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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

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

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: 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

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**39**

**40**

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13	<b>REPORTER'S NOTE:</b>	
14	<b>Exhibits were marked electronically and attached to</b>	
15	<b>the electronic transcript.</b>	
16	<b>(ph) indicates a phonetic spelling.</b>	
17	<b>[sic] indicates the text is as stated.</b>	
18	<b>Quoted text is as stated by the speaker.</b>	
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1                   **VIDEOGRAPHER:** On the record beginning the  
2 video deposition of Christina Paxson requested by  
3 the plaintiffs in the matter of Amy Cohen, et al.,  
4 plaintiffs, versus Brown University, et al.,  
5 defendants, in the United States District Court, the  
6 District of Rhode Island, Case Number  
7 92-CV-0197-JJM-LDA.

8                   Today's date is August 14th, 2020, and the  
9 approximate time is 8:03 a.m. Central Time. This  
10 deposition is being conducted via Zoom video  
11 conference in remote locations. My name is Amy  
12 Cooper, certified legal videographer of Fidelity  
13 Video Services, Incorporated, West Des Moines, Iowa.  
14 Counsel will please identify themselves for the  
15 record.

16                  **MS. LABINGER:** I'm Lynette Labinger, one  
17 of the attorneys for the plaintiffs, and I will be  
18 conducting today's deposition with the assistance of  
19 Lori, who will be managing the exhibits.

20                  **MS. BULLOCK:** Lori Bullock, one of the  
21 plaintiffs' attorneys as well.

22                  **MR. BRYANT:** Arthur Bryant, one of the  
23 plaintiffs' attorneys. I'll just be attending and  
24 observing.

25                  **MS. KAPLAN:** For defendants, Roberta

1 Kaplan of Kaplan Hecker representing President  
2 Paxson, and I'm here with my colleague Matthew  
3 Craig.

4 MS. GOLDGEIER: I'm Eileen Goldgeier, vice  
5 president and general counsel for Brown.

6 MR. CORRENTE: Robert Corrente, also  
7 counsel for Brown.

8 THE WITNESS: Did you hear Robert  
9 Corrente?

10 MS. LABINGER: Yes, we did.

11 THE WITNESS: Okay. Thank you.

12 MS. LABINGER: And he's in the room with  
13 you, Doctor?

14 THE WITNESS: Yes, he is in the room with  
15 me and he is trying to get connected to Zoom, and  
16 hopefully he'll be in the meeting soon.

17 MS. KAPLAN: I have one question for the  
18 court reporter. In terms of the video recording, I  
19 assume that you're just recording President Paxson,  
20 like as in a regular deposition?

21 VIDEOGRAPHER: Yeah. This is Amy, the  
22 videographer. Yes, I'm only recording the witness.

23 MS. KAPLAN: Thank you.

24 MS. LABINGER: And when the screen is  
25 shared for an exhibit, will that be shown as well?

1                   VIDEOGRAPHER: Yes.

2                   MS. KAPLAN: Thanks for raising that,  
3 Lynette. Did you guys email the exhibits?

4                   MS. BULLOCK: Yeah. You should have  
5 gotten an email from my paralegal.

6                   MS. KAPLAN: Let me look.

7                   MS. LABINGER: It was a really big PDF  
8 file so hopefully it went through.

9                   MS. KAPLAN: Yeah, I've got it. Bob and  
10 President Paxson, do you have it?

11                  THE WITNESS: I didn't get anything.

12                  MR. CORRENTE: I just got it at 9:01.

13                  MS. LABINGER: Well, we would prefer that  
14 the witness gets the documents as they're presented  
15 to her. They're for your -- as a courtesy to you.

16                  MS. KAPLAN: Yeah, but we still need to  
17 print them because she wants to be able to see the  
18 whole document rather than just the page on the  
19 screen. Why don't you give us five minutes and have  
20 her print them and we can start.

21                  MS. LABINGER: We can stay on the line and  
22 do some preliminaries while someone else is printing  
23 them.

24                  MS. KAPLAN: Bob and President Paxson --  
25 that's what I'm checking. Is that possible?

1                   THE WITNESS: We can print things in my  
2 office right here, but I don't have anything in my  
3 inbox.

4                   MS. LABINGER: You wouldn't. It would  
5 have gone to your lawyers.

6                   MR. CORRENTE: I'll forward mine to the  
7 president.

8                   THE WITNESS: Okay. Let me get them.

9                   MS. LABINGER: I'm just going to put some  
10 paper in my printer because it's 126 pages.

11                  MS. KAPLAN: I'm okay with doing  
12 preliminaries while it's printing, but let's just  
13 make sure it's actually printing.

14                  THE WITNESS: Well, it's not printing  
15 because I don't have it and I'm in my office so if  
16 someone can forward it to my --

17                  MS. KAPLAN: Sure. I'll forward it to you  
18 right now.

19                  THE WITNESS: Thank you.

20                  VIDEOGRAPHER: While we're waiting for the  
21 printer, should we establish on the record that  
22 Sonya can administer remotely?

23                  MS. BULLOCK: Yeah.

24                  MS. LABINGER: We need the deponent back  
25 on view before we do that.



1                   THE WITNESS: And the problem is I'm the  
2 one who's printing so we're going to have to wait  
3 just a minute.

4                   MS. KAPLAN: Just got sent out of my  
5 outbox, President Paxson.

6                   THE WITNESS: Okay. Eileen, the other  
7 thing is can you print in your office?

8                   MS. KAPLAN: I sent it to Eileen as well.

9                   MS. GOLDGEIER: I can't from this office.

10                  THE WITNESS: It hasn't come in yet. It  
11 must be huge.

12                  MS. KAPLAN: Yeah, it's big.

13                  THE WITNESS: Do you want to get started  
14 and give it, like, three minutes and then I can see  
15 if it's come in and I can get it started printing?

16                  MS. BULLOCK: Yeah. I'll be running the  
17 exhibits so I'm happy to scroll down slowly so that  
18 you can see the entire document if it doesn't get  
19 printed here, you know.

20                  THE WITNESS: Okay. Perfect.

21                  MS. KAPLAN: We'll get it printed one way  
22 or -- you know, old ladies like President Paxson and  
23 I prefer to see things on paper.

24                  THE WITNESS: Yeah.

25                  MS. KAPLAN: We'll manage to get it done,

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

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.

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?

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

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?

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

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



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

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

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

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

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

1 and legal obligation to offer proportional  
2 opportunities to participate in athletics for women  
3 and men at Brown because of federal Title IX  
4 regulations and a 1998 legal settlement (settling  
5 the 1992 Cohen v Brown lawsuit) that established  
6 firm standards. For this reason, gender equity  
7 played a large role in the committee's  
8 considerations."

9 Q. Do you agree that you made those public  
10 statements?

11 A. Yes.

12 Q. And did you participate in the drafting of  
13 those statements?

14 A. I participated, yes.

15 Q. And do you agree that you made those  
16 statements in the hope, among other things, that  
17 members of the greater Brown community would be  
18 convinced of Brown's commitment to gender equity not  
19 just because it was court ordered but because it is  
20 the right thing to do?

21 A. I was providing a statement of fact and  
22 also of what Brown believes is the right thing to  
23 do. Again, I don't know whether I thought I needed  
24 to persuade the community of that, but I wanted to  
25 establish it.

1           Q.    You wanted to establish on record that  
2   that was Brown's position?

3           A.    Yes.

4           Q.    Do you agree that at the same time that  
5   you made those public statements, in private you  
6   agreed with the chancellor of Brown University that  
7   the consent decree and the constraints imposed by it  
8   were like a plague at Brown that you hoped to get  
9   rid of?

10          A.    I don't recall the "plague at Brown"  
11   language, but if you show me a document, you could  
12   jog my memory.

13          Q.    Certainly. Can you mark Exhibit 3,  
14   please?

15                MS. KAPLAN: Can you guys help me, give me  
16   the Bates number or something on this one?

17                MS. LABINGER: 26044. Lori, why don't you  
18   scroll all the way down or make it smaller so you  
19   can see the Bates number. That's not showing up on  
20   mine. I'm not sure why. Can you -- thank you.

21                MS. KAPLAN: We're marking this email as  
22   Exhibit 3?

23                MS. LABINGER: Yes.

24                MS. KAPLAN: Do you want to identify it  
25   for the record just so it's clean?

1                   MS. LABINGER: Can you scroll it back up,  
2 please?

3           Q.    (By Ms. Labinger) Doctor Paxson, I'm  
4 showing you an email thread of an email from Samuel  
5 Mencoﬀ of June 4 to you and your response of June 5  
6 to him. Do you recognize this email thread?

7           A.    Yes, I do.

8           Q.    I would ask you to read the marked portion  
9 of Chancellor Mencoﬀ's statement to you of June 4,  
10 2020.

11          A.    "But here's an idea. Could we use this  
12 moment, where anger and frustration, especially from  
13 track and squash, are intense and building to go  
14 after the consent decree once and for all? Could we  
15 channel all this emotion away from anger at Brown to  
16 anger at the court and kill this pestilent [sic]  
17 thing? The argument would be that the consent  
18 decree is forcing us to eliminate these sports, and  
19 the court would then be bombarded with emails and  
20 calls as we are now. We would be aligned then with  
21 all who oppose us now.

22                   I have asked Jack to analyze weather if we  
23 were no longer subject to the consent decree and had  
24 latitude to operate within the bands of our Ivy  
25 peers, we could achieve the roster size realignment



1     that we are seeking even while retaining track, for  
2     example. We might be able to get to the same place  
3     in a different way. I'm not suggesting a change in  
4     strategy, but it would be worth knowing what our  
5     options are."

6           Q.     Did you receive this message?

7           A.     Yes, I did.

8           Q.     And it came from the chancellor of Brown,  
9     correct?

10          A.     Correct.

11          Q.     And you responded the next day, correct?

12          A.     Was it the next day? Yes, it was the next  
13     day.

14          Q.     Would you read the marked portion?

15          A.     "I spoke with Jack about this. I think  
16     it's a good idea. He is talking with Eileen, and I  
17     will follow up. This might be the perfect moment to  
18     petition the court to get us out of this agreement,  
19     which would let us restore men's track, field, and  
20     cross country and still remain in compliance with  
21     Title IX. The question would be how quickly can we  
22     do this."

23          Q.     And, for the record, Jack is the athletic  
24     director, Jack Hayes?

25          A.     That's correct. Jack Hayes.

1           Q.     And Eileen is Eileen Goldgeier, the  
2     general counsel of Brown?

3           A.     That's correct.

4           Q.     Do you agree that you made those private  
5     statements?

6                   MS. KAPLAN:   Private statements in this  
7     email?

8           Q.     (By Ms. Labinger) Statements in the email.

9           A.     I wrote that email.

10          Q.     Do you agree that in your response you  
11     made clear that you're actually opposed to the  
12     consent decree and want to get Brown out from under  
13     it?

14          A.     The consent decree --

15          Q.     That's a yes or no, President.

16                   MS. KAPLAN:   No.   No, it's not a yes or  
17     no, Lynette.   She can answer the question any way  
18     she wants.

19                   MS. LABINGER:   Are you directing her not  
20     to answer?   This is the defendant, and this  
21     deposition can be used in lieu of testimony in  
22     court.

23                   MS. KAPLAN:   I'm not directing her not to  
24     answer.   I'm directing her to answer using her  
25     words, which she's entitled to do.

