 role of the president in the lawsuit.

6 MS. LABINGER: All right. Thank you.

7 Q. (By Ms. Labinger) You're aware of the

8 existence of the lawsuit called Cohen versus Brown

9 University, correct?

10 **A. Yes, I am.**

11 Q. Did you first become aware of it shortly

12 after becoming president in 2012?

13 **A. I believe it was mentioned in one of my**

14 **early briefings with Beverly Ledbetter, who was then**

15 **the general counsel of Brown University.**

16 Q. You became aware that there was a consent

17 order that was a result of that lawsuit, correct?

18 **A. Vaguely. I don't know if I remember that**

19 **it was called a consent order, but I knew that we**

20 **had obligations as a result of the settlement of**

21 **that case.**

22 Q. And did you become aware that the case was

23 originally brought by students on the gymnastics and

24 volleyball team in the 1990s when their teams were

25 cut?

Page 13

1 **A. I knew that some gymnasts were involved.**

2 **I'm not sure I knew whether volleyball was involved.**

3 Q. And you knew that the first named

4 plaintiff was Amy Cohen, correct?

5 **A. Yes.**

6 MS. KAPLAN: President Paxson, I'm just

7 going to instruct you to answer these questions --

8 you're doing great, but avoid relaying any direct

9 conversations you had with the prior general counsel

10 of Brown because that would be privileged.

11 **THE WITNESS: Okay.**

12 Q. (By Ms. Labinger) And please follow your

13 counselor's directions on that, and I am not asking

14 you -- if there's any confusion, I'm not asking you

15 to convey conversations that you had exclusively

16 with your legal counsel. And that's another thing,

17 nods and shakes of the head, although we are on

18 video, are not preferred. If you can give us a

19 verbal answer, that will be clear as to what your

20 answer is. All right?

21 **A. Okay.**

22 Q. Super. As president, you answer to the

23 Brown Corporation; is that correct?

24 **A. Yes, that's correct.**

25 Q. And that's a group of fellows and trustees

Page 14

1 that meet periodically throughout the year, correct?

2 **A. That's correct.**

3 Q. And the corporation authorized the actions

4 concerning the elimination of varsity teams in 2020;

5 is that correct?

6 **A. That's correct.**

7 Q. And you have a good working relationship

8 with the corporation; is that correct?

9 **A. Yes, I would say so.**

10 Q. And they actually extended your contract

11 early and issued a statement that they had absolute

12 and unqualified confidence in your leadership; is

13 that correct?

14 **A. That's correct.**

15 Q. And that was earlier this year, correct?

16 **A. Yes, it was.**

17 Q. And the head position of the corporation

18 is the chancellor; is that correct?

19 **A. That's correct.**

20 Q. And, preliminarily, and without getting

21 into any specifics, is there anything about your

22 health or medications that you are taking that would

23 impair your ability to fully understand my questions

24 and give full and complete answers to my questions

25 today?

Page 15

1 **A. No.**

2 Q. Thank you. I want to draw your attention

3 to the announcement that you made on May 28, 2020,

4 when you announced that Brown was eliminating five

5 women's and six men's teams at the varsity level.

6 Do you recall that you issued a public statement at

7 that time?

8 **A. I recall a public statement, yes.**

9 MS. LABINGER: And, Lori, can you post the

10 5/28/20 statement and we'll mark that as an exhibit.

11 MS. KAPLAN: Counsel, if we could just

12 pause, I'm going over to my printer to find the

13 exhibits.

14 **THE WITNESS: Let me see if this has come**

15 **in. Yes. Be right back. I want to get it printed.**

16 MS. KAPLAN: Lori, do you know where this

17 is in the pile?

18 MS. LABINGER: Unfortunately, it's not --

19 it doesn't have a Bates number, but the other ones

20 are pretty much in order.

21 MS. KAPLAN: That's a good clue. Maybe

22 it's at the end. Hold on.

23 MS. LABINGER: I'm not sure it's at the

24 end. I think that it is --

25 MS. BULLOCK: My paralegal combined PDFs

Page 16

1 so I'm not -- I can't be certain. I'm sorry.

2 **THE WITNESS: Could you go back and reread**

3 **the previous question that Ms. Labinger stated to**

4 **me?**

5 MS. LABINGER: Is this a question to the

6 court reporter?

7 **THE WITNESS: Yes, please.**

8 (The requested portion of the record was

9 read.)

10 **THE WITNESS: Yes. I just wanted to note**

11 **for the record that while I recall issuing the**

12 **statement, I don't think that Ms. Labinger's**

13 **characterization of the content of the letter is**

14 **fully accurate.**

15 Q. (By Ms. Labinger) It's not your statement?

16 **A. It's my statement, but you characterized**

17 **it as making an announcement, and it was a broader**

18 **announcement than your characterization.**

19 Q. Okay. Please tell me what my

20 characterization was incomplete.

21 MS. KAPLAN: Before we do that, this might

22 be helpful for Bob and the president. It was about

23 two-thirds of the way down the file in the printout,

24 I found it.

25 **THE WITNESS: Yeah. We're not -- we're**

Page 17

1 **still starting printing.**

2 MS. KAPLAN: Okay. Sorry.

3 **THE WITNESS: So this announcement said**

4 **that we were converting a number of varsity teams to**

5 **club status and that we were also converting several**

6 **club teams to varsity status.**

7 Q. (By Ms. Labinger) All right. Thank you

8 for the clarification. Now, I marked a portion of

9 the statement as it pertains to Brown's commitment

10 to gender equity and compliance with the consent

11 decree.

12 MS. KAPLAN: Just so the record's clear,

13 Lynette, this document that's not Bates-stamped is

14 Exhibit 1?

15 MS. LABINGER: Yes. Lori, can you -- is

16 your mic on? Can you do the exhibit numbers?

17 MS. BULLOCK: Do we want to continue from

18 yesterday? This would actually be Exhibit 8.

19 MS. KAPLAN: No. I would prefer -- it's

20 up to you guys, but I think that gets super

21 confusing.

22 MS. LABINGER: I'm fine with starting

23 over.

