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23 REPORTER'S NOTE:

24 Exhibits were marked electronically and attached to

25 the electronic transcript.

(ph) indicates a phonetic spelling.

[sic] indicates the text is as stated.

Quoted text is as stated by the speaker.

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1 VIDEOGRAPHER: On the record beginning the

2 video deposition of Jack Hayes 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 15th, 2020, and the

9 approximate time is 9:13 a.m. Central Time. This

10 deposition is being conducted via Zoom video

11 conference in remote locations. My name is Amy

12 Cooper, certified legal videographer of Fidelity

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

14 Counsel will please identify themselves for the

15 record.

16 MS. BULLOCK: Lori Bullock for plaintiff

17 class.

18 MS. LABINGER: Lynette Labinger for

19 plaintiff class.

20 MR. BRYANT: Arthur Bryant observing for

21 plaintiffs' class.

22 MR. CORRENTE: Robert Corrente for the

23 defendant.

24 MR. CRAIG: Matthew Craig for defendants.

25 MR. GREEN: James Green for the

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1 defendants.

2 MS. KOLB: Staci Kolb for the defendant.

3 VIDEOGRAPHER: The oath will now be

4 administered by Sonya Wright, certified shorthand

5 reporter of Susan Frye Court Reporting, Des Moines,

6 Iowa.

7 MS. BULLOCK: Prior to the administering

8 of the oath, pursuant to federal court order in

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

10 have agreed to stipulate on the record that the

11 witness is remote and can be sworn in remotely.

12 COURT REPORTER: Would you raise your

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

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

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

16 **THE WITNESS: I do.**

17 **JACK HAYES,**

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

19 **testified under oath as follows:**

20 EXAMINATION

21 BY MS. BULLOCK:

22 Q. Good morning, Mr. Hayes.

23 **A. Hello.**

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

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

Page 7

1 with you?

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

3 **Kolb.**

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

5 identify what law firm you are with?

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

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

8 MS. BULLOCK: Thank you.

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

10 and spell your name for the record?

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

12 Q. Have you ever had your deposition taken

13 before?

14 **A. I have not.**

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

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

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

18 and the most important is there is a court reporter

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

20 you need to make sure to give affirmative answers to

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

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

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

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

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

Page 8

1 understand?

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

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

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

5 Oftentimes, in natural conversation, you are going

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

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

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

9 make sure that we allow the other person to

10 completely finish talking and then go ahead and

11 respond. This is particularly true in Zoom, where

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

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

14 understand?

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

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

17 you understand my questions. There may be times

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

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

20 time you do not understand my question, please ask

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

22 question, I will assume that you understood my

23 question. Does that make sense?

24 **A. It does.**

25 Q. During the course of the deposition, one

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1 of your attorneys may object to a particular

2 question. When that happens, those objections are

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

4 the question unless your attorney specifically

5 instructs you not to. So allow him to say

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

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

8 Along that same vein, Mr. Corrente, as

9 you're defending the deposition, pursuant to the

10 other depositions, all objections are reserved

11 except for form objections. I would ask that you

12 state the form objection and briefly what it is on

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

14 choose to do so.

15 MR. CORRENTE: Great.

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

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

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

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

20 **A. Okay.**

21 Q. That make sense?

22 **A. Yes.**

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

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

25 my best to make sure that we get through this

Page 10

1 deposition as quickly as possible. Obviously, I  
2 have a fair amount of questions that I need to get  
3 answered, but I will be direct and clear as  
4 possible, and at the same time, if you can be clear  
5 and direct as possible, that will help us get  
6 through this very quickly. Does that sound fair?  
7 **A. Yes, it does.**  
8 Q. Without getting into any specifics, is  
9 there anything about your health or medication that  
10 would impair your ability to fully understand my  
11 questions and give full and complete answers to my  
12 questions today?  
13 **A. There is not.**  
14 Q. Are you being represented by the attorneys  
15 that are representing Brown in this case?  
16 **A. Yes.**  
17 Q. Before coming here today -- and I say  
18 this, please do not tell me anything that you talked  
19 about -- did you meet, either in person or  
20 virtually, with your attorneys?  
21 **A. I did.**  
22 Q. Which ones?  
23 **A. With Staci Kolb and with Bob Corrente.**  
24 Q. And without telling me what was said, can  
25 you tell me approximately how long you met with

Page 11

1 them?  
2 **A. Maybe two hours. And I should add I met**  
3 **with Matthew Craig as well.**  
4 Q. And I assume that was not in person?  
5 **A. It was not.**  
6 Q. Did you review any documents in  
7 preparation for your deposition today?  
8 **A. I did.**  
9 Q. Can you tell me what documents you  
10 reviewed, please?  
11 **A. Specifically, I don't know --**  
12 Q. Anything you recall?  
13 **A. I went through emails that had been**  
14 **exchanged during this process, spreadsheets that had**  
15 **gone -- that had been used during this process,**  
16 **information from the meetings. The committee**  
17 **meetings.**  
18 Q. And just so I make sure we're both on the  
19 same page, is that the excellence in athletics  
20 committee meetings?  
21 **A. Yes.**  
22 Q. Did I get that name right? I always mix  
23 it up. Do you understand that we are here on a  
24 motion by the female athletes at Brown claiming that  
25 Brown is not complying with the Cohen consent order?

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1 **A. I do.**  
2 Q. Were you asked to provide Brown -- were  
3 you asked to provide any records in connection with  
4 that proceeding? That was a bad question.  
5 **A. Help me.**  
6 Q. Did anyone ask you to do a search for any  
7 records in connection with this court proceeding?  
8 **A. No.**  
9 Q. Where do you currently work?  
10 **A. At Brown University.**  
11 Q. And what's your role?  
12 **A. I'm the director of athletics.**  
13 Q. And how long have you been in that role?  
14 **A. Since June of 2012.**  
15 Q. Can you tell me what your chain of command  
16 at Brown looks like?  
17 **A. Sure. I report to the vice president for**  
18 **campus life, and I also have a dotted line to the**  
19 **president.**  
20 Q. And who's the vice president of campus  
21 life?  
22 **A. His name is Eric Estes, E-s-t-e-s.**  
23 Q. Do you have anyone that directly reports  
24 to you?  
25 **A. Yes.**

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1 Q. And who's that?  
2 **A. Colin Sullivan, who's the deputy director**  
3 **of athletics.**  
4 Q. Do the coaches directly report to you?  
5 **A. The coaches all report -- the coaches have**  
6 **a program administrator on our staff. The program**  
7 **administrators funnel up through the department**  
8 **ultimately to Colin Sullivan and to me.**  
9 Q. Can you tell me generally, what are your  
10 qualifications to serve as athletic director?  
11 **A. I've been in the field of intercollegiate**  
12 **athletics since 1989. I was a student-athlete in**  
13 **college myself, served as the director of athletics**  
14 **at Hofstra University for eight years prior to**  
15 **coming to Brown.**  
16 Q. You said you were a student athlete. What  
17 did you compete in?  
18 **A. Sport of lacrosse, Providence College.**  
19 Q. Earlier when I asked you if the coaches  
20 directly report to you, is there a difference  
21 between the club coaches and the varsity coaches?  
22 **A. There are. There are. Just the -- just**  
23 **the varsity coaches work through a program**  
24 **administrator. In the past, there have been two**  
25 **club sport coaches that have, those who have been in**

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1 the sport of rugby for men, and sailing.  
2 Q. Can you tell me about any achievements  
3 you've had as athletic director of Brown?  
4 A. We have had teams that have won Ivy League  
5 championships, students that have been national  
6 players of the year. We've had academic  
7 all-Americans. We've had department recognition for  
8 academic progress rates, which is a measurement of  
9 academic success.  
10 Q. Have you personally had any achievements  
11 or awards as athletic director?  
12 A. Personally I have not.  
13 Q. What are your responsibilities as athletic  
14 director?  
15 A. Day-to-day responsibilities are the  
16 management of the department, fiscal management,  
17 personnel management, the competitiveness of our  
18 athletics program, and the facility management. The  
19 bigger picture or long term is fundraising, donor  
20 cultivation, and the marketing and promotion of  
21 athletics, including the long-standing financial  
22 well-being of the department. And the recruitment  
23 and evaluation of coaches.  
24 Q. Other than recruitment and evaluation of  
25 coaches, do you have any other responsibilities as

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1 it pertains to the coaches?  
2 A. No.  
3 Q. Do you have any responsibilities as it  
4 pertains directly to the students?  
5 A. Direct responsibilities, I do not.  
6 Q. When you say "coaches" again, when you  
7 refer to coaches, are you referring to varsity  
8 coaches?  
9 A. Yes, I am.  
10 Q. Do you have any day-to-day  
11 responsibilities or overall responsibilities as to  
12 the club team coaches?  
13 A. I do not. The club team coaches report to  
14 a manager of club sports.  
15 Q. So is it safe for me to assume when you're  
16 talking about coaches for the rest of this  
17 deposition, you're talking about varsity coaches?  
18 A. Yes, I am.  
19 Q. I just want to make sure we're on the same  
20 page.  
21 A. Sure.  
22 Q. As an administrator, do you think it's  
23 important that you hold all of your coaches and  
24 staff working underneath you to the same standards  
25 of performance?

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1 A. The standard of performances are based on  
2 the resources provided to the sports. So you'd  
3 like -- we try to be consistent, but if the  
4 resources are different, then the expectations of  
5 those sports at times can be different.  
6 Q. Do you think it's important to have clear  
7 expectations for your coaches and staff?  
8 A. Yes.  
9 Q. And why?  
10 A. The expectations dictate how performance  
11 will ultimately be evaluated.  
12 Q. Do you have written policies governing  
13 expectations for coaches or teams?  
14 A. We do.  
15 Q. When were those drafted?  
16 A. I don't know when they were drafted. They  
17 are provided each year. It's in a department manual  
18 that is a working document that is continually  
19 updated.  
20 Q. Do you personally have any manual or  
21 written procedures that govern how you make  
22 decisions in the athletic department?  
23 A. We do not.  
24 Q. Do you have any -- sorry. I'm going to  
25 back up. When you were talking about the department

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1 manual, do you know when that was last updated?  
2 A. I believe it was last updated for the  
3 '19-'20 academic year.  
4 MR. CORRENTE: Just to be sure that the  
5 record's clear, I think by that, the witness means  
6 2019 through 2020.  
7 THE WITNESS: Yes. Yes.  
8 MR. CORRENTE: Not a hundred years ago.  
9 THE WITNESS: Yes. The 2019-2020 academic  
10 year.  
11 Q. (By Ms. Bullock) That's good. I was going  
12 to -- if it's 1919 --  
13 A. Yeah.  
14 Q. -- it's parchment.  
15 A. Yes.  
16 Q. Do you have any manuals or procedures that  
17 govern team size requirements?  
18 A. No.  
19 Q. Do you have any manuals or procedures that  
20 govern roster management?  
21 A. No.  
22 Q. You don't have anything in writing. Do  
23 you communicate the same requirements on team sizes  
24 or your management of your men's and women's teams  
25 with the coaches?

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1 A. So that I understand the question  
2 correctly, we do not have a manual that says a  
3 team's roster can only be as high as a specific  
4 number. Annually we review rosters with each team,  
5 and we at that time could have discussions about  
6 where we anticipate a roster might be for the  
7 upcoming year, and then we would determine if that  
8 roster size will be permissible. But we do not have  
9 anything -- a document in writing that has specific  
10 numbers that teams must have or cannot go over.  
11 Q. So there's a couple things there. How  
12 long have you been doing the roster review with each  
13 coach?  
14 A. Since I've been at Brown.  
15 Q. Is that a written document?  
16 A. No. That review is done with each team,  
17 and it's not in a written manual or document.  
18 Q. And then you stated that you go through --  
19 feel free to correct me if I'm wrong. You go  
20 through sort of the anticipated size of the team,  
21 and then you determine if that roster size is  
22 permissible. How do you know if it's permissible or  
23 not?  
24 A. We determine if it's permissible on the  
25 men's side because it's only on the men's side that

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1 we manage those rosters. So we will look at the  
2 beginning of each year at what the proposed rosters  
3 are from each sport, use that as a snapshot of how  
4 the year will begin; and then we manage from there,  
5 and if we feel that in the numbers that have been  
6 provided that we would not be meeting the  
7 proportionality requirements or the variance on  
8 proportionality, then we would have conversations  
9 with the coaches of the men's teams about having to  
10 adjust those rosters.  
11 Q. When you say adjust those rosters, do you  
12 mean reduce them?  
13 A. I do.  
14 Q. The department manual that you referenced,  
15 is that a public document?  
16 A. I don't believe so.  
17 Q. Do the student-athletes have access to it?  
18 A. The student-athletes have access to a  
19 student-athlete handbook, which would be different.  
20 Some of the information may be -- may be shared in  
21 both, but it's a different document.  
22 Q. Thank you. Do you have a copy of the  
23 Athletic Director's Desk Reference?  
24 A. Do I have a copy of --  
25 Q. It's a book that -- the Athletic

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1 Director's Desk Reference?  
2 A. I do not.  
3 Q. As athletic director at Brown, are you  
4 responsible for ensuring that Brown's athletic  
5 program is in compliance with Title IX?  
6 A. That is my -- that is one of my  
7 responsibilities.  
8 Q. What's your understanding of the  
9 requirements of Title IX for athletic participation?  
10 A. That the participation should be  
11 comparable -- the participation percentages should  
12 be comparable to the undergraduate population.  
13 Q. How do you determine the undergrad  
14 population?  
15 A. That number is provided to our department  
16 from an institution -- from institutional research.  
17 Q. Do you know who provides it?  
18 A. I don't know specifically.  
19 Q. When is that provided usually?  
20 A. Late September. We're given an  
21 anticipated percentage, but it's confirmed by late  
22 September, maybe early October.  
23 Q. Do you have the anticipated percentage for  
24 this year?  
25 A. For the year that's -- the 2020-'21?

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1 Q. Yes.  
2 A. Yes. I believe it's 52.3.  
3 Q. Do you have any documents that reflect  
4 that anticipated percentage?  
5 A. I do not.  
6 Q. How did you find out about it?  
7 A. From admissions.  
8 Q. Like in a phone call?  
9 A. Yes. Yeah. There may -- yeah. I don't  
10 believe there's an email going back and forth on  
11 that. I think it was in a phone call with the dean  
12 of admissions.  
13 Q. Is that something you could look for and  
14 provide to your attorneys if it exists?  
15 A. Yes.  
16 Q. Thank you. You are aware that Brown  
17 university was found to be in violation of Title IX  
18 in the Cohen v Brown lawsuit, correct?  
19 A. I am.  
20 Q. How did you learn that information?  
21 A. I remember hearing about it when I was  
22 working at another institution. I did not know many  
23 of the details until I came to Brown. I did not  
24 know any of the details until I came to Brown.  
25 Q. And when you came to Brown, who told

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1 you -- did you learn about the details?  
2 **A. At some point. I can't recall exactly**  
3 **when, but I did learn about it, and learned about**  
4 **the process by which Brown manages the**  
5 **proportionality.**  
6 Q. What was told to you as to the process  
7 that Brown uses to manage proportionality?  
8 **A. At the time, the staff member who was**  
9 **responsible for athletic compliance shared with me**  
10 **that there is a roster count on the first date of**  
11 **competition and the last date of competition. Those**  
12 **numbers are averaged to come up with a value for**  
13 **each sport. And that the athletic participation has**  
14 **to be in proportion with the undergraduate**  
15 **population with a variance of 3.5 percent.**  
16 Q. Does that 3.5 percent change at any time?  
17 **A. Only if the makeup of the number of sports**  
18 **were to change, so that if a men's program was added**  
19 **or a women's program was transitioned to a -- out of**  
20 **varsity status, that that 3.5 would then be reduced**  
21 **to 2.25 percent.**  
22 Q. Do you remember the staff person that told  
23 you about that?  
24 **A. There were two people, neither of whom are**  
25 **at Brown. One is Joan Taylor, who is retired. The**

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1 **other person is Sarah Fraser, who works in the**  
2 **athletic department at Quinnipiac University.**  
3 Q. Did Ms. Fraser used to work at Brown?  
4 **A. She did.**  
5 Q. But she's now at Quinnipiac?  
6 **A. She's now at Quinnipiac.**  
7 Q. Just wanted to make sure you weren't just  
8 receiving information from somebody who works at  
9 Quinnipiac. Okay. Is there someone serving in a  
10 similar role to Joan Taylor and Sarah Fraser now?  
11 **A. That role is administered by a Bridgette**  
12 **Cahill, and she's the person that manages that**  
13 **operation now.**  
14 Q. Do you believe that there is a difference  
15 between the requirements of Title IX proportionality  
16 compliance and the consent decree?  
17 **A. Can you ask the question one more time,**  
18 **please?**  
19 Q. Yeah. Let me see if I can be clearer.  
20 You kind of explained your understanding of Title IX  
21 and the athletic participation requirements, and in  
22 the consent decree, do you believe that those are  
23 the same?  
24 **A. I believe the count -- there's a**  
25 **difference in the mechanics. I would say the**

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1 **overarching objective is the same, to provide equal,**  
2 **equitable opportunities for men and women.**  
3 Q. I'm going to show you what has -- share my  
4 screen with you here. This was a previously marked  
5 exhibit. Can you see my screen?  
6 **A. I can.**  
7 Q. This is an email, if you see at the top  
8 here, from Mr. Samuel Menco to yourself. It  
9 starts at Bates 24794. It was part of the  
10 deposition from yesterday.  
11 MR. CORRENTE: Counsel, do you want to  
12 identify when that was previously marked and as  
13 what?  
14 MS. BULLOCK: Yesterday's deposition with  
15 President Paxson. Sonya, do you -- I don't have  
16 officially marked exhibits yet. I apologize. I  
17 think it's 3.  
18 (Reporter clarification.)  
19 MR. CORRENTE: No, that's not Exhibit 3.  
20 Is that document in the pack you sent us a couple  
21 minutes ago?  
22 MS. BULLOCK: I don't think it is because  
23 I thought it was part of yesterday's so I apologize.  
24 MR. CORRENTE: So we don't have that  
25 document?

