

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

AMY COHEN, et al.,

Plaintiffs,

vs.

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

Defendants .

• • • • •

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

ORIGINAL

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

AMY COOPER - FIDELITY VIDEO SERVICES, INC.

SONYA M. WRIGHT - CERTIFIED SHORTHAND REPORTER

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1	TABLE OF CONTENTS	
2	WITNESS: KEVIN MUNDT	PAGE
3	Examination By Ms. Labinger	5
4	EXHIBITS	PAGE FIRST REFERENCED
5		
6	1 - PowerPoint Title IX in Athletics, Office of the General Counsel, 3/12/20 (587-605)	.30
7	2 - 6/5/20 email from Paxson to Cliatt	37
8		(26402-26403)
9	3 - 1/5/20 email from Paxson to Mundt	41
10		(26993-26996)
11	4 - Excellence in Athletics Corporation	47
12		Committee on Campus Life, 5/14/20 (509-532)
13	5 - 4/8/20 email from Paxson to Mundt (699-710)	.51
14	6 - Committee on Excellence in Athletics	57
15		Meeting, 4/17/19 (487-501)
16	7 - Committee on Excellence in Athletics	58
17		Meeting, 4/17/19 (619-635)
18	8 - "Baseline Case: No Changes Made" (502)	60
19	9 - 6/6/20 email from Paxson to Mundt (25985) ...	74
20	10 - 6/9/20 email from Paxson to Mencoiff	76
21		(26190-26192)
22	11 - 6/8/20 email from Joutz to Mundt	85
23		(3533-3537)
24	12 - 6/13/20 email from Mundt to Hayes (26247) ...	87
25	REPORTER'S NOTE:	
	Exhibits were marked electronically and attached to the electronic transcript.	
	(ph) indicates a phonetic spelling.	
	[sic] indicates the text is as stated.	
	Quoted text is as stated by the speaker.	

1 VIDEOGRAPHER: On the record beginning the
2 video deposition of Kevin Mundt requested by the
3 plaintiffs in the matter of Amy Cohen, et al.,
4 plaintiffs, versus Brown University et al.,
5 defendants, in the United States District Court,
6 District of Rhode Island, Case Number
7 92-CV-0197-JJM-LDA.

8 Today's date is August 17th, 2020, and the
9 approximate time is 12:10 p.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: Lynette Labinger, one of
17 the attorneys for the plaintiffs.

18 MS. BULLOCK: Lori Bullock, one of the
19 attorneys for the plaintiff.

20 MR. BRYANT: Arthur Bryant, one of the
21 attorneys for the plaintiff.

22 MR. McCAUGHEY: This is Dan McCaughey from
23 Ropes & Gray. I'm counsel to Mr. Mundt, and I'm
24 here with my colleague, Sandra Masselink.

25 MR. CRAIG: Matthew Craig for defendants.

1 MS. GOLDGEIER: Eileen Goldgeier, vice
2 president and general counsel of Brown.

3 VIDEOGRAPHER: The oath will now be
4 administered by Sonya Wright, certified shorthand
5 reporter of Susan Frye Court Reporting, Des Moines,
6 Iowa.

7 MS. BULLOCK: Prior to the oath being
8 admitted, I will state for the record that due to
9 the COVID-19 pandemic and the Rhode Island federal
10 court order, the parties have agreed to stipulate
11 that the deponent is being deposed via Zoom video in
12 a remote location and can be sworn in remotely.

13 COURT REPORTER: Would you raise your
14 right hand, please. Do you solemnly swear or affirm
15 that the testimony you're about to give will be the
16 truth, the whole truth, and nothing but the truth?

17 THE WITNESS: I do.

18 KEVIN MUNDT,
19 called as a witness, having been first duly sworn,
20 testified under oath as follows:

21 EXAMINATION

22 BY MS. LABINGER:

23 Q. Mr. Mundt, would you state your full name
24 and spell your name for the record, please.

25 A. Kevin Alan Mundt, last name M-u-n-d-t.

1 Q. Thank you. And have you ever been deposed
2 before?

3 A. I have.

4 Q. Have you ever been deposed by Zoom before?

5 A. I have not.

6 Q. Well, it's pretty much the same except
7 that we're going to be publishing the documents on
8 your screen, and I'm just going to remind you of a
9 few ground rules to help keep this process going
10 smoothly and hopefully efficiently.

11 First, it's important to remember that the
12 reporter is taking down everything that you say, so
13 we would ask you to give your answers verbally and
14 not by nods or shakes of the head. Do you
15 understand that?

16 A. Yes.

17 Q. And if you don't understand a question
18 that I'm asking, I would ask that instead of trying
19 to answer it that you ask me to state it another
20 way. Okay?

21 A. Yes.

22 Q. And you understand that if you do give an
23 answer, we will believe that you have understood the
24 question, okay?

25 A. Yes.

1 Q. Now, during the course of the deposition,
2 one of the attorneys may object to a question, and
3 that's an objection made for the record, and I would
4 ask you to wait for the attorney to complete their
5 statement because the mikes cut each other off, but
6 unless your attorney, Mr. McCaughey, asks you not to
7 answer the question, you are to answer the question
8 to the best of your ability, okay?

9 A. Yes.

10 Q. If you need to take a break for any
11 reason, that's fine, just ask, but we would ask that
12 you wait and complete an answer to a pending
13 question before we start the break, okay?

14 A. Yes.

15 Q. Without getting into any specifics, is
16 there anything about your health or medications that
17 you are taking that would impair your ability to
18 fully understand my questions and give full and
19 complete answers to those questions today?

20 A. No.

21 Q. Now, before coming here today, did you
22 meet, either in person, on the phone, or virtually,
23 with your attorney, Mr. McCaughey?

24 A. I did.

25 Q. And was anyone, outside of you and your

1 attorney or members of his office, present?

2 A. No.

3 Q. And without telling me what you said, can
4 you tell me approximately how long you met with your
5 attorney?

6 A. In total, probably an hour. All the
7 meetings included.

8 Q. Okay. So you met more than once?

9 A. We met -- I think we had two or three
10 calls.

11 Q. Did you review any documents in order to
12 prepare for today's deposition?

13 A. Yes. Documents shared with me were
14 documents prepared for this deposition.

15 Q. Okay. When you say they were prepared for
16 the deposition, I'm not quite sure what you mean.
17 Things that you wrote up for today?

18 A. No. The total of the documents. I'll be
19 specific. Allow me to just refer to my screen.

20 Q. Certainly.

21 MR. McCAUGHEY: Lynette, if it helps here,
22 just to help get through this a bit, I can represent
23 to you, and you're welcome to ask him to confirm,
24 but they were materials produced -- primary
25 documents produced in the litigation.

1 MS. LABINGER: Produced in what?

2 MR. McCAUGHEY: In the litigation by the
3 university.

4 MS. LABINGER: Well, the university
5 produced about 26,000 electronic pages, so that's
6 not terribly enlightening unless Mr. Mundt has been
7 able to get through all 26,000 pages.

8 Q. (By Ms. Labinger) So let me just ask you,
9 Mr. Mundt, do you -- can you give me approximately
10 the size of the materials that you reviewed?

11 MR. McCAUGHEY: Yeah. Kevin, on that one,
12 I would just ask you not to answer with respect to
13 any index and the like. I take the position that
14 that's attorney work product. But I think volume,
15 totally fine.

16 THE WITNESS: Okay. Let me see when I get
17 to them. There are two documents to which I am
18 referring. One is 10 megabytes and one is 20.4
19 megabytes.

20 Q. (By Ms. Labinger) So can you describe the
21 types of documents that you reviewed?

22 A. There is a combination of documents that
23 were prepared as a part of my committee's work that
24 I chair. There are documents that were prepared by
25 the university as a part of this decision-making

1 process that they went through in the announcement.

2 There are documents that are characterized as emails
3 about this work.

4 And then there are some Brown University
5 athletic -- department of athletics, Brown
6 University Sports Foundation documents, about the
7 range of sports, our facilities. It's published,
8 sent out to many, many thousands of alums and people
9 that are interested. There's a document in there --
10 a presentation in there about Title IX, which I've
11 seen many times. And that's really the brunt of it.

12 Q. Now, without getting into specifics, were
13 you provided with an index of documents not by your
14 attorney but by someone else?

15 A. No.

16 Q. Without getting into any specifics, were
17 you provided with an overview of the documents that
18 you were being asked to look at not by your attorney
19 but by someone else?

20 A. No.

21 Q. And you -- do you understand that when I
22 say "someone else," I mean attorneys or other
23 principals at Brown?

24 A. When you say my attorney --

25 Q. Let me rephrase that. Your attorney is

1 Mr. McCaughey, correct?

2 A. Correct.

3 Q. And you're not represented by the
4 attorneys for Brown University, correct?

5 A. I can't comment on that. I'm not a legal
6 expert.

7 Q. Did you have any meetings with people that
8 you understand to be attorneys for Brown since this
9 motion was filed, and I think it was on -- was it
10 June 29?

11 A. Yes.

12 Q. Okay. And was your attorney present when
13 you met with those individuals?

14 A. I don't recall. We had one meeting with
15 the -- with Brown's counsel and some other attorneys
16 representing Brown as part of deposition prep. That
17 was the name of the title of the call. I don't know
18 if I had retained Dan McCaughey or not at that
19 point. That's the only call I remember.

20 Q. Okay. And who was on the call?

21 A. Eileen Goldgeier. Lawyers from Heckler
22 [sic] & Kaplan. And potentially Dan was on the
23 call, but I don't remember exactly when Dan got
24 first on to these -- that -- you know, I had that
25 call, and then everything else I had was with Dan.

1 Q. I'm going to invite Mr. McCaughey to
2 instruct you not to answer if he was on that call
3 so ...

4 MR. McCAUGHEY: Yeah. I appreciate that.
5 I was on that call, along with counsel for Brown,
6 and we take the position that those discussions are
7 subject to privilege and work product productions.

8 MS. LABINGER: And I accept that
9 instruction on behalf of -- I'm not going to pursue
10 that line of questioning.

11 Q. (By Ms. Labinger) So was that a
12 conversation in addition to the ones you had with
13 Mr. McCaughey where you prepared for today's
14 deposition?

15 A. That was the first call in which there was
16 a topic, preparation for a deposition.

17 Q. Have you reviewed any of the transcripts
18 or exhibits that have been prepared in connection
19 with the -- I guess it's now three depositions that
20 have been taken before yours over this past weekend?

21 A. The only documents to which I have laid my
22 eyes are the two documents that I referred to
23 earlier, one of 10 megabytes and the other one.
24 Those are the only two documents I have seen and
25 reviewed. I've seen nothing other than that.

1 Q. Okay. Now, the materials that -- I'm just
2 representing this to you. The materials that we've
3 received from Brown all have -- if it's an email, it
4 all has a Brown connection. Either it's to or from
5 someone who's got a Brown email address. But some
6 of them are -- involve you, who do not have a Brown
7 email address, and other individuals active at
8 Brown, such as Chancellor Menco.

9 Have you reviewed any of your own emails
10 with individuals who hold a governance role at Brown
11 who do not use an @brown.edu address?

12 A. No.

13 Q. Do you know whether you have exchanged
14 written communications with Chancellor Menco that
15 did not also go to someone at Brown concerning the
16 topics of the -- your committee work or the
17 subsequent rollout of the decision and the
18 reinstatement of men's track?

19 A. Could you repeat your question?

20 Q. I will try better. It was too long. All
21 right. So let me back up a bit. You understand
22 we're here because the women athletes of Brown have
23 filed a motion to enforce the consent order in the
24 Cohen versus Brown case, correct? You understand
25 that's why we're here?

1 A. Yes.

2 Q. And you understand that it concerns the
3 decision to eliminate a number of women's sports
4 from the varsity athletics program that was part of
5 the result of the recommendation of your committee,
6 the excellence in athletics committee, correct?

7 A. Yes.

8 Q. And after your committee completed its
9 actions and the Brown corporation made its initial
10 vote, there was a decision to reinstate the men's
11 track program to the varsity program, correct?

12 A. And cross country.

13 Q. Yes. And for just purposes of not having
14 a long statement, when I say "men's track," I'm
15 speaking of indoor, outdoor track, field, and cross
16 country, the entire program, okay?

17 A. Thank you.

18 Q. Thank you.

19 A. That will help.

20 Q. We refer to it just as the men's track
21 program to include everything. Okay?

22 A. Okay.

23 Q. Now, with respect to any of those
24 activities, your role with the committee, the later
25 decision by the corporation, the later decision by

1 the corporation to restore the men's track program,
2 did you have communications with individuals such as
3 Chancellor Mencoﬀ that did not also involve people
4 in the Brown @brown.edu community?

5 A. Yes.

6 Q. Were any of those communications in
7 writing? Emails, for example?

8 A. Yes.

9 Q. I would -- and have you provided them
10 directly to Brown to produce to us? If you know.

11 A. No. Brown went through all the emails
12 related to this and chose the ones, some of which I
13 was on, but those are on my personal email. I did
14 not provide them to Brown.

15 Q. So I'm just going to ask to make a note at
16 the beginning of this record that it is the -- this
17 has nothing to do with you, Mr. Mundt -- that it is
18 the plaintiffs' position that these are, because of
19 the individuals involved, part of Brown's obligation
20 to produce these documents, especially ones
21 involving its chancellor.

22 And with respect to those emails, did you
23 review them recently in preparation for this
24 deposition? The ones that are not through Brown?

25 A. Not really. I mean, I went back and

1 looked at -- as a part of getting ready for this, I
2 looked at all my emails about this committee, and I
3 know everybody's names so I searched that way.

4 Emails with -- on my personal email, the
5 Chancellor Menco, those really were not about this
6 decision. He's a friend of mine. I've known him
7 for 44 years. So, you know, there was a lot of
8 stuff in there. I did look at those but not for any
9 particular reason.

10 Q. Are you currently employed?

11 A. Yes.

12 Q. And where do you work?

13 A. Vestar Capital Partners.

14 Q. And what is the nature of your duties
15 there?

16 A. I'm a senior partner in the firm.

17 Q. And is that equity management or something
18 else?

19 A. It's a private equity firm.

20 Q. Okay. Great. And do your employment
21 duties have anything to do with athletics or
22 enforcing Title IX as it relates to athletics?

23 A. Restate your question, please.

24 Q. What you do at the private equity firm,
25 does any of it have to do with athletics or

1 enforcing Title IX as it relates to athletics?

2 A. No.

3 Q. You're a Brown graduate, correct?

4 A. Correct.

5 Q. Was that 1976?

6 A. Yes.

7 Q. And did you participate in athletics while
8 you were at Brown?

9 A. Yes.

10 Q. On what sport or sports?

11 A. Three sports.

12 Q. And what were they?

13 A. Football, indoor track, and outdoor track.

14 Q. And you serve on an athletics advisory
15 council for Brown; is that correct?

16 A. I chair it.

17 Q. You chair it. And how long have you
18 served on that council, either as chair or as a
19 member, approximately?

20 A. Approximately 12 years.

21 Q. And have you been chair for all 12 years?

22 A. No.

23 Q. How long have you been chair?

24 A. Approximately 10.

25 Q. During your tenure, has the council

1 reviewed the impact of the Cohen consent order or of
2 Title IX generally as it relates to the athletic
3 program at Brown?

4 A. Restate your question, please.

5 MS. LABINGER: Can you read that back?

6 (The requested portion of the record was
7 read.)

8 THE WITNESS: Yes.

9 Q. (By Ms. Labinger) And has the council made
10 any reports concerning the impact of the Cohen
11 consent order on athletics at Brown?

12 A. No.

13 Q. And during your tenure, has the council
14 made any reports concerning the impact of Title IX
15 on athletics as it relates to Brown?

16 MR. McCAUGHEY: Object to the form. You
17 can answer if you understand the question, Kevin.

18 THE WITNESS: I thought I just answered
19 it.

20 Q. (By Ms. Labinger) Well, I was
21 distinguishing Cohen -- the Cohen decision and
22 Title IX, which relates to more parts of the
23 athletic program. But if you see the two as the
24 same, that's fine. Do you?

25 A. Not necessarily, but the answer is no in

1 any case.

2 Q. Okay.

3 MS. LABINGER: And just as observation,
4 the objection as to form came from Mr. McCaughey; is
5 that correct?

6 MR. McCAUGHEY: That's right.

7 MS. LABINGER: So I would suggest that
8 your role you can't preserve objections because you
9 don't represent a party, won't be able to assert
10 them at the hearing, so if an objection needs to be
11 made, it would have to be made by Mr. Craig. You
12 may certainly instruct your witness not to answer
13 questions.

14 MR. McCAUGHEY: I've never heard that
15 position before. I guess I would think -- I hear
16 you that if there's a hearing, we don't have a part
17 in the hearing to preserve them at the trial, but if
18 there's a point down the road in the future, God
19 forbid -- we all hope that doesn't happen -- where
20 any of this is revisited and Mr. Mundt, you know,
21 there's a question he doesn't understand or there's
22 an issue with the form, I would think it would be
23 relevant for that. But, look, I intend to make them
24 as narrowly and in as limited a fashion as possible,
25 so maybe we can just proceed on that basis for now.

1 MS. LABINGER: Fair enough. Yes. And

2 I --

3 MR. CRAIG: Just --

4 MS. LABINGER: Sorry?

5 MR. CRAIG: I mean, Mr. McCaughey is
6 representing Mr. Mundt in this. You know, I don't
7 suspect that I will have form objections that differ
8 than his, and perhaps we can just agree that his
9 objections are preserved as to form.

10 MS. LABINGER: Yeah. I'm not comfortable
11 with that. The reason I put this on the record was
12 to make clear that we do not agree with
13 Mr. McCaughey making objections. Hopefully I can
14 clean up my questions so they are not compound and
15 they're not confusing, but I'm fairly confident that
16 this witness is capable of telling me when he does
17 not understand a question. But let's move on.

18 MR. CRAIG: And the basis for not allowing
19 Mr. McCaughey to make objections is?

20 MS. LABINGER: He doesn't represent a
21 party so he cannot assert objections at hearing. He
22 can, of course, instruct the witness not to answer
23 questions.

24 MR. McCAUGHEY: Just to say it, I've been
25 in a boatload of third-party depositions, and I've

1 never actually heard anyone articulate that rule. I
2 don't -- you know, our number-one objective is to
3 just keep this rolling so I don't think we need to
4 belabor the point. As I said, I hope to minimize
5 any objections at all, and I'll continue to do that
6 going forward, and obviously if Matt has some, he
7 can raise them as well, and maybe we can do it that
8 way.

9 MR. CRAIG: And if plaintiffs' counsel
10 insists, if Mr. McCaughey makes an objection, I will
11 note our agreement with the objection and assert it
12 as well if you want parallel assertions.