1                   MS. LABINGER: You read the question back,  
2 please. I'm asking the stenographer. To have it  
3 clearly in front of you.

4                   (The requested portion of the record was  
5 read.)

6                   THE WITNESS: What I make clear is that I  
7 think Brown, both men and women athletes, would be  
8 better off without the consent decree, and that was  
9 my intention when I wrote this.

10           Q.     (By Ms. Labinger) And how would women  
11 athletes be better off without the consent decree?

12           A.     Well, two things. One, it became really  
13 clear in the debates about track, field, and cross  
14 country, men's track, field, and cross country, that  
15 eliminating that team would actually hurt the  
16 women's track, field, and cross country team. There  
17 was a large outpouring from the women, and because  
18 of Ivy rules, they would have lost some coaching  
19 support, so that would have been a problem.

20                   I think more broadly, the consent decree  
21 has really made it very difficult to manage Brown  
22 athletics for 22 years, and the athletics department  
23 is involved in, you know, very painstaking roster  
24 management, which none of our peers have to do.

25                   I fully, fully believe in equal

1 opportunities for men and women in varsity  
2 athletics, but the consent decree adds an extra  
3 layer of obligations that are -- that are -- that  
4 add layers of difficulty that our peers don't have  
5 to contend with.

6 Q. Are you aware that nothing in the consent  
7 decree requires Brown to engage in roster  
8 management?

9 MS. KAPLAN: Objection to form. You can  
10 answer.

11 THE WITNESS: The consent decree requires  
12 that we maintain a very narrow band of  
13 proportionality between men's and women's sports,  
14 not only on the first day of the season but on  
15 average over the course of the season, and because  
16 the band is very narrow, 3 and a half percent, now  
17 2.25 percent, it necessitates careful roster  
18 management to make sure that we stay within that  
19 band.

20 Q. (By Ms. Labinger) Well, isn't that the  
21 case only if you don't have enough women's teams?

22 A. No, that's not the case only if we don't  
23 have enough women's teams.

24 Q. If you added another women's team and  
25 increased the number of women athletes so that they

1 more fully represented their proportion in the  
2 undergraduate enrollment, then you would not have to  
3 limit the number of men on the men's teams; isn't  
4 that correct?

5 A. There are many ways to comply with the  
6 consent decree, and my reading of the original  
7 opinion in that case was that Brown had leeway to  
8 choose any way that it wanted to comply.

9 Q. And --

10 A. And that could mean adding women's teams.  
11 It could mean subtracting men's teams. It could  
12 mean managing the rosters of men's teams to make  
13 sure that we remain in compliance.

14 Q. Do we have a stray phone?

15 A. Yes. I said that Bob Corrente is trying  
16 to get attached to the internet, and so -- did you  
17 get that? Oh, well, then give me my phone. I'll  
18 turn it off. That's why I turned it on. Okay.  
19 Sorry.

20 Q. So you agree with me that Brown had many  
21 ways to address compliance with the consent decree  
22 and it's the one who chose roster management?

23 A. Well, we have over the years done other  
24 things. I added a women's team. I added women's  
25 rugby, and I was proud to do that, but we have used

1 a variety of strategies over the years. I don't  
2 know what strategies were used before I became  
3 president, but, yes, different strategies have been  
4 used to comply because compliance is important.

5 MS. KAPLAN: Ms. Labinger, I think it  
6 might be a good time so we can just settle this  
7 issue up concerning the documents, we take a  
8 five-minute break.

9 MS. LABINGER: I'm right in the middle of  
10 my examination. I would like --

11 MS. KAPLAN: I know, but we would like to  
12 have the exhibits. I don't think President Paxson  
13 has the written exhibits, and we'd really like to  
14 have them. So we got them two minutes after the  
15 deposition was supposed to start, so we should have  
16 at least five minutes to print them.

17 MS. LABINGER: Are they printing now?

18 MS. KAPLAN: I don't know that. I can't  
19 find out because we're doing the questioning.  
20 That's what I want us to have five minutes to figure  
21 out.

22 MS. LABINGER: I am right in the middle of  
23 questioning, and I have not seen any difficulty with  
24 dealing with this. We can take a break after I  
25 finish this line of questioning.

1                   MS. KAPLAN: How much longer is this line  
2 of questioning?

3                   MS. LABINGER: Maybe five minutes.

4                   MS. KAPLAN: Okay. Let's do that.

5           Q. (By Ms. Labinger) Would you agree with me  
6 your public statement on June 6th, 2020, which we've  
7 marked as Exhibit 2, that in your public statement,  
8 you did not express your actual opposition to the  
9 consent decree because you did not want the public  
10 to know how you really feel about the consent  
11 decree?

12           A. I think how I feel about the consent  
13 decree is completely irrelevant. We comply with it.  
14 We have for 22 years, and we continue -- and we will  
15 continue to comply with it as long as it exists.

16           Q. Well, I appreciate that you don't think  
17 it's relevant, but ultimately it's the court's  
18 decision so I'm going to ask you to answer my  
19 question.

20           MS. KAPLAN: She answered your question,  
21 Lynette. Your question was why she didn't include a  
22 statement about that, and she said she didn't  
23 because she didn't think it was relevant.

24           MS. LABINGER: Now, I am going to ask that  
25 you do not advise your client on the record because

1     that was not my question.

2                   MS. KAPLAN: I'm not advising. You  
3     suggested her answer was nonresponsive. It was  
4     completely responsive to your question.

5                   MS. LABINGER: Her answer was that her  
6     opinion was not relevant. I asked her about her  
7     motivation. She said her motivation was not  
8     relevant. She did not tell me what her motivation  
9     was. I would ask the court reporter to read the  
10    question back, and I would ask counsel not to engage  
11    in argument, which signals to the witness what you  
12    want her to do.

13                  MS. KAPLAN: Ms. Labinger, let me just be  
14    very clear. If ever I've had a witness in my life  
15    who does not need help testifying, it's President  
16    Paxson, number one, but what you're doing here is  
17    telling her that an answer is not responsive when it  
18    was, and I have every obligation, so that the record  
19    is clean, when she gives an answer that is  
20    responsive and you try to say that it's not, to say  
21    that it was.

22                  MS. LABINGER: Can we read the question  
23    back, please?

24                  (The requested portion of the record was  
25    read.)



1                   MS. LABINGER: I'm going to move to strike  
2   that answer as not responsive and ask that you read  
3   the question again to the witness.

4                   MS. KAPLAN: I'm going to stand by my  
5   objection. That answer is completely responsive to  
6   your question. Again, I don't understand what  
7   language that answer is not responsive. You asked  
8   her how she feels, and she says why she didn't talk  
9   about how she felt in her statement and she said, "I  
10   think how I feel is irrelevant." She responded --

11                  MS. LABINGER: I'm sorry. That was not  
12   the question so let's read the question back.

13                  (The requested portion of the record was  
14   read.)

15                  MS. KAPLAN: If there's anything you want  
16   to add to your answer, President Paxson, feel free,  
17   but you've answered the question.

18                  THE WITNESS: I would add to the answer  
19   that I did not mean to mislead the public in any  
20   way. I thought that my personal feeling about the  
21   consent decree was not relevant for the public, who  
22   was reading the letter, because we fully intended to  
23   continue to comply with the consent decree.

24                  Q.    (By Ms. Labinger) Would you agree with me  
25   that you told the chancellor and Kevin Mundt, the

1 chair of the Committee on Excellence in Athletics  
2 Initiative, that you were not going to share with  
3 the public how you really feel about Brown's  
4 commitment to comply with the consent decree?

5 A. I don't recollect that. If you want to  
6 point me to a specific document, I'd be glad to be  
7 refreshed.

8 Q. Certainly. Let's mark 261.

9 MS. KAPLAN: Before we mark, this is the  
10 perfect place to break.

11 MS. LABINGER: No, it's not.

12 MS. KAPLAN: Lynette.

13 MS. LABINGER: I'm sorry.

14 MS. KAPLAN: She'd like to get the  
15 document. She'd like to see it in a document.

16 MS. LABINGER: It is right on the screen  
17 and --

18 MS. KAPLAN: No, but on the screen she  
19 can't see the whole context. She's entitled to see  
20 the whole exhibit. Please just wait five minutes.  
21 We will see if we have the documents. This is not  
22 our fault. You sent them to us at 9:02 a.m. So  
23 let's just take a five-minute break is what we just  
24 agreed to, and let's see if Mr. Corrente and the  
25 president have managed to get them printed. That's

1 all I ask.

2 MS. LABINGER: I agreed to take the break  
3 after this line of questioning, which is about to  
4 conclude if you stop.

5 MS. KAPLAN: I would like the document, so  
6 what's the Bates number on this document? We're not  
7 doing documents just on TV. What's the Bates  
8 number?

9 MS. LABINGER: 26190. It's about three  
10 sentences long.

11 MS. KAPLAN: So let's do it the proper  
12 way. Let's identify it for the record, and then you  
13 can ask a question. This is now Exhibit 4?

14 Q. (By Ms. Labinger) 4. President Paxson,  
15 I'm posting on the screen sharing Exhibit 4, which  
16 is Bates marked 26190. It's an email message -- or  
17 purports to be an email message from you to Samuel  
18 Mencoﬀ and Kevin Mundt. Samuel Mencoﬀ is the  
19 chancellor, correct?

20 A. Yes.

21 Q. Kevin Mundt is the person you appointed as  
22 chair of the excellence in athletics initiative  
23 committee; is that correct?

24 A. That's correct.

25 Q. All right. Did you send them this email

1 on June 9?

2 A. Yes.

3 Q. Would you read the marked portion of the  
4 email?

5 A. "Sam, Kevin, I wanted you to see the  
6 letter that we intend to send out after the students  
7 are told about reinstating men's track, field, and  
8 cross country. I expect both of you may have wanted  
9 us to be more explicit about our intention to fight  
10 the consent decree. Our concern is that this could  
11 rile up the Cohens of the world and put us in a  
12 defensive posture. We need space to work out a  
13 rock-solid legal strategy and then go on the  
14 offensive. That said, I'd really value your  
15 reaction to the letter. Thanks."

16 Q. Did you send that email?

17 A. Yes, I did.

18 Q. Do you agree that you made those private  
19 statements?

20 A. I just agreed that I sent the email.

21 MS. LABINGER: All right. We can take a  
22 break now.

23 MS. KAPLAN: Terrific.

24 VIDEOGRAPHER: Off the record at 8:43 a.m.

25 (Recess taken from 8:43 to 8:46 a.m.)

1                   VIDEOGRAPHER: On the record at 8:46 a.m.

2           Q.    (By Ms. Labinger) All right. We took a  
3 short break, and, President Paxson, do you now have  
4 the printout of the documents?

5           A.    Yes, I do.

6           Q.    Have you ever had your deposition taken  
7 before?

8           A.    Yes, I have.

9           Q.    I just want to remind you of a few items  
10 to cover. As the court reporter said, because of  
11 the microphones, we need to each talk separately,  
12 and I would ask that you also give your attorney an  
13 opportunity to state her objections. Do you  
14 understand that unless she directs you not to answer  
15 a question that you should go ahead and answer it?

16          A.    I understand that.

17          Q.    And I don't want to insult you because  
18 you're probably smarter than the rest of us in the  
19 room all together, but I ask you not to answer a  
20 question that you do not understand, okay?