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1 MS. BULLOCK: Not in paper form, no. It's  
2 just on the screen.  
3 MR. CORRENTE: I'm going to object to  
4 questioning him about it if we don't have it.  
5 MS. BULLOCK: You have it on the screen.  
6 There's no basis for that objection. In a normal  
7 deposition, I would hand you a copy of it. I have  
8 done so virtually, which is permitted.  
9 MR. CORRENTE: You can continue to  
10 question. I'm objecting to asking him about  
11 documents that you haven't sent us, but go ahead.  
12 Q. (By Ms. Bullock) So, Mr. Hayes, do you  
13 recall -- I'm going to show you the entire document  
14 so that -- I'm going to scroll down so you can see  
15 the entire document, and then I'll ask you questions  
16 about it, okay?  
17 **A. Yes.**  
18 MS. BULLOCK: Lynette, would you be able  
19 to send a copy of this to defendants?  
20 MS. LABINGER: Hi. Can you hear me?  
21 MS. BULLOCK: Yes.  
22 MS. LABINGER: Can we take 30 seconds  
23 so -- I can stay on the screen. I have the  
24 document. I just could not get back to the sound.  
25 I'm technologically challenged. Give me 30 seconds

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1 to send this to everyone. I have it right now.  
 2 Okay?  
 3 MS. BULLOCK: Thank you.  
 4 MS. LABINGER: I'm just going to go off  
 5 sound right now.  
 6 Q. (By Ms. Bullock) Mr. Hayes, would it be  
 7 easier for me to wait until you have a copy of it in  
 8 front of you, or can you read it off the screen?  
 9 A. I can see it.  
 10 Q. Do you recall receiving this email?  
 11 A. I do.  
 12 Q. And who's Mr. Mencoﬀ?  
 13 A. Mr. Mencoﬀ is the chancellor of Brown  
 14 University. Be similar to -- I believe similar to  
 15 being the chair of board of trustees.  
 16 Q. Can you read for me this portion of the  
 17 email from Mr. Mencoﬀ?  
 18 A. Sure. Do you want me to read through it  
 19 right now?  
 20 Q. Can you read it out loud?  
 21 A. Sure. "But here's an idea. Could we use  
 22 this moment, where anger and frustration, especially  
 23 from track and squash, are intense and building to  
 24 go after the consent decree once and for all? Could  
 25 we channel all this emotion away from anger at Brown

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1 to anger at the court and kill this thing? The  
 2 argument would be that the consent decree is forcing  
 3 us to eliminate these sports, and the court would  
 4 then be bombarded with emails and calls, as we are  
 5 now. We would be aligned then with all those who  
 6 oppose us now."  
 7 Q. Did you skip over a word there?  
 8 A. Yeah. I don't know it.  
 9 Q. Pestilential?  
 10 A. I don't know that word.  
 11 Q. Okay. You don't know what it means?  
 12 A. I've got a sense from reading, but I did  
 13 not know it and I do not know how to pronounce it.  
 14 Q. Okay. If you could read the next  
 15 paragraph here.  
 16 A. "I've asked Jack to analyze whether if we  
 17 were no longer subject to the consent decree and had  
 18 the latitude to operate within the bands of our Ivy  
 19 peers, could we achieve the roster size realignment  
 20 that we are seeking even while retaining track, for  
 21 example. We might be able to do the same -- we  
 22 might be able to get to the same place in a  
 23 different way. I'm not suggesting a change of  
 24 strategy, but it would be worth knowing what our  
 25 options are."

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1 Q. And then as a result of this email, did  
 2 you provide to Mr. Mencoﬀ this information  
 3 regarding sizes of other Ivy League schools'  
 4 athletic teams and variances?  
 5 A. I did. I don't know if it was in response  
 6 to that email, because I believe that email was to  
 7 the president, and maybe he had attached this to it.  
 8 He had asked me about this earlier. I provided  
 9 this, and then I believe this is what was attached  
 10 to his email to the president.  
 11 Q. So I'm going to go back to my previous  
 12 question. Do you believe that the requirements  
 13 under the consent decree are the same as they would  
 14 be if you were just subject to Title IX and not to  
 15 the consent decree?  
 16 A. Yes. As I said earlier, I said -- I  
 17 referenced earlier that the mechanics are different,  
 18 and the counting is different. Which does then play  
 19 into things such as proportionality.  
 20 Q. Can you elaborate on that for me a little  
 21 bit?  
 22 A. Yes. In the counting in the consent  
 23 decree, for the sports of track, there are three  
 24 seasons, cross country, indoor track, and outdoor  
 25 track. In the consent decree, a cross country

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1 student who participates in track can be counted  
 2 twice. A track participant can be counted one time.  
 3 For the purposes of EADA reporting, a cross country  
 4 runner who participates in the track program can  
 5 count three times. And the track participants who  
 6 participate in indoor and outdoor can count twice.  
 7 So there's a different count with respect to cross  
 8 country track and field.  
 9 There's a second difference, and that is  
 10 that in the EADA reporting, it is -- the numbers  
 11 that we provide are based on the first date of  
 12 competition. In the consent decree, it is an  
 13 average of the first date of competition and the  
 14 last date of competition. Those are -- when I refer  
 15 to the mechanics being different, that's what I'm  
 16 referring to.  
 17 Q. Do you believe, as Mr. Mencoﬀ's email  
 18 suggests, that Brown University would be allowed to  
 19 operate at a higher variance than the 3.5 or now  
 20 2.25?  
 21 A. I don't know. I know that -- I just know  
 22 that the count would potentially be different.  
 23 Q. I'm going to direct you to -- you would  
 24 agree with me that other Ivy League schools operate  
 25 with a higher variance, correct?



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1           **A. There are other schools that operate with**  
2 **a higher variance, yes.**  
3           Q. Is it your understanding -- is it your  
4 belief that they are in compliance with Title IX?  
5           **A. I don't know how they comply.**  
6           Q. Would you agree with me that Mr. Mencoﬀ  
7 in his email believes that without the consent  
8 decree, Brown would be allowed to operate at a  
9 higher variance?  
10          **A. I don't know what Mr. Mencoﬀ believes,**  
11 **but I know that in looking at that document, you can**  
12 **see that -- and he could see that schools operated**  
13 **with a variance that was significantly higher than**  
14 **ours.**  
15          Q. I'm going to show you -- just one moment.  
16 It's not letting me -- the joys of technology. Just  
17 one moment. We can go oﬀ -- no. That's fine.  
18 It's not letting me share my screen in the way  
19 that -- can you see my screen?  
20          **A. I can.**  
21          Q. I apologize. I was getting an error  
22 message. Okay. This is an email from you to  
23 Mr. Mencoﬀ on June 4th, Bates number 24776. Again,  
24 I'll scroll through the whole thing so you can see  
25 it on the screen.

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1           **A. Okay.**  
2           MR. CORRENTE: Counsel, was that a  
3 document that was sent to us?  
4           MS. BULLOCK: It should be. It should be  
5 in the stack.  
6           MR. CORRENTE: Can you tell us where  
7 because they're apparently not even in order?  
8           MS. BULLOCK: I don't -- I apologize. I  
9 sent combined PDFs so ...  
10          Q. (By Ms. Bullock) I'm going to scroll  
11 through here. Mr. Hayes, do you recall sending this  
12 email?  
13          MR. CORRENTE: Wait a minute. Can you  
14 tell us where it is in the stack? We have 130 pages  
15 of documents all mixed up.  
16          MS. BULLOCK: I don't know, Bob. I hit  
17 combined PDF because defendants asked for it as one  
18 giant PDF, and it combines and I sent it.  
19          MS. LABINGER: If I may, I will try to  
20 find it and email it to you. Give me 30 seconds.  
21          MS. BULLOCK: We will mark this as  
22 Exhibit 2.  
23          MR. CRAIG: For Brown's benefit, I believe  
24 it begins towards the end around page 110-ish of the  
25 set of documents out of 130.

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1           MS. BULLOCK: Thank you, Matthew.  
2           MR. CORRENTE: Are you marking a single  
3 page or is it a multipage document?  
4           MS. BULLOCK: It's three pages. It goes  
5 from 776 to 778. 24776 to 24778, so the record is  
6 clear.  
7          Q. (By Ms. Bullock) Mr. Hayes, did you  
8 prepare these scenarios, is what I'm going to call  
9 them, at the request of Mr. Mencoﬀ?  
10          **A. Not at the request of Mr. Mencoﬀ. It was**  
11 **not.**  
12          Q. Why did you prepare these, then?  
13          **A. I was using this as an example to show**  
14 **that there are different options. I believe --**  
15 **could you just tell me again, is it -- now I have it**  
16 **in front of me. So this is June 4.**  
17          Q. Yes.  
18          **A. So this is at a time when we're having**  
19 **conversations about track and we are looking at**  
20 **different scenarios. I am trying to look at**  
21 **options, and I'm also trying to do so in a way that**  
22 **maintains the commitment to proportionality. So I'm**  
23 **looking at different ways that track might come back**  
24 **in, and I'm also showing that the count on track,**  
25 **depending on how you count that sport, leads to the**

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1 **participation percentages changing.**  
2          Q. So scenario one is using the roster -- you  
3 say planned roster totals. Does that mean without  
4 track, men's track, field, and cross country?  
5          **A. At the time, I believe that's what it**  
6 **means, yes.**  
7          Q. If I refer to it as men's track when I --  
8 instead of men's track, field, and cross country, do  
9 you understand what I mean?  
10          **A. I certainly do.**  
11          Q. And so would scenario 2 just be adding  
12 back in men's track but no other changes?  
13          **A. Yes.**  
14          Q. Is that what you mean by "Using our  
15 planned roster totals"?  
16          **A. Yes, that's what I meant.**  
17          Q. When you say "planned roster totals,"  
18 where did those numbers come from?  
19          **A. Those would either come from -- I believe**  
20 **at this point we're having conversations with**  
21 **coaches about what their -- what they plan for a**  
22 **roster in the upcoming 2020-2021 academic year.**  
23          Q. So there isn't some sort of written-down  
24 plan of what the rosters will -- the roster numbers  
25 will be next year?

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1           **A. No.**  
2           Q. And then in scenario 3, this is using  
3 those planned roster totals, adding back in the  
4 track team, and then adding in the women's  
5 equestrian team, correct?  
6           **A. Yes. And the point there was -- I used**  
7 **women's equestrian as an example. I could have used**  
8 **any sport in there. Just I was showing what happens**  
9 **when -- to the percentages when you add men's track**  
10 **in and what happens when a women's team is added.**  
11          Q. And then you acknowledge the variance is  
12 about 1 percent in the third --  
13          **A. Yes.**  
14          Q. -- scenario, right?  
15          **A. Yes.**  
16          Q. Mr. Mencoff says, "If we weren't subject  
17 to the consent decree, couldn't we easily operate in  
18 scenario 2?" Do you see that?  
19          **A. I do.**  
20          Q. Do you know what he meant by that?  
21          **A. I do not.**  
22          Q. In scenario 2, you would not achieve the  
23 2.25 percent, correct?  
24          **A. In scenario 2 -- scenario 2 -- can you**  
25 **show me where you have that?**

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1          Q. Your variance -- in scenario 2, which is  
2 adding men's track, your variance would be greater  
3 than the 2.25 percent, correct?  
4          **A. That is correct.**  
5               MR. CRAIG: Can I just make sure I'm  
6 looking at the right part of the document where it's  
7 greater than 2.25?  
8          Q. (By Ms. Bullock) Absolutely. So using our  
9 planned roster totals and adding men's track (60  
10 participants), it's 467 male athletes, which is  
11 50.6 percent of the student athletes, 456 female  
12 athletes, which is 49.4 percent of the  
13 student-athletes, and you state up here that it's  
14 trending towards 52 percent female, correct?  
15          **A. Correct. So that's why -- yes. In that**  
16 **example of just adding track, based on the totals**  
17 **that I had at the time of men's and women's teams,**  
18 **in using these numbers, we would not be within the**  
19 **2.25 percent.**  
20          Q. Do you know why Mr. Mencoff believes --  
21 why he said, "If we weren't subject to the consent  
22 decree, we could easily operate at a variance of  
23 3.6"?  
24          **A. I don't.**  
25          Q. Just for clarification, you have 60

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1 participants here. Where did that number come from?  
2          **A. So during the -- after the announcement on**  
3 **May 28, in discussing how we may bring track back,**  
4 **we had conversations with coaches about where their**  
5 **rosters would be, and this was the number that we**  
6 **used for track.**  
7          Q. So that was a speculation going forward  
8 about the 2020-2021 roster?  
9               MR. CORRENTE: Object to the form of the  
10 question. He didn't say it was speculation.  
11          Q. (By Ms. Bullock) You can answer.  
12          **A. I believe -- yes, this was based on what**  
13 **we thought the roster would be going forward.**  
14          Q. And then you say here "Since we have been  
15 previously sued, we would likely be best off if we  
16 were as close to 52 percent as possible," correct?  
17          **A. Yes. Knowing what the undergraduate**  
18 **population percentages were going to be, I wanted to**  
19 **make sure that we complied with this to the best**  
20 **degree we could and make sure we stayed within that**  
21 **2.25.**  
22          Q. And so you acknowledge that you could  
23 easily get there in scenario 3 where you add another  
24 women's team back, correct?  
25          **A. Yeah. I would say that I acknowledged**

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1 **that we would be able to be closer to that -- to**  
2 **work within that variance if we had additional women**  
3 **added in. In this example, I used equestrian. The**  
4 **purpose of the parentheses with the number was so**  
5 **that we would be focused on the number of people,**  
6 **participants.**  
7          Q. Do you know -- do you recall -- sorry.  
8 The 467 male athletes that's in the planned rosters,  
9 are those based on -- what numbers are those based  
10 on?  
11          **A. The 407 and 456?**  
12          Q. Or any of these.  
13          **A. The numbers are based on what our plan**  
14 **was. As we went through this process, we were**  
15 **trying to plan what roster sizes we would**  
16 **anticipate. As we went through this, it was**  
17 **important for us to make sure that we stayed within**  
18 **the variance and met what that requirement of the**  
19 **consent decree was.**  
20               So we were continually looking at roster  
21 sizes throughout this process and looking to see  
22 what the impact on any of these decisions would have  
23 on the overall population of male and female  
24 student-athletes.  
25          Q. Do you believe Brown would have more

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1 freedom to reduce the size of its women's teams if  
2 it were not subject to the consent decree?  
3 **A. I don't know -- more freedom to eliminate**  
4 **or reduce? I don't know. I think the consent**  
5 **decree was put in place to support women's**  
6 **athletics. Brown has met it for many years, and I**  
7 **don't know if it would -- if the intent would be --**  
8 **I don't believe the intent would be to do anything**  
9 **negative to women's athletics if the consent decree**  
10 **didn't exist.**  
11 Q. Do you believe that the consent decree's  
12 gender proportionality requirements hurts the male  
13 athletes?  
14 **A. The requirement? The requirement of the**  
15 **2.25 percent variance?**  
16 Q. Yes.  
17 **A. I don't believe the requirement does. I**  
18 **think the count does.**  
19 Q. What do you mean by that, "the count  
20 does"?  
21 **A. I think the way that -- excuse me. The**  
22 **way that track, for example, is counted at Brown is**  
23 **different than the way that track is counted for**  
24 **other schools trying to -- if other schools are**  
25 **complying and reporting information through their**

