

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

B.P.J. by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, DORA STUTLER in her official capacity as Harrison County Superintendent, and THE STATE OF WEST VIRGINIA,

Defendants,

and

LAINEY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

JOINT MOTION TO FILE EXHIBITS UNDER SEAL

The Parties move this Court for an Order to file Exhibits 1–9 (as designated in the Memorandum of Law in Support of this Motion) under seal and for Plaintiff to file a reference list containing the full name of minor Plaintiff under seal. The Parties submit the attached Memorandum of Law in Support of this Motion, as well as a proposed order.

The Parties have good cause to file Exhibits 1–9 under seal, as these documents contain sensitive personal identifying information, health information, financial information, and other confidential information. The Parties also have a strong and well-recognized right to keep this information private. Under Local Rule 5.2.1, Plaintiff is permitted to file a reference list containing her full name under seal.

The Parties reserve the right to revisit this issue for purposes of determining how to present the subject documents at any future trial.

For these reasons, the Parties respectfully ask the Court to enter an Order permitting the Parties to file Exhibits 1–9 under seal and to permit Plaintiff to file the reference list under seal.

Dated: April 21, 2022

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J. by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF
EDUCATION, HARRISON COUNTY BOARD
OF EDUCATION, WEST VIRGINIA
SECONDARY SCHOOL ACTIVITIES
COMMISSION, W. CLAYTON BURCH in his
official capacity as State Superintendent, DORA
STUTLER in her official capacity as Harrison
County Superintendent, and THE STATE OF
WEST VIRGINIA,

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 21st day of April, 2022, I electronically filed a true and exact copy of the ***Joint Motion to File Exhibits Under Seal*** with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

Loree Stark

West Virginia Bar No. 12936

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

B.P.J. by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, DORA STUTLER in her official capacity as Harrison County Superintendent, and THE STATE OF WEST VIRGINIA,

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**[PROPOSED] ORDER GRANTING JOINT MOTION
TO FILE EXHIBITS UNDER SEAL**

The Parties, through counsel, filed a Joint Motion to File Exhibits Under Seal in the above-captioned matter to protect sensitive personal identifying information, personal health records, and other confidential information. After considering the moving papers, the Court concludes that the Parties have shown good cause and GRANTS the Parties' motion. Accordingly, it is ORDERED that Exhibits 1–9 (as designated in the Joint Memorandum of Law) and the submitted Reference List be sealed.

ORDERED: _____, 2022

/s/ _____
United States District Judge

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
 CHARLESTON DIVISION

* * * * *

B.P.J., by her next friend and *

Mother, HEATHER JACKSON, *

Plaintiff * Case No.

vs. * 2:21-CV-00316

WEST VIRGINIA STATE BOARD OF *

EDUCATION, HARRISON COUNTY *

BOARD OF EDUCATION, WEST *

VIRGINIA SECONDARY SCHOOL *

ACTIVITIES COMMISSION, W. *

CLAYTON BURCH in his official *

Capacity as State Superintendent, *

DORA STUTLER in her official *

Capacity as Harrison County * VIDEOTAPED DEPOSITION

Superintendent, PATRICK MORRISEY * OF

In his official capacity as * WESLEY SCOTT PEPPER

Attorney General, and THE STATE * January 19, 2022

OF WEST VIRGINIA, *

Defendants *

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 by the certifying agency.

1 VIDEOTAPED DEPOSITION
2 OF
3 WESLEY SCOTT PEPPER, taken on behalf of the Defendant,
4 State of West Virginia, herein, pursuant to the Rules of
5 Civil Procedure, taken before me, the undersigned,
6 Nicole Montagano, a Court Reporter and Notary Public in
7 and for the State of West Virginia, on Wednesday,
8 January 19, 2022, beginning at 10:07 a.m.

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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between
counsel for the respective parties that reading,
signing, sealing, certification and filing are not
waived.)

VIDEOGRAPHER: We are now on the record.
My name is Jacob Stock. I'm a Certified Legal Video
Specialist employed by Sargent's Court Reporting
Services. The date today is January 19th, 2022, and the
current time reads 10:07 a.m. This deposition is being
taken remotely by Zoom conference. The caption of the
case is: In the United States District Court, for the
Southern District of West Virginia, Charleston Division,
BPJ by her Next Friend and Mother, Heather Jackson, v.
West Virginia State Board of Education, et al., Case
Number 2:21-CV-00316. The name of the witness is Wesley
Scott Pepper.

Will the attorneys present state their
names and the parties they represent.

ATTORNEY TRYON: This is David Tryon. I
represent the Defendant, State of West Virginia.

ATTORNEY HARTNETT: This is Kathleen

1 Hartnett from Cooley, LLP, and I represent the Plaintiff
2 as well as the witness.

3 ATTORNEY GREEN: This is Roberta Green
4 here on behalf of West Virginia Secondary School
5 Activities Commission. I'm with Shuman, McCuskey,
6 Slicer.

7 ATTORNEY DENIKER: Good morning. Susan
8 Deniker, Counsel for Defendants, Harrison County Board
9 of Education and Superintendant Dora Stutler.

10 ATTORNEY DUCAR: Good morning. Timothy
11 Ducar on behalf of Intervenor, Lainey Armistead.

12 ATTORNEY BROWN: Joshua Brown serving as
13 local counsel for Alliance Defending Freedom on behalf
14 of Lainey Armistead.

15 ATTORNEY MORGAN: Kelly Morgan and
16 Kristen Hammond on behalf of the West Virginia Board of
17 Education and Superintendant Burch with Bailey and
18 Wyant.

19 ATTORNEY SWAMINATHAN: Sruti Swaminathan
20 on behalf of Plaintiff and witness from Lambda Legal.

21 ATTORNEY BLOCK: Josh Block on behalf of
22 Plaintiff.

23 ATTORNEY BARR: Andrew Barr from Cooley,
24 LLP, on behalf of the Plaintiff and witness.

1 ATTORNEY VEROFF: Julie Veroff on behalf
2 of Plaintiff.

3 ATTORNEY HELSTROM: Zoe Helstrom on
4 behalf of the Plaintiff from Cooley, LLC.

5 ATTORNEY HOLCOMB: Christiana Holcomb and
6 Rachel Csutoros on behalf of the Intervenor.

7 VIDEOGRAPHER: If that is everyone, the
8 court reporter can swear in the witness and we can
9 begin.

10 ATTORNEY CAPEHEART: One other thing ---
11 my apologies, I didn't speak up earlier when Dave was
12 identifying himself. Curtis Capeheart, also here on
13 behalf of the State of West Virginia.

14 COURT REPORTER: Mr. Pepper, would you
15 raise your right hand, please?

16 ---

17 WESLEY SCOTT PEPPER,
18 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDINGS, HAVING
19 FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS FOLLOWS:

20 ---

21 COURT REPORTER: Thank you.

22 ---

23 EXAMINATION

24 ---

1 BY ATTORNEY TRYON:

2 Q. Thank you. And just for the record right now
3 could you state your full name again?

4 A. Wesley Scott Pepper.

5 Q. Thank you. So my name is David Tryon. I
6 represent the State of West Virginia. And first of all,
7 I just want to kind of understand, given the unusual
8 circumstances of doing this remotely, can you describe
9 the room you're in and what equipment you're using?

10 A. It is a room in a lawyer's office and I'm here
11 by myself at a table and a semi-comfortable chair.

12 Q. And do you have a laptop in front of you?

13 A. Yes, yes.

14 Q. Great.

15 And are you represented by counsel today?

16 A. Yes, I am.

17 Q. Can you identify for me who represents you?

18 A. Kathleen Hartnett.

19 Q. All right.

20 A. I guess that's Lambda, right?

21 ATTORNEY HARTNETT: I'm from Cooley, but
22 --- so just to be clear, the counsel that identified
23 themselves as counsel for the Plaintiff on this
24 deposition are also representing the witness today.

1 BY ATTORNEY TRYON:

2 Q. Thank you.

3 And Mr. Pepper, do you have any sort of
4 engagement letter or representation letter with any of
5 these attorneys?

6 A. Do I?

7 Q. That's my question.

8 A. I didn't understand the question, sir.

9 Q. Did you sign any engagement letter or
10 representation letter retaining any of these attorneys?

11 A. Not to my knowledge. I mean, my wife and I
12 probably did. I don't remember.

13 Q. Okay.

14 A. It has been a while.

15 Q. Okay.

16 Can you tell us for purposes of identification
17 your location where you're currently at?

18 A. I am in Buckhannon, West Virginia.

19 Q. Do you know the address where you're located?

20 A. I do not.

21 Q. Have you ever been deposed before?

22 A. Yes.

23 Q. Can you tell us about when and where and what
24 that was about?

1 A. I've been through a divorce.

2 Q. And so you were deposed in connection with that
3 divorce?

4 A. Yes.

5 Q. How long ago was that?

6 A. 1990.

7 Q. Okay.

8 And any other depositions you've been in?

9 A. My oldest son had a dog bite case in Georgia. I
10 was under a deposition for that as well.

11 Q. When was that?

12 A. 2005, 2006.

13 Q. Any other depositions you've been in?

14 A. No.

15 Q. Have you been sued before other than in
16 connection with your divorce?

17 A. No.

18 ATTORNEY HARTNETT: Objection,
19 foundation.

20 BY ATTORNEY TRYON:

21 Q. Is your wife listening to this and watching this
22 in any fashion?

23 A. No.

24 Q. So just a question, you've been deposed before

1 so you already have some idea of what we're doing. But
2 a deposition is oftentimes an unusual situation because
3 it's not really any other type of communication that
4 we're typically involved in. It's an opportunity for
5 the attorneys to ask you questions and for you to give
6 them answers. And so I'm going to give you a few
7 instructions on how we'll handle this to try to make it
8 work out the best for everyone.

9 Would that be okay?

10 A. Yes.

11 Q. So first of all, we're operating in Federal
12 Court so the Federal Rules of Civil Procedure apply
13 here. And you're going to hear objections from time to
14 time, and I just want to let you kind of give you an
15 idea of how that's handled as of the Rules. And I'll
16 just read from what's called Federal Rule of Civil
17 Procedure C2, which says an objection at the time of the
18 examination, whether to evidence to a party's conduct,
19 the officer's qualifications, to the manner for taking
20 the deposition or any other aspect of the deposition
21 must be noted on the record but examination still
22 proceeds. The testimony is taken subject to any
23 objection and an objection must be stated concisely in a
24 non-argumentative and non-suggestive manner.

1 So in other words, if your counsel or any other
2 lawyer objects, they can only state objection with the
3 statement such as you've already heard foundation or
4 something like that, and then you still need to answer
5 the question unless your attorney instructs you to not
6 answer the question. So --- and I would also ask you to
7 as we're going through this to answer verbally so that
8 the court reporter can take this down as opposed to
9 nodding your head or shaking your head.

10 Okay?

11 A. Yes.

12 Q. Thank you.

13 And if you don't understand a question, feel
14 free to ask me to clarify it, which you've already done.
15 And if you do answer, then that implies that you
16 understand the question. So please let me know if you
17 don't understand.

18 Okay?

19 A. Yes.

20 Q. If you need to take a break for whatever reason,
21 please let me know and we'll arrange for that, although
22 we don't take breaks during the course of a question.
23 After you answer a question, then we can take a break.

24 And just for the record, this deposition is

1 being conducted as on Cross Examination, which for you
2 that just means that's a legal concept as to the
3 procedure.

4 Now, before we get started with our questions I
5 wanted to just let you know we understand this whole
6 situation is sensitive and we, as representing the State
7 and I'm sure others as well, we're not here to judge
8 you, your family, your child or anyone else and --- but
9 since BPJ has filed this lawsuit and we as the State
10 have an obligation to defend the statute that is being
11 challenged here, we are --- I mean, it's a serious
12 charge to challenge the validity of the statute, so we
13 have an obligation to ask questions to address that
14 issues.

15 So some of these questions, as in all
16 depositions, sometimes things are a little
17 uncomfortable, but that is the procedure that we need to
18 follow as required by the Courts.

19 Does that sound fair to you?

20 ATTORNEY HARTNETT: Objection to the
21 description of the obligations and other --- other
22 concepts that you've stated, but I think --- just for
23 the record, we've had conversations with Counsel for the
24 Defense about the conduct of the deposition and we

1 expect it to proceed civilly and professionally, but I'm
2 not sure if you have a question for the witness. I
3 don't think he needs to necessarily adopt your view of
4 your obligation to defend the case.

5 BY ATTORNEY TRYON:

6 Q. Mr. Pepper, the procedure that I just described,
7 does that sound fair to you?

8 A. Yes. I have one request. Can you turn your
9 volume up just a little bit so I can hear you a little
10 bit better, please?

11 Q. I don't know if I can do that. At your end you
12 should be able to do that.

13 A. I've got mine at a hundred here, and it's --- it
14 just seems like it's --- I can hear you, but I'm
15 straining just a little bit.

16 ATTORNEY HARTNETT: Can we go off the
17 record briefly? I might have a suggestion for that.
18 I'm happy to put it on the record, too.

19 ATTORNEY TRYON: Go ahead. Let's go off
20 the record.

21 VIDEOGRAPHER: We're going off the
22 record. The current time reads 10:19 a.m.

23 OFF VIDEOTAPE

24

1 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

2 ---

3 ON VIDEOTAPE

4 VIDEOGRAPHER: We are back on the record.
5 The current time reads 10:20 a.m.

6 BY ATTORNEY TRYON:

7 Q. So Mr. Pepper, in preparation for this
8 deposition did you review any documents?

9 ATTORNEY HARTNETT: Object to the extent
10 you --- I just would caution you, Mr. Pepper, to not
11 divulge the content of your discussions with your
12 attorneys, but you can answer the question.

13 THE WITNESS: Yes, I have reviewed some.

14 BY ATTORNEY TRYON:

15 Q. Can you tell me what documents you've reviewed
16 without disclosing your discussions with your lawyers?

17 A. I'm sorry. I didn't quite hear you.

18 Q. Can you tell me what documents you looked at in
19 preparation of this deposition other than discussions
20 with your lawyers?

21 A. I can't tell you the name of them, no.

22 Q. What were the nature of them?

23 A. Some were documents to --- I guess for these
24 proceedings and some were doctors' recommendations.

1 Q. Anything else?

2 A. Nope.

3 Q. And do you feel like you had ample time to
4 prepare for this deposition with your lawyers?

5 A. Yes.

6 Q. Did you have any discussions with either your
7 wife or BPJ in preparation for this deposition?

8 ATTORNEY HARTNETT: I would just object
9 based on the marital communications privilege. To the
10 extent that --- you know, I would direct you not to
11 answer with respect to any content of your
12 communications that were confidential with your wife.
13 But otherwise, you can answer the question.

14 THE WITNESS: I've conferred with my
15 wife.

16 BY ATTORNEY TRYON:

17 Q. Okay.

18 And how about your child, BPJ?

19 A. Somewhat.

20 Q. What discussions have you had with BPJ?

21 ATTORNEY HARTNETT: I would just object
22 to the extent it calls for any discussions that you had
23 with BPJ with your lawyers present to the --- that would
24 be covered by the attorney/client privilege. Otherwise,

1 you can answer.

2 THE WITNESS: My communication with my
3 daughter is pretty much father to daughter like I
4 communicate with my son, father to son, very general.

5 BY ATTORNEY TRYON:

6 Q. So you're aware of this lawsuit.

7 Right?

8 A. Yes.

9 Q. Have you read the Complaint?

10 A. Yes.

11 Q. Have you --- your name does not appear on here
12 but rather your wife's name. Let me just clarify, can
13 you tell us who your wife is?

14 A. My wife's name is Heather Denise Jackson.

15 Q. And her name appears on the Complaint.

16 Correct?

17 A. I believe so.

18 Q. At the time of filing the Complaint were you
19 asked to put your name on it as well?

20 ATTORNEY HARTNETT: Objection to the
21 extent it calls for communications between you and your
22 lawyers, us. But to the extent you can answer otherwise
23 --- also, to the extent it calls for any communications
24 between you and your wife, but otherwise you can answer.

1 THE WITNESS: I don't recall that my name
2 was asked to be placed on the documents, no.

3 BY ATTORNEY TRYON:

4 Q. Did you consent to the filing of the lawsuit?

5 ATTORNEY HARTNETT: Objection, vague.

6 BY ATTORNEY Tryon

7 Q. Go ahead, you may answer.

8 A. Yes.

9 Q. When you reviewed the Complaint, did you agree
10 with everything in there or was there anything you
11 disagreed within there?

12 ATTORNEY HARTNETT: Objection, vague and
13 compound.

14 BY ATTORNEY TRYON:

15 Q. Go ahead.

16 A. I agree with --- I agree with what's in the
17 papers.

18 Q. So the law known as HB3293, which is the law ---
19 which is the subject of this case, have you read that?

20 A. Somewhat.

21 Q. Okay.

22 ATTORNEY TRYON: I would like to ask the
23 videographer to bring that up?

24 VIDEOGRAPHER: Which document?

1 ATTORNEY TRYON: I believe it's the last
2 document.

3 VIDEOGRAPHER: Do you have the specific
4 number?

5 ATTORNEY TRYON: Pardon me.

6 VIDEOGRAPHER: Do you have the specific
7 number?

8 ATTORNEY TRYON: I apologize, Exhibit 34.

9 VIDEOGRAPHER: Thank you.

10 ATTORNEY TRYON: I mean, 32. No, it's
11 34. I'm sorry.

12 VIDEOGRAPHER: Is it 32 or 34? I'm
13 sorry.

14 ATTORNEY TRYON: Thirty-two (32). I beg
15 your pardon. Let me try it again. It's Exhibit 34.
16 I'm looking at two different things.

17 VIDEOGRAPHER: Just give me one second to
18 grab the right one for you.

19 ---

20 (Whereupon, Exhibit 34, House Bill 3293,
21 was marked for identification.)

22 ---

23 ATTORNEY TRYON: Okay.

24 Can I scroll down? How do I do that?

1 VIDEOGRAPHER: Yes.

2 BY ATTORNEY TRON:

3 Q. Mr. Pepper, are you able to read this?

4 A. It's pretty small.

5 Q. At the top of the screen there's a percentage.
6 Mine says 57.9 percent. You can increase the size on
7 your screen.

8 ATTORNEY HARTNETT: I'm sorry. We can't
9 do that, but it looks like the court reporter can.

10 ATTORNEY TRYON: I just did it. Can you
11 see it better now?

12 THE WITNESS: Yes, 75 is good.

13 BY ATTORNEY TRYON:

14 Q. Okay. Very good. So I want to go over a couple
15 of provisions in here.

16 ATTORNEY HARTNETT: David, would you be
17 able to please just scroll through the document so he
18 can see what the document is before you start reading
19 from a part of it?

20 ATTORNEY TRYON: Sure.

21 VIDEOGRAPHER: This is the videographer.
22 I just wanted to point out that basically I gave you
23 control of the --- of the documents. So you're the only
24 one that can actually control it right now. It's not

1 separate for everyone. It's --- whatever you do, that's
2 what everyone else is going to see right now.

3 ATTORNEY TRYON: Thank you.

4 BY ATTORNEY TRYON:

5 Q. So this is the bill. You can see the front
6 page. And then it consists of various articles. It's
7 not very long. It looks like it's a total of five
8 pages.

9 ATTORNEY HARTNETT: Thank you.

10 BY ATTORNEY TRYON:

11 Q. So under --- on the second page it has
12 definitions. The first definition I want to read is
13 biological sex. It means an individual's physical form
14 as a male or a female based solely on the individual's
15 reproductive biology and genetics at birth.

16 Have I read that correctly?

17 Mr. Pepper, are you there?

18 VIDEOGRAPHER: Counsel, it looks like we
19 might have lost him. I no longer see him in the list of
20 participants.

21 ATTORNEY HARTNETT: It looks like he just
22 rejoined.

23 VIDEOGRAPHER: Okay. Give me one second
24 then.

1 THE WITNESS: Okay. I think we lost
2 connection there. Can you hear me?

3 ATTORNEY TRYON: Yes, welcome back.

4 BY ATTORNEY TRYON:

5 Q. I'm not sure. Are you --- I'm not sure --- what
6 was the last thing you heard before you lost connection?

7 A. You scrolled back to the top of the document and
8 I lost you after that. Everything seemed to freeze up
9 on me.

10 Q. Okay. All right.

11 So it's a five page document. And let me
12 scroll through again just generally what's here. The
13 fourth page appears to be blank and then the fifth page
14 is just the signature page. So I'm going to go to the
15 definition section here.

16 The definition of biological says means an
17 individual's physical form as a male or a female based
18 solely on the individual's reproductive biology and
19 genetics at birth.

20 Have I read that correctly?

21 A. Yes.

22 Q. Do you agree that that's a fair definition of
23 biological sex?

24 ATTORNEY HARTNETT: Objection, calls for

1 a legal conclusion. Vague.

2 BY ATTORNEY TRYON:

3 Q. Go ahead.

4 A. I guess so, yeah.

5 Q. And then female says means an individual's whose
6 biological sex determined at birth as female as used in
7 this section women or girls refers to biological
8 females.

9 And is that a fair definition of female?

10 ATTORNEY HARTNETT: Objection, calls for
11 a legal conclusion, vague.

12 THE WITNESS: Yes.

13 BY ATTORNEY TRYON:

14 Q. And then the next definition is male, means an
15 individual's whose biological sex determined at birth is
16 male, as used in this section men or boys refers to
17 biological males.

18 Is that a fair definition of male?

19 ATTORNEY HARTNETT: Objection, again
20 calls for a legal conclusion and is vague.

21 THE WITNESS: I guess so.

22 BY ATTORNEY TRYON:

23 Q. In the --- on page three it has an operative
24 provision. Number two, it says athletic teams or sports

1 designated for females, women or girls shall not be open
2 to students of the male sex where the selection for such
3 teams is based upon competitive skill or the activity
4 involved is a contact sport.

5 Do you believe that that's fair?

6 ATTORNEY HARTNETT: Objection. Calls for
7 a legal conclusion and vague.

8 THE WITNESS: Do I think it's fair?

9 BY ATTORNEY TRYON:

10 Q. That's my question.

11 A. I guess.

12 Q. Now the State claims that this bill is designed
13 to preserve women's sports. Do you agree that that is a
14 reasonable objective for a bill?

15 ATTORNEY HARTNETT: Objection, foundation
16 and calls for a legal conclusion and vague.

17 THE WITNESS: Can you repeat the
18 question, please? I'm not sure I understand it.

19 BY ATTORNEY TRYON:

20 Q. Sure. Again, this bill claims that it is
21 designed to preserve women's sports. Irrespective of
22 whether or not it accomplishes that, I want to know
23 first of all if you think that is a reasonable objective
24 for a law, to preserve women's sports.

1 ATTORNEY HARTNETT: Same objections.

2 THE WITNESS: I don't know how to answer
3 that.

4 BY ATTORNEY TRYON:

5 Q. Okay.

6 Do you know anything about Title 9?

7 A. Vague.

8 Q. Title 9 is one of the claims in the Complaints
9 --- excuse me. Let me rephrase that. The Complaint
10 claims that this law violates Title 9. Are you aware
11 that the Complaint does that?

12 A. I do now.

13 Q. Okay. Fair enough.

14 One of the purposes of Title 9 is to preserve
15 and encourage women's sports. And so my question for
16 you is do you think it is a legitimate purpose of a law
17 to try to preserve and encourage women's sports?

18 ATTORNEY HARTNETT: Objection, foundation
19 and calls for a legal conclusion and vague.

20 THE WITNESS: Once again, I'm not sure
21 how to answer that.

22 BY ATTORNEY TRYON:

23 Q. Okay. Fair enough.

24 Another purpose that this law is designed for,

1 according to legislature, is to protect women's safety,
2 especially in high school, college sports. Would you
3 think that is an appropriate purpose for a law?

4 ATTORNEY HARTNETT: Objection,
5 foundation, calls for a legal conclusion and vague

6 THE WITNESS: I guess. I see what you're
7 saying, but I don't know. I'll leave it at that.

8 BY ATTORNEY TRYON:

9 Q. Okay.

10 Do you believe that this law is designed to
11 preserve women's sports?

12 ATTORNEY HARTNETT: Objection, calls for
13 a legal conclusion and vague.

14 THE WITNESS: Well, I'm no expert on
15 this, but that's what you're saying is a possibility
16 there.

17 BY ATTORNEY TRYON:

18 Q. Okay.

19 Well, you said you had read the lawsuit before
20 it was filed, right? Do I remember that correctly?

21 A. Yes.

22 Q. And that lawsuit challenges that and says that
23 it does not protect women's sports as I interpret the
24 Complaint. Do you know anything that you see in this

1 law that you believe does not preserve women's --- is
2 designed to do something other than to preserve women's
3 sports?

4 ATTORNEY HARTNETT: Objection, vague,
5 calls for speculation, calls for a legal conclusion.

6 THE WITNESS: I'm not quite well versed
7 in all this terminology, but ----.

8 BY ATTORNEY TRYON:

9 Q. But what?

10 A. I don't understand it.

11 Q. Okay.

12 A. I'm no expert in it.

13 Q. I understand. So let me back up just a little
14 bit and ask you --- you already stated your full name.
15 Can you give us your address and your phone number,
16 please?

17 A. My home address?

18 Q. Yes.

19 A. My home address is 12537 Buckhannon Pike, Lost
20 Creek, West Virginia 26385. And I'm sorry, what was
21 the other thing you wanted?

22 Q. Your phone number.

23 A. My cellphone number or my home phone number?

24 Q. How about both? And just to give you a heads

1 up, we would not place --- we would not call you as a
2 general rule. We would try to contact you through your
3 attorneys, but we would want to have this for record, if
4 for some reason you're no longer represented by counsel.

5 A. Understood. Cellphone, my cell is 770-546-5869.
6 My home phone is 304-624-1757.

7 Q. Thank you. Did you graduate from high school?

8 A. Yes, I did.

9 Q. Where did you go to high school?

10 A. In Pennsylvania. I graduated in 1980.

11 Q. And after high school did you have any further
12 education?

13 A. Yes.

14 Q. Okay.

15 What was --- after high school what education
16 did you have?

17 A. I went to nursing school. I got my Associate
18 degree in Fort Pierce, Florida. I got my Bachelor's
19 degree from Miami Shores, Florida. And I also have a
20 doctorate degree in chiropractic I got from Marietta,
21 Georgia.

22 Q. And when did you get your Associate's degree?

23 A. 1995.

24 Q. And when did you get your Bachelor's degree?

1 A. 1998.

2 Q. And finally, your Doctorate?

3 A. 2005.

4 Q. What is your current profession?

5 A. I am practicing as a Registered Nurse.

6 Q. How long have you done that?

7 A. I've been a nurse for 25, 26 years.

8 Q. And where do you currently work?

9 A. I currently work at John Manchin Senior
10 Healthcare Clinic in Fairmont, West Virginia.

11 Q. And you work in the capacity of a Registered
12 Nurse.

13 Is that right?

14 A. I'm sorry?

15 Q. Your current capacity there is as a Registered
16 Nurse?

17 ATTORNEY HARTNETT: Objection, asked and
18 answered.

19 THE WITNESS: Yes.

20 BY ATTORNEY TRYON:

21 Q. Have you ever worked as a chiropractor?

22 A. Yes.

23 Q. When was that?

24 A. 2005 through 2007. And my last stint was part

1 time in 2019, I believe.

2 Q. Did you have your own chiropractic practice or
3 did you work for somebody else?

4 A. I worked for someone else.

5 Q. And who was that?

6 A. Doctor Dan and Doctor Kim Gambino.

7 Q. How many children do you have?

8 A. I have four.

9 Q. So from your current marriage you have three.
10 Is that right?

11 A. Yes.

12 Q. And from your former marriage then you would
13 have one.

14 Is that right?

15 A. That's correct, yes.

16 Q. And what is the name of your ex-wife?

17 A. My ex-wife's name is Heather Lowry.

18 Q. When did you get married to your current wife?

19 A. In 2001. January 22nd to be exact.

20 Q. So your anniversary is coming up.

21 Right?

22 A. It's very close.

23 Q. You don't want to forget that.

24 So let me ask you some questions about BPJ.

1 And as I understand it, when BPJ was born BPJ --- whoops
2 --- oh, you there you are. I just lost my screen for a
3 second. When BPJ was born, BPJ had male body parts.

4 Right?

5 ATTORNEY HARTNETT: Objection, vague.

6 BY ATTORNEY TRYON:

7 Q. You may answer.

8 A. Yes.

9 Q. Is there anything vague about that question to
10 you?

11 ATTORNEY HARTNETT: Objection, vague.

12 And vague as to body parts, but you can answer.

13 THE WITNESS: I'm not sure of the
14 definition of vague.

15 BY ATTORNEY TRYON:

16 Q. Okay.

17 When BPJ was first born you considered BPJ as a
18 male.

19 Right?

20 A. Yes.

21 Q. And as your son.

22 Correct?

23 A. Yes.

24 Q. And now, you know, I understand BPJ had a

1 different birth name.

2 That's true, isn't it?

3 A. Yes.

4 Q. Now, how do you refer to BPJ now? What name do
5 you use for BPJ?

6 A. Her name is B [REDACTED].

7 Q. Okay.

8 And when did you change using BPJ's birth name
9 to B [REDACTED]?

10 A. When she requested it.

11 Q. Do you remember when that was?

12 A. Eight, nine years ago.

13 Q. At some point you noticed something that
14 suggested that BPJ may self identify as a female rather
15 than a male?

16 A. Can you repeat that, please?

17 Q. Yes. At some point did you notice something
18 that suggested that BPJ might self identify as a female
19 rather than a male?

20 A. Yes.

21 Q. Can you tell us, first of all, when that was,
22 the first time you noticed that, and when it was?

23 A. Approximately eight years ago. She liked to do
24 female things.

1 Q. What are those that she liked to do?

2 A. Mannerisms, dress.

3 Q. What mannerisms?

4 A. Talking like a female, acting like a female.

5 Q. What do you mean talking like a female?

6 A. Using pronouns she, her.

7 Q. So BPJ is --- usually when you talk about
8 yourself you don't use pronouns. Can you explain that
9 for me?

10 ATTORNEY HARTNETT: Objection,
11 foundation.

12 THE WITNESS: She preferred to be called
13 B [REDACTED] P [REDACTED] J [REDACTED], not by her birth name.

14 BY ATTORNEY TRYON:

15 Q. Okay.

16 Do you recall when BPJ --- and just to be
17 clear, the reason I'm using the initials BPJ is because
18 that's typically the way we refer to minors in court
19 proceedings. You're free to use whatever names you
20 prefer. I'm not objecting to that. But I just wanted
21 you to understand why I'm using those initials.

22 Okay?

23 A. Yes.

24 Q. And that is also the name that is used in the

1 Court filing, so that's why I'm doing that.

2 Okay?

3 A. Yes.

4 Q. So you said that at some point BPJ decided to
5 use the name B[REDACTED]. And can you tell us how it came
6 about that BPJ selected that name?

7 ATTORNEY HARTNETT: Objection. Calls for
8 speculation.

9 THE WITNESS: I still don't know where
10 that name came from today, where she chose that name.

11 BY ATTORNEY TRYON:

12 Q. And when BPJ chose that name, did you
13 immediately begin using that or were you hesitant, did
14 it take you sometime before you switched over?

15 ATTORNEY HARTNETT: Objection, compound.

16 THE WITNESS: In the beginning I was
17 confused. In the beginning I didn't understand.

18 BY ATTORNEY TRYON:

19 Q. And so my question then is at the beginning were
20 you --- did you not change immediately or did you --- or
21 what, how did that go?

22 ATTORNEY HARTNETT: Objection, compound,
23 vague.

24 THE WITNESS: It took a little while.

1 BY ATTORNEY TRYON:

2 Q. How long is a little while?

3 A. I don't remember. That's been years ago.

4 Q. Did it take a couple of years for you to change
5 what name you used?

6 A. No.

7 Q. Okay.

8 I believe that there are other mannerisms. You
9 said liked to talk like a female. What did you mean
10 that BPJ liked to talk like a female other than using
11 female pronouns?

12 ATTORNEY HARTNETT: Objection, asked and
13 answered.

14 THE WITNESS: Dressing like a female,
15 talking like a female, doing female things, things that
16 girls like to do.

17 BY ATTORNEY TRYON:

18 Q. When you say dressing, can you describe what
19 that means?

20 A. Wearing dresses, wearing female shoes.

21 Q. Anything else?

22 A. Jewelry, makeup.

23 Q. Anything else?

24 A. Not that I can think of right now.

1 Q. Well, let me ask you this question, a little
2 different question. For you what does it mean to be
3 female?

4 ATTORNEY HARTNETT: Objection, vague.

5 THE WITNESS: And I'm no expert, but
6 females at that age like to hang out with other females
7 that age. Do the things that they like to do, play
8 dolls, play house, talk on the phone.

9 BY ATTORNEY TRYON:

10 Q. Anything else?

11 A. No, sir.

12 Q. So if --- let me just see if I understand. Are
13 you saying that if any male likes to play with dolls,
14 talk on the phone, play with other girls and to dress in
15 dresses and wear jewelry or makeup, does that mean that
16 that child is female rather than male?

17 ATTORNEY HARTNETT: Objection, misstates
18 his testimony.

19 ATTORNEY TRYON: I'm not misstating
20 anything.

21 BY ATTORNEY TRYON:

22 Q. I'm asking, sir, if that is what you mean?

23 A. No, I think each individual has a right to
24 choose whatever they want.

1 Q. And if an individual has a right to choose what
2 they want, do they then just declare this is what I want
3 and identify as male or identify as female and is that
4 the determination?

5 ATTORNEY HARTNETT: Objection. Vague,
6 calls for speculation, compound and to the extent it
7 calls for expert opinion.

8 BY ATTORNEY TRYON:

9 Q. Go ahead.

10 A. I really don't know how to answer your question.

11 Q. Fair enough. Let me ask it in a different way
12 to try and clarify. Let me just ask a different
13 question. In your mind what does it mean to be a male?

14 ATTORNEY HARTNETT: Objection, vague.

15 THE WITNESS: I'm sorry. I missed the
16 question.

17 BY ATTORNEY TRYON:

18 Q. Sure. In your mind what does it mean to be
19 male?

20 ATTORNEY HARTNETT: Same objection.

21 THE WITNESS: In my mind what does it
22 mean to be male?

23 BY ATTORNEY TRYON:

24 Q. Yes.

1 A. To be the President of the United States, to be
2 the head of your household.

3 Q. So the President of the United States would have
4 to be male?

5 ATTORNEY HARTNETT: Objection.

6 THE WITNESS: Not necessarily.

7 ATTORNEY HARTNETT: Misstates his
8 testimony.

9 BY ATTORNEY TRYON:

10 Q. Then what do you mean by that, President of the
11 United States? My question was what does it mean for
12 you, what does it mean to be male, and you said it would
13 be the President of the United States.

14 Can you explain that?

15 A. Our history has shown that we've always had a
16 male dominant figure over the United States of America.

17 Q. So maybe a little bit generically can you tell
18 me what in your mind it means to be male?

19 ATTORNEY HARTNETT: Objection, vague and
20 to the extent you're seeking some sort of an expert
21 opinion, but you can answer.

22 THE WITNESS: To be male, in my opinion,
23 to be a father, to be a brother.

24 BY ATTORNEY TRYON:

1 Q. Does it matter what body parts you are born
2 with?

3 ATTORNEY HARTNETT: Objection, vague and
4 to the extent it calls for an expert opinion.

5 THE WITNESS: I don't believe that what
6 you're born with biologically has to do anything with
7 being a father or not.

8 BY ATTORNEY TRYON:

9 Q. Can you explain what you mean by that?

10 A. Well, I'm a male, but I'm a nurse. Women can
11 live together and one can be male and one can be female,
12 but I'm no expert.

13 Q. So you're --- as you said, as a nurse you
14 recognize that a child when they're born their body
15 parts determines whether they are a male or a female?

16 ATTORNEY HARTNETT: Objection, vague,
17 calls for expert opinion, calls for a legal conclusion,
18 calls for speculation.

19 BY ATTORNEY TRYON:

20 Q. Go ahead.

21 A. I would guess because that's what Webster's
22 Dictionary defines male and female or whatever other
23 book that you might look at.

24 Q. Well, your child was born as a male you said.

1 And you now --- I think you also said that you now
2 regard --- I'm not sure you said this, so let me just
3 ask the question. Forgive me if you've already answered
4 it. Your child was born as a male. Do you regard your
5 child BPJ as a female now?

6 A. That's correct.

7 ATTORNEY HARTNETT: Objection, vague, but
8 go ahead.

9 BY ATTORNEY TRYON:

10 Q. What was your answer?

11 A. I said that's correct.

12 Q. And why?

13 A. She is an individual. She has the right to her
14 body. That is her decision and I support her
15 100 percent.

16 Q. So BPJ identifies female. You believe that she
17 is a female?

18 ATTORNEY HARTNETT: Objection, vague.
19 You can answer.

20 THE WITNESS: That's correct.

21 BY ATTORNEY TRYON:

22 Q. Now, looking through the medical records it's
23 unclear when BPJ first identified as a girl. In one
24 place it said that was when BPJ was two years old.

1 Another place it says that when BPJ was in second grade
2 and another says when BPJ was three years old. Do you
3 know which one is accurate?

4 ATTORNEY HARTNETT: Objection. You're
5 reading from documents you're not showing him and
6 compound and incomplete description of the record.

7 BY ATTORNEY TRYON:

8 Q. You can answer if you know.

9 A. I believe it was around three years old. That
10 is an estimate. That has been many years ago.

11 Q. Yeah. Well, I'm asking your specific memory and
12 I'm just trying to jog your memory from what I've read.
13 So you believe it was about three years old.

14 Is that right?

15 A. That's correct.

16 ATTORNEY HARTNETT: David, if we could
17 take a break in the next couple of minutes, that would
18 be appreciated.

19 ATTORNEY TRYON: Okay.

20 Let me just finish up a couple of things
21 if you don't mind.

22 BY ATTORNEY TRYON:

23 Q. So let's take a look at Exhibits 22 and 22R.

24 ATTORNEY TRYON: If the videographer

1 could bring that up.

2 ATTORNEY HARTNETT: Actually, I would
3 request a break before we go into --- don't put it up so
4 we don't want him to be looking over to the break.
5 Before we go into the exhibits I would like to take a
6 break.

7 ATTORNEY TRYON: All right.

8 How long a break do you need?

9 ATTORNEY HARTNETT: Let's say ten
10 minutes.

11 ATTORNEY TRYON: Okay.

12 And if I could just alert the witness
13 that since we're in the middle of a deposition, that
14 you're not permitted to have discussions with your
15 counsel about your deposition. Okay. We will reconvene
16 in ten.

17 VIDEOGRAPHER: Going off the record. The
18 current time reads 10:59 a.m.

19 OFF VIDEOTAPE

20 ---

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 ---

23 ON VIDEOTAPE

24 VIDEOGRAPHER: We are back on the record.

1 The current time reads 11:10:00 a.m.

2 ATTORNEY HARTNETT: Could I just ---
3 while we are back on the record, you had mentioned
4 before the break, Mr. Tryon, that we should not confer
5 with our client. Is there a specific rule or authority
6 in this jurisdiction that you are citing to because ---
7 general rule as you stated.

8 ATTORNEY TRYON: It's my understanding
9 that during the course of a --- that prior to deposition
10 you may consult with your client and prepare them for
11 the deposition, but during a deposition it's just the
12 same as when you're in trial and --- your face is
13 frozen. Can you still hear me? Kathleen?

14 THE WITNESS: She's frozen on my end,
15 too.

16 VIDEOGRAPHER: She is frozen on this end
17 as well.

18 ATTORNEY TRYON: Go off the record.

19 VIDEOGRAPHER: Going off the record. The
20 current time reads 11:11 a.m.

21 OFF VIDEOTAPE

22 ---

23 (HEREUPON, A SHORT BREAK WAS TAKEN.)

24 ---

1 ON VIDEOTAPE

2 VIDEOGRAPHER: We are back on the record.
3 The current time is 11:13 a.m.

4 ATTORNEY TRYON: Counsel, it's my
5 understanding, to answer your question, that when you
6 are taking a deposition it's the same as being at trial.
7 In the middle of a trial deposition you're not permitted
8 to counsel with your client. You can counsel with your
9 client in preparing them for deposition but not during
10 the deposition. That is my understanding.

11 ATTORNEY HARTNETT: Yeah, I think that's
12 not our understanding. And I believe we're probably
13 under Federal common-law, but there's at least a Supreme
14 Court of West Virginia case saying that you can confer
15 during the deposition as long as it's not for an
16 improper purpose, such as, for example, in the middle of
17 a question. So I would appreciate if you could bring
18 some authority to our attention. Otherwise, we would
19 like to be able to check in with our client on breaks.
20 Obviously, for no improper purpose. But like I said we
21 did not speak to him on this break.

22 ATTORNEY TRYON: Okay.

23 Well, that's the understanding that I'm
24 operating under and will continue to operate under until

1 you can provide me some ulterior authority.

2 ATTORNEY HARTNETT: I actually think it's
3 the other way around. I'm unfamiliar with that
4 principle. And other than certain judges I know have
5 idiosyncratic rules at times about that issue, but my
6 understanding is in general you are able to consult with
7 your client on a break. I didn't expect this issue to
8 arise. I believe that the state ex rel Means v. King
9 case from the Supreme Court of Appeals from West
10 Virginia, 1999.

11 ATTORNEY TRYON: Okay.

12 Well, let's move on with the deposition,
13 please.

14 ATTORNEY HARTNETT: Well, okay, but I
15 would say, just to be clear on the record here, that we
16 do intend to confer with our client, to check in with
17 him, again for no improper purpose, on breaks unless
18 directed to some contrary authority because our
19 understanding is there is no such prohibition in this
20 jurisdiction.

21 ATTORNEY TRYON: And I object to you
22 doing that.

23 ATTORNEY HARTNETT: I object to the
24 objection without any authority to do so. And if you

1 direct me to any authority that makes that point in this
2 jurisdiction, we would obviously be happy to review it.
3 I've directed you to authority State ex rel Means.

4 ATTORNEY TRYON: As you well pointed out,
5 that's irrelevant because it is State authority. We are
6 under Federal Court at the moment. Thank you. Let's
7 continue with the deposition, please.

8 BY ATTORNEY TRYON:

9 Q. Mr. Pepper, during the deposition --- during the
10 break did you confer with anyone?

11 A. No.

12 Q. Thank you.

13 ---

14 (Whereupon, Exhibit 22, Birth
15 Certificate, was marked for
16 identification.)

17 (Whereupon, Exhibit 22R, Birth
18 Certificate, was marked for
19 identification.)

20 ---

21 ATTORNEY TRYON: Let me direct you to
22 Exhibits 22 and 22R. So for Counsel's information, 22
23 and 22R are the same document. They've been redacted in
24 different ways. Exhibit 22 came from the school and 22R

1 came from Plaintiff's Counsel. And in other exhibits we
2 have marked where we have gotten documents that includes
3 the --- BPJ's birth name, we have two exhibits and one
4 where we've redacted the name. It has the R attached to
5 it. I intend to primarily use the ones with the R
6 attached to it, but there may be circumstances where I
7 will use the other or someone else may wish to use the
8 other document.

9 BY ATTORNEY TRYON:

10 Q. So I have a very simple questions on these two
11 documents. This is 22.

12 ATTORNEY HARTNETT: Just to be clear, did
13 you apply any redactions to these documents or were they
14 produced with the redactions reflected in Exhibits 22
15 and 22R?

16 ATTORNEY TRYON: Happy to clarify.
17 Exhibit 22, I did not do anything with this document,
18 not redacted at all. These are redactions that came
19 from --- this came from the school. It was redacted in
20 this fashion.

21 And then let me scroll down to 22R. This
22 is the document produced by the Plaintiff and it is
23 redacted in a different fashion.

24 ATTORNEY HARTNETT: And just for the ---

1 I would just object to the --- any unnecessary use of
2 documents or putting documents into the record with our
3 client's birth name, which is a request that we had
4 made. But obviously you can introduce whatever exhibit
5 you want here. We would request that you use the
6 documents without the birth name in the interest of our
7 client's privacy and the other sensitivities we
8 discussed. And we also just would generally hold this,
9 you know, request that the exhibits and the transcript
10 be treated as confidential until we have an opportunity
11 to review them and ensure that any exhibits that should
12 be maintained as confidential are.

13 ATTORNEY TRYON: Yeah. And just on that
14 point, Counsel, we have gotten the --- the court
15 reporter did sign a Confidentiality Agreement --- or
16 excuse me, Protective Order.

17 ATTORNEY HARTNETT: Thank you very much.

18 ATTORNEY TRYON: Yes.

19 BY ATTORNEY TRYON:

20 Q. So Mr. Pepper, I just want to confirm, as far as
21 you know, these two documents, are these correct and
22 accurate?

23 A. From what I can read, yes.

24 Q. Okay.

1 That says 22. And let me show you 22R. That's
2 a little clearer. Is that correct and accurate to the
3 best of your knowledge?

4 A. Yes.

5 Q. Thank you. I have no other questions on these
6 two exhibits.

7 Let me ask you about the term gender dysphoria.
8 Mr. Pepper, when is the first time you heard that term?

9 ATTORNEY HARTNETT: Objection,
10 foundation.

11 ATTORNEY TRYON: Well, let's lay the
12 foundation.

13 BY ATTORNEY TRYON:

14 Q. Have you ever heard the term gender dysphoria
15 before?

16 A. Yes, but I'm not an expert on it.

17 Q. Right. When is the first time you heard it?

18 A. Months ago.

19 Q. So sometime in the past year?

20 ATTORNEY HARTNETT: Objection.

21 THE WITNESS: I don't recall.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 Well, when BPJ first started to use your

1 concept, acting or speaking like a girl, at that time
2 had you heard the term gender dysphoria?

3 ATTORNEY HARTNETT: Objection, vague,
4 mischaracterization of the testimony.

5 THE WITNESS: I heard it through my wife
6 and the doctors' notes.

7 BY ATTORNEY TRYON:

8 Q. Which doctor?

9 A. I don't recall.

10 Q. And tell me about when you first heard the term,
11 what was your understanding of it?

12 ATTORNEY HARTNETT: Objection. I'm
13 sorry, objection, foundation.

14 THE WITNESS: That an individual, what
15 they're born with biologically is not what they
16 represent themselves as, in a roundabout way.

17 BY ATTORNEY TRYON:

18 Q. So then you indicated about three years old is
19 when BPJ started identifying as a female. Is that a
20 fair characterization of your testimony?

21 A. Yes.

22 Q. And at that time you still had not heard the
23 term gender dysphoria.

24 Is that true?

1 A. At that time, no. Yes.

2 Q. So when BPJ started wanting to dress and act
3 like a girl, did you think that it was a phase that BPJ
4 would grow out of?

5 ATTORNEY HARTNETT: Objection, vague.

6 THE WITNESS: I didn't know.

7 BY ATTORNEY TRYON:

8 Q. Did you think that that was a possibility?

9 ATTORNEY HARTNETT: Objection, vague.
10 Calls for speculation.

11 THE WITNESS: Anything is possible.

12 BY ATTORNEY TRYON:

13 Q. At that time did you expect that BPJ would grow
14 out of this phase?

15 ATTORNEY HARTNETT: Objection vague,
16 foundation.

17 THE WITNESS: I did not know.

18 BY ATTORNEY TRYON:

19 Q. So you didn't know one way or the other.
20 Is that right?

21 ATTORNEY HARTNETT: Objection, asked and
22 answered?

23 THE WITNESS: That's correct, I didn't
24 know.

1 BY ATTORNEY TRYON:

2 Q. Did you think it might be a mental health issue?

3 ATTORNEY HARTNETT: Objection, vague.

4 THE WITNESS: I'm no mental health
5 expert, so I can't answer that question.

6 BY ATTORNEY TRYON:

7 Q. Well, as a nurse have you observed people who
8 have mental health issues?

9 ATTORNEY HARTNETT: Objection, vague.

10 THE WITNESS: Everyone has mental health
11 issues in my opinion.

12 BY ATTORNEY TRYON:

13 Q. Well, I agree with you there, but there's some
14 people who have mental health issues that need
15 treatment. Did you believe when your daughter --- when
16 your child BPJ was three years old that BPJ might need
17 some mental health --- some assistance with mental
18 health issues?

19 ATTORNEY HARTNETT: Objection, vague.

20 THE WITNESS: Maybe counseling. I don't
21 know about mental health.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 Counseling, you thought that perhaps BPJ might

1 need mental --- or excuse me, counseling when BPJ was
2 three years old?

3 ATTORNEY HARTNETT: Objection. Vague,
4 asked and answered.

5 THE WITNESS: Sure, to help her try to
6 sort everything out.

7 BY ATTORNEY TRYON:

8 Q. And when BPJ was three years old did you or your
9 wife get mental --- get counseling for BPJ?

10 A. I don't know the dates that she had counseling.
11 I've only been to one session with her. Most of the
12 time I'm at work, so ---.

13 Q. And when was --- which session were you at with
14 BPJ?

15 A. I believe it was last summer in Morgantown. I
16 believe it was Doctor Bunner or therapist. I don't know
17 if that is a doctor or therapist, but ---.

18 Q. Did you have have discussions with BPJ --- let
19 me rephrase that. When BPJ was three years old did you
20 have discussions with your wife about how to handle the
21 situation?

22 ATTORNEY HARTNETT: Objection, based on
23 the marital communications privilege. You can answer as
24 to whether --- I guess the fact of whether you talked to

1 your wife but not --- at any particular time but not the
2 content of the conversation.

3 THE WITNESS: Yes, I've conferred with my
4 wife through all this with her. We both agree on what's
5 best for my child --- our child.

6 BY ATTORNEY TRYON:

7 Q. Did you talk to anyone else either where you
8 work or other friends about the situation with BPJ, that
9 BPJ was identifying as a girl rather than a boy?

10 ATTORNEY HARTNETT: Objection, vague and
11 compound.

12 THE WITNESS: I spoke with one of my
13 colleagues very general but nothing specific. And as
14 far as talking with anyone else, no, I have not talked
15 to anyone else because it's really none of their
16 concern.

17 BY ATTORNEY TRYON:

18 Q. Who is that colleague?

19 A. A nurse --- a nurse friend of mine.

20 Q. Is that nurse ---?

21 A. I can't hear you. You're shotty.

22 Q. Does that nurse friend have a name?

23 A. Yes.

24 ATTORNEY HARTNETT: Objection, sorry

1 argumentative. And I guess you can answer the question
2 and we can seek to keep it confidential, but I just
3 object to the unnecessary questioning into other ---
4 other individuals.

5 BY ATTORNEY TRYON:

6 Q. Go ahead.

7 A. Her name is Missy Harrison.

8 Q. And is she a nurse. I assume it's a she. I
9 don't know. Is Missy Harrison a nurse?

10 A. Yes.

11 Q. And why did you talk to Missy Harrison about
12 BPJ?

13 ATTORNEY HARTNETT: Objection, misstates
14 the testimony.

15 BY ATTORNEY TRYON:

16 Q. Go ahead.

17 A. We --- we work close together.

18 Q. Tell me about your conversation with Missy
19 Harrison.

20 A. I told her that my child has chosen to be a
21 female and that's what she is going to be the rest of
22 her life.

23 Q. How old was BPJ at that time?

24 A. Nine, ten.

1 Q. Before BPJ was nine or ten did you talk to
2 anyone else about BPJ's desire to be identified as a
3 female?

4 A. No.

5 Q. So why not?

6 ATTORNEY HARTNETT: Objection.
7 Argumentative.

8 BY ATTORNEY TRYON:

9 Q. I'm nothing arguing with you, sir. I'm just
10 interested in the situation.

11 ATTORNEY HARTNETT: Objection to the
12 commentary.

13 THE WITNESS: I didn't feel the need to.

14 BY ATTORNEY TRYON:

15 Q. Were you embarrassed about the situation?

16 ATTORNEY HARTNETT: Objection.
17 Foundation.

18 THE WITNESS: Maybe in the beginning.

19 BY ATTORNEY TRYON:

20 Q. So in the beginning. How long did that last
21 where you felt some embarrassment?

22 A. A couple of months.

23 Q. Let me direct your attention to Exhibit 17.

24 ---

1 (Whereupon, Exhibit 17, Gender Support
2 Plan, was marked for identification.)

3 ---

4 BY ATTORNEY TRYON:

5 Q. So this is a document that you received from the
6 school. It's a Gender Support Plan that appears to me
7 was either filled out by either the school or your wife
8 and it has signature pages --- signatures at the end,
9 including --- let me scroll down here. So at the bottom
10 here it has it looks like the name B [REDACTED]. Would that be
11 BPJ's signature or name?

12 ATTORNEY HARTNETT: Objection, compound.

13 THE WITNESS: Yes.

14 BY ATTORNEY TRYON:

15 Q. And let me scroll down so you can see the
16 entirety of the exhibit here. That goes into
17 Exhibit 18. So let me stick with Exhibit 17 and go back
18 up to the top. Have you ever seen this document before?

19 A. I have not.

20 Q. Are you aware that a document was filled out at
21 the school called a Gender Support Plan?

22 A. I'm not aware of it.

23 Q. Okay.

24 So in the very first part here you can see it

1 has this language that says mom very supportive, dad has
2 struggled but coming around. Seeking outside help
3 through church and paternal side of family's
4 help/support. Does that accurately represent the
5 situation for you in 2019, the date of this document?

6 A. I have no idea who wrote that. And no, that's
7 not my --- that's not my recollection of what was going
8 on.

9 Q. Okay.

10 It says dad has struggled. Do you know what
11 that is referring to?

12 A. I do not.

13 Q. It also says seeking outside help through
14 church. Do you know what that's referring to?

15 A. I do not.

16 Q. Did you have any counseling through your church
17 about this situation?

18 ATTORNEY HARTNETT: Objection, vague.
19 Foundation.

20 THE WITNESS: Like I said, I have not
21 seen this document and I don't know what it represents.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 And my question is specifically did you have

1 any counseling through your church about BPJ's
2 situation?

3 ATTORNEY HARTNETT: Objection, vague and
4 foundation.

5 THE WITNESS: Not to my knowledge.

6 BY ATTORNEY TRYON:

7 Q. Well, that answer puzzles me because if you had
8 counseling, you would certainly know about it. So why
9 did you qualify that not to your knowledge?

10 ATTORNEY HARTNETT: Objection.
11 Argumentative.

12 THE WITNESS: I'm not always present with
13 every last detail that has been conducted with my
14 daughter. My wife has been the main support.

15 BY ATTORNEY TRYON:

16 Q. Okay.

17 But you have not sought outside help from your
18 church with respect to BPJ?

19 A. Please repeat that. You are very shotty.

20 Q. When you say shotty, you mean it's breaking up,
21 my voice is breaking?

22 A. Yes, breaking up.

23 Q. Okay.

24 I want to make sure I'm not shotty in some

1 other way.

2 A. No, no.

3 Q. So it says seeking outside help through church.
4 Does that refer to any kind of outside help that you
5 were seeking through the church?

6 A. Not to my knowledge.

7 Q. Okay.

8 Then it says and paternal side of family's
9 help/support. Did you seek any help from your family
10 other than your wife with respect to BPJ's situation?

11 ATTORNEY HARTNETT: Objection. Vague.

12 THE WITNESS: All my family has been
13 supportive of B [REDACTED] decision.

14 BY ATTORNEY TRYON:

15 Q. So who did you discuss your situation with?

16 A. Well, I have two sisters. They are both nurses.

17 Q. And when did you consult with them?

18 ATTORNEY HARTNETT: Objection,
19 foundation.

20 THE WITNESS: Years ago. I don't
21 remember the exact date.

22 BY ATTORNEY TRYON:

23 Q. Now, on the next document B [REDACTED] is comfortable
24 with others knowing her gender identity and transition.

1 Do you know what that --- when you see that --- let me
2 rephrase this. You believe that, quote, B[REDACTED] is
3 comfortable with others knowing her gender identity and
4 transition?

5 A. I would assume, according to what it says there
6 on that line.

7 Q. In your experience, did BPJ believe that's
8 accurate?

9 A. Yes.

10 Q. And is BPJ comfortable letting people know what
11 her original name was, what her birth name was?

12 ATTORNEY HARTNETT: Objection. Calls for
13 speculation.

14 THE WITNESS: She does not even discuss
15 that. That's not even part of who she is now.

16 BY ATTORNEY TRYON:

17 Q. What do BPJ's brothers call BPJ?

18 A. The same, B[REDACTED].

19 ATTORNEY HARTNETT: David, if you're
20 going to ask more questions about this document that the
21 deponent has said that he has not previously seen, could
22 you please let him review the document?

23 ATTORNEY TRYON: Yes. I was trying to do
24 that as the parts --- you want him to see the whole

1 document, is that what you're asking?

2 ATTORNEY HARTNETT: Yes, I would like
3 you ---.

4 ATTORNEY TRYON: I can do that.

5 ATTORNEY HARTNETT: This provider doesn't
6 appear to have a separate exhibit function, but if you
7 would be able to or someone could page down and he can
8 review the entire document before you ask more
9 questions, I would appreciate it.

10 ATTORNEY TRYON: That's a fair request.
11 I'm not sure if I have any more questions. Let me take
12 a look here.

13 BY ATTORNEY TRYON:

14 Q. I have no other questions on this particular
15 document. Would you like to see any more of it, Mr.
16 Pepper?

17 A. No, sir.

18 Q. Okay.

19 Let me direct you next to 11C.

20 VIDEOGRAPHER: Did you say 9C?

21 ATTORNEY TRYON: No, 11C.

22 VIDEOGRAPHER: Okay. Thank you.

23 ATTORNEY TRYON: I'm sorry. This might
24 be the wrong one. 11D is what I'm looking for. Okay.

1 So this is 11D, right. Can you give me control?

2 ---

3 (Whereupon, Exhibit 11D, Progress Notes,
4 was marked for identification.)

5 ---

6 BY ATTORNEY TRYON:

7 Q. Okay.

8 So this is three pages long. So take your time
9 and look through this, if you would like. I just have a
10 couple of questions about this. My first question is
11 going to be if you've ever seen this before?

12 A. I've not seen this before, no.

13 Q. Okay.

14 Well, per your attorney's request, this is
15 page one. Let me know if you feel comfortable moving on
16 to page two. You don't need to read all of it. You can
17 if you'd like.

18 A. Okay.

19 Q. Okay.

20 This is page two.

21 A. Okay.

22 Q. And then here is the third page of that exhibit,
23 which is actually a different document, but it's part of
24 this exhibit.

1 A. Okay.

2 Q. All right.

3 And down further that is the end of that
4 document and goes to document 12. So in this paragraph
5 here it says B[REDACTED] --- with stopping puberty. She wants
6 to know when she can start hormone therapy. So let me
7 first follow up. Did BPJ ever discuss with you about
8 stopping puberty?

9 A. No.

10 Q. All right.

11 And then wants to know about hormone therapy.
12 Was that discussed with you by anyone?

13 ATTORNEY HARTNETT: Objection, vague?

14 THE WITNESS: It was briefly discussed
15 with my wife.

16 BY ATTORNEY TRYON:

17 Q. Did you discuss that --- with your wife?

18 A. Just my wife.

19 COURT REPORTER: I'm sorry, Counsel. I
20 didn't get that question. It cut out.

21 ATTORNEY TRYON: I said that --- I asked
22 if he discussed that with any caregivers or just his
23 wife.

24 THE WITNESS: My answer was just my wife.

1 BY ATTORNEY TRYON:

2 Q. Right. And then it says wants to get breasts
3 and get rid of her penis. Was --- did anybody discuss
4 that with you?

5 ATTORNEY HARTNETT: Objection, vague.

6 THE WITNESS: No.

7 BY ATTORNEY TRYON:

8 Q. Do you have any concerns about that?

9 ATTORNEY HARTNETT: Objection, vague.

10 THE WITNESS: I have no concerns.

11 BY ATTORNEY TRYON:

12 Q. Do you know anything about the process of
13 removing a penis?

14 ATTORNEY HARTNETT: Objection, vague.

15 THE WITNESS: I do not.

16 BY ATTORNEY TRYON:

17 Q. It next says she is experiencing dysphoria with
18 leg hair growth. [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

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[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
BY ATTORNEY TRYON:

Q. Well, let me try it again. Is it your testimony
--- have you ever said man up?

A. No.

Q. Any idea why this might be reported in this
document?

ATTORNEY HARTNETT: Objection, calls for
speculation.

THE WITNESS: I have no idea. I was not
present at the appointment.

BY ATTORNEY TRYON:

Q. Okay.

Next it says mom has a transgender psychologist
in mind, but their office has been closed. Do you know
who that transgender psychologist is or was?

ATTORNEY HARTNETT: Just for the record,
you're moving to the next paragraph?

ATTORNEY TRYON: Yes

THE WITNESS: No, I do not know.

BY ATTORNEY TRYON:

Q. Is there currently a transgender --- strike
that.

1 Is there currently a psychologist that is
2 meeting with or treating BPJ?

3 ATTORNEY HARTNETT: Objection. Compound,
4 vague.

5 THE WITNESS: I believe her psychologist
6 is Bunner. That's my understanding. I could be wrong.
7 You're breaking up again.

8 BY ATTORNEY TRYON:

9 Q. Sorry. Do you know if Bunner is a psychologist?

10 A. I believe so. I'm not a hundred percent.

11 ---

12 (Whereupon, Exhibit 14, WVU Medical
13 Records, was marked for identification.)

14 ---

15 BY ATTORNEY TRYON:

16 Q. Let me direct you next to Exhibit 14, which I
17 might be able to scroll down to. Let me try and move
18 some things around here so I can do this better. There
19 we go. Here is 14. There is a lot of documents
20 contained within this Exhibit 14, so rather than
21 scrolling through all of it right now, just take one
22 document at a time. And so this first page here is a
23 stand-alone document. Can you read it all right?

24 A. Can you increase it to 100 percent, please?

1 Q. Yes.

2 A. Thank you. That's better.

3 ATTORNEY HARTNETT: I would object to the
4 characterization of the document. This appears to be a
5 15 --- let's see here, 17-page document with pagination
6 on the bottom and this is page 2 of a 17-page document.

7 ATTORNEY TRYON: Well, let's see here.

8 ATTORNEY HARTNETT: This appears to be a
9 medical record from a particular visit date.

10 ATTORNEY TRYON: Yeah, thank you for your
11 clarification on that, but I think these are separate
12 entries.

13 ATTORNEY HARTNETT: No. I would just
14 direct your attention to --- it's like a progress note,
15 so it begins on the first page that you have here, which
16 is page two of the document. And then it goes on to say
17 progress note continued at least through page eight.

18 ATTORNEY TRYON: Okay.

19 ATTORNEY HARTNETT: And then the office
20 note appears to continue, although it is a separate part
21 of the record from the progress note. It's the
22 documents portion for the remainder of the document. So
23 it's all the office visit note and then there is a
24 progress note and a document portion.

1 ATTORNEY TRYON: Okay.

2 ATTORNEY HARTNETT: I don't need to argue
3 it. I mean, it would be helpful --- I mean, you can ask
4 the witness whatever you'd like about the familiarity of
5 the document, but I would appreciate him having the
6 chance to review the document before you ask questions
7 about it.

8 BY ATTORNEY TRYON:

9 Q. Well, let me ask you, first of all, have you
10 ever seen this document before?

11 A. No, I have not.

12 COURT REPORTER: Excuse me, Counsel. Can
13 you make it bigger than 100 percent? I can't read it
14 very well.

15 ATTORNEY TRYON: How's that?

16 BY ATTORNEY TRYON:

17 Q. Mr. Pepper, can you read it all right?

18 A. Yes.

19 Q. I don't have any questions for you on this page.

20 A. You say you do have questions?

21 Q. I do not. Let me know when you're ready for the
22 next page.

23 ATTORNEY HARTNETT: Yes, I would just ---
24 I think what might be help for you or someone to page

1 through the full document. Obviously, for him to read
2 it at whatever pace he wants. I'm assuming he's not
3 going to --- he can read everything word for word, but
4 it would be helpful for him to see what this document is
5 in full before you start asking questions about it.

6 ATTORNEY TRYON: Okay. We'll do that.

7 BY ATTORNEY TRYON:

8 Q. Is that okay with you, Mr. Pepper?

9 A. Yes.

10 Q. So here is page --- here's the next page. Tell
11 me if you want me to stop at any particular place. And
12 when I go back and ask you a question, then you'll have
13 plenty of time to read that. Or if you want to look at
14 more portions of it before you answer the question, just
15 let me know.

16 A. Okay.

17 Q. Sorry?

18 VIDEOGRAPHER: I believe he got
19 disconnected again. I don't see him in the video feed.

20 THE WITNESS: Yes. I --- I stated
21 earlier it looks like everybody else was frozen, but the
22 page before this one, I didn't get a real good chance to
23 review it.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 Let me back up again. A lot in this one, so it
3 is --- okay. Let me see if I can scroll back up at the
4 top of the Complaint. Okay. So here is the beginning
5 of that document. [REDACTED]

6 [REDACTED] [REDACTED]
7 [REDACTED] Do you
8 know what that is referring to, Mr. Pepper?

9 A. I do not. I was not at that meeting.

10 Q. Do you believe you've ever used gender as a
11 weapon?

12 ATTORNEY HARTNETT: Objection. Vague.

13 THE WITNESS: Maybe in the beginning.

14 BY ATTORNEY TRYON:

15 Q. How so?

16 A. I would call B [REDACTED] by her birth name.

17 [REDACTED] [REDACTED]

18 [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED] B [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED]

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[REDACTED]

B [REDACTED]

[REDACTED] Do you know who that would be?

ATTORNEY HARTNETT: Objection.

Foundation.

THE WITNESS: No, I don't know. Once again, I was not at the visit.

BY ATTORNEY TRYON:

Q. I understand, but do you know what a gender affirming therapist is?

ATTORNEY HARTNETT: Objection. Vague.

THE WITNESS: No, I do not.

BY ATTORNEY TRYON:

Q. Do you know what a gender therapist is?

ATTORNEY HARTNETT: Objection. Vague.

THE WITNESS: No, I do not.

BY ATTORNEY TRYON:

Q. Okay.

For some reason I can't see you, sir. Is your camera on?

A. My camera?

Q. Yes. There you are. Now I got you, okay.
Thank you.

VIDEOGRAPHER: Counsel, to avoid that

1 problem in the future, you would probably want to pin
2 the witness and then it would always show him instead of
3 the active speakers.

4 ATTORNEY TRYON: Okay.

5 BY ATTORNEY TRYON:

6 Q. Have you had any counseling, sir, with any
7 therapist with respect to this situation?

8 ATTORNEY HARTNETT: Objection. Vague.

9 THE WITNESS: No, sir. I'm working all
10 the time.

11 BY ATTORNEY TRYON:

12 Q. Okay.

13 So BPJ, as I understand it, does have a
14 therapist.

15 Is that right?

16 A. Yes.

17 Q. Do you know how that therapist --- how either
18 you or your wife or your child found that therapist?

19 ATTORNEY HARTNETT: Objection. Compound.

20 THE WITNESS: I'm sure my wife found that
21 therapist. How? I don't know. You would have to ask
22 her.

23 BY ATTORNEY TRYON:

24 Q. Okay.

1 Did you interview that therapist before BPJ
2 started meeting with the therapist?

3 A. Personally, no.

4 Q. When you say personally, is there some other way
5 that you did?

6 A. Telephone.

7 Q. Okay.

8 And which therapist did you talk to?

9 A. I did not talk to any therapist before she went.

10 Q. What therapist did you talk to by phone?

11 A. Oh, that was just a general statement. I wasn't
12 saying --- you know, other than personally, you can talk
13 to them by phone. But I hadn't talked to any therapist
14 prior to her going to therapy. I had just conferred
15 with my wife.

16 Q. Have you since talked to any therapist?

17 A. I took B [REDACTED] to one therapy in Morgantown to see
18 Dr. Bunner and that was --- briefly spoke with a
19 therapist before and after her session.

20 Q. Okay.

21 What happened during that session?

22 ATTORNEY HARTNETT: Objection. Calls for
23 speculation.

24 BY ATTORNEY TRYON:

1 Q. Go ahead. Are you still there? Mr. Pepper?

2 VIDEOGRAPHER: He appears to be frozen I
3 think. And there he disconnected, so hopefully he will
4 be reconnecting.

5 ATTORNEY HARTNETT: The witness is here.

6 BY ATTORNEY TRYON:

7 Q. Okay.

8 Mr. Pepper, can you hear me now?

9 A. Yes.

10 Q. Okay.

11 So my question is what discussions --- my
12 question was, what happened in that session where you
13 attended with the therapist?

14 ATTORNEY HARTNETT: Objection. Misstates
15 the record.

16 BY ATTORNEY TRYON:

17 Q. Okay.

18 Let me back up and make sure I understand. You
19 were in that session with the therapist with your ---
20 with BPJ.

21 Is that correct?

22 A. One, yes.

23 Q. And what happened during that session?

24 ATTORNEY HARTNETT: Objection. Vague.

1

2 BY ATTORNEY TRYON:

3 Q. Can you elaborate, please?

4

5

6 Q. And what was --- did you answer that question or
7 did BPJ answer those questions?

8 A. We both spoke on it briefly before the session.

9 Q. Before the session?

10 A. Yes.

11 Q. When you say both, you mean you and BPJ spoke
12 together? Is that what you are saying?13 A. We were speaking with the therapist and he kind
14 of like was going through laying down guidelines, you
15 know, what they're going to be talking about and things
16 that --- you know, that I wasn't going to be privy to
17 but we could talk about how the session went and what is
18 going to be talked about during that session. So he was
19 kind of laying down guidelines for me because I had
20 never been there before and he was introducing himself
21 and just giving a general rundown.22 Q. And then there was a session where only BPJ and
23 the therapist were present.

24 Is that right?

1 A. Yes, that is correct.

2 Q. And as far as acceptance, are people accepting
3 of BPJ's situation?

4 ATTORNEY HARTNETT: Objection. Vague,
5 calls for speculation.

6 BY ATTORNEY TRYON:

7 Q. It is a general question. If you can answer
8 generally.

9 A. I would say generally, yes.

10 Q. Are there those that are not accepting of BPJ's
11 situation?

12 A. Not to my knowledge.

13 Any chance we could request five minutes to go
14 to the restroom?

15 ATTORNEY TRYON: Yeah. So what we could
16 do, actually, it is after 12 o'clock now. I don't know
17 what people feel about --- let's go off the record if we
18 may.

19 VIDEOGRAPHER: Going off the record ---.

20 ATTORNEY HARTNETT: Sorry. Can we stay
21 on the record for one ---?

22 VIDEOGRAPHER: Yes, sorry.

23 ATTORNEY HARTNETT: I just wanted to
24 direct Counsel's attention to the --- I think it's the

1 Page Act, the Under Armour case in the Northern District
2 of West Virginia. That's from November of 2020. And it
3 is Judge Alloy, I believe, making clear that we are able
4 to confer with our client on breaks of depositions even
5 if it's --- so long as it's not an improper purpose,
6 which, as I stated, it would not be. So our intent is
7 to check in with our client on a break, particularly if
8 there's a more extended one. And I think if you have
9 some contrary authority that disallows that, we would
10 appreciate you bringing it to our attention promptly.

11 ATTORNEY TRYON: Counsel, what do you
12 consider to be a proper purpose?

13 ATTORNEY HARTNETT: Checking in with how
14 he's feeling, is he comfortable. Obviously, we're not
15 going to coach him on any answer to any question, but we
16 can talk to him about potential Redirect. Those are all
17 appropriate topics for a deposition. We will not be
18 sharing any of the exhibits that you forwarded as a
19 courtesy with him before --- use them or don't use them
20 in a deposition.

21 ATTORNEY TRYON: And so you would agree
22 that you're not going to coach him on how to answer
23 questions? Is that your statement?

24 ATTORNEY HARTNETT: I would never coach

1 my witness on how to answer a question. He's been
2 coached, if anything, to tell the truth. And what I'm
3 telling you is out of courtesy we will not review any of
4 the exhibits with him that you sent ahead of time before
5 the deposition. And that it is our right, I believe,
6 under the Rules and under the precedent from this
7 jurisdiction to speak with our client. And as the case
8 sets forth, that it actually helps to advance the truth
9 seeking function here to make sure that our client is
10 comfortable, understands the questions and is able to
11 function properly in the deposition today.

12 ATTORNEY TRYON: Okay.

13 So let's go off the record for a second
14 and then we will come back on and reconfer.

15 VIDEOGRAPHER: Going off the record. The
16 current time is 12:09 p.m.

17 OFF VIDEOTAPE

18 ---

19 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

20 ---

21 ON VIDEOTAPE

22 VIDEOGRAPHER: Back on the record. The
23 current time reads 12:12 p.m.

24 ATTORNEY TRYON: Okay.

1 We're going to take a five-minute break
2 now and then in about an hour we're going to take a
3 lunch break for about a half hour after that. And so we
4 will reconvene in ten minutes, which would be 12:22.

5 ATTORNEY MORGAN: This doesn't have to do
6 with that, but since we're off the record here ---.

7 VIDEOGRAPHER: We are on the record.

8 ATTORNEY MORGAN: Okay.

9 I will wait until we are off.

10 OFF VIDEOTAPE

11 ---

12 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

13 ---

14 VIDEOGRAPHER: Is everyone ready to go
15 off the record?

16 ATTORNEY HARTNETT: I would just we had
17 no further discussion about the issue of talking to our
18 client while we were off the record, but we stand by
19 what we said on the record.

20 VIDEOGRAPHER: Okay.

21 Going off the record. The current time
22 reads 12:12 p.m.

23 ---

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

1 | - - -

2 | ON VIDEOTAPE

3 VIDEOGRAPHER: Back on the record. The
4 current time reads 12:26 p.m.

5 | BY ATTORNEY TRYON:

6	Q.	Okay.

7 Mr. Pepper, I had a question, a few more
8 questions about counseling and therapy. [REDACTED]

9 [REDACTED]

10 [REDACTED] Does that

11 comport with your memory?

12 ATTORNEY HARTNETT: Objection to the
13 characterization of records that you're not showing the
14 witness.

15 | BY ATTORNEY TRYON:

L6 | Q. Go ahead, sir.

17 | A. I have no recollection of it.

18 Q. So do you know when the first therapist
19 appointment was?

20 | A. No, I don't.

21 | Q. Do you have any documents that would show that?

22 | A. I do not.

23 | ATTORNEY HARTNETT: Objection. Vague.

24 | BY ATTORNEY TRYON:

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1 Q. Did you answer?

2 A. I said I do not. I do not.

3 Q. Have you kept any records in your personal files
4 about any therapy or any visits with therapists for BPJ?

5 ATTORNEY HARTNETT: Objection. Vague,
6 compound.

7 THE WITNESS: My wife takes care of all
8 that.

9 BY ATTORNEY TRYON:

10 Q. So would that be a no?

11 A. Yes.

12 Q. Do you know if your wife has --- with respect to
13 BPJ?

14 A. Yes, she takes care of all of the records.

15 Q. Now, it's also my understanding that BPJ
16 received a [REDACTED] Do you know what a
17 [REDACTED] is?

18 A. I do not.

19 Q. Do you know --- are you aware that BPJ received
20 a [REDACTED]

21 A. Yes.

22 Q. From what I read, [REDACTED]
23 [REDACTED] Is that consistent with your memory?

24 ATTORNEY HARTNETT: Objection to the

1 description of documents that you're not showing the
2 witness.

3 BY ATTORNEY TRYON:

4 Q. I didn't say anything about documents. I said
5 that's my understanding. So what is your understanding,
6 sir?

7 ATTORNEY HARTNETT: You said about from
8 the documents you reviewed. But it doesn't matter. I'm
9 just objecting to the extent you're characterizing
10 documents that are not before the witness.

11 THE WITNESS: I don't remember.

12 BY ATTORNEY TRYON:

13 Q. Fair enough.

14 Did you specifically consent to the
15 implantation of the [REDACTED]

16 A. Through my wife.

17 Q. Did anybody tell you what the [REDACTED] does?

18 A. I believe it stops puberty.

19 Q. Were you okay with that?

20 A. Yes.

21 ATTORNEY HARTNETT: Objection.

22 BY ATTORNEY TRYON:

23 Q. So BPJ at some point became interested in
24 sports.

1 Is that right?

2 A. Yes.

3 Q. Do you remember when that was?

4 A. The exact date, no.

5 Q. More or less?

6 A. Years ago.

7 ATTORNEY HARTNETT: Objection.

8 BY ATTORNEY TRYON:

9 Q. And what sports did BPJ initially become
10 interested in?

11 A. Cheerleading.

12 Q. Anything else?

13 A. Cross-country.

14 Q. Anything else?

15 A. Not to my knowledge.

16 Q. Do you remember when BPJ first became interested
17 in cheerleading?

18 A. Many years ago.

19 Q. Okay.

20 So that was before BPJ actually went onto the
21 cheerleading team?

22 A. That's correct.

23 Q. Do you remember what year it was that BPJ joined
24 the cheerleading team?

1 A. I do not.

2 Q. And do you remember when BPJ first got
3 interested in cross-country?

4 A. I would answer years ago, but I'm not sure of
5 the exact date.

6 Q. When did BPJ first start to participate in
7 cross-country in school?

8 A. Years ago. Like I said, I don't remember the
9 exact date.

10 Q. So you don't know when the first time that BPJ
11 was on the cross-country team?

12 A. No, sir, I don't.

13 Q. Do you know if ---?

14 COURT REPORTER: I'm sorry. I didn't get
15 that question.

16 BY ATTORNEY TRYON:

17 Q. I said do you ever go to BPJ's cross-country
18 events?

19 A. Whenever I'm not working I try to, yes.

20 Q. How many of those events did you attend?

21 ATTORNEY HARTNETT: Objection. Vague.

22 THE WITNESS: Half a dozen.

23 BY ATTORNEY TRYON:

24 Q. Do you know when BPJ tried out for

1 cross-country?

2 ATTORNEY HARTNETT: Objection. Vague.

3 THE WITNESS: Three, four --- three to
4 four years ago. I'm not real certain on that.

5 BY ATTORNEY TRYON:

6 Q. So it's your belief that three or four years ago
7 BPJ tried out for cross-country? Is that your
8 testimony?

9 ATTORNEY HARTNETT: Objection.
10 Argumentative. Asked and answered.

11 THE WITNESS: Yes.

12 BY ATTORNEY TRYON:

13 Q. And when is the first event that you went to
14 where BPJ was on the cross-country team?

15 A. I don't remember.

16 Q. What grade was BPJ in when BPJ participated on a
17 cross-country team?

18 ATTORNEY HARTNETT: Could you please
19 repeat that? I'm sorry, I didn't hear the beginning of
20 the question.

21 ATTORNEY TRYON: Can the court reporter
22 read that back, please?

23 COURT REPORTER: And when is the first
24 event that you ---?

1 ATTORNEY HARTNETT: You're on mute.

2 ---

3 (WHEREUPON, COURT REPORTER READS BACK PREVIOUS
4 QUESTION.)

5 ---

6 THE WITNESS: I don't remember. Fifth
7 grade, sixth grade. That's my guess.

8 BY ATTORNEY TRYON:

9 Q. And did BPJ participate in a cross-country team
10 this year?

11 A. Yes.

12 Q. What grade is BPJ in this year?

13 A. 6th or 7th. I don't remember.

14 Q. Okay.

15 Do you know why BPJ chose to be on the
16 cross-country team?

17 A. Do I know?

18 Q. That's my question.

19 A. No, I do not.

20 Q. Did you ever discuss that with BPJ?

21 A. Well, she comes from a family of runners. I
22 mean, my wife and I are runners and ---.

23 Q. And what did BPJ tell you about BPJ's desire to
24 run on a cross-country team?

1 A. Well, it's you against yourself and that's ---
2 she doesn't have --- I mean, you have coaches but you
3 just go do the best you can.

4 Q. Did BPJ want to compete against other runners?

5 A. Did she want to?

6 Q. Yes.

7 A. As far as I know, yes.

8 Q. Was it important for BPJ to try and win in
9 cross-country?

10 ATTORNEY HARTNETT: Objection. Calls for
11 speculation.

12 THE WITNESS: Of course. Everybody wants
13 to win, but I mean ---.

14 BY ATTORNEY TRYON:

15 Q. Okay.

16 Are there coed cross-country teams?

17 ATTORNEY HARTNETT: Objection. Vague,
18 calls for speculation.

19 THE WITNESS: Not to my knowledge.

20 BY ATTORNEY TRYON:

21 Q. What school does BPJ go to?

22 A. Let's see. I just --- slate went blank. Give
23 me a second here. You'll have to give me a minute
24 because my mind just went blank. It's in Harrison

1 County. I'm not sure what the name of the school is.
2 It's the junior high, the middle school.

3 Q. Do you know if the middle school has a boys
4 track cross-country team?

5 A. Yes.

6 Q. And which team did BPJ want to try out for?

7 A. Well, she's a girl, so she's going to be on the
8 girls team.

9 Q. Well, that wasn't my question. My question is,
10 which team did BPJ want to try out for?

11 ATTORNEY HARTNETT: Objection. Asked and
12 answered.

13 THE WITNESS: The girls team.

14 BY ATTORNEY TRYON:

15 Q. Thank you.

16 If there had been a coed team, would BPJ prefer
17 to be on that?

18 ATTORNEY HARTNETT: Objection, calls for
19 speculation.

20 THE WITNESS: You would have to ask her.
21 I don't know the answer to that.

22 BY ATTORNEY TRYON:

23 Q. Are try-outs for the girls cross-country team
24 competitive?

1 ATTORNEY HARTNETT: Objection, vague,
2 calls for speculation, to the extent it's calling for a
3 legal conclusion.

4 THE WITNESS: Yes, all sports is
5 competitive.

6 BY ATTORNEY TRYON:

7 Q. What do you know about --- tell me what you know
8 about cross-country. I'm not a cross-country runner, so
9 I don't know much about it. Can you help me out here?

10 ATTORNEY HARTNETT: Objection. Vague,
11 calls for a narrative.

12 THE WITNESS: I have not run
13 cross-country, but you're basically running over hill
14 and dale, up and down, doesn't matter what the weather
15 is, mud, you're going and you got to be in really good
16 shape.

17 BY ATTORNEY TRYON:

18 Q. Anyone else in your family --- let me rephrase
19 that. Has anyone else in your family run cross-country,
20 your wife or your other kids?

21 A. My wife has not that I know of. My oldest two
22 have.

23 Q. And are there specific tryouts for the
24 cross-country team?

1 A. Yes.

2 Q. Are there some that do not make it onto the
3 team?

4 ATTORNEY HARTNETT: Objection. Vague,
5 calls for speculation.

6 THE WITNESS: Well, if they've only got
7 so many spots, then only the kids that make it, make it.

8 BY ATTORNEY TRYON:

9 Q. Do you know how many classes there are in the
10 middle school where BPJ attends?

11 A. I do not.

12 Q. Do you know if she made the team for this year?

13 A. She did because she went to practice. If you
14 miss so many practices you're not going to be accepted
15 on the team. You have to attend practices.

16 Q. And did she participate in the actual races
17 besides practices?

18 A. I'm sorry. Say that again, please.

19 Q. Did she participate in any cross-country races
20 besides just practices?

21 A. Yes.

22 Q. Were there some people that were not --- did not
23 make it onto the team that you are aware of?

24 A. No, I didn't pay that close attention.

1 Q. Fair enough. Well, you're aware, though, that
2 there is a boys track team --- excuse me, a boys
3 cross-country team at the middle school.

4 Is that right?

5 ATTORNEY HARTNETT: Objection. Asked and
6 answered.

7 THE WITNESS: Yes.

8 BY ATTORNEY TRYON:

9 Q. Are the boys who participate on the
10 cross-country --- the boys cross-country team allowed to
11 compete against the girls on the girls cross-country
12 team?

13 ATTORNEY HARTNETT: Objection. Vague, to
14 the extent it calls for a legal conclusion, calls for
15 speculation.

16 THE WITNESS: That I'm not --- I'm not
17 aware of.

18 BY ATTORNEY TRYON:

19 Q. Okay.

20 Do you think that boys on the boys track team
21 should be allowed to compete against girls on the girls
22 track teams? By track I mean including cross-country.

23 ATTORNEY HARTNETT: Objection. Vague and
24 to the extent it calls for an expert or legal opinion.

1 THE WITNESS: Yeah, I'm not an expert it.

2 BY ATTORNEY TRYON:

3 Q. I'm asking for your opinion, sir.

4 ATTORNEY HARTNETT: Same objections.

5 THE WITNESS: Well, my opinion is she's
6 under --- she's under hormone blockers, so I believe
7 that she does not have the advantage that a person that
8 is a male --- doesn't have the same advantage.

9 BY ATTORNEY TRYON:

10 Q. Yeah. So my question though --- I appreciate
11 that answer, but my question is specifically do you
12 personally think that boys on the boys track team or
13 cross-country team should be allowed to compete against
14 the girls on the girls track or cross-country team?

15 ATTORNEY HARTNETT: Same objection.

16 THE WITNESS: Well, that's the rules.

17 BY ATTORNEY TRYON:

18 Q. I'm sorry, what's the rules?

19 A. That males run with males and females run with
20 females.

21 Q. Do you think that boys --- that males should be
22 allowed to run with females?

23 ATTORNEY HARTNETT: Objection. Same

24 objections and asked and answered.

1 THE WITNESS: I'm not sure how to answer
2 that.

3 BY ATTORNEY TRYON:

4 Q. Well, you just said that's the rules.

5 A. Uh-huh (yes).

6 Q. So I'm asking you, do you think it's fair --- it
7 would be fair for boys on the boys --- or strike that.

8 Let's use your wording. Do you think it would be
9 fair for males to compete on the females' cross-country
10 team?

11 ATTORNEY HARTNETT: Same objections as
12 before and calls for speculation.

13 THE WITNESS: I don't know how to answer
14 that.

15 BY ATTORNEY TRYON:

16 Q. Do you think in general that boys can run faster
17 than girls?

18 ATTORNEY HARTNETT: Objection. Vague.
19 Calls for speculation and to the extent it calls for a
20 legal or expert opinion.

21 THE WITNESS: Boys have more muscle mass,
22 but girls can be thinner. Some of the top elite
23 athletes are like skeletons. So I don't know what the
24 real answer is.

1 BY ATTORNEY TRYON:

2 Q. So you don't know if boys can run faster than
3 girls as a general matter. Is that what you are saying?

4 A. True.

5 Q. At any age would that --- so you don't know
6 about any age?

7 A. I would think it would have to depend on the
8 conditioning, the training, the will, the desire.

9 Q. What about on average, have you ever looked at
10 any statistical --- let me start that over. Have you
11 ever looked at any statistical information about whether
12 or not boys are faster than girls?

13 ATTORNEY HARTNETT: Objection. Vague.

14 THE WITNESS: No, I have not.

15 BY ATTORNEY TRYON:

16 Q. And you said that you believe that since BPJ is
17 on puberty blockers, that BPJ does not have any
18 advantage over girls? Did I say your --- was that
19 accurate, what you said?

20 ATTORNEY HARTNETT: Objection. Vague.

21 THE WITNESS: I guess so.

22 BY ATTORNEY TRYON:

23 Q. Would it surprise you to know that statistically
24 an average 11-year-old biological boy is about

1 20 percent faster than an 11-year-old biological girl in
2 the mile run?

3 ATTORNEY HARTNETT: Objection. Vague,
4 lack of foundation.

5 THE WITNESS: I have no knowledge of it.

6 BY ATTORNEY TRYON:

7 Q. Would it surprise you if there were statistics
8 that said that?

9 ATTORNEY HARTNETT: Objection, asked and
10 answered. Vague and lack of foundation.

11 THE WITNESS: That depends on --- in my
12 opinion, it depends on the training.

13 BY ATTORNEY TRYON:

14 Q. And what do you base that on?

15 A. Well, you're not going to make it to the next
16 level if you don't train every day, like any sports.

17 Q. So if boys or an athlete --- let's just say the
18 top level boys and the top level girls, do you think
19 that boys should be able to switch over and compete
20 against girls in the mile run or cross-country?

21 ATTORNEY HARTNETT: Objection. Vague,
22 compound, calls for speculation and to the extent it
23 calls for a legal or an expert opinion.

24 THE WITNESS: Can you rephrase that? I'm

1 not sure I understand.

2 BY ATTORNEY TRYON:

3 Q. Sure.

4 ATTORNEY TRYON: And Counsel, if you'd
5 like, I can just give you a standing objection to all of
6 my questions on this subject. Would you like to do
7 that?

8 ATTORNEY HARTNETT: No. There are
9 different objections depending on the question.

10 BY ATTORNEY TRYON:

11 Q. Let me move to another question. Do you think
12 that any boy who wants to play on a girl's team such as
13 cross-country should be allowed to do so?

14 ATTORNEY HARTNETT: Objection. Asked and
15 answered, vague, argumentative.

16 THE WITNESS: I think it would have to be
17 based on an individual --- individual case. I don't
18 think you can blanket a general race with a general
19 question.

20 BY ATTORNEY TRYON:

21 Q. So what do you think the criteria should be?

22 ATTORNEY HARTNETT: Objection. Vague,
23 calls for speculation and expert or legal opinion.

24 THE WITNESS: I'm no expert, so I don't

1 --- I couldn't say.

2 BY ATTORNEY TRYON:

3 Q. But you did express an opinion that's an
4 individual to individual case by case. So I'm just
5 asking you, in your opinion, what the basis should be.

6 ATTORNEY HARTNETT: Objection, vague,
7 calls for speculation, expert or legal opinion.

8 THE WITNESS: I'm not an expert. I don't
9 --- I don't think I can answer that.

10 BY ATTORNEY TRYON:

11 Q. So would you object to if one of the boys on the
12 boys cross-country team suddenly switched over and
13 started racing against BPJ?

14 ATTORNEY HARTNETT: Objection, calls for
15 speculation, vague, to the extent it calls for legal or
16 expert opinion.

17 THE WITNESS: Would have to be considered
18 on a case-by-case scenario. I mean, I don't know what
19 the scenario is. I don't know ---.

20 BY ATTORNEY TRYON:

21 Q. So if a boy that was on the cross-country team
22 last year wanted to switchover and participate in a
23 cross-country team this year and compete against BPJ,
24 would you have any objection to that?

1 ATTORNEY HARTNETT: Objection. Asked and
2 answered and the same objections that I had previously
3 and vague.

4 THE WITNESS: And I would answer no.

5 BY ATTORNEY TRYON:

6 Q. You have no objections?

7 A. I have no objections.

8 Q. So if a boy wanted to do that, they would not
9 need to even identify as being a female, it would just
10 be okay with you?

11 ATTORNEY HARTNETT: Objection,
12 argumentative. Calls for speculation.

13 THE WITNESS: Like I say, it would have
14 to be a case-by-case scenario. I can only answer for my
15 family and myself. I can't answer for anyone else.

16 BY ATTORNEY TRYON:

17 Q. So right now, after cross-country, do the kids
18 use any locker rooms?

19 ATTORNEY HARTNETT: Objection. Vague,
20 calls for speculation.

21 THE WITNESS: She gets dressed before and
22 after. She does not use a locker room.

23 BY ATTORNEY TRYON:

24 Q. Are you referring to BPJ?

1 A. Yes.

2 Q. Is there a reason that BPJ doesn't use a locker
3 room?

4 ATTORNEY HARTNETT: Objection. Calls for
5 speculation.

6 THE WITNESS: People don't agree with it.

7 BY ATTORNEY TRYON:

8 Q. I'm sorry. They don't agree --- people don't
9 agree with what?

10 A. With her using the female facilities, so she has
11 her own --- like in school, she has her own separate
12 bathroom she uses.

13 Q. I'm sorry to interrupt you. Go ahead.

14 A. That's all right.

15 Q. What people disagree with it?

16 A. Well, certain people in society that just don't
17 have the same views.

18 Q. Do you know of any of those people?

19 A. Not personally, no. I only hear of them.

20 Q. And do you think BPJ should use the girls locker
21 room?

22 ATTORNEY HARTNETT: Objection. Vague, to
23 the extent that you are calling for a legal or expert
24 opinion.

1 THE WITNESS: Do I feel she needs to use
2 the female facilities?

3 BY ATTORNEY TRYON:

4 Q. Well, my word was do you think that BPJ should
5 use the female facilities?

6 ATTORNEY HARTNETT: Same objections.

7 THE WITNESS: No, because they are
8 uncomfortable and that is why she has her own facilities
9 that she uses.

10 BY ATTORNEY TRYON:

11 Q. Okay.

12 So other people are uncomfortable or because
13 BPJ is uncomfortable or both?

14 ATTORNEY HARTNETT: Objection. Vague,
15 compound.

16 THE WITNESS: BPJ is not uncomfortable.
17 She is very independent and she knows what she wants.
18 She does not --- I think it's society just is not
19 accepting of it.

20 BY ATTORNEY TRYON:

21 Q. So right now BPJ would be comfortable using a
22 women's locker room after cross-country.

23 Is that right?

24 A. I ---.

1 ATTORNEY HARTNETT: Objection. Sorry
2 just objection. Vague.

3 THE WITNESS: I don't know. You would
4 have to ask her.

5 BY ATTORNEY TRYON:

6 Q. Fair enough.

7 Has she ever said anything to you about it?

8 ATTORNEY HARTNETT: Objection. Vague.

9 THE WITNESS: I'm sorry?

10 BY ATTORNEY TRYON:

11 Q. Has BPJ ever said anything to you about that
12 issue?

13 ATTORNEY HARTNETT: Same objection.

14 THE WITNESS: No, we --- the only issue
15 was in school and they gave her a separate bathroom to
16 use.

17 BY ATTORNEY TRYON:

18 Q. And that was okay with you?

19 ATTORNEY HARTNETT: Objection. Vague,
20 asked and answered.

21 THE WITNESS: Yes, because it made her
22 comfortable.

23 BY ATTORNEY TRYON:

24 Q. Can you repeat your answer?

1 A. My answer was yes, it's okay with me. I said if
2 she is comfortable with it, I'm comfortable with it.

3 Q. Okay.

4 And you said that she is comfortable with that.
5 Is that right?

6 A. Yes.

7 Q. And did she tell you that or did you just
8 ascertain that from her conduct?

9 ATTORNEY HARTNETT: Objection. Compound.

10 THE WITNESS: I don't know. You would
11 have to ask her.

12 BY ATTORNEY TRYON:

13 Q. Okay.

14 Do you know if --- so BPJ is familiar with the
15 term gender dysphoria.

16 Right?

17 ATTORNEY HARTNETT: Objection. Calls for
18 speculation.

19 BY ATTORNEY TRYON:

20 Q. Let me back up. Have you heard BPJ use the term
21 gender dysphoria?

22 A. I have not.

23 Q. Have you ever heard your wife use the term
24 gender dysphoria?

1 A. Yes, we have talked about it.

2 Q. Okay.

3 But you have not heard BPJ --- well, you
4 already answered that. Never mind.

5 Do you know how your wife first learned the
6 term gender dysphoria?

7 A. No, I don't.

8 Q. Do you know anything about when the term gender
9 dysphoria was first discussed with any doctor?

10 ATTORNEY HARTNETT: Objection. Vague.

11 THE WITNESS: No, I --- the only visit
12 that I was at was a therapist. I wasn't at any doctors'
13 visit, so I don't know what transpired during those
14 visits.

15 BY ATTORNEY TRYON:

16 Q. As far as you know, was there ever a
17 professional diagnosis of gender dysphoria for BPJ?

18 A. Can you repeat the question, please?

19 Q. As far as you know, was there ever a
20 professional diagnosis of gender dysphoria for BPJ?

21 A. I believe so, yes.

22 Q. Do you know when that was?

23 A. No, I don't know the exact date.

24 Q. Do you know who made that diagnosis?

1 A. I believe it was the doctor from Pittsburgh,
2 UPMC.

3 Q. Do you remember who that is?

4 A. At the moment, right now, I couldn't tell you.
5 If you said the name, I would say, yeah, that's him.

6 Q. Would it be Dr. Montano?

7 A. Yup.

8 Q. Do you know how he made that diagnosis?

9 ATTORNEY HARTNETT: Objection. Vague,
10 also speculation.

11 THE WITNESS: He is the doctor. I guess
12 you would have to ask him.

13 BY ATTORNEY TRYON:

14 Q. Well, fair enough. On the other hand, do you
15 have any information on how he made that diagnosis?

16 A. No. I was not there.

17 Q. Have you ever talked to Dr. Montano about that
18 diagnosis?

19 A. I've never spoken with Dr. Montano.

20 Q. Are you aware of what the treatment is for
21 gender dysphoria?

22 A. Yes.

23 ATTORNEY HARTNETT: Objection.

24 BY ATTORNEY TRYON:

1 Q. And how are you aware of it, of the possible
2 treatments?

3 A. Conferring with my wife.

4 Q. And so is the extent of your knowledge on how to
5 treat gender dysphoria, is that all based on what your
6 wife has told you?

7 A. I guess, yes.

8 Q. Have you done any investigation on that?

9 A. I haven't had time to.

10 Q. So the answer would be, no, you have not done
11 any independent investigation of that?

12 ATTORNEY HARTNETT: Objection. Asked and
13 answered.

14 THE WITNESS: No, just speaking with my
15 wife, who is well educated.

16 BY ATTORNEY TRYON:

17 Q. Fair enough.

18 Now, you said you are always working. Tell me
19 what that means when you say you are too busy for all
20 these things because you're always working.

21 ATTORNEY HARTNETT: Objection.
22 Mischaracterizes his testimony.

23 THE WITNESS: Well, I work 12-hour shifts
24 and sometimes it's three days a week, sometimes it's

1 four, sometimes it's five.

2 BY ATTORNEY TRYON:

3 Q. Were you told that there are multiple possible
4 treatments for gender dysphoria?

5 ATTORNEY HARTNETT: Objection.
6 Foundation.

7 THE WITNESS: No.

8 BY ATTORNEY TRYON:

9 Q. And so as far as you know, what is the treatment
10 --- let me start that over again. Is it your
11 understanding there is only one possible treatment for
12 gender dysphoria?

13 ATTORNEY HARTNETT: Objection. Vague.

14 THE WITNESS: That's not my field of
15 expertise. I don't know.

16 BY ATTORNEY TRYON:

17 Q. I'm asking you if you understand.

18 A. Do I understand?

19 Q. Let me try this a different way. Do you
20 understand if there are treatments for gender dysphoria?

21 A. Yes.

22 Q. And what are those treatments, as you understand
23 it?

24 ATTORNEY HARTNETT: Objection. Vague.

1 THE WITNESS: Counseling, medication,
2 therapy, different therapies.

3 BY ATTORNEY TRYON:

4 Q. Do you know what kind of therapy?

5 A. No, I don't.

6 Q. Have you ever been told that something called
7 watchful waiting and waiting to see if a child desists
8 from gender dysphoria?

9 ATTORNEY HARTNETT: Objection, vague,
10 lack of foundation.

11 THE WITNESS: I'm not familiar with it.

12 BY ATTORNEY TRYON:

13 Q. So is this the first time that you are hearing
14 of that concept?

15 ATTORNEY HARTNETT: Objection. Vague,
16 lack of foundation.

17 THE WITNESS: Yes.

18 BY ATTORNEY TRYON:

19 Q. Dr. Montano said --- did a full assessment of
20 BPJ. And as I would understand it, when you do an
21 assessment you also do a written assessment. And so my
22 question for you is have you ever seen an assessment,
23 something you would call an assessment of BPJ with
24 respect to her gender --- with respect to BPJ's gender

1 dysphoria?

2 ATTORNEY HARTNETT: Objection. Vague and
3 foundation to the preamble to the question.

4 THE WITNESS: I saw the papers that you
5 had on the screen. But other than that, no.

6 BY ATTORNEY TRYON:

7 Q. Have you ever heard of the WPATH standards?

8 A. I'm sorry. Repeat that.

9 Q. Have you ever heard of the WPATH standards.
10 WPATH is an organization and they have certain standards
11 that they go by for gender dysphoria, for example.

12 A. No, sir, I've never heard of it.

13 Q. You mentioned that you --- strike that.

14 You mentioned that BPJ went up to Pittsburgh to
15 see Dr. Montano.

16 Is that right?

17 A. Yes, according to my wife.

18 Q. Okay.

19 Do you know why your wife took BPJ to
20 Pittsburgh as opposed to someplace in West Virginia?

21 A. No, I don't.

22 ATTORNEY TRYON: This would be a
23 convenient time to go to lunch. And I don't think I
24 will be as long with this witness as I anticipated.

1 Let's go off the record for just a moment.

2 VIDEOGRAPHER: Going off the record. The
3 current time is 1:03:00 p.m.

4 OFF VIDEOTAPE

5 ---

6 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

7 ---

8 ON VIDEOTAPE

9 VIDEOGRAPHER: Back on the record at
10 1:04:00 p.m.

11 ATTORNEY TRYON: So let's take a half an
12 hour approximately to go to lunch and come back at about
13 1:35. And just pursuant to our prior discussion with
14 Counsel, Mr. Pepper, I agree you are permitted to talk
15 to your Counsel, but I would want to be clear what I'm
16 agreeing to is that things unrelated to your testimony
17 today are appropriate, but as far as them discussing any
18 questions about --- discussing any questions that I have
19 or may have, that it is my belief that that would be
20 improper and I would object to that. Otherwise, I have
21 no objection to you talking to your counsel about just
22 general issues.

23 ATTORNEY HARTNETT: And I would just,
24 again, direct counsel to the Pajak v. Under Armour case,

1 which I sketches out a different framework of what's
2 appropriate. And as I made clear before and will
3 continue to make clear, we are not going to coach the
4 witness on any topic nor are we going to reveal the
5 contents of any of the exhibits that you provided before
6 the deposition because we --- we'll let you use those as
7 you use them, but I am allowed to confer with my client
8 about substance, including potentially a Redirect
9 Examination if one is necessary.

10 ATTORNEY TRYON: Can you give me a
11 citation on that, please?

12 ATTORNEY HARTNETT: Yeah. It's Pajak v.
13 Under Armour. I have a Westlaw cite, which is 2020
14 Westlaw 6803844. And it's from the Northern District of
15 West Virginia. It's the Civil Action No. 119-CV-160.

16 ATTORNEY TRYON: Do you have a page
17 number?

18 ATTORNEY HARTNETT: It is a four-page
19 Westlaw Decision.

20 ATTORNEY TRYON: Okay. All right.

21 ATTORNEY HARTNETT: But just to be very
22 clear, I mean, right now I think we are all going to
23 take lunch and we're not having a discussion. We are
24 not discussing substance right now, but feel free to

1 read that Decision and we can regroup further as
2 needed.

3 ATTORNEY TRYON: Thank you. Okay. We
4 can go off the record now. See you back in a half an
5 hour.

6 ATTORNEY HARTNETT: Thank you.

7 VIDEOGRAPHER: Going off the record. The
8 current time reads 1:06:00 p.m.

9 OFF VIDEOTAPE

10 ---

11 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

12 ---

13 ON VIDEOTAPE

14 VIDEOGRAPHER: We are back on the record.
15 The current time reads 1:44 p.m.

16 BY ATTORNEY TRYON:

17 Q. Mr. Pepper, let me try and bring you back up
18 here. So at lunchtime did you have an opportunity to
19 talk to your counsel at all?

20 A. Yes.

21 Q. Any discussion about the documents or about your
22 testimony?

23 A. No.

24 ATTORNEY HARTNETT: Objection. Okay.

1 Objection to the extent the authority I sent you,
2 including the EBA Model Rules that are cited therein,
3 say that our conversations are protected by
4 attorney/client privilege.

5 ATTORNEY TRYON: Okay.

6 BY ATTORNEY TRYON:

7 Q. Let me turn your attention to Exhibit 3.

8 ---

9 (Whereupon, Exhibit 3, WVU Medical
10 Records, was marked for identification.)

11 ---

12 BY ATTORNEY TRYON:

13 Q. Okay.

14 This is Exhibit 3. This is a document, a
15 medical record of Bridgeport Pediatrics. I will just go
16 through it very quickly, Mr. Pepper, so you can see what
17 it is.

18 A. Uh-huh (yes).

19 ATTORNEY HARTNETT: It looks like this is
20 a ten-page medical record.

21 ATTORNEY TRYON: Right. I am just seeing
22 if there are other pages, so I will scroll down. Okay.
23 It goes up through there.

24 BY ATTORNEY TRYON:

1 Q. If there is any page you want to look at before
2 I ask you questions, let me know, Mr. Pepper.

3 A. Okay.

4 Q. I'm trying to go back up to the top now. I went
5 too far. Sorry. It's something around here --- the
6 screen --- so we can see it better. Here we go. Okay.
7 So this is a visit to --- of BPJ to Bridgeport
8 Pediatrics. [REDACTED]

9 [REDACTED]
10 [REDACTED] I
11 presume that this was a visit that you were in
12 attendance at.

13 Is that correct?

14 ATTORNEY HARTNETT: Objection to the
15 foundation of the birth name still being used.

16 THE WITNESS: I guess so. I'm her
17 father.

18 BY ATTORNEY TRYON:

19 Q. Okay.

20 And do you remember this visit?

21 A. Vaguely. It's been three years ago.

22 Q. Right. It was 2018.

23 Do you remember the purpose of the visit?

24 [REDACTED]

1 [REDACTED]

2 Q. Okay.

3 Any other --- do you remember anything else
4 about it?

5 A. No, I don't.

6 Q. Let me ask you specifically, do you remember any
7 discussion about BPJ's self identification as a female?

8 A. Repeat that again. I'm not sure I understand
9 what you meant.

10 Q. Sure. When you visited --- so the doctor here
11 is Bradley Mitchell.

12 Do you remember him?

13 A. Yes.

14 Q. And do you remember in your discussion with Dr.
15 Mitchell if there was any discussion about BPJ's self
16 identification as a female?

17 A. I don't remember. That's been three years ago.
18 I don't remember that.

19 Q. Do you remember if BPJ was dressed as a female
20 that day?

21 A. No, I don't remember.

22 Q. Do you know if when you introduced BPJ to the
23 doctor what name he used on that day?

24 A. I'm having trouble hearing you. Say it again,

1 please.

2 Q. Sure. I'll try again. Do you remember what
3 name was used when you introduced BPJ to the doctor that
4 day, what first name?

5 A. I don't. No, sir, I don't.

6 Q. So you don't remember one way or the other if it
7 was BPJ's birth name or the name B [REDACTED], is that a fair
8 statement?

9 A. Yes, I don't recall.

10 Q. Do you remember any diagnosis or anything else
11 from that visit?

12 A. No, I do not.

13 Q. Since it was a well care visit, according to
14 what this has, is there any reason why you would not
15 have brought up to the doctor any concerns you might
16 have about BPJ's identifying as a female and any
17 problems that BPJ was having related to that?

18 ATTORNEY HARTNETT: Objection. Vague.
19 Calls for speculation.

20 THE WITNESS: I don't recall. It's been
21 too long. Too much has transpired.

22 BY ATTORNEY TRYON:

23 Q. Let me go over some doctors' names and see if
24 you recognize them. Amanda Pennington?

1 A. Sounds familiar, but I don't --- I don't
2 remember where she was located.

3 Q. Okay.

4 How about Dr. Montano?

5 A. Montano is in Pittsburgh.

6 Q. Dr. Semashwar?

7 A. I don't have a clue.

8 Q. Mr. Bunner?

9 A. Morgantown.

10 Q. And who is Mr. Bunner?

11 A. I believe a therapist.

12 Q. And refresh my memory, have you had some
13 discussions with Mr. Bunner?

14 A. Very vague before and after her session, the
15 session that I was at.

16 Q. Doctor Bhutt, B-H-U-T-T?

17 A. Uh-uh (no). No, I don't.

18 Q. Dr. Kidd?

19 A. Spell it?

20 Q. K-I-D-D.

21 A. No, I don't.

22 Q. Any other doctors that have treated BPJ that you
23 are aware of?

24 A. No, sir, not to my knowledge.

1 ATTORNEY TRYON: Okay.

2 That may be all the questions that I have
3 at this time. Let me just go off screen for just a
4 moment. You can take down the exhibit. So at this time
5 I have no other questions.

6 And so I have one concern that I would
7 want to express on the record is that we are still going
8 through ongoing document and other discovery, and so to
9 the extent there's additional information or discovery
10 presented by Plaintiff, then we might need to reconvene
11 this deposition. I think it's unlikely, but I would
12 reserve the right to continue the deposition at a future
13 date in that situation.

14 ATTORNEY HARTNETT: And we would object
15 to that. We believe that --- I mean, we're not at the
16 end of the deposition because we have other potential
17 questioners, but there is no other basis for holding
18 open the deposition.

19 ATTORNEY TRYON: I would expect that you
20 would object. But that's our position, so --- that's
21 all I have for this witness at this time.

22 ATTORNEY HARTNETT: Sorry. Is there
23 something specific that you object to not having in your
24 possession right now that you need to question this

1 witness?

2 ATTORNEY TRYON: I noticed that --- one
3 moment. You have indicated in responding to
4 interrogatories from Lainey Armistead that you intend to
5 supplement responses to the Defendant's State of West
6 Virginia First Set of Discovery Requests. So depending
7 on what's in there, that may be something that we may
8 need to reconvene with this witness. And similarly, to
9 the extent that it turns out there's more doctors'
10 records that turn up, then we might need to reconvene
11 with this witness.

12 ATTORNEY HARTNETT: Sorry, what --- I
13 think we're supplementing the Armistead to simply
14 respond to what we've already produced to you. As we've
15 conveyed to you, we've already sought and produced all
16 the medical records. Yesterday you, I believe, sent a
17 follow-up email or your colleague asking some additional
18 questions, none of which indicated they were necessary
19 to resolve before today's deposition. I think the
20 testimony today makes clear that any additional medical
21 records are not something that would require holding
22 this deposition open, and so just on the record I object
23 to any notion of holding this deposition open. Now
24 would be the time to ask questions.

1 ATTORNEY TRYON: I hear you.

2 ATTORNEY HARTNETT: Okay.

3 I believe there will be additional
4 questioners now?

5 ATTORNEY TRYON: Yes. You might be
6 muted.

7 ATTORNEY GREEN: I'll go ahead and go
8 next.

9 ---

10 EXAMINATION

11 ---

12 BY ATTORNEY GREEN:

13 Q. Mr. Pepper, my name is Roberta Green. And we
14 met --- or you heard us all kind of introduce ourselves
15 at the beginning of this process. I'm an attorney here
16 on behalf of West Virginia Secondary School Activities
17 Commission, which is also WVSSAC. Do you know that
18 entity?

19 A. No.

20 Q. All right.

21 I just have a few questions for you.

22 A. Okay.

23 Q. I appreciate your willingness to respond. Do
24 you recall when you first learned about House Bill 3293?

1 A. A couple of years back my wife was talking about
2 it. Like I said, I can't give you the exact date.

3 Q. And do you recall whether at any time prior to
4 hearing about the House bill from your wife, any time
5 prior to that, you notified WVSSAC of BPJ's interest in
6 cross-country?

7 A. I didn't personally, no.

8 Q. Do you recall whether at any time prior to
9 filing the lawsuit or your family filed the lawsuit you
10 notified WVSSAC of BPJ's interest in running
11 cross-country?

12 A. I did not.

13 Q. All right.

14 And do you recall whether any time prior to
15 today, this moment, you notified WVSSAC of BPJ's
16 interest in cross-country?

17 ATTORNEY HARTNETT: Objection to
18 foundation.

19 THE WITNESS: My wife would have that
20 information. I don't --- I don't know that information.
21 I don't have that information.

22 BY ATTORNEY GREEN:

23 Q. All right.

24 And I was asking whether you personally had it.

1 Have you personally had any communications with WVSSAC?

2 A. No.

3 ATTORNEY GREEN: I don't have any other
4 questions. I appreciate your time.

5 THE WITNESS: Thank you.

6 ATTORNEY GREEN: Thank you.

7 ---

8 EXAMINATION

9 ---

10 BY ATTORNEY DENIKER:

11 Q. Mr. Pepper, my name is Susan Deniker. I am
12 counsel for the Harrison County Board of Education and
13 the Harrison County Board of Education's Superintendant
14 Dora Stutler. Thank you for your time today. We
15 appreciate it. I have a few questions for you. Have
16 you been involved in any meetings with any officials,
17 any employees of Harrison County Board of Education
18 relating to BPJ's gender identity and any accommodation
19 of her gender identity in the school system?

20 A. I have not.

21 Q. Okay.

22 Have you had a conversation with any employee
23 of the Harrison County Board of Education at anytime
24 with regard to your daughter's gender identity?

1 A. No.

2 Q. Have you had any communications with anybody
3 employed by the Harrison County Board of Education
4 regarding BPJ's participation in school sports?

5 A. No.

6 Q. I'm going to ask the court reporter to show you
7 one of the State's documents. I'll start with West
8 Virginia Exhibit 17. Mr. Pepper I believe that you saw
9 this document earlier. And we will get it pulled up,
10 but I will represent to you that it is the Gender
11 Support Plan that was done for BPJ through the school
12 system.

13 ATTORNEY DENIKER: And I'm going to ask
14 the videographer quickly, am I able to scroll down so
15 that the witness can see this document in its entirety?

16 VIDEOGRAPHER: Yes. I passed you
17 controls. All you really have to do is click and there
18 you go.

19 BY ATTORNEY DENIKER

20 Q. Mr. Pepper, I would be glad to scroll through
21 this entire document, but I want to confirm whether you
22 were at this meeting and whether you've seen this
23 document before. So I will scroll through it, but those
24 are the questions that I'm going to be asking you.

1 You'll see that this document, Mr. Pepper, on
2 the top right-hand side it says today's date,
3 August 23rd, 2019.

4 Do you see that?

5 A. Yes.

6 Q. We are at the signature page of this document,
7 which is Bates numbered BPJ 011. Is your signature on
8 this document?

9 A. No.

10 Q. Were you in attendance for this meeting?

11 A. No.

12 Q. Have you ever seen this Gender Support Plan,
13 which is dated August 23rd, 2019?

14 A. The lawyer before you had it up.

15 Q. And prior before seeing that today during your
16 deposition, have you seen this Gender Support Plan dated
17 August 23rd, 2019?

18 A. I can't say I have and I can't say that I
19 haven't. I don't recall. I may have seen it briefly,
20 but I don't --- I don't recall.

21 Q. Would you --- do you know whether you would have
22 seen this document at the time that it was created?

23 A. That I'm not sure of. Maybe after. Maybe
24 after, you know, it was all --- yes. I guess your

1 answer is yes.

2 Q. That you think that you likely saw it at the
3 time that the document was executed?

4 A. Yes, it's possible.

5 Q. Okay.

6 And I realize you don't recall whether or not
7 you've seen it, but sitting here today, do you recall
8 any concerns that you had with regard to this document?

9 A. No.

10 Q. And based upon your earlier testimony, is it
11 fair to say that you didn't reach out to anybody at
12 Norwood Elementary School or with the Harrison County
13 schools to address any concerns you had with regard to
14 the Gender Support Plan created for BPJ?

15 A. No, I didn't, but I'm sure my wife did.

16 Q. Do you know what steps specifically that she
17 took?

18 A. No, I don't. You'll have to ask her that.

19 Q. Do you know whether or not she was in agreement
20 with this Gender Support Plan dated August 23rd, 2019?

21 A. I would say by her signature that she was.

22 Q. I'm going to scroll down because the next
23 document I want to show you is marked as West Virginia
24 Exhibit 19.

1 concerns that you had with regard to the Gender Support
2 Plans that were agreed upon between your wife and BPJ in
3 the school system?

4 A. No.

5 Q. And again, did you reach out to anybody in
6 Harrison County schools, including anybody at Bridgeport
7 Middle School, to address any questions or concerns you
8 had about the Gender Support Plan?

9 A. I did not.

10 Q. Your daughter, I understand, is in the 6th grade
11 at Bridgeport Middle School.

12 Is that correct, Mr. Pepper?

13 A. Yes, I believe so. I believe that's the first
14 year that they attend there, the 6th grade.

15 Q. And before that she attended Norwood Elementary
16 School.

17 Is that correct?

18 A. Yes.

19 Q. Did BPJ have a good experience at Norwood
20 Elementary School?

21 ATTORNEY HARTNETT: Objection, vague.

22 THE WITNESS: As far as I know.

23 BY ATTORNEY DENIKER

24 Q. Was it your understanding that --- I know you

1 were not part of these communications, but that your
2 wife and BPJ had communications with Norwood Elementary
3 School to discuss BPJ's gender identification?

4 A. Yes, my wife took care of that.

5 Q. And was it your understanding that the Board of
6 Education and the folks at Norwood Elementary School
7 satisfactorily addressed and accommodated your
8 daughter's needs there?

9 ATTORNEY HARTNETT: Objection. Vague.

10 THE WITNESS: As far as I know, but like
11 I said, my wife took care of all of that. She has all
12 of the specifics, if you will.

13 BY ATTORNEY DENIKER:

14 Q. Did you personally have any concerns with regard
15 to how BPJ was treated as a result of her gender
16 identity while she was a student at Norwood Elementary
17 School?

18 A. No, my wife took care of all of that.

19 Q. And I'm going to ask you the same thing about
20 the limited time that she's been at Bridgeport Middle
21 School. Sitting here today, do you have any concerns
22 with how the employees of the Harrison County Board of
23 Education and the folks at Bridgeport Middle School have
24 addressed your daughter and handled her needs as a

1 student based upon her gender identification?

2 ATTORNEY HARTNETT: Objection. Vague and
3 compound, but you can answer.

4 THE WITNESS: No, I have no problems.

5 BY ATTORNEY DENIKER:

6 Q. I know that you said that you haven't been part
7 of any communications with any Harrison County school
8 officials with regard to your daughter's participation
9 in school sports. It's my understanding that BPJ did
10 participate in the girls cross-country team this year in
11 6th grade.

12 Is that right, Mr. Pepper?

13 A. Yes.

14 Q. And was that a positive experience for her this
15 year?

16 A. Yes.

17 Q. And I know earlier you testified that BPJ had
18 previously participated in cheerleading. It's my
19 understanding that that cheerleading was not a school
20 affiliated activity or sport.

21 Is that accurate, Mr. Pepper?

22 A. That I don't know.

23 Q. It's also my understanding that BPJ would not
24 have had an opportunity to engage in school sports until

1 she would have gotten to middle school this year.

2 Is that consistent with your understanding?

3 ATTORNEY HARTNETT: Objection. Vague.
4 Calls for speculation.

5 THE WITNESS: I'm not aware of it.

6 BY ATTORNEY DENIKER:

7 Q. Other than running for the Bridgeport Middle
8 School girls cross-country team this fall, has your
9 daughter participated in any other school athletic
10 activities?

11 A. No.

12 Q. Mr. Pepper, are you aware of any Harrison County
13 Board of Education rule or policy that would have
14 prohibited your daughter from participating in girls
15 sports?

16 A. I believe so, I don't --- I can't quote the
17 rule, but yes.

18 Q. It's my understanding, Mr. Pepper, that your
19 daughter's litigation is challenging House Bill 3293,
20 which has been talked a little bit about today in your
21 deposition. Is that consistent with your understanding
22 of the litigation?

23 A. Yes.

24 Q. And is it your understanding that that is a

1 state law that was passed by the West Virginia
2 legislature?

3 A. I know now.

4 Q. Did you know that before today's deposition, Mr.
5 Pepper?

6 A. Yes.

7 Q. Are you --- and so I want to go back to my other
8 question and that is are you aware of any Harrison
9 County Board of Education policy or rule that would have
10 limited your --- would have limited BPJ's ability to
11 participate in girls sports through the school system?

12 ATTORNEY HARTNETT: Objection. Vague and
13 to the extent it calls for a legal conclusion.

14 THE WITNESS: Due to her biological
15 birth, yes.

16 BY ATTORNEY DENIKER:

17 Q. And what policy or rule of the Harrison County
18 Board of Education is that, Mr. Pepper?

19 A. That I don't know, but I know it's out there.

20 Q. And who told you that that was out there?

21 A. My wife did.

22 Q. And did she tell you what the nature of that
23 policy was?

24 ATTORNEY HARTNETT: Objection to the

1 extent it's calling for confidential marital
2 communications.

3 BY ATTORNEY DENIKER:

4 Q. Well, Mr. Pepper, I'm aware of the state law
5 that we're talking about today and that I believe is
6 being challenged through the litigation that has been
7 brought by BPJ. And what I want to know is, is there
8 anything that the Harrison County Board of Education did
9 as a separate body to pass a policy or a rule that would
10 have addressed participation in school sports by
11 transgendered student athletes?

12 ATTORNEY HARTNETT: Objection, vague to
13 the extent it calls for a legal conclusion and calls for
14 speculation.

15 THE WITNESS: Can you rephrase it? I'm
16 not sure I understand the gist of it.

17 BY ATTORNEY DENIKER:

18 Q. Sure. And I'm not trying to trick you.

19 ATTORNEY DENIKER: And Kathleen, I will
20 give you a continuing objection to the question.

21 BY ATTORNEY DENIKER:

22 Q. I'm just trying to see if you are aware of the
23 specific policy or rule that was passed by the Harrison
24 County Board of Education, not the West Virginia State

1 Legislature, not any other entity, but was passed by the
2 Harrison County Board of Education that relates to the
3 participation of transgender students in school
4 athletics.

5 ATTORNEY HARTNETT: Same objections.

6 THE WITNESS: And I don't know the answer
7 to that.

8 BY ATTORNEY DENIKER:

9 Q. Have you ever had any communications --- well,
10 let me strike that and ask you this question.

11 Have you ever met Superintendant Dora Stutler?

12 A. Maybe once or twice. I can't recall.

13 Q. Have you ever had any conversations with Dora
14 Stutler about BPJ's participation in school sports?

15 A. I don't recall.

16 Q. Have you ever had any communications with
17 Superintendent Stutler about BPJ's gender identity?

18 A. That I don't recall either. There's been so
19 many people out there. I don't --- I can't remember. I
20 can't recall.

21 Q. Let's talk about Principal Mazza for a minute,
22 Dave Mazza, who is the principal of Bridgeport Middle
23 School. Have you had any communications with Mr. Mazza
24 directly about BPJ's participation in school sports?

1 A. No.

2 Q. Have you had any communications with Mr. Mazza
3 about BPJ's gender identity and any issues that may
4 relate to her gender identity?

5 A. No.

6 Q. Did you have any communications with the coaches
7 of the Bridgeport Middle School cross-country team about
8 BJP's participation on the girls cross-country team?

9 A. I did not, no.

10 Q. Did you have any interactions at all with the
11 coaches of the girls cross-country team during
12 cross-country season this year?

13 A. Just to say hi and, you know, hey, how is
14 everything going. But other than that, no, no
15 specifics.

16 Q. Did you have any concerns with how BPJ was
17 treated by the cross-country coaches this last
18 cross-country season?

19 ATTORNEY HARTNETT: Objection. Vague.

20 THE WITNESS: I did not.

21 BY ATTORNEY DENIKER:

22 Q. Did BPJ express any concerns to you about her
23 treatment by the cross-country coaches at the Bridgeport
24 Middle School?

1 ATTORNEY HARTNETT: Objection, vague.

2 THE WITNESS: Not to my knowledge.

3 BY ATTORNEY DENIKER:

4 Q. Mr. Pepper, did you have any involvement with
5 any members of the West Virginia Legislature with regard
6 to the passage of House Bill 3293?

7 A. No. I don't understand the --- I don't know
8 what you're saying.

9 Q. Well, thank you for telling me that. And I
10 should have started my questioning by telling you to do
11 just that. If I ask you something that you don't
12 understand or you don't hear my question. Please ask
13 me, and I will be glad to rephrase or repeat my
14 question. So thank you, Mr. Pepper, for doing that.

15 Let me ask you maybe the question --- maybe we
16 can break it down a little bit. Did you communicate in
17 any way with any members of the West Virginia
18 Legislature when House Bill 3293 was being considered?

19 A. I don't know how to answer that. I don't know
20 what to say.

21 Q. Did you write any letters to any members of the
22 West Virginia Legislature saying that you oppose House
23 Bill 3293?

24 A. I didn't.

1 Q. Did you contact --- did you call or visit the
2 offices of any member of the West Virginia Legislature
3 to state your opposition to House Bill 3293?

4 A. No, I did not.

5 Q. Did you communicate with anybody in the West
6 Virginia Legislature in any manner with regard to House
7 Bill 3293?

8 A. No.

9 Q. Did you contact Governor Justice or anyone in
10 the Governor's Office with regard to House Bill 3293?

11 A. No. My wife took care of all of that.

12 Q. Mr. Pepper, sitting here today, do you
13 personally have any concerns with regard to how BPJ has
14 been treated by employees of Harrison County Board of
15 Education?

16 ATTORNEY HARTNETT: Objection. Vague and
17 to the extent that it calls for a legal conclusion.

18 THE WITNESS: Say it again. I'm sorry.

19 BY ATTORNEY DENIKER:

20 Q. Sure. Sitting here today, do you personally
21 have any concerns with regard to how BPJ has been
22 treated by any employee of the Harrison County Board of
23 Education?

24 ATTORNEY HARTNETT: Same objection.

1 THE WITNESS: No, I don't.

2 ATTORNEY DENIKER: Mr. Pepper, I don't
3 have any further questions for you at this time. Thank
4 you.

5 THE WITNESS: Thank you.

6 ---

7 EXAMINATION

8 ---

9 BY ATTORNEY MORGAN:

10 Q. Good afternoon. Mr. Pepper, my name is Kelly
11 Morgan. I represent the West Virginia Board of
12 Education and Superintendent Burch in this matter.
13 Please, same as Susan had mentioned to you, if you don't
14 understand my question, please let me know. Otherwise,
15 I'm going to presume that you understood my question if
16 you answer my question.

17 Is that fair?

18 A. Yes.

19 Q. All right.

20 I just have just a few questions here. I don't
21 anticipate being very long here. But let me ask you
22 this. So the West Virginia Board of Education, are you
23 aware who makes up the West Virginia Board of Education?

24 ATTORNEY HARTNETT: Objection. Vague.

1 THE WITNESS: No, I don't.

2 BY ATTORNEY MORGAN:

3 Q. Do you know --- when I say the West Virginia
4 Board of Education, do you know what that entity is?

5 A. No.

6 Q. Do you have any understanding that the West
7 Virginia Board of Education is over the county Boards of
8 Education?

9 ATTORNEY HARTNETT: Objection to the
10 extent it calls for a legal conclusion.

11 THE WITNESS: I don't have knowledge of
12 it, no.

13 BY ATTORNEY MORGAN:

14 Q. Have you had any discussions with anyone from
15 the West Virginia Board of Education at anytime?

16 A. No.

17 Q. Have you ever personally contacted the West
18 Virginia Board of Education about BPJ?

19 A. I have not, no.

20 Q. Have you ever met Superintendant Burch?

21 A. I can't recall, no.

22 Q. Do you believe you have ever had any discussions
23 with him?

24 A. No.

1 Q. Did you ever try to contact his office for any
2 reason?

3 A. I did not, no.

4 Q. Do you have any reason to believe that the West
5 Virginia Board of Education --- and I'm just asking do
6 you personally, as you sit here today, do you have any
7 reason to believe that the West Virginia Board of
8 Education or State Superintendant Burch had any
9 involvement in the passage of House Bill 3293?

10 ATTORNEY HARTNETT: Objection, compound
11 and to the extent it calls for a legal conclusion.

12 THE WITNESS: I can't answer that. I
13 don't know that answer.

14 BY ATTORNEY MORGAN:

15 Q. Well, you can't answer it. Are you saying that
16 you don't have any reason to believe that they had any
17 involvement?

18 ATTORNEY HARTNETT: Same objections.

19 THE WITNESS: I don't know. I don't know
20 the hierarchy of it all.

21 BY ATTORNEY MORGAN:

22 Q. So then would you agree with me that, as you sit
23 here today, there's nothing you can point to, yourself
24 personally as BPJ's father, that you believe that the

1 West Virginia Board of Education or State Superintendant
2 Burch was specifically involved in with regard to this
3 House Bill 3293?