21          A.    Okay.

22          Q.    I'd ask you if you do not understand a  
23 question to ask me to say it another way because if  
24 you answer the question, we'll assume that you  
25 understand, okay?

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.

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

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?



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.

1           A.     Yes.    No.

2           Q.     Back in the '90s?

3           A.     I did not review those documents.

4           Q.     And were you asked to search for any  
5 records in connection with -- your records in  
6 connection with today's deposition?

7                   MS. KAPLAN: Hold on. Hold on, Chris.  
8 Objection to form. You mean in connection with the  
9 production in this case or in connection with --

10                   MS. LABINGER: Yes.

11                   MS. KAPLAN: You asked in connection with  
12 the deposition.

13                   MS. LABINGER: Sorry. My error.

14                   MS. KAPLAN: You want to rephrase?

15           Q.     (By Ms. Labinger) Yeah. Did you make any  
16 records available to your attorneys in order to  
17 comply with production in this case?

18           A.     My attorney said that she was putting a  
19 records hold -- it turns out that all of my  
20 documents are accessible in other ways, and so I  
21 personally did not have to deliver over documents.

22           Q.     Well, that was a blessing.

23           A.     Yeah. It was. There were many of them.

24           Q.     All right. So whatever came through came  
25 from another source but under your custody, correct?

1           A.     Yes.

2           Q.     Now, in December of 2019, it was decided  
3     to establish a committee on excellence -- excellence  
4     in athletics initiative; is that correct?

5           A.     That's correct.

6           Q.     And Kevin Mundt -- and we, off the record,  
7     spelled his name, M-u-n-d-t, correct?

8           A.     That's right.

9           Q.     Is he a trustee emeritus?

10          A.     Kevin is an emeritus trustee and also the  
11     chair of the athletics advisory council at Brown.

12          Q.     So I got the order wrong. What does an  
13     emeritus trustee mean?

14          A.     That's somebody who used to be a trustee  
15     that has completed his term, his or her term.

16          Q.     And can we mark as **Exhibit 5** 26993?

17          A.     Do you have that, Bob?

18                 MR. CORRENTE: I'm looking for it.

19                 MS. BULLOCK: Give me just one moment  
20     here.

21                 THE WITNESS: Thank you.

22                 MS. LABINGER: Are you going to post that?  
23     Thank you.

24                 MS. KAPLAN: I'm sorry. What number are  
25     we on? **Exhibit 5**?

1 MS. LABINGER: Yes.

2 MS. BULLOCK: Yes.

3 MS. KAPLAN: And are you marking just the  
4 cover email or the cover email and the attachments?

5 MS. LABINGER: I think the attachment is  
6 attached, is it not? Yeah.

7 MS. KAPLAN: Got it.

8 MS. LABINGER: Now, Ms. Bullock, can you  
9 scroll back up, please?

10 Q. (By Ms. Labinger) Is this a document that  
11 you prepared and shared with Kevin Mundt and  
12 Chancellor Menco in early January?

13 A. Yes, it is.

14 Q. And is this a draft -- if you could  
15 scroll, Ms. Bullock, to the next page -- of the  
16 committee on excellence in athletics that you were  
17 putting together?

18 A. It is a first draft of the committee  
19 charge.

20 Q. And so at that time -- and I'm --  
21 Ms. Bullock has the page. I've lost -- we've lost  
22 it now. If you stay right there. Would you agree  
23 with me that part of the charge was for the  
24 committee to assess existing varsity and club sports  
25 and make recommendations about which sports should

1 take on club or varsity status?

2 A. That is correct.

3 Q. And would it be fair to say that you  
4 already had a view that you wanted to reduce the  
5 total number of varsity sports to no more than 25?

6 A. I had a strong view that we needed to  
7 reduce the number of varsity sports at Brown. That  
8 was a very tentative number that was put in there,  
9 and clearly we did not land in that spot. But, yes,  
10 I wanted to reduce varsity sports at Brown.

11 Q. So the charge to the committee was not  
12 simply see whether we should reduce sports but,  
13 rather, see which ones to eliminate?

14 A. Yes, but I would also note that this is a  
15 draft charge. This is not the charge that the  
16 committee actually received. So if we want to talk  
17 about what the committee was charged with, we should  
18 look at the final committee charge.

19 Q. All right. I think we might be skipping  
20 ahead, but can we do as **Exhibit 6** Bates 533, which I  
21 believe includes the mission and charge?

22 MS. KAPLAN: 533 is the Bates number?

23 MS. LABINGER: I hope so. We're only  
24 getting half a page, Lori.

25 MS. KAPLAN: We're marking 533 through 535

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

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,

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



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

1     Brown -- there's three components to the budget,  
2     correct? There's the Brown funds, the endowment  
3     funds, and then the current donations; is that  
4     right?

5           A.     That's correct. Athletics, the team  
6     operating budgets are supported by the university, a  
7     combination of university funds, proceeds of endowed  
8     funds, as well as current-use gifts. That  
9     spreadsheet did not have any information on the  
10    broader operating expenses of the whole athletics  
11    department. It was just related to the teams  
12    themselves.

13          Q.     Right. And that was a document that you  
14    created for the committee to use, correct?

15          A.     No. I created that document originally  
16    for my own edification. I wanted to get a better  
17    understanding of what the operating budgets look  
18    like for the teams. But I made a decision early on  
19    that I did not want the committee to focus on  
20    operating budgets because they comprise only -- you  
21    know, they're not the most important issue in  
22    deciding which teams to keep as varsity or not, and  
23    discussions around budgets can go off in I think  
24    fruitless ways.

25          Q.     But you did share it with the committee,

1 correct?

2 A. I don't believe they ever saw the  
3 finance -- the finances. They were never shown  
4 that.

5 Q. Okay. And did you also have a component  
6 that identified the roster sizes of each team?

7 MS. KAPLAN: Lynette, if you don't mind,  
8 when you say "component," are you still talking  
9 about the spreadsheet or --

10 MS. LABINGER: I am.

11 THE WITNESS: So my recollection is that  
12 the spreadsheet that the committee saw -- and,  
13 again, this was being done by them by Zoom and  
14 screen share, sadly -- was that they saw a  
15 spreadsheet that showed all of the men's and women's  
16 teams, their current sizes, roster sizes,  
17 information on the number of recruiting slots they  
18 currently have, and the spreadsheet was designed in  
19 a way that you could interactively add or remove  
20 teams and see what happened to the overall balance,  
21 numbers with men and women athletes, etcetera.

22 Q. (By Ms. Labinger) And by recruiting slots,  
23 are you talking about a term that's also called  
24 support slots?

25 A. Support slots, yes.

1           Q.    And that's also sometimes called  
2 admissions slots, correct?

3           A.    That's correct.

4           Q.    Do they all mean the same thing?

5           A.    Yes. To my knowledge, they all mean the  
6 same thing.

7           Q.    And what is that?

8           A.    That means that these are athletes,  
9 student-athletes, who are accepted early decision  
10 with the idea that they are being recruited to  
11 participate in a specific sport. They also go  
12 through the standard admissions process. They have  
13 to be academically qualified to come to Brown as  
14 well.

15          Q.    And did your documents also assess the  
16 academic index of teams?

17          A.    We did not show that to the committee, but  
18 I was interested in that as well for myself. That  
19 column was not shown to the committee.

20          Q.    Thank you. And the -- that's also known  
21 as an AI, correct?

22          A.    That's correct.

23          Q.    And that's an Ivy League term; is that  
24 right?

25          A.    Yes.

1           Q.     And can you explain to me what -- how the  
2     AI functions in the Ivy League, the short version?

3           A.     The short version, and I couldn't give you  
4     the long version. And basically each school has to  
5     meet an average academic index. The AI is a  
6     combination of test scores and GPAs. I have no idea  
7     how it's calculated. And it's set for each school  
8     differently to ensure that student-athletes have the  
9     same academic background. They're not outliers in  
10    terms of their academic qualifications in the  
11    university.

12                The exception is -- so there's one average  
13    AI for the entire athletics department, although  
14    universities are free to set different AI targets  
15    for different sports. The exception is football.  
16    Football has its own AI distribution, and each sport  
17    is limited -- each university is limited to a  
18    certain number of admits within each part of the  
19    distribution. So football is treated differently.

20           Q.     So the AI measures the -- there's a range,  
21     and there's the very high academically performing  
22     and the less high academically performing?

23           A.     That's correct.

24           Q.     I didn't say low because it's Brown and  
25     everybody's performing well.

1           A.     That's right.

2           Q.     Outside of football, which has to have a  
3     balance within its own sport, do you have, like,  
4     target numbers within the Ivies that you have to  
5     have an average over all the teams so that a high AI  
6     on one sport can offset a low AI average on another?

7           A.     That's correct.

8           Q.     And that was something that you looked at  
9     and that Athletic Director Hayes looked at in  
10    evaluating the impact of cutting teams from the  
11    varsity program; is that correct?

12          A.     Well, somewhat. I think the reason to  
13    look at AI, the AI targets for individual teams can  
14    be changed over time. I don't set them. The  
15    athletics director does. But if you were to change  
16    the composition of varsity sports, you would want to  
17    go in with information about what it would mean  
18    about any AI adjustments you'd have to do on other  
19    teams.

20          Q.     And when you say that the athletic  
21    director sets the AI by teams, is that -- is it  
22    required to produce a minimum average AI across all  
23    the teams?

24          A.     It's meant to hit the Ivy AI average  
25    target.

1           Q.    And can -- is the Ivy AI target set across  
2 all sports or does it look at men and women  
3 separate?

4           A.    It's set across all sports.

5           Q.    So the committee appears to have met I  
6 guess virtually on March 10, April 17, and May 14.  
7 Do you recall those dates?

8           A.    Vaguely. I will take your word for it.

9           Q.    And I believe that May 14 was the last  
10 meeting before the recommendation went to the -- is  
11 it campus life committee?

12          A.    Yes. The committee made a recommendation  
13 to me. I took it to the corporation committee on  
14 campus life, and then it went to the corporation.

15          Q.    And the dates were -- the recommendation  
16 from the committee was May 14 to the campus life  
17 committee, which also met on May 14, correct?

18          A.    I will take your word for it. I don't  
19 remember. I don't have the dates in my head.

20          Q.    We'll just clarify that later. Because  
21 it's another document. And then it went to the  
22 corporation on May 21; is that right?

23          A.    Yes, I believe so.

24          Q.    So over the course of the committee  
25 meetings, the committee developed several things

1     that were called scenarios as to what would happen  
2     if we eliminated this sport or added that sport; is  
3     that right?

4           A.     The committee considered scenarios. After  
5     the first meeting, they charged Jack and me to come  
6     up with several scenarios based on the sense of the  
7     committee and the conversations that we'd had, yes.

8           Q.     So did you come back to the committee, you  
9     and/or -- let me withdraw.

10                  Did you come back to the committee with  
11     one scenario or more than one?

12           A.     More than one.

13           Q.     And -- I guess I'm losing something here.  
14     Right. Okay.

15                  Ms. Bullock, could you mark as **Exhibit 8**  
16     the document that starts with Bates 619? It's, I  
17     think, three or four -- it looks like three pages.