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1 **EADA, they are all counting track differently than**  
2 **Brown is.**  
3 Q. Do you believe the consent decree requires  
4 you to limit the sizes of men's teams?  
5 MR. CORRENTE: Object to the question.  
6 The decree says what it says. You can answer.  
7 **THE WITNESS: No.**  
8 Q. (By Ms. Bullock) Do you believe it  
9 requires you to add women to the women's teams?  
10 **A. No.**  
11 MR. CORRENTE: Same objection. You can  
12 answer.  
13 **THE WITNESS: No.**  
14 MS. BULLOCK: We've been going for about  
15 an hour. This would be an okay place to take a  
16 five-minute break.  
17 MR. CORRENTE: Okay. Thanks.  
18 VIDEOGRAPHER: Off the record at  
19 10:08 a.m.  
20 (Recess taken from 10:08 to 10:20 a.m.)  
21 VIDEOGRAPHER: On the record at 10:20 a.m.  
22 Q. (By Ms. Bullock) Mr. Hayes, we previously  
23 mentioned the excellence on athletics committee.  
24 Did you play a role in creating that committee?  
25 **A. I did not play a role in the creation of**

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1 **the makeup of the committee.**  
2 Q. You didn't select any of the committee  
3 members?  
4 **A. I did not.**  
5 Q. Did you serve on the committee?  
6 **A. I did not serve on the committee. I had a**  
7 **role with the group, but I was not a committee**  
8 **member.**  
9 Q. What was your role with the group?  
10 **A. To prepare information for the meetings**  
11 **and to answer any questions during the discussion,**  
12 **follow up on any questions that they might have.**  
13 Q. I'm going to have you look at -- actually,  
14 real quick, as you understand it, do you understand  
15 that the committee was given certain charges as a  
16 committee?  
17 **A. Yes.**  
18 Q. Did you play a role in deciding what  
19 those charges would be?  
20 **A. I had discussions with the president about**  
21 **a committee being put together, but the specific**  
22 **charges, I did not determine what those charges**  
23 **were.**  
24 Q. Did President Paxson consult you at all?  
25 **A. Yes.**

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1 Q. As to what the charges of the committee  
2 should be?  
3 **A. I'm sorry. She -- questions about -- we**  
4 **discussed the subject matter and the objectives, but**  
5 **ultimately the specific charges to them I believe**  
6 **were put together based on conversations that we had**  
7 **about this process.**  
8 Q. So to the best of your memory, what  
9 conversations did you have about what the purpose of  
10 the committee was?  
11 **A. The purpose of the committee was to look**  
12 **at the number of sports that Brown offered and**  
13 **looking at that in the context of how we maximize**  
14 **our competitiveness with our athletic program.**  
15 Q. Anything else?  
16 **A. No.**  
17 Q. I'm going to show you what has been  
18 previously marked as Exhibit 6. This was marked in  
19 President Paxson's deposition.  
20 MR. CRAIG: Lori, are you going to remark  
21 it for this deposition, though?  
22 MS. BULLOCK: I can if that's cleaner. So  
23 I can remark it as Exhibit 3.  
24 MR. CRAIG: I think it may be cleaner just  
25 since we're sort of restarting the numbers.

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

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

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

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

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

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

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

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

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1 Q. If you look at page 5 -- and it's not  
2 going to have a Bates stamp. Do you know who  
3 created this spreadsheet?

4 A. I do not. It may have been Marguerite.

5 Q. So there's a couple different columns  
6 here, and I just want to make sure I understand and  
7 we're both talking about the same thing. So it says  
8 "Roster" and it says "Average Roster, winning  
9 teams." What does that mean?

10 A. At the time, we were looking at, over a  
11 five-year period, what were the average roster sizes  
12 of teams that won Ivy League championships in any  
13 sport.

14 Q. And where would she get that information,  
15 or where would you get that information?

16 A. We would get that information by going on  
17 the Ivy League website to get the champions, and  
18 then by going on the EADA website to get what the  
19 roster sizes were of those specific teams. And our  
20 office compiled that information.

21 Q. And then the next column is "Current  
22 (3-year average)." What does that refer to?

23 A. I believe that was the average of Brown's  
24 roster size over the previous three years.

25 Q. And are those -- I assume this came to you

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1 with those numbers put in it already, correct?

2 A. I believe it was, so it would have been  
3 numbers that we had initially provided to her.

4 Q. Here under men's track and field and  
5 women's track and field, where did those numbers  
6 come from?

7 A. Our numbers -- all of our numbers would  
8 have come from -- well, what I can't recall right  
9 now is if our numbers are coming off the EADA report  
10 or if they're coming off the consent decree count,  
11 but they would be consistent. They would have all  
12 come from one or the other. My sense is that they  
13 are coming off -- they are coming off the consent  
14 decree count.

15 Q. And you agree with me that under the  
16 consent decree, track and field can only count once,  
17 plus cross country, correct?

18 A. Correct.

19 Q. You can't --

20 A. That the cross country runners would count  
21 as part of track, so those cross country runners  
22 would be a two-person count, and the track  
23 participants would count one time. So I can't tell  
24 from this if it's an -- I actually think it's an  
25 EADA count the way this is. These numbers are

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1 higher, and to me, I believe it would show that they  
2 were counted the way an EADA count is, where the  
3 cross country runners are counted three times and  
4 the track participants are counted twice, but I  
5 can't confirm that.

6 Q. Is there a reason that you would use the  
7 EADA numbers rather than the numbers pursuant to the  
8 consent decree when you're talking about roster  
9 sizes at Brown?

10 MR. CORRENTE: Object to the form of the  
11 question. He didn't prepare the spreadsheet. You  
12 can answer.

13 THE WITNESS: The only time that we would  
14 use -- the reason for using the EADA count is to  
15 compare to other institutions because that's how  
16 other institutions are counting their numbers. So  
17 when we are showing our totals to -- and roster  
18 sizes to committee members, in order to give a frame  
19 of reference, we have to use what the other  
20 institutions use, and that's why at times you'll see  
21 us in documents go back and forth, because using the  
22 consent decree count really would be misleading  
23 because the other schools don't have to do that. So  
24 there are times where we reference EADA so that it  
25 can be a true comparison with other institutions.

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1 Q. (By Ms. Bullock) And then "Ideal Roster"?

2 A. Ideal roster, this number -- again, this  
3 was a process that went on for months, where we went  
4 back and forth on what we would consider an ideal  
5 roster, coaches' input, but at the end -- at the  
6 end, our ideal roster was based on requesting  
7 information -- before a decision was made ultimately  
8 on the number of sports, was based on what coaches  
9 had provided to us as a number for what their ideal  
10 roster would be in responding to an email that I had  
11 sent to each one of them.

12 Q. And then for admission slots, are those  
13 called something else?

14 A. Either admission slots or admission  
15 supports.

16 Q. And the current three-year average, is  
17 that at Brown?

18 A. That would be at Brown.

19 Q. And then, again, the ideal, where does  
20 that number come from? Where would that number come  
21 from?

22 A. I think ultimately that would be a number  
23 that would be placed in when we knew what roster  
24 size we would eventually agree upon. The roster  
25 size -- for many teams, the roster size and the

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1 admission slots are a function of each other, so  
2 that would -- that and the ideal roster size are  
3 related.  
4 Q. And you said that you -- do you recall  
5 when you sent the emails to the coaches asking them  
6 for their ideal roster size?  
7 A. I don't have that date. I want to say  
8 it's in early May.  
9 Q. I'll share with you, this is Bates number  
10 26695. It carries over onto 26696. This is  
11 Exhibit 6. This is an email from Marguerite Joutz  
12 to you on March 8th. Do you recall receiving this  
13 email?  
14 A. Yes. I'm familiar with this email.  
15 Q. Would this be different than the emails  
16 you're talking about this day?  
17 A. Yes, it is.  
18 Q. Why did you send this email in March?  
19 A. Because at this time, we were looking at  
20 different women's programs that currently were not  
21 varsity and where we thought their roster numbers  
22 would be.  
23 Q. Were you contemplating elevating women's  
24 rugby to varsity status?  
25 A. Women's rugby is a varsity sport, and

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1 within that organization, they have not split, but  
2 they are trending towards two different types of  
3 programs with two different numbers of students on  
4 the field and different ways of playing, and so we  
5 compete in both, and we just wanted to look at what  
6 our actual number of rugby 7s were compared to our  
7 rugby team, our women's rugby team.  
8 Q. Sorry. Do you have the document in front  
9 of you? I stopped sharing it.  
10 A. I do. I have it.  
11 Q. You agree that the roster number for  
12 sailing was 18 women and 12 men, correct?  
13 A. That is correct.  
14 Q. And when it says 18 women for women's  
15 sailing, is that, as you understand it, 18  
16 additional women?  
17 A. No. It's 18 additional opportunities, not  
18 18 additional women.  
19 Q. You said you attended the meetings,  
20 correct?  
21 A. I did.  
22 Q. Did you take notes at the meetings?  
23 A. I did not. I'm sorry. Formal committee  
24 meeting notes?  
25 Q. We have been told -- so correct me if this

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1 is not correct -- that there were no minutes at the  
2 meetings.  
3 A. There were not.  
4 Q. And real quick, you -- sorry. In the  
5 previous one, I asked if those were 18 additional  
6 women, and you said not additional women but  
7 additional opportunities. What do you mean by that?  
8 A. I mean by that that you could have the  
9 same 18 women who were part of the women's sailing  
10 program also competing in the coed program.  
11 Q. Where does that information come from?  
12 A. From conversations with John Mollicone,  
13 the head coach, based on what our numbers had been  
14 the prior year.  
15 Q. That's my fault. That was vague. Where  
16 does the understanding that those are different  
17 opportunities come from?  
18 A. From how we would view women's sailing  
19 versus coed sailing. Different championships,  
20 different events. The fact that members of the  
21 women's team can participate in a women's event one  
22 day and a coed event at an entirely different site  
23 the next day, that they are different programs and  
24 they operate under different championships, and  
25 students could participate in one or both if they so

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1 choose.  
2 Q. So as I was saying, it's our understanding  
3 that there were not formal minutes taken at the  
4 committee meeting; is that correct?  
5 A. That's correct.  
6 Q. Did you personally take notes at the  
7 meeting?  
8 A. I didn't write anything that I -- I didn't  
9 have any notes. I listened to what the committee  
10 members discussed and I answered questions that they  
11 had.  
12 Q. I'm going to show you a document. Maybe  
13 it will refresh your recollection.  
14 A. Okay.  
15 Q. This is Bates stamp 26589, Exhibit 7.  
16 This is an email from Jack Hayes to Jack Hayes.  
17 A. Yeah.  
18 Q. Sent on April 18th. Are these notes from  
19 the meeting, Mr. Hayes?  
20 A. These are my notes, yeah. And I'm sorry.  
21 I thought you meant was I taking notes while we were  
22 in there during the meeting. This is an email that  
23 I wrote to myself that would have summarized  
24 different points that came up during those -- during  
25 that discussion. It was not anything that I shared

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1 with the group.  
2 Q. Okay. So I'm going to tell you, and with  
3 the caveat that there are tens of thousands of pages  
4 of documents, this is the only meeting notes that I  
5 could find in what Brown University has given us.  
6 Do you know if you took similar type of personal  
7 notes at the March meeting and the May meeting?  
8 MR. CORRENTE: Objection to the form of  
9 the question. You can answer.  
10 **THE WITNESS: I do not believe I did.**  
11 Q. (By Ms. Bullock) You only took them for  
12 the April 17th meeting?  
13 A. Yes.  
14 Q. Do you know if during the meeting anyone  
15 else was taking personal notes?  
16 A. I don't. If -- well, I certainly don't  
17 because we were on Zoom by this point. For the  
18 first meeting in March, maybe Marguerite was, and  
19 she was in the room with me, but after this date,  
20 everything was remote, so I do not know if anybody  
21 was taking any other notes themselves.  
22 Q. But you believe -- and Marguerite was in  
23 the room with you for the March meeting, correct?  
24 A. Yes. For the March meeting, we were both  
25 in the room. We were there in person.

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1 Q. And you believe she was taking maybe  
2 handwritten notes?  
3 A. I'm not sure. She may have been -- she  
4 may have, but I don't know for sure.  
5 Q. Are you pretty familiar with Marguerite?  
6 A. Yes.  
7 Q. Is she the type of person that tends to  
8 take notes in a meeting?  
9 MR. CORRENTE: Object to the form. You  
10 can answer.  
11 **THE WITNESS: Yeah. I don't know. She**  
12 **may have done what I did. She may have done what I**  
13 **said and went back and did this after the fact. I**  
14 **don't know if she -- I cannot recall if she was**  
15 **taking notes in that meeting. And I know that she**  
16 **did not distribute any type of summary notes to me.**  
17 Q. (By Ms. Bullock) Did you pass this along  
18 to anyone else?  
19 A. I did not.  
20 Q. So it says here, "Group prefers scenario  
21 2." Does that mean the committee?  
22 A. "Group" is the committee, yes.  
23 Q. And is that -- we can get to this in just  
24 a minute, but were they -- was the committee  
25 presented with multiple scenarios?

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1 A. I believe at the April meeting, there were  
2 two.  
3 Q. What about at the March meeting?  
4 A. No, I don't think there were -- I don't  
5 believe there were scenarios that early in the  
6 process.  
7 (Phone rang.)  
8 Q. Are you good?  
9 A. Yeah. Sorry about that.  
10 Q. That's okay. It happens. And then just  
11 so we can -- I'm going to show you -- this is  
12 committee on excellence in athletics meeting. We  
13 looked at this yesterday. It's dated April 17,  
14 2019, but President Paxson was very sure that that  
15 was a typo. Should be 2020?  
16 A. 2020.  
17 Q. And we'll mark this as Exhibit 8. This is  
18 Bates stamp 26778 through 26795.  
19 MR. CORRENTE: Counsel, may I ask, it  
20 looks like there's a copy of this in what you  
21 produced today.  
22 MS. BULLOCK: Yes.  
23 MR. CORRENTE: But it starts at 26971.  
24 MS. BULLOCK: That's actually -- so this  
25 one -- and I'll represent to you, Mr. Hayes, that

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1 this has -- we have been told that this was a first  
2 draft of this PowerPoint. The second draft is what  
3 Mr. Corrente is referring to, which starts at 26971.  
4 So we'll get to that one in just one second, but I'd  
5 like to go over the first draft with you first.  
6 **THE WITNESS: Okay.**  
7 MR. CORRENTE: What exhibit was the first  
8 draft that you're looking at now from the Paxson  
9 depo?  
10 MS. BULLOCK: I reproduced it with the  
11 materials today, Bob.  
12 MR. CORRENTE: What was the -- give me the  
13 Bates range again on that, please.  
14 MS. BULLOCK: 26778. They should -- in my  
15 pile, they are back to back so hopefully -- to try  
16 and help you guys out, I have the full combined up  
17 so I can scroll through it if need be to help you  
18 find things, but they were right back to back.  
19 Q. (By Ms. Bullock) So I'm going to have you  
20 turn to Bates stamp 26784.  
21 A. Okay. I see it.  
22 Q. Originally, were there three -- did you  
23 contemplate presenting three scenarios to the  
24 committee?  
25 A. We laid three -- as I recall, we laid





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1 MR. CORRENTE: Exhibit 9 was a different  
2 page, which was the substitute for the third page of  
3 Exhibit 8. So --  
4 MS. BULLOCK: It was not --  
5 MR. CORRENTE: I'm sorry.  
6 MS. BULLOCK: Mr. Corrente, it was a  
7 portion of the final report that was shown to the  
8 committee. So I --  
9 MR. CORRENTE: I understand that. I just  
10 wanted to clear up the confusion about Exhibits 8  
11 and 9 because 9 was a partial replacement for the  
12 third page of 8.  
13 MS. BULLOCK: Okay. And I guess I dispute  
14 your designation there. It wasn't a replacement for  
15 Exhibit 8. It was its own exhibit. Exhibit 8 is a  
16 draft of the -- Exhibit 8 yesterday, Paxson  
17 Exhibit 8, was a draft of the report. The page  
18 you're talking about is 619624 and 625 were pulled  
19 from a draft of the PowerPoint.  
20 What I have provided today, will be  
21 marking today, are the entirety of the PowerPoint,  
22 but they have redactions from the originals that  
23 were produced. So when you get them, compare them  
24 and just confirm --  
25 MR. CRAIG: I guess I'm missing you're --

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1 you want us to confirm that the single slides that  
2 you took -- that you showed President Paxson  
3 yesterday are from the full slide deck that you are  
4 about to introduce?  
5 MS. BULLOCK: They're not from the full  
6 slide deck because these are Bates 26778, starting,  
7 and that was from 620 -- 619 starting.  
8 MR. CRAIG: Is there a reason that you  
9 don't want to just use the full slide deck from  
10 which you took President Paxson's single slides?  
11 MS. BULLOCK: Because I want to use pages  
12 that have the admission slots on them.  
13 MR. CRAIG: Maybe we can just follow up on  
14 an email. I'm just not sure exactly what you're  
15 asking, but it doesn't sound like it matters to the  
16 witness.  
17 MS. BULLOCK: No. Just for the record to  
18 be clear, because now we're going to have --  
19 basically, we're going to have multiple versions of  
20 the same -- of the same document with different  
21 Bates stamps.  
22 MR. CRAIG: Noted.  
23 MS. BULLOCK: That solves that.  
24 Q. (By Ms. Bullock) Mr. Hayes, if you could  
25 turn back to Exhibit 8. And specifically we were