24 MS. BULLOCK: Okay. 1.

25 MS. LABINGER: This is my first Zoom

Page 18

1 deposition so I am very much assisted by Ms. Bullock
2 in the conduct of this deposition. So, Lori, can
3 you keep scrolling down to the marked portion?
4 Q. (By Ms. Labinger) Can you read the marked
5 portion of your statement out loud for the record?
6 A. "Promoting Gender Equity and Diversity.
7 This initiative aligns with Brown's strong
8 commitment to providing equal opportunity to women
9 and in varsity athletics. Title IX of the federal
10 education amendments of 1972 sets forth standards
11 for ensuring gender equity in athletics --
12 (Reporter asked the witness to slow down.)
13 MS. LABINGER: Can you read more slowly?
14 MS. KAPLAN: One thing that's often handy
15 is if the court reporter has a copy of the exhibits,
16 it tends to go faster. Can we send it to her?
17 COURT REPORTER: I can see it on the
18 screen. I just didn't see it right away. I'm
19 sorry.
20 THE WITNESS: I'll start from the
21 beginning more slowly. "Promoting Gender Equity and
22 Diversity. This initiative aligns with Brown's
23 strong commitment to providing equal opportunity to
24 women and men in varsity athletics. Title IX of the
25 federal education amendments of 1972 sets forth

Page 19

1 standards for ensuring gender equity in athletics
2 for all colleges and universities that receive
3 federal aid, and the Excellence in Brown Athletics
4 Initiative promotes gender equity under Title IX.
5 In addition, the team composition of
6 Brown's athletics program remains in compliance with
7 the 1998 settlement agreement that established the
8 percentage of varsity athletics opportunities for
9 women in relation to the percentage of Brown
10 undergraduate students who are women. With the
11 changes being made to the roster of varsity teams,
12 the percentage of varsity athletic participation
13 opportunities for women will increase and be even
14 more closely aligned with the percentage of women in
15 the undergraduate student body."
16 Q. (By Ms. Labinger) Do you agree that you
17 made those public statements?
18 A. Yes, I do.
19 Q. Do you agree that you made those
20 statements in the hope, among other things, that
21 members of the greater Brown community would be
22 convinced of Brown's commitment to gender equity,
23 not just because it was court ordered but because it
24 is the right thing to do?
25 MS. KAPLAN: Object to form. That's a

Page 20

1 long sentence, but you can answer, President Paxson.
2 THE WITNESS: Yeah. I don't know that I
3 was hoping for anything, but I thought it was really
4 important to make it clear that Brown is committed
5 to gender equity in athletics and everything else
6 that we do at the university.
7 Q. (By Ms. Labinger) Thank you. On June 6th,
8 2020, do you recall issuing a public statement in
9 order to respond to an outpouring of objections to
10 the May 28 decision, particularly to address a
11 campaign on behalf of the men's track program to be
12 reinstated?
13 A. I believe the purpose of that letter was
14 broader, and it was to provide more detailed
15 information about the decision-making process that
16 went into the recommended changes.
17 Q. And would it be fair to say that you did
18 issue a public statement on June 6th, 2020, correct?
19 A. I believe that's the date.
20 Q. Okay. And at that time, there had been a
21 large number of objections, public objections, to
22 the decision to change the status of varsity and --
23 certain varsity teams, correct?
24 A. Yes.
25 Q. And particularly there had been -- would

Page 21

1 it be fair to call it a very well-orchestrated
2 campaign on behalf of the men's track program?
3 A. There were well-orchestrated campaigns
4 on -- for several of the sports, but I think the
5 largest was probably men's track, track and field
6 and cross country.
7 Q. And because that's a mouthful, I'm going
8 to ask that -- if it's okay with you, that when I
9 refer to the men's track program in this context,
10 I'm referring to track, field, and cross country?
11 A. Yes.
12 Q. So we're on the same page.
13 And, Ms. Bullock, can you post the
14 June 6th, '20, statement?
15 MS. KAPLAN: Counsel, are we going to mark
16 this as Exhibit 2?
17 MS. LABINGER: Yes.
18 MS. BULLOCK: This will be marked as
19 Exhibit 2.
20 Q. (By Ms. Labinger) And I'd ask you to read
21 the marked portion of the statement out loud.
22 A. "Gender Equity. Brown is firmly committed
23 to providing equal opportunities to men and women --
24 women and men in athletics because it is the right
25 thing to do. The university also has a compliance

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1 **A. Okay.**

2 Q. Before coming here today, did you meet,

3 either in person or virtually, with your attorneys?

4 MS. KAPLAN: Answer that yes or no,

5 President Paxson.

6 **THE WITNESS: Yes.**

7 Q. (By Ms. Labinger) Who did you meet with?

8 Just give me names. Don't tell me what anybody

9 said.

10 **A. I met with Robbie, with Bob Corrente, and**

11 **Eileen Goldgeier.**

12 Q. And tell me approximately how long you met

13 with your attorneys to prepare for today's

14 deposition.

15 **A. Oh, perhaps two hours.**

16 Q. And did you review any documents, either

17 while your lawyers were there or on your own, to

18 prepare for today's deposition?

19 **A. Yes, I did.**

20 Q. Can you tell me, as best you recall, what

21 you reviewed?

22 MS. KAPLAN: No. I object. Don't answer

23 that. You can ask her whether any documents

24 refreshed her recollection, but you can't ask her

25 what documents she reviewed.

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1 MS. LABINGER: You're directing her not to

2 tell me what documents she reviewed?

3 MS. KAPLAN: Yeah, because documents

4 selected by counsel are work product, and that's

5 protected from disclosure. If you want to ask her

6 whether any documents she reviewed refreshed her

7 recollection, that's a fair question.

8 Q. (By Ms. Labinger) All right. Let me break

9 it up into two ways. Outside of the presence of

10 your lawyers, just a yes or no, did you review any

11 documents?

12 **A. Yes.**

13 Q. And were those documents ones that were

14 provided to you by your lawyers?

15 **A. Yes.**

16 Q. Did you review any documents that were not

17 provided to you by your lawyers?

18 **A. No.**

19 Q. And did you -- did any of the documents

20 that you reviewed refresh your recollection about

21 the events that you prepared for for today's

22 deposition?

23 **A. In a general sense, yes.**

24 Q. And which ones were those?

25 **A. I can't point to any one specifically, but**

Page 40

1 **things like dates, when things happened, those**

2 **things, I had not kept track of, and after reviewing**

3 **the documents, I knew more about that.**

4 Q. And which documents were those?

5 **A. I really can't give you specifics. When**

6 **you read, things come back, but there are many**

7 **documents. I can't give you specifics. I'm sorry.**

8 Q. Did you review the consultant's report of

9 the CSA?

10 **A. I did not reread it, no.**

11 Q. But you've seen it when it was issued,

12 correct?

13 **A. Certainly I've seen it.**

14 Q. You authorized the hiring of the

15 consultants, correct?

16 **A. Yes, I did.**

17 Q. And at the time, their mission was to

18 review 11 sports; isn't that right?