4 ATTORNEY HARTNETT: Objection, compound,
5 vague and to the extent it calls for a legal conclusion.

6 ATTORNEY MORGAN: And I'll give you a
7 continuing objection, but please I'd ask that you not
8 interrupt my questions to the witness.

9 ATTORNEY HARTNETT: I'm not interrupting
10 your questions. I'm giving question-specific
11 objections. I have one additional objection to the
12 prior question.

13 ATTORNEY MORGAN: Okay.

14 And I'm going to say that, honestly,
15 these objections are inappropriate. You're only to be
16 --- there are not to be any speaking objections. You
17 are giving direction to the witness, so I'm going to ask
18 you not to do that.

19 ATTORNEY HARTNETT: I object to that
20 that. I'm sorry. That's a pretty serious charge.
21 They're not inappropriate. Your question was compound.
22 It asked about two different entities. Your question
23 was potentially calling for a legal conclusion. All my
24 objections are well founded and I stated them simply.

1 I'm allowed to object to each question. You can re-ask
2 him and I will say same objections and he can answer.

3 ATTORNEY MORGAN: And I will give you a
4 continuing objection.

5 BY ATTORNEY MORGAN:

6 Q. Mr. Pepper, is there --- given that you've told
7 me that you have --- that you can't think of anything
8 here today, is that fair to say that you don't have
9 anything specific that you can point to that you believe
10 that the West Virginia Board of Education was involved
11 in the passage of the House Bill 3293?

12 ATTORNEY HARTNETT: Same objections and
13 misstates his testimony.

14 THE WITNESS: Like I said, I don't know
15 how --- I don't know the hierarchy. I don't know the
16 chain of command, if they were involved or not. I
17 cannot say personally, no.

18 BY ATTORNEY MORGAN:

19 Q. And so ---.

20 A. I do not know.

21 Q. I'm sorry to interrupt you. So then there's
22 nothing that you can point to specifically.

23 Is that correct?

24 ATTORNEY HARTNETT: Same objections and

1 asked and answered.

2 THE WITNESS: I can't point to anything.
3 I don't know if they created that bill or not. That's
4 --- that's not my cup of tea, you know. I'm not a
5 lawyer.

6 BY ATTORNEY MORGAN:

7 Q. Do you personally have any concerns as to how
8 BPJ has been treated by the West Virginia Board of
9 Education?

10 ATTORNEY HARTNETT: Objection. Vague and
11 to the extent it calls for a legal conclusion. You can
12 answer.

13 THE WITNESS: I have --- I personally
14 don't have any problems, no.

15 BY ATTORNEY MORGAN:

16 Q. Okay.

17 Is that the same for State Superintendant
18 Burch?

19 ATTORNEY HARTNETT: Same objection.

20 THE WITNESS: I have no problems with
21 him. But like I said, I don't know if they were
22 involved with creating that law or passing that bill. I
23 don't know. That's --- that's beyond my realm.

24 BY ATTORNEY MORGAN:

1 Q. And let me clarify. My question as to State
2 Superintendant Burch was do you have any concerns about
3 how BPJ was treated by State Superintendant Burch?

4 ATTORNEY HARTNETT: Same objections.

5 THE WITNESS: I don't have anything
6 specific.

7 BY ATTORNEY MORGAN:

8 Q. We talked a lot about today this House Bill 3293
9 and I know you were asked some questions about the
10 definitions. Let me ask you, do you ever recall a time
11 you actually sitting down and reading the full House
12 Bill 3293?

13 A. No.

14 ATTORNEY MORGAN: All right. Thank you.
15 Those are all the questions I have for you.

16 THE WITNESS: Thank you.

17 ---

18 EXAMINATION

19 ---

20 BY ATTORNEY DUCAR:

21 Q. Good afternoon, Mr. Pepper. I'm Timothy Ducar
22 and I represent Lainey Armistead. When did BPJ start
23 showing an interest in athletics?

24 A. I can't recall that.

1 Q. Can you estimate?

2 A. What athlete --- what specific entity are we
3 speaking of?

4 Q. Any of them?

5 A. She was interested in sports from a very young
6 age. All my children were.

7 Q. Can you estimate how old that was?

8 A. Two, three, four.

9 Q. And what was she interested in?

10 A. Playing ball.

11 Q. Did BPJ do anything else that evidenced her
12 interest in athletics at a very early age?

13 ATTORNEY HARTNETT: Objection. Vague.

14 THE WITNESS: Just normal kid, likes to
15 run around like any other kid.

16 BY ATTORNEY DUCAR:

17 Q. Did you play ball with BPJ?

18 A. Sure.

19 Q. What type of ball would you play with when you
20 played with BPJ, like what type of sport?

21 A. Passing the ball, just throwing the ball.

22 Q. And can you estimate when --- when that started?

23 A. Well, we do that with my kids at a young age. I
24 was very involved with my children from a young age.

1 Q. From a young age did you encourage BPJ to
2 participate in organized sports?

3 A. No.

4 Q. From a young age did you encourage BPJ to
5 participate in any sports?

6 A. No.

7 Q. So BPJ just decided to like sports on BPJ's own.
8 Is that a fair statement?

9 ATTORNEY HARTNETT: Objection to the
10 extent it calls for speculation.

11 ATTORNEY DUCAR: I'm actually asking what
12 his experience is. I'm not really asking him to
13 speculate about anything.

14 ATTORNEY HARTNETT: You asked whether BPJ
15 decided to like sports on BPJ's own, which is asking for
16 BPJ's opinion, but you can ask the question.

17 BY ATTORNEY DUCAR:

18 Q. Okay.

19 A. Sure. All my kids like sports because I like
20 sports. They kind of follow what their mother and
21 father do.

22 Q. And did you encourage them to participate in
23 sports, all of your children?

24 ATTORNEY HARTNETT: Objection.

1 THE WITNESS: If they wanted to.

2 BY ATTORNEY DUCAR:

3 Q. What was the first sport BPJ competed in?

4 ATTORNEY HARTNETT: Objection. Vague.

5 THE WITNESS: Cheerleading.

6 BY ATTORNEY DUCAR:

7 Q. And when was that?

8 A. Three years ago, yeah, 2016. Maybe five, six
9 years ago. I'm not sure of the exact date.

10 Q. BPJ participated in cheerleading first. What
11 other organized sports has BPJ participated in?

12 A. Cross-country.

13 Q. Anything else?

14 A. No.

15 Q. Has BPJ ever participated in a boys
16 cross-country team?

17 A. No.

18 Q. Has BPJ ever participated in a boys track and
19 field team?

20 A. No.

21 Q. Has BPJ ever participated in any organized
22 sports that was a boys team?

23 A. No.

24 Q. Who decided that BPJ was going to try out for

1 the track team at her current school?

2 A. She did, of course.

3 Q. Did you have a hand in that?

4 ATTORNEY HARTNETT: Objection. Vague.

5 THE WITNESS: No. I'm sure my wife did.

6 BY ATTORNEY DUCAR:

7 Q. So I guess to clarify, you did not assist BPJ in
8 deciding to try out for the track and field team.

9 Is that a fair statement?

10 A. Yes.

11 Q. We are here today because BPJ, in part, wants to
12 be a different gender than her biological birth gender.
13 How did you become aware of BPJ's interest in becoming a
14 different gender?

15 ATTORNEY HARTNETT: Objection to the
16 preamble to your question and to the term your --- as
17 vague to the terms you're using.

18 THE WITNESS: Through my wife and through

19 B [REDACTED]

20 BY ATTORNEY DUCAR:

21 Q. When did that first happen?

22 ATTORNEY HARTNETT: Objection. Vague.

23 THE WITNESS: Years ago.

24 BY ATTORNEY DUCAR:

1 Q. Can you estimate how many years ago it was that
2 either your wife or BPJ gave you an indication that BPJ
3 was interested in becoming a different gender?

4 ATTORNEY HARTNETT: Objection.
5 Foundation and vague.

6 THE WITNESS: Approximately seven, eight
7 years ago.

8 BY ATTORNEY DUCAR:

9 Q. During this seven or eight years was BPJ
10 consistent in desiring to change BPJ's gender?

11 ATTORNEY HARTNETT: Objection to the
12 foundation and the terms and their vagueness.

13 THE WITNESS: Yes, 100 percent.

14 BY ATTORNEY DUCAR:

15 Q. Who was the first person who talked to you about
16 BPJ's desire to change her gender?

17 ATTORNEY HARTNETT: Objection to the
18 terminology being used as vague and lacking foundation.

19 THE WITNESS: I would say my wife.

20 BY ATTORNEY DUCAR:

21 Q. When was that conversation?

22 A. It's been too many years. I couldn't tell you.

23 Q. Can you estimate?

24 A. Seven, eight, I don't know.

1 Q. That conversation was between you and your wife.
2 Is that what you testified?

3 A. Yes.

4 Q. Can you estimate how many times you have talked
5 to your wife about BPJ's desire to change her gender?

6 ATTORNEY HARTNETT: Objection to the
7 terminology you're using in terms of vagueness and
8 foundation. Also we have asserted the marital
9 communications privilege. To the extent you're asking
10 about generalized topics or numbers of conversations,
11 that's one thing, but I've instructed the witness not to
12 divulge the specifics of confidential conversations.

13 ATTORNEY DUCAR: And Ms. Hartnett, I
14 didn't ask him that. And why don't you explain to me
15 what's vague about my question so ---.

16 ATTORNEY HARTNETT: You keep saying the
17 words changed her gender. That's not a recognized
18 concept. That's not an appropriate terminology. That's
19 what I find to be vague.

20 ATTORNEY DUCAR: Do you have a different
21 suggestion on how I would explain what I'm trying to
22 explain, which is somebody who wants to change their
23 gender?

24 ATTORNEY HARTNETT: There's various

1 terminology that we can --- I'm happy to discuss it off
2 the record or on the record, but transition would be ---
3 socially transitioned would be one word that you could
4 use.

5 ATTORNEY DUCAR: That would be great.
6 Thank you.

7 ATTORNEY HARTNETT: Thank you for asking.
8 BY ATTORNEY DUCAR:

9 Q. Over the years can you estimate how many times
10 you have talked to your wife about BPJ's desire to
11 socially transition to a female?

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

13 Q. Would you estimate it to be two, five, more,
14 less?

15 A. Probably more.

16 Q. Can you give me any idea?

17 A. No. It had been an ongoing thing.

18 Q. When was the first time that you actually
19 remember talking to BPJ herself about her desire to
20 socially transition?

21 A. I couldn't tell you.

22 Q. Can you estimate?

23 A. Seven, eight years ago.

24 Q. Do you recall what was talked about?

1 A. I do not.

2 Q. Can you estimate how many times you have talked
3 to BPJ in the last seven or eight years with regards to
4 PBJ's desire to socially transition?

5 A. I would say less than a handful because she
6 speaks mainly with her mom.

7 Q. Well, how do you define less than a handful?

8 A. Five.

9 Q. Earlier HB 3293 was talked about when the State
10 was questioning you. One of the provisions indicates
11 that sports teams for biological girls are not open to
12 biological males and you were asked if that was fair and
13 your answer was I guess. Why do you think that's fair?

14 ATTORNEY HARTNETT: Objection. Misstates
15 his testimony and the same objections that I earlier
16 made.

17 THE WITNESS: I'm not sure I understand.
18 I'm not sure I understand the question of what's fair.

19 BY ATTORNEY DUCAR:

20 Q. Do you have a basic idea of what is fair, what's
21 right and wrong?

22 ATTORNEY HARTNETT: Objection. Compound.

23 ATTORNEY DUCAR: I'll withdraw that
24 question.

1 BY ATTORNEY DUCAR:

2 Q. What I'm trying to ask is you had earlier
3 testified that you thought or at least you guessed that
4 it was fair that biological males do not compete on
5 biological girls sports teams. And I wanted to know ---
6 tell me why you think that's fair.

7 ATTORNEY HARTNETT: Objection, misstates
8 his testimony and the earlier objections.

9 THE WITNESS: Females have tried out for
10 male teams. Football. I don't know.

11 BY ATTORNEY DUCAR:

12 Q. I'm talking about males on female teams.

13 A. I'm not sure I understand the definition of
14 male.

15 Q. Well, I guess my question is do you think it's
16 fair that a biological male can compete on a biological
17 girl's sports team?

18 ATTORNEY HARTNETT: Same objections and
19 asked and answered.

20 BY ATTORNEY DUCAR:

21 Q. I believe you said that you think that it is
22 fair that they not be able to do so and I wanted to know
23 why you think that's fair.

24 ATTORNEY HARTNETT: Same objections.

1 THE WITNESS: It's a case by case --- my
2 opinion is it's a case-by-case decision.

3 BY ATTORNEY DUCAR:

4 Q. Can you give me an example of when it would be
5 fair for a biological male to compete on a biological
6 female's sports team?

7 ATTORNEY HARTNETT: Objection to the
8 terminology as vague and lacking, foundation, also calls
9 for speculation and to the extent you're calling for a
10 legal conclusion.

11 THE WITNESS: Well, in the case of B [REDACTED],
12 she has not gone through puberty, so I guess that would
13 be a case.

14 BY ATTORNEY DUCAR:

15 Q. Okay.

16 Puberty. Are there any other factors that you
17 can put your hands on or put your finger on?

18 ATTORNEY HARTNETT: Objection. Sorry,
19 vague to the extent it calls for a legal or expert
20 opinion.

21 THE WITNESS: I'm not a medical doctor.
22 I can't answer that. That's not my expertise.

23 BY ATTORNEY DUCAR:

24 Q. Well, that's true. I'm not asking for your

1 expertise or for medical expertise. Earlier you said
2 that BPJ had female mannerisms, including like ---
3 including talking like a female. Can you describe what
4 it means to talk like a female?

5 ATTORNEY HARTNETT: Objection. I would
6 just note the prior testimony speaks for itself, but you
7 can answer if you can.

8 THE WITNESS: I don't know that I can.

9 BY ATTORNEY DUCAR:

10 Q. Would it be the tone of voice? Would it be the
11 type of words used? Would it be actions during the
12 discussion? Can you narrow it down at all?

13 ATTORNEY HARTNETT: Objection, compound,
14 calls for speculation.

15 THE WITNESS: I don't know how to answer
16 that.

17 BY ATTORNEY DUCAR:

18 Q. You also said that BPJ acted like a female
19 because she did --- BPJ did things that girls like to
20 do. What are things that girls like to do?

21 ATTORNEY HARTNETT: I just would object
22 to the extent that it doesn't fully capture his
23 testimony, but --- and vague.

24 THE WITNESS: Paint her fingernails.

1 BY ATTORNEY DUCAR:

2 Q. Anything else?

3 A. Put her hair up. I mean I don't know, things of
4 that nature.

5 Q. When was the first time she painted her
6 fingernails?

7 A. I don't recall.

8 Q. When was the first time BPJ put BPJ's hair up?

9 A. I don't know.

10 Q. Can you estimate?

11 A. No, I can't. I can't even estimate. I don't
12 know.

13 Q. Earlier you described female attire as including
14 dresses, female shoes, jewelry, makeup. In your view,
15 can an individual be female without liking female shoes,
16 jewelry or makeup?

17 ATTORNEY HARTNETT: I would just object
18 --- sorry, just to the extent that the record speaks for
19 itself on his full prior testimony, but you can answer.

20 THE WITNESS: I guess so.

21 BY ATTORNEY DUCAR:

22 Q. Earlier you testified that you considered BPJ to
23 be male when BPJ was born. Why?

24 ATTORNEY HARTNETT: Objection. Misstates

1 the testimony.

2 THE WITNESS: Well, that is what the
3 doctor said.

4 BY ATTORNEY DUCAR:

5 Q. Is there any other reason?

6 ATTORNEY HARTNETT: Same objection.

7 THE WITNESS: No.

8 BY ATTORNEY DUCAR:

9 Q. It didn't have anything to do with the genitalia
10 of the baby?

11 ATTORNEY HARTNETT: Objection.

12 THE WITNESS: Well, that's how they
13 determine, I guess.

14 BY ATTORNEY DUCAR:

15 Q. Earlier you testified that being a male means
16 being President of the United States or head of your
17 household. Does being male have anything to do with the
18 body that you're born with?

19 ATTORNEY HARTNETT: Objection, misstates
20 his testimony and to the extent it's seeking any expert
21 or legal opinion.

22 THE WITNESS: I guess.

23 BY ATTORNEY DUCAR:

24 Q. I'm sorry. I missed your answer?

1 A. I said, yes, I guess, but I'm no expert.

2 Q. When did BPJ start wearing girls clothing at
3 home?

4 A. I couldn't give you a year.

5 Q. Did BPJ ask anybody prior to beginning to dress
6 up in women's clothing?

7 ATTORNEY HARTNETT: Objection. Vague.
8 Calls for speculation.

9 THE WITNESS: My wife could give you a
10 better answer on that. I don't know.

11 BY ATTORNEY DUCAR:

12 Q. When did BPJ start presenting as a girl in other
13 ways at home?

14 ATTORNEY HARTNETT: Objection. Vague.

15 THE WITNESS: Six, seven, eight years. I
16 really don't know.

17 BY ATTORNEY DUCAR:

18 Q. Do you know if BPJ received any encouragement to
19 do that from somebody?

20 ATTORNEY HARTNETT: Objection, vague.

21 THE WITNESS: No, I don't know the answer
22 to that.

23 BY ATTORNEY DUCAR:

24 Q. Has BPJ consistently presented as a girl at home

1 since BPJ first began doing so?

2 A. Yes.

3 Q. When did BPJ start wearing girl's clothing at
4 school?

5 A. I can't --- I couldn't tell you. My wife could
6 tell you.

7 Q. Did BPJ ask you about wearing girl's clothing at
8 school prior to doing so?

9 A. No.

10 Q. Did it surprise you that BPJ began wearing
11 women's clothing or girl's clothing in school without
12 asking you?

13 ATTORNEY HARTNETT: Objection.

14 Argumentative.

15 THE WITNESS: At first maybe, but that
16 was her choice.

17 BY ATTORNEY DUCAR:

18 Q. Do you know if BPJ asked your wife if BPJ could
19 wear girl's clothing to school prior to doing so?

20 A. I'm sure she did, but I don't know personally.

21 Q. Do you know whether BPJ has ever asked people at
22 school to refer to her as a female or to use the
23 pronouns she or her?

24 A. Yes.

1 Q. Do you know who BPJ asked?

2 A. I believe it was the principal and also the
3 counselors there.

4 Q. Of what school?

5 A. Norwood Elementary.

6 Q. Anybody else?

7 A. Not to my knowledge, no.

8 Q. Has BPJ asked her friends at school to refer to
9 her as a female or to use pronouns she or her?

10 A. You would have to ask her that. I don't know.

11 Q. When did BPJ first start presenting herself as a
12 girl at school?

13 A. I don't know personally. That would be a good
14 question to ask my wife.

15 Q. After BPJ first started presenting as a girl at
16 school, has she done so consistently since then?

17 A. I'm sorry. Say it again, please, the question.

18 Q. After BPJ first presented as a girl at school,
19 has she consistently done so since then?

20 A. Yes.

21 Q. How do you feel about BPJ's transition?

22 A. I support her 100 percent.

23 ATTORNEY HARTNETT: Objection.

24 THE WITNESS: My love for her is

1 unconditional.

2 BY ATTORNEY DUCAR:

3 Q. Do you think BPJ's desire to transition is
4 permanent?

5 ATTORNEY HARTNETT: Objection to the
6 extent that it calls for any kind of expert opinion.

7 THE WITNESS: I believe so, but you would
8 be better off to ask her.

9 BY ATTORNEY DUCAR:

10 Q. Has BPJ's desire to transition caused any stress
11 for you?

12 A. In the beginning maybe a little.

13 Q. Has BPJ's desire to transition caused any stress
14 upon anybody else in your family?

15 A. Not that I know of.

16 Q. Does that also include BPJ?

17 A. Not quite sure --- I'm not following. Say that
18 again. Including BPJ how?

19 Q. Do you think BPJ's desire to transition is
20 causing BPJ anxiety?

21 ATTORNEY HARTNETT: Objection. Vague,
22 calls for speculation.

23 THE WITNESS: It is possible, but I'm no
24 --- I'm no expert in that field. I don't know. I'm not

1 a doctor.

2 BY ATTORNEY DUCAR:

3 Q. You haven't talked to BPJ about anxiety issues.
4 Correct?

5 A. That's correct.

6 Q. Has the publicity that has come with this
7 lawsuit caused any stressors within your family?

8 ATTORNEY HARTNETT: Objection, vague.

9 THE WITNESS: No.

10 BY ATTORNEY DUCAR:

11 Q. Does this lawsuit cause any stressors to the
12 people within your family?

13 ATTORNEY HARTNETT: Same objection.

14 THE WITNESS: Sure. Talking to
15 strangers all day long, absolutely.

16 BY ATTORNEY DUCAR:

17 Q. So depositions are stressful. You just
18 indicated this deposition is stressful. Is this lawsuit
19 stressful on anyone in your family other than the fact
20 that everyone's deposition has to be taken?

21 ATTORNEY HARTNETT: Objection, misstates
22 the testimony. Vague.

23 THE WITNESS: I can only answer for
24 myself.

1 BY ATTORNEY DUCAR:

2 Q. All right.

3 Please do so.

4 A. Well, I'm sitting in a chair for six hours. I'm
5 used to being on my feet for 12 hours a day, so yeah,
6 this is pretty uncomfortable, unnatural for me.

7 Q. Does this lawsuit, other than the deposition,
8 cause you any other stressors?

9 ATTORNEY HARTNETT: Objection.

10 THE WITNESS: No, and I won't let it.

11 BY ATTORNEY DUCAR:

12 Q. Has your wife told you how she feels about BPJ's
13 desire to transition?

14 ATTORNEY HARTNETT: Objection. Just back
15 to the marital communications privilege. I would
16 instruct the witness not to discuss his confidential
17 communications with his spouse.

18 ATTORNEY DUCAR: Okay.

19 I will withdraw the question.

20 BY ATTORNEY DUCAR:

21 Q. Mr. Pepper, how does this lawsuit affect ---
22 from a stressor situation, is this causing --- let me
23 rephrase the question. Does this lawsuit cause your
24 wife ---?

1 A. You were breaking up there. I'm sorry, I didn't
2 hear you towards the end.

3 Q. Does this lawsuit cause your wife any stressors?

4 ATTORNEY HARTNETT: Objection, vague.
5 Calls for speculation.

6 THE WITNESS: Sure, she's been stressed
7 out.

8 BY ATTORNEY DUCAR:

9 Q. Can you give me an example of how it's stressing
10 her out?

11 A. Well, no. You'd have to ask her that.

12 Q. Do you support BPJ's interest in being
13 transgender?

14 A. Yes, 100 percent.

15 Q. Do you encourage BPJ's interest in being
16 transgender?

17 ATTORNEY HARTNETT: Objection. Vague,
18 foundation.

19 THE WITNESS: I encourage her to be
20 herself and I love her no matter what. Like I said, my
21 love is unconditional for her.

22 BY ATTORNEY DUCAR:

23 Q. Have you encouraged her to transition?

24 A. If this is what makes her happy, it makes me

1 happy.

2 Q. Have you encouraged BPJ to transition?

3 ATTORNEY HARTNETT: Objection, asked and
4 answered.

5 ATTORNEY DUCAR: I didn't get the answer.

6 ATTORNEY HARTNETT: He answered your
7 question.

8 THE WITNESS: She's my daughter. I love
9 her. It makes her happy.

10 BY ATTORNEY DUCAR:

11 Q. Mr. Pepper, have you encouraged BPJ to
12 transition?

13 ATTORNEY HARTNETT: Objection. Vague,
14 asked and answered.

15 THE WITNESS: I've encouraged her to be
16 herself. I encourage her to be who she is. And if
17 she's happy, I back her 100 percent.

18 BY ATTORNEY DUCAR:

19 Q. So you have not encouraged her to transition.
20 Correct?

21 ATTORNEY HARTNETT: Objection, misstates
22 the testimony.

23 THE WITNESS: No, I didn't say that.

24 BY ATTORNEY DUCAR:

1 Q. Well, it's a simple question. I don't know why
2 I can't get a simple answer.

3 ATTORNEY HARTNETT: Objection. That's
4 argumentative and he has answered your question three
5 times.

6 THE WITNESS: She's my daughter. I love
7 her. I support her.

8 BY ATTORNEY DUCAR:

9 Q. Was transitioning BPJ's idea?

10 A. Say that again, please.

11 Q. Was transitioning BPJ's idea?

12 ATTORNEY HARTNETT: Objection. Vague.

13 THE WITNESS: I can't answer for her.
14 You would have to ask her that.

15 BY ATTORNEY DUCAR:

16 Q. Do you think it's important that team sports
17 have fair rules?

18 ATTORNEY HARTNETT: Objection. Vague.

19 THE WITNESS: All sports has rules.

20 BY ATTORNEY DUCAR:

21 Q. Do you think it's important that team sports
22 have fair rules?

23 ATTORNEY HARTNETT: Objection. Vague.

24 THE WITNESS: I'm not the one who makes

1 the rules up, so ---.

2 BY ATTORNEY DUCAR:

3 Q. Well, even though you don't make up the rules,
4 do you think it's important that they're fair?

5 ATTORNEY HARTNETT: Objection. Vague,
6 asked and answered.

7 THE WITNESS: I mean, there's right and
8 wrong.

9 BY ATTORNEY DUCAR:

10 Q. Well, do you think that it's important that team
11 sports have fair rules?

12 ATTORNEY HARTNETT: Objection, vague,
13 asked and answered.

14 THE WITNESS: Yeah.

15 BY ATTORNEY DUCAR:

16 Q. Do you have any long-term treatment goals for
17 BPJ?

18 ATTORNEY HARTNETT: Objection, vague.

19 THE WITNESS: I don't.

20 ATTORNEY HARTNETT: I don't want to
21 interrupt your line of questioning, but we've been going
22 for about an hour and a half. So I would like to take a
23 break shortly.

24 ATTORNEY DUCAR: I probably have about

1 maybe six more questions.

2 ATTORNEY HARTNETT: I wasn't sure. I
3 thought you might be getting there. Wes, are you okay
4 going a little bit longer?

5 THE WITNESS: Yeah. I got to --- I got
6 to urinate.

7 ATTORNEY DUCAR: If you want, we can take
8 a break and then --- I'm not sure how long these next
9 six questions are going to take. So we can ---.

10 THE WITNESS: I just need five minutes.

11 ATTORNEY DUCAR: That's fine here.

12 ATTORNEY HARTNETT: Okay.

13 THE WITNESS: Thank you.

14 VIDEOGRAPHER: Going off the record. The
15 current time reads 3:01:00 p.m.

16 OFF VIDEOTAPE

17 ---

18 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

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20 ON VIDEOTAPE

21 VIDEOGRAPHER: We are back on the record.
22 The current time reads 3:10:00 p.m.

23 BY ATTORNEY DUCAR:

24 Q. Mr. Pepper --- well, let's see. I would like to

1 take a look at West Virginia Exhibit 14 at this time.

2 ATTORNEY DUCAR: And Mr. Court Reporter,
3 if you don't mind scrolling through the whole thing just
4 so we can get an idea what it says? These are progress
5 notes.

6 VIDEOGRAPHER: You mean the whole
7 exhibit.

8 Correct?

9 ATTORNEY DUCAR: Well, I don't need the
10 whole exhibit.

11 ATTORNEY HARTNETT: I think it would be
12 helpful for the witness to refamiliarize himself just
13 with the exhibit to help move this along, but maybe by
14 showing the date of the visit that might help remind him
15 what he saw earlier.

16 THE WITNESS: Okay.

17 BY ATTORNEY DUCAR:

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] [REDACTED]
22 [REDACTED]
23 [REDACTED] Has BPJ told you that changing
24 her legal name is important to her?

1 A. She has told my wife.

2 Q. Do you have any idea of what the term gender
3 marker changes means?

4 A. No.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED] I'll stop there. Has BPJ
8 indicated any concerns with bathroom --- which bathrooms
9 she will be using?

10 A. They have provided her a separate one. It's
11 exclusive for her at school.

12 Q. Has she verbalized any concerns with regards to
13 changing during gym class?

14 ATTORNEY HARTNETT: Objection, calls for
15 speculation.

16 THE WITNESS: Not to my knowledge.

17 BY ATTORNEY DUCAR:

18 Q. Has BPJ expressed any concerns that her
19 preferred name and pronouns are used by the school?

20 ATTORNEY HARTNETT: Objection, calls for
21 speculation.

22 THE WITNESS: She wants everyone to call
23 her B [REDACTED].

24 BY ATTORNEY DUCAR:

1 Q. The record also notes above that BPJ is
2 interested in starting hormone therapy as soon as
3 medically possible. Has BPJ talked to you about hormone
4 therapy, which I also call puberty blockers?

5 ATTORNEY HARTNETT: I'm sorry. Could you
6 just direct me and the witness to what part of the
7 document you're referring to?

8 ATTORNEY DUCAR: Sure. It's the third
9 paragraph, third sentence, where it says she is also
10 interested in starting hormone therapy as soon as
11 medically possible.

12 ATTORNEY HARTNETT: Thank you.

13 BY ATTORNEY DUCAR:

14 Q. So my question was, have you talked to BPJ about
15 puberty blockers?

16 A. No.

17 Q. Whose idea was it for BPJ to start puberty
18 blockers?

19 ATTORNEY HARTNETT: Objection, calls for
20 speculation.

21 THE WITNESS: That would be a question
22 for B [REDACTED] I'm not sure of the answer.

23 ATTORNEY HARTNETT: Sorry. I also want
24 to object to the foundation of hormone therapy being

1 equivalent to puberty blockers.

2 BY ATTORNEY DUCAR:

3 Q. Do you understand the risks --- or let me
4 rephrase that. What do you understand the risks of
5 puberty blockers to be?

6 ATTORNEY HARTNETT: Objection.
7 Foundation.

8 THE WITNESS: My wife and I have
9 discussed this and there are several. And I cannot tell
10 you off the top of my head what it is, but --- and I'll
11 answer with this question --- or with this statement
12 that, you know, I love my daughter and I will --- this
13 is her choice.

14 BY ATTORNEY DUCAR:

15 Q. So you would agree that there are long-term
16 ramifications for puberty blockers, but you just don't
17 recall them at this time?

18 ATTORNEY HARTNETT: Objection, foundation
19 and misstates his testimony.

20 THE WITNESS: Yes.

21 ATTORNEY DUCAR: Mr. Court Reporter, you
22 can take that document off the screen at this point.
23 Thank you.

24 BY ATTORNEY DUCAR:

1 Q. Have you discussed the long-term ramifications
2 of taking puberty blockers with BPJ?

3 A. No.

4 Q. What do you understand to be the risks of cross
5 sex hormones?

6 ATTORNEY HARTNETT: Objection. Vague and
7 calls for speculation.

8 THE WITNESS: Sterility.

9 BY ATTORNEY DUCAR:

10 Q. Do you know how long one must take cross sex
11 hormones before they becomes sterile?

12 ATTORNEY HARTNETT: Objection,
13 foundation. Calls for speculation.

14 THE WITNESS: I am not an expert on it.
15 I don't know.

16 BY ATTORNEY DUCAR:

17 Q. Have you discussed the long-term ramifications
18 of taking cross sex hormones with BPJ?

19 ATTORNEY HARTNETT: Objection, vague.

20 THE WITNESS: No.

21 BY ATTORNEY DUCAR:

22 Q. Do you know why --- strike that.

23 Do you know that BPJ was selected to be part of
24 the base of BPJ's cheer team pyramids?

1 THE WITNESS: I'm not following you.

2 Please say it another way.

3 BY ATTORNEY DUCAR:

4 Q. Are you aware of when cheerleading teams create
5 pyramids of people?

6 A. Creating pyramids of people?

7 Q. Like a certain number of people would be at the
8 bottom and then a certain number of people would be on
9 top of them and they would create a pyramid?

10 A. I've seen it before, but I'm not --- I'm not
11 following you.

12 Q. So you know what I'm talking about.

13 Correct?

14 A. Yes.

15 Q. Do you know that BPJ was selected to be part of
16 the base of BPJ's cheer team pyramids?

17 A. No, I'm not aware of that.

18 ATTORNEY DUCAR: Thank you very much, Mr.
19 Pepper. I have no further questions at this time.

20 THE WITNESS: Thank you.

21 ATTORNEY HARTNETT: And the Plaintiff
22 does not have any questions.

23 ATTORNEY TRYON: Okay.

24 This is Dave Tryon. I do have a few

1 follow-up questions based on the line of questions that
2 were asked.

3 ATTORNEY HARTNETT: I don't think that's
4 --- sorry, that wasn't my --- I thought your questioning
5 was done.

6 ATTORNEY DENIKER: I also have just one
7 or two follow-up questions.

8 ATTORNEY TRYON: I think my follow-up
9 questions are based on questions that have been asked
10 after my questions. I've never had anybody object to me
11 doing that before. Are you objecting to me doing that?

12 ATTORNEY HARTNETT: I'm thinking about it
13 because I don't --- I've never had multiple Defense
14 Counsel do multiple rounds of questioning. They usually
15 do their questioning and unless there's a Redirect they
16 don't get to do additional questioning.

17 ATTORNEY TRYON: Well, that's different
18 from my experience, respectfully. I've been on a lot of
19 multi-Defendants questioning and their depositions and
20 it's my experience that, you know, after new things come
21 up during other counsels' questions, that there's not an
22 issue with following up on some of those things.

23 ATTORNEY HARTNETT: Can we go off the
24 record? I would like to confer with my co-counsel.

1 ATTORNEY TRYON: Yes.

2 VIDEOGRAPHER: Going off the record. The
3 current time reads 3:20 p.m.

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4 | OFF VIDEOTAPE
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6 | (WHEREUPON, A SHORT BREAK WAS TAKEN.)

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9 VIDEOGRAPHER: We're back on the record.

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10 | The current time reads 3:26 p.m.
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11 ATTORNEY HARTNETT: Okay.

12 We can put this on the record or off, but
13 I conferred with my co-counsel. Like I said, this is
14 not what we were expecting in the sense that I think we
15 had discussed having Defendants go kind of in a row and
16 that when you concluded your questioning, it would be
17 concluded, and absent Redirect from the other side, in
18 my experience you don't get to continue your
19 questioning.

20 On the other hand, we like to be
21 practical here, and so if folks have a few additional
22 questions, we're not going to --- I mean, we don't want
23 to hold this deposition open. So I just need to know
24 how much additional questioning you're contemplating.

1 ATTORNEY TRYON: Yes, Kathleen, just to
2 be clear, my understanding of the proper protocol is
3 that additional examination would be based on --- within
4 the scope of what other counsel have raised and --- so
5 that's where I would anticipate, you know, my questions
6 to be. I don't have many, less than a dozen.

7 ATTORNEY HARTNETT: Okay.

8 Again, we don't want to be obstructive
9 here in any way. And to the extent that that is a
10 response to other questioning, we're happy to allow it
11 here briefly. I just think we need to be careful to not
12 retread on things we've done or obviously do anything
13 harassing. But thank you for explaining.

14 ATTORNEY TRYON: Sure.

15 ---

16 RE-EXAMINATION

17 ---

18 BY ATTORNEY TRYON:

19 Q. Mr. Pepper, first of all, thank you again for
20 your time. We appreciate the time, as we know that this
21 is --- well, it's just appreciated. And so the term
22 social --- socially transition came up during Mr.
23 Ducar's questioning. Is today the first time you have
24 heard that term?

1 A. Yes.

2 Q. Let me turn back to Exhibit 17, please.

3 ATTORNEY TRYON: Jacob, can you bring
4 that up? I see you're working on it. Okay. Great.

5 BY ATTORNEY TRYON:

6 Q. So when I was asking you questions about this
7 document, sir, it was my understanding that you had not
8 seen this before. But when Attorney Susan Deniker was
9 asking you about it and I have it written down what was
10 said, at one point you said --- you were asked --- Ms.
11 Deniker asked, did you see Exhibit 17 at the time it was
12 executed. And you said yes, it's possible. So after
13 her questioning did that refresh your recollection that,
14 in fact, you had seen Exhibit 17 before?

15 A. I've seen so many documents that I --- it's
16 very possible. But like I say, I can't tell you, you
17 know, for a fact. I wouldn't take a test on it.

18 Q. Fair enough.

19 Let me ask you then to take a quick look at
20 this first paragraph in the form that says mom is very
21 supportive. Dad has struggled but coming around and
22 seeking outside help through church and paternal side of
23 family's help/support. Let me just ask you to look at
24 that and think back if you, in fact, saw that language

1 on the report before today.

2 ATTORNEY HARTNETT: Objection, asked and
3 answered.

4 THE WITNESS: And I don't recall. It's
5 been three years ago.

6 BY ATTORNEY TRYON:

7 Q. Fair enough. All I want is your --- I want to
8 make sure we have the correct testimony.

9 During the questioning by Mr. Ducar you were
10 asked if BPJ has stressed over this situation. And I
11 don't remember exactly what the question was but asked
12 if BPJ had stress in the context of the gender dysphoria
13 or transition. And I believe you said that BPJ had some
14 stress.

15 Is that right?

16 ATTORNEY HARTNETT: Objection. It
17 doesn't completely state his testimony.

18 ATTORNEY TRYON: Right.

19 THE WITNESS: She has stress, but it's
20 not --- it's not over it with me. It's more over it
21 with my wife. My wife and my daughter have the
22 communication line going.

23 BY ATTORNEY TRYON:

24 Q. Got it. My question is did BPJ's stress ever

1 get to the point where BPJ was suicidal?

2 ATTORNEY HARTNETT: Objection.

3 THE WITNESS: Not to my knowledge.

4 BY ATTORNEY TRYON:

5 Q. Okay.

6 Mr. Ducar asked you a number of questions about
7 encouragement or did you encourage the transition, and
8 you didn't seem to understand that. I just want to know
9 what do you understand the word encourage to mean?

10 ATTORNEY HARTNETT: Objection. Misstates
11 his testimony and he answered the question repeatedly.

12 THE WITNESS: I encourage her to be
13 herself. I encourage her to be the best that she can.
14 I encourage her to be happy. I encourage her to love
15 herself and to love her family, because her family loves
16 her.

17 BY ATTORNEY TRYON:

18 Q. Right. And you made that very clear and I
19 appreciate that. But when you say encourage, what do
20 you mean by encourage?

21 A. Well, she makes straight As. I encourage her to
22 be a good student. So that's some encouragement. She
23 gets a lot of that from her mother. I mean, I'm no
24 dummy, but ---.

1 Q. So then I have maybe one more question about
2 that because --- and I'm just trying to understand, did
3 you actively encourage BPJ in social transition or just
4 to socially transition to a female or were you just
5 neutral on it?

6 ATTORNEY HARTNETT: Objection. Compound
7 and asked and answered.

8 THE WITNESS: I've encouraged B [REDACTED] to be
9 herself. B [REDACTED] has chosen to be --- represent herself
10 as being a female, and that's who she is. I encourage
11 her to be a female, yes, I encourage her, because that's
12 what she loves. That's her life now.

13 BY ATTORNEY TRYON:

14 Q. And when did you start encouraging her to do
15 that?

16 A. Many years ago. I've been onboard many years.

17 ATTORNEY TRYON: I have no other
18 questions.

19 ATTORNEY HARTNETT: Roberta, did you have
20 questions?

21 ATTORNEY GREEN: On behalf of WVSSAC, no
22 further questions. Thank you.

23 ---

24 RE-EXAMINATION

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BY ATTORNEY DENIKER:

Q. Mr. Pepper, Susan Deniker. I only have a few questions for you. I asked you before, this is a clarifying question, if you had any communications with any employees of the Harrison County Board of Education regarding BPJ, her gender identity and her participation in school sports, and you told me that you had not. I wanted to ask you and clarify have you had any communications with anybody on the elected Harrison County Board of Education regarding BPJ's gender identity?

A. I'm not sure who those elected members would be.

Q. Is that a no then?

A. Yes. I don't even know who you're talking about.

Q. Okay.

So the Harrison County Board of Education has an elected board, the citizens and the county elect, and I just want to know if you raised any concerns, complaints or had any communication at all with BPJ's --- any accommodations for her gender identity or her participation in school sports?

ATTORNEY HARTNETT: Just objecting to

1 this questioning as not prompted by anything on the
2 other parties' questioning. This just seems to be
3 additional questioning that could have been asked the
4 first round. Also object to his prior testimony speaks
5 for itself, and I'm not sure the summary was entirely
6 accurate. If this is the only question, he's free to
7 answer it, but I just don't think we should be going
8 down this road of questioning that could have been asked
9 previously.

10 BY ATTORNEY DENIKER:

11 Q. Mr. Pepper, do you understand my question?

12 A. No. Would you say it again, please?

13 Q. Sure. And I would agree to give your counsel a
14 continuing objection because I know it gets confusing
15 when we all, you know, talk like this. But I'm just ---
16 have you had any communications with any member of the
17 elected Harrison County Board of Education to discuss in
18 any way accommodation of your daughter's gender
19 identification, issues at school or her participation in
20 school sports?

21 ATTORNEY HARTNETT: Objection that it's
22 beyond the scope of the other testimony and for the
23 other objections.

24 THE WITNESS: Directly, no. Indirectly

1 through my wife, I would say yes.

2 BY ATTORNEY DENIKER:

3 Q. But you personally haven't had any of those
4 communications.

5 Is that correct?

6 A. That's correct.

7 ATTORNEY HARTNETT: Objection, asked and
8 answered.

9 ATTORNEY DENIKER: Thank you, Mr. Pepper.
10 I don't have any further questions.

11 ATTORNEY MORGAN: I don't have any
12 further questions.

13 ATTORNEY DUCAR: Nothing further here.
14 Thank you.

15 ATTORNEY HARTNETT: Okay.

16 And we have nothing further from the
17 Plaintiff. We would reserve, obviously, our right to
18 review. But otherwise, we consider the deposition to
19 now be closed.

20 VIDEOGRAPHER: That concludes today's
21 deposition. The current time reads 3:37 p.m.

22 ATTORNEY TRYON: If I could just say
23 something before we close. First of all, thank you
24 again, Mr. Pepper. But also, to the extent that we

1 receive additional information in discovery that
2 necessitates to ask more questions, we would expect to
3 do so. But I don't anticipate that. But again, I know
4 that Plaintiff's Counsel has already objected to that,
5 so I recognize that, but I want to make sure I preserve
6 that for the record.

7 ATTORNEY HARTNETT: And I would reiterate
8 my objection that there has been absolutely nothing
9 identified that would require a further deposition of
10 Mr. Pepper.

11 ATTORNEY TRYON: Thank you.

12 VIDEOGRAPHER: That concludes the
13 deposition. The current time reads 3:37 p.m.

14 * * * * *

15 VIDEOTAPED DEPOSITION CONCLUDED AT 3:37 P.M.

16 * * * * *

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1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

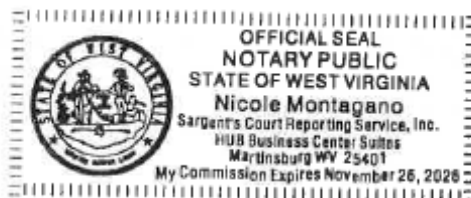
3 I, Nicole Montagano, a Notary Public in
4 and for the State of West Virginia, do hereby
5 certify:

6 That the witness whose testimony appears
7 in the foregoing deposition, was duly sworn by me
8 on said date, and that the transcribed deposition
9 of said witness is a true record of the testimony
10 given by said witness;

11 That the proceeding is herein recorded
12 fully and accurately;

13 That I am neither attorney nor counsel
14 for, nor related to any of the parties to the
15 action in which these depositions were taken, and
16 further that I am not a relative of any attorney
17 or counsel employed by the parties hereto, or
18 financially interested in this action.

19 I certify that the attached transcript
20 meets the requirements set forth within article
21 twenty-seven, chapter forty-seven of the West
22 Virginia.



Nicole Montagano
Nicole Montagano,
Court Reporter

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
 CHARLESTON DIVISION

* * * * *

B.P.J., by her next friend and *

Mother, HEATHER JACKSON, *

Plaintiff * Case No.

vs. * 2:21-CV-00316

WEST VIRGINIA STATE BOARD OF *

EDUCATION, HARRISON COUNTY *

BOARD OF EDUCATION, WEST *

VIRGINIA SECONDARY SCHOOL *

ACTIVITIES COMMISSION, W. *

CLAYTON BURCH in his official *

Capacity as State Superintendent, * VIDEOTAPED

DORA STUTLER in her official * VIDEOCONFERENCE

Capacity as Harrison County * DEPOSITION

Superintendent, PATRICK MORRISEY * OF

In his official capacity as * HEATHER JACKSON

Attorney General, and THE STATE * January 19, 2022

OF WEST VIRGINIA, *

Defendants *

Any reproduction of this transcript
 is prohibited without authorization
 by the certifying agency.

1 VIDEOTAPED VIDEOCONFERENCE DEPOSITION
2 OF
3 HEATHER JACKSON, taken on behalf of the Defendant, State
4 of West Virginia herein, pursuant to the Rules of Civil
5 Procedure, taken before me, the undersigned, Nicole
6 Montagano, a Court Reporter and Notary Public in and for
7 the State of West Virginia, on Wednesday, January 19,
8 2022, beginning at 4:02 p.m.

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I N D E X

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6	Exhibit 1R	Davis Medical Records	-- *
7	Exhibit 2	Davis Medical Records	-- *
8	Exhibit 3	WVU Medical Records	-- *
9	Exhibit 4	UPMC Children's Medical	
10		Records	-- *
11	Exhibit 5	UPMC Children's Medical	
12		Records	-- *
13	Exhibit 6	UPMC Children's Medical	
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21	Exhibit 11A	Progress Notes	-- *
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24	Exhibit 11D	Progress Notes	-- *

1	EXHIBIT PAGE		
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4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	Exhibit 12	UPMC Children's Medical	
6		Records	-- *
7	Exhibit 13	UMPC Children's Medical	
8		Records	-- *
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10	Exhibit 15	WVU Medical Records	-- *
11	Exhibit 16	WVU Medical Records	-- *
12	Exhibit 17	Gender Support Plan	-- *
13	Exhibit 18	Preferred Name Request Form	-- *
14	Exhibit 19	Gender Support Plan	-- *
15	Exhibit 20	Student Information	-- *
16	Exhibit 20R	Student Information	-- *
17	Exhibit 21	Screening Results	-- *
18	Exhibit 21R	Screening Results	-- *
19	Exhibit 22	Birth Certificate	-- *
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21	Exhibit 23	Heart Walk Article	--
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23	Exhibit 24	Photo	--
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	EXHIBIT PAGE		
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	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
1			
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5	Exhibit 25	WV Record	--
6	Exhibit 26	Photo of Mom and BPJ	--
7	Exhibit 27	Article	--
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10	Exhibit 30	Declaration of Heather	
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13	Exhibit 32	First Amended Complaint	--
14	Exhibit 33	Standards of Care	--
15	Exhibit 34	House Bill 3293	--
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* CONFIDENTIAL EXHIBITS

1 OBJECTION PAGE

2

3 ATTORNEY PAGE

4 Block 20, 22, 26, 28, 28, 29, 30, 31, 31, 32, 33, 33,

5 33, 34, 34, 35, 35, 36, 36, 37, 38, 38, 39, 39, 40, 40,

6 41, 41, 41, 42, 42, 43, 43, 43, 44, 44, 45, 45, 45, 46,

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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between
counsel for the respective parties that reading,
signing, sealing, certification and filing are not
waived.)

P R O C E E D I N G S

VIDEOGRAPHER: We are now on the record.
My name is Jacob Stock. I'm a Certified Legal Video
Specialist employed by Sargent's Court Reporting
Services. The date today is January 19th, 2022. The
time on the video monitor currently reads 4:02 p.m.
This deposition is being taken remotely by Zoom
conference. The caption of this case is in the United
States District Court for the Southern District of West
Virginia, Charleston Division, BPJ by her Next Friend
and Mother, Heather Jackson, versus West Virginia State
Board of Education, et al. Civil Action Number
2:21-CV-00316. The name of the witness is Heather
Denise Jackson. Will the attorneys present state their
names and the parties they represent.

ATTORNEY TRYON: This is David Tryon,

1 representing the State of West Virginia. And with me
2 is ---.

3 ATTORNEY CAPEHART: Curtis Capehart also
4 representing the State of West Virginia.

5 ATTORNEY BLOCK: This is Josh Block. I'm
6 representing Plaintiff BPJ and the witness. And with
7 folks' indulgence, I will have my co-counsel from Cooley
8 announce themselves followed by my co-counsel's from
9 Lambda Legal.

10 ATTORNEY HARTNETT: Hi. This is Kathleen
11 Hartnett from Cooley for BPJ and the witness.

12 ATTORNEY BARR: This is Andrew Barr from
13 Cooley for BPJ and the witness.

14 ATTORNEY VEROFF: This is Julie Veroff
15 from Cooley for BPJ and the witness.

16 ATTORNEY HELSTROM: This is Zoe Helstrom
17 from Cooley, LLP, for BPJ and the witness.

18 ATTORNEY SWAMINATHAN: This is Scruti
19 Swaminathan for BPJ and the witness from Lambda Legal.

20 ATTORNEY GREEN: Roberta Green, Schuman
21 McCuskey, Slicer here on behalf of West Virginia
22 Secondary School.

23 ATTORNEY DENIKER: Good afternoon. I'm
24 Susan Deniker from Steptoe and Johnson, PLLC,

1 representing Defendants Harrison County Board of
2 Education and Harrison County Superintendant Dora
3 Stutler.

4 ATTORNEY MORGAN: This is Kelly Morgan
5 with Bailey and Wyant as well as Kristen Hammond on
6 behalf of the West Virginia Board of Education and
7 Superintendant Burch.

8 ATTORNEY DUCAR: Good afternoon. Timothy
9 Ducar on behalf of Intervenor, Lainey Armistead.

10 ATTORNEY TRYON: Go ahead.

11 VIDEOGRAPHER: I was just going to say,
12 if that's everybody, the court reporter can swear in the
13 witness and we can begin.

14 ATTORNEY TRYON: Before you do that, the
15 communications are very garbled on our end. Is anyone
16 else experiencing that?

17 ATTORNEY GREEN: Very what? I'm sorry.

18 ATTORNEY TRYON: My point. I couldn't
19 understand anything that you just said. I think we're
20 going to log off and log back in. Get somebody to help
21 me do that. So I will be back in just a couple of
22 minutes here okay.

23 VIDEOGRAPHER: Other counsel, I'm
24 assuming we want to go off the record until he is back.

1 ATTORNEY GREEN: Yes.

2 VIDEOGRAPHER: Going off the record.

3 Current time reads 4:05 p.m.

4 OFF VIDEOTAPE

5 ---

6 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

7 ---

8 ON VIDEOTAPE

9 VIDEOGRAPHER: We are back on the record.

10 The current time reads 4:09 p.m.

11 ATTORNEY STARK: My name is Loree Stark,
12 and I'm with the ACLU of West Virginia and I'm here on
13 behalf of Plaintiff.

14 VIDEOGRAPHER: And if that's everybody,
15 the court reporter can swear in the witness so we can
16 begin.

17 COURT REPORTER: Ms. Jackson, would you
18 raise your right hand?

19 ---

20 HEATHER JACKSON,
21 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
22 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
23 FOLLOWS:

24 ---

1 COURT REPORTER: Thank you.

2 - - -

3 EXAMINATION

4 - - -

5 BY ATTORNEY TRYON:

6 Q. Hello, Ms. Jackson, my name is David Tryon. I'm
7 an attorney from the State of West Virginia. Thank you
8 for taking your time to --- for this deposition today.

9 Can you please state your name for the record?

10 A. Heather Jackson.

11 Q. And do you prefer that I call you Mrs. Jackson
12 or Ms. Jackson or something else?

13 A. Ms. Jackson is fine.

14 Q. Okay.

15 So first of all, can you tell me if you are
16 represented by counsel today?

17 A. I'm represented by counsel, yes.

18 Q. And can you tell me who your attorneys are?

19 A. The names or their groups?

20 Q. Either one.

21 A. Well, ACLU and the Cooley law, Lambda Legal.

22 Q. Okay.

23 And do you have any formal engagement letter or
24 retainer letter with any of those attorneys?

1 A. I don't understand the question.

2 Q. Sure. At the time that you retained those
3 attorneys or they became your attorneys, did you have a
4 written document that you signed with them saying you
5 are my attorneys?

6 A. Yes.

7 Q. Okay.

8 And how long ago was that signed?

9 A. I don't know the date.

10 Q. Was it before or after this lawsuit was filed?

11 A. Before.

12 Q. Was it before or after the Law House Bill 3293
13 was passed?

14 A. After.

15 Q. And who else is on that besides you? Is your
16 child BPJ on that?

17 A. BPJ.

18 Q. And is your husband Wesley on that?

19 A. I believe so.

20 Q. Okay.

21 Have you ever been deposed before?

22 A. No.

23 Q. Have you ever been sued before?

24 A. No.

1 Q. Have you received some guidance on how a
2 deposition works?

3 A. I've been told how it works.

4 Q. Okay. Great.

5 Well, I'm just going to go through some of the
6 rules. And you may have heard them before, but we'll go
7 through anyways. So first of all, the Federal Rules of
8 Civil Procedure apply here. And just so you know how
9 this works with objections, the specific rule involved,
10 which is Rule 30(c)(2) says an objection at the time of
11 the examination, whether to evidence, to a party's
12 conduct, to the officer's qualifications, to the manner
13 of taking the deposition or to any other aspect of the
14 deposition must be noted on the record but the
15 examination still proceeds. The testimony is taken
16 subject to any objection. An objection must be stated
17 concisely in a non-argumentative and non-suggestive
18 manner. That's the rule.

19 So in other words, if your counsel objects to
20 any of my questions or any of the other lawyers'
21 questions, they can object, they can state the reason
22 why, but they can't --- but you still need to answer the
23 question unless they specifically instruct you to not
24 answer it.

1 Do you understand that?

2 A. Yes.

3 Q. Okay.

4 And so in the context of this deposition, the
5 deposition is a little odd, which is where we ask you
6 questions about information that you might have about
7 this lawsuit that you filed on behalf of BPJ, and so you
8 will just answer those questions as far as to the best
9 of your ability.

10 Okay?

11 A. Okay.

12 Q. And if you don't understand my question and
13 would like me to clarify it, please ask me to clarify it
14 and I will do my best to do so.

15 Okay?

16 A. Okay.

17 Q. Also, I would like you to answer orally as you
18 have been doing rather than nodding or shaking your
19 head.

20 Okay?

21 A. Okay.

22 Q. And also, if you need a break during this
23 deposition, let me know. This is not designed to be an
24 endurance contest, so let us know if you need to take a

1 break.

2 I want to ask you first, during your husband's
3 --- your understanding is that your husband --- his
4 deposition was just taken.

5 Right?

6 A. Correct.

7 Q. Were you able to listen into it or watch it in
8 any fashion?

9 A. No.

10 Q. After his deposition, did he tell you about it?

11 A. No.

12 Q. And during the course of his deposition or
13 after, did anybody send you texts or emails telling you
14 about it?

15 A. No.

16 Q. So before we get actually started with any
17 questions, I just want to let you know that we, as
18 counsel, are not here to try and cause you any heartburn
19 or to judge you or anyone in your family. These are
20 situations which are, you know, obviously a little
21 different than some of us have experienced and they're
22 sometimes challenging, but in this situation your ---
23 BPJ has followed this lawsuit through you to challenge
24 the State's law, and so we have an obligation on behalf

1 of the State to defend that law. And so, as a result,
2 we have an obligation to then ask you questions about
3 your rationale, about the facts that are involved with
4 this. And so that's the background for this. I just
5 want to tell you that's why we're asking these questions
6 of you. Does that sound fair so far?

7 ATTORNEY BLOCK: Objection to the extent
8 that you're asking her to agree with your legal
9 interpretation of what the law requires you to do. You
10 can answer it.

11 THE WITNESS: Yes.

12 BY ATTORNEY TRYON:

13 Q. In preparation for your deposition today did you
14 look at any documents?

15 A. I have documents, yes.

16 Q. Have you looked at those as you prepared for
17 this deposition today?

18 A. A while back.

19 Q. Okay.

20 In the past week have you looked at any in
21 anticipation of this deposition?

22 A. No.

23 Q. Have you had ample time to discuss this --- to
24 prepare for this deposition in consultation with your

1 attorneys?

2 A. Yes.

3 Q. In connection with preparing for this
4 deposition, did you have any discussions with either BPJ
5 or with your husband?

6 A. Can you repeat that, please?

7 Q. Yes. In preparation for this deposition, did
8 you talk to either your husband or BPJ?

9 A. No.

10 Q. And just so you know, the reason I'm using the
11 initials BPJ is twofold. First of all, because it is
12 the name of the Plaintiff in the deposition --- excuse
13 me, in the Complaint that was filed. And also, because
14 whenever there's a minor involved, we typically in court
15 documents and court proceedings use the initials of the
16 minor. And so I'm not suggesting that you need to use
17 those initials. You can refer to BPJ in any manner that
18 you feel comfortable, but I want you to understand why
19 I'm using those initials.

20 Okay?

21 A. Yes.

22 Q. First of all, let me ask you about the law
23 itself. HB 3293, are you familiar with that law?

24 A. Yes.

1 Q. Have you read it?

2 A. Full on, no.

3 Q. Okay.

4 But certain parts you've read?

5 A. Just to get the extent of the knowledge that it
6 would not allow my daughter to participate in girls
7 sports.

8 Q. Okay.

9 And what's your basis for that understanding?

10 A. The law, as I've read it, from what I've read.

11 Q. And from what you can remember, what about the
12 law would prevent your --- prevent BPJ from
13 participating in girls sports?

14 A. Because she is a transgender female, she
15 wouldn't be permitted to play with the female sports
16 teams.

17 Q. Okay.

18 You've read part of the law you said but not
19 all.

20 Is that right?

21 A. Correct.

22 Q. Are you aware of any place in that law where it
23 uses the terms transgender?

24 ATTORNEY BLOCK: Objection to the extent

1 that you're asking her about the text of the document
2 that she doesn't have in front of her. I would like ---
3 I request you provide her the document unless you're
4 testing her memory.

5 ATTORNEY TRYON: My question stands.
6 Can the court reporter please read back
7 my question?

8 COURT REPORTER: Are you aware of any
9 place in that law where it --- where it uses the term
10 transgender?

11 THE WITNESS: I don't know.

12 BY ATTORNEY TYRON:

13 Q. Well, let's take a look at that.

14 ATTORNEY TRYON: I'll have the court
15 reporter pull up Exhibit 34, please.

16 BY ATTORNEY TRYON:

17 Q. So I would like to briefly go through this so
18 you can see the extent of it. So this is the first page
19 of House Bill 3293. And this is the second page. And I
20 will just go through it quickly. And if you want me to
21 go back and show you any particular page, I'm happy to
22 do that.

23 Okay.

24 This is the next page. That's the final page

1 of the text and then there's a blank page for some
2 reason and then there is the last page, which has
3 signatures --- signature lines for various parties. So
4 let me go back up to the beginning. And what I'd like
5 to ask you is can you tell me what parts of it you have
6 read prior to today, starting at page one?

7 ATTORNEY BLOCK: Objection. Can you give
8 the witness a chance to read the entire document before
9 answering your question as to parts of it?

10 BY ATTORNEY TRYON:

11 Q. Sure. You can tell me when you're ready to move
12 to the next page.

13 A. Okay. Next page.

14 Q. Okay.

15 Going down on this page. That is the remainder
16 of that page. Go ahead.

17 A. Okay.

18 Q. This is the top of the second page of the text?

19 A. Okay.

20 Q. All right.

21 That is the bottom half of the first page of
22 the text?

23 A. Okay.

24 Q. And this is the top of the next page of the

1 text?

2 A. Okay.

3 Q. And scrolling down to the last half of the full
4 text of the --- on that page of the text.

5 A. Okay.

6 Q. Would you agree with me that the term or the
7 word transgender does not appear anywhere in this bill?

8 A. It does not.

9 Q. And can you tell me what portions of this bill
10 that you believe prevents BPJ from participating in girl
11 sports?

12 A. The references to biological sex being male at
13 birth.

14 Q. So you are referring to line 25 and 26 on the
15 --- what is marked as page two of the bill?

16 A. Can you go up to the first page?

17 Q. Well, the first page --- yes, this is the first
18 page.

19 A. Okay.

20 There where it is talking about defining
21 biological sex as female and male.

22 Q. Okay.

23 You're looking at line four on the first page?

24 A. Yeah.

1 Q. On the left side there's lines?

2 A. I see --- I see the line numbers, okay. Yes.

3 Q. Okay.

4 Anything else in here that you saw? Tell me if
5 you want me to scroll down or anything.

6 A. Just the references to the biological sex of
7 female and male.

8 Q. Okay.

9 So you're saying the reference to biological
10 sex of female and male as referenced throughout the
11 bill?

12 A. Correct.

13 Q. So under the terminology of this bill would you
14 agree that BPJ has the biological sex of male?

15 A. Biological sex as male, correct.

16 Q. Just to be clear we are communicating, so the
17 biological sex of BPJ is male.

18 Right?

19 ATTORNEY BLOCK: Objection to the extent
20 --- I'm sorry.

21 THE WITNESS: She was born a male.

22 BY ATTORNEY TYRON:

23 Q. Okay.

24 And specific to this bill, under this bill BPJ

1 is defined --- would be defined as a biological male.

2 Right?

3 A. Correct.

4 Q. These are not trick questions. I'm just trying
5 to establish a baseline for us to communicate. But if
6 you think they are trick questions, you just tell me and
7 we'll try to clarify the questions.

8 So let me scroll down and --- so what parts of
9 this had you, in fact, read?

10 A. Parts of the first page and then the parts where
11 it says that if the --- it's like down on the third
12 page, I believe.

13 Q. I'll scroll down and you tell me when to stop.

14 A. Maybe it's not on the third page. Where it
15 talks about if there's ---.

16 Q. Well, this is page two right here of the bill.

17 A. Okay. Line 48.

18 Q. Line 48. So line 48 says any student aggrieved
19 by a violation of this section may bring an action
20 against a County Board of Education or state institution
21 of higher education alleged to be responsible for the
22 alleged violation. Is that what you're referring to?

23 A. Yes.

24 Q. Do you believe that's the provision under which

1 your lawsuit has been filed?

2 ATTORNEY BLOCK: Objection, misstates her
3 testimony.

4 ATTORNEY TRYON: I'm asking the question.

5 THE WITNESS: I believe that my child is
6 harmed by this bill, which is why we are filing this.

7 BY ATTORNEY TYRON:

8 Q. Okay.

9 In what way is your child harmed by this bill?

10 A. She cannot participate on female sports.

11 Q. And how is that harmful? To use your words, how
12 is that a harm to BPJ?

13 A. She is being denied the opportunity to
14 participate.

15 Q. The opportunity to participate in what?

16 A. In female sports.

17 Q. Under this bill would BPJ be permitted to
18 participate in male sports?

19 A. She wouldn't participate in male sports.

20 Q. Okay.

21 But that's not my question. My question is
22 under this bill would BPJ be permitted to participate in
23 male sports?

24 ATTORNEY BLOCK: Objection. Calls for a

1 legal conclusion.

2 BY ATTORNEY TYRON:

3 Q. Go ahead.

4 A. She could participate in male sports.

5 Q. And --- okay.

6 I'm now looking at page one as marked at the
7 bottom of the bill. In line one it says the legislature
8 hereby finds and then it lists a number of findings by
9 the legislature. Prior to today have you read those
10 findings?

11 A. No.

12 Q. Starting on line two, on page one it says there
13 are inherent differences between biological males and
14 biological females and that these differences are cause
15 for celebration as determined by the Supreme Court of
16 the United States in the United States versus Virginia,
17 1996. Do you agree with that statement?

18 ATTORNEY BLOCK: Objection to vagueness
19 of the terms.

20 THE WITNESS: I don't understand a lot of
21 the lawyer --- the legalese.

22 BY ATTORNEY TRYON:

23 Q. What part of that sentence do you not
24 understand?

1 A. The inherent differences. I mean, there's are
2 differences yes, but it's not telling me what the
3 inherent difference are.

4 Q. Very good. So do you agree that there are
5 inherent differences between biological males and
6 biological females?

7 ATTORNEY BLOCK: Objection again to the
8 vagueness of the terms biological males and biological
9 females.

10 ATTORNEY TRYON: Counsel, I would just
11 appreciate if you just state objection, vagueness,
12 something along those lines, rather than your extended
13 objection.

14 BY ATTORNEY TYRON:

15 Q. So ma'am, I'll ask you one more time. Do you
16 agree with the statement there are inherent differences
17 between biological males and biological females?

18 A. Do you mean physical differences?

19 Q. I'm reading the bill. I don't mean anything.
20 I'm asking if you agree with that statement that there
21 are inherent differences between biological males and
22 biological females?

23 A. I don't know what it means by inherent
24 differences, if it's talking about physical differences.

1 Q. Do you know what the word inherent means?

2 A. Apparently not.

3 Q. Do you know what the word differences mean?

4 A. Yes.

5 Q. Okay.

6 Do you believe that there are differences
7 between biological males and biological females?

8 A. There are physical differences, correct.

9 Q. Do you believe there are other differences
10 between biological males and biological females other
11 than physical differences?

12 ATTORNEY BLOCK: Objection, vagueness.

13 THE WITNESS: I'm not a physician here.
14 I'm just --- I mean, there's differences between males
15 and females.

16 BY ATTORNEY TRYON:

17 Q. Correct. And you are suing to have this law
18 overturned, so I'm asking --- I want to understand
19 specifically what parts of the law you agree with and
20 what parts you disagree with because that's very
21 important in a lawsuit where you're challenging the
22 constitutionality of a law. And that's why I'm asking
23 what you understand the differences are between
24 biological males and biological females?

1 ATTORNEY BLOCK: Objection.

2 Argumentative, vague.

3 THE WITNESS: There are differences
4 between biological males and biological females.

5 BY ATTORNEY TRYON:

6 Q. What's your understanding of what those
7 differences are?

8 A. Well, males have penises and females have
9 vaginas and ovaries.

10 Q. Are there any other differences?

11 A. Those are what I would consider biological
12 markers or what my child was judged at at birth. She
13 was born with a penis, so therefore she was judged as
14 male.

15 Q. Are there any other differences between
16 biological males and biological females that you are
17 aware of?

18 A. No.

19 ATTORNEY BLOCK: Objection. Objection,
20 vagueness.

21 BY ATTORNEY TRYON:

22 Q. The next part of that statement says and these
23 --- that these differences are cause for celebration.

24 Do you agree that the differences between biological

1 males and biological females are cause for celebration?

2 ATTORNEY BLOCK: Objection, vagueness.

3 THE WITNESS: Yes.

4 BY ATTORNEY TRYON:

5 Q. The next statement at line five says these
6 inherent differences are not a valid justification for
7 sex-based classifications that make overbroad
8 generalizations or perpetuate the legal, social and
9 economic inferiority of either sex.

10 Do you agree with that sentence?

11 ATTORNEY BLOCK: Objection, legal
12 conclusion.

13 THE WITNESS: There's a lot of legal
14 jargon in that sentence.

15 BY ATTORNEY TRYON:

16 Q. Do you want me to read it again?

17 A. No, I can read it. I just don't necessarily
18 understand the whole sentence.

19 Q. Well, let's break it down. It says these
20 inherent differences are not valid justification for
21 sex-based classification that makes overbroad
22 generalizations.

23 Do you agree with that much?

24 ATTORNEY BLOCK: Objection, legal

1 conclusion.

2 THE WITNESS: Yes.

3 BY ATTORNEY TRYON:

4 Q. The next part says or perpetuates the legal,
5 social and economic inferiority of either sex.

6 Do you agree with that?

7 ATTORNEY BLOCK: Objection, legal
8 conclusion.

9 THE WITNESS: Perpetuate or perpetuate
10 the legal, social? Can you explain that to me?

11 BY ATTORNEY TRYON:

12 Q. My understanding of the term perpetuate is that
13 a --- to promote or conclude or to move forward the
14 legal, social and economic inferiority of either sex.
15 In other words, this statement, as I read it, is saying
16 that these inherent differences are not valid
17 participation for legal, social and economic inferiority
18 of either sex.

19 A. Okay.

20 Q. Do you agree with that?

21 A. Okay. Yeah.

22 ATTORNEY BLOCK: Objection, legal
23 conclusion.

24 BY ATTORNEY TRYON:

1 Q. You can answer, but take your time.

2 A. From what I understand that sentence to mean,
3 yes, but I don't know that I fully understand all the
4 legal jargon in that sentence.

5 Q. Okay. Fair enough.

6 The next sentence at line seven says, rather
7 these inherent differences are a valid justification for
8 sex-based classifications when they realistically
9 reflect the fact that the sexes are not similarly
10 situated in certain circumstances as recognized by the
11 Supreme Court. But forgetting about whether or not the
12 Supreme Court recognized it, do you agree with that
13 statement?

14 ATTORNEY BLOCK: Objection, objection.
15 That doesn't read the complete sentence. It calls for a
16 legal conclusion.

17 THE WITNESS: I don't feel that it's a
18 valid justification for sex-based classifications, no.

19 BY ATTORNEY TRYON:

20 Q. Under any circumstances whatsoever?

21 ATTORNEY BLOCK: Objection, calls for a
22 legal conclusion.

23 THE WITNESS: There are valid
24 justifications for sex-based classifications? I'm

1 unable to imagine all possible situations.

2 BY ATTORNEY TRYON:

3 Q. Can you imagine any situation where a sex-based
4 classification is a valid justification?

5 A. No.

6 ATTORNEY BLOCK: Objection, calls for a
7 legal conclusion.

8 BY ATTORNEY TRYON:

9 Q. So for example, you think that men should always
10 be allowed to use women's bathrooms at any time, no
11 matter what?

12 ATTORNEY BLOCK: Objection.
13 Argumentative.

14 THE WITNESS: Can you repeat the
15 question?

16 BY ATTORNEY TRYON:

17 Q. Do you believe that any man should be allowed to
18 use any female bathroom at any time for any reason?

19 ATTORNEY BLOCK: Same objection.

20 THE WITNESS: I have no problem with
21 people using the restrooms that they want to use.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 Do you believe that it's appropriate to

1 require ---?

2 A. Can you repeat that?

3 Q. Yes. I'm thinking. I'm sorry.

4 A. Okay.

5 I didn't know if it cut out or ---.

6 Q. No. Your last answer surprised me a little bit,
7 so --- and do you believe that in your child's school
8 that any boy should be allowed to enter a girls' locker
9 room or shower at any time for any reason?

10 ATTORNEY BLOCK: Objection. Calls for
11 speculation.

12 THE WITNESS: If there is a bathroom
13 emergency and there's a --- somebody needs to use the
14 restroom, they should be able to use the restroom.

15 BY ATTORNEY TRYON:

16 Q. So if there's a bathroom --- bathroom emergency,
17 as you classified it, then a boy should be allowed to go
18 into a girl's bathroom, if necessary.

19 Is that your testimony?

20 A. No, I wouldn't say that's accurate. I have no
21 problem with people using whichever restroom they want
22 to use.

23 Q. How about locker rooms? You have no problems
24 with a boy in high school going in naked into a girls'

1 shower with naked girls?

2 ATTORNEY BLOCK: Objection, that calls
3 for speculation.

4 THE WITNESS: That is a bit extreme.

5 BY ATTORNEY TRYON:

6 Q. That is my question, though. Do you have --- do
7 you think that's --- there's a justification to prohibit
8 that?

9 A. I would think that that should be prohibited,
10 yes, if they're walking in there naked.

11 Q. Okay.

12 So at least in one situation there's a valid
13 justification for sex-based classifications.

14 Right?

15 ATTORNEY BLOCK: Objection, calls for a
16 legal conclusion.

17 BY ATTORNEY TRYON:

18 Q. I'm not asking you, by the way, on any of these
19 questions for a legal conclusion. I'm asking for your
20 viewpoint as a Plaintiff or representing as the parent
21 of the Plaintiff on whose behalf you filed this lawsuit.
22 I'm asking for your opinion on this law on all these
23 questions.

24 ATTORNEY TRYON: So you don't need to

1 keep saying calls for a legal conclusion. I'm not
2 asking for a legal conclusion.

3 ATTORNEY BLOCK: You're citing case law
4 that's quoted in the bill.

5 BY ATTORNEY TRYON:

6 Q. So I will ask you again ---.

7 ATTORNEY TRYON: Well, could the court
8 reporter please read back my question?

9 COURT REPORTER: Okay. So you at least
10 in one situation there is a valid justification for
11 sex-based classification. Right?

12 THE WITNESS: I also don't think that
13 they should walk around naked in the hallway either.

14 ATTORNEY TRYON: Court Reporter?

15 THE WITNESS: So I don't understand.

16 ATTORNEY TRYON: Court Reporter, could
17 you please read my question one more time, please?

18 COURT REPORTER: Okay. So you're --- at
19 least in one situation there is a valid justification
20 for a sex-based classification. Right?

21 ATTORNEY BLOCK: Objection, asked and
22 answered.

23 BY ATTORNEY TRYON:

24 Q. It's a simple yes or no.

1 ATTORNEY BLOCK: Objection, asked and
2 answered.

3 THE WITNESS: I don't know how to answer
4 this because I'm picturing the kid walking around naked
5 in the school at this point.

6 BY ATTORNEY TRYON:

7 Q. Forget --- don't --- don't picture that. You
8 had said that you believe it's --- as I understand your
9 testimony, is that there is valid justifications for
10 sex-based classification to prohibit a male to --- in
11 from walking into a girls' shower naked when there's
12 other naked girls in there?

13 ATTORNEY BLOCK: Objection. Are you
14 finished with the question? I didn't mean to cut you
15 off.

16 THE WITNESS: Yes, I don't think that a
17 male should walk around naked in a female locker room.

18 BY ATTORNEY TRYON:

19 Q. So a law or rule saying that would be
20 reasonable.

21 Right?

22 A. The school ---?

23 ATTORNEY BLOCK: Objection, calls for a
24 legal conclusion.

1 THE WITNESS: Schools have rules for
2 that, yes.

3 BY ATTORNEY TRYON:

4 Q. And that would be a validly justified rule.
5 Right?

6 ATTORNEY BLOCK: Objection, legal
7 conclusion.

8 THE WITNESS: Yes.

9 BY ATTORNEY TRYON:

10 Q. Okay.

11 Do you think there might be other valid
12 justifications for sex-based classifications ---

13 A. I don't know.

14 Q. --- to reflect the fact that the sexes are not
15 similarly situated in certain circumstances? Is that a
16 possibility?

17 ATTORNEY BLOCK: Objection. Calls for
18 legal conclusion, misstates prior testimony.

19 THE WITNESS: I don't know. I don't know
20 of all possible situations.

21 BY ATTORNEY TRYON:

22 Q. Neither do I but I'm asking if you think there
23 might be other situations?

24 ATTORNEY BLOCK: Objection asked and

1 answered.

2 THE WITNESS: I don't know. You probably
3 have to be on a case by case basis. I'm not sure of all
4 possible situations.

5 BY ATTORNEY TRYON:

6 Q. Okay, let's move on, line 12 says in the context
7 of sports involving competitive skill or contact
8 biological males and biological females are not in fact
9 similarly situated. Do you agree with that statement?

10 ATTORNEY BLOCK: Objection, vague, calls
11 for a legal conclusion.

12 THE WITNESS: I don't agree with that.

13 BY ATTORNEY TRYON:

14 Q. Do you believe that in the context biological
15 males and biological females are always similarly
16 situated?

17 ATTORNEY BLOCK: Objection, vague, calls
18 for legal conclusion?

19 THE WITNESS: I believe they are
20 similarly situated.

21 BY ATTORNEY TRYON:

22 Q. Under all circumstances?

23 A. As far as my knowledge goes, yes.

24 Q. Okay.

1 So if we are talking about a biological male
2 who is 18 as compared to a biological female who is 18
3 you believe that they are both similarly situated?

4 ATTORNEY BLOCK: Objection,
5 mischaracterizes testimony. Vague. Calls for legal
6 conclusions.

7 THE WITNESS: In regard to competitive
8 skill?

9 BY ATTORNEY TRYON:

10 Q. Correct.

11 A. Then they are similarly situated.

12 Q. So do you --- is it your position that there was
13 no difference between boys and girls playing high school
14 sports?

15 ATTORNEY BLOCK: Objection.
16 Mischaracterizes the previous testimony.

17 ATTORNEY TRYON: I'm not
18 mischaracterizing her testimony I'm asking her a new
19 question, counsel.

20 THE WITNESS: I believe ---.

21 ATTORNEY BLOCK: Same objection.

22 THE WITNESS: I believe a girl can run as
23 fast as a boy can run.

24 BY ATTORNEY TRYON:

1 Q. So you believe that a --- in a mile run you
2 believe that an 18-year-old girl would be able to run
3 just as fast as a boy?

4 ATTORNEY BLOCK: Objection calls for
5 speculation.

6 THE WITNESS: Yes, I do.

7 BY ATTORNEY TRYON:

8 Q. Do you have any statistics to back that up?

9 A. No, I do not.

10 Q. Have you ever looked at any statistics?

11 A. No, I do not.

12 Q. What is the basis for your belief of what you
13 just expressed?

14 A. With proper training they both have adequate
15 training they can both run.

16 Q. So do you believe that in high school sports the
17 differentiation between --- strike that.

18 Do you believe that in both middle school and
19 high school that there is no difference between males
20 and females in sports?

21 ATTORNEY BLOCK: Objection
22 mischaracterizes testimony. Argumentative?

23 THE WITNESS: I believe the girls are as
24 capable as the boys.

1 BY ATTORNEY TRYON:

2 Q. So there is no difference between them in either
3 middle school or high school in sports?

4 A. Agreed.

5 Q. Is that your testimony?

6 ATTORNEY BLOCK: Objection vague.

7 THE WITNESS: I think the males and the
8 females can do just as well.

9 BY ATTORNEY TRYON:

10 Q. So do you believe that there should be no
11 difference --- there should be no male teams and female
12 teams but they should all be together in elementary,
13 middle school and high school?

14 ATTORNEY BLOCK: Objection, vague.

15 THE WITNESS: I believe that she should
16 be able to participate on the team that they identify
17 with.

18 BY ATTORNEY TRYON:

19 Q. Well right now, there are different teams.
20 There is a boys team and a girls team in many sports, do
21 you believe that there is any reason at all that there
22 should be a differentiation between boys and girls
23 designation of sports?

24 A. No, I think ---.

1 ATTORNEY BLOCK: Objection.

2 THE WITNESS: I think if a girl wants to
3 wrestle, the girl should be allowed to wrestle.

4 BY ATTORNEY TRYON:

5 Q. And if a boy wants to run on a girls team ---
6 well let me back up.

7 So do you think there is any reason at all that
8 there should be a boys teams and a girls team in any
9 sports?

10 ATTORNEY BLOCK: Objection, vague.

11 THE WITNESS: I think that they should be
12 able to participate on the team that they identify with.

13 BY ATTORNEY TRYON:

14 Q. Okay.

15 But that is not my question that is a totally
16 different question. The question is are you saying that
17 there should not be a differentiation at all in the
18 middle school or high school sports between men ---
19 between boys and girls?

20 ATTORNEY BLOCK: Objection. Vague.

21 THE WITNESS: I don't know the answer to
22 that.

23 BY ATTORNEY TRYON:

24 Q. Well you said there is no justification for any

1 differentiation between biological males and biological
2 females and I'm trying to understand how that applies to
3 the context of sports?

4 ATTORNEY BLOCK: Objection, misstates
5 prior testimony, argumentative.

6 ATTORNEY TRYON: You're right I did make
7 a mistake there, I apologize.

8 BY ATTORNEY TRYON:

9 Q. In the context ever sports involving competitive
10 sports or contact you told me that biological males and
11 biological females are similarly situated and there is
12 no reason for them to have different designations of
13 sports. Is that consistent with your testimony?

14 A. I believe they are similarly situated.

15 Q. And so there is no reason to have a boys team,
16 right?

17 ATTORNEY BLOCK: Objection, vague,
18 argumentative.

19 THE WITNESS: I don't know what the
20 reason would be to have a boys team.

21 BY ATTORNEY TRYON:

22 Q. So all teams should just be coed, right?

23 ATTORNEY BLOCK: Objection, vague,
24 argumentative?

1 THE WITNESS: I don't know the answer to
2 that.

3 BY ATTORNEY TRYON:

4 Q. Okay.

5 So since there is no difference between
6 biological males and females on sports teams than why is
7 it that BPJ can't or won't run on what's designated as
8 the boys cross-country team?

9 ATTORNEY BLOCK: Objection misstates
10 prior testimony, vague, compound question,
11 argumentative?

12 THE WITNESS: Because she is a girl.

13 BY ATTORNEY TRYON:

14 Q. Okay.

15 But you just told me there is no difference
16 between boys and girls. So why shouldn't BPJ run on the
17 boys teams if there is no difference between boys and
18 girls?

19 ATTORNEY BLOCK: Objection, misstates
20 prior testimony, argumentative?

21 THE WITNESS: The fact is that there are
22 boys and girls teams and she should be able to run on
23 the girls team because she is a girl.

24 BY ATTORNEY TRYON:

1 Q. So in this lawsuit are you asking that the Court
2 abolish boys teams because there is no difference?

3 ATTORNEY BLOCK: Objection. Calls for a
4 legal conclusion, vague, misstates prior testimony.

5 THE WITNESS: Can you repeat the
6 question?

7 ATTORNEY TRYON: The court reporter
8 please repeat the question?

9 COURT REPORTER: So in this lawsuit are
10 you asking that the court abolish boys' teams because
11 there is no difference?

12 THE WITNESS: No, that is not what.

13 ATTORNEY BLOCK: My objection stands.

14 THE WITNESS: No, that is not what I'm
15 saying.

16 BY ATTORNEY TRYON:

17 Q. So I will ask a new question so I'm not
18 misstating your prior testimony. Do you believe there
19 is a justification to have a boys cross-country team?

20 ATTORNEY BLOCK: Objection, legal
21 conclusion.

22 THE WITNESS: I don't know if there is a
23 justification to that.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 So help me out here because you told me there
3 is no difference between males and females. What would
4 be the justification for having a different boys teams
5 and girls team in track?

6 ATTORNEY BLOCK: Objection, misstates her
7 prior testimony. Vague, argumentative.

8 THE WITNESS: I just know that there are
9 girls teams and boys teams in track.

10 BY ATTORNEY TRYON:

11 Q. But you don't agree there's justification for
12 it.

13 Is that correct?

14 ATTORNEY BLOCK: Objection misstates
15 prior testimony?

16 THE WITNESS: I don't know what the
17 justification is.

18 BY ATTORNEY TRYON:

19 Q. You don't believe there's a justification, do
20 you?

21 ATTORNEY BLOCK: Objection, asked and
22 answered misstates prior testimony?

23 THE WITNESS: I just know that there is
24 male teams and there is female teams in school and in

1 professional sports.

2 BY ATTORNEY TRYON:

3 Q. You mean professional sports, do you believe
4 there is a justification for that?

5 ATTORNEY BLOCK: Objection, vague.

6 THE WITNESS: I think a girl should be
7 allowed to play football.

8 BY ATTORNEY TRYON:

9 Q. How do you think a girl would fare in
10 professional football?

11 A. I don't know.

12 Q. Do you watch professional football?

13 A. I do.

14 Q. And have you ever seen --- are you aware of any
15 females that compete with males in the professional
16 football?

17 A. Not in the NFL.

18 Q. Any other football league?

19 A. I don't watch any other football league.

20 Q. Let's go back to line 12 on the second page of
21 the exhibit. It says in the context of sports involving
22 competitive skill or contact biological place and
23 biological females are not in fact similarly situated.
24 Do you agree with that --- I'm sorry we already asked

1 that my apologies. The next sentence is biological
2 males would displace females to a substantial extent if
3 permitted to be on teams designated for biological
4 females as recognized in the court case. Do you believe
5 that is a correct statement?

6 A. I don't.

7 ATTORNEY BLOCK: Objection, calls for a
8 legal conclusion, vague.

9 THE WITNESS: I don't agree with that
10 statement.

11 BY ATTORNEY TRYON:

12 Q. If the boys track team were to suddenly be
13 consolidated with the girls track team do you think that
14 the biological boys would displace the female, the
15 biological females or not?

16 A. I don't know.

17 ATTORNEY BLOCK: Objection. Vague, calls
18 for speculation.

19 BY ATTORNEY TRYON:

20 Q. You don't know?

21 A. I wouldn't know it would be completely a guess
22 on my point.

23 Q. So it is possible that there is a difference
24 then?

1 ATTORNEY BLOCK: Same objections.

2 THE WITNESS: There is possible there is
3 not a difference is what I'm saying.

4 BY ATTORNEY TRYON:

5 Q. And it's possible that there is a difference?

6 A. Not a difference.

7 Q. I'm sorry?

8 A. I'm saying that they would not displace females.

9 Q. You are absolutely certain they would not, is
10 that what you are saying?

11 ATTORNEY BLOCK: Objection, misstates
12 prior testimony, vague, calls for speculation.

13 THE WITNESS: It's just my opinion.

14 BY ATTORNEY TRYON:

15 Q. Okay.

16 And your opinion --- is your opinion based on
17 any facts?

18 A. No, it is my opinion.

19 Q. Is your opinion based on any facts?

20 ATTORNEY BLOCK: Objection, asked and
21 answered.

22 THE WITNESS: I don't know of a case
23 where a biological male has displaced females.

24 ATTORNEY TRYON: Could you read my

1 question again please, Court Reporter?

2 COURT REPORTER: Is your opinion based on
3 any facts? Do you want the question before that?

4 ATTORNEY TRYON: Yes. I might be
5 helpful. Maybe the answer before that and the question.

6 COURT REPORTER: Okay. And is your
7 opinion based on any facts. And, no, sir, it it my
8 opinion. Question, is your opinion based on any facts?

9 ATTORNEY BLOCK: Same objections, asked
10 and answered.

11 THE WITNESS: It's my opinion.

12 BY ATTORNEY TRYON:

13 Q. So you're not aware of any --- have you read any
14 books, articles, analysis that would support your
15 opinion?

16 A. No.

17 Q. There is a statement on line 17 that says,
18 gender identity is separate and distinct from biological
19 sex to the extent that an individual's biological sex is
20 not determinative or indicative of the individual's
21 gender identity. Do you agree with that statement?

22 A. I don't understand.

23 ATTORNEY BLOCK: Objection, calls for a
24 medical opinion.

1 THE WITNESS: I don't understand that
2 statement.

3 BY ATTORNEY TRYON:

4 Q. Great. Let's break it down. Gender identity is
5 separate and distinct from biological sex. Do you agree
6 with that?

7 ATTORNEY BLOCK: Objection, vague, calls
8 for medical opinion.

9 BY ATTORNEY TRYON:

10 Q. I'm not asking for your medical opinion, ma'am,
11 I'm just asking if you agree with that statement, gender
12 identity is separate and distinct from biological sex?

13 A. Yes.

14 ATTORNEY BLOCK: Objection, vague.

15 THE WITNESS: Yes, it's separate.

16 BY ATTORNEY TRYON:

17 Q. And on line 19 in the bill it says,
18 classification is based on gender identity, serve no
19 legitimate relationship to the State of West Virginia's
20 interest in promoting equal athletic opportunities for
21 female sex. Do you agree with that statement?

22 A. I don't ---.

23 ATTORNEY BLOCK: Objection, calls for a
24 legal conclusion, vague.

1 THE WITNESS: I don't understand that
2 sentence.

3 BY ATTORNEY TRYON:

4 Q. Okay.

5 Well and I'm not asking for a legal conclusion
6 I'm just asking if you agree with the statement because
7 we're not asking --- because you're not a lawyer and you
8 can't make a legal conclusion so let's break it down.
9 Classifications based on gender identity serve no
10 legitimate relation slip to the State of West Virginia's
11 interest in promoting equal athletic opportunities for
12 the female sex. What about that do you not understand?

13 ATTORNEY BLOCK: Same objections.

14 THE WITNESS: I don't than stand the
15 whole sentence. I don't understand the sentence.

16 BY ATTORNEY TRYON:

17 Q. On line 25 it says biological sex means that the
18 individuals physical form as a male or female based
19 solely on the individual's reproductive biology and
20 genetics at birth. Is that a reasonable definition of
21 biological sex in your mind?

22 ATTORNEY BLOCK: Objection, vague, calls
23 for a medical opinion.

24 THE WITNESS: Biological sex means that

1 they were born with a penis or a vagina, yes.

2 BY ATTORNEY TRYON:

3 Q. Okay.

4 And number two says, biological sex means an
5 individual's physical form as a male or female based
6 solely on the individual's reproductive biology and
7 genetics at birth. I'm not are asking for a medical
8 opinion, I'm asking if that is a reasonable biological
9 definition of sex?

10 ATTORNEY BLOCK: Objection, vague.

11 THE WITNESS: Biological sex means an
12 individual's physical form is male or female based
13 solely on individual's reproductive biology. So it's
14 saying that the biological sex is based on whether they
15 have a penis or a vagina, then yes.

16 BY ATTORNEY TRYON:

17 Q. Okay.

18 And the rest of that sentence says and
19 genetics. Do you understand what genetics are?

20 A. To a certain extent genetics are your DNA.

21 Q. Okay.

22 Do you understand what the different genetic
23 differences between males and --- biological males and
24 biological females?

1 A. Chromosomes.

2 ATTORNEY BLOCK: Objection vague calls
3 for medical opinion.

4 BY ATTORNEY TRYON:

5 Q. And do you know what those chromosomes are? And
6 I know you're not a doctor so if you don't know that is
7 okay?

8 ATTORNEY BLOCK: Same objections.

9 THE WITNESS: The X and Y chromosomes.

10 BY ATTORNEY TRYON:

11 Q. Do you know which pertains to which?

12 A. No.

13 Q. That's okay.

14 And the next one of course says, female means
15 an individual whose biological sex is --- sex determined
16 at birth is female as used in this section, women or
17 girls are first biological females. Is that a
18 reasonable definition in your mind?

19 ATTORNEY BLOCK: Objection, vague, calls
20 for legal conclusion, calls for medical conclusion?

21 THE WITNESS: In regards to this document
22 females means individual whose biological sex determined
23 at birth is female and in regards to this document?

24 BY ATTORNEY TRYON:

1 Q. Yes.

2 A. If that is what they are referring to in this
3 document?

4 Q. Yes.

5 A. Because my daughter is a female but her
6 biological sex determined at birth was not female.

7 Q. Okay.

8 And how do you define female so it would
9 include BPJ as a female?

10 ATTORNEY BLOCK: Objection, calls for a
11 medical opinion.

12 BY ATTORNEY TRYON:

13 Q. I'm not asking for medical opinion I'm asking
14 what you would use as a definition?

15 A. She identifies as female.

16 Q. Okay.

17 So the definition you would use for female is
18 and I'm just going to write this down because I want to
19 make sure that I understand this, female means anyone
20 who identifies --- who self identifies as female?

21 ATTORNEY BLOCK: Objection.
22 Mischaracterizes her testimony.

23 ATTORNEY TRYON: I didn't ask the
24 question yet.

1 BY ATTORNEY TRYON:

2 Q. Is that how you would define female?

3 ATTORNEY BLOCK: Objection,
4 mischaracterizes her testimony, vague, calls for medical
5 opinion.

6 THE WITNESS: Female means as individual
7 whose biological sex determined as birth as female or
8 someone who identifies as female.

9 BY ATTORNEY TRYON:

10 Q. Okay.

11 So anyone --- under your definition anyone at
12 all that identifies as female would be a female. Is
13 that right?

14 ATTORNEY BLOCK: Objection,
15 mischaracterizes her testimony, calls for medical
16 opinion, vague.

17 BY ATTORNEY TRYON:

18 Q. Okay.

19 Let me explain it all over again because I'm
20 not asking you for a medical opinion, a legal opinion
21 and I'm not mischaracterizing your testimony. I'm
22 asking you if you believe that the term female means
23 anyone who self identifies as female?

24 ATTORNEY BLOCK: Vague.

1 THE WITNESS: If there is an individual
2 that identifies as female then they are a female.

3 BY ATTORNEY TRYON:

4 Q. Okay.

5 And for someone to identify as a female do they
6 just need to say I identify as a female?

7 ATTORNEY BLOCK: Objection, vague, calls
8 for medical opinion.

9 THE WITNESS: If a person identifies as
10 female they're female.

11 BY ATTORNEY TRYON:

12 Q. And they simply need to say I identify as a
13 female, no other prerequisites, no other --- nothing
14 they have to do, just say I identify as a female and in
15 your mind that would make them --- under your definition
16 that would be a female person?

17 ATTORNEY BLOCK: Objection,
18 mischaracterizes her testimony, vague.

19 THE WITNESS: What prerequisites?

20 BY ATTORNEY TRYON:

21 Q. Are there any other requirements in your mind
22 under your definition? Your definition as I understand
23 it is female means anyone who identifies as a female?

24 A. Or someone who is born as a female and

1 identifies as female.

2 Q. Or born as a female?

3 A. And identifies as female.

4 Q. And by the same token how would you define male?

5 ATTORNEY BLOCK: Objection, vague, calls
6 for a medical opinion.

7 BY ATTORNEY TRYON:

8 Q. Are you a doctor?

9 A. No.

10 Q. So I'm obviously not asking for medical opinion,
11 I'm just asking you for your opinion as the ---
12 representing the Plaintiff in this case as a parent of
13 the Plaintiff. So how would you define male?

14 ATTORNEY BLOCK: Objection.

15 THE WITNESS: A male who biological sex
16 determined at birth is a male and they identify as a
17 male.

18 BY ATTORNEY TRYON:

19 Q. It has to be both or either one?

20 ATTORNEY BLOCK: Objection, compound
21 vague?

22 THE WITNESS: They can be born a male and
23 identify as a male. They have to identify as a male.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 So if you just identify as a male whatever you
3 are born at under your definition would you be a male?

4 ATTORNEY BLOCK: Objection,
5 mischaracterizes testimony, vague?

6 THE WITNESS: You could be born with
7 female genitalia and identify as a male.

8 BY ATTORNEY TRYON:

9 Q. Okay.

10 So tell me if you agree within this definition,
11 male means anyone who identifies as a male or who is
12 born with male genitalia and identifies as a male?

13 ATTORNEY BLOCK: Objection, vague, calls
14 for a medical opinion.

15 THE WITNESS: In my opinion that would be
16 a male.

17 BY ATTORNEY TRYON:

18 Q. Very good. Great. I just wanted to make sure
19 we had our definitional information.

20 Let me then ask you if someone identifies as a
21 male today and therefore as a male would they --- that
22 person then be able to identify as a female tomorrow and
23 thereby be a female tomorrow?

24 ATTORNEY BLOCK: Objection, vague, calls

1 for a medical opinion, calls for speculation.

2 THE WITNESS: If they truly --- if they
3 identify as a female is that what you are saying?

4 BY ATTORNEY TRYON:

5 Q. If they start out today identifying as a male
6 and tomorrow they change and identify as a female, would
7 they then be a female tomorrow?

8 ATTORNEY BLOCK: Objection, vague, calls
9 for medical opinion, calls for speculation.

10 THE WITNESS: Then they would be
11 transgender and female. Is that what you are saying?

12 BY ATTORNEY TRYON:

13 Q. I'm not saying anything about transgender. I
14 don't --- we haven't discussed that term. I just want
15 to know if someone says today I am male and then
16 tomorrow says I identify as female, under your
17 definition that person would then be female.

18 Correct, tomorrow?

19 ATTORNEY BLOCK: Objection, vague,
20 mischaracterizes testimony, calls for speculation, calls
21 for medical opinion.

22 THE WITNESS: If they identify as female
23 then they are female.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 So today they identify as a male, tomorrow they
3 identify as female, then on the third day could they
4 then turn around and identify as a male and then be a
5 male?

6 ATTORNEY BLOCK: Objection, vague, calls
7 for medical opinion, calls for speculation.

8 ATTORNEY TRYON: Okay.

9 Josh, this is ridiculous. I'm not
10 calling for medical opinion and you keep on saying that.
11 It 's ridiculous, it's not an appropriate objection
12 here. And it is very obvious I'm not asking for medical
13 opinion. So I would appreciate that you stop doing that
14 because I think you are interfering with this
15 deposition.

16 ATTORNEY BLOCK: It's a totally valid ---
17 it's a totally valid objection. You're asking medical
18 terms of, it's a completely valid objection.

19 ATTORNEY TRYON: And I will give you a
20 standing ongoing objection as to all of those objections
21 as to my questions.

22 ATTORNEY BLOCK: If you want to preface
23 your question saying you're not calling for a medical
24 opinion, that's fine. But as long as --- I'm entitled

1 to object.

2 ATTORNEY TRYON: I'm never asking you for
3 a medical opinion and if I do I will be very clear that
4 I'm asking for medical opinion.

5 BY ATTORNEY TRYON:

6 Q. Now if I can go back to my question please. So
7 Ms. Jackson, again, I want to ask you if a person
8 identifies as male today, female tomorrow and then male
9 the following day does that person's identity --- is
10 that person shifting from male to female to male and
11 then on the third day as male again?

12 A. They're ---.

13 ATTORNEY BLOCK: Objection, calls for
14 speculation. Vague. Calls for medical opinion.

15 BY ATTORNEY TRYON:

16 Q. Okay.

17 Did you answer my question, ma'am?

18 A. They are --- they identify --- they are the sex
19 they identify with.

20 Q. On any given day; is that your testimony?

21 A. Yes.

22 Q. Thank you. So in the context of sports do you
23 believe that a person should be able to switch back and
24 forth between boys and girls teams on a daily or weekly

1 basis?

2 ATTORNEY BLOCK: Objection,
3 mischaracterizes testimony, vague.

4 THE WITNESS: I believe they should be
5 able to participate on the team that they identify with.

6 BY ATTORNEY TRYON:

7 Q. On any given day; is that right?

8 ATTORNEY BLOCK: Objection,
9 mischaracterizes testimony, vague.

10 THE WITNESS: Yes, if they identify as
11 female then they need to run on the female team. If
12 they identify as male then they need to run on the male
13 team.

14 BY ATTORNEY TRYON:

15 Q. And they can go back and forth on a weekly
16 basis, right?

17 A. Whatever they identify as.

18 Q. On any given --- in any given week, right?

19 ATTORNEY BLOCK: Objection, asked and
20 answered.

21 THE WITNESS: Yep.

22 BY ATTORNEY TRYON:

23 Q. You have already stated your full name, can you
24 give us your current address and phone number. And

1 before you give me your phone number I just want it to
2 be clear that the only time in which we would use your
3 phone number as opposed to going to your counsel to
4 reach you if for some reason your client (sic) could not
5 reach you or you were no longer represented by counsel.
6 So on that basis could you give me your current address
7 and phone number?

8 A. [REDACTED], Lost Creek, West Virginia
9 26385.

10 Q. And your phone number?

11 A. [REDACTED].

12 Q. And is that a landline or is that a cell number?

13 A. That is a landline.

14 Q. Not many people still have landlines. I do.

15 A. Yes, we have to out where we live.

16 Q. I see. And did you get a high school diploma?

17 A. A high school diploma, yes.

18 Q. Where?

19 A. Seneca East High School.

20 Q. Where is that?

21 A. In Ohio.

22 Q. What part of Ohio? What city?

23 A. Attica.

24 Q. Where's Attica?

1 A. Let's see more towards Toledo.

2 Q. Okay.

3 And after high school did you get any further
4 education?

5 A. Yes.

6 Q. Can you please tell me what that was?

7 A. I got an associate of arts degree from the
8 University of Findlay in Findlay, Ohio.

9 Q. And when was that?

10 A. 1996.

11 Q. Anymore education after that?

12 A. I went to the Nuclear Medicine Institute after
13 that, recertified in Nuclear Medicine Technology.

14 Q. Is there a degree or certificate that you get
15 from that?

16 A. It's a certificate.

17 Q. And when was that?

18 A. That would have been in 1996 as well.

19 Q. Any other post-high school education?

20 A. No.

21 Q. When did you graduate from high school?

22 A. 1986.

23 Q. What did you do between 1986 and 1996?

24 A. I worked for a rehabilitation center.

1 Q. Doing what?

2 A. Bookkeeping.

3 Q. Were you there for --- how long were you there?

4 A. I don't remember.

5 Q. What was the next job that you had after that
6 rehabilitation center?

7 A. I went back to school after I got laid off.

8 Q. Is that when you went to University of Findlay?

9 A. Yes, first I went to Community College. It
10 would have been Terra Community College. And then I
11 went to the University of Findlay and received my
12 degree.

13 Q. Great. Where is Terra Community College?

14 A. In Toledo.

15 Q. Okay.

16 Did you get any certificates or anything there?

17 A. No, I just transferred to the University of
18 Findlay.

19 Q. Do you remember when you started at Terra
20 Community College?

21 A. No, I don't.

22 Q. Do you remember when you started at the
23 University of Findlay?

24 A. No, I don't.

1 Q. How long did it take you to get your associate's
2 degree at University of Findlay?

3 A. Two years. And I had to go to the Nuclear
4 Medicine Institute in order to practice nuclear medicine
5 technology.

6 Q. So took you two years to get your associate's
7 degree and you started somewhere around 1994?

8 A. Roughly.

9 Q. Okay.

10 So it looks like you worked as --- what was it
11 called, rehabilitation ---?

12 A. It was the Betty Jane Rehabilitation Center.

13 Q. Okay.

14 So it looks like that you worked there for
15 about eight years, is that fair?

16 A. Sounds right.

17 Q. Okay.

18 Tell me what nuclear medical --- excuse me,
19 nuclear technologist does?

20 A. Injects radioactive material into patients in
21 order to determine a malady.

22 Q. What is an abnormality?

23 A. It can be anything depending on a heart issue,
24 we could be looking for a bone issue, we could be

1 looking for a gallbladder issue, we could be looking for
2 a stomach issue.

3 Q. Okay.

4 So after you got that certification in 1996
5 what did you do then?

6 A. I practiced nuclear medicine technology.

7 Q. Where was the first place you did that?

8 A. That would have been in Florida.

9 Q. Do you remember the name of the place you worked
10 for?

11 A. Let's see, if I heard it I would know it but I
12 don't remember it off the top of my head.

13 Q. Okay. Fair enough.

14 That was starting in 1996 though?

15 A. Yes.

16 Q. And then how long were you there?

17 A. I don't know because I went there to private
18 imaging facility and worked.

19 Q. I'm sorry, can you repeat that I didn't
20 understand?

21 A. I don't know how long I was there. I left there
22 and went to a private imaging facility.

23 Q. What was the name of that?

24 A. RPA.

1 Q. RPA. And what did you do there?

2 A. Nuclear medicine technology.

3 Q. Okay.

4 Do you remember when you started there?

5 A. No, I don't.

6 Q. Do you remember when you left there?

7 A. I left there in 2001.

8 Q. And then what did you do?

9 A. I'm sorry I moved to Georgia.

10 Q. And that was in about 2001?

11 A. Yes.

12 Q. And what did you do in Georgia?

13 A. Nuclear medicine technology at Kennestone
14 Hospital.

15 Q. Can you spell that, please?

16 A. K-E-N-N-E-S-T-O-N-E. It's a well star facility.

17 Q. Excuse me one second. All right. I guess I've
18 been talking too much today I needed a cough drop.

19 Sorry. And how long were you there in Georgia?

20 A. Until 2005.

21 Q. And where did you go from there?

22 A. West Virginia.

23 Q. And what did you do in West Virginia in 2005?

24 A. Positron emission technology.

1 Q. Where was that located?

2 A. First I worked at a mobile unit for Alliance
3 Imaging.

4 Q. Where was that centered?

5 A. They're centered out of Charleston, but I was
6 assigned to North Central West Virginia and the western
7 panhandle and the Eastern panhandle in Maryland.

8 Q. And then you said initially in the mobile unit
9 and then what?

10 A. Then I took a stationary position with the
11 United Hospital Center.

12 Q. And where is that?

13 A. In Bridgeport, West Virginia.

14 Q. And then after that what?

15 A. I'm still there.

16 Q. Okay.

17 And at your house at [REDACTED] who
18 lives there with you?

19 A. My spouse and two of my three children.

20 Q. You're married, right?

21 A. Correct.

22 Q. And when did you get married?

23 A. We got married in --- oh I'm bad at
24 anniversaries, 2000, 2001.

1 Q. If I recall your husband told us that your
2 anniversary is coming up in the next several days?

3 A. It is and I never remember it.

4 Q. Well, I didn't write down the date but it is
5 coming up so you might want to ---.

6 A. I'll have to look at the certificate.

7 ATTORNEY BLOCK: David, we have a 5:30
8 stop and it is 5:24 so I just want to --- I don't want
9 you to start on a line of questioning that you have to
10 stop short in the middle of.

11 ATTORNEY TRYON: Right. And yeah, I'm
12 just going to finish up with this background and then we
13 will suspend this until tomorrow.

14 BY ATTORNEY TRYON:

15 Q. So is this your only marriage?

16 A. Correct.

17 Q. And you have no other children other than the
18 three that you mentioned?

19 A. Correct.

20 ATTORNEY TRYON: Okay.

21 Well now would be a good time to pause
22 until tomorrow and reconvene at 10:00 a.m. if everyone's
23 okay with that.

24 ATTORNEY BLOCK: That is good with

1 Plaintiff's Counsel.

2 THE WITNESS: That's fine.

3 VIDEOGRAPHER: Then if that is it for
4 today we are going off the record at 5:25 p.m.

5 ATTORNEY TRYON: Thank you.

6 * * * * *

7 VIDEOTAPED DEPOSITION CONCLUDED AT 5:25 P.M.

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1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

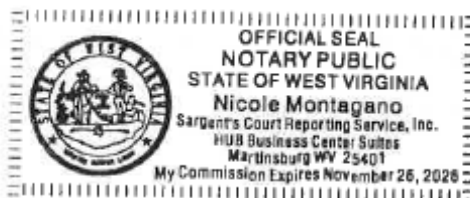
3 I, Nicole Montagano, a Notary Public in
4 and for the State of West Virginia, do hereby
5 certify:

6 That the witness whose testimony appears
7 in the foregoing deposition, was duly sworn by me
8 on said date, and that the transcribed deposition
9 of said witness is a true record of the testimony
10 given by said witness;

11 That the proceeding is herein recorded
12 fully and accurately;

13 That I am neither attorney nor counsel
14 for, nor related to any of the parties to the
15 action in which these depositions were taken, and
16 further that I am not a relative of any attorney
17 or counsel employed by the parties hereto, or
18 financially interested in this action.

19 I certify that the attached transcript
20 meets the requirements set forth within article
21 twenty-seven, chapter forty-seven of the West
22 Virginia.



Nicole Montagano
Nicole Montagano,
Court Reporter

Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

* * * * *

B.P.J., by her next friend and *

Mother, HEATHER JACKSON, *

Plaintiff * Case No.

vs. * 2:21-CV-00316

WEST VIRGINIA STATE BOARD OF *

EDUCATION, HARRISON COUNTY *

BOARD OF EDUCATION, WEST *

VIRGINIA SECONDARY SCHOOL *

ACTIVITIES COMMISSION, W. *

CLAYTON BURCH in his official *

Capacity as State Superintendent, * VIDEOTAPED

DORA STUTLER in her official * VIDEOCONFERENCE

Capacity as Harrison County * DEPOSITION

Superintendent, PATRICK MORRISEY * OF

In his official capacity as * HEATHER JACKSON

Attorney General, and THE STATE * January 20, 2022

OF WEST VIRGINIA, *

Defendants *

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is prohibited without authorization
by the certifying agency.

1 VIDEOTAPED VIDEOCONFERENCE DEPOSITION
2 OF
3 HEATHER JACKSON, taken on behalf of the Defendant, State
4 of West Virginia herein, pursuant to the Rules of Civil
5 Procedure, taken before me, the undersigned, Nicole
6 Montagano, a Court Reporter and Notary Public in and for
7 the State of West Virginia, on Wednesday, January 20,
8 2022, beginning at 11:13 a.m.

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A P P E A R A N C E S (cont'd)

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2			
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23 * CONFIDENTIAL EXHIBITS

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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between
counsel for the respective parties that reading,
signing, sealing, certification and filing are not
waived.)

P R O C E E D I N G S

ATTORNEY TRYON: This is David Tryon on
behalf of the State of West Virginia conducting this
deposition on behalf of the State of West Virginia. We
have had off the record some discussions among all the
counsel about some various stipulations about how to go
forward with the deposition and with objections, and I
think the best thing for me to do, since Josh, since you
were the one that is making the objections in this case,
you give your thoughts about how we can handle those
objections and then we can all state how we concur with
them. Is that fair enough or do you want me to state
them?

ATTORNEY BLOCK: No, I can state them.
And I think I'll state each type of objection. The
first is that several objections have come up to

1 questions that in our view seem to call for legal expert
2 or medical opinion. And our understanding from our
3 discussions with Defense Counsel is that they do not
4 intend for any of their questions to seek an answer
5 based on legal/medical or otherwise expert opinion and
6 they will specifically state otherwise if they are
7 seeking a legal/expert or medical opinion. And so based
8 on that understanding, we will just make a standing
9 objection to any question insofar as it calls for a
10 legal expert or medical opinion and won't be making a
11 specific objection to each question as it occurs.

12 ATTORNEY TRYON: Agreed. And that
13 applies to this deposition. And to the extent that we
14 address it at other depositions, we'll address that
15 separately.

16 Right?

17 ATTORNEY BLOCK: Yes. So if each counsel
18 could say that they agree to this way of handling those
19 objections for purposes of this deposition.

20 ATTORNEY DENIKER: I'm in agreement with
21 that.

22 ATTORNEY MORGAN: I am as well.

23 ATTORNEY DUCAR: I am as well.

24 ATTORNEY BLOCK: The second set of

1 objections that came up were objections to terminology
2 regarding gender identity, being transgender, the
3 definition of sex, gender transition, that in our view
4 are vague and that we think can lead to confusion about
5 what the terminology means and whether the terminology
6 is even medically appropriate. And so we object to any
7 questions that could be used to imply that the language
8 used in that question actually is medically appropriate
9 language. But we don't want those to unnecessarily
10 interrupt the deposition, but at the same time we think
11 it could be helpful to clarify some of the language so
12 it doesn't cause problems for any counsel down the road.
13 And so we propose that we can handle that issue by ---
14 if terminology that we think is vague and problematic
15 comes up, we will simply say objection to terminology
16 and say we have a standing objection to that terminology
17 without then reiterating objections each subsequent time
18 the terminology is used. And so is that procedure
19 acceptable to Defense Counsel?

20 ATTORNEY TRYON: Agreed on behalf of the
21 State of West Virginia.

22 ATTORNEY DENIKER: I'm agreeable to that
23 as well.

24 ATTORNEY MORGAN: I'm agreeable as well.

1 ATTORNEY DUCAR: Tim Ducar on behalf of
2 Armistead, yes.

3 ATTORNEY BLOCK: And the Commission had a
4 chance to put their statement on the record. Roberta?

5 ATTORNEY GREEN: Yes, I agree. I'm good
6 with that.

7 ATTORNEY BLOCK: And the final issue is
8 there are several objections on the basis that we
9 thought it mischaracterized the witness's testimony. We
10 of course, you know, do not want the objections to
11 impede the questioning or somehow, you know,
12 unintentionally affect how the witness responds. We
13 discussed that, instead of saying mischaracterizes the
14 testimony, we would say objection MT and that would
15 allow us to preserve the objection without the witness
16 hearing the grounds for it. So is that an acceptable
17 approach for all of Defense Counsel?

18 ATTORNEY TRYON: Yes.

19 ATTORNEY DENIKER: I'm also agreeable to
20 that.

21 ATTORNEY MORGAN: I am as well.

22 ATTORNEY GREEN: And I agree as well.

23 ATTORNEY DUCAR: I agree as well.

24 ATTORNEY BLOCK: Terrific. I think that

1 resolves everything unless I missed something.

2 ATTORNEY TRYON: No, I think that's
3 right. I think we are ready to go with the expectation
4 that we are ready to go. I would like to take a real
5 quick bathroom break, to be honest.

6 ATTORNEY BLOCK: That sounds good.
7 Should we convene at 10:50?

8 ATTORNEY TRYON: 10:55 is fine with me.

9 ATTORNEY HARTNETT: Why don't we do
10 10:55, and that will make sure we get the printed
11 copies?

12 ---

13 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

14 ---

15 VIDEOGRAPHER: We are on the record.
16 The current time reads 11:13 a.m. This is the continued
17 deposition of Heather Denise Jackson.

18 ---

19 HEATHER DENISE JACKSON,
20 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
21 HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED AND SAID AS
22 FOLLOWS:

23 ---

24 CONTINUED EXAMINATION

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BY ATTORNEY TRYON:

Q. Ms. Jackson, thank you for joining us again today. And I apologize for the delay here. We were trying to accomplish some things amongst the lawyers to streamline the process today, and sorry to keep you waiting for so long.

First of all, I just want to tell you that --- two things. First of all, you're still under oath. So everything you say today, you're still under oath just as yesterday.

Okay?

A. Yes.

Q. And then we also had some discussions off the record about how we're going to handle --- excuse me, certain objections. And some of them we have agreed to standing depositions --- excuse me, standing objections. And we will need to --- I'm sorry. I'm seeing another message. I'm distracted. So we will just explain that to you in a moment, but one of the other counsel suggested that we all ought to identify ourselves for the record since we do have some different people today than yesterday. So just for the record, I'm David Tryon, representing the State of West Virginia.

1 ATTORNEY BLOCK: I'm Joshua Block,
2 representing the Plaintiff and the witness. And after I
3 finish introducing myself, I'll have co-counsel from
4 Cooley followed by co-counsel from Lambda Legal followed
5 by co-counsel from ACLU of Virginia identify themselves.

6 ATTORNEY HARTNETT: Good morning. This
7 is Kathleen Hartnett from Cooley for Plaintiff and the
8 witness.

9 ATTORNEY BARR: Good morning. This is
10 Andrew Barr from Cooley for Plaintiff and the witness.

11 ATTORNEY VEROFF: Good morning. This is
12 Julie Veroff from Cooley for BPJ and the witness.

13 ATTORNEY HELSTROM: Good morning. This
14 is Zoe Helstrom from Cooley for Plaintiff and the
15 witness.

16 ATTORNEY SWAMINATHAN: Good morning.
17 This is Sruti Swaminathan for Plaintiff and the witness
18 from Lambda Legal?

19 ATTORNEY TRYON: Roberta?

20 ATTORNEY GREEN: Yes, Roberta Green, West
21 Virginia Secondary School Activities Commission.

22 ATTORNEY DENIKER: Good morning,
23 everyone. This is Susan Deniker, Counsel for Defendants
24 Harrison County Board of Education and Harrison County

1 Board of Education Superintendant Dora Stutler.

2 ATTORNEY DUCAR: Good morning. Timothy
3 Ducar on behalf of Intervenor, Lainey Armistead.

4 ATTORNEY HOLCOMB: Good morning.
5 Christiana Holcomb on behalf of Intervenor.

6 ATTORNEY CSUTOROS: Good morning. Rachel
7 Csutoros on behalf of Intervenor.

8 ATTORNEY BROWN: Joshua Brown on behalf
9 of the Intervenor.

10 ATTORNEY MORGAN: Kelly Morgan and Kristen
11 Hammond on behalf of the West Virginia Board of
12 Education and Superintendant Burch.

13 ATTORNEY STARK: Hi. I'm Loree Stark.
14 I'm with the American Civil Liberties Union of West
15 Virginia, and I'm here on behalf of Plaintiff.

16 ATTORNEY CAPEHART: Curtis Capehart on
17 behalf of the State of West Virginia.

18 BY ATTORNEY TRYON:

19 Q. Okay.

20 Ms. Jackson, I'll come back to you now. So
21 we've have placed a number --- one of the things that we
22 wanted to do is put some hard copies in your office
23 there to facilitate going through the documents more
24 quickly. So when I refer to a document you will be able

1 to pick it up and look at it in hard copy. I will also
2 probably be putting it up on the screen as well.

3 ATTORNEY TRYON: But before we actually
4 get started with any questions, Josh, do you want to
5 state what --- you're going to use certain
6 abbreviations?

7 ATTORNEY BLOCK: Sure. We put on the
8 record that there will be certain objections where I use
9 an abbreviation for it. So if I make an objection that
10 you don't understand, that's because we stipulated that
11 we will use an abbreviation for that objection.

12 ATTORNEY TRYON: Okay.

13 BY ATTORNEY TRYON:

14 Q. So let's get started. First of all, do you have
15 any questions from yesterday, Ms. Jackson, or anything
16 you need to correct from what your testimony was
17 yesterday?

18 A. Not off the top of my head, no.

19 Q. Okay.

20 After your deposition yesterday, did you talk
21 to your husband or anyone else about your deposition?

22 A. No.

23 Q. Did you talk to your husband about his
24 deposition?

1 A. No.

2 Q. Okay.

3 So I want to start off talking about BPJ and
4 when BPJ was born. These are things that seem obvious
5 to me, but I just want to make sure I understand. When
6 BPJ was born, BPJ had male body parts.

7 Right?

8 A. Correct.

9 Q. And still has those male body parts.

10 Right?

11 A. Correct.

12 Q. And when BPJ was born you considered BPJ as a
13 male.

14 Is that true?

15 A. Yes.

16 Q. And at that time did you refer to BPJ as your
17 son?

18 A. Yes.

19 Q. And did that change at some point?

20 A. Yes.

21 Q. And at some point did --- what changed?

22 A. She started presenting female characteristics
23 around the age of three.

24 Q. And at some point you started to refer to BPJ as

1 your daughter?

2 A. Yes.

3 Q. When was that?

4 A. I don't know of an exact date.

5 Q. Okay.

6 So you said at about three years old BPJ
7 started presenting with --- I'm sorry, how did you say
8 it?

9 A. Female characteristics, mannerisms, those type
10 of things.

11 Q. And at that point did you start referring to BPJ
12 as your daughter or was it later?

13 A. It was probably around the age of four.

14 Q. Does BPJ understand or recognize that BPJ was
15 born as a biological male?

16 ATTORNEY BLOCK: Objection to
17 terminology, and I will make that a standing objection.

18 THE WITNESS: She was born as a male with
19 a penis.

20 BY ATTORNEY TRYON:

21 Q. And my question, though, is does --- sorry, does
22 BPJ currently recognize that BPJ was born as a
23 biological male?

24 ATTORNEY BLOCK: Objection. Calls for

1 speculation.

2 THE WITNESS: Yes, she knows she was born
3 as a male.

4 BY ATTORNEY TRYON:

5 Q. Does it cause BPJ distress for someone to refer
6 to BPJ as a biological male?

7 A. Yes.

8 Q. Can you describe that for me a little bit, that
9 stress?

10 A. She gets upset, she cries, she gets angry.

11 Q. And when did that start?

12 A. That started at an early age, around three or
13 four.

14 Q. So at about three or four you said that BPJ
15 started to present as a female.

16 Did I get that right?

17 A. Yes.

18 Q. Can you tell me what specifically that means to
19 present as a female?

20 A. From an early age she didn't want to wear male
21 clothes. She wanted to wear my clothes as dresses.
22 When she was learning how to go to the bathroom, to
23 urinate, she didn't want to stand to urinate. She
24 wanted to sit down to urinate. She didn't understand

1 why she had a penis and I didn't.

2 Q. Anything else?

3 A. She requested at an early age for, I think it
4 was a birthday present, her own makeup kit.

5 Q. Anything else?

6 A. When she would pose for pictures, she would pose
7 with her leg tucked in more of a feminine stance.

8 Q. I'm afraid I don't understand that.

9 A. Put your hand on your hip, put your hip out a
10 little bit and cock your leg.

11 Q. So when you're standing?

12 A. Yeah, like when she is standing for a photo.

13 Q. Anything else?

14 A. Those are what comes to me off the top of my
15 head.

16 Q. And those were all done at age three or did we
17 condense that timeframe?

18 A. Like three to four.

19 Q. Three to four. And when BPJ asked why BPJ had a
20 penis, what was your explanation?

21 A. Because she was born a boy and boys have
22 penises.

23 Q. And what was BPJ's reaction?

24 A. That that wasn't right.

1 Q. Can you expound on that?

2 A. She didn't, at that point, identify as a male,
3 so she told me I was incorrect.

4 Q. That you were incorrect that --- that what?

5 A. That she was a male because she had a penis.

6 Q. And so I'm just trying to understand. So BPJ
7 was saying that BPJ was a female in spite of having a
8 penis or that BPJ did not have a penis or what? I
9 honestly don't understand?

10 ATTORNEY BLOCK: Objection, compound.

11 THE WITNESS: She's saying that she has a
12 penis, but she's not a male.

13 BY ATTORNEY TRYON:

14 Q. That's what BPJ said at three years old?

15 A. Well, she didn't have quite that language. It
16 was more like I'm a girl.

17 Q. She did know the word penis at the time?

18 A. Yes. We've always used correct terms for
19 genitalia.

20 Q. And forgive me if this is insensitive, but I'm
21 just trying to understand. Why did --- how did she no
22 that you had one and you didn't?

23 A. Because she would follow me into the bathroom.

24 Q. Okay.

1 Did she --- did BPJ recognize that her brothers
2 were males?

3 A. She recognized that we referred to them as
4 males.

5 Q. Did BPJ ever ask what the difference was between
6 BPJ and your other sons?

7 A. No.

8 Q. Let me ask you to look at Exhibit 30.

9 ATTORNEY TRYON: And I will ask the court
10 reporter to pull that up as well. I lost some video
11 feed for her, for the witness. There she is.

12 VIDEOGRAPHER: You have her pinned?

13 ATTORNEY TRYON: No. There we go. Okay.
14 I pinned Josh. How do I unpin Josh?

15 VIDEOGRAPHER: The same way you pinned
16 him.

17 ATTORNEY TRYON: Okay.

18 Now I got it. Sorry for the delay.

19 BY ATTORNEY TRYON:

20 Q. Ms. Jackson, have you seen this document before?

21 A. Yes.

22 Q. Have you reviewed it before today?

23 A. When I originally --- when I originally declared
24 it.

1 Q. And on the last page, that's your signature.

2 Is that right?

3 A. I don't have that page.

4 Q. Okay.

5 I take it back. So page six is the signature
6 page. Do you have that?

7 A. I have to page five.

8 Q. Okay.

9 I just saw you scroll past it. Right there?

10 Q. Yeah. So you see that?

11 A. Yes.

12 Q. Is that your signature?

13 A. It is.

14 Q. And it was signed on 5/25/2021?

15 A. Yes.

16 Q. So who prepared this document?

17 A. Well, the lawyers would have written it up and I
18 reviewed it. They --- I told them what I told them and
19 they typed it.

20 Q. Okay.

21 And is your --- at the time you said this is
22 true and accurate. Do you still believe the entire
23 thing is true and accurate to the best of your knowledge
24 and belief?

1 A. Yes.

2 Q. Great. Let me ask you, first of all, paragraph
3 four is I'm fiercely protective of BPJ. What do you
4 mean by that?

5 A. Just as any parent would be fiercely protective
6 of their child.

7 Q. Then you say, as her mother, I want to see her
8 be able to achieve all her dreams. Can you tell me what
9 her dreams are at this point?

10 A. Well, in regards to this, she wanted to be able
11 to run on the cross-country team, and that is what she
12 had dreamed of.

13 Q. Was that all you were referring to at the time
14 you signed this Declaration?

15 A. Well, I want to see her do well in life. I
16 mean, if she tells me she wants to go to college, I want
17 to see her achieve that. At the age of 11 they don't
18 have a whole lot of dreams.

19 Q. When you signed this, did BPJ express any other
20 dreams that she had --- that he or she had?

21 A. Not that comes to mind.

22 Q. Okay.

23 And then the next --- in paragraph six it says
24 BPJ from a very young age that she didn't want her boy

1 parts. Was there anything else about that statement
2 other than what you've already told me?

3 A. No, that's very accurate.

4 Q. Before that it says BPJ is also transgender.
5 What does that word, transgender, mean to you, as you
6 signed this?

7 A. She was designated at birth as a male, but she
8 is a female.

9 Q. And hopefully I'm not repeating from yesterday,
10 but when you say she is a female that is --- can you
11 tell me why she is a female?

12 A. She identifies as a female.

13 Q. And just so I'm clear, that's why you say that
14 BPJ is transgender?

15 A. Correct, she is a female.

16 Q. Okay.

17 Next you say she never wanted to be naked for
18 bathing because she was deeply uncomfortable with and
19 did not want to see certain parts of her body. So how
20 did she bathe?

21 A. She bathed, but we would keep a wet washcloth
22 over her genitals.

23 Q. What would happen when she saw her genitals?

24 A. She would be deeply upset.

1 Q. Can you explain that to me a little bit? I
2 don't mean to pry, but what did that mean, that BPJ
3 would be upset?

4 A. She wouldn't like seeing it. She would be
5 upset, she would be frustrated, visibly frustrated.

6 Q. Did she yell, cry, scream, say don't look at me?
7 What happened?

8 ATTORNEY BLOCK: Objection. Compound.

9 THE WITNESS: She would be deeply upset
10 in the form of she would say I don't want that.

11 BY ATTORNEY TRYON:

12 Q. Did she just say that or did she yell, raise her
13 voice?

14 A. She would be very stern.

15 Q. When BPJ first was reacting this way, as you
16 described it, did you insist that BPJ was, in fact, a
17 male or did you just accept her statement that she was a
18 female?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: When she told me she was a
21 female, I accepted her statement as true.

22 BY ATTORNEY TRYON:

23 Q. From the very first time or did it take some
24 time to accept that?

1 A. No, from the first time that she told me she was
2 a girl I believed that she believed she was a girl.

3 Q. And then --- but if I remember your earlier
4 testimony, I think you said that it was a little while
5 before you started referring to BPJ as your daughter.

6 Is that right?

7 ATTORNEY BLOCK: Objection, MT.

8 BY ATTORNEY TRYON:

9 Q. Did you answer?

10 A. Correct.

11 Q. So let me see if I understand it. You initially
12 --- you right away accepted her belief that she was a
13 female, but didn't actually refer to BPJ as your
14 daughter until some time later?

15 A. It took me a while to learn the terminology.

16 Q. How long did it take you to learn the
17 terminology?

18 A. I don't know the answer to that, but for three
19 years --- for three years I'd been calling her my son so
20 it took a while.

21 Q. And what terminology is that?

22 A. To refer to her as a female.

23 Q. And where did you learn the terminology, as
24 you've said it?

1 A. To refer to her as a female?

2 Q. Yes.

3 A. She told me that she is a female.

4 Q. Okay.

5 Well, then I guess I'm misunderstanding,
6 because you said it took you a while to learn the
7 terminology. What do you mean by that?

8 A. For three years I had been calling her my son,
9 so I had to learn to call her my daughter.

10 Q. I get it. You didn't like --- I thought you
11 meant you had to go read some books or something.
12 You're not saying that?

13 A. No. I know what a daughter is.

14 Q. Okay. Understood.

15 And paragraph seven says, as a child BPJ also
16 presented differently from my other children, both of
17 who are boys. Do either one of your other --- let me
18 rephrase that. The boys that you --- you have two other
19 children who are sons.

20 Right?

21 A. Correct.

22 Q. Are either one of them transgender?

23 A. No, they are not.

24 Q. And you --- in paragraph seven you say whenever

1 BPJ was provided with the opportunity to pick out her
2 clothes or toys, she always went straight for the girly
3 items. Can you tell me what those girly items --- what
4 that means?

5 A. She would want to shop in the girls sections of
6 the stores. She wanted dresses and lacy tutus, sparkly
7 clothes. She wanted the girls clothes.