18                  Now, I'd like to note for the record that  
19     the second page -- this is not the complete  
20     document, Ms. Kaplan. If you want the complete  
21     document, we can do that, but I was trying to limit  
22     the number of pages that were --

23                  MS. KAPLAN: No problem. Can you just  
24     give me a second to find it in my pile, though?

25                  MS. LABINGER: Absolutely. It starts at



1     619. It's called Committee on Excellence in  
2     Athletics meeting, April 17. It says 2019. I think  
3     that's a typo.

4             THE WITNESS: That is a typo.

5             MS. KAPLAN: Okay. Great.

6             THE WITNESS: Do you have that, Bob? I'd  
7     like to see the whole thing. Thank you.

8             Q. (By Ms. Labinger) You want the whole  
9     document? Do you have it?

10            A. I have it.

11            Q. Great. When you say you have the whole  
12     document, you're talking about the entire pack for  
13     that meeting because --

14            A. No.

15            Q. Because I can get you that too if you'd  
16     like.

17            A. Yeah. This only has two pages --

18            Q. Correct.

19            A. -- but let's see if I need the rest.

20            MS. KAPLAN: Let's clean it up a little  
21     bit if you don't mind, Lynette. Exhibit 8 are  
22     portions from a document that has -- that says on  
23     the first page "Committee on Excellence in Athletics  
24     Meeting" but it's not the full document?

25            MS. LABINGER: That's correct. And I can

1 get you the full document if you want it.

2 MS. KAPLAN: No. I think that's fine. I  
3 just want the record to be clear.

4 MS. LABINGER: Absolutely.

5 THE WITNESS: Can I get it from my files?  
6 Would that be okay or no?

7 MS. LABINGER: Yes, and I'm going to see  
8 if I can -- do we have it -- oh, you have it some  
9 other way. Okay.

10 MR. CORRENTE: Can you just tell us what  
11 the Bates numbers are?

12 MS. LABINGER: It starts at 619.

13 MR. CORRENTE: And what are the other  
14 ones? Because I don't have those in sequence after  
15 that number.

16 MS. LABINGER: It's 619, 624, and 625.

17 MR. CORRENTE: Okay. Thank you.

18 THE WITNESS: I have it.

19 Q. (By Ms. Labinger) Super. All right. And  
20 if you want, as I'm asking the questions, if there's  
21 another page that you feel is necessary to complete  
22 your answer, we will make that part of this, an  
23 addendum, or make it part of this exhibit.

24 A. Thank you.

25 Q. I was just trying to keep it pointed. So

1 we start by saying it was April 17, 2020, correct?

2 A. That's correct.

3 Q. And the next page, which has some basic  
4 information, I'd just like the record to reflect  
5 that although it says designated confidential,  
6 because the only information here are total numbers,  
7 I believe the parties have agreed that that  
8 designation has been withdrawn?

9 MS. KAPLAN: Yeah. I'm just looking at  
10 the document, Lynette, to confirm that. And, Matt,  
11 you should look as well, but I think that is right.

12 MS. LABINGER: And I believe that's the  
13 reason that the rest of the document's not there.  
14 Just to make it simple.

15 MS. KAPLAN: Yeah. Just so I can say for  
16 the record, the confidentiality issue has to go with  
17 the -- has to do with the allotment of admission  
18 slots per team. We don't have a confidentiality  
19 objection to the total number at Brown.

20 Q. (By Ms. Labinger) Thank you. So this  
21 page, we'll just agree that that does not apply.  
22 And what I really wanted to address your attention  
23 to is the last page of this three-page document. It  
24 might not be the last page of the actual document  
25 itself, but of this excerpt. And that's a scenario

1 1, 2, and 3. Do you see that?

2 A. Yeah. The thing that is confusing me is  
3 I'm looking at the April 17th PowerPoint that was  
4 actually presented at the committee meeting, and it  
5 only has scenario 1 and 2. I think you might have  
6 an early version.

7 Q. An early version?

8 A. Yeah. That may have been edited shortly  
9 before the -- that may have been made in preparation  
10 for the committee, but I don't think it was the one  
11 that was actually presented. I think --

12 Q. Okay. So what we need to -- I mean, let's  
13 clarify. This is a document that you've seen  
14 before?

15 A. Yes.

16 Q. And you think it's a draft of the  
17 PowerPoint that was presented at the April 17, 2020,  
18 committee meeting?

19 A. Yes.

20 Q. All right. And at the one that was  
21 presented, there were only two scenarios; is that  
22 correct?

23 A. That's correct.

24 MS. KAPLAN: President Paxson, if I may,  
25 the first page of the one that was presented, was

1 the date correct, 2020? That may clear things.

2 THE WITNESS: No. It was still 2019.

3 MS. KAPLAN: Oh, it was still a typo.

4 Okay.

5 Q. (By Ms. Labinger) On the document that  
6 you're reviewing, President Paxson, does that one  
7 have any Bates stamps or is that just your internal  
8 document?

9 A. It's just an internal document.

10 Q. It's not going to be any help to us to  
11 find it in our pile of documents.

12 MS. BULLOCK: I have it, Lynette.

13 MS. LABINGER: What's that?

14 MS. BULLOCK: I have it. Hold on.

15 MS. LABINGER: Okay. All right.

16 MS. KAPLAN: Just give me a second to --  
17 was that in the pile you guys sent us?

18 MS. BULLOCK: It's not. It's Bates 493.

19 MS. KAPLAN: You want to mark that as that  
20 page? I don't have the document. You want to mark  
21 that page as Exhibit 9?

22 Q. (By Ms. Labinger) Let's make sure first,  
23 is that the correct revision, President Paxson,  
24 before we clutter the record with the wrong thing?

25 MS. KAPLAN: That page 493, is that

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.

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.

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



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.

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

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

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

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

1 email. And without telling them the purpose, he  
2 said, "You know, if you could have any roster size,  
3 what would it be?" And so the coaches' ideal is  
4 really sort of if we really did the best we possibly  
5 could for each of our teams, according to our  
6 coaches, who are the experts, what would those  
7 numbers look like.

8 Q. And that came out as the 52.9 percent; is  
9 that right?

10 A. Correct.

11 Q. Now, is it your understanding that those  
12 total numbers included a projected number for  
13 sailing, coed and women's?

14 MS. KAPLAN: Just so the record is clear,  
15 Lynette, you're talking about the 52.9 on that  
16 document?

17 MS. LABINGER: I'm talking about all of  
18 the numbers on -- in the blue chart.

19 MS. KAPLAN: Okay.

20 THE WITNESS: They're based on actual data  
21 from the women's and coed sailing teams, which have  
22 existed for years.

23 Q. (By Ms. Labinger) Well, they don't  
24 maintain separate rosters for women's and coed prior  
25 to today. Were you aware of that?

1           A.     I don't understand your question.

2           Q.     Well, as a club team, the sailing program  
3     didn't count women on the women's -- the women on  
4     the sailing program separately for women's and coed.  
5     Are you aware of that?

6           MS. KAPLAN:  Objection to the form.

7           THE WITNESS:  I'm not -- I mean, the coach  
8     of the sailing team knows how many women were on his  
9     coed teams and his women sailing team, so I assume  
10    that the numbers which came from the athletics  
11    office reflect the actual experience of the sailing  
12    teams.

13          Q.     (By Ms. Labinger) And were you aware  
14    that -- withdrawn.

15                 Did these numbers include a total number  
16    of women on sailing -- on the sailing rosters let's  
17    say for the past five years, counted once for women  
18    and once for coed?  If you know.

19          A.     That's correct.  We were following what  
20    would be the standard under EADA guidelines.

21          Q.     Did you investigate EADA guidelines  
22    yourself?

23          A.     No.  I've been told what they are.

24          Q.     Have you ever heard the term "unduplicated  
25    count"?

1           A.     Yes, I have.

2           Q.     That means you don't count the same person  
3     twice; is that correct?

4           A.     Yes.   There's a way of counting athletes  
5     duplicated and unduplicated.

6           Q.     And by counting the students as being on  
7     two teams at the same time, you are counting them  
8     twice; is that correct?

9           A.     We're counting them twice for the number  
10    of opportunities for female athletes, correct.  And  
11    my understanding is that that has been the standard  
12    in intercollegiate athletics for some time.

13          Q.     Does Harvard do that for its sailing team?

14          A.     I can't speak for Harvard, but I assume  
15    that that's how they would do it when they report to  
16    the EADA.

17          Q.     And if your understanding is incorrect,  
18    you stand corrected?

19          A.     I don't know.

20                 MS. KAPLAN:  Objection to form.

21          Q.     (By Ms. Labinger) And do you know whether  
22    Dartmouth counts its sailing team that way?

23          A.     I don't.  I have no direct knowledge about  
24    how any other college or university counts their  
25    team.



1           Q.    So what's the basis for your understanding  
2   as you described?

3           A.    Because they are different athletics  
4   opportunities. They compete in different events,  
5   and much in the same way that, you know, cross  
6   country, some of those runners also compete in track  
7   and field, they're counted as separate opportunities  
8   for women, it makes sense to do it that way.

9           Q.    And that's your personal opinion?

10          A.    My understanding of Title IX is that it  
11   refers to athletics opportunities for women and that  
12   in the EADA reporting that students who participate  
13   in multiple teams count multiple times because those  
14   are different opportunities.

15          Q.    And did you seek -- withdrawn.

16                Did you direct your legal counsel or  
17   anyone else at Brown to reach out to counsel for the  
18   plaintiffs to determine whether they would agree  
19   with your methodology of counting a new varsity  
20   team?

21          A.    No, I did not.

22          Q.    You were aware that changing -- adding  
23   varsity teams for men would cause a drop-down in the  
24   permitted variance; is that right?

25          A.    That's correct, but we were confident that

1 we could meet that target, as we have for 22 years.

2 Q. Well, you haven't always met that target,  
3 have you?

4 A. There were a few years -- since my time at  
5 Brown, we've met that target.

6 Q. And the target that you met was  
7 3.5 percent, not 2.25 percent, as the standard; is  
8 that right?

9 A. That's correct. Although in some years, I  
10 believe we've been close to or below the 2.25.

11 Q. Certainly. But that was not the  
12 measurement that you were subjected -- by "you" I  
13 mean Brown -- was subjected to, correct?

14 A. Correct. Brown was required to meet the  
15 3.5 variance prior to these changes in teams, yes.

16 Q. And did you seek an opinion from any  
17 governing entity, such as the Office for Civil  
18 Rights, as to whether counting the two teams as two  
19 separate teams would meet the Title IX requirements?

20 A. No. And, you know, one reason why we  
21 didn't feel the need to do that was -- and as you've  
22 seen in our expert witness documents, we can meet  
23 the requirements of 2.25 regardless of how you count  
24 sailing. I think it's consistent, based on my  
25 knowledge with how other schools do it, to double --

1 to count those as separate athletics opportunities,  
2 but we get -- we'll be in compliance either way. We  
3 have to be in compliance.

4 Q. When you say it's consistent with your  
5 knowledge of other schools, you're talking about  
6 sailing or just generically how other schools count  
7 opportunities on more than one sport?

8 A. Generically? You know, maybe I shouldn't  
9 say this. We did seek the advice of -- Robbie, can  
10 we talk for a second?

11 MS. KAPLAN: If it's a question about --

12 THE WITNESS: Maybe not.

13 MS. KAPLAN: Okay. President Paxson --

14 THE WITNESS: Okay. We --

15 MS. KAPLAN: If it's about privilege, hold  
16 it. We can talk about it during the break and you  
17 can decide whether to say it later. I don't want  
18 you to waive privilege.