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1 discussing 26784 that has those three scenarios on  
2 it. And I can pull it back up here if that's  
3 helpful.  
4 **A. I have it. Yes, I have it.**  
5 Q. And you had stated that you decided  
6 scenario 1 you weren't going to show to the  
7 committee, and you didn't go forward with that  
8 because it eliminated too many women, correct?  
9 **A. Correct.**  
10 Q. Other than these three scenarios that are  
11 here, were there any other scenarios that were  
12 discussed between yourself and President Paxson?  
13 **A. No.**  
14 Q. How did you guys come to the three  
15 scenarios that are present on 26784?  
16 **A. Conversations that came out of the March  
17 meeting.**  
18 Q. What were those conversations?  
19 **A. Looking at where programs were  
20 facility-wise, where programs were competitively,  
21 which programs -- from a community interest or a  
22 collegiate landscape, where those programs fell.  
23 These were the sports that tended to fall into each  
24 one of those discussions as programs that we would  
25 consider transitioning to the club level.**

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1 Q. So at the March meeting, did the committee  
2 decide which programs should be eliminated from  
3 varsity status?  
4 **A. No. At the March meeting, they did not,  
5 but they did discuss those different areas of  
6 competitiveness, facility assessments, and they did  
7 agree that those were the types of things that  
8 should go into these decisions.**  
9 Q. So the lists of sports here that say  
10 convert to club or cut, you're saying at the March  
11 meeting, they didn't actually come up with these  
12 specific list of sports that should be converted or  
13 cut?  
14 **A. Correct, but they did agree -- on the type  
15 of criteria that had been discussed, we felt these  
16 were programs that would fall into those categories  
17 of criteria.**  
18 Q. When you say "we," who do you mean?  
19 **A. The president and myself.**  
20 Q. Are you the only two that were making that  
21 decision?  
22 **A. I was the only -- all I know is that I was  
23 consulted on it. I don't know if anybody else was.**  
24 Q. You didn't have any conference calls with  
25 anyone other than --

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1       **A. No.**  
2       Q. -- the president?  
3       **A. No.**  
4       Q. So I'm going to have you turn to what's  
5 going to be marked as Exhibit 9. It starts at Bates  
6 26971.  
7       **A. 26791?**  
8       Q. 971.  
9       **A. Okay.**  
10      Q. I'll put it up here on the screen as well.  
11 This is, again, the athletics review committee. Is  
12 that different than the committee on excellence in  
13 athletics meeting?  
14      **A. No. Same group.**  
15      Q. And again it says April 17th, 2019. That  
16 should be 2020, correct?  
17      **A. Yes. Correct.**  
18      Q. So this is a PowerPoint that would have  
19 been shown to the committee during the meeting,  
20 correct?  
21      **A. That's correct.**  
22      Q. I want to go over just a couple of the --  
23 if you look at Bates 26974, do you see the chart  
24 there?  
25      **A. I do.**

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1       Q. So it says here -- these are roster  
2 numbers, correct?  
3       **A. Yes.**  
4       Q. And it says "Brown." Where do these  
5 numbers come from?  
6       **A. Those are compiled by our compliance**  
7 **office, and those are actuals.**  
8       Q. So actuals of --  
9       **A. I want to -- it would be I believe what**  
10 **our current roster was at the time. No, that's not**  
11 **correct. It's an average. I'm not quite certain.**  
12 **It might be a five-year average of what our -- of**  
13 **what the Brown rosters were. And then the next**  
14 **column is a five-year average of what the Ivy League**  
15 **winning teams have been.**  
16      Q. These are not numbers that you report for  
17 the Cohen numbers, correct?  
18      **A. Well, it's an average, so this number --**  
19 **what you would see here in that first column as an**  
20 **average might not have been reported on any of the**  
21 **years in any reports.**  
22      Q. And I'm going to draw your attention to  
23 the track, field, and cross country. It's 100.  
24 Does that sort of align with what you believe would  
25 be reported as far as the participation requirements

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1 under the Cohen settlement for participation in  
2 track, field, and cross country?  
3       **A. It looks to me like that would be an EADA**  
4 **comparison, not a consent decree. And, again, when**  
5 **we were comparing this to the winning rosters of the**  
6 **Ivy League champion teams, we had no -- in order to**  
7 **make a true comparison, we had to use EADA counts**  
8 **because that's all we had for the other schools.**  
9       Q. So all of these numbers should be, you  
10 said, a five-year average of what was reported to  
11 EADA, correct?  
12      **A. Yes.**  
13      Q. By EADA, I mean E-A-D-A?  
14      **A. Yeah. I understand.**  
15      Q. And then you have a column here for  
16 winning. What does that mean?  
17      **A. That is the winning rosters over the last**  
18 **five years of the other five Ivy League champions.**  
19      Q. So is it -- I just want to make sure I'm  
20 understanding. You -- did you or someone in your  
21 office go through the last five years of  
22 championships in each of these sports and pull the  
23 winning roster for that sport for that year?  
24      **A. Yes, we did.**  
25      Q. Who did that?

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1       **A. It was our compliance office. Two people**  
2 **would have been responsible for this: Bridgette**  
3 **Cahill and Jeanne Carhart.**  
4       Q. And would they have used the EADA data for  
5 that as well?  
6       **A. They would. That would be the only data**  
7 **that we would have on another school.**  
8       Q. And then you've got a column here for  
9 optimal. Is that the same thing as ideal or is that  
10 different?  
11      **A. I'm not sure if ideal was used at this**  
12 **time in any documents. I think you could -- optimal**  
13 **does not involve conversations with any of the**  
14 **coaches.**  
15      Q. So if we look at the page right before  
16 this, it says, "Roster size" -- I suppose could have  
17 directed you here -- for over five years. It says  
18 "Jack's view." Does that mean that you came up with  
19 these numbers by yourself?  
20      **A. Yes.**  
21      Q. What information did you use to inform  
22 these numbers?  
23      **A. The winning roster of the last five Ivy**  
24 **League champions. The column right before it.**  
25      Q. So there's some discrepancies here.

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1 You'll see squash is slightly different than  
2 winning. Golf is slightly different than winning.  
3 Crew has less. Why the deviation there in those?  
4 **A. Because in some cases, I knew ultimately**  
5 **that we were going to have a situation, regardless**  
6 **of what number of sports we landed on, where there**  
7 **was going to be management of the men's rosters, and**  
8 **so in some cases, I made decisions that in some**  
9 **sports, that number could be lower than what the**  
10 **five-year average of the winning roster number was.**  
11 Q. What did you base that decision on?  
12 **A. On my own -- I made my own decision on**  
13 **where I thought the sport rosters needed to be**  
14 **higher than others.**  
15 Q. Did you consult anyone else in making that  
16 decision?  
17 **A. I did not.**  
18 Q. If we go down to the women's, again, just  
19 to confirm, this would be the EADA data for both the  
20 Brown and winning, correct?  
21 **A. Correct.**  
22 Q. This is page 26975, just for the record.  
23 And, again, here there are some -- in the "Optimal"  
24 column, there are some numbers that are less, some  
25 numbers that are higher. How did you make the

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1 decision about what would be the optimal size for  
2 the women's teams?  
3 **A. Again -- so what we have here is -- and on**  
4 **the other one, we have all of our sports. So at**  
5 **some point, I'm assuming that there's going to be a**  
6 **recommendation that some programs are going to be**  
7 **transitioned to club, and if that were to happen,**  
8 **then we would have to go back, look at where the**  
9 **proportionality rates are, and then make**  
10 **adjustments.**  
11 **And so I put numbers in so they would**  
12 **essentially start -- it was a starting place. It**  
13 **was a starting place to continue the conversations**  
14 **once we got to a point where we knew what sports**  
15 **might be recommended to be transitioned, and in some**  
16 **cases I put them slightly above, sometimes slightly**  
17 **below, and sometimes I kept them at what that**  
18 **five-year rate was.**  
19 Q. If we go to the next page, 26976, we've  
20 got numbers here. So these are current, and then if  
21 we implement optimal. Do you see that?  
22 **A. I do.**  
23 Q. Is this with all of the teams, that would  
24 be the optimal based on the EADA data?  
25 **A. Yes. It was -- the point of this baseline**

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1 **was to show that if you implemented the optimal**  
2 **numbers and did not make any reductions, this is**  
3 **where you would find our numbers to be.**  
4 Q. And then we've also got a column here for  
5 slots. Those are the admission slots or support  
6 slots you were talking about?  
7 **A. Yeah.**  
8 Q. And is this a five-year average as well or  
9 just current?  
10 **A. Current. That's a current number.**  
11 Q. Is there a reason that there's more total  
12 slots for men than women even though there's more  
13 female student-athletes?  
14 **A. No. Football accounts for a lot of them.**  
15 **Part of this process was also to look to even this**  
16 **distribution out.**  
17 Q. The distribution of support slots?  
18 **A. Yes.**  
19 Q. And these numbers contemplate counting  
20 track twice, correct?  
21 **A. I believe so, because we are comparing it**  
22 **to the other schools' numbers.**  
23 Q. So if we look at the next page here, these  
24 are the two scenarios that were actually presented  
25 to the committee, correct?

Page 77

1 **A. That is correct.**  
2 Q. And do you remember in the notes that we  
3 looked at earlier, you said the committee preferred  
4 scenario 2?  
5 **A. Yes.**  
6 Q. Would that be -- I just want to confirm  
7 that that's going to be talking about the scenario 2  
8 that's here in the PowerPoint?  
9 **A. That's correct.**  
10 Q. There wasn't some discussion about  
11 creating a different version of scenario 2 during  
12 the meeting? It wasn't ever documented?  
13 **A. It was not.**  
14 Q. Do you remember why they preferred  
15 scenario 2?  
16 **A. Again, on the discussion on track and**  
17 **field, I remember raising the issue that it would be**  
18 **difficult to meet the proportionality requirements**  
19 **if we eliminated women's track and field.**  
20 Q. Would you agree with me that this scenario  
21 doesn't look like the ultimate cuts that were made,  
22 correct?  
23 **A. The ultimate cuts on what date?**  
24 Q. On May 28th.  
25 **A. On May 28th, no. It changed slightly.**

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1 Q. What changed?

2 A. **The tennises remained in, and at that**

3 **time, men's cross country, track, and field -- well,**

4 **that's listed there at the bottom, but that was**

5 **added back in. So the change would have been that**

6 **men's and women's tennis, which were on this to be**

7 **eliminated, were brought back in.**

8 Q. Was something else eliminated instead?

9 A. **No. I don't -- no.**

10 Q. And then on the very last page of this,

11 26984, I just again want to confirm, this is the

12 scenario 2. This would have been the final list of

13 sports that remained, and this doesn't match what

14 was ultimately decided as the remaining varsity

15 sports on May 28th, correct?

16 A. **Because men's cross country, track, and**

17 **field -- it has cross country in there alone, but**

18 **track and field was added back in, and then the two**

19 **tennises were added back in.**

20 Q. Okay. Is that something that was ever

21 contemplated by the committee?

22 A. **Not that I am aware of. Not in a**

23 **committee meeting.**

24 Q. And then among the materials that I

25 believe were consulted for the committee, you also

Page 79

1 received a report of the AI admission slots for the

2 class entering in fall 2020, correct?

3 A. **That's not in this packet?**

4 Q. It is. It should be marked as Bates

5 26662. I'll go ahead and share that with you. This

6 is an email dated April 20th of 2020.

7 A. **Okay.**

8 MS. KOLE: Is it three pages?

9 Q. (By Ms. Bullock) Should be four pages

10 total. It ranges from Bates 26662 to 26665. We'll

11 go ahead and mark this as Exhibit 10.

12 A. **I have that now.**

13 Q. Who is Colleen Kelly?

14 A. **Colleen Kelly is the manager of athletics**

15 **admissions and financial aid.**

16 Q. And just so I'm clear, what is AI?

17 A. **That is the academic index. The academic**

18 **index is a formula that is used by the Ivy League to**

19 **assure representativeness for recruited athletes and**

20 **the general student body.**

21 Q. And what do you mean by

22 "representativeness"?

23 A. **That their academic qualifications are**

24 **similar.**

25 Q. So you couldn't let somebody play a sport

Page 80

1 who maybe, you know, had gotten a -- really, really

2 poor grades and really, really poor test scores that

3 couldn't otherwise -- wouldn't --

4 A. **They wouldn't be admissible.**

5 Q. Okay. So if we look at page 26663, it

6 looks like the allocated support for fall 2020 for

7 men is 137. You see that there?

8 A. **I do.**

9 Q. For women it's 119?

10 A. **Yeah, I see that.**

11 Q. Then there's another column, "Numbers

12 supported as of 4/20/2020." What does that column

13 indicate?

14 A. **That would indicate the number that have**

15 **actually been used and admitted for the current**

16 **year. So you could have an admissions support for a**

17 **student that ultimately the student decides not to**

18 **come. So you could have admission supports that go**

19 **unused.**

20 Q. And so for fall of 2020, we've got -- and

21 I'm doing the math here -- roughly 46.5 percent of

22 the admission slots are allocated to women, 53.5 to

23 men, correct?

24 A. **I would say are used. It's a -- so we**

25 **have a rolling average, and so we can use more than**

Page 81

1 **we have so long as we maintain a four-year rolling**

2 **average. This is how they're being used in 2020.**

3 Q. Okay. And how do you -- what do these --

4 for the AI goals, how do you come up with these

5 goals?

6 A. **They are -- they rarely change. In terms**

7 **of maybe where each sport would rank. The goal**

8 **itself and the number is determined by the**

9 **admissions office based on the qualifications of the**

10 **undergraduate population. We are then given a**

11 **target of what we need to reach as a department for**

12 **the year based on the academic qualifications of the**

13 **undergraduate student body.**

14 Q. Are there policies or a manual for

15 determining that goal?

16 A. **Not that I'm aware of. It may -- the**

17 **director of admissions may have a policy on that,**

18 **but we are not part of that process. We are told**

19 **what the goal -- we are given that information that**

20 **here's the number that you need to reach.**

21 Q. So what role did these numbers play in

22 your decision of which teams to eliminate from

23 varsity status?

24 A. **It did not. We didn't look at what**

25 **sports. We knew that there would be admissions**

Page 82

1 supports to reallocate no matter what sport was  
2 transitioned, but we didn't select sports based on  
3 what a sport's AI target was.  
4 Q. So on April 20th, when this email is sent,  
5 the very last page, 26665, it says here "Class  
6 entering fall 2020," the department target, current  
7 AI, and then there's figures with -- without certain  
8 teams. Do you see that?  
9 A. I do.  
10 Q. Did you ask for that information without  
11 those teams?  
12 A. I did.  
13 Q. Because you were contemplating eliminating  
14 those teams at this time?  
15 A. Because those sports had been mentioned in  
16 these -- in our meetings, and I -- but I wanted to  
17 make sure of where our AI fell if those were the  
18 sports that were selected.  
19 Q. I'm going to have you look at Bates  
20 26617 -- actually, it starts with 26616. Do you see  
21 that here? Do you have that in front of you?  
22 A. I do not yet. What is the last page?  
23 Q. One moment. 26628 would be the very last  
24 page. We'll mark this as Exhibit 11.  
25 A. Okay. I have that.

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1 Q. And so this first page here is just an  
2 email from President Paxson to you, and then it  
3 looks like you forward -- you forwarded that on to  
4 Bridget Hayes?  
5 A. Oh, yes. Yeah.  
6 Q. Do you see that?  
7 A. Yes.  
8 Q. Who is Bridget Hayes?  
9 A. Bridget Hayes is my wife. So at this  
10 time, when we're operating remotely, I had to use a  
11 computer in the house to print the documents.  
12 Q. Thought maybe there was just somebody else  
13 with the same last name as you.  
14 A. No.  
15 Q. I'm going to go ahead and share my screen  
16 with you so this is up on the screen. And these are  
17 the spreadsheets -- these spreadsheets include the  
18 team operating budgets and totals, correct?  
19 A. Yes.  
20 Q. And all of the sources of funding for the  
21 team, correct?  
22 A. Yes.  
23 Q. So if you look here -- I apologize. The  
24 way that this turns into a PDF, it carries on to the  
25 next page. Do you see that?