8 Q. Anything else?

9 A. Same thing with shoes. She wanted the girls
10 shoes.

11 Q. What toys are you referring to as girly items?

12 A. Toys would be her dolls that she would have
13 growing up.

14 Q. What kind of dolls?

15 A. Plush.

16 Q. So like girl dolls or animal dolls? I'm not
17 sure I understand.

18 A. Girl dolls that are plush.

19 Q. And paragraph eight is when BPJ told us that she
20 was a girl and wants to be dressed as a girl, I was not
21 surprised because I spend so much time with her, can you
22 expound on that?

23 A. Well, when I'm not at work, I'm with her.

24 Q. So how much time do you spend with her?

1 A. I am with her other than nine hours a day.

2 Q. Paragraph nine ---.

3 ATTORNEY TRYON: Can I ask the court
4 reporter to take control and scroll down? Thank you.

5 BY ATTORNEY TRYON:

6 Q. Because BPJ and I have such an open
7 communicative relationship we have --- would have
8 conversations about how she was feeling. Can you tell
9 me about those conversations?

10 A. Conversations in regards to how she is feeling
11 regarding she didn't want her penis, that she identified
12 as a female.

13 Q. And then the next sentence, the last part says
14 more, she was able to clearly communicate that she knew
15 she was a girl. What do you mean by more clearly
16 indicates?

17 A. As she learned language skills as she grew up.

18 Q. So what language skills --- and what language
19 changed for her to communicate that?

20 A. As her vocabulary increased.

21 Q. So for example, what additional words was she
22 using?

23 A. She would use the word vagina when she learned
24 that term. She would use the term breasts when she

1 learned that term. She learned the term brassiere.

2 Q. When BPJ first informed you that BPJ was a girl,
3 did you --- did this cause you any concern or stress or
4 anxiety?

5 A. I worried about any sort of --- I don't know
6 what the word is I'm looking for --- discrimination she
7 might receive.

8 Q. Did you at that time --- at that time had you
9 heard of the term transgender?

10 A. Yes.

11 Q. And in what context had you already heard the
12 term transgender?

13 A. I'm sorry. Could you repeat that?

14 Q. Sure. In what context had you heard the term
15 transgender?

16 A. Just in referring to people as transgender.

17 Q. Had you known anybody that was transgender
18 before BPJ told you that BPJ was a girl?

19 A. I did not.

20 Q. Were you surprised when BPJ announced that BPJ
21 was a girl?

22 A. No.

23 Q. Why is that?

24 A. She had been presenting as a girl.

1 Q. I see. So you expected BPJ at some point to
2 tell you that BPJ was a girl?

3 A. Yes.

4 ATTORNEY BLOCK: Objection, MT.

5 BY ATTORNEY TRYON:

6 Q. Back in --- at the end you say you knew this was
7 not a phase for her and that there was something
8 different happening. How did you know it was not a
9 phase?

10 A. It never went away. It just became more
11 intense. I had already raised two sons and realized
12 that she was a girl. She was being raised as a
13 daughter. She was telling me that she was a girl.

14 Q. At what point did you conclude that it was not a
15 phase?

16 A. I don't know a date for that.

17 Q. Well, was it before --- I presume it was after
18 BPJ announced that BPJ was a girl.

19 Is that right?

20 A. Yes, but I don't know the date of that either.

21 Q. But you believe it was approximately at age
22 three?

23 A. Three to four.

24 Q. At some point did BPJ say that BPJ wanted

1 breasts?

2 A. Yes.

3 Q. Do you remember when that was?

4 A. I don't remember the date.

5 Q. Was it in the past two years or do you recall at
6 all?

7 A. I don't recall.

8 Q. And why did BPJ want breasts?

9 A. Because girls have breasts.

10 Q. Does BPJ understand at that time --- let me
11 start that over. At that time, when BPJ said that BPJ
12 wanted breasts, did BPJ understand the purpose of
13 breasts?

14 ATTORNEY BLOCK: Objection, calls for
15 speculation.

16 THE WITNESS: I don't know that she knew
17 the purpose of breasts, no.

18 BY ATTORNEY TRYON:

19 Q. Have you ever informed BPJ or had BPJ somehow
20 learned the purpose of breasts?

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: She knows she was breastfed
23 as a child, so she knows that milk comes out of them.

24 BY ATTORNEY TRYON:

1 Q. Had you ever had any discussions with BPJ about
2 the purpose of breasts?

3 A. No.

4 Q. Do you know if BPJ expects that once --- if BPJ
5 has an operation to give --- to put breasts in place,
6 does BPJ expect the ability to lactate?

7 ATTORNEY BLOCK: Objection. Objection to
8 form and calls for speculation.

9 THE WITNESS: Yeah, we've never had that
10 discussion.

11 BY ATTORNEY TRYON:

12 Q. So you don't know?

13 A. I would presume that she knows that it doesn't
14 work that way because she knows she can't have children.
15 She can't give birth.

16 Q. Okay.

17 And how do you know that?

18 A. Because we've talked about that.

19 Q. Tell me about that conversation.

20 A. That she doesn't have a uterus and that's what
21 you carry a baby in, is a uterus.

22 Q. Do you recall when you had that discussion?

23 A. I don't know the date.

24 Q. Was it within the past year?

1 A. I don't know when it was.

2 Q. Was it before or after this lawsuit was filed?

3 A. I don't know the answer to that.

4 Q. Did that cause distress to BPJ to know that BPJ
5 would not be able to have children?

6 A. No.

7 Q. Does BPJ --- let me rephrase that. Has BPJ told
8 you that BPJ wants a vagina?

9 A. Yes.

10 Q. Do you remember when that was?

11 A. I do not know the date.

12 Q. And do you know why BPJ wants to have a vagina?

13 A. Because she's a girl.

14 Q. And for BPJ that's an indicator that BPJ is a
15 girl?

16 A. She wants to be a girl. She is a girl. She
17 wants the genitalia to match.

18 Q. Well, I want to ask this question again. It's
19 important for me to understand the situation. Has BPJ
20 thought about this in the context of sexual relations?

21 A. No.

22 ATTORNEY BLOCK: Objection to form and
23 calls for speculation.

24 BY ATTORNEY TRYON:

1 Q. And how do you know that BPJ has not ---?

2 A. We have not talked about sexual relations.
3 She's 11.

4 Q. Fair enough.

5 ATTORNEY TRYON: Paragraph ten, if the
6 court reporter can put the document back up on the
7 screen.

8 BY ATTORNEY TRYON:

9 Q. By the time BPJ was in the third grade she had
10 chosen her name and was living as herself at home. What
11 name did she choose?

12 A. She chose the name B[REDACTED].

13 Q. Do you know why she chose the name B[REDACTED]?

14 A. She said she liked the name.

15 Q. Did she talk to you about it before choosing the
16 name?

17 A. Nope. She told me that that was the name she
18 was picking.

19 Q. So paragraph ten says third grade. How old was
20 BPJ at that time?

21 A. I don't know how old someone is in the third
22 grade.

23 Q. I'm asking how old BPJ was at the time that BPJ
24 went into the third grade.

1 A. I don't know off the top of my head how old you
2 are when you enter into third grade.

3 Q. Do you know how old BPJ was when BPJ entered
4 kindergarten?

5 A. She was five.

6 Q. So then in the third grade, would that make BPJ
7 eight?

8 A. Roughly.

9 Q. So between third grade and eighth grade in the
10 public she presented outwardly as a male?

11 ATTORNEY BLOCK: Objection.

12 ATTORNEY TRYON: I don't think I said
13 that right. Let me try that again. Apologize.

14 BY ATTORNEY TRYON:

15 Q. Between the age of three and eight do I
16 understand correctly that she presented to the general
17 public as a male?

18 A. At school.

19 Q. Okay.

20 And what about outside school?

21 A. It would depend on the function. If it was
22 around family, she presented as a female and wore female
23 clothes. If it was a function she didn't feel
24 comfortable in, like a funeral, she would present as she

1 would in school.

2 Q. As a boy?

3 A. She would wear male clothes.

4 Q. And thank you for that clarification. So ---
5 and then so she would dress as a boy at school and then
6 would she come home and change?

7 A. Immediately.

8 Q. And did BPJ --- when you say BPJ was around
9 family, do you mean just your immediate family or
10 extended family?

11 A. Extended family.

12 Q. And who would that extended family be just so I
13 understand your term?

14 A. Aunts, uncles, grandparents.

15 Q. Did anyone express a surprise at the beginning
16 that BPJ was now dressing as a boy (sic)?

17 A. Not to me they didn't.

18 Q. So to this day, no one outside your immediate
19 family has --- let me rephrase it. To this day, no one
20 in your extended family has ever said why is BPJ
21 presenting as a --- or dressed as a boy when BPJ is a
22 girl? No, let me start that all over again.

23 Let me see if I understand this. When BPJ was
24 between the ages of three and eight when BPJ was around

1 extended family BPJ would dress as a girl.

2 Is that right?

3 A. Correct.

4 Q. Okay.

5 I got a little confused. And during all that
6 time none of your extended family ever said to you or
7 anyone else that you were able to hear why is BPJ
8 wearing girl's clothing when BPJ is a boy?

9 ATTORNEY BLOCK: Objection to form.

10 THE WITNESS: Are you asking if they
11 expressed it to me?

12 BY ATTORNEY TRYON:

13 Q. Either to you or someone you heard them say it
14 to?

15 A. Well, when she was first introduced in female
16 clothes they asked why, and I said she is a girl.

17 Q. And what was their reaction?

18 A. Oh.

19 Q. That was it?

20 A. That is it.

21 Q. Okay.

22 When BPJ would go to school dressed as a boy
23 prior to the third grade, did that cause BPJ any
24 distress?

1 A. She didn't like dressing as a boy, but she was
2 worried about being made fun of at school if she dressed
3 like a girl.

4 Q. Can you repeat your answer there?

5 A. She didn't like dressing as a boy at school.

6 Q. But she --?

7 A. But she did because she was afraid that she
8 would be made fun of if she dressed as a girl at school.

9 Q. Thank you.

10 When BPJ started wearing a dress at school did
11 BPJ get made fun of?

12 A. No.

13 Q. Now, when you say when BPJ came home BPJ would
14 change into girl's clothing, does that mean always a
15 dress or something else?

16 A. Oh, it could be leggings, it could be her
17 pajamas, not necessarily always a dress.

18 Q. That's what I'm wondering, because girls many
19 times wear pants. So does BPJ now that BPJ is
20 identifying as a girl wear jeans or pants to school?

21 A. She does not wear jeans.

22 Q. Other pants?

23 A. She wears leggings.

24 Q. Why not jeans?

1 A. She doesn't like jeans.

2 Q. I want to shift gears a little bit here. So BPJ
3 had a different birth name than B[REDACTED].

4 Correct?

5 A. Correct.

6 Q. And does it disturb you to see or hear BPJ's
7 birth name?

8 A. Disturb? I don't understand what you mean by
9 disturb.

10 Q. Does it cause you any anxiety to see BPJ's birth
11 name, for example, on the Birth Certificate or other
12 places where it's been written down?

13 A. Oh, it just seems foreign to me because she's
14 been B[REDACTED] for so long.

15 Q. Does it cause distress for BPJ to see BPJ's
16 birth name?

17 A. Yes, it does.

18 Q. Can you describe that? And forgive me if you've
19 already told me this yesterday, and I may have
20 forgotten, but does it --- tell me about what that
21 distress is.

22 A. She gets angry and upset and doesn't understand
23 why her dead name is on there.

24 Q. Where did you learn the term dead name?

1 A. From B [REDACTED].

2 Q. How did B [REDACTED] learn the term dead name?

3 ATTORNEY BLOCK: Speculation.

4 THE WITNESS: I don't know.

5 BY ATTORNEY TRYON:

6 Q. When did B [REDACTED] start using term dead name?

7 ATTORNEY BLOCK: Objection.

8 THE WITNESS: I don't know the name.

9 BY ATTORNEY TRYON:

10 Q. Was it before or after the lawsuit was filed?

11 A. Before.

12 Q. More than a year before that?

13 A. I don't know.

14 Q. Can you give me any kind of approximation at all
15 when BPJ started using the term dead name?

16 A. No, I cannot.

17 Q. Well, do you know if BPJ initially heard that
18 from lawyers?

19 ATTORNEY BLOCK: Objection, calls for
20 speculation.

21 THE WITNESS: I don't know where she
22 heard it from.

23 BY ATTORNEY TRYON:

24 Q. When is the first time you heard it? From B [REDACTED]

1 I think you said, is that right or not?

2 A. B [REDACTED] told me the name --- the term dead name.

3 ATTORNEY TRYON: Let's go off the record
4 for just a moment.

5 VIDEOGRAPHER: Going off the record. The
6 current time reads 12:01 p.m.

7 OFF VIDEOTAPE

8 ATTORNEY TRYON: So I'm about to get into
9 a different line of questioning. I want to be
10 respectful about everybody's thoughts about lunch. I'm
11 happy to keep on going for another half-hour or hour,
12 but I just want to make sure that --- I want to be
13 respectful with other people's feelings on that. Well,
14 hearing no objection, I'm going to keep going unless
15 somebody speaks up, including you, ma'am. If you ---
16 you're the star here. You and the court reporter are
17 the most important people here, so if you feel the need
18 to take a break ---.

19 THE WITNESS: I'm okay.

20 ATTORNEY TRYON: Okay.

21 ATTORNEY DUCAR: Can we take five
22 minutes?

23 ATTORNEY TRYON: Yes.

24 ATTORNEY DUCAR: Thank you.

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(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record.

The current time reads 12:09 p.m.

BY ATTORNEY TRYON:

Q. Okay.

Ms. Jackson, I want to talk to you now about some issues about sports. Now, this may overlap a little bit from your testimony from yesterday. It's a problem --- well, not too much. But to the extent that it does, you know, I will try and ask questions that are consistent with our questions and answers from yesterday. But if you feel like I'm somehow misrepresenting your testimony or anything from yesterday, please let me know and I will try and be respectful of your prior testimony.

Okay?

A. Yes, sir.

Q. So when did BPJ first get interested in sports?

A. She was in elementary school.

Q. Do you remember which grade?

A. Fourth.

1 Q. And what was the sport she became interested in?

2 A. Cheerleading.

3 Q. What was her interest?

4 A. She liked to cheer.

5 Q. Since I haven't been a cheerleader, can you tell
6 me what that means that she liked to cheer?

7 A. So she would go to the games, hers would have
8 been football, and you cheer for your team. You learn
9 the routines and you learn the cheers.

10 Q. And I believe you told me at that time she was
11 identifying as a female.

12 Is that right?

13 A. Correct.

14 Q. And the team that she was watching, was that a
15 school team or some other type of team?

16 A. Bridgeport Youth Football League.

17 COURT REPORTER: I'm sorry, what football
18 league did you say, ma'am.

19 THE WITNESS: Bridgeport Youth.

20 BY ATTORNEY TRYON:

21 Q. Is that a school-sponsored team?

22 A. It is not sponsored by the school, it's
23 sponsored by the counties.

24 Q. And is there a sponsor for the cheer team or was

1 there at the time?

2 A. All inclusive with the football team, if that's
3 --- I'm guessing. I think that's what you're asking.

4 Q. Yes. That answers my question.

5 Were there any boys on that cheer team?

6 A. There were not.

7 Q. Did you attend those games with BPJ?

8 A. Yes.

9 Q. How often did you go to those games?

10 A. Every time they had one.

11 Q. Was that just because you were interested in
12 those football games or did one of your other children
13 play in the football game?

14 A. One year I had a son who played on the football
15 team. Another year I did not have a son that played on
16 the football team.

17 Q. And you went anyway?

18 A. Absolutely.

19 Q. Is that because you like football or is it
20 because BPJ liked football? Why was that?

21 A. I like football.

22 Q. And did BPJ express any interest in playing on
23 the football team?

24 A. No.

1 Q. But BPJ was interested in the cheer team, as I
2 recall from some things that I read, at that time just
3 interested but was not part of the team.

4 Is that right?

5 A. Correct.

6 Q. And as I recall from something I read, BPJ then,
7 before getting on the team, learned some of the cheers.

8 Is that right?

9 A. Correct.

10 Q. And was it the very next year when BPJ joined
11 the cheer team or not?

12 A. Yes.

13 Q. So in the fifth grade BPJ was on the cheer team?

14 A. Correct.

15 Q. Were there tryouts for the cheer team?

16 A. There were not tryouts.

17 Q. So just anybody who wanted to be on the cheer
18 team could be on the cheer team?

19 A. Yes. You had to present the proper
20 documentation. You had to fill out the forms and give a
21 Birth Certificate and a physical.

22 Q. Was that cheer team open for both boys and
23 girls?

24 A. I don't know the answer to that.

1 Q. Did they ask you when you presented your
2 documentation or when BPJ applied in some fashion if BPJ
3 was a boy or a girl?

4 A. They did not ask me.

5 Q. Forgive me. I can't find it in my notes. At
6 fourth grade was BPJ already dressing as a female at
7 school?

8 A. Yes.

9 Q. Did your husband go to any of those football
10 games with you and BPJ?

11 A. Yes. Like which year, though?

12 Q. The first year before BPJ was on the cheer team?

13 A. Yes.

14 Q. And what about the year once BPJ was on the
15 cheer team?

16 A. When work permitted he would go.

17 Q. Did you encourage BPJ to sign up for the cheer
18 team?

19 A. She told me she wanted to sign up for the cheer
20 team.

21 Q. And then did you encourage her to do so or just
22 say whatever you want to do or something like that?

23 A. I said if she wants to cheer ---.

24 ATTORNEY BLOCK: Objection to form.

1 THE WITNESS: I said said if she wanted
2 to cheer --- I said if she wanted to cheer, she could
3 cheer.

4 BY ATTORNEY TRYON:

5 Q. It required your parent consent I presume.
6 Is that right?

7 A. Correct.

8 Q. Would that be just either your consent or your
9 husband's or both?

10 A. Either/or.

11 Q. At that time in the third grade did BPJ express
12 any interest in any other sports?

13 A. There are no other sports available to her.

14 Q. Why?

15 A. They didn't offer anything at her school.

16 Q. You mean in that grade?

17 A. Yeah.

18 Q. And then after that did BPJ want to be involved
19 in any other sports?

20 A. After that when?

21 ATTORNEY BLOCK: Objection, vague.

22 ATTORNEY TRYON: Thank you for the
23 clarification.

24 BY ATTORNEY TRYON:

1 Q. After the fourth grade did --- either in or
2 after the fourth grade did BPJ become interested in any
3 other sports?

4 A. She wanted to run, but there was no running
5 sport available to her at her age.

6 Q. Okay.

7 About what grade or age was that when BPJ was
8 interested?

9 A. In the --- let's see, that would have been the
10 fifth grade.

11 Q. The fifth grade?

12 A. The fifth grade, she's interested in running.

13 Q. So going into the fifth grade or while she was
14 in the fifth grade?

15 A. I'm not sure of the date.

16 Q. Okay.

17 But initially there was no track team --- I'm
18 sorry, you said cross-country.

19 Right?

20 A. Right. Correct.

21 Q. So at that point there was no cross-country
22 available for BPJ because of BPJ's age?

23 A. Correct.

24 Q. Were there other track sports that BPJ was

1 interested in?

2 A. Just running.

3 Q. Right. So running encompasses --- and I'm no
4 expert on track, but I thought that track included
5 cross-country and other running events.

6 Is that right or wrong?

7 A. Track can do running and other field events.

8 Q. So was it just cross-country that BPJ was
9 interested in or other running events?

10 A. That's what we were focusing on at the time
11 because that's what she knew.

12 Q. Why did she know --- when you say that you are
13 talking about cross-country?

14 A. Cross-country, yes.

15 Q. And why was that what she knew?

16 A. Because her --- her siblings ran cross-country.

17 Q. So was BPJ interested in any kind of
18 cross-country or specific cross-country events?

19 ATTORNEY BLOCK: Objection, vague.

20 THE WITNESS: Yeah, I don't understand
21 the question. Cross-country is cross-country.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 So some places have --- I don't know this. I

1 will ask this. As far as I know, there is boys
2 cross-country and girls cross-country. And I presume
3 there may also be coed cross-country teams.

4 Do you know about that?

5 ATTORNEY BLOCK: Objection to form.

6 THE WITNESS: The only one that was
7 available was in the sixth grade, and it was a boys
8 cross-country and a girls cross-country.

9 BY ATTORNEY TRYON:

10 Q. And as I understand it, BPJ prefers to try out
11 for the girls cross-country team.

12 Right?

13 A. Yes, because she's a girl.

14 Q. Okay.

15 I just want to establish first that is what she
16 wanted, she wanted to try out for the girls
17 cross-country team.

18 Right?

19 A. Yes.

20 Q. And did she ever say I don't want to try out for
21 the boys cross-country team?

22 A. Correct.

23 Q. And she said that because I'm a girl, I want to
24 be on the girls cross-country team or words to that

1 effect?

2 A. She said she wanted to run with the girls on the
3 girls cross-country team.

4 Q. Did she have any friends who were girls that
5 were on the team already?

6 A. She knew of some people that were not in her
7 grade that were in cross-country that were friends with
8 her brother.

9 Q. And those were girls or boys?

10 A. Girls.

11 Q. Did she know any boys that were on the boys
12 cross-country team?

13 A. Her siblings.

14 Q. Great. Anybody else of her age group?

15 A. Not that I know of.

16 Q. From what I've read, I gather that the tryouts
17 for the girls cross-country team are competitive.

18 Is that your understanding?

19 A. Correct.

20 Q. And then once you get on the cross-country team,
21 are the races themselves competitive?

22 A. Correct.

23 Q. And did BPJ want to be competitive or just only
24 participate and she didn't care if she won?

1 A. Oh no, she --- she was competitive.

2 Q. So she wanted to win?

3 A. Yeah.

4 Q. And did she work hard at it?

5 A. She trained every day.

6 Q. And how did she do?

7 A. She ran cross-country.

8 Q. Okay.

9 How did she do compared to others?

10 A. She never finished first. She never finished
11 second.

12 Q. She wanted to finish first or second, though, I
13 take it?

14 A. Every kid wants to.

15 Q. I'm sorry?

16 A. Every kid wants to finish first.

17 Q. Including her, right?

18 A. Yes.

19 Q. Do the boys and girls cross-country teams ever
20 compete against each other?

21 A. There are races where they call them one and
22 done, where everybody runs together. And there are
23 races where they are separated out. It just depends on
24 the format of the host school.

1 Q. So the ones --- they call them won and done.

2 Is that right?

3 A. Yes.

4 Q. That means everybody runs together, all the boys
5 and all the girls?

6 A. Correct.

7 Q. Have you ever observed any of those?

8 A. I believe there was one last year.

9 Q. Did you go do that?

10 A. Yeah.

11 Q. And did BPJ participate in that?

12 A. Yes.

13 Q. How did BPJ do?

14 A. She didn't finish last.

15 Q. Okay.

16 Did BPJ finish ahead of any of the boys?

17 A. Yes.

18 Q. And did --- how many boys was she faster than?

19 A. I don't know the answer to that.

20 Q. Do you know how many kids were in that
21 particular race?

22 A. No, I don't.

23 Q. Do you remember what the name of that event was?

24 A. No, I don't.

1 Q. Do you remember where it was or what school it
2 was at?

3 A. No, I don't.

4 Q. Okay.

5 When BPJ --- let me back up. BPJ, she made the
6 team obviously.

7 Right?

8 A. Correct.

9 Q. Were any of the other people who tried out for
10 it, did they not get on the team?

11 A. I don't know the answer to that. I don't know
12 --- I'm not privy to that information, as to who tried
13 out and who made it.

14 Q. Well, I'm going to ask you this question. I
15 think based on our discussions yesterday I think I know
16 the answer, but I'm going to ask it anyway just to make
17 sure I understand, but do you think that boys on the
18 boys cross-country team should be allowed to compete
19 against the girls on the girls cross-country team?

20 A. If they identify as female? Is that what you're
21 asking, if they identify as female?

22 Q. Well, let's start with that. If they identify
23 as female, should they be allowed to compete against the
24 girls on the girls cross-country team?

1 A. Anybody who identifies as female should be able
2 to run on the girls cross-country team.

3 Q. And as to boys who do not identify as girls,
4 should they be allowed to run on the girls
5 cross-country?

6 A. It is not permitted at the school that she's at.

7 Q. And do you have an opinion if they should be
8 allowed to?

9 A. If there's a boys team, that they're running on
10 the boys team if they don't identify as female.

11 Q. So you don't think they should be allowed to run
12 on the girls team unless they identify as a girl.

13 Is that right?

14 A. I believe that anybody who identifies as female
15 should be able to run on the female's cross-country team
16 or track team or ---.

17 Q. Right. But my question is if a boy, not
18 identifying as a girl, just wants to compete against the
19 girls on the cross-country team for girls, do you think
20 that should be allowed or not?

21 A. Is there a boys team available?

22 Q. Yes.

23 A. Then I would think they would run on the boys
24 team.

1 Q. What if they just want --- what if they just
2 wanted to run on the girls team instead without
3 identifying as a girl, do you think that person should
4 be allowed to?

5 A. I don't know that I understand the question.

6 Q. Okay.

7 We'll move on.

8 ATTORNEY TRYON: Let me just take a break
9 here and determine if I can skip some of my questions
10 here to speed things up. Give me just a moment.

11 VIDEOGRAPHER: Do we want to go off the
12 record or just stay on?

13 ATTORNEY BLOCK: Let's go off the record.

14 ATTORNEY TRYON: Just a minute. I will
15 be right back. Just a minute.

16 ATTORNEY BLOCK: So we're off the record.

17 VIDEOGRAPHER: Yeah, we're off the record
18 at 12:29 p.m.

19 OFF VIDEOTAPE

20 ---

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 ---

23 ON VIDEOTAPE

24 VIDEOGRAPHER: We are back on the record.

1 The current time reads 12:33 p.m.

2 ATTORNEY TRYON: Thank you.

3 BY ATTORNEY TRYON:

4 Q. Just to clarify one thing that we were
5 discussing and you used term identify as a female. Can
6 you tell me what you understand that means, to identify
7 as a female?

8 A. Choose to live your life as a female because you
9 are a female.

10 Q. So we were talking about boys and girls
11 cross-country teams and other running events. And
12 yesterday we talked about if you were aware of any
13 statistics on how fast boys and girls can run. I want
14 to ask you would it surprise you to know that there are
15 statistics that show on average 11-year-old biological
16 boys are about 20 percent faster than 11-yearold
17 biological girls in the one-mile run.

18 ATTORNEY BLOCK: Objection to form and
19 terminology. And I will make the terminology a standing
20 objection.

21 THE WITNESS: I don't know that I'm
22 surprised. I don't know that I'm not surprised.

23 BY ATTORNEY TRYON:

24 Q. In the context of cross-country, does BPJ take

1 showers or change clothing at school?

2 A. She changes into her uniform at school.

3 Q. Does she use the locker room to do that?

4 A. She uses a private bathroom by the counselor's
5 office to do that.

6 Q. Who may use that private bathroom?

7 A. I don't know who beside her uses that bathroom.

8 Q. Is it just a unisex bathroom or what?

9 A. Again, I don't know who all uses it to be boys
10 or girls or both. I don't know.

11 Q. Have you been in it?

12 A. I've seen it.

13 Q. Okay.

14 And so can you describe it for me? Does it
15 just have one toilet in there and a sink or more than
16 that?

17 A. Yes, just one.

18 Q. So one person can go in there, shut the door,
19 lock it and use the facilities.

20 Is that right?

21 A. Correct.

22 Q. And is BPJ satisfied with that arrangement?

23 A. She doesn't mind it. She would rather use the
24 female facilities, but she doesn't mind it. She says it

1 has the good toilet paper.

2 Q. Well, that's a good reason to use it. Is there
3 a reason that BPJ does not use the female facilities?

4 A. She was told at the school that that was the
5 bathroom that she is supposed to use.

6 Q. Have you objected to that arrangement?

7 A. I have not.

8 ATTORNEY TRYON: Okay.

9 It's 12:37. I would propose to change
10 topics and move forward unless you people want to take
11 lunch now. If I keep going forward, I would probably on
12 this next topic go until past 1:00. So we can either go
13 for another half hour or so or we can take a break now.
14 Whatever you prefer. Ma'am, what is your preference?

15 THE WITNESS: I'm fine to go another half
16 hour.

17 ATTORNEY TRYON: And Josh, are you okay
18 with that.

19 ATTORNEY BLOCK: I prefer to keep going,
20 yes.

21 ATTORNEY TRYON: Very good.

22 BY ATTORNEY TRYON:

23 Q. When you first --- let me back up and ask a
24 different question. Are you familiar with the term

1 gender dysphoria?

2 A. Yes.

3 Q. When did you first become aware of that term?

4 A. When my daughter was diagnosed with gender
5 dysphoria.

6 Q. So when BPJ was approximately three or four and
7 said I am a girl, you were not aware of that term.

8 Is that correct?

9 A. No. When she first told me that she was a girl,
10 I was not aware of that.

11 Q. And how did your husband react when BPJ said
12 that BPJ was a girl, not a boy?

13 A. How did he react to me?

14 Q. To the announcement, whether it came from you or
15 from BPJ?

16 A. Concerned.

17 Q. Did he learn about it at approximately the same
18 time that you did?

19 A. Yeah.

20 Q. When you say concerned, can you explain that a
21 little better?

22 A. Concerned about any sort of discrimination that
23 she may have later in life.

24 Q. Was he at all distressed to learn that the child

1 who he believed to be his son was now claiming to be a
2 daughter?

3 ATTORNEY BLOCK: Objection to the form
4 and argumentative.

5 THE WITNESS: I don't know if he was
6 upset.

7 ATTORNEY TRYON: Can you look at
8 Exhibit 17 with me, please?

9 BY ATTORNEY TRYON:

10 Q. Let me know when you have that in front of you.

11 A. I do.

12 Q. This is fairly a short document so take a look
13 through there and let me know when you are able to
14 familiarize yourself with it.

15 ATTORNEY TRYON: If counsel would like us
16 to scroll through that, let me know and we'll have the
17 court reporter do that.

18 ATTORNEY BLOCK: I'm fine without the
19 scrolling.

20 BY ATTORNEY TRYON:

21 Q. Have you seen this document before?

22 A. Yes.

23 Q. When did you first see this?

24 A. When we filled it out.

1 Q. Is this your handwriting?

2 A. No, that's not my handwriting.

3 Q. Do you know whose handwriting that is?

4 A. The person that filled it out.

5 Q. Okay.

6 Is that somebody at the school?

7 A. Yes.

8 Q. And just for the record, this a Gender Support
9 Plan dated 8/23/19. So were you in the meeting where
10 this was filled out?

11 A. Yes.

12 Q. And there was some sort of meeting?

13 A. Yes, it was individuals in a room with paper.

14 Q. And on the last page it shows what appears to be
15 a signature of B [REDACTED]. Would that be BPJ?

16 A. Yes.

17 Q. And at the time that this was filled out on
18 August 23, 2019, you reviewed it at that time?

19 A. Was I what at that time?

20 Q. Did you --- did you fill --- I'm sorry, did you
21 review it at that time?

22 A. Yes, yes.

23 Q. And did BPJ review it at that time?

24 A. She didn't review the document. She was in the

1 meeting.

2 Q. Is there a reason that she did not review it?

3 A. No reason.

4 Q. In the first paragraph, under where it says
5 parent/guardian involvement ---

6 A. Correct.

7 Q. --- the language there says mom very supportive,
8 dad has struggled but coming around, seeking outside
9 help through church and parental side of families
10 help/support?

11 ATTORNEY BLOCK: Objection. You misread
12 the document.

13 ATTORNEY TRYON: Oh, I'm sorry. What did
14 I miss.

15 ATTORNEY BLOCK: Paternal instead of
16 parental.

17 BY ATTORNEY TRYON:

18 Q. Ma'am, can you help me out here? To me it looks
19 like it says paternal?

20 ATTORNEY BLOCK: Yeah. I think you said
21 parental unless I misheard.

22 ATTORNEY TRYON: Oh, okay.

23 BY ATTORNEY TRYON:

24 Q. So my question then is when it says dad

1 struggled, what's that referring to?

2 A. He was concerned, but on page three it says
3 parents are supportive.

4 Q. I understand. We can get to page three in a
5 minute, but when it says dad had struggled, does that
6 mean that he was uncomfortable with what I'll
7 characterize as the changing of BPJ's gender?

8 A. He was ---.

9 ATTORNEY BLOCK: Objection to form.

10 THE WITNESS: He was worried about any
11 sort of discrimination.

12 BY ATTORNEY TRYON:

13 Q. And then but coming around, what does but coming
14 around mean?

15 A. I don't know.

16 Q. Well, you gave the information --- let me strike
17 that.

18 Who gave the information to the person filling
19 this out?

20 A. I don't know if she paraphrased or what, but it
21 doesn't look like it's a quote.

22 Q. Who gave the information to the person filling
23 this out?

24 A. She would have been questioning me.

1 Q. Not BPJ?

2 A. BPJ was in the meeting, but I don't believe she
3 was questioned directly in regards to that.

4 Q. The next part says seeking outside help through
5 church. What outside help was dad seeking through
6 church?

7 A. Talking to the minister.

8 Q. About what?

9 A. Trying to reconcile religion and his daughter.

10 Q. And what reconciliation was that?

11 A. I don't know. I wasn't privy to those
12 conversations.

13 Q. Did you tell the person filling out this form
14 that dad was seeking outside help through the church?

15 A. Yes.

16 Q. Which church is that, by the way?

17 A. He goes to a different church than me.

18 Q. Do you know what denomination?

19 A. It's the --- it's the Church of God, whatever
20 denomination that is.

21 Q. And you don't go to that church?

22 A. I don't go to that church.

23 Q. But he told you that he was seeking help from
24 the church?

1 ATTORNEY BLOCK: Objection. Objection
2 marital communication, privileged.

3 BY ATTORNEY TRYON:

4 Q. Well, don't tell me the exact --- just tell me
5 in general if that was the purpose of seeking help.

6 A. He was trying to reconcile religion versus his
7 daughter.

8 Q. Do you know what that religion believes with
9 respect to this issue?

10 A. No, I don't go to that church.

11 Q. And then it says and paternal side of family's
12 help/support. Can you explain what you meant when you
13 conveyed that information ---?

14 A. They are also members of that church.

15 Q. Down further at the bottom of that page it says
16 B[REDACTED] is comfortable with others knowing her gender
17 identity and transition. Can you explain to me what was
18 --- well, let me back up. Does that accurately
19 represent what you told the person filling out this
20 form?

21 A. Yes.

22 Q. Can you explain to me a little more about what
23 that means that she's --- that B[REDACTED] is comfortable with
24 others knowing her gender identity and transition?

1 A. Just that --- it's just that. She is
2 comfortable with others knowing. She'll talk to you
3 about it if you want to.

4 Q. So she's comfortable talking about the
5 transition from being a boy to a girl?

6 ATTORNEY BLOCK: Objection to
7 terminology. I'll make that a standing objection.

8 THE WITNESS: She's comfortable with
9 explaining her transgender identity.

10 BY ATTORNEY TRYON:

11 Q. Does that include explaining that I was once a
12 boy and now I'm a girl, however --- you know, I'm not
13 trying to put it in --- those words in anybody's mouth.
14 That's the concept I'm trying to understand.

15 A. I've never witnessed a conversation where that
16 was said.

17 Q. Okay.

18 Then how do you know what BPJ was comfortable
19 with?

20 A. Because I've witnessed her talking to people
21 about her transgender identity.

22 Q. Great. And so what have you observed her
23 saying?

24 A. That she is transgender and that she is living

1 life as a female.

2 Q. Anything beyond that?

3 A. I would have to have a specific question.

4 Q. Anything else you can remember right now?

5 A. No.

6 Q. On the next page ---.

7 ATTORNEY TRYON: And Counsel, if you need
8 me to bring up the page, please say so. Oh, great, it's
9 being brought up. Okay.

10 BY ATTORNEY TRYON:

11 Q. Gender will be male, do you see that part down
12 almost at the bottom?

13 A. Oh, yeah, I see that.

14 Q. But B [REDACTED] will be in parentheses next to birth
15 name. So why would the gender be male?

16 A. I think it has to do with the WEVAS System.

17 Q. Can you explain that?

18 A. No, I don't understand WEVAS at all.

19 Q. Okay.

20 When this was filled out, you can see on that
21 page, for example, what name and gender marker are
22 listed on the student's identity documents, and there is
23 what we call a redaction, a black mark.

24 A. Okay.

1 Q. That covers up some information. Would that
2 information have been BPJ's birth name?

3 A. Yes.

4 Q. So remind me, did BPJ read this document before
5 she --- before BPJ signed it?

6 A. She was in the meeting, but she didn't read it
7 line for line, no.

8 Q. Okay.

9 But did sign it?

10 A. Yes. We were to sign it that we were present.

11 Q. On the page marked at the lower right-hand
12 corner BPJ 010, I think it's the fourth page --- yeah,
13 it says page four at the top. See at the bottom it says
14 received training, that part there?

15 A. Oh, okay.

16 Q. It says Norwood staff received training on
17 tolerance and cultural diversity and LGBTQ --- I think
18 that's plus IA on 8/21.

19 Do you see that?

20 A. Yes, I do see that.

21 Q. Do you know what that's referring to?

22 A. No, I don't.

23 Q. Have you ever been provided with any further
24 information on what tolerance or cultural diversity or

1 similar training that is given to the staff?

2 A. No.

3 Q. Next it says and provided protocol and multiple
4 resources --- multiple resource sources. Was that
5 meaning that you were provided with that information or
6 that was information that was provided to the Norwood
7 staff?

8 A. To the Norwood staff.

9 Q. Were you provided any resource sources at the
10 time that this was filled out?

11 A. No.

12 Q. Going back up to the first page where we talk
13 about your husband seeking outside help through the
14 church, did his views or feelings change in any way
15 after seeking that --- after getting help through the
16 church?

17 A. He has reconciled his religion with his
18 transgender daughter.

19 Q. Did he explain to you how?

20 A. No.

21 Q. Let me ask you to look at Exhibit 11C. In fact,
22 ma'am, if you could grab 11A, B, C and E. And I
23 apologize let me look at 11D first, D as in David. So
24 take a look at this, and I'll ask you a few questions

1 about it.

2 A. Go ahead.

3 Q. Okay.

4 And for the record, Exhibit 11D, at the top is
5 --- has the name of Andrew James Spurr, M.D., and it
6 says progress notes and it says encounter date, December
7 16, 2020. Do you see that at the top, ma'am?

8 A. Yes.

9 Q. I want to make sure we are looking at the same
10 thing together. And it says history obtained from
11 mother --- well, let me back up. First of all, have you
12 ever seen this document before?

13 A. No.

14 Q. Do you remember --- it says on here, history
15 obtained from mother. B [REDACTED] was not present for this
16 tele-medicine visit.

17 Do you see that?

18 A. Yes.

19 Q. Do you remember this --- that you had --- were
20 involved in this tele-medicine visit, as it says?

21 A. Yes.

22 Q. And I want to direct you to the next paragraph
23 that says B [REDACTED] is very happy with stopping puberty. Is
24 that something that you reported to the doctor?

1 A. Yes.

2 Q. And it was directed to the doctor not, someone
3 else?

4 A. To Andrew James Spurr.

5 Q. Right. How did you come to speak with Andrew
6 James Spurr? How did you find him as a doctor?

7 A. He was on --- he was just on that call as a
8 resident. I don't know how he got assigned to us. It's
9 the one and only time he was ever assigned to us. I
10 don't know if Dr. Montano was out or what.

11 Q. So Dr. Spurr is in Dr. Montano's office?

12 A. I would presume so, yes.

13 Q. It says she, referring to B [REDACTED], wants to know
14 when she can start hormone therapy. Were you told
15 anything in response to that?

16 A. I was not told anything in response to that.

17 Q. Next it says wants to get breasts and get rid of
18 her penis. You reported that to the doctor?

19 A. Correct.

20 Q. And did he have any response to that?

21 A. No.

22 Q. You next said she is experiencing dysphoria ---
23 strike that.

24 The document says she is experiencing dysphoria

1 with leg growth hair. Did you use that terminology with
2 the doctor?

3 ATTORNEY BLOCK: Objection, misread the
4 text.

5 BY ATTORNEY TRYON:

6 Q. Let me try again, she is experiencing dysphoria
7 [REDACTED]. Did you use the term dysphoria
8 when speaking to the doctor?

9 A. He used the term dysphoria.

10 Q. And what terminology did you use when you spoke
11 to the doctor?

12 [REDACTED]
13 [REDACTED]

14 [REDACTED]
15 A. Correct.

16 [REDACTED]
17 [REDACTED] And did you, in fact, tell the doctor
18 that?

19 A. Yes.

20 Q. And when --- so this is --- the encounter date
21 is December 16, 2020. [REDACTED]

22 [REDACTED]

23 A. I don't know the date that he said it. The date
24 --- the encounter date is just the date of the

1 appointment.

2

3

4 A. I'm guessing yes.

5 Q. And he said that to BPJ?

6 A. Correct.

7 Q. Why did he say that?

8 A. I don't know.

9 Q. Did you observe it?

10 A. I observed the aftereffects.

11 Q. So you didn't actually hear him say that?

12 A. No, she came and reported it to me.

13 Q. She being BPJ?

14 A. Correct.

15 Q. What did BPJ say about it?

16 A. She was crying and was upset.

17

18 A. According to her.

19 Q. What did that mean to BPJ?

20 ATTORNEY BLOCK: Objection. Calls for
21 speculation.

22 THE WITNESS: I just know that it upset
23 her, that she was crying and was upset.

24 BY ATTORNEY TRYON:

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[REDACTED]

A. I don't know what they were doing outside. I know they were outside because she came inside.

Q. Has your husband ever said that to BPJ before that, to your knowledge?

A. To my knowledge, no.

Q. Did BPJ say he said this to me before, or this is the first time, or any other discussion about it?

A. No other discussion about it.

Q. This just seems odd to me, so maybe I'll just ask the question. [REDACTED]

A. Yeah.

Q. Why would that be reported?

A. [REDACTED]

[REDACTED] My guess is he didn't read the case file.

Q. Okay. Okay.

[REDACTED]

Who's that transgender psychologist?

A. There was one locally, but he left after ---

1 during the COVID session and I never did get to see him.

2 Q. Who was that?

3 A. I don't know what his name was.

4 Q. And has --- have you ever found a transgender
5 psychologist?

6 A. We have found a psychologist that specializes in
7 transgender care.

8 Q. Who is that?

9 A. Doctor Matthew Bunner.

10 Q. When is the first time that you saw Doctor
11 Matthew Bunner?

12 A. I don't know. It would be in the medical
13 records, but I don't know the date off the top of my
14 head.

15 Q. All right.

16 Well, then we will find it in the medical
17 records in a bit. Was there a reason that B [REDACTED] was not
18 present for this tele-medicine visit?

19 A. I was out of town. My dad died.

20 Q. Sorry about that, by the way.

21 So prior to this appointment you had not ---
22 let me rephrase that. Prior to this appointment --- or
23 this encounter on December 16, 2020, BPJ had not yet met
24 with a psychiatrist or a psychologist.

1 Is that right?

2 A. Yeah, correct.

3 Q. And is Doctor Matthew Bunner, is he a
4 psychiatrist or psychologist?

5 A. I'm not sure of his credentials.

6 Q. Prior to this data, [REDACTED]
7 [REDACTED] Do you believe that
8 to be accurate date, more or less?

9 A. That's accurate.

10 Q. Do you know what a [REDACTED] is?

11 A. Yes, it's a hormone blocker.

12 Q. Can you describe for the record how that's
13 implanted?

14 A. The skin is separated from the tissue below it
15 and it's slid in underneath the skin and secured with a
16 suture.

17 Q. And where on the body?

18 A. Where is hers?

19 Q. Yes.

20 [REDACTED]

21 [REDACTED]

22 Q. Well, I don't know where [REDACTED], but
23 it gives me a good idea. Thank you.

24 And then how long is that supposed to last? Do

1 you need to replace it at some point?

2 A. It will have to be replaced at some point.

3 Q. Do you know how long?

4 A. It depends on her labs.

5 Q. Were you given a general time period for whether
6 it's a year, two years, six months?

7 [REDACTED]

8 [REDACTED]

9 Q. So from what I understand from what you told me,
10 then [REDACTED] before BPJ met with a
11 psychologist or psychiatrist.

12 Is that right?

13 A. Correct.

14 Q. Is there a reason you didn't wait to talk to a
15 psychologist or psychiatrist before doing this ---
16 taking this action?

17 A. We couldn't get in anywhere because of COVID.

18 Q. Is that the only reason?

19 A. Yes.

20 Q. Did you feel it was important to actually have
21 BPJ meet with a psychiatrist or psychologist before
22 taking this action?

23 ATTORNEY BLOCK: Objection to form.

24 [REDACTED]

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[REDACTED]

BY ATTORNEY TRYON:

Q. Are you familiar with the Tanner stages?

A. With what? I'm sorry.

Q. The Tanner stages, T-A-N-N-E-R?

A. I'm not sure.

Q. Can you look at Exhibit 11A, please?

A. 11A. Oh, yeah.

Q. Okay.

Take a look at that document and let me know when you're ready. I just have a question or two.

A. Okay.

Q. All right.

[REDACTED]

[REDACTED]

[REDACTED] She has been followed up for gender dysphoria with desire to start hormone blockers, [REDACTED] Does that refresh your recollection what the Tanner stage one means?

A. Yes.

Q. What's your understanding of that?

A. They take --- it almost looks like a beaded necklace, but it's different size representation of

1 testicular formation and they compare it to her testes
2 in order to see what stage they are.

3 Q. What's the purpose of that?

4 A. To measure the testes.

5 Q. And is --- why do that?

6 A. Because it's a sign of puberty.

7 Q. And is there a particular Tanner stage that you
8 need to be at in order to get the hormone blocker?

9 A. I do not know the answer to that. I'm not sure
10 which stage you must be at.

11 Q. Is that indicative --- do they use that in some
12 fashion to determine when you insert a --- or start
13 using the hormone blockers?

14 A. They use it as a sign for puberty.

15 Q. And does puberty have something to do with when
16 you --- well, let me just ask it this way. As I
17 understand it, before --- the doctors do not want to use
18 hormone blockers until you start into puberty Tanner
19 Stage 2?

20 A. Okay.

21 Q. Do you have any information on --- do you
22 believe that is accurate or not?

23 A. I don't know.

24 Q. Okay.

1 When you --- let me rephrase that. Did both
2 you and BPJ meet with the doctor, a doctor to discuss
3 the pros and cons or any side effects of using hormone
4 blockers?

5 A. Yes.

6 Q. So would that have been just you or would BPJ
7 have been involved as well?

8 A. B [REDACTED] would have been involved as well.

9 Q. How about your husband?

10 A. He was working. I would have to relay the
11 information after I got back from the doctor.

12 Q. And did you relay that information to him?

13 A. Yes.

14 Q. Was he okay with using hormone blockers?

15 A. We read like the package insert information.

16 Q. Okay.

17 A. To look at the possible side effects.

18 Q. And what were the possible side effects,
19 according to that insert?

20 A. Some of them off the top of my head was
21 decreased size in testes, osteoporosis.

22 Q. Were you concerned about the side effects?

23 A. The benefit outweighed the risk.

24 Q. And what was the risk? Those side effects?

1 A. The risk would be the side effects.

2 Q. And what was the benefit?

3 A. The benefit would be help with her transition.

4 Q. Explain what you mean by transition.

5 A. To live her life authentically, to stop the male
6 hormones.

7 Q. What would the male hormones do as you
8 understand it?

9 A. Male hormones would cause her penis size to
10 increase, her testicle size to increase, body hair to
11 start forming, Adam's apple would start forming, her
12 voice would change.

13 Q. And those are all things that you wanted to
14 avoid happening?

15 A. She wanted to avoid happening.

16 Q. How about you, did you care one way or the
17 other?

18 A. I wanted her to live her most authentic life.

19 Q. What did you mean by that, her most authentic
20 life?

21 A. I wanted her to be able to live as a female, as
22 she wished to live.

23 Q. Why does that make it her authentic life?

24 A. Because she's a girl.

1 Q. Okay.

2 So I'm done with this exhibit.

3 ATTORNEY TRYON: I'm finished with
4 Exhibits 11A, B, C and D, so we can put those aside.
5 It's 1:15. This would be a convenient place to stop if
6 we want to for lunch. Would you like to do that, ma'am,
7 or do you want to keep going?

8 THE WITNESS: I need a break to use the
9 restroom.

10 ATTORNEY TRYON: Would you like to take a
11 half an hour for lunch?

12 THE WITNESS: Sure.

13 ATTORNEY TRYON: Okay.

14 Everybody else is good with that?

15 ATTORNEY DENIKER: That's fine.

16 ATTORNEY BLOCK: See you at 1:45.

17 VIDEOGRAPHER: Going off the record. The
18 current time is 1:15 p.m.

19 OFF VIDEOTAPE

20 ---

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 ---

23 ON VIDEOTAPE

24 VIDEOGRAPHER: We are back on the record.

1 The current time reads 1:47 p.m.

2 BY ATTORNEY TRYON:

3 Q. Let's go to Exhibit 14, if you wouldn't mind,
4 ma'am. This Exhibit 14 is a group of medical records.
5 Take your time and look through there and let me know
6 when you're finished and then we'll come back to the
7 first couple of pages for some questions.

8 ---

9 (WHEREUPON, WITNESS REVIEWS DOCUMENT.)

10 ---

11 THE WITNESS: I've read the first page.

12 BY ATTORNEY TRYON:

13 Q. Are you finished?

14 A. Yes.

15 Q. Great. Let me go back and first ask you a
16 question on page two of the document on the bottom that
17 says page three?

18 A. Okay.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] Before I ask
22 you a question about that let me just back up. So this
23 appears to be from an office visit with a Jean
24 Someshwar.

1 Is that right?

2 A. Yes. That's about as good as I can pronounce
3 it.

4 Q. Were you in attendance at this meeting?

5 A. Yes.

6 Q. Was BPJ in attendance?

7 A. Yes.

8 Q. So then going back to my question, what I just
9 read on the second page, where it's marked as page three
10 on the bottom. [REDACTED]

11 [REDACTED] Do
12 you --- did you or BPJ say something that triggered this
13 note?

14 A. BPJ.

15 Q. And what did BPJ say that you believe triggered
16 this note?

17 A. Well, it's in quotes, so I'm saying that she
18 said that.

19 [REDACTED]
20 [REDACTED]

21 A. Yeah.

22 Q. What does that mean?

23 A. I'm going to guess when they are in fights or
24 spats.

1 [REDACTED]

2 [REDACTED]

3 A. Probably have to ask Becky that one.

4 Q. Did she expound at all during this meeting?

5 A. Not according to the notes.

6 Q. I'm asking you from your memory?

7 A. I don't remember.

8 [REDACTED]

9 [REDACTED]

10 A. Yes.

11 Q. I'm sorry?

12 A. Yes.

13 Q. And what does that mean?

14 A. To me?

15 Q. Yes.

16 A. To me I would say that you would use it to lash
17 out at somebody.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] I don't know.

21 Q. Did you observe anything like this?

22 A. No.

23 [REDACTED]

24 [REDACTED]

1 A. Not to me.

2 Q. Are you aware of BPJ saying this to anyone else?

3 A. No.

4 Q. Back on page one, starting --- let's go back up
5 on the screen. Let's see. Okay, that's right. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] How did you locate Dr. Montano in
10 Pittsburgh?

11 A. Doctor Montano came to me through
12 recommendations from friends.

13 Q. Excuse me, what friends?

14 A. Friends that we know, one of which has a
15 transgender male child.

16 Q. And who is that?

17 A. I only know her first name.

18 Q. Which is?

19 A. Carolyn.

20 Q. Does Carolyn live --- well, where does Carolyn
21 live?

22 A. Clarksburg.

23 Q. Just for the record, how far is Clarksburg from
24 where you live?

1 A. Oh, maybe 30 minutes.

2 Q. And how do you know Carolyn?

3 A. I met her through the PFLAG Group in Morgantown.

4 Q. So what does PFLAG stand for?

5 A. I don't know.

6 Q. What is the PFLAG Group?

7 A. The group that I attend is a group of parents
8 who have transitioning children.

9 Q. Did BPJ attend meetings with a different PFLAG
10 group?

11 A. No.

12 Q. At the bottom of this page, towards the bottom,
13 if you could scroll down. Okay. Right there. It says
14 family was going to PFLAG meetings. But due to COVID,
15 meetings had been virtual B[REDACTED] misses seeing her PFLAG
16 friends in person. So was B[REDACTED] going to the same
17 meetings as you?

18 A. Yes.

19 Q. You indicated that the group you went to was for
20 parents?

21 A. Parents with children who were transitioning.
22 So the parents would meet and the children would play.

23 Q. So the children would play like what?

24 A. On the playground.

1 Q. Okay.

2 And they are both boys and girls?

3 A. Yes.

4 Q. That's kind of a weird question, given the
5 context, so I'm not quite sure. Would it include --- I
6 guess it would be trans boys and trans girls. Is that
7 the proper way to say that?

8 A. It includes just gender boys and girls and
9 transgender boys and girls.

10 Q. Very good. So in these meetings what did the
11 parents talk about?

12 A. The issues that we might have in the community,
13 like in our churches or in finding daycare or in support
14 groups.

15 Q. And you said something that I didn't understand.
16 You said parents with children that are transitioning,
17 which suggests they are in the process of making a
18 transition. Is that what that means?

19 A. Yes.

20 Q. And so what is that process of transitioning?

21 A. Well, with every parent and child, that's ---
22 that's up to them.

23 Q. Can you explain in broad terms what that
24 transitioning process is?

1 A. Identifying as your gender identity and living
2 authentically.

3 Q. So simply, stating that you are a different
4 gender than your birth gender. Is that all that's
5 required for that transitioning process?

6 A. That's how it can start.

7 Q. Okay.

8 So that's how it starts, but what happens after
9 that?

10 A. Like I said, with every parent and child it's
11 going to be different. With their cases, it may be
12 different than my case.

13 Q. And with your case then, tell me about that.

14 A. Okay.

15 Well, she presented around age three or four
16 wearing my clothes, wearing my shirts as dresses, not
17 wanting to sit to urinate.

18 Q. So that's part of the transitioning process?

19 A. I'm sorry?

20 Q. You're saying that's part of the transitioning
21 process?

22 A. That was part of B [REDACTED] transitioning process.

23 Q. Thank you for that clarification.

24 Let's see. Back up a little. [REDACTED]

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Do you see that?

5

A. I'm looking.

6

Q. It's about the middle of that paragraph.

7

A. Okay. I see it.

8

Q. I can point it out on the screen, but you found

9

it.

10

A. Yeah, I found it.

11

Q. So tell me about the process for a legal name

12

change to the extent that you know about it.

13

A. Well, it involves a lot of documents with

14

legalese on it that's very difficult for me to weave my

15

way through. But for the name change process, we have

16

to fill out a form, several forms. They have to be

17

notarized, filed with the Circuit Court, then it goes

18

before a Judge, as I understand it.

19

Q. And what have you done in that --- you or BPJ

20

have done in that process?

21

A. We've gotten forms. We've gotten them

22

notarized. Wes has got to get his notarized, which he

23

is supposed to be getting done today. And then we go up

24

to the Courthouse to submit it with \$200.

1 Q. Do you know of anything else beyond that?

2 A. That's all I know so far.

3 Q. So why have you waited until now to do that?

4 A. Because it's been very hard for me to understand
5 and try to figure out what the documents are saying.
6 The first time I filled them out I filled them out
7 incorrectly.

8 Q. How did you find out you filled them out
9 incorrectly?

10 A. I took them up to the Circuit Court and they
11 said you did it wrong.

12 Q. Okay.

13 And when was that?

14 A. A couple of weeks ago.

15 Q. So why did you wait until a few weeks ago to
16 start the name change?

17 A. I'm been overwhelmed by the forms.

18 Q. When did you first get the forms?

19 A. I've had the forms for probably six months.

20 Q. Okay.

21 So just to help me out, I'm not trying to
22 insult you or anything, but I'm just trying to
23 understand because you --- because BPJ changed BPJ's
24 name to B [REDACTED] several years ago.

1 Right?

2 A. Correct.

3 Q. And so why didn't you and/or B [REDACTED] move forward
4 at that time?

5 A. We were deciding on middle names.

6 Q. Have you decided on any middle name?

7 A. Yes, we have.

8 Q. What is that?

9 A. It will be Maranlynn.

10 Q. So you spent the past several years just working
11 on a middle name.

12 Is that right?

13 A. Yes.

14 Q. You're laughing about that. Why?

15 A. Because she didn't want the name Meridan and I
16 wanted the name Maridan, so we came to a compromise that
17 it is Maranlynn. Plus the Lynn comes from her uncle and
18 she wanted to ask her uncle permission to use his middle
19 name as her middle name.

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] Can you explain

24 that to me, please?

1 A. I don't know what [REDACTED] mean.

2 That would be a doctor term.

3 [REDACTED]

4 [REDACTED]

5 What is your understanding of what that hormone therapy
6 is?

7 A. She can either get implants or injections and
8 get hormones, female hormones, start female hormones.
9 It depends on her labs and if she goes into
10 osteoporosis. If she goes into osteoporosis from the
11 [REDACTED], she would have to start hormones
12 sooner.

13 Q. And what would those hormones do?

14 A. It would help her live authentically as a
15 female.

16 Q. You need to be more specific. Would those
17 hormones cause physical changes to BPJ's body?

18 A. Yes.

19 Q. What would those physical changes be?

20 A. She could grow breasts.

21 Q. Just to be clear, you say she could grow
22 breasts. Would it actually trigger breast growth?

23 A. Isn't that the same thing?

24 Q. You said could, which is a possibility. I'm

1 asking if that is, in fact, ---.

2 A. I'm not a doctor. I'm going to guess that
3 that's, you know, could be.

4 Q. No, I just want to understand --- make sure
5 we're communicating. And I think we are, so thank you.

6 [REDACTED] Is that
7 what she said?

8 A. That's her words.

9 Q. And we talked about this a little bit before,
10 but [REDACTED], do you know what that means?

11 [REDACTED]

12 [REDACTED]

13 Q. Do you know what age that is or what triggers
14 that?

15 A. I don't know at what age it's legal in the State
16 of West Virginia.

17 Q. So is that the only thing that would stop it
18 from happening sooner is just the legal age part?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: And if she was medically
21 able to. If she has reached all of the milestones that
22 she's supposed to reach, being a transgender female on
23 hormone blockers, on hormone replacement therapy.

24 BY ATTORNEY TRYON:

1 Q. Do you know how that is accomplished?

2 A. Well, they take the penis and they split it
3 almost like a banana and they peel back the skin and
4 they take all of that and they put it into a cavity
5 inside the pelvis and create a vagina out of the
6 erectile tissue from the penis.

7 Q. I guess the answer's yes. Is she aware that
8 that is what the procedure is?

9 A. Yes.

10 Q. Was that --- who explained that to BPJ?

11 A. I did.

12 Q. And what was BPJ's reaction?

13 A. Ouch.

14 Q. That exact word?

15 A. Yep.

16 Q. After you explained that did BPJ still want to
17 proceed?

18 A. Yep.

19 Q. So I just want to go back to your discussions
20 with Carolyn I think it was who recommended Dr. Montano.
21 Do I remember that correctly?

22 A. Yes.

23 Q. And what exactly did Carolyn say about Dr.
24 Montano?

1 A. That he specialized in transgender care.

2 Q. Did you receive recommendations for any other
3 doctors that specialized in transgender care?

4 A. He was the only one that we could find in the
5 area that specialized in transgender care. He is quite
6 good.

7 Q. When you say he is quite good, what do you mean?

8 A. He is very good working with B [REDACTED] He talks to
9 her on her level.

10 Q. So did you review any other doctors for
11 specializing in transgender care before settling in with
12 Dr. Montano?

13 A. Nope.

14 Q. And then you then decided to change doctors.
15 Is that right?

16 A. Right.

17 Q. And why is that?

18 A. Doctor Kidd is practicing closer to home and
19 she's within my healthcare network.

20 Q. Did you interview with anybody else to see if
21 you wanted to use someone else instead?

22 A. Nope, she's the only one in my area.

23 Q. Are you satisfied with Dr. Kidd so far?

24 A. Yes.

1 Q. How many meetings have you and/or BPJ had with
2 Dr. Kidd?

3 A. Two. We were introduced to her in group with a
4 bunch of --- with that Dr. Someshwar. We were
5 introduced in a group there and then one on one with her
6 later on.

7 Q. Can you turn to --- it's marked at the bottom as
8 page seven? It also has what is called Bates stamp BPJ
9 152 at the bottom.

10 ATTORNEY TRYON: And if the court
11 reporter would put that up.

12 THE WITNESS: Okay.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] [REDACTED]
22 [REDACTED]
23 [REDACTED] This was something that you reported or BPJ
24 reported?

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 Q. And that was as of April of 2021?
10 A. Yeah.
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 Is that a fair statement or not?
15 ATTORNEY BLOCK: Objection to form.
16 THE WITNESS: Not. I wouldn't say that.
17 BY ATTORNEY TRYON:
18 Q. Okay.
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] [REDACTED]

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Both you and BPJ were in this particular meeting.

Is that right?

A. Correct.

Q. And do you know if this statement came from something that you said or that BPJ said?

A. I don't know.

ATTORNEY BLOCK: Objection to the form.

BY ATTORNEY TRYON:

Q. I'm a little confused as to this form, so it's unclear to me if this is from a discussion with Mr. Bunner or with Dr. Someshwar.

Do you know?

A. This whole note?

Q. This particular paragraph anyways?

A. Oh, well it would be in the same notes as the whole packet from the WVU Healthcare University Town Center.

Q. Right. So maybe I can ask the question a little better perhaps. When you went to this appointment on April 1st, 2021, who did you meet with?

A. I don't know who this note is from. I don't

1 know. It says progress note continued. I don't know
2 where the first page is.

3 Q. Okay.

4 The first page would be the prior page that
5 appears to me, but let me ask you if you met on this
6 occasion with Matthew Bunner?

7 A. I don't know who this meeting was with.

8 Q. Do you remember a meeting on --- I mean, this
9 reports a meeting that you've just indicated to me that
10 you attended?

11 A. Yes.

12 Q. Okay.

13 A. Yes.

14 Q. Okay.

15 A. I've been to a lot of doctors' appointments and
16 I don't know which doctor this is from.

17 Q. Okay.

18 A. It doesn't say.

19 Q. Well, it has two names throughout the documents.
20 One is --- if you go to the prior page, on page six, I
21 will let the court reporter bring that up. Towards the
22 top it says I saw and examined the patient. I received
23 resident's note. I agree with the findings and plan of
24 care as documented in the resident's note. Any

1 exceptions/additions are edited/noted. Jean Someshwar.

2 A. Jean Someshwar (corrects pronunciation).

3 Q. Thanks.

4 A. So this note would be from Dr. Someshwar or
5 however you pronounce it.

6 Q. But then down below it says progress notes by
7 Bunner, Matthew, LPC?

8 A. Okay.

9 Q. So let me first ask, do you specifically
10 remember meeting with Jean Someshwar?

11 A. I remember being in one meeting with him, yes.

12 Q. Is Jean a man or a woman?

13 A. I don't know how they identify as.

14 Q. Okay.

15 But you said --- all right. And Matthew
16 Bunner, do you know who Matthew Bunner is?

17 A. Yes, I do.

18 Q. In the middle of the page here it refers to
19 editor being Matthew Bunner and the author as being
20 Matthew Bunner.

21 A. Okay.

22 Q. So it appears --- and correct me if I'm wrong,
23 but it appears that Mr. Bunner also met with you on that
24 date?

1 A. Yes, there was a group of people there.

2 Q. Who else was there besides Mr. Bunner and Jean
3 Someshwar?

4 A. I don't know.

5 Q. Was there others?

6 A. Yeah. There was nurses.

7 Q. Was this all one big meeting or separate
8 meetings?

9 A. It was a big group. It was B [REDACTED] and I in a
10 room with these people.

11 Q. How many people?

12 A. I don't remember.

13 Q. Can you give me --- more than five?

14 A. I don't remember.

15 Q. At the bottom of page seven, under procedure, do
16 you see that?

17 A. Yes.

18 [REDACTED]
19 [REDACTED] Do you remember that procedure
20 as represented there?

21 A. I don't remember that.

22 Q. Then next it says provided assessment/treating
23 utilizing some or all interventions below from WPATH
24 standards of care version seven.

1 Do you see that?

2 A. Yes.

3 Q. Do you remember that assessment being or
4 treatment being provided to you?

5 A. I don't know what WPATH Standards of Care
6 version seven is.

7 Q. Have you ever --- so have you ever heard that
8 term WPATH Standards of Care?

9 A. No.

10 Q. And you've never seen the document just titled
11 WPATH Standards of Care?

12 A. No.

13 Q. First item under there is one, directly assess
14 gender dysphoria in children and adolescents. Was that
15 discussed with you?

16 A. It looks like it was an assessment on their
17 part.

18 Q. And was that assessment when they were
19 discussing it to you and BPJ?

20 A. I presume that they made their assessment based
21 on their interview.

22 Q. And do you know what their assessment was?

23 A. No.

24 Q. Do you remember what was discussed in that

1 interview?

2 A. Well, if I go to the first page I can read what
3 was discussed. But other than that ---.

4 Q. You don't have any independent recollection?

5 A. No.

6 Q. If you could go to the next page marked
7 page eight.

8 A. Okay.

9 Q. At the top it's got Item Number 4, it talks
10 about referring adolescents for additional physical
11 interventions. And the second sentence says the
12 referral should include documentation of an assessment
13 of gender dysphoria and mental health, the adolescent's
14 eligibility for physical interventions outlined below,
15 comma, the medical health professional's role and
16 expertise and any other information pertinent to the
17 use, health and referral for specific treatments. Are
18 you aware of any such referral?

19 ATTORNEY BLOCK: Objection to the form.

20 THE WITNESS: She already had blockers.

21 BY ATTORNEY TRYON:

22 Q. Understood. This is not limited to puberty
23 blockers.

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[REDACTED]

[REDACTED]

Q. Right. Do you anticipate a referral for any other physical interventions?

A. I don't know the answer to that.

Q. Prior to getting the puberty blocker, was there documentation of BPJ's --- strike that.

Let me start that over. Prior to getting the puberty blocker, [REDACTED] was there, to your knowledge, an assessment of gender dysphoria and mental health of BPJ?

A. The assessment was made by Dr. Montano.

Q. Do you know what documentation there is for that assessment?

A. No, I don't.

Q. Earlier in this deposition I asked you if you have documentation, and you said you have documents. What documents do you have relative to BPJ's gender dysphoria?

ATTORNEY BLOCK: Objection, MT.

THE WITNESS: I have copies of her Gender Care Plans given to me by the schools. Is that what you mean?

BY ATTORNEY TRYON:

1 Q. I'm just asking a broad question to see what
2 documents you have.

3 A. Oh, off the top of my head, I don't have them
4 with me.

5 Q. Okay.

6 And off the top of your head you mentioned the
7 plan assessments from the schools. Anything else?

8 A. I have --- I have the Gender Care Assessment ---
9 or Gender Care Plans from Norwood and I got one from
10 Bridgeport. I have those. And I have some copies of
11 partial of her records from UPMC that I gave to Dr. Kidd
12 at WVU.

13 Q. Have you shared those documents with your
14 counsel?

15 A. They're here.

16 Q. Okay.

17 So the documents --- when you say here you mean
18 in the conference room there?

19 A. Yes, they're with your exhibits.

20 Q. Okay.

21 Any other documents that are not with the
22 exhibits that you've seen so far that you think you have
23 in your possession?

24 A. No, I don't have anything other than what I

1 said.

2 Q. If you go to what's now page nine.

3 A. Okay.

4 [REDACTED]

5 [REDACTED]

6 A. Yes.

7 Q. Is that what that represents, [REDACTED]?

8 A. [REDACTED] It's
9 definitely not mine.

10 [REDACTED]

11 [REDACTED]

12 Right?

13 A. Correct.

14 Q. And this is measured --- do you see down below,
15 at the bottom of that little chart, it says for boys?

16 A. Where does it say that at?

17 Q. So I'll just point with the cursor. It's kind
18 of hard to see on the screen, but right here. On the
19 hard copy that I have it's a little clearer?

20 A. I don't see the cursor moving on my screen. Oh,
21 now I do.

22 VIDEOGRAPHER: To move the cursor on your
23 screen you have to click first and then you can move it.

24 ATTORNEY TRYON: Oh.

1 VIDEOGRAPHER: There you go.

2 THE WITNESS: If you say that's what it
3 says then I can't read that, but ---.

4 BY ATTORNEY TRYON:

5 Q. Okay?

6 A. And I have it in this copy, too, and I can't
7 read it there either.

8 Q. Yeah. You know, I understand because I have a
9 copy under which is probably a copy and you have a ---.

10 A. A copy of a copy.

11 Q. But it does say --- in mine it says --- I can't
12 read all of it. [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED]

18 A. You would have to ask them.

19 Q. That was never discussed with you, I take it?

20 A. No.

21 Q. I will just note for the record on BP --- within
22 this document there is on Bates stamp BPJ 162 --- you
23 don't need to look at it, but there are some markings on
24 that page that says Dr. Brunner/Dr. Someshwar, and it

1 says 2021. I believe those are handwritten notes. Those
2 were not on the original. Those are my notes only. My
3 apologies. Those should have been taken off before this
4 started.

5 VIDEOGRAPHER: I'm sorry. Did you want
6 me to scroll to that one?

7 ATTORNEY TRYON: No, unless somebody else
8 wants to see it. But that's just for the record, so if
9 people see that in the future, they can say --- they can
10 understand what that is.

11 VIDEOGRAPHER: Okay.

12 BY ATTORNEY TRYON:

13 Q. Let me go back to Exhibit 1. If you could take
14 a quick look through here. I don't have any specific
15 questions. I just have a general question. If you want
16 to take a look through there.

17 A. Okay.

18 Q. So these documents came from the local Board of
19 Education as part of this discovery process. I think
20 that's right. Yes. And I apologize, West Virginia 1-R
21 you have got to look at.

22 A. Let me grab that.

23 ATTORNEY BLOCK: Do you have a Bates
24 number for that?

1 ATTORNEY TRYON: HBCBOE 00075.

2 ATTORNEY BLOCK: Thank you.

3 BY ATTORNEY TRYON:

4 Q. So my question on this, first of all, is so
5 these are medical records from the Davis Medical Center.
6 The date of the visit appears to be May 13, 2014. And I
7 believe I saw something in here that indicated that
8 these were given to the school in 2016. And I was
9 interested to know if you recall why these were
10 submitted to the school at that time?

11 ATTORNEY BLOCK: Objection. Foundation.

12 THE WITNESS: The school requires their
13 vaccination records and their oral evaluations.

14 BY ATTORNEY TRYON:

15 Q. What do you mean by oral evaluations?

16 A. Their dentist.

17 Q. Oh, okay. So this has more information than
18 just the vaccinations. Were you just being
19 overinclusive when you sent this to them?

20 A. I just gave them the well child visit.

21 Q. Okay.

22 If you could turn to Exhibit 3, please. Do you
23 know --- never mind. We don't need Exhibit 3. Exhibit
24 4?

1 A. Exhibit 4. Okay.

2 Q. Take a look through there and then I will have a
3 few questions.

4 A. Okay.

5 Q. At the top it says that it's from UPMC
6 Children's Hospital of Pittsburgh and it says adolescent
7 medicine evaluation. And the child listed is P [REDACTED]
8 J [REDACTED]. The first name is blocked out. It references
9 male, age nine years old. And then down below it has a
10 date of July 15, 2019. Do you see that? No, it's at
11 the top of that page.

12 A. Oh.

13 Q. Right at the very top of the page.

14 A. Oh, I see it, next to Montano's name. Okay.

15 Q. Yes. Do you remember having a visit on or about
16 that date?

17 A. I don't remember it, but I'm sure there was.

18 Q. And that was with Dr. Montano or --- yeah, Dr.
19 Montano?

20 A. Yes.

21 Q. Without referencing the notes here specifically,
22 do you remember what was discussed at this visit?

23 A. I don't remember what was discussed at this
24 visit.

1 Q. Do you remember the purpose of it?

2 A. I'm guessing just continued care plan.

3 Q. Do you remember --- tell me from what you know
4 who Dr. Montano is.

5 A. Doctor Gerald Montano. He specializes in gender
6 dysphoria, in transitional care patients.

7 Q. And it appears to me from my review of the
8 records, please correct me if I'm wrong, that this is
9 the first time when there was a diagnosis of gender
10 dysphoria by a medical professional?

11 ATTORNEY BLOCK: Objection to form.

12 BY ATTORNEY TRYON:

13 Q. Is that in your memory or not?

14 A. I don't know.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 A. No.

20 Q. So it says B [REDACTED], legal name P [REDACTED] J [REDACTED], is
21 a nine-year-old transgender female coming to the clinic
22 for gender dysphoria. So does that suggest that's the
23 purpose of this visit.

24 Is that right?

1 A. Okay.

2 ATTORNEY BLOCK: Objection.

3 BY ATTORNEY TRYON:

4 Q. Is that consistent with your memory?

5 A. I'm just going by what the notes say, and the
6 notes say that we're there for gender dysphoria.

7 Q. Okay.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Do you see all that?

15 A. Yes.

16 Q. And do you remember reporting this information
17 to Dr. Montano or that BPJ reported this information to
18 Dr. Montano on or about July 15, 2019?

19 [REDACTED]
20 [REDACTED]

21 Q. Okay.

22 And just to be clear, BPJ was in attendance for
23 this meeting as well?

24 A. Yes.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Q. So you don't know what that means then?

10 A. I would presume it meant [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Q. Now, on the third page, which is labeled BPJ 036
14 in the lower right hand corner, do you have that?

15 A. Under social history?

16 Q. Yes.

17 A. Yes.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

1 was?

2 A. No, I don't.

3 Q. Do you know how it was conducted?

4 A. No, I don't.

5 Q. Do you know of any documentation for it?

6 A. No, I don't.

7 Q. Other than what is here before us?

8 A. Unless it's in one of these exhibits, I don't
9 know.

10 Q. Okay.

11 Dr. Montano, did he diagnose BPJ with gender
12 dysphoria?

13 A. Yes.

14 Q. Do you know the basis of his diagnosis?

15 A. No. I presume that went with his medical
16 training to diagnose.

17 Q. Right. Do you know what factors or anything
18 else that he used to make that diagnosis?

19 A. That would be a question for him.

20 Q. It will be a question for him, but I'm asking
21 you if you know.

22 A. I don't know. I'm not a doctor.

23 Q. So if you go to page four --- let me know when
24 you are there?

1 A. Okay.

2 Q. At the bottom, where it says history suggests
3 that B [REDACTED] suggests --- excuse me, history suggests that
4 B [REDACTED] suffers from gender dysphoria.

5 Have you seen that note before today?

6 A. No.

7 Q. And then it says the World Professional
8 Association for Transgender Health. Are you familiar
9 with that organization?

10 A. No, sir.

11 Q. Have you ever heard of that organization before
12 today?

13 A. No, sir.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED] Do you remember Dr. Montano discussing
19 that with you?

20 A. Yes.

21 Q. What else do you remember about what he
22 discussed with you?

23 A. Just informed --- that just falls under informed
24 consent. Just --- he just told us the benefits and the

1 risks.

2 Q. And if I recall correctly, you then discussed
3 these risks with your husband.

4 Is that right?

5 A. Correct.

6 ATTORNEY BLOCK: Objection, MT, vague.

7 BY ATTORNEY TRYON:

8 Q. And both --- so B[REDACTED], you and your husband are
9 all comfortable with the risks for infertility?

10 A. Yes.

11 Q. Has B[REDACTED] ever expressed an interest in having
12 children?

13 A. It has not really come up. I mean, she gets mad
14 at her brother, she says stuff like I'm never having
15 children.

16 Q. Sorry for laughing, but that is kind of funny.

17 A. Just in --- just in situations like that.

18 Q. Yeah. Yeah. Were you advised --- let me
19 rephrase that. Did Dr. Montano advise you that the
20 majority of pre-pubescent children with gender dysphoria
21 desist from gender dysphoria if given affirmation
22 therapy?

23 ATTORNEY BLOCK: Objection.

24 BY ATTORNEY TRYON:

1 Q. Sorry. Let me just start that all over again.
2 In fact, you can strike that all.

3 Let me ask you to take a look at Exhibit 33,
4 please.

5 A. Thirty-three (33)?

6 Q. Correct.

7 A. Okay. I have it.

8 Q. Ma'am, I will represent to you that this is an
9 excerpt from the Standards of Care of the World
10 Professional Association for Transgender Health. It
11 goes through page 21. And this is the seventh version.
12 And I have a few questions about it. You can either
13 read the entire thing right now or you can just wait for
14 me to ask you a question and then if you want to read
15 other parts of it as well, you can do that.

16 A. I've never seen this before.

17 Q. Okay.

18 So Dr. Montano, as I mentioned earlier in the
19 document that we were looking at before, references the
20 Standards of Care for the World Professional Association
21 of Transgender Health.

22 Do you recall that?

23 A. I remember it was mentioned in that other
24 document.

1 Q. Right.

2 ATTORNEY BLOCK: Objection to form.

3 BY ATTORNEY TRYON:

4 Q. Let me ask you to turn to page five.

5 A. I don't see page numbers.

6 Q. At the very bottom right it has page numbers.
7 It looks like they may not have printed very well. At
8 the top it says gender non-conformity is not the same as
9 gender dysphoria.

10 A. The difference between gender non-conformity and
11 gender dysphoria?

12 Q. At the top it says gender non-conformity is not
13 the same. Yes. Right. On page four it says the
14 difference between gender non-conformity and gender
15 dysphoria and then I have a question for you on page
16 five, at the top of page five. Take a look at that
17 paragraph and then I have a question about it. And then
18 if you want to --- before you answer my question, if you
19 want to look at more you can, but I don't think you will
20 need to.

21 A. The one that says gender nonconformity refers to
22 the extent, that paragraph?

23 Q. That paragraph.

24 ATTORNEY BLOCK: And while she's looking

1 at this document, I will just refer back to our standing
2 objections.

3 ATTORNEY TRYON: Thank you.

4 THE WITNESS: Okay.

5 BY ATTORNEY TRYON:

6 Q. So my question is did Dr. Montano explain to you
7 the difference between gender nonconformity and gender
8 dysphoria?

9 A. No.

10 Q. Having read that, do you think it would have
11 been useful for him to explain that to you?

12 A. No.

13 Q. If you could turn to page 11, please?

14 A. I have no page numbers.

15 Q. Well, keep scrolling down on the screen. Do you
16 see --- they're not as faint on the copy that is on the
17 screen, but at the lower right-hand corner it says
18 page 11. So if you count in it would be about 13 pages,
19 but it says differences between children and adolescents
20 with gender dysphoria. That's the topic near the top of
21 the page.

22 A. Okay.

23 I found the page.

24 Q. Okay.

1 I'm just going to read the first --- the
2 sentence that I'm interested in, couple of sentences.
3 And then I'm going to ask you a question. And if you
4 would like to read more of them --- of this before
5 answering you may. But it says an important difference
6 between gender dysphoric children and adolescents is in
7 the proportion for whom dysphoria persists into
8 childhood --- excuse me, into adulthood. Gender
9 dysphoria during childhood does not inevitably continue
10 into adulthood. Rather follow-up studies of pre-pubertal
11 children, mainly boys, who were referred to clinics for
12 assessment of gender dysphoria, the dysphoria persisted
13 into adulthood for only 6 to 23 percent of children.
14 And my question is did Dr. Montano explain that to you?

15 A. No.

16 ATTORNEY BLOCK: Objection to form.
17 First, there's a footnote in that paragraph that I think
18 is illegible on the piece of paper. And second, you
19 didn't read the entire paragraph.

20 ATTORNEY TRYON: I'll read the footnotes
21 that's not illegible because it's legible on my copy.
22 My apologies for that.

23 BY ATTORNEY TRYON:

24 Q. It says gender nonconforming behaviors in

1 children may continue into adulthood but such behaviors
2 are not necessarily indicative of gender dysphoria and a
3 need for treatment. As described in Section 3, gender
4 dysphoria is not synonymous in gender expression. So
5 when you're finished with your review, let me know. I'm
6 just interested if Dr. Montano did explain that to you.

7 A. I don't remember.

8 Q. Would that have been helpful for you to have
9 that information?

10 A. No.

11 ATTORNEY TRYON: Off the record for just
12 one moment, please.

13 VIDEOGRAPHER: Going off the record. The
14 current time reads 2:52 p.m.

15 OFF VIDEOTAPE

16 ---

17 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

18 ---

19 ON VIDEOTAPE

20 VIDEOGRAPHER: Back on the record. The
21 current time reads 2:53 p.m.

22 THE WITNESS: Yes. And I can't see that
23 footnote either on my copies.

24 BY ATTORNEY TRYON:

1 Q. Yes, my apologies. I don't know why that didn't
2 come through on the photocopy, but we'll try and remedy
3 that. Okay. I'm finished with that exhibit.

4 At what point did you start considering suing
5 the State to have this law declared unconstitutional?

6 A. When I realized that it was going to affect my
7 child.

8 Q. And was that before or after the law was
9 actually passed?

10 A. It was after it was signed by the Governor.

11 Q. And how did you come to be aware of it?

12 A. Be aware of the law?

13 Q. Yes.

14 A. That it was in consideration or that it was
15 signed?

16 Q. Well, let's start with consideration. When did
17 you first become aware that it was under consideration?

18 A. I don't know the date. I remember seeing it on
19 the news, that it was under consideration.

20 Q. And at that time were you aware that it could
21 affect your child?

22 A. I was alarmed.

23 Q. Did you contact any legislators about it?

24 A. Yes.

1 Q. Who did you contact?

2 A. Romano and Patrick. I can't remember his last
3 name.

4 Q. Are they --- do you remember which house they're
5 in?

6 A. No, I don't.

7 Q. And how did you contact them?

8 A. Via email.

9 Q. Do you remember the contents of the emails?

10 A. Asking them to vote against it.

11 Q. Did they vote against it?

12 A. I don't know.

13 Q. Do you have a copy of that email?

14 A. I have no idea.

15 Q. Was it the same email to each one of them?

16 A. Yes.

17 Q. And you sent it from your computer?

18 A. Yeah.

19 Q. Would it still be on your computer?

20 A. I don't think so. I don't know.

21 Q. Why do you think so? You said you don't think
22 so. Why would it not be?

23 A. Because at that point I didn't keep emails.

24 Q. Can you look on your computer and see if you

1 still have, them please? Obviously not right now.

2 A. Okay.

3 ATTORNEY TRYON: And then if so, we would
4 request copies of those from counsel. And we can make a
5 formal request or we can just have this be the formal
6 request if you prefer?

7 ATTORNEY BLOCK: I prefer this to be the
8 formal request. We will follow up with you.

9 ATTORNEY TRYON: Thank you.

10 BY ATTORNEY TRYON:

11 Q. Did you ever receive a response from either one
12 of those legislators?

13 A. No.

14 Q. Did that bother you?

15 A. Yes.

16 Q. Did you do any kind of follow-up?

17 A. No.

18 Q. Did you contact any other public officials about
19 that piece of legislation?

20 A. I called the Governor's Office and asked them
21 not to sign it.

22 Q. Did you get to talk to the Governor?

23 A. No.

24 Q. Do you know who you talked to?

1 A. A voicemail.

2 Q. Did you ever hear back?

3 A. No.

4 Q. He never saw this?

5 A. No.

6 Q. And then once you saw that the law was actually
7 passed, did you do anything else?

8 A. I contacted the ACLU and asked if they were
9 going to fight against this law.

10 Q. And how did you contact them?

11 A. By phone.

12 Q. Was that your first contact with the ACLU?

13 A. Correct.

14 Q. About anything at all?

15 A. Yep.

16 Q. And why did you think to call the ACLU?

17 A. Because they fight for civil liberties.

18 Q. So you just had that background knowledge about
19 the ACLU, you thought I will call the ACLU or was there
20 anything else that triggered your ---?

21 A. I felt like my daughter's --- I felt like my
22 daughter's civil liberties were being violated.

23 Q. And that was after the law was passed?

24 A. Correct.

1 Q. On the Complaint it has your name as next friend
2 and mother of BPJ.

3 Do you recall that?

4 A. Yes.

5 Q. And do you know why your name is on there?

6 A. Because I'm the next friend and mother of BPJ.

7 Q. Do you know why that is legally --- what the
8 legal impetus behind that is?

9 A. The next friend part?

10 Q. Do you know why your name needs to be on that
11 part of the document?

12 A. Because I'm the adult. I'm the mom.

13 Q. So it's your understanding simply because BPJ is
14 a minor your name needed to be on there in some
15 capacity?

16 A. Yes.

17 Q. Did you review the Complaint before it was
18 filed?

19 A. I don't remember. I reviewed documents.

20 Q. Let's take a look at Exhibit 32, which is the
21 Complaint.

22 ATTORNEY BLOCK: Before we do that I just
23 want to check to see if the witness needs a break at
24 all.

1 THE WITNESS: I'm good.

2 ATTORNEY TRYON: I'm nearing the end.

3 THE WITNESS: Oh, yeah, this.

4 BY ATTORNEY TRYON:

5 Q. Before we turn to that, let me ask you real
6 quick, my colleague gave two names. Would the
7 legislators have been Patrick Martin?

8 A. Pat Morrissey.

9 Q. Okay.

10 Well, Morrissey is the Attorney General. Is
11 there another Morrissey? Mike Romano?

12 A. Mike Romano, yeah.

13 Q. Okay.

14 Having this in front of you now, do you recall
15 reviewing this before it was filed?

16 A. Yes.

17 Q. On page eight there is a picture of BPJ?

18 A. Yeah.

19 Q. Is that a picture that you supplied?

20 A. Yes.

21 Q. And so it appears to be to me that BPJ is
22 wearing makeup.

23 Is that right?

24 A. Yes, for cheer competition.

1 Q. And did BPJ apply that makeup or did you?

2 A. We both did it.

3 Q. And BPJ is wearing an Indian jersey.

4 Is that right?

5 A. Correct.

6 Q. Is BPJ part American Indian?

7 A. No, she cheers for the Indians.

8 Q. Is that the name of the local team?

9 A. Yes.

10 Q. Not the Cleveland Indians?

11 A. No, not that they're known as Cleveland Indians
12 anymore.

13 Q. I understand.

14 A. The Cleveland Guardians.

15 Q. I understand. I'm from Cleveland.

16 A. Oh, are you a Browns fan?

17 Q. You know, I think we'll just leave that alone.

18 We can talk about it off the record. How's that?

19 Were you asked if you agreed with everything in
20 here before it was filed?

21 A. Yes.

22 Q. And do you understand the legal issues?

23 A. Which legal issues?

24 Q. Well, it talks about on --- you know, I should

1 just clarify. What I'm showing you is the Amended
2 Complaint. There was a prior Complaint that was filed
3 and then there was a subsequent that was filed for
4 clarification for the record. So on page 20 there's
5 count one?

6 A. Yes.

7 ATTORNEY BLOCK: Just objection. I'm
8 just going to refer back to our standing objections.

9 ATTORNEY TRYON: Okay. I haven't asked
10 the question yet, but that's okay.

11 BY ATTORNEY TRYON:

12 Q. Having --- did you review this count one?

13 A. A while back.

14 Q. And in your own mind or your own terminology
15 would you be able to explain what you understand count
16 one to ask or claim?

17 A. Well, I'd say that she is protected under Title
18 IX.

19 Q. What do you know about Title IX? And if you
20 don't know anything about it, that's okay. I'm just
21 asking for your --- what you know because your lawyers
22 are the ones that really put this aspect of it together.
23 I just want to understand your understanding.

24 ATTORNEY BLOCK: Objection to the form.

1 BY ATTORNEY TRYON:

2 Q. Go ahead.

3 A. You could be denied based on your sex, meaning
4 your biological sex.

5 Q. I didn't understand your answer. Could you say
6 that again?

7 A. You could be denied benefits based on your
8 biological sex, benefits afforded to you under Title IX.

9 Q. And then Count 2, if you could take a look at
10 that and tell me what your own understanding of what
11 that is about?

12 A. It's about the equal protection clause of the
13 14th Amendment.

14 Q. Do you know anything about that?

15 ATTORNEY BLOCK: Objection, vague.

16 BY ATTORNEY TRYON:

17 Q. Do you know anything about the equal protection,
18 the claim for equal protection --- excuse me, the 14th
19 Amendment, the equal protection clause?

20 A. It's just equal protection under the law.

21 Q. Have you looked into what that law is at all on
22 your own?

23 ATTORNEY BLOCK: Objection, vague.

24 THE WITNESS: No.

1 BY ATTORNEY TRYON:

2 Q. I didn't hear you.

3 A. No.

4 Q. Let me go back to the title, though. I'm just
5 going to ask you one more question about it. Where it
6 says BPJ, her next friend and mother, Heather Jackson,
7 is there a reason you were selected to be the next
8 friend as opposed to your husband as the next friend and
9 father?

10 A. I'm the one that reached out for help in the
11 first place.

12 Q. Did anyone ask if your husband wanted to be
13 named on here as also another next friend and parent?

14 ATTORNEY BLOCK: Just objection to the
15 extent that this calls for communications with your
16 attorneys. I'm instructing you not to answer.

17 BY ATTORNEY TRYON:

18 Q. Without any communication with your attorney,
19 did you have a discussion with your husband about him
20 being named on here?

21 A. My husband and I have been hand in hand
22 throughout this whole procedure.

23 Q. I understand. That wasn't my question. My
24 question was did you have any discussion with his name

1 appearing on here as well?

2 A. No.

3 Q. Let me ask you about Exhibit WV 23R.

4 A. Okay.

5 Q. So on the third page of this document?

6 A. Yes.

7 ATTORNEY TRYON: Can the court reporter
8 put that up?

9 VIDEOGRAPHER: I'm looking. I don't see
10 a 23R, I just see a 23.

11 ATTORNEY TRYON: Put up 23, and then it
12 should be --- if you scroll down it should be there.

13 VIDEOGRAPHER: So I got that article and
14 then it moves into 24.

15 ATTORNEY TRYON: Well, my apologies. We
16 will use 23 for this deposition. And as we've already
17 indicated, we will not be using this exhibit with BPJ.

18 BY ATTORNEY TRYON:

19 Q. So on the --- so can you look at 23?

20 A. Yes.

21 Q. So on the --- this is an article from 2016. And
22 in 2016 you were already referring to BPJ as B [REDACTED] and
23 using the pronouns her.

24 Right?

1 A. Correct, with family.

2 Q. So then, yes, my question is on page three, when
3 you're talking to apparently the reporter you say
4 Stratton looks forward to it. He does this every year
5 because he says he wants to help other babies. Why did
6 you continue to use [REDACTED] name in public?

7 ATTORNEY BLOCK: Objection, the document
8 looks like [REDACTED] is in brackets from the quote you
9 read.

10 ATTORNEY TRYON: Yes.

11 BY ATTORNEY TRYON:

12 Q. So ma'am, let's be ---.

13 ATTORNEY TRYON: Thank you for that
14 clarification.

15 BY ATTORNEY TRYON:

16 Q. Did you, in fact, refer to BPJ as [REDACTED] when
17 you talked to the reporter for this article?

18 A. Yes.

19 Q. And why did you do that?

20 A. Because it was public, not private.

21 Q. And when did you go public?

22 ATTORNEY BLOCK: Objection, vague.

23 THE WITNESS: I don't know the date.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 Let's take a look at 25.

3 VIDEOGRAPHER: There's 23R. It was right
4 after 24R.

5 ATTORNEY TRYON: Oh, well, my apologies.

6 BY ATTORNEY TRYON:

7 Q. Do you have 25 in front of you?

8 A. Correct.

9 Q. So on the second page of that exhibit it appears
10 to have a quote from BPJ saying I just want to run. I
11 come up from a family of runners, P [REDACTED] J [REDACTED] said in
12 a news release. I know how hurtful a law like this is
13 to all kids like me who just want to play sports with
14 their classmates and I'm doing this for them. Trans
15 kids deserve better, closed quote. Now, sometimes
16 newspapers misreport things, so I'm asking you if you
17 know if that's an accurate quote?

18 A. That is accurate.

19 Q. Was that an oral statement that BPJ made?

20 A. Oral.

21 Q. And did you help her come up with that or did
22 BPJ come up with that all on BPJ's own?

23 A. BPJ.

24 Q. So what exactly is BPJ doing for others, for

1 them?

2 ATTORNEY BLOCK: Objection, vague,
3 foundation.

4 THE WITNESS: She wants all kids to be
5 able to run with the teams that they identify with or
6 play with the teams that they identify with.

7 BY ATTORNEY TRYON:

8 Q. And trans kids deserve better, do you know what
9 that meant?

10 ATTORNEY BLOCK: Objection, speculation.

11 THE WITNESS: They deserve to be treated
12 equally.

13 BY ATTORNEY TRYON:

14 Q. On the next page, at the top of that page, the
15 second paragraph says the Complaint complains that House
16 Bill 3293 was prompted by unfounded stereotypes. Do you
17 have an opinion on what those unfounded stereotypes are?

18 A. Unfounded stereotypes ---.

19 ATTORNEY BLOCK: Just objection to
20 reading only part of the sentence.

21 BY ATTORNEY TRYON:

22 Q. Go ahead.

23 A. The fear that if she runs on a girls team, that
24 she's going to beat all the other girls because she was

1 born as a biological sex male. That's an unfounded
2 stereotype.

3 Q. How about false scientific claims, do you know
4 what that is?

5 A. Same thing.

6 Q. Do you know what baseless fear and
7 misunderstandings of girls who are transgender, do you
8 know what that refers to?

9 A. Same thing.

10 Q. Well, what's the fear?

11 A. The fear that they're going to beat out all the
12 other competition and win all the awards and get all the
13 scholarships.

14 Q. Okay.

15 And just to be clear that --- I think I
16 understood the prior testimony, you don't have any data
17 or articles or scientific claims to support this data,
18 do you?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: I don't have anything.

21 BY ATTORNEY TRYON:

22 Q. Has anything been shown to you?

23 ATTORNEY BLOCK: Objection to form,

24 vague.

1 BY ATTORNEY TRYON:

2 Q. You're shaking your head no. Is that a no?

3 A. Shown to me in regards to ---?

4 Q. Thank you for asking for that clarification. Do
5 you have any --- this talks about false scientific
6 claims. Do you have any scientific evidence to show
7 that those claims are false?

8 A. I don't have anything to show that they're false
9 or true.

10 Q. And you haven't seen anything, have you?

11 A. No.

12 Q. Okay.

13 Let me ask you to take a look at Exhibit 27.
14 And I'm going to ask you a question about the seventh
15 page in. It's actually the last page of the article
16 itself.

17 A. Okay.

18 Q. All right.

19 So on that page B [REDACTED] is quoted as --- B [REDACTED]
20 was devastated. She said, quote, I felt horrible
21 because I knew then I couldn't run with the other girls.
22 So is that her quote or did somebody supply that to her?

23 A. No, that's her.

24 Q. And then it says B [REDACTED] immediately started

1 discussing potential lawsuit with her mom. Can you
2 explain that to me?

3 A. She wanted to know what we could do to fight it.

4 Q. Did she raise that before you did or ---

5 A. Yes.

6 Q. --- on her own?

7 A. Yes. She wanted to know how we could fight it.

8 Q. So it sounds like, and correct me if I'm wrong,
9 it sounds like the lawsuit was initially --- let me
10 rephrase that. Was the lawsuit her idea or just the
11 idea of fighting it?

12 A. The idea of fighting it.

13 ATTORNEY BLOCK: Objection to the form.

14 THE WITNESS: The idea of fighting it.

15 BY ATTORNEY TRYON:

16 Q. And then how was the idea of a lawsuit, how did
17 that come to pass?

18 A. That was the only way we could fight it.

19 Q. Well, did you come up with that idea or did that
20 idea come after you called the ACLU?

21 A. I asked for help.

22 Q. In the form of a lawsuit or was that a
23 suggestion they made to you?

24 A. No, a suggestion I made.

1 Q. Okay.

2 Exhibit 29.

3 A. Okay.

4 Q. I'm going to ask you a question about the third
5 paragraph down. That starts with the term --- with the
6 words that I just want to run. Take your time to read
7 through this as much as you want, and I just have a
8 question about that.

9 A. Okay.

10 Q. So this appears to be a press release by Lambda
11 Legal. And this appears to be a quote attributed to
12 B[REDACTED]. In the third paragraph it says I just want to
13 run and the State wants to stop me from running as part
14 of a team at my school, said B[REDACTED], an 11-year-old
15 middle school student. I love running and being part of
16 a team. And the State of West Virginia should explain
17 in court why they won't let me, closed quote.

18 You know, sometimes in the press releases like
19 this the person putting together the press release puts
20 together a quote and then attributes it to --- shows it
21 to the person to whom it's attributed and says is this
22 okay for me to say. And other times it's something that
23 the person quoted actually said. Can you tell me which
24 one of those it is?

1 A. That's B[REDACTED].

2 ATTORNEY BLOCK: Objection to the form.
3 Objection to the form.

4 THE WITNESS: That's B[REDACTED].

5 BY ATTORNEY TRYON:

6 Q. So she came up with this quote all on her own?

7 A. Yes.

8 Q. And so she wants the State of West Virginia to
9 explain in court why they won't let BPJ run as part of
10 the team.

11 Right?

12 A. Yes.

13 Q. Okay.

14 When this lawsuit was filed, did she understand
15 that she might be subject to a deposition?

16 A. We didn't even know what a deposition was.

17 Q. Okay.

18 So I'll ask the same question of you, although
19 I think the answer is obvious. At the time that you
20 filed this lawsuit, did you know that you might be
21 subject to a deposition?

22 A. I didn't even know what a deposition was.

23 Q. So the answer would be no?

24 A. That would be a no.

1 ATTORNEY TRYON: Let me go off the record
2 for just a minute and see if I have any other questions.

3 VIDEOGRAPHER: Going off the record. The
4 current time reads 3:23 p.m.

5 OFF VIDEOTAPE

6 ---

7 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

8 ---

9 ON VIDEOTAPE

10 VIDEOGRAPHER: We are back on the record.
11 The current time reads 3:27 p.m.

12 BY ATTORNEY TRYON:

13 Q. I want to go back and just reconfirm something
14 about --- you said you wrote to two legislators. And we
15 just checked to see which legislators are in your
16 district, and one is Patrick Martin and one is Mike
17 Romano.

18 A. That's who it is. It's Patrick Martin.

19 Q. Okay.

20 Very good. And then I'm interested, given
21 there's been a fair amount of publicity in this case,
22 have you received media inquiries about this case?

23 A. The only inquiries I have had has come to me
24 through my lawyers.

1 Q. Okay.

2 Do you have any --- has anyone contacted you
3 about you or BPJ being some sort of representative or
4 advocate for transgender rights?

5 A. No.

6 Q. And you said that you have received --- no, let
7 me rephrase that. Have you received any press inquiries
8 about this case through your attorneys?

9 A. The inquiries I have were the ones that you
10 brought forth as exhibits.

11 Q. There weren't any others?

12 A. No.

13 Q. Well, I should represent to you there are a few
14 others that I have not shown.

15 A. Okay.

16 Q. So I'm not trying to trick you. I just want to
17 --- but you don't remember any others right now?

18 A. No, but I haven't seen all the exhibits either.
19 I don't know if you have them in here as exhibits.

20 Q. Yeah, and that's fine. If you don't remember
21 any others, that's all right. There are one or two
22 more, but that's okay.

23 ATTORNEY TRYON: I don't think I have any
24 other questions at this time, subject to any follow-up

1 after other questions and any other reservation rights
2 we might make at the end of this deposition. Thank you
3 for your time.

4 ATTORNEY BLOCK: Before other counsel
5 begins, do you need a break, Heather?

6 THE WITNESS: I would like to use the
7 restroom.

8 ATTORNEY BLOCK: Okay.

9 So let's come back at 3:35, everyone.

10 ATTORNEY TRYON: Okay. Thank you.

11 VIDEOGRAPHER: Going off the record. The
12 current time reads 3:29 p.m.

13 OFF VIDEOTAPE

14 ---

15 (WHEREUPON, A BREAK WAS TAKEN.)

16 ---

17 ON VIDEOTAPE

18 VIDEOGRAPHER: We are back on the record.
19 The current time reads 3:36 p.m.

20 ---

21 EXAMINATION

22 ---

23 BY ATTORNEY GREEN:

24 Q. All right. We are back on the record. And I've

1 just --- the State has signed off officially, and so ---
2 oh, there you are. You just popped her into the screen.
3 It took me a minute to find her.

4 Ms. Jackson, my name is Roberta Green. I'm an
5 attorney here on behalf of West Virginia Secondary
6 School Activities Commission, also known as WVSSAC.

7 Do you know the those initials, WVSSAC?

8 A. Yes, I know the WVSSAC initials. Yes.

9 Q. Okay. Great. So if I refer to it then --- it
10 as WVSSAC, you'll know who I mean?

11 A. Yes, yes.

12 Q. That will save us ten words every time I --- so
13 I just have a few questions for you today. If I
14 understood your testimony correctly, you learned of
15 House Bill 3293 when you heard about it on the news.

16 Is that accurate?

17 A. Yes, that's accurate.

18 Q. Do you recollect whether at any time prior to
19 learning of House Bill 3293 you had notified WVSSAC of
20 BPJ's interest in running on the girls cross-country
21 team?

22 A. I did not notify them of her desire.

23 Q. All right.

24 And at any time prior to filing the lawsuit do

1 you recall whether you ever notified WVSSAC of BPJ's
2 interest in running on the girls cross-country team?

3 A. I did not contact the WVSSAC in advance.

4 Q. All right.

5 And do you know whether at any time, like up
6 until today, you have contacted WVSSAC to notify them of
7 BPJ's interest in running on the girls cross-country
8 team?

9 A. I have not.

10 ATTORNEY GREEN: Okay.

11 I don't think I have any other questions.
12 So thank you very much. I appreciate it.

13 ---

14 EXAMINATION

15 ---

16 BY ATTORNEY DENIKER:

17 Q. Good afternoon, Ms. Jackson. My name is Susan
18 Deniker. I introduced myself earlier today, but I
19 represent the Harrison County Board of Education and
20 superintendant Dora Stutler in this litigation. Thank
21 you for your time today. I know it's been a long day
22 and I appreciate you hanging in there with us.

23 I do have some additional questions for you.
24 If I ask you anything that you don't understand today

1 please tell me and I'll be glad to rephrase the
2 question. If you don't do that I will assume that you
3 have understood the question.

4 Is that fair?

5 A. Okay.

6 Q. Thank you.

7 Ms. Jackson, tell me about BPJ's education.
8 Did she start her education in Harrison County schools?

9 A. Yes, she started her education in Harrison
10 County schools.

11 Q. And did she start in pre-K or in kindergarten?

12 A. Kindergarten.

13 Q. Did she have any formal education before going
14 to kindergarten? In other words, was she in a
15 pre-school program or a pre-K program anywhere before
16 starting kindergarten?

17 A. No.

18 Q. And did she do her entire elementary schooling
19 at Norwood Elementary?

20 A. Yes, she did.

21 Q. Tell me the first --- well, in general, how was
22 your experience for --- how was the experience for BPJ
23 at the Norwood Elementary School did she have a positive
24 experience at that elementary school?

1 A. She had a positive experience.

2 Q. The current Superintendent of Harrison County
3 schools is Dora Stutler. Was she the principal at
4 Norwood during part of the time period that BPJ would
5 have been enrolled at Norwood Elementary School?

6 A. Yes, she was.

7 Q. So you had interactions with Ms. Stutler while
8 she was the principal at Norwood.

9 Is that true?

10 A. Interactions, yes.

11 Q. And were your interactions with her positive?

12 A. I think I've received a couple phone calls from
13 her in regards to B [REDACTED], that maybe she had concerns
14 over not getting a homework assignment in or that kind
15 of thing, but it was positive criticism.

16 Q. So your interactions with Ms. Stutler when she
17 was principal at Norwood Elementary School were all
18 professional in nature?

19 A. Yes.

20 Q. And you didn't have any concerns with those
21 communications?

22 A. No concerns.

23 Q. Did your other --- did your two older children,
24 your sons, did they go through Norwood Elementary School

1 as well?

2 A. Yes.

3 Q. And did you have any issues or concerns when
4 they went through Norwood Elementary School?

5 A. Correct that. My oldest one transferred from
6 St. Mary's to Bridgeport Middle. My second one was all
7 in Norwood.

8 Q. Okay.

9 A. I think his kindergarten year, there was no room
10 at Norwood and he had to go to Johnson.

11 Q. Very good.

12 So you transferred your oldest child to St.
13 Mary's?

14 A. From St. Mary's directly to Bridgeport Middle,
15 so I correct that.

16 Q. So your middle --- your middle child, that child
17 did go through Norwood Elementary School?

18 A. Yes, yes.

19 Q. Any issues or concerns during his time at
20 Norwood Elementary School?

21 A. No.

22 Q. When did you first make any employees of Norwood
23 Elementary School or anybody in Harrison County schools
24 aware that BPJ identified as a female and was a

1 transgender student?

2 A. I contacted Mr. James Thornton, who was the
3 school counselor, but I don't know the date.

4 Q. Do you recall what grade BPJ was in at the time?

5 A. Third.

6 Q. And Mr. Thornton was the guidance counselor at
7 Norwood Elementary School at that time?

8 A. Yes.

9 Q. And can you tell me at about that communication?
10 What was discussed when you contacted Mr. Thornton?

11 A. That B [REDACTED] is a transgender female and wishes to
12 be --- conduct her life as such and her pronouns were
13 she/her.

14 Q. What was Mr. Thornton's response to that?

15 A. He understood and was going to take it to a
16 higher power. I'm guessing it was the principal at the
17 time.

18 Q. Was there anything else that you can recall that
19 was part of that initial communication with Mr. Thornton
20 about BPJ's transgender status?

21 A. That she was going to start presenting as a
22 female at school.

23 Q. And then what was Mr. Thornton's response to
24 that?

1 A. The same, that he would go ahead and handle what
2 had to be handled on his end.

3 Q. Did you find him to be supportive of ---?

4 A. Yes.

5 Q. Did you say extremely?

6 A. Extremely supportive of Becky's transition.

7 Q. Very good. Did Mr. Thornton, in fact, get back
8 to you after he spoke with the principal?

9 A. I don't recall.

10 Q. What was --- what was the next communication
11 that you recall having with the school officials with
12 regard to B[REDACTED] transition?

13 A. I would have had contact with her teacher at
14 that time. I can't remember her name at that time. And
15 realizing that she was going to have questions or that
16 the students would have questions, but I can't remember
17 that teacher's name. I apologize.

18 Q. That's no problem.

19 Tell me about the nature of your communications
20 with --- this would have been the third grade teacher.

21 Is that correct?

22 A. Right, right. That she was going to start
23 presenting as a female at school.

24 Q. And was the teacher supportive of that?

1 A. Yes.

2 Q. And then BPJ did start presenting as a female at
3 school I think I heard you testify earlier.

4 Is that correct?

5 A. That is correct.

6 Q. Were there any problems or issues with that?

7 A. The only thing that I know of is that the
8 teacher did get questions as to why B [REDACTED] was dressing
9 the way she was dressing, and her answer was she's B [REDACTED]
10 and that's what makes her happy.

11 Q. Were you comfortable with that response from the
12 teacher?

13 A. Yes.

14 Q. And so in the third grade did you have any
15 concerns with regard to how the school handled B [REDACTED]
16 transition?

17 A. No, I did not.

18 Q. And then BPJ also would have been enrolled at
19 Norwood Elementary School in the fourth and fifth
20 grades.

21 Is that true?

22 A. That is correct.

23 Q. And at that point she was --- in those grades
24 she was fully transitioned ---

1 A. Correct.

2 Q. --- to being a female student.

3 Is that correct?

4 A. Correct.

5 Q. And did you have any issues or concerns with the
6 way school officials handled that?

7 A. School officials handled it quite well.

8 Q. So during BPJ's tenure as a student at Norwood
9 Elementary School did you have any concerns or issues
10 with regard to how school officials handled --- how your
11 daughter wanted to handle her transgender status and how
12 she wanted to present at school?

13 A. They respected her transition and her
14 transgender status. They used her correct pronouns,
15 which was she/her.

16 Q. That was something that was important to you and
17 BPJ.

18 Is that correct?

19 A. Correct.

20 Q. So part of that --- my understanding is that
21 part of the communications that you would have had with
22 school officials at Norwood Elementary School included
23 completing a Gender Support Plan for BPJ.

24 Is that correct?

1 A. That is correct.

2 Q. And I'll ask you --- I'm going to ask you about
3 both Gender Support Plans because I know you're having
4 to grab things. I'm going to ask you about Exhibits 17
5 and 19, if you want to pull them out. We'll look at
6 Exhibit 17 first.

7 A. I've got 17 in front of me.

8 Q. Okay. Very good. We'll start there. We can
9 get to 19 when we get there.

10 And you can take as much time as you want to
11 review this, but my initial question is going to be is
12 this the Gender Support Plan that was in place when BPJ
13 was at Norwood Elementary School?

14 A. Yes, it is.

15 Q. And you would agree with me that this document
16 is dated August 23rd, 2019?

17 A. Correct.

18 Q. And this was a document that the Harrison County
19 Board of Education had in place, so that there was a
20 process to discuss a combination of a student who's
21 transgender like BPJ.

22 Is that correct?

23 ATTORNEY BLOCK: Objection to form.

24 THE WITNESS: That's my understanding.

1 BY ATTORNEY DENIKER:

2 Q. And in fact, did you meet with school officials
3 from the Harrison County Board of Education to develop
4 this Gender Support Plan to support BPJ?

5 A. I met with the people that are listed on the
6 last page of the Gender Peer Support Plan.

7 Q. Was there anybody present in the meeting on
8 August 23rd, 2019, whose name doesn't appear on the
9 signature page on page five, which is Bates number BPJ
10 011?

11 A. I don't know. I know that we were all supposed
12 to sign it to say that we were there in attendance. So
13 I presume everyone signed it.

14 Q. In looking at this signature page, do you recall
15 anybody being there whose name you don't see there?

16 A. I don't off the top of my head, no.

17 Q. Is your signature on this document?

18 A. Yes, ma'am, it is.

19 Q. And it looks like BPJ's signature is on this
20 document as well.

21 Is that correct?

22 A. Correct, because she was in attendance. She had
23 to sign it.

24 Q. So she was part of this meeting.

1 Is that right?

2 A. That's correct.

3 Q. Did you find the school officials that
4 participated in this process to be respectful of you and
5 of BPJ?

6 A. Yes, I did.

7 Q. And did you find that the purpose of this was to
8 help accommodate any needs that BPJ might have as a
9 transgender student?

10 ATTORNEY BLOCK: Objection to form.

11 THE WITNESS: That's my understanding that
12 that was the purpose of the document.

13 BY ATTORNEY DENIKER:

14 Q. Did you --- were you in agreement with the
15 Gender Support Plan that was put into place through this
16 August 23rd, 2019 document?

17 A. Yes, I was in agreement with it.

18 Q. Was BPJ in agreement with it?

19 A. Yes, as much as she understood. Yes.

20 Q. And did you believe that the school followed
21 through and accommodated her in accordance with this
22 Gender Support Plan while she was at the Norwood
23 Elementary School?

24 A. They followed the Gender Support Peer Plan, yes.

1 Q. So is it fair to say that you didn't have any
2 issues or concerns of BPJ's treatment as a transgender
3 student during the time that she was a student at
4 Norwood Elementary School?

5 A. I would say correct.

6 COURT REPORTER: I'm sorry. I'm sorry.
7 Can you state that question one more time? It was a
8 little fast.

9 ATTORNEY DENIKER: I will try to do that.

10 BY ATTORNEY DENIKER:

11 Q. Is it fair to say that you did not have any
12 issues or concerns with BPJ's treatment as a transgender
13 student during the time that she was enrolled as a
14 student at Norwood Elementary School?

15 A. We had no issues.

16 Q. Ms. Jackson, to confirm, it is my understanding
17 that Harrison County Schools does not offer
18 school-sponsored athletics for students who are in
19 elementary school. Is that consistent with your
20 understanding?

21 A. That's my understanding.

22 Q. And I heard you testify earlier that BPJ
23 participated in cheerleading, which was not a
24 school-related activity, while we was in elementary

1 school.

2 Is that correct?

3 A. That was through the Bridgeport Youth Football.

4 Q. And that's not affiliated with the Harrison
5 County Board of Education.

6 Is that correct?

7 A. That is --- that is correct.

8 Q. So the first time that BPJ was eligible to
9 participate in school-sponsored sports was when she went
10 to middle school for this coming academic year.

11 Is that correct?

12 A. That is correct.

13 Q. And BPJ, is she currently in the 6th grade?

14 A. That is correct.

15 Q. And is she still 11 years old?

16 A. Yes.

17 Q. And prior to her --- so she would have
18 transferred from Norwood Elementary School to Bridgeport
19 Middle School for the beginning of this academic year.

20 Is that correct?

21 A. Correct.

22 Q. And it's my understanding that Bridgeport Middle
23 School is a three-year middle school that has grades
24 six, seven and eight.

1 Is that correct?

2 A. That is correct.

3 Q. Your older children, your two sons, have they
4 both gone through Bridgeport Middle School?

5 A. Yes, they have.

6 Q. So you're familiar with the school?

7 A. Yes.

8 Q. And you were familiar with it before BPJ
9 enrolled there.

10 Is that correct?

11 A. Yes.

12 Q. And did you have --- well, strike that.

13 Now, I am going to ask you to look at Exhibit
14 Number 19, if you can find it, please.

15 A. I got to find it. Can they bring it up on the
16 screen rather than me finding it?

17 Q. Yes. And if you need to see a paper copy, I'll
18 be glad to take a break for you to be able to find it.

19 A. That's okay. I can look on the screen. I'm
20 familiar with this document.

21 Q. Great. Would you agree with me that this
22 document we just marked as Exhibit West Virginia 19 is a
23 Gender Support Plan for BPJ, which is dated May 18th,
24 2021?

1 A. Correct.

2 Q. And was this a meeting that you would have had
3 with school officials to create another Gender Support
4 Plan for BPJ?

5 A. Correct.

6 Q. May 18th of 2021, at that time am I correct that
7 BPJ would have been finishing her 5th-grade year at
8 Norwood at that time?

9 A. Yes.

10 Q. So this meeting was done in preparation for
11 BPJ's transition to Bridgeport Middle School.

12 Is that correct?

13 A. Correct, and the meeting was held at Norwood.

14 Q. And as before, the folks that were in
15 attendance, are their signatures on page five of this
16 document, which is Bates number BPJ 006?

17 A. Yes, I presume that is everyone that was there.
18 We were all asked to sign in if we attended.

19 Q. And again, as I asked you before, is there
20 anybody who you recall being present for this meeting
21 whose name or signature doesn't appear on page five of
22 this document?

23 A. I don't think so.

24 Q. Is your signature on this document?

1 A. Yes, it is.

2 Q. And I also see BPJ's signature on this document.
3 Is that correct?

4 A. Yes.

5 Q. This included --- even though it was held at
6 Norwood Elementary School, this did include school
7 officials from Bridgeport Middle School.

8 Is that correct?

9 A. Correct.

10 Q. And this included a discussion about
11 accommodation for BPJ once she got to the middle school
12 for this current academic year.

13 Is that correct?

14 A. Correct.

15 Q. Was this meeting conducted professionally in
16 your opinion?

17 A. Yes.

18 Q. And were you able to discuss wishes, ideas, and
19 concerns you had about accommodations for BPJ as she was
20 starting into the middle school?

21 A. Yes.

22 Q. And did you feel like this was a positive
23 meeting?

24 A. Yes.

1 Q. Dave Mazza is somebody who's on the signature
2 page. He's the principal at Bridgeport Middle School.

3 Is that correct?

4 A. That is correct.

5 Q. Did you know Mr. Mazza before you had this
6 meeting?

7 A. Yes.

8 Q. And again, you would have been a parent of
9 students who have been at Bridgeport Middle School.

10 Is that correct?

11 A. That is correct.

12 Q. Your middle child, Ms. Jackson, I'm trying to
13 figure out the ages, is he a couple of years older than
14 BPJ?

15 A. Thirteen (13).

16 Q. He's 13. And what grade is he currently in?

17 A. Eighth.

18 Q. So you have two children currently at the middle
19 school.

20 Is that correct?

21 A. That is correct.

22 Q. Okay.

23 So Mr. Mazza wasn't new to you in this meeting?

24 A. That is correct.

1 Q. And did you have a --- prior to this meeting,
2 did you have a positive relationship with Mr. Mazza?

3 A. That is correct.

4 Q. He's a nice guy, isn't he?

5 A. He is.

6 Q. And my experience with him has been that he's
7 very student centered. Has that been your experience as
8 it relates to your children?

9 A. He's extremely student oriented.

10 Q. He really cares about the students, doesn't he?

11 A. I believe so, yes.

12 Q. And I see that Tarra Shields was on this
13 document. Is she the counselor at Bridgeport Middle
14 School?

15 A. She's the principal I believe now, isn't she?

16 Q. Is she one of the principals there?

17 A. I think so, at Norwood.

18 Q. At Norwood?

19 A. At Norwood.

20 Q. That's right. That's right, Ms. Jackson. So
21 she was there as the Norwood principal.

22 Is that correct?

23 A. Correct, correct.

24 Q. And it looks like Ms. Merrill was there and she

1 is a counselor at Bridgeport Middle School.

2 Is that correct?

3 A. That is correct.

4 Q. And how was your experience with her in this
5 meeting?

6 A. Can you be more specific?

7 Q. Sure. Was she professional with you?

8 A. Yes.

9 Q. And was she helpful in terms of identifying
10 appropriate accommodations for your daughter as she was
11 getting ready to transition to the middle school?

12 A. Yes.

13 Q. Did you feel that the Bridgeport Middle School
14 team was committed to making your daughter's transition
15 to the school as a transgender student a positive
16 experience?

17 A. Yeah. The only concern that was raised was the
18 concern about her participating in cross-country.

19 Q. And I wanted to talk to you about this, Ms.
20 Jackson. Let me ask you this. Other than conversation
21 as it related to participation on the cross-country
22 team, did you have any concerns at all about what was
23 discussed during this meeting for the Gender Support
24 Plan on May 18th, 2021?

1 A. No.

2 Q. So during this meeting it sounds like you did
3 have a discussion with the school officials with regard
4 to BPJ's participation in athletics.

5 Is that correct?

6 A. That is correct.

7 Q. And in fact, that's part of this plan is to
8 discuss --- that is a topic to be discussed.

9 Is that correct?

10 A. I'm sorry. Can you repeat that?

11 Q. Sure. And I probably didn't ask it very well.
12 And let me actually ask you by looking at the document.
13 Let's look at page four of the document. And this is
14 Bates number BPJ 005. And Ms. Jackson, I will ask you
15 to look at the top of that document as we scroll up to
16 it. And there's a specific section on this Gender
17 Support Plan to have a discussion about the student's
18 participation in extracurricular activities.

19 Would you agree with that?

20 A. Yeah, there's definitely information there
21 regarding that.

22 Q. And it specifically also addresses sports,
23 doesn't it?

24 A. Yes, specifically is cross-country and track.

1 Q. Okay.

2 And so I think the question on the form, it
3 says, in what extracurricular programs or activities
4 will the student be participating and then in
5 parentheses it says sports, theater, clubs, et cetera,
6 question mark. Did I read that accurately, Ms. Jackson?

7 A. Yes.

8 Q. And then in handwriting under that question it
9 says cross-country and track.

10 Is that right?

11 A. That is correct.

12 Q. And did you fill this document out?

13 A. No, that is Ms. Merrill's handwriting.

14 Q. Okay.

15 And the entries that say cross-country and
16 track, did that --- where did that information come
17 from?

18 A. From B [REDACTED] and myself, that she wanted to
19 participate in cross-country and track.

20 Q. Okay.

21 And that was noted on this form.

22 Is that correct?

23 A. Correct.

24 Q. And was there a discussion about BPJ's

1 participation in school sports and specifically
2 cross-country and track since BPJ expressed an interest
3 in that participation?

4 A. Yes. What was discussed is actually on that
5 next line, about the coaches have to be aware of the
6 transition.

7 Q. Okay.

8 The next line says what steps will be necessary
9 for supporting the student there. And as you noted, it
10 says coaches would need to be aware of Becky's
11 transition. If teammates have questions, they can
12 approach the coach or administration. Did you have any
13 concern with that?

14 A. The only concern I had at the time was, was she
15 going to be able to run on the girls cross-country team.

16 Q. And did you ask that question during the
17 meeting?

18 A. It came up during the meeting. I don't know if
19 it was in question form or in statement form.

20 Q. Do you remember who brought it up?

21 A. I brought it up.

22 Q. Do you remember what you said during the
23 meeting?

24 A. Not specifically, just that I was concerned that

1 she would be able to run on the girls cross-country
2 team.

3 Q. And did somebody respond to that inquiry from
4 you?

5 A. David Mazza.

6 Q. And what did Mr. Mazza say?

7 A. That it would all depend on how the bill was
8 going to come about, and that if she wanted to run, she
9 wouldn't be able to run on the girls cross-country
10 because of the bill.

11 Q. And when you say the bill, are you talking about
12 House Bill 3293?

13 A. Yeah.

14 Q. And is that the bill that --- is it your
15 understanding that it's House Bill 3293 that your
16 current litigation seeks to overturn and address?

17 A. Yes.

18 Q. So were you aware as of the date of this Gender
19 Support Plan, May 18th, 2021, what the status of House
20 Bill 3293 was?

21 A. I just knew it was in legislature.

22 Q. And Mr. Mazza was also aware of it, it sounds
23 like from his response to you.

24 Is that your understanding?

1 A. Yes.

2 Q. And so was there any further discussion of BPJ's
3 ability to run on the girls team other than what you
4 have already told me?

5 A. That was the gist of the conversation, was
6 regarding my concerns whether or not she would be able
7 to run on the girls cross-country team.

8 Q. And so you were aware of the House Bill --- and
9 were you aware that it was a state law?

10 A. All I knew was about the bill.

11 Q. Okay.

12 And were you aware that that was a bill that
13 was considered and passed by the West Virginia State
14 Legislature?

15 A. I'm not sure what year it was passed. I know it
16 was signed by the Governor in April.

17 Q. So you understood that the bill was signed by
18 the Governor.

19 Correct?

20 A. Yes.

21 Q. I'm not trying to quiz you on dates here, Ms.
22 Jackson, but were you aware that at some point the West
23 Virginia Legislature passed that bill?

24 A. Yes. Yes, it was passed. Yes.

1 Q. Would you agree with me that there is no
2 Harrison County Schools rule or policy that addresses
3 transgender student participation in sports?

4 A. I don't know that there is or is not.

5 Q. Has anybody ever told you that there is a
6 Harrison County policy or rule that would prohibit BPJ
7 from participating in a girls sports team?

8 A. No one has ever told me that.

9 Q. And the only discussion that you had with Mr.
10 Mazza with regard to BPJ's participation on a girls
11 sports team related specifically to House Bill 3293.

12 Is that correct?

13 A. Can you repeat that question, please?

14 Q. Sure. The only conversation you had with Mr.
15 Mazza with regard to BPJ's ability to participate in a
16 girls sports team at Bridgeport Middle School related to
17 House Bill 3293.

18 Is that correct?

19 A. Yes.

20 Q. Have you had any communication with any other
21 official of Harrison County Board of Education or
22 Harrison County Schools related to BPJ's ability to
23 participate in girls sports?

24 A. No, I have not.

1 Q. So the only communication related to this
2 occurred with Mr. Mazza on May 18th, 2021.

3 Is that correct?

4 A. Correct.

5 Q. And your only discussion about a possible
6 limitation of BPJ's ability to participate in girls
7 sports related to House Bill 3293.

8 Correct?

9 A. I'm sorry. I thought I answered that. Can you
10 repeat the question? I'm confused.

11 Q. Sure. And your only communication then with
12 anybody in Harrison County Schools related to BPJ's
13 ability to participate on a girls sports team was with
14 Mr. Mazza.

15 Correct?

16 A. Correct.

17 Q. And that conversation only related to BPJ's
18 ability to run as it would have been impacted by House
19 Bill 3293.

20 Is that correct?

21 A. The conversation was in regards to how --- if
22 she would be able to run on the girls cross-country team
23 and that would have been dictated by that House Bill.

24 Q. Mr. Mazza didn't tell you that it would be

1 dictated by anything else, did he?

2 A. No.

3 Q. And Mr. Mazza, he did not indicate to you that
4 he wouldn't permit BPJ to participate on the girls team
5 personally.

6 Is that correct?

7 ATTORNEY BLOCK: Objection to form.

8 THE WITNESS: Yeah. Can you repeat that
9 question?

10 BY ATTORNEY DENIKER:

11 Q. Sure. Did Mr. Mazza tell you that he personally
12 had any objection to BPJ participating on a girls sports
13 team?

14 A. He never said those words, no.

15 Q. Okay.

16 And did anybody else in Harrison County Schools
17 affiliated with Harrison County Schools in any way tell
18 you that they wouldn't permit or had a problem with BPJ
19 participating in a girls sports team?

20 ATTORNEY BLOCK: Objection. Compound
21 question.

22 THE WITNESS: I didn't contact --- I
23 wasn't in contact with any other individuals.

24 BY ATTORNEY DENIKER:

1 Q. So you didn't have any communications with
2 anybody else about that.

3 Is that correct?

4 A. That is correct.

5 Q. Is there any other communication that you had
6 with anybody in Harrison County Schools about BPJ's
7 participation on a girls sports team other than what we
8 just talked about?

9 A. No.

10 Q. Were you otherwise comfortable --- well, strike
11 that.

12 This Gender Support Plan that is dated
13 May 18th, 2021, is that currently in effect for BPJ?

14 A. Yes.

15 Q. And were you in agreement with that when you
16 signed it on May 18th, 2021?

17 A. Correct.

18 Q. And have you had any issues or concerns or
19 problems with the implementation of this Gender Support
20 Plan during the school year?

21 A. With the Gender Support Plan I've had no issues.

22 Q. Did you raise any concerns with anybody within
23 the Harrison County Board of Education or Harrison
24 County Schools about your objections or disagreements

1 with House Bill 3293?

2 A. I hadn't had any conversations with those
3 individuals.

4 Q. And when you say I hadn't I just want to make
5 sure that sitting here today have you had any
6 discussions with anybody affiliated with Harrison County
7 Board of Education other than the communication you had
8 with Mr. Mazza about concerns or problems you had with
9 House Bill 3293?

10 A. I have not.

11 Q. Are you aware that there is an elected Board of
12 Education for all of the county Boards of Education in
13 West Virginia?

14 A. Yes.

15 Q. And are you aware that there is a specific
16 County Board --- elected County Board of Education for
17 Harrison County Schools?

18 A. Yes.

19 Q. Did you have any communications with anybody on
20 the elected Board of Education with regard to BPJ and
21 her ability to participate in girls sports teams?

22 A. I've had no contact with anybody on the elected
23 board.

24 Q. Have you had any communication with Dora Stutler

1 with regard to BPJ's ability to participate in school
2 sports?

3 A. No.

4 Q. Was BPJ permitted to participate in summer
5 conditioning with the Bridgeport Middle School
6 cross-country team in the summer of 2021?

7 A. Yes.

8 ATTORNEY BLOCK: Objection to form.

9 BY ATTORNEY DENIKER:

10 Q. And it's my understanding that the Middle School
11 cross-country team at Bridgeport Middle School does the
12 summer conditioning where they run together.