19 THE WITNESS: It's an issue of privilege  
20 and how we got information.

21 Q. (By Ms. Labinger) But you did not  
22 investigate all of your Ivy counterparts that have  
23 sailing to determine whether they count women both  
24 as coed and as a women's team at the same time?

25 A. No, we didn't.

1           Q.     And are you aware that the sailing -- on  
2     the sailing program that the athletic department  
3     intends to count the same identical women to be  
4     members of both the coed team and the women's team  
5     at the same time?

6           MS. KAPLAN:  Objection to form, but you  
7     can answer.

8           THE WITNESS:  My understanding is that we  
9     are counting them as separate athletics  
10    opportunities because the women do not need to be  
11    identical.

12          Q.     (By Ms. Labinger) The women do not need to  
13    be identical?  So you could have -- if you have a  
14    team of 25, you could have 25 women on the -- I'm  
15    sorry.  I cannot figure out how to turn this thing  
16    off.

17          MS. KAPLAN:  At some point, I need a --  
18    way for me to say this, but I actually do need a  
19    bathroom break.

20          MS. LABINGER:  You know what?  This is an  
21    ideal time because I am being attacked by my office  
22    phone, which is -- I can't seem to turn off.  So  
23    this is a lovely time to take a break.  How long do  
24    you want, Robbie?

25          MS. KAPLAN:  10:45.  You want to say 10

1     minutes, 15 minutes?

2                   MS. LABINGER:  Let's say 11.

3                   MS. KAPLAN:  Great.

4                   VIDEOGRAPHER:  Off the record at 9:46 a.m.

5                   (Recess taken from 9:46 to 10:00 a.m.)

6                   VIDEOGRAPHER:  On the record at 10 a.m.

7                   MS. KAPLAN:  10 -- oh, you're in Iowa.

8     Sorry.

9                   MS. LABINGER:  Yes.  That's Central Time.

10            Q.     (By Ms. Labinger) Before the break, you  
11     made a reference to an expert retained by Brown?

12            A.     We consulted with an external lawyer who  
13     is an expert in Title IX.  So I clarified that I can  
14     tell you that.  Of course I can't tell you anything  
15     about the substance of those discussions.  They  
16     would be privileged.

17            Q.     And can you identify the individual,  
18     please?

19            A.     No.

20            Q.     You can't?

21            A.     I've been advised not to.  Robbie?

22            Q.     Not to identify the name of a person that  
23     you consulted with?

24                   MS. KAPLAN:  Let me -- I wasn't part of --  
25     let me -- we'll deal with that on the next break.

1 We may be able to resolve that.

2 Q. (By Ms. Labinger) Okay. So you know that  
3 Brown has also retained an expert economist to give  
4 an opinion in this case? That's not who you were  
5 referring to?

6 A. No.

7 Q. And Professor Ashenfelter, if I pronounce  
8 his name correctly, is that someone you know from  
9 Princeton?

10 A. I did know him. Ashenfelter.

11 Q. Ashenfelter. Thank you. And that's not  
12 the information that you were referring to, correct?

13 A. No.

14 MS. KAPLAN: And we may also, as I think I  
15 said -- I think I said in a letter, email, we may  
16 also have a Title IX expert in this case, but I can  
17 confirm that.

18 MS. LABINGER: Please, this is my  
19 deposition, and that has nothing to do with the  
20 questioning of this witness. I'd rather not --

21 MS. KAPLAN: Well, I'm sorry, but you were  
22 clarifying that it isn't Mr. Ashenfelter. I also  
23 want to clarify that the Title IX expert we probably  
24 will use, it's not that person either. I just want  
25 the record to be clear.

1           Q.    (By Ms. Labinger) All right. So with  
2   respect to whoever you consulted with, whatever you  
3   told them, your attorney is asserting a privilege, I  
4   take it. Let's get that clarified.

5           MS. KAPLAN: That's correct.

6           Q.    (By Ms. Labinger) So you're not going to  
7   tell me anything about the substance of any  
8   communications to that individual attorney or any  
9   information that that attorney has given to you; is  
10  that correct?

11          MS. KAPLAN: That's correct.

12          Q.    (By Ms. Labinger) So your statement that  
13  someone told you that this was okay, that was part  
14  of a privileged communication? Is that the  
15  assertion today?

16          A.    No. Not fully. The analysis of sailing,  
17  which I know you're very concerned about, we can  
18  meet the Cohen requirements even with the lower band  
19  from 3.5 to 2.25, whether or not sailing is counted  
20  as one sport or two. I believe it's appropriate to  
21  count as two, but it doesn't really matter.

22          Q.    And the basis for that statement, is that  
23  an opinion that someone has given you or your own  
24  analysis?

25          A.    That's the expert opinion's analysis, but

1 it was also our assessment prior to that.

2 Q. And when you say the expert opinion, that  
3 is someone that you consulted in this matter?

4 A. Well, the expert report -- Orley  
5 Ashenfelter's report was produced after this legal  
6 issue began.

7 Q. Okay. So you're talking about that expert  
8 report now. I'm so confused --

9 A. Yeah.

10 Q. -- what you're talking about.

11 A. Yeah.

12 Q. And that one's based on the numbers on  
13 preseason rosters, correct? If you know.

14 A. I don't know exactly what you mean by that  
15 term.

16 Q. Preseason rosters? It's the numbers that  
17 are on declarations that Brown collects before the  
18 season starts as to who might be on the team.

19 A. I don't -- I'm not sure how those numbers  
20 came up. You'd have to ask Athletics Director  
21 Hayes.

22 Q. Okay. So you don't know what the numbers  
23 are that Professor Ashenfelter relied on to project  
24 the 2020-21 participants; is that correct?

25 A. I have no direct knowledge of the data



1     that was given to him.

2             Q.     Thank you.

3             A.     Yeah.

4             Q.     And with respect to sailing, the sailing  
5     program, obviously it's never had a season as a  
6     varsity, correct?

7             A.     To my knowledge, it's always been a club  
8     sport at Brown, both women's sailing and coed  
9     sailing. It has a marvelous history, though.

10            Q.     And are you aware that the same women who  
11     sail on women's events also sail on the coed events?

12            A.     I have never looked at the data to see if  
13     that's true or not.

14            Q.     And are you aware of any woman in the past  
15     who's been on the women's sailing team who's not  
16     also been part of the coed team at the same time?

17            A.     I wouldn't have that level of detail on  
18     any of our athletes. I'm sorry.

19            Q.     Fair enough. Thank you. So I want to go  
20     back to Exhibit -- I think it's **Exhibit 10**. We were  
21     looking at page 525 of that exhibit.

22            A.     Correct.

23            Q.     And this is the report that was presented  
24     to the corporation committee on May 14, and would it  
25     be fair to say that it was your recommendation of

1    which sports to cut from the varsity lineup at the  
2    same time as adding the sailing program as a  
3    varsity? Is that correct?

4           A.    That was my recommendation at the time,  
5    yes.

6           Q.    And you had done all of your various  
7    analyses to determine a proportion of women based on  
8    this lineup, correct?

9           A.    That's correct. And, you know, if you  
10   look at the numbers in the table at the bottom, you  
11   can see that there are many different ways to do the  
12   counting depending on whether you use EADA, Cohen,  
13   whether you look at Brown five-year averages, what  
14   the coaches want. So we wanted to cover all our  
15   bases and look at all of them, and the great thing  
16   is for all of them, we would be in compliance with  
17   Cohen under the new standard.

18          Q.    And which one of those columns do you  
19   believe is what you'd call the Cohen column?  
20   Because none of them are labeled "Cohen."

21          A.    You know what? At this point, I'm not  
22   sure. I'm not sure which one. The whole treatment  
23   of track, field, and cross country is so confusing  
24   that I'm never -- I don't remember which ones are  
25   done which ways.

1           Q.     Okay. And the numbers in the four columns  
2 to the right of "Current" are all smaller than  
3 "Current" because you were measuring what things  
4 would look like with 27 sports instead of 38,  
5 correct?

6           A.     Correct.

7           Q.     And just for my clarification, because  
8 everybody seems to count the track programs  
9 differently, if you know, how many teams were you  
10 counting for track, field, and cross country for  
11 men? Is that three?

12          A.     Three, yes.

13               MS. KAPLAN: And that's, again, in  
14 reference to this chart, just so the record's clear?

15               MS. LABINGER: Yes, in reference to this  
16 chart.

17          Q.     (By Ms. Labinger) And you didn't count  
18 indoor and outdoor track as two separate sports,  
19 correct?

20          A.     No, not -- in the line that says number of  
21 sports, it treats indoor track, outdoor track, and  
22 cross country, for women in this chart because men's  
23 have been removed, as three separate sports, which  
24 is the standard in our league and I believe in the  
25 NCAA.

1           Q.    And based on your analysis in all four  
2 versions of counting, you were going to increase the  
3 relative percentage of women as compared to your  
4 overall number of athletes; is that right?

5           A.    If I understand your correction [sic], in  
6 all of these different ways of counting, we have a  
7 higher proportion of athletics opportunities for  
8 women than we currently have.

9           MS. KAPLAN: I just want to clarify. You  
10 said "If I understand your correction." I think you  
11 meant, President Paxson, "If I understand your  
12 question."

13           THE WITNESS: "If I understand your  
14 question," yes.

15           Q.    (By Ms. Labinger) All right. So it says  
16 there was a discussion at the corporation committee.  
17 Was there?

18           A.    Yes, there was a discussion. This is the  
19 campus life committee of the corporation that we're  
20 talking about, right? Are we on to the full  
21 corporation?

22           Q.    No, no. We're still on May 14 so --

23           A.    Okay.

24           Q.    Campus life.

25           A.    Yeah.

1           Q.    I apologize. I don't know what all of the  
2   terms are. Let's clarify. The campus life  
3   committee is a standing committee of the  
4   corporation; is that correct?

5           A.    That's correct.

6           Q.    As opposed to Mr. Mundt's committee, which  
7   was an ad hoc committee that the president, you,  
8   appointed?

9           A.    Yes. It was not a committee of the  
10   corporation.

11          Q.    And are the people on the corporation  
12   committee members of the corporation, the fellows  
13   and trustees?

14          A.    The campus life committee of the  
15   corporation is comprised of current corporation  
16   members. They could be fellows and/or trustees.  
17   And, in addition, the heads of each of the branches  
18   of student government, undergraduate, graduate, and  
19   medical.

20          Q.    When you say "the heads" --

21          A.    The presidents.

22          Q.    Presidents of --

23          A.    The undergraduate counsel of students.

24          Q.    So the actual students?

25          A.    Yes. They sit with the committee,

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**

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.

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.



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

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

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.

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.

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

1     whether you have any information if they've been  
2     created yet.

3           A.     So let me tell you, this -- so there's  
4     one -- well, I'll explain to you how the corporation  
5     works. There's an executive session with the  
6     president at which we discuss things without anybody  
7     else in the room, no secretary. The discussion  
8     about athletics and club sports was held during that  
9     meeting. The formal resolution was voted on at the  
10    business meeting. Those are very proforma meetings  
11    so I can assure you that the minutes would not be  
12    illuminating.