13 Q. (By Ms. Labinger) All right. Mr. Mundt,
14 as a result of your service on the athletics
15 advisory council, have you formed any opinions,
16 either positive or negative, or both, about the
17 impact of the Cohen consent order on Brown
18 athletics?

19 MR. McCAUGHEY: I'm going to object to the
20 form to the extent it calls for opinion testimony.

21 MR. CRAIG: Join the objection.

22 MS. LABINGER: You may answer.

23 THE WITNESS: And your question again was
24 have I formed any opinions? Is that your question?

25 Q. (By Ms. Labinger) As a result of your

1 service on the athletics advisory council, have you
2 formed any opinions about the impact of the Cohen
3 consent order, either positive or negative or both,
4 on Brown athletics?

5 A. As a part of that committee, as my role of
6 the chair of that committee, we have sought to
7 understand the impact, not form opinions, so we've
8 looked at data to try to understand the impact of
9 that decision. Both good and bad.

10 Q. Well, what were the -- did you identify
11 good things about the impact of the Cohen consent
12 order?

13 A. Yeah. Look, I think things are a lot
14 better over the last 20 years at Brown for women in
15 varsity sports. Much better, quite honestly. We
16 made a lot of progress, and we're probably -- I
17 think probably the best female varsity athletic
18 program in the country for schools that have coed
19 programs, men and women's programs.

20 But part of what we have done for the last
21 22 years is paid attention to it because we've been
22 held to that one standard of proportionality, which
23 you're very familiar with. And so everything we do
24 at Brown as it relates to sports and talking about
25 programmatic discussions, Title IX is always a part

1 of that. We always pay attention to it. We never
2 have a discussion about the programmatic aspect of
3 sports without making sure that we are complying
4 with Title IX. Ever.

5 Q. And did you -- are there any negative
6 aspects that you determined to the impact of the
7 Cohen consent order on Brown athletics, as a result
8 of your service on the athletics advisory council?

9 A. My answer to that would be based upon
10 what, you know, we've heard from the athletic
11 director and coaches and the department of athletics
12 and physical education, though to the extent that
13 it's based on a third party, it's speculation, but
14 of course I've heard people talk about the impacts,
15 both positive, as I already mentioned, as well as
16 potentially -- I wouldn't say negative so much as
17 things we've just had to manage and work around.

18 Q. And manage and work around what, please?

19 A. Roster sizes, you know, asking,
20 encouraging walk-ons in certain sports. You know,
21 potentially, you know, supporting sports that, quite
22 honestly, I never was comfortable with in terms of
23 the personal risks that young women were taking
24 driving in a van to a ski -- you know, a mountain.
25 There's no mountains in Rhode Island so they have to

1 drive two or three hours in the afternoon.

2 So the discussions were around, you know,
3 what kinds of programmatic impacts has complying
4 with Title IX had on us. It really wasn't about --
5 you know, you asked -- those are your words,
6 "negative or positive." It was just really about
7 the impacts on our program. And, again, everything
8 we've ever done for the last 22 years,
9 programmatically in sports at Brown, has been to
10 make sure we comply with Title IX.

11 Q. Okay. So you said the last 22 years, and
12 I noticed that you said you'd worked on the advisory
13 council on athletics for the last 12 years. So
14 what's your knowledge for the 10 years before that?
15 Did you have another governance role at Brown?

16 A. So I have volunteered my time, and more
17 than my time, to my university ever since I
18 graduated, and there was a precursor to the advisory
19 council in athletics, which was established by
20 President Ruth Simmons as one of sort of the ad hoc
21 governing groups.

22 The precursor to that was kind of a sports
23 council, sports advisory council. That goes back a
24 long time, and I was actually -- you know, I think
25 1992-'93, when Plaintiff Cohen brought this lawsuit,

1 you know, I remember sitting in the room listening
2 to Beverly Ledbetter discuss the lawsuit. So yes, I
3 have context, but I had no official role on that
4 group. I was just a young kid trying to help my
5 university as a volunteer with my time.

6 Q. And you have served on the Brown
7 Corporation as well; is that correct?

8 A. Correct.

9 Q. And what were your years of service on the
10 corporation?

11 A. I turned out two years ago, so add six to
12 that and then do the math. I think it was maybe 10
13 to 16 -- or, no, 11 to 17, something like that. I
14 don't really keep track of those things. I served
15 one term. It's six years. And I've been off for
16 two years.

17 Q. Thank you. And during your tenure on the
18 corporation, did you serve on any corporation
19 committees on which you reviewed the impact of the
20 Cohen consent order or Title IX as it relates to
21 athletics?

22 A. No, the way you asked the question. I
23 served on the campus life committee.

24 Q. Okay.

25 A. But the second part of your question, the

1 answer would be no. So when I served on the campus
2 life committee -- each member -- each trustee is
3 asked to serve on one of the committees. I was on
4 campus life. But in terms of -- we discussed many,
5 many other issues of campus life, things like
6 dormitories and student health and many other things
7 besides -- or I would say -- I'm not even sure I can
8 remember one campus life committee meeting where,
9 you know, that was a focus.

10 Q. Fair enough.

11 A. That's why I answered the question both
12 ways. Yes, I was on it, but no, not in that
13 context.

14 Q. Right. And if I ever slip and fail to say
15 Title IX as it relates to athletics, let me be
16 clear. Title IX has lots of other --

17 A. I'm well aware of that.

18 Q. -- aspects about campus life. I'm not
19 asking you about anything but athletics, okay?

20 A. Fair. Good. I don't know anything but
21 athletics.

22 Q. During your tenure on the corporation, did
23 the corporation consider eliminating any varsity
24 sports for women?

25 A. No.

1 Q. Now, as a result of your participation on
2 the athletics advisory committee council and on the
3 corporation and your -- did you familiarize yourself
4 with the requirements of the Cohen consent decree?

5 A. We as a group were generally familiarized
6 with the result of the Cohen consent decree. You
7 asked the question did I personally, you know, as a
8 part -- so as a part of those groups, since it was a
9 we, yes, I was familiarized with them.

10 Q. Now, as part of your committee meetings in
11 the spring of 2020, you received a PowerPoint
12 presentation from the general counsel about Title IX
13 and the Cohen case. Do you recall that?

14 A. Be specific. Which committee? The
15 advisory council on athletics?

16 Q. No. I'm terribly sorry. Your
17 committee -- your ad hoc committee on excellence in
18 athletics.

19 A. Now you're talking about a different
20 committee now?

21 Q. Yes, I am. I switched gears. I
22 apologize.

23 A. Can you restate your question, please,
24 then?

25 Q. All right. So starting around December of

1 2019, did President Paxson ask you to consider
2 chairing a committee that she was forming called the
3 excellence in athletics committee?

4 A. Yes.

5 Q. And you agreed to chair it, correct?

6 A. Yes.

7 Q. And can you tell me -- and if you need a
8 list, I can get it for you -- who the other --
9 whether the other members of the committee had a
10 governance role at Brown, such as members of the
11 corporation?

12 A. Some do and some don't. Jonathan Nelson
13 is a fellow. Earl Hunt is a trustee. Rich Caputo
14 is a trustee. I am a trustee emeriti. Paul
15 McNamara is trustee emeriti. Kathryn Quadracci
16 Flores is -- simply serves on the advisory council
17 to athletics and president's leadership council. So
18 all of them are in or around the leadership of the
19 university.

20 Q. And both fellows and trustees are part of
21 the corporation; is that correct?

22 A. Yes. It's a bicameral structure.

23 Q. Now, your group met in March of 2019; is
24 that correct?

25 A. I don't think that's -- no. You talking

1 about the ad hoc advisory committee on excellence in
2 athletics?

3 Q. Yes.

4 A. No. No. We didn't start meeting till
5 March or April of this year. 2020. You said '19.

6 Q. You're absolutely right. I apologize.
7 You were formed in -- you had a discussion about
8 forming in December of 2019. The committee was
9 formed -- or at least the participants were
10 identified in January, or thereabouts, with a
11 mission statement. Correct?

12 A. Yes.

13 Q. And the first meeting is March of 2020,
14 correct?

15 A. Yes.

16 Q. And at that meeting, March of 2020, were
17 you given a PowerPoint presentation by Brown's
18 general counsel about Title IX and the Cohen consent
19 decree?

20 A. I don't recall if it was -- we had -- the
21 committee had, I think, four meetings, and I know
22 that the first meeting was about the -- our charge
23 to the committee from the president and kind of
24 setting the groundwork. The committee did at some
25 point in one of our meetings have a presentation

1 about Title IX and the Cohen consent decree. I
2 don't know for sure. It could have easily been that
3 meeting.

4 Q. All right. Let's -- Lori, do you have
5 that Bates number or do you need me to find it for
6 you? All right.

7 So we are publishing on the screen Bates
8 586 to 605. And I would ask you to take your time
9 to review it. Lori will go through the pages. And
10 let us know whether you recall being person.

11 A. Yes, I recall.

12 Q. Okay. Do you need to go slower?

13 A. No. I know this document.

14 Q. All right. And does that refresh your
15 recollection that there was a presentation by the
16 general counsel which talked about Title IX in
17 general and the Cohen consent decree and the history
18 specifically?

19 A. Yes.

20 Q. Now, before being present for this
21 presentation, had you been aware of the specifics
22 that are contained in this presentation?

23 A. Generally aware of some of the specifics.
24 Specifically not aware of all of the specifics.

25 Q. Are you aware that Brown was found to be

1 in violation of Title IX in the Cohen versus Brown
2 lawsuit?

3 A. Yes.

4 Q. And did you understand that as a result of
5 that finding, Brown was required to develop a
6 compliance plan to get in compliance with Title IX?

7 A. I was not privy to all of the detailed
8 implications of the Cohen consent decree so I do not
9 know exactly what Brown University agreed to or not
10 agreed to in terms of the detail of the compliance
11 plan. I just understand the major parts of it and
12 the standard to which we are held. The one standard
13 to which we are held.

14 Q. And what's the one standard to which you
15 are held, as you understand?

16 A. Substantial proportionality. There's two
17 other standards to which you can meet that ongoing
18 program expansion and/or effective accommodation of
19 interests, but Brown is only held to proportionality
20 and has been only held to proportionality for --
21 since that consent decree was handed down.

22 Q. Now, do you believe that there is a
23 difference between compliance with substantial
24 proportionality under Title IX and what the consent
25 decree requires?

1 A. I can't answer that question. I'm not an
2 expert in that area.

3 Q. Do you think that Brown will have more
4 freedom to reduce the size of its women's program in
5 relation to undergraduate enrollment if the consent
6 decree is terminated?

7 A. That's speculation. I don't know.

8 Q. Now, you're aware that under the consent
9 decree, before Brown decided to end a number of
10 women varsity teams, the standard for
11 proportionality was measured at a 3. -- up to a
12 3.5 percent gap, correct?

13 A. We had to be within 350 basis points of
14 the undergraduate population represented by females,
15 correct.

16 Q. I've never heard it said as basis points
17 before. That's obviously your background.

18 A. Stick with me. There's a lot of things
19 you can learn.

20 Q. I have no doubt. None. And so -- and
21 it's your understanding that by --

22 A. I will use percentage points going
23 forward. It's the language -- it's the language I
24 deal in every day. Sorry.

25 Q. Either one is fine. It's the same thing.

1 And as a result of the termination of certain
2 women's teams, any women's teams at the varsity
3 level, you understood that that differential would
4 drop to 2.25 percent, correct?

5 A. Yes, I'm aware of that.

6 Q. Now, did anyone associated with Brown
7 governance, like the president, the chancellor,
8 other members of the corporation, express the view
9 to you that if there were no consent decree, Brown
10 would have more flexibility on how large the gap
11 could be between the number of women participants
12 and their presence in the undergraduate population?

13 A. Specifically that way, no. I've
14 definitely been a part of conversations with various
15 members of Brown's leadership, you know, at large
16 about we might have more flexibility if we weren't
17 held to one -- the one standard of substantial
18 proportionality.

19 Q. Did Chancellor Menco share with you a
20 view that other Ivy League institutions were -- had
21 a greater gap than the 2.25 percent that was being
22 mandated for Brown?

23 A. No. I reviewed those facts as part of our
24 committee. Those were broadly available to us as a
25 committee.

1 Q. And was that part of the materials that
2 were presented at your committee, the differentials
3 between the number of undergraduates at each of the
4 Ivies and the presence of women on their athletic
5 programs?

6 A. Yes.

7 Q. And what was the context for that?

8 A. Specifically, we were looking at different
9 varsity sport programmatic structures and whether or
10 not we could stay in compliance with Title IX and
11 the consent decree on proportionality, either 3 and
12 a half or 2.25, and it was pointed out to the
13 committee that other Ivies don't -- I think four in
14 particular, have much broader gaps versus their
15 female undergraduate population. They're obviously
16 not held to this consent decree.

17 So it was more -- those facts were brought
18 up more in context. We were discussing the overall
19 competitiveness of men's and women's varsity sports
20 at Brown University. That committee that you're
21 referring to, that was our true north. That was --
22 our charge, was to explore programmatic solutions to
23 try to help the remaining sports become more
24 competitive so that the women and men in those
25 sports would have a better student-athlete

1 experience at Brown University.

2 So that was a contextual data that was
3 shared with the committee. I believe that was the
4 first time I had seen the specific gaps versus
5 gender, female representation in varsity slots
6 versus undergraduate. I think that was the first
7 time I had ever seen the actual data. I had heard
8 people talk about it, but I had never seen the data.

9 Q. Did you -- you said that you and
10 Chancellor Menco are friends?

11 A. We're fraternity brothers. We've known
12 each other for too long. 45 years. We're also --
13 we also were roommates in graduate school.

14 Q. Did he ever express the view in your
15 presence that -- when I say "presence," it could
16 also be a phone call or virtually -- that "If Brown
17 were no longer subject to the consent decree and had
18 the latitude to operate within the bands of our Ivy
19 peers, we could achieve the roster size realignment
20 we are seeking and still retain the men's track
21 program"?

22 A. You're asking specifically if Chancellor
23 Menco said that to me?

24 Q. Yes.

25 A. Not that I recall.

1 Q. Did President Paxson say that to you?

2 A. Not that I recall.

3 Q. Did Athletic Director Hayes say that to
4 you?

5 A. I think he did say that to me.

6 Q. All right. And do you recall when that
7 was, approximately?

8 A. It would have been after the announcement
9 that we made that we were cutting 11 varsity sports
10 and we were promoting two club sports to varsity
11 status. There was a -- there was an awful set of
12 events that occurred in our country that made the
13 elimination of a sport that had a reasonable
14 representation of black athletes in that sport
15 quite -- quite a charged issue, and so as part of
16 the considerations of reinstating -- potentially
17 reinstating, as you call it, men's track, Athletic
18 Director Hayes did, in fact, indicate he thought
19 that there might be a way to do that, reinstate it
20 and stay within.

21 Q. Well, that's somewhat different than the
22 question I asked, which was whether he had expressed
23 the view that they could -- that they would be able
24 to do it if they were no longer subject to the
25 consent decree. Did he express that opinion?

1 A. He may have. I don't recall specifically.

2 Q. Did any other members of the corporation
3 express that opinion to you?

4 A. I wouldn't know. I'm not privy to the
5 corporation's discussions.

6 Q. Did President Paxson ever express to you
7 the view that if Brown were not under the consent
8 decree, Brown could bring back men's track and field
9 and stay in compliance with Title IX?

10 MR. CRAIG: Asked and answered.

11 Q. (By Ms. Labinger) You may answer.

12 A. I don't recall. I don't recall.

13 Q. Let's post 26042. This will be Exhibit 2.
14 That's 26042, Exhibit 2.

15 MR. CRAIG: And it's two pages, just to
16 confirm?

17 MS. LABINGER: I believe that it is two
18 pages.

19 MS. BULLOCK: Yes, I can confirm it's two
20 pages.

21 Q. (By Ms. Labinger) Have you completed
22 reviewing Exhibit 2, Mr. Mundt?

23 A. I didn't know I was supposed to. You
24 didn't ask me to. You just put it up on the screen.
25 So if you want me to review it, I'd like to read it

1 from the bottom up so please give me a minute.

2 Q. Yes, of course.

3 A. Okay. You can scroll up. Yeah. Keep
4 going. Okay. Okay. I've finished reading it,
5 reviewing it.

6 Q. All right. Does this now refresh your
7 recollection that President Paxson expressed the
8 view to you that if Brown were not under the consent
9 decree, Brown could bring back men's track and field
10 and stay in compliance with Title IX?

11 A. Yes. It's what it says.

12 Q. And did you have any conversations, either
13 by email, phone, or in person -- let me try that
14 again. When I'm asking you about a conversation, I
15 would like to just be clear, because of COVID, I'm
16 talking about Zoom, email, in person, on the phone,
17 and we can narrow it down.

18 A. Okay.

19 Q. I'm asking the broadest way possible.

20 A. Understand.

21 Q. Did you have any conversations with
22 President Paxson about that statement of hers?

23 A. Not specifically that statement.

24 Q. Okay.

25 A. The -- but I want to say something else

1 about that, though. Her comment there about
2 reinstating Brown track and field cannot be taken
3 out of the context of the hue and cry that had swept
4 over the university about removing that program, and
5 it was cast in a -- it was cast in a light that
6 obviously made it look awful at the time because of
7 what had happened in our country.

8 And her comment there was based upon the
9 math -- the then math that was run by the department
10 of athletics and physical education as to how they
11 would allocate, you know, slots among sports.
12 That's an important point to remember.

13 Q. Did you have a further conversation with
14 her about -- withdrawn.

15 Now, when you were writing in this email,
16 you were the recipient of a fair amount of
17 unpleasant emails directed to you personally; is
18 that correct?

19 A. That would be an understatement.

20 Q. And you were asking for some assistance
21 from Brown to redirect the communications; is that
22 correct?

23 A. We had set up a mailbox at Brown into
24 which we were supposed to forward all of the emails
25 like the ones I was receiving, and I was simply

1 asking the president, you know, if there was some
2 other way we could -- I mean, I didn't necessarily
3 like the fact that people had freely Googled my name
4 and then started using my business email address,
5 which pops up quite readily, so I was the recipient
6 of many of these emails, and because I'm a former
7 captain of the track team at Brown, I received some
8 of these emails. So I was simply asking if there
9 was anything else we could do.

10 Cass Cliatt, who is the last respondent on
11 that email chain, you'll see is in charge of
12 communications at Brown, and she was trying to
13 handle those, but for me, it had gotten
14 uncomfortable because they were coming to my
15 personal and my business email, which I didn't
16 appreciate at all.

17 Q. Understood. And you see that the -- your
18 email -- apparently, your email address has been
19 blocked off of this document. Do you still use that
20 same email address for your business communications?

21 A. Why is that important?

22 Q. Why is it important? We're trying to find
23 out whether this is no longer a viable email
24 address. You said this one is available to the
25 public?