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1 A. I do.  
2 Q. It looks like the total for fiscal year  
3 '17 through '19 -- the average there for men is  
4 8,700,143, and the total for women is 6,268,214. Do  
5 you see that?  
6 A. Yes. Going to the second page, I see  
7 that.  
8 Q. What's the -- why is the men's so much  
9 more when the women's are more than 50 percent of  
10 the participants?  
11 A. I think some things that would  
12 contribute -- equipment certainly contributes to  
13 that. There are certain equipment in some men's  
14 programs that is not needed in women's. That's only  
15 one example. I can't give you another one here that  
16 I can think of.  
17 Q. And if we scroll down, looks like there  
18 were quite a few spreadsheets that were attached to  
19 this email.  
20 A. Okay.  
21 Q. Let's look at page 26621. Do you see  
22 that? The team sizes there?  
23 A. 26621. Yes, I can see that. I can see it  
24 better on the screen than on the printout.  
25 Q. Oh. Well, there we go. And when you were

Page 85

1 determining winning and optimal sizes for the  
2 sailing team, again you used 12 men and 18 women,  
3 correct?  
4 A. We did.  
5 Q. Where did that information come from?  
6 A. I believe it came from Coach Mollicone  
7 maybe looking at the current roster of his team.  
8 Q. So if Brown were to implement the optimal  
9 size of the team, which you said was based on the  
10 winning size and then some discretionary additions  
11 or subtractions to the team that you said you would  
12 make, is it true that -- isn't it true that the  
13 percentage of women would decrease to 49.6, or 49 --  
14 what is it?  
15 A. I can't -- if that's what it says there.  
16 Q. 49.24. Can you see that there?  
17 A. I can see it on the screen, yes.  
18 Q. I'm not sure why it printed out so much  
19 smaller. And it looks like these spreadsheets, they  
20 differ a little because you've started -- are  
21 these -- I guess are these the calculations that  
22 were run for the different scenarios, then?  
23 A. I would say they are.  
24 Q. Okay. So this one is no changes made,  
25 baseline?

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1       **A. Yeah.**  
2       Q. And then you've got percentage of women,  
3 49.2 --  
4       **A. Yes.**  
5       Q. -- or 49.6 in the optimal?  
6       **A. So if you did not eliminate any sports but**  
7 **you went with optimal roster sizes, that would be**  
8 **the baseline.**  
9       MR. CORRENTE: Just to clarify the  
10 record --  
11       MS. BULLOCK: Can I clarify one thing?  
12 The 49.2 is the admission slots. That was my -- too  
13 many spreadsheets. The actual participation is  
14 49.6.  
15       MR. CORRENTE: Okay. Thank you.  
16       MS. BULLOCK: Figured that's what you were  
17 referring to.  
18       Q. (By Ms. Bullock) All right. So then we've  
19 got -- this is, it says, scenario 1A. Do you see  
20 that here?  
21       **A. I do.**  
22       Q. The next page, 26622. So this one  
23 contemplates cutting -- it says cuts fence -- men  
24 and women's fencing, men and women's golf. Do you  
25 see that up there?

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1       **A. I do.**  
2       Q. And so if you were to make those cuts --  
3 this is the number if you were to make those cuts  
4 and then implement optimal roster sizes, correct?  
5       **A. Yes.**  
6       Q. That gets you to 51.8 percent of women,  
7 correct?  
8       **A. Yes.**  
9       Q. And these are all -- you said the  
10 five-year -- like the last five years of Brown,  
11 right?  
12       **A. I believe those were the last five years**  
13 **of our EADA average.**  
14       Q. And if we go down to the next page, 26623,  
15 this is scenario 1B. And this is reducing the  
16 football roster. Is that the only change that's  
17 contemplated between what -- the difference between  
18 1A and 1B?  
19       **A. I believe so.**  
20       Q. And so when you're looking at implementing  
21 the optimal, you would drop it down to a hundred?  
22       **A. Yes.**  
23       Q. Would that still achieve the goals that  
24 you were trying to achieve with the committee and  
25 the changes?

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1       **A. Yes, because if it was going to happen, it**  
2 **was going to be -- it would likely be a league**  
3 **mandated. We looked at this as potentially a**  
4 **league-mandated situation, so it would not be**  
5 **putting us at a competitive disadvantage against the**  
6 **other schools.**  
7       Q. Is that something that's going to happen?  
8       **A. I don't know. I just know it has been**  
9 **discussed. So since it had been discussed, never**  
10 **more than -- it's been a confidential conversation,**  
11 **but it had been discussed so it was put in here as a**  
12 **possibility.**  
13       Q. Who was that discussed with?  
14       **A. I believe just at the presidential level**  
15 **in the Ivy League and with the Ivy League athletic**  
16 **directors.**  
17       Q. When was that discussion?  
18       **A. I don't know about the president's**  
19 **meetings. At the Ivy League meetings, those take**  
20 **place in May and October. Never put to a vote.**  
21 **Never put to a straw vote, but had been mentioned.**  
22       Q. So not something that's going to happen?  
23       **A. No, not right now.**  
24       Q. But if that were, that puts you at -- that  
25 puts Brown at 53.1 percent, you know, with those

Page 89

1 cuts and the optimal roster size, correct?  
2       **A. Yes. And that was the purpose of just**  
3 **looking at an exercise where if that were to happen.**  
4       Q. And just to clarify, the 18 that you have  
5 listed, you have coed and women's. Those are,  
6 again, the same 18 women, correct?  
7       **A. Same 18 women.**  
8       Q. That wouldn't be 36 different women,  
9 correct?  
10       **A. No. It would be 36 opportunities.**  
11       Q. Would it be possible to have 36 different  
12 women?  
13       **A. Possible. Likely, no, but possible. You**  
14 **could have situations where there's a handful that**  
15 **may only be on one and not the other.**  
16       Q. Have you talked with Coach Mollicone about  
17 that?  
18       **A. We have not -- we have not talked about**  
19 **whether that would happen in the upcoming years. We**  
20 **have not.**  
21       Q. So then we've got scenario 2A. And,  
22 again, these coincide with the scenarios that were  
23 presented in Exhibit 9 to the committee. So can you  
24 help me understand? We've got track, field, and  
25 cross country down here representing three sports,

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1 but then you also have cross country alone up here  
2 representing one sport.  
3 **A. Yeah.**  
4 Q. Sorry. I'm just -- I'm wondering, would  
5 the math be correct, then, here, if we're counting  
6 the hundred track, field, and cross country and also  
7 the 15 for cross country alone?  
8 **A. I don't know. The 15 could be in that**  
9 **number hundred, but, again -- well, looking at**  
10 **optimal numbers, so no, I would say that those are**  
11 **separate.**  
12 Q. So this would be double-counting the cross  
13 country -- the way it's -- at least the way it  
14 appears on this spreadsheet, it contemplates  
15 double-counting the cross country, correct?  
16 **A. I would say in this, when you're looking**  
17 **at cross country alone, you're looking at 15**  
18 **individuals on that optimal. On the track number**  
19 **down low of a hundred, using the EADA count, you**  
20 **would have the 15 cross country runners in indoor**  
21 **track and the 15 cross country runners in outdoor**  
22 **track.**  
23 So 30 of the hundred in that number down  
24 below would be an EADA count on what you'd have for  
25 cross country -- you know, the cross country

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1 participants running track in the winter and spring.  
2 Up top, because it has cross country alone and  
3 you're assuming there that it's just a fall sport,  
4 we're counting them one time as 50.  
5 Q. So is the intention of the spreadsheet  
6 here in the ones where we have sports eliminated to  
7 not -- are the numbers in yellow added with the  
8 numbers in blue?  
9 **A. In this, it looks like they would be.**  
10 **Again, I think the point of this is not necessarily**  
11 **to -- for their group to focus on the total numbers**  
12 **at the bottom. It was to look at the sports in**  
13 **yellow -- using the same sheets from before and**  
14 **staying consistent with the layout of the sheet, the**  
15 **sports in yellow were the ones that were being**  
16 **discussed as transitioning to the club sport level.**  
17 Q. And maybe help me understand from the  
18 spreadsheet here, the 420, what does that number  
19 represent? Over on the side there. In the 492?  
20 **A. 420, it looks like it is the rosters of**  
21 **the teams in blue.**  
22 Q. So that would be with the cuts, there  
23 would be 420?  
24 **A. Yes.**  
25 Q. So this one, scenario 2A, we get up to

Page 92

1 53.9 percent women, correct?  
2 **A. Yes.**  
3 Q. And then we've got kind of the same thing  
4 as 1B, but 2B, where that football roster is down to  
5 a hundred --  
6 **A. Yeah.**  
7 Q. And then that gets us all the way to  
8 55.2 percent women, correct?  
9 **A. Yes.**  
10 Q. And then it looks like you did the math  
11 for the two -- the scenario 3 that wasn't actually  
12 presented to the group, correct?  
13 **A. Which one is this here?**  
14 Q. This would be page -- sorry. You said  
15 scenario 1 was not presented?  
16 **A. Right, scenario 1 was the one not**  
17 **presented.**  
18 Q. Okay. So that's my fault. So 26626, this  
19 is eliminating all these teams but keeping  
20 equestrian, right? And then we get to 52.9 percent,  
21 correct?  
22 **A. Yes.**  
23 Q. And then, again, reducing the football  
24 size for that third one, that gets us to  
25 55.1 percent, correct?

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1 **A. Yes.**  
2 Q. You guys did a lot of work, and then we  
3 have the historically underrepresented groups. This  
4 is -- are these the -- sometimes in the spreadsheet,  
5 they refer to diversity numbers? Is that what these  
6 are?  
7 **A. Yes.**  
8 Q. Is this from self-representation from  
9 students, or how do you get those percentages?  
10 **A. That comes from an office on campus that I**  
11 **think -- that I believe is self-representation.**  
12 Q. So it looks like you guys did a lot of  
13 work. This was all done to sort of analyze those  
14 three different scenarios that were presented to the  
15 committee, correct?  
16 **A. I would say it was. I would say the ones**  
17 **with the versions of football was more of a**  
18 **hypothetical.**  
19 Q. Did you do this same analysis in  
20 deciding -- in looking at the breakdown -- and I'll  
21 stop sharing my screen here -- in looking at the  
22 breakdown for the decision that was voted on on  
23 May 1st by the corporation?  
24 **A. Was this analysis shared with that group?**  
25 Q. Did you conduct the analysis? Because,



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1 you know, I think we agreed earlier that the final  
2 layout of what teams were going to be eliminated  
3 from varsity status and promoted to varsity status  
4 didn't look the same between the committee on  
5 excellence in athletics and the final team layout --  
6 you know, makeup that was voted on by the  
7 corporation on May 21st, correct?

8 **A. Correct.**

9 Q. So did you do the analysis on the team --  
10 you know, the teams as they were going to be voted  
11 on on May 21st?

12 **A. I did not. I did not. The only teams**  
13 **that were -- the only changes at that point were the**  
14 **addition of the two tennises.**

15 Q. Did you do the analysis -- that same level  
16 and depth of analysis before the decision on -- was  
17 announced on June 9th to reinstate the men's track  
18 and cross country team?

19 **A. I would say we did the same level of**  
20 **analysis with -- we were focused on proportionality.**  
21 **That's where we did our analysis.**

22 Q. Do you have any documents reflecting that?

23 **A. I have -- there is a -- the only documents**  
24 **I'm aware of are the anticipated rosters that the**  
25 **coaches provided to us for what they expected their**

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1 rosters to be for the 2020-'21 year. That was prior  
2 to June 9th, and then that was solidified with the  
3 roster declaration forms that came after. Later in  
4 the month of June.

5 Q. But you didn't personally go back in and  
6 replug numbers into that spreadsheet, correct?

7 **A. We did not.**

8 Q. You said you relied on preseason rosters,  
9 correct?

10 **A. I relied on the rosters that the coaches**  
11 **expected to begin the school year with, and then**  
12 **those were followed up with the roster declaration**  
13 **forms.**

14 Q. And are those the same documents that you  
15 were talking about earlier in regards to emailing  
16 all of the coaches in May?

17 **A. No. Those were what would the coaches'**  
18 **ideal rosters be. One was ideal roster. The next**  
19 **was, later on -- well, at the beginning of the next**  
20 **month, was what were their expected rosters going to**  
21 **be for the upcoming year.**

22 Q. And when did you receive those expected  
23 rosters?

24 **A. During the week -- they came in from**  
25 **different coaches, but during the week of -- that**

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1 **first week of June. Before the decision to reverse**  
2 **track.**

3 MS. BULLOCK: Can we take a quick  
4 three-minute break, three to five minutes?

5 VIDEOGRAPHER: Off the record at  
6 12:34 p.m.

7 (Recess taken from 12:34 to 12:47 p.m.)

8 VIDEOGRAPHER: On the record at 12:47 p.m.

9 Q. (By Ms. Bullock) Mr. Hayes, you had said  
10 that you received roster declarations from the  
11 coaches, correct?

12 **A. Roster declarations come later in the**  
13 **process. That's the formal part. But I did get**  
14 **what their expected rosters were going to be from**  
15 **them during that week -- that first week in June. I**  
16 **don't recall the actual date of being in receipt of**  
17 **the forms themselves.**

18 Q. And did you receive -- I guess, how did  
19 you receive that information from the coaches?

20 **A. By phone, and in some cases, when we were**  
21 **tracking down the coach themselves, became time**  
22 **consuming, the sport administrator would get -- who**  
23 **supervises that sport would get those numbers from**  
24 **the coaches.**

25 In addition to not just asking for the

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1 numbers, we requested the actual names of the  
2 students, both those that would be returning and  
3 those that would be entering as first-year students  
4 or transfers in the upcoming year. So we had both  
5 the numbers of participants but the actual names of  
6 the participants.

7 Q. As we sit here today, are you certain that  
8 you received all of the teams' information before  
9 the decision to reinstate track was made?

10 **A. I would say yes, that's fair to say.**

11 Q. Do you have any documentation that shows  
12 that?

13 **A. I don't know if I have that. I don't**  
14 **know. But I know that in order to make the decision**  
15 **about whether track could be reinstated, the main**  
16 **concern was could we meet the requirements of**  
17 **proportionality, so I needed to know what the**  
18 **rosters were going to be for every sport.**

19 Q. Do you know how -- did the committee make  
20 an ultimate recommendation of which teams should be  
21 eliminated on May 21st and which teams should be  
22 elevated?

23 MR. CORRENTE: Can I just ask, to clarify  
24 the record, which committee are you talking about?

25 MS. BULLOCK: The committee on excellence

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1 in athletics.

2 MR. CORRENTE: Okay. Thank you.

3 THE WITNESS: They did not -- there was

4 not a written or formal recommendation made, but at

5 the last meeting, the group indicated -- I believe

6 they indicated their approval of recommending that

7 list of sports.

8 Q. (By Ms. Bullock) And I apologize. That

9 was at the May 14th committee meeting, correct?

10 A. Correct.

11 Q. Do you -- what is your understanding of

12 how the precise lineup of teams to be -- back up.

13 Originally, did -- coming out of the May 14th

14 committee meeting, was the recommendation for men's

15 and women's tennis to be eliminated?

16 A. Coming out of the May 14 meeting, it was

17 to be eliminated.

18 Q. And at some point, did that change?

19 A. Yes.

20 Q. And when was that change decided?

21 A. On May 20, I had a conversation with an

22 Ivy League staff member, and that was when I became

23 aware of a formula used for how many admission slots

24 would be available to Ivy League championship

25 sports, which was based on which Ivy League

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1 championship sports you actually offered. Didn't

2 mean that they all had to be -- that whatever sport

3 had an assigned number of admission supports, they

4 didn't all have to be used in that sport, but -- you

5 could use them elsewhere, but your total was based

6 on the number of sports that you -- not just the

7 number, but the actual sports that you offered. The

8 first time I became aware of that was on May 20.

9 Q. And who told you that?

10 A. Carolyn McGovern from the Ivy League

11 office.

12 Q. Was that in response to an inquiry from

13 you or --

14 A. Yes. Yes.

15 Q. Did you email her?

16 A. No. I called her.

17 Q. So what did you do with that information?

18 A. So I shared with the president that based

19 on that calculation of where our admission slots

20 would fall that it would be, I felt, in our best

21 interest to consider adding back -- well, we hadn't

22 done anything yet, but consider adding a sport,

23 men's and women's, back into the list of sports that

24 we offered, which would then -- Ivy League

25 championship sports, which would have been factored

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1 into that calculation of the available admission

2 supports.

3 Q. So you communicated that to the president?

4 A. On the 20th.

5 Q. The 20th? And what was her response?

6 A. We didn't talk specific about a sport.

7 She understood that. And then she was -- I believe

8 there was -- later that day I believe was the campus

9 life committee meeting of the corporation to walk

10 through the proposal. I believe at that point,

11 tennis was included back on the list.

12 Q. Tennis was included before or after the

13 meeting?

14 A. I believe before. I'm not certain.

15 Q. When you communicated that information to

16 President Paxson, was that via email about the

17 slots?

18 A. No. That was on the phone. That was on

19 the phone on the 20th.