13          Q.     They wouldn't be what, please?

14          A.     They wouldn't give you any additional  
15    information over and above what's in this.

16          Q.     Do you recall there being any discussion  
17    at the board meeting concerning the lineup of the  
18    sports selected for elimination as varsities?

19          A.     This would have been at the executive  
20    session or during the formal board meeting.

21          Q.     At any time that you were present?

22          A.     So when I presented this recommendation  
23    during executive session, there was some discussion.  
24    My recollection -- and I don't recall the discussion  
25    specifically -- was that people wanted to make sure

1     that we had good things in place to support the  
2     students who would be transitioning out of varsity  
3     to club status. You know, we all recognize that  
4     this would be really hard for them.

5           Q.     It would be really what, please?

6           A.     It would be difficult for them to convert  
7     from varsity to club teams. That's one of the down  
8     sides of making any changes in athletics. So they  
9     were -- wanted to make sure that they would continue  
10    to have support in the coming years and also support  
11    if they decided to transfer.

12          Q.     And when you say it would be difficult for  
13    them, would you explain, as you understand it, why  
14    students who were being -- whose teams were being  
15    eliminated from the varsity lineup would take this  
16    as not a good thing?

17          A.     Well, I've seen changes in university  
18    athletics, college athletics, over the course of my  
19    career. I went to Swarthmore College that  
20    eliminated football. I learned about Brown's prior  
21    attempts to reduce some sports under Ruth Simmons.  
22    I've heard about Dartmouth, some other universities'  
23    experiences. And I have to say, you know, this is  
24    very sensitive. People have very strong connections  
25    to their athletics teams. We know that. On the

1 other hand, I feel strongly that the university has  
2 to be able to make changes that are in the best  
3 long-run interests of the university and of the  
4 future students who come to Brown.

5 Q. So focusing on the students who are  
6 affected, would you agree with me that this -- that  
7 the transition, as you call it, from a varsity to  
8 potentially club would not be -- you would not  
9 expect that most students would welcome that if they  
10 were a varsity athlete?

11 A. No, they wouldn't welcome that.

12 Q. And it would have a lot of impact on their  
13 competitive level and their access to trainers,  
14 conditioning, coaches, facilities, all of those  
15 things; is that correct?

16 A. Well, you put a lot of things into those.  
17 Do you want me to --

18 Q. Okay. I can take them separately.

19 A. Yeah. And it varies across teams.

20 Q. When you were directing that, the access  
21 of any teams that were removed from the varsity  
22 lineup to trainers or conditioning and Brown  
23 facilities that are extended to varsities no longer  
24 be available to members of the club teams, correct?

25 A. That's correct, and, you know, one of the



1 reasons for reducing the number of teams is that  
2 those facilities at Brown are overstressed, have  
3 been overstressed, and we needed to -- that was one  
4 of the rationales for reducing the number of teams.

5 Q. So for the continuing varsity players,  
6 they'd still have access to it, correct?

7 A. Absolutely, yes.

8 Q. The level of competition at the club  
9 level, outside of sailing, is not Division I,  
10 correct? If you know.

11 A. Well, actually for one of our teams,  
12 equestrian, they would have stayed in exactly the  
13 same league and had the same competitive  
14 opportunities because they're in a league that is a  
15 combination of varsity and club teams, so that  
16 wouldn't have changed their experience.

17 I believe for the remainder of the teams,  
18 it probably would have, but I don't know enough  
19 about, you know, who -- I don't know enough about  
20 who sailing competes against to know if -- not  
21 sailing -- skiing to know whether that would be true  
22 for skiing as well.

23 Q. All right. Well, I'll reserve the rest of  
24 this line of questioning for athletic director  
25 Hayes. Would you agree he's more knowledgeable on

1 the subject than you are?

2 A. Yes, I would.

3 Q. As a result of your presentation and the  
4 discussion, the corporation approved your  
5 recommendations; is that correct?

6 A. That's correct.

7 Q. And they made no changes in the lineup of  
8 the teams that you were proposing be eliminated from  
9 the varsity lineup or the program that you were  
10 recommending be elevated to varsity, correct?

11 A. That's correct.

12 Q. Now, let's mark as **Exhibit 13** Bates 26536.

13 MS. KAPLAN: Are you continuing the  
14 exhibit to the next page?

15 MS. LABINGER: Yes, it goes on. It does.  
16 26537.

17 Q. (By Ms. Labinger) Do you have that? Have  
18 you found that or are you looking at it on the  
19 screen?

20 A. Yes, I'm looking at it.

21 Q. All right. So is this the discussion --  
22 withdrawn.

23 Do you recognize that as an email from  
24 Athletic Director Hayes to you of May 21, 2020, at  
25 7:17 p.m.?

1           A.     Yes, but I have to say, I'm really  
2     confused by this because I remember this  
3     conversation as happening between the campus life  
4     and the corporation meeting, not after the  
5     corporation meeting. So it seems very odd to me  
6     that I see this dated with that date and that time.

7           Q.     Well, I appreciate that, but these are  
8     records that were produced by --

9           A.     Well, I understand that, but I can tell  
10    you this is not my recollection. I recollect not  
11    getting an email from Jack Hayes. I recollect  
12    getting a phone call from Jack Hayes between the  
13    time of the campus life meeting and the corporation  
14    meeting advocating for adding fencing in.

15          Q.     Well, if you read -- have you read it to  
16    yourself?

17          A.     I'm reading it now.

18          Q.     Okay. It deals with admission slots and  
19    AI, correct?

20          A.     That's correct.

21          Q.     Both of the things that you mentioned he  
22    had talked about, correct or -- withdrawn.

23                 You mentioned that he had talked about  
24    admission slots?

25          A.     That's correct.

1           Q.    And here he says, "I take full  
2   responsibility that I should have understood this  
3   calculation, but now that we are aware, before  
4   making an announcement, there is an opportunity to  
5   adjust it and better our teams. I am concerned."  
6   Do you see that?

7           A.    Yeah.

8           Q.    Does that refresh your recollection that  
9   he raised it after the corporation had taken a vote?

10          A.    Well, I just -- I don't -- my memory on  
11   this isn't great. I distinctly remember a phone  
12   call before the corporation meeting where we talked  
13   about fencing.

14                Now, this implies that he made yet one  
15   last-ditch attempt for fencing after the corporation  
16   meeting. I don't recall getting this email. I  
17   don't recall how I responded to it. But my answer  
18   would have been "Jack, the decision is made. We're  
19   done." You can ask him about it. He may remember  
20   better.

21          Q.    All right. And let's mark as 14 26538.

22          A.    Thank you.

23          Q.    And do you recognize this as another  
24   email?

25          A.    Yeah. I don't have a distinct

1 recollection of receiving it, but it clearly went to  
2 me. It went to my Gmail account, which is funny. I  
3 don't know why he would have done that.

4 Q. This is -- this document, which is  
5 slightly later in time than the one that we just --  
6 this is Exhibit 14. This follows Exhibit 13, the  
7 same evening with the same issue about admission  
8 slots and AI, correct?

9 A. Correct.

10 Q. Do you have a question?

11 A. I do.

12 MR. CRAIG: Just note one thing for the  
13 record, Lynette. Just obviously this shows the same  
14 original email from Colleen Kelly, and you will see  
15 comparing 26536 and 26538 in the two different  
16 exhibits that it appears that someone's sort of time  
17 stamp may be off on the phone. So I think that  
18 might explain some of the timing questions. You can  
19 do with it what you want, but I just wanted to point  
20 out that it shows -- I believe it shows different --  
21 the same email with two different time stamps  
22 between the two exhibits.

23 MS. KAPLAN: Well done, Mr. Craig.

24 MS. LABINGER: I'm sorry. I don't  
25 particularly need you to explain it further. That's

1 fine.

2 MR. CRAIG: Okay.

3 Q. (By Ms. Labinger) No, I don't believe that  
4 I have attached them because the content was not  
5 particularly significant, but the second one, which  
6 is Exhibit 14, refers to updated spreadsheets that  
7 apparently were forwarded to you on May 21  
8 concerning slots and AI. Do you see that reference?

9 A. Yes.

10 Q. Can you tell me what it means, if you  
11 know, "and our AI will have to up"?

12 A. I assume he meant that with the new menu  
13 of teams, because some of the teams that were  
14 converted to club status are relatively high teams,  
15 that we would have to increase AI targets for some  
16 of the remaining sports.

17 Q. And if I understand your earlier  
18 testimony, as you understand it, that is an internal  
19 decision by the athletic director --

20 A. Yes.

21 Q. -- is that right?

22 A. The average AI target for all of our  
23 teams, excluding football, is set by the Ivy League  
24 based on data on all Brown students. The athletics  
25 director makes a determination about the AI target

1     for individual teams in order to achieve the overall  
2     objective.

3           Q.     Now, I want to -- why don't we take a  
4     five-minute break.  Actually, before we take a  
5     break, does anyone want to break at some point for  
6     lunch?  Because I will not be finished that soon.

7           A.     We have lunch coming, being delivered at  
8     noon.

9           Q.     Okay.  Let's take the break at noon.

10          A.     Okay.  I'm good until then if everybody  
11     else it.

12          Q.     That's fine.  I just heard the phone  
13     ringing so I thought this might be an opportune time  
14     for a break.

15                 MS. KAPLAN:  I apologize.  That was the  
16     phone in my office, which I just have to knock off  
17     every time it rings.

18                 MS. LABINGER:  It's all right.  I have the  
19     same issue.  I wound up just unplugging mine.

20          Q.     (By Ms. Labinger) I want to return to  
21     Exhibit 2, which is your public statement from  
22     June 6th of 2020.

23          A.     Okay.

24                 MS. LABINGER:  Can you pop that up?

25                 MS. BULLOCK:  Yes.  Just give me one

1 moment.

2 MS. LABINGER: Certainly.

3 Q. (By Ms. Labinger) All right. If we can  
4 get to page 6 of 8. That's it. Could you read the  
5 marked portion at the top of the page?

6 A. Yes. "Since the announcement of the  
7 athletics initiative, there have been requests to  
8 restore men's track, field, and cross country;  
9 however, if these sports are restored at their  
10 current levels and no other changes were made, Brown  
11 would not be in compliance with our legal  
12 obligations under the settlement agreement. We  
13 continue to closely examine Brown's legal  
14 obligations."

15 Q. Is that a public statement that you made?

16 A. Yes, it is.

17 Q. And did you believe it at the time?

18 A. Yes. I still do.

19 Q. And what data were you looking at that  
20 told you that Brown could not comply with the  
21 settlement agreement if you restored the men's track  
22 program?

23 A. That's not what this says. This says that  
24 if we restored the men's track, field program and no  
25 other changes were made, and my meaning was there to



1     our plan. What we had done even before writing this  
2     letter was to go back and say okay. You know, we  
3     had hoped to increase squad sizes to the coaches'  
4     optimal level. If we restore men's track, field,  
5     and cross country, we're going to have to do some  
6     roster management, bring some of those rosters down  
7     on the men's side, and then we can comply.

8                 So those -- when I talk about no other  
9     changes were made, I'm referring a little bit  
10    obliquely to changes in roster management -- changes  
11    in roster size and roster management. We decided  
12    not to put that in the letter because it's really in  
13    the weeds, and most people wouldn't understand what  
14    we were talking about.