1 A. Yes. It's my business email address.

2 Q. Right. So -- and it was available in June
3 of 2020, correct?

4 A. Correct.

5 Q. Okay. All right. We can take that one
6 down. Lori, can you post -- I think it's 26993.
7 This will be Exhibit 3. It starts at 26993 and
8 consists of four pages.

9 And if you could review that, Mr. Mundt.

10 A. Could you keep scrolling up, please?

11 Okay. Okay. I'm familiar with this document.

12 Q. Is this an email and attached proposed
13 description of the committee on excellence in
14 athletics that you received from President Paxson in
15 January of 2020?

16 A. I didn't look at the exact date, but yes,
17 it is.

18 Q. And this was also shared with Chancellor
19 Menco, correct?

20 A. It appears it was, yeah.

21 Q. And did you note that the original version
22 of the committee charge -- and I'm looking at page
23 26995 -- was to identify sports which would take on
24 club or varsity status? The goal should be to
25 reduce the overall number of varsity sports to no

1 more than 25. Did you see that?

2 A. Yes.

3 Q. And the paraphernalia authentic, although
4 I would be glad to see a report that offers options
5 with numbers that range from 23 to 27, is it fair to
6 say that that was a communication to you from
7 President Paxson?

8 MR. CRAIG: Objection to form. Aren't we
9 talking about something that was in a communication
10 to him from President Paxson? You showed an email.
11 This is an attachment, correct?

12 MS. LABINGER: All right. I'll withdraw
13 the question. I will rephrase. The language in the
14 parenthetical, who was the author of this document,
15 if you know?

16 THE WITNESS: I have no idea, knowledge of
17 that. It came from the president, but I have no
18 idea who authored the document.

19 Q. (By Ms. Labinger) But it was presented to
20 you by President Paxson asking for your input; is
21 that correct?

22 A. That is correct.

23 Q. And she asked you to chair this committee,
24 correct?

25 A. Yes.

1 Q. And did you change the committee charge
2 thereafter? If you recall?

3 A. No. The committee was put in place to
4 actually serve the president and the corporation
5 relative to that charge, so if -- you know, that was
6 our job. I didn't try to change our job.

7 Q. And by your job, you're talking about
8 basically at the end of the day reducing the number
9 of --

10 A. No.

11 Q. -- varsity sports? No?

12 A. No. I want to be specific. First of all,
13 our committee was only a committee to provide advice
14 and counsel to the president and the corporation and
15 the department of athletics and Jack Hayes. We're
16 not a decision-making body. One.

17 Two, we were to help them look at the
18 different pros and cons of various options that
19 included obviously reducing the number of sports to
20 try to make the remaining sports more competitive.
21 And the president and the committee had various data
22 that suggested ways that we could achieve higher
23 levels of competitiveness in the remaining sports.
24 One of those was reducing the number of varsity
25 sports, for men and for women. And there were many

1 other things that went into our deliberations. So
2 that wasn't the only charge here, but that was a
3 hypothesis that I would characterize is that it was
4 necessary but not sufficient.

5 Q. Necessary to have fewer sports but not
6 sufficient just to identify which ones to cut?

7 A. No. Necessary to -- at the current time,
8 at the time that this committee was put in place,
9 Brown was fielding 38 varsity sports, the second
10 most in the Ivy League, second only to Harvard with
11 42, at a budget of 22 million. Harvard has a budget
12 of 50 million. I think everybody on this call can
13 do the math. Brown had the third-most number of
14 varsity sports offered of any Division I school in
15 the nation.

16 We had done -- the president had chartered
17 some outside work by athletic consultants, who were
18 experts looking across universities, and one of the
19 observations they made is you have a large number of
20 varsity sports for women and for men on a very small
21 budget. And part of getting to -- to change the
22 trajectory of the results of our athletic programs,
23 which yielded 2.8 percent Ivy League titles in ten
24 years across 38 sports -- part of that was a
25 consideration that we should cut back, pare back,

1 the number of varsity sports, thereby endowing the
2 remaining sports with both greater budgets
3 financially, greater resources in terms of incoming
4 recruits, and greater coaching resources.

5 That was the -- part of the theory, the
6 hypothesis. We were asked to help the president
7 look at different options and opine on those. We
8 were not a decision-making body.

9 Q. Was part of your charge to recommend that
10 they increase the sports budget to match Harvard's?

11 A. I'm not going to comment on that.

12 Q. Well, is Harvard in the sports --
13 withdrawn.

14 You said that Harvard has, actually, more
15 sports for men and women than Brown does?

16 A. Correct.

17 Q. And would you characterize Harvard as
18 having a more competitive record in the Ivies than
19 Brown does?

20 A. Much. But they have 50 million dollars.
21 This is another context thing. They have a
22 50-million-dollar athletic budget. We had 22 at the
23 time. They had a near 35- to 40-billion-dollar
24 endowment. Ours is barely 5. Context is very
25 important here.

1 Q. So it would be fair to say that increasing
2 the overall budget was not a consideration? Sports
3 budget?

4 A. My committee was not told that that was
5 part of a solution set.

6 Q. Now, would you agree that one of the key
7 goals of your committee was to increase gender
8 equity, that is, to increase the fraction of varsity
9 opportunities for women?

10 A. Repeat that question again, please,
11 exactly the way you stated it the first time.

12 Q. Was one of the goals of your committee --
13 withdraw that.

14 In terms of analyzing the varsity lineup
15 that your committee was recommending to Brown, was
16 one of the factors or goals that the final
17 combination of varsity teams had to satisfy the
18 criterion of increasing the fraction of varsity
19 opportunities for women?

20 A. No.

21 Q. Sorry. Looking at the wrong document.

22 Did you -- were you invited to attend the
23 meeting of the corporation committee on campus life
24 to present the recommendations of your committee?

25 A. Yes.

1 Q. Did you attend?

2 A. Via Zoom, yes.

3 Q. Did you -- were you present for a
4 PowerPoint presentation on the excellence in
5 athletics to the corporation committee on campus
6 life?

7 A. If that presentation was a part of that
8 Zoom call I just said yes to, then yes.

9 Q. Okay. Let's make the next exhibit Exhibit
10 4, and that starts Bates 509 continuing to 532.
11 Now, I'm going to direct your attention to page
12 Bates 516 -- I think that's the right one. Let's
13 see. No. That's the wrong page. Yes, 524. If you
14 could take a moment to review that page, and then if
15 you want to read the entire PowerPoint, we can start
16 at the beginning.

17 A. I've read it.

18 Q. Okay. So I had asked you whether that was
19 one of the criteria of your committee, and you said
20 that it was not. Bullet point number 4, "Gender
21 equity. Increase the fraction of varsity
22 opportunities for women." Does that refresh your
23 recollection?

24 MR. CRAIG: Objection. Misstates prior
25 testimony.

1 Q. (By Ms. Labinger) You may answer my
2 question.

3 A. Yes. It's what it says on the page.

4 Q. Now, do you disagree that that --
5 withdrawn.

6 Does that refresh your recollection about
7 the goals of your committee?

8 A. The goals of our committee were to provide
9 guidance and advice to different varsity sport
10 constructs. What I mean by that is different
11 combinations of varsity sports represented by the
12 Athletic Director Hayes.

13 And in that context, what we were looking
14 to do was to definitely stay in compliance with
15 Title IX's consent decree. I don't recall
16 personally that we had as an objective to increase
17 the fraction of varsity teams for women. I know
18 that we were very focused, very focused, on staying
19 within compliance, and we understood that if we
20 eliminated a women's varsity sport that the 3 and a
21 half percentage points would drop to 2 and a
22 quarter, and we had to make sure that any program in
23 the various roster structures stayed, then, within
24 that narrower band.

25 So if we have a class that's 53 percent

1 female, we could go no lower than, you know, 51 and
2 a quarter. And -- or whatever the math is. I
3 didn't do that right. But -- so we were more
4 focused on that, on staying in compliance. This
5 says what it says. I personally do not recall that
6 this was one of our criteria.

7 Q. Fair enough. I'm sorry, Lori. Can you
8 just put that back up one second?

9 Did you assist in the preparation of this
10 PowerPoint, which is Exhibit 4?

11 A. I did not.

12 Q. Thank you. I'd like to take about a
13 five-minute break.

14 MS. BULLOCK: Amy, you were muted.

15 VIDEOGRAPHER: How frustrating. I clicked
16 it but it didn't take. I said 1:22 p.m.

17 (Recess taken from 1:22 to 1:28 p.m.)

18 VIDEOGRAPHER: On the record at 1:28 p.m.

19 Q. (By Ms. Labinger) As chair of the
20 excellence in athletics committee in the spring of
21 2020, did you task anyone to take minutes?

22 A. I did not, no. If minutes were taken,
23 they were taken by Marguerite Joutz, I think is the
24 way her name is pronounced, who attended the
25 meetings. I did not task anyone on my group to take

1 minutes, no.

2 Q. Did you take any notes?

3 A. No.

4 Q. If you know, did anyone else?

5 A. I don't know.

6 Q. Let's --

7 A. May I say one more thing about that? I
8 want to just give you a sense of how that committee
9 works since you asked the question. Information --
10 I want -- I'm going to say this again. We were not
11 a decision-making body and we were not the ones
12 designing these athletic programs so -- and the
13 information was so confidential, we were concerned
14 it would get out ahead of us.

15 So the athletic director and President --
16 they would bring in various scenarios and they would
17 bring in the competitiveness charts. They'd bring
18 in the rankings in the Ivies. They'd bring in all
19 the data you've seen. You've got I don't know how
20 many thousands of pages. And then we would discuss
21 it as a group and we would provide feedback as a
22 group.

23 And then the president and the athletic
24 director would take that feedback, and then they
25 would go back to work, and we would meet again and

1 we would have the same kind of discussions with
2 refined structures in the athletic program, women's,
3 men's, where would it leave us in terms of slots,
4 proportionality, etcetera. So it was not a lot of
5 people taking notes. Plus the fact I'd like to
6 remind you, all of this was done over Zoom, so I
7 couldn't see if anyone was taking notes anyhow.

8 Q. When you say "slots," are you talking
9 about admission slots or spots on the roster?

10 A. Both.

11 Q. Okay. But when you used the word "slots,"
12 are you speaking specifically about admission slots?

13 A. I just answered your question. Both.
14 There's admission slots and then there's slots
15 allocated to rosters.

16 Q. All right. Let's mark as the next
17 exhibit, 5, which is Bates 699 to 710.

18 MS. BULLOCK: Mr. Mundt, do you need that
19 bigger?

20 THE WITNESS: It would be nice.

21 MS. BULLOCK: Yeah. I can do that.

22 THE WITNESS: Was it the glasses that gave
23 me away? I can read it. I'm okay. This is another
24 one that -- you know, I don't know what we're going
25 to discuss here, but I'd like to read it from the

1 bottom up, please. Wait a minute. Is this all in
2 one email? I'm -- oh, the materials for today.
3 Okay. Okay. I got it. Thank you.

4 Q. (By Ms. Labinger) And just to be clear,
5 I'm not going to ask you about all the specific
6 numbers but just as an overview.

7 A. Thank you. Okay. I'm familiar with this
8 material. I don't think you need to keep scrolling.

9 Q. Okay. So if we start this -- again, this
10 is Exhibit 5. If we start at the cover email, it
11 refers to attaching materials for today to you, and
12 Jack, I take it, is the athletic director; is that
13 right?

14 A. I think you know that. Yes, he is.

15 Q. Well, see, we're just making a record so
16 it's not what I know.

17 A. Yes, Jack Hayes is the athletic director.

18 Q. Thanks. It's for clarity reasons.

19 A. I understand.

20 Q. Thank you. Appreciate it. So we have a
21 PowerPoint date of April 17, 2020, for a meeting of
22 your committee. This refers to a meeting today on
23 April 8. So did you have a meeting with the
24 president, Athletic Director Hayes, and yourself to
25 discuss these materials outside of the full

1 committee meeting?

2 A. I don't recall.

3 Q. Okay.

4 A. Would you state what you said earlier?

5 The PowerPoint was what date? A week later?

6 Q. April 17. Do you want me to --

7 A. No. That's all right. I don't recall.

8 It's possible that the president had a pre-call with
9 me and Jack to just talk about these scenarios, but
10 I don't recall specifically.

11 Q. There were a lot of different scenarios,
12 right?

13 A. Depending on your definition of "a lot,"
14 yes. We looked at many. We were trying to solve a
15 very complex problem.

16 Q. And every one of them included adding
17 sailing, coed and women's, correct?

18 A. If my memory is correct, yes, each
19 scenario included adding two more -- converting
20 those to varsity sports, correct.

21 Q. And so would it be fair to say that right
22 from the beginning of your committee, it was
23 understood that those teams were being elevated to
24 varsity status?

25 A. No, that would not be a correct statement.

1 Q. All right. What presentation were you
2 given about the sailing program?

3 A. I don't think we highlighted specifically,
4 you know, called out the sailing program. I think
5 that if you look at the competitiveness of that
6 program, we know that we've won a number of titles,
7 the women's sailing program. Actually, women prefer
8 to sail with men when they compete as well, and we
9 sit on one of the greatest sailing bays in the
10 world, and the minute you have more than, I believe
11 it's -- don't quote me on this. I think at the
12 minute, if there's more than five Ivy League schools
13 that have a sport -- a varsity sport, you can
14 contend for an Ivy League title.

15 So I think the thinking was we were very
16 competitive. We had fabulous facilities. We gave
17 great opportunities for the women -- for the men and
18 the women that sailed together. And by converting
19 it to a varsity sport, we could probably win many
20 Ivy League titles. There was not, to my
21 recollection, a specific presentation on sailing.

22 Q. So these are things that you already knew?

23 A. These are things we discussed as a
24 committee. These are things that we discussed
25 verbally. The people that made up this committee

1 are -- all of them were varsity athletes. All of
2 them care deeply about the men's and women's varsity
3 sports at Brown. They follow them. So it was not
4 difficult for them to understand a conversation like
5 that.

6 Q. Now, in each of the scenarios that --
7 that's provided, it provides a number for coed
8 sailing on the men's side, generally 12, coed
9 sailing on the women's side, generally 18, and
10 sailing on the women's side, generally of 18. Do
11 you want the document put back up?

12 A. Sure.

13 Q. Can you do that, Lori, Exhibit 5?

14 The first one is no changes made so that's
15 the next one. Do you see those numbers?

16 A. I see the coed sailing.

17 Q. For men?

18 A. For the men's.

19 Q. 12.

20 A. And I see coed for women, 18, and women's
21 sailing, 18.

22 Q. So were you aware that the women who sail
23 on coed sailing and the women who sail on women's
24 sailing are the same people?

25 A. Specifically, no, but I don't think you --

1 I don't think it takes a genius to imagine that they
2 might be.

3 Q. And did your committee conduct any review
4 as to whether it was appropriate to count the same
5 women twice?

6 A. As a committee? Absolutely not. That's
7 the department of athletics and physical education's
8 job, to stay on top of roster counts, how they're
9 counted. To the best of my knowledge, there are
10 different standards by which the NCAA counts, you
11 know, athletes towards rosters, so that -- we leave
12 that in the hands of the department of athletics and
13 physical education. That was not our committee's
14 charge.

15 Q. So you didn't review -- these numbers were
16 provided to you by the athletic department and the
17 president's office, correct?

18 A. Yes.

19 Q. And you didn't question the accuracy of
20 the numbers, correct?

21 A. We had no basis to correct -- to question
22 the accuracy of roster numbers from the department
23 of athletics and physical education of the athletic
24 director. On what basis would we question it?

25 Q. It's just a question.

1 A. Oh. No. We -- the answer is no.

2 Q. Thank you.

3 All right. Lori, we can move on from that
4 one. I want to mark as Exhibit 6 Bates 487 to 501.

5 And, Mr. Mundt, it's been indicated in
6 past depositions that that date is a typo. It's
7 actually 2020.

8 A. Duly noted.

9 Q. Now, tell us when you've finished
10 reviewing and are prepared to at least try to answer
11 questions. Take your time.

12 A. Okay. Proceed. I'm familiar with this
13 slide. These are just numbers, just facts. Yeah.
14 Same. Understand. Yeah. Yes, these are some of
15 the different scenarios, yeah. Okay. Okay. I've
16 read that. I'm familiar with this. And this.
17 Okay. I've read this. Okay. I'm ready.

18 Q. All right. So before I ask you pointed
19 questions about that PowerPoint, there is another
20 version of this PowerPoint, which I will provide to
21 you if you need to see it, that has three scenarios
22 instead of two, and it was suggested that this was
23 the one that your committee reviewed, but I'm happy
24 to post the other one for your comparison if you do
25 not have a recollection as to whether it was two or

1 three scenarios.

2 A. Could you be specific? You used the term
3 "this" and "that." Are you saying --

4 Q. The one that you're looking is the one
5 that --

6 A. Right.

7 Q. Exhibit 6, Bates 487 to 501 -- you see on
8 page 493, it has scenario 1 and scenario 2?

9 A. Correct.

10 Q. And there's another version of this
11 document that was produced -- and I don't want to
12 clutter the record if you didn't see it -- that has
13 three scenarios. And I'm happy to just excerpt --
14 do you remember it being two as opposed to three, or
15 would you like to see the other one?

16 A. If I'm recalling correctly, I think in one
17 of these scenarios, there was a 1A and 1B.

18 Q. Yeah. This one has -- these all have 1A
19 and 1B, but there's a scenario 3. Or, actually, it
20 might be -- all right. Let's just post it. It's
21 probably simpler. This will be Exhibit 7, Bates 619
22 to 635. And just for clarification, Mr. Mundt,
23 we're getting all of this probably a week before
24 we're having this examination, so we apologize if
25 we're not as clear on which document is in use

1 because we're just finding out as we go.

2 MR. CRAIG: I'll just note for the record
3 that these specific documents were provided weeks
4 ago, given the Bates numbers, and they were included
5 in the earliest productions, but we do have a lot of
6 documents.

7 MS. LABINGER: That may be, but they
8 didn't say which ones were the ones that were used
9 by the committee.

10 MR. CRAIG: No. I'm just noting that the
11 timing was not right before this deposition.

12 MS. LABINGER: We can determine that part
13 later.

14 Q. (By Ms. Labinger) So here we are on --
15 this is -- can we get back to the first page, Lori,
16 of Exhibit 7, which shows the same incorrect date?
17 And now move forward to page 625.

18 Okay. So that's the other version. And
19 if you don't have a clear recollection of which one
20 was presented, that's okay. I just need you to tell
21 me.

22 A. My recollection is I'm more familiar with
23 the first format you showed me.

24 Q. All right. Then let's put this one to one
25 side and go back to Exhibit 6. Now, can we also --

1 as Exhibit 8, I'd like to post Bates 502. I think
2 we probably should post this as the native.