13 Is that correct?

14 A. They --- they all condition together, but they
15 separate out into groups, if that makes sense.

16 Q. How were those groups separated? Do you know?

17 A. Normally by speed in the conditioning
18 environment.

19 Q. Are they separated by sex or gender in any way?

20 A. Only by boys team and girls team.

21 Q. And was BPJ permitted to run then with the girls
22 teams in the girls groups?

23 A. Correct.

24 ATTORNEY BLOCK: Objection to form.

1 BY ATTORNEY DENIKER:

2 Q. Did you have any issues or concerns with how BPJ
3 was treated concerning conditioning?

4 A. No. The coaches were very respectful of her
5 pronouns and her transgender identity.

6 Q. And was that true for the entire cross-country
7 season?

8 A. The coaches --- yes, the coaches were very much
9 so, yes.

10 Q. So you had --- did BPJ have a positive
11 experience participating on the girls cross-country
12 team?

13 A. Yes.

14 Q. And so I got a little bit ahead of myself
15 because we were talking about summer conditioning and
16 then there were tryouts for cross-country.

17 Is that correct?

18 A. That's correct.

19 Q. And did that take place in August of 2021?

20 A. Yes.

21 Q. And BPJ tried out for the girls cross-country
22 team.

23 Is that correct?

24 A. That is correct.

1 Q. And she was permitted to do so by the middle
2 school.

3 Is that right?

4 A. That is correct.

5 Q. And was she selected for membership on the girls
6 cross-country team?

7 A. That is correct.

8 Q. And I think I heard you testify earlier that she
9 did compete through the whole season on the girls
10 cross-country team.

11 Is that right?

12 A. That is correct.

13 Q. And she had a good experience doing that?

14 A. Yes, she did.

15 Q. Good. I'm glad to hear that. And I had to
16 laugh when Mr. Tryon was asking you questions about
17 where she placed because it's clear to me that he has
18 never been to a middle school cross-country meet because
19 they're just --- even in high school, there are just
20 tons of kids and lots of runners, aren't there?

21 A. There's tons of them, yes.

22 Q. And just for the record, my kids never came in
23 first or second either, so I understand that.

24 Who were the coaches for the cross-country team

1 this year at the Bridgeport Middle School?

2 A. Schoonmaker or Shumaker, I'm not sure how to
3 pronounce her name, and I can't remember the names of
4 the other two.

5 ATTORNEY BLOCK: Sorry. Just can you
6 give me a five-second pause while I move to the other
7 room. My son is about to come home from school.

8 ATTORNEY DENIKER: Absolutely. No
9 problem.

10 ATTORNEY BLOCK: Shift over. All set.

11 ATTORNEY DENIKER: That was fast.

12 ATTORNEY BLOCK: Small apartment.

13 BY ATTORNEY DENIKER:

14 Q. Ms. Jackson, I was asking you about the
15 Bridgeport cross-country coaches. Are the coaches the
16 same for the girls and the boys teams?

17 A. Yes, they are.

18 Q. And was the head coach Danielle I think maybe
19 it's Schoonmacher?

20 A. Yes.

21 Q. And then you said there were two other coaches.
22 I think one of them may be Natalie McBriar?

23 A. Yes, that is one of them.

24 Q. Is that correct?

1 A. Yes.

2 Q. And do you who the other one was?

3 A. I can't remember her name.

4 Q. But your daughter would have interacted with
5 these coaches throughout the season?

6 A. Correct.

7 Q. And didn't have any issue or problem with them.
8 Is that correct?

9 A. That is correct.

10 Q. Did she have any issues or problems with other
11 students on the cross-country team?

12 A. At one point she came home and reported that
13 somebody had told her that she's not a real girl. I
14 asked her at that point if she reported it to the coach
15 and she said that she did.

16 Q. And do you know whether the situation was
17 addressed by the coaches?

18 A. I do not know.

19 Q. Did you follow up with the coaches to discuss
20 this concern?

21 A. I did not.

22 Q. Did you feel that BPJ had handled it herself and
23 you were comfortable with that?

24 A. Oh, quite well, yes.

1 Q. And were there any issues after that with
2 students, after BPJ raised this concern with the
3 coaches?

4 A. There was not.

5 Q. If you thought that there was a further problem
6 would you have gotten involved and either addressed it
7 with either the coaches or school officials?

8 A. Most definitely.

9 Q. Is it fair to say you didn't think that was
10 necessary?

11 A. Correct.

12 Q. That season is over now.

13 Is that correct?

14 A. That is correct.

15 Q. And is BPJ --- did she try out for any winter
16 sports at the middle school?

17 A. No, she did not.

18 Q. Does she intend to try out for any spring
19 sports?

20 A. Yes, she does.

21 Q. And what does she intend to try out for?

22 A. Track.

23 Q. And has --- have you had any communications with
24 school officials about her ability to try out for track

1 this spring?

2 A. We have not.

3 Q. Is it your understanding that she will be
4 permitted to try out for the girls track team?

5 A. I don't have an understanding whether she'll be
6 permitted or not.

7 Q. Because you have not had any discussions.
8 Is that correct?

9 A. Correct.

10 Q. Let me talk more candidly about BPJ's school
11 year. And I'm sorry if I already asked you this, but at
12 the middle school she's I guess almost halfway through
13 her sixth grade year.

14 Is that correct?

15 A. That is correct.

16 Q. And is she having a good school year?

17 A. She's having an excellent school year. After
18 she learned her locker combination, everything went
19 well.

20 Q. Right now all of us are having a flashback to
21 middle school and the trauma that was remembering your
22 locker code. I understand that, Ms. Jackson. And do
23 you feel that the school has appropriately implemented
24 the Gender Support Plan that you agreed upon?

1 A. Yes.

2 Q. And you don't have any issues or concerns with
3 how school officials have treated BPJ this school
4 year-to-date?

5 A. No.

6 Q. I want to follow up on a question that Mr. Tryon
7 asked about cross-country meets this fall. You
8 mentioned that some meets --- I think you called them
9 one and done meets?

10 A. Yes.

11 Q. And I think you described that everybody ---
12 they have the girls teams and the boys teams all run at
13 one time.

14 Is that correct?

15 A. Correct, correct.

16 Q. And in those situations the boys teams are still
17 competing against the boys teams and the girls teams are
18 still competing against the girls teams.

19 Is that correct?

20 A. Yes. The statistics go towards the appropriate
21 team.

22 Q. That was what I assumed was the case in those
23 meets, but I just wanted to ask you. I haven't seen one
24 of those, but I figured they still separated the results

1 by girls teams and boys teams.

2 Right?

3 A. Correct.

4 Q. And in those situations BPJ would have been
5 listed on girls roster and would have been competing
6 against other girls teams.

7 Correct?

8 A. That is correct.

9 Q. I did notice in one of the pictures that was
10 provided through your counsel in discovery there were
11 some pictures of BPJ at various cross-country meets this
12 fall. It looks like she was having a good time.

13 Was that correct?

14 A. That is correct.

15 Q. I saw the one of her in the creek, and I will
16 tell you that I have been there with my daughter and
17 what a muddy mess. Huh?

18 A. Yes, very much so.

19 Q. But the middle school kids love it. I don't
20 know if BPJ loved it, but I know that my daughter
21 thought it was great to get muddy.

22 A. The creek crossing runs are her favorites.

23 Q. Let me just look at my notes here, Ms. Jackson.
24 I'm almost done.

1 I want to go back briefly to your
2 communications with Mr. Mazza about House Bill 3293.
3 Mr. Mazza did not tell you that he agreed with that
4 bill, did he?

5 A. He didn't say he agreed or disagreed.

6 Q. And did anybody employed by Harrison County
7 Schools or any elected official of Harrison County
8 Schools ever tell you that they agreed with House Bill
9 3293?

10 A. I've had no communication with anybody in that
11 genre whether they agreed or disagreed.

12 Q. And that would include Superintendant Stutler,
13 she also didn't tell you that she agreed with House Bill
14 3293.

15 Correct?

16 A. Yes, there has been no communication between me
17 or her whether she agrees or disagrees.

18 ATTORNEY DENIKER: Ms. Jackson, thank
19 you. I don't have any further questions at this time.

20 ---

21 EXAMINATION

22 ---

23 BY ATTORNEY MORGAN:

24 Q. Ms. Jackson, my name is Kelly Morgan and I

1 represent the West Virginia Board of Education and
2 Superintendant Burch. Can you hear me okay?

3 A. Yes.

4 Q. All right.

5 I only anticipate a few questions here, so I
6 don't anticipate going very long. But if you don't
7 understand my question, please let me know. Otherwise,
8 I'm going to assume that you understood my question if
9 you answer my question.

10 Is that fair?

11 A. Okay. Yes.

12 Q. All right.

13 Had you ever had any discussions with anyone
14 from the West Virginia Board of Education?

15 A. I have not.

16 Q. And when I say the West Virginia Board of
17 Education, what does that mean to you?

18 A. I don't know how to answer that. That means the
19 West Virginia Board of Education.

20 Q. Do you know what the West Virginia Board of
21 Education is?

22 A. Yeah, the governing body of the board --- of the
23 educational system.

24 Q. Can you describe that any more for me as to what

1 your understanding is?

2 A. No, I cannot.

3 Q. Do you know like the hierarchy of how that's set
4 up at all?

5 A. No.

6 Q. Okay.

7 Do you know where they are in relation to say
8 Harrison County Board of Education?

9 A. No.

10 Q. Fair enough.

11 A. Do you mean physically where they're located?

12 Q. No, not physically?

13 A. Oh, okay.

14 Q. Like as who might give direction to who?

15 A. Oh, okay. No.

16 Q. Or who does what or anything like that?

17 A. No.

18 Q. Okay. Fair enough.

19 I just wondered. Have you ever talked to
20 Superintendant Burch?

21 A. No.

22 Q. Have you ever contacted his office?

23 A. No.

24 Q. Are you aware of anyone in your family who has

1 contacted the West Virginia Board of Education or
2 Superintendant Burch?

3 A. I am not aware.

4 Q. Do you have any reason to believe that the West
5 Virginia Board of Education had any specific role or
6 involvement in the passage of House Bill 3293?

7 A. I don't know.

8 Q. You wouldn't know one way or another?

9 A. Nope.

10 Q. Okay.

11 And so if you never had any contact with the
12 West Virginia Board of Education or Superintendant
13 Burch, is it fair to say that you don't have any
14 complaints of anything that they've done in this case
15 with regard to BPJ?

16 ATTORNEY BLOCK: Objection to form.

17 THE WITNESS: Can you repeat the
18 question?

19 BY ATTORNEY MORGAN:

20 Q. Sure. Let me even rephrase it a different way.
21 Do you have any complaints as to anything that the West
22 Virginia Board of Education has done with regard to BPJ?

23 A. Up to this point they have let her run on the
24 girls cross-country team, so we're happy with that.

1 Q. And when you say they, who are you referring to?

2 A. The Board of Education. They have not ---
3 because of the stay, they didn't tell her she couldn't
4 run.

5 Q. And are you specifically referring to Harrison
6 County Board of Education?

7 A. I'm referring to any Board of Education.

8 Q. You said earlier that you had never been
9 contacted by anyone for BPJ to be, in essence, the
10 spokesperson for transgender rights.

11 Is that right?

12 A. That's correct.

13 Q. Had you ever contemplated her being a
14 spokesperson for transgender rights?

15 A. Heavens, no.

16 Q. You said that you had a family friend who also
17 had a transgender, I believe male.

18 Is that right?

19 A. That's correct.

20 Q. What discussions have you had with that friend
21 regarding transgender rights?

22 ATTORNEY BLOCK: Objection. Vague.

23 THE WITNESS: Yeah, I'm not sure how to
24 answer that. I mean ---.

1 BY ATTORNEY MORGAN:

2 Q. As you sit here today, can you think of anything
3 specific about things you might do to promote
4 transgender rights?

5 A. What we would do as individuals to promote it?

6 Q. Yes.

7 A. Like publicly promote it?

8 Q. Sure.

9 A. No.

10 Q. Have you talked to this friend? And I forget
11 her name.

12 A. Carolyn.

13 Q. Carolyn. Have you talked to Carolyn about this
14 case?

15 A. No.

16 Q. Do you know whether B [REDACTED] has talked to Carolyn
17 or her transgender son, if I'm using that term
18 correctly, about this case?

19 A. She has not.

20 ATTORNEY MORGAN: Ms. Jackson, those are
21 all the questions that I have for you. Thank you.

22 And before someone questions, I think it
23 was Tim possibly, I may be switching to a different
24 device so just be patient if I drop off this for the

1 court reporter and all other counsel. I'll be joining
2 on another device. Thank you again.

3 ---

4 EXAMINATION

5 ---

6 BY ATTORNEY DUCAR:

7 Q. Good afternoon, Ms. Jackson. I'm Tim Ducar and
8 I represent Lainey Armistead, an intervenor in this
9 case. You previously --- strike that.

10 Let's go back to this cross-country competition
11 example that we were talking about because I am
12 unfamiliar with it. Is this one and done competition
13 everybody runs all at one time but the rankings are kept
14 track somehow?

15 A. Correct.

16 Q. And you said the rankings are done in what
17 manner?

18 A. Sometimes they have chips, sometimes it's done
19 manually.

20 Q. So it is separated by gender or sex or is it
21 separated by --- how are those separated?

22 A. Sorry. There's a huge echo.

23 ATTORNEY MORGAN: Sorry. That may have
24 been me. I think I fixed it.

1 THE WITNESS: Okay.

2 I'm sorry. Mr. Ducar, could you repeat?

3 BY ATTORNEY DUCAR:

4 Q. How are the groups that are competing separated
5 in those kinds of events?

6 A. I'm not sure how the logistics works. I've
7 never worked an event where that happens, so I'm not
8 sure how they do it.

9 Q. Okay.

10 But when BPJ ran in an event like that, I guess
11 she only ran in one, would you describe her as not being
12 first, not being second, not being last, but how?

13 A. I wouldn't know to tell you where she ranked.

14 Q. Okay.

15 On the times that she competed against --- on
16 the girls team, she didn't end up first, second or last.
17 Was she in the front of the pack? Was she in the back?
18 How did she end up?

19 A. She was in the back of the pack.

20 Q. So the second 50 percent anyway.

21 Correct?

22 A. She was not in the top 50 percent.

23 Q. She still enjoyed herself.

24 Right?

1 A. She had a blast.

2 Q. You previously testified that BPJ was born a
3 male. Can you please explain what you meant when you
4 said BPJ was born a male?

5 A. She was born as a male in that she was
6 designated male at birth because she had a penis when
7 she was born.

8 Q. Is there any other characteristics that would
9 conclude you to say BPJ was born a male?

10 A. No. That is how they're identified when you
11 give birth. They look at the genitalia and tell you
12 it's a boy or a girl.

13 Q. You previously testified the reason BPJ is
14 female is based upon BPJ's identification as a female.
15 In your view, how does someone know what they identify
16 as?

17 A. She knows that she's a female just like I know
18 that I'm a female and you know that you're a male.

19 Q. So it's something somebody knows internally.
20 Correct?

21 A. Yes. She knows that she's a female.

22 Q. And the way one identifies whether or not
23 they're male or female is their internal thought about
24 that.

1 Correct?

2 ATTORNEY BLOCK: Objection to form.

3 THE WITNESS: Their internal thought and
4 their outward thought.

5 BY ATTORNEY DUCAR:

6 Q. How they act, is that what you're saying?

7 A. How they express themselves, if they come out
8 and say that I am a female.

9 Q. Very well.

10 You testified earlier that someone who
11 identifies as a female should be able to run on girls
12 cross-country teams. Do you think it's true even if the
13 person was born a biological male and has not taken
14 puberty blockers?

15 A. Yes.

16 Q. Earlier you testified that BPJ showed female
17 characteristics at about age three. What are female
18 characteristics that she would have --- or that BPJ
19 displayed?

20 A. Her mannerisms, her choice of clothing, limited
21 vocabulary but able to say that she's a girl, expressing
22 concern over the fact that she had a penis.

23 Q. I presume you supported her the entire time when
24 she was showing these characteristics?

1 A. Yes, I nurtured her.

2 Q. Did you ever dissuade BPJ's from these
3 characteristics?

4 A. Nope.

5 Q. Have you ever?

6 A. Nope.

7 Q. How do you feel about BPJ's transitioning?

8 A. I think she's a beautiful little girl.

9 Q. Do you think her desire to transform is
10 permanent?

11 A. Yes.

12 Q. What happens if BPJ changes BPJ's mind and wants
13 to transition back?

14 ATTORNEY BLOCK: Objection to form.

15 BY ATTORNEY DUCAR:

16 Q. Would you support that?

17 A. I would support her true self, however she
18 chooses live authentically.

19 Q. So would you support de-transitioning if that is
20 what BPJ wanted to do?

21 A. If some day she came to me and said she chose to
22 de-transition, yes, I would support her.

23 Q. Does the fact that BPJ wants to transition or is
24 transitioning causing you any anxiety?

1 A. Just worried about any sort of discrimination
2 that she may face.

3 Q. Anything else?

4 A. No.

5 Q. Is it causing your husband any anxiety?

6 A. You would have to ask him.

7 Q. None that you're aware of?

8 A. It seems that he's doing just fine.

9 Q. Is it causing BPJ any anxiety?

10 ATTORNEY BLOCK: Objection to form.

11 THE WITNESS: If she gets misgendered,
12 she's upset.

13 BY ATTORNEY DUCAR:

14 Q. Is there anything else about the transitioning
15 that causes her anxiety?

16 A. No. She's happy to transition.

17 Q. How about this lawsuit, is this lawsuit causing
18 you anxiety?

19 A. The whole process of it is quite overwhelming.

20 Q. Is it causing your husband anxiety?

21 A. You would have to ask him on that one.

22 Q. Is it causing BPJ anxiety?

23 A. Not that I know of.

24 Q. Has your husband told you about how he feels

1 about BPJ's desire to transition?

2 A. I know that he supports her.

3 Q. Do you have any hesitation about BPJ's interest
4 in socially or medically transitioning?

5 A. Can you repeat that, please?

6 Q. Do you have any hesitation about BPJ's interest
7 in socially or medically transitioning?

8 A. No hesitation.

9 Q. Have you encouraged BPJ's interest in
10 transitioning?

11 A. I have helped ---.

12 ATTORNEY BLOCK: Objection to form.

13 THE WITNESS: I have helped her in her
14 desire to transition.

15 BY ATTORNEY DUCAR:

16 Q. So that would be yes.

17 Correct?

18 A. I helped her in her desire to transition.

19 Q. Have you encouraged her?

20 A. I have helped her.

21 ATTORNEY BLOCK: Objection to the form.

22 BY ATTORNEY DUCAR:

23 Q. So you have not encouraged BPJ?

24 A. I wouldn't use the word encourage.

1 Q. Do you think it's important that team sports
2 have fair rules?

3 ATTORNEY BLOCK: Objection to form.

4 ATTORNEY DUCAR: Excuse me. What is
5 wrong with the form? That's a simple question.

6 ATTORNEY BLOCK: I think the fair rules
7 is vague.

8 ATTORNEY DUCAR: Okay. Thank you.

9 BY ATTORNEY DUCAR:

10 Q. So I'll ask it again. Ms. Jackson, do you think
11 it's important that team sports have fair rules?

12 A. I think rules are necessary in society.

13 Q. Do you think it's important that team sports
14 have fair rules?

15 A. What constitutes fair?

16 Q. Well, that's a good question. Okay. I'll move
17 on then.

18 Do you have any long-term treatment goals for
19 BPJ?

20 A. Well, I hope she'll continue her blockers until
21 she's ready for her next step, whatever she and her
22 doctors decide that need be.

23 Q. You're going to follow the medical advice of the
24 doctors.

1 Correct?

2 A. Correct.

3 Q. Whose idea was it for BPJ to start puberty
4 blockers?

5 A. She expressed her desire to start the puberty
6 blockers. She was concerned about her body producing
7 male hormones.

8 Q. Earlier you testified that Dr. Montano talked to
9 you about risks of puberty blockers.

10 Did you understand what he said?

11 A. Yes.

12 Q. Did BPJ understand what he said?

13 A. Yes.

14 Q. And do you understand the long-term
15 ramifications of BPJ taking puberty blockers?

16 A. As I read the package insert.

17 Q. What do you understand the risks to be of cross
18 sex hormones?

19 A. I don't understand the question.

20 Q. You talked about hormone therapy throughout this
21 deposition.

22 Correct?

23 A. Correct.

24 Q. What do you define as hormone therapy?

1 A. Well, in her particular case she will be
2 receiving female hormones.

3 Q. Do you understand the risks of her taking female
4 hormones?

5 A. Yes.

6 Q. Does B [REDACTED]?

7 A. Yes.

8 Q. And you understand the long-term ramifications
9 of BPJ taking these hormones.

10 Correct?

11 A. I know there are risks.

12 Q. And BPJ knows those as well.

13 Right?

14 A. There are risks, yes.

15 Q. What are those risks?

16 A. Possibility of increased chance of cancer.

17 Q. Anything else?

18 A. Non-reversible characteristics.

19 Q. For example, what would that be?

20 A. Decreased size in testes.

21 Q. Anything else?

22 A. If she would eventually want to go off the
23 hormones, a decreased size in breasts.

24 Q. Anything else?

1 A. Those are the biggies.

2 Q. Earlier I did not hear that Dr. Montano talked
3 about the risks of testosterone. Did Dr. Montano talk
4 to you about the risks of testosterone?

5 A. She's not taking testosterone.

6 Q. Did Dr. Montano ever talk to you about that?

7 A. She won't be taking testosterone.

8 Q. Does that mean no?

9 A. No, because she's not taking testosterone.

10 Q. Has any medical professional talked to you about
11 the risks of taking testosterone?

12 A. No, because she wouldn't be taking testosterone.

13 Q. Is BPJ eligible to compete on Bridgeport Middle
14 Schools cross-country team, girls?

15 ATTORNEY BLOCK: Objection to form.

16 THE WITNESS: She was permitted to
17 participate this past season.

18 BY ATTORNEY DUCAR:

19 Q. Bridgeport Middle School has a boys
20 cross-country team.

21 Correct

22 A. Correct.

23 Q. Is BPJ eligible to compete on Bridgeport Middle
24 School's boys cross-country team?

1 A. She would not participate.

2 Q. Do you know if BPJ is eligible to do so?

3 A. It was irrelevant to the conversation in regards
4 that she would refuse to try out for the boys
5 cross-country team.

6 Q. So is it fair to say you're not sure?

7 A. I don't know if she would be eligible.

8 Q. I believe in your Declaration you said that
9 BPJ's running on a boys cross-country team is not an
10 option. What did you mean by that?

11 A. She will not be running on a boys cross-country
12 team. She has exhibited absolutely no desire to run on
13 a boys cross-country team.

14 Q. Are there situations where it would be not fair
15 to allow a male, a biological male, to run on a girls
16 cross-country team?

17 A. Can you repeat the question?

18 Q. Are there situations where it would be not fair
19 to allow a biological male to run on a girls
20 cross-country team?

21 A. If a biological male identifies as a female they
22 should be allowed to run on a girls cross-country team
23 or play girls sports.

24 Q. Okay.

1 But my question is, is there a situation where
2 it wouldn't be fair to allow that to happen?

3 A. I guess I don't understand how the wording of it
4 --- it's almost like you are using a double negative.
5 I'm not understanding the question.

6 Q. Is it --- can you think of a situation where it
7 would be unfair to allow a biological male to run on a
8 girls cross-country team?

9 A. No, I can't think of a situation.

10 ATTORNEY DUCAR: Thank you, Ms. Jackson.
11 I have nothing further for you.

12 ATTORNEY TRYON: I have two follow-up
13 questions.

14 ---

15 RE-EXAMINATION

16 ---

17 BY ATTORNEY TRYON:

18 Q. You indicated that ---.

19 ATTORNEY DUCAR: I'm sorry. Can I
20 interrupt?

21 ATTORNEY TRYON: Yes.

22 ATTORNEY DUCAR: I have like three other
23 questions that I forgot about. I'm sorry to interrupt.

24 ATTORNEY TRYON: Okay. Go ahead.

1 ATTORNEY DUCAR: All right. Do you need
2 a break, Heather?

3 THE WITNESS: I just need to get a little
4 more water. I'm out.

5 ATTORNEY DUCAR: Okay.

6 I'm changing my mind. I've already
7 handled these questions, so I'm sorry for interrupting
8 and now I have no further questions.

9 THE WITNESS: Got it.

10 BY ATTORNEY TRYON:

11 Q. Two quick questions. You indicated during some
12 of the other questioning that BPJ intends to or wants to
13 run in track this next year.

14 Is that right?

15 A. That is correct.

16 Q. Do you know which events that BPJ wants to or
17 intends to run in this next year?

18 A. She's interested in distance running.

19 Q. Can you be more specific?

20 A. The mile, two-mile.

21 Q. Any others?

22 A. She's not really experienced any of the other
23 events in track because this would be her first year to
24 be exposed to them. So she hasn't really raised any

1 desire because she hasn't experienced them.

2 Q. Okay.

3 So what about cross-country, does BPJ want to
4 do them again?

5 A. Oh, yes.

6 Q. Great. Then when running in these meets, these
7 cross-country meets, it's my understanding that BPJ was
8 competing against both sixth, seventh and eighth
9 graders.

10 Is that right?

11 A. That is correct.

12 Q. Ninth graders?

13 A. No.

14 Q. That's true for all cross-country that BPJ's
15 grade levels.

16 Right?

17 A. That is correct.

18 ATTORNEY TRYON: Thank you. I have no
19 further questions with the caveat in the event that we
20 need to reopen this upon delivery of additional
21 documents we would want to continue this deposition.
22 Other than that, I have no other questions.

23 ATTORNEY BLOCK: And Plaintiff would
24 object to any continuation of the deposition.

1 ATTORNEY GREEN: On behalf of WVSSAC I
2 have no further questions. Thank you, Ms. Jackson.

3 THE WITNESS: Thank you.

4 ATTORNEY DENIKER: I have no further
5 questions. Thank you for your time today, Ms. Jackson.

6 THE WITNESS: Thank you.

7 ATTORNEY MORGAN: I have no further
8 questions. Thank you so much.

9 THE WITNESS: Thank you.

10 ATTORNEY DUCAR: I have nothing further.
11 Thank you so much.

12 THE WITNESS: Thank you.

13 ATTORNEY BLOCK: And the witness will
14 review the transcript in accordance with the Rules.

15 VIDEOGRAPHER: If there are no further
16 questions, then that this concludes the deposition. The
17 time reads 4:49 p.m.

18 * * * * *

19 VIDEOTAPED VIDEOCONFERENCE DEPOSITION

20 CONCLUDED AT 4:49 P.M.

21 * * * * *

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24

1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

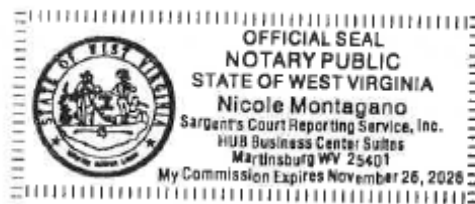
3 I, Nicole Montagano, a Notary Public in
4 and for the State of West Virginia, do hereby
5 certify:

6 That the witness whose testimony appears
7 in the foregoing deposition, was duly sworn by me
8 on said date, and that the transcribed deposition
9 of said witness is a true record of the testimony
10 given by said witness;

11 That the proceeding is herein recorded
12 fully and accurately;

13 That I am neither attorney nor counsel
14 for, nor related to any of the parties to the
15 action in which these depositions were taken, and
16 further that I am not a relative of any attorney
17 or counsel employed by the parties hereto, or
18 financially interested in this action.

19 I certify that the attached transcript
20 meets the requirements set forth within article
21 twenty-seven, chapter forty-seven of the West
22 Virginia.



Nicole Montagano
Nicole Montagano,
Court Reporter

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
 CHARLESTON DIVISION

* * * * *

B.P.J., by her next friend and *

Mother, HEATHER JACKSON, *

Plaintiff * Case No.

vs. * 2:21-CV-00316

WEST VIRGINIA STATE BOARD OF *

EDUCATION, HARRISON COUNTY *

BOARD OF EDUCATION, WEST *

VIRGINIA SECONDARY SCHOOL *

ACTIVITIES COMMISSION, W. *

CLAYTON BURCH in his official *

Capacity as State Superintendent, * VIDEOTAPED

DORA STUTLER in her official * VIDEOCONFERENCE

Capacity as Harrison County * DEPOSITION

Superintendent, PATRICK MORRISEY * OF

In his official capacity as * BPJ

Attorney General, and THE STATE * January 21, 2022

OF WEST VIRGINIA, *

Defendants *

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VIDEOTAPED VIDEOCONFERENCE DEPOSITION
OF
BPJ, taken on behalf of the Defendant, State of West
Virginia herein, pursuant to the Rules of Civil
Procedure, taken before me, the undersigned, Nicole
Montagano, a Court Reporter and Notary Public in and for
the State of West Virginia, on Friday, January 21, 2022,
beginning at 10:09 a.m.

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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between
counsel for the respective parties that reading,
signing, sealing, certification and filing are not
waived.)

VIDEOGRAPHER: We're now on the record.
My name is Jacob Stock. I'm a Certified Legal Video
Specialist employed by Sargent's Court Reporting
Services, which is located at 210 Main Street,
Johnstown, PA 15901. The date today is January 21st,
2022. The current time reads 10:09 a.m., Eastern
Standard Time. This deposition is being taken remotely
by Zoom conference. The caption of the case is in the
United States District Court for the Southern District
of West Virginia, Charleston Division, BPJ, by her Next
Friend and Mother, Heather Jackson versus West Virginia
State Board of Education, et al. Civil Action Number
2:21-CV-00316. The name of the witness is BPJ.

Will the attorneys present state their
names and the parties they represent?

ATTORNEY CAPEHART: This is Curtis
Capehart for the State of West Virginia. And with me is

1 my colleague, David Tryon.

2 ATTORNEY HARTNETT: Good morning. This
3 is Kathleen Hartnett from Cooley, LLP, for Plaintiff
4 BPJ, who is the witness today. And the other
5 Plaintiff's Counsel could introduce themselves, first
6 with the others from Cooley and then we could go to
7 ACLU, ACLU of West Virginia and Lambda.

8 ATTORNEY BARR: Good morning. This is
9 Andrew Barr from Cooley, LLP, on behalf of the
10 Plaintiff.

11 ATTORNEY VEROFF: Good morning. This is
12 Julie Veroff from Cooley, LLP, on behalf of the
13 Plaintiff.

14 ATTORNEY HELSTROM: Good morning. This
15 is Zoe Helstrom from Cooley, LLP, on behalf of the
16 Plaintiff.

17 ATTORNEY BLOCK: Good morning. This is
18 Josh Block from ACLU on behalf of Plaintiff.

19 ATTORNEY STARK: Good morning. This is
20 Loree Stark with the ACLU of West Virginia on behalf of
21 the Plaintiff.

22 ATTORNEY SWAMINATHAN: Good morning.
23 This is Sruti Swaminathan from Lambda Legal on behalf of
24 Plaintiff.

1 ATTORNEY DENIKER: Good morning. I'm
2 Susan Deniker with Steptoe and Johnson, counsel for
3 Defendants Harrison County Board of Education and
4 Harrison County Superintendant Dora Stutler.

5 ATTORNEY GREEN: Good morning. This is
6 Roberta Green on behalf of West Virginia Secondary
7 School Activities Commission, and I will let me
8 colleagues introduce.

9 ATTORNEY BANDY: Hello. This is Kimberly
10 Bandy also on behalf of West Virginia Secondary School
11 Activities Commission.

12 ATTORNEY HAMMOND: Good morning. This is
13 Kristen Hammond. And Kelly Morgan is also on here with
14 Bailey and Wyant and we represent the West Virginia
15 State Board of Education and Superintendant Burch.

16 ATTORNEY DUCAR: Good morning. Timothy
17 Ducar here on behalf of the Intervenor, Lainey
18 Armistead.

19 ATTORNEY HOLCOMB: Good morning.
20 Christiana Holcomb with Alliance Defending Freedom on
21 behalf of the Intervenor.

22 ATTORNEY CSUTOROS: Good morning. This
23 Rachel Csutoros on behalf of Alliance Defending Freedom
24 on behalf of the Intervenor.

1 mischaracterization of the evidence. Those same
2 stipulations would hold today. And so for the record,
3 the Plaintiff agrees to that. And it would be helpful I
4 think if the other Defendants could just assent to those
5 stipulations for today on the record.

6 ATTORNEY DENIKER: This is Susan Deniker.
7 I stipulate to that.

8 ATTORNEY GREEN: This is Roberta Green on
9 behalf of WVSSAC. We stipulate to that.

10 ATTORNEY HAMMOND: This is Kristen
11 Hammond, and we also stipulate to that.

12 ATTORNEY DUCAR: This is Tim Ducar. We
13 also stipulate to that.

14 ATTORNEY CAPEHART: And the State does as
15 well.

16 ATTORNEY CAPEHART: Anything else,
17 Kathleen, or should I go ahead?

18 ATTORNEY HARTNETT: Nothing here.

19 ATTORNEY CAPEHART: All right. Thanks
20 very much.

21 ---

22 EXAMINATION

23 ---

24 BY ATTORNEY CAPEHART:

1 Q. Well, good morning. Nice to finally get to meet
2 you. My name is Curtis Capehart, as I said just a
3 minute ago. I represent the State of West Virginia in
4 this. Now up to this point we've been referring to you
5 by the initials as BPJ because that is the way you have
6 been identified in the Complaint that started this
7 lawsuit. Now, is that okay or would you prefer that I
8 call you something else while we're talking here today?
9 Because initials can be a little awkward. So if you
10 feel more comfortable with me calling you something
11 else, that's perfectly fine. You just let me know what
12 that could be.

13 A. You can call me B[REDACTED].

14 Q. Okay.

15 ATTORNEY HARTNETT: If I could just say
16 for the record, not to interrupt, that we filed with the
17 BPJ initials in light of the Rules of Court, but the
18 Plaintiff Counsel has no objection to you referring to
19 her as B[REDACTED] in this deposition.

20 ATTORNEY CAPEHART: Okay.

21 BY ATTORNEY CAPEHART:

22 Q. You are represented by counsel here today and is
23 that Kathleen, Ms. Hartnett, that was speaking just now?

24 A. Yes.

1 Q. Have you ever been involved in a lawsuit before?

2 A. No.

3 Q. So you've probably never been deposed before,
4 have you?

5 A. Can you repeat the question?

6 Q. Sure. You haven't been deposed before then,
7 have you?

8 A. No.

9 Q. Okay.

10 Also if there is a time where you have trouble
11 understanding me or hearing me, just do what you just
12 did there, let me know and I'll try and speak up a
13 little bit. We don't have the best microphone
14 placements in here, so that might be a thing as we go
15 through today.

16 So as I go through and answer --- I'm sorry, if
17 I go through and ask you questions today, I just need
18 you to try to remember to answer verbally, not just nod
19 your head or shake your head because there is a video,
20 but we need to have those verbal responses so we can
21 truly understand what your answer is. And if you do not
22 understand a question, that's fine. You just need to
23 say so so that I can try and put together a better
24 question or try to explain more of what I'm trying to

1 learn. Okay?

2 Now, if you answer one of questions that I ask
3 you today, we are going to assume that you understand
4 it. So if there is any kind of confusion, we don't want
5 to deal with any of that. It's better you just ask me
6 and I'll try and improve my question for you.

7 Does that all make sense?

8 A. Yes.

9 Q. Okay.

10 Also, I want to kind of touch on a couple of
11 other things here before I get started with some
12 questioning. Just understand that we are not here to
13 judge you. We're just trying to learn some of the facts
14 here, things we don't know. This lawsuit was filed
15 trying to have a West Virginia State Law declared
16 invalid under the U.S. Constitution and another Federal
17 Law referred to as Title 9. And that's --- that's
18 pretty serious. So we, as the lawyers for the State,
19 have an obligation to defend that law. That means I
20 have to ask you some questions that might make all of us
21 uncomfortable a little bit, but I have an obligation to
22 try and get through these. That's not my goal. I'm
23 just trying to find out information. Okay?

24 Now, also if I ask you a question that makes

1 you very uncomfortable, tell me, and I can try, if I
2 can, to rephrase it in a way to make you not
3 uncomfortable. I can't say that I won't ask those kinds
4 of questions because there's some things that we have to
5 ask questions about, some things that we need to get
6 your testimony on, but I'm not trying to make you feel
7 bad or upset you in any way.

8 Okay?

9 A. Okay.

10 ATTORNEY HARTNETT: I would just object
11 to the extent you're seeking the witness to agree with
12 your description of your role. But on the other hand, I
13 appreciate you letting her know that she can let you
14 know if she has an upsetting question.

15 BY ATTORNEY CAPEHART:

16 Q. Also, I'm just going to --- a word about
17 objections. Sometimes when we go through these, your
18 lawyer might make an objection. I may ask a question,
19 Kathleen may same objection, something else. Now, if
20 that happens, the lawyers may have to have a
21 conversation. It's unlikely, but the lawyers may have
22 to talk about something, at which point you wouldn't be
23 able to hear us or see us. We don't think that's going
24 to happen, but we at least want to let you know.

1 Also, generally, if your lawyer says objection,
2 you can go ahead and answer the question unless your
3 lawyer directs you not to.

4 A. Okay.

5 Q. Oh, and one last thing. If you need to take a
6 break for any reason, go to the bathroom, get more
7 water, something of that nature, just let me know and we
8 will take a break as soon as we can. We just can't take
9 a break if I've asked a question and we are waiting for
10 you to finish your answer.

11 Does that make sense?

12 A. Yes.

13 Q. Okay. Great.

14 We will try and get through this as quickly as
15 we can. I'm sure you have a lot of other things that
16 you would rather do on a Friday. So with that, let me
17 ask you, if you can, to please state your name for the
18 record.

19 A. First and last?

20 Q. Yes, please.

21 A. B [REDACTED] P [REDACTED] J [REDACTED].

22 Q. Great. What is your address?

23 A. Could you repeat the question?

24 Q. Sure. What is your home address?

1 A. I'm not sure.

2 Q. Okay.

3 And where do you go to school?

4 A. Bridgeport Middle School.

5 Q. Do you remember signing a document called a
6 Declaration back when this lawsuit was first getting
7 started?

8 A. I can't remember.

9 Q. Okay.

10 If you could look at --- it's marked Exhibit
11 31.

12 ATTORNEY CAPEHART: Court Reporter, if
13 you could pull up that exhibit also.

14 BY ATTORNEY CAPEHART:

15 Q. So do you have Exhibit 31 in front of you?

16 A. Yes.

17 Q. It's also up on the screen, just to make sure
18 that we're all looking at this document here?

19 MS. JACKSON: This is this.

20 BY ATTORNEY CAPEHART:

21 Q. There's on the screen electronic version of it,
22 too.

23 ATTORNEY HARTNETT: For the record, we
24 have copies of the exhibits face down in the room with

1 the witness, and the witness may feel free to pick up
2 the exhibit once it's referred to by the questioning
3 counsel and look at the hard copy.

4 BY ATTORNEY CAPEHART:

5 Q. Okay.

6 Looking at this, now if you look at the last
7 page, I believe it is number page four, it has the
8 initials BPJ there and then some handwritten
9 signature-like initials of BPJ. Looking at those, do
10 you recognize those?

11 A. Yes.

12 Q. And that's your handwriting, I guess?

13 A. Yes.

14 Q. Okay. Thanks very much.

15 Looking at this, does it jog your memory a
16 little bit that this is something you had to deal with
17 back when the lawsuit was started?

18 A. Not really.

19 Q. Okay.

20 And do you remember signing it?

21 A. A little bit.

22 Q. I know it's been a while, so I thought you might
23 want to go and look at a couple of these things to
24 remember what was in here.

1 MS. JACKSON: Do you want to read through
2 it?

3 THE WITNESS: No.

4 BY ATTORNEY CAPEHART:

5 Q. If you want to take a minute, you can kind of
6 read all through it. You just go ahead and let us know
7 when you've had a chance to do that.

8 MS. JACKSON: You need to tell them when
9 you're done.

10 THE WITNESS: Oh, I'm done.

11 BY ATTORNEY CAPEHART:

12 Q. Thank you.

13 Now, since you signed this back in May of last
14 year, obviously it's been quite a while since May. And
15 is anything --- well, let me rephrase. Back at that
16 time, if you look on page two, this was --- in
17 paragraph 11 you were talking about trying out for
18 cross-country and track. And obviously, with the
19 passage of time, you tried out for the track team,
20 right, cross-country track team.

21 ATTORNEY HARTNETT: Objection, form.

22 THE WITNESS: I tried out cross-country.
23 Track is not a sport that was available at that time.

24 BY ATTORNEY CAPEHART:

1 Q. Is track a spring sport?

2 A. Yes.

3 Q. Okay.

4 So you tried out for cross-country. Did you
5 make the cross-country team?

6 A. Yes.

7 Q. Back on the bottom of the first page, under the
8 paragraph number four, it describes that you when you
9 were younger would play with your mom's clothes, liked
10 paint and girly items. Whenever you said girly items
11 there with the quotations around it, what kind of items
12 are those?

13 A. Items that had maybe unicorns on it, sparkles,
14 anything that would stick out in general that was maybe
15 a mystical creature that was like a unicorn maybe. I
16 had some stuff that was pandas because I really like
17 pandas, and they were always multi-colored. And that's
18 about it.

19 Q. Okay.

20 I'm going to set that off to the side for a
21 minute and just ask you a few other questions. Your
22 mother told us that you are comfortable explaining your
23 gender identity. Are you?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Yes.

2 BY ATTORNEY CAPEHART:

3 Q. Can you explain to me what is your gender
4 identity?

5 A. I am female and I go by the pronoun she or her.

6 Q. Do you also refer to yourself as a transgender
7 girl?

8 A. No. I refer myself as a girl because I am a
9 girl, and that's it.

10 Q. Okay.

11 Does it bother you if someone does refer to you
12 as a transgender girl?

13 A. No, because that's still calling me a girl, but
14 I prefer to be called as just a girl.

15 Q. Okay.

16 Did you have a problem with --- looking back at
17 your Declaration, at Exhibit 31, in paragraph 12 it
18 says, the second line, I am a transgender girl. Is that
19 okay with you that that's written that way?

20 A. Yes, that is fine because that is --- that's
21 still showing that I am a girl and that is on a ---
22 that's on my Declaration.

23 Q. And transgender female or transgender girl, are
24 both of those terms accurate?

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: Yes, because I am a
3 transgender female and a transgender girl.

4 BY ATTORNEY CAPEHART:

5 Q. Okay.

6 I just want to make sure I got the terminology
7 down. Do you remember the first time you heard the term
8 transgender?

9 A. I can't remember.

10 Q. Okay.

11 As long as you remember, you just --- have you
12 always had an understanding of what transgender means?

13 A. I don't know, I don't think so.

14 Q. So --- and I'm not trying to put words in your
15 mouth. I'm just trying to understand. So do you think
16 there was a time that you didn't, but at some point you
17 learned it, you just don't remember when that was?

18 A. Yes.

19 Q. All right.

20 Do you have any recollection of a time when you
21 were not a transgender girl?

22 ATTORNEY HARTNETT: Objection to form.

23 THE WITNESS: A little bit of a memory,
24 but not much.

1 BY ATTORNEY CAPEHART:

2 Q. What kind of a memory do you have --- let me
3 back up. How old is that memory?

4 A. Four or five years.

5 Q. Okay.

6 Was that memory --- what were you doing that
7 you can remember, I guess, maybe not being a transgender
8 girl at that time?

9 ATTORNEY HARTNETT: Objection to form.

10 THE WITNESS: I think I was learning
11 something in school and I found it really interesting.

12 BY ATTORNEY CAPEHART:

13 Q. Okay.

14 You don't remember what that was that you were
15 learning, do you?

16 A. No.

17 Q. Your mother also told us that at some point when
18 you were younger you told her that you were a girl. Do
19 you remember the first time you told your mother that?

20 A. I can't remember.

21 Q. Okay.

22 Do you remember the first time you told someone
23 other than your mother that you were a transgender girl?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: I --- can you say it again?

2 BY ATTORNEY CAPEHART:

3 Q. Sure. I will try to make it a little bit
4 better, too. Do you remember the time that you first
5 told someone other than your mother that you were a
6 girl?

7 A. Yes.

8 Q. Okay.

9 Can you tell me about that?

10 A. It was in school. It was new, whenever I just
11 came out, and it was the year of 4th grade.

12 Q. Okay.

13 Do you remember who you were talking to?

14 A. I don't remember.

15 Q. Now, you said that was 4th grade, that that was
16 the year that you came out. Do you use terminology like
17 socially transition when you talk about that time?

18 A. Could you repeat the question?

19 Q. Sure. Let me ask a different one. Are you
20 familiar with the term social transition or to socially
21 transition?

22 A. No.

23 Q. Okay.

24 When you --- and I'm going to use your term,

1 okay. When you said you came out in 4th grade and that
2 was the time when you maybe started talking to other
3 people about being a girl, you don't really remember who
4 that was, but generally how was that time for you?

5 ATTORNEY HARTNETT: Objection to form.

6 THE WITNESS: It was good because I made
7 a lot of new friends. A lot of people were really nice
8 to me.

9 BY ATTORNEY CAPEHART:

10 Q. Were your old friends nice to you, too?

11 A. Yes.

12 Q. How was everybody at your school, teachers and
13 other folks that worked there?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: They were very good about
16 it.

17 BY ATTORNEY CAPEHART:

18 Q. Did you have any bad experiences that year?

19 A. No.

20 Q. Okay.

21 B[REDACTED], for you what does it mean to be female
22 or to be a girl?

23 A. Could you repeat the question?

24 Q. Sure. I'm trying to understand your perspective

1 on things, and so that's why I'm just asking, to you,
2 what does it mean to be a girl or to be female?

3 ATTORNEY HARTNETT: Objection to form.

4 THE WITNESS: It means --- it means
5 everything. I've always wanted to be a girl.

6 BY ATTORNEY CAPEHART:

7 Q. Okay.

8 And what is it about a girl or female that
9 makes them different from boys or males?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: How they act and how they
12 dress their selves.

13 BY ATTORNEY CAPEHART:

14 Q. Okay.

15 Anything else other than how they act or how
16 they dress?

17 A. Not that I can think of right now.

18 Q. Okay.

19 How do girls or females dress differently than
20 boys or males?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: Females would wear ---
23 normally wear dresses and males would normally wear
24 tuxedos and suits. And their casual clothes are most of

1 the time different but sometimes can be the same.

2 BY ATTORNEY CAPEHART:

3 Q. Okay.

4 So do I look like I'm dressed like a male
5 because I'm wearing a suit jacket and tie?

6 ATTORNEY HARTNETT: Objection to form.

7 THE WITNESS: Yes.

8 BY ATTORNEY CAPEHART:

9 Q. Okay.

10 A. Because that is also how you present yourself.

11 Q. Okay.

12 Is presenting one's self, when you say that, is
13 that different than how one dresses and how one acts or
14 is it both of those together?

15 ATTORNEY HARTNETT: Objection to form.

16 Sorry.

17 THE WITNESS: It's kind of a mix of all
18 of it.

19 BY ATTORNEY CAPEHART:

20 Q. Now, when you say that how someone acts is
21 different regarding girls to boys, what do you mean by
22 that?

23 A. Normally ---.

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Most of the time males will
2 look very big and buff and females most of the time do
3 not like that look, but some can.

4 BY ATTORNEY CAPEHART:

5 Q. Okay.

6 What else about how a person acts puts them in
7 a more of a female category than a male category?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: They would maybe --- they
10 wouldn't want to look like a guy. A guy wouldn't want
11 to look like a girl and a girl wouldn't want to look
12 like a guy unless --- unless you do, which sometimes
13 people do do that.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 So if someone is trying to look like a guy,
17 then they are going to wear more what I'll call
18 traditional attire, like you said, maybe like a tuxedo
19 or a suit with a coat and a tie and they may want to
20 look bigger and buff and in an overall way present
21 themselves as male.

22 Is that right?

23 ATTORNEY HARTNETT: Objection to form.

24 THE WITNESS: Most of the time but not

1 all the time.

2 BY ATTORNEY CAPEHART:

3 Q. Okay.

4 Are there actions or things that people do that
5 make you think this person is acting more like a male or
6 someone is acting more like a female?

7 ATTORNEY HARTNETT: Objection to form.

8 THE WITNESS: Sometimes.

9 BY ATTORNEY CAPEHART:

10 Q. Okay.

11 When you say sometimes what are you thinking
12 about?

13 A. Maybe people are walking around because
14 sometimes it's how they walk that you can tell and their
15 hair sometimes.

16 Q. What kind of hair is more male as compared with
17 hair that is more female to you?

18 ATTORNEY HARTNETT: Objection to form.

19 THE WITNESS: I think longer hair is more
20 ladylike and short hair is more manly, but sometimes
21 people do like an option of that where people --- where
22 guys will like long hair and girls will like short hair.

23 BY ATTORNEY CAPEHART:

24 Q. I think my father would agree with you on what

1 you said there. Are there other kind of behaviors that
2 people exhibit that are more male or more female besides
3 walking and maybe kind of their physical posture?

4 ATTORNEY HARTNETT: Objection to form.

5 THE WITNESS: Not really, no.

6 BY ATTORNEY CAPEHART:

7 Q. Okay.

8 Besides, as you said, males would be more big
9 and buff and females not really liking that look as
10 much, although some of them do, are there other physical
11 attributes that makes you think someone is more male or
12 more female?

13 ATTORNEY HARTNETT: Objection to form.

14 THE WITNESS: Not really.

15 BY ATTORNEY CAPEHART:

16 Q. Does height have anything to do with it?

17 ATTORNEY HARTNETT: Objection to form.

18 THE WITNESS: No, because that can go
19 either way. That's genetics if you're tall or not.

20 BY ATTORNEY CAPEHART:

21 Q. As you have been growing up, from what I
22 understand, you talk with your mom a lot.

23 Right?

24 A. Yes.

1 Q. Have you ever talked with your mother about what
2 it means to be female?

3 A. Yes.

4 Q. Okay.

5 What did your mother --- strike that.

6 Did your mother try to help you as you were
7 going through this process to kind of understand this a
8 little bit more what is male and female?

9 ATTORNEY HARTNETT: Objection to form.

10 THE WITNESS: Could you repeat the
11 question?

12 BY ATTORNEY CAPEHART:

13 Q. Sure. As you've been growing up and as you've
14 been talking with your mother over the years as you
15 realized, as you said, you're a girl and as we were just
16 talking about, that there are certain things in your
17 mind that go more with being female rather than being
18 male, did you and your mom have conversations about that
19 same kind of thing we were just discussing?

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: Yes.

22 BY ATTORNEY CAPEHART:

23 Q. Okay.

24 What did you all talk about?

1 A. We talked about looks and --- mainly looks and
2 that was about it.

3 Q. Okay.

4 Did you talk about makeup?

5 A. Yes.

6 Q. Okay.

7 Is that something to you that is more female or
8 more male?

9 A. More female, but some males do wear them ---
10 wear it.

11 Q. Did you and your mom talk about jewelry?

12 A. Ish, not really because jewelry can be worn by
13 males and females.

14 Q. That's fair. I'm wearing some myself right now.
15 Did you all talk about anything else other than those
16 few things that you just provided to me and also the
17 makeup?

18 ATTORNEY HARTNETT: Objection to form.

19 THE WITNESS: Not really.

20 BY ATTORNEY CAPEHART:

21 Q. Okay.

22 Have you ever had any of those kinds of
23 conversations with your father?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Not really because I don't
2 think he would understand it because he is a guy that is
3 --- he really --- he likes doing manly stuff and I don't
4 think he'd understand makeup.

5 BY ATTORNEY CAPEHART:

6 Q. So with all that in mind, I'm just trying to
7 understand how you think about some of these things.
8 How do you define girls and boys?

9 ATTORNEY HARTNETT: Objection to form.

10 THE WITNESS: Males try to look muscular
11 and they do --- they lift weights and have short hair,
12 but girls can also do that, but it's most commonly found
13 with guys. With girls, they usually have long hair, but
14 guys can have that, too. They wear makeup and have
15 different clothing than males.

16 BY ATTORNEY CAPEHART:

17 Q. Okay.

18 Are there activities that girls or females like
19 to do that men don't like to do or that males don't like
20 to do?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: Not really because sports
23 are for everyone and they should --- and every --- and
24 any person should be able to play.

1 BY ATTORNEY CAPEHART:

2 Q. I thank you for that. I was making it a little
3 bit more broad than that even though. Are there other
4 things outside of sports that may be girls and females
5 like to do that typically, from your experience, boys
6 and males don't like to do?

7 ATTORNEY HARTNETT: Objection to form.

8 THE WITNESS: Not really because anything
9 that a female could do a male could do, and anything a
10 male could do a female could do.

11 BY ATTORNEY CAPEHART:

12 Q. And among all of your friends, are they mostly
13 girls, mostly boys or all across both boys and girls?

14 A. They are mostly girls, but I do have some guy
15 friends.

16 Q. What do you like to do with your friends that
17 are girls?

18 A. We hang out, sometimes we play video games.

19 Q. Do you go --- do you like going to the mall or
20 shopping? I know that has been harder recently since
21 COVID?

22 ATTORNEY HARTNETT: Objection to form.

23 THE WITNESS: Sometimes, but not really
24 because of COVID.

1 BY ATTORNEY CAPEHART:

2 Q. Do you do the same kind of things with your
3 friends that are boys?

4 A. We also hang out. We talk about video games, we
5 play video games, so, yes, about the same.

6 Q. Okay.

7 At some point you decided to change your name.
8 Do you remember when you decided to do that?

9 A. When I came out.

10 Q. So in 4th grade, as you mentioned earlier?

11 A. I came out in the third --- the summer of third
12 grade. But when I was like actually talking to people
13 and stuff about it, it was 4th grade. So yes, when I
14 came out.

15 Q. Okay.

16 And so when did you start going by B[REDACTED]?

17 A. The summer of third grade.

18 Q. Did you go by B[REDACTED] at school at that time, too,
19 or did you wait until fourth grade for that?

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: It was the summer of third
22 grade and I was kind of presenting through third grade,
23 but I didn't go by B[REDACTED], just --- at that point I
24 waited until fourth grade.

1 BY ATTORNEY CAPEHART:

2 Q. Okay.

3 How did you select your new name?

4 A. I've always liked the name, so that's what I
5 liked.

6 Q. Okay.

7 And why did you decide at that time that you
8 needed a new name?

9 A. Because I didn't think my name fit for me.

10 Q. Okay.

11 And you're familiar with the term dead name.
12 Right?

13 A. Yes.

14 Q. Okay.

15 Do you remember the first time that you
16 encountered that word --- or I'm sorry, that term?

17 A. That term? When I came out, I was told that I
18 could be dead named and they told me what that was. And
19 then later I looked it up and figured out what it was
20 more in depth.

21 Q. Okay.

22 Do you remember who it was that had told you
23 that you could be dead named?

24 A. I can't remember.

1 Q. Was it your mom?

2 A. It may have been, but I can't remember.

3 Q. From what your mother and your father told us,
4 it sounds like your mother has been the parent that has
5 taken you to all but maybe one of your appointments to
6 talk to people about being a transgender girl. Is that
7 about right from your recollection?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: Yes, that is about right.

10 BY ATTORNEY CAPEHART:

11 Q. Have you had a lot of appointments to talk with
12 doctors or other healthcare providers about being a
13 transgender girl?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: I wouldn't say it was a
16 lot, but I also wouldn't say it was like a little. It
17 was a good amount of appointments.

18 BY ATTORNEY CAPEHART:

19 Q. Okay.

20 After one of those appointments you received a
21 diagnosis of gender dysphoria. Have you been told that
22 before?

23 A. Yes.

24 Q. Okay.

1 When was the first time you remember
2 encountering that term gender dysphoria?

3 A. I don't know the date, but I think my mom told
4 me that I had it.

5 Q. Okay.

6 Do you remember generally when that was?

7 A. I can't remember. It may have been 2021 or
8 2022.

9 Q. Also, when you're remembering something, if you
10 remember it by year, I know that is how I remember a lot
11 of things growing up, if something happened at a
12 particular year of school rather than a calendar year.
13 You know, if that's a frame of remembering for you, too,
14 that is fine also. Calendar years aren't as important.

15 Do you know what gender dysphoria is?

16 A. A little bit about it, but I don't know the
17 actual definition.

18 Q. Okay.

19 Did you look it up and research it like you did
20 dead name after you heard it?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: I don't think so because if
23 I did I'd probably know more about it.

24 BY ATTORNEY CAPEHART:

1 Q. And you said --- do you remember the doctor
2 visit where you first heard one of your doctors use that
3 term?

4 A. I can't remember.

5 Q. Do you remember an appointment with Dr. Montano?

6 A. Yes, I remember some of the appointments with
7 him.

8 Q. Okay.

9 There is some medical records that show that
10 you had an appointment with Dr. Montano where he did a
11 full assessment of you in the summer of 2019. Do you
12 remember that by any chance?

13 ATTORNEY HARTNETT: Objection to form.

14 THE WITNESS: Not really because that was
15 a long time ago.

16 BY ATTORNEY CAPEHART:

17 Q. Do you remember any appointment with Dr. Montano
18 that was a longer appointment where you talked about a
19 lot of things?

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: Not really because they all
22 felt like they went by so fast because during the things
23 I usually had to miss a day of school, and I was always
24 thinking about what I missed.

1 BY ATTORNEY CAPEHART:

2 Q. I did the same thing at your age.

3 Whenever you had those appointments with Dr.
4 Montano or at Dr. Montano's office, I know oftentimes at
5 those appointments it's not just the doctor, that there
6 are sometimes other people that work there that will
7 come in and see a patient during the appointment time.
8 What do you recall about those appointments and who you
9 met with?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: I can't remember, but I ---
12 I don't remember their name, but I remember a time where
13 someone else went in there.

14 BY ATTORNEY CAPEHART:

15 Q. Do you remember the kinds of things that you
16 would talk about with Dr. Montano or any of the other
17 people at those appointments?

18 A. Maybe --- I don't know. I can't remember.

19 Q. When you were at appointments at Dr. Montano's
20 office, do you recall him or any of his staff running
21 tests on you?

22 ATTORNEY HARTNETT: Objection to form.

23 THE WITNESS: I can't recall.

24 BY ATTORNEY CAPEHART:

1 Q. Okay.

2 At those appointments do you remember hearing
3 people talking about how to treat gender dysphoria?

4 A. I can't remember.

5 Q. Has your mother discussed with you how your
6 gender dysphoria is being treated now?

7 A. Maybe back whenever I --- whenever I was
8 diagnosed with it, but I can't remember.

9 Q. Whenever there's any decisions that have to get
10 made about your treatment for your gender dysphoria,
11 does your mother talk with you about that and explain
12 everything that's happening?

13 A. Yes.

14 Q. Okay.

15 When you all are having those conversations and
16 a decision has to be made, does your mother let you make
17 those decisions?

18 ATTORNEY HARTNETT: Objection to form.

19 THE WITNESS: Yes, I am part of the
20 making of the decisions what happens to me.

21 BY ATTORNEY CAPEHART:

22 Q. Okay.

23 Do you and your mother ever disagree about what
24 should be done?

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: Not --- not --- I don't
3 think we have, but there is a possibility that could
4 happen or could have happened and I don't recall.

5 BY ATTORNEY CAPEHART:

6 Q. Okay.

7 Give me just a second.

8 ATTORNEY HARTNETT: Also, I think it
9 might be a good time to take a quick break just given
10 the youth and amount of water consumption. So maybe we
11 can take a five to ten-minute bathroom break when it's
12 good for you, Curtis.

13 ATTORNEY CAPEHART: Oh, yeah, that's
14 actually perfectly fine.

15 ATTORNEY HARTNETT: Can we take a
16 ten-minute break? Yeah, let's just take a ten-minute
17 break so we're are not all back too early.

18 ATTORNEY CAPEHART: Sounds great.

19 VIDEOGRAPHER: Going off the record. The
20 current time reads 11:01 a.m.

21 OFF VIDEOTAPE

22 ---

23 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

24 ---

1 ON VIDEOTAPE

2 VIDEOGRAPHER: We are back on the record.
3 The current time reads 11:13 a.m.

4 BY ATTORNEY CAPEHART:

5 Q. Okay.

6 Well, during the break I was going back over
7 some notes and just have a couple of questions that kind
8 of relate to some things we already talked about and
9 then I'm going to move on.

10 Okay?

11 A. That Declaration that we had looked at earlier,
12 I recall that you had mentioned when you first looked at
13 it you didn't recall seeing it, you didn't recall
14 signing it, you then looked at your initial signatures
15 and then you had read the rest of the document. After
16 we went through all of that, did that jog your memory
17 any. Do you remember signing it?

18 A. I do remember signing it, but I kind of have a
19 little bit of memory seeing it, but I do have a memory
20 signing it.

21 Q. Okay.

22 Also, when you recalled learning and hearing
23 the term about dead name and that someone might do that
24 to you at school, did anyone actually do that to you at

1 school?

2 A. Not that I can remember.

3 Q. Okay.

4 I think you had also said you kind of did some
5 research. What kind of research did you do looking into
6 that term?

7 A. Just looking what it meant, looking up what it
8 meant.

9 Q. Did you look it up in a book or on the internet?

10 A. The internet.

11 Q. Okay.

12 Do you recall where on the internet you found
13 it?

14 A. I think I looked it up on Google and I did
15 another one, but I can't remember what it was. It was
16 one of the unpopular ones.

17 Q. Okay.

18 Also, when you were --- or when we were talking
19 about the characteristics or things that make a person
20 more female or more male you had said that height really
21 didn't make a difference, that that was really more
22 genetic. Do genetics have something more to do with
23 being a girl or a boy?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: I wouldn't know.

2 BY ATTORNEY CAPEHART:

3 Q. Also, is there anything that definitively makes
4 a person a girl or a female versus a boy or a male?

5 ATTORNEY HARTNETT: Objection to form.

6 THE WITNESS: Could you repeat the
7 question?

8 BY ATTORNEY CAPEHART:

9 Q. Sure. And I will preface it with kind of what
10 we were kind of talking about before. You were
11 describing how there were a lot of things that are
12 typically --- and I don't think you used that word but
13 I'm going to use it, more typically associated with
14 males like tuxedos or suits, short hair, being buff,
15 working out, that sort of thing, and other things that
16 were more typically associated with being female,
17 wearing dresses, longer hair, not preferring to have
18 that maybe over muscled physique, wearing makeup, that
19 sort of thing, and that there were even some other
20 things you said are maybe more associated with males,
21 but that doesn't mean that females don't do it or vice
22 versa. I think that's what you said.

23 So I'm wondering is there anything in your mind
24 that if you see a person doing that or wearing that or

1 whatever that thing might be, is there something that
2 you, if you see it associated with a person, you think
3 only boys do that or only girls do that?

4 ATTORNEY HARTNETT: Objection to form.

5 THE WITNESS: No, because if I see
6 someone like that and I don't --- I don't immediately
7 go, oh, that's a guy, oh, that's a girl. I ask them,
8 oh, what are your pronouns, what is your gender
9 identity. And that's --- that's the better way to
10 figure out what they --- what they are and if they're
11 male or female or what --- if they're nonbinary or
12 whatever they are.

13 BY ATTORNEY CAPEHART:

14 Q. You mentioned a term nonbinary. Can you explain
15 what nonbinary means?

16 A. It is a person that doesn't identify as a male
17 or female and they go by they/them pronouns.

18 Q. Do you know anyone that is nonbinary?

19 A. One of my lawyers is.

20 Q. Do you know anybody at your school or your
21 hometown that is nonbinary?

22 A. I don't think so.

23 Q. Okay.

24 ATTORNEY HARTNETT: Heather, do you want

1 a minute for a break?

2 MS. JACKSON: Just to get a sip of water.

3 ATTORNEY HARTNETT: Can you give her a
4 mute to, the court reporter, just to let her work
5 through that? It's happened to all of us. No worries.

6 MS. JACKSON: It went down the wrong
7 pipe.

8 ATTORNEY CAPEHART: And again, if you
9 need to take another break, that's fine, too. All okay
10 on your end?

11 MS. JACKSON: We're good.

12 ATTORNEY CAPEHART: Okay.

13 BY ATTORNEY CAPEHART:

14 Q. I don't want to upset you, but I need to ask a
15 couple of questions about some comments that, according
16 to what we learned, your father had made in the past.

17 ATTORNEY HARTNETT: Objection to form.

18 ATTORNEY CAPEHART: That wasn't a
19 question, but okay.

20 BY ATTORNEY CAPEHART:

21 Q. We understand that ---.

22 ATTORNEY HARTNETT: Sorry. Just to make
23 clear my objection was that you were stating that
24 certain statements had been made, and I'm objecting to

1 the foundation.

2 ATTORNEY CAPEHART: Okay.

3 ATTORNEY HARTNETT: Go ahead.

4 BY ATTORNEY CAPEHART:

5 Q. I've looked at some records and there are some
6 notations and [REDACTED]

7 [REDACTED] When we were talking with
8 your mother she had said she did not know what had
9 happened there. Can you tell me what had happened when
10 that occurred?

11 ATTORNEY HARTNETT: Objection to form.

12 THE WITNESS: Could you repeat the
13 question?

14 BY ATTORNEY CAPEHART:

15 Q. Sure. We've seen in some records a notation
16 [REDACTED]

17 [REDACTED] Your mother did not
18 know what had happened on that occasion. She recalled
19 that when this happened, but she didn't know what had
20 actually occurred [REDACTED]

21 Do you remember that?

22 ATTORNEY HARTNETT: Objection to form.

23 Go ahead.

24 THE WITNESS: I can't remember, but I'm

1 pretty sure it was --- I was scared of something that
2 was --- honestly I shouldn't have been scared of. It
3 was nowhere near me. It was probably a spider or
4 something. But just the phrase [REDACTED]
5 [REDACTED] it is like don't be
6 scared of that, there's no reason to. It's just another
7 use of don't be scared of that.

8 BY ATTORNEY CAPEHART:

9 Q. Okay.

10 We were --- we were just wondering what had
11 happened there because, as I recall, when this was being
12 discussed yesterday, that your mother indicated you were
13 very upset when you had [REDACTED]

14 [REDACTED]

15 [REDACTED] Does that help you
16 remember anything more?

17 ATTORNEY HARTNETT: Objection, form.

18 THE WITNESS: Not really.

19 BY ATTORNEY CAPEHART:

20 Q. Also, we seen a note in one of the medical
21 records that was, again, discussed yesterday and your
22 mother said we would need to ask you about it. [REDACTED]

23 [REDACTED]

24 [REDACTED]

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[REDACTED]

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you restate the question?

BY ATTORNEY CAPEHART:

Q. Sure. We were looking at some records and there was some notation [REDACTED]

[REDACTED] Your mother wasn't familiar with that and said we should ask you about it. So I'm asking you if you recall ever discussing that with one of your treaters?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I don't remember discussing that with anyone besides my mom really. But it was a long time ago, so I --- I can't remember if I did or not.

BY ATTORNEY CAPEHART:

Q. Okay.

Do you know what that would relate to, that reference [REDACTED]

A. He probably got mad at me, like really mad in the situation, and he was probably threatening [REDACTED]

[REDACTED]

Q. Has that happened sometimes?

1 A. A long time ago. It doesn't happen anymore now.

2 Q. Did it happen on multiple occasions or just
3 once?

4 A. It was --- well, it was a couple of times maybe
5 in like the same three days or something like that, but
6 after those three days it stopped.

7 Q. Did you talk with your mom about it when that
8 happened?

9 A. Yes.

10 Q. Okay.

11 Did she tell you that she was going to talk to
12 your father for you?

13 ATTORNEY HARTNETT: Objection. Go ahead.

14 THE WITNESS: She --- I think she did.
15 She talked to him, and that's why he stopped doing it.

16 BY ATTORNEY CAPEHART:

17 Q. [REDACTED]?

18 A. Could you restate it?

19 Q. Sure. Do you have appointments from time to
20 time to [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

1 ATTORNEY CAPEHART: We've got a fire
2 drill going on. Hold on, everybody.

3 | THE WITNESS: What happened?

4 MS. JACKSON: They have a fire alarm
5 going off.

6 | THE WITNESS: Oh.

7 VIDEOGRAPHER: Do you want to go off the
8 record?

9 ATTORNEY HARTNETT: We're fine with that.

10 VIDEOGRAPHER: Going off the record. The
11 current time reads 11:25 a.m.

12	OFF	VIDEOTAPE

13 | - - -

14 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

15 | - - -

16 | ON VIDEOTAPE

17 VIDEOGRAPHER: Back back on the record.

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18 | The current time reads 11:41 a.m.
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19 ATTORNEY GREEN: All right. Thank you
20 and I will just hop in for a minute. This is Roberta
21 Green on behalf of WVSSAC. And I just wanted to note
22 for the record the appearance of my co-counsel, Shannon
23 Rogers, who's with me on behalf of WVSSAC. I just
24 wanted to note that for the record and I'll hop off.

1 Thanks.

2 ATTORNEY CAPEHART: Okay.

3 Now that we are through our building
4 emergency, if I could ask the court reporter to go back
5 to the last line of actual testimony. I don't recall
6 what point during that event we broke off the record,
7 but if you could go back and tell us where we were
8 whenever loud noises started happening.

9 COURT REPORTER: The question, sure. Do
10 you have any appointments from time to [REDACTED]

11 [REDACTED]
12 [REDACTED] Answer, yes. Question, okay. Who do
13 you meet with? And then that's when the fire drill
14 happened.

15 ATTORNEY CAPEHART: Thank you.

16 BY ATTORNEY CAPEHART:

17 Q. Becky, let's just pick up there. Who do you
18 meet with?

19 A. I meet with [REDACTED] His name is [REDACTED]

20 Q. Okay.

21 Do you know what office or group [REDACTED] is
22 with?

23 ATTORNEY HARTNETT: Objection to form.

24 THE WITNESS: Could you repeat the

1 question?

2 BY ATTORNEY CAPEHART:

3 Q. Sure. Is [REDACTED] or is
4 [REDACTED] part of a [REDACTED]?

5 A. I don't know.

6 Q. Do you know the name --- I'm sorry. I cut you
7 off. Go ahead.

8 A. I just go to him for [REDACTED] That's ---.

9 Q. Okay.

10 How often do you meet with [REDACTED]

11 A. It just depends because sometimes maybe it's
12 once a month, but it can be anytime. If we call him and
13 we need to go, he usually has a spot open.

14 Q. Okay.

15 And just generally speaking, what kind of
16 things do you discuss with [REDACTED]

17 A. [REDACTED]
18 [REDACTED]

19 Q. Okay.

20 Whenever you meet with [REDACTED] do you go in
21 alone or does your mother go in with you?

22 A. It depends. It usually starts with me and my
23 mom in there, then she waits out in the lobby and we
24 talk. And sometimes I go out and my mother talks to him

1 and then we get back --- we both go in the room at the
2 end and then we say bye and then we leave.

3 Q. Okay.

4 And how do you like that process, going to talk
5 to [REDACTED]

6 A. I love it because I can talk about [REDACTED]

7 [REDACTED]

8 Q. Does that help you to feel better?

9 A. Uh-huh (yes).

10 Q. Do you know --- excuse me, do you know whether
11 you have had any [REDACTED]?

12 ATTORNEY HARTNETT: Objection to form.

13 THE WITNESS: Could you rephrase that?

14 BY ATTORNEY CAPEHART:

15 Q. Yes. And let me back up and ask another
16 question I had forgotten to ask earlier. Do you know
17 what [REDACTED] profession is?

18 A. I don't know.

19 Q. Okay.

20 A. All I know is that he is a [REDACTED] That's
21 what I know.

22 Q. Okay.

23 And do you know whether [REDACTED] is a [REDACTED] of
24 some sort or just a [REDACTED]

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: I do not know.

3 BY ATTORNEY CAPEHART:

4 Q. Okay. Okay.

5 Now, if you could look at Exhibit 34. Do you
6 have the document marked as Exhibit 34 in front of you?
7 It says West Virginia Legislature at the top and then in
8 the middle of the page there's a line that says House
9 Bill 3293.

10 A. Yes, we have that.

11 Q. Okay. Great.

12 Have you ever seen this before?

13 A. I don't think so.

14 Q. Okay.

15 So if you --- this is just of kind of a cover
16 page for what was House Bill 3293 that passed the
17 legislature and was signed the Governor last year. This
18 is the --- this is the bill, the law that your lawsuit
19 is challenging.

20 Now, if you look --- start looking at page two
21 you'll see there is a lot of text here. Have you seen
22 any of this before? You don't have to read it all, just
23 kind of glance over it. And if you think you may have
24 seen parts before, you can say so, but ---.

1 A. I don't think I've seen this before.

2 Q. Okay. Okay. All right.

3 Well, I'm not going to ask you to read the
4 whole thing right now. I'm just going to ask you about
5 a couple of parts of it.

6 Okay?

7 A. Uh-huh (yes).

8 Q. Because there's a lot to read here.

9 ATTORNEY HARTNETT: I'll just refer to
10 our standing objection. Thank you.

11 ATTORNEY CAPEHART: Sure. Sure.

12 BY ATTORNEY CAPEHART:

13 Q. On what's marked at the bottom of the page as
14 page two you'll see that there are kind of a column of
15 numbers that run down the left-hand side of the page
16 there. The top number on page two should be a ten?

17 A. Uh-huh (yes).

18 Q. Okay.

19 And I'll just refer to those lines to direct
20 you to a couple of spots. Okay. And just so you know,
21 that's a standard part of what a bill looks like so that
22 whenever they're looking at legislation people can refer
23 to a procedure or line. That way they can follow it
24 more easy.

1 So the lines I'm going to direct you to are 25
2 and 26. This is a definition that is set forth in this
3 bill and it is down in West Virginia Code. So just read
4 that and let me know when you've read that definition in
5 this bill.

6 A. I've read it.

7 Q. Okay.

8 Do you think that's a proper definition of
9 biological sex?

10 ATTORNEY HARTNETT: Objection to
11 terminology. Make that a standing objection.

12 THE WITNESS: I would not know that if I
13 --- if that would be ---.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 Have you ever heard people use language like
17 biological sex or biological female?

18 ATTORNEY HARTNETT: Objection to form.

19 THE WITNESS: Yes, I've heard people use
20 that.

21 BY ATTORNEY CAPEHART:

22 Q. Okay.

23 Has anyone ever explained what they mean when
24 they have used that terminology around you?

1 A. I don't think so or I just can't remember.

2 Q. Okay.

3 This definition, at lines 25 and 26, does this,
4 based on the way that you have heard people use the term
5 in the past, is this about what you think they meant?

6 ATTORNEY HARTNETT: Objection to form.

7 THE WITNESS: Yes.

8 BY ATTORNEY CAPEHART:

9 Q. Okay.

10 So now that you've read that in this bill
11 that's what that term means, look up at lines 21 and 22
12 and let me know when you've read those two lines.

13 A. Okay.

14 Q. Do you agree with that statement at lines 21 and
15 22?

16 ATTORNEY HARTNETT: Objection to form.

17 THE WITNESS: I don't because I think if
18 someone wants to play on the girls team, like me, they
19 should be able to even though they are --- they're not
20 following that requirement.

21 BY ATTORNEY CAPEHART:

22 Q. Okay.

23 Before I move on to ask some questions about
24 cheerleading and track, I just want to talk about a

1 couple of other words that we were just touching on.
2 But I just want to make sure that we understand each
3 other or at least you understand me. You have heard
4 people use the term biological female or the term
5 biological male before.

6 Is that correct?

7 A. Yes.

8 Q. Okay.

9 And just so we're clear, if I use the term
10 biological female or biological girl, I'm describing
11 people who were determined to be female at the time of
12 birth. Okay? I'm not looking at the statute. I'm just
13 saying like if I use that term, that's what I'm talking
14 about. Just so that if I use a word and you're not sure
15 what I mean, I'm trying to explain in advance so there's
16 no confusion. Does that make sense?

17 A. Yes.

18 Q. Okay.

19 And also, if I say biological male or
20 biological boy I mean someone who was determined to be
21 male at the time of birth.

22 A. Yes.

23 Q. So if I use that --- if I use that kind of
24 terminology that is what I'm talking about, people who

1 were determined to be that at the time of birth. Okay?

2 When did you first get interested in sports?

3 A. I've always liked running. And I think
4 running's a sport, so since I could walk and run.

5 Q. What kind of sports, in addition to running,
6 have you been interested in?

7 A. Cheering was one. I was a little bit interested
8 in volleyball, but not anymore.

9 Q. Why not?

10 A. I just never --- I just didn't --- I just lost
11 liking of it.

12 Q. Whenever I say interested in --- let me
13 rephrase. Whenever you say that you are interested in
14 running, you were interested in cheer and been part of a
15 team and for a short time you are interested in
16 volleyball but aren't really interested anymore, do you
17 mean interested in participating and playing those
18 sports?

19 A. Yes.

20 Q. Okay.

21 Are there other sports that you have been
22 interested in from the perspective of being a viewer but
23 maybe not a participant?

24 A. Could you repeat the question?

1 Q. Sure. Besides the three that you just talked
2 about, running, cheer, volleyball, are there other
3 sports that you have an interest in as a viewer, as a
4 person that's in the stand watching it, or watching it
5 on television, but you don't have an interest in playing
6 or taking part?

7 A. I like watching football.

8 Q. Okay.

9 Anything else?

10 A. That's about it.

11 Q. Does your mom watch football?

12 A. Yeah. We like the same team.

13 Q. What team?

14 A. The Cleveland Browns.

15 Q. Do you like any other football teams?

16 A. Not really, no.

17 Q. Do you just watch professional football or do
18 you watch college, too?

19 A. Just professional.

20 Q. Now, have your parents encouraged you to be
21 involved in sports?

22 ATTORNEY HARTNETT: Objection to form.

23 THE WITNESS: I'd say so that they
24 encouraged me.

1 BY ATTORNEY CAPEHART:

2 Q. Okay.

3 Now that you've been on a couple of different
4 kind of teams, girls cross-country and also cheer when
5 you were younger, do you enjoy getting to compete as
6 part of a team?

7 A. Yes, I do.

8 Q. If you were in a sport where you weren't on a
9 team, that you were just an individual on a team, would
10 you enjoy that also?

11 A. No, because that's not --- that's not on ---
12 you're not on a team, you're not doing teamwork, that's
13 just by yourself.

14 Q. So is the bigger appeal to you in sports being
15 part of a team, being part of a group, working towards a
16 common goal?

17 ATTORNEY HARTNETT: Objection to form.

18 THE WITNESS: Could you repeat the
19 question?

20 BY ATTORNEY CAPEHART:

21 Q. Sure. You said you wouldn't really like being
22 in an individual sport, maybe something like, I don't
23 know, figure skating maybe, because you wouldn't be part
24 of a team, you would be --- that you like being part of

1 a team?

2 A. Yes.

3 Q. So is that what draws you to some of the sports
4 that you are interested in, the team aspect?

5 A. Yeah, the team aspect and I can make new
6 friends.

7 Q. Do you consider yourself competitive whenever
8 you're playing sports or when you're playing games with
9 your friends?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: I want to call myself
12 competitive. I'm just a person that likes playing
13 games. I'm not like, oh, I got to win. I just like
14 playing them, doing sports.

15 BY ATTORNEY CAPEHART:

16 Q. Okay.

17 Do you have some friends that are like that?

18 A. Yeah, I have a couple of friends.

19 Q. I think we all have a couple of friends that are
20 like that.

21 So in those sports that you're interested in,
22 including football, do you think rules are really
23 important in sports?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Yes, I think rules are
2 important because you wouldn't want someone having an
3 unfair advantage, like cheating.

4 BY ATTORNEY CAPEHART:

5 Q. Right.

6 A. And like ---.

7 Q. Sorry. Go ahead.

8 A. Like in baseball, I don't know what it's called,
9 but getting a better grip on the ball, that's cheating.
10 That's not fair.

11 Q. So do you think rules are a big part of or an
12 important part of making sure that sports are fair?

13 A. Yes.

14 ATTORNEY HARTNETT: Objection to form.
15 Sorry, B [REDACTED] Just make sure you give me a chance to
16 object, but you should then give your answer. So let's
17 try that one again.

18 ATTORNEY CAPEHART: Court Reporter, can
19 you repeat the last question?

20 THE WITNESS: Could you repeat the last
21 question?

22 COURT REPORTER: Question, so do you
23 think rules are a big part of or an important part of
24 making sure that sports are fair?

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: I think they are a big part
3 of making sports fair.

4 BY ATTORNEY CAPEHART:

5 Q. What does it mean for sports, for competition to
6 be fair?

7 ATTORNEY HARTNETT: Objection to form.

8 THE WITNESS: Well, sometimes it can mean
9 losing --- maybe winning unfair and winning things
10 because if people are cheating then they could get --- I
11 don't know if there's a cash prize. So if they cheat,
12 they're going to get that. That's not fair because they
13 get something out of cheating.

14 BY ATTORNEY CAPEHART:

15 Q. So it sounds like that you're saying that if
16 somebody breaks a rule like the one that you were
17 talking about in baseball, and by breaking that rule
18 that helps them to win or beat someone else, that that
19 wouldn't be fair. Is that what you're ---?

20 ATTORNEY HARTNETT: Objection.

21 THE WITNESS: Yes.

22 BY ATTORNEY CAPEHART:

23 Q. I'm sorry. I think I lost part of your answer
24 there.

1 A. Yes, that's what I'm saying.

2 Q. Who do you think should make up the rules for
3 sports?

4 ATTORNEY HARTNETT: Objection to form.

5 THE WITNESS: I don't know.

6 BY ATTORNEY CAPEHART:

7 Q. I'm going to ask you a couple of questions about
8 your time on cheerleading. How many years were you on
9 the cheer team?

10 A. I was on the cheer team for two years.

11 Q. Okay.

12 And if I recall from what your mother had told
13 us, it was part of the Bridgeport Youth --- is it
14 Bridgeport Youth Football League? Is that what it was?

15 MS. JACKSON: Yes.

16 COURT REPORTER: I'm sorry. Ms. Jackson,
17 did you say yes or was it the witness. I'm sorry.

18 MS. JACKSON: I said yes.

19 BY ATTORNEY CAPEHART:

20 Q. My understanding is that that's not affiliated
21 with the schools in any way, that's an independent, what
22 a lot of people would maybe call midget football league
23 and that that league has cheerleading teams also.

24 Is that right?

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: Yes. Sorry.

3 BY ATTORNEY CAPEHART:

4 Q. Okay.

5 I just want to make sure I understood that.
6 That's how things were when my daughter did midget cheer
7 --- midget league cheer, also.

8 What team were you on like B, C D? Do you
9 recall?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: I was on Bridgeport Pee Wee
12 Red.

13 BY ATTORNEY CAPEHART:

14 Q. Okay.

15 And were the members of that team all within
16 --- all the same age or within a year of each other?

17 A. They were within a year of each other.

18 Q. So was that third and fourth or fourth and
19 fifth?

20 A. I think it was fourth and fifth.

21 Q. Did you enjoy being on the cheerleading team?

22 A. Yeah, it was really fun.

23 Q. Did you like cheering at sidelines at games more
24 than competition cheer?

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: I did like cheering on
3 sidelines better because I had stage fright and I feel
4 whenever I was cheering on the sidelines most of the
5 people were paying attention to the game, so I didn't
6 have as much stage fright. But at competition, that was
7 the main thing that everyone was focusing on.

8 BY ATTORNEY CAPEHART:

9 Q. When you would be part of the team and working
10 on your competition cheer, you all did stunts.

11 Is that correct?

12 A. Yes, that is correct.

13 Q. Did you get to be a flyer or were you a base?

14 A. I was a base.

15 Q. Did you enjoy that more than going up in the
16 air?

17 A. Definitely, because I have a fear of heights.

18 Q. Understandable. So now that you're in Middle
19 School you were on the cross-country track team this
20 fall and you're also interested in running track.

21 Is that correct?

22 A. Yes.

23 Q. Okay.

24 I know I've seen in some reports and maybe in

1 your Declaration, too, you mentioned that there were
2 other people in your family that had run. Is that the
3 basis for your interest in being on cross-country and
4 also doing track this spring?

5 A. Yes.

6 Q. Bridgeport Middle doesn't have coed teams, does
7 it?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: Could you repeat the
10 question?

11 BY ATTORNEY CAPEHART:

12 Q. Sure. Do you know what a coed team is? Have
13 you heard that term before?

14 A. No.

15 Q. Okay.

16 I realize I'm probably dating myself a little
17 bit there. That term is not really used all that
18 frequently maybe nowadays, but that just essentially
19 means that coed would be, you know, boys and girls all
20 on the same team together. And I guess you don't. You
21 just have a boys team and a girl teams.

22 Right?

23 A. Yes.

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Sorry.

2 BY ATTORNEY CAPEHART:

3 Q. Now, in this --- for spring track you're going
4 to try out for the girls team.

5 Correct?

6 A. Yes.

7 Q. Now, that tryout and also the one for
8 cross-country track, are those competitive tryouts where
9 everybody has to run and be timed?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: Kind of because when we did
12 cross-country, all of us made it. But I was told that
13 the year before, when I was in 5th grade, that they had
14 to cut people because there was too many. So I think
15 that they only cut people if there's not --- if there is
16 too many.

17 BY ATTORNEY CAPEHART:

18 Q. Do you know how many there were on cross-country
19 this fall?

20 A. I don't know.

21 Q. Okay.

22 If there is some upper limit, though, your team
23 didn't reach that limit in terms of participants?

24 A. I think it may have been exactly the limit or

1 less, but I don't know.

2 Q. You don't remember anyone that tried out not
3 making the team, though?

4 A. Nope. Everyone made it if they didn't quit.

5 Q. Okay.

6 Do you remember how many meets or events you
7 went to this past fall?

8 A. I don't know for a fact, but it was around seven
9 to eight.

10 Q. And were all of those competitive team events
11 where they were tracking everyone's times with a team
12 placing at the end?

13 ATTORNEY HARTNETT: Objection to form.

14 THE WITNESS: Yes, there was.

15 BY ATTORNEY CAPEHART:

16 Q. Okay.

17 How did you all do this fall?

18 A. We did very good.

19 Q. Great. Did you place at most of the events that
20 the team went to?

21 ATTORNEY HARTNETT: Objection to form.

22 BY ATTORNEY CAPEHART:

23 Q. And by team I mean did the team place at the
24 event that your team participated in?

1 A. Most of the time, yes. Some of them weren't,
2 but we always got close.

3 Q. Did your team get first place at any of the
4 events?

5 A. Yes.

6 Q. How did that feel to be part of a team that got
7 first place at one of these events?

8 A. It felt awesome. It felt great.

9 Q. Okay.

10 So just because I don't know a tremendous
11 amount about cross-country or track and field, for
12 cross-country do you understand how the scoring works or
13 how the timing ends up with a team being first place or
14 second place or last place?

15 A. I do not know.

16 Q. But you would like to win, right? You would
17 like your team to win.

18 Right?

19 A. Yes.

20 Q. What track sports do you want to run in this
21 spring, track events I should say?

22 A. I'm thinking about doing long distance.

23 Q. And by long distance what does that mean in
24 terms of the actual distance?

1 A. There is a mile, two miles, and I think there
2 may be a three-mile one.

3 Q. So are you training to build up your stamina to
4 those right now?

5 A. Not currently just because it is really cold
6 out.

7 Q. That's fair. Just like I was asking you to help
8 me understand a little bit about how cross-country does
9 its scoring and placing, I think I know a little bit
10 more about track and field. In events like the distance
11 runs, the one, two or even --- one mile, two mile or
12 even longer distances, there are individual places in
13 each of those events.

14 Correct?

15 A. Uh-huh (yes).

16 Q. So do the first, second, third place finishers
17 get metals in those?

18 ATTORNEY HARTNETT: Objection to form.

19 THE WITNESS: I'm not sure because this
20 would be my first year doing track.

21 BY ATTORNEY CAPEHART:

22 Q. And do you know whether the outcome of those
23 individual races are then factored into some overall
24 team standing?

1 A. I do not know.

2 Q. Okay.

3 Now, at all of these events that you have
4 participated in this past fall with the girls track team
5 and then the ones that you would like to be part of this
6 spring for track and field, those are just girls teams
7 against girls teams.

8 Is that correct?

9 ATTORNEY HARTNETT: Objection to form.

10 THE WITNESS: I do not know because,
11 again, this is my first year.

12 BY ATTORNEY CAPEHART:

13 Q. Okay.

14 Now, at the cross-country events you went to
15 this past fall, when your team got first place, that was
16 just competing against a girls team.

17 Correct?

18 A. Yes.

19 Q. Okay.

20 At those same events or meets are there also
21 boys teams present?

22 A. Yes.

23 Q. Okay.

24 But your team only competed against the girls

1 teams.

2 Correct?

3 A. Yes.

4 Q. Would you have liked for your teams to have
5 competed against boys teams and girls teams?

6 A. At a couple of meets they did. But when they
7 do, they only tallied the girls points and the guys
8 teams differently and then they did the teams' totals.

9 Q. Okay.

10 Did anyone explain to you why they did that
11 that way?

12 A. I don't know.

13 Q. Okay.

14 Do you think that they may have done those
15 tallies differently because someone thought that boys
16 could run faster than girls?

17 ATTORNEY HARTNETT: Objection to form.

18 THE WITNESS: I don't know. I don't know
19 that.

20 BY ATTORNEY CAPEHART:

21 Q. Okay.

22 A. But whenever we started the --- a different ---
23 like the guys would go five minutes before and then five
24 minutes later the girls would go, so it was easier to

1 tally up all the points.

2 Q. Okay.

3 Do you think that the boys can run faster than
4 the girls?

5 ATTORNEY HARTNETT: Objection to form.

6 THE WITNESS: I do not believe so because
7 I also think that is a genetic thing, if you are fast or
8 not.

9 BY ATTORNEY CAPEHART:

10 Q. Okay.

11 From what I remember reading somewhere you're
12 pretty good with math.

13 Is that fair to say?

14 A. Yes.

15 ATTORNEY HARTNETT: Objection to form.

16 THE WITNESS: Sorry.

17 ATTORNEY HARTNETT: That is okay.

18 BY ATTORNEY CAPEHART:

19 Q. Do you know what statistics are?

20 A. I am familiar with the word, but I don't know
21 what it means.

22 Q. Okay.

23 Would you and your teammates sometimes compare
24 times after meets?

1 A. Sometimes.

2 Q. Okay.

3 And at the cross-country events, was the course
4 that you would run a different length every time?

5 A. It was always around 2 miles to 2.3, so --- so
6 not really.

7 Q. Okay.

8 I was just curious because I have a number of
9 friends that are athletes and they really seem to enjoy
10 talking about statistics, you know, how fast they run or
11 in baseball a batting average or in football a
12 quarterback's completion percentage or something, that
13 those are, it seems for folks in and around sports, ways
14 that you can try to evaluate or to get a sense of
15 something about a person or group of people. Have you
16 heard and seen statistics talked about when you watch
17 those football broadcasts with your mom?

18 ATTORNEY HARTNETT: Objection to the
19 narrative and to the question form.

20 THE WITNESS: Could you repeat the
21 question?

22 ATTORNEY CAPEHART: Sure.

23 BY ATTORNEY CAPEHART:

24 Q. Have you seen or heard statistics talked about

1 on those football broadcasts that you watch with your
2 mom?

3 A. Sometimes, but I don't really pay attention to
4 those because I mainly like watching the game.

5 Q. That's fair.

6 MS. JACKSON: Excuse me. She needs to
7 use the restroom.

8 ATTORNEY CAPEHART: Absolutely. Take a
9 break.

10 MS. JACKSON: Can you get through?

11 VIDEOGRAPHER: Going off the record.

12 The current time reads 12:18 p.m.

13 OFF VIDEOTAPE

14 ---

15 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

16 ---

17 ON VIDEOTAPE

18 VIDEOGRAPHER: We are back on the record.

19 The current time reads 12:25 p.m.

20 BY ATTORNEY CAPEHART:

21 Q. All right.

22 Well, let's see. When we left off I was just
23 asking you about things about statistics. Have you ever
24 looked up any statistical data about cross-country for

1 people your age?

2 A. No, I have not looked up the statistics for
3 people my age.

4 Q. And I think I framed that question as for
5 cross-country. Have you ever done that with track and
6 field, for example, the one mile or the two mile?

7 A. No, I have not.

8 Q. If you were to see statistics that show that, on
9 average, 11-year-old biological boys were 20 percent
10 faster than 11-year-old biological females in the mile
11 run, would that surprise you?

12 ATTORNEY HARTNETT: Objection to form.

13 THE WITNESS: Yes, because I think
14 biological --- it's all about genetics, if you're fast
15 or not.

16 BY ATTORNEY CAPEHART:

17 Q. So if you're fast or not is about genetics?

18 A. I think it is, but it could be not.

19 Q. Okay.

20 If that were true, that there is a statistic
21 somewhere that shows that 11-year-old biological boys
22 are 20 percent faster than biological girls of the same
23 age, would it be fair to have the biological boys
24 running in the mile race with biological girls?

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: Can you say the question
3 again?

4 BY ATTORNEY CAPEHART:

5 Q. Sure. If there were statistics that did show
6 that difference of 20 percent between biological boys at
7 a certain age and biological girls at that same age,
8 would it be fair to allow biological boys to run that
9 same race as the biological girls?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: If they identify as a
12 female, then I think, yes. But if not, then I don't
13 think that it should.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 So you said if they identify as a female, then
17 they should be able to run with the biological girls?

18 A. Yes.

19 Q. Did I hear you right?

20 A. Yes.

21 Q. Okay.

22 So then could any biological boy be on the
23 girls team so long as they identify as female?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: I think so. Sorry.

2 ATTORNEY HARTNETT: Sorry.

3 BY ATTORNEY CAPEHART:

4 Q. And when you say they identify as female, just
5 explain that to me so I make sure I understand it.

6 A. When people are transgender from male to female,
7 like me, that's what I think is identifying as a female.

8 Q. Okay.

9 Is it enough for someone in your mind to
10 identify as female for them to just say that they
11 believe they're female or do they need to do something
12 more than that?

13 ATTORNEY HARTNETT: Objection to form.

14 THE WITNESS: I think they need to have
15 an appearance and there has to be a reason. Like ---
16 well, not a reason, but they have to --- they have to
17 not just say, oh, I identify as female, I should run.
18 They should have already been transitioned. It can't
19 just be out of nowhere. Like, oh, all of the sudden,
20 now that I started, I just realize that I can do this,
21 oh, I'm transgender. That's --- I don't think that ---
22 I think maybe --- I don't know, a year into the
23 transition that you should be able to.

24 BY ATTORNEY CAPEHART:

1 Q. Okay.

2 So when you say a year into their transition
3 do, you mean like just their social transition, the way
4 they are presenting themselves?

5 A. Yes.

6 Q. Okay.

7 For that kind of hypothetical person that you
8 were describing there, if they had gone a year into
9 their transition, as I think you've described it, then
10 in your mind that's what they need to do so that they
11 could be on the girls team?

12 ATTORNEY HARTNETT: Objection to form.

13 THE WITNESS: Yes.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 Do they --- do they need to be doing something
17 else like taking puberty blockers or something of that
18 nature?

19 ATTORNEY HARTNETT: Objection to form.

20 THE WITNESS: I think they should be on
21 puberty blockers to do it because if they have hit
22 puberty, then that's a different story because they hit
23 puberty and that's not changeable.

24 BY ATTORNEY CAPEHART:

1 Q. Okay.

2 When they hit puberty and that's not
3 changeable, explain that to me a little if you can.

4 ATTORNEY HARTNETT: Objection to form.
5 Go ahead.

6 THE WITNESS: If they've hit puberty,
7 then they are maturing and they are going to get a
8 deeper voice. A girl would get a bigger Adam's apple
9 and then that's really it. And I think that gives them
10 more of an unfair advantage. I could be wrong, but I
11 think after they hit puberty, I don't know, I think
12 something happens, but I'm not sure.

13 BY ATTORNEY CAPEHART:

14 Q. Do you think there is something else that
15 happens besides the depth of voice and the Adam's apple?

16 A. I think they may get faster because their
17 testosterone levels will rise.

18 Q. Okay.

19 And do you think that's not an issue for
20 someone that hasn't gone through puberty yet?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: Sorry. Yes, because their
23 testosterone levels, if they are on puberty blockers,
24 won't be as high and they won't be --- it won't be high

1 and it won't give them any advantage.

2 BY ATTORNEY CAPEHART:

3 Q. If there was someone in that situation that
4 wasn't on puberty blockers, do you think that would be
5 unfair for that person to be on a girls team?

6 ATTORNEY HARTNETT: Objection to form.

7 THE WITNESS: As long as they haven't hit
8 puberty, then I think it's fine. But if they have hit
9 puberty, then I think they should maybe go on hormone
10 blockers and then maybe then, because I --- I could be
11 wrong, but I think their testosterone levels will drop
12 if they go on hormone blockers after puberty.

13 BY ATTORNEY CAPEHART:

14 Q. Okay.

15 Do you think that they also need to be getting
16 treated for gender dysphoria?

17 ATTORNEY HARTNETT: Objection to form.

18 THE WITNESS: I don't think that matters
19 because if they don't have gender dysphoria, why should
20 they be getting treated for it.

21 BY ATTORNEY CAPEHART:

22 Q. So if there was a person that went through that,
23 a biological boy who had done all the things that you
24 say needed to be done and they could be on the girls

1 team, but at some point in the future that person
2 decided they wanted to, I don't know, revert back to
3 being on the boys team for sports, should that be
4 allowed?

5 ATTORNEY HARTNETT: Objection to form.

6 THE WITNESS: If they want to, then yes,
7 go ahead, because they will --- if they are --- if they
8 still have the requirements to be on the girls team,
9 then they will be on puberty blockers and then the
10 testosterone levels will still be low. So --- but if
11 they get off, then they'll just raise back, and they
12 could still run on the boys team, but they can't run on
13 the girls.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 You've been talking about puberty blockers like
17 a person that knows about them, which I think you do.
18 What do you know about puberty blockers?

19 ATTORNEY HARTNETT: Objection to the
20 preamble and to the form.

21 THE WITNESS: Okay.

22 Could you repeat the question?

23 BY ATTORNEY CAPEHART:

24 Q. Sure. What do you know about puberty blockers?

1 A. They stop hormone levels from rising and they
2 have --- they have a chance for --- they have side
3 effects, but if you are transgender they can help ---
4 they can help with the process of a transition because
5 it will stop you from hitting puberty and you won't grow
6 an Adam's apple, you won't grow facial hair and your
7 voice won't get deeper.

8 Q. Okay.

9 You're receiving puberty blocking medications
10 now.

11 Is that correct?

12 A. Yes, that's correct.

13 Q. Okay.

14 Did you want to start that medication to delay
15 or prevent puberty?

16 A. Yes, that is correct.

17 Q. Okay.

18 We had talked some about your doctors'
19 appointments before. You had some appointments before
20 receiving the puberty blockers.

21 Correct?

22 A. Yes, that is correct.

23 Q. Okay.

24 Do you remember an appointment where you talked

1 with a doctor about getting puberty blocking meds?

2 A. Yes.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

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1 [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED]

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9 [REDACTED] [REDACTED]

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12 [REDACTED]

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18 [REDACTED] [REDACTED]

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21 [REDACTED]

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13 [REDACTED] [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED] [REDACTED]
18 ATTORNEY CAPEHART: I think this is a
19 good spot to take a break. The next part that I'm going
20 to get into I think is going to take a little more time
21 than we have. I see it's 12:41, so if it's all right
22 with everyone, I suggest we go off the record and talk
23 about when we come back.
24 ATTORNEY HARTNETT: That's fine with us.

1 VIDEOGRAPHER: Going off the record. The
2 current time reads 12:41 p.m.

3 OFF VIDEOTAPE

4 - - -

5 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

6 - - -

7 ON VIDEOTAPE

8 VIDEOGRAPHER: We are back on the record.

9 The current time reads 1:19 p.m.

10 BY ATTORNEY CAPEHART:

11 Q. Okay.

12 Well, before I move onto something else, I just
13 wanted to follow up on something that you had mentioned
14 before the break, B[REDACTED]. And I hope you had a good
15 break. You had mentioned testosterone before. Where
16 had you learned about what testosterone is?

17 A. The doctors.

18 Q. Okay.

19 Like Dr. Montano, those people?

20 A. Yes.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] [REDACTED] [REDACTED]
4 [REDACTED]
5 [REDACTED] [REDACTED]
6 [REDACTED]
7 [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED]
9 [REDACTED]

10 BY ATTORNEY CAPEHART:

11 Q. Okay.

12 You had mentioned before in relation to a
13 biological boy running on a girls team and that they
14 would need to, I think you had said --- I'm not trying
15 to put words in your mouth, but I think you had said
16 something along the lines that they would need to be
17 taking some kind of medication relative to the
18 testosterone if they were either going through puberty
19 or had gone through puberty.

20 ATTORNEY HARTNETT: Objection to form.

21 BY ATTORNEY CAPEHART:

22 Q. Do you remember that when we were talking
23 earlier?

24 A. Yes.

1 Q. Okay.

2 Why did you mention testosterone relative to
3 how a biological boy might be performing in running?

4 A. Because I think that --- that after --- whenever
5 you half an increase of testosterone, that --- I think
6 that increases your athletic ability, but I could be
7 wrong there.

8 Q. Okay. Fair enough.

9 Do you know that because of what the doctors
10 had talked to you about?

11 ATTORNEY HARTNETT: Objection to form.

12 THE WITNESS: I am pretty sure, yeah.

13 BY ATTORNEY CAPEHART:

14 Q. Okay.

15 Have you had done any independent research
16 yourself to learn more about testosterone?

17 A. I don't recall. I may have, but I don't
18 remember.

19 Q. Okay.

20 Do you recall reading the Complaint in this
21 lawsuit?

22 A. I do not.

23 Q. Okay.

24 If you could look at Exhibit 32 for just a

1 minute. Okay. It says Exhibit WV-32 at the bottom
2 right corner and has a lot of other words, but in
3 boldface in the upper right center are the words First
4 Amended Complaint. Okay. This is as it says is the
5 First Amended Complaint, means there was an original
6 Complaint that had been amended once in its first
7 Amended Complaint. Do you recall ever having seen this
8 before now that you are getting a chance to look at it?

9 A. Yes, I think so.

10 Q. Okay.

11 Do you remember reading over it yourself?

12 A. I don't think so.

13 Q. Okay.

14 Do you remember anyone discussing with you what
15 was in the Complaint?

16 A. I think I discussed it with my mom.

17 Q. But you don't know everything that's in here
18 because you haven't read it yourself.

19 Is that correct?

20 A. I don't.

21 ATTORNEY HARTNETT: Objection.

22 THE WITNESS: I don't remember if I have
23 or haven't.

24 BY ATTORNEY CAPEHART:

1 Q. Okay.

2 You don't remember if you have or have not.

3 Okay.

4 Now, I think we had talked before about the
5 fact that your lawsuit is challenging the HB 3293. You
6 may have remembered we had looked at that very briefly
7 and I had directed you to a couple of parts of it and
8 you had said you hadn't read the whole thing. And I
9 will also represent to you that it also had some other
10 definitions in there for biological male and female. Do
11 you believe there is a difference between biological
12 males and biological females?

13 ATTORNEY HARTNETT: Objection to form and
14 the preamble.

15 THE WITNESS: I don't know.

16 BY ATTORNEY CAPEHART:

17 Q. Okay.

18 You don't know if there is any difference
19 between a biological boy and a biological girl?

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: I don't know. I don't know
22 if there is a difference.

23 BY ATTORNEY CAPEHART:

24 Q. Okay.

1 Do you think there are physical differences
2 between a biological boy and a biological girl?

3 ATTORNEY HARTNETT: Objection.

4 THE WITNESS: Could you repeat the
5 question?

6 BY ATTORNEY CAPEHART:

7 Q. Sure. Do you think there are physical
8 differences between a biological boy and a biological
9 girl?

10 A. Yes.

11 Q. Okay.

12 ATTORNEY HARTNETT: And I just have a
13 standing objection in terminology, but I will not
14 continue to make that objection.

15 ATTORNEY CAPEHART: Noted. Thank you.

16 BY ATTORNEY CAPEHART:

17 Q. What do you understand the physical differences
18 are between a biological boy and a biological girl?

19 A. A biological boy has a penis and a biological
20 girl has a vagina.

21 Q. Okay.

22 Do you believe there are any other physical
23 differences between a biological boy and a biological
24 girl?

1 A. There --- yes, but that part could be with
2 either one, because long hair could also be with a guy
3 or like that's --- like if a girl, a biological girl,
4 would probably have long hair, but a guy could also have
5 long hair. And then a guy could have --- a guy could
6 have short hair and a girl could also have that. And a
7 biological guy would probably want to look muscular, but
8 a biological girl would probably --- could probably want
9 to look like that.

10 Q. So apart from a superficial difference like hair
11 length or how much someone works out and also the
12 difference in genitalia, are you aware of any other
13 differences?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: Not that I can think of
16 right now.

17 BY ATTORNEY CAPEHART:

18 Q. Okay. Okay.

19 Can you all look at Exhibit 26? Do you have
20 Exhibit 26?

21 A. Yes.

22 Q. This looks like it is an article from the
23 Gazette Mail. If you flip to the second page of the
24 exhibit, the fourth block of text up from the bottom it

1 reads, quote, I just want to run, I come from a family
2 of runners, close quoted, P [REDACTED] J [REDACTED] said in a news
3 release. Quote, I know how hurtful a law like this is
4 to all kids like me who just want to play sports with
5 their classmates, and I'm doing this for them. Trans
6 kids deserve better, closed quote. B [REDACTED], do you
7 remember talking to a reporter before this article got
8 written?

9 A. Yes.

10 Q. Okay.

11 And the quoted language that I was just reading
12 there that's also in the exhibit, do you remember saying
13 that?

14 A. Yes.

15 Q. Okay.

16 So those are your words, no one was
17 paraphrasing something you were trying to tell them
18 then?

19 A. No.

20 Q. Okay.

21 Is a trans kid an appropriate term to use?

22 ATTORNEY HARTNETT: Objection, form.

23 THE WITNESS: Could you repeat the
24 question?

1 BY ATTORNEY CAPEHART:

2 Q. Sure. In the quote it says trans kids deserve
3 better. I'm just curious, is trans kids a normal term
4 that is used and is acceptable to use?

5 ATTORNEY HARTNETT: Objection, form.

6 THE WITNESS: Could you repeat the
7 question one more time?

8 BY ATTORNEY CAPEHART:

9 Q. Sure. And I'm not trying to trick you. I'm
10 just trying to understand because you used the term
11 trans kids, and I think I've seen it in maybe another
12 article, too, and I just thought I encountered it
13 another experience. So I'm asking the question is that
14 an acceptable term to use to refer to transgender boys
15 or transgender girls?

16 ATTORNEY HARTNETT: Same objection.

17 THE WITNESS: Yes.

18 BY ATTORNEY CAPEHART:

19 Q. Is it okay to call you a trans kid?

20 A. If you don't know that I don't know my name and
21 you know I'm trans, then yes, that's acceptable. But if
22 you know my name and you're purposely calling me that,
23 then not really, but it's still fine.

24 Q. Yeah. And I don't intend to. I was just

1 curious ---

2 A. Yes.

3 Q. --- from the nuances and the acceptable use of
4 the term. So thank you. Excuse me. If you can look
5 at Exhibit 27.

6 ATTORNEY HARTNETT: And just for the
7 record and the witness's knowledge, B[REDACTED], you should
8 feel free to review the full exhibit before you answer
9 questions if you want to.

10 THE WITNESS: Okay.

11 MS. JACKSON: So that's the first page.

12 ATTORNEY CAPEHART: You all just let me
13 know whenever you're ready to proceed.

14 Okay?

15 ATTORNEY HARTNETT: I'm sorry. I think
16 B[REDACTED] is ready.

17 THE WITNESS: Yeah.

18 ATTORNEY CAPEHART: Okay. Thank you.

19 BY ATTORNEY CAPEHART:

20 Q. I'm going to try to make sure I direct you to
21 the proper page. It looks like it's the last page of
22 the text, which looks like it's about the fourth to the
23 last page of the exhibit. At the top of the page the
24 test begins with the word when Justice. Right there.

1 Have you all found that on your hard copy?

2 A. Yes.

3 Q. Okay. All right.

4 So let's see, this first block here that reads
5 when Justice signed the Bill banning transgender girls
6 from sports teams, B [REDACTED] was devastated she said. Then
7 another quote, I felt horrible because I knew then I
8 couldn't run with the other girls. Do you remember
9 talking to the author of this piece before it came out?

10 A. Yes.

11 Q. Okay.

12 And does that quote seem right? Do you
13 remember saying that?

14 A. Yes.

15 Q. Okay.

16 Now, I recall earlier you mentioned that you
17 hadn't read the bill, the new law yourself, but here you
18 said you couldn't run with the other girls after the
19 Governor signed it. How did you know that since you
20 hadn't read through the bill?

21 A. I was told by my mom.

22 Q. Okay.

23 Do you remember when you and your mother had
24 that discussion?

1 A. I don't remember.

2 Q. All right.

3 Were you aware of this bill before your mom
4 told you that it was now a law?

5 A. I was aware of it, but I didn't know that it was
6 going to get signed.

7 Q. Okay.

8 What did you know about it before your mom told
9 you it was signed and was now a law?

10 A. That I wouldn't be able to run with the girls
11 once it got signed.

12 Q. Okay. All right.

13 If you move down to and look at the fourth
14 block of text there on the page it says as hard as it is
15 to be a trans kid and a mother of a trans kid, suddenly
16 thrust into the public eye in a conservative state,
17 B [REDACTED] and Jackson agree that the potential payoff makes
18 it all worth it. You don't have a problem with the
19 author using trans kid there, do you?

20 A. No.

21 Q. Okay.

22 How hard has it been in Bridgeport and Lost
23 Creek to be a trans kid, as the author says?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Could you --- could you
2 repeat the question?

3 BY ATTORNEY CAPEHART:

4 Q. Sure. This little bit of language here is
5 talking about it being hard to be a trans kid and the
6 mother of a trans kid, so my question is how hard has
7 that been on you in Bridgeport and Lost Creek?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: Well, a lot of the people
10 don't support it and don't agree with it, so that's what
11 makes it hard.

12 BY ATTORNEY CAPEHART:

13 Q. Okay.

14 You had said that school had gone really well
15 with your transition.

16 Correct?

17 A. Uh-huh (yes).

18 Q. Okay.

19 So are these people you're describing now, are
20 these all people outside of school?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: Yes.

23 BY ATTORNEY CAPEHART:

24 Q. Okay.

1 What kind of people are these?

2 ATTORNEY HARTNETT: Objection to form.

3 THE WITNESS: Usually adults.

4 BY ATTORNEY CAPEHART:

5 Q. Okay.

6 Are these people you know or strangers?

7 A. Strangers.

8 Q. Well, what have they done?

9 A. Just not --- just be mean in general.

10 Q. Well, how are they being mean?

11 A. They don't support it. Sometimes people call me
12 names, just be mean.

13 Q. Okay.

14 Does this happen often?

15 A. Not as much now, but it used to happen a lot.

16 Q. When you say used to happen a lot, do you mean
17 back at the time that you transitioned or before that or
18 after that?

19 A. Well ---.

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: Well, at the time and a
22 little bit after because I was so --- I was new to it
23 and I didn't know how to handle people like being
24 meaning about it.

1 BY ATTORNEY CAPEHART:

2 Q. Okay.

3 Would people be mean to you when your parents
4 were around?

5 A. They wouldn't do it like directly to my face
6 usually. They would say it to my mom or my dad and then
7 my parents would tell me. So it wasn't usually directly
8 to me.

9 Q. So when they would say these things, you weren't
10 in the presence of these people when they were saying
11 them?

12 A. Most of the time, yes.

13 Q. Oh, okay.

14 But then your mom and your dad would have
15 people say things to them and then your mom and dad
16 would tell you about what other people had said?

17 ATTORNEY HARTNETT: Objection to form.

18 BY ATTORNEY CAPEHART:

19 Q. Is that correct?

20 A. Yes, but sometimes they wouldn't tell me just
21 I'm assuming to try not to make me sad.

22 Q. Have any other kids ever said the kind of things
23 to you that your parents said adults had told them?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: No.

2 BY ATTORNEY CAPEHART:

3 Q. No? Do you and your family attend a church?

4 A. Not anymore.

5 Q. Okay.

6 Did you before?

7 A. For a short period of time, yes.

8 Q. Okay.

9 Did you ever have any issues or problems there?

10 A. No.

11 Q. So there weren't any adults at that church that
12 were mean to you or that said mean things to your
13 parents that you know of?

14 A. At that time I was not transitioned yet, so
15 there was no comments like that.

16 Q. Okay.

17 Do you remember when you had said your mom had
18 explained to you because the bill was now signed you
19 wouldn't be able to run, did she explain what part of
20 the new law would stop you from running?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: No, she just told me that
23 because of this I couldn't run.

24 BY ATTORNEY CAPEHART:

1 Q. Okay.

2 And because you haven't read the bill yourself,
3 you don't have any knowledge of what part of the bill
4 prevents you from running.

5 Is that correct?

6 A. Yes.

7 ATTORNEY HARTNETT: Objection to form.

8 BY ATTORNEY CAPEHART:

9 Q. Thank you. All right. Let's see Exhibit 28.
10 I just was going to interject that you are free to read
11 the entirety if you would like to, the 20 pages. It's a
12 lot, but I have no problem telling you the only thing
13 I'm going to ask you about is the portion on the last
14 page, the part under the subtitle B [REDACTED]'s trials.

15 MS. JACKSON: Thank you.

16 ATTORNEY CAPEHART: You're welcome.

17 THE WITNESS: I'm ready.

18 BY ATTORNEY CAPEHART:

19 Q. Okay. Great.

20 Do you remember talking to this author from
21 ESPN?

22 A. I can't remember.

23 Q. It sounds like your tryouts were pretty
24 challenging.

1 Is that true?

2 A. Yes.

3 Q. Okay.

4 Do you recall expressing anything to this
5 reporter that's quoted here or otherwise described?

6 ATTORNEY HARTNETT: Objection to the
7 form.

8 THE WITNESS: Could you repeat the
9 question?

10 BY ATTORNEY CAPEHART:

11 Q. Sure. Do you recall saying this part that's
12 quoted here about your friends or discussing any of the
13 rest of it with the reporter?

14 A. I don't remember, but I think I remember saying
15 maybe some of this, but I can't remember. I can't
16 remember.

17 Q. Okay. Okay.

18 And it seems like you were understandably
19 excited to have made the team.

20 Is that right?

21 A. Yes.

22 Q. Okay.

23 How many girls were on the team this past fall?

24 ATTORNEY HARTNETT: Objection. I'm

1 sorry.

2 THE WITNESS: I don't know.

3 BY ATTORNEY CAPEHART:

4 Q. Okay.

5 And you were the only transgender girl on the
6 team.

7 Is that correct?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: As I knew of, there may
10 have been people that haven't come yet, but of what I
11 knew I was the only one.

12 BY ATTORNEY CAPEHART:

13 Q. So far as you know, you're the only transgender
14 girl on the team.

15 Is that correct?

16 A. Yes.

17 Q. Okay. Okay.

18 Exhibit 29, which is much shorter. Okay. Take
19 a look at that, however much you would like to, and then
20 let me know whenever you'd like to proceed.

21 A. I'm done reading.

22 Q. Okay.

23 Let's see. Just below kind of the mid point of
24 the page, about the third block of real text it starts

1 off with a quote there and it says, quote, I just want
2 to run and the State wants to stop me from running as
3 part of a team at my school, end quote, said B [REDACTED], an
4 11-year-old Middle School student. Quote, I love
5 running and being part of the team and the State of West
6 Virginia should explain in court why they won't let me,
7 end quote. Do you remember saying or writing that?

8 A. I remember saying that.

9 Q. Okay.

10 Who did you say that to?

11 A. I can't remember.

12 Q. Okay.

13 But those are all your words.

14 Correct?

15 A. Uh-huh (yes).

16 Q. Okay.

17 A. Yes.

18 Q. In what ways --- strike that.

19 When you say that the State of West Virginia
20 should explain in court why they won't let you be part
21 of the team, are you referring to HB-3293?

22 A. Yes.

23 Q. But as you said earlier, you're not sure what
24 part of that prevents you from running, you just know

1 that it does because you have been told that.

2 Correct?

3 ATTORNEY HARTNETT: Objection to form.

4 THE WITNESS: Yes.

5 BY ATTORNEY CAPEHART:

6 Q. Okay.

7 Sorry for that. B [REDACTED], are you aware of or
8 have you read anything that the State has filed with the
9 Court in this case?

10 A. I think I've skimmed through a couple of things,
11 but not really read them.

12 Q. Okay.

13 Those couple of things that you think you have
14 skimmed through, do you recall what those were?

15 A. One of them was the one thing we just read ---
16 the thing that we went through just a little bit, I
17 skimmed through that. And there was another one, but I
18 don't remember which one it was.

19 Q. Okay.

20 The thing that we went just went through, I
21 apologize, we have gone through a few things.

22 A. Just now, the one just now I skimmed through,
23 couple of paragraphs. I'm pretty sure at least.

24 Q. Do you mean Exhibit 29?

1 MS. JACKSON: This?

2 THE WITNESS: Yes.

3 BY ATTORNEY CAPEHART:

4 Q. Exhibit 29 is not anything that the State has
5 written. I'm just explaining what this is. And my
6 understanding is that this is a news release from Lambda
7 Legal. So you think there may have been something else,
8 though, that you looked at, you're just not really sure?

9 A. Yeah.

10 Q. Okay. Okay.

11 Give me just a second to check a couple of
12 things. Okay. There's a couple of things to just run
13 through real quick and then I think I might be done.
14 One, just following back up on the thought of why the
15 State won't let you run, why do you think, to use your
16 words from this press release, that the State won't let
17 you run?

18 A. Could you repeat the question?

19 Q. Sure. In the release here there is, as you
20 said, your language saying that you want the State to
21 explain in court why they won't let you, referring back
22 to being part of a team and running. Why do you --- why
23 do you think that is?

24 ATTORNEY HARTNETT: Objection. Form.

1 THE WITNESS: Because I don't think there
2 is a good enough reason for me to not be able to run.

3 BY ATTORNEY CAPEHART:

4 Q. Okay.

5 When you say there's not a good enough reason,
6 has someone spoken to you or explained some reason why
7 they think that the State wouldn't let you run?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: Could you repeat the
10 question?

11 ATTORNEY CAPEHART: Court Reporter, can
12 read that question back for us?

13 COURT REPORTER: When you say there is
14 not a good enough reason, has someone --- has someone
15 --- I'm sorry. When you say there's not a good enough
16 reason, has someone spoken to you or explained some
17 reason why they think that the State wouldn't let you
18 run?

19 ATTORNEY HARTNETT: Objection.

20 THE WITNESS: No one has explained the
21 reason, but that's why I think there's not a good enough
22 reason for me to not run.

23 BY ATTORNEY CAPEHART:

24 Q. So you have not had any conversations with

1 anyone who could explain what reasons the State may have
2 presented as to why they passed this bill?

3 ATTORNEY HARTNETT: I would just object
4 to the extent this would entail any conversations with
5 your lawyers, B[REDACTED], and you should not testify about
6 those conversations. If there are conversations other
7 than ones with your lawyer, you can testify about that.

8 THE WITNESS: What was --- can you repeat
9 the question?

10 BY ATTORNEY CAPEHART:

11 Q. Sure. And to pick up on Kathleen's comment, I'm
12 not trying to get you to divulge any confidential
13 communications that you had with your lawyers, but I'm
14 just trying to understand your comment where you said
15 that there is not a good enough reason and that no one
16 has explained a reason why the State passed this bill.
17 So I'm asking you what kind of conversations have you
18 had, if any, with anyone other than your lawyers about
19 the reason why this bill may have been passed?

20 A. I haven't had any conversations with any of my
21 lawyers.

22 Q. Okay.

23 Have you talked with your mom about why this
24 law may have been passed?

1 A. I don't think I have, no.

2 Q. And you already said you have not looked at any
3 of the State's filings or documents that it has put in
4 before the Court in this case?

5 ATTORNEY HARTNETT: Objection, MT.

6 THE WITNESS: I don't think so.

7 BY ATTORNEY CAPEHART:

8 Q. Okay.

9 You don't recall whether you have seen those,
10 but you don't believe so, is that what you said
11 previously?

12 ATTORNEY HARTNETT: Objection, MT.

13 THE WITNESS: Yes.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 Real briefly, look back at Exhibit 31, which is
17 the Declaration that you looked at when we started.
18 Just let me know when you have it.

19 A. We have the Declaration.

20 Q. Okay.

21 Look at page three, if you would. Got it?

22 A. Uh-huh (yes), yes.

23 Q. Okay.

24 There at paragraph number 13 it says, I do not

1 want to run with the boys and I should not have to run
2 with the boys. What's wrong with running with the boys?

3 A. I'm not a boy. I'm a girl. I should be able to
4 run with the girls.

5 Q. Okay.

6 Are there any competitive concerns if you did
7 run with the boys?

8 ATTORNEY HARTNETT: Objection. Form.

9 THE WITNESS: No. I just think I'm a
10 girl and I shouldn't have to run with the boys. I
11 should be able to run with the girls because I am a
12 girl.

13 BY ATTORNEY CAPEHART:

14 Q. Okay.

15 One other --- one other quick question for you.
16 Do you know that under the law you could run with the
17 boys if you wanted to.

18 Right?

19 ATTORNEY HARTNETT: Objection to form.

20 THE WITNESS: That I could if I wanted
21 to, but that's not --- I'm not running with the boys
22 because I am a girl.

23 BY ATTORNEY CAPEHART:

24 Q. Okay.

1 I just wanted to make sure that someone had
2 apprised you that the law does not prevent that, that
3 new law. Fair enough. And I believe that's everything
4 I have for you right now. Thank you very much for your
5 patience.

6 ATTORNEY CAPEHART: And whoever the next
7 person in line wants to take over the questioning, go
8 right ahead.

9 ATTORNEY HARNETT: And I know we haven't
10 gone for an hour yet, but I just wanted to check to see,
11 B [REDACTED], do you need a bathroom break before we do more
12 questions?

13 THE WITNESS: I'm good.

14 ATTORNEY ROGERS: I think I'm next if I'm
15 understanding the order that was established earlier
16 this week.

17 Is that right?

18 ATTORNEY HARTNETT: I believe Roberta
19 went next.

20 ATTORNEY ROGERS: All right.

21 ---

22 EXAMINATION

23 ---

24 BY ATTORNEY ROGERS:

1 Q. Hi, B[REDACTED]. My name is Shannon Rogers. I am one
2 of the attorneys that represents the West Virginia
3 Secondary School Activities Commission, which is
4 sometimes referred to as the WVSSAC. And so when I'm
5 saying WVSSAC that's what I'm referring to.

6 Does that make sense?

7 A. Yes.

8 Q. Okay.

9 Had you ever had heard of the WVSSAC before?

10 A. I don't think so.

11 Q. Okay.

12 Do you know if you have ever spoken to anybody
13 who is with the WVSSAC?

14 A. I don't know.

15 Q. You don't know? Okay.

16 Do you know if anybody --- well, strike that.

17 So you don't think you've ever communicated or
18 you just don't remember?

19 A. I don't think I've ever communicated.

20 ATTORNEY ROGERS: Okay.

21 I don't have any other questions. Thank
22 you, B[REDACTED].

23 ---

24 EXAMINATION

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BY ATTORNEY DENIKER:

Q. Hi, B[REDACTED]. My name is Susan Deniker. I'm an attorney who works at a law firm called Steptoe and Johnson, and I represent the Harrison Board of Education and the Superintendant Dora Stutler. Thank you for your time today. I know it has been a long day and I know it's hard to sit in front of a computer screen, so thank you. You've done a really great job.

I'm going to ask you a few questions about your experience in school and in cross-country. If I ask you anything that doesn't make sense or that you don't understand, please let me know. You've done a really great job with that today, but will you let me know if I ask you something that you don't understand?

A. Yes.

Q. Very good.

And then also, if you need to take a break at any time, just let me know and we'll be glad to take a break.

Okay?

A. Okay.

Q. So yesterday I got to ask some questions of your mom and she told me that you went to elementary school

1 at Norwood Elementary.

2 Is that correct?

3 A. Yes.

4 Q. And did you go to Norwood Elementary School from
5 kindergarten through the fifth grade?

6 A. Yes.

7 Q. How did you like Norwood?

8 A. It was a nice school. I really enjoyed it.

9 Q. Did you have a good experience there?

10 A. Yeah.

11 Q. Was Mrs. Stutler your principal for a period of
12 the time that you were at Norwood Elementary School?

13 A. Yes.

14 Q. Did you know her then?

15 A. Like know her --- could you repeat the question?

16 Q. Sure. No. It probably wasn't a very good
17 question. Did you sometimes have interactions with Mrs.
18 Stutler when she was your principal?

19 A. Yes.

20 Q. And how was that? Was she nice with you when
21 you dealt with her?

22 A. Yes.

23 Q. Did you think she was a good principal?

24 A. Yes.

1 Q. Who was the principal after Mrs. Stutler?

2 A. Mrs. Shields.

3 Q. And did you like Mrs. Shields?

4 A. Yeah.

5 Q. Was she nice to you when you were at school?

6 A. Yes.

7 Q. Now, I know you said earlier that you came out
8 in the fourth grade.

9 Is that right?

10 A. I came out in the summer of third grade, but in
11 school it was in the fourth grade.

12 Q. Okay.

13 And something else I should have said to you at
14 the beginning is that I want to use terms that you're
15 comfortable with. And so if I don't use the right
16 terms, you correct me.

17 Okay?

18 A. Okay.

19 Q. So when you started school in the fourth grade
20 it is my understanding then you came to school
21 presenting as a girl, as a female.

22 Is that correct?

23 A. Yes.

24 Q. And did you have any discussions with your

1 teachers or the principal or anyone else at Norwood
2 about making that change?

3 A. Yes.

4 Q. Tell me about those communications that you
5 would have had.

6 A. I think it was the day before school started we
7 went to the school to establish where --- everything
8 about what the teacher should be calling me, where my
9 bathroom would be and everything like that.

10 Q. Were you part of that meeting, B[REDACTED]?

11 A. Yes.

12 Q. Do you recall who else was in that meeting?

13 A. There was Mrs. Louder, it was the principal. I
14 don't know if it at the time it was Mrs. Stutler or Mrs.
15 Shields and someone else. I can't remember their name.

16 Q. Was the school counselor maybe part of that
17 meeting?

18 A. I think so.

19 Q. Was Mrs. Louder your teacher that year?

20 A. Yes.

21 Q. And was your mom also in that meeting?

22 A. Yes.

23 Q. Anyone else that you remember?

24 A. Not really, no.

1 Q. Were you happy with what came out of that
2 meeting?

3 A. Yes.

4 Q. You were comfortable with the agreements that
5 was reached with regard to the name that would be used
6 and the bathroom facilities and any other accommodations
7 that would be made for you?

8 ATTORNEY HARTNETT: Objection.

9 THE WITNESS: Yes.

10 BY ATTORNEY DENIKER:

11 Q. And then how did fourth grade go? Was it a good
12 --- was it a good year for you?

13 A. Yeah.

14 Q. Did you feel that the teachers and the principal
15 and the other employees of the school were supportive of
16 you?

17 A. Yes, very.

18 Q. Good. And did you feel that they treated you
19 kindly and fairly?

20 A. Yes.

21 Q. And it sounds like from your earlier testimony
22 that you also had a good experience with the students in
23 the school.