19 **A. No. Their mission was to conduct a broad**

20 **review of how we could make our varsity athletics**

21 **programs more competitive, and I asked them to do a**

22 **separate, more focused study on a smaller set of**

23 **sports.**

24 Q. And none of those sports are the ones that

25 were removed from varsity status in 2020, correct?

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1 **A. No.**

2 Q. That's my fault. That's a bad question.

3 Would you agree with me that of the sports that --

4 of the ones that were reviewed, none of those sports

5 were removed from varsity status this year?

6 **A. No. I asked them to review sort of the**

7 **big mainstream sports that are really important**

8 **parts of Brown's athletics mission.**

9 Q. And I think it's probably my question, but

10 those sports were not part of the group removed in

11 2020 from varsity status, correct?

12 **A. That is correct.**

13 Q. Perfect. The problem is my question

14 prompted a response that was a no that could mean

15 too many things so I apologize for that.

16 And did you review any records concerning

17 the original Cohen case or the consent order?

18 MS. KAPLAN: Is this -- in connection with

19 what, Lynette?

20 MS. LABINGER: In preparation for today's

21 deposition.

22 **THE WITNESS: No, I did not. Just to**

23 **clarify, did you mean actual documents that came out**

24 **of that, like the consent decree, or --**

25 Q. (By Ms. Labinger) Yes.

<p style="text-align: right;">Page 42</p> <p>1 A. Yes. No.</p> <p>2 Q. Back in the '90s?</p> <p>3 A. I did not review those documents.</p> <p>4 Q. And were you asked to search for any</p> <p>5 records in connection with -- your records in</p> <p>6 connection with today's deposition?</p> <p>7 MS. KAPLAN: Hold on. Hold on, Chris.</p> <p>8 Objection to form. You mean in connection with the</p> <p>9 production in this case or in connection with --</p> <p>10 MS. LABINGER: Yes.</p> <p>11 MS. KAPLAN: You asked in connection with</p> <p>12 the deposition.</p> <p>13 MS. LABINGER: Sorry. My error.</p> <p>14 MS. KAPLAN: You want to rephrase?</p> <p>15 Q. (By Ms. Labinger) Yeah. Did you make any</p> <p>16 records available to your attorneys in order to</p> <p>17 comply with production in this case?</p> <p>18 A. My attorney said that she was putting a</p> <p>19 records hold -- it turns out that all of my</p> <p>20 documents are accessible in other ways, and so I</p> <p>21 personally did not have to deliver over documents.</p> <p>22 Q. Well, that was a blessing.</p> <p>23 A. Yeah. It was. There were many of them.</p> <p>24 Q. All right. So whatever came through came</p> <p>25 from another source but under your custody, correct?</p> <p style="text-align: right;">Page 43</p> <p>1 A. Yes.</p> <p>2 Q. Now, in December of 2019, it was decided</p> <p>3 to establish a committee on excellence -- excellence</p> <p>4 in athletics initiative; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And Kevin Mundt -- and we, off the record,</p> <p>7 spelled his name, M-u-n-d-t, correct?</p> <p>8 A. That's right.</p> <p>9 Q. Is he a trustee emeritus?</p> <p>10 A. Kevin is an emeritus trustee and also the</p> <p>11 chair of the athletics advisory council at Brown.</p> <p>12 Q. So I got the order wrong. What does an</p> <p>13 emeritus trustee mean?</p> <p>14 A. That's somebody who used to be a trustee</p> <p>15 that has completed his term, his or her term.</p> <p>16 Q. And can we mark as Exhibit 5 26993?</p> <p>17 A. Do you have that, Bob?</p> <p>18 MR. CORRENTE: I'm looking for it.</p> <p>19 MS. BULLOCK: Give me just one moment</p> <p>20 here.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 MS. LABINGER: Are you going to post that?</p> <p>23 Thank you.</p> <p>24 MS. KAPLAN: I'm sorry. What number are</p> <p>25 we on? Exhibit 5?</p>	<p style="text-align: right;">Page 44</p> <p>1 MS. LABINGER: Yes.</p> <p>2 MS. BULLOCK: Yes.</p> <p>3 MS. KAPLAN: And are you marking just the</p> <p>4 cover email or the cover email and the attachments?</p> <p>5 MS. LABINGER: I think the attachment is</p> <p>6 attached, is it not? Yeah.</p> <p>7 MS. KAPLAN: Got it.</p> <p>8 MS. LABINGER: Now, Ms. Bullock, can you</p> <p>9 scroll back up, please?</p> <p>10 Q. (By Ms. Labinger) Is this a document that</p> <p>11 you prepared and shared with Kevin Mundt and</p> <p>12 Chancellor Menco in early January?</p> <p>13 A. Yes, it is.</p> <p>14 Q. And is this a draft -- if you could</p> <p>15 scroll, Ms. Bullock, to the next page -- of the</p> <p>16 committee on excellence in athletics that you were</p> <p>17 putting together?</p> <p>18 A. It is a first draft of the committee</p> <p>19 charge.</p> <p>20 Q. And so at that time -- and I'm --</p> <p>21 Ms. Bullock has the page. I've lost -- we've lost</p> <p>22 it now. If you stay right there. Would you agree</p> <p>23 with me that part of the charge was for the</p> <p>24 committee to assess existing varsity and club sports</p> <p>25 and make recommendations about which sports should</p> <p style="text-align: right;">Page 45</p> <p>1 take on club or varsity status?</p> <p>2 A. That is correct.</p> <p>3 Q. And would it be fair to say that you</p> <p>4 already had a view that you wanted to reduce the</p> <p>5 total number of varsity sports to no more than 25?</p> <p>6 A. I had a strong view that we needed to</p> <p>7 reduce the number of varsity sports at Brown. That</p> <p>8 was a very tentative number that was put in there,</p> <p>9 and clearly we did not land in that spot. But, yes,</p> <p>10 I wanted to reduce varsity sports at Brown.</p> <p>11 Q. So the charge to the committee was not</p> <p>12 simply see whether we should reduce sports but,</p> <p>13 rather, see which ones to eliminate?</p> <p>14 A. Yes, but I would also note that this is a</p> <p>15 draft charge. This is not the charge that the</p> <p>16 committee actually received. So if we want to talk</p> <p>17 about what the committee was charged with, we should</p> <p>18 look at the final committee charge.</p> <p>19 Q. All right. I think we might be skipping</p> <p>20 ahead, but can we do as Exhibit 6 Bates 533, which I</p> <p>21 believe includes the mission and charge?</p> <p>22 MS. KAPLAN: 533 is the Bates number?</p> <p>23 MS. LABINGER: I hope so. We're only</p> <p>24 getting half a page, Lori.</p> <p>25 MS. KAPLAN: We're marking 533 through 535</p>
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1 as Exhibit 6?