15            Q. At the time that you wrote this, were you  
16    already planning to restore the men's track program?

17            A. We were -- I think I was probably 90,  
18    95 percent of the way there.

19            Q. What was the purpose of writing this if  
20    you were going to restore the men's track program?

21            A. This letter is not just about the men's  
22    track program. This is an 8-page letter. And we  
23    wrote it because we were getting questions from  
24    students and parents and alumni who were involved in  
25    many different sports who were asking more about the

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

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

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.

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 wound

1 up reinstating a very large program, men's track,  
2 field, and cross country, correct?

3 A. Yes. For reasons that I think were the  
4 right reasons at the time.

5 Q. It did not fit with your goal of reducing  
6 the number of teams so that you could increase the  
7 size of the undersized men's teams; is that correct?

8 A. That's correct. When we look at this,  
9 we're weighing many, many different factors. We're  
10 looking at gender. In this case, we were looking at  
11 diversity, which was very important. So we  
12 developed a plan that, you know, didn't get me maybe  
13 to my ideal number of teams but was right for Brown  
14 and I think will be right for Brown. We'll be in  
15 compliance with Cohen and we'll have a set of teams  
16 that, you know, the university can do well and  
17 become more competitive in some, if not all, of  
18 them.

19 Q. Well, because of the roster management,  
20 you're going to have a number, if not all men's  
21 teams, that, from your perspective, are undersized;  
22 is that correct?

23 A. We'll have some that are smaller than what  
24 the coaches ideally would want, that's correct.

25 Q. All right. Let us mark as **Exhibit 15**

1     Bates 25964, which is -- goes to 25967.

2             A.     So we're just -- I'm sorry to interrupt,

3     but we're four minutes to noon. Is this -- is this

4     going to be a long set of questions or should we --

5             Q.     No. No, it's not.

6             A.     Thank you. Just checking.

7             Q.     That's fine.

8             MS. KAPLAN: This is --

9             MS. LABINGER: Sorry?

10            MS. KAPLAN: What number are we on? I

11     apologize.

12            MS. LABINGER: That's okay. 25964.

13            MS. KAPLAN: No. Which exhibit number?

14     I'm sorry.

15            MS. LABINGER: Oh. 15, I hope.

16            THE WITNESS: There's somebody at the

17     door. That's probably the food.

18            Q.     (By Ms. Labinger) Shall I wait for

19     Mr. Corrente to return?

20            A.     That would probably make sense.

21            Q.     Okay. Are we ready?

22            A.     Yes.

23            Q.     Oh. Thank you. Okay. So have you had a

24     chance to review this set of emails?

25            A.     Yes, I have.

1           Q.    And do you recall receiving -- it looks  
2   like you got the thread on Sunday, June 7 -- it was  
3   sent to you Sunday, June 7 at 11:52 from Chancellor  
4   Mencoff, and you responded on the same day at around  
5   noon; is that correct?

6           A.    That's correct.

7           Q.    Okay. So let me just ask you a few  
8   questions. Who is Rich Friedman?

9           A.    So Rich Friedman is a fellow of the  
10   corporation, and he also currently serves as  
11   secretary of the corporation.

12          Q.    And the chancellor is sharing his email  
13   from Mr. Friedman with you; is that correct?

14          A.    That's correct.

15          Q.    And did you reach out separately to  
16   Mr. Friedman about his comments?

17          A.    I don't recall that I did.

18          Q.    The bottom of page 25965, there are some  
19   redactions. Without telling me who it is, because  
20   we can deal with that later, do you recall what type  
21   of content was there?

22          A.    Well, this paragraph is talking about  
23   alumni parents who have a -- had a son on the track  
24   team, and clearly who are not happy about it.

25          Q.    Do you remember who they are?



1                   MS. KAPLAN: Objection. Don't answer that  
2 because we're keeping the identity of donors  
3 confidential.

4           Q.     (By Ms. Labinger) So, President Paxson,  
5 are all donors to Brown confidential?

6           A.     No. Donors get to choose whether they  
7 want their gifts to be made in confidence or not,  
8 and we respect the donors' wishes.

9           Q.     And a lot of donors, you know who they are  
10 because they have buildings named after them, right?

11          A.     Some of them, yes, or professorships, but  
12 many of them prefer confidentiality.

13          Q.     Okay. Sitting here today, can you tell me  
14 whether this person is someone who has asked for  
15 confidentiality?

16          A.     Yes. I know it is.

17          Q.     All right. And is this someone who has  
18 made more than a token gift to Brown?

19          A.     They had --

20                   MS. KAPLAN: Objection to form.

21                   THE WITNESS: -- made their first  
22 leadership gift shortly before the announcement  
23 about sports.

24          Q.     (By Ms. Labinger) I don't know what a --  
25 you know what that term means, "leadership gift."

1 Does that tell you about a range of amount?

2 A. It's a gift of over a hundred thousand  
3 dollars.

4 Q. Sounds more than token. And on the last  
5 page of this document, 25966, Alison's report of her  
6 discussion with \_\_\_\_ (not sure who he is), do you  
7 know who that refers to?

8 A. Yes, I do.

9 Q. And tell me something about the  
10 characteristic of that redacted individual.

11 A. That redacted individual is the same as  
12 the earlier redacted individual.

13 Q. All right. And then on the first page,  
14 25964, there's another redaction, and would it be  
15 fair to say that that relates to someone other than  
16 the donor?

17 A. You know, I don't remember. I'd have to  
18 look at the unredacted document. I assume it's  
19 about some donor or else it wouldn't have been  
20 redacted, but I don't remember who.

21 Q. So sitting here today, you can't tell me  
22 why Brown has redacted this comment; is that  
23 correct?

24 A. That's correct. I assume our attorney  
25 can.

1 Q. Well, that would be helpful. All right.

2 Let's now take that break for lunch. Do you want to  
3 do -- can we have an hour or 45 minutes?

4 A. How much longer do you think we'll need  
5 today, and how much time do we have in total  
6 allocated?

7 Q. Well, we have one day of seven hours,  
8 which I hope not to do. I would say we're -- you  
9 know, I can't promise you, but we're certainly --  
10 we've finished more than we have left to do.

11 A. Okay.

12 Q. How's that? I don't want to say halfway,  
13 but I'm just saying we're over that spot.

14 A. Would 45 minutes work for the rest of you?

15 Q. It's your call on this one.

16 A. 45.

17 Q. All right. 45.

18 MS. KAPLAN: Just to -- sorry. Go ahead.

19 VIDEOGRAPHER: Off the record at  
20 11:03 a.m. Central Time.

21 MS. KAPLAN: This is just to confirm a  
22 conversation I just had with Lynette off the record.  
23 I wanted to follow up on a question she had about  
24 Exhibit 12, and we can now confirm that that  
25 document has been de-designated and that it's no

1 longer confidential.

2 MS. LABINGER: So we're prepared to go  
3 back off the record and take a 45-minute break. Do  
4 you need to say something, Amy?

5 VIDEOGRAPHER: No. That's fine. The  
6 transcript can have that section that's not on the  
7 video.

8 MS. LABINGER: It's not on the video.  
9 Okay. That's fine.

10 (Recess taken from 11:05 to 11:51 a.m.)

11 VIDEOGRAPHER: Going back on the video  
12 record. The time is 11:51 a.m. Central.

13 Q. (By Ms. Labinger) So we had been talking  
14 about Exhibit 15, which you don't need to put back  
15 up. It's part of the time line. Which was the  
16 emails from Chancellor Menco to you and yours to  
17 him of June the 7th concerning your plan to  
18 recommend to the corporation to reinstate the track  
19 program but hold firm on everything else. And I  
20 just wanted to take you forward to -- slowly to the  
21 9th. Sorry about that.

22 A. That's okay.

23 Q. Let's look at Bates 608 to 9, which will  
24 be Exhibit 16.

25 MS. KAPLAN: Sorry. What's that number

1       again, the Bates?

2                   MS. LABINGER: 608 to 609.

3                   MS. KAPLAN: Got it.

4           Q.     (By Ms. Labinger) All right. Do you have  
5       that in front of you?

6           A.     Yes.

7           Q.     So this is a letter -- I'm sorry, an email  
8       from you to the members of the corporation dated  
9       June 4 calling for a call of the corporation on  
10      June 9.

11          A.     That's correct.

12          Q.     And at the time that you wrote this and  
13      asked for the call, were you already thinking that  
14      you were going to recommend reinstatement of the  
15      track program?

16          A.     That decision hadn't been finalized, but  
17      that's where I was heading, yes. That's my  
18      recollection.

19          Q.     So you wanted to have something set up  
20      without signaling your position at that point? Is  
21      that it?

22          A.     Well, often if I -- if I had thought that  
23      that was going to be the recommendation, I probably  
24      wouldn't put it in an email that far in advance  
25      because we like to not let things leak out.

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?

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

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.



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

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.

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

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.

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

1 to add any new varsity teams at Brown?

2 A. No.

3 Q. You're aware that Brown's position is that  
4 it has enough women in its plan program to meet the  
5 2.25 percent compliance range and that plaintiffs'  
6 position is that it needs more women or fewer men to  
7 meet that standard; is that correct?

8 A. Well, I know what our position is. I  
9 haven't seen anything written from you. But, yes,  
10 our position is that our plans, certified earlier in  
11 the summer, indicate that we can make the standard.

12 Now, I would add a caveat, which is that,  
13 as you know, sports have been canceled for the fall,  
14 probably the winter, and very likely the spring.  
15 It's going to be hard to compute a ratio of  
16 men-to-women varsity athletes because it might be  
17 zero over zero. Yeah. Sadly.

18 Q. Even I can do that without the PhD in  
19 economics.

20 A. Yeah. You can't -- that's like an  
21 undefined number, right? So it's going to be a  
22 really funny year. You know, if we end up, for  
23 example, canceling fall but doing winter and spring,  
24 we're going to have a very high fraction of women  
25 because we won't have football. So it's very hard

1 to predict how the numbers are going to go next year  
2 given COVID.

3 Q. Do you believe there is a difference  
4 between Brown's obligation of compliance with the  
5 Title IX responsibilities for proportionality and  
6 the requirements of the consent decree?

7 A. My understanding is that there is some  
8 difference because all of our peers are in  
9 compliance with Title IX. At least they haven't  
10 been found to be out of compliance. And they have  
11 very different proportionality, some of them, than  
12 we do.

13 You know, but I want to be really clear.  
14 My goal is not to look like Penn, which is I think 7  
15 or 8 percent gap between men and women. I want  
16 equal opportunities for men and women. That's my  
17 value that I bring to this. While there may be a  
18 difference between Cohen and Title IX, in some ways  
19 that's not really that relevant because it's not  
20 going to drive what we do, if that makes sense.

21 Q. It certainly was not the position  
22 expressed to you by the chancellor, was it?

23 A. Well, you know, there are various views on  
24 this. You know, I -- if you want to come back to  
25 the conversation, I think Cohen, to me, I'm not in

1     favor of it because it's very constraining. It's  
2     difficult to implement. I do not have the desire to  
3     reduce the fraction of opportunities for women.  
4     That's not my desire. And that's where I intend to  
5     stick as long as I'm president.

6             Q.     Do you have any plans at the present time  
7     to move to terminate the consent decree if you can?

8             MS. KAPLAN: I -- on this one, President  
9     Paxson, you can answer, but don't talk about it or  
10    do anything based on any conversations you may have  
11    had with your attorneys because that would be  
12    privileged.