24 Is that correct?

1 A. Yes.

2 Q. Tell me about your fifth grade year at Norwood
3 Elementary School. Did you have a good experience that
4 year?

5 A. Yes. There was brand new teachers and my
6 teacher was Ms. Watson. She was a very nice teacher.

7 Q. And do you feel that everyone at the school was
8 supportive of you?

9 A. Yes.

10 Q. Did you feel that everybody treated you in a
11 fair and kind manner?

12 A. Yes.

13 Q. And so you had a good school year in fifth grade
14 as well?

15 A. Yes.

16 Q. Do you recall having any other meetings in
17 fourth or fifth grade to discuss your transitioning to
18 being --- to presenting as a girl at school?

19 A. Not that I can remember. Beginning of fourth
20 grade was the only one I think.

21 Q. And then it's my understanding that this year
22 you started at Bridgeport Middle School.

23 Is that right?

24 A. Yes.

1 Q. And are you in the sixth grade this year, B[REDACTED]?

2 A. Yes.

3 Q. Do you remember when you were in Norwood
4 Elementary School having a meeting and filling out a
5 document that was called a Gender Support Plan?

6 A. Yes, I remember that.

7 Q. And did you participate in the meeting where
8 that plan was discussed?

9 A. Yes.

10 Q. And did you think that that was a good meeting?

11 A. Yes.

12 Q. Were you happy with the outcome of what was
13 agreed upon at that meeting?

14 A. Yes.

15 Q. And then you had another one of those meetings
16 with school officials before you started at the Middle
17 School.

18 Is that right?

19 A. Yes.

20 Q. And I think that that meeting happened in May of
21 2021, which would have been the end of your fifth grade
22 year.

23 Is that --- does that sound right?

24 A. Yes.

1 Q. And were you a part of that meeting?

2 A. Yes.

3 Q. Do you remember who else was a part of that
4 meeting?

5 A. We had my new principal, Mr. Mazza, the
6 counselor there, Mrs. Shields and my mom.

7 Q. And were you comfortable with what was discussed
8 and agreed upon at that meeting?

9 A. Yes.

10 Q. And how has sixth grade been so far?

11 A. It's been good.

12 Q. Do you like Mr. Mazza?

13 A. Yes.

14 Q. He is your principal this year.
15 Is that right?

16 A. Yes.

17 Q. Do you feel like Mr. Mazza is supportive of you?

18 A. Yes, very.

19 Q. Good. And do you think that he treats you in a
20 kind and fair manner?

21 A. Yes.

22 Q. How are your classes this year? Do you like
23 them?

24 A. Yeah, I like my classes. I have really nice

1 teachers.

2 Q. I think I saw that you are a straight A student.
3 Maybe I saw that in something that your mom wrote.

4 Is that right?

5 A. Yes.

6 Q. Congratulations. Good for you. Do you feel
7 that your teachers are fair and supportive of you?

8 A. Yes.

9 Q. And are you comfortable with the arrangements
10 that the school has made for you this year in terms of
11 addressing how you want to present at school as being a
12 girl?

13 A. Yes.

14 Q. I know that we have discussed today sports and
15 your participation in sports, and I heard you say that
16 you love running.

17 Is that right?

18 A. Yes.

19 Q. And I understand that you tried out for the
20 girls cross-country team.

21 Is that correct?

22 A. Yes.

23 Q. So I want to talk to you a little bit about that
24 process. The cross-country team, did they do some

1 training and conditioning over the summer before the
2 year started?

3 A. Yes. There was a week of conditioning before
4 the season started.

5 Q. And did that happen over the summer?

6 A. Yes.

7 Q. Did you participate in that conditioning?

8 A. Yes.

9 Q. And how was that experience? Was that a
10 positive experience for you?

11 A. Yes.

12 Q. And then tryouts I think were in August for
13 cross-country.

14 Is that right?

15 A. Yes.

16 Q. And were you permitted to try out for the girls
17 cross-country team?

18 A. Could you ---?

19 Q. Let me rephrase that. Were you allowed to try
20 out for the girls cross-country team?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: Yes.

23 BY ATTORNEY DENIKER:

24 Q. And was that the team you wanted to try out for?

1 A. Yes.

2 Q. And did you make the team?

3 A. Yes.

4 Q. And I think you said this year they didn't have
5 any cuts.

6 Is that right?

7 A. Yes.

8 Q. Who were your coaches for cross-country this
9 year?

10 A. I had Ms. Schoonmaker, Ms. --- Coach Flesher and
11 Coach McBrayer.

12 Q. And did they coach both the girls and the boys
13 cross-country teams?

14 A. Yes.

15 Q. How was your season?

16 A. It was good.

17 Q. Did you like cross-country?

18 A. Yes.

19 Q. Did you believe that your coaches treated your
20 fairly and kindly this season?

21 A. Yes.

22 Q. Did you feel that they were supportive of you?

23 A. Yes.

24 Q. So you think it's fun to run up hills and

1 through water and mud, B[REDACTED]?

2 A. Yes.

3 Q. Because that's what cross-country is about,
4 isn't it?

5 A. Yes.

6 Q. It's a hard sport I think. Do you think it's
7 hard?

8 A. It depends if you've done it before and how much
9 you run normally.

10 Q. Do you think you would like to do it again?

11 A. Yes.

12 Q. And I heard you talk a little bit about track.
13 Are there other --- is track something that you're
14 interested in doing?

15 A. Yes.

16 Q. And I heard you said you might want to be --- do
17 the distance running in track.

18 Is that right?

19 A. Yes.

20 Q. You're a tough girl. Cross-country and distance
21 running and track, those are the hard once, aren't they?

22 ATTORNEY HARTNETT: Objection to form.

23 THE WITNESS: It just depends if you've
24 ran before or whatever you've done.

1 BY ATTORNEY DENIKER:

2 Q. I think that you're right. I think it depends
3 how good of shape you're in. Are you planning to
4 condition in the off season?

5 A. If it's not freezing, then yes.

6 Q. I understand. We were talking about what a cold
7 day it is here in West Virginia, isn't it?

8 A. Yes.

9 Q. B[REDACTED], has anybody in the school system ever
10 told you that Harrison County Schools wouldn't let you
11 participate on a girls sports team for any reason?

12 ATTORNEY HARTNETT: Objection to form.

13 THE WITNESS: After a bill was passed,
14 not --- I don't think there was because when the bill
15 was passed, I already went trying out and then we ---
16 then the whatever it was called where I could do ---
17 where I could play in the sports team from the Judge
18 came out.

19 BY ATTORNEY DENIKER:

20 Q. And I just want to make clear, did any of your
21 coaches ever tell you that you couldn't run on the girls
22 team?

23 A. No.

24 Q. Did Mr. Mazza ever tell you that you couldn't

1 run on the girls team?

2 A. No.

3 Q. Did any of your teachers tell you that you
4 couldn't run on the girls team?

5 A. No.

6 Q. And did Mrs. Stutler ever tell you that you
7 couldn't run on the girls team?

8 A. There was not a cross-country back then, so I
9 couldn't run whenever she was my principal, so ---.

10 Q. And that was when you were in elementary school.
11 Is that right?

12 A. Yes.

13 Q. And that's a good point that you brought up,
14 B[REDACTED]. There aren't any school sports in elementary
15 school in Harrison County, are there?

16 ATTORNEY HARTNETT: Objection to form.

17 THE WITNESS: No, you're very limited to
18 them and most of them aren't even in the school. You
19 have to do them outside of school.

20 BY ATTORNEY DENIKER:

21 Q. Did you have any school-sponsored sports at
22 Norwood Elementary School?

23 A. I don't know. I don't --- yeah, I don't know.

24 Q. Okay.

1 Did you try out or participate in any sports
2 that were run by the school while you were at Norwood?

3 A. I --- no.

4 Q. And so let me go back and ask you about Mrs.
5 Stutler. So it's kind of funny. You had Mrs. Stutler
6 as your principal at Norwood for a little bit.

7 Is that right?

8 A. Yes.

9 Q. And do you know where she went after she left
10 Norwood?

11 A. The Board of Education.

12 Q. She did. She went to the Central Board Office.
13 And did you know that she's now the Superintendant of
14 Schools?

15 A. I did not know that. I just knew she went to
16 the Board of Education.

17 Q. Well, she's actually your school superintendant
18 now. And have you had any communications with her since
19 she became superintendant?

20 A. No.

21 Q. Well, now you know who your superintendant is.
22 So if you see her at school you can call her
23 Superintendant Stutler now.

24 B [REDACTED], let me check my notes and see if I have

1 any other questions. I think I'm just about done.

2 B [REDACTED], did you have any conversations with
3 anybody that works for the Harrison County Board of
4 Education, teachers, principals, anybody like that,
5 coaches, regarding this House Bill 3293?

6 ATTORNEY HARTNETT: Objection to form.

7 THE WITNESS: Could you repeat the
8 question?

9 BY ATTORNEY DENIKER:

10 Q. Sure. Did you talk with anybody who works for
11 the Harrison County Board of Education or is somehow
12 connected with the Board of Education about House Bill
13 3293?

14 A. I think I did. I think I may have. I'm not
15 sure. I can't remember her name. It started with an S,
16 I know that.

17 Q. Do you know what that --- what the woman you're
18 referring to, do you know what her job was?

19 A. I do not know.

20 Q. Was it a teacher or a principal?

21 A. I don't know that. I just --- she was at one of
22 our meetings, and I think we may have talked a little
23 bit about that.

24 Q. And was that one of your Gender Support Plan

1 meetings?

2 A. Yes.

3 Q. Okay.

4 And was that the one before you were going into
5 Middle School?

6 A. I think. I can't remember. I just --- I can't
7 remember, but I think she either talked about that or
8 the Gender Support Plan.

9 Q. Okay.

10 Do you remember what she said about House Bill
11 3293?

12 A. I do not. Because she may have not talked about
13 it. She --- because she was there at one of our
14 meetings, so she could have not, but I think she did.

15 Q. But you don't remember what was said?

16 A. I don't.

17 Q. Okay.

18 Do you remember any conversations with anybody
19 at school or anybody affiliated with the school about
20 House Bill 3293?

21 ATTORNEY HARTNETT: Objection, form.

22 THE WITNESS: Not that I can think of off
23 the top of my head.

24 BY ATTORNEY DENIKER:

1 Q. And B[REDACTED], I should have clarified. Do you know
2 what I'm talking about when I say House Bill 3293?

3 A. Yeah, HB-3293. Yes.

4 Q. Okay.

5 I just wanted to make sure that you knew what I
6 was talking about. I thought that you did.

7 B[REDACTED], if you had any concerns about how you
8 were being treated at school, would you feel comfortable
9 going to talk to Mr. Mazza about that?

10 A. Yes. If I was being treated bad, then I would
11 talk to Mr. Mazza.

12 Q. Would you also feel comfortable going to some of
13 your teachers about that?

14 A. Yes.

15 Q. But do you feel that overall all of the teachers
16 and administrators, including your principals at
17 Bridgeport Middle School, have been supportive of your
18 status as a transgender student?

19 A. Could you repeat the question?

20 Q. Sure. And I apologize, it was a long one. Do
21 you believe that the teachers and administrators, and
22 that would include the principals and the other
23 employees at Bridgeport Middle School, have been
24 supportive of your transgender status?

1 A. Yes, I think they have been supportive.

2 Q. When you were on the cross-country team did you
3 believe your teammates were supportive of you?

4 A. Yes.

5 Q. And how about in school, have you had any issues
6 with other students or problems with students related to
7 your transgender status?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: No. No.

10 ATTORNEY DENIKER: B [REDACTED], those are all
11 the questions I have for you now. Thanks so much for
12 your time today.

13 ATTORNEY HARTNETT: We can take a break.
14 I think this might be a good time to take a break and
15 then we can come back for questions.

16 VIDEOGRAPHER: Okay. Going off the
17 record. The current time reads 2:28 p.m.

18 OFF VIDEOTAPE

19 ---

20 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

21 ---

22 ON VIDEOTAPE

23 VIDEOGRAPHER: We are back on the record.

24 The current time reads 2:42 p.m.

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EXAMINATION

BY ATTORNEY HAMMOND:

Q. Hi, B[REDACTED]. My name is Kristen Hammond. And I'm an attorney with the law firm of Bailey and Wyant. And I represent the West Virginia State Board of Education and the State Superintendant Clayton Burch. And I just have I think a few questions for you today. Do you know what the State Board of Education is?

A. I don't know.

Q. Okay.

And do you know or have you ever heard of the West Virginia State Superintendant Clayton Burch?

A. No.

Q. Okay.

So I guess since you do not know them, do you have any memory or any recall of maybe talking to anybody at the State level or at the Board of Education level regarding this lawsuit or regarding the House Bill or your sports? How about we limit it to that?

A. I don't remember if I have or not.

Q. Okay.

So you just don't recall. Could you possibly

1 have talked to somebody?

2 ATTORNEY HARTNETT: Objection to form.

3 THE WITNESS: Could you repeat the
4 question?

5 BY ATTORNEY HAMMOND:

6 Q. Yes. I just want to see --- you say you don't
7 recall talking to anybody. Do you think that it's a
8 possibility that you did talk to somebody or you don't
9 believe that you've talked to anybody?

10 A. I don't believe I've talked to anybody.

11 ATTORNEY HAMMOND: Okay. Thank you for
12 your time. I just had a couple of questions, and that's
13 all I have for you today. Thank you.

14 ---

15 EXAMINATION

16 ---

17 BY ATTORNEY DUCAR:

18 Q. Good afternoon, B[REDACTED]. I'm Timothy Ducar. I
19 represent the Intervenor in this case. I wanted to ask
20 you a question about Exhibit 29. Do you have that
21 available?

22 MS. JACKSON: Give me a second to find
23 it.

24 ATTORNEY DUCAR: Yes, that's it. Can you

1 scroll down just four paragraphs? Thank you.

2 BY ATTORNEY DUCAR:

3 Q. B[REDACTED], you had testified earlier that paragraph
4 that starts with I just want to run, that you had ---
5 that's a quote from you.

6 Correct?

7 A. Yes.

8 Q. I just wanted to know, is that a quote that you
9 wrote on paper and provided to somebody or wrote on a
10 computer and provided to somebody or did you actually
11 say that with your --- verbally?

12 A. I said that.

13 Q. Verbally?

14 A. Yeah, I said that verbally.

15 Q. Thank you. When did you decide you liked
16 running?

17 A. I've always liked running. It's from when I
18 could walk, I liked running.

19 ATTORNEY DUCAR: We're done with this
20 exhibit, Mr. Court Reporter. Thank you.

21 BY ATTORNEY DUCAR:

22 Q. When did you decide you wanted to try out for
23 the girls cross-country team?

24 A. I've always wanted to do cross-country, so when

1 I had the chance I decided I wanted to.

2 Q. And did you know about it because your brothers
3 ran?

4 A. Yes.

5 Q. Did your mom encourage you to try out for the
6 girls team?

7 ATTORNEY HARTNETT: Objection to form.

8 THE WITNESS: Yes. Yes, she encouraged
9 me.

10 BY ATTORNEY DUCAR:

11 Q. And these try-outs were last summer.

12 Correct?

13 A. Yes.

14 Q. Going into sixth grade?

15 A. Yes.

16 Q. Did your dad encourage you to try out for the
17 girls team?

18 A. Yes.

19 Q. Earlier you testified that you did well in
20 cross-country. Did you have any rankings?

21 ATTORNEY HARTNETT: Object to the form.

22 THE WITNESS: I --- could you rephrase
23 the question?

24 BY ATTORNEY DUCAR:

1 Q. Do you have any idea how well you did on your
2 team as an individual?

3 A. I don't know.

4 Q. Do they keep track of individual times and ---?

5 A. I think they put it on a website.

6 Q. Is that something you have ever seen?

7 A. My mom looks at it, but I don't.

8 Q. Do you have any indication whether or not you
9 were one of the better runners or not one of the better
10 runners on the team?

11 ATTORNEY HARTNETT: Objection to form.

12 THE WITNESS: I don't know. I think I
13 was good.

14 BY ATTORNEY DUCAR:

15 Q. Do you want to run cross-country again next
16 year?

17 A. Yes.

18 Q. Track tryouts are coming up in the spring.
19 Correct?

20 A. Yes.

21 Q. And you intend to try out for track?

22 A. Yes.

23 Q. Do you want to compete in any other sports
24 besides track and cross-country?

1 A. Not really.

2 Q. Why not?

3 A. I don't find any other sport really interesting
4 besides running.

5 Q. You said trusting?

6 A. Interesting.

7 Q. What does that mean?

8 A. What is interesting?

9 Q. Oh, interesting. I misheard you. Thank you.
10 And I think I misheard you on something else, so I'm
11 going to re-ask the question. Do you like to compete?

12 ATTORNEY HARTNETT: Objection to the
13 form.

14 THE WITNESS: I'm not a really
15 competitive person. I just play a sport because I think
16 it's fun.

17 BY ATTORNEY DUCAR:

18 Q. Do you consider yourself a good athlete?

19 A. Yes.

20 Q. What makes you a good athlete?

21 A. I'm good at running, good at the sports I do.

22 Q. Do you try hard to win?

23 A. Yes. Well --- yes.

24 Q. Have you talked to anybody else about playing

1 other sports other than cross-country and track?

2 A. I've talked to my mom about playing other
3 sports.

4 Q. What sports have you talked to her about?

5 A. Volleyball and maybe basketball.

6 Q. And describe for me what you guys talked about
7 as far as volleyball and basketball?

8 A. We talked about trying new sports.

9 Q. When did you two talk about those subjects?

10 A. I can't remember.

11 Q. Was it in the last six months or ---?

12 A. I don't --- I can't remember.

13 Q. Did you bring up the idea of playing volleyball
14 to her?

15 A. Yes.

16 Q. And what did she say?

17 A. That's a good idea.

18 Q. Did she say that about basketball as well?

19 A. I think she may have brought up basketball, but
20 I can't remember. It may have been me or her.

21 Q. Did you feel like she was encouraging you to
22 play volleyball?

23 A. She liked the idea. So I wouldn't say
24 encouraged, but she thought it was a good idea.

1 Q. Did she think playing basketball was a good
2 idea?

3 ATTORNEY HARTNETT: Objection to form.

4 THE WITNESS: I think so, yes.

5 BY ATTORNEY DUCAR:

6 Q. And as you sit here right now, you don't have
7 any plans to go out for a volleyball or a basketball
8 team.

9 Correct?

10 A. No, not right now. No.

11 Q. Do you foresee yourself running on the
12 cross-country team or on the track team later in high
13 school?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: Yes, yes.

16 BY ATTORNEY DUCAR:

17 Q. Do you see yourself running on the cross-country
18 team or track team if you ever go to college on a
19 college team?

20 ATTORNEY HARTNETT: Same objection.

21 Objection to form.

22 THE WITNESS: Maybe, but I haven't
23 thought that far ahead.

24 BY ATTORNEY DUCAR:

1 Q. Sure. When was the first time you remember
2 thinking that you wanted to be a girl?

3 ATTORNEY HARTNETT: Objection to form.

4 THE WITNESS: I can't remember.

5 BY ATTORNEY DUCAR:

6 Q. Do you remember the first time you talked to
7 somebody about the fact that you wanted to become a
8 girl?

9 ATTORNEY HARTNETT: Objection.

10 THE WITNESS: I also can't --- I don't
11 remember.

12 BY ATTORNEY DUCAR:

13 Q. There's a statement in the record that indicates
14 you feel like a girl. What does feeling like a girl
15 mean?

16 ATTORNEY HARTNETT: Objection to form.

17 THE WITNESS: I just know that I want to
18 be a girl and I feel like a girl inside.

19 BY ATTORNEY DUCAR:

20 Q. You picked out the name B [REDACTED] for yourself.
21 Correct?

22 A. Yes.

23 Q. When did you do that?

24 A. Whenever I transitioned.

1 Q. Going into fourth grade?

2 A. Yes.

3 Q. How did you pick that name?

4 A. I've always liked it.

5 Q. Me, too. I have a daughter named B [REDACTED]

6 Did anyone else help you pick that name?

7 A. I think my friends liked that name, too.

8 Q. When did you start wearing girl's clothing at
9 home?

10 A. I mean, I've always wanted my mom's clothes, so
11 I really started dressing like that maybe at home, third
12 grade, the year of third grade.

13 Q. Did you ask your parents if you could do it or
14 did you just do it?

15 A. I just did it.

16 Q. What was their reaction?

17 A. Positive.

18 Q. When did you first ask your parents to refer to
19 you as she or her?

20 A. When I transitioned.

21 Q. Going into fourth grade?

22 A. Yes.

23 Q. When did you start presenting as a girl in other
24 ways at home? I guess that would be makeup, other ways

1 besides clothing.

2 ATTORNEY HARTNETT: Objection to form.

3 THE WITNESS: Could you restate the
4 question, please?

5 BY ATTORNEY DUCAR:

6 Q. Yeah. I'll withdraw that question.

7 When did you start presenting as a girl at
8 home?

9 A. It started when I was really young.

10 ATTORNEY HARTNETT: Objection.

11 THE WITNESS: But I fully started wearing
12 clothes on my own, not wearing my mother's, around the
13 third-grade year.

14 BY ATTORNEY DUCAR:

15 Q. Do you wear jewelry?

16 A. Not a lot. I used to wear earrings but not
17 anymore.

18 Q. Do you wear makeup?

19 A. No.

20 Q. Are there other ways you presented at home as a
21 girl besides dressing as a girl?

22 A. Well, I always wanted girly --- a girly room and
23 girly items.

24 Q. And you started wearing girls clothing in fourth

1 grade.

2 Correct?

3 A. Yes.

4 Q. Do you recall the first time you saw a doctor or
5 a therapist about your desire to be a girl?

6 A. I can't remember.

7 Q. How did you first learn about puberty blocking
8 treatment?

9 A. Could you repeat the question, please?

10 Q. How did you first learn about puberty blocking
11 treatment?

12 A. My mom. My mom told me about it whenever I
13 transitioned.

14 Q. And is that something that you wanted to do?

15 A. Yes.

16 Q. At some point you wanted to start hormone
17 therapy?

18 A. Yes.

19 Q. Do you know what that means?

20 A. Getting female hormones.

21 Q. B[REDACTED], do you ever feel anxious?

22 ATTORNEY HARTNETT: Objection to form.

23 ATTORNEY DUCAR: Let me restate that.

24 That's fair.

1 BY ATTORNEY DUCAR:

2 Q. Does the fact that you are transitioning make
3 you feel anxious?

4 A. No.

5 Q. Does the fact that you're part of this lawsuit
6 make you feel anxious?

7 ATTORNEY HARTNETT: Objection to form.

8 THE WITNESS: No.

9 BY ATTORNEY DUCAR:

10 Q. Do you know what the word anxious means?

11 A. Nervous.

12 Q. Do you know what gender dysphoria is?

13 A. Yes.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED]

19 ATTORNEY DUCAR: Thank you, B [REDACTED]. I
20 have no further questions for you today.

21 ATTORNEY CAPEHART: We have no further
22 questions at this time. We're just going to note as we
23 have in the last two depositions the possibility of
24 having to revisit something. If for some reason some

1 medical records would could to light, although I
2 understand that's unlikely, we're still noting that, but
3 you would object to that?

4 ATTORNEY HARTNETT: Yes, we object, but
5 we appreciate you making the record you want to make.

6 ATTORNEY CAPEHART: Thank you.

7 ATTORNEY HARTNETT: I'm sorry. Just on
8 that point, though, I mean, is there any specific item
9 that you lack today that you need to make a record?

10 ATTORNEY CAPEHART: I think our concern
11 has been the possibility of new records that might be
12 produced following the depositions.

13 ATTORNEY HARTNETT: Okay. Thank you.

14 ATTORNEY CAPEHART: Thank you.

15 ATTORNEY HARTNETT: I mean, is anyone
16 else going to have any further questioning? Sorry.
17 Just for the witness's awareness, we're confirming
18 whether or not there will be additional questioning from
19 any Defendant.

20 ATTORNEY ROGERS: I don't have any
21 further questions.

22 ATTORNEY DENIKER: I have no further
23 questions. Thank you again for your time today, B[REDACTED].

24 ATTORNEY HAMMOND: I have no further

1 questions. Thank you.

2 ATTORNEY DUCAR: I have nothing further.

3 Thank you.

4 ATTORNEY HARTNETT: And we also have no
5 questions for the witness today.

6 VIDEOGRAPHER: Okay. If there are no
7 further questions, that concludes today's deposition.
8 And the current time reads 3:01 p.m.

9 COURT REPORTER: Is it reading and
10 signing for your client?

11 ATTORNEY HARTNETT: Yes. I'm sorry. I
12 meant to say that on the record.

13 * * * * *

14 VIDEOTAPED VIDEOCONFERENCE DEPOSITION

15 CONCLUDED AT 3:01 P.M.

16 * * * * *

17

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1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

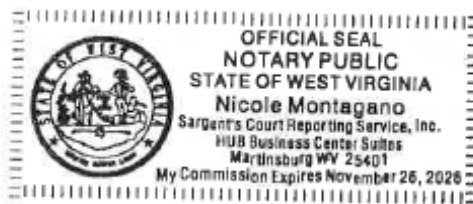
3 I, Nicole Montagano, a Notary Public in
4 and for the State of West Virginia, do hereby
5 certify:

6 That the witness whose testimony appears
7 in the foregoing deposition, was duly sworn by me
8 on said date, and that the transcribed deposition
9 of said witness is a true record of the testimony
10 given by said witness;

11 That the proceeding is herein recorded
12 fully and accurately;

13 That I am neither attorney nor counsel
14 for, nor related to any of the parties to the
15 action in which these depositions were taken, and
16 further that I am not a relative of any attorney
17 or counsel employed by the parties hereto, or
18 financially interested in this action.

19 I certify that the attached transcript
20 meets the requirements set forth within article
21 twenty-seven, chapter forty-seven of the West
22 Virginia.



Nicole Montagano
Nicole Montagano,
Court Reporter

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

* * * * *

B.P.J., by her next friend and	*
Mother, HEATHER JACKSON,	*
Plaintiff	* Case No.
vs.	* 2:21-CV-00316
WEST VIRGINIA STATE BOARD OF	*
EDUCATION, HARRISON COUNTY	*
BOARD OF EDUCATION, WEST	*
VIRGINIA SECONDARY SCHOOL	*
ACTIVITIES COMMISSION, W.	*
CLAYTON BURCH in his official	* CONFIDENTIAL
Capacity as State Superintendent,	* VIDEOTAPED
DORA STUTLER in her official	* VIDEOCONFERENCE
Capacity as Harrison County	* DEPOSITION
Superintendent, PATRICK MORRISEY	* OF
In his official capacity as	* GERALD MONTANO, D.O.
Attorney General, and THE STATE	* February 24, 2022
OF WEST VIRGINIA,	*
Defendants	*

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by the certifying agency.

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1 CONFIDENTIAL VIDEOTAPED VIDEOCONFERENCE DEPOSITION
 2 OF
 3 GERALD MONTANO, D.O., taken on behalf of the Defendant,
 4 State of West Virginia herein, pursuant to the Rules of
 5 Civil Procedure, taken before me, the undersigned, Lacey
 6 C. Scott, a Court Reporter and Notary Public in and for
 7 the State of West Virginia, on Thursday, February 24,
 8 2022, beginning at 10:06 a.m.
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 10
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A P P E A R A N C E S (cont'd)

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 COUNSEL FOR GERALD MONTANO, D.O.

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EXHIBIT PAGE

NUMBER	DESCRIPTION	PAGE	IDENTIFIED
4	Adolescent Medicine Evaluation	--	
5	Discharge Summary	--	
6	Outpatient Evaluations	--	
7	Outpatient Evaluations	--	
8	Adolescent Medicine Evaluation	--	
9	Progress Note	--	
11A	Progress Note	--	
11B	Progress Note	--	
33	Standards of Care for Health of Transexual, and Gender Nonconforming People	--	
36	Adolescent Medicine Questionnaire	--	
37	Doctor Note	--	
38	Doctor Note	--	
39	Doctor Note	--	
40	Procedure Note	--	
42	Doctor Note	--	
43	Doctor Note	--	
45	Confidential Disclosure Statement	--	

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I N D E X

DISCUSSION AMONG PARTIES 10 - 14
 WITNESS: GERALD MONTANO, D.O.
 EXAMINATION
 By Attorney Tryon 14 - 159
 DISCUSSION AMONG PARTIES 159 - 161
 CERTIFICATE 162

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OBJECTION PAGE

ATTORNEY	PAGE
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STIPULATION

(It is hereby stipulated and agreed by and between counsel for the respective parties that reading, signing, sealing, certification and filing are not waived.)

PROCEEDINGS

VIDEOGRAPHER: We're now on the record. My name is Jacob Stock. I'm a Certified Legal Video Specialist employed by Sargent's Court Reporting Services. The date today is February 24th, 2022. The current time reads 10:06 a.m. This deposition is being taken remotely by video conference. The caption of this case is in the the United States District Court for the Southern District of West Virginia, Charleston Division. BPJ by her next friend and mother, Heather Jackson, versus West Virginia State Board of Education, et al. Case number 2:21-CV-00316. The name of the witness is Gerald Montano, D.O. Will the attorneys present state their names and the parties they represent?

ATTORNEY TRYON: This is David Tryon representing the State of West Virginia. Curtis

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ATTORNEY MORGAN: This is Kelly Morgan on behalf of the West Virginia Board of Education and Superintendent Burch. Also on phone is Kristen Hammond with my office as well. We do not need the real time or a rough copy.

ATTORNEY GREEN: This is Roberta Green here on behalf of West Virginia Secondary School Activities Commission. We do not need the real time feed nor do we want the rough copy of the transcript.

ATTORNEY DUCAR: This is Tim Ducar once again. I didn't --- I didn't talk about the rough draft, and we don't need that as well.

ATTORNEY BLOCK: This is Josh Block for Plaintiff again. We don't need the real time either.

VIDEOGRAPHER: And if that's everybody, the court reporter can swear in the witness and we can begin.

ATTORNEY BARR: Sorry, this is Andrew Barr for the Plaintiff. I got kicked out of the room and just reentered. I'm with Cooley L.L.P.

VIDEOGRAPHER: Okay.

GERALD MONTANO, D.O.,
CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND

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Capehart, my colleague, is also on the line.

ATTORNEY BLOCK: This is Josh Block, representing the Plaintiff. And I have other colleagues on the line that will identify themselves.

ATTORNEY SWAMINATHAN: This is Sruti Swaminathan from Lambda Legal representing the Plaintiff.

ATTORNEY HARTNETT:
This is Kathleen Hartnett from Cooley representing the Plaintiff.

ATTORNEY KANG: This is Katelyn Kang from Cooley representing Plaintiff.

ATTORNEY JONES: This is Ron Jones representing Doctor Montano.

ATTORNEY CROPP: My name is Jeffrey Cropp of Steptoe & Johnson, representing Defendants Harrison County Board of Education and Dora Stutler.

ATTORNEY HELSTROM: This is Zoe Helstrom from Cooley LLP representing the Plaintiff.

ATTORNEY DUCAR: This is Timothy Ducar on behalf of the intervenor. Also on the line is my colleague, Christiana Holcomb. I'd like to note that I am viewing the real time transcript and the intervenor is not going to participate in the charges for that.

Page 13

HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS FOLLOWS:

ATTORNEY TRYON: Thank you. Before we actually get started, I was on muted --- I was mute --- muted, so I meant to say there is a couple things we wanted to hit right before we actually get started with regard to how we're handling objections. I think we can do that with the witness present and in discussion with Mr. Jones prior to this. And as we have done in prior depositions to make things smoothly, these are the --- what I would like to propose as far as how objections are handled. That the objections would be limited to objections to form, objections to scope, specifically as to that this doctor is not going to serve as an expert witness and objections to terminology since we have various terminology that each party prefers to use and objections for privilege if the witness's counsel needs to assert that. Is that satisfactory to you, Mr. Block?

ATTORNEY BLOCK: Yes, it is.

ATTORNEY TRYON: And Mr. Jones, that's satisfactory to you.

ATTORNEY JONES: Yes, it is.

ATTORNEY TRYON: And Mr. Jones, for some

1 reason your picture is frozen for me. That's okay, but
2 just FYI for your information. Does anybody else have
3 any objection to that procedure? Okay. Then we will go
4 ahead and move forward.

5 ---
6 EXAMINATION
7 ---

8 BY ATTORNEY TRYON:

9 **Q. Mr. Montano, thank you very much for joining me**
10 **this morning. I appreciate your time, I know your time**
11 **is valuable. And I will try to make this as smooth and**
12 **move through this as quickly as possible. So thank you**
13 **again?**

14 A. You're welcome.

15 **Q. First of all, who's there with you for the**
16 **record?**

17 A. Ron Jones. I'm sorry, my lawyer.

18 **Q. And you are represented by counsel?**

19 A. Yes.

20 **Q. And who is that?**

21 A. Ron Jones.

22 **Q. Have you ever been deposed before?**

23 A. Yes.

24 **Q. Tell me about that. What case was that in?**

1 **Q. Yes, that was someone who --- a female that**
2 **wanted to take testosterone?**

3 A. It was a --- someone who was assigned a female
4 at birth who identified as male.

5 **Q. Have you been deposed any other times besides**
6 **that?**

7 A. No.

8 **Q. Have you ever been sued?**

9 A. No.

10 **Q. Have you ever testified at trial?**

11 A. No.

12 **Q. So as we go through here, just for everyone's**
13 **reference, we're in Federal Court, so the Federal Rules**
14 **of Civil Procedure apply here. And Federal Rules of**
15 **Civil Procedure 30(c)(2) regarding objections says that**
16 **an objection at the time of examination, whether to**
17 **evidence to party's conduct or to the officer's**
18 **qualifications, to the manner of taking deposition or to**
19 **any other aspect of the deposition must be noted on the**
20 **record, but the examination still proceeds. And we**
21 **discussed how we're going to do objections.**

22 **And Mr. Montano --- Doctor Montano, if your**
23 **counsel or any other lawyer objects, then you are still**
24 **required to answer unless instructed not to by your**

1 A. It was regarding a case of whether or not to
2 allow one of my patients to proceed with
3 gender-affirming hormones because their parents
4 objected.

5 **Q. When was that?**

6 A. I recall 2018.

7 **Q. And were you sued in that case?**

8 A. No.

9 **Q. Who was suing whom?**

10 A. It wasn't a lawsuit, it was trying to determine
11 if this kid needed care, and I served as a witness.

12 **Q. You served as an expert witness?**

13 A. No, witness to that person's care.

14 **Q. And what was the result of that?**

15 A. The patient was allowed to get on
16 gender-affirming hormones.

17 **Q. What hormones were those?**

18 A. Testosterone.

19 **Q. So that was a female who wanted to take**
20 **testosterone.**

21 **Is that right?**

22 A. Can you repeat?

23 **Q. Yes.**

24 A. Can you repeat the question?

1 lawyer.

2 **Do you understand that?**

3 A. Yes.

4 **Q. And I would ask you to make sure that you answer**
5 **verbally as opposed to nodding or shaking your head for**
6 **the court reporter's benefit.**

7 **Okay?**

8 A. Yes.

9 **Q. And if you don't understand a question, please**
10 **tell me and I will try and clarify my question. And if**
11 **you answer the question, that indicates to me that you**
12 **do understand the question.**

13 **So do you understand that?**

14 A. Yes.

15 **Q. And finally, if you need a break, let me know**
16 **and we will do our best to break for you. And the only**
17 **qualifications on that is that we can't take a break**
18 **while a question is pending.**

19 **All right?**

20 A. Yes.

21 **Q. So are you familiar with the subject of the**
22 **lawsuit that we're here for?**

23 A. Yes.

24 **Q. Are you familiar with the law that's involved,**

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1 commonly known as by some of us as Save Women's Sports
2 Act, also known as HB 3293?

3 A. Yes.

4 Q. Are you aware of who BPJ is?

5 A. Yes.

6 Q. What is your understanding of who BPJ is?

7 A. She is the Plaintiff of that case.

8 Q. Has BPJ been your client in the past?

9 A. Yes.

10 Q. Does BPJ continue to be your patient?

11 A. No.

12 Q. Do you know BPJ's full name?

13 A. Yes.

14 Q. Okay.

15 I understand there's some concern about using a
16 child's birth name in these circumstances, but can you
17 give me the full name as you understand it to be?

18 ATTORNEY BLOCK: Objection. Do you mean
19 --- do you want the name assigned at birth or do you
20 want the name that BPJ goes by?

21 BY ATTORNEY TRYON:

22 Q. Give me the name that you use for BPJ?

23 A. E█████ P█████ r-█████

24 Q. But you're aware of the birth name.

Page 19

1 Correct?

2 A. Yes.

3 Q. Have you brought any documents to the deposition
4 today?

5 A. Yes.

6 Q. What documents have you brought?

7 A. I brought medical records and also the
8 psychosocial assessment.

9 ATTORNEY JONES: Just for the record,
10 this is Ron Jones, these are the records that were
11 provided.

12 ATTORNEY TRYON: I'm sorry. I didn't
13 hear you, Mr. Jones.

14 ATTORNEY JONES: I'm sorry. Can you hear
15 me now?

16 ATTORNEY TRYON: Yes.

17 ATTORNEY JONES: I said just for the
18 record these were the records that were provided by
19 counsel.

20 ATTORNEY TRYON: Okay.

21 ATTORNEY JONES: Based on the nature that
22 this is a virtual deposition.

23 BY ATTORNEY TRYON:

24 Q. So the medical records that we have seen have

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1 your name on them and --- on many of them and some of
2 them say that you edited them or reviewed them or that
3 you were the author. Is that a typical process?

4 A. Yes.

5 Q. And if it says that you were --- that you either
6 edited them or reviewed them or that you were the
7 author, is it safe to rely upon the accuracy of those
8 statements that you did so?

9 A. Yes.

10 Q. And when did you last review the documents that
11 you have --- let me rephrase that. When is the last
12 time you reviewed the medical records for BPJ?

13 A. This morning.

14 Q. Have you gone through what you believed to be
15 all of the medical records for BPJ from your offices?

16 A. Yes.

17 Q. Are they correct?

18 ATTORNEY JONES: Objection to form. You
19 can answer.

20 THE WITNESS: Yes.

21 BY ATTORNEY TRYON:

22 Q. Is there anything you saw that's incorrect that
23 you need to correct before we review them.

24 ATTORNEY JONES: Objection to form. You

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1 can answer.

2 THE WITNESS: Can you repeat the question
3 again?

4 BY ATTORNEY TRYON:

5 Q. Yes. Did you see anything in there during the
6 review that you believe is incorrect that you need to
7 correct before we review them?

8 A. No.

9 Q. Have you had any type of communications, whether
10 written or oral, with BPJ's lawyers?

11 A. Yes.

12 Q. When was the first time that you did?

13 A. I don't recall the exact date, but I believe it
14 was early January.

15 Q. Do you remember who you spoke with? Let me
16 rephrase that. What type of communication was it?

17 A. It was a phone call.

18 Q. Who was it with?

19 A. Avatara Smith-Carrington.

20 Q. And who initiated that phone call?

21 A. Avatara or Ms. Smith Carrington.

22 ATTORNEY BLOCK: Just objection. Avatara
23 uses they/them pronouns.

24 THE WITNESS: Thank you.

1 BY ATTORNEY TRYON:

2 **Q. What was discussed?**

3 A. What was discussed was that the lawyers from
4 West Virginia intended to depose me as a witness to
5 BPJ's case.

6 **Q. So what else was discussed? Tell me about the
7 details of that conversation.**

8 A. They just summarized what was the nature of the
9 case and why they --- why the lawyers from West Virginia
10 wanted to talk to me about it.

11 **Q. What did you tell Avatara?**

12 A. I just said that, okay, what would I expect
13 next.

14 **Q. What were you told to expect?**

15 A. That they will contact me and request a
16 deposition and that's all that I recall.

17 **Q. Did they --- did ---?**

18 ATTORNEY TRYON: I'm sorry. Josh, what
19 is the first name again. Avatara?

20 ATTORNEY BLOCK: Avatara.

21 ATTORNEY TRYON: Can you spell that for
22 me?

23 ATTORNEY BLOCK: Yes, A-V-A-T-A-R-A.

24 ATTORNEY TRYON: Thank you.

1 A. Yes.

2 **Q. How do you know Doctor Kidd?**

3 A. I am one of her mentors when she was a fellow.

4 **Q. What does that mean to be a mentor?**

5 A. It means being an advisor on academic and career
6 advancement.

7 **Q. When is the last time you had any communications
8 with Doctor Kidd?**

9 A. As I recall, two weeks ago.

10 **Q. What was that communication?**

11 A. Can you rephrase the question?

12 **Q. Did you have a phone call or a written
13 communication with Doctor Kidd two weeks ago?**

14 A. Phone call.

15 **Q. And what was the subject of that phone call?**

16 A. How stressed we were about this case.

17 **Q. And who called whom?**

18 A. As I recall, she called me.

19 **Q. What else was discussed besides the fact that
20 you were both stressed about the case?**

21 A. That was all.

22 **Q. Was that before or after her deposition?**

23 A. I don't recall.

24 **Q. Did she tell you anything about her deposition?**

1 BY ATTORNEY TRYON:

2 **Q. Did Avatara tell you what you should say in the
3 deposition?**

4 A. No.

5 **Q. Any other communications with Plaintiff's
6 attorneys?**

7 A. With --- if I can --- Sruti Swaminathan
8 regarding medical records.

9 **Q. When was that?**

10 A. As I recall, the end of January.

11 **Q. Was it a phone call or other communication?**

12 A. Phone call.

13 **Q. What happened in that phone call?**

14 A. Sruti asked about certain medical records and
15 where he can get them, and I directed her to the
16 Department that handles medical records.

17 **Q. Anything else?**

18 A. No.

19 **Q. Any other communications?**

20 A. None.

21 **Q. So only two communications with Plaintiff's
22 counsel?**

23 A. Yes.

24 **Q. Do you know a Doctor Kacie Kidd?**

1 A. No.

2 **Q. Why was she stressed about this case?**

3 A. I think any physician being disposed (sic) can
4 be stressful.

5 **Q. And you said you were also stressed about this
6 case?**

7 A. Yes.

8 **Q. And why is that?**

9 A. Again, any physician who's deposed, it's always
10 a stressful experience.

11 **Q. Well, I will try to not to make this stressful
12 for you. I'll try and do my best to give you
13 straightforward questions. Anything else that was
14 discussed in that conversation?**

15 A. No.

16 **Q. Any other communications with Doctor Kidd in the
17 past two weeks?**

18 ATTORNEY JONES: Objection to form.
19 Regarding this matter?

20 ATTORNEY TRYON: Yes regarding this
21 matter.

22 THE WITNESS: None.

23 BY ATTORNEY TRYON:

24 **Q. So there's some things I want to understand that**

1 I have read during the course of this case that I think
2 you may have had some involvement with. So do you know
3 what a [REDACTED] [REDACTED] is?

4 A. Yes.

5 Q. And can you tell me what that is?

6 A. It is a form of pubertal blocker.

7 Q. What chemical is in a [REDACTED] implant?

8 A. The general term would be a
9 gonadotropin-releasing hormone agonist.

10 Q. I think I've seen the term [REDACTED] What is
11 that?

12 A. That is the generic term of the medication.

13 Q. I understand that that's been FDA approved for
14 precocious puberty.

15 Is that right?

16 A. Yes.

17 Q. I have also seen that it is using it for a
18 puberty delay is an off-label use and is not FDA
19 approved.

20 Is that right?

21 A. Can you be specific when you said not FDA
22 approved for which condition?

23 Q. Sure. It is my understanding it is not FDA
24 approved just for puberty delay but only for precocious

1 question?

2 BY ATTORNEY TRYON:

3 Q. The actual [REDACTED] [REDACTED] is similar to a stick.
4 Is that right?

5 A. Yes.

6 Q. Can you describe the diameter and the length?

7 A. It's about four centimeters.

8 Q. Long?

9 A. Yes.

10 Q. Right --- okay.

11 And how thick is it?

12 A. I estimate around five millimeters.

13 Q. And how long does it work?

14 A. It is FDA approved for one year, but studies
15 show that it could be extended into two.

16 Q. And how much does it cost?

17 A. It depends. If it's the [REDACTED] brand, it's
18 about \$4,000. The [REDACTED] brand is \$40,000.

19 Q. Did you say 4-0 thousand?

20 A. That is correct.

21 Q. I have also read about a Nexplanon implant.
22 What is that?

23 A. That is a form of birth control.

24 Q. What chemical is used in the Nexplanon implant?

1 puberty.

2 Is that right?

3 ATTORNEY BLOCK: Objection to form.

4 THE WITNESS: It is not FDA approved for
5 treating gender dysphoria.

6 BY ATTORNEY TRYON:

7 Q. What is the significance of that?

8 ATTORNEY JONES: Objection to form.

9 THE WITNESS: I don't understand the
10 question. Can you rephrase it?

11 ATTORNEY TRYON: I'll move on.

12 BY ATTORNEY TRYON:

13 Q. How does Histrelin work? What does it do?

14 A. So what it does, in simple terms, it blocks the
15 communication between the hypothalamus and the
16 pituitary. And what that ultimately does is that it
17 stops the gonads from producing either testosterone and
18 estrogen, which are important hormones in puberty
19 development.

20 Q. And the [REDACTED] [REDACTED] itself is --- well, tell
21 me what that is.

22 ATTORNEY BLOCK: Objection to form.

23 ATTORNEY TRYON: Go ahead.

24 THE WITNESS: Can you rephrase the

1 A. Etonogestrel. And let me know if you want me to
2 spell that.

3 Q. I've got it. And that's FDA approved for
4 contraception.

5 Is that right?

6 A. Yes.

7 Q. That's not used for puberty delay, is it?

8 A. No.

9 Q. So let me go back and get some basic
10 information. Give me your --- if you wouldn't mind
11 giving me your business address please?

12 A. 120 Lytton, L-Y-T, as in Timothy, T as in
13 Timothy, O-N, as in Nancy, Suite M, as in Michael, 060,
14 Pittsburgh PA, 15213.

15 Q. What is your business number?

16 A. Can you rephrase the question?

17 Q. Do you have a work number?

18 A. As in a phone number?

19 Q. Yes. Sorry.

20 A. (412) 692-6356.

21 Q. And I'm going to ask for your home number or
22 cell number, whichever is preferably, in the event that
23 for some reason you're not represented by counsel and we
24 need to get a hold of you. That would be only if your

1 counsel is --- if you are no longer represented would I
2 ever use this number.

3 A. Cell phone number?

4 Q. Yes.

5 A. [REDACTED]

6 Q. So on your website it shows that you are Board
7 Certified with the American Board of Pediatrics in
8 Pediatrics and Adolescent Medicine.

9 Is that accurate?

10 A. Yes.

11 Q. And when did you get that Board Certification?

12 A. Can you clarify which one?

13 Q. Oh, it's more than one?

14 A. Yes.

15 Q. Let's start with pediatrics.

16 A. 2013.

17 Q. And Adolescent Medicine?

18 A. 2020.

19 Q. What does it take to get Board Certification in
20 Pediatrics?

21 A. You are required to go to medical school and
22 graduate and then you have to complete a three-year
23 residency in pediatrics in order to sit for the Boards.

24 Q. Anything else?

1 A. Yes.

2 Q. When did you become that --- when did you get
3 that title?

4 A. As I recall, I believe it was 2018.

5 Q. What do you do in that position?

6 A. So I create a program and work with several
7 colleagues in delivering gender-affirming care and
8 oversee to make sure that is done in a correct manner.

9 Q. When you say you create a program, can you tell
10 me what that means?

11 A. That means create --- gathering a group of
12 professionals in mental health, in pediatrics and
13 nursing and basically discussing and creating what kind
14 of services we can provide for our patients.

15 Q. In that position do you supervise others?

16 A. Yes.

17 Q. How many people do you supervise?

18 A. Estimation currently, around nine people.

19 Q. Do you see patients in that capacity?

20 A. Yes.

21 Q. And I read that you are also an Assistant
22 Professor of pediatrics at the University of Pittsburgh
23 School of Medicine.

24 Is that correct?

1 A. Passing the exam.

2 Q. And then for Adolescent Medicine, what do you
3 have to do for that?

4 A. Not only do you have to go through or complete a
5 pediatric residency, you will need to complete an
6 adolescent medicine fellowship and a research project
7 during that time and then sit for the Boards and pass
8 it.

9 Q. Is it a different set of Boards?

10 A. Yes.

11 Q. What is the significance of having a
12 certification in pediatrics?

13 A. It verifies that you have the correct and
14 acceptable knowledge in your field.

15 Q. Are there things that it enables you to do
16 professionally that otherwise you could not do?

17 A. Technically you can practice without Board
18 Certification, but some hospitals will not allow you to
19 practice in their facility if you are not Board
20 Certified or at least Board Eligible.

21 Q. I also read that you are the Medical Director on
22 the Gender and Sexuality Development Program at UPMC
23 Children's Hospital of Pittsburgh.

24 Is that correct?

1 A. Yes.

2 Q. When did you take that position?

3 A. That would be in 2017.

4 Q. What do you do in that position?

5 A. So I'm primarily responsible for the teaching of
6 our residents and assisting in research.

7 Q. When you say teach residents, is this in a
8 classroom setting?

9 A. No.

10 Q. Tell me about it then.

11 A. So I teach residents in terms of inside the
12 clinic and supervise their care of the patients there.

13 Q. Tell me about the clinic.

14 A. Can you be more specific?

15 Q. All right. I will be. Trying to understand
16 what --- what this clinic is, where it is, what it does,
17 how many patients it has. Let's just start in general,
18 what does --- what's the name of the clinic?

19 A. The Center for Adolescent and Young Adult
20 Health.

21 Q. Where is it located?

22 A. In the University Center at the same address as
23 where I work.

24 Q. Are you employed by the Center for Adolescent

1 **and Young Adult Health?**

2 A. No, I'm employed by University of Pittsburgh
3 Physicians.

4 **Q. But you work at the Center for Adolescent and**
5 **Young Adult Health?**

6 A. Yes.

7 **Q. I'm just going to call that the clinic from now**
8 **on. Does the clinic see patients there?**

9 A. Yes.

10 **Q. How many doctors see patients there?**

11 A. Counting how much ---?

12 **Q. Let me clarify my question. How many doctors**
13 **are there that see patients there?**

14 A. By my estimation, around eight.

15 ATTORNEY TRYON: So I hear somebody's
16 kids, I think.

17 BY ATTORNEY TRYON:

18 **Q. I don't know if that --- where that's at. Is**
19 **that where you're at Doctor Montano?**

20 A. No.

21 ATTORNEY BLOCK: They're mine. Sorry.

22 ATTORNEY TRYON: That's okay, Josh. I
23 was wondering if they were somewhere in my office. But
24 that's okay, Josh. You do what you got to do.

1 Pittsburgh.

2 **Q. Any other place where you see patients?**

3 A. No.

4 **Q. On your website it says that you received your**
5 **medical degree from Kansas City University of Medicine**
6 **in bioscience.**

7 **Is that right?**

8 A. Yes.

9 **Q. And when was that?**

10 A. 2010.

11 **Q. And your master's degree in clinical research**
12 **from the University of Pittsburgh.**

13 **Is that right?**

14 A. Yes.

15 **Q. And when was that?**

16 A. 2016.

17 **Q. Is there a particular major or emphasis that you**
18 **had in your master's degree?**

19 A. Clinical research.

20 **Q. Okay.**

21 **And then it says that you completed a**
22 **pediatrics residency at Saint John Children's Hospital.**

23 **Is that right?**

24 A. Yes.

1 BY ATTORNEY TRYON:

2 **Q. So about how many patients come through there in**
3 **a week?**

4 A. I don't know.

5 **Q. Would it be 10, 20, 100?**

6 A. I don't know. I don't keep count of that.

7 **Q. What is the funding for the clinic --- let me**
8 **rephrase that. Where does the funding come from for the**
9 **clinic?**

10 ATTORNEY BLOCK: Objection, scope.

11 ATTORNEY TRYON: Go ahead. I'm just
12 trying to --- I'm just trying understand. Let me
13 actually ask a different question.

14 BY ATTORNEY TRYON:

15 **Q. Is the clinic separate or is it part of a larger**
16 **organization?**

17 A. It's part of a larger organizations.

18 **Q. Which is what?**

19 A. UPMC Children's Hospital of Pittsburgh.

20 **Q. Is that the only place where you see patients,**
21 **at the clinic, that is?**

22 A. No.

23 **Q. Where else do you see patients?**

24 A. At the Student Health Center at University of

1 **Q. And when did you complete that residency?**

2 A. 2013.

3 **Q. And then your fellowship in adolescent medicine**
4 **at UPMC Children's Hospital, Pittsburgh.**

5 **Is that right?**

6 A. Yes.

7 **Q. What year was that?**

8 A. 2016.

9 **Q. And your post-doctoral research --- sorry. You**
10 **were a post-doctoral research scholar in primary care**
11 **research at the University of Pittsburgh.**

12 **Right?**

13 A. Yes.

14 **Q. When was that?**

15 A. From 2014 to 2016.

16 **Q. What does that mean to be a research scholar?**

17 A. You get training on how to conduct research
18 under supervision from a mentor.

19 **Q. On your website it says that your interests**
20 **include increasing healthcare access for transgender and**
21 **gender-diverse youth and advocating for government and**
22 **systems policies that protect and enhance their health**
23 **and wellbeing. Is that accurate as stated on your**
24 **website?**

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1 A. Yes.

2 **Q. And what government policies do you advocate in**
3 **this context?**

4 A. Any government policies that would make any
5 transperson's environment a safe place to be.

6 **Q. Are there any specific government policies that**
7 **you have either advocated for or against?**

8 ATTORNEY JONES: Objection to form.

9 ATTORNEY BLOCK: Same.

10 THE WITNESS: Can you rephrase the
11 question?

12 BY ATTORNEY TRYON:

13 **Q. Sure. You indicate that one of your interests**
14 **is advocating for government policies that protect and**
15 **enhance the health and wellbeing of gender-diverse youth**
16 **and transgender youth. My question is have you actually**
17 **advocated for any particular government policies?**

18 A. For, no.

19 **Q. Against?**

20 A. Yes.

21 **Q. Did you advocate against HB 3293?**

22 A. No.

23 **Q. What government policies did you advocate**
24 **against?**

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1 A. I don't recall the bill number, but it was a law
2 in Pennsylvania that would prevent transgender girls
3 from playing in women's sports.

4 **Q. What did you do --- excuse me. What did you do**
5 **to advocate against that law?**

6 ATTORNEY BLOCK: Objection to scope.

7 ATTORNEY JONES: Same.

8 THE WITNESS: Should I answer ---?

9 ATTORNEY JONES: If you understand the
10 question.

11 THE WITNESS: Yes, I understand the
12 question. I testified in the Pennsylvania Assembly.

13 BY ATTORNEY TRYON:

14 **Q. When was that?**

15 A. I believe August 2021.

16 **Q. Have you been asked to be an expert witness in**
17 **this case?**

18 A. Yes.

19 **Q. When were you asked to be an expert witness in**
20 **this case?**

21 A. Around August 2021.

22 **Q. Did you agree to be an expert witness in this**
23 **case?**

24 A. Yes.

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1 ATTORNEY BLOCK: Objection to form.

2 BY ATTORNEY TRYON:

3 **Q. Do you anticipate submitting an expert report in**
4 **this case?**

5 A. No.

6 **Q. Why not?**

7 ATTORNEY JONES: Objection to form.

8 ATTORNEY TRYON: You can answer.

9 THE WITNESS: I wasn't requested to.

10 BY ATTORNEY TRYON:

11 **Q. Do you anticipate testifying as an expert in**
12 **this case?**

13 A. No.

14 **Q. And why not?**

15 A. I wasn't asked to.

16 **Q. Have you --- so I'm trying to understand this**
17 **because you said you agreed to be an expert witness in**
18 **this case, but you don't anticipate testifying. Has**
19 **that request been withdrawn?**

20 A. Just to be clear, which case are you referring
21 to?

22 **Q. Maybe we're confused. I'm talking the BPJ case.**
23 **Have you been asked --- let me start over then. Have**
24 **you been asked to testify --- sorry. Have you been**

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1 **asked to serve as an expert witness in the BPJ case?**

2 ATTORNEY BLOCK: Objection to form.

3 ATTORNEY JONES: Same. You can answer.

4 THE WITNESS: No.

5 BY ATTORNEY TRYON:

6 **Q. Thank you. That's --- I was confused there. I**
7 **apologize if I caused that confusion.**

8 **I presume you're licensed to practice medicine.**
9 **Which states would you be --- are you licensed to**
10 **practice in?**

11 A. Pennsylvania.

12 **Q. Any others?**

13 A. No.

14 **Q. I understand you're a member of the American**
15 **Academy of Pediatrics.**

16 **Is that correct?**

17 A. Yes.

18 **Q. And what is the American Academy of Pediatrics?**

19 A. It is a professional organization of
20 pediatricians.

21 **Q. What does it take to be a member?**

22 A. You have to be a healthcare professional that
23 deals with pediatrics and you pay a fee to be a member.

24 **Q. Why did you join?**

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1 A. It will help me network with other providers and
2 it's a good learning opportunity because they also offer
3 conferences.

4 **Q. Do you do anything else in there besides attend
5 conferences and network?**

6 A. No.

7 **Q. I understand you're also a member of the Society
8 for Adolescent Health and Medicine.**

9 **Is that right?**

10 A. Yes.

11 **Q. What is that?**

12 A. That is another professional organization and
13 they specialize or focus on the adolescents' and young
14 adults' health.

15 **Q. How is it different from the American Academy of
16 Pediatrics?**

17 A. Their focus. So in the AAP, the American
18 Academy of Pediatrics, they look at all pediatrics,
19 which include the age of 18, but in Society of
20 Adolescent Health and Medicine it could be anywhere
21 between 9 to 26-year-olds. So they have different laps
22 or different scopes.

23 **Q. What does it take to be a member of that?**

24 A. You have to be some sort of professional or

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1 someone who has interest in adolescent and young adult
2 health and pay a membership fee.

3 **Q. You said professional. So that would include
4 any kind of professional or just medical professionals?**

5 A. It could be any serving professionals like
6 therapists or nurses.

7 **Q. Why did you join that one?**

8 A. Again, for networking opportunities, learning
9 opportunities, and camaraderie.

10 **Q. You are the Treasurer/Secretary for the Ohio
11 Valley Society of Adolescent Medicine. What is that?**

12 A. So that is a regional organization that is
13 focusing on the health of adolescent and young adult
14 health, but this time within the areas of southwestern
15 Pennsylvania, eastern Ohio, West Virginia and Kentucky,
16 basically the Ohio Valley area.

17 **Q. Are you a member of WPATH?**

18 A. No.

19 **Q. Why not?**

20 A. I have not had the chance to join.

21 **Q. Are you a member of any other organizations?**

22 A. That's about it.

23 **Q. Where do you currently work?**

24 A. At the Center for Adolescent Youth and Health.

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1 **Q. Which is the clinic.**

2 **Right?**

3 A. Yes.

4 **Q. Where else do you work?**

5 A. The student health center at University of
6 Pittsburgh.

7 **Q. And where else?**

8 A. That's all.

9 **Q. So you are an assistant professor at the
10 University of Pittsburgh. Do you not work there?**

11 A. I will make a correction. I do work at the
12 University of Pittsburgh as well.

13 **Q. Any place else?**

14 A. That's all.

15 **Q. Okay.**

16 **And so you are currently a treating physician.**

17 **Right?**

18 A. Yes.

19 **Q. Tell me about the areas of your medical
20 practice.**

21 A. Can you rephrase the question?

22 **Q. Sure. I mean, I can kind of infer that you ---
23 your medical practice is for adolescents and youth and
24 children. Would that much be accurate?**

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1 A. Yes.

2 **Q. Is it beyond that? Do you treat or diagnose
3 adults?**

4 A. I treat young adults.

5 **Q. So what age group or age range of people do you
6 treat?**

7 A. Anywhere between 9 to up to 26 years old.

8 **Q. What types of medical issues or problems
9 diseases, disorders, do you see the most?**

10 ATTORNEY BLOCK: Objection to form.

11 ATTORNEY JONES: Same.

12 THE WITNESS: Can you rephrase the
13 question?

14 BY ATTORNEY TRYON:

15 **Q. I'm trying to understand the scope of your
16 practice. Is it just --- is it anything that 9 to
17 26-year-olds encounter or do you limit your practice?**

18 A. I don't limit my practice, so yes, I see many of
19 the medical issues for anyone between 9 to 26 years old.

20 **Q. So do you treat people for cold, flu, ear
21 infections, those types of things?**

22 A. Yes.

23 **Q. And mental health issues?**

24 A. Yes.

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Q. Would that include bipolar issues?

A. No.

Q. How about chronic depression?

A. Yes.

Q. How about things like bulimia?

A. Yes.

Q. Borderline personality disorder?

A. Yes.

Q. Urinary tract infection?

A. Yes.

Q. Gender dysphoria?

A. Yes.

Q. How much of your time is spent on --- as a treating physician versus other parts of your professional work?

A. I would say about 80 percent.

Q. And that 80 percent, would that include supervising other doctors or is that separate?

A. It includes supervising other doctors.

Q. When patients come to you they sometimes probably already have a self diagnosis or what they think they have.

Is that right?

ATTORNEY JONES: Objection to form.

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what's wrong with me, am I right or am I wrong?

A. It would be the former. They would tell me what they are experiencing and then I ask additional questions and make further assessments and recommendations based on what I see in the history and the physical exam.

Q. So for example, if they come to you and say I think I have --- nobody comes to you and says I think I have the flu?

ATTORNEY JONES: Objection to form.

THE WITNESS: Can you rephrase that question?

BY ATTORNEY TRYON:

Q. Has anyone come to you and say --- and said I think I have chronic depression?

A. Yes.

Q. Do you take that at face value or do you ask further questions?

A. I ask further questions.

Q. So that's what I'm referring to as a self diagnosis. Someone comes to you and says I think I have chronic depression. Can you tell me how often people come in to you, youth come in to you with a self diagnosis?

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THE WITNESS: Can you rephrase the question? I don't understand.

BY ATTORNEY TRYON:

Q. Sure. When patients come to you they I presume describe their symptoms.

Right?

A. Yes.

Q. And when they do that they tell you I think I have X, Y, Z ---

ATTORNEY BLOCK: Objection to form.

BY ATTORNEY TRYON:

Q. --- illness or problem?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Can you rephrase that question? I don't understand.

BY ATTORNEY TRYON:

Q. Sometimes when I go to my doctor I say I'm experiencing these symptoms and I think this is what it is. I think I've got a cold or I think I have got --- I don't know Parkinson's disease or something. And then the doctor will either say yes, no, maybe, need to run more tests. Tell me about when patients come to you. Do they just give you their symptoms and say what's wrong with me or do they sometimes say I think this is

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ATTORNEY BLOCK: Objection to form.

ATTORNEY JONES: Objection to form.

THE WITNESS: I don't know what percentages that would be.

BY ATTORNEY TRYON:

Q. You indicated you are involved in diagnosing and treating what is typically known as gender dysphoria.

Is that right?

A. Yes.

Q. What percentage of your practice involves that type of medical issue?

A. By my estimation, around 70 to 80 percent.

Q. And how often do these types of patients come to you with a self diagnosis saying I think I have gender dysphoria?

A. I don't know that number.

Q. Does it happen?

A. Yes.

Q. Would you estimate it's more than ten percent?

A. I don't know.

Q. But you recall that some have done that. Right?

A. Yes.

Q. And of those that do self diagnose with gender

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1 dysphoria, have you ever come up with a different
2 diagnosis for them?

3 A. Yes.

4 Q. What are some alternative diagnoses that you
5 have given?

6 A. Eating disorders.

7 Q. Anything else?

8 A. That's as I recall.

9 Q. How many times has that happened?

10 A. I don't know the percentages.

11 Q. As far as is it 1, 2, 20, not in percentage but
12 absolute numbers?

13 A. That I do not know.

14 Q. Could it be just one?

15 A. That I don't know.

16 Q. So when you mention eating disorders, were you
17 thinking of a particular case?

18 ATTORNEY JONES: Objection to scope.

19 THE WITNESS: I don't understand the
20 question.

21 BY ATTORNEY TRYON:

22 Q. Well, I asked you of those that self diagnose
23 with gender dysphoria issues, have you ever come up with
24 a different diagnosis. You said yes. And I asked you

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1 patients. How does that happen? Does a new patient
2 call in or is a new patient referred to you?

3 A. It's a combination of both.

4 Q. When that happens and they --- who gathers
5 information on this person --- on this patient first?
6 Would that be you or a secretary or a nurse?

7 A. Initially it would be the schedulers to get
8 their basic information. That would be the first point
9 of contact.

10 Q. And does the scheduler then set up something in
11 a system with the patient's name and information?

12 A. Yes.

13 Q. What is that system?

14 A. Can you clarify the question?

15 Q. Sure. Is there a particular software that is
16 used?

17 A. Yes.

18 Q. What is that?

19 A. Epic, currently.

20 Q. How long has it been Epic?

21 A. For our clinic, since 2020. February of 2020.

22 Q. Before 2020 what was it?

23 A. Cerner.

24 Q. Sorry?

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1 what and you said eating disorders. So I'm asking you
2 was that a specific patient you recall?

3 A. No.

4 Q. Do you remember any specific patients where
5 you've given them a different diagnosis?

6 A. Yes.

7 Q. How many?

8 A. That number I don't know off the top of my head.

9 Q. Well, you're thinking of one person at least.
10 Was it more than one?

11 ATTORNEY JONES: Objection. Asked and
12 answered.

13 BY ATTORNEY TRYON:

14 Q. Go ahead.

15 A. Can you repeat the question?

16 Q. I said you were thinking of one person at least.
17 Do you recall more than one?

18 A. Yes.

19 ATTORNEY JONES: Same objection.

20 BY ATTORNEY TRYON:

21 Q. Do you recall more than five?

22 A. No.

23 Q. Let me ask about the --- let me start that over.
24 Let me ask you about the intake process for new

Page 53

1 A. Cerner, C-E-R-N-E-R.

2 Q. Now, you said you see patients outside the
3 clinic.

4 Right?

5 A. Yes.

6 Q. Sorry. Where is that again?

7 A. The University of Pittsburgh Student Health
8 Center.

9 Q. Does that use the same system?

10 A. No.

11 Q. What system does that use?

12 ATTORNEY JONES: Objection, scope.

13 ATTORNEY TRYON: Let me back up.

14 BY ATTORNEY TRYON:

15 Q. Let me ask you this question because ultimately
16 I just want to focus on BPJ. So BPJ came to see you at
17 the clinic or at the University of Pittsburgh?

18 A. At the clinic.

19 Q. So at the clinic, if I understand correctly, the
20 scheduler will set up the initial record.

21 Is that right?

22 A. Yes.

23 Q. And then when the patient comes in will there be
24 additional information sought from the patient?

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1 A. The social worker usually calls the patient
2 beforehand to get a sense of what that patient's needs
3 are.

4 **Q. And then what happens?**

5 A. And then the social work team provides me with
6 that information on the electronic medical records that
7 would help me put things into context.

8 **Q. So the social worker calls the patient and**
9 **inputs --- talks to the patient and inputs information**
10 **into the system.**

11 **Is that right?**

12 A. Yes.

13 **Q. At some point the patient comes into the clinic.**
14 **Right?**

15 A. Yes.

16 **Q. I suppose especially during COVID that sometimes**
17 **these things are handled remotely. Did that happen**
18 **during the COVID period?**

19 A. Yes.

20 **Q. Now, does a nurse meet with the patient before**
21 **you do or are you the first contact?**

22 A. The medical assistant --- let me back up. I
23 apologize. It's the schedulers that first meet the
24 patients when they register and they check in the

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1 **Q. How would that process happen?**

2 A. Typically, the patient would request to forward
3 the medical records to our office.

4 **Q. Now, I just want to make sure I understand one**
5 **thing about the systems that are being used. Before**
6 **February 2020, the Cerner system was used. And then**
7 **when you --- when the clinic started using Epic, were**
8 **all of the records transferred from Cerner into Epic?**

9 A. Not all.

10 **Q. Which ones were not?**

11 A. Typically, it would be phone conversations.
12 Those are not usually transferred over.

13 **Q. So the clinic's use of Epic, is that tied into**
14 **other medical providers besides just the clinic?**

15 A. I don't understand the question.

16 **Q. Sure. Epic has an ability to, as I understand**
17 **it, to tie systems together from various hospitals or**
18 **other medical providers, whether it's individual doctors**
19 **or clinics. Are you aware of that capability of Epic?**

20 A. Yes.

21 **Q. And so my question is with respect to the**
22 **clinics' use of Epic, is it tied into any other medical**
23 **providers or hospitals or systems besides just the**
24 **clinics?**

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1 clinic.

2 **Q. And then what happens?**

3 A. Then the medical assistant comes out and take
4 the patient's vitals and a short history of their
5 complaints and their medications.

6 **Q. When you say medical assistant, can you tell me**
7 **what that means?**

8 A. That would be a professional who helps take
9 vitals and rooms the patient.

10 **Q. Is that --- would a nurse be a medical**
11 **assistant?**

12 A. Sometimes.

13 **Q. Other than nurses, who would be medical**
14 **assistants?**

15 A. Anyone with a certification in medical
16 assistance.

17 **Q. So is the term medical assistant an actual**
18 **title?**

19 A. Yes.

20 **Q. If there are other --- if there are prior**
21 **medical providers, would the medical assistant or the**
22 **scheduler get those records or get any records from**
23 **prior medical providers before you see the patient?**

24 A. Yes.

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1 A. They have something called Care Everywhere and
2 so that allows them to gain or obtain records from other
3 facilities.

4 **Q. And do you know what the clinic is tied into,**
5 **what other facilities through Care Everywhere?**

6 A. Can you rephrase that question? I don't
7 understand.

8 **Q. Sure. So in the Epic system at the clinic, can**
9 **you access records from say the West Virginia ---**
10 **University of West Virginia Medicine?**

11 A. Sometimes.

12 **Q. Why only sometimes?**

13 A. Not everyone shares their records. So it is not
14 always consistent.

15 ATTORNEY JONES: Objection. I think
16 we're getting off track, off scope. So objection to the
17 scope.

18 BY ATTORNEY TRYON:

19 **Q. What information do you need to make a diagnosis**
20 **of a problem?**

21 ATTORNEY JONES: Objection.

22 BY ATTORNEY TRYON:

23 **Q. Let me be more specific. What are objective**
24 **symptoms?**

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1 ATTORNEY JONES: Objection to form.
 2 ATTORNEY BLOCK: Objection to form.
 3 THE WITNESS: Can you rephrase the
 4 question?
 5 BY ATTORNEY TRYON:
 6 **Q. When I say an objective symptom, do you know**
 7 **what that means?**
 8 A. It doesn't make sense, the term objective
 9 symptom.
 10 **Q. Do you know what a subjective symptom is?**
 11 A. Yes.
 12 **Q. What's a subjective symptom?**
 13 A. Basically a symptom that the patient reports.
 14 **Q. Is there any way to measure subjective symptoms?**
 15 A. It depends.
 16 **Q. On what?**
 17 A. The type of symptom.
 18 **Q. Can you tell me of a symptom that you can**
 19 **measure, a subjective symptom that you can measure?**
 20 A. Depression.
 21 **Q. How do you measure depression?**
 22 A. We --- in our practice we do what we call a
 23 Patient Health Questionnaire. It's a series of
 24 questions that describes or measures the severity of

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1 depression.
 2 **Q. But isn't that still asking the patient**
 3 **subjectively the patient's subjective feelings?**
 4 A. Yes.
 5 **Q. Would an objective symptom be something you**
 6 **could observe externally such as a broken arm through an**
 7 **x-ray?**
 8 ATTORNEY BLOCK: Objection to form.
 9 THE WITNESS: Yes.
 10 BY ATTORNEY TRYON:
 11 **Q. What's --- is the intake process for someone**
 12 **coming to you with gender dysphoria issues different**
 13 **than a person coming to you for other types of medical**
 14 **issues?**
 15 ATTORNEY JONES: Objection to
 16 terminology.
 17 ATTORNEY BLOCK: Same.
 18 THE WITNESS: Can you rephrase the
 19 question?
 20 BY ATTORNEY TRYON:
 21 **Q. So you've indicated that you treat patients for**
 22 **a lot of different things, and I'm just interested if**
 23 **there is a different intake process for someone with**
 24 **gender dysphoria as opposed to any other types of**

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1 **issues?**
 2 ATTORNEY JONES: Same objections.
 3 THE WITNESS: Is there a different way
 4 you can ask that question?
 5 BY ATTORNEY TRYON:
 6 **Q. When someone calls to you, speak to the**
 7 **scheduler and they have gender dysphoria issues, what do**
 8 **they typically tell the scheduler?**
 9 ATTORNEY BLOCK: Objection to form.
 10 ATTORNEY JONES: Same.
 11 THE WITNESS: Is there another way you
 12 could phrase that question?
 13 BY ATTORNEY TRYON:
 14 **Q. Tell me about the term gender dysphoria. What**
 15 **does that mean to you?**
 16 A. That is a distressing feeling an individual has
 17 when their gender identity does not match their physical
 18 body.
 19 **Q. How do you typically get patients that have**
 20 **issues with gender identity?**
 21 A. There are two ways. You may have another
 22 provider refer that patient to me or they come to my
 23 clinic on their own volition.
 24 **Q. When they come to your clinic on their own**

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1 **volition, do you know what they say to the scheduler?**
 2 A. In our typical practice, they would basically
 3 say they have gender issues.
 4 **Q. Does the scheduler handle people who say they**
 5 **have gender issues any differently than any other types**
 6 **of medical issues?**
 7 ATTORNEY JONES: Objection to form. If
 8 you understand, you can answer.
 9 THE WITNESS: No, they don't treat them
 10 any differently.
 11 BY ATTORNEY TRYON:
 12 **Q. Are you familiar with the term gender**
 13 **nonconformity?**
 14 A. Yes.
 15 **Q. And how do you describe gender nonconformity?**
 16 A. That is when someone's mannerisms and behaviors
 17 do not conform to what a society's view of gender.
 18 **Q. Do you have patients come to you who only have**
 19 **gender nonconformity but not gender dysphoria?**
 20 A. Yes.
 21 **Q. How do you distinguish between those?**
 22 A. You talk to the patient.
 23 **Q. You talk to the patient and how do you make a**
 24 **determination which it is?**

1 A. Typically, for example, if a patient wears
2 skirts and they say, well, I still identify as the sex
3 assigned at birth, so in this case male, then that would
4 be more gender nonconforming.

5 **Q. So the distinction is if they say they identify
6 as male or female, that's the distinction?**

7 ATTORNEY BLOCK: Objection to form.

8 ATTORNEY JONES: Objection.

9 THE WITNESS: Is there another way you
10 can ask that question?

11 BY ATTORNEY TRYON:

12 **Q. So a male --- in your hypothetical, a male comes
13 in and says I have got a --- I am wearing a skirt, but I
14 still identify as a male. Then that person would have
15 gender nonconformity.**

16 **Is that right?**

17 A. Yes.

18 **Q. But if that same person said I identify as a
19 female, then that person would have gender dysphoria.**

20 **Is that right?**

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: Can you rephrase that
23 question?

24 BY ATTORNEY TRYON:

1 this person is just gender nonconforming.

2 **Q. Do you have a list of questions?**

3 A. Yes.

4 **Q. Is that list of questions on the Epic system?**

5 A. Yes.

6 **Q. Is it a form that you give to the patient?**

7 ATTORNEY JONES: Objection to form.

8 THE WITNESS: I understand the question.

9 No, we don't give that form to the patient.

10 BY ATTORNEY TRYON:

11 **Q. Are there any qualifications for a medical
12 professional to give a diagnosis of gender dysphoria?**

13 A. Can you be --- can you rephrase that question?

14 I don't understand.

15 **Q. Sure. Can just any doctor give a diagnosis of
16 gender dysphoria or do they have to have some other
17 qualifications?**

18 A. What do you mean by qualifications?

19 **Q. Professional qualifications.**

20 A. To answer that question, there isn't a
21 certification or degree or anything of that sort for
22 qualifications. But in terms of training and the
23 ability to do so, there are some recommendations that
24 they should have to make that diagnosis.

1 **Q. In what you just told me, if a patient comes in
2 who is a male wearing a skirt and says I identify as a
3 male, that person you said would have gender
4 nonconformity. But if that person instead says I
5 identify as a female, then would that mean that person
6 has gender dysphoria?**

7 ATTORNEY JONES: Objection to form.

8 THE WITNESS: Not always, because that's
9 not how we determine that.

10 BY ATTORNEY TRYON:

11 **Q. Okay.**

12 **So how do you determine that?**

13 A. Which one? Can you be specific?

14 **Q. The child or person comes in, is a male wearing
15 a skirt, says I identify as a female. How would you
16 determine if that person has gender dysphoria or gender
17 nonconformity?**

18 A. We do an assessment when we ask the patient some
19 questions about their behaviors. And they would have
20 their parents, too, so we would also interview the
21 parents, to get a sense of this person's behavior. And
22 then, based on what the patient tells us and our
23 objective findings, then we make the determination if
24 this person may be suffering from gender dysphoria or

1 **Q. Who gives those recommendation?**

2 A. WPATH and the Endocrine Society.

3 **Q. What is the purpose of getting a diagnosis of
4 gender dysphoria?**

5 ATTORNEY JONES: Objection to form.

6 THE WITNESS: Is there a different way
7 you could ask that question?

8 BY ATTORNEY TRYON:

9 **Q. Sure. Is it necessary for some purpose that a
10 person receive a diagnosis of gender dysphoria?**

11 ATTORNEY BLOCK: Objection to form.

12 THE WITNESS: Is there a different way
13 you can ask that question?

14 BY ATTORNEY TRYON:

15 **Q. Let me give you an example. Before I had my
16 appendix taken out, the doctor needs to do a diagnosis
17 that says that I need to get my appendix taken out. So
18 that diagnosis of a problem with my appendix, whatever
19 it is, is necessary for the operation. Is there any
20 need for a diagnosis of gender dysphoria or is it just
21 something that people come to understand what's wrong
22 with them, not wrong, but what's different about them?**

23 ATTORNEY BLOCK: Objection to form.

24 ATTORNEY TRYON: That's not even the

1 right way to say it.

2 BY ATTORNEY TRYON:

3 **Q. That there's something about them that they are**
 4 **trying to understand, is that the only purpose of a**
 5 **diagnosis of gender dysphoria?**

6 ATTORNEY JONES: Objection to form.

7 THE WITNESS: I understand the question.

8 It is actually both. Some people are looking to
 9 understand what's going on and at the same time in order
 10 to receive any treatment in the healthcare system they
 11 need a diagnosis.

12 BY ATTORNEY TRYON:

13 **Q. How many of your patients --- let me try and**
 14 **establish the right terminology from your perspective.**
 15 **As far as gender dysphoria, is it considered a medical**
 16 **condition?**

17 A. No.

18 **Q. What is it considered?**

19 A. It's a mental health condition.

20 **Q. I'm sorry. You said it's a mental health**
 21 **condition?**

22 A. Yes.

23 **Q. The patients that you see with gender dysphoria,**
 24 **how often is it that they've already been diagnosed with**

1 **watchful waiting?**

2 A. I learned it in --- when I read about the
 3 guidelines or when I talk to my colleagues or in
 4 professional conferences because this is something that
 5 is discussed amongst us.

6 **Q. Any particular papers you've read on it?**

7 A. That, I don't recall which particular papers.

8 **Q. Did you read the original Dutch study?**

9 ATTORNEY BLOCK: Objection to scope.

10 ATTORNEY JONES: Objection to scope.

11 BY ATTORNEY TRYON:

12 **Q. Did you read the original Dutch study?**

13 ATTORNEY BLOCK: Objection to form.

14 ATTORNEY JONES: Objection to form. Go
 15 ahead.

16 THE WITNESS: I'm aware of the Dutch
 17 study.

18 BY ATTORNEY TRYON:

19 **Q. Did you read it?**

20 ATTORNEY JONES: Same objections.

21 THE WITNESS: Is there any way you could
 22 ask that question differently?

23 BY ATTORNEY TRYON:

24 **Q. You said you were aware of the Dutch study. I'm**

1 **gender dysphoria versus a first-time approach to you**
 2 **asking you about the --- this condition?**

3 A. I don't know the exact numbers off the top of my
 4 head.

5 **Q. Can you give me an approximation?**

6 A. That, I don't know.

7 **Q. Are you familiar with the concept of watchful**
 8 **waiting?**

9 A. Yes.

10 **Q. Have you ever told any of your patients about**
 11 **watchful waiting?**

12 A. No.

13 **Q. So you never recommended that to anyone? Is**
 14 **that a true statement?**

15 A. Yes.

16 **Q. What do you know about the concept of watchful**
 17 **waiting?**

18 A. It's a concept in which you do not do any
 19 interventions for the child to see how the gender
 20 dysphoria may worsen or improve without it.

21 **Q. What's your under --- basis of your**
 22 **understanding of the concept of watchful waiting?**

23 A. I don't understand the question.

24 **Q. Where have you learned your information about**

1 **asking if you read it?**

2 A. That I don't recall the exact details.

3 **Q. So you don't recall reading it?**

4 A. Correct.

5 **Q. When you give the diagnosis of gender dysphoria,**
 6 **you said sometimes that's necessary for treatment. What**
 7 **treatment would that be necessary for?**

8 A. Can you rephrase the question?

9 **Q. Are there treatments which require a diagnosis**
 10 **of gender dysphoria?**

11 A. Yes.

12 **Q. What are those treatments?**

13 A. That would include puberty blockers,
 14 gender-affirming hormones and surgeries and even mental
 15 health treatments.

16 **Q. Are you familiar with the WPATH standards of**
 17 **care?**

18 A. Yes.

19 ATTORNEY TRYON: Jacob, can you bring up
 20 --- actually, no, I think I can do this.

21 ATTORNEY BLOCK: David, it has been about
 22 an hour and a half. I just wanted to see if anyone
 23 needs a break.

24 ATTORNEY TRYON: Yeah, if we want to take

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1 a break we can take a break now. Or keep on going,
 2 whatever you prefer.
 3 THE WITNESS: I could take a break.
 4 ATTORNEY TRYON: And I'll be going past
 5 lunchtime. I'm probably halfway through. So we can
 6 consider whether or not we want to take lunch or keep
 7 going all the way through. But we can talk about that
 8 later. Why don't we take a five-minute break right now?
 9 THE WITNESS: Thank you.
 10 VIDEOGRAPHER: Going off the record.
 11 Current time reads 11:37 a.m.
 12 OFF VIDEOTAPE
 13 ---
 14 (WHEREUPON, A SHORT BREAK WAS TAKEN.)
 15 ---
 16 ON VIDEOTAPE
 17 VIDEOGRAPHER: Back on the record.
 18 Current time reads 11:45 a.m.
 19 ATTORNEY TRYON: Okay.
 20 I'm going to try and share Exhibit 33
 21 here. Jacob, do I just click on sharing or open?
 22 VIDEOGRAPHER: Right.
 23 ATTORNEY JONES:
 24 Is this the --- for clarification, is

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1 this the documents that you just sent to me?
 2 ATTORNEY TRYON: These are documents ---
 3 this is document from before. It's the standards of
 4 care for WPATH.
 5 ATTORNEY JONES: Okay.
 6 VIDEOGRAPHER: You will hit open and then
 7 that opens it for you. And then you'll hit start and
 8 that shares it with everyone.
 9 ATTORNEY TRYON: Okay.
 10 So I hit start. Do people see standards
 11 of care?
 12 THE WITNESS: Yes.
 13 BY ATTORNEY TRYON:
 14 **Q. Great. You're familiar with WPATH's Standards**
 15 **of Care.**
 16 **Right?**
 17 A. Yes.
 18 **Q. And the most recent version is the 7th version.**
 19 **Is that right?**
 20 A. Yes.
 21 **Q. So you can see at the top up here --- and you**
 22 **can zoom in on your own, I believe, if it's too small.**
 23 **It says 7th version Standards --- under Standards of**
 24 **Care.**

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1 **Do you see that?**
 2 A. Yes.
 3 **Q. So I would like to go to page 11. No, that's**
 4 **not the right page. Sorry.**
 5 ATTORNEY JONES: I'm just going to object
 6 to the scope. Just making a standing objection.
 7 ATTORNEY TRYON: Okay.
 8 This is the page I want to ---.
 9 BY ATTORNEY TRYON:
 10 **Q. So take a look at page 11 there. And this is**
 11 **directly relevant to this situation, and ask you a**
 12 **question about the first two paragraphs.**
 13 A. I have read it.
 14 **Q. Let me know when you are ready to discuss those.**
 15 A. I'm ready.
 16 **Q. Okay.**
 17 **So in the first paragraph under the title**
 18 **differences between children and adolescents with gender**
 19 **dysphoria it says that gender dysphoria during childhood**
 20 **does not inevitably continue into adulthood rather in**
 21 **follow-up studies of prepubertal children, mainly boys,**
 22 **who were referred to clinics for assessment of gender**
 23 **dysphoria, the dysphoria persisted into adulthood were**
 24 **only 6 to 23 percent of children. Boys in these studies**

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1 **more likely to identify as gay in adulthood than as**
 2 **transgender. My question is do you ever disclose this**
 3 **information to your patients?**
 4 ATTORNEY JONES: Objection to form.
 5 THE WITNESS: Is there a different way
 6 you could ask that question?
 7 BY ATTORNEY TRYON:
 8 **Q. Pardon me?**
 9 A. Is there a different way you can ask that
 10 question, meaning --- what I mean is that specific
 11 information or the fact that not every one ends up being
 12 trans?
 13 **Q. Do you disclose to any of your patients that**
 14 **prepubertal children with gender dysphoria that**
 15 **statistically it only persists into adulthood for only 6**
 16 **to 23 percent of children?**
 17 ATTORNEY BLOCK: Objection to form.
 18 ATTORNEY JONES: Objection to form.
 19 THE WITNESS: To answer your question, I
 20 don't cite those statistics. I just say that it is a
 21 possibility.
 22 BY ATTORNEY TRYON:
 23 **Q. So you tell your patients that is a possibility**
 24 **that gender dysphoria may not persist into adulthood.**

1 **Is that a fair statement?**

2 A. Yes.

3 **Q. Do you tell all of your patients that?**

4 A. Yes.

5 **Q. Do you give them any percentages at all?**

6 A. No.

7 **Q. Do you just say it is a possibility?**

8 A. Yes.

9 ATTORNEY JONES: Objection to form.

10 BY ATTORNEY TRYON:

11 **Q. Do any of your --- okay.**

12 **Are there standards that you use --- we're done**
13 **with that exhibit for now. Are there standards that you**
14 **use for diagnosing gender dysphoria?**

15 A. By standards, do you mean guidelines?

16 **Q. Yes.**

17 A. Yes.

18 **Q. What's the source of those guidelines?**

19 A. And by guidelines do you mean like position
20 papers or which organizations?

21 **Q. Yes.**

22 A. I use several, including WPATH, the Endocrine
23 Society and the University of California, San Francisco
24 Guidelines.

1 **standards?**

2 ATTORNEY JONES: Objection to scope.

3 THE WITNESS: There is. I just don't
4 know the exact name of that group.

5 BY ATTORNEY TRYON:

6 **Q. Fair enough. Do you know if there is an**
7 **approval process for those standards?**

8 ATTORNEY BLOCK: Objection to scope.

9 ATTORNEY JONES: Objection to scope.

10 THE WITNESS: From my knowledge, yes,
11 there's an approval process.

12 BY ATTORNEY TRYON:

13 **Q. Are there disputes about those standards?**

14 ATTORNEY JONES: Objection to scope.

15 ATTORNEY BLOCK: Objection to scope.

16 ATTORNEY JONES: And objection to form.

17 BY ATTORNEY TRYON:

18 **Q. Are you aware of any disputes as to those**
19 **standards?**

20 ATTORNEY JONES: Objection to scope and
21 objection to form.

22 THE WITNESS: By dispute, do you mean
23 some mild disagreement in how this is done or like a
24 rift?

1 **Q. Do you use DSM-V?**

2 A. Yes.

3 **Q. Now, I have not heard of the University of**
4 **California, San Francisco Guidelines. What are those?**

5 A. They are a set of guidelines on how to work and
6 manage people with gender dysphoria.

7 **Q. Are those different from DSM-V as far as**
8 **diagnosing gender dysphoria?**

9 A. No DSM-V focuses on criteria for diagnosis where
10 UCSF focuses more on medical management.

11 **Q. Is there anything different between DSM-V and**
12 **WPATH?**

13 A. None to my knowledge.

14 **Q. Is there any difference between the DSM-V**
15 **Guidelines and the Endocrine Society Guidelines?**

16 A. None to my knowledge.

17 **Q. Who came up with standards for DSM-V?**

18 A. From an organizational perspective, it would be
19 American ---.

20 **Q. I'm afraid I didn't hear you.**

21 A. It would be the American Psychological
22 Association who writes the DSM-V.

23 **Q. And is there a particular group within the**
24 **American Psychological Association that writes the**

1 BY ATTORNEY TRYON:

2 **Q. Well, let's start with a rift. Are you aware of**
3 **any rifts in the medical community which dispute the**
4 **methodology of DSM-V for diagnosing gender dysphoria?**

5 ATTORNEY BLOCK: Objection to the scope.
6 This is a lay witness.

7 ATTORNEY JONES: He's not an expert in
8 this. He's made that perfectly clear. I'm going to
9 instruct him not to answer. We're getting into expert
10 testimony.

11 ATTORNEY TRYON: Well, no it's not expert
12 testimony, but maybe I'll lay a foundation a little bit
13 differently for you.

14 BY ATTORNEY TRYON:

15 **Q. So you use DSM-V. Are there other standards out**
16 **there that you could use that disagree with DSM-V?**

17 ATTORNEY JONES: Objection to form.

18 THE WITNESS: There isn't any other set
19 of criteria that would oppose DSM-V, if that's the word
20 you use.

21 BY ATTORNEY TRYON:

22 **Q. It is different for adults and adolescents and**
23 **children in DSM-V.**

24 **Right?**

Page 78

1 ATTORNEY BLOCK: Objection to form.
 2 ATTORNEY JONES: Objection to form.
 3 THE WITNESS: Can you rephrase the
 4 question?
 5 BY ATTORNEY TRYON:
 6 **Q. The standards for diagnosing gender dysphoria is**
 7 **different for adults and adolescents and children under**
 8 **DSM-V.**

9 **Right?**

10 A. Yes.

11 **Q. Are you ---?**

12 ATTORNEY JONES: Again, I think that
 13 we're getting off track here. And I hate to make this
 14 speaking objection, but you're asking him differences in
 15 standards of care and he's here to talk about the care
 16 and the treatment of BPJ. I think you can ask him about
 17 his care and treatment of BPJ, but I think you're
 18 getting off track with the scope.

19 ATTORNEY TRYON: Yeah. And just to be
 20 clear, we're establishing what sort of the baseline,
 21 which I think is totally appropriate here. I'm going to
 22 keep on moving on.

23 ATTORNEY JONES: Well, I think --- I
 24 think you can ask him what he used for his baseline.

Page 80

1 **Q. What pediatrician referred them?**

2 A. I don't recall the name of the pediatrician.

3 **Q. Do you remember that first visit?**

4 A. Yes.

5 **Q. Tell me about that.**

6 A. Can you be more specific?

7 **Q. Do you remember when you first saw them, their**
 8 **appearances?**

9 A. Yes.

10 **Q. Who was there?**

11 A. B[REDACTED] --- BPJ and her mother.

12 **Q. Did someone see them on that --- let me back up.**
 13 **You saw them at the clinic.**

14 **Is that right?**

15 A. Yes.

16 **Q. Did someone at the clinic see them before you**
 17 **did?**

18 A. No.

19 **Q. Not even the scheduler?**

20 A. I correct myself. So if you meant like another
 21 professional than me, no. But yes, they did --- the MA
 22 as part of the check-in process.

23 **Q. As part of the check-in process would another**
 24 **medical professional have then taken BPJ's vitals and**

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1 ATTORNEY TRYON: I think I have just done
 2 that, but keep on moving.

3 ATTORNEY JONES: I'll keep on objecting.

4 ATTORNEY TRYON: Okay.

5 BY ATTORNEY TRYON:

6 **Q. So let's talk about BPJ. Do you have any**
 7 **personal relationship with BPJ or BPJ's family?**

8 A. Personal relationship? No.

9 **Q. And how did the professional relationship with**
 10 **BPJ or BPJ's family start?**

11 A. They made an appointment to see me at the
 12 clinic.

13 **Q. Do you remember when that was?**

14 A. July 15th, 2019.

15 **Q. Was that when they made the appointment or when**
 16 **the appointment actually was?**

17 A. That's the actual date of the appointment.

18 **Q. Do you know how that appointment was made,**
 19 **whether it was through a referral or just a direct phone**
 20 **call or something else?**

21 A. It was a self referral --- I correct myself.

22 **Q. I'm sorry. There's some interference. I**
 23 **couldn't hear you.**

24 A. I recall that a pediatrician referred them.

Page 81

1 **other information?**

2 A. Yes.

3 **Q. Before you met BPJ and the mother --- the mother**
 4 **is Heather Jackson.**

5 **Is that right?**

6 A. Yes.

7 **Q. And before you met with them did you have any**
 8 **written materials to look at before you actually met**
 9 **with them in person?**

10 A. By written materials do you mean like previous
 11 medical records.

12 **Q. Either previous medical records or any**
 13 **information that had been typed into the system by**
 14 **anyone else?**

15 A. I have reviewed those ---.

16 **Q. I'm sorry. You're breaking up. I can't hear**
 17 **you.**

18 ---

19 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

20 ---

21 BY ATTORNEY TRYON:

22 **Q. Let's go back.**

23 A. Can you remind me what was the last question?

24 **Q. I'm thinking here. Before you --- let me ask a**

1 different question. So you actually met with them in
2 person as opposed to a televisit.

3 Right?

4 A. Yes.

5 Q. And before you actually met with them, did you
6 review anything --- any --- either medical records or
7 anything that any of your assistants or staff had typed
8 into the system?

9 A. Yes.

10 Q. What did you review?

11 A. One of the things I reviewed was the social work
12 note that, as I had told earlier, usually calls the
13 patient before we see them.

14 Q. Do you remember what was in those social worker
15 notes?

16 A. Basically for that note they said they tried
17 contacting that patient and they didn't pick up.

18 Q. Anything else that you reviewed that was in
19 writing?

20 A. Just the patient's vitals and the reason why
21 they're here.

22 Q. So tell me about that visit. When you first met
23 with them, did Heather Jackson speak first or did BPJ
24 speak first?

1 Q. Did Heather tell you that?

2 A. No.

3 Q. At that time did you do a psychodiagnostic
4 assessment of BPJ?

5 A. I did a psychosocial evaluation.

6 Q. Is that different than a psychodiagnostic
7 assessment?

8 A. Yes.

9 Q. How is that different?

10 A. Because I am asking more questions about the
11 context of that patient and it's not necessarily to make
12 a diagnosis.

13 Q. Did you do a psychiatric assessment?

14 A. Can you clarify? What do you mean by
15 psychiatric assessment?

16 Q. Yes, I can. Let me go back to Exhibit 33. Do
17 you see that on your screen?

18 A. No.

19 VIDEOGRAPHER: Attorney Tryon, did you
20 hit the start button? There you go.

21 BY ATTORNEY TRYON:

22 Q. Let me know when you see that.

23 A. I see --- there we go.

24 Q. Okay.

1 A. I believe that BPJ spoke first.

2 Q. What did BPJ tell you?

3 A. As I recall, she was --- she told me that she
4 was concerned about going into puberty.

5 Q. Anything else that you can recall as you sit
6 here?

7 A. That's the initial thing I recall.

8 Q. How about Heather Jackson, do you remember
9 anything that she said?

10 A. Not without looking at my notes.

11 Q. Fair enough. Do you remember anything that you
12 told them?

13 A. Yes.

14 Q. What did you tell them?

15 A. I counseled them about all --- you know, what
16 would the visit look like and what kind of options are
17 available and how we could help them. That's part of my
18 custom and practice.

19 Q. At that time did you ask questions in order to
20 determine if BPJ should be diagnosed with gender
21 dysphoria?

22 A. Yes.

23 Q. Did BPJ tell you that BPJ had gender dysphoria?

24 A. No.

1 I want to go to page 15. Okay. This is in the
2 WPATH Standards of Care, page 15, item two. It says
3 assessment of gender dysphoria and mental health should
4 explore the nature and characteristics of a child's or
5 adolescent's gender identity. A psychodiagnostic and
6 psychiatric assessment covering the areas of emotional
7 functioning, peer and other social relationships and
8 intellectual functioning, slash, school of achievement
9 should be performed. Did you do either --- did you do
10 that psychiatric assessment as described here?

11 A. Yes.

12 Q. What did that entail?

13 A. So in adolescent medicine you ask questions
14 about that person's school life and how they are doing
15 in their grades. You screen for any depression. You
16 ask about their eating behaviors. You ask about any
17 substance use and potential for violence in the home,
18 any concerns about their sexual orientation or gender
19 identity and smoking habits and the relationships or at
20 least observe the relationships between their family
21 members.

22 Q. Is that what you consider a psychiatric
23 assessment?

24 ATTORNEY JONES: Objection to form.

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1 THE WITNESS: I understand the question.
2 By defined at the WPATH the psychiatric assessment, if
3 they describe the emotional functioning, peer and social
4 relationships and school achievements, then yes, I did
5 something like that.

6 BY ATTORNEY TRYON:

7 **Q. But you indicated I think that a**
8 **psychodiagnostic assessment is different.**

9 **Is that right?**

10 ATTORNEY BLOCK: Objection to form.

11 ATTORNEY JONES: Objection to form.

12 BY ATTORNEY TRYON:

13 **Q. You can answer.**

14 A. From what I understand when you first asked the
15 question, but if reading that and say that a
16 psychodiagnostic and psychiatric assessment includes
17 those things that I ask, then that would be a
18 psychodiagnostic exam.

19 **Q. And how did you document your assessment?**

20 A. There's a form that the patient filled out and I
21 verified.

22 **Q. I'm trying to post Exhibit 36. Let me know when**
23 **you see that.**

24 A. I can see it.

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1 **Q. Down lower, under what would you like to talk**
2 **about today and it says other, explain AFAB, do you see**
3 **that?**

4 A. Yes.

5 **Q. What does AFAB mean?**

6 A. The acronym I'm familiar with is assigned female
7 at birth.

8 **Q. Under self it says --- the third question there,**
9 **if you could change one thing about your life or**
10 **yourself would it be --- it says to be a girl, which is**
11 **--- I presume BPJ wrote that.**

12 **Is that right?**

13 A. Yes.

14 **Q. Did you explore why BPJ wanted to be a girl?**

15 A. Can you clarify? What do you mean by exploring?

16 **Q. Did you ask BPJ why BPJ would like to be a girl?**

17 ATTORNEY JONES: Objection to form and
18 terminology.

19 THE WITNESS: In my practice I don't ask
20 the reasons someone wants to be a girl. What I ask is
21 what are the features or what are the behaviors that
22 would be consistent in saying that I am a girl or that
23 patient is a girl.

24 BY ATTORNEY TRYON:

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1 **Q. Is this the form that you are referring to?**

2 A. Yes.

3 **Q. Did --- do you know who filled this out?**

4 A. BPJ did.

5 **Q. Did BPJ fill this out in your presence?**

6 A. I don't recall.

7 **Q. What is the source of this form?**

8 A. By source do you mean like who created the form
9 or ---?

10 **Q. Created this form?**

11 A. The American Medical Association.

12 **Q. Let me ask you, up in the upper right-hand**
13 **corner here --- just to make sure I understand some of**
14 **the things on this --- it shows DOS 7/15/2019. That**
15 **means the date of service.**

16 **Is that right?**

17 A. Yes.

18 **Q. And this was the first visit you had with BPJ**
19 **and Heather Jackson?**

20 A. Yes.

21 **Q. And then I see in that same area, Epic FIN, and**
22 **then number. What is that?**

23 A. That is the financial information number. It
24 helps with billing.

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1 **Q. And did you ask BPJ that?**

2 A. Yes.

3 **Q. What did BPJ tell you?**

4 A. That she was afraid of going through puberty
5 because she does not want to be a boy, that she dresses
6 as a girl, that she doesn't like her own body, that she
7 prefers people use she/her pronouns and use the name
8 B■■■■, that, as I said, she dresses in a way that is
9 consistent with being a girl, like the clothing, the
10 hairstyle, and that she identifies as a girl.

11 **Q. And why did BPJ --- why was BPJ afraid of being**
12 **a boy?**

13 ATTORNEY JONES: Objection to form.

14 ATTORNEY BLOCK: Object to form.

15 THE WITNESS: I can answer that question.
16 Because she didn't identify as a boy.

17 BY ATTORNEY TRYON:

18 **Q. What was --- what was BPJ afraid of?**

19 ATTORNEY JONES: Objection to form.
20 Asked and answered.

21 THE WITNESS: Can you repeat that
22 question?

23 BY ATTORNEY TRYON:

24 **Q. You said she was afraid of going through puberty**

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1 because she does not want to be a boy. Why was she
2 afraid of going through puberty?

3 A. [REDACTED]

12 BY ATTORNEY TRYON:

13 Q. Is that a word that you would use or a word that
14 BPJ actually used?

15 A. That is from my own observation.

16 Q. [REDACTED]

22 Q. Did BPJ --- strike that.

23 Did you ask BPJ what it means in BPJ's mind to
24 be a girl?

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1 system.

2 Right?

3 A. Yes.

4 Q. Let's go to the second page here. Do you see
5 under development there's some questions there?

6 A. Yes.

7 Q. Did you discuss issues under this category with
8 BPJ?

9 A. Yes.

10 Q. Tell me about those discussions.

11 A. So the two main questions I ask that is custom
12 and part of my practice is if you --- what parts of your
13 body do you feel most uncomfortable with. And then if
14 there are anything you would change to make your body
15 fit with who --- with that person's or patient's gender
16 identity.

17 Q. And what was BPJ's response?

18 A. [REDACTED]

21 Q. The next --- well, I don't know how to
22 characterize this, but it says I am romantically or
23 sexually attracted to boys, [REDACTED]. Did
24 you ask BPJ about that?

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1 ATTORNEY JONES: Form.

2 THE WITNESS: Is there a different way
3 you can ask that question?

4 BY ATTORNEY TRYON:

5 Q. In the form it says if you could change one
6 thing about your life or yourself would it be, BPJ wrote
7 to be a girl. Did you ask BPJ what it meant to be a
8 girl?

9 A. If you mean from an existential point, no.

10 Q. Did you ask anything else --- you may have
11 already answered part of this. I apologize if I'm ---
12 if I'm asking the same thing. Did you ask BPJ --- let
13 me --- and forgive me if I'm asking you to repeat
14 yourself. Did you ask BPJ what characteristics of being
15 a girl that BPJ wanted?

16 A. I may have to look at my notes to refresh my
17 memory.

18 Q. What notes are those?

19 A. The medical records on the day I saw her.

20 Q. I see. Okay. We'll get to those in a bit then.
21 Do you have any handwritten notes from your visit with
22 BPJ and Heather Jackson that day?

23 A. No.

24 Q. So the only notes would be what are in the

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1 A. No, I didn't expand upon that.

2 Q. [REDACTED]

6 BY ATTORNEY TRYON:

7 Q. [REDACTED]

14 Q. Why do you ask that?

15 A. It provides me a level of that patient's mental
16 health.

17 Q. Ultimately, did you, in fact, diagnose BPJ with
18 gender dysphoria or not?

19 A. Yes, I diagnosed her with gender dysphoria.

20 Q. Has anyone else previously or after, to your
21 knowledge, diagnosed BPJ with gender dysphoria?

22 A. Do you mean as in like a second opinion?

23 Q. I don't know if I would call it second opinion
24 or not. I want to know if you know of anyone else

Page 94

1 **that's actually made a formal diagnosis of gender**
2 **dysphoria for BPJ?**

3 A. That I do not know.

4 **Q. I have been told that there's something called**
5 **--- that gender identity is fluid.**

6 **Is that right?**

7 ATTORNEY BLOCK: Objection to form.

8 ATTORNEY JONES: Form and terminology.

9 ATTORNEY TRYON: Let me back up.

10 BY ATTORNEY TRYON:

11 **Q. What does the term gender identity mean?**

12 A. Gender identity is an immutable characteristic
13 of someone's feeling of either being a woman or a man or
14 something in between or another gender, which could be a
15 combination of bio, psychosocial, societal expectations
16 and their own sense of what their gender identity is.

17 **Q. Can gender identity be fluid?**

18 ATTORNEY JONES: Objection to form.

19 THE WITNESS: It cannot be fluid. It is
20 immutable.

21 BY ATTORNEY TRYON:

22 **Q. So if another medical professional said that**
23 **gender identity is fluid, that person would be wrong in**
24 **your estimation?**

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1 THE WITNESS: That is something that a
2 person only knows.

3 ATTORNEY TRYON: Jacob, I'm trying to
4 find the documents used previously. Trying to find
5 Exhibit 4.

6 VIDEOGRAPHER: Give me one moment here.
7 That would be --- 4 would be in the one marked 1 through
8 9. Correct?

9 ATTORNEY TRYON: Correct.

10 VIDEOGRAPHER: Okay.

11 It should be shared with you. You might
12 see it in a folder labeled shared with you.

13 ATTORNEY TRYON: Shared with group.
14 There we go. Okay.

15 Jacob, is there a way to get through here
16 without clicking the arrow button so I can get through
17 faster?

18 VIDEOGRAPHER: You can highlight the
19 number and type in, you know, whatever number page you
20 want to go to.

21 ATTORNEY TRYON: Thank you.

22 Okay. This is Exhibit 4.

23 BY ATTORNEY TRYON:

24 **Q. Can you see that, Doctor Montano?**

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1 ATTORNEY JONES: Objection to scope.
2 He's not here as an expert.

3 BY ATTORNEY TRYON:

4 **Q. You can answer.**

5 A. I would say they're using --- that would be
6 incorrect definition of what gender identity is.

7 **Q. I've also been told that gender identity**
8 **evolves. Are you saying --- is that right or wrong?**

9 ATTORNEY BLOCK: Objection to the form.

10 BY ATTORNEY TRYON:

11 **Q. Or that it can evolve. Would that be right or**
12 **wrong.**

13 ATTORNEY BLOCK: Objection to form.

14 ATTORNEY JONES: And scope.

15 THE WITNESS: Can you clarify what do you
16 mean by evolve?

17 BY ATTORNEY TRYON:

18 **Q. Change over time.**

19 A. No.

20 **Q. Have you ever --- is gender identity something**
21 **that is observable externally or only what some person**
22 **feels?**

23 ATTORNEY BLOCK: Objection to form.

24 ATTORNEY JONES: Form. You can answer.

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1 A. I cannot see it.

2 **Q. Oh, let me know when you see it.**

3 A. It's loading. Sorry.

4 **Q. That's okay.**

5 A. I see it.

6 **Q. Do you recognize this document?**

7 A. Yes.

8 **Q. What is it?**

9 A. That is the physical documentation when I first
10 saw BPJ.

11 **Q. How is this form filled out? Do you see this**
12 **form just like this on the system and you type in your**
13 **information or is this just a separate internal form**
14 **that then populates this?**

15 A. It's the template within the electronic medical
16 record.

17 **Q. Are you saying this is the actual template or**
18 **there is a template that you --- on the system that you**
19 **type into which then populates this form?**

20 ATTORNEY BLOCK: Objection to form.

21 ATTORNEY JONES: Objection to form.

22 THE WITNESS: Is there --- can you
23 rephrase that question?

24 BY ATTORNEY TRYON:

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1 Q. Yeah. I'm just trying to understand. When you
2 --- when --- you don't fill things out in paper, right?

3 You do it right on the computer.

4 Is that correct?

5 A. Yes.

6 Q. And when you pull up --- go to enter information
7 on the computer, does the document look like this
8 Exhibit 4?

9 A. Yes, it's like a pre-form template that I use.

10 Q. And what's the source of the template? Is it
11 something that you developed or that UPMC developed or
12 something that Epic developed or something else?

13 A. It's a template I developed.

14 Q. Is this form in the Epic system now?

15 A. Yes.

16 Q. And more than form. I guess I should say ---
17 rephrase that. Is this actual document in the Epic
18 system?

19 A. Are you referring to WV 4?

20 Q. Yes.

21 A. Yes. It's in the electronic medical record
22 system.

23 Q. At the top here it has got the designation of
24 male.

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1 Do you see that?

2 A. Yes.

3 Q. Why does it say male?

4 A. Because that is the legal sex of the patient.

5 Q. Is there any other reason that the designation
6 of male should be in here?

7 ATTORNEY BLOCK: Objection to form.

8 ATTORNEY JONES: Objection to form.

9 THE WITNESS: From my custom and
10 practice, it's important to know what organs that person
11 has. So it's a good thing to know.

12 BY ATTORNEY TRYON:

13 Q. Does that mean that BPJ is a biological male?

14 ATTORNEY BLOCK: Objection to form.

15 ATTORNEY JONES: Objection to form.

16 THE WITNESS: The way I would describe it
17 is that B [REDACTED] or BPJ was assigned male at birth.

18 BY ATTORNEY TRYON:

19 Q. Does the term biological male have a meaning?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: To answer your question, it
22 is a very misleading and to some people offensive
23 meaning.

24 BY ATTORNEY TRYON:

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1 Q. Is it offensive to you?

2 A. No.

3 Q. In what way is it misleading?

4 A. Because it disqualifies someone's gender
5 identity when you describe them as biologically male.

6 Q. Does the term --- how does the term male as used
7 in this document differ from the term biological male?

8 A. Going back to my assigned male at birth, this is
9 what that patient was assigned at birth typically based
10 on what the doctors see in their genitalia.

11 Q. Now, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

16 Q. Under desire or secondary sex characteristics of
17 other gender, slash, to be other gender, in that part of
18 this form can you tell me what part of the template and
19 what items you actually inputted?

20 A. So the heading desire to get rid of secondary
21 sex characteristics and then the expectations for
22 today's visit and then hopes for hormone therapy, those
23 are part of the template. And then the words afterwards
24 are something that I input based on the patient

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1 response.

2 Q. And the words desire for secondary sex
3 characteristic of other gender, slash, to be other
4 gender, that's part of the template?

5 A. Yes.

6 Q. And then severity of wanting to be another
7 gender is based on the following, that's part of the
8 template?

9 A. Yes.

10 Q. And then there's four items underneath that,
11 hairstyle, clothing, shoes and name. Are those part of
12 the template?

13 A. Yes.

14 Q. And the Y after each one of those, is that
15 something that you inputted into the system?

16 A. Yes.

17 Q. I presume Y stands for yes.
18 Correct?

19 A. Yes. Yes.

20 Q. So are you the one that created the template
21 that listed hairstyle, clothing, shoes and name.

22 Is that right?

23 A. Yes.

24 Q. Why did you choose those particular four

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1 categories?

2 A. That was based on my training on what questions
3 would be high yield and also based on my understanding
4 of the criteria for gender dysphoria.

5 Q. So you just limited it to four there, not ---
6 why didn't you have more characteristics?

7 A. I felt that those would be sufficient enough to
8 indicate someone's desire to be of the other gender.

9 Q. When it says been expressing herself as female,
10 that's template?

11 A. No, that actually was something I inputted
12 myself.

13 Q. Okay.

14 So including the one year? That question is
15 not entirely clear. Let me try again. So it says been
16 expressing herself as female, colon, one year. That
17 entire phrase is something you inputted separately, not
18 part of the template?

19 A. I'm sorry. I had a recording phrase. I don't
20 know if you said something.

21 Q. The language, it says been expressing herself as
22 female. Is that language part of the template or
23 something you typed in?

24 A. That is something I typed in.

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1 assessment was conducted and documented confidentially
2 and relevant recommendations and health education was
3 offered to the patient and family. Is that part of the
4 template or is that something you typed in?

5 A. That is part of the template.

6 Q. And was that psychosocial assessment conducted?

7 A. Yes.

8 Q. And how is it documented?

9 A. It was documented through that confidential
10 Adolescent Medicine Questionnaire.

11 Q. The two-page document that we looked at earlier?

12 A. Yes.

13 Q. Any other documentation on that psychosocial
14 assessment?

15 A. No.

16 Q. On the page we're looking at, which is page five
17 of 6, also labeled at the bottom BPJ 038, at the top
18 there's a part that says we discussed with B [REDACTED] and her
19 parents/caregiver the nature, effects, benefits, et
20 cetera.

21 Do you see that paragraph?

22 A. Yes.

23 Q. How much of that is part of the template and how
24 much of that was actually typed in by you?

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1 Q. And then the one year, you typed that in?

2 A. Yes.

3 Q. And that was based on what BPJ and/or BPJ's mom
4 told you?

5 A. Both of them.

6 Q. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Q. So I don't really understand what that's saying.
17 Can you explain that?

18 A. To be honest, I don't understand what it means
19 either.

20 Q. On the next page, under social and psychosocial
21 habits it says no data available. Did you type in no
22 data available?

23 A. No.

24 Q. And the next part says a detailed psychosocial

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1 A. That was part of the template, but it's my
2 custom and practice to describe all of that when I'm
3 counseling my patients.

4 Q. And so it says that you offered a refer to the
5 fertility services at Magee Womens Hospital. Why did
6 you offer her a referral to the fertility services at
7 Magee Womens Hospital?

8 A. The reason being is that if B [REDACTED] were to decide
9 to get a puberty blocker, [REDACTED]

10 [REDACTED] And so I always --- it's my custom
11 and practice to always counsel my parents that that is a
12 possibility and they should consult with a fertility
13 specialist to understand what would happen if this
14 person were to go or use puberty blockers.

15 Q. Well, will BPJ be able to produce any eggs with
16 or without puberty blockers?

17 A. I apologize. [REDACTED]

18 [REDACTED]
19 Q. You threw me there. One more question about
20 this form, back on the first page, page one of eight I
21 think it is. So under history of present illness ---
22 OFF VIDEOTAPE

23 Q. --- incongruence, it says identifies as
24 transgender instead of male. What does it take to

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1 **identify as transgender?**

2 A. To stop you right there, I can't see that file.

3 VIDEOGRAPHER: Hold on one second. The
4 witness's video feed cut out for a second and that ended
5 up pausing the recording during your question. The
6 reporter still heard it, though. But let me get
7 everything sorted here real quick.

8 Okay. We are recording again. Doctor
9 Montano, can you see the exhibit right now?

10 THE WITNESS: No.

11 VIDEOGRAPHER: Mr. Tryon, could you do me
12 a favor and just hit stop and then start again?

13 ATTORNEY JONES: Just so you know, I have
14 --- if you would like ---?

15 VIDEOGRAPHER: The witness got cut out
16 again.

17 ATTORNEY TRYON: I can see Mr. Jones. I
18 cannot see the witness.

19 VIDEOGRAPHER: Right. The witness's feed
20 is not here. Mr. Jones, is he losing internet
21 connection on the computer he's using? I'm going to
22 send him a chat.

23 ATTORNEY JONES: I apologize. I would
24 have thought that my --- my office had the capability to

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1 handle this.

2 ATTORNEY TRYON: Are we all back together
3 again?

4 ATTORNEY JONES: Yes.

5 VIDEOGRAPHER: Give me one second. Mr.
6 Tryon, you might have to do that stop and start again if
7 the witness can't see the exhibit.

8 THE WITNESS: I can see it right now.

9 VIDEOGRAPHER: Oh, okay.

10 ATTORNEY JONES: And I have the document
11 that he's referring to, our copy, in front of him.

12 VIDEOGRAPHER: Okay. We are recording
13 and we are back on the record.

14 ON VIDEOTAPE

15 BY ATTORNEY TRYON:

16 **Q. Independent of this exhibit, did you tell BPJ or**
17 **Heather Jackson that there was a possibility that BPJ**
18 **could --- might not persist with gender dysphoria?**

19 A. It is my custom and practice to discuss that
20 with all of my patients.

21 **Q. Do you remember saying that to BPJ and Heather**
22 **Jackson?**

23 A. Again, it's part of my custom and practice to
24 always bring that up.

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1 **Q. I understand. Do you remember having that**
2 **discussion with them?**

3 A. Not the specific details, but yes.

4 **Q. Do you remember what their reaction was, the**
5 **response was?**

6 A. I don't remember.

7 **Q. And on the document, Exhibit 4, it says history**
8 **of present illness, incongruence, that much is part of**
9 **the form.**

10 **Right?**

11 A. Yes.

12 **Q. And then the next part says identifies as**
13 **transgender instead of --- instead of male. Is that**
14 **something you typed in?**

15 A. Yes.

16 **Q. And did BPJ say that BPJ identifies as**
17 **transgender or something else and you just**
18 **re-characterized it?**

19 A. I don't recall specifically.

20 **Q. Okay.**

21 **What does it take for someone to identify as**
22 **transgender, to say I identify as transgender, or is**
23 **there something beyond that?**

24 ATTORNEY BLOCK: Objection to form.

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1 ATTORNEY JONES: Objection to form.

2 THE WITNESS: The criteria for
3 incongruence is someone who states that someone
4 identifies differently from the sex assigned to them at
5 birth.

6 BY ATTORNEY TRYON:

7 **Q. Okay.**

8 **I'm showing you now Exhibit 5. Do you see**
9 **that?**

10 A. Yes.

11 **Q. So this would have been generated through the**
12 **same system --- I mean this appears to have much of the**
13 **same information as the prior document, Exhibit 4, but**
14 **in a different format. At the top it says discharge**
15 **summary. So let me, first of all, ask you if you have**
16 **seen this document before?**

17 A. Yes.

18 **Q. And how is this different from Exhibit 4, which**
19 **is --- is titled Adolescent Medicine, dash, Evaluation?**

20 VIDEOGRAPHER: I have to interrupt you.
21 The witness's video cut out again. It looks like he's
22 back.

23 THE WITNESS: I can still see the form
24 --- oh, I'm frozen.

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1 BY ATTORNEY TRYON:

2 **Q. Do you see the form or not?**

3 A. I can see the form.

4 **Q. Okay.**

5 **Did you understand my question?**

6 A. Can you repeat the question, please?

7 **Q. Yes. Let me fix my system here. Okay. How is**
8 **this Exhibit 5 differ from Exhibit 4?**

9 A. So the discharge summary is something that we
10 are required by the hospital to give to summarize their
11 care and the next steps for the patient.

12 **Q. Under provider plan there's three items. That's**
13 **information you typed in there.**

14 **Correct?**

15 A. Yes.

16 **Q. And item two, I will contact Doctor Murray in**
17 **Morgantown, West Virginia, to determine if her clinic**
18 **can give pubertal blockers, did you contact Doctor**
19 **Murray?**

20 A. My memory is not clear. I may have to review
21 some of the telephone notes to see if I remember or to
22 help me recall that I did speak with Doctor Murray.

23 **Q. Why were you considering contacting Doctor**
24 **Murray to determine if her clinic could give pubertal**

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1 **blockers?**

2 A. Because it would be closer to the patient.

3 **Q. Who is Doctor Murray?**

4 A. She is a physician that used to work at West
5 Virginia University Adolescent Medicine.

6 **Q. Where does Doctor Murray work now?**

7 A. Boston Children's.

8 **Q. What is Doctor Murray's first name?**

9 A. Pamela.

10 **Q. Ultimately, Doctor Murray did not give any**
11 **pubertal blockers to BPJ.**

12 **Correct?**

13 A. Yes.

14 **Q. Do you know why?**

15 A. From my recollection, she just didn't do those
16 procedures or give out those medications.

17 **Q. This is Exhibit 6. This is also from the date**
18 **of service of --- I'm sorry. Do you see that?**

19 A. Yes.

20 **Q. Are you looking at a hard copy?**

21 A. I'm looking at both.

22 **Q. Very good. This is also from July 15, 2019 it**
23 **says at the top. Do you see that?**

24 A. Yes.

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1 **Q. And this is outpatient evaluations. It appears**
2 **to have much the same information again, but it's a**
3 **different form. Can you explain the purpose of this**
4 **form?**

5 A. I believe it's just a duplication because my
6 recollection of the full form, it looks like the exact
7 same information that was on the previous exhibit.

8 **Q. Okay.**

9 **Let's look at the bottom here. And I think**
10 **you're probably right. The bottom, it says it was**
11 **printed on 5/19/2021. So back in May this was printed.**
12 **Do you know why this was printed back in May of 2021?**

13 A. That I would not know.

14 **Q. Next I have got Exhibit 7. Do you see that?**

15 A. Yes.

16 **Q. This is the same thing it appears.**

17 **Is that right?**

18 A. Yep. Yes.

19 **Q. Next I'm showing you Exhibit 8. Do you see**
20 **that?**

21 A. Yes.

22 **Q. And it shows an addendum typed in there. Do you**
23 **see that?**

24 A. Yes.

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1 **Q. Is all of that something you typed in?**

2 A. Yes.

3 **Q. And you typed it in on October 17, 2019?**

4 A. Yes.

5 **Q. Did you see the patient on this date?**

6 A. No.

7 **Q. Who did see the patient on that date?**

8 A. Laura Lynch.

9 **Q. And who is Laura Lynch?**

10 A. She's a physician assistant at the clinic.

11 **Q. Next I'm showing you Exhibit 9. Have you seen**
12 **this document before?**

13 A. Yes.

14 **Q. What is it?**

15 A. It's the progress note written by Laura Lynch on
16 October 15th, 2019, of PBJ.

17 **Q. And did you review these notes on the date of**
18 **service of 10/15/2019?**

19 A. It appears I reviewed these notes two days
20 afterwards.

21 **Q. Did you make any changes to Laura Lynch's ---**
22 **what she had put in?**

23 A. No.

24 **Q. Would that somehow be indicated if you had made**

Page 114

1 any changes?

2 A. Yes.

3 Q. How would you notate that? Would that be simply
4 --- would you state that on the addendum?

5 A. I would state that on the addendum.

6 Q. And this was just a follow-up visit.
7 Is that right?

8 A. Yes.

9 Q. I'm now showing you Exhibit 11A. Do you see
10 that?

11 A. Not yet.

12 Q. I forgot to hit start. Let me know when you see
13 it.

14 A. I see it.

15 Q. This says --- have you seen this document
16 before?

17 A. Yes.

18 Q. The encounter date is March 16, 2020.
19 Right?

20 A. Yes.

21 Q. Encounter date means the date of the visit.
22 Correct?

23 A. Yes.

24 Q. And who is Taylor Rives?

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1 Q. Such as what?

2 A. Depending on sex, but for those assigned male at
3 birth, it would be testicular growth. And for those
4 assigned female at birth, it would be breast buds.

5 ---
6 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)
7 ---

8 BY ATTORNEY TRYON:

9 Q. Down lower it says therapist, she has not
10 started seeing a therapist yet. However, they have a
11 therapist in her town who specializes in gender
12 dysphoria. Mother is waiting to start therapy until
13 B■■■■ wants to start. Do you know who that therapist
14 was to be?

15 A. No.

16 Q. Is it normal to wait as long as BPJ and Heather
17 waited to start seeing a therapist?

18 ATTORNEY JONES: Objection to form.

19 THE WITNESS: To answer your question,
20 it's not atypical for someone to wait to see a
21 therapist.

22 BY ATTORNEY TRYON:

23 Q. Do your patients who have gender dysphoria
24 typically meet with a therapist before meeting with you?

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1 A. She was one of the resident trainees with me
2 that day.

3 Q. Now, it says under history of present illness,
4 second sentence, she has been followed for gender
5 dysphoria with desire to start hormone blockers, but was
6 ■■■■■ last visit. What does that mean?

7 A. ■■■■■
8 ■■■■■.

9 Q. ■■■■■
10 ■■■■■
11 ■■■■■

12 A. Generally it means first signs of puberty, which
13 is different ---.

14 VIDEOGRAPHER: You're cutting out again,
15 Doctor Montano.

16 THE WITNESS: Can you hear me now?

17 VIDEOGRAPHER: Yes.

18 ATTORNEY TRYON: Yes.

19 THE WITNESS: Can you repeat the question
20 that you couldn't hear my answer?

21 BY ATTORNEY TRYON:

22 Q. ■■■■■
23 ■■■■■
24 ■■■■■.

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1 A. Not always.

2 Q. But sometimes?

3 A. Yes.

4 Q. During your discussions with BPJ and Heather
5 Jackson, did you discuss having a therapist prior to
6 this date of 3/16/2020?

7 A. From my recollection, yes, because of my custom
8 and practice. But yes.

9 Q. Why do you --- and I take it you recommend that
10 they talk to a therapist.

11 Is that true?

12 ATTORNEY JONES: Objection to form.

13 ATTORNEY BLOCK: Same.

14 BY ATTORNEY TRYON:

15 Q. Go ahead.

16 A. To answer your question, it's my custom and
17 practice to always --- to recommend seeing a therapist
18 because gender affirmation can be very difficult for the
19 patient, so it's in order to get them support that they
20 need.

21 Q. And did you recommend that in your first visit
22 with BPJ and Heather Jackson?

23 A. From my recollection, yes.

24 Q. And what was their response?

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1 A. I do not recall what their response was.

2 **Q. Did you suggest any names?**

3 A. That I don't know.

4 **Q. Do you typically give your patients names of**
5 **therapists?**

6 A. Yeah, my --- yes, my custom and practice is I
7 actually consult our behavioral health team and then
8 they speak with our patients to help find a therapist if
9 they need one.

10 **Q. Next is Exhibit 11B. I'm sorry, I need to go**
11 **back to 11A for a moment. So under physical exam, do**
12 **you see that?**

13 A. Yes.

14 **Q. It shows a reference to BP and then also to BMI.**
15 **What is BMI?**

16 A. BMI is a measurement of the weight in ratio to
17 someone's height.

18 **Q. And why is that tracked?**

19 A. Because it helps determine if --- a patient
20 might be having difficulties with obesity if it's too
21 high of a number.

22 **Q. And BMI percentages are divided into categories**
23 **for comparison to similar populations.**
24 **Is that right?**

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1 A. Yes.

2 **Q. Is it important to compare people to the correct**
3 **grouping?**

4 ATTORNEY BLOCK: Objection to form.

5 ATTORNEY TRYON: Let me rephrase.

6 BY ATTORNEY TRYON:

7 **Q. Go ahead.**

8 A. No, you can rephrase the question, please.

9 **Q. Why are they divided into categories to compare**
10 **for comparison to similar populations?**

11 A. It helps create a normalized data to help
12 pediatricians in general to figure out if someone is
13 outside the typical range.

14 **Q. And they're dividing it between boys and girls.**
15 **Right?**

16 A. Yes.

17 **Q. And this one shows that BPJ was in the** [REDACTED]

18 **Right?**

19 A. Yes.

20 **Q.** [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

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1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5

ATTORNEY JONES: Objection to form.

6 BY ATTORNEY TRYON:

7 **Q.** [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13

Q. So in your opinion, should BPJ have been
14 **compared on BMI with** [REDACTED]

15 [REDACTED]

16

ATTORNEY JONES: Objection, scope.

17 BY ATTORNEY TRYON:

18 **Q. Go ahead.**

19 A. There's a debate as to which ones to be used and
20 our --- at least in my practice, if this is something
21 pertinent, I will try to do both boys and girls and make
22 a comparison.

23 **Q. So you think for BPJ you should track BPJ on**
24 **both boy's and girl's charts?**

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1 ATTORNEY JONES: Objection, scope.

2 BY ATTORNEY TRYON:

3 **Q. Is that right?**

4 A. That's what I would do.

5 **Q. Well, this is your form. Can't you modify it to**
6 **do that?**

7 ATTORNEY JONES: Objection, scope, asked
8 and answered.

9 BY ATTORNEY TRYON:

10 **Q. Go ahead. You can answer.**

11 ATTORNEY JONES: I don't want to give a
12 speaking objection.

13 ATTORNEY TRYON: I'll give you a standing
14 objection on this.

15 THE WITNESS: Can you repeat the
16 question?

17 BY ATTORNEY TRYON:

18 **Q. Well, let me back up. Maybe I misunderstood**
19 **something. This form that you're --- that is being**
20 **filled out here, is this a form that you created?**

21 A. It's a template I created, yes.

22 **Q. So on the template, are you able to add an**
23 **additional category for BMI percentiles for girls as**
24 **well as boys?**

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1 A. Yes.