2 MS. LABINGER: I believe that's the end,
3 but we're having some technical difficulties.

4 **THE WITNESS: I have the document so if**
5 **you maximize the screen, it doesn't matter if the**
6 **writing is small.**

7 Q. (By Ms. Labinger) Okay. Can you scroll
8 through the entire document, which is Exhibit 6?
9 Does that document contain the final version of the
10 charge to the committee?

11 **A. I believe so.**

12 Q. And if you could scroll up a bit. Well,
13 I'm going to find it a different way. So in the
14 final version, you removed the express charge to
15 look at the overall roster and determine which
16 sports should be removed from varsity status to
17 reach an optimal number between 23 and 27; is that
18 correct?

19 **A. I no longer reference a specific number of**
20 **teams, although there is language in there that**
21 **discusses a smaller menu of varsity teams.**

22 Q. And can you point to that language for me,
23 please?

24 **A. Yes. It's the language just above**
25 **"Committee Charge," and it says, "Several factors**

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1 **can be examined to determine whether Brown should**
2 **refocus its efforts on perhaps a smaller and**
3 **different menu of varsity teams so as to increase**
4 **the competitive balance within the Ivy League and to**
5 **pursue a standard of excellence at Brown."**

6 Q. Now, the chair of the committee was Kevin
7 Mundt, correct?

8 **A. Correct.**

9 Q. And you had already communicated to him
10 your initial view that it would be optimal to reduce
11 the number of teams at Brown to between 23 and 27,
12 correct?

13 **A. I was not anchored on the 23 to 27, but I**
14 **had made it clear to him that I want to reduce the**
15 **number of teams.**

16 Q. Thank you.

17 MS. KAPLAN: Put those aside, Counsel?

18 MS. LABINGER: I believe that's safe.

19 Now, can we mark as Exhibit 7 Bates 26991 to 2?

20 MS. BULLOCK: Give me just one moment.

21 MS. KAPLAN: The pile, just for Bob and
22 President Paxson's information, it's in rough Bates
23 stamp order, so it's towards the bottom of the pile.

24 Q. (By Ms. Labinger) Have you located or are
25 you able to see this email thread on the screen,

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1 President Paxson?

2 **A. Yes, I see it.**

3 Q. And do you recall the -- let me make sure
4 I've got this correct. Sorry. So this -- would you
5 agree with me that this email chain is the response
6 to your sending the draft, which is Exhibit 5, to
7 Chancellor Mencoﬀ and Mr. Mundt?

8 **A. It appears to be, yes. The timing makes**
9 **sense, and the content too.**

10 Q. And if we start at the -- read from the
11 bottom up, the first message is from Chancellor
12 Mencoﬀ commenting on the committee's charge,
13 correct?

14 **A. That's right. The draft charge.**

15 Q. And it includes your response and his
16 response back to you about what happens to varsity
17 teams that might be eliminated and allowed if they
18 chose to exist as a club sport; is that right?

19 **A. That's correct.**

20 Q. Did you actually -- I think we can take
21 that off the screen.

22 Did you actually attend any of the
23 meetings of the -- I'm just going to call it the
24 committee if that's okay, the excellence in
25 athletics committee, because it's, again, a

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1 mouthful. Did you actually attend any of them?

2 **A. Yes, I did.**

3 Q. Did you attend all of them?

4 **A. I think I might not have attended one or**
5 **part of one. I can't really remember. I was**
6 **certainly there for the first one.**

7 Q. And did you help create the spreadsheet or
8 template that was designed to analyze a variety of
9 categories for the committee to consider? Do you
10 remember that?

11 **A. I didn't help create it. I created it.**
12 **I'm an economist and a bit of a data nerd, and**
13 **nobody else knew how to do it so I did it.**

14 Q. Right. The template that you created, was
15 it initially all one spreadsheet that was broken
16 into a couple, if you recall?

17 **A. I don't --**

18 MS. KAPLAN: Objection to form because I'm
19 not sure what that means, but you can answer.

20 **THE WITNESS: Yeah. I don't recall the**
21 **original spreadsheet. I don't know what you mean by**
22 **that.**

23 Q. (By Ms. Labinger) All right. Well, in
24 your template that you created for others to fill
25 in, it included the budgets for each team, the

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1 consistent with the version of the document you have
2 in front of you?
3 **THE WITNESS: This is consistent with the**
4 **document I have in front of me, and to the best of**
5 **my recollection, this is what the committee was**
6 **presented with on April 17th, 2020.**
7 MS. LABINGER: All right. Then we're
8 going to mark Bates 493 as Exhibit 9.
9 MS. KAPLAN: The record will reflect that
10 that's a page from a larger PowerPoint that the
11 witness has said was presented to the committee.
12 Q. (By Ms. Labinger) So just to be clear, the
13 first two pages of Exhibit 8 are consistent with the
14 PowerPoint that was presented on April 17, and the
15 third page was replaced by Exhibit 9; is that
16 correct?
17 **A. Which one's Exhibit 9? I'm so sorry. I'm**
18 **confused.**
19 Q. I'm sorry. We'll try it again. At your
20 PowerPoint -- at the PowerPoint on April 17, the
21 committee saw the first two pages of Exhibit 8,
22 which is page Bates 619 and 624 -- they saw more,
23 but those were two of the pages, and then they also
24 saw the document which we've marked Exhibit 9, which
25 is Bates number 493? Scenario 1 and 2.

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1 **A. Yeah, but we don't have Exhibit 9.**
2 Q. No, you don't because -- but you're
3 looking at it on the screen, if you can.
4 **A. Yeah.**
5 Q. And can you compare that to the PowerPoint
6 pack that you have?
7 **A. Yeah.**
8 Q. And confirm that they're the same, except
9 for the Bates stamp?
10 **A. Yes.**
11 Q. Okay. All right. So then we are
12 literally now working off the same page?
13 **A. We are.**
14 Q. Excellent. So on April 17, the committee
15 was considering only two scenarios at that point?
16 **A. No.**
17 Q. All right.
18 **A. Go ahead. Finish your question. My**
19 **apologies.**
20 Q. Okay. Were there more scenarios than
21 these two, under consideration?
22 **A. The committee was presented with two**
23 **scenarios because the committee was still in**
24 **progress. These were discussed, and the scenarios**
25 **were further modified as we went along.**