20 Q. And do you know, going into the meeting,

21 was it their -- going -- you said you didn't know

22 whether it was before the meeting or after the

23 meeting that tennis was going to be reinstated,

24 correct, or --

25 A. That's correct. My conversation was long

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1 before the meeting. What I don't know -- what I

2 can't recall is if the discussion about tennis

3 then -- if tennis was then part of that meeting or

4 took place after. I do not know. I can't recall.

5 Q. So if President Paxson said that initially

6 they were going to keep in fencing, would you have

7 any -- before that campus life committee, would you

8 have any reason to dispute that?

9 A. Fencing I do not believe was discussed

10 prior to the meeting on the 20th.

11 Q. I'm going to show you, this is an email

12 from you to President Paxson Bates-stamped 26536,

13 and it carries on to the next page, 26537. Go ahead

14 and mark this Exhibit 12. I can scroll through the

15 email here for you.

16 A. I'm familiar with it.

17 Q. Do you recall sending this email?

18 A. Yes. This was the next day. This was the

19 next evening.

20 Q. Okay. So here you're urging the president

21 to add men's and women's fencing back to the

22 portfolio, correct?

23 A. Yes. Here's what took place on that

24 evening. By then, men's and women's tennis is back

25 in, and I'm looking at the overall number of

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1 admission slots and the calculation. I know that  
2 the two tennises are back in, and I still felt that  
3 we were a little short in what that overall total  
4 should be to put us in the best position, and I was  
5 basing that on what our numbers had been for our  
6 other sports and including the tennises back in. I  
7 sent the note.  
8 Later on that evening, I realized that  
9 this calculation I'm using doesn't include sailing  
10 because sailing has never been in our original  
11 count. Sailing was added in when the sport was  
12 added. So I followed up -- we followed up by phone  
13 on the morning of the 22nd, and I said to the  
14 president, "Now that the tennises are in and I  
15 forgot that I'm not counting the calculation of  
16 sailing, which would now be added, I am not  
17 concerned about us having to add anything else, and  
18 I don't think we need to add fencing."  
19 So on the evening of the 21st, when I send  
20 this and I'm reviewing the total number of admission  
21 slots we have for Ivy League championship sports, I  
22 am factoring in the two tennises, which have been  
23 added from earlier that day, but what I hadn't been  
24 including, because it had never been included on our  
25 totals, was sailing.

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1 Once the sailing number was in, I followed  
2 up the next morning by phone and said, "I should  
3 have had the sailing numbers in before I sent the  
4 email. When the sailing numbers are included, we're  
5 in a good position, and I'm no longer concerned."  
6 Q. When you say "the sailing numbers," does  
7 that include the AI numbers for sailing?  
8 A. It would. It would include -- as soon as  
9 sailing is an Ivy League championship sport, it  
10 would fall under the formula of number of admission  
11 support allocations as well as the AI number for  
12 that sport being factored into our overall target.  
13 Q. Did you attend the campus life committee  
14 meeting?  
15 A. On the 20th?  
16 Q. Yes.  
17 A. Yes.  
18 Q. Did you take any notes?  
19 A. I did not.  
20 Q. Do you recall specifically any of the  
21 discussions in that meeting?  
22 A. There was not -- the president walked  
23 through a PowerPoint, and I don't recall there being  
24 much discussion.  
25 Q. Just to clarify, if I can find the

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1 document, I believe the date of the campus life  
2 meeting was actually May 14th. Does that sound  
3 correct to you?  
4 A. It does. Yeah. That would be a week  
5 prior to -- the corporation meeting is on the 21st.  
6 So yes, that makes sense.  
7 Q. And you attended that meeting, correct?  
8 A. I attended the meeting on the 14th.  
9 Q. And you also attended the committee on  
10 athletic excellence meeting, correct?  
11 A. I did. The one I did not attend was the  
12 corporation meeting on the 21st.  
13 Q. So by the 20th, is it your understanding  
14 that tennis was already eliminated?  
15 A. My understanding is on the morning of the  
16 20th that it is among the sports that are going to  
17 be eliminated.  
18 Q. So then does that refresh -- going into  
19 the campus life meeting --  
20 A. On the 14th?  
21 Q. -- tennis was part of the elimination?  
22 A. Yes.  
23 Q. Correct?  
24 A. Yes.  
25 Q. And what happened -- strike that.

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1 Did you get a response from Chris to your  
2 email on the 21st about adding men and women's  
3 fencing back in?  
4 A. No. We had that conversation by phone the  
5 next morning where I said, you know, I hadn't  
6 factored in the addition of sailing and I'm no  
7 longer concerned and I don't see the need to add  
8 anything back in. Beyond the tennises.  
9 Q. You said you did not attend the meeting of  
10 the corporation, correct?  
11 A. That's correct.  
12 Q. How did you find out about which -- what  
13 was the final decision of the corporation?  
14 A. I think I was contacted by phone by the  
15 president later that day, on the 21st.  
16 Q. What happened after that?  
17 A. After that, then I just started to lay out  
18 the teams. I went -- I looked at the numbers that  
19 we had, and I went back to the conversation with  
20 Carolyn McGovern from the Ivy League office, and  
21 that's when it -- that's when I thought at the time  
22 do we actually have enough admission slots in this,  
23 and later that evening, I sent the email to the  
24 president. I continued to go over those numbers,  
25 recognized at that point that I didn't have sailing

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

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

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

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

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

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

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

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

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

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

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

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

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1 rosters?  
2 **A. Looking at the women's rosters in the**  
3 **sense of where the coaches have said their rosters**  
4 **are going to be. And then managing where the men's**  
5 **rosters can go.**  
6 Q. Do you also manage where the women's  
7 rosters can go?  
8 **A. By requiring them to increase their**  
9 **numbers of the roster?**  
10 Q. Yes.  
11 **A. No. We do not.**  
12 Q. President Paxson made the statement that  
13 if men's track and field were reinstated and no  
14 other changes were made that they would -- that  
15 Brown would not be in compliance with the  
16 settlement. Did you understand that to be true?  
17 **A. If you just brought cross country, track**  
18 **and field back in, I did not see how we could be**  
19 **within the variance, so I would -- yes.**  
20 Q. Other than roster management, were there  
21 other changes that were contemplated to be made?  
22 **A. No.**  
23 Q. Did you think about adding another women's  
24 team back in?  
25 **A. I was more focused on the numbers**

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1 **themselves, numbers of participants, so in the email**  
2 **that we looked at earlier that I wrote where I**  
3 **communicated with Sam Menco, I used equestrian as**  
4 **an example, but I put in parentheses 32**  
5 **participants.**  
6 I did not have a conversation about  
7 bringing equestrian back. I was just using that as  
8 an example that if we were going to bring track  
9 back, we were going to have to look at where the  
10 women's numbers were as well as managing men's  
11 roster numbers accordingly.  
12 Q. I'd like to show you something. It's not  
13 an exhibit. It's more of a demonstrative. So I'm  
14 not going to mark it.  
15 MR. CORRENTE: I don't mind you showing it  
16 to him, but I think in order to make sure we have a  
17 complete record of what went on, anything you show  
18 him and ask him to comment on, we need to have a  
19 copy of it in the record.  
20 MS. BULLOCK: Okay. I can do that. I'm  
21 going to -- to make it a little cleaner, I'm going  
22 to use the PowerPoint version. So we'll mark this  
23 as Exhibit 15.  
24 Q. (By Ms. Bullock) I'm going to represent to  
25 you this is the spreadsheet that was in 502 prior --

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1 and as we established, that was never adjusted prior  
2 to the reinstatement of men's track and field,  
3 correct?  
4 **A. Correct.**  
5 Q. I can make it bigger. If we add back in  
6 the men's track and field teams and cross country  
7 here, that leaves us at 48.8 percent women, making  
8 no other changes to the spreadsheet.  
9 **A. Okay.**  
10 Q. So is it your understanding -- would you  
11 agree with me that 48.8 percent is not in compliance  
12 with the consent decree, correct?  
13 **A. That's correct.**  
14 Q. And there was no other changes made other  
15 than roster management, correct?  
16 MR. CORRENTE: I object to the form of the  
17 question. "Roster management" by its terms implies  
18 a whole series of ongoing changes in order to ensure  
19 that they remain in compliance, so that question  
20 doesn't make any sense.  
21 MS. BULLOCK: And I just want to -- I want  
22 to make sure because he said he was doing it through  
23 roster management.  
24 MR. CORRENTE: Right. And he defined  
25 roster management as a whole series of ongoing

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1 changes to make sure that the university stays in  
2 compliance, so to say no other changes were made  
3 except for roster management is the same thing as  
4 saying so no other changes were made except for all  
5 the changes that were made. It doesn't make any  
6 sense.  
7 MS. BULLOCK: I think the record's pretty  
8 clear. We'll leave it.  
9 MR. CORRENTE: I think so too.  
10 Q. (By Ms. Bullock) I'm going to -- you  
11 testified earlier that you, either on the phone or  
12 sit down -- sorry. I hear an echo -- sit down with  
13 the coaches and go over their rosters for the  
14 upcoming season, correct?  
15 **A. Correct.**  
16 Q. I'm going to pull up -- and you also  
17 testified that you -- as part of the process, you  
18 obtained ideal rosters from the coaches, correct?  
19 **A. Earlier in the process, yes.**  
20 Q. You said back in May, right?  
21 **A. Yes.**  
22 Q. And I just want to make sure. This is a  
23 40-page series of emails that begin at Bates 26388,  
24 ends at 26427.  
25 MR. CRAIG: So it's not entirely

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1 sequential?

2 MS. BULLOCK: I do not believe so. I

3 think I had to go through -- but that's -- when

4 you're looking at the stack, that's the beginning

5 and the end of the stack.

6 MR. CRAIG: Okay. I just want to note for

7 the record that you had sort of suggested the

8 exhibit was a range, but it's not a range.

9 MS. BULLOCK: I apologize. That was more

10 for counsels' purposes --

11 MR. CRAIG: I appreciate it.

12 MS. BULLOCK: -- than describing the

13 actual exhibit.

14 MR. CRAIG: Understood.

15 Q. (By Ms. Bullock) Yeah. if you want to go

16 through those, we can kind of look at the first --

17 the second page here, which is 26389, on the

18 bottom -- this is just the way emails print out. It

19 starts with your email and then their response,

20 right? Is this the email you were referring to when

21 you asked all the coaches to give you their ideal

22 responses?

23 **A. Yes, it is.**

24 Q. Ideal roster size? Okay. And I believe,

25 and you can do a double-check here, but I believe I

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1 have compiled every coach's response to that email.

2 If you just want to take a minute and make sure that

3 I'm not missing one.

4 **A. I can only do that by literally going**

5 **through each one. Can I do that?**

6 Q. Yeah. Absolutely.

7 **A. They look like they're all here.**

8 Q. Okay. Great. I like to make sure that's

9 complete, and I know that's tedious, but I

10 appreciate you going through and doing that. We'll

11 come back to that in just one second.

12 So the roster meetings that you were

13 talking about, when do you typically do those with

14 the coaches?

15 **A. The roster meetings for what an upcoming**

16 **year's roster is going to look like?**

17 Q. Yes.

18 **A. That would typically take place in August.**

19 Q. When you say "all this," with the

20 understanding that this year may be different, but

21 if you could -- you know, the typical year?

22 **A. No. In a typical year, it would take**

23 **place in August.**

24 Q. And who was at those meetings other than

25 yourself and the coach?

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1 **A. I would not ordinarily attend those. It**

2 **would be the sport administrator, the head coach.**

3 **All that information would be compiled and provided**

4 **to the compliance office.**

5 Q. So do you ever talk to the coaches about,

6 you know, what their rosters will look like

7 yourself?

8 **A. We have annual evaluations in each sport.**

9 **I ask where they think their roster's going to be in**

10 **the upcoming year. At that time -- again, we don't**

11 **get into the management of where men's rosters may**

12 **have to be managed until the roster declaration**

13 **process, where we can see where the numbers are.**

14 **Now, coaches have a history of knowing, at**

15 **least on the men's side, where their roster likely**

16 **can be -- would be capped, so they typically come**

17 **back with numbers that are consistent from year to**

18 **year. Not always, but -- and we have conversations**

19 **about those once we have them all and we know what**

20 **our totals are and we know what the variance is.**

21 Q. Do these meetings take place with coaches

22 from both the men's and women's teams?

23 **A. Each -- those meetings take place with**

24 **each sport, but there isn't -- there's questions**

25 **just asking about where the women think their**

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1 **rosters -- where the coaches of women's teams think**

2 **their rosters would be. That's an evaluation that**

3 **would take place at the end of the year. Those**

4 **aren't numbers that are recorded and used. We wait**

5 **until the roster declaration process takes place**

6 **just prior to the school year starting.**

7 Q. When you say "end of the year," what does

8 that mean to you?

9 **A. Academic year.**

10 Q. At the meetings at the end of the academic

11 year, is that when you discuss if a men's team needs

12 to be smaller?

13 **A. No, because we don't know for sure yet**

14 **where the women's rosters might be. Those take**

15 **place when the roster declaration forms are prepared**

16 **at the start of the school year. As I said, most**

17 **men's coaches have a history of where their roster**

18 **can be. They may make a request if it could be**

19 **larger. They may do that in the form of a roster**

20 **declaration form, at which point we would go back**

21 **and forth about whether or not their roster can be**

22 **that large.**

23 Q. You keep referring to a roster declaration

24 at the beginning of the year. Is that the academic

25 year, first?



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1       **A. Yeah. That would be in August.**  
 2       Q. And is that a list of their actual rosters  
 3 or --  
 4       **A. Yes, it is.**  
 5       Q. -- is that a projection of what their  
 6 roster will be on day one of competition?  
 7       **A. It's what they anticipate their roster to**  
 8 **be on the first date of competition.**  
 9       Q. But it could vary from what the roster is  
 10 on the first day of competition, correct?  
 11       **A. It could for the men and it could for the**  
 12 **women.**  
 13       Q. Yeah. And I'm not divvying it up between  
 14 men and women, just trying to establish that that's  
 15 not -- for either sport, for any sport, the roster  
 16 declaration is not their roster as it exists on day  
 17 one of the competition?  
 18       **A. It's what they anticipate it to be.**  
 19       Q. It's projections?  
 20       **A. Yeah, but, I mean, I would say it's more**  
 21 **specific than a projection because it includes the**  
 22 **names of the people that are coming. It's not an**  
 23 **estimate. It's who they anticipate will be on it.**  
 24 **It's the individuals that they anticipate will be on**  
 25 **the team.**

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1       Q. Do you know if those roster declarations  
 2 are prepared before walk-on tryouts?  
 3       **A. In some cases, they are -- well, they are**  
 4 **prepared before walk-on tryouts, and some of them**  
 5 **include students who -- that we have been in**  
 6 **conversations with that maybe we find out are**  
 7 **admitted late, get admitted off the wait list, and**  
 8 **someone that we had communicated with that if they**  
 9 **were admitted, they were strong enough to be --**  
 10 **athletically to be on the team and they could be**  
 11 **included. And then there would be others that the**  
 12 **document -- or that the roster would be revised if**  
 13 **walk-on tryouts took place after the school year**  
 14 **began.**  
 15       Q. So there could be more walk-ons for some  
 16 teams, right?  
 17       **A. There could.**  
 18       Q. There could be some of those walk-ons who  
 19 end up not actually being interested in competing at  
 20 a Division I level, correct?  
 21       **A. Absolutely.**  
 22       Q. Does it take a lot of dedication to be a  
 23 Division I athlete?  
 24       **A. It does. I think most students know what**  
 25 **their -- I think they have a good understanding what**

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1       **the expectations are, but yeah, there are times**  
 2 **where it's not -- it may not be for that student and**  
 3 **they may choose not to follow through and pursue it.**  
 4       Q. And then just as you said -- and we talked  
 5 about the men's team -- do you ever talk about the  
 6 coaches of the women's teams, that their teams need  
 7 to be larger?  
 8       **A. Do not.**  
 9       Q. I'm going to have you turn back to the  
 10 large stack of roster -- the responses to the  
 11 "Rosters - Important" emails.  
 12       **A. Okay. If you could look at what's labeled**  
 13 **as 26413.**  
 14       Q. I also have it up here on the screen for  
 15 you if that is easier than digging through your  
 16 pile.  
 17       **A. Okay. I see it.**  
 18       Q. Who is Felix Mercado?  
 19       **A. He is the head coach of both the men's and**  
 20 **women's water polo teams.**  
 21       Q. He states here "Ideal roster size for my  
 22 program is 18 for men, 20 for women. Currently we  
 23 have 19 -- on the men's side 19, on the women 24,"  
 24 and then he says, "I always anticipate carrying more  
 25 women to help with Title IX numbers." You see that?