2 Q. I'm looking now at the third page of this
3 exhibit, and I look down and see where it says self
4 harm?

5 A. Yes.

6 Q. And then it says TR.2T in the superscript. What
7 does that mean?

8 A. That I would not know.

9 Q. Well, does the T --- well, TR is the person's
10 name, right, Taylor Rives or Rives (different
11 pronunciation), if you look at the top?

12 ATTORNEY JONES: Objection, asked and
13 answered.

14 THE WITNESS: That could mean anything,
15 so I would not be able to know what that would mean.
16 BY ATTORNEY TRYON:

17 Q. Well, these superscripts, have you seen these
18 before?

19 A. No. It's not part of the medical record that I
20 have.

21 Q. Well, now it's unclear to me when you --- are
22 you saying you haven't seen this document before. I
23 thought you said that you had. Can you clear that up
24 for me?

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1 A. I have seen this document before, but I have
2 never seen it with those superscripts in it.

3 Q. Okay.

4 So under self harm it says [REDACTED]

6 Is that right?

7 A. Yes.

8 Q. And then suicidality, what is suicidality?

9 A. Suicidality is the desire to end one's own life.

10 Q. [REDACTED]

15 [REDACTED]
16 [REDACTED] next page. Sorry, I don't have questions
17 on the next page. It will be the following page.

18 There's a notation of some information that it appears
19 you entered. It says I saw and examined the patient and
20 was present during the key portion of the E, slash, M
21 service. Did you type that in?

22 A. Yes.

23 Q. And what is E, slash, M service?

24 A. Evaluation and management.

Q. Now, a couple lines down it says reviewed adol
med note from 10/15/2019 and at the time the patient was

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1 still at [REDACTED] and then it has got a superscript there.

2 It says GM.2M. And if you look down below, it says GM.2
3 and it refers to you, your name, on 3/16/2020 at 10:58
4 a.m. Looking at that now, does that give you an
5 indication what that superscript means?

6 A. Based on the attribution key it means that I
7 wrote that note --- or wrote that portion of the note.

8 Q. And what would be the portion of the note to the
9 left of the superscription.

10 Right?

11 A. Yes.

12 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24 Q. Not to ask the obvious, but did BPJ say why BPJ

Page 129

1 was uncomfortable?

2 A. Same reason why she came in, it's because she
3 doesn't like her own body.

4 Q. Did she actually say that or are you just
5 projecting --- not projecting, but is that what you
6 think --- why she was uncomfortable?

7 ATTORNEY JONES: Objection to form.

8 THE WITNESS: From my recollection, she
9 told me that. That's why we have a process in which we
10 cover her face, so she doesn't have to see the
11 examination being done.

12 BY ATTORNEY TRYON:

13 Q. What do you cover her --- BPJ's face with?

14 A. A gown, a patient gown.

15 Q. Okay.

16 Exhibit 11B, have you seen this document
17 before?

18 A. I can't see it right now.

19 Q. Oh, that's because I didn't hit the right
20 button.

21 ATTORNEY BLOCK: David, how much --- how
22 much longer do you think you have?

23 ATTORNEY TRYON: I'm guessing --- I think
24 within an hour.

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1 ATTORNEY BLOCK: It's been about two
2 hours since our last break. Is now a good time for
3 another one?

4 ATTORNEY TRYON: It works for me if
5 people want to do that.

6 ATTORNEY JONES: Do you want to take a
7 break?

8 THE WITNESS: Yes.

9 ATTORNEY JONES And can also go off the
10 record just about timing also, just so I can get an idea
11 of, you know, how much time ---?

12 ATTORNEY TRYON: So let's go off the
13 record.

14 VIDEOGRAPHER: Let me take us off then.
15 Going off the record. The current time reads 1:33 p.m.
16 OFF VIDEOTAPE

17 ---
18 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

19 ---
20 ON VIDEOTAPE

21 VIDEOGRAPHER:

22 We're back on the record. The current
23 time reads 1:44 p.m.

24 BY ATTORNEY TRYON:

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1 A. So in this case it gives us the baseline in
2 terms of what their original levels are.

3 Q. I'm sorry, original levels of those two
4 chemicals?

5 A. Yes.

6 Q. And then testosterone, is that a separate lab
7 test?

8 A. Yes.

9 Q. And this document does not show those levels.
10 Correct?

11 A. Correct.

12 Q. And the next word, estradiol, how do you
13 pronounce that?

14 A. Estradiol.

15 Q. Estradiol. And that was also a test that was
16 run?

17 A. Yes.

18 Q. [REDACTED]
[REDACTED]

21 Q. So on the next page, where it says we discussed
22 with B [REDACTED] and then it has that language, if I
23 understand correctly, that is basically template
24 language but you insert B [REDACTED] name.

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1 Q. Okay.

2 Exhibit 11, do you see that?

3 A. Yes.

4 Q. And this is from the encounter date of April 13,
5 2020.

6 Right?

7 A. Yes.

8 Q. And you've seen this document before?

9 A. Yes.

10 Q. It shows you at the top. Does that mean you are
11 the author of this document?

12 A. Yes.

13 Q. And everything in here is correct as far as you
14 can tell?

15 ATTORNEY JONES: Objection to form.

16 THE WITNESS: I see no errors.

17 BY ATTORNEY TRYON:

18 Q. Under it says review the labs with mom, F [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22 Q. And you had a lab done for that --- for those?

23 A. Yes.

24 Q. And what does that tell you?

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1 Is that right?

2 A. Yes.

3 Q. But you recall that you discussed those things
4 with BPJ and Heather Jackson?

5 A. Yes.

6 Q. So this is on April 13. I'm going to show you
7 another document from April 13, 2020. Let me know when
8 you see that.

9 A. I can see that.

10 Q. It is Exhibit 38?

11 A. Yes.

12 Q. Again, this is from the prior document, which
13 was Exhibit 11B. We received that some time ago.
14 Exhibit 38 we just received within the past week. It
15 looks like --- are these --- and you may have already
16 said you don't know, but are these from different
17 systems or different parts of the same system, if you
18 know?

19 A. That I --- that I do not know.

20 Q. You see at the top it says visit date,
21 4/13/2020.

22 Right?

23 A. Yes.

24 Q. And have you seen this document before?

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1 A. No --- I clarify. I reviewed that document the
2 night before but not in my electronic medical records.

3 **Q. Okay.**

4 **It says under progress notes, it has your name**
5 **and it says you are the author. What were you the**
6 **author of?**

7 A. I was the author of the progress note that I
8 wrote related to that visit on that date.

9 **Q. What do you see in this document, because I'm**
10 **not familiar with it, that you believe that you actually**
11 **input it into the system?**

12 A. Can you rephrase the question? I do not
13 understand.

14 **Q. Sure. There's a lot of information on here, a**
15 **lot of writing. And I'm trying to understand what**
16 **information you would have inputted into this that**
17 **appears on this document.**

18 ATTORNEY JONES: And can I interject real
19 quick. It appears, you know, yesterday, last night was
20 the first time we were made aware of these documents.
21 And after looking at these documents going to, you know,
22 we're using your Bates number WV 0031 and WV 0032 and
23 then looking at the page number of both of them, it
24 appears that a page is missing from the progress note.

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1 I do not believe that Doctor Montano can accurately, you
2 know, answer this question based on this missing page.

3 ATTORNEY TRYON: Yeah. I will represent
4 to you, as far as I know, this is what we got. I don't
5 know why that page is missing. I don't know if it was
6 not copied correctly when it was sent to us. These are
7 the documents that we received just two days ago. I'm
8 not sure what the missing page is. But if we could just
9 find out what Doctor Montano knows about these two
10 particular pages, recognizing that there's a missing
11 page that nobody knows what's there.

12 THE WITNESS: So from I tell by looking
13 through the information, it feels like it was a
14 duplicate --- there are words and information that are
15 duplicated from the progress note that I wrote on that
16 same day.

17 BY ATTORNEY TRYON:

18 **Q. Okay.**

19 **The reference to the [REDACTED]**
20 **[REDACTED], is that something**
21 **you would have inputted or someone else?**

22 A. That would be something I would have ordered and
23 then it would be reflected on that note.

24 **Q. When you order something, how does that actually**

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1 **happen? Do you write a script on like one of the old**
2 **fashion pads and give it to somebody or tell somebody**
3 **and they inputted it into the system or do you actually**
4 **input it into the system like this?**

5 A. I electronically inputted it.

6 **Q. Okay.**

7 **Did you actually order it from the provider?**

8 A. Can you clarify that question?

9 **Q. Let me ask you a different question. Who's**
10 **Samantha Richard?**

11 A. She was a medical assistant that worked in our
12 clinic at that time.

13 **Q. Okay.**

14 **So this [REDACTED] kit, is that something**
15 **that would be stocked in the clinic or has to be ordered**
16 **from the manufacturer or supplier?**

17 A. It has to be ordered from the manufacturer.

18 **Q. Do you know who actually ordered it from the**
19 **manufacturer?**

20 A. I did.

21 **Q. You did?**

22 A. Yes.

23 **Q. So you actually --- do you do that**
24 **electronically or do you make a phone call?**

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1 A. I do that electronically.

2 **Q. Okay.**

3 **Then next on the next page of this exhibit,**
4 **which I recognize appears that there may be a missing**
5 **page in between, it refers to --- under instructions it**
6 **says we will first obtain a preauthorization of**
7 **[REDACTED] Authorization from whom?**

8 A. It would be authorization from the patient's
9 insurance company.

10 **Q. Next I'm showing you Exhibit 39. Let me know**
11 **when you see that.**

12 A. Yes.

13 **Q. And this is for --- the note is dated 5/5/2020.**
14 **Do you see that?**

15 A. Yes.

16 **Q. And have you seen this document before?**

17 A. I've seen the contents of that document but not
18 in that format.

19 **Q. Fair enough. Everything in this document seems**
20 **correct to you?**

21 ATTORNEY JONES: Objection to form.

22 BY ATTORNEY TRYON:

23 **Q. I think you can --- anybody who has access to it**
24 **can scroll through it on the screen, but I think you**

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1 have a hard copy of it as well.

2 Is that right?

3 A. Yeah. Based on the interaction, I recall that
4 happening and that is correct.

5 Q. Who is Alexis Hammond?

6 A. She's one of the nurses who works at our clinic.

7 Q. Lauren Machi is also a nurse at the clinic.

8 Is that right?

9 A. Yes.

10 Q. Do you remember a [REDACTED] being delivered?

11 A. No, I did not physically saw it delivered.

12 Q. Was it --- did you do --- well, strike that.

13 On 6/15/2020 there was [REDACTED]
14 with BPJ.

15 Is that right?

16 A. Yes.

17 Q. And who performed that?

18 A. I did.

19 Q. Who else was present at that procedure?

20 A. If I could see the procedure note it will help
21 me remember if anyone else helped me during that
22 procedure.

23 Q. Okay.

24 I'm showing you Exhibit 40. Is that the

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1 procedure note that you're referring to? This is the
2 only information that I've received for any visit on
3 6/15/2020.

4 A. That was part of the note, but I do have a hard
5 copy here.

6 Q. Yeah. It's several pages long.

7 A. Yes.

8 Q. It goes --- Bates stamp is WV 22 through WV 26.

9 A. Yes, I can see that.

10 Q. Okay.

11 Is this the note you were referring to?

12 A. Yes.

13 Q. And have you seen the information in this
14 document before?

15 A. Yes.

16 Q. And it shows under procedures that you're the
17 author of this.

18 Is that right?

19 A. Yes.

20 Q. And then down at the bottom it says P [REDACTED],

21 [REDACTED] k, P [REDACTED] - J [REDACTED] d [REDACTED]
[REDACTED] [REDACTED]

23 Do you see that?

24 A. Yes.

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1 Q. So [REDACTED],
2 is it?

3 A. Correct.

4 Q. Did you insert a [REDACTED] insert?

5 A. No.

6 Q. It says she has been counseled concerning the
7 risks, benefits and alternatives to [REDACTED] and she
8 especially understands that her menstrual periods are
9 expected to become irregular and unpredictable
10 throughout the time she is using the [REDACTED] She has
11 no contradictions to [REDACTED] Her questions have been
12 answered. She has fully reviewed the FDA approved
13 [REDACTED] consent brochure, has signed the consent form
14 and wishes to proceed with the insertion today. Did she
15 sign a [REDACTED] consent brochure consent form?

16 A. No.

17 Q. But this says that she --- that BPJ did?

18 ATTORNEY BLOCK: David, can you change
19 the view of the document so the page you're reading from
20 is up on the screen?

21 ATTORNEY TRYON: I'm sorry. I thought
22 everyone could see this, could go through it. So it
23 goes from page one onto page two.

24 BY ATTORNEY TRYON:

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1 Q. So this says that BPJ signed the consent form
2 for the [REDACTED] insert. Are you now saying this note
3 is wrong?

4 A. The note is a template I was forced to use and
5 that's why I put in parentheses [REDACTED] because it's
6 a very similar procedure. But the way the hospital set
7 this up that was the only template I used and would not
8 let me finish the note or bill the patient's insurance
9 if I do not use that note. So this was the best next
10 option for me to use.

11 Q. How many [REDACTED] insertions do you do a year?

12 ATTORNEY JONES: Objection.

13 THE WITNESS: That number I do not keep
14 track of.

15 BY ATTORNEY TRYON:

16 Q. Well, it's many many.

17 Right?

18 A. It's something I do ---.

19 Q. I'm sorry, what?

20 A. I do it commonly, yes.

21 Q. And yet you don't have a template that allows
22 you to say you inserted a [REDACTED]?

23 ATTORNEY JONES: Objection. Don't answer
24 that. We're not here to talk about any type of --- you

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1 know, his diagnosis is what it is and ---.

2 ATTORNEY TRYON: No, this is --- this is
3 very relevant.

4 ATTORNEY JONES: Well, I'm --- I'm
5 instructing him not to answer. He spoke to you about
6 this and he spoke to you why he inserted --- or why he
7 inserted the words the way he did. If there's any other
8 concern then, you know, that's to be taken up for --- at
9 another time, another thing. But this case is about BPJ
10 and essentially her inability to play sports.

11 ATTORNEY TRYON: This case is about BPJ
12 and BPJ's diagnosis and treatment, and I'm entitled to
13 ask these questions and I'm not going to debate it.

14 ATTORNEY JONES: Okay.

15 I'm instructing him not to answer. I
16 think this is going beyond the scope. He explained.
17 It's asked and answered. Keep moving.

18 BY ATTORNEY TRYON:

19 **Q. The next statement says procedure, [REDACTED]
20 insert. Do you see that?**

21 ATTORNEY JONES: Objection, form. I
22 also says [REDACTED] insertion.

23 BY ATTORNEY TRYON:

24 **Q. Do you see where I'm reading?**

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1 **you see that?**

2 A. Yes.

3 **Q. It says office supplied device and then it says
4 yes. Did the office supply that device?**

5 A. We had the device, correct.

6 **Q. And it shows the lot number.
7 Right?**

8 A. Yes.

9 **Q. What's that lot number?**

10 A. It's the identification of the [REDACTED] to know
11 which lot it came from.

12 **Q. I'm sorry?**

13 A. Continue. I apologize.

14 **Q. So is it the actual lot number for the item
15 which was inserted?**

16 A. Yes.

17 **Q. Down further under procedure details it says
18 blank, presumably the child's name, was given post
19 insertion instructions. She understands that [REDACTED]
20 must be removed at the end of three years and may be
21 removed sooner if she wishes. And it has your initials
22 and the superscript. Did you enter that data?**

23 A. That was part of the template, yes.

24 **Q. No, it's not part of the data --- the template I**

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1 A. Yes.

2 **Q. Do you have the ability to modify the language
3 underneath where it says clinical notes?**

4 A. No, because it's a template.

5 **Q. And you cannot modify that template?**

6 A. Correct.

7 **Q. And you cannot insert your own clinical notes?**

8 A. I could ---.

9 ATTORNEY JONES: Objection to form.

10 THE WITNESS: Under procedure comments I
11 clarified that this is specifically for [REDACTED]
12 procedure.

13 BY ATTORNEY TRYON:

14 **Q. Can you show me what you're referring to?**

15 A. In the very bottom, where it says procedure
16 comments, I said that I specifically reviewed the risk
17 for [REDACTED] procedure and including those risks and
18 that they both understand and consented.

19 **Q. Where is that consent form?**

20 A. It's in the chart.

21 ATTORNEY TRYON: We would request that
22 consent form because we do not have it.

23 BY ATTORNEY TRYON:

24 **Q. Where it says [REDACTED] insert information, do**

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1 **don't think because if you look down at the bottom under
2 attribution key, it says M for manual.**

3 **Right?**

4 A. Yes.

5 **Q. So it says GM.1M, so that means it was manually
6 inputted.**

7 **Right?**

8 A. Yes.

9 **Q. And it actually shows the exact date and time
10 when you inputted that information.**

11 **Right?**

12 A. Yes.

13 **Q. The [REDACTED] insert lasts for three years.**

14 **Right?**

15 A. Yes.

16 **Q. But the [REDACTED] insert does not.**

17 **Correct?**

18 A. Yes.

19 **Q. There's nothing on this entire form that has the
20 word [REDACTED] does it?**

21 A. I used the word [REDACTED] because that's the
22 generic name.

23 **Q. Let's go to the next page. Up at the top, on
24 the right, where it says status, do you see that?**

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1 A. Yes.

2 **Q. It says deleted by Montano, Gerald, D.O., at**
 3 **6/15/2020, 9:33 a.m. What does that mean? What is that**
 4 **referring to?**

5 A. That means that I deleted the note.

6 **Q. What note did you delete?**

7 A. The procedure note that you see in the exhibit
 8 on that current page.

9 **Q. What did the note say that you deleted?**

10 A. The whole note was deleted.

11 **Q. Does the information --- are you saying the**
 12 **document that I have before me was deleted?**

13 ATTORNEY JONES: Objection to form.

14 THE WITNESS: So this page, specific
 15 page, was the one I deleted, not the page before.

16 BY ATTORNEY TRYON:

17 **Q. Why did you delete this page?**

18 A. Same reason why I have difficulty with the last
 19 page, because it had incorrect information and I did not
 20 want to represent that.

21 **Q. Where are you able to --- but it says deleted,**
 22 **but it's still here.**

23 **Right?**

24 A. Yes.

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1 **Q. So why does it say deleted if it's still here?**
 2 **I'm confused.**

3 ATTORNEY JONES: Objection to form.

4 THE WITNESS: That I cannot explain.

5 BY ATTORNEY TRYON:

6 **Q. Who else was present at this appointment?**

7 A. Based on the note and my recollection, it was
 8 me, BPJ and mom.

9 **Q. I'm sorry. I couldn't hear that.**

10 A. Based on the note and my recollection, it would
 11 be BPJ, me, and her mom.

12 **Q. So where it says names of all present during the**
 13 **procedure there's three asterisks below that. What are**
 14 **those three asterisks for?**

15 A. That --- that means that it's a blank template,
 16 fill in the blank. The reason ---.

17 **Q. I couldn't hear that. Sorry?**

18 A. Those three asterisks is a fill in --- is a
 19 --- is a place where you can fill in that information.
 20 However, that was left blank because I deleted that
 21 note.

22 **Q. So there is information below which specifically**
 23 **says blank Pepper-Jackson. So somebody typed in BPJ's**
 24 **name.**

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1 **Right?**

2 A. As I can see, yes.

3 **Q. Is that you?**

4 A. It looks like I did.

5 **Q. It says desires [REDACTED] insertion. You could**
 6 **have typed in right there desires [REDACTED] insertion, but**
 7 **you didn't.**

8 **Right?**

9 ATTORNEY JONES: Objection. Again, if
 10 you look at the top it says deleted by Gerald Montano.
 11 He again explained why this was deleted.

12 BY ATTORNEY TRYON:

13 **Q. You could have typed that in if you wanted to.**

14 **Right?**

15 COURT REPORTER: Was there an answer? I
 16 didn't hear. What was the answer?

17 ATTORNEY JONES: I told him not to answer
 18 that and I said next question.

19 COURT REPORTER: Did he answer it?

20 ATTORNEY TRYON: So you told him not to
 21 answer that?

22 ATTORNEY JONES: I did. He explained to
 23 you already why he deleted it. If you look at this note
 24 it says deleted by Gerald Montano, and he told you why

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1 he specifically deleted that portion of the note. I can
 2 have the court reporter read it back to you.

3 ATTORNEY TRYON: Well, let's go back to
 4 the prior page. Go back to page one. Oops, I'm on the
 5 wrong document.

6 ATTORNEY BLOCK: Objection. Just, David,
 7 for the scope of this deposition, this is about his
 8 treatment of BPJ, not about their recordkeeping
 9 practices.

10 ATTORNEY TRYON: Jacob, can you bring up
 11 Exhibit 40 for me again, please? Somehow I've lost it.

12 VIDEOGRAPHER: Yes.

13 ATTORNEY JONES: I join on that last
 14 objection.

15 VIDEOGRAPHER: Mr. Tryon, I need you to
 16 stop sharing the one that you have. If you could hit
 17 the stop button. Thank you. This is what I have for
 18 Exhibit 40. Do you see that?

19 ATTORNEY TRYON: Yes.

20 BY ATTORNEY TRYON:

21 **Q. So at the bottom there you did not delete this**
 22 **page or the following page.**

23 **Is that right?**

24 A. Yes.

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1 Q. And you did enter that information, B [REDACTED]
2 Pepper-Jackson desires, as indicated by that superscript
3 there.

4 Right?

5 A. Can you refer ---?

6 Q. Where it says --- at the very bottom there is a
7 blank, a redaction, and it says Pepper --- well, B [REDACTED]
8 Pepper-Jackson --- well, the deletion, desires. You
9 inputted those words.

10 Right?

11 A. The [REDACTED] part, yes.

12 Q. So you were able to insert [REDACTED] insertion?

13 A. Yes, they allow for comments.

14 ATTORNEY JONES: With, all due respect,
15 if you look at the blank Pepper-Jackson it's GM.1T. GM,
16 if you go to the attribution key on WV 0024 is Montano,
17 Gerald, and then 1T is template. So if we're doing what
18 you said before and you're going to the left, the blank
19 Pepper-Jackson is part of the template.

20 ATTORNEY TRYON: Okay.

21 BY ATTORNEY TRYON:

22 Q. Help me out here. So blank Pepper-Jackson is in
23 the template, Mr. Montano?

24 A. Yes, that's part of the procedure note. It

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1 automatically generates the name.

2 ATTORNEY JONES: And again, I just object
3 to this line of questioning. I mean ---.

4 ATTORNEY TRYON: I'm going to move on to
5 the next exhibit.

6 ATTORNEY JONES: Thank you.

7 BY ATTORNEY TRYON:

8 Q. So sharing with you Exhibit 42. Let me know
9 when you can see that.

10 A. Yes, I see that.

11 Q. And I'm going to go to the third page of that
12 document. And if we look down you see the paragraph
13 that starts B [REDACTED] Oh, there's a couple places. Under
14 history of present illness, the second paragraph, do you
15 see that?

16 A. Yes.

17 Q. And it says she wants to know when she can start
18 hormone therapy. [REDACTED]

19 [REDACTED] And so do you have an idea --- did you
20 already decide when BPJ can start hormone therapy at
21 that point?

22 A. No.

23 Q. Did you ever discuss a timeframe for that with
24 BPJ and Heather Jackson?

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1 A. No.

2 Q. How about a timeline for [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 Q. Then it said below recently her dad said [REDACTED]
6 which caused distress. What do you remember about that
7 conversation?

8 A. Exactly what it says there.

9 Q. So you just remember that --- who told you that
10 dad said [REDACTED], Heather or BPJ?

11 A. Heather.

12 Q. And that caused distress to whom?

13 A. That caused distress to B [REDACTED]

14 Q. And did B [REDACTED] explain that?

15 A. As you can see she wasn't present in that visit.
16 I was speaking solely to mom. So this is from mom's
17 point of view.

18 Q. Yeah, thank you for pointing that out. Lastly,
19 it says she has not [REDACTED]. Why would that be put
20 in there?

21 ATTORNEY JONES: Real quick, I'm just
22 going to object to the --- to the form of the question.
23 You're asking him to interpret a note of his resident.
24 I mean, as a supervising physician, you know, there are

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1 some things, but you know some --- I'm just going to
2 object to the form of the question.

3 BY ATTORNEY TRYON:

4 Q. Well, let's back up. Did you review the
5 information in this form?

6 A. Yes.

7 Q. And it says she had [REDACTED]. Did you
8 review that?

9 A. Yes.

10 Q. And why did you let that stay in there?

11 A. I do not recall.

12 Q. I mean, it's impossible for [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 Q. I'll show you Exhibit 43. Have you seen this
17 document before --- oops, I need to start. Let me know
18 when you see that.

19 A. Yes.

20 Q. This is from May 17, 2021. And then the second
21 page is from 5/17/2021. And this shows under telephone
22 encounter that your name and author is your name. And
23 then it says, hi, scheduling team, can you please reach
24 out to this family to schedule a follow-up appointment

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1 with me.

2 Do you see that?

3 A. Yes.

4 Q. Why did you want to have a follow-up
5 appointment?

6 A. It's routine practice to have the patient return
7 every three months once they're put on the puberty
8 blocker to make sure everything is going all right.

9 Q. And did you have that follow-up appointment?

10 A. It did not happen.

11 Q. Do you know why?

12 A. That I don't know why. They didn't make that
13 appointment.

14 Q. Did you have --- forgive me if I don't get the
15 terminology correct. Did you recommend or prescribe any
16 further treatment for BPJ other than the [REDACTED]

17 A. No.

18 Q. I'm showing you Exhibit 45. First page is just
19 a confidential disclosure statement that came with these
20 documents when we received them. And then the next
21 three pages are for --- well, I don't know how to
22 characterize this, but they're dated 5 --- excuse me. I
23 can't even --- it looks like the active coverage is as
24 of 12/31/2021, so it looks like that's the date of this

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1 document but the problem listed --- yeah, so 12/31/2021.
2 Do you recognize this document?

3 A. It looks like a duplicate of the previous
4 document.

5 Q. Can you look through here and tell me if
6 everything in here looks to be correct?

7 ATTORNEY JONES: Objection to form. What
8 --- just this page only?

9 ATTORNEY TRYON: No, all three pages. I
10 guess a total of --- after the first page, disclosure
11 statement, the rest of the document.

12 ATTORNEY JONES: So just so we're clear,
13 not going by the Bates --- well, we can go by the Bates.
14 It would be WV 002 through WV ---.

15 ATTORNEY TRYON: 0004.

16 ATTORNEY BLOCK: I'm just going to make
17 an objection to form. A lot of this information is
18 blank.

19 THE WITNESS: From what I'm reading in
20 the information here, this is all correct.

21 BY ATTORNEY TRYON:

22 Q. I didn't hear you.

23 A. From what I'm reading in the information here in
24 the exhibit they are correct.

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1 Q. And I recognize there's some information that
2 does not appear here and I'm just asking you to be clear
3 about the information that does appear here. So does
4 that --- your answer remain the same?

5 A. Yes.

6 Q. Let me ask you one question under problem list,
7 where it says [REDACTED].

8 Do you see that?

9 A. Yes.

10 ATTORNEY JONES: On WV 000 ---.

11 BY ATTORNEY TRYON:

12 Q. Is this [REDACTED] and the answer is no?

13 A. Yes, I see that.

14 Q. So can you explain that to me? Does that mean
15 that gender dysphoria is not a chronic condition or does
16 it mean something else? I don't understand it.

17 A. If I understand this completely, when you put in
18 the diagnosis in the chart, sometimes that would be
19 specific to that date only. So it doesn't list that as
20 chronic. That date is only specific to that date from
21 my understanding of how the electronic medical records
22 is listed.

23 ATTORNEY JONES: Again, objection to this
24 line of questioning. I'm not exactly sure if Doctor

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1 Montano was even the person filling out this part of the
2 form. So you're essentially asking him to interpret
3 what someone else put.

4 VIDEOGRAPHER: Mr. Tryon, you appear to
5 be muted. Mr. Tryon? Can everybody hear me?

6 THE WITNESS: I can hear you.

7 VIDEOGRAPHER: Okay.

8 I'm going to send him a message. Give me
9 one second.

10 ATTORNEY HARTNETT: This is Kathleen
11 Hartnett for the Plaintiff. Just for the record, the
12 volume is going in and out for a lot of people listening
13 to it. So whatever is happening to him may be what's
14 been happening to us sporadically throughout the
15 deposition.

16 VIDEOGRAPHER: Okay.

17 ATTORNEY TRYON: I got booted. I am
18 back. Can you guys hear me?

19 VIDEOGRAPHER: Yes. I just sent you a
20 chat message.

21 ATTORNEY TRYON: Okay.

22 VIDEOGRAPHER: Okay.

23 BY ATTORNEY TRYON:

24 Q. I'm sorry. So my question that I was trying to

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ask, Doctor Montano, have you had any conversations ---
communications with BPJ or Heather Jackson since May 17,
2021?

A. Yes ---.

Q. I'm sorry?

A. Yes.

Q. And when was that?

A. From my recollection, it would be sometime in
December of 2021.

Q. And what was that communication?

A. The communication, as I recall, was that the
lawyers for West Virginia wanted to talk to me regarding
her care, and I basically told them that they would need
to sign a release of information for them to speak with
those lawyers.

Q. And that was a conversation with --- with
Heather Jackson or BPJ?

A. With Heather Jackson.

Q. And anything else discussed during that
conversation?

A. No.

Q. Any other conversations other than that since
May 2021?

A. No.

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else has any questions, but ---.

ATTORNEY GREEN: This is Roberta Green,
WVSSAC. I have no questions.

ATTORNEY BLOCK: This is Josh Block for
Plaintiff. We don't have any questions, but we want to
make sure the transcript is marked confidential.

ATTORNEY CROPP: This is Jeff Cropp for
Harrison County Board of Education, Dora Stutler. We
don't have any questions.

ATTORNEY MORGAN: This is Kelly Morgan on
behalf of the West Virginia Board of Education and
Superintendent Burch. I don't have any questions.

ATTORNEY TRYON: Tim, you're muted.

ATTORNEY DUCAR: Thank you. Timothy
Ducar on behalf of the intervenor. We have no
questions.

ATTORNEY TRYON: I think that concludes
today's deposition, Mr. Montano. You have the right to
review this --- the transcript. I'm sure your client
--- your attorney will instruct you accordingly, whether
or not ---

ATTORNEY JONES: We'll read.

ATTORNEY TRYON: --- to read or waive.

ATTORNEY JONES: We will read.

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ATTORNEY TRYON: Well, give me just a
minute. I think I'm about finished here. Let me take a
quick break and I'll be back in just a moment.

VIDEOGRAPHER: Going off the record.

Current time is 2:34 p.m.

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ATTORNEY TRYON: No further questions.
ON VIDEOTAPE

VIDEOGRAPHER: We're back on the record,
2:37.

ATTORNEY TRYON: Okay.

This is David Tryon. I'm back, and I
have no further questions. Doctor Montano, thank you
for your time. I appreciate it. And we would request a
copy of that consent form that was discussed earlier.
And my question is simply do I need to do anything
formal to request that or will this suffice, Mr. Jones?

ATTORNEY JONES: I would say just send me
an e-mail just so I have something hard copy. And then
I'll make the request and get that for you.

ATTORNEY TRYON: Great. I doubt anybody

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VIDEOGRAPHER: That concludes the
deposition.

ATTORNEY TRYON: I guess I didn't --- we
would like a copy of the transcript and that only, and
we would like an etranscript as well.

ATTORNEY DUCAR: Yes, the intervenor
would like a copy of the transcript as well. No video,
please.

VIDEOGRAPHER: That concludes the
deposition. The current time is 2:40 p.m.

CONFIDENTIAL VIDEOTAPED DEPOSITION CONCLUDED

AT 2:40 P.M.

Exhibit 6

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

* * * * *

B.P.J., by her next friend and *

Mother, HEATHER JACKSON, *

Plaintiff * Case No.

vs. * 2:21-CV-00316

WEST VIRGINIA STATE BOARD OF *

EDUCATION, HARRISON COUNTY *

BOARD OF EDUCATION, WEST *

VIRGINIA SECONDARY SCHOOL *

ACTIVITIES COMMISSION, W. *

CLAYTON BURCH in his official * CONFIDENTIAL

Capacity as State Superintendent, * VIDEOTAPED

DORA STUTLER in her official * VIDEOCONFERENCE

Capacity as Harrison County * DEPOSITION

Superintendent, PATRICK MORRISEY * OF

In his official capacity as * KACIE KIDD, M.D.

Attorney General, and THE STATE * February 21, 2022

OF WEST VIRGINIA, *

Defendants *

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1 CONFIDENTIAL VIDEOTAPED VIDEOCONFERENCE DEPOSITION
2 OF
3 KACIE KIDD, M.D., taken on behalf of the Defendant,
4 State of West Virginia herein, pursuant to the Rules of
5 Civil Procedure, taken before me, the undersigned,
6 Nicole Montagano, a Court Reporter and Notary Public in
7 and for the State of West Virginia, on Monday, February
8 21, 2022, beginning at 10:16 a.m.

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I N D E X

DISCUSSION AMONG PARTIES	10 - 15
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Linkous 23

S T I P U L A T I O N

(It is hereby stipulated and agreed by and between
counsel for the respective parties that reading,
signing, sealing, certification and filing are not
waived.)

P R O C E E D I N G S

VIDEOGRAPHER: We are now on the record.
My name is Jacob Stock. I'm a Certified Legal Video
Specialist employed by Sargent's Court Reporting
Services. The date today is February 21st, 2022, and
the current time is 10:16 a.m. Eastern Standard Time.
This deposition is being taken remotely by
videoconferencing. The caption of this case in the
United States District Court for the Southern District
of West Virginia, Charleston Division. BPJ by her next
friend and mother, Heather Jackson v. West Virginia
State Board of Education, et al. Case number
2:21-CV-00316. The name of the witness is Kacie Kidd,
M.D. Will the attorneys present state their names and
the parties they represent?

ATTORNEY LINKOUS: This is Tim Linkous on

1 behalf of Kacie Kidd, M.D.

2 ATTORNEY TRYON: This is David Tryon on
3 behalf of the State of West Virginia.

4 ATTORNEY DENIKER: This is Susan Deniker
5 on behalf of Defendants Harrison County Board of
6 Education and Superintendant Dora Stutler.

7 ATTORNEY GREEN: This is Roberta Green on
8 behalf of West Virginia Secondary School Activities
9 Commission.

10 ATTORNEY MORGAN: This is Kelly Morgan on
11 behalf of West Virginia Board of Education and
12 Superintendant Burch.

13 ATTORNEY HOLCOMB: This is Christiana
14 Holcomb on behalf of Intervenor, Lainey Armistead.

15 ATTORNEY HARTNETT: And sorry, I think I
16 was on mute before. This is Kathleen Hartnett from
17 Cooley for Plaintiff. And there are several others on
18 the line for Plaintiff from Cooley.

19 ATTORNEY BARR: Yes. Good morning. This
20 is Andrew Barr from Cooley on behalf of Plaintiff.

21 ATTORNEY KANG: Good morning. This is
22 Katelyn Kang from Cooley on behalf of the Plaintiff.

23 ATTORNEY REINHARDT: Good morning. This
24 is Elizabeth Reinhardt on behalf of Plaintiff.

1 ATTORNEY HELSTROM: Good morning. This
2 is Zoe Helstrom from Cooley on behalf of Plaintiff.

3 ATTORNEY SWAMINATHAN: Good morning.
4 This is Sruti Swaminathan from Lambda Legal on behalf of
5 Plaintiff.

6 ATTORNEY BLOCK: Good morning. This is
7 Josh Block from the ACLU on behalf of Plaintiff.

8 VIDEOGRAPHER: If that's everybody, the
9 court reporter can swear in the witness, and we can
10 begin.

11 ATTORNEY TRYON: Two things. So first of
12 all, I went to mention that my colleague, Curtis
13 Capehart, is on this call. And I wanted to take care of
14 a housekeeping matter before we get started. I wonder
15 if we could do that, if we could exclude Dr. Kidd for
16 just a moment.

17 VIDEOGRAPHER:
18 Yes, give me one second.

19 ATTORNEY TRYON:
20 Thank you. So I just wanted to --- we
21 had previously in other depositions we've talked about
22 how we're going to handle objections. And Mr. Linkous,
23 in some other depositions, we've said that we are going
24 to handle by stating objection for form of the question

1 or directing the witness not to answer for privilege
2 issues. And Kathleen, are you going to be handling this
3 deposition?

4 ATTORNEY HARTNETT: Yes, David. And
5 would you like to discuss this off the record first and
6 then we can put our agreements on the record?

7 ATTORNEY TRYON: Okay.

8 ATTORNEY HARTNETT: Can we go off the
9 record?

10 VIDEOGRAPHER: Yes. Going off the
11 record. The current time is 10:20 a.m.

12 OFF VIDEOTAPE

13 ---

14 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

15 ---

16 ON VIDEOTAPE

17 VIDEOGRAPHER: Back on the record. The
18 current time is 10:24 a.m.

19 ATTORNEY TRYON: Thank you. So while we
20 were off the record we had a discussion and we've come
21 to an agreement on how to handle objections, that
22 primarily we would be handling objections by stating one
23 of three things, either objection to form, objection as
24 to technology --- or terminology, excuse me, or

1 objection to any privileges or scope. So I guess that's
2 four. And Mr. Linkous has said he will strive for that,
3 but has not specifically addressed --- agreed to that.
4 And finally, the counsel for Defendants have indicated
5 that they will --- if there is an objection by counsel
6 for Dr. Kidd, then they will be included within that
7 objection. So they don't have to object as well. Is
8 that a fair summary of our discussion?

9 ATTORNEY HARTNETT: Just on the last
10 point, it was objections by the witness to Counsel.

11 ATTORNEY TRYON: Thank you for correcting
12 me.

13 ATTORNEY LINKOUS: Hey, Dave, can I ask a
14 quick question?

15 ATTORNEY TRYON: Yes.

16 ATTORNEY LINKOUS: Ms. Holcomb, who was
17 on just a second ago, I heard her say she represents an
18 intervenor, and I didn't know there was an intervenor,
19 so who intervened and what's the story there?

20 ATTORNEY TRYON: The intervenor is Lainey
21 Armistead, I think that's how you say her last name, who
22 is a colleague student, a female college student who has
23 intervened.

24 ATTORNEY LINKOUS:

1 | Okay. Thank you. I appreciate that.

2 ATTORNEY HARTNETT: And Tim, that's a
3 gender college student who is seeking to intervene to
4 defend the state law.

5 | ATTORNEY LINKOUS: I see. Thank you.

6 COURT REPORTER: Josh, one second. It's
7 the court reporter. Can you go off the record, please,
8 Josh?

9 VIDEOGRAPHER: Going off the record,
10 10:26 a.m.

11	OFF VIDEOTAPE

12 | - - -

13 | (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

14 | - - -

15 | ON VIDEOTAPE

16 VIDEOGRAPHER: Back on the record. The
17 current time reads 10:32 a.m.

18 ATTORNEY DUCAR: My name is Tim Ducar.
19 I'm entering an appearance on behalf of the intervenor,
20 Lainey Armistead.

21 VIDEOGRAPHER: The court reporter can
22 swear in the witness and we can begin.

23 | - - -

24 | KACIE KIDD, M.D.,

1 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDINGS, HAVING
2 FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS FOLLOWS:

3 - - -

4 EXAMINATION

5 ---

6 BY ATTORNEY TRYON:

7 Q. Dr. Kidd, my name is David Tryon. I represent
8 the State of West Virginia. Can you, first of all, tell
9 me how you would prefer that I address you?

10 A. Hi, I'm Kacie Kidd. I use she/her pronouns.
11 You're welcome to address me as Kacie or Dr. Kidd.

12 Q. Very good. So Kacie --- well, let me call you
13 Dr. Kidd. Dr. Kidd, are you represented by counsel
14 today?

15 A. I am.

16 Q. And who is that?

17 A. Mr. Linkous.

18 Q. And how long has he represented you?

19 A. Well, I can't recall our exact first email
20 exchange. I think it's been over a month.

21 Q. Okay.

22 Have you ever been deposed before?

23 A. I have not.

24 Q. Have you ever testified at trial before?

1 A. I have not.

2 Q. Excuse me. Sorry about that. Have you ever
3 been sued before?

4 A. I have not.

5 Q. Have you ever been retained as an expert either
6 as a testifying or consulting expert in any litigation
7 or otherwise?

8 A. I have not.

9 Q. We are in Federal Court, so the Federal Rules of
10 Procedure apply here. And under the Federal Rules of
11 Procedures 30(c)(2) it provides for objections by your
12 counsel or other counsel. And while we were off the
13 record or before --- we have agreed to certain ways to
14 make objections. And then even if there are objections,
15 you'll still need to answer questions unless your
16 counsel directs you to not do so.

17 Understand?

18 A. Yes.

19 Q. Do you have any questions about that?

20 A. No.

21 Q. Okay.

22 So when you answer, as you're doing now, please
23 answer verbally rather than a nod or a shake. The court
24 reporter, especially since she is not currently watching

1 us, will not be able to detect anything other than your
2 actual words.

3 Okay?

4 A. Yes.

5 Q. Now, if you don't understand my questions,
6 please say so, and I will try to reframe them or say it
7 in a different way.

8 All right?

9 A. Okay.

10 Q. And if you need a break, let us know and we'll
11 make --- we'll try and accommodate that. The only thing
12 you can't do is take a break after I've asked a
13 question. So we need to do it before I ask a question.
14 And I'll also note that this deposition is being
15 conducted as upon Cross Examination.

16 Now, are you familiar with the lawsuit that's
17 involved here?

18 A. I know of the lawsuit loosely. I don't know
19 significant details.

20 Q. Okay.

21 Just briefly, the Plaintiff in the case is BPJ.
22 Are you aware of who BPJ is?

23 A. I am.

24 Q. And BPJ is suing various Defendants asserting

1 that a law known as HB-3293 is invalid at least as it
2 pertains to BPJ. Were you aware of that much?

3 A. Not the numbers and name of that law, but
4 loosely, yes.

5 Q. Okay.

6 Have you heard of the law, loosely known ---
7 well, it is known as HB-3293, sometimes called the
8 Women's Sports --- Save Women's Sports Act, and maybe
9 there's other names for it, too. Have you heard of the
10 law?

11 ATTORNEY HARTNETT: Objection to the
12 form.

13 THE WITNESS: In lay media, yes.

14 BY ATTORNEY TRYON:

15 Q. You haven't actually seen the lawsuit.

16 Is that right?

17 A. That's correct.

18 Q. Have you read that law?

19 A. I can't recall if I read the actual law that
20 passed.

21 Q. Okay.

22 Have you brought any documents to the
23 deposition with you today?

24 A. I was told to have the two --- I think they're

1 called exhibits, the WPATH Guidelines and my clinical
2 record.

3 Q. Okay.

4 And do you have those in hard copy or just
5 electronically?

6 A. Both.

7 Q. Okay.

8 And have you reviewed any documents in
9 preparation for this deposition?

10 A. Yes.

11 Q. Which documents are those?

12 A. They were documents provided by my lawyer
13 telling me about depositions because I add ---.

14 ATTORNEY LINKOUS: Stop right there, Dr.
15 Kidd. Communications from me to you and the substance
16 of those communications are privileged. You don't have
17 to talk about the substance of those.

18 BY ATTORNEY TRYON:

19 Q. Yes. All I need to know and I don't want to
20 know what you and your lawyer talked about. I just want
21 to know what documents you've looked at in preparation
22 for your deposition today.

23 A. Sure. So those documents certainly.

24 Q. Okay.

1 So those are the medical records you mentioned,
2 as well as the WPATH standards?

3 A. Yes.

4 Q. Anything else?

5 A. I've certainly reviewed the medical literature
6 in this case but that is an ongoing process that I'm
7 always engaged in.

8 Q. Okay.

9 Now, on Saturday we received some additional
10 documents from your office, which appear to be similar
11 to what's previously been marked as Exhibit 16. Do you
12 have those in front of you as well?

13 A. I'm not familiar with what Exhibit 16 includes.

14 ATTORNEY LINKOUS: Mr. Tryon, I will just
15 interrupt and say that those records didn't really come
16 from her office, they came from me. And I sent them to
17 Plaintiff's Counsel, who then provided them to you.

18 ATTORNEY TRYON: Got it. And do you know
19 if Dr. Kidd has those in front of her as well?

20 ATTORNEY LINKOUS: She should, yes.

21 ATTORNEY TRYON: Okay.

22 BY ATTORNEY TRYON:

23 Q. So having gone through those --- excuse me one
24 moment. So just some quick background. Can you give me

1 your full name and address, please?

2 A. My home address or my work address?

3 Q. Both, please.

4 A. My full name is Kacie Marie Kidd. My work
5 address is --- depends on if you're looking at my office
6 or clinical practice, but my office is 1 Medical Center
7 Drive, Morgantown, West Virginia, 26506, I believe. And
8 my home address ---.

9 Q. Can you slow down just a little bit, please?

10 A. Sure.

11 Q. Go ahead.

12 A. Do you need me to repeat? My home address is
13 106 Canyon Ridge Drive, Morgantown, West Virginia,
14 26508.

15 Q. And can you give me your work phone number,
16 please?

17 A. I would need to check my business card. Is it
18 okay if I do that?

19 Q. Yes.

20 A. My work phone (304) 293-6307.

21 Q. And I would also like to ask you for your
22 personal phone number, which I would use only in the
23 event that for some reason you were no longer
24 represented by counsel. Otherwise, I would contact you

1 through counsel.

2 ATTORNEY LINKOUS: I would --- I just
3 object and instruct her not to answer on that. I will
4 accept subpoenas and you can contact me through her. I
5 will continue representing her. And if not, there will
6 be new counsel assigned and you will be informed of
7 that.

8 ATTORNEY TRYON: Well, I've never had
9 anyone instruct a witness not to do that before, but
10 I'll move on.

11 BY ATTORNEY TRYON:

12 Q. Can you tell me where you went to --- about your
13 education, your undergraduate education first, please?

14 A. Sure. I received my Bachelor's Degree in
15 biology and women's studies from West Virginia
16 University. I then went to medical school at West
17 Virginia University School of Medicine. After that I
18 completed a four-year residency in internal medicine and
19 pediatrics at West Virginia University School of
20 Medicine. I then completed a three-year fellowship in
21 adolescent medicine at the University of Pittsburgh.

22 Q. What was your major in your pre-Bachelor's
23 Degree?

24 A. It was biology and women's studies.

1 Q. And when did you get your Bachelor's Degree?

2 A. I graduated with my Bachelor's in 2010.

3 Q. And medical school, when did you graduate there?

4 A. 2014.

5 Q. Did you have any particular emphasis at the West
6 Virginia School of Medicine?

7 A. It's not customary for people to have emphasis
8 in medical school but instead in residency.

9 Q. Okay.

10 And in your residency what was your specialty
11 or emphasis?

12 A. I did a dual residency in internal medicine and
13 pediatrics.

14 Q. And when did you get that? When did you
15 complete your residency?

16 A. In 2018.

17 Q. And then your fellowship, what was that in?

18 A. Adolescent medicine.

19 Q. And when did you complete that?

20 A. In 2021.

21 Q. Any particular reason that you chose adolescent
22 medicine?

23 A. Supporting adolescents and young adults is my
24 favorite part of medicine.

1 Q. Have you had any other specialized training
2 other than what you just discussed?

3 A. Within adolescent medicine there are several
4 ways to have additional training and I did pursue one of
5 those ways.

6 Q. And what was that?

7 A. Gender affirming care.

8 Q. And in what way did you pursue that?

9 A. I dedicated much of my clinical training to
10 learning under experts in this space. I also dedicated
11 my research training in a similar vein, and I engaged in
12 organizations and groups and additional educational
13 opportunities to round out that training.

14 Q. What experts are you referring to?

15 A. Doctor Gerald Montano, Doctor Selma Witchell
16 among others.

17 Q. I'm sorry. Montano and who is the other one?

18 A. Selma Witchell.

19 Q. Can you spell that, please?

20 A. W-I-T-C-H-E-L-L.

21 Q. And what was the first name?

22 A. Selma, S-E-L-M-A.

23 Q. And where is Selma Witchell?

24 A. The University of Pittsburgh.

1 Q. Do you have a license to practice medicine?

2 A. I do.

3 Q. Where?

4 A. In the State of West Virginia.

5 Q. Any others?

6 A. I previously held a training license in the
7 State of Pennsylvania when I was a trainee there.

8 Q. But currently you do not?

9 A. I do not.

10 Q. And do you have any --- you may have answered
11 this, but do you have any specific specialties?

12 A. My specialties are pediatrics, internal
13 medicine, adolescent medicine and gender affirming care.

14 Q. I was wondering if that was my computer dingling
15 or someone else's.

16 A. I think it may be mine. Give me a second. I'll
17 sign out of my email.

18 Q. Okay.

19 A. Okay.

20 Q. Do you have Board Certifications?

21 A. I do.

22 Q. What are those?

23 A. I'm Board Certified in Internal Medicine and
24 Pediatrics.

1 Q. What was necessary to get Board Certification
2 for internal medicine?

3 A. I was trained in internal medication and many of
4 my patients are adults by legal definition.

5 Q. I'm sorry. You broke up. Can you repeat that
6 please?

7 A. Sure. I was trained in internal medicine and
8 eligible to sit that Board Examination. Additionally, a
9 lot of my patients are over the age of 18.

10 Q. So you had to sit for a Board Examination.
11 Is that right?

12 A. I sat for two Board Examinations in Pediatrics
13 and Internal Medicine as well as numerous Board
14 Examinations to be allowed to get to that point.

15 Q. Okay.

16 And you passed those boards?

17 A. I did.

18 Q. Are you a member of any medical societies?

19 A. I am.

20 Q. What are those?

21 A. I am currently a member of the American Academy
22 of Pediatrics. I'm a member of the Society for
23 Adolescent Health and Medicine. I am also a member of
24 the World Professional Association for Transgender

1 Health.

2 Q. Any others?

3 A. Not that I can recall.

4 Q. When you said the Society for Adolescent
5 Medicine, did I hear that right?

6 A. The Society for Adolescent Health and Medicine,
7 abbreviated SAHM, S-A-H-M.

8 Q. And what do you need to be a member of that,
9 what do you need to do?

10 A. Most of these organizations have membership
11 tiers for a variety of persons and you need to pay a
12 fee. But for the purpose of my membership, it's as a
13 physician. And for the American Academy of Pediatrics I
14 have a special notation in my membership as someone who
15 has passed the board exam for that field.

16 Q. For WPATH, what do you need to do to be a member
17 there?

18 A. You need to sign up and pay a fee and check your
19 membership category. Mine, again, is physician and
20 although I think I may be still listed as a student
21 member based on my training time at the University of
22 Pittsburgh for that membership, but I am also part of
23 their global education initiative, which is an
24 additional training on top of being a member.

1 Q. I'm sorry, global what initiative?

2 A. Education initiative.

3 Q. Are you a member of the ---?

4 A. I am not.

5 Q. Are you a member or on the board of any
6 educational organizations?

7 A. I think it depends on what you mean by
8 educational organization.

9 Q. Any organizations that try and educate on any
10 issues?

11 A. Well, broadly, I'm faculty at West Virginia
12 School of Medicine and I routinely educate a variety of
13 learners at a variety of levels. I'm also part of
14 something called the Tri-State Gender Collaborative,
15 which is a community-based organization that does
16 provide education.

17 Q. And do you have privileges at any hospitals?

18 A. I do have privileges at Ruby Memorial Hospital
19 in Morgantown, West Virginia.

20 Q. Any others?

21 A. No.

22 Q. So tell me of your work experience, your
23 professional work experience.

24 A. Can you restate your question?

1 Q. Yes. So I'm interested to learn your work
2 experience, where you have worked and what you have done
3 starting --- I'm not sure exactly --- you've told me
4 about your internship and then I know that you are doing
5 some other things. So after your internship, did you
6 have any professional --- did you start working right
7 away or did you just do the fellowship or is fellowship
8 considered work? Help me out, understand your work
9 history.

10 ATTORNEY HARTNETT: Objection to the
11 form.

12 THE WITNESS: Medicine training is
13 complicated, and so the internship is part of residency.
14 That was part of the four years that I spent in internal
15 medicine and pediatrics training. During that time I
16 was working in a variety of settings to obtain training
17 in both of those fields.

18 After that was completed I was also doing
19 training at the University of Pittsburgh. One could
20 consider all of those work. And I was a paid employee
21 during that time when I was a trainee as well.

22 BY ATTORNEY TRYON:

23 Q. What's the first job in which you were actually
24 treating patients?

1 A. I have been treating patients since I was a
2 medical student.

3 Q. Okay.

4 And your first paid job where you were treating
5 patients?

6 A. That would have been the beginning of my
7 residency, which is often called an internship in
8 internal medicine and pediatrics.

9 Q. And then how about your fellowship, were you
10 treating patients during your fellowship?

11 A. Yes.

12 Q. What is your current --- I don't know what the
13 right term would be profession --- excuse me, profession
14 or your work status?

15 A. I am currently an assistant professor in the
16 Department of Pediatrics at the WVU School of Medicine.
17 I am also the Medical Director of the WVU Medicine
18 Children's Gender and Sexual Development Clinic.

19 Q. And then do you have a separate practice where
20 you diagnose and treat patients?

21 A. Under those titles, yes.

22 Q. Okay.

23 So it's not separate from those?

24 A. No.

1 Q. Do you get paid directly by the patients or just
2 only get paid by the West Virginia University?

3 A. I am dual employed as is the customary practice
4 for physicians who are working at the WV School of
5 Medicine, and so my dual employment goes both through
6 West Virginia University as well as --- I believe it's
7 called UHA, the University Health Associates, but I may
8 need to clarify that.

9 Q. Okay.

10 As assistant professor what do you do?

11 A. Assistant professor is my title in my tenure
12 track of employment, and so it's fairly traditional for
13 assistant professors to be the entry point of tenure
14 track position, if that makes sense. And my role in
15 that is to provide medical care as well as to conduct
16 research and to provide teaching.

17 Q. So I understood conduct research and also
18 teaching. What was the first thing you said?

19 A. To provide clinical care.

20 Q. What do you teach?

21 A. I teach a variety of learner types and topics,
22 but they typically center adolescent medicine and gender
23 affirming care or both.

24 Q. Are there classes specifically on those topics

1 or is it part of a more general class?

2 A. Most often my teaching is as a guest lecturer
3 for a medical student class or a residency training
4 program or something called grand rounds, which is a
5 teaching opportunity for faculty-level positions.

6 Q. What types of research do you do?

7 A. I conduct mix methods research, including
8 qualitative and quantitative analyses, centering gender
9 adversity in people and their experiences as well as the
10 experiences of their family.

11 Q. How many papers have you published?

12 A. I don't know that I could give you a complete
13 answer to that question. I suspect --- I know that it
14 is more than 12. I suspect less than 20. It also
15 depends on what you mean by paper.

16 Q. Okay.

17 When you say provide clinical care --- well,
18 let me come back to that in a minute. As Medical
19 Director of the West Virginia University --- excuse me,
20 West Virginia University Medicine Children's Gender and
21 Sexual Development --- do I have that title right?

22 A. Almost. It's the WVU Medicine Children's Gender
23 and Sexual Development Clinic.

24 Q. And what is your role? What do you do in that

1 role?

2 A. I direct the clinical care of gender diverse
3 intersex and questioning youth, ages approximately 3
4 through 26 in our multi-disciplinary team.

5 Q. So how is that different then from where you
6 provide clinical care as an assistant professor?

7 A. Those two jobs descriptions overlap quite a bit.

8 Q. Are there any parts that do not overlap?

9 A. I would argue that it's outside of my role as an
10 assistant professor but definitely in my role as the
11 Medical Director of the clinic to have meetings where we
12 discuss the care we provide, to meet with our DEI head
13 more promptly, diversity, equity and inclusion, those
14 sorts of things.

15 Q. Do you supervise anyone in either of your roles?

16 A. I often precept trainees, residents and medical
17 students.

18 Q. Could you repeat that?

19 A. I often precept trainees, including residents
20 and medical students.

21 Q. You said preset?

22 A. Precept, P-R-E-C-E-P-T. It's a word used in
23 medical care to discuss supervision of trainees. I'm
24 their preceptor.

1 Q. And do you supervise them as they are giving
2 medical care?

3 A. Yes.

4 Q. Would it be fair to say that you are currently a
5 treating physician?

6 A. Yes.

7 Q. And just so I have it right rather than me
8 trying to restate it, in what areas do you treat
9 patients?

10 A. I provide care for adolescents and young adults.

11 Q. In what areas?

12 A. In adolescent medicine, in gender affirming
13 care.

14 Q. Do you provide general --- are you a
15 pediatrician as well?

16 A. It's complicated. Adolescent medicine is a
17 complicated --- and there are many adolescent
18 specialists who do provide well child care for young
19 people. I do that infrequently. And so for example, if
20 a young person wishes for me to be their primary care
21 provider, I can do that on a limited basis, but the
22 majority of my care is subspecialty care and
23 consultation.

24 Q. When patients need to come to you do they come

1 to you directly or through the University?

2 A. Can you restate the question?

3 Q. So it's my understanding that you do treat
4 patients. And so my question is do they come to you
5 directly or do they go through the University?

6 A. I'm not understanding what you mean by coming
7 through the University.

8 Q. How do you --- how do patients come to you?

9 A. They can call our scheduling line that is
10 available on our website or they can be referred from
11 another physician or provider.

12 Q. How much of your time is spent with patients
13 versus your time in doing research and teaching and
14 other things?

15 A. I am 20 percent clinical and 80 percent
16 research.

17 Q. So when a new patient comes in what is the ---
18 let me back up for a second. Have you been --- one
19 second. When you have a new patient come in --- I'm
20 sorry, let me go back to my other question. Have you
21 been asked to be an expert witness in this case?

22 A. No.

23 Q. Tell me about the intake process for a new
24 patient.

1 A. Well, depending on how a new patient finds us,
2 either through direct scheduling or referral, once they
3 have the visit they usually meet with us for a longer
4 than perhaps expected visit to compare to other
5 pediatric practices. New patients visit with my team
6 are usually between two and two and a half hours. An
7 hour of that is typically spent with me and we have a
8 fairly long conversation with the young person, with
9 family members together and separately and then we work
10 together to help support that young person together.

11 Q. When you say your team, who is on your team?

12 A. Our team, from my practice, currently includes
13 myself, a child and adolescent psychiatrist, whose name
14 is Dr. Deci, and a clinical therapist, whose name is Ms.
15 Brianna Hayes.

16 Q. Doctor Steven --- what is his last name?

17 A. Deci, D-E-C-I.

18 Q. And Brianna Hayes, what is ---?

19 A. H-A-Y-E-S.

20 Q. What's her practice?

21 A. She is a clinical therapist.

22 Q. And Doctor Deci, what's the practice?

23 A. He is a child and adolescent psychiatrist.

24 Q. When the patient first is coming in --- let me

1 back up just a little bit for some more nuts and bolts
2 in my question. Do they first meet with a secretary or
3 nurse or fill out papers online? How does that process
4 --- let's start with someone who is just direct
5 scheduling.

6 A. And so if someone calls our scheduling line,
7 they are scheduled for a visit. And they would arrive
8 at their visit time, they would check in. They would
9 sit in the waiting room. A nurse would call them back,
10 take their vital signs and they would be put in an exam
11 room with their family. They arrive with family. And
12 then our team would see them.

13 Q. As far as the initial record, setting up the
14 initial record of who this person is and what they're
15 coming in for, who does that?

16 A. The family when they call when to make a visit
17 will ask for a gender visit, and that's the only
18 questioning that happens at that time.

19 Q. And then everything else that is input into the
20 patient's records would either be from the nurse or from
21 you or your team?

22 A. For those who are directly scheduling. If
23 someone has been referred, it may be that they're
24 referring provider or a scheduler from their referral

1 team put additional documentation in.

2 Q. Is there any --- okay.

3 So when you meet with the patients, is it
4 initially just you or is it with the entire team first?

5 A. So it depends. We like to do a greeting where
6 we all pile in these exam rooms and say hello and
7 introduce ourselves so young people and families know
8 our names and faces. Sometimes that is not possible for
9 a variety of reasons. And also sometimes families don't
10 need all of us and may or may not be interested in
11 seeing all of us. Sometimes families just want to see
12 me or sometimes they just want to see the mental health
13 providers, and we try to accommodate that where we can.

14 Q. Do you gather their past medical history?

15 A. Yes.

16 Q. And is their medical history important?

17 A. I think that every patient's medical history,
18 medication list, allergies, things like that can be
19 important to their care.

20 Q. Can you explain to me why? I mean it may seem
21 obvious to you, but I would like to just understand it.

22 A. Okay.

23 And so, someone's past medical history could
24 certainly impact their present health, and so part of my

1 routine practice is to ask young people and their
2 families what kind of diagnoses they have had in the
3 past, including things like asthma, allergies, if
4 they've broken their arm before, a whole host of
5 questions.

6 Q. Are those things relevant to gender care?

7 A. They could be.

8 Q. How would allergies be related to gender care?

9 A. If you had an allergy to a medication that was
10 related or the same as a medication that I could
11 provide, that would be a concern to me.

12 Q. And do you typically take the history just from
13 the patient or do you reach out to other healthcare
14 providers?

15 A. I take my history from the patient and parent or
16 guardian in front of me, but I also have access to our
17 electronic health record and I review that as well for
18 meeting new patients.

19 Q. Tell me about the electronic health record.

20 A. Our health system uses an electronic health
21 record called Epic.

22 Q. And what is located in the Epic system?

23 A. A variety of things, including vital signs from
24 previous visits, notes from prior visits and prior

1 providers, information about the family address and
2 phone number, should we need to mail anything or call
3 them, things like that.

4 Q. Does the Epic system --- let me back up. So the
5 Epic system is a system used by West Virginia
6 University.

7 Is that right?

8 A. WV Medicine specifically and UHA uses Epic I
9 believe in most, if not all, of their hospitals. I
10 think a couple hospitals are going live with Epic soon.
11 I think it's an incredibly common electronic health
12 record in this country and others I believe.

13 Q. I've heard of it. I don't know a lot about it.
14 So tell me, would Epic system that WVU Medicine is
15 using, does it just have information from within the WVU
16 Medicine medical system or does it expand out to all
17 providers in the country, for example?

18 A. It would be wonderful if it did that if an
19 effective way. There's a bit of capitalism involved
20 there I suspect, but we do have something called Care
21 Everywhere, which is a tab that you can select and for
22 some circumstances it allows you to see notes from other
23 Epics systems outside of WVU Medicine.

24 Q. So what is the WVU medical system? Where else

1 are they tied into?

2 A. Can you restate your question?

3 Q. First of all, let me make sure I get my
4 terminology correct. It's WVU Medical?

5 A. WVU Medicine. I think that's the brand name for
6 the UHA health family of hospitals and clinics and that
7 sort of thing.

8 Q. So WVU Medicine uses the Epic system and also
9 you can utilize Care Everywhere. So my question is,
10 Care Everywhere ties you into what other systems?

11 A. I don't know the comprehensive list. It's kind
12 of a bit of luck I think sometimes navigating Care
13 Everywhere. It's a little bit of what I would consider
14 a clunky system, but Care Everywhere is within Epic. It
15 is not itself a separate system.

16 Q. Understood. But can you recall any other
17 organizations that you can access through Care
18 Everywhere?

19 A. I know that I can access the University of
20 Pittsburgh in some capacity. I previously worked in
21 that system, and so I wasn't seeing exactly what it
22 looked like if I was in their system, but I can't really
23 speak to other systems that are connected.

24 Q. And if a patient comes in and they've had prior

1 medical providers, do they typically bring in any copies
2 of medical records?

3 A. That would be wonderful, but it doesn't happen
4 very often.

5 Q. Is the intake process any different for when
6 someone comes in as a referral patient?

7 A. It depends on how they've been referred. So for
8 example, sometimes providers will reach out to me
9 through secure communication within Epic and say they
10 have a patient they wish to refer and they might have
11 questions about how to make that happen. So there may
12 be an additional layer of communication there. I often
13 ask questions about urgency of need. Sometimes patients
14 are needing to see me sooner for a variety of reasons,
15 maybe mental health concerns, that may be just stress
16 about getting a visit, and so I can accommodate those
17 things.

18 Q. So if the referred physician had information,
19 they can send that to you through the Epic system?

20 A. They can send me a communication and that may
21 include information that they feel is relevant for me to
22 know about the patient they're sending me.

23 Q. When they send that communication, what does
24 that look like? Is that email, texting?

1 A. It's --- it's neither. It's actually a
2 communication system within Epic. It's called Inbasket.

3 Q. And does Inbasket provide for just
4 communications or also sending documents?

5 A. I believe you can attach documents within those,
6 but I have very intermittent luck of doing so and most
7 folks do not use that feature.

8 Q. Anything else different about when you receive a
9 referral as opposed to a direct contact?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: Not that I can think of.

12 BY ATTORNEY TRYON:

13 Q. Let me ask you generally what types of
14 information do you need to diagnose a problem?

15 ATTORNEY HARTNETT: Objection to form.

16 THE WITNESS: Can you restate the
17 question?

18 BY ATTORNEY TRYON:

19 Q. Yes. So in your field, are you --- do you
20 diagnose patients?

21 A. If it is within my scope of practice, yes.

22 Q. And what type of --- what information do you
23 need to make a diagnosis of your patients?

24 A. It depends on the patient and the diagnoses I'm

1 considering.

2 Q. Is there something called objective versus
3 subjective symptoms?

4 A. Yes.

5 Q. Can you explain what those are and the
6 difference?

7 A. Objective tends to refer to things like vital
8 signs or labs, things that we measure. Subjective tends
9 to refer to things that patients tell us, like that they
10 have headaches or the severity of their headaches.

11 Q. How do you measure subjective symptoms?

12 A. You talk with your patient.

13 Q. Anything else?

14 A. That's the primary way to diagnose most things
15 is to have a conversation with your patient.

16 Q. Is there a --- an objective way to measure the
17 subjective symptoms?

18 A. We have a lot of scales for a lot of things. We
19 have a lot of diagnostic criteria for a lot of things,
20 but most of medicine would not exist in my opinion if we
21 didn't talk with our patients.

22 Q. I understand that. So it sounds like there's
23 not a good way to actually put a measurement on
24 subjective symptoms.

1 Is that a fair statement?

2 ATTORNEY HARTNETT: Object to form.

3 THE WITNESS: They are by nature
4 subjective.

5 BY ATTORNEY TRYON:

6 Q. So when someone comes to you for gender
7 dysphoria issues as opposed to other types of medical
8 issues --- actually, let me start that all over again.
9 Do you ever treat patients or diagnose patients for
10 things other than gender dysphoria issues?

11 A. Yes.

12 Q. What other medical issues do you diagnose or
13 treat?

14 A. It's a very extensive list.

15 Q. Okay.

16 Then I won't make you go through it, but can
17 you give me some just general ideas?

18 A. Dysmenorrhea is an incredibly common thing that
19 I treat and diagnose.

20 Q. Can you repeat that or spell that, please?

21 A. Dysmenorrhea, D-Y-S-M-E-N-O-R-R-H-E-A.
22 Dysmenorrhea.

23 Q. What is that?

24 A. Dysmenorrhea is difficult periods. It's a whole

1 host of things that lead to heavy bleeding,
2 uncomfortable bleeding, pain with bleeding, and can
3 really impact live experience with young people.

4 Q. Okay.

5 Anything else?

6 A. As I said, there are many things that I diagnose
7 and treat.

8 Q. Give me a few examples just so I sort of
9 understand your practice.

10 A. Okay.

11 Sexually transmitted infections. I'm an
12 adolescent medicine doctor, so really anything in the
13 pubertal period or young period is in my practice. But
14 I often screen and treat for sexually-transmitted
15 infections. I also manage contraception. I also talk
16 about mood, anxiety, depression. Would you like more?

17 Q. I think I'm getting the sense of it. So let me
18 ask you about gender dysphoria. Can you give me your
19 definition for what gender dysphoria is?

20 A. My definition is loosely based on the DSM-V,
21 which has criteria for the diagnosis of gender
22 dysphoria, but it is stress, significant distress often
23 associated with the inconference between one's sex
24 assigned at birth and gender identity lasting longer

1 than six months with accompanying things like seeking to
2 present one's self gender expression in line with one's
3 affirmed gender and in opposition to one's sex assigned
4 at birth as well as some other criteria.

5 Q. Is the actual intake process that we have
6 discussed for someone coming to you for gender dysphoria
7 different than some of these other issues that you've
8 mentioned to me?

9 A. Can you restate the question?

10 Q. Sure.

11 When someone comes to you, you have given me
12 sort of the --- explained to me how the intake process
13 works in general. And my question is, is it any
14 different in general than with respect to someone coming
15 to you with gender dysphoria specifically?

16 A. In some ways. I ask a whole lot more questions
17 about gender when we are talking about gender dysphoria,
18 although I ask all of my patients about gender identity.

19 Q. Why do you ask all of your patients about gender
20 identity?

21 A. It's important that I'm respectful of them and
22 their name and pronouns, and also we know that gender
23 diverse young people, and by my definition that is
24 anyone who's sex assigned at birth and gender identity

1 do not fully align, we know that those young people face
2 health disparities and inequities associated with mental
3 health, and I want to make sure I can address those if
4 they are present.

5 ATTORNEY TRYON: Let me just ask the
6 court reporter if you're able to keep up with this?

7 COURT REPORTER: Attorney Tryon, if the
8 doctor could speak a little bit slower because I'm ---
9 yeah, a little bit slower, Doctor, please.

10 THE WITNESS: Absolutely.

11 ATTORNEY HARTNETT: She is doing a great
12 time on the real time, though, but appreciate the point.

13 BY ATTORNEY TRYON:

14 Q. What is --- what percentage of your practice
15 involves gender dysphoria or gender identity issues?

16 A. I couldn't give you an exact number, but my
17 guess would be 80 percent.

18 Q. Now, you mention there's --- this may not be
19 your word, but there's a process for diagnosing gender
20 dysphoria.

21 Is that right?

22 A. There are diagnostic criteria, yes.

23 Q. And can you list those for me again? You
24 started to go through that a little bit, but if you

1 could go through that I would appreciate it.

2 A. These are located in the DSM-V, and I cannot
3 recite them by memory.

4 Q. Well, as best as you can, can you tell me what
5 they are?

6 A. Loosely, the definition of gender dysphoria by
7 my interpretation is that there is distress, often
8 significant distress, associated with an incongruent
9 between one's sex assigned at birth and one's gender
10 identity lasting for at least six months and also
11 inclusive of some other criteria, which include things
12 like desiring to align one's gender expression with
13 one's affirmed gender and in opposition to one's
14 assigned sex.

15 Q. About how many people have come to you to get an
16 initial diagnosis of gender dysphoria?

17 A. I want to clarify that most folks, at least a
18 substantial portion of folks don't come to me asking for
19 that diagnosis specifically, but more broadly to have
20 conversations about means of support, although I am able
21 to provide that diagnosis.

22 Q. Okay.

23 And about how many people have you given that
24 diagnosis to?

1 A. I couldn't give you an exact number. I can
2 approximate and say that I have seen well over a hundred
3 patients in my clinic.

4 Q. And in which or for which you've given a
5 diagnosis or gone through that --- let me start that
6 over. Of those hundreds, those are the --- those you've
7 actually gone through the process to make a diagnosis of
8 gender dysphoria?

9 A. I've certainly asked all of the relevant
10 questions. Sometimes young people and their families
11 don't desire to have that diagnosis listed in their
12 chart due to fear of discrimination.

13 Q. But you would say you've given that diagnosis
14 for over a hundred patients?

15 A. I've certainly asked the questions associated
16 with that diagnosis, yes.

17 Q. Okay.

18 But I'm asking where you've done the actual
19 initial diagnose --- given actual diagnosis of that
20 gender dysphoria, would you say over a hundred or not?

21 A. It's really hard to say because there is no ---
22 there is no way that one gives a formal diagnosis kind
23 of as a here it is. It's more of a you meet these
24 criteria. Let's explore what that means. Does that

1 feel in line with your life experience. Sometimes I
2 have to write it in the chart for the purpose of
3 insurance coverage, for medication for example. But
4 it's a bit more complicated than just saying you checked
5 the boxes, here is your diagnosis.

6 Q. Okay.

7 Have you ever had a patient that came to you
8 and you discussed gender dysphoria with that patient and
9 ultimately you concluded that the patient did not have
10 gender dysphoria?

11 A. I have.

12 Q. Are those patients who initially thought they
13 had gender dysphoria and you concluded they did not?

14 A. Not usually, no. Those are more often patients
15 who are questioning this part of themselves and
16 exploring their identities as a normal part of
17 adolescent development.

18 Q. For any of the patients that have come to you
19 and said they thought they had gender dysphoria, have
20 you arrived at a different diagnosis of what was causing
21 their concerns?

22 A. I can't recall an occasion like that.

23 Q. Are you familiar with the concept of watchful
24 waiting?

1 A. I am.

2 Q. Have you ever recommended that to a patient?

3 A. I have not because it is not recommended by the
4 American Academy of Pediatrics.

5 Q. Tell me how you are familiar with that.

6 A. I'm familiar with it through the policy
7 statement on the care of this population of young people
8 from the American Academy of Pediatrics by Rafferty, et
9 al., 2018.

10 Q. Have you --- tell me that citation again.

11 A. Sure. Rafferty, et al., 2018, the American
12 Academy of Pediatrics.

13 ATTORNEY LINKOUS: Mr. Tryon, I know
14 we've been going about an hour-and-a-half. When you get
15 to a logical breaking point, I could use three minutes.

16 ATTORNEY TRYON: Okay.

17 Give me just another couple of minutes
18 and then we will break.

19 BY ATTORNEY TRYON:

20 Q. Have you read any literature other than that
21 about watchful waiting?

22 A. That is the literature that most specifically
23 sticks out in my mind. I'm sure I've read countless
24 articles that discuss this in one form or another.

1 Q. Are you aware that there are other articles that
2 do recommend watchful waiting?

3 ATTORNEY HARTNETT: Objection to form.

4 THE WITNESS: I am not familiar with
5 articles like that from highly-respected medical
6 organizations.

7 BY ATTORNEY TRYON:

8 Q. Are you aware of any, whether or not they are
9 from highly-respected medical organizations?

10 A. Not off the top of my head, no.

11 Q. Have you read their studies? I mean, this is a
12 Dutch concept.

13 Right?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: I'm not familiar with what
16 you're talking about.

17 BY ATTORNEY TRYON:

18 Q. It's called the Dutch Approach, and you're not
19 --- you haven't heard that?

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: I certainly am familiar
22 about the Netherlands and the Dutch and the work they've
23 been doing in this space for more than a decade.

24 BY ATTORNEY TRYON:

1 Q. And over there watchful waiting is considered an
2 appropriate recommendation.

3 Right?

4 A. I can't speak to that. I know from their
5 literature they've demonstrated that the approach we
6 take here in this country when done in their country was
7 very helpful and reduced mental health concerns in their
8 young people. I believe that's a DeVry study from more
9 than ten years ago.

10 Q. What is the difference between gender dysphoria
11 and gender nonconformity?

12 ATTORNEY TRYON: You know what, I will
13 withdraw that question. We can take a break right now.
14 When we come back we can talk about that. Okay?

15 ATTORNEY LINKOUS: We can go off the
16 record.

17 VIDEOGRAPHER: Going off the record. The
18 current time reads 11:26 a.m.

19 OFF VIDEOTAPE

20 ---

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 ---

23 ON VIDEOTAPE

24 VIDEOGRAPHER: We are back on the record.

1 The current time reads 11:37 a.m.

2 BY ATTORNEY TRYON:

3 Q. Dr. Kidd, when we concluded, when we took our
4 break we were just finishing up talking about watchful
5 waiting. Let me ask you just one or two more questions
6 about that. Is watchful waiting something that --- is
7 the only reason that you don't ever recommend that is
8 because of the Rafferty study?

9 A. So Rafferty is not a study. It's a policy
10 statement from the American Academy of Pediatrics that
11 summarizes best practice guidelines for gender diverse
12 young people. And so in that it does not recommend
13 watchful waiting.

14 Additionally, based on my own literature view
15 conducted over the course of my career thus far I have
16 never seen medical literature that supports the use of
17 that practice and is associated with positive mental
18 health outcomes for youth.

19 Q. Okay.

20 Let me ask you about gender dysphoria versus
21 gender non-conformity. You're familiar with both those
22 terms.

23 Right?

24 A. I am.

1 Q. What's the difference between those two things?

2 A. Gender conformity is simply someone rejecting
3 some tenet of what society presumes they should look
4 like, act like, think like as it pertains to gender.
5 And so that could be someone who, like myself, was
6 assigned female but who is very interested in building
7 and construction, right. Typically, that is considered
8 a more masculine pursuit. And so that could be gender
9 non-conformity, and that could extend through my
10 expression. Perhaps I would want to present myself in a
11 way that is more masculine or more androgenous. That
12 would also be reflective of gender nonconformity.

13 Where this enters into the territory of gender
14 dysphoria is when you have that significant distress
15 associated with that encumbrance between my sex
16 assignment and my gender identity. That is the
17 difference.

18 Q. Could you repeat that last part again?

19 A. From where?

20 ATTORNEY TRYON: Can I ask the court
21 reporter to read back that answer?

22 COURT REPORTER: It is simply someone
23 rejecting of what society presumed they should look
24 like, act like, think like as it pertains to gender.

1 And so that could be someone, who like myself, was
2 assigned female but who is very interested in building
3 and construction, right. Typically that is considered a
4 more masculine pursuit, and so that could be gender
5 non-conformity and that could express through my
6 expression perhaps. I would want to perhaps myself in
7 --- want to present myself in a way that is perhaps more
8 masculine or androgenous, where this enters into the
9 area of territory of gender dysphoria where you have
10 that significant distress encumbrance in between my
11 gender society. That is the difference. That's the
12 part I messed up.

13 BY ATTORNEY TRYON:

14 Q. Isn't there always some level of anxiety or
15 distress when someone has a gender non-conformity?

16 A. No, not always.

17 Q. So then in every event where there is some level
18 of stress or anxiety does it then turn into gender
19 dysphoria?

20 A. No. The word that I use is significant or
21 severe, and I believe that language is also echoed in
22 diagnostic criteria.

23 Q. So when I use the name BPJ, do you know who that
24 is?

1 A. I do.

2 Q. Who is that?

3 A. That is B [REDACTED], my patient.

4 Q. Last name J [REDACTED]?

5 A. I believe it's a hyphenated last name,

6 P [REDACTED] - J [REDACTED], but yes.

7 Q. Very good. Thank you for correcting me on that.

8 Any --- prior to --- strike that.

9 Do you have any personal relationship with
10 either BPJ or BPJ's family?

11 A. I am a physician caring for this young person.
12 That is the extent of my relationship with this family
13 and this young person.

14 Q. When did you first hear of BPJ, with that ---
15 those initials or any other name?

16 A. I believe the first time I heard about B [REDACTED] was
17 when Dr. Someshwar, an adolescent medicine specialist
18 who i work with, recommended that she see me.

19 Q. Remind me how to spell that doctor's name?

20 A. S-O-M-E-S-C-H-W-A-R (sic), Someshwar.

21 Q. And how did that come about?

22 A. So Dr. Someshwar is the division head of
23 Division of Adolescent Medicine and WVU Medicine
24 Children's and my direct supervisor in my current

1 position, but also Dr. Someshwar provides care for
2 gender diverse people, as I do, but she does not provide
3 care for those who are interested in or have received
4 pubertal blockers.

5 Q. Why not?

6 A. That is outside of her scope but well within my
7 own, and that is why she wished for me to see B[REDACTED].

8 Q. And how did --- and I'm also going to use BPJ
9 because that's the name on the Complaint, number one,
10 and number two, since BPJ is a minor, that's my practice
11 is to refer to people in court proceedings by their
12 initials, all minors.

13 ATTORNEY HARTNETT: And if I could just
14 --- for the record, this is Kathleen Hartnett for
15 Plaintiff. It's acceptable to us for you to refer to
16 her as B[REDACTED] or BPJ in this deposition. We marked the
17 Complaint BPJ per rules of Court, and we'll mark the
18 parts of this deposition about her medical records, if
19 any, confidential, but Plaintiff has no objection to
20 referring to her in either way. Thank you.

21 ATTORNEY TRYON: Well, to be clear, I'm
22 going to continue doing that because if I make the
23 mistake elsewhere, I can be sanctioned by a court, so
24 I'm going to stay with that.

1 BY ATTORNEY TRYON:

2 Q. So how did BPJ come to the attention to Dr.
3 Someshwar?

4 A. It is my understanding that Dr. Someshwar had
5 provided care to B[REDACTED].

6 Q. Do you know what care?

7 A. I had seen a note from Dr. Someshwar.

8 Q. And what did that note say?

9 A. I can't recall the contents of that note, simply
10 that I do remember seeing one.

11 Q. Is that in the records that you mentioned before
12 or the Epic records?

13 A. It would be in the Epic record, yes.

14 Q. Do you remember when you had your first contact
15 with BPJ and BPJ's family?

16 A. I know from my records the exact date. But
17 without I could easily tell you it was in the fall. I
18 can look at my records to get you the exact date if that
19 would be helpful.

20 Q. Before we go there, let me ask you if you have a
21 specific recollection of meeting with BPJ and Heather
22 Jackson.

23 A. I do.

24 Q. What do you remember right now about that

1 encounter?

2 A. I have a mental picture of where B [REDACTED] and her
3 mom were sitting in the exam room. That's most of the
4 extent of what I recall just from my own memory and not
5 reviewing the note.

6 Q. Do you have a mental memory of the discussions
7 you had with BPJ and BPJ's mother?

8 A. That would certainly refresh from my review of
9 my own note but also my practice is to have fairly
10 similar structured conversations with families, and so I
11 have a rough template in my brain of what we would have
12 talked about.

13 Q. Tell me about that template.

14 A. It involves asking lots of questions about young
15 people, their interests, their journey with gender
16 identity, their family. Sometimes I ask about pets.
17 It's a whole host of things to get to know the young
18 person and their family.

19 Q. What does that term mean journey with gender
20 identity?

21 A. We are all forever growing and evolving and
22 changing as humans. It's part of the human experience,
23 but particularly as it relates to gender for my patients
24 that's often a bit of a long journey, and so that may be

1 starting from when they are young children. It may be
2 starting from when they are adolescents. But
3 regardless, there is always much to talk about with
4 regard to a young person's experience of their own
5 gender identity over time.

6 Q. And is that gender identity sometimes fluid?

7 A. It absolutely can be.

8 Q. Somebody may be for one period of time have a
9 gender identity as one gender and then that can change?

10 A. Yes.

11 ATTORNEY HARTNETT: Object to form.

12 BY ATTORNEY TRYON:

13 Q. How many genders are there?

14 A. There are more genders than we understand, can
15 conceptualize or can count.

16 Q. So over a hundred?

17 A. Gender is a spectrum. There is no solid number.
18 It's someone's lived experience. It's much more
19 complicated than we try to make it by binarizing people.

20 Q. So setting aside binder --- how do you say that,
21 binderizing?

22 A. Binarizing people. Forcing folks into a binary.

23 Q. I've read some place there's 27 genders. Would
24 you agree with that or not?

1 ATTORNEY HARTNETT: Object to the form.

2 THE WITNESS: I'm certainly not familiar
3 with that particular study, but I would dispute it as I
4 could probably list more than 27 myself.

5 BY ATTORNEY TRYON:

6 Q. And when someone is gender fluid what does that
7 mean?

8 A. It depends on the individual, and so these terms
9 tend to be applied to folks but what matters to me is
10 the individual's definition of themselves.

11 Q. Have you had any --- well, let me move on to
12 Exhibit 16.

13 ATTORNEY TRYON: And let me try to bring
14 this up. This is going to be a first for me on doing
15 this on the system.

16 VIDEOGRAPHER: And I'm here if you need
17 some help or I can pull it up as well.

18 ATTORNEY TRYON: So Jacob, when I pull up
19 exhibits file sharing, it wants me to enter a password.

20 VIDEOGRAPHER: Did you join with a new
21 link when you rejoined after we got everything fixed?

22 ATTORNEY TRYON: I attempted to join with
23 the same link.

24 VIDEOGRAPHER: I can set that new one or

1 I can just pull it up for you, either/or.

2 ATTORNEY TRYON: Why don't you do that.
3 Can you pull up Exhibit 16, please?

4 VIDEOGRAPHER: Yes, just give me one
5 second.

6 ATTORNEY TRYON: No, I had uploaded.
7 Maybe you can't access them. I had uploaded three
8 documents. One was Exhibit 16 just so we would only
9 have to look at that one.

10 VIDEOGRAPHER: Got you. If you have them
11 uploaded, then I would not have access to them unless
12 you share them as host and share them with me.

13 ATTORNEY TRYON: Let me see if I can do
14 this.

15 VIDEOGRAPHER: Also, when you upload if
16 you check mark any of the boxes --- like if you check
17 mark like Defendant's Counsel, they would also all have
18 access to that as well.

19 ATTORNEY TRYON: Well, it's now rejecting
20 my password.

21 VIDEOGRAPHER: It might be since it's a
22 probably a different link that you joined the meeting
23 with you might have to hit the forget password and set
24 up a new one. That one --- the old one that you made

1 might be tied to the old link.

2 ATTORNEY TRYON: Let's go off the record
3 for a second so I can get this straightened out.

4 VIDEOGRAPHER: Going off the record. The
5 current time reads 11:52.

6 OFF VIDEOTAPE

7 - - -

8 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

9 - - -

10 ON VIDEOTAPE

11 VIDEOGRAPHER: We are back on the record.
12 The current time reads 11:59 a.m.

13 BY ATTORNEY TRYON:

14 Q. Dr. Kidd, this is what we've marked as Exhibit
15 16. Do you recognize this?

16 A. I'm not able to read any of it due to size.

17 Q. Okay.

18 I'm trying to blow it up. Does that help?

19 A. I have not seen it change. I may be able to do
20 --- I can do it on my end specifically. Let me do that.
21 I can only see the first page so far, but this does look
22 familiar, yes.

23 Q. I believe you can click the different pages, 1
24 through 9.

1 A. I see that now. Yes. This looks like my note.

2 Q. Do you have a hard copy of that in front of you
3 as well?

4 A. I do.

5 Q. Feel free to use either one, just to go through
6 this.

7 A. Yes.

8 Q. So my first question is simply what is this
9 document?

10 A. So certainly there are pages associated with
11 this packet that I'm not familiar with. I think they
12 are part from the pull from the health system. But
13 specifically as it relates to the section that begins
14 B [REDACTED] is a 11-year-old patient, that is the beginning of
15 my clinical note from our patient visit.

16 Q. How is the information in here populated into
17 this document?

18 A. The note itself?

19 Q. Well, everything in here. I'm just trying to
20 understand how this document is created.

21 A. I can't speak to the ancillary information
22 outside of my patient note. I can tell you how my note
23 was created.

24 Q. Well, let's start with that then.

1 A. Okay.

2 I use a note template that has spaces for me to
3 fill in information, as well as some information that is
4 already populated that I can adjust accordingly.

5 Q. Is that note template in Epic?

6 A. It is.

7 Q. And then Epic takes that information and would
8 populate it into a document that looks like what we have
9 before us?

10 A. Specifically the section that begins B [REDACTED] is an
11 11-year-old patient, yes.

12 Q. The other information in here, for example, the
13 visit date, the name, those sorts of things, do you know
14 how those are populated into this document?

15 A. So let me --- I don't know that you can see
16 where I am in the document, but this portion here that
17 has the WVU Medicine Children's logo, I think it copied
18 poorly. But from this section down, this is my note
19 template. Above that ---.

20 Q. I cannot see where you're at.

21 ATTORNEY TRYON: Jacob, can you enable
22 her to show that?

23 ATTORNEY LINKOUS: Jacob, you're on mute.

24 VIDEOGRAPHER: I have you enabled to mark

1 up the document. You should be able to put in
2 highlights or drag us around. Whatever you do we should
3 see.

4 THE WITNESS: Okay.

5 VIDEOGRAPHER: If you highlighted that
6 right there, that's --- I see the highlight. Does
7 everyone else see that highlight?

8 ATTORNEY TRYON: No, I can't see it.

9 VIDEOGRAPHER: On page three, around the
10 it looks like the logo.

11 ATTORNEY LINKOUS: I see it.

12 ATTORNEY HARTNETT: This is Kathleen
13 Hartnett. Just to make sure I'm clear, is the witness
14 able to move the exhibit in the window but the others
15 who see it cannot?

16 VIDEOGRAPHER: Right now I have the
17 witness set to move it. I can give anybody permission
18 to alter it and move it around and stuff. And it does
19 that for everybody. So right now I just have the
20 witness with the permission for that. Does that make
21 sense?

22 ATTORNEY TYRON: Yes.

23 ATTORNEY HARTNETT: Yes.

24 ATTORNEY TYRON: Yes.

1 BY ATTORNEY TRYON:

2 Q. Is it highlighted in color?

3 A. It is yellow.

4 ATTORNEY LINKOUS: Mr. Tryon, she is also
5 on BPJ099. I don't know if you're on that same page or
6 not. I think she moved us down to that page.

7 VIDEOGRAPHER: Let me try something to
8 synch it back up for you, Mr. Tryon.

9 ATTORNEY TRYON: Okay.

10 VIDEOGRAPHER: Do you see it now?

11 ATTORNEY TRYON: I see the document. I
12 don't see any yellow highlighting.

13 BY ATTORNEY TRYON:

14 Q. Well, go ahead and describe where you're at.

15 A. Sure. There's a logo on one of these pages that
16 has some cookie-cutter people holding hands and it says
17 WV Medicine Children's, although I think the photocopy
18 did not do that logo any justice. But that is the logo
19 located on the top of my note. And that logo and
20 everything beneath it is part of my note template. I am
21 not familiar with how Epic aggregates the additional
22 information in this packet.

23 Q. Okay.

24 Do you know who enters in the information, for

1 example, the date of birth and the visit date?

2 A. That information is likely entered at the time
3 of the visit being scheduled, although that is not part
4 of my role and so I cannot be certain.

5 Q. At the very top of that page, I think it's the
6 same page, do you see it's got a number --- MRN number.
7 Is that the patient's number that's assigned?

8 A. I have an E number on my screen that's below the
9 date of the visit encounter. That is in my note
10 template. That is the patient's medical record number,
11 that E number.

12 Q. So I'm seeing MRN: E2003446?

13 A. Yes. And I know that you're having trouble
14 seeing my highlighting, and I don't know if you can see
15 that piece. I pulled that number into my notes. I'm
16 not sure where you're referring to it, but that is the
17 number.

18 Q. Right at the top, I'm looking at the very top of
19 this page, page --- it's labeled BPJ099, and it's page
20 one.

21 A. I can see it here.

22 Q. Yes. Now I see you're highlighting, although
23 it's not yellow. Okay. So then if you move over to the
24 right and it says sex M. Does that stand for male?

1 A. It does.

2 Q. And who would input that that BPJ's sex is male?

3 A. I cannot speak with certainty, but my guess
4 would be the person who collected the insurance
5 information.

6 Q. And why would --- if BPJ identifies as a female,
7 as I think you say later on, why would that be put there
8 as male?

9 A. The sex marker has to line up with the insurance
10 for the purposes of billing in the medical system.

11 Q. Is that the only reason?

12 A. That's the reason that I'm familiar with.

13 Q. So you did not put that information in there?

14 A. I did not.

15 Q. If you can scroll down where it says desired to
16 be treated as other gender.

17 A. Sure.

18 Q. It shows the name pronouns of she and her.
19 Right?

20 A. Yes.

21 Q. And if I scroll down further I look at and I see
22 under gender dysphoria patient describes this experience
23 for themselves as --- why do you use a different pronoun
24 down there?

1 A. That's part of my standard note template. The
2 things before the colons in these sections are part of a
3 note template.

4 Q. Okay.

5 Then back up to desire to be rid of secondary
6 sex characteristics. It says expectations for today's
7 visit. That's part of the template?

8 A. It is before the colon.

9 Q. Right. And so that template is something that's
10 created by Epic or by someone else?

11 A. That's a note template that I created within
12 Epic.

13 Q. I see. And so it says want to establish care.
14 That seems obvious to me, but can you explain that?

15 A. This was my first time seeing B[REDACTED]. And as
16 part of my first visit with all of my patients I ask,
17 you know, what are their expectations or goals for
18 today's visit. And when I asked that question, B[REDACTED]
19 and her mom responded that they wanted to establish care
20 today. I'm not sure exactly who said that. I suspect
21 it was mom.

22 Q. And next it says has [REDACTED] since
23 June 2020 placed by Dr. Montano at UPMC. And you put
24 that in there?

1 A. I did.

2 Q. And how did you know about that [REDACTED]?

3 A. I suspect that mom told me. That information
4 was provided to me during this visit. But also it was
5 in the medical record that I would have briefly reviewed
6 prior to this visit.

7 Q. What medical record is that?

8 A. The notes that are available for me in Epic.

9 Q. So you're telling me that in Epic there would be
10 some notes that stated that there was an [REDACTED] a
11 [REDACTED]?

12 A. I believe Dr. Someshwar's note referred to it,
13 yes.

14 Q. Did you ever ask Dr. Montano if he had placed
15 that [REDACTED]

16 A. I don't recall specifically asking Dr. Montano
17 if he placed the [REDACTED] no.

18 Q. Did you do anything to confirm that the [REDACTED]
19 was in place?

20 A. I examined B[REDACTED]'s arm. I palpated the [REDACTED]
21 I noted the small scar at the insertion site. I also
22 confirmed it based on lab testing.

23 Q. Next, under desire to gain secondary sex
24 characteristics of other gender, slash --- other gender,

1 colon, that was part of the form?

2 A. That was part of my note template, yes.

3 Q. And you created that?

4 A. I did. I should note it's based off of a
5 template from those that taught me.

6 Q. Which would be whom?

7 A. Dr. Montano.

8 Q. Under there it has --- under severity, wanting
9 to be other gender, other gender is based on the
10 following, hair style and clothing and desire for
11 hormone therapy, which you created that template.

12 Right.

13 A. Yes, everything before the colon.

14 Q. And you inputted feminine, feminine in the
15 future.

16 Right?

17 A. I did, based on our conversation during this
18 visit.

19 Q. Are those the things upon which you made a
20 determination --- strike that.

21 Did you make a determination that B [REDACTED] was
22 gender dysphoric?

23 A. If you review the criteria for diagnosis for
24 gender dysphoria it's that essentially insistent,

1 persistent, consistent, incongruence associated with
2 significant distress, as I discussed earlier, plus two
3 or more of a list of criteria. This note outlines those
4 criteria. And so based on the responses to questions
5 that I asked in relation to my documentation here, yes,
6 B[REDACTED] does meet the diagnostic criteria for gender
7 dysphoria.

8 Q. Did you actually make a diagnosis?

9 A. B[REDACTED] already had that diagnosis prior to seeing
10 me.

11 Q. And that was --- who made that diagnosis?

12 A. I suspect the first person was Dr. Montano,
13 although I don't know that for sure.

14 Q. And who told you that she already --- that BPJ
15 already had such a diagnosis?

16 A. The medical record.

17 Q. And that medical record which was from Dr.
18 Someshwar?

19 A. And Doctor Someshwar would have had one of those
20 notes, yes.

21 Q. Any other notes that would have said that?

22 A. Likely notes from B[REDACTED]'s therapist.

23 Q. And you have access to B[REDACTED]'s therapist's ---
24 excuse me, BPJ's therapist --- let me start that over.

1 You had information from BPJ's therapist?

2 A. I had documentation.

3 ATTORNEY HARTNETT: Object to form.

4 THE WITNESS: Of her record.

5 BY ATTORNEY TRYON:

6 Q. Is that also on Epic?

7 A. Yes.

8 Q. So I want to go back to this part where it says
9 desire to gain secondary sex characteristics. So are
10 hairstyle and clothing the only bases to determine if
11 someone is gender dysphoric?

12 ATTORNEY HARTNETT: Object to form.

13 THE WITNESS: No.

14 BY ATTORNEY TRYON:

15 Q. What other?

16 A. Potential criteria, potential things that we
17 look for. There's no one single criterion.

18 Q. But those are the only things that are listed in
19 this form.

20 Right?

21 ATTORNEY HARTNETT: Object to form.

22 THE WITNESS: In that particular section.

23 BY ATTORNEY TRYON:

24 Q. And desire for hormone therapy in the future.

1 What additional hormone therapy was desired?

2 A. Estrogen.

3 Q. And were you told why?

4 A. I can't recall our exact conversation, but it is
5 my typical practice to have pretty detailed
6 conversations about where a young person is in their
7 chem thought process and understanding of what estrogen
8 could mean for them.

9 Q. And what could it mean for them?

10 A. It could meaning gaining secondary sex
11 characteristics of the other gender.

12 Q. Such as?

13 A. Breast growth.

14 Q. Any others?

15 A. Several others.

16 Q. What are those?

17 A. Thinning of hair follicles, softening of skin.
18 Those are the primary.

19 Q. I'm sorry. What did you say about hair
20 follicles?

21 A. Thinning, making the hair follicles less
22 apparent on the body especially.

23 Q. And do you recall discussing those with BPJ and
24 BPJ's mother?

1 A. I can't recall the specifics of that encounter,
2 but is my standard practice to have those discussions.

3 Q. Up at the top of that page, do you see at the
4 very top where it says P [REDACTED] - J [REDACTED], comma, and it's
5 blocked out?

6 A. Yes.

7 Q. So --- let me back up. This document was
8 produced to Plaintiff's Counsel then gave it to us.
9 Were you involved in that production to Plaintiff's
10 Counsel?

11 A. I was not.

12 Q. Okay.

13 Let me move on to the next page. And let me
14 ask you, during this conversation was BPJ joined by
15 Heather the entire time?

16 A. It is my standard practice to talk to young
17 people alone for at least a portion of their visit, and
18 so I suspect I did that during this visit.

19 Q. Do you recall during this visit anyone other
20 than you were involved as far as healthcare providers?

21 A. It is often that I have trainees with me, most
22 often in the role of shadows to witness how I talk to
23 patients, how I gather this information, that sort of
24 thing, how I provide care. I do not recall having a

1 trainee with me that day, but my memory could be
2 mistaken there.

3 Q. And in your memory was anyone else from WVU in
4 that meeting?

5 A. From WV Medicine?

6 Q. Yes.

7 A. I don't think so because I know that the other
8 members of my multidisciplinary team were not a part of
9 this conversation as B [REDACTED] was already established with
10 a mental health therapist.

11 Q. Under past medical history --- and I'm now on
12 page two of this document, it shows mental health HX.
13 What is that? What does HX stand for?

14 A. It's a common medical abbreviation for the word
15 history.

16 Q. In this past medical history that you have put
17 here, the source is --- what was the source?

18 A. This source was very likely B [REDACTED]'s mother.

19 Q. Under social history do you see that?

20 A. I do.

21 Q. Is there anything in there that affects or would
22 affect a determination or a diagnosis of BPJ having
23 gender dysphoria?

24 A. These items in the social history are really

1 about getting to know B [REDACTED] and her family dynamic and
2 more about her generally. These are not directly
3 related to her gender identity.

4 Q. And let me just confirm up at the top of the
5 page it says --- it shows the date being 9/16/2021. Was
6 that the date of the visit?

7 A. To the best of my recollection, yes.

8 Q. On the next page it shows patient active problem
9 list. Do you see that?

10 A. I do.

11 Q. And what --- it says WCC well check. Is that
12 something that you inputted?

13 A. It is not. So this is a problem list that is
14 maintained in Epic usually by the patient's primary care
15 provider.

16 Q. Who is this patient's primary care provider?

17 A. I do not recall.

18 Q. Is there anything on this form that would tell
19 you?

20 A. On this particular form, no, although in the
21 Epic record that would likely be noted, at least to the
22 extent of my note. It is not written in my notes. It
23 may have been in some of these ancillary pages that I'm
24 not as familiar with.

1 Q. During the visit did you discuss any of these
2 items under the diagnosis --- well, excuse me, under the
3 patient active problem list?

4 A. Not to my recollection, no.

5 Q. I'm sorry. Let me finish my question. The six
6 bullet points that are listed there, you did not input
7 any of those?

8 A. That is correct.

9 Q. And you didn't discuss any of those with BPJ or
10 BPJ's mother?

11 A. Not to my recollection, no.

12 Q. Now, the next paragraph of notes, was that
13 something that you inputted?

14 A. It is.

15 Q. And you ordered labs to confirm that the [REDACTED] was
16 likely to release medication. Do I understand that
17 correctly?

18 A. I ordered labs to confirm that the [REDACTED] was
19 continuing to release the medication, as I suspected it
20 would be, yes.

21 Q. Why do you do that?

22 A. It's routine and to make sure that the [REDACTED] is
23 functioning as we expect it to. And for my practice I
24 usually check those labs every 6 to 12 months.

1 Q. How is the [REDACTED] supposed to function?

2 A. So the [REDACTED] has a medication called [REDACTED]
3 [REDACTED] is a gonadotropin-releasing hormone agonist,
4 or abbreviated a GRNHA. A GRNHA works at the level of a
5 hypervolemic pituitary gonadal axis to suppress that
6 axis and subsequent release of sex hormones, either
7 testosterone or estrogen, depending on the sex assigned
8 at birth.

9 Q. Is it the same medication for both to stop
10 either testosterone or estrogen or is it different?

11 A. It is the same medication. It works in the same
12 way.

13 Q. And did you also discuss that a [REDACTED] scan be
14 done?

15 A. I had a discussion with B [REDACTED] and her mother
16 about why I thought a [REDACTED] scan could be helpful and
17 they opted to get one.

18 Q. It says I shared resources with mom to connect
19 her to local parents support programs. Who were those
20 resources?

21 A. I am connected to community organizations run by
22 parents wherein parents can talk with other parents of
23 gender diverse people. My abbreviation for the program
24 I referred B [REDACTED]'s mom to is, in fact, next to B [REDACTED]'s

1 mom's email. It's abbreviated POT for the Parent
2 Outreach Program.

3 Q. At the bottom it says on the day of the
4 encounter a total of 60 minutes was spent on this
5 patient encounter, including review of historical
6 information, examination, documentation of post
7 activities. And my question is what was the historical
8 information?

9 A. That would have been the conversation with B [REDACTED]
10 and her mom talking about the medical history as well as
11 my pre-review of the chart prior to this visit.

12 Q. And then the examination, what would that
13 entail?

14 A. For B [REDACTED], to my memory, that included making
15 sure that B [REDACTED]'s heart and lungs sounded normal and
16 generally evaluating how she was able to communicate,
17 how she moved about the room, those sorts of things are
18 the aspects of my physical exam.

19 Q. And when it refers to documentation, what is
20 that referring to?

21 A. The actual writing of this note.

22 Q. Anything that is not in this note?

23 A. It would have also involved me ordering the labs
24 and the [REDACTED] scan, writing why I was ordering the [REDACTED]

1 scan, things of that nature.

2 Q. And what would the post visit activities refer
3 to?

4 A. That could be things like reviewing the labs if
5 they came back the same day. This is a billing
6 statement and only includes the time spent during that
7 same day.

8 ATTORNEY LINKOUS: I'm sorry. Can you
9 repeat that?

10 THE WITNESS: It is a billing statement
11 and so it is referring to activities that were
12 undertaken on that day.

13 BY ATTORNEY TRYON:

14 Q. In your discussion with BPJ and BPJ's mother was
15 there any indication that BPJ had ever had any suicidal
16 ideations, suicide plans, threats or attempts?

17 A. Not to my recollection.

18 Q. Did you ask?

19 A. I likely did. That is part of my standard
20 practice.

21 Q. Why do you ask that?

22 A. Because gender diverse young people like B [REDACTED]
23 base health inequities particularly as it relates to
24 mental health, although that's at population level and

1 does not necessarily apply to B [REDACTED].

2 Q. Why wouldn't it apply to B [REDACTED]?

3 A. That's a population statistic, and so B [REDACTED] is
4 her own person and may or may not be in line population
5 statistics more promptly.

6 Q. And now I understand. Do you know if BPJ has
7 ever been hospitalized for anything?

8 A. I reviewed the chart and don't recall a specific
9 example of hospitalization. I think there may have been
10 notes from emergency sorts of visits, but I don't
11 remember an inpatient hospitalization.

12 Q. Before this visit had BPJ ever been diagnosed
13 with any mental or emotional illnesses?

14 ATTORNEY HARTNETT: Object to form.

15 THE WITNESS: Mom specifically mentioned
16 gender dysphoria, which is a diagnosis within the DSM-V,
17 which is a diagnostic and statistical manual and so I
18 suppose that could count.

19 BY ATTORNEY TRYON:

20 Q. Well, is that a mental or emotional illness?

21 ATTORNEY HARTNETT: Object to form.

22 THE WITNESS: It depends on your
23 interpretation. It is a diagnosis in the DSM-V.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 It is a diagnosis. Is it a diagnosis of mental
3 illness?

4 ATTORNEY HARTNETT: Objection to form.

5 THE WITNESS: That is a very challenging
6 question, and so the short answer is gender dysphoria is
7 significant distress, and it is that distress that can
8 be considered a mental health concern. Being gender
9 diverse or transgender is not a pathology.

10 BY ATTORNEY TRYON:

11 Q. Can you define then for our purposes what you
12 consider --- or based on DSM-V, what is a mental
13 illness?

14 ATTORNEY HARTNETT: Object to form.

15 THE WITNESS: Can you rephrase the
16 question?

17 BY ATTORNEY TRYON:

18 Q. Yes. So you referred to the DSM-V.

19 Right?

20 A. I mentioned it, yes.

21 Q. Does that define what a mental illness is?

22 A. The DSM-V is the diagnostic and statistical
23 manual of essentially all of the things that the
24 American Psychiatric Association considers in their

1 wheelhouse for diagnoses. And so things like depression
2 and anxiety are certainly in there but also things like
3 gender dysphoria.

4 Q. Does it define the term mental illness?

5 A. I can't recall. It's a very broad term.

6 Q. Other than gender dysphoria, were there any
7 other mental or emotional issues or problems that you
8 were aware that BPJ had been diagnosed with?

9 A. Not that I can ---.

10 ATTORNEY HARTNETT: Object to the form.

11 ATTORNEY TRYON: Jacob, can you pull up
12 Exhibit 33, please? Actually, I take that back. Let's
13 stick with this exhibit a little bit longer.

14 VIDEOGRAPHER: You got it.

15 ATTORNEY TRYON: I apologize for that.

16 BY ATTORNEY TRYON:

17 Q. So turning to page six of this exhibit?

18 A. I'm unable to do that on my end.

19 Q. I can.

20 A. I can now, yeah.

21 Q. Okay.

22 If you can go down to where it shows --- sorry,
23 it would be on actually page eight, eight of nine, I
24 believe. And this was part of the testing that you

1 would have requested.

2 Is that right?

3 A. This is one of those forms that Epic has
4 compiled for you, but it does look like it is of the
5 labs that I ordered, yes.

6 Q. When this came back did you review it?

7 A. I did.

8 Q. And it shows under components testosterone total
9 serum. Do you see that?

10 A. Let me highlight and make sure we're looking at
11 the same thing. Here?

12 Q. Yes.

13 A. Yes.

14 Q. And if you go lower it shows the total serum and
15 it shows value of less than 7.0.

16 Right?

17 A. Yes.

18 Q. And down below it shows the Tanner reference
19 stages and for prepubertal, 7-20 for Stage 1.

20 Right?

21 A. I can see that.

22 Q. So does that testosterone level indicate that
23 BPJ was at Tanner Stage 1?

24 A. No, that is not a correct interpretation.

1 Q. Could you please interpret it for me?

2 A. Sure. So the testosterone level demonstrates
3 that it is suppressed, actually below a detectable
4 threshold of 7.0 for the purposes of this lab. It is
5 important to note that all bodies, unless they are too
6 young or being blocked, make testosterone and that
7 includes people who are assigned female. And so I
8 myself right now very likely, in fact I'm extremely
9 confident, have a level much higher than seven of
10 testosterone because that is normal for an adult female.
11 And so B■■■■'s testosterone based on this level is fully
12 suppressed. The reason that the Tanner stage reference
13 guidelines are in this record is that other folks use
14 this lab to monitor pubertal progression. B■■■■ was
15 Tanner stage prior to the rod and was at Tanner 2 at
16 that time. And so this table is not relevant to B■■■■,
17 just a refresh in the lab that her testosterone is fully
18 suppressed.

19 ATTORNEY TRYON: Okay.

20 Now let's turn to Exhibit 33.

21 VIDEOGRAPHER: Before I show it, you said
22 33.

23 ATTORNEY TRYON: I didn't hear you.

24 VIDEOGRAPHER: Before I show it, you said

1 33.

2 Correct?

3 ATTORNEY TRYON: Right. I sent you two
4 other forms.

5 VIDEOGRAPHER: I just wanted to make sure
6 before I showed it.

7 ATTORNEY TRYON: Yes.

8 VIDEOGRAPHER: And does everybody see
9 that.

10 THE WITNESS: Yes.

11 ATTORNEY TRYON: I do.

12 BY ATTORNEY TRYON:

13 Q. Great. So if we could go forward into page 11.
14 Sorry, it's going to be page 11 of the document itself,
15 so it looks like that will be page --- I'm not sure.

16 And Dr. Kidd, if you have the hard copy it might
17 be easier to read. It depends on which one you want to
18 look at. So the first two sentences of this read
19 through --- actually maybe the first three sentences.
20 Why don't you go ahead and read them to yourself. We
21 don't need to read them out loud.

22 VIDEOGRAPHER: While she's reading that,
23 Mr. Tryon, I also gave you permission to mark the
24 document as well if you need to highlight something or

1 guide the witness.

2 ATTORNEY TRYON: Thank you.

3 VIDEOGRAPHER: You're welcome.

4 BY ATTORNEY TRYON:

5 Q. Have you finished?

6 A. I have.

7 Q. Great. So this indicates that gender dysphoria
8 during childhood is not evidently continued to childhood
9 rather than the dysphoria persists and resulted for only
10 6 to 23 percent of the children.

11 Right?

12 ATTORNEY HARTNETT: Object to form.

13 THE WITNESS: I believe, which are a bit
14 dated, but yes, that is what it says.

15 BY ATTORNEY TRYON:

16 Q. Do you think that percentage has changed?

17 A. I think our understanding of diagnostic
18 criteria, for example many of those studies were from
19 when we used GID, a different diagnostic criteria, that
20 has evolved additional these guidelines from WV are from
21 2012, I believe. There is a new version that is set to
22 come out in the I think late winter of this coming year
23 that I was involved in giving feedback for.

24 Q. Yes. That version has not yet been accepted or

1 issued, has it?

2 A. Not yet. It's expected like within the winter.

3 Q. Assuming that's accepted, since it's still out
4 for comment, but assuming it's accepted, how does it
5 change in the eighth version, how does it change this
6 language?

7 A. To be clear, it's still not out for comment.
8 The comment period has ended and it's now back with its
9 writing committee. But there is more space given, to my
10 recollection, for exploring those differences by
11 diagnostic criteria that we did inform this prior
12 studies. I think it's important, though, to center
13 B[REDACTED] in this conversation. B[REDACTED] is an adolescent,
14 meaning that the second paragraph discussing the
15 likelihood of her gender identity is more relevant.

16 Q. And under these guidelines what is the
17 percentage of persistence for adolescents?

18 A. I couldn't cite a specific number because again
19 it's complicated, but it is the majority is my
20 understanding.

21 Q. So when BPJ originally identified as being a
22 girl, BPJ was a child.

23 Right?

24 A. I believe social transition was in third grade,

1 so into adolescence but perhaps not quite there yet
2 depending on your definition of adolescence.

3 Q. How do you define adolescence?

4 A. It depends. The World Health Organization puts
5 numbers on young people, and so I believe they say age
6 10 to 19. But that's not necessarily reflective of
7 pubertal changes, which is how I would define
8 adolescence. And it's normal for pubertal changes to
9 begin at age nine.

10 Q. And for --- well, let me just ask you, so since
11 this is the current and existing guideline and --- or
12 excuse me, standard of care, which you said you
13 subscribe to.

14 Right?

15 ATTORNEY HARTNETT: Object to form.

16 THE WITNESS: Well, I think it is
17 important to note if I may in this document.

18 BY ATTORNEY TRYON:

19 Q. I apologize. I didn't hear that.

20 A. It's possible, I would like to point out on
21 page two, page number two on that part of it where it
22 lists the standards of care are flexible clinical
23 guidelines, that's a critical piece of all of this. And
24 so they are not a kind of rule book but instead a

1 guideline and there are many circumstances to deviate
2 based on an individual patient circumstance.

3 Q. So you pick and choose what you agree with?

4 ATTORNEY HARTNETT: Object to form.

5 THE WITNESS: Not at all. I follow
6 numerous guidelines, including those from the American
7 Academy of Pediatrics, but I also shape them to fit the
8 needs of the patient.

9 BY ATTORNEY TRYON:

10 Q. Do you share with BPJ and BPJ's mother the
11 statistics that 6 to 23 percent of children due to
12 dysphoria --- excuse me, that the dysphoria persists
13 into adulthood for only 6 to 23 percent of children?
14 Did you share that with BPJ or BPJ's mother?

15 ATTORNEY HARTNETT: Object to form.

16 THE WITNESS: I believe the comment was
17 not relevant to the patient in front of me.

18 BY ATTORNEY TRYON:

19 Q. Did you share with BPJ or BPJ's mother the fact
20 that not all adolescents persist into adulthood?

21 A. I create space for people to explore their
22 gender identities. I do not assume that any of us will
23 wake up tomorrow feeling the way we feel today about our
24 gender identity.

1 Q. So the answer is no, you did not share that with
2 them?

3 A. I create space to have that conversation.

4 Q. Did you have a discussion in which you told BPJ
5 or BPJ's mother that BPJ's gender dysphoria may not
6 persist into adulthood?

7 A. I specifically in my practice make space to have
8 conversations about fluidity and gender identity.

9 Q. That doesn't mean anything to me. What do you
10 mean create space?

11 ATTORNEY HARTNETT: Object to form.

12 THE WITNESS: We have a conversation
13 where I explain to young people that I don't expect them
14 to be the same person every day for the rest of their
15 lives. And if they feel that circumstances have changed
16 or if their family feels that circumstances have changed
17 the rod that B [REDACTED] has is fully reversible and it's
18 always an option to remove that rod if it was in B [REDACTED]'s
19 best interest, which I did not feel it was at the time
20 of our encounter.

21 BY ATTORNEY TRYON:

22 Q. Did you tell BPJ or BPJ's mother that gender
23 dysphoria does not always persist for adolescents into
24 adulthood?

1 A. I don't think I said that exact thing, no.

2 Q. As I understand it --- well, let me back up.
3 Did BPJ or BPJ's mother tell you how it came about that
4 BPJ identified as being a girl instead of a boy?

5 A. I can't remember our exact conversation, but it
6 is my standard practice to ask questions relative to
7 that point and so I suspect, yes, we had that
8 conversation.

9 Q. You don't remember anything about that
10 conversation relative what I just asked you?

11 A. Not beyond what is documented in my note.

12 Q. In your notes it says that patient has
13 identified gender diverse since, and then you inserted
14 around age two. Does that refresh your recollection at
15 all as far as what happened at around age two?

16 A. I document what is talked about during the
17 visit, and so yes, that would have been the
18 conversation.

19 Q. Do you remember anything else about BPJ
20 identifying as a girl around age two?

21 ATTORNEY HARTNETT: Object to reading
22 from the document that is not before the witness.

23 ATTORNEY TRYON: She has a hard copy.

24 ATTORNEY HARTNETT: I don't know where

1 you're reading from. Can you tell us where you are
2 reading from?

3 ATTORNEY TRYON: Sure. It's on page one
4 of the --- well, it's on page three of the actual
5 exhibit and page one of Dr. Kidd's office notes.

6 ATTORNEY LINKOUS: It's okay. I think
7 Dr. Kidd has her office notes in front of her. Go
8 ahead, Doctor.

9 BY ATTORNEY TRYON:

10 Q. So I'm just asking when it says patient has
11 identified as gender diverse since and then you inputted
12 around age two, comma, she said she was a girl around
13 age three, does that refresh your recollection about
14 your conversation about how that came about?

15 A. Somewhat, yes.

16 Q. Okay.

17 And what do you remember now?

18 A. Specifically that B [REDACTED] and her mom more likely
19 in this conversation would have told me that for me to
20 write it down and so likely B [REDACTED]'s mom said that she
21 identified as gender diverse in some capacity, be that a
22 girl or otherwise, but first said she was a girl at age
23 three. And that's a common differentiation. It's often
24 children exhibit behaviors and interests that are

1 gendered in a direction parents may not expect. And
2 that aligns with that question you had earlier about
3 non-conformity.

4 Q. Do you remember anything else about that
5 conversation relating to that?

6 A. Well, my next line is that third grade was when
7 she started to wear girl clothes comfortably. I think I
8 had a typo there. I meant to write comfortably instead
9 of comfortable. And that social transition was the
10 summer before third grade.

11 Q. And you have no other recollection about the
12 conversation?

13 A. I do not.

14 Q. Very good.

15 ATTORNEY HARTNETT: I object to form on
16 the last question. Sorry.

17 BY ATTORNEY TRYON:

18 Q. Was the father, Wesley Pepper, in this meeting?

19 A. No. My appointment with B [REDACTED] was with B [REDACTED]
20 and her mom.

21 Q. Did you ever talk to Wesley Pepper?

22 A. I have not yet, though I expect to in the
23 future.

24 ATTORNEY TRYON: Let's take a quick ---

1 off the record for just one moment.

2 VIDEOGRAPHER: We are going off the
3 record. The current time reads 12:48 p.m.

4 OFF VIDEOTAPE

5 - - -

6 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

7 - - -

8 ON VIDEOTAPE

9 VIDEOGRAPHER: We are back on the record.
10 The current time reads 12:48 p.m.

11 BY ATTORNEY TRYON:

12 Q. So back in Exhibit 33, if we go to what's at the
13 bottom of the page, page 15 of the document itself. And
14 I have a question for you on paragraph two. If you can
15 take some time and review that and then I will ask you a
16 question.

17 A. Beginning with assessment of gender dysphoria?

18 Q. Correct.

19 A. Okay.

20 Q. Are you ready?

21 A. Yes.

22 Q. Great. So the second sentence says a
23 psychodiagnostic and psychiatric assessment covering the
24 areas of emotional functioning, peer and other social

1 relationships and intellectual functioning, slash,
2 school achievement should be performed.

3 Did I read that correctly?

4 A. I believe so.

5 Q. Do you know if a psychodiagnostic and
6 psychiatric assessment was performed?

7 A. And so during my visit, portions of that were
8 absolutely performed. But B [REDACTED] had those kinds of
9 discussions previously based on my review of the notes
10 and my experience working with Dr. Montano.

11 Q. So and --- okay.

12 I understand you have had experience with Dr.
13 Montano, but how do you know that those were performed
14 for BPJ specifically?

15 A. I know Dr. Montano's routine practice because he
16 is one of my teachers and I'm very confident in his
17 skills.

18 Q. I understand that. But for BPJ specifically,
19 are you aware if it was done?

20 A. Based on my review of the chart, I had every
21 indication that --- and I want to quote this, a
22 psychodiagnostic assessment covering areas of emotional
23 functioning, peer and other social relationships and
24 intellectual functioning and school achievement was

1 performed.

2 Q. By whom?

3 A. By Dr. Montano.

4 Q. Okay.

5 And there was something in the records that
6 shows that?

7 A. I was able to see portions of Dr. Montano's
8 note. It's that Care Everywhere thing we were talking
9 about before, that they're not complete notes. But
10 based on my understanding of what I was reading, Dr.
11 Montano had the same conversation with B [REDACTED] that he had
12 with all of the patients that I have witnessed him
13 talking to.

14 Q. What were in his notes that said that since we
15 don't have those?

16 A. And so I can't recall exactly what was in his
17 notes, but his notes are templated very similarly to my
18 notes in that they explore things like mental health
19 concerns, like school functioning, like peer support and
20 family support, things of that nature.

21 Q. And what does --- what's his title or his
22 specialty?

23 A. So Dr. Montano is the Clinical Director of the
24 Gender and Sexual Development Clinic at the Children's

1 Hospital of Pittsburgh. He is Board Certified in
2 Pediatrics and he is an expert in pediatric gender
3 affirming care.

4 Q. Is he a psychologist or a psychiatrist?

5 ATTORNEY HARTNETT: Object to form.

6 THE WITNESS: He is an adolescent
7 medicine specialist. And adolescent medicine
8 specialists have extensive training and experience in
9 mental health support for young people.

10 BY ATTORNEY TRYON:

11 Q. Is that a qualification --- does he have
12 qualifications that you don't?

13 ATTORNEY HARTNETT: Object to form.

14 THE WITNESS: I am not aware. He may
15 well. But he certainly had tons of training in the
16 space as have I.

17 BY ATTORNEY TRYON:

18 Q. Okay.

19 But you are not a psychiatrist or a
20 psychologist.

21 Right?

22 A. I am neither of those two things. That is
23 correct.

24 Q. So when it says psychiatric assessments, what

1 qualifications do you believe is necessary to do a
2 psychiatric assessment?

3 A. Someone who has extensive training and
4 background in psychiatric diagnoses like anxiety,
5 depression, and for these purposes gender dysphoria.

6 Q. And you're asserting you have that
7 qualification?

8 A. I do have that qualification, yes.

9 Q. Now, if we wanted these notes out of Epic that
10 you referenced, how would we get those?

11 A. I honestly am not sure how that system works or
12 the process of you getting those notes works.

13 Q. Who has control over those?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: I don't know.

16 ATTORNEY LINKOUS: Mr. Tryon, I can be of
17 benefit if you would like.

18 ATTORNEY TRYON: Sure.

19 ATTORNEY LINKOUS: Health Information
20 Management at West Virginia University Hospitals, Inc.
21 is the owner of the Epic medical records. I can also
22 send you an address for that.

23 ATTORNEY TRYON: That would be wonderful
24 if you would do that.

1 ATTORNEY LINKOUS: I would be happy to.

2 ATTORNEY TRYON: Can you email that to
3 me?

4 ATTORNEY LINKOUS: Yes, absolutely.

5 ATTORNEY TRYON: You have either mine
6 or ---?

7 ATTORNEY LINKOUS: Yes.

8 ATTORNEY TRYON: If not, you have
9 Curtis'.

10 Right?

11 ATTORNEY LINKOUS: I do, yes.

12 ATTORNEY TRYON: That would be wonderful.
13 Thanks.

14 ATTORNEY HARTNETT: This is Kathleen
15 Hartnett. Are you asking for the full Epic records for
16 Dr. Kidd or --- I just was unclear of what records
17 you're asking for.

18 ATTORNEY TRYON: Well, I'm a little
19 unclear what exactly there is in Epic, so it's hard for
20 me to ask. So I guess I would be probably asking for
21 all of the records in Epic for BPJ.

22 ATTORNEY HARTNETT: Okay.

23 Just for the record, as you know, the
24 Plaintiff has requested BPJ's records from WV Medical,

1 produced what we have and this Saturday --- and maybe
2 Mr. Linkous can speak to it further, we produced
3 additional records that were apparently the printout
4 that Dr. Kidd was able to see, even though that's not
5 what the records department produced. Just for the
6 record, we produced all records that we received from
7 WVU Medical, which was in our requests were all records
8 that exist.

9 ATTORNEY LINKOUS: Sure. And to expedite
10 things, I can certainly --- if counsel agree, I can
11 certainly produce to Kathleen the records I have
12 obtained from WVU, because I represent WVU, obviously,
13 and then Kathleen can redact and send them on.

14 ATTORNEY HARTNETT: We have done that.
15 Is that the records that you sent this weekend.

16 ATTORNEY LINKOUS: That is Dr. Kidd's
17 office visit. I have access to BPJ's records from the
18 health system that go beyond Dr. Kidd's visit.

19 ATTORNEY HARTNETT: Okay.

20 I mean, obviously whatever you would like
21 to do would be helpful, but I guess for the record to be
22 clear we've asked for and to our knowledge received all
23 documents related to BPJ's treatment by WVU Medical.
24 And that's what we produced to the other parties. And

1 then we understood this weekend that you were able to
2 --- Dr. Kidd is able to see something different in her
3 interphase, and so --- which appeared to be largely
4 additional administrative information, and we produced
5 that document as soon as we received it from you on
6 Saturday.

7 ATTORNEY LINKOUS: That's correct. I can
8 do it however you would like.

9 ATTORNEY TRYON: So Mr. Linkous, we would
10 like to get the rest of the documents that are in the
11 Epic system that we don't already have. And we will go
12 over the other documents that I got over the weekend
13 next. But if there are additional documents in the Epic
14 system, we'd like to obtain those.

15 ATTORNEY LINKOUS: Okay.

16 ATTORNEY HARTNETT: Just to be clear, are
17 you asking for the --- sorry, the documents from the
18 Epic system from WVU Medical?

19 ATTORNEY TRYON: Are you asking me?

20 ATTORNEY HARTNETT: Yes, just because I
21 think what the witness has stated is that the Epic
22 system is used by different institutions, and so I think
23 --- I'm just trying to be clear if you are asking Mr.
24 Linkous for the documents from WVU Medical's Epic system

1 or you are trying to seek more broadly all of the
2 documents about BPJ that may be out there in the, you
3 know, in the Epic systems of other institutions, which
4 it doesn't sound like he is the person that would be
5 able to get that for you.

6 ATTORNEY TRYON: Right. That's my
7 understanding. So whatever Mr. Linkous has access to,
8 including Epic and the Care System, which is part of
9 Epic.

10 ATTORNEY LINKOUS: I only have access to
11 West Virginia University records, and that would include
12 these --- what was the tab called again, Care Everywhere
13 tab. And I can certainly produce that. I would prefer
14 to produce that in a link to Kathleen and then let
15 Kathleen look at it. It may be duplicative of what she
16 already has and then she can produce.

17 ATTORNEY TRYON: I will agree to that.

18 ATTORNEY HARTNETT: And I will just make
19 a representation for the record that we'll produce it
20 even if it's duplicative just to make clear to the
21 Defendants that we are producing everything we have.
22 And I would expect that those --- any records that were
23 referred to in a different institution have been sought
24 and received from that institution, such as Dr. Montano.

1 ATTORNEY LINKOUS: And just, Mr. Tryon, I
2 want to be completely transparent with you so when you
3 get the records you can understand any distinction or
4 differences that might be in them. When I get records
5 from West Virginia University I have my nursing staff
6 organize them, Bates stamp them and bookmark them in a
7 PDF document so they're in a format that I typically use
8 for case by case by case. So for instance, the exhibit
9 you are about to use will have my unique Bates stamp
10 number on it at the bottom center. I can produce them
11 certainly in that Bates stamped organized, bookmarked
12 fashion to Kathleen or I can produce the native
13 documents as they came to me, however you would like.
14 Does that make sense?

15 ATTORNEY TRYON: Native, you mean without
16 the Bates stamp?

17 ATTORNEY LINKOUS: Yes. So for instance,
18 West Virginia University may send me --- I'm making it up
19 --- a thousand pages of medical records for a patient.
20 I give that to my nursing staff who organizes it by
21 provider, by date, and they bookmark it so you can go to
22 this date, this date, this date, this lab result, this
23 admission, this ER, this pediatrician and you can
24 navigate the records quickly. So I have my nursing

1 staff do that for me.

2 ATTORNEY TRYON: That's great.

3 ATTORNEY LINKOUS: I can produce that if
4 you'd like. That way there's a Bates stamp and it shows
5 you every one through how many ever there are.