3 Mr. Mundt, do you remember being provided
4 access to a spreadsheet that showed the calculations
5 with different scenarios?

6 A. I've certainly seen this spreadsheet, yes.

7 Q. And do you -- I'm just going to draw to
8 your attention, if we look at final 1, which is the
9 second tab, and go up to the top, please. Now,
10 would you agree with me that the legend at the top,
11 which says, "Converts to club, men's and women's
12 fencing, men's and women's golf, men's and women's
13 squash, men's and women's tennis, men's track,
14 field, and cross country, women's skiing, women's
15 equestrian, and converts to varsity coed sailing and
16 women's sailing" -- would you agree with me that
17 that is the recommendation that your committee made?

18 A. I would agree with you that -- no, it's
19 not the recommendation we made. I would agree to
20 you that it was the scenario that when we viewed it
21 as a committee we thought best achieved the
22 objectives we were shooting for.

23 Q. So the way you've said it, is that what
24 you presented to the president?

25 A. We didn't present --

1 Q. The recommendations, it was the best
2 scenario?

3 A. No. Excuse me. We didn't present
4 anything. When we were shown -- again, our
5 committee was an advising and counseling committee,
6 so when we looked at different scenarios of varsity
7 sport structures, female varsity sports, male
8 varsity sports, the resulting data that you're
9 looking here, roster sizes, etcetera -- and then the
10 bottom line was the percentage female slots,
11 percentage male, were we in compliance and what did
12 it do to our diversity, which at Brown we call the
13 HUG ratio -- this was the one that our committee
14 thought accomplished -- you know, it's like a linear
15 program. You're trying to solve many different, you
16 know, pieces of the puzzle, but this is the one that
17 I think our committee advised the president and the
18 athletic director was the one that we thought made
19 the most sense.

20 Q. Okay.

21 A. We did not -- the words here are very
22 important because we did not -- we weren't the ones
23 designing these programs. We were simply looking at
24 the programs brought to us and asking questions and
25 opining on them.

1 Q. So what I do want to do now that -- but
2 the legend at the top is what your committee thought
3 made the most sense, as you characterized it,
4 correct?

5 A. The legend at the top says converts the
6 club and converts the varsity.

7 Q. Right.

8 A. It doesn't say anything about our
9 committee thinking this made the most sense.

10 Q. Yes. And I want to draw to your
11 attention -- this is a document that was provided to
12 us by Brown that, in fact, this particular version
13 of this spreadsheet doesn't actually follow your
14 legend at the top because men's and women's tennis
15 are included in the sports that would remain. Do
16 you see that?

17 A. I see it, yes.

18 Q. Ms. Bullock, if you would access the info
19 page on this document, you will see that -- oh, no.
20 It's been last modified today. That's not helpful.
21 All right.

22 MR. CRAIG: Is there -- can you clarify
23 the nature of the modifications that plaintiffs'
24 counsel made to this document before presenting it
25 to the witness?

1 MS. BULLOCK: I didn't modify it. I
2 downloaded it and saved it to my desktop to be able
3 to publish it, rather than pulling it out of the
4 production file. I can pull the actual one. Hold
5 on.

6 Q. (By Ms. Labinger) All right. Thank you.
7 Do you see, Mr. Mundt, that this, although it was
8 created April the 20th, apparently, it was last
9 modified May the 20th, so after your committee
10 completed its work, correct?

11 A. Just to be clear, I'm not looking at a
12 spreadsheet here. I'm just looking at a screenshot
13 of Ms. Bullock's screen that says "Info" at the top.

14 Q. Well, it's the first page -- I mean, it's
15 the info page of the -- of this --

16 A. Okay. This page that's now on the screen
17 was what you were referring to prior.

18 Q. Yes.

19 A. Okay. So what is the question?

20 Q. All right. So at some point -- you can go
21 back to the final page on that one, Lori.

22 At some point after your committee
23 concluded its work, a decision was made that men's
24 and women's tennis would not be removed from the
25 varsity lineup, correct?

1 A. Yes.

2 Q. Can you tell me how you came to learn of
3 that decision?

4 A. The president took -- scroll up to the top
5 of this page, please. In the black bold box, there
6 was the structure of this programmatic design. This
7 is what we as a group told the president we thought
8 made sense. The president then went to a
9 corporation meeting and discussed this with the
10 corporation. They're the decision-making body, not
11 us.

12 So somewhere between this page and -- in
13 its original form, and then the final decision was
14 to keep men's and women's tennis. That was a
15 decision that the corporation made. We weren't a
16 part of that decision.

17 Q. Okay. So sitting here today, is there
18 anything about that decision, that you're aware of?

19 A. No.

20 Q. So it's just something that --

21 A. Only that the corporation decided to put
22 it back in.

23 Q. Okay. So I want to talk to you a bit
24 about your understanding, if you have one, of the --
25 if we can go back to the baseline page, the tab on

1 this. Thank you. All right. I'm wrong. If you
2 can go back to the final page.

3 If you take a look at women's track,
4 field, and cross country, and you see -- if you
5 could scroll down a little bit more, Lori. That's
6 great.

7 You can see that there's a couple of the
8 hashmarks or footnotes for the way that those are
9 counted, such that track, field, and cross country
10 are listed as one number for the Brown five-year
11 average and the Ivy average, but that track and
12 field is broken out separately from cross country in
13 the columns for coaches' ideal and Brown plan. Do
14 you see that?

15 A. I read the footnote, yes.

16 Q. So was it explained to your committee why
17 there were two different numbers? I'm sorry. Why
18 there were two different methods of counting?

19 A. I will answer your question. Would you --
20 Ms. Bullock, would you scroll up so I can see these
21 column headers? What are these -- okay. So Brown
22 five-year average, Ivy average, coaches' ideal,
23 Brown plan. Thank you. And then your question
24 again, please?

25 Q. So -- yeah. There's a different number

1 for -- the first one is the five-year average. I'm
2 looking at women's track, field, and cross country.
3 It says it's 129. Then in the coaches' ideal and
4 Brown plan, that number is 58 for track and field
5 plus 26 for cross country. If you add them
6 together, I'm not that good at math, but it's not
7 129. Was this explained to you that they were using
8 two different methods of counting?

9 A. If I recall correctly, and I may not, we
10 discussed it briefly, but I think the point that the
11 athletic director was making was that the 58, if you
12 multiply that, you get 116, and you would add that
13 to the 26, you'd get 142. He was just saying for
14 purposes of this spreadsheet, he just put in the
15 number because, for all intents and purposes, women
16 that are on the indoor track team are on the outdoor
17 track team, and vice versa.

18 Q. So were you aware that under the Cohen
19 consent decree that indoor and outdoor track were
20 counted as one number and averaged?

21 A. No. As I mentioned to you, the purview of
22 our committee was to review these different
23 scenarios. Who's keeping count of heads and roster
24 sizes and definitional issues about does that count
25 as a roster slot or not count, does women's cross

1 country count -- or, pardon me, is women indoor kind
2 of separate from women's outdoor track and field --
3 you know, the department of athletics and physical
4 education athletic director gets paid. That's his
5 job. So we weren't diving into that level of detail
6 as it related to the consent decree and the
7 specifics of how these would be counted. We were
8 not -- that was not our charge.

9 Q. So with respect to the five-year average
10 for Brown team sizes, you accepted the presentation
11 by Brown as accurate and reliable; is that correct?

12 A. Are you talking in general or specifically
13 to the track and field issue?

14 Q. I'm talking as to every team that's listed
15 there.

16 A. Yes, we did.

17 Q. Thank you. Did you ever hear or read an
18 explanation from director -- Athletic Director Hayes
19 that referred to the -- I'm going to call it EADA,
20 or E-A-D-A, counts as giving a higher number of
21 women than the Cohen consent order?

22 MR. CRAIG: Objection to form. Vague.

23 Q. (By Ms. Labinger) Do you understand my
24 question?

25 A. I'd like you to repeat it. I think I do,

1 but I'd like you to repeat it.

2 Q. All right. I'll break it down. Are you
3 familiar with the term EADA, E-A-D-A?

4 A. I think I've heard it twice in my life.

5 Q. How about Equity -- now I can't remember
6 it. Equity --

7 A. Well, then I certainly can't.

8 Q. Yeah. Equity Disclosure in Athletics Act,
9 or I've got it backwards, but it requires each
10 institution to report on their team sizes
11 nationally.

12 A. Okay.

13 Q. EADA numbers, E-A-D-A.

14 A. Okay.

15 Q. Did Director Hayes ever refer to the fact
16 that the numbers that he was providing were EADA
17 numbers?

18 A. We -- our committee always asked Athletic
19 Director Hayes and his department if these numbers
20 were right, and we asked him -- you know, I think we
21 were run by three or four different people. In one
22 phone call I had with Director Hayes -- this is when
23 we were thinking about reinstating men's track and
24 field -- he mentioned that there was two
25 different -- different standards for how things can

1 be counted. I didn't go into that in detail in that
2 call because at that point in time, we were focused
3 on whether or not we could put back in men's track
4 and field and was there a way to nip and tuck all
5 the other rosters to stay within Title IX compliance
6 and the consent decree.

7 So his challenge at that point, when we
8 felt pressure to reinstall men's track and field and
9 cross country, was if I take all the remaining
10 rosters and then resize them, you know, one here,
11 two here, two here, one here, etcetera, can I --
12 would we be able to do that, and that's the only
13 context in which he ever mentioned there might have
14 been different ways to count for heads.

15 Q. And did he explain what the different ways
16 to count were in that conversation?

17 A. He may have, but I don't recall. I don't
18 dwell on things like that. That's his job, not my
19 job.

20 Q. Did he share his numbers with you as to
21 how he thought he could do it?

22 A. I believe I just said that the way in
23 which he -- do what? What are you saying? What are
24 you referring to?

25 Q. Did he share any analysis with numbers

1 that showed here's how we're going to reach
2 2.25 percent, with you, where you could see team by
3 team by team here's what I'm going to do?

4 MR. CRAIG: Objection to form. Are you
5 referring to the entirety of the committee process?

6 MS. LABINGER: I'm referring to this
7 conversation that Mr. Mundt just referred to.

8 MR. CRAIG: Okay.

9 THE WITNESS: Athletic Director Hayes told
10 me -- if you're talking about the conversation about
11 putting back in men's track and field and cross
12 country, he said that if he -- when he went back and
13 reworked -- I've already said this -- roster
14 sizes -- okay. I told you, nipping and tucking.

15 So when we first looked at the elimination
16 of men's track and field, it was predicated on
17 putting roster sizes to the Ivy League average of
18 the last five years' championship teams, in which
19 case almost every one of our rosters, women and men,
20 were in deficit.

21 So by eliminating sports and keeping the
22 same number of recruited athlete slots, we could
23 repopulate those slots, women's and men's, with a
24 more representative squad size of the championship
25 teams. You recall that earlier in this

1 conversation, I said reducing sports was necessary
2 but not sufficient. Part of improving the
3 competitiveness was then resizing the rosters.

4 So when he first looked at that scenario
5 where you took out men's and women's -- pardon me,
6 women's -- men's cross country and track, field,
7 when you took that out, he was keeping the roster
8 sizes, okay, at the optimal. Understand?

9 Q. (By Ms. Labinger) Yes, I understand what
10 you're saying.

11 A. Okay. Then when he was challenged with
12 how do we bring back in men's track and field and
13 cross country, he said, "I've got to go back in and
14 redo all those roster sizes." And it was that math
15 that he represented to me allowed us to do it and
16 stay within the 2.25.

17 Q. And my question to you was, did he ever
18 show you his work?

19 A. No. Nor do I think it's my job to ask the
20 athletic director at Brown to show me his numbers.

21 Q. Well, you had seen a large number of
22 numbers and reviewed them over several months in the
23 spring, correct?

24 A. And? So?

25 Q. Is that correct? You did, right?

1 A. That's a fact.

2 Q. Okay. But this time, you were not -- you
3 were not shown any more numbers, correct?

4 A. Correct. I personally did not ask the
5 athletic director to prove to me with his math that
6 we could do that. I didn't think that's my place.
7 He has a boss called the president of Brown
8 University.

9 Q. And would you agree with me that, sitting
10 here today, you've never seen those numbers that
11 show that they can get into compliance at
12 2.25 percent?

13 A. What I would say is that I've never seen
14 the exact resulting roster sizes versus the original
15 optimal roster sizes that we thought we could get
16 to, okay, because once again, once we added back in
17 those -- I don't know -- 50 or 60 men's slots, he
18 had to do a lot of alteration of roster sizes. I
19 never saw those final specific numbers. I took it
20 at his word that he had run those numbers with his
21 team correctly to say we would be within compliance.

22 Q. Okay. I was just asking you whether
23 you've ever seen a set of numbers since you had that
24 conversation with Director Hayes.

25 MR. CRAIG: Asked and answered.

1 Q. (By Ms. Labinger) Can you just answer the
2 question?

3 A. No. I mean no, I haven't seen the
4 numbers.

5 Q. And it's a bad question. I apologize.
6 But thank you for clarifying it. I'm going to
7 take -- let's take a 10-minute break, help me
8 collect my thoughts and see if we can wrap this up.

9 VIDEOGRAPHER: Off the record at 2:10 p.m.
10 (Recess taken from 2:10 to 2:25 p.m.)

11 VIDEOGRAPHER: On the record at 2:25 p.m.

12 Q. (By Ms. Labinger) I want to go back to
13 Exhibit 2, which is 26042 to 043. And, Mr. Mundt,
14 can you read -- if you can scroll up, please -- the
15 first -- actually, would you read the last paragraph
16 of President Paxson's email to you of June 5 at
17 12:55 p.m.? Out loud.

18 A. Sure. I didn't know I was going to have a
19 reading test. I'm nervous. "Honestly, if we were
20 not under the consent decree, we could bring back
21 men's track and field and stay in compliance with
22 Title IX (as it is applied to every other
23 university). I have been thinking about using this
24 as a moment to petition the court for relief."

25 Q. And can you read the first sentence of

1 your response at 1:27 on June 5?

2 A. "First, I think your last thought has
3 tremendous merit and we should pursue that path."

4 Q. So you were talking about petitioning the
5 court for relief; is that correct?

6 A. I was endorsing the president's thought of
7 potentially doing that.

8 Q. Okay. And would -- did you continue to,
9 at least personally, have a role with regard to
10 discussions to reinstate the men's track program
11 during the, I want to call it, June 4 through 9 time
12 frame? Approximately?

13 A. You're requiring me to remember what
14 happened between June 4th and June 9th.

15 Q. Sorry. We'll try --

16 A. So, therefore, I would say I don't know.
17 I will tell you that I was involved in further
18 discussions about reinstating men's track and field.

19 Q. Okay. So let us, then, have as
20 Exhibit 9 -- see if this is the right one.
21 Exhibit 9, Bates 25985, one page.

22 A. Okay.

23 Q. All right. Does this refresh your
24 recollection that you were engaged with
25 President Paxson about reaching out to the track --

1 A. Yes.

2 Q. -- community?

3 A. That's why I answered your question in the
4 affirmative. I just didn't know the exact dates.

5 Q. Okay. And had you been in contact with
6 Bob Rothenburg before your offer in this email to
7 reach out to him?

8 A. No, I had not. I had -- let me -- just
9 hold on one second, please. Okay. Pardon me. I
10 retract that. I had had a call with Bob Rothenburg,
11 who, for the record, is the former track and field
12 coach at Brown University, not the current, and a
13 man I know very well. And we were -- I called him
14 because of the enormous, enormous and very emotional
15 reaction to the announcement about men's track field
16 and cross country, and I asked him, you know, for
17 his advice.

18 And then during that call, I asked him if
19 he would be willing to get on the phone with
20 President Paxson and provide her with his counsel as
21 to what to do about that, and he replied in the
22 affirmative. So this then picks up with me
23 confirming with President Paxson that she would like
24 to talk to him.

25 Q. And was he your coach when you were on

1 track?

2 A. Absolutely not. I'm way too old.

3 Q. Okay. He was there a long time.

4 A. Well -- all right. Now I'm really
5 offended.

6 Q. It's all right.

7 A. No. Bob Rothenburg was not the head track
8 coach. Bob Rothenburg circa was in the, like, late
9 '80s through the '90s and early 2000s and -- I mean,
10 just -- Tim Springfield just took over recently, but
11 I did not have the pleasure -- he was a running
12 coach anyhow and I was a field events guy so I would
13 not have had him.

14 Q. Thank you. Now, this was on June 6th.
15 Let's also mark as Exhibit 10, Bates 26190, which is
16 three pages.

17 A. I'm familiar with this document.

18 Q. Okay. And did you receive the cover email
19 from President Paxson addressed to you and
20 Chancellor Menco on June the 9th?

21 A. Yes.

22 Q. Is there a -- had you been in
23 communications with President Paxson and Chancellor
24 Menco on the issue that is addressed in the email?

25 A. I think I stated earlier I'd been in

1 discussion with President Paxson, as the prior email
2 showed, about the reinstatement of the track and
3 field program. I was trying to help her figure out,
4 you know, how to do that, and she was also
5 simultaneously working with Director Hayes on
6 whether or not by adjusting all of the other
7 rosters, the remaining rosters, we could put it back
8 in and still be in compliance with the Title IX
9 consent decree and the 2.25 percent. That's what my
10 discussions with her were about.

11 Q. Well, there were also discussions about
12 petitioning the court for relief from the consent
13 decree, correct?

14 A. She had mentioned that in an email, as you
15 read, and I said I thought it had merit. That was
16 the sum total of my involvement in that.

17 Q. And had you been in contact with --
18 withdrawn.

19 Did you know that Chancellor Menco had
20 expressed a similar view to President Paxson's, to
21 end the consent decree?

22 A. No. I only read that in
23 President Paxson's email. It wouldn't surprise me
24 that Chancellor Menco agreed with that, but I only
25 read it, and you saw how I responded. I said I

1 think it has merit.

2 Q. Right. And --

3 A. I want to say just one thing, you know. I
4 think that in the construct of a governance of a
5 university, where I was simply providing advice and
6 counsel in my committee to the president, I know the
7 president was having conversations with the
8 chancellor and also other fellows, who were, by the
9 way, listed on one of the -- in one of the emails
10 before, and I'm not privy to those conversations.
11 So, you know, when she first said to me she was
12 thinking about what she was considering and I
13 responded, it didn't surprise me. By the way,
14 that's not first time that -- you know, that
15 thought's ever been had.

16 Q. Well, can you tell me, when you say it
17 wouldn't surprise you that Chancellor Mencoﬀ had
18 expressed that view --

19 A. No, that's not what I said. I said that
20 the president expressed that view, not -- that's not
21 what I said. I didn't say Chancellor Mencoﬀ had
22 expressed that view. I said it didn't surprise me
23 the president -- in the previous emails you showed
24 us, where she said in her last paragraph, you know,
25 something about the consent decree and getting

1 relief and I said I think that has merit, okay, I
2 was referring specifically to President Paxson, not
3 to Chairman Menco. I didn't talk to him about
4 this.