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1 Q. And do you have a document of the
2 committee that includes a further modification of
3 the scenarios?
4 **A. I believe we have to go and look and see**
5 **what was presented to the committee at the final**
6 **meeting. If there is such a thing.**
7 Q. We have --
8 **A. Or maybe this is the last one that they**
9 **got. I'm not sure.**
10 Q. Well, I appreciate your confusion because
11 we've seen a lot of documents, and so I can't be
12 certain.
13 **A. I think --**
14 Q. I wasn't there.
15 **A. I think it's important to know that, you**
16 **know, this was a discussion. Teams were coming in**
17 **and moving out. This was in flux. It was dynamic.**
18 **And that's why my recollection isn't clear as to**
19 **which scenarios were discussed with the committee at**
20 **exactly which point. These were working documents.**
21 **This was work in progress.**
22 Q. Just give me one moment. All right.
23 Then, Ms. Bullock, can you post as Exhibit 10 Bates
24 509 to 532?
25 And so that you know what we're looking

Page 65

1 at, it's called the Excellence in Athletics
2 Corporation Committee on Campus Life.
3 **A. Correct.**
4 MS. KAPLAN: This is Exhibit 10, correct?
5 MS. LABINGER: Exhibit 10, the whole
6 thing.
7 MS. KAPLAN: Got it.
8 Q. (By Ms. Labinger) Now, President Paxson,
9 this is a different committee than the one that
10 Mr. Mundt chaired, correct?
11 **A. Correct.**
12 Q. So by this point, the -- Mr. Mundt's
13 committee had completed its recommendations; is that
14 right?
15 **A. That's correct.**
16 Q. Were you present for the meeting of the
17 corporation committee on campus life on May 1 --
18 May 14, 2020?
19 **A. Yes, I was.**
20 Q. This PowerPoint was presented and then
21 discussed; is that right?
22 **A. That's correct.**
23 Q. Did you have a role in the creation of
24 this document?
25 **A. Yes.**

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1 Q. What was your role?

2 A. I developed it with my staff. With input

3 from Director Hayes.

4 Q. So let's go to the page that's Bates stamp

5 525.

6 A. It's right at the end. Great.

7 Q. Are you there?

8 A. I'm here.

9 Q. Thank you.

10 A. Yes.

11 Q. So this page indicates a recommendation to

12 cut or convert to club men's and women's fencing,

13 men's and women's golf, women's skiing, men's and

14 women's squash, women's equestrian, men's and

15 women's tennis, and men's track, field, and cross

16 country, and to elevate sailing, which is listed as

17 coed and women; is that correct?

18 A. That's correct.

19 Q. And was that the recommendation of

20 Mr. Mundt's committee?

21 A. Yes.

22 Q. Okay. So by the time it got to this

23 corporation committee, Mr. Mundt's committee had

24 settled on this package of recommendations, correct?

25 A. This was where the committee ended up. I

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1 think it's useless to clarify, though, that

2 Mr. Mundt's committee was advisory to me, and so

3 what I'm really giving the campus life committee of

4 the corporation are my recommendations.

5 Q. Okay. And in their advice to you, did

6 Mr. Mundt's committee advise you that they supported

7 this lineup of teams to cut and add?

8 A. We didn't have a formal vote, but there

9 seemed to be consensus in the committee.

10 Q. Do you recall any dissent in the committee

11 concerning the lineup?

12 A. There was some discussion about track,

13 field, cross country and the role that it plays in

14 diversity and inclusion at Brown.

15 Q. Anything else that you recall?

16 A. Not that I can recall.

17 Q. And when you presented this recommendation

18 to the corporation committee, your office or

19 Mr. Hayes' office had done all the math on how this

20 would impact things such as proportionality and

21 admission slots; is that correct?

22 A. We had actually stopped looking at

23 admission slots along the way. We knew that, you

24 know, there's a university limit and it's really

25 under the purview of the athletics director to make

Page 68

1 those decisions, so we were really focused on roster

2 sizes and gender balance.

3 Q. And you conducted that analysis with this

4 lineup, correct?

5 A. Correct. And those are the numbers

6 reflected in the chart.

7 Q. And in each of the -- so this is the chart

8 that's in a blue background that says "Percent

9 Women" under the current lineup, the Brown five-year

10 average if the team lineup was changed, and then

11 three other ways of looking at it, the alternative

12 roster sizes; is that right?

13 A. That's correct.

14 Q. And the Brown five-year average, that was

15 based on the average number on those teams, the 27

16 remaining for the previous five years; is that

17 correct?

18 A. That's correct.

19 Q. So it's looking historically to make an

20 assessment that based on the five years of past

21 experience, if we looked at these 27 remaining

22 teams, we would expect to have a total number of

23 athletes of 794 of which 54.4 percent were women; is

24 that right?

25 A. That is correct. The one point that I

Page 69

1 want to note about this table is, though, it's

2 confusing because the first three columns use the

3 EADA method of counting varsity opportunities for

4 men and women, which is different from the Cohen way

5 of counting varsity opportunities for men and women.

6 So just keep that in mind as you look at these

7 numbers.

8 Q. Well, did you count them the Cohen way, as

9 you say?

10 A. The Cohen way is under "Coaches' ideal"

11 and -- is under "Coaches' ideal" and "Ivy average,"

12 and there's an asterisk that notes that those are

13 counting squad sizes differently than other methods.

14 Q. Okay. So coaches' ideal is -- you're

15 saying it's not actually the ideal but the last five

16 years?

17 A. No. Five-year average is using, actually,

18 numbers on student participation on these teams.

19 One of the goals of the whole athletics initiative

20 was to create opportunities for both men's and

21 women's rosters, which were undersized on average,

22 to become bigger. That was one of the major points

23 of this.

24 And so what Athletic Director Hayes did

25 was he went to each of the coaches. He sent them an

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1 **although not in executive sessions.**
 2 Q. Okay. And as a result of the discussion
 3 that took place on May 14, did your recommendation
 4 get approved by the corporation committee on campus
 5 life as presented to it?
 6 **A. It was approved as presented.**
 7 Q. Now, let's see if I can get to the next
 8 one. Let's mark as 11 Bates 536 to 559. And that,
 9 just for clarification, is the meeting of the
 10 corporation, PowerPoint called "Excellence in
 11 Athletics"?
 12 **A. That's correct.**
 13 Q. Now, have you found the version that we've
 14 presented to you with the Bates numbers?
 15 **A. I believe so.**
 16 Q. Or you can look at it on the screen too.
 17 I just want to make sure that you're satisfied this
 18 is the version that was presented since we had that
 19 confusion about the one from April to the committee.
 20 **A. Yeah.**
 21 MS. KAPLAN: It should be -- it was on the
 22 top of the pile that was printed, President Paxson.
 23 **THE WITNESS: 536, right?**
 24 MS. KAPLAN: Yeah, starts at 536. Yeah.
 25 **THE WITNESS: Yes. This looks like the**