6 ATTORNEY TRYON: That's fantastic. I
7 appreciate it.

8 ATTORNEY LINKOUS: Sure.

9 ATTORNEY TRYON: So I would like to now
10 turn to Exhibit 35. If you could pull that up, Jacob.

11 VIDEOGRAPHER: Can you see that?

12 ATTORNEY TRYON: Yes.

13 ATTORNEY TYRON: Yes.

14 VIDEOGRAPHER: And again, the witness and
15 Mr. Tryon, you have permission to move to pages,
16 highlight that, et cetera.

17 ATTORNEY TRYON: Thank you.

18 BY ATTORNEY TRYON:

19 Q. So Dr. Kidd, my first question simply, do you
20 recognize this document?

21 A. I recognize that it is a face sheet, and I think
22 this may have been part of the packet that I was sent.

23 ATTORNEY HARTNETT: Could I ask for the
24 record what --- we can only see one page at a time and I

1 don't have this exhibit. So I'd be happy to pull the
2 document that Mr. Linkous gave us and that we produced
3 to you, but what Bates numbers are on this document?

4 ATTORNEY TRYON: Sure. They got cut off
5 because the Bates number is so close to the bottom that
6 when I printed it out ---.

7 VIDEOGRAPHER: And Attorney Hartnett, I
8 did submit this document, which basically means it is
9 now shared with everybody. If you go to the top and
10 click on files, then that --- exhibit file sharing, you
11 should be able to see it off to the right.

12 ATTORNEY HARTNETT: I do.

13 VIDEOGRAPHER: And you should be able to
14 download that yourself.

15 ATTORNEY HARTNETT: Appreciate it. Thank
16 you.

17 VIDEOGRAPHER: You're welcome.

18 ATTORNEY TRYON: And Mr. Linkous' Bates
19 numbers are 101103 through 101137.

20 ATTORNEY HARTNETT: And these were, just
21 for the record, the documents that we produced on
22 Saturday from Mr. Linkous with Bates BPJ 02510 to BPJ
23 02545.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 Dr. Kidd, I'm not sure I understood your
3 answer. What do you understand this document to be?

4 A. I just scrolled through it and it looks like
5 some supportive documentation around my note.

6 Q. Would there be any information in this document
7 that's not in Exhibit 16?

8 A. Is Exhibit 16 the document we reviewed
9 previously.

10 Q. Yes, it is the --- it's your notes and the lab
11 information.

12 A. I can't speak to the nuance in this ancillary
13 documentation. I'm sure that there is information on
14 the face sheet if it was not present in the prior
15 packet, Exhibit 16, but my notes should be the same in
16 both packets.

17 Q. Now, there are places where there have been
18 redactions of names.

19 Do you see that?

20 A. Are you referring to --- let me use my
21 highlighter again.

22 Q. On the very first page that you look at there
23 are three places where information is blocked out, which
24 yeah, you've highlighted it.

1 A. Yes, I can see that.

2 Q. Did you have any involvement in that --- in
3 blocking that out or redacting it?

4 A. No, no, I did not.

5 ATTORNEY HARTNETT: For the record,
6 Plaintiff produced these to you with that information
7 redacted at the request of Mr. Linkous.

8 BY ATTORNEY TRYON:

9 Q. On the second page of this exhibit, if you can
10 go there, under the organs inventory, none of that is
11 filled out. Is there a reason for that?

12 A. So this is a form that is optional to complete
13 in Epic and is not part of my standard practice for
14 adolescents.

15 Q. So underneath admission diagnosis, slash, and
16 reasons for visits, do you see that?

17 A. I do not --- oh, down here at the bottom, yes, I
18 see that now.

19 Q. What is ICD-10-CM?

20 A. That is the system that we use for billing codes
21 ICD-10 specifically, I'm not sure what the -CM refers
22 to.

23 Q. And under it, it says long-term, parentheses,
24 current, closed paren, use of other agents affecting

1 estrogen receptors and estrogen levels. And that's
2 under the admission diagnosis and reason for visit. So
3 tell me what that means.

4 A. I have to assume because I myself did not enter
5 in that code I believe that that is an umbrella code
6 that the code I actually entered falls under. But
7 again, I can't be positive about that. The code I would
8 have ---.

9 Q. Go ahead.

10 A. The code I would have entered was likely
11 something along the lines of long-term use of a
12 gonadotropin-releasing hormone agonist or GRNHA.

13 Q. And is that a diagnosis or reason for visit?

14 A. So that is a reason to get the labs and the REDACTED
15 scan that I subsequently ordered. And so when you order
16 labs or imaging you have to tell insurance why it is
17 medically relevant. And so that is the purpose of that
18 code.

19 Q. During your visit with BPJ and BPJ's mother, did
20 you actually make any diagnoses?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: To my recollection, no new
23 diagnoses that had not already been made.

24 BY ATTORNEY TRYON:

1 Q. On the fourth page, which at the bottom center
2 is 101 to 106, do you see --- let's see. I'm blowing it
3 up on my screen. Does it get any larger on yours?

4 A. No, but I have it zoomed in on mine.

5 VIDEOGRAPHER: Mr. Tryon, if you
6 highlight or write with the pencil tool, that will share
7 it with everybody. But the zoom feature --- or the
8 zooming is specific to each person. So each person can
9 zoom in on the page that whatever their preference is.

10 BY ATTORNEY TRYON:

11 Q. Okay.

12 So I tried to highlight this one part that says
13 it says gender dysphoria. Did it highlight on your
14 screen?

15 A. Where patient describes this experience for
16 themselves as?

17 Q. Yes.

18 A. Yes.

19 Q. So before the colon that's part of the form.
20 Is that right?

21 A. That's correct.

22 Q. And then the rest of that language you added?

23 A. That language came from B [REDACTED] and I typed it in
24 to this note.

1 Q. Do you remember any more about the conversation
2 with BPJ about those words?

3 A. I can't speak more to what other words were
4 said, but I try to write these as directly as the young
5 person provides them to me, and I didn't make any
6 additional notation. I make additional notation if the
7 young person's experience is unexpected or different
8 from my experience in working with gender diverse young
9 people. And so in my practice this would suggest that
10 this was what B [REDACTED] said and that her experience she
11 described was very similar to other young people that I
12 have cared for.

13 Q. What does it mean angel, slash, devil on
14 shoulder kind of feeling?

15 A. To my recollection, B [REDACTED] kind of described that
16 what you often see depicted in media, that there were
17 kind of parts of who she was that were in conflict. And
18 my interpretation based on my memory was that those
19 parts of her were her gender identity and what society
20 kind of expects of her because of her sex assignment.
21 That's that distress that is associated with the gender
22 dysphoria diagnostic code.

23 Q. What did society expect from BPJ?

24 A. Typically when babies are assigned male at birth

1 we expect them to identify as boys and eventually men
2 and to live their lives as such.

3 Q. Do you remember anything specifically about BPJ,
4 though, about what BPJ thought society expected of BPJ?

5 A. I can't recall specifically if B [REDACTED] spoke to
6 that.

7 Q. What does society expect of boys and men?

8 ATTORNEY HARTNETT: Object to form.

9 THE WITNESS: Can you restate that
10 question?

11 BY ATTORNEY TRYON:

12 Q. Well, I'm just going back to what you said, you
13 said society expects certain things of boys and I think
14 you used the terminology of those that are assigned male
15 at birth and they expect certain things of boys and
16 certain things when they grow up to be men.

17 A. Society.

18 ATTORNEY HARTNETT: Object to form.

19 THE WITNESS: To be very clear on this,
20 society expects --- in my experience if someone is
21 assigned male that they identify as male, simply put.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 Well, what specifically does society expect of

1 men?

2 ATTORNEY HARTNETT: Object to form.

3 THE WITNESS: Can you rephrase that?

4 BY ATTORNEY TRYON:

5 Q. Well, you're telling me that society expects
6 certain things of boys and men. I want to know what you
7 are saying that society expects from them.

8 ATTORNEY HARTNETT: Object to form.

9 THE WITNESS: I'm simply stating is that
10 folks who are assigned male are expected to identify as
11 male. That is what society expects.

12 BY ATTORNEY TRYON:

13 Q. And what does that mean to identify as male?

14 A. To have one's sense of gender for one's self be
15 on the masculine spectrum.

16 Q. What's on the masculine spectrum?

17 A. There is a very helpful tool for this that I
18 often use in talking about gender identity. It's called
19 the gender unicorn, and it diagrams this out really
20 nicely. But essentially there are masculine and
21 feminine and nonbinary and other gender components in
22 all of us to some varying degree. And when I say
23 masculine I mean that the masculine component is
24 dominant.

1 Q. What are masculine components?

2 A. It's a bit of a cultural and time, so temporally
3 associated sort of thing, and I talk about this with
4 patients and families, but it's often how we
5 communicate, how we carry ourselves, what our place and
6 role in society is, lots of expectations. But when
7 we're talking about gender identity, it's this inherent
8 sense of self as it relates to gender.

9 ATTORNEY TRYON: I would ask the court
10 reporter to read back my question, please.

11 COURT REPORTER: What are the masculine
12 components?

13 BY ATTORNEY TRYON:

14 Q. Please answer that question.

15 ATTORNEY HARTNETT: Object to form.

16 THE WITNESS: They are not specific
17 components but instead a sense of self.

18 BY ATTORNEY TRYON:

19 Q. So there are no masculine components?

20 ATTORNEY HARTNETT: Object to form.

21 THE WITNESS: There is not a checkbox for
22 masculinity, although society does impose ideas on us.

23 BY ATTORNEY TRYON:

24 Q. Well, you used term masculine components. I

1 didn't. What were you referring to?

2 A. Those thoughts that society has about what is
3 masculine.

4 Q. Which are what?

5 A. I think it depends on the society in question.

6 Q. Okay.

7 Our society here in West Virginia?

8 ATTORNEY HARTNETT: Object to form.

9 THE WITNESS: Here in West Virginia one
10 may masculine things are --- things like I gave the
11 example earlier of interest in construction, right, and
12 what we were discussing earlier, interest in hunting.
13 While there are many folks who consider those things
14 feminine as well, they stereotypically masculine in our
15 society by my interpretation.

16 BY ATTORNEY TRYON:

17 Q. So that would be your stereotype?

18 ATTORNEY HARTNETT: Object to form.

19 THE WITNESS: The stereotype that I
20 observe in our society as part of my job.

21 BY ATTORNEY TRYON:

22 Q. So how have you reported your observations as to
23 what constitutes a masculine component?

24 ATTORNEY HARTNETT: Object to form.

1 ATTORNEY TRYON: Do you have a list?

2 THE WITNESS: Could you repeat the
3 question?

4 BY ATTORNEY TRYON:

5 Q. Do you have a list of what you've observed to be
6 masculine components in our society here in West
7 Virginia?

8 ATTORNEY HARTNETT: Object to form.

9 THE WITNESS: I do not have a list, no.

10 BY ATTORNEY TRYON:

11 Q. So just when you're talking to a young person
12 how do you know what constitutes a masculine component?

13 A. I think that's irrelevant for the purposes of
14 discussing someone's gender identity as they see it
15 themselves and instead more relevant to conversations
16 about society's expectations of them.

17 Q. You say it's relevant or irrelevant?

18 A. It is relevant in some ways as to how they see
19 themselves certainly. The primary thing we focus on is
20 how the young person experiences their gender identity.

21 Q. How did BPJ experience BPJ's identity?

22 A. She identified as a girl.

23 Q. And what does that mean then?

24 A. It means that in her own mind and her own sense

1 of self she is a girl. She sees herself as a girl. Her
2 relationships with people are based on her own internal
3 sense of self as a girl.

4 Q. Did BPJ tell her what components constitute
5 being a girl?

6 ATTORNEY HARTNETT: Object to form.

7 THE WITNESS: Not to my recollection.

8 BY ATTORNEY TRYON:

9 Q. So just the fact that BPJ said I identify as a
10 girl, that was enough?

11 ATTORNEY HARTNETT: Object to form.

12 THE WITNESS: No one knows their own
13 lived experience better than the individual themselves.
14 And so when young people tell me how they identify, I
15 explore what that mean for them. But B [REDACTED] identifies
16 as a girl and so she is a girl.

17 BY ATTORNEY TRYON:

18 Q. So you explored that with BPJ. Can you tell me
19 about that exploration, what it meant for BPJ to be a
20 girl?

21 A. Only to the extent that I documented it and
22 based on my standard practice. I don't recall the
23 specifics of our conversation beyond that.

24 Q. So if someone comes to you and says --- who is a

1 girl who was, as you say, assigned the sex of female at
2 birth, that says I identify as a male, but all outward
3 appearances --- let me rephrase that. Let me just start
4 over. If a young woman of any age comes to you and says
5 I identify as a male, is that in and of itself enough to
6 establish gender --- now I'm forgetting the terminology,
7 sorry, gender dysphoria?

8 ATTORNEY HARTNETT: Object to form.

9 THE WITNESS: It is not because, as we
10 discussed, there are specific diagnostic criteria for
11 that diagnosis.

12 BY ATTORNEY TRYON:

13 Q. And that is they have to identify as such for
14 six months?

15 ATTORNEY HARTNETT: Object to form.

16 THE WITNESS: I'm happy to review based
17 on my memory, but I would refer to the DSM-V and that
18 specific diagnostic criteria.

19 BY ATTORNEY TRYON:

20 Q. What if that persons says I don't care about
21 DSM-V, you know, I was assigned girl at birth, but I
22 identify as a girl, that's not good enough?

23 ATTORNEY HARTNETT: Object to form.

24 THE WITNESS: I think you are confusing

1 the difference between gender dysphoria, the diagnosis,
2 and gender identity, the experience.

3 BY ATTORNEY TRYON:

4 Q. Thank you for clarifying. So for someone to
5 have a gender identity different than what they are
6 quote assigned at birth, they just simply need to say
7 that they have a different gender identity.

8 Is that right?

9 ATTORNEY HARTNETT: Object to form.

10 THE WITNESS: They also don't have to say
11 it. It's something they know in their own minds for
12 themselves and for them to share or not.

13 BY ATTORNEY TRYON:

14 Q. But if they share that, is it your view that
15 that person needs to accept that, that other folks need
16 to accept that?

17 ATTORNEY HARTNETT: Object to form.

18 THE WITNESS: It's my view that no one
19 can know inside someone's else's mind better than that
20 person themselves.

21 BY ATTORNEY TRYON:

22 Q. Do others --- should others be required to
23 accept that or not?

24 ATTORNEY HARTNETT: Object to form.

1 THE WITNESS: I can't speak to that more
2 broadly. All I can talk about is B [REDACTED] and what she
3 told me.

4 BY ATTORNEY TRYON:

5 Q. Okay.

6 If we could turn now to page --- okay. I'm
7 looking at what is page 18 of 36. Do you see that?

8 A. I do.

9 Q. Okay. So ---.

10 ATTORNEY HARTNETT: Could I just say for
11 the record it's the document with the 101120 at the
12 bottom?

13 ATTORNEY TRYON: Correct.

14 ATTORNEY HARTNETT: Thank you.

15 BY ATTORNEY TRYON:

16 Q. And it says --- under messages sent it shows
17 delivery and it shows on 10/25/2021 it looks like a
18 message was sent to Matthew Bunner. Is that a correct
19 interpretation of that?

20 A. That would be my guess, although I'm not
21 familiar with that exact message nor is this kind of
22 usually how I see this report. So outside of this
23 setting, I wouldn't necessarily have access to this
24 view.

1 Q. Do you remember talking to or sending a message
2 to Mr. Bunner on 10/25/2021?

3 A. No, I don't have recollection of that and I
4 suspect it was not me who sent the message.

5 Q. Okay.

6 Then down below further it says call
7 information and it references Steven Deci and you and
8 --- that's all. It references a call apparently on
9 9/16/2021. Do you know what that is about?

10 A. I don't. I don't recall receiving a phone call.
11 I do know that is the date of the visit and the time of
12 the visit, and so this may be what it is referring to.

13 Q. Okay.

14 Now, I'm on page 21, which is at the bottom of
15 the page. The bottom is 101123. And under here it
16 shows today's visit. There's a box there. Do you see
17 that?

18 A. I do.

19 Q. And who inputted this information?

20 A. It depends on what information you're referring
21 to, and I only know partial answers to that question.

22 Q. Okay.

23 The blood pressure?

24 A. It is our standard practice that the nurse takes

1 the blood pressure and then enters it into the chart.

2 Q. The same thing with the BMI and the weight?

3 A. So the nurse would take a weight and measure
4 height and then the computer would automatically
5 calculate a BMI.

6 Q. Okay.

7 And the temperature, the nurse does that as
8 well?

9 A. Yes.

10 Q. And the pulse?

11 A. Yes.

12 Q. And it says under that percentiles calculated
13 using cc, paren, boys 2, dash, 20 years, closed paren.
14 Do you see that there?

15 A. I do.

16 Q. And so why is that percentage using the boys
17 chart as opposed to a girls chart?

18 A. Because in Epic the sex designation carries over
19 to the gender marker, and so that is what chart is used.

20 Q. Is there a reason to determine percentiles for
21 the child?

22 A. The BMI percentiles are important for youth as
23 BMI itself is a poor measure and so BMI percentile is
24 the standard based on my training that is used.

1 Q. And why is that important?

2 A. It's important to look at growth and development
3 throughout childhood. Children are not fixed as adults
4 often are in their height, for example.

5 Q. So if BPJ identifies as a female, why not use
6 the female chart?

7 ATTORNEY HARTNETT: Object to the form.

8 THE WITNESS: It's a question and it's a
9 limitation of our health system and our health record.

10 BY ATTORNEY TRYON:

11 Q. So you don't think it matters which chart is
12 used, whether it's a male or female?

13 ATTORNEY HARTNETT: Object to form.

14 THE WITNESS: I certainly think it
15 matters.

16 BY ATTORNEY TRYON:

17 Q. And why does it matter?

18 A. It matters because these charts are slightly
19 different and based on a child's growth trajectory it
20 may be better to use one chart over the other or even
21 both to make sure that a child growth trajectory is on
22 target.

23 Q. Did you prescribe any treatment for BPJ?

24 ATTORNEY HARTNETT: Object to form.

1 THE WITNESS: No new treatment. I did
2 continue with [REDACTED] For example, we did not discontinue
3 the [REDACTED] during my visit.

4 BY ATTORNEY TRYON:

5 Q. Is --- let me see if I can pronounce this right.
6 [REDACTED] hormone, what is that?

7 A. [REDACTED] hormone or LH is a hormone that is
8 downregulated by the presence of the [REDACTED] It is a
9 hormone that goes on to stimulate a secretion of sex
10 hormone in the body throughout.

11 Q. Do you anticipate any of --- prescribing any
12 further treatment?

13 A. So I think I have a visit with B [REDACTED] coming up
14 next month and at that point we will be discussing B [REDACTED]
15 and her family's goals and discussing options like
16 [REDACTED] We began that conversation at our first
17 visit.

18 Q. And what about options such as surgery?

19 A. I'm not a surgeon, and in my experience, B [REDACTED]
20 is very young to be making kind of long-term plans in
21 that direction, although if she has questions I will
22 answer them to the best of my ability.

23 Q. So if that's something that BPJ wanted, is there
24 something that you would --- is that something you would

1 refer BPJ to someone else?

2 ATTORNEY HARTNETT: Object to form.

3 THE WITNESS: When appropriate.

4 BY ATTORNEY TRYON:

5 Q. Do you have someone in particular --- well, have
6 you ever referred anybody to another specialist for
7 surgery?

8 A. Yes.

9 Q. Who have you referred them to?

10 A. Well, there are usually surgical centers as well
11 as individual surgeons, but it depends on what the young
12 person is seeking and what their insurance coverage is,
13 where their family is located, and a host of other
14 factors.

15 Q. How many referrals have you made for surgery?

16 ATTORNEY HARTNETT: Object to form,
17 scope. Go ahead.

18 THE WITNESS: I couldn't speak to that
19 specifically. I don't know off the top of my head.

20 BY ATTORNEY TRYON:

21 Q. More than one?

22 A. Yes.

23 ATTORNEY HARTNETT: Same objection.

24 BY ATTORNEY TRYON:

1 Q. Can you just give me the names of a couple of
2 folks who do this type of --- do surgery for gender
3 transition?

4 ATTORNEY HARTNETT: Objection, form,
5 scope.

6 THE WITNESS: What type of surgery are we
7 talking about?

8 BY ATTORNEY TRYON:

9 Q. Sex reassignment surgery.

10 ATTORNEY HARTNETT: Objection. This
11 deposition concerns the diagnosis and treatment of
12 Plaintiff, BPJ aka B [REDACTED] P [REDACTED] -J [REDACTED]. I would like
13 to understand how this line of questioning is at all
14 relevant to that.

15 ATTORNEY TRYON: To understand the future
16 of possible treatments.

17 ATTORNEY HARTNETT: She has not testified
18 to any such future possible treatment with BPJ or --- I
19 just don't understand why having her list the names of
20 providers to conduct surgeries has anything at all to do
21 with BPJ's diagnosis or treatment.

22 BY ATTORNEY TRYON:

23 Q. You can answer the question.

24 A. Can you restate the question?

1 Q. Can you give me a list of providers for a sex
2 reassignment surgery that you've referred people to?

3 ATTORNEY HARTNETT: Object to the form
4 and scope.

5 THE WITNESS: Sex reassignment surgery is
6 very broad, and so I'm not able to give you a specific
7 list of surgeons without further clarity.

8 BY ATTORNEY TRYON:

9 Q. Then I guess I need to ask you what is included
10 within sex reassignment surgery.

11 A. It's a rather long list, but none of this
12 pertains to B [REDACTED] right now and may not in the future.

13 Q. But you have referred folks out for some form of
14 sex reassignment surgery or not?

15 ATTORNEY HARTNETT: Object to form.

16 THE WITNESS: I have referred patients
17 for a variety of needs outside of my scope of practice,
18 yes.

19 BY ATTORNEY TRYON:

20 Q. Can you recall the name of even one of the
21 surgeons you've referred people to?

22 ATTORNEY HARTNETT: Same objection and
23 asked and answered.

24 THE WITNESS: John Pang.

1 BY ATTORNEY TRYON:

2 Q. How do you spell the last name?

3 A. P-A-N-G.

4 Q. Give me two more and we will be done.

5 ATTORNEY HARTNETT: Objection to scope
6 and form and harassing the witness.

7 ATTORNEY LINKOUS: If you can recall, you
8 can tell him.

9 THE WITNESS: And there are usually teams
10 and not individual surgeons, but Toby Meltzer is someone
11 whose name I had mentioned previously. And I'm thinking
12 of centers, and so there's lots of folks in centers.

13 BY ATTORNEY TRYON:

14 Q. Give me a center name?

15 A. The Hopkins Clinic.

16 Q. Is that in West Virginia?

17 A. It is not. In fact, none of these providers
18 are.

19 Q. I see. Okay.

20 ATTORNEY TRYON: Let's go off the record.
21 Let me take just a very short break and see if there are
22 any other questions that I have.

23 VIDEOGRAPHER: Going off the record. The
24 current time reads 1:32 p.m.

1 OFF VIDEOTAPE

2 - - -

3 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

4 - - -

5 ON VIDEOTAPE

6 VIDEOGRAPHER: We are back on the record.

7 The current time reads 1:41 p.m.

8 ATTORNEY TRYON: Dr. Kidd, I want to
9 thank you very much for your time. I have no further
10 questions for you at this time. In the rare event that,
11 unlikely I will say, event that the Epic records somehow
12 show something that we need to reconvene this for, then
13 I would want to reconvene this. Otherwise, I have no
14 further questions. And you have the option to --- well,
15 your counsel will advise you you have the option to read
16 this or waive reading. So that's all I have. Thanks
17 again.

18 ATTORNEY HARTNETT: And this is Kathleen
19 Hartnett for Plaintiff. I just would like to
20 provisionally mark the transcript as confidential in
21 light of the discussion of medical records. And we'll
22 do a more specific designation when we review.

23 And I also just wanted to state from the
24 Plaintiff's perspective, the deposition is closed

1 because we made the production requested of us, but we
2 will, as I noted, review with what Mr. Linkous sent and
3 we will send to Defendants anything responsive to RFP-1
4 per the way we have responded to date in this
5 litigation.

6 ATTORNEY LINKOUS: If there are no more
7 questions, we will read and sign. And you may send her
8 deposition transcript to me and I will facilitate the
9 errata process to the doctor.

10 ATTORNEY TRYON: Any other Defendants
11 have any other questions?

12 ATTORNEY CROPP: This is Jeff Cropp for
13 Defendant Harrison County Board of Education and Doris
14 Stutler. I came on for Susan Deniker who had to leave
15 early. We have no questions today.

16 ATTORNEY GREEN: This is Roberta Green
17 here on behalf of West Virginia Secondary School
18 Activities Commission. No questions.

19 ATTORNEY TAYLOR: This is Michael Taylor
20 on behalf of the West Virginia State Board of Education.
21 Kelly Morgan had to step off, so I jumped on, and we
22 have no questions.

23 ATTORNEY TRYON: Mr. Ducar, you are
24 muted.

1 ATTORNEY DUCAR: Thank you. Timothy
2 Ducar on behalf of the Intervenor Lainey Armistead. We
3 have no questions.

4 ATTORNEY TRYON: Thank you, everyone.

5 VIDEOGRAPHER: That concludes this
6 deposition. The current time reads 1:43 p.m. Thank
7 you, Counsel.

8 * * * * *

9 VIDEOTAPED VIDEOCONFERENCE DEPOSITION

10 CONCLUDED AT 1:43 P.M.

11 * * * * *

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1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

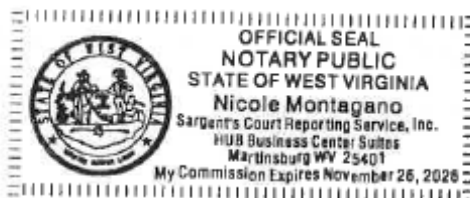
3 I, Nicole Montagano, a Notary Public in
4 and for the State of West Virginia, do hereby
5 certify:

6 That the witness whose testimony appears
7 in the foregoing deposition, was duly sworn by me
8 on said date, and that the transcribed deposition
9 of said witness is a true record of the testimony
10 given by said witness;

11 That the proceeding is herein recorded
12 fully and accurately;

13 That I am neither attorney nor counsel
14 for, nor related to any of the parties to the
15 action in which these depositions were taken, and
16 further that I am not a relative of any attorney
17 or counsel employed by the parties hereto, or
18 financially interested in this action.

19 I certify that the attached transcript
20 meets the requirements set forth within article
21 twenty-seven, chapter forty-seven of the West
22 Virginia.



Nicole Montagano
Nicole Montagano,
Court Reporter

Exhibit 7

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J. by her next friend and)
mother, HEATHER JACKSON,)
Plaintiff,)
vs.) Case No.
WEST VIRGINIA STATE BOARD OF) 2:21-cv-00316
EDUCATION, HARRISON COUNTY)
BOARD OF EDUCATION, WEST)
VIRGINIA SECONDARY SCHOOL)
ACTIVITIES COMMISSION, W.)
CLAYTON BURCH in his official)
capacity as State)
Superintendent, DORA STUTLER,)
in her official capacity as)
Harrison County)
Superintendent, and THE STATE)
OF WEST VIRGINIA,)
Defendants.)
And)
LAINEY ARMISTEAD,)
Defendant-Intervenor.)
-----)

REMOTE VIDEOTAPED DEPOSITION OF
DORA STUTLER

AND

DAVE MAZZA

Tuesday, March 8, 2022

Volume I

Reported by:

ALEXIS KAGAY, CSR No. 13795

Job No. 5079542

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J. by her next friend and)
mother, HEATHER JACKSON,)
Plaintiff,)
vs.) Case No.
WEST VIRGINIA STATE BOARD OF) 2:21-cv-00316
EDUCATION, HARRISON COUNTY)
BOARD OF EDUCATION, WEST)
VIRGINIA SECONDARY SCHOOL)
ACTIVITIES COMMISSION, W.)
CLAYTON BURCH in his official)
capacity as State)
Superintendent, DORA STUTLER,)
in her official capacity as)
Harrison County)
Superintendent, and THE STATE)
OF WEST VIRGINIA,)
Defendants.)
And)
LAINEY ARMISTEAD,)
Defendant-Intervenor.)
)

Videotaped deposition of DORA STUTLER and DAVE
MAZZA, Volume I, taken on behalf of the Plaintiff,
B.P.J., with all participants appearing remotely
beginning at 12:32 p.m. and ending at 7:18 p.m. on
Tuesday, March 8, 2022, before ALEXIS KAGAY, Certified
Shorthand Reporter No. 13795.

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Page 6

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Tuesday, March 8, 2022

12:33 p.m.

THE VIDEOGRAPHER: Okay. Good afternoon.

We are on the record at 12:33 p.m. on 12:32:54
March 8th, 2022. This is media unit 1 in the
video-recorded deposition of Dora Stutler in the
matter of B.P.J. by Heather Jackson versus the West
Virginia State Board of Education, et al. It's
filed in the U.S. District Court for the Southern 12:33:16
District of West Virginia, in the Charleston
Division. The case number is 2:21-cv-00316.

This deposition is being held virtually.

My name is Dave Halvorson. I'm the
videographer here from Veritext. And I'm here with 12:33:37
the court reporter, Alexis Kagay, also from
Veritext.

Counsel, can you please all identify
yourselves so the witness can be sworn in.

MS. REINHARDT: Good afternoon. This is 12:33:47
Elizabeth Reinhardt. I'm in the room with
Andrew Barr from Cooley, LLP, and we're here on
behalf of the plaintiff, B.P.J.

MS. HARTNETT: Hi. This is Kathleen Hartnett
from Cooley, also on behalf of Plaintiff, B.P.J. 12:34:02

1 MS. PELET DEL TORO: Hi. This is Valeria
2 Pelet del Toro, also on behalf of Plaintiff, for
3 Cooley, LLP.

4 MS. HELSTROM: Hi. This is Zoe Helstrom from
5 Cooley, LLP, on behalf of Plaintiff. 12:34:11

6 MR. TRYON: This is David Tryon. I'm -- I'm
7 with the Attorney General's Office of West Virginia
8 on behalf of the State of West Virginia.

9 MS. MORGAN: This is Kelly Morgan on behalf
10 of the West Virginia Board of Education and 12:34:39
11 Superintendent Burch, along with Heather Hutchens as
12 general counsel for the State Department of
13 Education.

14 MS. DENIKER: Good afternoon. This is Susan
15 Deniker, and with me is Jeff Cropp. We are counsel 12:34:51
16 for defendants Harrison County Board of Education
17 and Superintendent Dora Stutler.

18 MS. GREEN: This is Roberta Green, Shuman,
19 McCuskey Slicer, here on behalf of West Virginia
20 Secondary School Activities Commission. 12:34:57

21 MS. MORGAN: This is Kelly Morgan again. I
22 also have Kristen Hammond from my office as well.

23 MR. FRAMPTON: This is Hal Frampton at
24 Alliance Defending Freedom on behalf of the
25 Intervenor. And we also have on the call, for the 12:35:19

1 Intervenor, Timothy Ducar, Christiana Holcomb and
2 Rachel Csutoros.

3 THE VIDEOGRAPHER: And I believe somebody
4 just logged in.

5 MS. SWAMINATHAN: Hi there. This is 12:35:35
6 Sruti Swaminathan from Lambda Legal on behalf of
7 Plaintiff.

8 THE VIDEOGRAPHER: Okay. I believe that's
9 everyone, so can we please swear in the witness.

10 (Witness sworn.) 12:35:50

11 THE VIDEOGRAPHER: Please begin.

12 MS. REINHARDT: For the sake of the record,
13 we were just off record, and we agreed that
14 objections to form would -- would reserve all
15 rights, except as to privilege. 12:36:22

16
17 DORA STUTLER,
18 having been administered an oath, was examined and
19 testified as follows:

20
21 EXAMINATION

22 BY MS. REINHARDT:

23 Q How are you this afternoon, Mrs. Stutler?

24 A I'm just fine. How are you?

25 Q I'm doing well. 12:36:32

Page 15

1 And can you please let me know your current
2 title?

3 A I'm currently the superintendent of Harrison
4 County schools.

5 Q Great. Is it okay if I refer to you as 12:36:42
6 Superintendent Stutler for the remaining of the
7 deposition?

8 A Sure.

9 Q Wonderful. And have you ever been deposed
10 before? 12:36:51

11 A I have not.

12 Q Have you ever testified in a court before?

13 A I have not.

14 Q And I just want to go over a couple of ground
15 rules so that you aren't surprised by anything today 12:37:05
16 and to establish a clean record for the court
17 reporter.

18 I'll be asking you questions, and you must
19 answer, unless your attorney tells you otherwise.

20 Do you understand? 12:37:19

21 A Yes.

22 Q So even if your attorney objects, if they do
23 not tell you not to answer, you should still answer
24 my question.

25 Understood? 12:37:30

1 A Yes.

2 Q And, unfortunately, the court reporter will
3 not be able to transcribe any gestures, such as
4 nodding, so we'll need to speak verbally.

5 Is that okay with you? 12:37:41

6 A Yes.

7 Q Wonderful. Thank you.

8 And I will try to take a break every hour,
9 and we'll take a somewhat longer break, around
10 12:00, Mountain Time, or -- but if I'm in the middle 12:37:52
11 of a question and you need to take a break, please
12 let me finish my question or a series of questions
13 in order to get your answer before we take the
14 break, if that's okay with you.

15 A Sure. 12:38:06

16 Q Wonderful. And do you understand that you're
17 testifying under oath today just as if you were
18 testifying in a court of law?

19 A I do.

20 Q And without disclosing any communications you 12:38:18
21 had with your counsel, what did you do to prepare
22 for today's deposition?

23 A Met with counsel.

24 Q How long ago did you meet with your counsel?

25 A Yesterday. We spent a day. 12:38:34

1 MS. DENIKER: You don't need to -- I'm just
2 going to -- just to clarify for the witness, the
3 substance of our communications is protected here,
4 so you don't need to talk about what we talked
5 about. 12:38:48

6 To the extent that you talked to other people
7 to prepare for your deposition today, you can also
8 disclose that.

9 THE WITNESS: When we spoke -- we spoke with
10 witnesses yesterday. 12:39:02

11 BY MS. REINHARDT:

12 Q Which witnesses did you speak with?

13 A We spoke with -- I spoke with Tarra Shields,
14 principal at Norwood Elementary; Jasmine Lowther.
15 She's a fourth grade teacher at Norwood Elementary. 12:39:12
16 Dave Mazza was in the room during the preparation.
17 He's a principal at Bridgeport Middle School. And
18 spoke with Natalie McBrayer, an assistant -- she's a
19 volunteer coach for the cross-country team at
20 Bridgeport Middle School. 12:39:37

21 Q Did you review any documents during that
22 meeting?

23 A I did.

24 I also am remembering Amber Davis. She's the
25 current counselor at Norwood Elementary School. I 12:39:52

1 had a conversation with her as well.

2 Q And which documents did you review?

3 A We looked at the transgender support plans
4 that were created at Norwood and at Bridgeport
5 Middle. We looked at rostering information from 12:40:10
6 cross-country that was submitted to the SSAC. We
7 looked at the statute in question. We looked at
8 some articles that were on West Virginia News and
9 other news organizations.

10 It was a lot of material. 12:40:36

11 Q I understand. I understand. I appreciate
12 you listing those.

13 Were all of those documents provided to you
14 by your attorney?

15 A Yes. 12:40:47

16 Q And did you bring any document to that
17 meeting that were not provided by your attorney?

18 A I did not.

19 Q And do you have any documents with you today?

20 A I do not. 12:41:03

21 Q Is there anything that would prevent you from
22 answering my questions truthfully today?

23 A No.

24 Q Did you discuss the case with anyone other
25 than the folks you listed at the meeting yesterday 12:41:14

1 and your attorneys?

2 A No.

3 Q Were you asked to provide any documents to
4 anyone in preparation for this deposition?

5 A No. 12:41:29

6 Q B.P.J. filed a lawsuit against the County
7 Board of Education; correct?

8 A Yes.

9 Q You're here today in connection to that
10 lawsuit; correct? 12:41:42

11 A Yes.

12 Q Wonderful. And now I'm just going to ask a
13 few foundational questions, just in order to get my
14 bearings and so that you can see kind of where I'm
15 planning on going today. 12:41:54

16 So do you understand that you're here in
17 response to a 30(b)(6) Deposition Notice?

18 A Yes.

19 Q Do you know what a 30(b)(6) Deposition Notice
20 is? 12:42:06

21 A Yes.

22 Q Did you review the 30(b)(6) Deposition
23 Notice?

24 A I did.

25 Q If you could go into the "Marked Exhibits" 12:42:16

1 folder, I'm going to introduce to you a document
2 that's been marked as Exhibit 24. Please let me
3 know when you have it.

4 (Exhibit 24 was marked for identification
5 by the court reporter and is attached hereto.) 12:42:27

6 THE WITNESS: It's there. I have that.

7 BY MS. REINHARDT:

8 Q Is this -- I'll let you flip through it for a
9 moment, if you would like to, but my question is, is
10 this the document that you reviewed yesterday? 12:42:43

11 A Yes.

12 Q Have you prepared to testify regarding the
13 topics listed on the 30(b)(6) notice?

14 A Yes.

15 Q Do you understand -- 12:42:59

16 MS. DENIKER: Excuse me, Ms. Reinhardt, just
17 to -- just to clarify, we had a discussion off the
18 record, Ms. Stutler will be testifying with regard
19 to topics except those topics the plaintiff has
20 agreed to withdraw, which were topics 3, 6, 9, 12 12:43:16
21 and 15. And she also will not be testifying with
22 regard to topics 10 and 11, as another witness will
23 be testifying on those topics.

24 MS. REINHARDT: Understood. Thank you for
25 putting that on the record. 12:43:36

1 BY MS. REINHARDT:

2 Q I'll only be asking you about the topics your
3 attorney has just confirmed, but I'd like to go
4 through them now to make sure that you understand
5 each of these topics, if that's okay with you, Mrs. 12:43:46
6 Stutler.

7 A Yes.

8 Q Wonderful. So let's look at topic 1.
9 Do you understand this topic?

10 A I do. 12:44:03

11 Q Did you review any documents related to this
12 topic?

13 A We had a discussion about --

14 MS. DENIKER: I'm going to -- so, again, I'm
15 going to instruct you not to answer and provide any 12:44:11
16 information about communications you had with
17 counsel about --

18 THE WITNESS: Okay.

19 MS. DENIKER: -- this matter.

20 BY MS. REINHARDT: 12:44:24

21 Q As I understand it, you reviewed several
22 documents yesterday with your counsel, as well as a
23 few other folks related to this case.

24 Were there any documents or conversations not
25 with your counsel that helped you prepare for this 12:44:34

1 topic?

2 A No.

3 Q And do you understand topic 2?

4 A I do.

5 Q Without disclosing any conversations you had 12:44:49
6 with your attorney, did you review any documents
7 pertaining to topic 2?

8 A I did.

9 Q And do -- which documents were those?

10 A It was any policies that we would have had 12:45:03
11 regarding the authority of school-sponsored
12 athletics. We looked at that. We also looked at
13 SSAC rules.

14 Q How about topic 4, do you understand that
15 topic? 12:45:26

16 A Yes.

17 Q And did you review any documents pertaining
18 to that topic?

19 A I did. I reviewed documents pertaining to
20 gender support plans dating back to 2019. 12:45:46

21 Q And topic 5, do you understand that topic?

22 A I do. It was the same -- the same documents
23 for the gender support plans.

24 Q And for topics 7 and 8, did you review those
25 topics? 12:46:11

1 A Yes.

2 Q Do you understand them?

3 A I do.

4 Q And did you review any documents you have not
5 already listed relating to those topics? 12:46:27

6 A We have no documents specific to that topic.

7 Q Both topic 7 and topic 8; is that correct?

8 A Yeah, at Harrison County schools, we have no
9 documents specific to that topic.

10 Q Thank you. And we're almost done. I'm going 12:46:56
11 to ask you about topics 13 and 14.

12 Do you understand what those topics say?

13 A Yes.

14 Q And did you review any documents pertaining
15 to those topics? 12:47:11

16 A The statute, the House Bill 3293.

17 Q Did you review your discovery responses
18 listed under topic 14?

19 A I did.

20 Q Thank you. Throughout the deposition, if I 12:47:34
21 use a term that you're unfamiliar with, please let
22 me know. Just so you're aware, there may be a few
23 terms that I'd like to define now, and there may
24 also be a few terms as we go that I will ask if it's
25 okay if I use the abbreviated version. 12:47:50

1 If it's okay with you, do you mind if I go
2 over two terms now?

3 A No, please do. Thank you.

4 Q No, thank you.

5 So I'm going to use the word "transgender." 12:48:00
6 When I use the term "transgender," I'm referring to
7 someone whose gender identity does not match the sex
8 they were assigned at birth.

9 So, for example, if someone was assigned male
10 at birth, but they identify as female, that person 12:48:14
11 would be a transgender girl or woman.

12 Do you understand my reference of
13 transgender?

14 MR. TRYON: Objection to form.

15 David Tryon. 12:48:28

16 THE WITNESS: Yes.

17 BY MS. REINHARDT:

18 Q I'll also be using the word "cisgender."
19 When I use the word "cisgender," I am referring to
20 someone whose gender identity matches the sex they 12:48:44
21 were assigned at birth.

22 So as an example, if someone was assigned
23 male at birth and they also identify as male, that
24 person is a cisgender boy or male.

25 Do you understand my reference to cisgender? 12:48:54

1 MR. TRYON: Same objection.

2 This is David Tryon.

3 THE WITNESS: Yes.

4 BY MS. REINHARDT:

5 Q Thank you. And when I refer to the County 12:49:06
6 Board of Education, is it okay with you if I just
7 say "county board"?

8 A Yeah, that's fine.

9 Q Wonderful. And unless I state otherwise,
10 when I use the word "you," I'm referring to the 12:49:21
11 county board, not you as an individual.

12 Understood?

13 A Yes.

14 Q Are you aware of any issues under the -- are
15 you aware of any issues underlining this lawsuit? 12:49:31

16 MS. DENIKER: Objection to the form.

17 If you do not understand, you can -- you can
18 advise her that you do not understand.

19 THE WITNESS: I am -- I do not understand
20 that, those terms. 12:49:50

21 BY MS. REINHARDT:

22 Q Thank you. And as I said, as I continue to
23 go along, if there's something that you don't
24 understand, please let me know. Otherwise, if you
25 answer, I'll assume that you do understand. 12:49:58

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1 So I'll put it slightly differently.

2 Does the county board have a position
3 regarding the validity of the underlying lawsuit?

4 MS. DENIKER: Objection to the form of the
5 question. 12:50:13

6 It also calls for a legal conclusion.

7 THE WITNESS: I can't comment. I have no
8 comment on that.

9 BY MS. REINHARDT:

10 Q No problem. I am now going to ask you a 12:50:28
11 series of questions as you, Superintendent Dora
12 Stutler. So for the purpose of the next following
13 questions, when I use the term "you," I do mean you,
14 Superintendent Stutler, and this is just for
15 background purposes. 12:50:43

16 Do you understand?

17 A Yes.

18 Q Can you please let me know what your
19 education level is?

20 A I have a Master's in educational leadership. 12:50:50

21 Q And did you receive that Master's after
22 obtaining your Bachelor's degree?

23 A I did.

24 Q And what was your Bachelor's degree in?

25 A Elementary education. 12:51:02

1 Q Was that a four-year program?

2 A It was.

3 Q And how long was your Master's program?

4 A I did it quickly. It was a

5 two-and-a-half-year program. 12:51:19

6 I also have a Master's in special education.

7 Q And how long did it take for you to obtain
8 your Master's in special education?

9 A I worked on them concurrently, so -- it's
10 been a long time ago. Two and a half -- two and a 12:51:38
11 half years.

12 Q Understood. And did you obtain those
13 Master's degree immediately after obtaining your
14 Bachelor's?

15 A I did not. 12:51:50

16 Q What did you do in between your Bachelor's
17 and your Master's?

18 A Substitute taught. And then I actually
19 stayed home with my children for six years, worked
20 on my Master's at that time and then immediately 12:52:06
21 went back into the field.

22 Q When you were teaching during this time, was
23 it in Harrison County?

24 A I was a substitute in Harrison and Taylor
25 County, which is an adjoining county. 12:52:23

1 Q Thank you. Where do you currently work?

2 A Harrison County schools.

3 Q How long have you worked for the Harrison
4 County schools?

5 A 24 years as a regular employee. I had seven 12:52:36
6 years as a substitute employee.

7 Q And when you say "regular employee," what do
8 you mean by that?

9 A It means regular employee with full benefits,
10 hired, not in a substitute capacity, regular 12:52:52
11 schedule.

12 Q Understood. And when you say "Harrison
13 County schools," is that the County Board of
14 Education, or are you referring to a broader
15 umbrella term? 12:53:06

16 A No. It's Harrison county schools.

17 Q Wonderful. And what's your current role?

18 A Superintendent.

19 Q Do you report to anyone?

20 A I do. I have four -- five elected board 12:53:18
21 members.

22 Q Who are those elected board members?

23 A Frank Devono, Junior. He's my -- he's a
24 vice president. Gary Hamrick is the president of
25 the board. Michael Daugherty, member. 12:53:38

1 Kristin Messenger, member. And Doug Hogue, member.

2 Q How are these members selected?

3 A They are elected for four-year terms.

4 Q What do the county board members do?

5 A They oversee the -- I oversee day-to-day 12:54:00
6 operations. They're there overseeing what I do and
7 the County.

8 Q And what are your day-to-day
9 responsibilities?

10 A Operations of the schools every day, my 12:54:17
11 county office, everything from personnel -- I have
12 several divisions that report to me. We're a large
13 organization. We have 1500 employees, close to
14 10,000 students. And ultimately, they report to me.

15 Q And the -- Bridgeport Middle School falls 12:54:49
16 under your jurisdiction?

17 A Yes.

18 Q What is your role as it relates to Bridgeport
19 Middle School?

20 A I'm their supervisor. I have 26 12:54:58
21 administrators, full-time administrators, that
22 report to an administrative assistant over the
23 schools, and that administrative assistant reports
24 to me. But ultimately, the schools are my
25 responsibility. 12:55:19

1 Q How often does the administrative assistant
2 report to you?

3 A Daily.

4 Q And how is it reported to you?

5 A We do an official Monday meeting. We meet as 12:55:30
6 a group every -- at least once a week. And
7 throughout the day, my supervisors are reporting to
8 me or contacting me.

9 Q You said you meet as a group on Mondays.

10 Who attends that meeting? Who is this group? 12:55:52

11 A My department heads.

12 Q How many department heads are there?

13 A I have ten.

14 Q And if you wouldn't mind, can you please list
15 those departments. 12:56:05

16 A Sure. I have an administrative assistant
17 over secondary education. I have an administrative
18 assistant over elementary education. I have a -- an
19 assistant superintendent over facilities and
20 transportation. I have a supervisor over special 12:56:21
21 education, a supervisor over federal programs, a
22 chief financial officer, a supervisor over
23 technology.

24 And then we kind of drop down. They still
25 come to these meetings. They -- I go down to a 12:56:42

1 director of student support and safety and a
2 director of school attendance.

3 Q Is your role similar as it pertains to
4 Norwood Elementary School?

5 A I -- yes. I mean, I would oversee 12:56:57
6 Norwood Elementary School.

7 Q And those --

8 A I was -- I was the principal there for a lot
9 of years, so...

10 Q Understood. And do those same ten department 12:57:20
11 heads also report to you as it pertains to
12 Norwood Elementary School?

13 A Yes.

14 Q And you mentioned you were the principal of
15 Norwood Elementary School. 12:57:32

16 When were you principal?

17 A 2009 till 2018.

18 Q And what did you do starting in 2018?

19 MS. MORGAN: Can I stop you guys for a
20 second? 12:57:55

21 I just got a message from Dave Tryon that his
22 computer crashed.

23 Can you hold a moment so he can get back on?

24 MS. REINHARDT: No problem. Let's go off the
25 record while we wait. 12:58:01

1 THE VIDEOGRAPHER: All right.

2 MR. TRYON: Yeah, I -- I just got back.

3 THE VIDEOGRAPHER: Oh.

4 MR. TRYON: It crashed right as you were

5 talking about education and the Master's degree and 12:58:07

6 Bachelor's degrees (sic), so that's -- just for the

7 record, that's when my computer crashed, and I got

8 back on as fast as I could.

9 So we can go on. Thank you.

10 This is David Tryon speaking, by the way. 12:58:23

11 MS. REINHARDT: Thank you.

12 BY MS. REINHARDT:

13 Q Superintendent Stutler, what did you do
14 starting in 2018?

15 A I moved to the central office as the 12:58:33
16 personnel director.

17 Q And what does that role -- what -- what do
18 you do in that role?

19 A Well, it was technically supervisor, but --
20 you just oversee all personnel in the county, as far 12:58:44
21 as hiring, processing information for the
22 superintendent to make recommendations to the board,
23 dealing with employee attendance. Any matter as it
24 related to school personnel.

25 Q And did you do that role until you became 12:59:01

1 superintendent in 2020?

2 A Yes.

3 Q Thank you. Do you understand what
4 interscholastic sports are?

5 A No. 12:59:19

6 Q So it refers to sports where students compete
7 against students at other schools.

8 Does that make sense?

9 A Yes.

10 Q So for the purposes of today, I might refer 12:59:29
11 to it as sports or athletics, but I'm really only
12 referring to interscholastic sports and athletics
13 when I say that.

14 A Okay. Thank you.

15 Q Do you know if there are any sports in 12:59:46
16 Harrison County?

17 A Yes. Many.

18 Q What is your role as it relates to sports in
19 Harrison County?

20 A It would fall under the same role as any 12:59:58
21 of -- any of my other responsibilities. I do have
22 supervisors that are the immediate contact for that.
23 But if this is an issue or problem, generally it
24 gets to me.

25 Q And -- 01:00:19

1 A And it would be handled as any other -- yeah.

2 Q I apologize for interrupting you. Please go
3 ahead.

4 A I said it would be handled as any other piece
5 of my role. 01:00:30

6 Q So these supervisors would report to you if
7 there was anything they felt you needed to know?

8 A Yes.

9 Q And what is your role as it relates to
10 policies in Bridgeport Middle School? 01:00:45

11 A Policies in our county are -- really come
12 from our board, and we only have a policy if the
13 board agrees and enacts that policy.

14 Q What does it take for the board to agree to a
15 policy? 01:01:11

16 A I would never know what it would take. I
17 offer a policy or we -- if a policy is generated --
18 and I will tell you, generally our policies are
19 generated from things coming from state statute or
20 things that we need to cover, and the stakeholders 01:01:32
21 in my organization would get -- would get together
22 and we create a policy, work, generally, with
23 counsel on a policy. That goes to a -- goes to the
24 board, and the five board members will look at that
25 policy, make changes to that policy, discuss that 01:01:47

1 policy. It could be put out on a 30-day comment,
2 for public comment and policy.

3 And then it would come back to the board and
4 that does not become policy unless the board acts on
5 that, takes action, and then it becomes a policy. 01:02:03

6 Q So am I understanding correctly that you
7 would present a policy to the board?

8 A Sometimes it would occur that way.

9 Q In cases where it does not occur that way,
10 how are policies presented to the board? 01:02:28

11 A Generally, it's a policy that -- it's already
12 in state statute, and we've just added some local
13 language that would be specific to Harrison County,
14 adopting what's already in state language. That's a
15 lot of times how policies get there. 01:02:49

16 We're just either -- we're adapting our local
17 policy to match state policy. And that has to be
18 board acted on as well because sometimes there's
19 something, maybe, in our county that might be
20 county-specific or, you know, we need to address. 01:03:04

21 Q And does the board vote on those -- in order
22 to implement those policies?

23 A All policies are voted and acted on by the
24 five board members.

25 Q Does it take a majority vote consensus, do 01:03:22

1 you know?

2 A It's a majority vote, yes. We have a
3 five-member board.

4 Q You mentioned that -- and please correct me
5 if I'm misrepresenting your statement. 01:03:43

6 As I understand it, you would revise policies
7 from the State in order to make them applicable to
8 the County; is that correct?

9 MS. DENIKER: Objection to the form.

10 THE WITNESS: I can't state what's in state 01:04:02
11 policy. I can only -- I can do what's in state
12 policy, and I -- I'm trying to think of a good
13 example.

14 But I can't change what's in state policy.
15 I -- and a lot of times we just adopt its straight 01:04:16
16 language. We use the language directly from the
17 state policy.

18 And occasionally there's something at the
19 State that we find out that we do not have a local
20 policy on, and we will adopt the State language and 01:04:30
21 create a policy that mirrors the State.

22 BY MS. REINHARDT:

23 Q I can give you a real example.

24 Is this what happened for H.B. 3293?

25 A No. 01:04:47

1 Q Did you or anyone at the county board present
2 the county board members with the -- with the bill
3 H.B. 3293?

4 A No.

5 Q Has the board voted in any way relating to 01:05:04
6 policies around H.B. 3293?

7 A No.

8 Q What is the county board's relationship with
9 the Department of Education?

10 A I believe, as the superintendent, I am the 01:05:21
11 conduit from the County Board of Education to my
12 board. So information that comes from the state
13 board is usually a conduit through me to the board,
14 although my board has -- our state boards have their
15 own association that also has a relationship with 01:05:50
16 the state board, and they do have a fall meeting and
17 a winter meeting to update board members. So
18 they -- they have a relationship outside of my
19 relationship with the state board through that
20 organization. 01:06:08

21 Q When you say "they," who are you referring
22 to?

23 A My board members. My five board members are
24 part of a state -- it's just an association. Like I
25 have an association for superintendents, there's an 01:06:23

1 association for state board members, and they meet a
2 couple of times of the -- a year, and they are given
3 information that's coming down from our State Board
4 of Education and the Department of Ed.

5 Q And does the county superintendent attend 01:06:41
6 those meetings?

7 A I am allowed to attend those meetings with my
8 board members.

9 Q Do you regularly attend those meetings as
10 they're held? 01:06:57

11 A I attend if my board members are attending.
12 They're optional meetings. If -- a board member in
13 our county or in our state has to have so many hours
14 to remain on a board. It's kind of like a
15 professional development-type thing, they have to 01:07:13
16 have so many hours. And so I'm not going to say
17 that my board attends every meeting. If they have
18 their hours, they don't always attend.

19 Q Does the county board have any rulemaking
20 power? 01:07:27

21 A We can adopt a policy, and then it becomes a
22 rule for our county.

23 Q Do you -- do you make those policies? Does
24 the county board make those policies?

25 A We can adopt the policy. 01:07:53

1 Q Just so I understand, you've said "adopt a
2 policy." What I'm asking is, are there instances
3 where the policy comes directly from the county
4 board?

5 A No. As far as creating the policy, like 01:08:07
6 writing it, the actual making of the policy, I
7 don't --

8 Q No problem. Thank you.

9 If the county board disagrees with a policy
10 that's been presented by the state board, will it 01:08:40
11 still adopt that policy?

12 A We have no choice but to follow state board
13 policy.

14 Q So what is the purpose of having votes as it
15 relates to policies? 01:08:56

16 A They're -- I guess it's -- we adopt state
17 policy. We use the language for state policy. And
18 that is our guidance.

19 If we have a local policy, and it would be
20 something like our local discipline policy, we have 01:09:08
21 an overarching state policy for safe and supportive
22 schools, policy 4373, and it gives you examples of
23 how you would discipline, if this occurs.

24 A local policy would take that policy, adopt
25 all the same language as the state policy, but we 01:09:31

1 may add in a third progressive discipline.

2 Like, if -- we may not want to go strictly
3 to -- now, there are things in that behavior policy
4 that we have to do, if there's a weapon, if
5 there's -- there are things that you have to do, but 01:09:50
6 when it is a -- something where two children are
7 arguing and we want to say, you know what, we want
8 to do ISS, put them in an in-school suspension,
9 instead of an out-of-school suspension.

10 That's what I mean by adding things that are 01:10:05
11 specific to a county that we feel that would be good
12 for our students, and I think that's -- anytime we
13 make a policy change, it's based on, you know, our
14 students and what our administrators are seeing in
15 the schools. 01:10:18

16 Q I really --

17 A The overarching policy would be state policy.
18 We would just add things like that. That's just an
19 example.

20 Q I really appreciate that example, as I 01:10:31
21 haven't had the privilege of being a part of this
22 process. So thank you.

23 I'll move on and ask you, how many schools
24 are in the county board's jurisdiction?

25 A We have five high schools, five middle 01:10:43

1 schools and 13 elementary schools and one
2 alternative education high school/middle school.
3 It's a combination. It's one building.

4 Q And of those schools, is Bridgeport Middle
5 School part of the County Board of Education's 01:11:05
6 jurisdiction?

7 A Yes.

8 Q Norwood Elementary School as well?

9 A Yes.

10 Q Do rules and regulations between schools ever 01:11:18
11 vary?

12 A Schools follow our policies, our county
13 policies. It's their guidance.

14 Q And schools are allowed to implement their
15 own policies on top of those; is that correct? 01:11:34

16 A Not -- not a policy. But a school could
17 have -- if you wanted to have different rules for
18 the kids, like, you know, raise your hand and -- I
19 mean, they do things like that.

20 You know, as a school administrator, we give 01:11:51
21 them some autonomy to run their schools with
22 scheduling. You know, how they're going to run
23 their lunches, we don't have that in policy. But
24 our policy is what -- that governs all of our
25 schools. 01:12:10

1 Q So these rules that a school may choose to
2 implement, does the county board review them?

3 A Not always. If there -- if it's a rule --
4 if -- if a -- a principal has had something
5 happening in their building and they want to change 01:12:34
6 a lunch schedule or a master schedule or -- we would
7 not review that. But our policy would say, you need
8 to have 350 minutes of instruction. That's what our
9 policy would say.

10 Now, within that school, they could have the 01:12:50
11 autonomy to -- to make that 350-minute schedule,
12 what works for their building and their staffing.

13 Q Understood. I'm going to ask you a few
14 questions about superintendents.

15 I first want to know, who employs the county 01:13:08
16 board superintendent?

17 A I am hired by the five elected board members.

18 Q And are you a state official?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: I believe I'm considered a 01:13:26
21 state employee. I have all the rights and benefits
22 of a state employee.

23 BY MS. REINHARDT:

24 Q Are you responsible for executing educational
25 policies? 01:13:38

1 A That's been approved by my board, by my
2 five-member board.

3 Q Understood. Is the county board
4 superintendent responsible for monitoring H.B. 3293?

5 MS. DENIKER: Objection to the form. 01:14:04

6 THE WITNESS: That -- there is a current
7 injunction with that rule, so we're...

8 BY MS. REINHARDT:

9 Q Is the county board superintendent
10 responsible for monitoring state policies that are 01:14:30
11 adopted by the county board?

12 MS. DENIKER: Objection to form.

13 THE WITNESS: Would you repeat that question.

14 BY MS. REINHARDT:

15 Q Is the county board superintendent 01:14:41
16 responsible for monitoring policies, let's say state
17 policies, that are adopted by the county board?

18 MS. DENIKER: Same objection.

19 THE WITNESS: Our -- our county board
20 policies are following state board policy. 01:15:01

21 BY MS. REINHARDT:

22 Q And is the county board superintendent
23 responsible for monitoring those?

24 MS. DENIKER: Same objection.

25 THE WITNESS: We enforce the policy as it 01:15:13

1 comes down from the State and our local board
2 because we're required to enforce state policy.

3 BY MS. REINHARDT:

4 Q And how do you enforce it, state policy?

5 A We follow what the rule says. 01:15:40

6 Q Does the rule describe how it should be
7 enforced?

8 MS. DENIKER: Objection to the form.

9 THE WITNESS: Generally, we know how to
10 enforce the rule. And if we had questions about a 01:16:02
11 state board policy, we would contact the state board
12 to make clarification.

13 BY MS. REINHARDT:

14 Q Understood. And what is your relationship
15 with the county board superintendent -- I'm sorry, 01:16:14
16 let -- let me rephrase that.

17 What is your relationship with the state
18 board superintendent?

19 A I contact him when I need to. He's -- he is
20 available, and our state board is available, our 01:16:32
21 state department.

22 Q In what instances would you need to -- in
23 what instances would you need to discuss things with
24 the state board superintendent?

25 A I've had contact with our state board 01:16:49

1 superintendent when I wanted to have something
2 clarified that was said, possibly, at a meeting with
3 us. They do meet with us regularly. They are great
4 to give us -- great to keep us informed in
5 information. So we -- we see them often. 01:17:19

6 So it's -- it's not like I call him every day
7 , but if I needed something, I -- I have called to
8 verify something that one of his departments maybe
9 have said to us and I wanted to talk with him. It's
10 not often, but he is available and there when we 01:17:42
11 have questions.

12 Q Who is the state board superintendent?

13 A Clayton Burch.

14 Q And did you discuss H.B. 3293 with
15 Clayton Burch? 01:18:00

16 A No.

17 Q Does the county board superintendent defer to
18 the state board superintendent?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: No. 01:18:14

21 BY MS. REINHARDT:

22 Q Have you heard of the West Virginia Education
23 Information System?

24 A I believe we call that WVEIS, West Virginia
25 EIS. We -- we refer to it as WVEIS, so I'm sure 01:18:32

1 that -- I haven't heard it called that for a long
2 time.

3 Q Wonderful. So it's an acronym --

4 A Thanks for the memory.

5 Q Is it okay with you if I also call it WVEIS? 01:18:40

6 A Yes. You can also call it an antiquated
7 system, but that's okay.

8 Q And why do you call it an antiquated system?

9 A It's been around as long as I have, so...

10 Q What is WVEIS, if you could please explain it 01:18:57
11 to me?

12 A WVEIS is just the state database that we use.
13 All counties are connected to WVEIS. And it's a --
14 just a student information database. It also holds
15 financial -- our county financial menus as well. 01:19:12
16 It's a large -- it's a large database.

17 Q So the county board superintendent has access
18 to WVEIS?

19 A I do.

20 Q Do the county board members have access to 01:19:30
21 WVEIS?

22 A No.

23 Q Who controls WVEIS?

24 MS. DENIKER: Objection to the form.

25 THE WITNESS: I believe it would be the state 01:19:47

1 department. It's just a database. So there's a lot
2 of people involved with WVEIS in different
3 departments. There's a lot of sides to it. There's
4 a student information side. There's, like I said,
5 the finance side. That's where we keep our student 01:19:59
6 attendance. It's just a recordkeeping large
7 database.

8 BY MS. REINHARDT:

9 Q Does the county board -- I'll rephrase.

10 Is the county board able to enter information 01:20:12
11 into WVEIS?

12 A Are you referring to county board members, in
13 that sense, or are you speaking about just --

14 Q I'll take it from a high level first.

15 So can you, as county superintendent, enter 01:20:30
16 information into WVEIS?

17 A I can.

18 Q And are the various departments -- and when I
19 say "departments," I'm referring to the ten
20 departments that report to you. Are they able to 01:20:47
21 enter information into WVEIS?

22 A For their specific department. My attendance
23 director has access to attendance menus. My school
24 supervisors have access to menus that involve their
25 schools. 01:21:04

1 So it depends on what their need is. We
2 don't just allow anybody WVEIS access.

3 Q Understood. And I am -- I have just a few
4 more questions for you, and then we can take a
5 break, if you would like. 01:21:19

6 My first question is if you've ever heard of
7 the county board superintendent's advisory council?

8 A Repeat that.

9 Q The county board superintendent's advisory
10 council. 01:21:43

11 A I am not familiar with that. And I could
12 be -- I just maybe have not -- maybe it's like the
13 WVEIS thing. I'm just not --

14 Q As I --

15 A Is it -- 01:22:07

16 Q Sorry, I did not mean to interrupt you.

17 Go ahead.

18 A I was going to ask, as it relates to just our
19 county superintendents?

20 Q As I understand it -- and again, I don't know 01:22:17
21 if it exists, but as I understand it, it's a council
22 to promote collaboration among the county districts
23 and to provide input to the State Board of
24 Education.

25 Is there a council similar to that that 01:22:35

1 you're aware of?

2 A I am not a member of that council.

3 Q Do you know if there's an annual report that
4 goes to the state superintendents regarding concerns
5 the county board may have? 01:22:56

6 A I am not aware.

7 Q Thank you. And similarly, have you heard of
8 the West Virginia education advisory team?

9 A I'm not sure that's what it's titled. I know
10 we have some superintendents that are involved in 01:23:27
11 different things from the state superintendent. I
12 am not on that team.

13 Q Understood. And those are all the questions
14 I have pertaining to this topic, if you would like
15 to take a break at this time. 01:23:44

16 MS. DENIKER: Is that topic 1 that we have
17 concluded, Ms. Reinhardt?

18 MS. REINHARDT: It is the conclusion of
19 topic 1. I may have some questions later that kind
20 of inter- -- that cross with topic 1, but for now, 01:23:58
21 that's the conclusion of topic 1.

22 THE WITNESS: Do we need a break?

23 MS. DENIKER: We do not need a break, if you
24 want to continue, but if you would like to take a
25 break, that is fine. 01:24:15

1 MS. REINHARDT: One second.

2 Let's take a five-minute break for now. If
3 folks are able to return at 11:30, we'll go off the
4 record.

5 THE VIDEOGRAPHER: We are going off the 01:24:33
6 record at 1:24 p.m., and this is the end of Media
7 Unit No. 1.

8 (Recess.)

9 THE VIDEOGRAPHER: All right. We are back on
10 the record at 1:36 p.m., and this is the beginning 01:35:51
11 of Media Unit No. 2.

12 Go ahead.

13 BY MS. REINHARDT:

14 Q Does the county board have a role as it
15 relates to sports in Harrison County? 01:35:59

16 A The same as they would with any policy, as it
17 relates to sports or any other topic.

18 Q Can you speak a little bit more to that?
19 What role would they have?

20 A Are you asking specific to sports? 01:36:36

21 Q I am.

22 A The understanding is, is that our board, when
23 they have policies in place -- like I said, I am
24 there for the day-to-day operations. So I think the
25 questions are, is the board, everyday, in the 01:36:59

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1 day-to-day operations. They are not, until we have
2 a board meeting and they're in as a group. They --
3 they take no action. They -- they really have no
4 authority as single board members.

5 So I guess my -- my thing is, is they -- 01:37:17
6 they've got me for day-to-day operations, and I --
7 they adopt policy to support that as a group.

8 But as far -- are you speaking of day-to-day
9 operations of athletics in the county?

10 Q I am not. But let me ask you another 01:37:38
11 question first.

12 Is the county -- when I'm referring to the
13 county board, are you answering only as it relates
14 to the county board members?

15 A Well, I believe my role here is in the -- I 01:37:52
16 am in that capacity as representing the -- the
17 board, but they -- they are my supervisors or they
18 are over my --

19 MS. DENIKER: Ms. Reinhardt, this is Susan
20 Deniker. Could we go off the record for a minute 01:38:21
21 and I think that we can maybe make some
22 clarifications that would be helpful moving forward?

23 MS. REINHARDT: Thank you. Yes, let's go off
24 the record, please.

25 THE VIDEOGRAPHER: All right. We're going 01:38:31

1 off the record. The time is 1:38 p.m.

2 (Recess.)

3 THE VIDEOGRAPHER: All right. We are back on
4 the record at 1:41 p.m.

5 Go ahead. 01:40:46

6 MS. REINHARDT: While off the record, we
7 discussed the definition of county board, as I refer
8 to it here.

9 BY MS. REINHARDT:

10 Q So Superintendent Stutler, when I refer to 01:40:54
11 "county board," I'm talking about the entire County
12 Board of Education, not just the elected members.
13 I'll clarify, going forward, when I'm talking about
14 the county board's elected members. Is that clear?

15 A Yes. Thank you. 01:41:14

16 Q Wonderful. And as I go through this line of
17 questioning, if there's anything that you don't
18 believe you reviewed while reviewing the topics in
19 the 30(b)(6) notice, just let me know, but I will
20 try to stick to only topics that you've noted as 01:41:30
21 reviewed.

22 A Thank you.

23 Q I'm going to ask my previous question again.

24 Does the county board have a role as it
25 relates to athletics or sports? 01:41:44

1 A Yes.

2 Q And what is that role?

3 A We -- well, it's under my jurisdiction.

4 Each -- each school has an athletic director that

5 would be under the administrator in that building. 01:42:01

6 So each athletic program has its own athletic

7 director that oversees the programs in that

8 building. And that athletic director reports to the

9 school principal, and, of course, the school

10 principal reports to the county board. 01:42:19

11 Q Are the coaches at Bridgeport Middle School

12 employees of the county board?

13 A Not all. We have volunteer coaches that are

14 vetted by the school board, but they are not

15 employees; they are unpaid volunteer coaches. 01:42:51

16 Q Are they required to sign a contract as

17 volunteer coaches?

18 A No. We are -- we do vet them. They have

19 background checks, and we vet them, but they're not

20 under contract. 01:43:06

21 Q And when you say "we," do you mean the county

22 board?

23 A Yes.

24 Q Thank you.

25 A Thank you. 01:43:13

1 Q Does the county board have a role -- and I
2 know we discussed this briefly -- as it pertains to
3 policies regarding sports in Harrison County?

4 A Yes.

5 Q What is that role? 01:43:32

6 A It would be the same role as other policies
7 that we would have -- that we -- that my board would
8 adopt.

9 Q Does the county --

10 A It would follow -- 01:43:47

11 Q Oh, I -- I apologize. Go ahead.

12 A It would follow that same process.

13 Q Would you bother reminding me what the
14 process is?

15 A If -- if there's a state policy and we want 01:43:59
16 to adopt the processes for our county, we would
17 adopt the local policy, with those processes, and it
18 would go to the board, and they would adopt an
19 official policy, and it would be enacted.

20 Q And when you say it would go to the board, do 01:44:18
21 you mean the elected board members?

22 A The elected board. I'm sorry, I will say
23 elected board as well.

24 Q No problem. I know --

25 A They're such a big part of our world. 01:44:28

1 Q Understood. Does the county board have any
2 policies pertaining to sports?

3 A We have minimal. We have two.

4 Q And what are those two policies?

5 A We have a policy on extracurricular 01:44:45
6 activities for 6 to 12, just defining what
7 extracurricular would be for 6 to 12th grade. And
8 the other policy that we have is on how you obtain a
9 letter, how are you a lettermen, as far as sports is
10 concerned. 01:45:07

11 Q When were those policies developed?

12 A I believe 2008 was one. I don't remember the
13 date on the other. They were early. They're --
14 they're older policies.

15 Q So as it relates to the lettermen policy, 01:45:20
16 I'll use that as an example, who is responsible for
17 enforcing it?

18 A That would be the school AD and the athletic
19 program at the school. That would be really
20 pertaining to the high school athletic directors. 01:45:40

21 Q And does the county board ever need to step
22 in, as far as enforcing those policies?

23 A Only if there would be a disagreement. I
24 would assume that if a child thought they were
25 supposed to get a letter, and they didn't, then I 01:46:00

1 would probably be -- it would be brought to my
2 attention.

3 Q Understood. And just for clarity, does the
4 county board have any policies related to sex
5 separation in sports? 01:46:12

6 A No, we do not have an adopted policy for
7 that. We follow SSAC guidelines on what teams are
8 coed.

9 Q Does the County have any policies pertaining
10 to transgender students? 01:46:40

11 A No.

12 Q What do you know about H.B. 3293?

13 MS. DENIKER: Objection to the form.

14 THE WITNESS: It -- it was a state law passed
15 in July of '21. 01:47:05

16 BY MS. REINHARDT:

17 Q What does H.B. 3293 do?

18 MS. DENIKER: Objection to the form.

19 THE WITNESS: I can really only tell you what
20 I know when I read the statute. It's a -- it makes 01:47:24
21 a distinction between -- it begins by saying that
22 there is an inherent difference between a male and a
23 female. It talks about safety during sporting
24 activities or doing -- during athletics. And it
25 also addresses the equity or displacement of female 01:47:46

1 athletes.

2 I can only speak to the statute and what it
3 says.

4 BY MS. REINHARDT:

5 Q How did you come to know about H.B. 3293? 01:48:03

6 MS. DENIKER: I'm going to object to the form
7 and ask if you're asking her -- are you asking her
8 this as the superintendent?

9 I mean, this is a little bit of a
10 complicating factor as it relates to a 30(b)(6) 01:48:19
11 deposition.

12 Are you asking Superintendent Stutler how she
13 became aware of that as the superintendent?

14 MS. REINHARDT: I'm asking
15 Superintendent Stutler to speak to it as the county 01:48:30
16 board designee.

17 When I'm referring to Superintendent Stutler,
18 I'll be sure to reference you and make it clear when
19 I'm asking. I apologize if that wasn't clear.

20 MS. DENIKER: Well, I'm not sure how she can 01:48:47
21 answer how an entity became aware of something.

22 MS. REINHARDT: Can we go off the record for
23 just one moment, please?

24 MS. DENIKER: Sure.

25 THE VIDEOGRAPHER: Okay. We are going off 01:48:55

1 the record. The time is 1:49 p.m.

2 (Recess.)

3 THE VIDEOGRAPHER: All right. We are back on
4 the record at 1:55 p.m.

5 Go ahead.

01:55:19

6 BY MS. REINHARDT:

7 Q Superintendent Stutler, when did you, in your
8 individual capacity, become aware of H.B. 3293?

9 A I cannot give a specific date or time. I can
10 tell you the process with any legislative updates 01:55:36
11 that I received, and it involves all of them.

12 Generally, when our legislative group in
13 Charleston convene, they are always, you know,
14 putting forth new bills. You never know where
15 they're at and what process. 01:55:54

16 And we have multiple organizations, one being
17 my superintendent's organization, that gives us
18 usually a weekly update on where the bills are.
19 There's not commentary on those. It's just a
20 snippet of what the bill is and kind of an overview 01:56:07
21 of what the bill is, and I get those -- a list of
22 all of them that's been introduced, and then they'll
23 update us occasionally. And those come from
24 different directions.

25 We have a superintendent's organization. Our 01:56:25

1 school board, I'm talking about the elected members,
2 and their association will send out legislative
3 updates on everything coming out of the legislation
4 for the legislative body in -- in our Charleston
5 legislature.

01:56:42

6 So I can't give you a specific time, but I
7 did receive updates in general from -- from those
8 sources.

9 Q And how often are those updates provided?

10 A It depends on how busy Charleston is. If
11 there's a lot going on, we get them frequently. No
12 more than once a week during the session.

01:56:56

13 Q And if the superintendent of the county board
14 has questions related to legislation, who does the
15 county superintendent go to?

01:57:15

16 MS. DENIKER: Objection to the form.

17 Are you speaking about Dora Stutler as county
18 superintendent?

19 MS. REINHARDT: I'm generally speaking to a
20 superintendent in this role.

01:57:29

21 BY MS. REINHARDT:

22 Q Is there a specific person who has been
23 designated or is in a position to answer questions
24 about legislation?

25 A When there is a legislative update, I -- I

01:57:42

1 guess I'm in a different role. In my role as
2 superintendent here, I -- I am not one that's making
3 decisions on legislation. I'm watching it. I'm
4 being updated on it. I am not in that role.

5 Now, whether other superintendents are, I am 01:58:00
6 unaware. But I am not in that role. But I am
7 paying attention and reading the updates that are
8 coming to me.

9 Q Do you recall who updated you about H.B.
10 3293? 01:58:13

11 A It came specifically from our superintendent
12 organization. They do -- like I said, it's that
13 same -- it's the same group. We -- we have an
14 association of all the superintendents, 55 counties.

15 Q Who is the superintendent -- and I 01:58:35
16 apologize -- superintendent of organizations, is
17 that what you've said?

18 A Yeah, it's an association of superintendents.
19 It's just our -- all -- all 55 counties. There's an
20 executive director of that group, and they inform us 01:58:51
21 of anything that's -- of anything that's going to
22 affect school systems or legislation or rules,
23 anything.

24 Q Are you a member of this association?

25 A I am. 01:59:09

1 Q And once the association made you aware of
2 H.B. 3293, did you report -- did you report anything
3 related to H.B. 3293 to someone you report to?

4 And I can rephrase that if that was not
5 clear. 01:59:29

6 A No.

7 Q Did you discuss H.B. 3293 with anyone who
8 reports to you?

9 A No.

10 Q Was the County Board of Education -- did the 01:59:45
11 County Board of Education have a role in drafting
12 H.B. 3293?

13 A No.

14 Q Did the county board provide any comments or
15 thoughts to the legislature regarding H.B. 3293 that 02:00:01
16 you are aware of as Superintendent Stutler?

17 A Are you speaking about my county-elected
18 board or --

19 Q The County Board of Education, generally.

20 A No. 02:00:22

21 Q How was H.B. 3293 described to you as
22 Superintendent Stutler?

23 MS. DENIKER: Objection to the form.

24 THE WITNESS: I truly just read the

25 administrative updates, and I will tell you that we 02:00:42

1 had someone that presented to my board, but he did
2 all the legislative updates, like we would with any
3 legislative session, to inform my board.

4 (Exhibit 25 was marked for identification
5 by the court reporter and is attached hereto.) 02:01:04

6 BY MS. REINHARDT:

7 Q Understood. If you could go into the "Marked
8 Exhibits" folder, I'm going to introduce a document
9 that's been marked as Exhibit 25.

10 Please let me know when you have that up. 02:01:18

11 A I see that.

12 Q And for now, we're just going to be looking
13 at that first page.

14 Have you seen this e-mail before?

15 A I had not seen that e-mail until counsel 02:01:58
16 shared that.

17 Q What is WVASA?

18 A That is the West Virginia association of
19 superintendents.

20 Q And are you a member of that Listserv? 02:02:12

21 A I am.

22 Q Thank you. Now, if you wouldn't mind, I
23 would also like to ask you who Sarah Starkey is.

24 A She's our county Title IX investigator.

25 Q And who is Kenneth Winkie? 02:02:36

1 A He's our safety and support director.

2 Q And, finally, who is Donna Hage, if I'm
3 pronouncing that correctly?

4 A Donna Hage, at that time, in 2021, the date
5 of that, she was an assistant superintendent for 02:02:56
6 Harrison County schools.

7 Q Thank you. Now, attached to this e-mail is a
8 Title IX presentation.

9 Have you seen this before?

10 A I -- yesterday, I saw that. I don't recall 02:03:10
11 seeing that previous, prior to yesterday, when I
12 did -- met with counsel.

13 Q Understood. I will give you an opportunity,
14 if you would like it, to flip through the PowerPoint
15 presentation, or I can just direct you to the pages 02:03:41
16 that I'll be asking about. What do you prefer?

17 A Just direct me to the pages.

18 Q Wonderful. I'm going to direct you to the
19 page that's Bate-numbered HCB0E 00343.

20 Are you there? Let me -- please let me know 02:04:20
21 when you're there.

22 A Yes.

23 Q So on this page, at the top, it says,
24 "Title IX and Current Issues." And on the following
25 page, it says, "Recent Cases of Note." 02:04:38

1 Do you see that?

2 A Yes.

3 Q Then on the following page, which is

4 HCB0E 00345, it says, "WV House Bill 3293."

5 Do you see that?

02:04:54

6 A Yes.

7 Q And is it correct that you, as Dora Stutler,

8 were not present for this presentation?

9 A I do not attend all of those association

10 meetings. So I do not recall that particular

02:05:12

11 presentation. These attorneys do present often at

12 these organization meetings.

13 Q After this presentation, did any of the --

14 other superintendents that are members of this

15 associations speak with you about a presentation?

02:05:33

16 A No.

17 Q Has the county board had any conversations

18 with the State Board of Education, prior to the

19 enactment of H.B. 3293, about students who are

20 transgender participating in sports?

02:05:54

21 A No.

22 Q Now, looking at this page, which I believe is

23 345, is that the same page you're currently on?

24 A Yes.

25 Q Can you just review it and let me know if

02:06:07

1 this is how you recall H.B. 3293 being summarized to
2 you?

3 MS. DENIKER: Objection to the form of the
4 question.

5 I'm unclear about -- summarized by who? 02:06:24

6 BY MS. REINHARDT:

7 Q As I understand it, Superintendent Stutler,
8 you received various e-mails about upcoming
9 legislation.

10 Did any of those e-mails categorize H.B. 3293 02:06:32
11 similarly to the page before you Bates-Stamped
12 numbered HCB0E 00345?

13 A I could not speak to that.

14 MS. DENIKER: Objection to the form.

15 BY MS. REINHARDT: 02:06:52

16 Q Can you please go to the page Bates-Stamped
17 HCB0E 00347?

18 A Yes, I see that.

19 Q And it says (as read):

20 "Cause of Action. Any student 02:07:18

21 aggrieved by a violation of this

22 section may bring an action against

23 a county board of education or state

24 institution of higher education

25 alleged to be responsible for the 02:07:29

1 alleged violation."

2 Have you seen this cause of action prior to
3 now?

4 MS. DENIKER: Objection to the form.

5 THE WITNESS: This document, during prep, was 02:07:41
6 shown to me.

7 BY MS. REINHARDT:

8 Q Okay. And has any student brought an action
9 against the county board under H.B. 3293?

10 MR. TRYON: Objection. 02:08:03

11 THE WITNESS: We have been named, with
12 several other entities.

13 BY MS. REINHARDT:

14 Q In what action?

15 A It's a lawsuit against multiple entities, and 02:08:14
16 we are included in that for B.P.J.

17 Q Have there been any actions related to
18 H.B. 3293 other than this case?

19 A No.

20 Q Has the county board taken any steps in 02:08:41
21 addressing this Cause of Action section?

22 MS. DENIKER: Objection to the form.

23 THE WITNESS: No. I mean...

24 BY MS. REINHARDT:

25 Q Has the county board taken any steps in 02:09:04

1 preparation for actions brought under this section?

2 A We have retained counsel for the current
3 lawsuit that we've been named in.

4 Q Other than this action, has there been any
5 other preparation as to this Cause of Action section 02:09:30
6 from House Bill 3293?

7 A No.

8 Q Did the county board have any conversations
9 with employees at Bridgeport Middle School prior to
10 the enactment of H.B. 3293? 02:09:47

11 MS. DENIKER: Objection to the form.

12 Are you asking about --

13 MR. TRYON: Objection.

14 MS. DENIKER: -- 3293?

15 MS. REINHARDT: Can you please repeat that, 02:10:01
16 Ms. Deniker?

17 MS. DENIKER: Yes, I'm sorry, I objected to
18 the form. And then I was asking for clarification.

19 Why don't I just let you re-ask the question.
20 I apologize. 02:10:11

21 MS. REINHARDT: No problem.

22 BY MS. REINHARDT:

23 Q Did the county board have any conversations
24 with employees at Bridgeport Middle School prior to
25 the enactment of H.B. 3293 related to transgender 02:10:18

1 students participating in sports?

2 A There was a gender support plan being created
3 at Norwood Elementary for B.P.J. She was going to
4 attend Bridgeport Middle School.

5 Q So -- 02:10:49

6 A And there's a section -- there's a section on
7 that plan, Are you an athlete?

8 Q Other than the gender support plan that
9 you're speaking of, were there any other
10 conversations with Bridgeport Middle School 02:11:04
11 employees about transgender students
12 participations -- participation in sports?

13 A No.

14 Q Did the county board have any conversations
15 with employees at Norwood Elementary School prior to 02:11:18
16 the enactment of H.B. 3293 about students who are
17 transgender participating in sports?

18 A No.

19 Q What is the county board's rule as it relates
20 to H.B. 3293? 02:11:45

21 MS. DENIKER: Objection to the form.

22 THE WITNESS: It's like any other state law.
23 But there's an injunction, so that was never
24 enacted.

25 BY MS. REINHARDT: 02:11:58

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Q Has H.B. 3293 been enforced against any other student other than B.P.J.? I apologize.

A There's an injunction against it. We take -- we've taken no action.

02:12:17

MS. REINHARDT: Susan, I believe the rest of my questions relate to topic 10, so if it suits the parties, we'll take a break now for about 20 minutes, and then I would ask the county board to have David Mazza present.

02:12:39

MS. DENIKER: And then are done with all other topics upon which Ms. Stutler will be testifying on?

MS. REINHARDT: I am not.

MS. DENIKER: Okay.

02:12:51

THE VIDEOGRAPHER: So -- okay.

MS. REINHARDT: We can also go off the record.

THE VIDEOGRAPHER: Yeah, let's discuss -- okay. We're -- we're going off the record. The time is 2:13 p.m., and this is the end of Media Unit No. 2.

02:13:00

One moment.

(Recess.)

THE VIDEOGRAPHER: All right. We are back on

02:53:32

1 the record at 2:54 p.m., and this is the beginning
2 of Media Unit No. 3.

3 Go ahead.

4 BY MS. REINHARDT:

5 Q Have you heard -- I'll rephrase. 02:53:57

6 Have you, as Dora Stutler, heard of
7 West Virginia Secondary School Activities
8 Commission?

9 A Yes.

10 Q Can you tell me what it is? 02:54:06

11 MS. GREEN: Object to the form.

12 This is Roberta Green on behalf of WVSSAC.

13 THE WITNESS: It's -- it's a governing body,
14 but it's made up of member -- members of the -- of
15 the schools. It's a principals organization with 02:54:26
16 the governing body of the SSAC.

17 BY MS. REINHARDT:

18 Q Is it okay if I refer to it as "WVSSAC" going
19 forward?

20 A Yes. 02:54:42

21 Q Is the county board able to delegate powers
22 to another body?

23 A Can you rephrase that or ask that in another
24 way?

25 Q Of course. I can ask a more direct question. 02:54:55

1 Has the county board delegated any of its
2 powers, as it relates to sports, to WVSSAC?

3 MS. DENIKER: Object to the form.

4 MS. GREEN: Also object to the form.

5 THE WITNESS: No. 02:55:13

6 BY MS. REINHARDT:

7 Q Has the county board delegated any of its
8 powers, as it relates to sports, to any other entity
9 other than the County itself?

10 MS. DENIKER: Objection to the form. 02:55:31

11 MS. GREEN: Object to the form.

12 THE WITNESS: Can we talk about what the
13 SSAC -- I mean, how it -- the oversight of the SSAC
14 for counties in general? Because the confusion is,
15 is we don't -- my board, delegating authority -- I 02:55:53
16 mean, my board, we're following state policy and
17 guideline. That's what we do.

18 The West Virginia SSAC is an oversight board
19 and provides guidance for our schools and our
20 athletic programs. It's a guiding body. 02:56:11

21 So I don't know that my board, if you're --
22 well, see, I'm thinking elected members. You're --
23 you're thinking of the board in general.

24 I'm trying to just explain the relationship.
25 I mean, we -- we have members of the SSAC. 02:56:28

1 They're -- it's a member body. It's our principals.

2 MS. DENIKER: This is Susan Deniker. I just
3 want to also state that to the extent we're talking
4 about the relationship between the Harrison County
5 board and the WVSSAC, I believe that that is topic 02:56:43
6 10, and we've designated a different witness for
7 that.

8 MS. REINHARDT: Understood. I am asking
9 Superintendent Stutler questions as it relates to
10 topic 8 at this moment. 02:56:54

11 BY MS. REINHARDT:

12 Q Does WVSSAC have any powers as it relates to
13 sports?

14 MS. GREEN: Object to the form.

15 MS. DENIKER: Same objection. 02:57:09

16 THE WITNESS: Yes. They set guidelines for
17 us to follow.

18 BY MS. REINHARDT:

19 Q When you say "us," they set guidelines for
20 the County Board of Education to follow? 02:57:18

21 MS. GREEN: Object to the form.

22 THE WITNESS: There are athletic -- yes, for
23 our athletics, in each -- our programs need to
24 follow. There's certain examples. Transfer of a --
25 of a student from one school to another. There's 02:57:34

1 guidelines. They have to follow that. There's
2 eligibility requirements. Those are all -- but
3 those are all rules that were voted on as the -- the
4 principals vote on that as members of the West
5 Virginia SSAC. But there is a governing body that 02:57:53
6 govern all of our sport programs.

7 BY MS. REINHARDT:

8 Q I apologize if I'm not quite understanding.
9 So if I can just have a little bit of clarity, I'm
10 wondering -- so I'll ask several questions and maybe 02:58:06
11 that will help get me to the point of understanding.

12 WVSSAC provides guidelines, and those are
13 presented to the county board, and the county board
14 must follow those guidelines.

15 Is that a correct summary of what you've 02:58:26
16 said?

17 MS. DENIKER: Object to the form.

18 MS. GREEN: Objection to the form.

19 THE WITNESS: I guess my frustration is I'm
20 not sure what you're asking me. I know how the 02:58:40
21 West Virginia SSAC works. I know how it governs our
22 sporting events. And they work with our
23 administrators and our ADs to put programs together
24 for our kids and their athletics. It's -- it's a --
25 it's a guide. They provide guidelines for them. 02:58:59

1 And there are -- if we do not follow certain
2 things, and there is a -- someone says, hey, I don't
3 agree with that, yes, there are ways to appeal that,
4 and there could be hearings for athletes.

5 BY MS. REINHARDT:

02:59:17

6 Q So --

7 A But there are rules that we have to follow
8 for our athletic programs.

9 Q And those rules are provided by WVSSAC?

10 MS. GREEN: Object to the form.

02:59:31

11 MS. DENIKER: Objection to the form.

12 THE WITNESS: Yes.

13 BY MS. REINHARDT:

14 Q And can you please describe the process to me
15 if the county board doesn't agree with a guideline
16 or a rule set by WVSSAC?

02:59:40

17 MS. GREEN: Object to the form.

18 THE WITNESS: Well, I -- I think you have to
19 go back to what the -- how their -- their rules come
20 to us. You have your administrators all as a
21 part -- they're members of this. So they're the
22 ones creating these rules, voting on these rules.

02:59:56

23 So we -- once those rules are passed by a
24 majority of those members, we follow the rules.

25 ///

1 BY MS. REINHARDT:

2 Q And what happens if there's a dispute about
3 implementing a certain rule?

4 MS. GREEN: Object to the form.

5 MS. DENIKER: Objection to the form. 03:00:25

6 I also believe that this is a topic 10 issue.

7 MS. REINHARDT: I'm going to ask the witness
8 to continue to answer, as I believe this falls under
9 topic 8.

10 MS. DENIKER: And I will permit her to answer 03:00:37
11 with the understanding that I will not permit
12 multiple witnesses to be asked the same questions
13 with regards to the same issues.

14 MS. REINHARDT: Understood. Thank you.

15 BY MS. REINHARDT: 03:00:53

16 Q Would you like me to repeat my question?

17 A Yes, please.

18 MS. REINHARDT: Could the court reporter
19 please read back my last question?

20 THE REPORTER: Yes. 03:01:11

21 (Record read.)

22 MS. GREEN: Object to the form.

23 MS. DENIKER: Same objections I've already
24 raised.

25 THE WITNESS: I can tell you, in Harrison 03:01:23

1 County, our ADs and our administrators are following
2 those rules.

3 BY MS. REINHARDT:

4 Q So all of the rules set by WVSSAC are
5 currently being followed by the County Board of 03:01:38
6 Education?

7 MS. GREEN: Object to the form.

8 MS. REINHARDT: I can also --

9 THE WITNESS: That I'm aware of.

10 MS. REINHARDT: Oh, I apologize. 03:01:51

11 Would Mrs. Deniker and Mrs. Green make a
12 standing objection to these topics?

13 MS. GREEN: I'm perfectly fine to keep
14 objecting. It's possible some of them would be,
15 yeah. But my -- my objections go to foundation and 03:02:05
16 scope, and I'm not sure what else, so...

17 MS. DENIKER: At this point, I don't see a
18 need for a continuing objection, but if we get to a
19 place where I think that that is appropriate, I will
20 -- we can discuss that. Thank you for that offer. 03:02:25

21 MS. REINHARDT: No problem.

22 BY MS. REINHARDT:

23 Q You may answer, Superintendent Stutler.

24 A Are you asking if a -- an administrator has
25 an objection to the rule or the athlete has an 03:02:36

1 objection to the rule?

2 Q I'm asking about the County Board of
3 Education. So if -- if it makes more sense, an
4 administrator.

5 MS. DENIKER: Objection to the form. 03:02:54

6 THE WITNESS: I am unaware of any objections
7 to the SSAC rules in Harrison County from our
8 administrators.

9 BY MS. REINHARDT:

10 Q Thank you. Does the County determine player 03:03:05
11 eligibility?

12 MS. GREEN: Object to the form.

13 MS. DENIKER: Also object to the form.

14 And again, I'm going to object that this is
15 beyond the scope of topic 9, and I believe that it 03:03:27
16 clearly falls within -- within topic 10.

17 BY MS. REINHARDT:

18 Q I'm going to ask you to go into the "Marked
19 Exhibit" folder and please pull up Exhibit 24.

20 Please let me know once you have it up. 03:03:56

21 A Yes, it's there.

22 Q So if you look at topic 8, which I believe,
23 at the bottom, is page 7, it states (as read):

24 "The Harrison County Board and the
25 County Superintendent's current 03:04:15

1 and/or expected role in
2 implementing, monitoring,
3 supervising, regulating, and
4 enforcing H.B. 3293, including any
5 delegation of authority to or 03:04:24
6 supervision over the West Virginia
7 Secondary School Activities
8 Commission."

9 Did you prepare for this topic?

10 A I did. 03:04:34

11 Q And can you please remind us what you did in
12 preparation of topic 8?

13 MS. DENIKER: And again, I will instruct you
14 not to answer about any communications you had with
15 counsel. 03:04:49

16 THE WITNESS: Reading over documents in -- in
17 prep for this meeting today.

18 BY MS. REINHARDT:

19 Q And --

20 A And House Bill 3293. 03:05:00

21 Q And which documents were those?

22 A I read the house bill, 3293.

23 Q That was the only document you read related
24 to this topic?

25 MS. DENIKER: Objection to the extent that 03:05:16

1 this has been asked and answered.

2 MR. TRYON: Objection.

3 David Tryon.

4 BY MS. REINHARDT:

5 Q Were there any additional documents that you 03:05:25
6 reviewed?

7 MS. DENIKER: Same objection.

8 THE WITNESS: Information on the secondary
9 school activities commission.

10 BY MS. REINHARDT: 03:05:37

11 Q What information on the West Virginia
12 Secondary School Activities Commission?

13 A When they're governing body and how they
14 interact with counsels in their role.

15 MS. REINHARDT: So, Susan, I believe these 03:05:54
16 fall directly under the questions that I'm asking,
17 and it sounds like Superintendent Stutler is
18 prepared to answer these questions.

19 MS. DENIKER: Well, I object to that because
20 I believe that topic 8 is in the context of House 03:06:06
21 Bill 3293. You're asking general questions with
22 regard to the relationship between Harrison County
23 Board of Education and the WVSSAC, which I believe
24 are within the scope of topic 10. I -- I understand
25 topic 8 to be in the context solely of House Bill 03:06:23

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1 3293.

2 MS. REINHARDT: I will continue to set a
3 foundation, and I will allow you to have a standing
4 objection, if you would like, or you can continue to
5 object.

03:06:36

6 BY MS. REINHARDT:

7 Q But I would ask you, Superintendent Stutler,
8 if the county board determines player eligibility.

9 MS. GREEN: Object to the form.

10 MS. DENIKER: I object to the form, too.

03:06:48

11 And I just want to say one more time that I
12 will object to you asking these general questions of
13 a different witness if you get -- if you have these
14 questions asked and answered of this witness.

15 MS. REINHARDT: Understood.

03:07:01

16 MS. DENIKER: And to the extent you do not
17 know the answers to the question --

18 THE WITNESS: Just say "I don't know"?

19 MS. DENIKER: -- you may answer accordingly.

20 THE WITNESS: Eligibility is -- there's a
21 guideline for what eligibility -- the requirements
22 for eligibility for a student athlete.

03:07:13

23 BY MS. REINHARDT:

24 Q And is that guideline through the County
25 Board of Education?

03:07:23

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1 MS. DENIKER: Objection to form.

2 THE WITNESS: No. It's SSAC rules.

3 BY MS. REINHARDT:

4 Q What happens if there's a dispute between the
5 county board and WVSSAC as it pertains to player 03:07:32
6 eligibility?

7 MS. GREEN: Object to the form.

8 MS. DENIKER: Objection to the form.

9 THE WITNESS: I am unaware of any objections
10 with my ADs, my school administrators, with SSAC 03:07:49
11 rules.

12 BY MS. REINHARDT:

13 Q Is there a process in place for a dispute
14 between the county board and WVSSAC regarding their
15 guidelines? 03:08:06

16 MS. GREEN: Object to the form.

17 A There is a process for a student
18 athlete or -- yeah, an athlete. If they disagree
19 with something that the AD or the coach or the
20 administrator has said, they can ask for a hearing. 03:08:28

21 BY MS. REINHARDT:

22 Q And would this also be true for H.B. 3293?

23 MS. GREEN: Object to the form.

24 MS. DENIKER: Objection to the form.

25 MR. TRYON: I'm going to join the objection. 03:08:48

1 THE WITNESS: No. Because we are not
2 operating under House B. -- House Bill 3293.

3 BY MS. REINHARDT:

4 Q Despite the injunction, if one was not put in
5 place, would the process that you've described be 03:09:05
6 the same for H.B. 3293?

7 MS. DENIKER: Object to the form.

8 THE WITNESS: If a student -- if a student
9 athlete is objecting to something, according to SSAC
10 rules, they could follow that process. 03:09:20

11 BY MS. REINHARDT:

12 Q Thank you. Did the county board have any
13 conversations with WVSSAC prior to the enactment of
14 H.B. 3293 about students who are transgender
15 participating in sports? 03:09:40

16 A No.

17 Q Do you know who Bernie Dolan is?

18 A Yes.

19 Q Who is Bernie Dolan?

20 A He's the executive director of the SSAC. 03:09:52

21 Q Did the county board have any conversations
22 with Mr. Dolan, prior to the enactment of H.B. 3293,
23 about students who are transgender participating in
24 sports?

25 A No. 03:10:11

1 Q Did you, Superintendent Stutler, have any
2 conversations with Mr. Dolan regarding transgender
3 students participation in sports?

4 A No.

5 MS. REINHARDT: I am now going to move tab 7 03:10:27
6 into the exhibit folder, if you could please just
7 give me one second. That will be marked as
8 Exhibit 26.

9 I'll let you know once I've placed it in the
10 folder. 03:10:47

11 Okay. You may refresh. And please let me
12 know once you see Exhibit 26.

13 (Exhibit 26 was marked for identification
14 by the court reporter and is attached hereto.)

15 THE WITNESS: I see that. 03:11:16

16 BY MS. REINHARDT:

17 Q Have you, Superintendent Stutler, seen this
18 document before?

19 A I don't recall seeing that.

20 Q Now, I know there are quite a few people 03:11:23
21 listed on this e-mail. I'm wondering if these are
22 all employees of the county board?

23 MS. DENIKER: Objection to the form.

24 And, also, I don't believe that there's a
25 question. 03:11:41

1 BY MS. REINHARDT:

2 Q Are any of these e-mails in the "To" column
3 employees of the county board?

4 A I'm looking at the names. I do not --
5 there's a -- it looks like David that's under the 03:12:11
6 exhibit, Exhibit 26. What's that? I don't know
7 that name.

8 There is one AD on there for Harrison County,
9 high school principal, high school assistant. It
10 looks like this may have went to high school 03:12:21
11 principals, ADs.

12 Q So there are -- great.

13 A Okay.

14 Q You're seeing several employees of the County
15 Board of Education in the "To" column; correct? 03:12:39

16 A Yes.

17 Q And so in this e-mail, it reads "Dear
18 Principals and ADs."

19 Does ADs stand for administrators?

20 A No. That's athletic director. 03:12:51

21 Q Thank you for clarifying.

22 It goes on to say (as read):

23 "Below are a couple of bills that
24 will impact your school."

25 Am I reading that correctly? 03:13:09

1 A Yes.

2 Q On the next page, it says (as read):

3 "HB 3293 - Transgender bill. Please
4 read."

5 Am I reading that correctly? 03:13:16

6 A Yes.

7 Q Do you, Superintendent Stutler, agree that
8 H.B. 3293 is properly characterized as a transgender
9 bill?

10 MS. DENIKER: Objection -- 03:13:34

11 MS. GREEN: Object to the --

12 MS. DENIKER: -- to the form.

13 MS. GREEN: Object to the form.

14 MR. TRYON: Objection.

15 THE WITNESS: I'm reading that. I think that 03:13:53

16 was sent as just a small piece of information. I --

17 I take nothing from that, really.

18 BY MS. REINHARDT:

19 Q Do you know --

20 A I think that was sent to AEs (sic) -- ADs and 03:14:03
21 the -- and the administrators.

22 Q I apologize. Can you please just repeat the
23 last portion?

24 A I said that was sent to some ADs and
25 administrators. I don't know what the intent of 03:14:16

1 that was.

2 Q Do you know why Mr. Dolan would characterize
3 H.B. 3293 as a transgender bill?

4 MS. GREEN: Object to the form.

5 MS. DENIKER: Objection to the form. 03:14:28

6 MR. TRYON: Speculation.

7 THE WITNESS: No.

8 BY MS. REINHARDT:

9 Q Do you agree with the characterization that
10 H.B. 3293 is a transgender bill? 03:14:37

11 MS. DENIKER: Objection to the form.

12 MS. GREEN: And I'll object to the form.

13 MR. TRYON: Objection. Asked and answered.

14 (Simultaneous speaking.)

15 THE REPORTER: I can't get all of your
16 objections at the same time. I know it's hard being
17 on Zoom. If you don't mind going off the record --
18 it's hard, with the cameras off, to see who is
19 speaking and objecting, so maybe to make it easier,
20 we either turn them on or try and take our time and
21 answer one at a time. Thank you.

22 MR. TRYON: This is Dave Tryon. My objection
23 is asked and answered.

24 THE REPORTER: Thank you.

25 MS. DENIKER: This is Susan Deniker. I 03:15:13

1 objected to form and then also objected that it had
2 been asked and answered.

3 MS. GREEN: This is Roberta Green on behalf
4 of SSAC. I objected to the form.

5 BY MS. REINHARDT: 03:15:33

6 Q Unless your counsel directs you otherwise,
7 you may answer.

8 A I don't know what the intent is with that.

9 Q I'm asking if you agree with the
10 characterization. 03:15:47

11 MS. GREEN: Same objection.

12 MS. DENIKER: Same objection.

13 MR. TRYON: Objection.

14 THE WITNESS: I would not be able to speak
15 whether I agree or disagree for the board. 03:15:59

16 BY MS. REINHARDT:

17 Q Do you know why Mr. Dolan would send this
18 e-mail to the principals and -- and athletic
19 directors?

20 MS. GREEN: I'm going to object to the form, 03:16:13
21 foundation, scope and speculative.

22 MS. DENIKER: Object to form.

23 THE WITNESS: I would have no idea.

24 BY MS. REINHARDT:

25 Q Thank you. And just to expedite my next few 03:16:23

1 questions, I want to see if I can confirm what you
2 previously stated.

3 Can you confirm whether or not the county
4 board had any conversations with anyone outside of
5 the County Board of Education about H.B. 3293 as it 03:16:44
6 relates to students who are transgender
7 participating in school sports?

8 MS. DENIKER: Objection on the basis it's
9 been asked and answered.

10 You can answer. 03:16:59

11 THE WITNESS: I am unaware of any
12 conversations.

13 BY MS. REINHARDT:

14 Q If the preliminary injunction was not in
15 place, what would be required of the county board as 03:17:07
16 it relates to H.B. 3293?

17 MS. DENIKER: Objection to the form.

18 THE WITNESS: We -- we have not acted or
19 changed the way that we would continue with sports
20 in our athletic programs and -- 03:17:39

21 BY MS. REINHARDT:

22 Q And that -- and that's true even if the
23 injunction was not in place?

24 MS. DENIKER: Objection to the form.

25 THE WITNESS: The board has taken no action 03:17:52

1 as it relates to this house bill.

2 BY MS. REINHARDT:

3 Q I'm asking what that'd be required to do.

4 MS. DENIKER: Objection to the form.

5 THE WITNESS: We receive the house bill. 03:18:14

6 It's not enacted. We've made no action on that.

7 And I could not speak on what actions would be

8 taken. We have not had to address that.

9 BY MS. REINHARDT:

10 Q Who will be responsible for promulgating 03:18:36
11 rules to implement H.B. 3293?

12 MS. GREEN: Object to the form.

13 MS. DENIKER: Objection to the form.

14 THE WITNESS: It would be the same process we
15 would with any new house bill or rule that we have. 03:18:49

16 BY MS. REINHARDT:

17 Q And that's in line with how you characterized
18 the process earlier in this deposition; is that
19 correct?

20 MS. DENIKER: Objection to the form. 03:19:04

21 THE WITNESS: I believe so.

22 BY MS. REINHARDT:

23 Q I am just trying to not make you reiterate
24 the -- your process for implementing policies, but
25 if you prefer, I am happy to hear that. 03:19:20

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1 A I think I have been asked that. It's a --
2 it's a complicated question. When you're talking
3 about board policies, our board can only enact
4 policies that they vote on and it becomes the
5 policy. We have adopted state board policy, and we 03:19:43
6 will mirror the language of the state board policy.

7 Can the County adopt their own policy? We
8 can. If it's presented to the board, it's acted on,
9 they vote on it.

10 I don't -- I guess I'm not sure what you're 03:20:03
11 asking me.

12 Q That answers my question. Thank you.

13 Could the county board issue any rules in
14 conflict with H.B. 3293?

15 A No. 03:20:26

16 Q To your knowledge, has the county board ever
17 violated any rules promulgated by the State Board of
18 Education?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: Not that I'm aware of. 03:20:43

21 BY MS. REINHARDT:

22 Q Thank you. I'm going to move on to topics as
23 they relate to topic 4.

24 I want to talk a little bit about
25 Plaintiff B.P.J. in this case and her experience in 03:20:59

1 Harrison County schools. Is that okay?

2 A Yes.

3 Q Do you, Superintendent Stutler, know who
4 B.P.J. is?

5 A Yes. 03:21:11

6 Q Have you ever met B.P.J.?

7 A I have.

8 Q How would you describe her?

9 A Energetic, pleasant, athletic.

10 Q Have you ever seen her be distressed? 03:21:37

11 MS. DENIKER: Objection to the form.

12 THE WITNESS: I believe the questions were
13 prior to 2019, so are you speaking about --

14 I think she's going back into possibly
15 when -- I can't speak to that. 03:22:07

16 BY MS. REINHARDT:

17 Q I can clarify.

18 A In this case -- in this case.

19 Q I can clarify.

20 A I was a -- I was a principal in the building 03:22:16
21 with her when she was younger.

22 Q I can clarify. I'm only asking about your
23 interactions since January 1st, 2019, to present.

24 So in that time, have you ever seen B.P.J. be
25 stressed -- distressed? 03:22:31

1 A No.

2 MS. DENIKER: Objection.

3 THE WITNESS: No.

4 BY MS. REINHARDT:

5 Q Have you -- have you, Superintendent Stutler, 03:22:38
6 interacted with any of B.P.J.'s family members?

7 A I have not.

8 Q When was the county board informed that
9 B.P.J. is a girl who is transgender?

10 MR. TRYON: Objection. 03:22:58

11 David Tryon.

12 THE WITNESS: Our county board gets
13 involved -- or my Title IX investigator gets
14 involved when a school reaches out to her to provide
15 assistance for a gender support plan. 03:23:12

16 BY MS. REINHARDT:

17 Q Great. And I'll have some questions about
18 the gender support plan in a moment.

19 I'm wondering, was the county board informed
20 that B.P.J. is a girl who is transgender only at the 03:23:24
21 time of the gender support plan?

22 MR. TRYON: Objection.

23 THE WITNESS: I am unaware of any time prior
24 to that.

25 ///

1 BY MS. REINHARDT:

2 Q Thank you. Was Norwood Elementary School
3 informed that B.P.J. is a girl?

4 MS. DENIKER: Objection to the form.

5 MR. TRYON: Objection. 03:23:52

6 THE WITNESS: Speaking with Tarra Shields,
7 the administrator of Norwood Elementary, she was
8 informed by her mother prior to going into her
9 fourth-grade year.

10 BY MS. REINHARDT: 03:24:13

11 Q Was anyone else informed that B.P.J. is a
12 girl, at Norwood Elementary School?

13 MR. TRYON: Objection.

14 THE WITNESS: I believe when the mother
15 reached out to the administrator, that is what set 03:24:25
16 in motion the gender support plan, and that's when
17 our Title IX director was brought into the process.

18 BY MS. REINHARDT:

19 Q Are you familiar with the counselors at
20 Norwood Elementary School during B.P.J.'s time there 03:24:44
21 as a student?

22 A Yes. Amber Davis.

23 Q Do you know who James Thorton is?

24 A No. There was a previous counselor there,
25 Josh Thorton. 03:25:07

1 Q Thank you. And Josh Thorton, you said, was a
2 counselor.

3 Are the counselors at Norwood Elementary
4 School employed by the county board?

5 A Yes. 03:25:20

6 Q What qualifications are required to become a
7 counselor in the county board -- in the county?

8 A They -- they have to be certified counselors
9 through the national school counseling association
10 and through our state. 03:25:39

11 Q Was Mr. Thorton made aware of B.P.J.'s status
12 as a girl who is transgender?

13 MS. DENIKER: Objection to form.

14 MR. TRYON: Objection.

15 THE WITNESS: I am unaware of that. 03:25:49

16 BY MS. REINHARDT:

17 Q Was Principal Mazza informed that B.P.J. is a
18 girl?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: I believe he was contacted when 03:26:05
21 she was going to go there as a sixth grader and
22 there was an update to the gender support plan.
23 That would be when Mr. Mazza was informed.

24 BY MS. REINHARDT:

25 Q Are you aware of any conversation between 03:26:19

1 Principal Mazza and Heather Jackson regarding
2 B.P.J. playing on girls' sports teams?

3 A I am only aware of the gender support plan
4 that took place between Heather Jackson, the mother;
5 and Mr. Mazza, and there were a few in that meeting, 03:26:39
6 at that gender support plan meeting.

7 Q Were you in attendance at that meeting?

8 A I was not.

9 Q So how did you become aware that
10 Principal Mazza and Heather Jackson had a meeting 03:26:58
11 regarding the gender support plan?

12 And please do not inform us of -- of any
13 conversations you may have had with counsel.

14 A I reviewed the gender support plan as it
15 related to this case. 03:27:10

16 Q And in preparation for this case, did you
17 speak with Principal Mazza?

18 A I did.

19 Q And did you -- did he inform you of any
20 conversation between him and Heather Jackson 03:27:26
21 regarding B.P.J.'s ability to play on girls' sports
22 teams?

23 MS. DENIKER: I'm going to object to the
24 extent that it -- that the question calls for
25 information that she learned as part of 03:27:38

1 attorney-client privileged communications.

2 To the extent that you have had
3 communications with Mr. Mazza that were not part of
4 the attorney-client privilege, you may answer, but
5 I'm going to instruct you not to answer with regard 03:27:51
6 to any attorney-client privileged communications.

7 THE WITNESS: The gender support plan
8 involved multiple people, and all the items on that
9 gender support plan were discussed, and she checked
10 that she would be an athlete at Bridgeport Middle. 03:28:05

11 (Exhibit 27 was marked for identification
12 by the court reporter and is attached hereto.)

13 BY MS. REINHARDT:

14 Q Thank you. I am now going to move tab 9 into
15 the "Marked Exhibits" folder. I'll let you know 03:28:20
16 once it's there. It will be marked as Exhibit 27.

17 You may refresh. And please let me know once
18 you see Exhibit 27.

19 A I see that.

20 Q Are you familiar with this e-mail? 03:29:05

21 And please take your time to review it, if
22 necessary.

23 A I am.

24 Q And are how are you familiar with this
25 e-mail? 03:29:16

1 A It was between the -- my board president and
2 myself.

3 Q Is Gary Hamrick the board president you're
4 referring to?

5 A Yes. 03:29:26

6 Q And what is his role?

7 A He's the -- I guess you want to say the
8 president of my board. He leads the meetings and...

9 Q Thank you. And if you look at the e-mail, he
10 writes (as read): 03:29:49

11 "Even though it is a new state law,

12 Mazza should have informed you that

13 he denied a transgender student."

14 Am I reading that correctly?

15 A You are. 03:30:01

16 Q And you respond (as read):

17 "Agree. First I heard."

18 Am I reading that correctly?

19 A I was agreeing that it was a new state law.

20 Q And were you saying -- and what did you mean 03:30:12
21 by "first I heard"?

22 A It's the first I heard that we had a -- a
23 lawsuit. I believe he's referring to the MetroNews
24 article. And I think that's where he got his
25 information, possibly. 03:30:36

1 Q Did you speak with Principal Mazza upon
2 learning about the incidents alleged in the
3 complaint, which I believe was attached to this
4 e-mail?

5 MS. DENIKER: And again, I will just instruct 03:30:47
6 you that to the extent that -- you're not to answer
7 with regard to any attorney-client privileged
8 communications, but if you had other communications,
9 you can answer with regard to those.

10 THE WITNESS: Would you ask me that again. 03:31:06

11 BY MS. REINHARDT:

12 Q Did you speak with --

13 MS. DENIKER: If you just give me a
14 continuing -- I'll just continue that same
15 instruction, but I won't interrupt you, if that's 03:31:16
16 okay, so the witness can hear the question.

17 MS. REINHARDT: Thank you, Mrs. Deniker.

18 BY MS. REINHARDT:

19 Q I'm wondering if you spoke with Mr. Mazza
20 upon learning about the allegations in the 03:31:28
21 complaint.

22 A I did not.

23 Q Did any employees of the county board raise
24 concerns about B.P.J. being a girl who is
25 transgender? 03:31:48

1 A No.

2 Q Under H.B. 3293, can cisgender girls play on
3 girls' sports teams?

4 MS. DENIKER: Objection to the form.

5 MR. TRYON: Objection. 03:32:07

6 THE WITNESS: Yes.

7 BY MS. REINHARDT:

8 Q Under H.B. 3293, can girls who are
9 transgender play on the girls' sports teams?

10 MS. DENIKER: Object to the form. 03:32:20

11 MR. TRYON: Same objection.

12 (Simultaneous speaking.)

13 MS. DENIKER: And I'm so sorry to interrupt
14 here, but I heard the same question you just asked,
15 which makes me believe that I didn't hear it 03:32:31
16 correctly.

17 So if you would preserve all of our
18 objections, could you ask that again, please?

19 MS. REINHARDT: Yes.

20 BY MS. REINHARDT: 03:32:41

21 Q Under H.B. 3293, can girls who are
22 transgender play on girls' sports teams?

23 A If it's a -- no, but they can on coed teams.

24 Q And what -- what's your --

25 (Simultaneous speaking.) 03:33:00

1 BY MS. REINHARDT:

2 Q Oh, I apologize. Please go ahead.

3 A I -- I was going to say, it says no. That's
4 what -- that's what the house bill is.

5 Q And you mentioned coed. Are you referring to 03:33:12
6 coed sports?

7 A Yes.

8 MS. GREEN: Object to the form.

9 BY MS. REINHARDT:

10 Q Can you please tell me what your 03:33:25
11 understanding of -- what your understanding is of
12 coed sports?

13 MS. GREEN: Object to the form.

14 THE WITNESS: That the team is available to
15 either male or female athletes. 03:33:37

16 (Exhibit 28 was marked for identification
17 by the court reporter and is attached hereto.)

18 BY MS. REINHARDT:

19 Q I'm going to move tab 20 into the "Marked
20 Exhibits" folder. It will be Exhibit 28. I'll let 03:33:55
21 you know when you can refresh.

22 You may refresh. Please let me know once you
23 have reviewed Exhibit 28.

24 A I see it.

25 Q It says on page 2, under "Bridgeport High 03:34:34

1 School," where it lists "Football," it says,
2 "Co-Ed."

3 Can you explain to me why football is -- why
4 it says football is coed?

5 MS. GREEN: Object to the form. 03:34:53

6 THE WITNESS: I believe there's not a -- a
7 football -- female football team, so they created a
8 coed team because there's not a counterpart for a
9 female athlete to participate.

10 BY MS. REINHARDT: 03:35:10

11 Q Can you please explain that to me a little
12 bit further?

13 So it's marked as coed because there's not a
14 girls team; is that correct?

15 A Correct. 03:35:19

16 MS. DENIKER: Object to the form.

17 BY MS. REINHARDT:

18 Q So why would it be marked co- -- I'll
19 rephrase.

20 Generally, if I'm understanding correctly, 03:35:29
21 the football team would be a boys' team, and it is
22 marked "Co-Ed" because there is no girls' team; is
23 that correct?

24 MS. GREEN: Object to the form.

25 A I have no idea. We've -- we've had girls 03:35:55

1 play on football teams for a long time. They could
2 be kickers. They've -- they've been on football
3 teams for quite a while.

4 BY MS. REINHARDT:

5 Q And is that true of the wrestling team as 03:36:06
6 well?

7 MS. GREEN: Object to the form.

8 A Yes, we do have -- yes, we have female
9 wrestlers.

10 BY MS. REINHARDT: 03:36:19

11 Q Okay. Great. You can take down that exhibit
12 for now.

13 Prior to H.B. 3293, what team would B.P.J. be
14 required to play on?

15 MS. DENIKER: Objection to the form. 03:36:32

16 THE WITNESS: She chose to run cross-country.
17 It's a coed sport.

18 BY MS. REINHARDT:

19 Q Sorry, I'm going to ask you to please re-pull
20 up Exhibit 28. 03:36:50

21 And if you look at page 4, under "Bridgeport
22 Middle School," it says (as read):

23 "Boys Cross-Country, Boys.

24 "Girls Cross-Country, Girls."

25 So what do you mean by it is a coed sport? 03:37:13

1 A I -- they -- they run together. They
2 practice together. They run together. They go to
3 meets together. It's treated more as a coed sport.

4 Q So do girls run during the boys' meets?

5 A Can I just say I'm not familiar with 03:37:38
6 cross-country, other than I know how it works there,
7 because I've never coached that, I've never been
8 responsible for that in my current -- or in my
9 previous duties.

10 Q Understood. And to the extent that you -- to 03:38:02
11 the extent that you do know, are there -- one
12 second.

13 Do the girls' team have different winners
14 than the boys' team?

15	MS. GREEN: Object to the form.	03:38:27

16 MS. DENIKER: Object to the form.

17 THE WITNESS: I will say that middle school
18 sports is a competitive sport, so there are winners
19 and losers.

20 BY MS. REINHARDT: 03:38:35

21 Q As it's listed here in Exhibit 20 (sic), it
22 says, girls' sport -- or "Girls Cross-Country" and
23 then "Girls" in the next column -- oh, I'm sorry.
24 Exhibit 28. I apologize.

25	It says, "Girls Cross-Country" in the first	03:38:51

1 column and "Girls" in the second column.

2 So would that mean that girls would be the
3 winners on the girls' cross-country team?

4 A I would assume so.

5 Q Prior to H.B. 3293, what team would 03:39:11
6 B.P.J. play on?

7 MS. DENIKER: Objection to the form.

8 MS. GREEN: Object to the form.

9 THE WITNESS: Prior to that rule, she would
10 have been rostered as what her birth certificate 03:39:34
11 said.

12 BY MS. REINHARDT:

13 Q Are you aware of what her birth certificate
14 says?

15 A It's whatever is in WVEIS. 03:39:48

16 Q Are you aware of what is in WVEIS?

17 A I'm not aware of that. I'm not sure what --
18 where she's at.

19 Q Prior to H.B. 3293, what team would
20 transgender boys play on? 03:40:09

21 MS. DENIKER: Objection to the form.

22 MR. TRYON: Objection.

23 MS. GREEN: Objection.

24 THE WITNESS: You said transgender boys prior
25 to? 03:40:31

1 BY MS. REINHARDT:

2 Q Correct.

3 A They would be rostered the same as their --
4 whatever they are on WVEIS. We would be required to
5 roster them male or female.

03:40:49

6 Q Why are you required?

7 MS. GREEN: Object to the form.

8 THE WITNESS: That's the rules we have from
9 the WVSSAC say.

10 BY MS. REINHARDT:

03:41:15

11 Q You said the rules from WSSAC (sic)? Did I
12 hear that properly?

13 MS. GREEN: Object to the form.

14 A Yes. And we do go by what is in WVEIS.

15 BY MS. REINHARDT:

03:41:33

16 Q Is there a benefit to playing on sports
17 teams?

18 MS. DENIKER: Objection to the form.

19 THE WITNESS: Absolutely.

20 BY MS. REINHARDT:

03:41:45

21 Q What are those benefits?

22 A Cooperation, teamwork, watching out for your
23 fellow players. There's a lot of benefit to having
24 a team sport.

25 Q Would you say B.P.J. benefited from

03:41:59

1 participating in sports?

2 MS. DENIKER: Objection to the form.

3 MR. TRYON: Objection.

4 THE WITNESS: I can't speak for her, but I
5 hope she did. I hope she had a great experience. 03:42:09

6 BY MS. REINHARDT:

7 Q And I'm just trying to further understand how
8 WVEIS works.

9 What rule requires you to follow the gender
10 listed in WVEIS? 03:42:24

11 MS. GREEN: Objection to the form.

12 THE WITNESS: WVEIS allows us to put -- when
13 we have -- when we have a student ask for a certain
14 name, we're allowed to put that in there so that
15 during the course of the day, they can use their 03:42:42
16 name that they choose to be called by, but because
17 WVEIS is a database that generates legal documents,
18 graduation transcripts, is -- is the big thing. I
19 mean, it is -- it's a legal -- it's what generates
20 the legal documents later. It's a record of their 03:43:09
21 school. It's a -- it's a legal record.

22 So we only make changes in WVEIS if we have a
23 court order or a birth certificate that tells us
24 gender, their sex, male or female.

25 BY MS. REINHARDT: 03:43:29

1 Q For sports specifically, what rule requires
2 you to follow the gender/sex listed in WVEIS?

3 MS. GREEN: Object to the form.

4 MS. DENIKER: Same objection.

5 THE WITNESS: It's the -- it's the same. 03:43:45

6 It's -- it's a guideline for us. We -- we do not
7 have -- I do not have the legal authority and I sure
8 wouldn't want my AD or my administrator to have that
9 legal authority to make that change. We ask for
10 either a judge or someone above us to tell us that. 03:44:03

11 BY MS. REINHARDT:

12 Q Do you know where this rule comes from?

13 MS. DENIKER: Object to the form.

14 THE WITNESS: I do not.

15 BY MS. REINHARDT: 03:44:30

16 Q Are you aware of whether the County has
17 followed this rule across the board for all
18 students?

19 A I can speak to cases. We've -- we have
20 previous cases. When we get a court order or a 03:44:46
21 document with a new birth certificate and a name
22 change, we take care of that at the county level in
23 WVEIS, and we change that.

24 Q Thank you. Do you know where we might be
25 able to find the rule you are referring to? 03:45:08

1 MS. GREEN: Object to the form.

2 MS. DENIKER: Object to the form.

3 THE WITNESS: We -- we clarified that, there

4 was a call to our West Virginia Department of Ed --

5 I can't even recall when it was. It was under -- 03:45:22

6 when I was working for the previous

7 superintendent -- that we cannot change the legal

8 record in WVEIS without a court order or a new birth

9 certificate.

10 MS. REINHARDT: Court reporter, would you 03:45:46

11 please mind rereading my last question.

12 (Record read.)

13 BY MS. REINHARDT:

14 Q I just want clarity. If you could please

15 answer that question directly. 03:46:06

16 A I would direct you to the State Department of

17 Education.

18 Q Thank you. Did you ever receive any

19 complaints about any transgender students

20 participating in sports at Bridgeport Middle School? 03:46:25

21 A I did not.

22 Q Are you aware of any complaints about a

23 transgender student participating in sports at

24 Bridgeport Middle School?

25 A I am unaware of any complaints. 03:46:47

1 Q Are you aware if any transgender students,
2 other than B.P.J., have played sports in West
3 Virginia?

4 MR. TRYON: Objection.

5 THE WITNESS: I would -- I would not have 03:47:02
6 that knowledge.

7 MS. REINHARDT: So before I move on to the
8 next set of topics, we've been going for about an
9 hour, I'm happy to continue, but I wanted to see if
10 anyone needed a break. 03:47:18

11 THE WITNESS: I'm fine.

12 MS. REINHARDT: Great.

13 BY MS. REINHARDT:

14 Q So my next line of questioning pertains to
15 topics 4 and 5. I'm going to move tab 12 into the 03:47:27
16 "Marked Exhibits" folder. It's been previously
17 marked as Exhibit WV-17.

18 You may refresh. It should be there.

19 A We have it.

20 Q Have you seen this document before? 03:48:31

21 A I have.

22 Q And without disclosing any information you
23 may have had with counsel, when did you see this
24 document?

25 A In prep for this deposition. 03:48:45

1 Q And on the first page, do you see where it
2 says "Today's Date"?

3 A Yes.

4 Q And it says "8-23-19"; is that correct.

5 A Yes. 03:49:06

6 Q Do you know what the purpose of the gender
7 support plan is?

8 A Yes. It's the -- to bring everybody together
9 that's working with the -- the student and come up
10 with a plan. 03:49:21

11 Q Has the gender support plan ever been
12 requested other than for B.P.J.?

13 A Yes.

14 Q When was it requested?

15 MS. DENIKER: Objection to the form. 03:49:38

16 THE WITNESS: I could not give you specifics
17 on that. I know it has been requested throughout
18 Harrison County.

19 BY MS. REINHARDT:

20 Q Who created this document? 03:49:48

21 A This document was initially created with
22 support from Dr. Cris Mayo at WVU and with our
23 Title IX investigator. She was kind of given the
24 role to develop a plan. And we have an adolescent
25 coordinator that works for seven counties that had 03:50:15

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1 been involved in some of this.

2 But it was with -- with Dr. Cris Mayo and my
3 Title IX director and just -- information, and they
4 put this together.

5 Q Do you recall when that was? 03:50:33

6 And I apologize if you said it and I did not
7 hear you.

8 A I'm trying to think of the year. '18 -- I'm
9 trying to think of the year. It would have been --
10 we had -- we had an issue a -- a few years ago, and 03:50:55
11 it generated this -- a need for it. As we
12 discovered, we had a need for this. So that's where
13 it came from.

14 I'm thinking 2018, the prior year. Might
15 have been '19. 03:51:13

16 Q And when you say there was a need for this,
17 can you -- can you explain what you mean by there
18 was a need for this?

19 MS. DENIKER: I'm going to object to the
20 form. I'm also going to object to any discussion 03:51:27
21 that is student-specific so we can avoid any HIPAA
22 issues.

23 THE WITNESS: Well, we have -- when our
24 administrators reach out and ask questions and we
25 had more students requesting to be called by other 03:51:46

1 names and -- you know, of course, it was new for us.
2 We're trying to understand it. So it generated a
3 need to have a -- a protocol in place or guidelines
4 for our schools to follows so we're all working in
5 the same direction and focused. 03:52:03

6 BY MS. REINHARDT:

7 Q Does the county board -- and again, when I
8 refer to the county board, I mean the entire County
9 Board of Education.

10 Does the county board provide the gender 03:52:15
11 support plan to the schools?

12 A The gender support plan was generated in our
13 county office and provided to the schools, yes.

14 Q Thank you. And does the county board receive
15 a copy of completed gender support plans? 03:52:37

16 A We do not. They're kept at the school level,
17 in the student file.

18 Q Are they kept in WVEIS at all?

19 A No. The only thing in WVEIS is a name that
20 the student uses, in parentheses, that they would 03:52:55
21 prefer to be called.

22 Q Do you know why it isn't stored in WVEIS?

23 A That's not the role of WVEIS. We have other
24 documents that we prepare at the school level that
25 take care of our kids. We have multiple plans that 03:53:11

1 we use, and -- and they're kept in the school file.