5 Q. Yeah. We can go back and check your
6 answer that you said it wouldn't surprise you that
7 Sam thought the same way.

8 A. It wouldn't surprise me.

9 Q. And had he ever expressed that view to
10 you?

11 A. He may have. Not that I recall
12 specifically.

13 Q. And in this email, it says, "I expect both
14 of you may have wanted us to be more explicit about
15 our intention to fight the consent decree." Were
16 there conversations between you and President Paxson
17 where you urged her to go out in the public to
18 denounce the consent decree?

19 A. No. What I think she's referring to here
20 is that -- by the way, this whole conversation
21 started, you know, more than two years ago, and I
22 think what she's referring to here is I had a
23 meeting with the president where she expressed her
24 interest in trying to improve the quality of the
25 women's and men's varsity programs, her excellence

1 in athletics, her first idea, and then I had a
2 meeting also about a year and a half ago with
3 President Paxson and chairman -- or Chancellor
4 Mencoff where we talked about could we -- should we
5 try to do this, okay, and in that conversation, I'm
6 sure the Title IX consent decree came up because we
7 knew that whatever we did, we must comply with that.

8 So it would not have -- I don't recall
9 specifically what was said, but it wouldn't surprise
10 me. I think that's what she means when she says --
11 I'm speculating here, but I think that's what she
12 means when she said, "I expect both of you --" may
13 have wanted us to be more explicit about this,
14 because we had discussed it, but I was never privy
15 to any conversations about any specific plans to
16 fight or overturn the consent decree. Ever.

17 Q. The only thing you saw was what you read
18 in that email that was marked Exhibit 9 that we just
19 read, correct?

20 A. Her last paragraph where she said
21 something about getting relief from it, and I
22 think -- well, I would be speculating. I won't tell
23 you what I think she means by "relief." I have my
24 own idea, but that's not relevant here.

25 Q. All right. Did the phrase "Our concern is

1 that this could rile up the Cohens of this world and
2 put us in a defensive posture" mean anything to you?

3 A. Sure.

4 Q. What was that?

5 A. Well, all of us that spend time on this
6 subject know that Plaintiff Cohen was the original
7 plaintiff in the first lawsuit brought in '92, '93,
8 '94. I don't really remember when. And I think
9 when -- so she was using that euphemistic phrase
10 that we can be challenged again on Title IX consent
11 decree.

12 We talk about that all the time so this is
13 nothing -- I mean, we talk about the consent decree.
14 As I mentioned to you, it has always been probably
15 the first or second topic we discuss -- whenever we
16 talk about programmatic changes in varsity sports
17 for women, for men, we always talk about we must
18 stay in compliance with Title IX. Always. So that
19 doesn't surprise me that she mentioned -- when she
20 said "the Cohens of the world," she just means in
21 general that topic. My view. That's speculation.

22 Q. Now, you asked to convene a meeting of
23 your committee before the announcement was made
24 to -- that the track -- men's track program would be
25 reinstated. Do you recall that?

1 A. I do.

2 Q. If I can find the reference, I will, but I
3 believe it was on June the 8th.

4 Ms. Bullock, do you know where it is?

5 MS. BULLOCK: I can find it if you give me
6 a moment.

7 Q. (By Ms. Labinger) All right. What was the
8 purpose -- withdrawn. Did you have that meeting of
9 your committee virtually?

10 A. As I recall, we did, yeah.

11 Q. And what was the purpose of the meeting?

12 A. I wanted the entire committee that I
13 chaired, who had given their time as volunteers to
14 the university, to be aware of the fact that we were
15 changing a pretty significant component of the
16 programmatic plan that we were going forward with.
17 That was the reinstatement of men's cross country,
18 track, and field.

19 And I wanted them to be aware of it
20 because I was not the only person receiving emails
21 about this, and I felt as the chair of that
22 committee, it was my -- I felt obliged to make sure
23 those people were informed and not hear this, you
24 know, at the time we announced it to the university.
25 I would have failed them if I would have let that

1 happen. So I was insistent upon informing them that
2 we were going to change that decision.

3 Q. And was this in the nature of simply
4 informing them, or were you asking for feedback?

5 A. By the nature of the way I run that
6 committee and by the nature of the people that they
7 are, by informing them, we were asking them for
8 feedback. These are not -- these are not, you
9 know -- and we wanted it, and of course the
10 number-one question was "Can we do that and make the
11 numbers work with Title IX?" which was a question
12 for Director Hayes, and the absolute answer was
13 "Yes. We've run the numbers 20 ways from Sunday.
14 We can do it, and the way that we do it is by
15 altering all of the remaining sports roster sizes."

16 So we were sort of -- we were going to
17 have to give up the dream of keeping all the roster
18 sizes at their optimal size to accommodate that
19 and -- but the athletic director thought it was
20 absolutely the right thing to do and that we could
21 make the numbers work. So I just wanted the
22 committee to have the chance to hear it from the
23 president and the athletic director and, if they had
24 questions or input, to provide it. That was the
25 purpose of the meeting. That's how I run my

1 committees.

2 Q. And were the president and Athletic
3 Director Hayes part of the meeting?

4 A. I don't recall specifically. I would be
5 very surprised if we had a meeting and they weren't
6 on it, but -- we can go back and check the roster of
7 the meeting.

8 Q. When you say a roster, I'm not quite sure
9 that I --

10 A. The attendees. The attendees. I don't
11 think I would have had that meeting -- I don't think
12 I would have said let's go ahead without the
13 president and the athletic director because the
14 whole purpose was to give them some feedback, so I'm
15 fairly certain they were on that call. I think it
16 was just a telephonic meeting, but I don't recall
17 specifically.

18 Q. Let me take a minute to find that date.

19 Ms. Bullock, were you able to find it?

20 A. Would have been sometime in the first two
21 weeks of June.

22 MS. BULLOCK: It's Bates --

23 MS. LABINGER: June the 8th, I'm almost
24 positive, but there's just so many numbers, and they
25 have no meaning outside of how they were --

1 MS. BULLOCK: It's Bates 3533 through
2 3537.

3 MS. LABINGER: All right. Can we make
4 that Exhibit 11?

5 MS. BULLOCK: Mr. Mundt, I'm going to
6 scroll to the bottom.

7 THE WITNESS: Okay. Is there a question
8 related to this?

9 Q. (By Ms. Labinger) Yes. Does this assist
10 you in determining when the meeting took place and
11 who was present?

12 A. Well, it looks like the meeting took
13 place -- I mean, this is all just factual stuff,
14 right? It looks like the meeting -- we need to be
15 specific what meeting we're talking about, right?

16 Q. The meeting of your committee to --

17 A. Yeah. Right. It looks like it took place
18 on Wednesday morning, okay, and since Marguerite was
19 arranging it -- you know, she represents the
20 president so I'm pretty certain the president was on
21 that call, but the -- the way that this worked,
22 having reread this, is it looks like the president
23 felt -- we had -- the president and I had a meeting
24 with the track team on Tuesday evening, and I think
25 she announced it very soon thereafter, so the

1 announcement, as it says, probably had already gone
2 out, but, again, we just wanted to -- I wanted my
3 committee to have a chance to talk about it.

4 Q. And you previously said that the athletic
5 director made a representation that he could make
6 the numbers work but had not provided you new
7 numbers. Is that still your answer?

8 MR. CRAIG: Objection to form. I'm not
9 sure it quite captures his prior testimony.

10 Q. (By Ms. Labinger) Do you understand my
11 question? Let me rephrase it. You said you had a
12 meeting with your committee to bring them up to date
13 and give them feedback. You said you thought that
14 the president and the athletic director participated
15 and that the athletic director told them he was
16 going to make the numbers work so that Brown would
17 be in compliance.

18 MR. CRAIG: Misstates prior testimony.

19 Q. (By Ms. Labinger) Is that your
20 recollection?

21 MR. CRAIG: Sorry, I didn't mean to
22 interrupt, but misstates prior testimony.

23 Q. (By Ms. Labinger) Please correct me if
24 I've misstated anything that you've just testified
25 to.

1 A. What I have said is that when I talked to
2 Director Hayes about this new plan, reinstating
3 cross country -- men's cross country and track and
4 field, I discussed with him whether or not he had
5 run the numbers and whether or not he was sure that
6 the numbers showed, given what he had done to the
7 roster sizes of all the remaining twenty -- now I
8 think we're talking about the remaining 25 or 26
9 sports -- do the numbers show that we're in
10 compliance, and he said yes.

11 I did not ask him -- as I stated before, I
12 did not ask him for the spreadsheets, the detailed
13 numbers. I did not ask him to verify tick and tie
14 all those rosters. So in this call, if that
15 question came up, you know, I'm -- I -- which I
16 don't remember if it did because we were just
17 telling them we were reinstating it. If a question
18 came up about are we in compliance, I would have
19 said, "Yes, Jack Hayes and I have discussed the
20 numbers," but I never looked at those numbers
21 specifically. Just -- that's my original testimony.
22 I'm pretty sure that's exactly what I said.

23 Q. Thank you. That's what I understood as
24 well. Appreciate the clarification. Let's mark
25 Exhibit 12 as -- that's Bates 26247. Do you have

1 it, Ms. Bullock?

2 A. Yes. I'm familiar with this.

3 Q. So you're -- this is an email that you
4 received and forwarded to Athletic Director Hayes,
5 correct?

6 A. That is correct.

7 Q. And your comment, I take it you weren't
8 being scientific, but you said this is one versus
9 3,000. Were you talking about the ratio of
10 favorable to unfavorable emails that you had been
11 peppered with over the preceding several weeks?

12 A. Correct.

13 Q. And is "peppered" an understatement,
14 "bombarded" more correct?

15 A. I don't think we have to choose specific
16 words to describe it.

17 MS. LABINGER: Did you -- I just want to
18 take -- okay -- two minutes just to make sure that
19 I've got everything lined up. Let's go back on the
20 record in two minutes.

21 VIDEOGRAPHER: Off the record at 2:51 p.m.

22 (Recess taken from 2:51 to 2:54 p.m.)

23 VIDEOGRAPHER: On the record at 2:54 p.m.

24 Q. (By Ms. Labinger) Mr. Mundt, in your
25 discussions with President Paxson and Jack Hayes, as

1 you were talking in this period about the
2 possibility of reinstating the men's track program,
3 was there any discussion about reinstating one or
4 more women's teams in order to make the numbers work
5 towards compliance?

6 A. Not to my recollection. We had -- as you
7 pointed out, when the president went to the
8 corporation, they had already taken a decision to
9 leave in men's and women's tennis for, you know --
10 I'm sure they had very good reasons, and when we
11 talked about the reinstatement of men's track and
12 field and cross country, we did it only in the
13 context of can we make the numbers work by doing
14 what I described earlier, which is, essentially, in
15 a bespoke fashion tailoring the size of rosters, and
16 Athletic Director Hayes assured us we could. So
17 there was not a discussion about that.

18 There was a discussion about the fact that
19 reinstating men's track and field and cross country
20 actually improved the women's program, and that was
21 simply a function of the fact that, unbeknownst to
22 me, but if you only have a women's cross country and
23 track and field team, you can't have -- you can only
24 have three -- they would only have been able to have
25 three coaches, and a team cannot run a track and

1 field program without four. Need a distance coach,
2 a sprints coach, a throws coach, and jumps coach.

3 So by actually putting that back in, we
4 were actually going to help the women's program.
5 And it turns out, you know, unlike when I was there,
6 when there wasn't a women's track team, the men and
7 women train all together. The camaraderie is
8 important. They travel together on trips that they
9 make. And they do enjoy that camaraderie. So by
10 reinstating men's track and field, we were able to
11 add the fourth coach back in, which actually
12 strengthens the women's program as well.

13 There was not, to my knowledge, a
14 discussion about adding back other than the sports
15 we already had done, which was women's tennis,
16 women's sailing, coed sailing -- there was not a
17 discussion about adding other women's sports that I
18 was a part of.

19 Q. Understood. And just one more thing.
20 When you mentioned that Athletic Director Hayes
21 talked about adjusting the rosters, did he indicate
22 that he was looking at reducing the rosters of men
23 and increasing the rosters of women or just one or
24 the other?

25 A. He did not go into nor did I ask him any

1 of the specific details of that. The only specific
2 conversation we ever had as it related to one
3 specific roster was a discussion about the 120 men
4 on the football team and, you know -- which actually
5 is part of the Ivy League rules because the Ivy
6 League sets the size of football squads and whether
7 or not that could ever go to a hundred, but there
8 was never a discussion about "Jack, what specific
9 sports are you adding to or taking away from?" but I
10 would assume that when you add back in men's track
11 and field, okay, then the other men's sports must
12 be -- you must deduct from them and/or add to women
13 in order to change the ratio. You can either raise
14 the bridge or lower the water. You can't -- you
15 know, so that's what Athletic Director Hayes had to
16 do in order to, quote, make the numbers work,
17 according to him.

18 MS. LABINGER: Thank you. No further
19 questions. Anyone else?

20 VIDEOGRAPHER: Off the record ending the
21 deposition at 2:58 p.m.

22 (Deposition concluded at 2:58 p.m.)
23
24
25

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 18th day of August, 2020.

23 

24 _____
25 SONYA M. WRIGHT, RPR-CSR

KEVIN MUNDT

Cohen, et al. v. Brown University, et al.

August 18, 2020

WITNESS ERRATA SHEET

Indicate changes you want to make below, including page number, line number, the text as shown in the transcript, what you want to change it to, and the reason for the change. Example: Page X, Line Y, Smith to Smythe, incorrect spelling.

transcript, what you want to change it to, and the reason for the change. Example: Page X, Line Y, Smith to Smythe, incorrect spelling.

Smith to Smythe, incorrect spelling.

Page	Line	Change	what	to what	Reason
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I have read my examination under oath and have noted any changes I wish to make to it above. Signed and dated this _____ day of _____, 2020.

dated this _____ day of _____, 2020.

WITNESS SIGNATURE

I witness the above signature on the day of

_____, 2020.

NOTARY PUBLIC My commission expires .

Exhibits	1	2000s 76:9	4	635 58:22
111232_	1 58:8 60:8	2019 28:1,23 29:8		699 51:17
Mundt Exhibit 1	10 9:18 12:23	2020 4:8 27:11	4 47:10,20 49:10	6th 76:14
3:5	17:24 24:14 25:12	29:5,13,16 41:3,	74:11	
111232_	76:15	15 49:21 52:21	40-billion-dollar	7
Mundt Exhibit 2	10-minute 73:7	57:7	45:23	
3:7 37:13,14,22	11 25:13 36:9 85:4	20th 63:8,9	42 44:11	7 58:21 59:16
73:13		22 22:21 24:8,11	44 16:7	710 51:17
111232_	116 66:12	44:11 45:22	45 35:12	
Mundt Exhibit 3	12 17:20,21 24:13	23 42:5	487 57:4 58:7	8
3:8 41:7	55:8,19 87:25	25 42:1 87:8	493 58:8	8 52:23 60:1
111232_	120 91:3	25985 74:21	4th 74:14	80s 76:9
Mundt Exhibit 4	129 66:3,7	26 66:5,13 87:8		8th 82:3 84:23
3:10 47:9,10	12:10 4:9	26,000 9:5,7	5	
49:10	12:55 73:17	26042 37:13,14		9
111232_	142 66:13	73:13	5 45:24 51:17	
Mundt Exhibit 5	16 25:13	26190 76:15	52:10 55:13 73:16	9 74:11,20,21
3:11 52:10 55:13	17 25:13 52:21	26247 87:25	74:1	80:18
111232_	53:6	26993 41:6,7	50 44:12 45:20	90s 76:9
Mundt Exhibit 6	17th 4:8	26995 41:23	72:17	92 81:7
3:12 57:4 58:7	18 55:9,10,20,21	27 42:5	50-million-dollar	92-CV-0197-
59:25	19 29:5	29 11:10	45:22	JJM-LDA 4:7
111232_	1976 17:5	2:10 73:9,10	501 57:4 58:7	93 81:7
Mundt Exhibit 7	1992-'93 24:25	2:25 73:10,11	502 60:1	94 81:8
3:14 58:21 59:16	1:22 49:16,17	2:51 88:21,22	509 47:10	9th 74:14 76:20
111232_	1:27 74:1	2:54 88:22,23	51 49:1	
Mundt Exhibit 8	1:28 49:17,18	2:58 91:21,22	516 47:12	@
3:15 60:1	1A 58:17,18		524 47:13	
111232_	1B 58:17,19	3	53 48:25	@brown.edu
Mundt Exhibit 9		3 32:11 34:11 41:7	532 47:10	13:11 15:4
3:16 74:20,21	2	48:20 58:19	58 66:4,11	A
80:18	2	3,000 88:9	586 30:8	
111232_	2 37:13,14,22	3.5 32:12	6	ability 7:8,17
Mundt Exhibit 1	48:21 58:8 73:13	35- 45:23		able 9:7 19:9
111232_	2.25 33:4,21	350 32:13	6 57:4 58:7 59:25	36:23 63:2 69:12
Mundt Exhibit 1	34:12 70:2 71:16	3533 85:1	60 72:17	84:19 89:24 90:10
2 3:20 87:25	72:12 77:9	3537 85:2	605 30:8	absolute 83:12
	2.8 44:23	38 44:9,24	619 58:21	absolutely 29:6
0	20 22:14 83:13		625 59:17	56:6 76:2 83:20
043 73:13	20.4 9:18			accept 12:8
				accepted 67:10