13            THE WITNESS: I mean, so this is a legal  
14    matter. I'm not a lawyer. I don't know the law.  
15    I've never heard of a consent decree that lasts in  
16    perpetuity. But maybe there is such a thing. I  
17    think, you know, what we need to do is really sit  
18    down, get good legal advice on when it's -- when  
19    this consent decree has outlived its useful life.  
20    And I want to say that originally I think it served  
21    a useful purpose.

22            Q.     (By Ms. Labinger) Well, it ended a very  
23    contentious lawsuit which Brown had lost, correct?

24            A.     Well, I don't know whether we lost it or  
25    we settled. I wasn't here then. But what I was



1 thinking was that it ended a situation where women  
2 weren't in equal representation in athletics, and  
3 that was not a good thing. We've been in compliance  
4 for many years, and, you know, my own view is that  
5 given the -- just the onerous standards that are  
6 imposed by the consent decree that it has outlived  
7 its useful life. What I don't know is how the law  
8 works on that. That's up to the lawyers to decide.

9 Q. Were you aware that before the consent  
10 decree was entered that Brown was found to have  
11 violated Title IX by eliminating women's teams when  
12 its variance between undergraduate enrollment was  
13 between 10 and 13 percent?

14 A. I didn't know the variance numbers. I  
15 don't have that level of detail. I wasn't here  
16 then.

17 Q. Okay. Let me check something. Can we  
18 post as Exhibit 18 586 to 605?

19 A. I don't think I need this, Bob. I  
20 remember it from the meeting.

21 Q. So I have -- we've put up on the screen  
22 what's now been marked Exhibit 18, Bates 586 to 605.  
23 Do you recall participating in the Mundt committee  
24 meeting where General Counsel Goldgeier presented a  
25 PowerPoint on Title IX and the history of the Cohen

1 case?

2 A. Yes. She presented this at the first  
3 meeting of the committee on athletics excellence.

4 Q. And did you -- you attended that?

5 A. I participated by Zoom, yes.

6 Q. Okay. So if you take a look at 597,  
7 you'll see that your general counsel explained that  
8 Brown was found to have violated Title IX by  
9 demoting women's teams when there was a 10.9 percent  
10 differential between the number of women athletes  
11 and their presence in the undergraduate enrollment,  
12 which at that time was 47.6 percent, so less than  
13 today, right?

14 A. What's -- where do you see the 46.7? I  
15 see 10.9 percent differential.

16 Q. Right, but if you look at the --

17 A. Oh, yes.

18 Q. -- clear on the left.

19 A. Exactly. Yes, I see that. I had  
20 forgotten those numbers, but, yes, I see them.

21 Q. And you see that it says, "Brown was found  
22 to have violated Title IX"?

23 A. Where does it say that?

24 Q. Yeah. On the right.

25 A. Oh, yes. Okay. Got it.

1           Q.    And then on the next slide, it gives the  
2   time line where Brown was -- appealed and was found  
3   to have -- appealed the preliminary injunction, and  
4   then the slide -- the next slide, which is 599, in  
5   1996, the First Circuit upheld the judgment but  
6   reversed the remedial order and gave Brown the  
7   opportunity to develop its own plan?

8           A.    Mm-hmm.

9           Q.    Okay.  That's a yes, correct?

10          A.    I'm reading so please let me -- I  
11   didn't --

12          Q.    Take your time.

13          A.    I didn't read this in detail at the time  
14   so I just want to read it.

15          Q.    Okay.

16          A.    Yes, it stresses that academic --  
17   universities deserve great leeway in their  
18   operations, and so it's up to Brown to make the  
19   determination in how it can bring itself into  
20   compliance.

21          Q.    Right.

22          A.    Yeah.

23          Q.    So does this refresh your recollection  
24   that back in the '90s, Brown was found to have  
25   violated Title IX and the agreement was how to come

1     into compliance?

2             A.     It does refresh my recollection, yes.

3     Thank you.

4             Q.     And on page 601, it says that the  
5     agreement was indefinite in duration and contains  
6     mechanism to bring Brown back into compliance if the  
7     allowable variance is exceeded, correct?

8             A.     That's correct.

9             MS. LABINGER:   Now, this is primarily for  
10    Ms. Kaplan.   The last page, it has nothing to do  
11    with this inquiry today, and if you agree, we can  
12    redact that page to just a white sheet with the  
13    Bates number on it.

14            MS. KAPLAN:   You're talking about the  
15    pending Title IX matter?

16            MS. LABINGER:   Yes.

17            MS. KAPLAN:   We may not even need to do  
18    that.   Let me get back to you on that, Lynette.

19            MS. LABINGER:   All right.   I'm going to  
20    leave that one up to you, but I do not want portions  
21    of this deposition designated confidential because  
22    of that page.

23            MS. KAPLAN:   That's a fair request, and  
24    we'll get back to you, but I'm not even sure you'll  
25    need to do that.

1 MS. LABINGER: Super.

2 Q. (By Ms. Labinger) So did you ever, during  
3 this process where you felt constraints or received  
4 complaints of constraints by your corporation, your  
5 chancellor, or others, as to how Brown was complying  
6 with the consent order to reach back out to  
7 plaintiffs' counsel to discuss ways to remain in  
8 compliance and still serve the interests of all the  
9 parties? At any time?

10 A. You know, I have to be honest, and you and  
11 I haven't met until today. It never crossed my  
12 mind. I didn't know your name. I thought you were  
13 in Boston. I didn't know you were here in  
14 Providence.

15 And, you know, my reading of the consent  
16 decree, which I have read, you know, made it very  
17 clear it was up to us to make sure we were in  
18 compliance, and so I went into this process  
19 determined to make changes that would make Brown  
20 athletics better but that would keep us in  
21 compliance. That's our duty. So the conversation  
22 didn't seem like it -- a conversation never would  
23 have made sense to me or even -- I never thought of  
24 it.

25 Q. So did anyone within Brown advise you that

1 over the years, at times when Brown was either out  
2 of compliance or feared that it might fall out of  
3 compliance, they were required to and did reach out  
4 to plaintiffs' counsel to discuss the circumstances  
5 and how to fix it?

6 A. I knew that there had been interaction  
7 between our counsel's office and your office over  
8 the years, but in this case, we did not think that  
9 we were at risk of being out of compliance. We  
10 developed a plan that would keep us in compliance.

11 Q. And that plan kept changing; is that  
12 correct, until --

13 A. It kept changing, and we kept figuring out  
14 ways that we could manage it.

15 Q. Now, are you aware that in earlier years,  
16 in fact, the parties went back to court to agree  
17 upon a change to the golf program so that Brown  
18 could separate the golf program without triggering  
19 the 2.25 percent drop-down?

20 A. I've never heard that before until today.

21 Q. Well, your legal department knows about  
22 it.

23 A. What year was that?

24 Q. The early 2000s.

25 A. Okay.

1           Q.    And are you aware that the agreement  
2   provides a mechanism where either party can go back  
3   to court if they think the law has changed?

4           A.    I don't remember that.  I read parts -- I  
5   read the consent decree, the agreement, but I must  
6   not have read the whole thing that carefully.

7           Q.    And sitting here today, do you have any  
8   information that the law has changed?

9           MS. KAPLAN:  Are you talking about the  
10  line --

11          Q.    (By Ms. Labinger) Sorry?  I'm talking  
12  about the three-part test that brought us to this  
13  case.

14          A.    You know, I don't know what the Title IX  
15  law was 20 years ago, and so I just don't have your  
16  perspective on this, so I couldn't tell you what it  
17  was then and whether it's different than what it is  
18  now.

19          Q.    And as part of this process, you did not  
20  task anyone either on the committee or elsewhere to  
21  assess whether the law had changed; is that correct?

22          A.    I count on my general counsel to keep  
23  track of whether laws change.

24          Q.    And would it be fair to say that you  
25  consider the presentation in Exhibit 18 to be a

1 report from your general counsel for the benefit of  
2 the Mundt committee to understand how the three-part  
3 test operates and how the consent decree operates at  
4 Brown?

5 A. Yes. The purpose of the presentation to  
6 the committee on academic excellence -- I don't call  
7 it the Mundt committee. That's your word.

8 Q. Yeah. I just do that because it's a  
9 mouthful but --

10 A. Okay.

11 Q. That's the only reason. I'm sorry.

12 A. We're used to long committee names.

13 Q. Yeah.

14 A. But no. We felt it was important for the  
15 committee to really understand the issues around  
16 especially Cohen and the consent decree because they  
17 were binding on us, and they would continue to be.

18 MS. LABINGER: Why don't we take a  
19 five-minute break so I can confer with my  
20 co-counsel.

21 VIDEOGRAPHER: Off the record at  
22 12:26 p.m. Central.

23 (Recess taken from 12:26 to 12:37 p.m.)

24 VIDEOGRAPHER: On the record at 12:37 p.m.  
25 Central.



1           Q.    (By Ms. Labinger) President Paxson, with  
2   respect to the time frame around June 9, when you  
3   said that you conferred with AD Hayes and he said he  
4   could make the numbers work and you did not drill  
5   down on the numbers -- I'm just trying to set the  
6   stage for that time frame. Did he tell you anything  
7   about how he was going to make it work other than  
8   roster management?

9           A.    No. He talked about using roster  
10 management to make the numbers work, yes.

11          Q.    That's the only thing?

12          A.    That is the only thing. I mean, we did,  
13 as I relayed, a conversation of if things shifted in  
14 the future, what would his preference be to making a  
15 change, and his preference would be, he said, to cut  
16 another men's team.

17          Q.    And was another men's team identified?

18          A.    No. This was very future hypothetical.

19          Q.    So not immediate?

20          A.    No.

21          Q.    Okay. Nothing further.

22          A.    Okay.

23                   VIDEOGRAPHER: Off the record ending the  
24 deposition at 12:39 p.m.


25                   (Deposition concluded at 12:39 p.m.)

1                                   **CERTIFICATE OF REPORTER**

2           **I, the undersigned, a Certified Shorthand**  
3   **Reporter of the State of Iowa, do hereby certify**  
4   **that there came before me via Zoom video conference**  
5   **at the time and date hereinbefore indicated, the**  
6   **witness named on the caption sheet hereof, who was**  
7   **by me duly sworn to testify to the truth of said**  
8   **witness's knowledge, that the witness was thereupon**  
9   **examined under oath, the examination taken down by**  
10   **me in shorthand and later reduced to a transcript**  
11   **through the use of a computer-aided transcript**  
12   **device under my supervision and direction, and that**  
13   **the deposition is a true record of the testimony**  
14   **given and of all objections interposed.**

15           **I further certify that I am neither attorney or**  
16   **counsel for, nor related to or employed by any of**  
17   **the parties to the action in which this deposition**  
18   **is taken, and further that I am not a relative or**  
19   **employee of any attorney or counsel employed by the**  
20   **parties hereto or financially interested in the**  
21   **action.**

22           **Dated this 15th day of August, 2020.**

23             
24           \_\_\_\_\_  
25           **SONYA M. WRIGHT, RPR-CSR**

<b>Exhibits</b>	<b>111195_ Paxson Exhibit</b>	<b>86:3 89:10 90:7 100:21 101:6 102:6</b>	<b>22 27:22 31:14 74:1</b>	<b>493 61:18,25 62:8,25</b>
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