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1       **A. I do.**  
 2       Q. Is it your assertion that he's doing that  
 3 of his own accord, then?  
 4       **A. I am. I look at this as when he wants to**  
 5 **increase his men's roster, he would sometimes come**  
 6 **to us and say, "I know any increase on the men's**  
 7 **side would be based on -- whether I could increase**  
 8 **my roster would be based on what the overall women's**  
 9 **numbers are, and I'm in a situation where I actually**  
 10 **want to carry more women. Would I be able to**  
 11 **carry -- would I be able to add a male student since**  
 12 **I've actually found two additional women that want**  
 13 **to be on the team?" That would be a conversation**  
 14 **that would be typical that he might have with his**  
 15 **sport administrator. So that's what I think he**  
 16 **means by that.**  
 17       Q. And then I just want to get in the record  
 18 here -- we'll mark this -- Sonya, really quick, did  
 19 I mark that giant stack of emails?  
 20               MR. CORRENTE: That was 16.  
 21               MS. BULLOCK: Okay. I knew what number it  
 22 should be. I don't know if I officially marked it  
 23 on the record.  
 24       Q. (By Ms. Bullock) So we'll mark this as  
 25 Exhibit 17. It is an email Bates stamp 26444, and

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1 then it should be followed by three pages which were  
2 produced in native form, so they did not have Bates  
3 stamps on the bottom. You see that?  
4 **A. Yes, I have them.**  
5 Q. And I apologize the way that my -- so this  
6 is the email, and it was all together. Who is  
7 Jeanne Carhart again?  
8 **A. Jeanne Carhart is an athletic**  
9 **administrator, who also serves as a program**  
10 **administrator for some sports.**  
11 Q. Okay. And she sent this on 5/13, correct?  
12 **A. Yes.**  
13 Q. 8:52 p.m.? Yes?  
14 **A. Yes. She was -- so this was compiling the**  
15 **numbers that were sent in emails.**  
16 Q. Okay. That was going to be my next  
17 question. The two spreadsheets that follow that  
18 were produced with that are the composite of all of  
19 those coaches' ideal roster sizes, correct?  
20 **A. Yes.**  
21 Q. And what were these numbers used for?  
22 **A. They were put together by -- at the**  
23 **request of general counsel just for us to have some**  
24 **sort of baseline on where we thought our rosters**  
25 **might be moving toward and what -- and allow us to**

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1 look at the proportionality as the discussion was  
2 progressing about which sports would ultimately be  
3 transitioned.  
4 Q. So these are following 26445, and these  
5 are the two just so --  
6 **A. Yeah. I would look at it as another data**  
7 **point that we had, average rosters over five years.**  
8 **We had average roster sizes of Ivy League**  
9 **championship teams. We had what might be optimal**  
10 **roster sizes. Again, that was me putting those**  
11 **numbers in without having any conversations with the**  
12 **coaches. And now -- we provided very little context**  
13 **in that email that we sent to the coaches, but now**  
14 **there's a column that includes input from the**  
15 **coaches on what their ideal roster size would be.**  
16 Q. Okay. And here, just so we're clear, it  
17 says, "All track combined." That's track, field,  
18 and cross country, correct?  
19 **A. Yes, it is.**  
20 Q. So that 20 and 52, that's the cross  
21 country and then the track and field, correct?  
22 **A. It is.**  
23 Q. Okay. And the same thing with the  
24 women's? All track --  
25 **A. That would be the same. Yes, it would.**

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1 Q. Perfect. And on the email from --  
2 Mr. Mercado, there's two numbers redact -- I think  
3 they're numbers. There's two redactions there. Do  
4 you know what those are?  
5 **A. Could I see it again? I'll try to get**  
6 **that hard copy.**  
7 Q. Absolutely. I shouldn't make promises I  
8 probably can't keep here. Okay. It's up on your  
9 screen.  
10 MR. CORRENTE: You know, I'm just going to  
11 caution the witness that because this redaction is  
12 the subject of a pending motion before the court, if  
13 he can identify the nature of the material that's  
14 redacted sort of by category, he may do so. I'm  
15 going to caution him that he is not to disclose the  
16 actual redacted material at this time. Do you  
17 understand the distinction?  
18 **THE WITNESS: No.**  
19 Q. (By Ms. Bullock) Let me ask this question,  
20 Mr. Hayes. Do you know what information might be  
21 underneath those redactions?  
22 MR. CORRENTE: What kind of information?  
23 MS. BULLOCK: Yeah.  
24 **THE WITNESS: Numerical information.**  
25 MR. CORRENTE: That's --

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1 **THE WITNESS: Yeah.**  
2 Q. (By Ms. Bullock) He said, "Having blank  
3 spots for the men." What does that mean?  
4 **A. Admission supports.**  
5 Q. Okay. So those aren't, you know,  
6 different numbers for the ideal roster size numbers?  
7 **A. No. Those he's referring to admission**  
8 **supports.**  
9 Q. Okay. So here's my question. This is  
10 his sort of what he would think would be ideal  
11 admission spots, correct?  
12 **A. These are -- yes. What he's saying here**  
13 **is these are the admission supports that he would**  
14 **want to have to remain a top-tier program in his**  
15 **sport.**  
16 Q. These are not the actual admission slots,  
17 correct?  
18 **A. I don't know what's redacted there, but**  
19 **I'm not sure if it's the actual number. It might be**  
20 **the actual number for the women and not the men.**  
21 **I'm not positive. But he is referring to admission**  
22 **supports in that sentence.**  
23 Q. Do you think if he was receiving the  
24 optimal admission supports that -- you know, that he  
25 would be emailing you about what he believes are

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1 optimal admission support numbers?  
2 MR. CORRENTE: Object to the form.  
3 There's no way he could guess what somebody else  
4 thought when they wrote this.  
5 Q. (By Ms. Bullock) You can answer.  
6 A. **Again, I sent the note with very little**  
7 **context, so their response back may -- they may have**  
8 **had questions. They may have just -- in some cases,**  
9 **as you see in here, some coaches just responded with**  
10 **a number.**  
11 Q. How do you know that this is not  
12 participation spots and admission spots?  
13 A. Because we don't -- because the word  
14 "spots" and "slots" are often used for admission  
15 support, and "spots" is not a reference that we  
16 would use as participation numbers. And to  
17 reference spots on the women's side, he's talking  
18 about admission slots. He's not talking about  
19 participation numbers because we have no limit on  
20 what we would provide on a participation number for  
21 a women's team.  
22 MS. BULLOCK: And I'm just going to note  
23 for the record that we do not believe that this is  
24 properly redacted. This is not admission slot  
25 numbers. It is ideal admission slot numbers.

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1 MR. CORRENTE: I understand. The same  
2 instruction --  
3 MS. BULLOCK: It's on the record, Bob. We  
4 don't need to argue about it. I understand your  
5 objection.  
6 Q. (By Ms. Bullock) Just to clarify -- I just  
7 want to make sure -- in the spreadsheet at 26445,  
8 where it's all track combined, that's counting track  
9 and field once, correct?  
10 A. **If you look at the men's number of 72 --**  
11 Q. Yes.  
12 A. **-- that would be counting the cross**  
13 **country runners of 20 twice and counting the 32**  
14 **track members one time.**  
15 Q. Okay. Because the men's cross country  
16 runners run long -- sorry. The men's cross country  
17 runners run long-distance track events?  
18 A. **In the winter and in the spring.**  
19 **(To Mr. Corrente) That's just the men's,**  
20 **not the women's. It has the men's twice.**  
21 Q. What did you say, Mr. Hayes?  
22 A. **I said that the document I had that I was**  
23 **just looking at had the attachments on -- what you**  
24 **just asked me from that list of sports, it has the**  
25 **men on one page, but the next page, it has the men**

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1 **again. It doesn't have the women.**  
2 Q. You are correct. This is what was  
3 produced to us. This is in its entirety.  
4 A. **Okay.**  
5 Q. Do you know if there's an email where  
6 Ms. Carhart sent you the women's?  
7 A. **I do not.**  
8 MS. LABINGER: Lori, I think it's an  
9 error.  
10 MS. BULLOCK: Okay. Okay.  
11 MS. LABINGER: Let me get a corrected  
12 document.  
13 MS. BULLOCK: That is what I get for  
14 pulling it from native form and trying to turn it  
15 into a PDF.  
16 MR. CORRENTE: Can we take five minutes?  
17 MS. BULLOCK: Sure. Let's take 10.  
18 VIDEOGRAPHER: Off the record at 2:03 p.m.  
19 (Recess taken from 2:03 to 2:20 p.m.)  
20 VIDEOGRAPHER: On the record at 2:20 p.m.  
21 Q. (By Ms. Bullock) And I need to clarify on  
22 the record, Mr. Hayes, you said you were looking at  
23 a double printout of the men's, and that is because  
24 when it printed out the native form spreadsheet,  
25 rather than printing out both tabs, it printed out

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1 two of the first tab.  
2 A. **Okay.**  
3 Q. So I will get counsel and the court  
4 reporter the proper, but I will say, the version  
5 that was shown on the Zoom screen-share to Mr. Hayes  
6 that we talked through was men's and then women's.  
7 So this is correct, and he was looking at the  
8 correct version.  
9 A. **Okay.**  
10 Q. When you look at the actual native --  
11 MR. CORRENTE: Counsel, when you get us  
12 that in paper format, should we mark that as -- or  
13 that additional one sheet, should that be 17A?  
14 MS. BULLOCK: Sure, let's do that. That  
15 sounds fine.  
16 Q. (By Ms. Bullock) So just a couple more  
17 questions, actually, about this, Mr. Hayes, and I'll  
18 have you look up on the screen since you don't have  
19 the second page. I had asked you, the all track  
20 combined is counting track once, and you had said  
21 it's counting cross country and then counting cross  
22 country again. I just want to make sure, the way  
23 that this is being counted is in accordance with  
24 what the settlement requires, correct?  
25 A. **It is.**

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1 Q. You see here men's ideal roster size is,  
2 like you had said, the 20 cross country runners, 52  
3 track and field, which is counting track and field  
4 one time and cross country one more time, correct?  
5 A. Yeah. So in that one, the track  
6 participants would be 32, and you would take the  
7 cross country 20 runners and add them back in, and  
8 that's how you would have 20 plus 52.  
9 Q. Okay. And these are the ideal sizes,  
10 correct?  
11 A. These are the ideal sizes on the responses  
12 from the coaches, yes.  
13 Q. I'm going to have you look at what we will  
14 mark as Exhibit 18. This is -- we've looked at a  
15 version of this email before. I wish there was a  
16 way to do side by side, but if you look at  
17 Exhibit 2 -- do you have Exhibit 2 in front of you?  
18 A. Is this from earlier today? Did we look  
19 at this one before?  
20 Q. Yes, we did. Well, we looked at a version  
21 of it.  
22 A. Yeah. I have it. I can see it on the  
23 screen.  
24 Q. Well, Exhibit 18 is a little different  
25 than Exhibit 2 so I'd like you to be able to -- if

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1 you need to reference back, 24776 is the starting  
2 page of Exhibit 2. Exhibit 18 is an email between  
3 Mr. Hayes and Mr. Menco on June 4th. It is 24781,  
4 the first page, and it goes to 24783, Exhibit 18.  
5 A. Okay. I have it.  
6 Q. These are again those -- this is while you  
7 were contemplating reinstating track, correct?  
8 A. Yes.  
9 Q. And you're looking at different scenarios  
10 in order to make the participation numbers work,  
11 correct?  
12 A. That is correct.  
13 Q. And you're saying here that these are --  
14 we have here the "Using planned roster totals and  
15 adding men's track (60 participants)." Where did  
16 the number 60 come from?  
17 A. As we looked at the variance and bringing  
18 track back, I felt that we had to manage a roster  
19 for track that was smaller than what the ideal  
20 roster size was. So rather than have that number in  
21 at the coaches' ideal roster size of 72, I had it in  
22 as 60.  
23 Q. Okay. But if we look back at the  
24 spreadsheets where you have the Brown plan  
25 numbers --

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1 A. Yeah.  
2 Q. -- the rest of those numbers are the  
3 ideal, correct? That you had talked about with the  
4 minor adjustments up and down if necessary?  
5 A. Yes.  
6 Q. So here's --  
7 A. These were the optimal numbers, right?  
8 The optimal numbers were the ones that we went --  
9 that I adjusted slightly above and below based on  
10 what the Ivy League five-year average was.  
11 Q. Okay. I just want to make sure I'm --  
12 A. That was the optimal.  
13 Q. -- looking at the --  
14 A. The optimal did not involve any input from  
15 the coaches. The ideal roster size were the ones  
16 that I emailed to the coaches, and that's the  
17 numbers that -- in that document that we just looked  
18 at on the ideal roster size. But in the spreadsheet  
19 of optimal, where we talked earlier that in some  
20 cases they were increased or reduced here or there,  
21 that was not with any input from the coaches.  
22 Q. But the one where it had the coaches'  
23 ideal column was with input from the coaches,  
24 correct?  
25 A. Yes, it was.

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1 Q. If we look up at the top here, is this  
2 your statement? Can you read your statement to  
3 Mr. Menco?  
4 A. "Yes. I'd say we probably want to adjust  
5 a few men's rosters down and a few women's rosters  
6 up and we would be in a good place."  
7 Q. So here are you contemplating adding women  
8 to the rosters in order to make the numbers work?  
9 A. I'm contemplating that -- getting where --  
10 getting from our coaches of our women's team where  
11 our numbers are and if they are higher than what the  
12 coaches had on their ideal roster, factoring that  
13 into what our total would be. So if we have a  
14 women's team where their roster is higher than what  
15 their ideal number was, then that should be adjusted  
16 up.  
17 On the men's side, it may require a  
18 conversation of saying to a men's coach "That may be  
19 your ideal roster, but that isn't necessarily what  
20 your roster can be going forward."  
21 Q. Okay. I just want to draw your attention  
22 here -- we were looking at Exhibit 502, which was  
23 the final spreadsheet last edited on May 20th.  
24 Okay. So you have this email in front of you,  
25 correct?

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1           **A. I do.**  
2           Q. I'm going to stop sharing this one, then.  
3 Okay. Can you see this?  
4           **A. I can.**  
5           Q. This spreadsheet, 502. Okay. Would you  
6 agree with me that on Bates 24777, we're adding the  
7 60 participants. That number there is based not off  
8 of the optimal number but off of the Brown plan,  
9 which is, you testified, based off of the coaches'  
10 ideal, correct?  
11          **A. I don't -- I don't know what the question**  
12 **is.**  
13          Q. So --  
14           MR. CORRENTE: I don't know where you are  
15 on the document either. Can you start over, please?  
16           MS. BULLOCK: Yeah. On page 24777 --  
17           MR. CORRENTE: That's not part of this  
18 exhibit.  
19           MS. BULLOCK: I understand that,  
20 Mr. Corrente.  
21           MR. CORRENTE: Where is it?  
22           MS. BULLOCK: In that email that you have  
23 in front of you that we just stopped -- I can't  
24 share two documents on my screen, so on the email  
25 that you just had in front of you with the second

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1 page of that email -- sorry. The second page of  
2 that one is 24782.  
3           MR. CORRENTE: Yeah.  
4           MS. BULLOCK: The one you just had in  
5 front of you. The second scenario, where we're  
6 talking about adding 60 participants. Okay?  
7           **THE WITNESS: Okay.**  
8           Q. (By Ms. Bullock) Okay. So would you agree  
9 with me that that would be adding 60 participants to  
10 this -- if you look up on the screen, the Brown plan  
11 number, which you testified earlier was based off of  
12 the coaches' ideal?  
13           MR. CORRENTE: I object to the form of the  
14 question. I still have no idea what you're talking  
15 about.  
16           MS. BULLOCK: Does the witness understand?  
17           MR. CORRENTE: I don't think so.  
18           MS. BULLOCK: I would like the witness to  
19 answer that, Mr. Corrente.  
20           MR. CORRENTE: Okay.  
21           **THE WITNESS: If I -- so you're asking me,**  
22 **in the Brown plan, it totals 407 males.**  
23           Q. (By Ms. Bullock) Yes.  
24           **A. If we add track back into that group at**  
25 **60, does that number total 467?**

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1           Q. Yes.  
2           **A. Yes.**  
3           Q. Okay. And what I'm trying to establish  
4 is, I think you had testified earlier that the  
5 numbers on 24782 were based on the optimal numbers  
6 before you had coaches' input, but it looks like  
7 it's actually based on the Brown plan numbers, which  
8 is post coaches' input, correct? Because it's 456  
9 women, and that matches?  
10          **A. Yes, and it appears that that is the case.**  
11 **Yes.**  
12          Q. That is all I wanted to clarify.  
13          **A. Okay.**  
14          Q. Okay. So -- one second here. I'm going  
15 to pull this back -- I'm going to share my screen  
16 again. I just noticed something I want to clarify.  
17 Okay. So this is the Exhibit 502. Can you see that  
18 on the screen again?  
19          **A. I can.**  
20          Q. If you see here -- and this is how this  
21 was produced to us -- these numbers are all the  
22 same. You can verify that with me if you want.  
23 Correct?  
24           MR. CORRENTE: Object to the form. What  
25 numbers are all the same?