access 60:4 62:18	admission 51:9, 12,14	announced 82:24 85:25	45:6 47:18 50:9 68:18,20 72:25 75:16,18 81:22	68:8 80:1
accommodate 83:18	admitted 5:8	announcement 10:1 36:8 75:15 81:23 86:1	asking 6:18 23:19 26:19 35:22 38:14,19 39:20 40:1,8 42:20 61:24 72:22 83:4, 7	attached 41:12
accommodation 31:18	advised 61:17	answer 6:19,23 7:7,12 9:12 12:2 18:17,25 19:12 20:22 21:22 23:9 26:1 32:1 37:11 48:1 57:1,10 65:19 73:1 79:6 83:12 86:7	aspect 23:2	attaching 52:11
accomplished 61:14	advising 61:5	answered 18:18 26:11 37:10 51:13 72:25 75:3	aspects 23:6 26:18	attachment 42:11
according 91:17	advisory 17:14 21:15 22:1 23:8 24:12,18,23 27:2, 15 28:16 29:1	answers 6:13 7:19	assert 19:9 20:21 21:11	attend 46:22 47:1
accuracy 56:19, 22	affirm 5:14	apologize 27:22 29:6 58:24 73:5	assertions 21:12	attended 49:24
accurate 67:11	affirmative 75:4, 22	apparently 40:18 63:8	assistance 39:20	attendees 84:10
achieve 35:19 43:22	afternoon 24:1	appears 41:20	associated 33:6	attention 22:21 23:1 47:11 60:8 62:11
achieved 60:21	agree 20:8,12 46:6 60:10,16,18, 19 72:9	applied 73:22	assist 49:9 85:9	attorney 7:4,6,23 8:1,5 9:14 10:14, 18,24,25 11:12
across 44:18,24	agreed 5:10 28:5 31:9,10 77:24	appreciate 12:4 40:16 52:20 87:24	assume 91:10	attorneys 4:17, 19,21 7:2 10:22 11:4,8,15
Act 68:8	agreement 21:11	appropriate 56:4	assured 89:16	August 4:8
actions 14:9	ahead 50:14 84:12	approximately 8:4 9:9 17:19,20, 24 36:7 74:12	athlete 70:22	authentic 42:3
active 13:7	Alan 5:25	April 29:5 52:21, 23 53:6 63:8	athletes 13:22 36:14 55:1 56:11	author 42:14
activities 14:24	allocate 39:11	area 32:2	athletic 10:5 18:2,23 22:17 23:10 34:4 36:3, 17 44:17,22 45:22 48:12 50:12,15,23 51:2 52:12,17,24 56:16,23 61:18 66:11 67:4,18 68:18 70:9 71:20 72:5 83:19,23 84:2,13 86:4,14, 15 88:4 89:16 90:20 91:15	authored 42:18
actual 35:7 63:4	allocated 51:15	arranging 85:19	athletics 10:5 14:4,6 16:21,22, 25 17:1,7,14 18:11,15 21:14,18 22:1,4 23:7,8,11 24:13,19 25:21 26:15,19,21 27:2, 15,18 28:3,17 29:2 39:10 41:14 43:15 47:5 49:20 56:7,12,23 67:3	available 33:24 40:24 41:2
actually 21:1 24:24 43:4 45:14 54:7 57:7 58:19 62:13 73:15 89:20 90:3,4,11 91:4	Allow 8:19	Arthur 4:20		average 65:11,22 66:1 67:9 70:17
ad 24:20 27:17 29:1	allowed 71:15	articulate 21:1		averaged 66:20
add 25:11 66:5,12 90:11 91:10,12	allowing 20:18	ask 6:13,18,19 7:4,11 8:23 9:8,12 15:15 28:1 30:8 37:24 52:5 57:18 71:19 72:4 87:11, 12,13 90:25		aware 26:17 30:21,23,24,25 32:8 33:5 55:22 64:18 66:18 82:14,19
added 72:16	alteration 72:18	asked 10:18 24:5 25:22 26:3 27:7 36:22 37:10 42:23		away 51:23 91:9
adding 53:16,19 90:14,17 91:9	altering 83:15			awful 36:11 39:6
addition 12:12	alums 10:8			
address 13:5,7, 11 40:4,18,20,24 41:1	always 22:25 23:1 68:18 81:14, 17,18			B
addressed 76:19,24	amount 39:16			back 13:21 15:25 18:5 24:23 37:8 38:9 44:25 49:8 50:25 55:11 59:15,25 63:21 64:22,25 65:2 69:3 70:11,12 71:12,13 72:16 73:12,20 77:7
adjusting 77:6 90:21	Amy 4:3,11 49:14			
administered 5:4	analysis 69:25			
	analyzing 46:14			
	and/or 31:18 91:12			

79:5 84:6 88:19 90:3,11,14 91:10	bombarded 88:14	budgets 45:2	certified 4:12 5:4	clarify 62:22
background 32:17	boss 72:7	Bullet 47:20	chain 40:11	clarifying 73:6
backwards 68:9	bottom 38:1 52:1 61:10 85:6	Bullock 4:18 5:7 37:19 49:14 51:18,21 62:18 63:1 65:20 82:4,5 84:19,22 85:1,5 88:1	chair 9:24 17:16, 17,18,21,23 22:6 28:5 42:23 49:19 82:21	clarity 52:18
bad 22:9 73:5	box 64:5	Bullock's 63:13	chaired 82:13	class 48:25
band 48:24	break 7:10,13 49:13 68:2 73:7	business 40:4, 15,20 41:1	chairing 28:2	clean 20:14
bands 35:18	bridge 91:14		chairman 79:3 80:3	clear 20:12 26:16 38:15 52:4 58:25 59:19 63:11
barely 45:24	briefly 66:10	<hr/> C <hr/>	challenge 69:7	Cliatt 40:10
based 23:9,13 39:8	bring 37:8 38:9 50:16,17,18 71:12 73:20 86:12	calculations 60:4	challenged 71:11 81:10	clicked 49:15
baseline 64:25	broad 34:14	call 11:17,19,20, 23,25 12:2,5,15 35:16 36:17 44:12 47:8 61:12 67:19 68:22 69:2 74:11 75:10,18 84:15 85:21 87:14	championship 70:18,24	club 36:10 41:24 60:11 62:6
basically 43:8	broadest 38:19		chance 83:22 86:3	clutter 58:12
basis 19:25 20:18 32:13,16 56:21,24	broadly 33:24	called 5:19 28:2 54:4 72:7 75:13	chancellor 13:8, 14 15:3,21 16:5 33:7,19 35:10,22 41:18 76:20,23 77:19,24 78:8,17, 21 80:3	coach 75:12,25 76:8,12 90:1,2,11
Bates 30:5,7 47:10,12 51:17 57:4 58:7,21 59:4 60:1 74:21 76:15 84:22 85:1 87:25	broken 65:12	calls 8:10 21:20	change 43:1,6 44:21 83:2 91:13	coaches 23:11 89:25
bays 54:9	brothers 35:11	camaraderie 90:7,9	changing 82:15	coaches' 65:13, 22 66:3
beginning 4:1 15:16 47:16 53:22	brought 24:25 34:17 61:24 81:7	campus 25:23 26:1,4,5,8,18 46:23 47:5	characterize 44:3 45:17	coaching 45:4
behalf 12:9	Brown 4:4 5:2 10:4,5,23 11:4,8, 16 12:5 13:3,4,5, 6,8,10,15,22,24 14:9 15:4,10,11, 14,24 17:3,8,15 18:3,11,15 21:17 22:4,14,24 23:7 24:9,15 25:6 28:10 30:25 31:1, 5,9,19 32:3,9 33:6,9,22 34:20 35:1,16 37:7,8 38:8,9 39:2,21,23 40:7,12 44:9,13 45:15,19 46:15 55:3 61:12 62:12 65:10,13,21,23 66:4 67:10,11 71:20 72:7 75:12 86:16	capable 20:16	characterized 10:2 62:3	coed 22:18 53:17 55:7,8,16,20,23 60:15 90:16
belabor 21:4	Brown's 11:15 15:19 29:17 33:15	Capital 16:13	charge 29:22 34:22 40:11 41:22 43:1,5 44:2 45:9 56:14 67:8	Cohen 4:3 13:24 18:1,10,21 21:17 22:2,11 23:7 24:25 25:20 27:4, 6,13 29:18 30:1, 17 31:1,8 66:18 67:21 81:6
bespoke 89:15	brunt 10:11	captain 40:7	charged 36:15	Cohens 81:1,20
best 7:8 22:17 56:9 60:21 61:1	Bryant 4:20	captures 86:9	chartered 44:16	colleague 4:24
Beverly 25:2	budget 44:11,21 45:10,22 46:2,3	Caputo 28:13	charts 50:17	collect 73:8
bicameral 28:22		care 55:2	check 79:5 84:6	column 65:21
bigger 51:19		case 4:6 13:24 19:1 27:13 70:19	choose 88:15	columns 65:13
bit 8:22 13:21 64:23 65:5		Cass 40:10	chose 15:12	combination 9:22 46:17
black 36:14 64:5		cast 39:5	circa 76:8	combinations 48:11
blocked 40:19		Central 4:9	clarification 58:22 87:24	comfortable 20:10 23:22
boatload 20:25		certain 23:20 33:1 84:15 85:20		comment 11:5 39:1,8 45:11 88:7
Bob 75:6,10 76:7, 8				
body 43:16 45:8 50:11 64:10				
bold 64:5				

committee 13:16 14:5,6,8,24 16:2 22:5,6 25:23 26:2, 8 27:2,10,14,17, 20 28:2,3,9 29:1, 8,21,23,24 33:24, 25 34:2,13,20 35:3 41:13,22 42:23 43:1,3,13, 21 44:8 46:4,7,12, 15,23,24 47:5,19 48:7,8 49:20 50:8 52:22 53:1,22 54:24,25 56:3,6 57:23 59:9 60:17, 21 61:5,13,17 62:2,9 63:9,22 65:16 66:22 68:18 70:5 78:6 81:23 82:9,12,22 83:6, 22 85:16 86:3,12	37:9 38:10 48:14, 19 49:4 61:11 69:5 72:11,21 73:21 77:8 81:18 86:17 87:10,18 89:5 comply 24:10 80:7 complying 23:3 24:3 component 82:15 compound 20:14 concern 80:25 concerned 50:13 concerning 13:15 18:10,14 concerns 14:2 concluded 63:23 91:22 conduct 56:3 conducted 4:10 conference 4:11 confident 20:15 confidential 50:13 confirm 8:23 37:16,19 confirming 75:23 confusing 20:15 connection 12:18 13:4 cons 43:18 consent 13:23 18:1,11 21:17 22:3,11 23:7 25:20 27:4,6 29:18 30:1,17 31:8,21,24 32:5,8 33:9 34:11,16 35:17 36:25 37:7 38:8 48:15 66:19 67:6,21 69:6 73:20 77:9,12,21 78:25 79:15,18	80:6,16 81:10,13 consideration 44:25 46:2 considerations 36:16 consists 41:8 construct 78:4 constructs 48:10 consultants 44:17 contact 75:5 77:17 contained 30:22 contend 54:14 context 25:3 26:13 34:7,18 39:3 45:21,24 48:13 69:13 89:13 contextural 35:2 continue 21:5 74:8 continuing 47:10 convene 81:22 conversation 12:12 38:14 39:13 55:4 69:16 70:7, 10 71:1 72:24 79:20 80:5 91:2 conversations 33:14 38:12,21 78:7,10 79:16 80:15 converting 53:19 54:18 converts 60:11, 15 62:5,6 Cooper 4:12 corporation 14:9,25 15:1 25:7, 10,18 26:22,23 27:3 28:11,21 33:8 37:2 43:4,14 46:23 47:5 64:9, 10,15,21 89:8 corporation's	37:5 correct 11:1,2,4 13:24 14:6,11 17:3,4,15 19:5 25:7,8 28:5,21,24 29:11,14 32:12,15 33:4 39:18,22 41:3,4,19 42:11, 21,22,24 45:16 53:17,18,20,25 56:17,20,21 58:9 62:4 63:10,25 67:11 71:23,25 72:3,4 74:5 77:13 80:19 86:23 88:5, 6,12,14 correctly 58:16 66:9 72:21 council 17:15,18, 25 18:9,13 21:15 22:1 23:8 24:13, 19,23 27:2,15 28:16,17 counsel 4:14,23 5:2 11:15 12:5 21:9 27:12 29:18 30:16 43:14 62:24 75:20 78:6 counseling 61:5 count 56:4 66:23, 24,25 67:1 69:14, 16 counted 56:9 65:9 66:20 67:7 69:1 counting 65:18 66:8 country 14:12,16 22:18 36:12 39:7 60:14 65:4,9,12 66:2,5 67:1 69:9 70:12 71:6,13 75:16 82:17 87:3 89:12,19,22 counts 56:8,10 67:20 couple 65:7 court 4:5 5:5,10, 13 73:24 74:5 77:12	cover 52:10 76:18 COVID 38:15 COVID-19 5:9 Craig 4:25 19:11 20:3,5,18 21:9,21 37:10,15 42:8 47:24 59:2,10 62:22 67:22 70:4, 8 72:25 86:8,18, 21 created 63:8 criteria 47:19 49:6 criterion 46:18 cross 14:12,15 60:14 65:4,9,12 66:2,5,25 69:9 70:11 71:6,13 75:16 82:17 87:3 89:12,19,22 cry 39:3 current 44:7 75:12 cut 7:5 44:6,25 cutting 36:9 <hr/> D <hr/> Dan 4:22 11:18, 22,23,25 data 22:8 35:2,7,8 43:21 50:19 61:8 date 4:8 41:16 52:21 53:5 57:6 59:16 84:18 86:12 dates 75:4 day 32:24 43:8 deal 32:24 December 27:25 29:8 decided 32:9 64:21 decision 13:17 14:3,10,25 16:6
---	--	---	---	--

18:21 22:9 63:23 64:3,13,15,16,18 83:2 89:8	Des 4:13 5:5	discuss 25:2 50:20 51:25 52:25 81:15	due 5:8	88:10
decision-making 9:25 43:16 45:8 50:11 64:10	describe 9:20 88:16	discussed 26:4 54:23,24 64:9 66:10 80:14 87:4, 19	duly 5:19 57:8	emeriti 28:14,15
decree 27:4,6 29:19 30:1,17 31:8,21,25 32:6,9 33:9 34:11,16 35:17 36:25 37:8 38:9 48:15 66:19 67:6 69:6 73:20 77:9,13,21 78:25 79:15,18 80:6,16 81:11,13	described 89:14	discussing 34:18	duties 16:14,21	emotional 75:14
deduct 91:12	description 41:13	discussion 23:2 29:7 77:1 89:3,17, 18 90:14,17 91:3, 8	dwelt 69:18	employed 16:10
deeply 55:2	design 64:6	discussions 12:6 22:25 24:2 37:5 51:1 74:10, 18 77:10,11 88:25	E	employment 16:20
defendants 4:5, 25	designing 50:12 61:23	distance 90:1	E-A-D-A 67:20 68:3,13	encouraging 23:20
defensive 81:2	desktop 63:2	distinguishing 18:21	EADA 67:19 68:3, 13,16	end 32:9 43:8 77:21
deficit 70:20	detail 31:10 67:5 69:1	District 4:5,6	Earl 28:13	ending 91:20
definitely 33:14 48:14	detailed 31:7 87:12	diversity 61:12	earlier 12:23 53:4 70:25 76:25 89:14	endorsing 74:6
definition 53:13	details 91:1	diving 67:5	earliest 59:5	endowing 45:1
definitional 66:24	determine 59:12	Division 44:14	early 76:9	endowment 45:24
deliberations 44:1	determined 23:6	document 10:9 30:13 40:19 41:11 42:14,18 46:21 55:11 58:11,25 62:11,19,24 76:17	easily 30:2	enforce 13:23
denounce 79:18	determining 85:10	documents 6:7 8:11,13,14,18,25 9:17,21,22,24 10:2,6,13,17 12:21,22,24 15:20 59:3,6	education 23:12 39:10 56:13,23 67:4	enforcing 16:22 17:1
department 10:5 23:11 39:9 43:15 56:7,12,16,22 67:3 68:19	develop 31:5	dollars 45:20	education's 56:7	engaged 74:24
Depending 53:13	differ 20:7	dormitories 26:6	effective 31:18	enjoy 90:9
deponent 5:11	difference 31:23	doubt 32:20	efficiently 6:10	enlightening 9:6
deposed 5:11 6:1,4	differential 33:3	downloaded 63:2	Eileen 5:1 11:21	enormous 75:14
deposition 4:2, 10 7:1 8:12,14,16 11:16 12:14,16 15:24 59:11 91:21,22	differentials 34:2	draw 60:7 62:10	electronic 9:5	enough 20:1 26:10 49:7
depositions 12:19 20:25 57:6	difficult 55:4	dream 83:17	elevated 53:23	enrollment 32:5
	direct 47:11	drive 24:1	eliminate 14:3	entire 14:16 47:15 82:12
	directed 39:17	driving 23:24	eliminated 48:20	entirety 70:5
	directly 15:10	drop 33:4 48:21	eliminating 26:23 70:21	equestrian 60:15
	director 23:11 36:3,18 48:12 50:15,24 52:12, 17,24 56:24 61:18 66:11 67:4,18 68:15,19,22 70:9 71:20 72:5,24 77:5 83:12,19,23 84:3,13 86:5,14, 15 87:2 88:4 89:16 90:20 91:15		elimination 36:13 70:15	equity 16:17,19, 24 46:8 47:21 68:5,6,8
	disagree 48:4		email 13:3,5,7 15:13 16:4 38:13, 16 39:15 40:4,11, 15,18,20,23 41:1, 12 42:10 52:2,10 73:16 75:6 76:18, 24 77:1,14,23 79:13 80:18 88:3	especially 15:20
	Disclosure 68:8		emails 10:2 13:9 15:7,11,22 16:2,4 39:17,24 40:6,8 78:9,23 82:20	essentially 89:14
				established 24:19
				et al 4:3,4
				etcetera 51:4 61:9 69:11
				euphemistic 81:9

evening 85:24	explore 34:22	fellow 28:13	73:15,25 74:2	frame 74:12
events 36:12	express 33:8	fellows 28:20	78:11,14 80:1	fraternity 35:11
76:12	35:14 36:25 37:3,6	78:8	81:7,15 84:20	freedom 32:4
everybody's	expressed 36:22	felt 69:8 82:21,22	five 54:12 70:18	freely 40:3
16:3	38:7 77:20 78:18,20,22 79:9,23	85:23	five-minute	friend 16:6
exact 41:16 72:14	extent 21:20	female 22:17	49:13	friends 35:10
75:4	23:12	34:15 35:5 49:1	five-year 65:10,	frustrating 49:15
exactly 11:23	eyes 12:22	61:7,10	22 66:1 67:9	Frye 5:5
31:9 46:11 87:22		females 32:14	flexibility 33:10,	full 5:23 7:18
examination		fencing 60:12	16	52:25
5:21 58:24	F	fewer 44:5	Flores 28:16	fully 7:18
example 15:7		Fidelity 4:12	focus 26:9	function 89:21
excellence 14:6	fabulous 54:16	field 14:15 37:8	focused 48:18	future 19:18
27:17 28:3 29:1	facilities 10:7	38:9 39:2 60:14	49:4 69:2	
41:13 47:4 49:20	54:16	65:4,9,12 66:2,4	follow 55:3 62:13	G
79:25	fact 36:18 40:3	67:2,13 68:24	follows 5:20	
except 6:6	51:5 62:12 68:15	69:4,8 70:11,16	football 17:13	gap 32:12 33:10,
excerpt 58:13	72:1 82:14 89:18,21	71:6,12 73:21	91:4,6	21
exchanged	factors 46:16	74:18 75:11,15	footnote 65:15	gaps 34:14 35:4
13:13	facts 33:23 34:17	76:12 77:3 82:18	footnotes 65:8	gave 51:22 54:16
Excuse 61:3	57:13	87:4 89:12,19,23	forbid 19:19	gears 27:21
exhibit 37:13,14,	factual 85:13	90:1,10 91:11	form 18:16 19:4,	gender 35:5 46:7
22 41:7 47:9	fail 26:14	fielding 44:9	22 20:7,9 21:20	47:20
49:10 51:17 52:10	failed 82:25	fight 79:15 80:16	22:7 42:8 64:13	general 5:2 27:12
55:13 57:4 58:7,	fair 20:1 26:10,20	figure 77:3	67:22 70:4 86:8	29:18 30:16,17
21 59:16,25 60:1	49:7 53:21	file 63:4	format 59:23	67:12 81:21
73:13 74:20,21	fairly 20:15 84:15	filed 11:9 13:23	formed 21:15,24	generally 18:2
76:15 80:18 85:4	familiar 22:23	final 46:16 60:8	22:2 29:7,9	27:5 30:23 55:8,9,
87:25	41:11 52:7 57:12,	63:21 64:13 65:2	former 40:6	10
exhibits 12:18	16 59:22 68:3	72:19	75:11	genius 56:1
expansion 31:18	76:17 88:2	financially 45:3	forming 28:2	give 5:15 6:13,22
expect 79:13	familiarize 27:3	find 30:5 40:22	29:8	7:18 9:9 38:1 50:8
80:12	27:5,9	82:2,5 84:18,19	forward 21:6	82:5 83:17 84:14
experience 35:1	familiarized	finding 31:5 59:1	32:23 39:24 59:17	86:13
expert 11:6 32:2	27:5,9	fine 7:11 9:15	82:16	giving 67:20
experts 44:18	fashion 19:24	18:24 32:25	forwarded 88:4	glad 42:4
explain 69:15	89:15	finished 38:4	found 30:25	glasses 51:22
explained 65:16	favorable 88:10	57:9	Foundation 10:6	goal 41:24
66:7	federal 5:9	firm 16:16,19,24	four 29:21 34:13	goals 46:7,12,16
explanation	feedback 50:21,	first 5:19 6:11	41:8 68:21 90:1	48:7,8
67:18	24 83:4,8 84:14	11:24 12:15	fourth 90:11	God 19:18
explicit 79:14	86:13	29:13,22 35:4,6	fraction 46:8,18	
80:13		43:12 46:11 55:14	47:21 48:17	
		59:15,23 63:14		
		66:1 70:15 71:4		