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1 **version that was presented.**
 2 Q. (By Ms. Labinger) Super. Okay. So did
 3 you have a role in the preparation of this
 4 PowerPoint?
 5 **A. Yes, I did.**
 6 Q. And what was your role?
 7 **A. My staff and I put together the**
 8 **PowerPoint.**
 9 Q. Now, if you go to the page that's marked
 10 552, it's a different list than the last one
 11 presented to the corporation committee, correct?
 12 **A. That's correct.**
 13 Q. And men's and women's tennis has been
 14 removed, correct?
 15 **A. That's correct.**
 16 Q. And can you tell me how that came about?
 17 **A. That came about because after the campus**
 18 **life committee and shortly before the corporation**
 19 **committee, Athletics Director Hayes contacted the**
 20 **Ivy office and realized through a discussion that he**
 21 **had a misunderstanding of how the Ivy League**
 22 **oversees numbers of recruiting slots, admissions**
 23 **slots, as we've referred to them before, based on**
 24 **rules that I had no knowledge of and still don't**
 25 **quite understand.**

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1 He contacted me and suggested that we
 2 **reinsert one of the sports, both men's and women's,**
 3 **into the varsity sports that were kept. His initial**
 4 **recommendation was fencing. I spoke -- talked it**
 5 **through with him. We had a phone conversation. My**
 6 **recommendation finally was that instead of fencing**
 7 **we maintain tennis as a varsity sport, men's and**
 8 **women's tennis.**
 9 Q. Okay. So what time of the day does the
 10 corporation generally meet?
 11 **A. Well, we're in a pandemic so nothing is**
 12 **normal. I can't remember what time of day this**
 13 **committee meeting was, but I could look it up in my**
 14 **calendar.**
 15 Q. Was it -- just give me one second, please.
 16 **A. That meeting would have been at 2 p.m. on**
 17 **May 21st.**
 18 MS. KAPLAN: And the record should
 19 reflect, President Paxson, you were looking at your
 20 calendar?
 21 **THE WITNESS: That's correct.**
 22 Q. (By Ms. Labinger) So what you said is that
 23 he had -- he was talking about admission slots to
 24 put fencing back in, or AI?
 25 **A. I'm sorry. Admission slots, not AI. Yes.**

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1 Q. Admission slots?
 2 **A. Admission slots.**
 3 Q. Okay. And after the corporation voted,
 4 did he come back to you and then advocate again to
 5 add fencing back in?
 6 **A. No. That's not my recollection.**
 7 Q. I mean, was the committee meeting over by
 8 7 o'clock on May 21?
 9 **A. Sure.**
 10 Q. Between May 14 and the committee
 11 proceedings, did you also speak with Orlando Bravo
 12 about the decision to cut men's and women's tennis?
 13 **A. I spoke with a number of corporation**
 14 **members who had been involved in tennis during their**
 15 **time at Brown, and he was one of them.**
 16 Q. And this was before your presentation,
 17 right?
 18 **A. Correct.**
 19 Q. And he advocated that you put men's and
 20 women's tennis back; isn't that right?
 21 **A. He did.**
 22 Q. And that's not -- does that have anything
 23 to do with your decision-making?
 24 **A. Well, it waved me away from fencing and**
 25 **towards tennis. He's somebody who's strongly**

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1 **supportive and can do a lot to help the program**
 2 **going forward.**
 3 Q. So was there a time because of the
 4 athletic director's advocacy that you were thinking
 5 of putting tennis back into the varsity -- I'm
 6 sorry. Forgive me. I'll try that again.
 7 Between May 14 and your final presentation
 8 on May 21, was there also a time when you were
 9 thinking of putting fencing back into the varsity
 10 lineup and leaving tennis in the proposal?
 11 **A. Personally, I never wanted to put fencing**
 12 **back. That didn't seem like a good idea to me. The**
 13 **athletics director may differ, but I never thought**
 14 **it was a good idea.**
 15 Q. So -- but whatever he said to you about
 16 admission slots, if I understand correctly,
 17 convinced you that you needed to put something back?
 18 **A. It convinced me that it would be**
 19 **beneficial to put something back, and by putting**
 20 **back something that was an Ivy sport, men's and**
 21 **women's.**
 22 Q. And can you just explain, if you
 23 understand, how that -- how having it an Ivy sport
 24 impacts on that issue?
 25 **A. I don't understand the Ivy rules governing**

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1 **admission slots. In fact, they don't even show up**
 2 **in the Ivy policy manual, but we learned that they**
 3 **exist. Admission slots would -- under the Ivy rules**
 4 **would only pertain to Ivy sports, and of the list**
 5 **here, equestrian certainly wouldn't be counted.**
 6 **It's not -- it doesn't have enough schools who**
 7 **are -- have equestrian as a varsity team.**
 8 Q. Fencing is an Ivy sport?
 9 **A. I think so, yeah.**
 10 Q. And squash?
 11 **A. Yes.**
 12 Q. And certainly the men's track program?
 13 **A. Yes.**
 14 Q. What about golf?
 15 **A. I believe it is, although if it gets below**
 16 **a certain number, it loses championship status, and**
 17 **Dartmouth just cut golf so I don't know where we are**
 18 **now.**
 19 Q. And then you reran the numbers in your
 20 chart, which is on page 5 -- Bates 552, to come up
 21 with the projected percentages based on having 29
 22 teams as opposed to 27; is that correct?
 23 **A. That's correct.**
 24 Q. Let's mark as Exhibit -- withdrawn. I'm
 25 sorry.

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1 So at your presentation of the corporation
 2 meeting on May 21, 2020, would it be fair to say
 3 that the corporation voted to approve your
 4 recommendation to authorize the elimination of
 5 certain varsity teams and the elevation of the
 6 sailing program to varsity status, as you
 7 recommended?
 8 **A. Yes, they approved the plan. What I can't**
 9 **recall is what exactly was in the corporation**
 10 **resolution and whether it listed the sports. I**
 11 **can't remember. I'd have to look at the document.**
 12 Q. All right. Well, let's accommodate you.
 13 **A. Thank you.**
 14 Q. Have to find it. 606. I think that's it.
 15 Does that help? This is Exhibit 12. Pages -- Bates
 16 pages 606 to 607.
 17 **A. Yes. So as I thought I remembered, it**
 18 **doesn't actually list the specific sports, but it**
 19 **approves the findings and recommendations.**
 20 MS. LABINGER: All right. And for the
 21 record, Ms. Kaplan, you've withdrawn your designated
 22 confidential label on this document; is that
 23 correct?
 24 MS. KAPLAN: I think so. Matt? That
 25 seems right to me.