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1           Q. (By Ms. Bullock) The numbers -- can you  
2 see my cursor?  
3           **A. I can.**  
4           Q. Okay. So the numbers in the "Coaches'  
5 Ideal" column and the numbers in the "Brown plan"  
6 column in the men's half of the spreadsheet are all  
7 the same, correct?  
8           **A. I see that.**  
9           Q. Do you have any idea why the numbers and  
10 the subtotals are different?  
11          **A. They certainly should be the same.**  
12          Q. Okay.  
13           MR. CORRENTE: Just so the record's clear,  
14 that's not 502, what you're using.  
15           MS. BULLOCK: This is the native form of  
16 502 that was produced to us.  
17           MR. CORRENTE: It's not page 502.  
18           MS. LABINGER: Respectfully, that is 502.  
19           MS. BULLOCK: That is 502. That is what  
20 was -- you -- and maybe there's more than one 502,  
21 but that is the native form of what was produced to  
22 us for 502. And I can show you the Bates stamp 502  
23 as well in PDF form if you would like to see that.  
24           MR. CORRENTE: I'm looking at the Bates  
25 stamp 502 on a different document, but whatever.

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1 You can keep going.

2 Q. (By Ms. Bullock) Okay. Mr. Hayes, have

3 you ever conducted an analysis on the preseason

4 roster declarations with the actual rosters to see

5 how closely they align with each other?

6 A. I've seen the roster declarations from the

7 previous two academic years and looked at what the

8 variance was on the roster declarations versus what

9 the variance ended up being at the end of the year.

10 Q. Do you have any documents demonstrating

11 that?

12 A. I do not have that here. I do not.

13 Q. Do you have anything in your possession

14 that demonstrates that analysis?

15 A. If I do, I -- what should I do if I have

16 that document?

17 Q. Can you please provide it to your

18 attorneys so they can give it to us?

19 A. Yeah.

20 Q. And when you did that analysis, do you

21 remember in general what it showed?

22 A. That the variance was larger -- I can't

23 recall, but here's what I can tell you, that we use

24 a variance in each year to identify -- we use the

25 roster declaration forms to identify what the

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1 variance is at the beginning of the year and then

2 manage that accordingly. So as the rosters

3 fluctuate, men's and women's, we are focused on what

4 is that variance and how does that variance change.

5 Q. And when did you do that analysis?

6 A. I looked at it recently, within the last

7 three weeks.

8 Q. And you said you looked at the last how

9 many years?

10 A. The previous two.

11 Q. In the previous two years, did it vary

12 quite a bit?

13 A. It did not.

14 Q. Are you saying that you do that analysis

15 every year?

16 A. From year to year? No.

17 Q. Did you do that in connection with this

18 case?

19 A. I did.

20 Q. Have you ever done it before?

21 A. I have not.

22 Q. Did you do it before or after the decision

23 to reinstate men's track, cross country, and -- or

24 track, field, and cross country was made?

25 A. After.

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1 Q. As part of the decision to eliminate some

2 varsity teams, there was also a decision to elevate

3 sailing, correct?

4 A. Correct.

5 Q. Is there a reason you haven't elevated

6 sailing before this year?

7 A. One reason was -- and I mentioned this

8 earlier -- that we had just built a facility. They

9 had -- their facility, locker rooms, offices, were

10 in a building that burned down in 2011. It did not

11 reopen until two years ago.

12 Q. And as part of -- we've already seen the

13 documents here. As part of elevating sailing, did

14 you reach out and ask the sailing coach for his

15 ideal roster size as well?

16 A. At the time, I did not. We asked for it

17 after. All my conversations regarding sailing -- I

18 had conversations with the sailing coach over the

19 last two or three years about their status and what

20 it would take to become a varsity program, but they

21 were not -- the head coach was not involved in any

22 of the conversations leading up to this decision.

23 Q. Okay. Do you remember when you reached

24 out to him?

25 A. It may have been on the same -- on the

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1 same day that we wrote to all the other head coaches

2 on the 13th, but I'm not positive, because on the

3 30th, we were writing to all the coaches about --

4 those were the current coaches of our teams, and at

5 the time, sailing was not a varsity sport, so I

6 don't believe I did include him on the initial

7 request, but then went back -- in the next couple

8 days, I was directed to include his number as well.

9 I'm looking at the initial email from the document

10 written to all the head coaches. He was not on

11 that.

12 Q. Okay. I'm going to pull up here for

13 you -- we will mark this as Exhibit 19. Let me

14 share my screen with you. This is Bates stamp 26429

15 to 26431. It's an email between Mr. Mollicone and

16 yourself -- at least the top of it is -- on

17 May 15th. Do you see that?

18 A. I do.

19 Q. Do you recall this email chain?

20 A. I do.

21 Q. So it looks like on May 14th you reached

22 out to Mr. Mollicone and said, "As we consider

23 sailing as a varsity sport, what would be your ideal

24 roster size?" Correct?

25 A. Yes.

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

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

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

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

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

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

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

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



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1 **Now I can.**  
 2 Q. Perfect. Okay. Is this something that  
 3 you prepared at the request of Ms. Goldgeier and  
 4 Mr. Green?  
 5 **A. It is.**  
 6 Q. Is this the only written plans for sailing  
 7 that exist?  
 8 **A. Written plans to transition the program**  
 9 **from club to varsity? It is.**  
 10 Q. And this wasn't something that you created  
 11 prior to elevating the corporation meeting on the  
 12 21st where they were elevated to a varsity team,  
 13 correct?  
 14 **A. It is not.**  
 15 Q. Mr. Hayes, you testified earlier that you  
 16 were a student-athlete, correct?  
 17 **A. I was.**  
 18 Q. And you also obviously manage an entire  
 19 department of student-athletes, correct?  
 20 **A. Yes.**  
 21 Q. What are the benefits of being a  
 22 Division I varsity athlete?  
 23 **A. Number of benefits. Personal development.**  
 24 **Leadership development. In many cases, it's a**  
 25 **complement to what students do academically. It's**

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1 **helpful in time management, as athletics has been an**  
 2 **important part of their experience prior to entering**  
 3 **college. And so there are a number of benefits that**  
 4 **students can obtain by participating in**  
 5 **intercollegiate athletics.**  
 6 Q. And you agree with me that those benefits  
 7 are far beyond just playing a sport, correct?  
 8 MR. CORRENTE: Object to the form.  
 9 Q. (By Ms. Bullock) You can answer.  
 10 **A. I do.**  
 11 Q. Do you get to meet people as a  
 12 student-athlete that you might not otherwise get to  
 13 meet?  
 14 MR. CORRENTE: Object to the form.  
 15 **THE WITNESS: You have the opportunity. I**  
 16 **think some students take advantage of it more than**  
 17 **others, but the opportunity is there.**  
 18 Q. (By Ms. Bullock) And you make lifelong  
 19 relationships with your teammates, correct?  
 20 **A. Yes.**  
 21 Q. Do Division I varsity athletes put in a  
 22 lot of work to play at that level?  
 23 **A. They do.**  
 24 Q. Do they make sacrifices?  
 25 **A. They do.**

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1 Q. What are some of the sacrifices that they  
 2 make?  
 3 MR. CORRENTE: Objection. Form.  
 4 **THE WITNESS: There's a commitment.**  
 5 **There's a time commitment. So there are things**  
 6 **socially they may not be able to participate in.**  
 7 **There are travel opportunities that they may not be**  
 8 **able to participate in.**  
 9 Q. (By Ms. Bullock) Anything else?  
 10 **A. Not that I can think of.**  
 11 Q. Do some of them manage their diets pretty  
 12 strictly?  
 13 **A. Some do. I mean, as I'm sure many**  
 14 **nonathletes do.**  
 15 Q. Do student-athletes at Brown have any  
 16 restrictions placed upon them about what type of  
 17 social activities they can engage in?  
 18 **A. No.**  
 19 Q. Do they have restrictions on drinking?  
 20 **A. Maybe on -- prior to competition, days**  
 21 **before competition, but overall, no.**  
 22 Q. Have you seen any studies or data on how  
 23 many CEOs in the country are former Division I  
 24 student-athletes?  
 25 **A. I have not.**

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1 MR. CORRENTE: Objection. What does that  
 2 have to do with anything in this case?  
 3 MS. BULLOCK: This is discovery,  
 4 Mr. Corrente, and I can --  
 5 MR. CORRENTE: Yeah, I understand what it  
 6 is. I just -- I'd like you to tell me why a  
 7 sociological study about the link between Division I  
 8 athletics and economist CEOs is germane to this  
 9 case.  
 10 MS. BULLOCK: It's germane to this case  
 11 because it's one of the benefits of being a  
 12 student-athlete, that you learn how to succeed at  
 13 the top level.  
 14 Q. (By Ms. Bullock) Is that correct,  
 15 Mr. Hayes?  
 16 **A. It's a benefit of athletics. Many of the**  
 17 **benefits that we've discussed on camaraderie and**  
 18 **time management would be available at the**  
 19 **intercollegiate level and the club level.**  
 20 Q. Is playing a club sport the same as  
 21 playing a varsity Division I sport?  
 22 **A. No.**  
 23 Q. What benefits do you think you personally  
 24 got from being a student-athlete?  
 25 **A. Personal connections. Time management.**

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

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

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

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

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1 so with a competitive season potentially not taking  
 2 place, there was not a need to hire a coach just  
 3 yet.  
 4 Q. Weren't the club teams told too that they  
 5 wouldn't have the same level of support and they  
 6 were going to need to have to raise some money?  
 7 A. All club programs raise money, and all the  
 8 varsity programs have raised money in the past.  
 9 What we had said was during the year of transition,  
 10 we would provide the same level of support that the  
 11 institution had been providing when it was a varsity  
 12 program.  
 13 Now, since then -- yes, I had those  
 14 conversations. During COVID, it's changed the  
 15 financial model for our entire department. So the  
 16 conversations have changed with what we will be able  
 17 to fund for varsity sports and club sports. For  
 18 instance, right now, not only is there a hiring  
 19 freeze, but there are purchases that we would not be  
 20 able to make departmentwide. So any changes to what  
 21 was communicated to them after the announcement are  
 22 based on what we're able to do in terms of funding  
 23 and operating our own department.  
 24 Q. At the time you made those announcements  
 25 to the student-athletes that were being demoted to

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1 club level, we were in the middle of COVID, correct?  
 2 A. Of course we were in the middle of COVID,  
 3 but I didn't know what the funding model for  
 4 athletics was going to be going forward in terms of  
 5 an operating budget.  
 6 Q. So you made those statements to the  
 7 student-athletes before you had the information?  
 8 A. I made that assuming that our operating  
 9 budget would continue as it has in years past, and  
 10 then we've had conversations with all areas of  
 11 athletics about how we can spend going forward.  
 12 Club sports would be a part of that.  
 13 Q. Paxson testified yesterday that if the  
 14 court found in this action that Brown was not in  
 15 compliance that you thought that Brown should  
 16 eliminate another men's team instead of reinstating  
 17 a women's team. Is that true?  
 18 A. I said at the time that -- well, let me  
 19 step back. Our plan all along was to be as  
 20 competitive as we could in athletics and reduce the  
 21 number of sports that we had. So I would say that  
 22 if we were going to remain consistent with what that  
 23 charge is that, yes, eliminating rather than adding  
 24 would be consistent with what the intent was of the  
 25 excellence in athletics charge.

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1 Q. Which team would you eliminate?  
 2 A. I don't know. I wouldn't be the one  
 3 ultimately that would be making that decision so I  
 4 don't know what sport would be eliminated.  
 5 Q. Part of the plan of the committee on  
 6 excellence in athletics was to increase the space on  
 7 the men's teams so that they could be more  
 8 competitive, correct?  
 9 A. That's correct.  
 10 Q. Have you accomplished that goal?  
 11 A. In some sports. It would have been  
 12 more -- there would have been more sports that would  
 13 have fallen into that category if we had not brought  
 14 cross country, track, and field back in.  
 15 Q. What sports do you feel that you've  
 16 accomplished that goal in?  
 17 A. Basketball, rowing, men's lacrosse. We're  
 18 just talking about the men's side right now. Those  
 19 are three right now that I can think of. Swimming  
 20 is a fourth. And some remain where they were  
 21 before, and then some would potentially be -- well,  
 22 not -- some would be reduced.  
 23 Q. And I just -- I want to go back and  
 24 clarify. When we talked about not having the same  
 25 level of support, you specifically told that to the

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1 skiing team, correct?  
 2 A. I had a Zoom meeting with every team that  
 3 was transitioned.  
 4 Q. Did you tell every team that they -- that  
 5 even though you had made promises about funding that  
 6 they would not actually have the same level of  
 7 support as a club team as they did as a varsity  
 8 team?  
 9 A. Can you ask that question again?  
 10 Q. Sure. So you had testified that you told  
 11 the teams that they would have funding as they did  
 12 as a varsity team for, you said, one year for all  
 13 the sports, two years for equestrian, correct?  
 14 A. Correct.  
 15 Q. And you had subsequent Zoom meetings, and  
 16 my question is, was it with all of the meetings  
 17 or -- or all of the teams that you told them that,  
 18 in fact, they would not have the same level of  
 19 support, or just the ski team?  
 20 MR. CORRENTE: I object to the form of  
 21 that question not only because the form is bad but  
 22 because I think it misstates the prior testimony.  
 23 The one-year, two-year discussion was not about the  
 24 level of support for the program as a whole. It was  
 25 about the support for the existing coach.

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1 THE WITNESS: The operating budgets and  
 2 the coaches for the conversations that we had with  
 3 each team by Zoom was that we would maintain the  
 4 coaches and the operating budget of the university  
 5 allocation in this transitional year. Equestrian  
 6 was two years based on an anonymous gift.  
 7 We have a manager of club sports. That  
 8 staff member has been interacting ever since with  
 9 each one of the teams on what -- that's that  
 10 person's responsibility. I've communicated with  
 11 that person, and I know that she has shared this  
 12 information with all the teams. Again, the hiring  
 13 freeze, that's an institutional effort, and the club  
 14 skiing position is going to fall underneath that.  
 15 That's going to be part of it.  
 16 The operating funds for the department  
 17 are -- it's in a different situation than it was a  
 18 month ago, two months ago, and so right now, we do  
 19 not make purchases that we do not know for sure that  
 20 we would need in the upcoming year. So that's been  
 21 communicated to teams. Varsity and club.  
 22 Q. (By Ms. Bullock) And so that communication  
 23 came from the club coordinator, not yourself?  
 24 A. Correct.  
 25 Q. And are you aware that that individual

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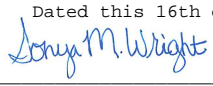
1 told the skiing team that they will not get the same  
 2 level of support in regards to their operational  
 3 budget that they had last year?  
 4 A. Well, in the context of that -- I don't  
 5 know the context of that conversation, but if it's  
 6 about the university's operating budget as a whole  
 7 and what the university's practices are going  
 8 forward about what can be purchased, then that would  
 9 be consistent, that the support wouldn't be -- I  
 10 wouldn't say the support is -- and, again, I wasn't  
 11 there. I wouldn't say the support is the same --  
 12 isn't the say, but I would say that the funding  
 13 that's available would not necessarily be the same,  
 14 as it would not be available in all other units of  
 15 athletics.  
 16 Q. So were all the club teams told that the  
 17 support of operational budgets would not be there?  
 18 A. I believe that was communicated by the  
 19 club -- by the manager of club sports to all the  
 20 teams.  
 21 MS. BULLOCK: I don't have any further  
 22 questions.  
 23 MR. CORRENTE: No questions. Thank you.  
 24 VIDEOGRAPHER: Off the record ending the  
 25 deposition at 3:37 p.m.

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1 (Deposition concluded at 3:37 p.m.)  
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CERTIFICATE OF REPORTER

1 I, the undersigned, a Certified Shorthand  
 2 Reporter of the State of Iowa, do hereby certify  
 3 that there came before me via Zoom video conference  
 4 at the time and date hereinbefore indicated, the  
 5 witness named on the caption sheet hereof, who was  
 6 by me duly sworn to testify to the truth of said  
 7 witness's knowledge, that the witness was thereupon  
 8 examined under oath, the examination taken down by  
 9 me in shorthand and later reduced to a transcript  
 10 through the use of a computer-aided transcript  
 11 device under my supervision and direction, and that  
 12 the deposition is a true record of the testimony  
 13 given and of all objections interposed.  
 14 I further certify that I am neither attorney or  
 15 counsel for, nor related to or employed by any of  
 16 the parties to the action in which this deposition  
 17 is taken, and further that I am not a relative or  
 18 employee of any attorney or counsel employed by the  
 19 parties hereto or financially interested in the  
 20 action.  
 21  
 22 Dated this 16th day of August, 2020.  
 23   
 24 \_\_\_\_\_  
 25 SONYA M. WRIGHT, RPR-CSR

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