Goldgeier 5:1 11:21	happened 39:7 74:14	hold 13:10 63:4 75:9	incoming 45:3	interests 31:19
golf 60:12	happy 57:23 58:13	honestly 22:15 23:22 73:19	Incorporated 4:13	interrupt 86:22
good 22:9,11 26:20 66:6 89:10	Harvard 44:10,11 45:12,14,17	hope 19:19 21:4	incorrect 59:16	invite 12:1
Googled 40:3	Harvard's 45:10	hour 8:6	increase 45:10 46:7,8 47:21 48:16	invited 46:22
governance 13:10 24:15 28:10 33:7 78:4	hashmarks 65:8	hours 24:1	increasing 46:1, 18 90:23	involve 13:6 15:3
governing 24:21	Hayes 36:3,18 43:15 48:12 52:17,24 67:18 68:15,19,22 70:9 72:24 77:5 83:12 84:3 87:2,19 88:4, 25 89:16 90:20 91:15	hue 39:3	index 9:13 10:13	involved 15:19 74:17
graduate 17:3 35:13	head 6:14 76:7	HUG 61:13	indicate 36:18 90:21	involvement 77:16
graduated 24:18	headers 65:21	hundred 91:7	indicated 57:5	involving 15:21
Gray 4:23	heads 66:23 69:14	Hunt 28:13	individuals 11:13 13:7,10 15:2,19	Iowa 4:13 5:6
great 16:20 54:17 65:6	health 7:16 26:6	hypothesis 44:3 45:6	indoor 14:15 17:13 66:16,19 67:1	Island 4:6 5:9 23:25
greater 33:21 45:2,3,4	hear 19:15 67:17 82:23 83:22	I	info 62:18 63:13, 15	issue 19:22 36:15 67:13 76:24
greatest 54:9	heard 19:14 21:1 23:10,14 32:16 35:7 68:4	idea 42:16,18 80:1,24	information 50:9,13	issues 26:5 66:24
ground 6:9	hearing 19:10,16, 17 20:21	ideal 65:13,22 66:3	informed 82:23	Ivies 34:4,13 45:18 50:18
groundwork 29:24	Heckler 11:21	identified 29:10	informing 83:1,4, 7	Ivy 33:20 35:18 44:10,23 54:12, 14,20 65:11,22 70:17 91:5
group 25:4 27:5 28:23 49:25 50:21,22 64:7	held 22:22 31:12, 13,15,19,20 33:17 34:16	identify 4:14 22:10 41:23 44:6	initial 14:9	IX 10:10 16:22 17:1 18:2,14,22 22:25 23:4 24:4, 10 25:20 26:15,16 27:12 29:18 30:1, 16 31:1,6,24 34:10 37:9 38:10 69:5 73:22 77:8 80:6 81:10,18 83:11
groups 24:21 27:8	help 6:9 8:22 14:19 25:4 34:23 43:17 45:6 73:7 77:3 90:4	image 56:1	input 42:20 83:24	IX's 48:15
guess 12:19 19:15	helpful 62:20	impact 18:1,10, 14 21:17 22:2,7,8, 11 23:6 25:19	insistent 83:1	J
guidance 48:9	helps 8:21	impacts 23:14 24:3,7	insists 21:10	Jack 43:15 52:12, 17 53:9 87:19 88:25 91:8
guy 76:12	higher 43:22 67:20	impaired 7:17	institution 68:10	January 29:10 41:15
H	highlighted 54:3	implications 31:8	institutions 33:20	job 43:6,7 56:8 67:5 69:18,19 71:19
half 34:12 48:21 80:2	history 30:17	important 6:11 39:12 40:21,22 45:25 61:22 90:8	instruct 12:2 19:12 20:22	Join 21:21
hand 5:14	hoc 24:20 27:17 29:1	improve 79:24	instruction 12:9	
handed 31:21		improved 89:20	intend 19:23	
handle 40:13		improving 71:2	intention 79:15	
hands 56:12		include 14:21	intents 66:15	
happen 19:19 83:1		included 8:7 43:19 53:16,19 59:4 62:15	interest 79:24	
			interested 10:9	

Jonathan 28:12	last 5:25 22:14,20 24:8,11,13 40:10 62:20 63:8 70:18 73:15 74:2 78:24 80:20	little 65:5	male 61:7,11	52:21,22,23 53:1 64:9 79:23 80:2 81:22 82:8,11 83:25 84:3,5,7,11, 16 85:10,12,14, 15,16,23 86:12
Joutz 49:23	late 76:8	location 5:12	man 75:13	
jumps 90:2	latitude 35:18	locations 4:11	manage 23:17,18	
June 11:10 41:2 73:16 74:1,11,14 76:14,20 82:3 84:21,23	lawsuit 24:25 25:2 31:2 81:7	long 8:4 13:20 14:14 17:17,23 24:24 35:12 76:3	management 16:17	
<hr/> K <hr/>	Lawyers 11:21	longer 35:17 36:24 40:23	mandated 33:22	meetings 8:7 11:7 27:10 29:21, 25 49:25
Kaplan 11:22	leadership 28:17,18 33:15	looked 16:1,2 22:8 53:14 61:6 70:15 71:4 87:20	March 28:23 29:5,13,16	megabytes 9:18, 19 12:23
Kathryn 28:15	League 33:20 44:10,23 54:12, 14,20 70:17 91:5, 6	Lori 4:18 30:4,9 41:6 49:7 55:13 57:3 59:15 63:21 65:5	Marguerite 49:23 85:18	member 17:19 26:2
keeping 66:23 70:21 71:7 83:17	learn 32:19 64:2	lot 16:7 22:13,16 32:18 51:4 53:11, 13 59:5 72:18	mark 51:16 57:4 76:15 87:24	members 8:1 28:9,10 33:8,15 37:2
Kevin 4:2 5:18,25 9:11 18:17	least 29:9 57:10 74:9	lots 26:16	marked 80:18	memory 53:18
key 46:6	leave 51:3 56:11 89:9	loud 73:17	Masselink 4:24	men 22:19 34:24 43:25 44:20 45:15 54:8,17 55:17 70:19 81:17 90:6, 22 91:3
kid 25:4	Ledbetter 25:2	lower 49:1 91:14	match 45:10	men's 13:18 14:10,14,20 15:1 34:19 35:20 36:17 37:8 38:9 51:3 55:2,8,18 60:11, 12,13 62:14 63:23 64:14 68:23 69:3, 8 70:11,16,23 71:5,6,12 72:17 73:21 74:10,18 75:15 79:25 81:24 82:17 87:3 89:2,9, 11,19 90:10 91:10,11
kind 24:22 29:23 51:1 67:1	legal 4:12 11:5	Lynette 4:16 8:21	materials 8:24 9:10 13:1,2 34:1 52:2,11,25	
kinds 24:3	legend 60:10 62:2,5,14	<hr/> M <hr/>	math 25:12 39:9 44:13 49:2 66:6 71:14 72:5	
knew 54:22 80:7	level 33:3 67:5	M-U-N-D-T 5:25	Matt 21:6	
knowledge 24:14 42:16 56:9 90:13	levels 43:23	made 7:3 14:9 18:9,14 19:11 22:16 36:9,12 39:6 44:19 54:25 55:14 60:17,19 61:18 62:3,9,24 63:23 64:8,15 81:23 86:5	matter 4:3	
<hr/> L <hr/>	life 25:23 26:2,4, 5,8,18 46:23 47:6 68:4	mailbox 39:23	Matthew 4:25	
Labinger 4:16 5:22 9:1,4,8,20 12:8,11 18:5,9,20 19:3,7 20:1,4,10, 20 21:13,22,25 37:11,17,21 42:12,19 48:1 49:19 52:4 59:7, 12,14 63:6 67:23 70:6 71:9 73:1,12 82:7 84:23 85:3,9 86:10,19,23 88:17,24 91:18	light 39:5	major 31:11	McCaughey 4:22 7:6,23 8:21 9:2,11 11:1,18 12:1,4,13 18:16 19:4,6,14 20:5,13,19,24 21:10,19	
laid 12:21	limited 19:24	make 15:15 19:23 20:12,19 24:10 43:20 47:9 48:22 82:22 83:10,21 85:3 86:5,16 88:18 89:4,13 90:9 91:16	Mcnamara 28:15	Mencoff 13:8,14 15:3 16:5 33:19 35:10,23 41:19 76:20,24 77:19,24 78:17,21 79:3 80:4
language 32:23 42:13	linear 61:14	makes 21:10	meaning 84:25	
large 33:10,15 44:19 71:21	lined 88:19	making 20:13 23:3 52:15 66:11	means 80:10,12, 23 81:20	
	lineup 46:14 63:25		measured 32:11	
	list 28:8		medications 7:16	mentioned 23:15 66:21 68:24 69:13 77:14 81:14,19 90:20
	listed 65:10 67:14 78:9		meet 7:22 31:17 50:25	merit 74:3 77:15 78:1 79:1
	listening 25:1		meeting 11:14 26:8 29:4,13,16, 22 30:3 46:23	met 8:4,8,9 11:13 28:23
	litigation 8:25 9:2			

methods 65:18 66:8	<hr/> N <hr/>	numbers 42:5 52:6 55:15 56:15, 20,22 57:13 59:4 65:17 68:13,16, 17,19 69:20,25 71:20,22 72:3,10, 19,20,23 73:4 83:11,13,21 84:24 86:6,7,16 87:5,6, 9,13,20 89:4,13 91:16	opinion 21:20 36:25 37:3	pare 44:25
mikes 7:5	names 16:3		opinions 21:15, 24 22:2,7	parenthetical 42:14
million 44:11,12 45:20	narrow 38:17		opportunities 46:9,19 47:22 54:17	part 9:23,25 11:16 14:4 15:19 16:1 19:16 22:5, 20,25 25:25 27:8, 10 28:20 33:14,23 34:1 36:15 44:21, 24 45:5,9 46:5 47:7 59:12 64:16 71:2 84:3 90:18 91:5
mine 16:6	narrower 48:24		opposed 58:14	
minimize 21:4	narrowly 19:24		optimal 71:8 72:15 83:18	
minute 38:1 52:1 54:10,12 84:18	nation 44:15		options 42:4 43:18 45:7	
minutes 49:21,22 50:1 88:18,20	nationally 68:11	<hr/> O <hr/>	order 5:10 8:11 13:23 18:1,11 21:17 22:3,12 23:7 25:20 67:21 89:4 91:13,16	participants 29:9 33:11
mission 29:11	native 60:2	oath 5:3,7,20	original 41:21 64:13 72:14 81:6 87:21	participate 17:7
misstated 86:24	nature 16:14 62:23 83:3,5,6	object 7:2 18:16 21:19	outdoor 14:15 17:13 66:16,19 67:2	participated 86:14
misstates 47:24 86:18,22	NCAA 56:10	objection 7:3 19:4,10 21:10,11, 21 42:8 47:24 67:22 70:4 86:8	overview 10:17 52:6	participation 27:1
modifications 62:23	necessarily 18:25 40:2	objections 19:8 20:7,9,13,19,21 21:5	overturn 80:16	particular 16:9 34:14 62:12
modified 62:20 63:9	necessary 44:4, 5,7 71:1	objectives 60:22	pages 9:5,7 30:9 37:15,18,20 41:8 50:20 76:16	parties 5:10
modify 63:1	negative 21:16 22:3 23:5,16 24:6	obligation 15:19	paid 22:21 67:4	partner 16:16
Moines 4:13 5:5	Nelson 28:12	obliged 82:22	pandemic 5:9	Partners 16:13
moment 47:14 73:24 82:6	nervous 73:19	observation 19:3	paragraph 73:15 78:24 80:20	parts 18:22 31:11
months 71:22	nice 51:20	observations 44:19	parallel 21:12	party 19:9 20:21 23:13
morning 85:18	nip 69:4	occurred 36:12	p.m. 4:9 49:16,17, 18 73:9,10,11,17 88:21,22,23 91:21,22	past 12:20 57:6
motion 11:9 13:23	nipping 70:14	offended 76:5	paraphernalia 42:3	path 74:3
mountain 23:24	nods 6:14	offer 75:6	pardon 67:1 71:5 75:9	Paul 28:14
mountains 23:25	north 34:21	offered 44:14		Paxson 28:1 36:1 37:6 38:7,22 41:14 42:7,10,20 74:25 75:20,23 76:19,23 77:1 79:2,16 80:3 88:25
move 20:17 57:3 59:17	note 15:15 21:11 41:21 59:2	offers 42:4		Paxson's 73:16 77:20,23
multiply 66:12	noted 57:8	official 25:3		pay 23:1
Mundt 4:2,23 5:18,23,25 9:6,9 15:17 19:20 20:6 21:13 37:22 41:9 51:18 57:5 58:22 60:3 63:7 70:7 73:13 85:5 88:24	notes 50:2 51:5,7	ongoing 31:17		peers 35:19
muted 49:14	noticed 24:12	operate 35:18		pending 7:12
	noting 59:10	opine 45:7		people 10:8 11:7 15:3 23:14 35:8
	number 4:6 14:3 30:5 32:9 33:11 34:3 41:25 43:8, 19,24 44:13,19 45:1 47:20 54:6 55:7 65:10,25 66:4,15,20 67:20 70:22 71:21	opining 61:25		
	number-one 21:2 83:10			

40:3 51:5 54:25 55:24 68:21 82:23 83:6	plans 80:15	presence 33:12 34:4 35:15	privy 31:7 37:4 78:10 80:14	43:13 48:8 50:21 57:20 75:20 83:24
peppered 88:11, 13	pleasure 76:11	present 8:1 11:12 30:20 46:24 47:3 60:25 61:3 85:11	problem 53:15	provided 10:13, 17 15:9 55:7 56:16 59:3 60:3 62:11 86:6
percent 32:12 33:4,21 44:23 48:25 70:2 72:12 77:9	point 11:19 19:18 21:4 29:25 39:12 47:20 63:20,22 66:10 69:2,7	presentation 10:10 27:12 29:17,25 30:15, 21,22 47:4,7 54:1, 21 67:10	proceed 19:25 57:12	provides 55:7
percentage 32:22 48:21 61:10,11	pointed 34:12 57:18 89:7	presented 34:2 42:19 59:20 60:24	process 6:9 10:1 70:5	providing 68:16 78:5
period 89:1	points 32:13,16, 22 48:21	presenting 62:24	produce 15:10, 20	public 40:25 79:17
person 7:22 30:10 38:13,16 82:20	pops 40:5	preserve 19:8,17	produced 8:24, 25 9:1,5 58:11	publish 63:3
personal 15:13 16:4 23:23 40:15	population 32:14 33:12 34:15	preserved 20:9	product 9:14 12:7	published 10:7
personally 27:7 39:17 48:16 49:5 72:4 74:9	portion 18:6	president 5:2 24:20 28:1 29:23 33:7 36:1 37:6 38:7,22 40:1 41:14 42:7,10,17, 20 43:4,14,21 44:16 45:6 50:15, 23 52:24 53:8 60:24 61:17 64:4, 7,8 72:7 73:16 74:25 75:20,23 76:19,23 77:1,20, 23 78:6,7,20,23 79:2,16,23 80:3 83:23 84:2,13 85:20,22,23 86:14 88:25 89:7	production 63:4	publishing 6:7 30:7
petition 73:24	position 9:13 12:6 15:18 19:15	president's 28:17 56:17 74:6	productions 12:7 59:5	pull 63:4
petitioning 74:4 77:12	positive 21:16 22:3 23:15 24:6 84:24	pressure 69:8	program 14:4,11, 16,21 15:1 18:3, 23 22:18 24:7 31:18 32:4 35:21 39:4 48:22 51:2 54:2,4,6,7 61:15 74:10 77:3 81:24 89:2,20 90:1,4,12	pulling 63:3
phone 7:22 35:16 38:13,16 68:22 75:19	possibility 89:2	pretty 6:6 82:15 85:20 87:22	programmatic 22:25 23:2 24:3 34:9,22 64:6 81:16 82:16	purpose 82:8,11 83:25 84:14
phrase 80:25 81:9	post 37:13 41:6 57:24 58:20 60:1, 2	previous 78:23	programmatically 24:9	purposes 14:13 66:14,15
physical 23:12 39:10 56:7,13,23 67:3	posture 81:2	previously 86:4	programs 22:19 34:5 44:22 50:12 61:23,24 79:25	purview 66:21
picks 75:22	potentially 11:22 23:16,21 36:16 74:7	primary 8:24	progress 22:16	put 20:11 37:24 43:3 44:8 49:8 55:11 59:24 64:21 66:14 69:3 77:7 81:2
pieces 61:16	Powerpoint 27:11 29:17 47:4, 15 49:10 52:21 53:5 57:19,20	principals 10:23	promoting 36:10	putting 70:11,17 90:3
place 43:3 44:8 72:6 85:10,13,17	pre-call 53:8	private 16:19,24	pronounced 49:24	puzzle 61:16
plaintiff 4:19,21 24:25 81:6,7	preceding 88:11	privilege 12:7	proportionality 22:22 31:16,19, 20,24 32:11 33:18 34:11 51:4	<hr/> Q <hr/>
plaintiffs 4:3,4, 17	precursor 24:18, 22		proposed 41:12	Quadracci 28:15
plaintiffs' 15:18 21:9 62:23	predicated 70:16		pros 43:18	quality 79:24
plan 31:6,11 65:13,23 66:4 82:16 87:2	prefer 54:7		prove 72:5	quarter 48:22 49:2
	prep 11:16		provide 15:14	question 6:17,24 7:2,7,13 13:19 16:23 18:4,17 19:21 20:17 21:23,24 25:22,25 26:11 27:7,23 32:1 36:22 42:13
	preparation 12:16 15:23 49:9			
	prepare 8:12			
	prepared 8:14,15 9:23,24 12:13,18 57:10			