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1 Q. (By Ms. Labinger) Okay. I'll certainly
 2 give you a later chance to change your mind about
 3 it, but just to keep the record clear that we're not
 4 confused about it. And we haven't received any
 5 minutes of the meeting on May 21. Is that typical,
 6 that they wouldn't have been prepared yet?
 7 **A. I never see minutes from the corporation**
 8 **meeting. They're kept and I think they're put in**
 9 **the Hay Library. I've never seen them. So I don't**
 10 **know when they're prepared.**
 11 Q. (By Ms. Labinger) When you say "they're
 12 put in the Hay Library," is that a public location?
 13 **A. It's one of Brown's libraries where we**
 14 **keep university archives.**
 15 Q. But can anybody go and read the minutes?
 16 **A. No.**
 17 Q. That's what I wanted to know.
 18 MS. KAPLAN: Nice try, Lynette.
 19 **THE WITNESS: I think they are kept**
 20 **confidential for something like 50 years or could be**
 21 **longer. There's a certain time period where they're**
 22 **sealed.**
 23 Q. (By Ms. Labinger) Well, we have requested
 24 them and I believe we're entitled to them, but they
 25 may not exist at this time. What I'm asking you was

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1 process, how did we make decisions, what went into
2 it.

3 So this letter is really -- I mean, in
4 some sense, it's -- I think if we regretted one
5 thing in the initial communication was that we
6 didn't say more about the process that went into the
7 decision-making, so this was making up for that.

8 Q. And would you agree that there's nothing
9 in this letter that indicates that you are
10 reevaluating the team lineups from the decision that
11 was announced on May 28?

12 A. No. That was not the purpose of the
13 letter.

14 MS. KAPLAN: Objection to form. By "team
15 lineups," you mean roster size, Lynette?

16 MS. LABINGER: No.

17 MS. KAPLAN: You mean selection of the
18 team?

19 MS. LABINGER: I mean just what I said.

20 MS. KAPLAN: Okay. I wanted to make sure.
21 You meant the selection of which teams?

22 MS. LABINGER: Yes. And if the witness
23 does not understand my question, I'm sure she can
24 tell me.

25 MS. KAPLAN: Well, the counsel for the

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1 witness also needs to understand your question.

2 Q. (By Ms. Labinger) "Team lineup" and "team
3 roster" are very, very different terms. All right.
4 We can take this one down.

5 Now, had you or your staff done an
6 analysis of what the percentage of women athletes
7 would be if you made no adjustments, as you've
8 indicated, and added back the men's track program?

9 A. At this point in the process, I was not
10 doing any direct work on these spreadsheets myself.
11 That was being done by the athletics director.

12 Q. Did you receive any reports, formal or
13 informal, from the athletic director as to analyses
14 of what would need to be done to achieve compliance?

15 A. He told me he could make it work. He
16 didn't say how, but he said, "With appropriate
17 roster management, we can make it work." We would
18 be in compliance with Cohen.

19 Q. Was this in a phone call or writing?

20 A. You know what? I can't remember whether
21 he told me this directly or another member of my
22 team told me this. I just don't remember.

23 Q. Would it be fair to say that during this
24 time frame, all communications were somehow virtual,
25 either by phone, Zoom, or other format, as opposed

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1 to face-to-face?

2 A. Yes. That's certainly true, yes.

3 Q. All right. So sitting here today, you
4 don't -- do you have a recollection of being
5 provided any actual numbers as to what would need to
6 be done in order to achieve compliance with the
7 restoration of the men's track program to the lineup
8 after your May 28 announcement?

9 A. No. I did not receive any specific
10 numbers. Those are kept by the athletics
11 department, and, you know, they've been managing
12 compliance issues for many years, and I trust them
13 to do it accurately and well.

14 Q. When you said in your letter of June the
15 6th that if the men's track program were restored at
16 the current levels and no other changes were made,
17 Brown would not be in compliance with the legal
18 obligations under the settlement agreement, what
19 data did you have in mind at that time?

20 A. I don't remember specific data or what
21 spreadsheet was being looked at at that point, but,
22 you know, we were really looking at could we achieve
23 this plan of ideal roster sizes for men's and
24 women's teams and bring men's track, field, and
25 cross country back in.

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1 And as I said before, Jack determined that
2 it would be -- we would not be in compliance with
3 the 2.25 under ideal roster sizes, but we could be
4 with some modifications to men's rosters.

5 Q. So at the time that Brown -- withdrawn.
6 Did you consider at all -- I'm sorry. I'm
7 going to withdraw that one too.

8 When you say "roster management," what
9 does that mean to you?

10 A. Well, in the context of the Cohen
11 agreement, it means keeping men's rosters small
12 enough to meet the requirements given the teams we
13 have.

14 Q. It doesn't mean adding women to teams
15 beyond their natural sizes?

16 A. No.

17 Q. And I think we explored this once before,
18 but you could achieve the same result by having
19 added back in a women's team, correct?

20 A. That's correct, but the whole objective of
21 this was to reduce the number of teams at Brown
22 because we have too many. We had too many and we
23 needed to reduce the number. So that was not
24 something that I wanted to do.

25 Q. I appreciate that, but you actually would

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1 Q. All right. So was this -- was this
2 considered an actual meeting of the corporation on
3 the 9th?
4 A. It was not a formal business meeting, no.
5 MS. LABINGER: And -- I'm sorry. I'm
6 looking at the wrong one. If you could remove that
7 one and post as Exhibit 17 Bates 770 to 771.
8 MS. KAPLAN: The last two documents in my
9 pile.
10 MS. BULLOCK: Give me just one moment.
11 MS. LABINGER: Yeah. I think they're out
12 of order.
13 THE WITNESS: Okay. Well, I'll see if we
14 need to print. Oh, they're there? Great. Thanks.
15 Q. (By Ms. Labinger) That's it. Thank you.
16 A. Okay.
17 Q. Now, do you -- this was not sent to you or
18 from you, but it concerns an email to Kathryn and
19 Paula that "Chris and Kevin would like to reconvene
20 the committee following Tuesday's communication,"
21 and I take it, President Paxson, you're Chris?
22 A. Yes, I'm Chris.
23 Q. And Kevin is Chairman Mundt?
24 A. Yes.
25 Q. What was this about?