46:10 48:2 50:9 51:13 56:19,21, 24,25 63:19 65:19,23 67:24 71:17 73:2,5 75:3 83:10,11 85:7 86:11 87:15,17	recall 11:14 27:13 29:20 30:10,11 35:25 36:2,6 37:1, 12 43:2 48:15 49:5 53:2,7,10 66:9 69:17 70:25 79:11 80:8 81:25 82:10 84:4,16	reducing 43:8, 19,24 71:1 90:22	69:9 77:7 83:15 87:7,8	requiring 74:13
questioning 12:10	recalling 58:16	refer 8:19 14:20 68:15	remember 6:11 11:19,23 25:1 26:8 39:12 58:14 60:3 68:5 74:13 81:8 87:16	reread 85:22
questions 7:18, 19 19:13 20:14,23 57:11,19 61:24 83:24 91:19	receive 76:18	reference 82:2	remind 6:8 51:6	resize 69:10
quote 54:11 91:16	received 13:3 27:11 40:7 41:14 88:4	referred 12:22 67:19 70:7	remote 4:11 5:12	resizing 71:3
R	receiving 39:25 82:20	referring 9:18 34:21 63:17 69:24 70:5,6 79:2,19,22	remotely 5:12	resources 45:3,4
	recently 15:23 76:10	refers 52:11,22	removed 63:24	respect 9:12 14:23 15:22 67:9
raise 5:13 21:7 91:13	recess 49:17 73:10 88:22	refined 51:2	removing 39:4	responded 77:25 78:13
range 10:7 42:5	recipient 39:16 40:5	refresh 30:14 38:6 47:22 48:6 74:23	repeat 13:19 46:10 67:25 68:1	respondent 40:10
rankings 50:18	recollection 30:15 38:7 47:23 48:6 54:21 57:25 59:19,22 74:24 86:20 89:6	reinst 52:11,22	rephrase 10:25 42:13 86:11	response 74:1
ratio 61:13 88:9 91:13	recommend 45:9	reinstall 69:8	replied 75:21	restate 16:23 18:4 27:23
reach 70:1 75:7	recommendatio n 14:5 60:17,19	reinstate 14:10 36:19 74:10	repopulate 70:23	restore 15:1
reaching 74:25	recommendatio ns 46:24 61:1	reinstated 81:25	report 42:4 68:10	result 14:5 21:14, 25 23:7 27:1,6 31:4 33:1
reaction 75:15	recommending 46:15	reinstatement 13:18 77:2 82:17 89:11	reporter 5:5,13 6:12	resulting 61:8 72:14
read 18:5,7 37:25 47:15,17 51:23,25 57:16,17 65:15 67:17 73:14,15,25 77:15,22,25 80:17,19	record 4:1,15 5:8, 24 7:3 15:16 18:6 20:11 45:18 49:18 52:15 58:12 59:2 73:9,11 75:11 88:20,21,23 91:20	reinstating 36:16,17 39:2 68:23 74:18 87:2, 17 89:2,3,19 90:10	Reporting 5:5	results 44:22
readily 40:5	recruited 70:22	related 15:12 67:6 85:8 91:2	reports 18:10,14	retain 35:20
reading 38:4 73:19	recruits 45:4	relates 16:22 17:1 18:2,15,22 22:24 25:20 26:15	represent 8:22 19:9 20:20	retained 11:18
ready 16:1 57:17	redirect 39:21	relation 32:5	representation 35:5 36:14 86:5	retract 75:10
realignment 35:19	redo 71:14	relative 43:5	representative 70:24	review 8:11 15:23 30:9 37:25 41:9 47:14 56:3,15 66:22
reason 7:11 16:9 20:11	reduce 32:4 41:25	relevant 19:23 80:24	represented 11:3 32:14 48:11 71:15	reviewed 9:10,21 12:17,25 13:9 18:1 25:19 33:23 57:23 71:22
reasonable 36:13		reliable 67:11	representing 11:16 13:2 20:6	revisiting 37:22 38:5 57:10
reasons 52:18 89:10		relief 73:24 74:5 77:12 79:1 80:21, 23	represents 85:19	revisited 19:20
		remain 62:15	requested 4:2 18:6	reworked 70:13
		remaining 34:23 43:20,23 45:2	required 31:5	Rhode 4:6 5:9 23:25
			requirements 27:4	Rich 28:13
			requires 31:25 68:9	rile 81:1
				risks 23:23
				road 19:18

roasters 90:23	Sandra 4:24	service 21:14	66:24 67:10 68:10	23:13 32:7 81:21
role 13:10 14:24	satisfy 46:17	22:1 23:8 25:9	70:14,17 71:8,14	spell 5:24
19:8 22:5 24:15	saved 63:2	Services 4:13	72:14,15,18	spend 81:5
25:3 28:10 74:9	scenario 53:19	set 36:11 39:23	83:15,18 87:7	sport 17:10 34:9
rolling 21:3	58:8,19 60:20	46:5 72:23	ski 23:24	36:13,14 48:9,20
rollout 13:17	61:2 71:4	sets 91:6	skiing 60:14	54:13,19 61:7
room 25:1	scenarios 50:16	setting 29:24	slide 57:13	sports 10:6,7
roommates	53:9,11 55:6	several 71:22	slip 26:14	14:3 17:10,11
35:13	57:15,21 58:1,13,	88:11	slot 66:25	22:15,24 23:3,20,
Ropes 4:23	17 60:5 61:6	shakes 6:14	slots 35:5 39:11	21 24:9,22,23
roster 23:19	66:23	share 33:19	51:3,8,9,11,12,14	26:24 34:19,23,25
35:19 48:23 51:9	school 35:13	69:20,25	61:10 70:22,23	36:9,10 39:11
56:8,22 61:9	44:14	shared 8:13 35:3	72:17	41:23,25 43:11,
66:23,25 70:13,17	schools 22:18	41:18	slower 30:12	19,20,23,25 44:5,
71:7,14 72:14,15,	54:12	shooting 60:22	small 44:20	9,14,20,24 45:1,2,
18 83:15,17 84:6,	scientific 88:8	show 71:18,20	smoothly 6:10	10,12,15 46:2
8 87:7 91:3	screen 6:8 8:19	72:11 87:9	solemnly 5:14	48:11 53:20 55:3
rosters 51:15	30:7 37:24 63:13,	showed 42:10	solution 46:5	61:7,8 62:15
56:11 69:5,10	16	59:23 60:4 70:1	solutions 34:22	70:21 71:1 81:16
70:19 71:3 77:7	screenshot	77:2 78:23 87:6	solve 53:14 61:15	83:15 87:9 90:14,
87:14 89:15	63:12	shown 61:4 72:3	Sonya 5:4	17 91:9,11
90:21,22	scroll 38:3 64:4	shows 59:16	sort 24:20 83:16	spots 51:9
Rothenburg	65:5,20 73:14	sic 11:22	sought 22:6	spreadsheet
75:6,10 76:7,8	85:6	side 55:8,9,10	speaking 14:15	60:4,6 62:13
rule 21:1	scrolling 41:10	59:25	51:12	63:12 66:14
rules 6:9 91:5	52:8	significant 82:15	specific 8:19	spreadsheets
run 39:9 68:21	searched 16:3	similar 77:20	27:14 35:4 43:12	87:12
72:20 83:5,13,25	second 25:25	Simmons 24:20	52:5 54:21 58:2	spring 27:11
87:5 89:25	44:9,10 49:8 60:9	simpler 58:21	59:3 72:19 80:15	49:20 71:23
running 76:11	75:9 81:15	simply 28:16	85:15 88:15 91:1,	Springfield
Ruth 24:20	seeking 35:20	39:25 40:8 61:23	3,8	76:10
<hr/>	senior 16:16	78:5 83:3 89:21	specifically	sprints 90:2
S	sense 50:8 61:19	simultaneously	30:18,24 33:13	squad 70:24
<hr/>	62:3,9 64:8	77:5	34:8 35:22 37:1	squads 91:6
sail 54:8 55:22,23	sent 10:8	sit 54:9	38:23 51:12 53:10	squash 60:13
sailed 54:18	sentence 73:25	sitting 25:1 64:17	54:3 55:25 67:12	standard 22:22
sailing 53:17	separate 67:2	72:9	79:2,12 80:9 84:4,	31:12,14 32:10
54:2,4,7,9,21	separately 65:12	size 9:10 32:4	17 87:21	33:17
55:8,9,10,16,21,	serve 17:14 25:18	35:19 70:24 83:18	specifics 7:15	standards 31:17
23,24 60:15,16	26:3 43:4	89:15 91:6	10:12,16 30:21,	56:10 68:25
90:16	served 17:18	sizes 23:19 61:9	23,24 67:7	start 7:13 29:4
Sam 79:7	25:6,14,23 26:1	speculating	speculation	47:15 52:9,10
same 6:6 18:24	serves 28:16	80:11,22		started 40:4
32:25 40:20 51:1				79:21
55:24 56:4 57:14				starting 27:25
59:16 70:22 79:7				starts 41:7 47:10

state 5:8,23 6:19 53:4	23:21	ten 44:23	thousands 10:8 50:20	total 8:6,18 77:16
stated 46:11 76:25 87:11	supposed 37:23 39:24	tennis 60:13 62:14 63:24 64:14 89:9 90:15	three 8:9 12:19 17:11 24:1 57:21 58:1,13,14 68:21 76:16 89:24,25	totally 9:15
statement 7:5 14:14 29:11 38:22,23 53:25	surprise 77:23 78:13,17,22 79:6, 8 80:9 81:19	tenure 17:25 18:13 25:17 26:22	throws 90:2	towards 56:11 89:5
States 4:5	surprised 84:5	term 25:15 58:2 68:3	tick 87:13	track 13:18 14:11,14,15,20 15:1 17:13 25:14 35:20 36:17 37:8 38:9 39:2 40:7 60:13 65:3,9,11 66:2,4,16,17,19 67:2,13 68:23 69:3,8 70:11,16 71:6,12 73:21 74:10,18,25 75:11,15 76:1,7 77:2 81:24 82:18 85:24 87:3 89:2, 11,19,23,25 90:6, 10 91:10
status 36:11 41:24 53:24	Susan 5:5	terminated 32:6	tie 87:13	train 90:7
stay 34:10 36:20 37:9 38:10 48:14 56:8 69:5 71:16 73:21 81:18	suspect 20:7	termination 33:1	till 29:4	trajectory 44:22
stayed 48:23	swear 5:14	terms 23:22 26:4 31:10 45:3 46:14 51:3	Tim 76:10	transcripts 12:17
staying 48:18 49:4	swept 39:3	terribly 9:6 27:16	time 4:9 24:16,17, 24 25:5 30:8 35:4, 7 39:6 44:7,8 45:23 46:11 57:11 69:2 72:2 74:11 76:3 78:14 81:5, 12 82:13,24	travel 90:8
Stick 32:18	switched 27:21	test 73:19	times 10:11	tremendous 74:3
stipulate 5:10	sworn 5:12,19	testified 5:20 86:24	timing 59:11	trial 19:17
strengthens 90:12	<hr/> T <hr/>	testimony 5:15 21:20 47:25 86:9, 18,22 87:21	title 10:10 11:17 16:22 17:1 18:2, 14,22 22:25 23:4 24:4,10 25:20 26:15,16 27:12 29:18 30:1,16 31:1,6,24 34:10 37:9 38:10 48:15 54:14 69:5 73:22 77:8 80:6 81:10, 18 83:11	trips 90:8
structure 28:22 64:6	tab 60:9 64:25	theory 45:5	titles 44:23 54:6, 20	true 34:21
structures 34:9 48:23 51:2 61:7	tailoring 89:15	thereabouts 29:10	today 7:19,21 8:17 52:2,11,22 62:20 64:17 72:10	trustee 26:2 28:13,14,15
student 26:6	takes 56:1	thing 32:25 45:21 50:7 78:3 80:17 83:20 90:19	today's 4:8 8:12 12:13	trustees 28:20
student-athlete 34:25	taking 6:12 7:17 23:23 51:5,7 91:9	things 8:17 22:11,13 23:17 25:14 26:5,6 32:18 44:1 54:22, 23,24 68:25 69:18	told 46:4 64:7 70:9,14 86:15	truth 5:16
stuff 16:8 85:13	talk 23:14 35:8 53:9 64:23 75:24 79:3 81:12,13,16, 17 86:3	thinking 54:15 62:9 68:23 73:23 78:12	top 56:8 60:9,10 62:2,5,14 63:13 64:4	tuck 69:4
subject 12:7 35:17 36:24 81:6	talked 30:16 80:4 87:1 89:11 90:21	third 23:13	topic 12:16 81:15,21	tucking 70:14
subsequent 13:17	talking 22:24 27:19 28:25 38:16 42:9 43:7 51:8 67:12,14 70:10 74:4 85:15 87:8 88:9 89:1	third-most 44:13	topics 13:16	Tuesday 85:24
substantial 31:16,23 33:17	task 49:21,25	third-party 20:25		turned 25:11
sufficient 44:4,6 71:2	team 40:7 66:16, 17 67:10,14 68:10 70:2,3 72:21 85:24 89:23,25 90:6 91:4	thought 18:18 36:18 60:21 61:14,18 62:2 64:7 69:21 72:15 74:2,6 77:15 79:7 83:19 86:13		turns 90:5
suggest 19:7	teams 32:10 33:2 46:17 48:17 53:23 70:18,25 89:4	thought's 78:15		twenty 87:7
suggested 43:22 57:22	telephonic 84:16	thoughts 73:8		twice 56:5 68:4
sum 77:16	telling 8:3 20:16 87:17			two 8:9 9:17 12:22,24 18:23 24:1 25:11,16
Sunday 83:13				
supporting				

31:16 36:10 37:15,17,19 43:17 53:19 57:22,25 58:14 65:17,18 66:8 68:24 69:11 79:21 84:20 88:18,20	82:14,24 unlike 90:5 unpleasant 39:17 urged 79:17	volume 9:14 volunteer 25:5 volunteered 24:16 volunteers 82:13 vote 14:10	63:24 64:14 65:3 66:2,25 67:2 70:23 71:5,6 79:25 89:4,9,20, 22 90:4,6,12,15, 16,17 won 54:6 word 51:11 72:20 words 24:5 61:21 88:16 work 9:14,23 10:3 12:7 13:16 16:12 23:17,18 44:17 50:25 63:10,23 71:18 83:11,21 86:6,16 89:4,13 91:16 worked 24:12 85:21 working 77:5 works 50:9 world 54:10 81:1, 20 wrap 73:8 Wright 5:4 writing 15:7 39:15 written 13:14 wrong 46:21 47:13 65:1 wrote 8:17	<hr/> Z <hr/> Zoom 4:10 5:11 6:4 38:16 47:2,8 51:6
types 9:21 typo 57:6	<hr/> V <hr/> Vague 67:22 van 23:24 varsity 14:4,11 22:15,17 26:23 32:10 33:2 34:9, 19 35:5 36:9,10 41:24,25 43:11,24 44:9,14,20 45:1 46:8,14,17,18 47:21 48:9,11,17, 20 53:20,24 54:13,19 55:1,2 60:15 61:6,7,8 62:6 63:25 79:25 81:16 verbally 6:13 54:25 verify 87:13 versa 66:17 version 41:21 57:20 58:10 59:18 62:12 versus 4:4 13:24 31:1 34:14 35:4,6 72:14 88:8 Vestar 16:13 viable 40:23 vice 5:1 66:17 video 4:2,10,13 5:11 view 33:8,20 35:14 36:23 37:7 38:8 77:20 78:18, 20,22 79:9 81:21 viewed 60:20 violation 31:1 virtually 7:22 35:16 82:9	<hr/> W <hr/> wait 7:4,12 52:1 walk-ons 23:20 wanted 79:14 80:13 82:12,19 83:9,21 86:2 water 91:14 ways 26:12 43:22 69:14,15 83:13 Wednesday 85:18 week 53:5 58:23 weekend 12:20 weeks 59:3 84:21 88:11 West 4:13 win 54:19 withdraw 42:12 46:13 withdrawn 39:14 45:13 48:5 77:18 82:8 women 13:22 22:14 23:23 26:24 32:10 33:11 34:4, 24 43:25 44:20 45:15 46:9,19 47:22 48:17 54:7, 17,18 55:20,22,23 56:5 66:15 67:1, 21 70:19 81:17 90:7,23 91:12 women's 14:3 22:19 32:4 33:2 34:19 48:20 51:2 53:17 54:7 55:2,9, 10,20,23 60:11, 12,13,14,16 62:14	<hr/> Y <hr/> year 29:5 80:2 years 16:7 17:20, 21 22:14,21 24:8, 11,13,14 25:9,11, 15,16 35:12 44:24 79:21 years' 70:18 yielded 44:23 young 23:23 25:4	
<hr/> U <hr/> unbeknownst 89:21 uncomfortable 40:14 undergraduate 32:5,14 33:12 34:15 35:6 undergraduates 34:3 understand 6:15,17,22 7:18 10:21 11:8 13:21, 24 14:2 18:17 19:21 20:17 22:7, 8 31:4,11,15 38:20 52:19 55:4 57:14 67:23 71:8, 9 86:10 understanding 32:21 64:24 understatement 39:19 88:13 understood 6:23 33:3 40:17 48:19 53:23 87:23 90:19 unfavorable 88:10 United 4:5 universities 44:18 university 4:4 9:3,4,25 10:4,6 11:4 24:17 25:5 28:19 31:9 34:20 35:1 39:4 72:8 73:23 75:12 78:5				