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1 A. I wanted to talk to them about the
2 possibility of reinstating men's track, field, and
3 cross country and also just touch base with them. I
4 think a lot of them -- not all of them, but some of
5 them were getting a lot of email. It was -- you
6 know, they were kind of a little rattled. Even
7 though they knew it would be difficult, I think the
8 volume left some of them kind of disturbed.
9 Q. This was sent on Monday, June the 8th, and
10 it said, "We'd like to reconvene the committee
11 following Tuesday's communication." That would be
12 June the 9th, right? So you were seeking a meeting
13 to let them know about -- to meet with them after
14 you had communicated that you were reinstating the
15 track program; is that correct?
16 A. You know, I can't remember. Yeah. I
17 don't know what Tuesday refers to, but that kind of
18 makes sense, right? I didn't write this so I didn't
19 read it until right now.
20 Q. Fair enough. Do you remember having a
21 meeting with the Mundt committee before you
22 announced the June 9 decision?
23 A. No. I remember meeting with them that
24 Wednesday just to give them a heads-up. There had
25 been a lot of communication mainly between Kevin and

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1 others with members of the corporate -- of the
2 committee, so it may be that by the time that
3 meeting happened, everybody was up to speed, but I
4 wasn't directly involved in that. I wasn't talking
5 to them.
6 Q. And did you consult with the Mundt
7 committee before you made your decision to recommend
8 to the board -- the corporation that the men's track
9 program be reinstated?
10 A. Not as a committee, per se, but there
11 was -- you know, I had been in touch with Kevin. I
12 believe he had been in touch with other members of
13 the committee. So my sense is, you know, it was
14 kind of being socialized in that group before it was
15 actually announced.
16 Q. And was there -- did the committee as a
17 group support your decision or was there a mixture
18 of responses?
19 A. No. I think they really understood, and,
20 you know, the coincidence of our announcement with
21 George Floyd's murder and the racial unrest that
22 came after that, it just felt like the right thing
23 to do, especially given what we were hearing from
24 the men's and women's track, field, and cross
25 country teams.

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1 Q. You also heard from a number of other
2 sports programs that had been cut; is that correct?
3 A. Oh, yes.
4 Q. You heard from everyone, correct?
5 A. Many emails. Many, many emails. Many of
6 them not directly to me but to my -- an email
7 account that somebody else monitors, but there was a
8 lot of email traffic, yes.
9 Q. And a lot of rancor?
10 A. Yeah, there was some rancor. There was
11 also a number of alumni who wrote saying, "This is
12 absolutely the right thing to do. Good for you."
13 Q. Did you do any kind of ratio as to how
14 many favorables or how many unfavorable?
15 A. No, didn't.
16 Q. You don't think it was equal, do you?
17 A. No, because typically the people who are
18 unhappy are the ones who are going to write, and the
19 people who think it's fine are the ones who are less
20 likely to write.
21 Q. And you heard from a number of the sports
22 programs -- withdrawn.
23 So when you had your call with the
24 corporation on June 9, what was the purpose of the
25 call? To brief them or to get their approval? Or

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1 something else?

2 A. Well, it was a little bit unclear, I

3 think. You know, they had approved a plan that

4 didn't list specific sports, and I talked it over I

5 believe with the chancellor or with Russell Carey,

6 who's one of my staff members -- I can't remember

7 which one -- and determined that we did not need a

8 formal corporation vote on a change.

9 The corporation wouldn't normally be

10 voting on, you know, smaller appraisal issues, and

11 this would fall under that. So it was more just to

12 talk to them, get a sense of where they were, see if

13 they were on board, without a formal vote.

14 Q. Do you know whether you had a quorum of

15 the corporation on the call?

16 A. I don't remember. I don't remember. It's

17 hard to tell with a Zoom call, but my recollection

18 is that it was pretty well attended.

19 Q. Do you know how many are on the

20 corporation?

21 A. It's 52.

22 Q. Five two?

23 A. Yes. It's very large.

24 Q. And do you know what a quorum is?

25 A. No.

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1 Q. Is it just basically 50 percent plus one?

2 A. I have no idea.

3 Q. Someone else is in charge of determining

4 that?

5 A. Yes. We've never been in a position of

6 having a business meeting with -- we have very good

7 attendance so it's never been relevant.

8 Q. And is it -- there's two groups, right?

9 There's trustees and fellows. So do they have to

10 have a certain amount of each to meet the threshold?

11 A. I don't know.

12 Q. Okay.

13 A. Yeah. I just don't know.

14 Q. So was there any kind of a vote or

15 resolution made at that time to approve reinstating

16 the men's track program?

17 A. No. There would only have been a vote if

18 it was a formal business meeting, and there are

19 rules about advanced notice and agendas and, you

20 know, we had not established it as a formal business

21 meeting.

22 Q. So it was just an update?

23 A. It was a conversation.

24 Q. Was there any discussion about the need to

25 revisit the fraction of the women's program produced

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1 by reinstating the men's track program?

2 A. I don't have any specific recollection of

3 the conversation. You know, we certainly would have

4 assured the corporation that we would be able to

5 remain in compliance with Cohen with the change.

6 Q. And by the time you had that call, had you

7 conducted any analyses or seen anything that Jack

8 Hayes had referred to in your previous conversation

9 where he said, "We can make it work"?

10 A. No, I hadn't.

11 Q. Now, did there come a time after June 9

12 that you actually were presented with any analyses

13 from Jack Hayes or other individuals to show how

14 Brown was going to make the compliance happen with

15 the track program restored?

16 A. No, I never saw any data tables on that.

17 As I said before, you know, Jack is athletics

18 director. His job has been roster management for

19 years. And when he says he can make it work, I

20 trust him.

21 Q. So as you sit here today -- we saved a lot

22 of questions. Is that the same answer, that you

23 have not reviewed the analytics to see how Brown is

24 going to make this work?

25 A. I have not.

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1 Q. Thank you. I can certainly put an X

2 through a whole bunch of the page. Did Mr. Hayes or

3 anyone else report to you what percentage of women

4 were expected to be part of the remaining varsity

5 teams under this new make-it-work analysis with

6 men's track restored?

7 A. No. I wasn't given any specific numbers,

8 but I was assured that it would be within the

9 required new band for Cohen.

10 Q. Was there any consideration of reinstating

11 some or all of the women's teams to improve the

12 fraction of women participants and allow for more

13 room in the undersized men's sports once you decided

14 to reinstate the men's track program?

15 A. No. There was none. I had a discussion

16 with Jack Hayes, who said that if we did need to

17 make further adjustments in teams down the road, we

18 were confident we could do it right away. His

19 recommendation would be to reduce -- take out

20 another men's team. Of course, this was all

21 theoretical because we knew we could meet the

22 targets immediately.

23 Q. As we sit here today, are there any

24 considerations or plans at Brown to restore any of

25 the eliminated men's or women's varsity programs or