2 You have to understand that the kids that are
3 interacting -- or the people and -- and faculty that
4 are interacting with those children at the school
5 are the frontline people that need to know and -- so 03:53:30
6 it's kept there so the school has access to it and
7 input into it. They know the people involved.

8 Q Does sex change in WVEIS as a result of the
9 gender support plan?

10 A No. 03:53:55

11 Q I want to look at this first page where it
12 says "Meeting Participants."

13 Who is Sarah -- oh, I apologize, you've
14 already explained.

15 Sarah Starkey is the Title IX director; is 03:54:09
16 that correct?

17 A Yes, she is.

18 Q And why was she in attendance?

19 A When we began doing the gender support plans,
20 we put that under her purview, in her department. 03:54:24
21 So she is the one that's been with this from the
22 ground up. She's a great support for our -- our
23 administrators and our families. She also is a
24 social worker. She has an excellent background, a
25 Title IX investigator. She's the right person to be 03:54:40

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1 involved in this.

2 Q Does she attend all gender support plan
3 meetings?

4 A She is invited to all of them, and she tries
5 to. But we're a large county. Sometimes she is 03:54:53
6 not.

7 Q And again, I apologize if you've already
8 said, but who is Tarra Shields?

9 A Tarra Shields is the principal at
10 Norwood Elementary. 03:55:08

11 Q And who is Jasmine Lowther?

12 A Jasmine Lowther is the fourth-grade teacher
13 at Norwood Elementary.

14 Q And why was she at the gender support plan
15 meeting? 03:55:24

16 A Jasmine Lowther was the fourth-grade teacher.
17 This would have been done in August when school was
18 starting, and B [REDACTED] would have been going into the
19 fourth grade. So that would have been her classroom
20 teacher. 03:55:36

21 Q And, finally, why was Nurse Tina at the
22 gender support plan meeting?

23 A When we do a comprehensive plan at the
24 school, we generally bring in any health support
25 people. They're just usually part of the school 03:55:54

1 planning team. We have, you know, of course,
2 anybody related to counseling, and nursing is a big
3 part of that school, and so she was part of the
4 plan.

5 Q Thank you. I'm going to ask you to turn to 03:56:06
6 the next page. It's Bates-Stamped number, at the
7 bottom, BPJ 008.

8 And at the top, it states (as read):

9 How will teach --

10 "How will a teacher/staff member 03:56:21
11 respond to any questions about the
12 student's gender from:"

13 And then it lists three different incidents.

14 Do you see that?

15 A Yes, I see that. 03:56:39

16 Q And it lists "Other students? Staff members?
17 Parents/community?"

18 Is that correct?

19 A Yes.

20 Q For each group, it states (as read): 03:56:46

21 "Be open and honest -- she is B [REDACTED]."

22 Do you see that?

23 A Yes.

24 Q What does it mean by "be open and honest"?

25 MS. DENIKER: Objection to the form. 03:57:00

1 THE WITNESS: I think with any student, we --
2 we want to be open and honest and just -- we want
3 them to be -- be in a happy place.

4 BY MS. REINHARDT:

5 Q So is your understanding that when it states 03:57:18
6 "be open and honest," that they're directing the --
7 they're directing the teachers or staff members to
8 be open and honest?

9 MR. TRYON: Objection.

10 MS. DENIKER: Objection to form. 03:57:29

11 THE WITNESS: Well, it's talking about other
12 students, staff members. You've got to look at this
13 plan in -- in its entirety. You're looking at a
14 school and a group of individuals that's dealing
15 with B [REDACTED] every day, and they're trying to make 03:57:44
16 this plan, and I want to say as open and honest and
17 as real as possible for her so that when she comes
18 to school every day, she feels safe and secure and
19 she belongs there.

20 So if you go back to the front page, every 03:58:00
21 person that's involved with B [REDACTED] at that school is
22 listed. And including B [REDACTED]. B [REDACTED] was there.

23 So the language on here was developed as a
24 group so they could make it a great environment for
25 her. They wanted her to be successful. 03:58:12

1 BY MS. REINHARDT:

2 Q I'm simply trying to understand what "open
3 and honest" means.

4 MS. DENIKER: Same objection.

5 BY MS. REINHARDT: 03:58:27

6 Q So in this context, what does "open and
7 honest" mean?

8 A I --

9 MR. TRYON: Objection.

10 THE WITNESS: I was not in that meeting. 03:58:32

11 I was not in that meeting. It means what it
12 means, that you're open and honest. I -- I don't
13 know. I would not be able to speak to what that
14 meaning is --

15 BY MS. REINHARDT: 03:58:42

16 Q I'm going to --

17 A -- other than they -- they wanted her to be
18 in a safe, secure environment.

19 Q I'm going to move tab 13 into the "Marked
20 Exhibits" folder. And it was previously marked as 03:58:53
21 Exhibit WV-19.

22 Do you see that?

23 A I do.

24 Q And were you in attendance for this gender
25 support plan meeting? 03:59:15

1 A I was not. The participants are listed.

2 Q And if you go to that second page, where it
3 says "BPJ 003," similarly, under "How will a
4 teacher/staff member respond to any questions about
5 a student's gender from:" and lists those three 03:59:34
6 categories, it says (as read):

7 "Be open and honest – she is B [REDACTED],
8 and that makes her happy."

9 Did you speak to anyone about either of these
10 gender support plans? 03:59:49

11 A When we were preparing for today's
12 deposition.

13 Q And not including your attorney, did anyone
14 provide clarity on what it means to be "open and
15 honest – she is B [REDACTED]"? 04:00:09

16 A No, not specifically.

17 Q Thank you. If you could please go back to
18 that previously marked exhibit, WV-17.

19 A Yes.

20 Q And on that second page, BPJ 008, closer to 04:00:33
21 the bottom of the page, it says (as read):

22 "Gender will be male, but B [REDACTED] will
23 be in () next to birth name."

24 Do you see that?

25 A I do. 04:00:50

1 Q What does the -- what does the double
2 parentheses mean?

3 A That means in WVEIS, in the -- in the WVEIS
4 system, outside of her official given name, it will
5 be in parentheses what her preferred name is. 04:01:05

6 Q So this -- what's written here is pertaining
7 to B.P.J.'s name; correct?

8 A Yes.

9 Q So the --

10 A How she would have identified in WVEIS. 04:01:23

11 Q So are the double brackets in WVEIS empty, or
12 is there somebody in -- I'll just ask that first.

13 Is the -- are the double brackets in WVEIS empty?

14 A No. It has "B[REDACTED]."

15 Q So if I'm understanding correctly, it says 04:01:38
16 gender will be male, but in WVEIS, next to "male,"
17 it will say "B[REDACTED]"; is that correct?

18 MS. DENIKER: Objection to the form.

19 THE WITNESS: It's by her name. It's her --
20 her -- her official name is there, and "B[REDACTED]" is in 04:02:00
21 parentheses on that line.

22 BY MS. REINHARDT:

23 Q Thank you for clarifying.

24 I'm going to ask you to turn to what's page 4
25 that says BPJ 010, and near the bottom, it says (as 04:02:09

1 read):

2 "What training(s) will the school
3 engage in to build capacity for
4 working with gender-expansive
5 students? How will the school work 04:02:26
6 to create more gender inclusive
7 conditions for all students?"

8 Did I read that correct?

9 A Yes.

10 Q And the answer says (as read): 04:02:34
11 Norwood staff receives (sic)
12 training on tolerance and cultural
13 diversity and LGBTQ + AI (sic) on
14 8/23 -- sorry -- 8/21 and -- and
15 provided protocol and multiple 04:02:52
16 resource -- resources (sic) sources.

17 Did I read that correctly?

18 A Yes.

19 Q The date of the gender support plan, as we
20 noted earlier, is 8/23/19. 04:03:07

21 Are you aware if the training did in fact
22 occur two days prior to the gender support plan?

23 A I would not be able to speak specifically. I
24 know countywide we did multiple trainings. I do not
25 have those dates. 04:03:30

1 Q Did you, Superintendent Stutler, attend any
2 of these trainings?

3 A I did.

4 Q And what did the trainings entail?

5 A The trainings were provided by Dr. Cris Mayo. 04:03:41
6 We originally brought her in to meet with several
7 school staff, and then she did a training with all
8 of our school administrators and county office
9 administrators, and it was about how to make our
10 school environments inviting for -- and it really 04:04:03
11 was all-encompassing. The children -- children are
12 children. Students are students. Athletes are
13 athletes.

14 It really was -- it was a great training
15 because it made you focus on, you know, you're there 04:04:22
16 for kids and we need to make them comfortable and
17 out of the line of fooling or intimidation in any
18 manner. She -- she framed it in the sense this is
19 for all of our kids.

20 Q And did Dr. Cris Mayo provide any guidance on 04:04:37
21 how to make students more comfortable?

22 A She gave specifics, and I cannot recall
23 those. She gave us a lot of information.

24 Q Did staff receive resources?

25 A They did, provided by her and the department 04:04:58

1 at WVU, the diversity department.

2 Q Do you have a copy of those resources?

3 A I do in my office.

4 Q And did these trainings occur prior to 2019?

5 A We've had diversity trainings prior, not -- 04:05:21
6 not involving Cris Mayo. But that's been part of
7 the county for quite a while.

8 Q And did those trainings always include LGBTQ
9 plus IA?

10 A All -- 04:05:42

11 MS. DENIKER: Objection to the form.

12 THE WITNESS: Specifically, I don't know that
13 it said that, but we did provide diversity training.
14 That's all-encompassing. So I would say yes, it
15 addressed that. 04:06:06

16 We tried to identify -- everybody -- our
17 children aren't all the same. It's difficult to put
18 them in categories. Their needs are different, and
19 we meet those needs as they come to us.

20 BY MS. REINHARDT: 04:06:16

21 Q On the same page, it says (as read):

22 "Plan will be reviewed at least
23 yearly."

24 Do you see that?

25 A Yes. 04:06:25

1 Q What does it mean by "plan"?

2 A This plan, this written plan that's developed
3 by -- in this case, B [REDACTED] was there. Her mother was
4 there. School staff was there. So we look at it
5 annually and sooner, if it needs to be. 04:06:44

6 Q Do you know if the plan was reviewed the
7 following year?

8 A Are you speaking about the plan I'm looking
9 at now?

10 What's the date on this one? 04:07:00

11 It will be on the second -- wait. I'm moving
12 it.

13 She -- this was from fourth grade -- when she
14 was going into fourth grade.

15 They could have reviewed it and not made 04:07:18
16 changes to it. I don't know that.

17 Q Thank you.

18 A I don't know that.

19 Q And on the last page, page 5, where it says

20 "BPJ 001 (sic) at the bottom, it says (as read): 04:07:34

21 "Will schedule at end of school year
22 for next school year."

23 And I reading that correctly?

24 A Yes.

25 Q Was that stating the plan would be reviewed 04:07:41

1 for the fifth-grade year?

2 A Tarra Shields -- in conversation with
3 Tarra Shields, they put this plan into place, her
4 going into fourth grade. And, now, this is from
5 Tarra Shields. There were -- they -- she had a -- 04:08:05
6 I'm talking from Tarra, that she had a good
7 fourth-grade year. They were going -- she was going
8 into the fifth grade, and they felt there was really
9 no need to change anything.

10 At any time, a parent can request that the 04:08:20
11 plan be reviewed. So I would take that if there's
12 not another plan dated, that they felt that, you
13 know, she was having a good two years.

14 Q And who are you referring to when you say
15 "they"? 04:08:35

16 A I -- I would say Tarra Shields, this team
17 that was with her at Norwood. And you've also got
18 to understand the parent is involved in this.
19 And -- and B[REDACTED].

20 Q Did the county board implement any policies 04:08:46
21 related to transgender students after implementing
22 B[REDACTED]'s gender support plan?

23 A No.

24 Q Now I'm going to ask you to go back to what
25 was previously marked as WV-19. 04:09:05

1 A Okay.

2 Q Did you see -- have you seen this document
3 before?

4 A In preparing for this deposition.

5 Q In looking at this first page, we've already 04:09:27
6 been over a few of these meeting participants, but
7 I'm hoping you can tell me who Amber Davis is.

8 A Amber Davis is the counselor at Norwood.

9 Q And who is David Mazza?

10 A The principal at Bridgeport Middle School. 04:09:46

11 Q And who is Lauren Muro, if I'm pronouncing
12 her name right?

13 A Laura -- Lauren is the counselor at
14 Bridgeport Middle.

15 Q Thank you. And on the same first page, it 04:09:59
16 says (as read):

17 "How public or private will
18 information about this student's
19 gender be?"

20 And there's an X next to "Teachers and/or 04:10:16
21 other school staff will know."

22 And then it says "Specify the adult staff
23 members," and it states "All teachers."

24 Am I reading that correctly?

25 A Yes. 04:10:29

1 Q Who did -- were all teachers, in fact,
2 informed about B[REDACTED]'s gender?

3 A Mr. Mazza informed her teachers, yes.

4 Q Are you aware of what the teachers were
5 informed? 04:10:50

6 A No, I do not know exactly what they were
7 told.

8 Q Thank you. And now I'd like to turn to
9 page 4, which is listed as BPJ 005. And at the top,
10 it indicates that B.P.J. would be participating in 04:11:11
11 cross-country and track.

12 Do you see that?

13 A I do.

14 Q And underneath, it says (as read):
15 "Coaches would need to be aware of 04:11:22
16 B[REDACTED]'s transition. If teammates
17 have questions, they could approach
18 the coaches or administration."

19 Do you see that?

20 A Yes. 04:11:31

21 Q Were the coaches informed of B.P.J.'s gender?

22 MS. DENIKER: Objection to the form.

23 THE WITNESS: I don't know. I really --
24 that, I don't know.

25 ///

1 BY MS. REINHARDT:

2 Q Do you know if the teachers were informed
3 about B.P.J.'s transition?

4 MS. DENIKER: Objection to the form.

5 And are you asking about coaches -- 04:12:00

6 MS. REINHARDT: Yes.

7 MS. DENIKER: -- or teachers?

8 MS. REINHARDT: I'm asking about coaches, as
9 it states on that second question on page BPJ 005.

10 MS. DENIKER: Thank you. Same objection. 04:12:13

11 THE WITNESS: I'm not aware of that.

12 BY MS. REINHARDT:

13 Q And near the bottom, it says (as read):

14 "What training(s) will the school
15 engage in to build capacity for 04:12:29

16 working with gender-expansive
17 students? How will the school work
18 to create more gender inclusive
19 conditions for all students?"

20 Did I read that correctly? 04:12:36

21 A Yes.

22 Q It states further (as read):

23 "BMS will receive training on
24 tolerance and culture diversity and
25 LGBTQ as arranged by Mr. Mazza 04:12:51

1 during upcoming school year."

2 Is that -- am I reading that correctly?

3 A Yes.

4 Q What is BMS?

5 A Bridgeport Middle School. 04:13:01

6 Q So who would that training be for?

7 A His staff, his teachers.

8 Q Are you aware if that training occurred?

9 A It did. I don't know the date. I spoke with
10 him, and he did do that training. 04:13:22

11 Q Did you attend that training?

12 A I did not.

13 Q Are -- are sports team coaches in attendance
14 for those trainings?

15 A When it talks about being -- you have to 04:13:36
16 understand, our sports coaches are not always
17 employees in the buildings where they are coaching.
18 So they could have been in training maybe in the
19 building where they were at. It would not have been
20 specific to any -- it would have just been general 04:13:54
21 diversity training.

22 Our coaches come from all over. We have -- a
23 coach might live on one side of the county and work
24 in one side of the county but coach at another high
25 school. So they would not always be there during 04:14:11

1 that school day when that training would be taking
2 place.

3 MS. REINHARDT: Thank you. I'm now going to
4 put tab 14 into the "Marked Exhibits" folder. I
5 believe we are at Exhibit 28. Oh, sorry, let me 04:14:26
6 see. 29. It will be marked as Exhibit 29. I'll
7 let you know once the page is refreshed.

8 And it should be in the folder now.

9 (Exhibit 29 was marked for identification
10 by the court reporter and is attached hereto.) 04:14:58

11 BY MS. REINHARDT:

12 Q Do you see it?

13 A I do.

14 Q And Amber Davis attended the gender support
15 plan meeting at Bridgeport Middle School; correct? 04:15:15

16 A Yes.

17 Q Are you aware if Davis and B.P.J. interacted
18 often?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: I don't know how often. She's 04:15:36
21 a school counselor there. I know that that
22 counselor goes into every classroom at least once a
23 week for 40 minutes, so I know they interact in that
24 general sense, and then as individual counseling is
25 required. 04:15:52

1 BY MS. REINHARDT:

2 Q Did Davis ever report any problems regarding
3 B.P.J. to the county board?

4 A No.

5 Q Are you aware of any problems Davis may have 04:16:06
6 reported to Bridgeport Middle School?

7 MS. DENIKER: Objection to the form.

8 THE WITNESS: No.

9 BY MS. REINHARDT:

10 Q Have you seen this exhibit before? 04:16:26

11 A When I was preparing for the deposition.

12 Q Let's review the top portion of this
13 document, which appears to not be dated.

14 Do you know if these are Amber Davis's
15 personal opinions of B.P.J.? 04:16:39

16 MS. DENIKER: Objection to the form.

17 THE WITNESS: I spoke with Amber about these
18 notes.

19 BY MS. REINHARDT:

20 Q Did Amber indicate whether these were her 04:16:53
21 personal opinions?

22 A They were not her personal opinions.

23 Q Did Amber state to you whose opinions they
24 were?

25 A She could not recall. She had had a 04:17:08

1 conversation with someone she could not recall. I
2 asked her that specifically. She said she was an --
3 you have to understand, she was a brand-new
4 counselor in that school, had only just been there,
5 and she was trying to learn names of people. And 04:17:24
6 she said, I just do not recall.

7 Q Let's look at the notes that appear to be
8 dated 3/22.

9 Did Davis state whether these were her
10 personal opinions? 04:17:43

11 A They are not her personal opinions.

12 Q Whose opinions are they?

13 A These were --

14 MS. DENIKER: Objection to form.

15 THE WITNESS: It was just a note that she 04:17:53
16 made. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23 BY MS. REINHARDT:

24 Q And now let's look at the note that appears
25 to be dated 3/23. 04:18:26

1 Whose opinion is this note from?

2 MS. DENIKER: Objection to the form.

3 THE WITNESS: [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

17 That's the way Amber described those notes.

18 BY MS. REINHARDT:

19 Q Do you know if there was any follow-up after

20 3/23?

04:19:24

21 A I do not know.

22 Q Thank you. I'm now going to put tab 15 in

23 the "Marked Exhibits" folder. It will be marked as

24 Exhibit 30 (sic).

25 ///

1 You should be able to refresh.

2 I apologize. This was previously marked as
3 WV-18.

4 A I have that.

5 Q Have you seen this form before? 04:20:26

6 A I have.

7 Q And when did you see it?

8 A It was developed in -- with our protocol.

9 Q Which protocol are you referring to?

10 A When we did the gender support plan, this was 04:20:39
11 part of that process.

12 Q How long has the county board been using the
13 gender support -- I apologize -- the preferred name
14 request form?

15 A I believe when we started using the protocol. 04:20:54

16 Q To your knowledge, when would students fill
17 this form out?

18 A If a -- if a child in -- in any school
19 chooses to have a different preferred name, they
20 would -- most of the time, kids go to the teacher. 04:21:25
21 They go to their teacher. If that's not a safe
22 place for them to go, they would hopefully go to the
23 counselor, and they are provided this form, and then
24 the process begins.

25 Q How are students made aware of the preferred 04:21:41

1 name request form?

2 A That's done within the schools.

3 Q Do you know how the schools introduce
4 students to the preferred name request form?

5 A It would be available through the school 04:22:02
6 counselors. And, fortunately, in Harrison County,
7 we do have a counselor in every building.

8 Q Do you know if any students other than B [REDACTED]
9 have used the preferred name request form?

10 A We -- we have others. 04:22:21

11 Q Did you discuss this form with anyone at
12 Bridgeport Middle School?

13 A No.

14 Q Have you, Superintendent Stutler, spoken with
15 B.P.J. about her name? 04:22:42

16 A No.

17 (Exhibit 30 was marked for identification
18 by the court reporter and is attached hereto.)

19 BY MS. REINHARDT:

20 Q Thank you. I'm now going to move tab 16 into 04:22:52
21 the "Marked Exhibits" folder. And now I will
22 correct that this will be Exhibit 30?

23 Feel free to refresh.

24 A Okay.

25 Q If you could please review this e-mail, and, 04:23:32

1 once it's been reviewed, if you could please let me
2 know if you've seen it before.

3 A Yes.

4 Q Who is Barbara Tucker?

5 A Barbara Tucker is a region 7 athletic health 04:24:01
6 initiative coordinator. She works under grant
7 funding and provides services to seven counties.

8 Q And at the bottom of the first page, it says
9 (as read):

10 "After reviewing your in-house 04:24:19
11 training options for our staff, I
12 think that Mr. Mazza would like to
13 do your half day (preferably 2 hours
14 if possible) session on strategies
15 and resources for diversity and 04:24:30
16 inclusion (sic) classrooms with you
17 and Selina Vickers on the morning of
18 October 29th."

19 Do you see that?

20 A Yes. 04:24:43

21 Q Do you know why Laura (sic) Merrill and
22 Barbara Tucker would be e-mailing?

23 A Lauren Merrill was the counselor at
24 Bridgeport Middle, and they were looking for
25 additional training and resources for their staff. 04:24:58

1 This would not be unusual --

2 Q Do you know --

3 A -- for any topic.

4 Q Do you know if this training occurred?

5 A I do not. I could not tell you for sure. 04:25:09

6 MS. REINHARDT: I'm going to now put in tab
7 17 into the exhibit folder. It will be marked as
8 Exhibit 31.

9 (Exhibit 31 was marked for identification
10 by the court reporter and is attached hereto.) 04:25:27

11 BY MS. REINHARDT:

12 Q It should be in the folder now.

13 A I see that.

14 Q At the top, it says (as read):

15 "I have linked a few resources that 04:26:01
16 could be helpful for our session
17 tomorrow."

18 Do you see that?

19 A Yes.

20 Q I'm going to ask you to now turn to the page 04:26:09
21 with HCB0E 01178 Bates-Stamped on the bottom.

22 A I have that up.

23 Q If you could just take a look at these
24 materials.

25 A Okay. 04:26:54

1 Q Do you recognize these materials?

2 A Not these specifically. She provides us with
3 a lot of different resources, but not -- I can't say
4 that I've looked at these specifically.

5 "Welcoming Schools," I have. 04:27:16

6 Q In what context does Barbara Tucker provide
7 resources?

8 A Like I said, she is -- works with -- with
9 seven counties. She provides resources on all types
10 of adolescent health, any kind of health 04:27:39
11 initiatives. She does smoking cessation, not -- not
12 just this. I mean, diversity training. And she
13 provides that to seven counties. And we
14 occasionally reach out to her for resources.

15 Q And when you say "we," who are you referring 04:27:58
16 to?

17 A The County, our county administrators, if
18 they find something that they need specifically for
19 their building. It's not unusual for them to look
20 for resources for their staff, and she is one 04:28:10
21 resource.

22 Q Are you aware if Barbara Tucker provides
23 resources to students?

24 A I'm sure she has student handouts, but I -- I
25 don't have them specifically. 04:28:30

1 MS. REINHARDT: Okay. No problem.

2 If you could go into the "Marked Exhibits"
3 folder, I'm going to introduce you to a document
4 that's been marked as Exhibit 31 -- no -- 32.

5 If you could please review this document. 04:29:09

6 (Exhibit 32 was marked for identification
7 by the court reporter and is attached hereto.)

8 THE WITNESS: I have that.

9 BY MS. REINHARDT:

10 Q Have you seen this e-mail before? 04:29:18

11 A I have.

12 Q And are you familiar with this e-mail because
13 you are cc'd on it?

14 A Yes.

15 Q And it says (as read): 04:29:37

16 "Please see attached forms for the
17 2020-2021 school year."

18 Do you see that?

19 A Yes.

20 Q Did Sarah Starkey provide new forms for every 04:29:50
21 school year?

22 A She generally -- that's like an August thing.
23 She will update forms and send them out.

24 Q Wonderful. And if you turn to the first
25 attachment, which is marked HCB0E 01132 at the 04:30:11

1 bottom, it says "Teacher/Staff Protocol for
2 Transgender and Gender Non-conforming Students."

3 Do you see that?

4 A Yes.

5 Q Was this form approved by the county board? 04:30:27

6 A No. This was a -- just a protocol developed
7 from our office to support our administrators and
8 our teachers.

9 Q So the county board has documents that are
10 not officially approved; is that correct? 04:30:50

11 MS. DENIKER: Object to the form.

12 THE WITNESS: The county board generates a
13 lot of documents that do not go to a board meeting
14 for action.

15 BY MS. REINHARDT: 04:31:09

16 Q So when you referred to "our office," who
17 were you referring to?

18 A That would be myself and my department heads.

19 Q Before the teacher/staff protocol for
20 transgender and gender non-conforming students is 04:31:22
21 provided, does the county board review it?

22 A That would have -- that would fall under the
23 purview of day-to-day operations for my building,
24 and they would allow me to make that decision.

25 Q And on the page marked HCB0E 01133, it lists 04:31:43

1 Sarah Starkey, Cris Mayo, Barbara Tucker,
2 Trans Lifeline.

3 Does Cris Mayo work for the county board?

4 A No.

5 Q Who created this document? 04:32:11

6 A Sarah Starkey.

7 Q Why was the document created?

8 A It was part of our gender support plan and
9 the processes we would use when we had a child that
10 wanted to identify as transgender. 04:32:29

11 Q Thank you.

12 MS. REINHARDT: Before I move on to the next
13 topic, I just want to see if anybody needs a break.

14 THE WITNESS: I'm good.

15 THE VIDEOGRAPHER: This is -- 04:32:46

16 MS. REINHARDT: I believe our --

17 THE VIDEOGRAPHER: Sorry, this --

18 MS. REINHARDT: -- co-counsel --

19 THE VIDEOGRAPHER: This is the videographer.

20 I would like to switch the tape, the volume, so -- 04:32:51
21 we've been going about an hour and 40, so if we
22 could do five minutes, that would be great.

23 MS. REINHARDT: No problem. Let's actually
24 just take a ten-minute break so folks can get some
25 water. 04:33:02

1 If we can go off the record for a ten-minute
2 break.

3 THE VIDEOGRAPHER: Sure. We're going off the
4 record. The time is 1:39 p.m., and this is the end
5 of Media Unit No. 2 (sic). 04:33:10

6 (Recess.)

7 THE VIDEOGRAPHER: All right. We are back on
8 the record at 4:46 p.m., and this is the beginning
9 of Media Unit No. 4.

10 Go ahead. 04:46:38

11 BY MS. REINHARDT:

12 Q I just wanted to circle back and get a little
13 bit of clarity on WVEIS. As you can understand, I'm
14 still trying to wrap my head around it.

15 Earlier, it seemed like you stated that there 04:46:47
16 might be a rule that requires a person to check
17 WVEIS in order to see what sports team a student
18 should be on; is that correct?

19 MS. DENIKER: Object to the form.

20 THE WITNESS: I don't -- I ask for guidance 04:47:13
21 from our state department. I don't know that that's
22 an official rule, so I probably misspoke.

23 BY MS. REINHARDT:

24 Q When did you ask for guidance?

25 A I said that earlier in testimony, when we 04:47:24

1 were asking when can we change a permanent record in
2 WVEIS, and we reached out to our state department.

3 Q And can you remind me what the state
4 department's answer was, if you recall?

5 A That we -- that we could not make an official 04:47:39
6 name change or change in WVEIS unless we had
7 something from a court or we had a -- a new birth
8 certificate.

9 Q And when did you speak to the State
10 Department of Education? 04:47:57

11 A It would have been when I was a personnel
12 director, reaching out on behalf of the
13 superintendent at that time. It would have been a
14 few years ago.

15 Q And why do you think WVEIS's gender controls 04:48:07
16 which sports students can play on?

17 MS. DENIKER: Object to the form.

18 THE WITNESS: My -- my understanding is, is
19 that there -- there's an automatic pull from WVEIS
20 into a roster, and I am not as familiar with it as 04:48:26
21 another witness may be on that, as far as rostering
22 for sports in SSAC. And I have my understanding
23 that there's an automatic pull and all of that goes
24 over into that roster.

25 Q And does the roster, if you know, go to the 04:48:43

1 coaches?

2 MS. DENIKER: Object to the form.

3 THE WITNESS: I believe the ADs help roster
4 those students.

5 BY MS. REINHARDT: 04:48:58

6 Q And are you aware of any instance where the
7 roster has been reviewed in order to determine which
8 sports team a student is required to play on?

9 MS. DENIKER: Object to the form.

10 THE WITNESS: I -- I'm not aware, until this 04:49:13
11 deposition, of a case. It's the first time I've
12 seen, actually, rosters.

13 BY MS. REINHARDT:

14 Q Understood. Did the county board support
15 H.B. 3293 when it was being considered? 04:49:26

16 MS. DENIKER: Objection to the form.

17 THE WITNESS: I really could not comment on
18 that. I would have no way of knowing that.

19 MS. DENIKER: I'm going to -- can you reread
20 that -- can you repeat the question or have it read 04:49:46
21 back, please?

22 MS. REINHARDT: Yes.

23 If the court reporter could please read back
24 my question.

25 (Record read.) 04:50:10

1 THE WITNESS: I think I've said this. When
2 the county board gets a new law, we -- we have to
3 abide by that rule. It was not our rule. And the
4 county board is given those rules; we have to abide
5 by those, period.

04:50:27

6 BY MS. REINHARDT:

7 Q I'm wondering if the county board supported
8 H.B. 3293 when it was being considered by the
9 legislation.

10 MS. DENIKER: Same objection to the form.

04:50:43

11 THE WITNESS: I'm not going to -- I don't
12 know how to really answer that other than we support
13 all of our students in the sense that we need to
14 make them comfortable and aware and -- and support
15 them in their surroundings.

04:50:58

16 BY MS. REINHARDT:

17 Q So you are not aware of any rule prior to
18 H.B. 3293 in West -- where a school in West Virginia
19 had to follow the gender in WVEIS in order for a
20 student to participate on a sports team?

04:51:14

21 MR. TRYON: Objection.

22 MS. GREEN: Object to the form.

23 THE WITNESS: I'm not aware of any other
24 school in West Virginia.

25 ///

1 BY MS. REINHARDT:

2 Q Is there a school in West Virginia that you
3 know had to review WVEIS in order to determine which
4 sports team a student would play on?

5 MS. DENIKER: Objection to form. 04:51:39

6 THE WITNESS: I -- I believe you're asking
7 if -- and I'm -- tell me if I'm wrong -- if all
8 schools follow the same rules when they're
9 rostering. I'm -- I'm unaware of anything that
10 would be different. We're -- we're given guidelines 04:51:55
11 when we roster students.

12 BY MS. REINHARDT:

13 Q And --

14 A And I would believe that ADs and
15 administrators would be following those rules. 04:52:05

16 Q And so in accordance with those rules,
17 rosters are reviewed before students are designated
18 to a specific sports team?

19 MS. GREEN: Object to the form.

20 THE WITNESS: I -- I just -- I -- I think I 04:52:19
21 just want to say, I -- the only thing I know about
22 rostering is that there's a bulk of information
23 that's pulled over to that roster from that student,
24 for student information. I am not an expert on
25 rostering and sports by no means. 04:52:32

1 MS. DENIKER: I'll object to the form
2 belatedly because I didn't get it in in time and
3 also state that to the extent that this relates to a
4 topic to be covered by another witness, that it's
5 more appropriate to be asked of that witness. 04:52:51

6 MS. REINHARDT: Understood. I'll save that
7 line of questioning for another witness. Thank you.

8 MS. DENIKER: Thank you.

9 BY MS. REINHARDT:

10 Q Are you familiar with Title IX? 04:53:02

11 A I am.

12 Q Does the county board have a Title IX policy?

13 A It's included in our -- we have a -- a policy
14 that's a safe and supportive schools policy, and
15 it's all included in there. 04:53:22

16 Q And without disclosing any identities of any
17 students, has the county board received any Title IX
18 complaints from a transgender student?

19 MS. DENIKER: I'm going to object to the
20 extent that I believe that this is beyond the scope 04:53:43
21 of the topics set forth for the 30(b)(6) deposition.

22 If you know, I'm going to allow you to answer
23 this question, but I may object to any further
24 questioning on those.

25 MS. REINHARDT: Understood. 04:53:58

1 THE WITNESS: Yes.

2 BY MS. REINHARDT:

3 Q Does -- did any of those complaints relate to
4 student sports?

5 MS. DENIKER: Same objection. I'll -- 04:54:20
6 (Simultaneous speaking.)

7 MS. GREEN: Object to the form.

8 THE WITNESS: No.

9 BY MS. REINHARDT:

10 Q Has the county board ever been investigated 04:54:29
11 by the Department of Education for Title IX
12 violations?

13 MS. DENIKER: Objection to the form. And I
14 do believe that you are now well beyond the scope of
15 the topic. So if you can show me where this would 04:54:37
16 fall under a topic, I will reconsider my objection.

17 MS. REINHARDT: Yes, I believe it falls under
18 two topics. One second.

19 So I'm asking in connection, for background
20 information, as we discussed under topic 1, 04:55:04
21 Sarah Starkey was discussed, and I'm trying to get
22 more background information on the Title IX office,
23 their role and her role and what would be involved
24 of Sarah Starkey and her roles.

25 I'm also asking as it relates to topic 7, 04:55:23

1 "participation of transgender students in
2 school-sponsored sports in Harrison County."

3 MS. DENIKER: Well, I believe that that
4 question is beyond the scope of both of those
5 topics; and, therefore, I object to the line of 04:55:35
6 questioning about other Title IX complaints that may
7 have been received.

8 MS. REINHARDT: I'm going to --

9 MS. DENIKER: For this witness to answer a
10 question related to Title IX complaints about -- 04:55:48
11 from transgender students involving school sports,
12 the witness has answered that there are not any.

13 I do not believe that further questioning on
14 other Title IX complaints is appropriate or within
15 the topics presented. 04:56:01

16 MS. REINHARDT: That is my final question, if
17 the witness could please answer.

18 MS. DENIKER: Is the question just that has
19 the County ever --

20 Please read the back the question. I need to 04:56:17
21 hear what it is again.

22 MS. REINHARDT: If the court reporter
23 wouldn't mind, please.

24 THE REPORTER: Yes. Give me one second.

25 (Record read.) 04:56:55

1 MS. DENIKER: And I'm going to ask for --
2 this is Susan Deniker again.

3 What is the scope of timing on your question,
4 Ms. Reinhardt?

5 MS. REINHARDT: It will be from January 1st, 04:57:03
6 2019, to present.

7 THE WITNESS: No.

8 BY MS. REINHARDT:

9 Q Thank you. And just as one last final
10 follow-up question, has the county board implemented 04:57:12
11 any Title IX policies pertaining to transgender
12 students' participation in sports?

13 A No.

14 MS. REINHARDT: Thank you very much,
15 Superintendent Stutler. I believe that opposing 04:57:26
16 counsel may have a few questions for you.

17 THE WITNESS: Thank you.

18

19 EXAMINATION

20 BY MS. GREEN: 04:57:34

21 Q Hello, Superintendent Stutler. This is
22 Roberta Green with WVSSAC --

23 MS. GREEN: Kelly, did -- were you guys
24 hopping on to go first? Okay. I'll just leap to
25 the front of the line, then. 04:58:02

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1 BY MS. GREEN:

2 Q -- and I'm here on behalf of WVSSAC, and I
3 recollect that you had testified to some issues
4 relative to their eligibility rules, their processes
5 and any processes they have in place relative to 04:58:15
6 3293.

7 Do you recollect that testimony?

8 A Yes.

9 Q And as you sit here, do you actually defer to
10 WVSSAC as probably more informed and knowledgeable 04:58:31
11 as to their processes?

12 A Repeat that question.

13 Q Would you defer to WVSSAC as being more
14 knowledgeable about WVSSAC policies --

15 MS. REINHARDT: Objection. 04:58:48

16 MS. DENIKER: Objection to the form.

17 BY MS. GREEN:

18 Q -- than you would be?

19 A Yes.

20 Q Okay. I -- I was like uh-oh. Okay. 04:58:56

21 In terms of eligibility rules and the scope
22 of those rules, if there are some -- or even one
23 state rule embedded in WVSSAC's policies -- it's a
24 state rule, not an SSAC or other policy -- is that
25 information that you know as you sit here today? 04:59:17

1 MS. REINHARDT: Objection to form.

2 MR. TRYON: Roberta, I'm going to object
3 because I didn't understand it, to be honest.

4 THE WITNESS: Yeah.

5 BY MS. GREEN: 04:59:38

6 Q All right. Well, you know, would you
7 defer -- Superintendent, would you defer to WVSSAC
8 as being potentially more knowledgeable about their
9 rules, how their rules work and --

10 MS. REINHARDT: Same objection. 04:59:48

11 BY MS. GREEN:

12 Q -- the preparations are pursuant to 3293, if
13 any?

14 MS. REINHARDT: Same objection.

15 MS. DENIKER: Objection to the form. 05:00:00

16 THE WITNESS: If you're saying they're more
17 knowledgeable, yes.

18 BY MS. GREEN:

19 Q Well --

20 A If you're -- 05:00:04

21 Q -- I don't know if I am, but hopefully --

22 A Yes.

23 Q -- WVSSAC is.

24 A Well, and they're in the room, yes.

25 Q There -- 05:00:08

1 A Yes.

2 Q All right. And -- and in -- in preparing for
3 your testimony today, you did not speak to Bernie
4 Dolan relative to WVSSAC's policies or its
5 preparations, did you? 05:00:31

6 MS. REINHARDT: Objection to form.

7 THE WITNESS: I did not.

8 MS. GREEN: Okay. I don't think I have any
9 other questions. Thank you very much,
10 Superintendent. I appreciate it. 05:00:44

11 THE WITNESS: Thank you.

12

13

14

15 EXAMINATION

16 BY MS. MORGAN:

17 Q Hi, Superintendent Stutler. My name is
18 Kelly Morgan, and I represent the West Virginia
19 Board of Education and superintendent Burch.

20 Can you hear me okay? 05:00:50

21 A I can.

22 Q I just want to ask you a couple of clarifying
23 questions about some testimony earlier about, as I
24 understand it, someone called the West Virginia
25 Board of Education for some guidance as to a -- a 05:01:11

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1 request to change a student's name.

2 Did I understand that correctly?

3 A Yes. And I can't tell you -- it was a few
4 years ago. We reached out on what we could do in
5 WVEIS when it came to name changes. 05:01:30

6 Q You said "we." Was it -- did you make the
7 phone call?

8 A It was actually -- I was in the room with
9 the -- with Dr. Hage. She was the assistant
10 superintendent at the time. And the superintendent 05:01:41
11 at that time had requested that we find that
12 information, so we reached out to the Department of
13 Ed.

14 Q Do you remember who it was you spoke to?

15 A I do not. I -- I do not. 05:01:55

16 Q And then you were asked whether that was
17 based on some sort of policy.

18 Are you aware of any specific policy by those
19 State Department of Education or Board of Education
20 as to when a student can change their name? 05:02:09

21 A We --

22 (Simultaneous speaking.)

23 A We were not -- we were not aware of any
24 policy. We needed guidance, so we -- we reached
25 out. 05:02:21

1 Q Okay. So then would you also defer to the
2 West Virginia Department of Education and/or the
3 West Virginia Board of Education as to their
4 specific policies that would be applicable?

5 MS. REINHARDT: Objection. 05:02:35

6 THE WITNESS: Yes.

7 MS. MORGAN: Very good. Thank you. I don't
8 have any other questions.

9 THE WITNESS: Thank you.

10 05:02:45

11

12 EXAMINATION

13 BY MR. TRYON:

14 Q Hello, Superintendent. It's been a --

15 A Hi. 05:02:53

16 Q -- a long day. I'm David Tryon. I represent
17 the State of West Virginia, and I'm an attorney with
18 the attorney -- in the attorney's general office.

19 So I have a few questions, and hopefully I
20 won't be duplicative of what has already been 05:03:05

21 discussed, but I would like to follow up on the
22 gender support plan, which I believe is Exhibit 17.

23 So if you could pull that up, that would be helpful.

24 I'm going to try and do the same here.

25 A I see that. 05:03:39

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1 Q Okay. So as I understand it, Sarah Starkey
2 and Cris Mayo were the primary drafters or preparers
3 of this document; is that right?

4 MS. REINHARDT: Objection to form.

5 THE WITNESS: Well, with help from the 05:03:52
6 adolescent coordinator, Barbara Tucker.

7 BY MR. TRYON:

8 Q Was this form created from scratch, or do you
9 know if it was taken from a form that someone else
10 had already come up with and just adopted by the 05:04:26
11 Harrison County Board of Education?

12 A I believe that Barbara Tucker and
13 Sarah Starkey were working -- I believe Barbara had
14 a form, and then it was created for Harrison County
15 schools and -- and what we felt we needed, and then 05:04:45
16 it was sent to Cris Mayo for review and changes were
17 made. And it went through that process several
18 times before we had the final document.

19 Q So this just wasn't a form taken from
20 someplace else, it may have started that way, but it 05:05:02
21 was customized; is that --

22 A I would not know the original -- yeah, I do
23 not know the original origins. I'm sure they looked
24 at something, and I believe that it was Barbara
25 Tucker that had some background, and that's where it 05:05:14

1 originated or the -- the beginnings of it.

2 Q And who made the final approval of this form?

3 A This form was actually brought back to the --

4 kind of the heads of the departments, and at the

5 time, it was Dr. Manchin, and we reviewed that 05:05:32

6 collectively together with Sarah before it was

7 rolled out to the principals and the schools.

8 Q So this was before you were the

9 superintendent?

10 A The initial gender support plan, yes. 05:05:46

11 Q Just to be clear, as I understand it, the

12 Board of Education never approved this; is that

13 right?

14 A No. It is just an internal, like, protocol.

15 It's guidelines for our schools. 05:06:03

16 Q And it applies to all schools within

17 Harrison County?

18 A Yes, we use this document in all of our

19 schools.

20 Q Was there a formal approval process? 05:06:14

21 A No.

22 Q Is -- at that time, was the Board of

23 Education made aware of this form?

24 MS. DENIKER: Objection to the form.

25 Are you speaking as to the elected board, 05:06:36

1 Mr. Tryon?

2 BY MR. TRYON:

3 Q Yeah, let me go back to that. Tell me -- I
4 guess I missed that. Maybe when I was cut off on
5 the phone call -- what's the difference between the 05:06:48
6 elected board and the nonelected board?

7 A Well, I think we made the distinction that
8 when we were talking about the elected board, it
9 would be, like, my five people, my -- my actual
10 board members, and then the board in general would 05:06:59
11 just be myself and my office.

12 Q Ah.

13 A So you're --

14 Q Yes.

15 A -- speaking of five elected board members. 05:07:10

16 Q Yes. Did the five elected board members ever
17 become aware of this form?

18 A It was never brought to a meeting for
19 official action, no.

20 Q Do you know if they are aware of it as of 05:07:26
21 today?

22 A I really could not say.

23 Q Fair enough. Do you know if this form has
24 been adopted with any other -- by any other counties
25 or by the state school board? 05:07:47

1 A I am not aware of that. I do know that
2 Sarah Starkey has had another county reach out for
3 examples. We tend to do that in education.

4 Q Have you looked through this form, and do you
5 feel like you understand it? 05:08:26

6 A I do.

7 Q Okay. When it -- in the very first part,
8 where it talks about the purpose of this document,
9 it says (as read):

10 "...is to create shared 05:08:38
11 understandings about the ways in
12 which the student's authentic gender
13 will be accounted for..."

14 What's your understanding of what that means,
15 specifically to student's authentic gender? 05:08:47

16 A Just an understanding of what the -- the
17 child's desire and the parents' desire is. It's
18 really a document to, I believe, collectively get
19 people all on the same page with where a child is
20 at, regardless of where they're at in the process 05:09:08
21 or -- I -- I -- I believe it is just a focus. It's
22 just a focus, the building and to provide support
23 for the child.

24 Q Did any lawyers take a look at this form?

25 MS. DENIKER: I'm going to object to the 05:09:30

1 extent it calls for any attorney-client
2 communications.

3 I'm instructing you to not testify about the
4 substance of any communications you had with counsel
5 about this form. 05:09:40

6 THE WITNESS: I am not aware of that.

7 BY MR. TRYON:

8 Q If you go to page 4.

9 A Okay.

10 Q And the first part of that is "Extra 05:10:13
11 Curricular Activities," and specifically it's asking
12 about, among other things, sports.

13 Do you see that?

14 A Yes.

15 Q So you -- or whoever prepared this, at the 05:10:24
16 time, understood that sports would be an issue that
17 would be impacted by biological males who wanted to
18 participate in -- in -- on girls' teams; right?

19 MS. REINHARDT: Objection.

20 MS. DENIKER: Objection to the form. 05:10:44

21 THE WITNESS: I -- I feel that this is just a
22 reflection of where the student is and what their
23 interests are. If you look, it's asking them lots
24 of other questions as well, just finding out what
25 they are interested in so that they could feel like 05:11:01

1 they are part of a school.

2 BY MR. TRYON:

3 Q And part of it was to find out about
4 children's interest in sports and what sports they
5 would participate in; right?

05:11:16

6 MS. REINHARDT: Objection to form.

7 MS. DENIKER: Objection to form.

8 THE WITNESS: Yes, I think that's all part of
9 knowing the child.

10 BY MR. TRYON:

05:11:32

11 Q And once you know the child, then you would
12 need to address issues that are -- that arise;
13 right?

14 MS. REINHARDT: Objection to form.

15 THE WITNESS: We -- we would do that with any
16 child.

05:11:42

17 BY MR. TRYON:

18 Q Correct.

19 A At least I would hope we would do that.

20 Q When you learned that B.P.J. was going to
21 participate in -- well, strike that.

05:11:58

22 We've talked a little bit about who sets
23 policies for sports, and as I understand it, the
24 County -- the County's policies for sports follow
25 what the state policies are, the state board's

05:13:19

1 policies; is that right?

2 MS. DENIKER: Objection to the form.

3 BY MR. TRYON:

4 Q Yeah, I -- I didn't really say that right.

5 Let me just ask you an open-ended question. 05:13:29

6 What policies -- where -- who sets the
7 policies for sports for the County?

8 A I testified earlier, we just have two,
9 really, policies that are written or acted and board
10 acted on, and it deals with extracurriculars. 05:13:43

11 As far as the sports programs in our middle
12 and high schools, which that's really what we're
13 talking about, competitive sports, there is
14 oversight by the West Virginia SSAC, which are
15 board -- the members are our principals, so there 05:13:58
16 are a set of guidelines that they follow for the
17 sports programs in those buildings.

18 Q You were asked about -- if there are benefits
19 to sports, and I might -- I'd like to follow up on
20 that just a little bit, but if you believe that Mr. 05:14:19
21 Mazza would be better suited to answer these
22 questions, just tell me, as long as your counsel is
23 okay with that.

24 A I'm okay talking about the general --

25 MS. DENIKER: Let him ask a -- let him ask a 05:14:36

1 question.

2 BY MR. TRYON:

3 Q Yeah, let me ask you a question first.

4 THE WITNESS: I thought he was asking if I

5 was okay with the question. 05:14:40

6 That was you?

7 BY MR. TRYON:

8 Q Would you agree -- sorry.

9 Would you agree that the most important thing
10 for kids in your school system is their safety -- 05:14:47

11 MS. REINHARDT: Objection --

12 BY MR. TRYON:

13 Q -- as far --

14 MS. REINHARDT: -- to the form.

15 BY MR. TRYON: 05:14:54

16 Q -- as far as sports is concerned?

17 MS. REINHARDT: Objection to form.

18 MS. DENIKER: Susan Deniker. I also object
19 to form.

20 THE WITNESS: Safety in all areas is 05:15:03
21 important in our school system, and it is at the top
22 of the list.

23 BY MR. TRYON:

24 Q Yeah, and I'm asking in particular with
25 respect to athletics. Is safety the most important 05:15:10

1 thing for consideration for kids in sports?

2 A Safety is important in sports.

3 Q Are you of any rules -- aware of any rules
4 that are set up for safety to prevent injuries in
5 sports?

05:15:27

6 MS. REINHARDT: Objection to form.

7 THE WITNESS: There's a lot of rules,
8 probably rules that I don't know since I'm not
9 involved in that on a daily basis, but a lot of
10 training for our coaches, proper equipment for the
11 children or the students and the athletes, from --
12 really everything, having an athletic trainer at the
13 games and available for the students, if there is an
14 injury, that would properly handle that.

05:15:42

15 BY MR. TRYON:

05:16:01

16 Q Do you know if that's one of the reasons
17 that -- that sports are separated by sex?

18 MS. REINHARDT: Objection.

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: Going back to the house bill
21 that was passed, that is stated in there, that it is
22 a safety concern.

05:16:13

23 BY MR. TRYON:

24 Q Aside from the house bill, would you agree

25 that, from your perspective, that we separate sports

05:16:21

1 in schools by sex in order -- for -- for safety
2 purposes, especially with respect to contact sports?

3 MS. REINHARDT: Objection to form.

4 And I would also remind Mr. Tryon that
5 Superintendent Stutler is a 30(b)(6) witness. 05:16:42

6 MR. TRYON: Thank you for the reminder.

7 BY MR. TRYON:

8 Q Can you answer the question, please?

9 MS. DENIKER: I'm also going to put an
10 objection on the record as to form. 05:16:52

11 And to the extent that you can answer as a
12 representative of the Harrison County Board of
13 Education, you may do so.

14 THE WITNESS: I would agree that there are --
15 that there could be physical differences that could 05:17:03
16 produce a safety risk in a contact sport.

17 BY MR. TRYON:

18 Q Let me look at one other exhibit I may want
19 to ask you a question about. Yeah, let me ask
20 you on Exhibit 19. Let me know when you have that. 05:18:37

21 A Okay. I see that.

22 Q At the top of page 4, on that one, can you
23 turn there?

24 A Okay. I am there.

25 Q Sure. The -- so the very first thing says 05:18:57

1 (as read):

2 "In what extra-curricular programs
3 or activities" -- excuse me -- "will
4 the student be -- student be
5 participating (sports, theater, 05:19:04
6 clubs, etc)?"

7 A Yes.

8 Q And then it's filled in "cross country and
9 track." And this was filled in on May 18, 2021.

10 At that time, was there any concern about 05:19:19
11 whether B.P.J. would be permitted to participate on
12 the girls' cross -- cross-country team or the boys'
13 cross-country team?

14 MS. REINHARDT: Objection to form.

15 MS. DENIKER: Objection to the form. 05:19:36

16 THE WITNESS: I was not aware of any concern.

17 BY MR. TRYON:

18 Q Do you know if anybody -- okay. Fine.

19 MR. TRYON: That's all -- that's all the
20 questions I have. Thank you. 05:19:47

21

22 EXAMINATION

23 BY MR. FRAMPTON:

24 Q And, Superintendent Stutler, this is
25 Hal Frampton for the intervenor. I've got just a 05:20:00

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1 few questions for you. I know it's been a -- a long
2 afternoon so far.

3 A Thank you.

4 Q If you would -- no worries.

5 If you would, please, pull up Exhibit 28, and 05:20:11
6 when you've got it up, go ahead and scroll down to
7 page 4, the listings for Bridgeport Middle School.

8 A I have that.

9 Q Thank you, Superintendent. And I just want
10 to make sure -- I know you testified a little bit 05:20:33
11 about this earlier, but I -- I wasn't totally clear
12 on what you were saying.

13 So it is your understanding that there is a
14 separate boys' cross-country team and girls'
15 cross-country team at Bridgeport Middle School; 05:20:46
16 correct?

17 A Yes.

18 Q And so the winners of their meets, there
19 would be a boys' winner and a girls' winner; is that
20 correct? 05:20:58

21 A Yes.

22 Q Okay. And they're further separated into
23 varsity and junior varsity; is that right?

24 A Correct.

25 Q And who decides whether a student is 05:21:07

1 competing at the varsity level or junior varsity
2 level?

3 A I believe that would be the coach.

4 Q Okay. The -- the coach at the individual
5 middle school? 05:21:25

6 A Yes.

7 Q Do you know how that decision is made?

8 A No. I would assume it would be by their
9 time.

10 Q A competitive decision? 05:21:38

11 A Yeah, their -- yes.

12 Q Are there limits as to how many people can be
13 designated varsity or junior varsity?

14 A I would not know that.

15 Q Who -- who would make the decision as to 05:21:52
16 whether there are limits on that?

17 A That would be the AD at that school and the
18 coach. And I would say that -- how many would be
19 out for the team. There's a lot of factors in that.

20 Q Okay. Would those same people decide the -- 05:22:11
21 the number of students who can be on the team,
22 period?

23 A I believe so, with the administrator, the
24 school administrator. It would become a staffing --
25 just staffing and what they can do. 05:22:36

1 Q Right. And are there in fact limits on the
2 number of students who can be on a given athletic
3 team?

4 MS. REINHARDT: Objection to form.

5 THE WITNESS: I do not know that. That is 05:22:46
6 not my wheelhouse.

7 BY MR. FRAMPTON:

8 Q And -- and who would know that?

9 A The AD at the school, the coach and the
10 school administrator. 05:23:01

11 MR. FRAMPTON: All right. Give me one second
12 while I mark an exhibit.

13 (Exhibit 33 was marked for identification
14 by the court reporter and is attached hereto.)

15 BY MR. FRAMPTON: 05:23:12

16 Q All right. Superintendent, what I've marked
17 as Exhibit 33 ought to be available to you now.
18 Could you check?

19 A I have that.

20 Q Have you seen this e-mail before? 05:23:49

21 A During prep for this deposition.

22 Q Yes, ma'am. Can you tell me who
23 Danyelle Schoonmaker is?

24 A She is the cross-country coach at
25 Bridgeport Middle School. 05:24:07

1 Q Is she the head coach?

2 A Yes.

3 Q And who is Meghan Flesher?

4 A She is a volunteer assistant.

5 Q For the cross-country team? 05:24:22

6 A Yes.

7 Q And did you say earlier Natalie McBrayer is
8 also a volunteer assistant?

9 A Natalie McBrayer is an assistant coach that
10 is -- yes, she is also a volunteer assistant coach, 05:24:41
11 sorry.

12 Q Does she have any other role with the -- with
13 the Board of Education, the county board?

14 A Natalie does not.

15 Q Okay. She's not a teacher as well? 05:24:55

16 A No, she's not.

17 Q And of these, the three people on these
18 messages, is Natalie the only one that you spoke to
19 in preparation for this deposition?

20 A Yes. 05:25:10

21 Q Do you agree this e-mail says "Attached is
22 the excel spreadsheet with our athletes' times and
23 attendance (could be off a bit-I haven't updated
24 from our sheet yet)"? Did I read that correctly?

25 A Yes. 05:25:32

1 MR. FRAMPTON: All right. And hang on. I'm
2 going to try to mark separately, unfortunately,
3 because they're different file types, the
4 spreadsheet that was attached to this. Give me one
5 second. 05:25:46

6 All right. What I've marked as Exhibit 34
7 ought to be available to you now.

8 (Exhibit 34 was marked for identification
9 by the court reporter and is attached hereto.)

10 THE WITNESS: I have that. 05:26:21

11 BY MR. FRAMPTON:

12 Q Okay. Do you agree this is a spreadsheet
13 with three tabs at the bottom?

14 A Yes.

15 Q And was this also something you reviewed in 05:26:38
16 preparation for this deposition?

17 A Yes.

18 Q And tell me what you understand this document
19 to be.

20 A This was the Excel sheet on -- it had the 05:26:48
21 attendance on the -- I think the first two
22 practices. It had the -- the student names and
23 their grade levels.

24 Q Got it. And --

25 A And then their lap times, yeah. 05:27:02

1 Q Thank you. The -- on the Athlete Info tab,
2 are -- are all of the -- obviously, everyone is
3 blacked out except for B.P.J., which I -- I
4 certainly understand.

5 My question is, are all of the blacked-out 05:27:16
6 folks Bridgeport Middle School students?

7 A Yes, they would be.

8 Q Okay. And these are all students who are
9 interested in running cross-country in the fall of
10 2021? 05:27:32

11 A Yes.

12 Q And there are 41 students on this list; is
13 that right?

14 A Yes.

15 Q What do you understand the purpose of this 05:27:52
16 document being, tracking their attendance and lap
17 times?

18 MS. REINHARDT: Objection to form.

19 THE WITNESS: I believe that that would be
20 for the coach's information. 05:28:12

21 (Exhibit 35 was marked for identification
22 by the court reporter and is attached hereto.)

23 BY MR. FRAMPTON:

24 Q Thank you. All right. Hang on. I'll mark
25 another one. 05:28:22

1 All right. You should have available now
2 what I've marked as Exhibit 35.

3 A I have that.

4 Q And is this also a document you reviewed in
5 your preparation? 05:29:15

6 A Yes.

7 Q And tell me what you understand this document
8 to be.

9 A These were the students that were -- that
10 participated, I believe, in a week -- that early 05:29:25
11 summer conditioning week with the coaches.

12 Q In -- in preparation for running
13 cross-country in the fall?

14 A For the season, yes.

15 Q If you could go to that second page, do you 05:29:42
16 agree that it's got 18 people listed under the
17 cross-country girls' team?

18 A Yes, I see that.

19 Q And then 18 listed under the boys' team?

20 A Yes. 05:30:08

21 Q And 18 plus 18 is 36, would you agree?

22 A Yes, uh-huh.

23 Q How did we get from 41 people on that last
24 spreadsheet to 36 on this spreadsheet?

25 A It could be that -- 05:30:21

1 MS. DENIKER: Object to the form.

2 THE WITNESS: Was that a question?

3 MS. DENIKER: He's asking that question, and
4 I'm objecting to the --

5 THE WITNESS: Okay. 05:30:42

6 MS. DENIKER: -- form of the question.

7 THE WITNESS: It could be that less students
8 came out. It could be. I don't know. I don't
9 know.

10 BY MR. FRAMPTON: 05:30:59

11 Q Okay. You're not -- it sounds like you're
12 not sure how those, essentially, fiveish people
13 were -- were on one spreadsheet and not on the next
14 one; is that right?

15 A I would not -- yeah, I would not know that. 05:31:13

16 MR. FRAMPTON: All right. Give me one second
17 to get my next one.

18 (Exhibit 36 was marked for identification
19 by the court reporter and is attached hereto.)

20 BY MR. FRAMPTON: 05:31:54

21 Q All right. You should now have available to
22 you what I have marked as Exhibit 36.

23 A I have that.

24 Q Okay. And was this also a document you
25 reviewed in your preparation? 05:32:14

1 A Yes.

2 Q And it is an e-mail from Natalie McBrayer to
3 Danyelle Schoonmaker and Meghan Flesher dated
4 August 9th, 2021; is that correct?

5 A Yes. 05:32:39

6 Q Do you see in that first sentence the -- a
7 reference to lap counts?

8 A I do.

9 Q What's your understanding of what lap counts
10 are? 05:32:48

11 A How many -- I'm assuming it's how many laps
12 they went.

13 Q Okay. So the next sentence says (as read):

14 "I highlighted the ones Meghan and I
15 talked about taking for at least 1 05:33:04
16 loop to see how they do."

17 Did I read that correctly?

18 A Yes.

19 Q Can you tell me what that means, "taking for
20 at least 1 loop to see how they do"? 05:33:15

21 A My thoughts are they're going to run them one
22 lap and check their time.

23 Q And then it says (as read):

24 "We might want to drop some after
25 the first loop." 05:33:32

1 Did I read that correctly?

2 A I see that.

3 Q What does it mean -- what do they mean by
4 "drop some"? Do you know what that means?

5 MS. DENIKER: Objection to the form. 05:33:44

6 And I would just like to have an objection as
7 to form on all of these, about what it means.

8 But you can answer, to the extent that you
9 can.

10 THE WITNESS: I'm guessing -- I -- I don't 05:33:55
11 want to guess. I'm not allowed to guess.

12 It's -- it's hard to know what the coach was
13 thinking. They're trying to use times to accurately
14 judge who would make the varsity team compared to
15 the junior varsity. 05:34:12

16 BY MR. FRAMPTON:

17 Q Okay. So there's some -- your understanding
18 is that "drop some" would have some competitive
19 meaning; correct?

20 MS. DENIKER: Objection to the form. 05:34:24

21 THE WITNESS: Based on times.

22 BY MR. FRAMPTON:

23 Q And then if you look at that next page in
24 this, you would agree that we've got B.P.J. listed
25 with a -- the number 5 beside the name; is that 05:34:46

1 right?

2 A Yes.

3 Q But no yellow highlight; is that correct?

4 A Correct.

5 Q Any understanding of why B.P.J. did not 05:35:03
6 receive a yellow highlight?

7 MS. DENIKER: Objection to the form.

8 MS. REINHARDT: I'll join that objection.

9 THE WITNESS: I do not know.

10 BY MR. FRAMPTON: 05:35:20

11 Q You would agree that, at least the way that
12 this spreadsheet is presented, B.P.J. is the first
13 person not to receive a yellow highlight; is that
14 correct?

15 MS. REINHARDT: Objection. 05:35:29

16 THE WITNESS: Looking at the form, as it is,
17 she does not have a yellow highlight.

18 BY MR. FRAMPTON:

19 Q And in terms of the order in which the
20 students are presented, B.P.J. is the first person 05:35:44
21 presented without a yellow highlight; is that right?

22 MS. REINHARDT: Objection to form and also
23 outside the scope of the deposition.

24 THE WITNESS: Would you repeat that question?

25 (Exhibit 37 was marked for identification 05:36:01

1 by the court reporter and is attached hereto.)

2 BY MR. FRAMPTON:

3 Q I'll just strike it.

4 Let's see.

5 All right. What I've marked as Exhibit 37 05:36:40
6 should now be available to you.

7 A I have that.

8 Q All right. Was this also a document that you
9 reviewed in preparation for your deposition?

10 A Yes. 05:37:06

11 Q Go to the Meet Info tab.

12 A Okay.

13 Q What's your understanding of this -- what
14 this tab is presenting?

15 MS. DENIKER: Objection to the form. 05:37:32

16 THE WITNESS: This is a schedule of the
17 upcoming meets and where they'll be held.

18 BY MR. FRAMPTON:

19 Q These are the meets that the cross-country
20 teams at Bridgeport Middle School were going to 05:37:43
21 participate in in the fall of 2021?

22 MS. REINHARDT: Objection to form and also
23 outside the scope of the deposition.

24 MS. DENIKER: Objection to the form.

25 THE WITNESS: Yes, I believe that's the 05:37:56

1 schedule of the dates and where Bridgeport Middle
2 would be participating in events.

3 MR. FRAMPTON: Hold on for a second. I've
4 just got two or three more. I'll be very quick.

5 (Exhibit 38 was marked for identification 05:38:26
6 by the court reporter and is attached hereto.)

7 BY MR. FRAMPTON:

8 Q All right. What I've marked as Exhibit 38
9 should now be available to you.

10 A I have that. 05:38:58

11 Q All right. Was this also a document that you
12 reviewed in preparation for your deposition?

13 A Yes.

14 Q What do you understand it to be?

15 MS. DENIKER: Objection to form. 05:39:12

16 THE WITNESS: It's looking at the
17 participants of the team and whether they meet
18 eligibility requirements.

19 BY MR. FRAMPTON:

20 Q Who prepares this document? 05:39:22

21 A The AD at the school.

22 Q And is this a listing of everyone who is
23 going to be on the team for that year?

24 MS. REINHARDT: Objection. And outside the
25 scope of the deposition. 05:39:44

1 MS. DENIKER: Objection to form of the
2 question.

3 THE WITNESS: I really don't know that.

4 And when I said with the AD, I'm sure the
5 coach had something to do with this as well. 05:39:55

6 (Exhibit 39 was marked for identification
7 by the court reporter and is attached hereto.)

8 BY MR. FRAMPTON:

9 Q All right. What I've marked as Exhibit 39
10 should be available to you. 05:40:24

11 A I have that.

12 Q All right. Is this also a document that you
13 reviewed in preparation for your deposition today?

14 A Yes.

15 Q Is it a listing of how the Bridgeport Middle 05:40:51
16 school's cross-country players did at the
17 Doddridge Invitational?

18 MS. REINHARDT: Objection.

19 And I also want to note that this line of
20 questioning pertains to a topic that's been removed 05:41:11
21 from the Deposition Notice.

22 MR. FRAMPTON: It pertains to topic 14, which
23 has not been removed. It is a document produced by
24 the deponent, and this particular witness has
25 already testified that she reviewed it in 05:41:25

1 preparation.

2 MS. REINHARDT: It's -- I'm going to hold my
3 objection that it's still outside the scope of the
4 deposition.

5 MR. FRAMPTON: Your objection is noted. 05:41:38

6 If the witness would please answer the
7 question.

8 MS. DENIKER: Susan Deniker. Object to the
9 form.

10 THE WITNESS: Would you please repeat the 05:41:46
11 question?

12 MR. FRAMPTON: Absolutely.

13 Madame Court Reporter, could you please
14 repeat my question?

15 MS. DENIKER: Mr. Frampton, if you're 05:41:54
16 agreeable, I will not restate my objection if you'll
17 agree to continue to note my objection.

18 MR. FRAMPTON: Absolutely. That's -- that's
19 totally fine with me.

20 (Record read.) 05:42:03

21 MS. REINHARDT: Same objections.

22 THE WITNESS: Yes.

23 BY MR. FRAMPTON:

24 Q Okay. Looking at page 2 of the document,
25 would all of the blacked-out students on this page 05:42:25

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1 be Bridgeport Middle School students?

2 A Yes.

3 Q Okay. So this document is not telling us how
4 the Bridgeport Middle School students did as against
5 the -- the participants from other schools in that 05:42:41
6 meet; is that correct?

7 MS. REINHARDT: Objection to form.

8 MS. DENIKER: Objection to the form.

9 THE WITNESS: Yes.

10 BY MR. FRAMPTON: 05:42:54

11 Q Okay. And you would agree that B.P.J. had a
12 time that was faster than three of the girls listed
13 on the spreadsheet; is that right?

14 MS. REINHARDT: Objection to form.

15 MS. DENIKER: Objection to form. 05:43:09

16 THE WITNESS: There were three names listed
17 below her.

18 BY MR. FRAMPTON:

19 Q Okay. The two names at the bottom that, of
20 course, I can't see, the N/As, would those have been 05:43:24
21 people who were permitted to participate in the meet
22 and just didn't?

23 MS. REINHARDT: Objection to form.

24 MS. DENIKER: Objection to form.

25 THE WITNESS: I would not know that. 05:43:35

1 (Exhibit 40 was marked for identification
2 by the court reporter and is attached hereto.)

3 BY MR. FRAMPTON:

4 Q All right. What I have listed as -- marked
5 as Exhibit 40 should be -- should be available to 05:44:22
6 you now.

7 And this is my last exhibit, so you're almost
8 done with me.

9 A I have it.

10 Q All right. Is this document also something 05:45:03
11 that you reviewed in preparation for your
12 deposition?

13 A Yes.

14 Q Okay. The first page, is this a listing of
15 how the Bridgeport Middle School cross-country 05:45:16
16 athletes did in the Ritchie County meet on Saturday,
17 October 1st?

18 MS. REINHARDT: Objection to form.

19 And I'll put a standing objection that these
20 questions are outside of the scope. 05:45:29

21 MR. FRAMPTON: Yes, happy to grant you a
22 standing objection.

23 THE WITNESS: Yes.

24 BY MR. FRAMPTON:

25 Q And so as with the last one we looked at, all 05:45:35

1 of the students on this page would be
2 Bridgeport Middle School students; right?

3 A Yes.

4 Q And you would agree that B.P.J. has a time
5 that is faster than three of the girls listed on 05:45:49
6 this spreadsheet; correct?

7 MS. REINHARDT: Objection to form.

8 THE WITNESS: Yes, there are three names
9 below hers.

10 BY MR. FRAMPTON: 05:46:02

11 Q Do you have any idea what the yellow
12 highlighting means?

13 A I do not.

14 Q It was worth a try.

15 A I do not. 05:46:18

16 Q The next two pages, are these just a -- a --
17 sort of compilation of how the Bridgeport Middle
18 School cross-country athletes did across a number of
19 meets in the fall 2021 season?

20 MS. REINHARDT: Objection to form. 05:46:38

21 MS. DENIKER: This is Susan Deniker.
22 Objection to form.

23 THE WITNESS: It looks like it is a
24 compilation of meets and times.

25 BY MR. FRAMPTON: 05:46:58

1 Q Look at the third page.

2 A Okay.

3 Q You would agree that there are no names
4 listed next to these various times; right?

5 A Yes. 05:47:25

6 Q Okay. Is this just a -- a sort of horizontal
7 continuation of the previous page?

8 MS. REINHARDT: Objection to form.

9 MS. DENIKER: Objection to form.

10 THE WITNESS: I do not know. 05:47:41

11 BY MR. FRAMPTON:

12 Q And then the last page of the exhibit, would
13 you agree this is a compilation of how the various
14 Bridgeport Middle School cross-country athletes did
15 in two time trial competitions? 05:47:59

16 MS. REINHARDT: Objection to form.

17 MS. DENIKER: This is Susan Deniker.
18 Objection to form.

19 THE WITNESS: Yes, it says "Time
20 Trial-Bridgeport City Park" and the time trial for 05:48:17
21 the Bridgeport city park course on two different
22 dates.

23 Q And you would agree, with respect to the
24 October 7, 2021, date, it's got B.P.J. listed in
25 24th place; is that right? 05:48:33

1 MS. REINHARDT: Objection to form.

2 MS. DENIKER: Objection to form.

3 THE WITNESS: She is by the number 24.

4 BY MR. FRAMPTON:

5 Q Okay. And the heading for that column is 05:48:46

6 TT Place; correct?

7 A Yes.

8 Q And it's got B.P.J. in 30th place in the

9 August 24th time trial; is that right?

10 MS. REINHARDT: Objection to form. 05:49:08

11 MS. DENIKER: Objection to form.

12 THE WITNESS: Yes, she is by number 30.

13 BY MR. FRAMPTON:

14 Q And the heading for that column is "Place"?

15 A The heading for that column is "Place," yes. 05:49:21

16 MR. FRAMPTON: All right. Those were my
17 questions for you, Superintendent Stutler. Thank
18 you so much.

19 MS. REINHARDT: Superintendent Stutler, I
20 apologize, I have a few redirect questions, but I'll 05:49:37
21 be very brief.

22 If you could please turn to Exhibit 28.

23 MS. DENIKER: Ms. Reinhardt, while we do
24 that, this is Susan Deniker, I will have a couple of
25 questions for this witness. It's fine with me if 05:49:59

1 you want to proceed, but I did want to let you know
2 that.

3 MS. REINHARDT: Thank you.

4

5 FURTHER EXAMINATION

05:50:05

6 BY MS. REINHARDT:

7 Q Please let me know when you're at Exhibit 28.

8 A Okay.

9 Q If you could please turn to page 4, under
10 Bridgeport Middle School.

05:50:20

11 Do you, Superintendent Stutler, know if
12 football is a contact sport?

13 A Yes.

14 Q And on this sheet here, it says football is
15 coed; is that correct?

05:50:51

16 A Yes.

17 Q And do you understand that to mean that girls
18 can play on the football team?

19 A Yes.

20 Q And would you also say that wrestling is a
21 contact sport?

05:51:03

22 A Yes.

23 Q And is it also listed here as coed?

24 A Yes.

25 Q And does that mean that girls are able to

05:51:18

1 participate?

2 A Yes, in wrestling.

3 MS. REINHARDT: Thank you. And I am going to
4 put what will be marked as Exhibit 41 into the
5 "Marked Exhibit" folder. I'll let you know once 05:51:28
6 it's -- once you can refresh.

7 MR. REISBORD: Counsel, what's -- what's the
8 exhibit number?

9 MS. REINHARDT: It will be Exhibit 41.
10 And you should be able to refresh now. 05:51:47
11 (Exhibit 41 was marked for identification
12 by the court reporter and is attached hereto.)

13 BY MS. REINHARDT:

14 Q Have you seen this form?

15 A I have. 05:52:00

16 Q Could you please read paragraph 6.

17 A (As read):
18 "No other Bridgeport Middle School
19 student was displaced by B.P.J.'s
20 participation on the girls' 05:52:13
21 cross-country team."

22 MS. REINHARDT: Thank you. I have no further
23 questions.

24 MS. DENIKER: This is Susan Deniker.
25 Superintendent Stutler, I have a few questions for 05:52:25

1 you.

2

3

EXAMINATION

4

BY MS. DENIKER:

5

Q You testified earlier today about policies 05:52:29

6

that are passed by the Harrison County Board of

7

Education, which is made up of elected board

8

members.

9

Do you recall that testimony?

10

A I do. 05:52:44

11

Q And it's my recollection of your testimony

12

that you testified that some of the policies passed

13

by the Harrison County Board of Education are to

14

implement state board policies but on a local board

15

level, with local county board processes in place; 05:52:58

16

is that correct?

17

A Yes.

18

Q Does the Harrison County Board of Education

19

ever pass other policies that are not -- that do not

20

originate from state board policy? 05:53:10

21

A Yes.

22

Q And does the county board adopt and pass as a

23

policy every West Virginia State Board of Education

24

policy?

25

A No. 05:53:25

1 Q Does it only pass policies for the County
2 where there's some type of local process or
3 implementation that is necessary for Harrison County
4 schools?

5 MS. REINHARDT: Objection to form. 05:53:36

6 THE WITNESS: That would be correct.

7 BY MS. DENIKER:

8 Q I'm sorry, I didn't hear your answer.

9 A That would be correct.

10 Q You were also asked some questions today 05:53:40
11 about rostering for school sports for Harrison
12 County schools; is that correct?

13 A Yes.

14 Q Have you ever held the position of being a
15 middle school or high school administrator? 05:53:54

16 A No.

17 Q Have you ever been an athletic director in
18 any -- in any school, in any county, in West
19 Virginia?

20 A No. 05:54:04

21 Q Have you ever personally been responsible for
22 either directly or overseeing the rostering that
23 goes on at either middle schools or high schools in
24 Harrison County?

25 A No. 05:54:14

1 Q Do you know how that process is done?

2 A Not from beginning to end. I know parts.

3 Q Is it fair to say that you will defer
4 testimony on behalf of the Harrison County Board of
5 Education about rostering for school sports in 05:54:29
6 Harrison County to the other designee for today's
7 30(b)(6) deposition?

8 A Yes.

9 Q You were also asked questions today about
10 House Bill 3293. 05:54:44

11 Superintendent Stutler, are you familiar with
12 that house bill that was passed by the West Virginia
13 legislature?

14 A Yes.

15 Q And you would have reviewed that bill; is 05:54:55
16 that correct?

17 A Yes.

18 Q You were asked some questions about whether
19 the Harrison County Board of Education supported
20 that bill, and I want to ask you more specific 05:55:03
21 questions about that.

22 Did the Harrison County Board of Education as
23 an entity do anything officially to advocate or
24 support that bill?

25 MS. REINHARDT: Objection to form. 05:55:15

1 THE WITNESS: No.

2 BY MS. DENIKER:

3 Q Did any employee or agent of Harrison County,
4 in their official capacities, take any action to
5 advocate for the passage of that bill? 05:55:25

6 MS. REINHARDT: Objection.

7 THE WITNESS: No.

8 BY MS. DENIKER:

9 Q Did any employee or agent of the
10 Harrison County Board of Education in any way 05:55:34
11 contribute to the passage of that bill by providing
12 testimony or information to support passage of
13 House Bill 3293?

14 MS. REINHARDT: Objection to form.

15 THE WITNESS: No. 05:55:48

16 BY MS. DENIKER:

17 Q Did the Harrison County Board of Education,
18 through the elected board, pass any policy
19 proclamation or other statement that related to
20 House Bill 3293 in any way? 05:56:00

21 A No.

22 Q Has the Harrison County Board of Education
23 taken any action to implement the provisions of
24 House Bill 3293 as you sit here today?

25 A No. 05:56:13

1 MS. DENIKER: Give me one minute and let me
2 just see if I have any other questions.

3 Superintendent Stutler, I have no further
4 questions. Thank you.

5 THE WITNESS: Thank you. 05:56:36

6 MR. FRAMPTON: I have some additional
7 questions based on plaintiff's redirect.

8

9 FURTHER EXAMINATION

10 BY MR. FRAMPTON: 05:56:42

11 Q All right. Superintendent Stutler, do you --
12 do you still have Exhibit 41 up?

13 MS. DENIKER: We are pulling it up for the
14 witness.

15 MR. FRAMPTON: Thank you. 05:56:59

16 THE WITNESS: I have it.

17 BY MR. FRAMPTON:

18 Q All right. And scroll down to paragraph 6
19 which plaintiff's counsel had you read into the
20 record. 05:57:11

21 A Okay.

22 Q What does this statement mean by "displaced"?

23 MS. DENIKER: Objection to the form.

24 MS. REINHARDT: Join the objection.

25 THE WITNESS: That someone did not get to 05:57:31

1 participate because of B.P.J.

2 BY MR. FRAMPTON:

3 Q Participate as in join the team?

4 A Yes, as part of the cross-country team.

5 Q Does "participate" have any -- any other 05:57:45
6 meaning other than just join the team?

7 MS. REINHARDT: Objection to form.

8 MS. DENIKER: This is Susan Deniker. I also
9 object to the form of the question.

10 THE WITNESS: Participation. If you're on 05:58:01
11 the team, you're participating.

12 BY MR. FRAMPTON:

13 Q Okay. You would agree B.P.J. did beat some
14 girls in cross-country meets; correct?

15 MS. REINHARDT: Objection to form. 05:58:11

16 MS. DENIKER: I also object to the form. And
17 I believe that that is also beyond the scope of the
18 notice.

19 MR. FRAMPTON: Well, so is the stipulation.

20 And -- and it -- and it actually does relate 05:58:26
21 to the documents we looked at earlier that are part
22 of the -- the -- the board's document production.

23 THE WITNESS: Looking at the documents that
24 were -- that I reviewed yesterday for -- in prep for
25 this, there were students below her on the time 05:58:39

1 trials.

2 BY MR. FRAMPTON:

3 Q And students below her at cross-country
4 meets; correct?

5 A Yes. 05:58:49

6 MS. REINHARDT: Objection.

7 BY MR. FRAMPTON:

8 Q And -- and not just students, but girls below
9 her at the cross-country meets; correct?

10 MS. REINHARDT: Objection to form. 05:58:59

11 THE WITNESS: Yes.

12 MS. REINHARDT: And also outside the scope.

13 MR. FRAMPTON: Just so we are clear, the
14 court reporter got it, you answered that question
15 "yes"; correct? 05:59:08

16 THE WITNESS: Yes.

17 MS. DENIKER: And I would also like to place
18 a belated objection to form on the record.

19 BY MR. FRAMPTON:

20 Q Do you know whether B.P.J.'s participation 05:59:14
21 prevented any girls at -- on the cross-country team
22 from going to any meets?

23 MS. REINHARDT: Outside the scope of the
24 redirect and objection to form.

25 MS. DENIKER: Objection to form. 05:59:32

1 THE WITNESS: I am not aware of any student
2 that was displaced due to her participating on the
3 team.

4 BY MR. FRAMPTON:

5 Q And again, by "displaced," you simply mean 05:59:43
6 allowed to participate on the team; correct?

7 A Yes, yes.

8 MR. FRAMPTON: Okay. That's all I've got.

9 MS. MORGAN: This is Kelly Morgan. So are we
10 concluded with Superintendent Stutler and moving 06:00:11
11 straight on to Mr. Mazza?

12 MS. REINHARDT: We can continue with Mr.
13 Mazza at this time, yes.

14 MS. MORGAN: Do we have any anticipation as
15 to how much longer this is going to go? We started 06:00:26
16 here at noon for us, and it's 6 o'clock. Some of us
17 have, you know, family obligations here.

18 Are we talking two, three, four more hours?

19 MS. REINHARDT: I --

20 THE VIDEOGRAPHER: Off the record? 06:00:38

21 MS. REINHARDT: I don't believe that -- oh,
22 yes, can we please go off the record.

23 THE VIDEOGRAPHER: Yeah. Okay. Thanks.

24 I -- we're going off the record. The time is
25 6:00 p.m., and this is the end of Media Unit No. 4. 06:00:44

1 (Recess.)

2 THE VIDEOGRAPHER: All right. We are back on
3 the record at 6:19 p.m., and this is the beginning
4 of Media Unit No. 5.

5 Can we please swear in the witness. 06:19:02

6 (Witness sworn.)

7 THE VIDEOGRAPHER: And I'll just mention,
8 this is the beginning of David Mazza's testimony.

9 Go ahead. Thank you.

10

11 DAVE MAZZA,
12 having been administered an oath, was examined and
13 testified as follows:

14 EXAMINATION

15 BY MS. REINHARDT:

16 Q Hi, Mr. Mazza. How are you doing today?

17 A Good. How are you doing?

18 Q I'm doing well.

19 Is it okay if I call you "Principal Mazza"

20 for the point of this deposition? 06:19:39

21 A Yes, you can call me "Principal Mazza," yes.

22 Q Great. And have you ever been deposed
23 before?

24 A I have not.

25 Q Have you ever testified in a court of law 06:19:46

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1 before?

2 A I have.

3 Q What is your current title?

4 A I am principal at Bridgeport Middle School,

5 Harrison County schools.

06:20:02

6 Q And how long have you been the principal?

7 A I'm in my fifth year.

8 Q Wonderful. And what did you do before that?

9 A I was the assistant at Bridgeport Middle for

10 eight years. Prior to that, I was a teacher for

06:20:11

11 20 years. I'm in my 33rd year in education.

12 Q That's wonderful. And I'm sorry, I want to

13 make sure that I didn't mishear you. Did you say

14 you have or have not testified in court before?

15 A I have testified in court before.

06:20:29

16 Q Thank you for clarifying.

17 And what was the nature of that case?

18 A It's when I was -- I had just turned 18, and

19 I witnessed a fight. One of the participants in the

20 fight used brass knuckles. I'm going way back to

06:20:45

21 the '70s here, so -- and I just had to be a witness

22 of what I did see and how the fight went down.

23 Q I appreciate that. So you have never

24 testified in court as it relates to your current

25 role; is that correct?

06:21:01

1 A That is true.

2 Q Thank you. So going back, you have been in
3 this field for quite some time.

4 Did you study education in college?

5 A I did. I went to Fairmont State College from 06:21:13
6 1985 to 1989. I went on to West Virginia University
7 and received my Master's degree in special
8 education. Then I went to Salem International
9 University and -- and got my administration
10 certificate. 06:21:31

11 Q You're extremely credentialed. I appreciate
12 you walking me through that.

13 And is there a reason you're aware of today
14 that you won't be able to answer my questions
15 truthfully and accurately? 06:21:47

16 A Can you repeat that? I'm sorry.

17 Q Is there a reason that you're aware of that
18 would prevent you from answering my questions
19 truthfully and accurately today?

20 A No. 06:21:59

21 Q Thank you. And I would like to set a couple
22 of ground rules so there aren't any surprises for
23 you today.

24 A Okay.

25 Q If I ask you a question, please answer it 06:22:07

1 unless your attorney states otherwise. Is that
2 understood?

3 A That is understood.

4 Q And so that the court reporter can get
5 everything we're saying, please use only verbal 06:22:20
6 responses. Unfortunately, we cannot transcribe
7 nodding or hand gestures. Is that understood?

8 A That is understood.

9 Q And if I ask a question that you don't
10 understand, please let me know. If you answer my 06:22:36
11 question, I'll assume that you understand what I'm
12 asking. Is that okay?

13 A Yes. Thank you for that.

14 Q No problem. And my last just housekeeping
15 rule is if you'd like to take a break at any point, 06:22:48
16 please let us know. I'll need to finish my line of
17 questioning, but we'd be happy to accommodate any
18 breaks.

19 A Thank you very much.

20 Q Did you review any documents in preparation 06:22:59
21 of today's deposition?

22 A Yes, I did.

23 Q And without disclosing any communications you
24 may have had with your attorney, can you please let
25 me know which documents you reviewed. 06:23:13

1 A We reviewed what the litigation is about
2 today.

3 Q And were there any other documents in
4 connection to this litigation you reviewed?

5 A Just what was over in the litigation. I 06:23:26
6 mean, we looked at several different things. We did
7 a review of the gender support plan that was -- that
8 had taken place last May, just the basic documents
9 that go on with this litigation.

10 Q And if you know, were all of the documents 06:23:44
11 provided by counsel?

12 A Yes.

13 Q And did you bring any documents with you
14 today?

15 A I did not. 06:24:01

16 Q Great. And did you provide your counsel with
17 any documentation?

18 A I did.

19 Q And what was it?

20 MS. DENIKER: This is Susan Deniker. I would 06:24:12
21 like to clarify something here. Are you asking in
22 preparation for the deposition, or do you mean with
23 regard to this litigation, generally, in terms of
24 discovery?

25 MS. REINHARDT: Thank you for that clarifying 06:24:26

1 question. I mean in preparation for today.

2 THE WITNESS: No.

3 BY MS. REINHARDT:

4 Q Thank you. And did you speak with anyone in
5 preparation for today's deposition? 06:24:38

6 A Just counsel.

7 Q Did you --

8 MS. DENIKER: Let me -- Ms. Reinhardt, excuse
9 me, this is Susan Deniker again.

10 Mr. Mazza, to the extent that you had 06:24:49
11 conversations with other Harrison County Board of
12 Education employees --

13 THE WITNESS: Right.

14 MS. DENIKER: -- to prepare for your
15 deposition, you may disclose the names of those 06:24:59
16 persons that you spoke with.

17 THE WITNESS: Okay. Other than counsel here,
18 we did -- of course, Dora Stutler, superintendent;
19 Amber Davis; Tarra Shields, principal of Norwood
20 Elementary -- Amber Davis was -- is the counselor -- 06:25:17
21 and fifth-grade teacher -- I can't remember her
22 name, I'm sorry. I cannot remember the
23 fifth-grade teacher's name, I'm sorry. I apologize.

24 BY MS. REINHARDT:

25 Q By any chance, was it a fourth-grade teacher 06:25:30

1 by the first name of Jasmine?

2 A Yes, it was a fourth-grade teacher. I
3 apologize for that. I thought it was the
4 fifth-grade teacher.

5 Q No problem at all. 06:25:41

6 And do you understand that B.P.J. filed a
7 lawsuit against the County Board of Education?

8 A Yes.

9 Q And do you understand that that is why you're
10 here testifying today? 06:25:56

11 A Correct, yes.

12 MS. REINHARDT: Wonderful. And I just want
13 to review, briefly, with you Exhibit 24. It should
14 be in the "Marked Exhibit" folder.

15 (Exhibit 24 was marked for identification 06:26:09
16 by the court reporter and is attached hereto.)

17 BY MS. REINHARDT:

18 Q Please let me know once you've reviewed it.

19 A I have reviewed it.

20 Q Have you seen this document before? 06:26:47

21 A I have.

22 Q And I'll ask you to turn to what's numbered
23 page 8. Did you review topics 10 and 11 for today's
24 deposition?

25 A I did. 06:26:59

1 Q And did you review any documentation related
2 to topics 10 and 11 in preparation for today's
3 deposition?

4 A I did.

5 Q And were those the same documents that you've 06:27:15
6 already -- you've already disclosed?

7 A I believe so, yes.

8 Q Wonderful. And looking at this exhibit, can
9 you please review topics 1 through 15 and let me
10 know if you've already viewed these -- reviewed 06:27:35
11 these topics with counsel.

12 MS. DENIKER: I'm going to object to -- that
13 question calls for attorney-client privileged
14 communications. You can ask him if he -- if he's
15 reviewed the Notice of Deposition, but I'm going to 06:28:00
16 instruct him not to answer as to whether or not he
17 reviewed topics with counsel.

18 MS. REINHARDT: Understood.

19 BY MS. REINHARDT:

20 Q Did you review these topics in preparation 06:28:07
21 for today's deposition?

22 A I've looked them over.

23 Q Thank you. And for purposes of the record,
24 we have previously spoken with
25 Superintendent Stutler and asked her a number of 06:28:22

1 questions related to these topics. Today, we'll
2 only be asking you about topics 10 and 11. Is that
3 understood?

4 A That is understood.

5 Q And I'm just briefly going to go over two 06:28:34
6 terms with you. So the first one is the word
7 "transgender." When I use the word "transgender,"
8 I'm referring to someone whose gender identity does
9 not match the sex they were assigned at birth.

10 So, for example, if someone was assigned male 06:28:51
11 at birth, but they identify as female, that person
12 would be a transgender girl or woman.

13 Do you understand how I am referring to that
14 term?

15 MR. TRYON: Objection. 06:29:04

16 THE WITNESS: I do.

17 BY MS. REINHARDT:

18 Q Thank you. And, likewise, I'll be asking the
19 term "cisgender." When I use the term "cisgender,"
20 I am referring to someone whose gender identity 06:29:14
21 matches the sex they were assigned at birth.

22 So as an example, if someone was assigned
23 male at birth and they identify as male, that person
24 would be a cisgender boy or man.

25 Do you understand how I'm referring to that 06:29:28

1 term?

2 MR. TRYON: Objection.

3 THE WITNESS: I do -- I do understand.

4 MR. TRYON: Elizabeth, can I just have a

5 standing objection to terminology?

06:29:38

6 MS. REINHARDT: Yes, I will see that standing
7 objection. Thank you.

8 MR. TRYON: Thank you.

9 BY MS. REINHARDT:

10 Q And when I say the word "you," unless I

06:29:43

11 specifically say "Principal Mazza as an individual"

12 or something similar, I'm asking for you to answer

13 my question as a representative of the County Board

14 of Education. Is that understood?

15 A That is understood.

06:30:00

16 Q And when I -- if it's okay with you, I'd like

17 to use the term "county board" rather than "County

18 Board of Education." Is that okay?

19 A That is okay.

20 Q Wonderful. And also, when I'm referring to

06:30:14

21 the county board, I am talking about the entire

22 entity of the county board, not just its elected

23 members. Is that understood?

24 A That is understood.

25 Q Thank you. So I am going to -- I am going to

06:30:27

1 put tab 5 into the "Marked Exhibit" folder. I
2 believe --

3 MS. REINHARDT: And please correct me if I'm
4 wrong, Mrs. Court Reporter. I believe we're at
5 Exhibit 41 -- 42. Apologies. 06:30:50

6 I'll let you know once you can refresh.

7 You may refresh. And please let me know once
8 you have that document open.

9 (Exhibit 42 was marked for identification
10 by the court reporter and is attached hereto.) 06:31:13

11 BY MS. REINHARDT:

12 Q Do you have that document open?

13 A Yes.

14 Q Great. Are you familiar with WVSSAC, or the
15 West Virginia Secondary School Activities 06:31:58
16 Commission?

17 A I am familiar with the WVSSAC, correct.

18 Q And are you okay with me using the acronym
19 WVSSAC in reference to the West Virginia School --
20 Secondary School Activities Commission? 06:32:16

21 A Yes.

22 Q Wonderful. And if you look at the front page
23 here, it says "Regional Principals' Meeting."

24 Are you familiar with the regional
25 principals' meeting? 06:32:24

1 A I am.

2 Q Can you please tell me what that is?

3 MS. DENIKER: Object to the form.

4 THE WITNESS: Yes. We attend -- member

5 school principals attend a regional principals' 06:32:41

6 meeting every fall before school starts. This

7 year -- it typically takes place the first week in

8 August. We meet at East Fairmont High School in

9 Marion County. That's where the region is set up

10 for Harrison, and surrounding counties. We meet 06:33:01

11 from noon to 3:00. And they go over information of

12 previous proposals that pass at the board of

13 controls meeting in April.

14 BY MS. REINHARDT:

15 Q Thank you. It sounds like you are used to 06:33:20

16 sitting in long meetings, so I appreciate you being

17 here today.

18 Did -- were you in attendance for the 2021 to

19 2022 regional principals' meeting?

20 A I was not. 06:33:32

21 Q Have you seen this PowerPoint before?

22 A I have.

23 Q And when did you first see this PowerPoint?

24 A I believe from my athletic director.

25 Q And when did your athletic director show you 06:33:49

1 this document?

2 A I would say shortly after. He is part of the
3 SSAC. He's actually a director. And he gets this
4 information sent to him via e-mail, I believe.

5 Q And what is the name of this individual? 06:34:09

6 A Mr. Arthur Petitto.

7 Q Thank you. And do you know why WVSSAC holds
8 the principals' meeting?

9 MS. GREEN: Object to the form.

10 MS. DENIKER: Objection to the form as well. 06:34:40

11 You can answer.

12 THE WITNESS: In the spring, we have controls
13 where there are proposals that are passed by the
14 member schools. Once these proposals pass, they go
15 to the State Board of Education who then approve 06:34:49
16 them. And this regional principals' meeting is an
17 update, typically, of what passed and what has
18 changed with anything athletic in the state of West
19 Virginia.

20 BY MS. REINHARDT: 06:35:03

21 Q Thank you. And other than your conversation
22 with Mr. Petitto -- is that correct? -- have you
23 seen --

24 A That is correct.

25 Q Wonderful. 06:35:12

1 -- have you seen this PowerPoint?

2 A Have I seen it, is that -- was that your
3 question?

4 Q Yes. Other than with Mr. Petitto -- or from
5 Mr. Petitto.

06:35:23

6 A I have not. I have not.

7 Q And you should feel free to review this
8 document in its entirety, but I'll only be asking
9 you questions as it relates to what is

10 Bates-numbered WVSSAC 000346. So you should feel
11 free to go to that page, if it's convenient for you,
12 or you may look through the entire PowerPoint.

06:35:35

13 Please let me know once you're at
14 WVSSAC 00346. It's slide 60.

15 A We are there.

06:36:29

16 Q Great. And did you -- do you know what this
17 slide is in reference to?

18 MS. GREEN: Object to the form.

19 MS. DENIKER: You can answer, if you know.

20 THE WITNESS: I believe it's for the current
21 law -- the bill and law that was passed in the state
22 of West Virginia that went into effect in July.

06:36:47

23 BY MS. REINHARDT:

24 Q And is what you're referring to H.B. 3293?

25 A Correct.

06:37:02

1 Q Thank you. And did you discuss this slide in
2 particular with Mr. Petitto?

3 A I did not.

4 Q Have you reviewed this slide before today?

5 A I have not.

06:37:18

6 Q So on the slide, it says -- the heading is
7 "Transgender," and the first bullet point is
8 "Current law being challenged in court." The second
9 bullet says "WVSSAC's current position in that
10 gender is identified in WVEIS for athletic
11 participation purposes." 06:37:33

12 Did I read that correctly?

13 A You did.

14 Q So for WVEIS, is it okay if I refer to that
15 as "WVEIS"? 06:37:53

16 A Yes, you can.

17 Q And do you know what WVEIS is?

18 A Yes, I do.

19 Q What is it?

20 A It's our identification system for every 06:38:01
21 student that is in the state of West Virginia. That
22 number stays with them. They're assigned a number.
23 Each county is different, as far as assigning the
24 number. But if the student transfers to a different
25 county, that same number stays with them. 06:38:18

1 Q Thank you. And do you have access to WVEIS
2 as the principal of Bridgeport Middle School?

3 A Yes, I do.

4 Q Does the athletic director have access to
5 WVEIS?

06:38:34

6 A No, he doesn't.

7 Q Does anyone at Bridgeport Middle School have
8 the ability to change information in WVEIS?

9 A The -- the people that can change information
10 are myself, my assistant and my counselor.

06:38:52

11 Q And do --

12 A Also, both of my secretaries.

13 Q And does anyone you've just listed need
14 permission to change information in WVEIS?

15 A No.

06:39:06

16 Q Thank you.

17 A Can I add something to that?

18 Q Of course.

19 A WVEIS, the way it's set up, only certain
20 things that are part of WVEIS, like, for example,
21 discipline, my secretaries do not access to that,
22 nor my counselor. Just the assistant principal and
23 myself. There's -- there's just certain items, like
24 health, if a student has a health issue, I would
25 have to put that in. There are -- there are certain

06:39:25

06:39:44

1 items that only go to certain people.

2 The secretaries have, usually, residency
3 information, scheduling, the schedules, things like
4 that, but some of the stuff that is put in the
5 WVEIS, it's mostly my counselor, myself and my
6 assistant. 06:40:03

7 Q In WVEIS, are students' names listed and
8 other -- so I'm asking, are student names listed,
9 including their ID number?

10 A That is correct. 06:40:16

11 Q And are students' genders listed in WVEIS?

12 A Yes, they are.

13 Q And if a student were to participate in a
14 school athletic program, would the athletic director
15 need to check WVEIS to know which team the student
16 needed to be on? 06:40:39

17 A No.

18 Q How is it -- how are students designated
19 between teams?

20 A They are given an information sheet that is 06:40:48
21 filled out by them or the -- the student or the
22 parent. That information goes back to the athletic
23 director who then puts it in a portal that would be
24 seen by the WVSSAC.

25 Q Does that portal have a name? 06:41:03

1 A It's part of the WVSSAC website where you
2 see -- I'm not sure if you've visited that website,
3 but there's an admin login.

4 Q And is -- is the information the athletic
5 director provides not a part of WVEIS? 06:41:28

6	A	It is not part of WVEIS.

7 Q And is that information used to create a
8 roster?

9 A That information is used to create a roster.

```
10      Q    So WVEIS is not used to create a roster; is      06:41:43
11      that correct?
```

12 MS. DENIKER: Object --

13 THE WITNESS: That is correct.

14 MS. DENIKER: -- to the form.

15	BY MS. REINHARDT:	06:41:51

16 Q And if I'm understanding correctly, the
17 administrative director would list whichever gender
18 is completed by a parent or the athlete in the form
19 you noted earlier; is that correct?

20 A That would be correct. 06:42:10

21 Q And does Bridgeport Middle School have any
22 policies as it relates to gender separation in
23 sports?

24 A We don't have any policies.

25	Q	Is Bridgeport Middle School required to	06:42:32

1 follow any other policies related to gender
2 separation in sports?

3 MS. GREEN: Object to the form.

4 MS. DENIKER: I also object to the form.

5 THE WITNESS: Bridgeport Middle follows the 06:42:53
6 guidelines set by the WVSSAC.

7 BY MS. REINHARDT:

8 Q And what are those guidelines as it relates
9 to gender separation in sports?

10 MS. GREEN: Object to the form. 06:43:06

11 MS. DENIKER: Object to the form.

12 THE WITNESS: Those guidelines come in the
13 form of rostering, where -- for example, my athletic
14 director receives from the track coach, who is the
15 boys track coach, he would roster them on the WVEIS 06:43:23
16 system as a B, goes into the B portal. And if my
17 athletic director receives the information from the
18 girls' coach, it would go on the G side, which is --
19 would be the girl.

20 BY MS. REINHARDT: 06:43:44

21 Q So the athletic director implements a
22 student's gender into WVEIS; is that correct?

23 MS. DENIKER: Objection to the form and also
24 asked and answered.

25 MS. GREEN: I'll object to the form as well. 06:43:56

1 Thank you.

2 MS. DENIKER: Do you need to have -- if
3 you'll give me a standing objection on that. Maybe
4 we should have the court reporter read back the
5 question so that the witness could hear it, if 06:44:09
6 that's okay, Ms. Reinhardt.

7 MS. REINHARDT: That would be great. I'll
8 give you a standing objection.

9 If the court reporter could please read my
10 question back. 06:44:18

11 (Record read.)

12 MS. DENIKER: If you need to hear it again,
13 you can ask for it to be repeated.

14 THE WITNESS: Repeat that again, please, I'm
15 sorry. 06:44:46

16 MS. REINHARDT: If the court reporter could
17 please read that again.

18 And I believe it should be "input." I
19 apologize if I wasn't clear.

20 (Record read.) 06:45:08

21 THE WITNESS: The athletic director puts the
22 information on the boy roster or the girl roster.

23 BY MS. REINHARDT:

24 Q And where -- okay. I think I understand.

25 And are B and G the only options for the -- 06:45:33

1 putting a student's gender on the roster?

2 A I believe so.

3 Q And does Bridgeport Middle School have any
4 coed sports?

5 A We do.

06:45:48

6 Q And for those rosters, for the rosters for
7 coed sports, do they still list B or G?

8 A I believe so.

9 Q Thank you. And are you familiar with the
10 roster that's used for football?

06:46:13

11 A I am.

12 Q Can you please describe to me what that
13 roster would include?

14 MS. GREEN: Object to the form.

15 THE WITNESS: It's -- the roster would
16 include a student's name, the place of birth. I
17 believe, residence.

06:46:31

18 BY MS. REINHARDT:

19 Q And does it say they're a B or a G as well?

20 A I'm honestly not sure.

06:46:57

21 Q Understood. And -- but it's your
22 understanding that generally these rosters contain a
23 B or a G?

24 MS. GREEN: I'm going to object to the form.

25 THE WITNESS: That is correct.

06:47:12

1 BY MS. REINHARDT:

2 Q And if a -- if a student is gender
3 nonconforming, does the school have a policy on what
4 would be put as their gender for school sports?

5 A Can you repeat that again, please? 06:47:27

6 Q If a student is gender nonconforming -- and
7 what I mean by that is they neither identify as just
8 a boy or a girl -- does the school have a policy for
9 how they're listed on a sports team's roster?

10 A We do not. 06:47:43

11 Q Does the school have a policy related to what
12 transgender students are listed as for the purposes
13 of sports teams' rosters?

14 A We do not.

15 Q I'm just going to make sure I have -- I've 06:47:59
16 asked all my questions on this topic. One second.

17 Other than school policies, does WVSSAC have
18 any policies that you would follow related to
19 students' genders listed on school sports?

20 MS. GREEN: Object to the form. 06:48:33

21 MS. DENIKER: Object to the form.

22 THE WITNESS: I have never seen any
23 information like that from the SSAC.

24 BY MS. REINHARDT:

25 Q Thank you. And I want to ask if you've ever 06:48:42

1 discussed gender separation in school sports with
2 Heather Jackson.

3 MS. DENIKER: I'm going to ask you identify
4 where -- which topic that falls under.

5 MS. REINHARDT: I'm referring to topic 11 06:49:03
6 where it says policies, documents, communications of
7 the Harrison County board and the county board
8 superintendent concerning the separation of boys and
9 girls in school-sponsored sports.

10 MS. DENIKER: Thank you. 06:49:19

11 Do you need to have the question repeated
12 Mr. Mazza?

13 THE WITNESS: Just the name again.

14 BY MS. REINHARDT:

15 Q Are you familiar with B.P.J.'s mother? 06:49:28

16 A Oh, I'm -- yes, absolutely.

17 Q No problem. It's been a long day, I'm sure.
18 Have you --

19 A It has. [REDACTED]

[REDACTED]

[REDACTED]

22 Q Makes sense. Have you had any conversation
23 with B.P.J.'s mother related to the separation of
24 boys and girls in school-sponsored sports?

25 A The only conversation was at the gender 06:49:53

1 support meeting back in May of '21.

2 Q And what was the conversation about?

3 A As we were going through the gender support
4 plan, and we were finishing up, she was -- Heather
5 was asking specific questions about band. I said 06:50:15
6 that would not be a problem. You know, we do offer
7 related art classes other than our five core
8 classes, which is reading, English, science, math,
9 social studies. So we were pretty much asking B [REDACTED]
10 what other related art classes she would be 06:50:33
11 interested in other than band. She -- B [REDACTED] said,
12 art. And we do offer STEAM, etcetera.

13 And then Heather asked me, B [REDACTED] wants to
14 participate in cross-country. I said, No problem.
15 And then Heather asked me, B [REDACTED] wants to run with 06:50:48
16 the girls. And I -- I know -- I've known Heather --
17 I've had both of her -- I had her oldest son go
18 through, and she has another son that is an
19 eighth-grader in our building. And I looked at
20 Heather, and I said, You did hear about the bill 06:51:07
21 that was signed into law, that's going into effect
22 in July.

23 And she said, We know all about that.

24 And that was the only discussion we had with
25 this law that went into effect in the state of 06:51:17

1 West Virginia.

2 Q And if you know, did Mrs. Jackson take that
3 to mean that B [REDACTED] would have to participate on the
4 boys' sports team?

5 MS. DENIKER: Objection to the form of the 06:51:30
6 question, calls for speculation.

7 THE WITNESS: I honestly don't know.

8 BY MS. REINHARDT:

9 Q And what was the purpose in raising H.B. 3293
10 with Mrs. Jackson? 06:51:48

11 A Her question was pretty forward, and I just
12 wondered if she knew that that bill was going to
13 turn into a law in July.

14 Q Understood. I'm just checking my notes. One
15 moment. 06:52:13

16 And just for background information, do
17 you -- have you ever coached any sports?

18 A I have.

19 Q Which sports have you coached?

20 A I've coached football and track. 06:52:26

21 Q And were those in Harrison County?

22 A Football was in Monongalia County, 1989, and
23 track was in Harrison County, 1991, Lincoln High
24 School. Football was the -- what was then
25 Westover Junior High, which is now Westwood Middle. 06:52:51

1 Q Thank you. And do you see a benefit in
2 participating in school sports?

3 A Absolutely.

4 Q And what are those benefits as you know them
5 as Principal Mazza? 06:53:01

6 MR. TRYON: Objection.

7 THE WITNESS: I --

8 MS. DENIKER: Objection to the form.

9 THE WITNESS: My benefits of having two
10 children of my own, I believe it develops 06:53:11
11 discipline, teamwork. There's nothing better than
12 teamwork. I truly believe once you do graduate
13 college and go into the workforce, you will always
14 be working as a team with someone. Trust. I see a
15 lot of trust with sports. And it's just great 06:53:31
16 conditioning just to be part of something, just to
17 be part of a team.

18 BY MS. REINHARDT:

19 Q I understand that. I played basketball and
20 volleyball, so I can appreciate those. 06:53:42

21 Do you think B.P.J. gained any benefits from
22 participating on a sports team?

23 MS. DENIKER: Objection to the form.

24 MR. TRYON: Objection.

25 THE WITNESS: I believe so. I believe so. 06:54:03

1 MS. REINHARDT: Could we please go off the
2 record for one moment?

3 THE VIDEOGRAPHER: Sorry. Oop, I was on
4 mute.

5 Yep. We're going off the record. The time 06:54:23
6 is 6:54 p.m.

7 (Recess.)

8 THE VIDEOGRAPHER: All right. We are back on
9 the record. It's 7:00 p.m.

10 Go ahead. 07:00:30

11 MS. REINHARDT: Principal Mazza, we have no
12 further questions for you, unless there will be
13 questions on redirect.

14

15 07:00:36

16 EXAMINATION

17 BY MS. GREEN:

18 Q Principal Mazza, my name is Roberta Green,
19 and I'm an attorney here on behalf of WVSSAC. I
20 appreciate your patience today. I know it's been a 07:00:47
21 long day.

22 In terms of your knowledge of WVSSAC's rules
23 and policies, their rationale with the slideshow,
24 would you defer to WVSSAC as to the interpretation
25 of all of that? 07:01:08

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1 MS. REINHARDT: Objection.

2 MS. DENIKER: Objection to form.

3 THE WITNESS: Can you repeat that question,
4 please?

5 MS. GREEN: Sure. 07:01:17

6 MS. DENIKER: And, Ms. Green, if you'll just
7 give me a standing objection, I won't repeat my
8 objection to form.

9 MS. GREEN: Thank you. Absolutely.

10 BY MS. GREEN: 07:01:24

11 Q Mr. Mazza, in terms of WVSSAC's policies,
12 you've commented on a couple this evening, I
13 wondered if -- I'm asking you on behalf of WVSSAC --
14 would you defer to WVSSAC to speak to its own
15 policies? 07:01:40

16 MS. REINHARDT: Same objection.

17 THE WITNESS: Yes, I would.

18 BY MS. GREEN:

19 Q Okay. And in terms of WVSSAC's thinking in
20 assembling the principals' slideshow or whoever 07:01:49
21 assembled the slideshow, would you defer to WVSSAC
22 to explain the slides in that slideshow?

23 MS. REINHARDT: Object to form.

24 MS. DENIKER: This is Susan Deniker. I also
25 object to the form. 07:02:05

1 THE WITNESS: Yes, I would.

2 BY MS. GREEN:

3 Q And in terms of the rules and regulations
4 that WVSSAC has in place, would you defer to WVSSAC
5 to take a position on their rules and how they're 07:02:18
6 interpreted and applied?

7 MS. REINHARDT: Objection to form.

8 MS. DENIKER: Same objection.

9 THE WITNESS: Yes, I would.

10 MS. GREEN: Thank you. No further questions, 07:02:33
11 Principal Mazza. Thank you very much.

12 THE WITNESS: Thank you.

13 MR. TRYON: Kelly, do you have any questions?

14 MS. MORGAN: This is Kelly Morgan. I don't
15 have any questions. Thank you. 07:02:51
16
17
18

19 EXAMINATION

20 BY MR. TRYON: 07:02:53

21 Q Mr. Mazza, I do have a few questions. My
22 name is David Tryon, and I'm an attorney
23 representing the State of West Virginia, and I'm
24 with the attorney general's office.

25 I would like to -- let me start off with 07:03:08

1 Exhibit 28. Let me know when you see it, when you
2 have that.

3 A Yes.

4 Q Have you seen this document before?

5 A I've seen so many documents, sir, I'm not 07:04:00
6 sure.

7 Q Right. Well, take a look at page 4. I want
8 to ask you some questions about information on
9 page 4.

10 A I am on page 4. 07:04:13

11 Q Under "Bridgeport Middle School," do you see
12 those various teams listed?

13 A I do.

14 Q And as far as the -- the -- the list of
15 teams, just the list itself, does that seem to be 07:04:29
16 accurate?

17 A Let me look through that real quick, sir.
18 It does look correct.

19 Q On the football team, to your knowledge, are
20 there any biological girls on the football team? 07:04:53

21 MS. REINHARDT: Objection to terminology.

22 BY MR. TRYON:

23 Q Go ahead, you may answer.

24 A We do not have any biological girls on our
25 football team. 07:05:10

1 Q So it's my understanding that football is
2 generally considered to be a boy's sport, and so I'm
3 interested to see that that is characterized as a
4 coed sport.

5 Can you explain why it's characterized as a 07:05:21
6 coed sport?

7 MS. REINHARDT: Objection to form and also
8 outside the scope of the deposition.

9 BY MR. TRYON:

10 Q You may answer. 07:05:31

11 A Sir, I'm assuming because girls can play
12 football.

13 Q Okay. And -- and why can girls play
14 football?

15 MS. GREEN: I'll object to the form. 07:05:42

16 MS. REINHARDT: Same objection.

17 THE WITNESS: I believe there's not an equal
18 sport for females in the fall.

19 BY MR. TRYON:

20 Q And so is there some reason that you then 07:05:55
21 have to characterize this as coed?

22 A I believe if we had a female on the team, it
23 would be coed.

24 Q And if it -- it does not have a female on the
25 team, is it still considered coed? 07:06:12

1 MS. REINHARDT: Objection to form.

2 MS. DENIKER: Objection to form.

3 THE WITNESS: I believe --

4 MS. GREEN: And I'll object to form.

5 THE WITNESS: I believe that if it leaves the 07:06:26
6 door open, that a female can go out for
7 Bridgeport Middle School football.

8 BY MR. TRYON:

9 Q Is it the same rationale for wrestling?

10 MS. REINHARDT: Objection to form. 07:06:38

11 THE WITNESS: Yes, sir, it is the same
12 rationale.

13 BY MR. TRYON:

14 Q Are there any safety concerns involved for
15 girls joining the football team? 07:06:47

16 MS. GREEN: Object to the form.

17 MS. REINHARDT: Same objection.

18 MS. DENIKER: This is Susan Deniker.
19 Objection to the form.

20 THE WITNESS: We would all -- the female 07:06:55
21 students would be suited up just as equally as the
22 male student, helmet, shoulder pads, etcetera.

23 BY MR. TRYON:

24 Q So -- strike that.

25 Is there a reason that girls' soccer and 07:07:23

1 boys' soccer are separated by sex?

2 MS. REINHARDT: Objection.

3 MS. DENIKER: Objection to the form.

4 MS. GREEN: I'll object to the form.

5 THE WITNESS: We have -- we have enough 07:07:37
6 students to support both boys and girls' soccer.

7 BY MR. TRYON:

8 Q Well, why not just have them both be coed?

9 MS. REINHARDT: Objection --

10 MS. DENIKER: Objection to the form. 07:07:51

11 MS. REINHARDT: -- to the form.

12 Oh, I apologize, also objection to the form.

13 MS. GREEN: And I'll join.

14 THE WITNESS: Once again -- once again, sir,
15 we have a number of students that can do both, and 07:07:57
16 our understanding is if we just did coed, it would
17 be playing just boys' teams.

18 BY MR. TRYON:

19 Q Why is that?

20 MS. DENIKER: Objection to the form. 07:08:09

21 MS. REINHARDT: Same objection.

22 THE WITNESS: My -- my belief is at -- at
23 middle school or high school, if you support a coed
24 team, that coed team must play a boys' team.

25 BY MR. TRYON: 07:08:25

1 Q Okay. What's the problem with doing that?

2 MS. REINHARDT: Object to --

3 MS. GREEN: Object to the form.

4 MS. REINHARDT: I'll join that objection.

5 THE WITNESS: We have the -- we have the 07:08:33
6 numbers for both a boys and a girls' soccer team.

7 BY MR. TRYON:

8 Q Well, why not just let the girls play against
9 the boys, then?

10 MS. REINHARDT: Objection to the form. 07:08:42

11 MS. DENIKER: This is Susan Deniker.

12 Objection to the form.

13 THE WITNESS: Because we have a girls' team
14 and we have a boys' team, sir.

15 MR. TRYON: And I'll just stipulate to a 07:08:54
16 standing objection on this.

17 BY MR. TRYON:

18 Q But I still don't understand why you separate
19 the boys from the girls.

20 MS. REINHARDT: Same objection. 07:09:02

21 BY MR. TRYON:

22 Q Can you please explain that? You haven't
23 really explained that, I don't think.

24 A The SSAC allows us to have a girls' team and
25 a boys' team, if we can support both numbers for 07:09:11

1 each.

2 Q Does it require it?

3 MS. GREEN: Object to the form.

4 MS. REINHARDT: I'll join that objection.

5 MS. DENIKER: And this is Susan Deniker. 07:09:25

6 Mr. Tryon, if you'll give me a standing objection to
7 this line of questioning, I will not continue to
8 object to form.

9 MR. TRYON: Right. And that's what I just
10 said a minute ago, that I would give all three of 07:09:34
11 you --

12 MS. DENIKER: Yes.

13 MR. TRYON: -- a standing objection on that.

14 MS. GREEN: Okay.

15 THE WITNESS: I'm not sure, sir, about that 07:09:42
16 question, if it requires that.

17 BY MR. TRYON:

18 Q When you mix boys and girls on soccer teams,
19 is that creating a safety issue, as far as you're
20 concerned? 07:09:59

21 MS. REINHARDT: Objection to form.

22 BY MR. TRYON:

23 Q As far as you're concerned as the
24 representative of the -- of the -- of the board?

25 A I believe in every sport there are safety 07:10:08

1 issues. I think in this particular case, since it
2 is allowed, I -- I don't think the safety factor is
3 an issue.

4 Q Wait, I'm sorry, since what is allowed?

5 A To have a coed team. 07:10:29

6 Q Having a coed -- I was talking about -- about
7 soccer.

8 A Yeah, if you said you mixed the -- didn't you
9 say if you mix the boys and the girls together, does
10 it create a safety issue? That was your question, 07:10:40
11 sir?

12 Q Yes. So if in soccer, if you mixed all the
13 boys and girls together, does that create any safety
14 issues for the girls, competing against -- against
15 the boys? 07:10:51

16 MS. REINHARDT: Objection to form.

17 THE WITNESS: I believe there's always safety
18 issues with any sport, sir.

19 BY MR. TRYON:

20 Q Are biological boys allowed on girls' teams, 07:11:32
21 other than B.P.J.?

22 MS. REINHARDT: Objection to form and also
23 objection to terminology.

24 THE WITNESS: Can you repeat the question,
25 sir? 07:11:44

1 BY MR. TRYON:

2 Q Other than B.P.J., are any biological boys
3 allowed on the girls' teams?

4 MS. REINHARDT: Same objections.

5 MS. DENIKER: This is Susan Deniker. 07:11:56
6 Objection to the form.

7 THE WITNESS: The particular B [REDACTED] situation,
8 because we are in an injunction, B [REDACTED] was allowed
9 to run on the girls' cross-country team.

10 BY MR. TRYON: 07:12:15

11 Q Understood. Other than B.P.J., are any
12 biological boys allowed on girls' team?

13 MS. REINHARDT: Same objection.

14 THE WITNESS: We have -- we have never came
15 to that situation, sir, up until this year. 07:12:24

16 BY MR. TRYON:

17 Q Is fairness an important value in sports?

18 MS. REINHARDT: Objection.

19 MS. DENIKER: Objection to form.

20 THE WITNESS: I have two children that played 07:13:17
21 sports, and I always just believe that, you know,
22 fairness is part of it. You know, you just go out
23 and do your best.

24 BY MR. TRYON:

25 Q I understand that on a personal level. I was 07:13:28

1 asking, I guess, more on behalf of the board, does
2 the board consider fairness to be important in
3 sports?

4 MS. REINHARDT: Objection to form.

5 MS. DENIKER: I'm going to raise an objection 07:13:42
6 to form here and also state that to the extent that
7 you're seeking an opinion, that the -- the entity
8 here cannot have an opinion about something that's
9 not reflected in some official policy or other
10 determination by the board. 07:14:00

11 BY MR. TRYON:

12 Q Well --

13 A I will say this --

14 Q -- can you answer --

15 A The -- 07:14:16

16 Q Can you answer the question?

17 A I -- I would just say that, like you said,
18 like I just believe as representing the board, that
19 that question just cannot be answered.

20 Q Okay. So the -- the board has no position on 07:14:26
21 fairness?

22 MS. DENIKER: Objection to the form of the
23 question.

24 To the extent that you can answer about
25 fairness and sports, you can answer that. 07:14:37

1 THE WITNESS: I believe -- I believe any
2 board would want fairness in sports, any Board of
3 Education that has athletic programs would want
4 fairness.

5 MS. REINHARDT: And I wasn't able to 07:14:51
6 interject with an objection. I'm going to say also
7 outside the scope of the deposition.

8 MR. TRYON: I don't have any other questions.
9 Thank you.

10 Hal -- 07:15:33

11 MS. REINHARDT: Does anyone else --

12 MR. TRYON: -- are you there?

13 MS. REINHARDT: -- have any --

14 MR. FRAMPTON: Yeah, I don't have any
15 questions. 07:15:39

16 MS. DENIKER: This is Susan Deniker.
17 Mr. Mazza, I do have a couple of questions for you
18 to clarify your earlier testimony.

19

20

21

22 EXAMINATION

23 BY MS. DENIKER:

24 Q You talked earlier about the athletic
25 director putting information onto a roster for a 07:15:53

1 sports team.

2 Do you recall that testimony?

3 A I do.

4 Q Does the athletic director input any
5 information into WVEIS relating to a student's 07:16:04
6 athletic participation?

7 A It does not. It goes into the WVSSAC portal
8 to put that information in for eligibility.

9 Q And I think you also testified about whether
10 the athletic -- about the information the athletic 07:16:20
11 director uses as a source of information to input
12 information into the WVSSAC portal.

13 Does the athletic director pull information
14 from WVEIS to put into that WVSSAC portal?

15 A It does not. It uses an informational sheet. 07:16:41
16 I want to say I believe it's an WVSSAC sheet that's
17 standard to all the schools. The information is
18 filled out on that sheet. He uploads it into the
19 portal. And if -- for example, if that child is a
20 sixth-grader, that information will stay in there 07:16:59
21 and each year it -- it transfers over.

22 MS. DENIKER: Okay. Thank you, Mr. Mazza. I
23 do not have any further questions.

24 MS. REINHARDT: Mr. Mazza, we don't have any
25 redirect questions. 07:17:10

1 We would ask that this deposition stay open.

2 We previously discussed offline that we're waiting
3 for documents from another custodian. We don't
4 anticipate having to reopen the deposition, but we'd
5 like to hold that position. 07:17:24

6 MS. DENIKER: Thank you, Ms. Reinhardt.

7 On behalf of the Harrison County Board of
8 Education and Superintendent Stutler, I am not
9 agreeable to leaving the deposition open based upon
10 the information that is -- is remaining out there, 07:17:36
11 and so I'm placing an objection to that request on
12 the record.

13 THE VIDEOGRAPHER: Should we go off the
14 record for the day? Are we done?

15 MS. REINHARDT: We're finished. Thank you. 07:17:59

16 THE VIDEOGRAPHER: Okay. All right. We are
17 off the record at 7:18 p.m. This ends today's
18 testimony given by Ms. Stutler and Mr. Mazza.

19 The total number of media was used was five
20 and will be retained by Veritext Legal Solutions. 07:18:12

21 (TIME NOTED: 7:18 P.M.)

22

23

24

25

1 I, DORA STUTLER, do hereby declare under
2 penalty of perjury that I have read the foregoing
3 transcript; that I have made any corrections as
4 appear noted, in ink, initialed by me, or attached
5 hereto; that my testimony as contained herein, as
6 corrected, is true and correct.

7 EXECUTED this ____ day of _____,
8 20____, at _____, _____.
9 (City) (State)

10
11
12
13
14 _____
15 DORA STUTLER
16 VOLUME I
17
18
19
20
21
22
23
24
25

1 I, DAVE MAZZA, do hereby declare under
2 penalty of perjury that I have read the foregoing
3 transcript; that I have made any corrections as
4 appear noted, in ink, initialed by me, or attached
5 hereto; that my testimony as contained herein, as
6 corrected, is true and correct.

7 EXECUTED this ____ day of _____,
8 20____, at _____, _____.
9 (City) (State)

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11
12
13 _____
14 DAVE MAZZA
15 VOLUME I
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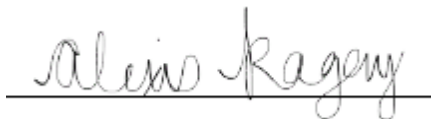
1
2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby
5 certify:

6 That the foregoing proceedings were taken
7 before me at the time and place herein set forth;
8 that any witnesses in the foregoing proceedings,
9 prior to testifying, were placed under oath; that a
10 record of the proceedings was made by me using
11 machine shorthand which was thereafter transcribed
12 under my direction; further, that the foregoing is
13 an accurate transcription thereof.

14 I further certify that I am neither
15 financially interested in the action nor a relative
16 or employee of any attorney of any of the parties.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19 Dated: March 22, 2022

20
21
22 
23

24 ALEXIS KAGAY

25 CSR NO. 13795

Exhibit 8

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

* * * * *

B.P.J., by her next friend and
mother, HEATHER JACKSON,

Plaintiffs

vs.

WEST VIRGINIA STATE BOARD OF
EDUCATION, HARRISON COUNTY BOARD OF
EDUCATION, WEST VIRGINIA SECONDARY
SCHOOL ACTIVITIES COMMISSION, W.
CLAYTON BURCH in his official
capacity as State Superintendent,
and DORA STUTLER in her official
capacity as Harrison County
Superintendent, PATRICK MORRISEY in

*
*
* Case No.
* 2:21-CV-00316

VIDEOTAPED DEPOSITION OF

JOSHUA SAFER, M.D.

March 24, 2022

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is prohibited without authorization
by the certifying agency.

1 his official capacity as Attorney *

2 General, and THE STATE OF WEST *

3 VIRGINIA, *

4 Defendants *

5 * * * * *

6

7 VIDEOTAPED DEPOSITION OF

8 JOSHUA SAFER, M.D.

9 March 24, 2022

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1 VIDEOTAPED DEPOSITION
2 OF
3 JOSHUA SAFER, M.D., taken on behalf of the Intervenor
4 herein, pursuant to the Rules of Civil Procedure, taken
5 before me, the undersigned, Nicole Montagano, a Court
6 Reporter and Notary Public in and for the Commonwealth
7 of Pennsylvania, taken via videoconference, on
8 Wednesday, March 24, 2022 at 9:30 a.m.

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A P P E A R A N C E S (cont'd)

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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between
counsel for the respective parties that reading,
signing, sealing, certification and filing are not not
waived.)

P R O C E E D I N G S

MR. BABWAH: My name is Brandon Babwah.
I'm a notary public out of the State of New York.

VIDEOGRAPHER: We are now on the record.
My name is Jacob Stock. I'm a Certified Legal Video
Specialist employed by Sargent's Court Reporting
Services. The date today is March 24th, 2022. The
current time on the video monitor reads 9:17 a.m.
Eastern Standard Time. This deposition is taken
remotely by videoconference. The caption of this case
is the United States District Court for the Southern
District of West Virginia at Charleston, BPJ, et al.
versus West Virginia State of Board of Education, et
al., Civil Action No. 2:21-cv-00316. The name of the
witness is Joshua Safer. Will the attorneys present
state their names and the parties they represent?

1 ATTORNEY BROOKS: Roger Brooks for the
2 Intervenor, Lainey Armistead, in the room --- in the
3 conference room with the witness. With me is my
4 colleague, Lawrence Wilkerson.

5 ATTORNEY HOLCOMB: Christiana Holcomb for
6 the Intervenor.

7 ATTORNEY TRYON: This is David Tryon
8 representing the State of West Virginia. I'm with the
9 Attorney General's Office.

10 ATTORNEY MORGAN: This is Kelly Morgan on
11 behalf of the West Virginia Board of Education and
12 Superintendent Burch.

13 ATTORNEY DENIKER: Good morning. Susan
14 Deniker representing Harrison County Board of Education
15 and Superintendent Dora Stutler.

16 ATTORNEY GREEN: Roberta Green here on
17 behalf of West Virginia Secondary School Activities
18 Commission.

19 ATTORNEY BLOCK: For the Plaintiff in the
20 room is Josh Block from the ACLU.

21 ATTORNEY SWAMINATHAN: And you have Sruti
22 Swaminathan from Lambda Legal.

23 ATTORNEY HARTNETT: Good morning. This
24 is Kathleen Hartnett from Cooley for the Plaintiff.

1 ATTORNEY BARR: This is Andrew Barr from
2 Coley for Plaintiff.

3 ATTORNEY KANG: Good morning. This is
4 Katelyn Kang from Cooley for the Plaintiff.

5 ATTORNEY HELSTROM: Hello. This is Zoe
6 Helstrom from Cooley for Plaintiff.

7 VIDEOGRAPHER: And if that's everyone,
8 may I ask the notary to swear in the witness?

9 ---

10 JOSHUA SAFER, M.D.,
11 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
12 HAVING FIRST BEEN DULY SWORN BY A NOTARY PUBLIC,
13 TESTIFIED AND SAID AS FOLLOWS:

14 ---

15 VIDEOGRAPHER: May I also ask the notary
16 to identify himself for the record as well?

17 NOTARY: My name is Brandon Babwah.

18 VIDEOGRAPHER: And at this time the
19 notary may be dismissed and we can begin.

20 ATTORNEY BROOKS: Thank you. And thank
21 you all for making all this complicated stuff work.

22 ---

23 EXAMINATION

24 ---

1 BY ATTORNEY BROOKS:

2 Q. Doctor Safer, good morning. I want to first put
3 in front of you your expert report and your rebuttal
4 report so that you have those if at any point you want
5 to refer to them. It looks --- for convenience let's
6 mark those as Exhibit 1 and 2 for the deposition.

7 ATTORNEY TRYON: Roger, one moment. I'm
8 looking at the realtime, and it's recording you as
9 Attorney Capehart. So I don't know if that needs to be
10 corrected now. And it's showing me as Attorney
11 Hartnett.

12 ATTORNEY BROOKS: She will get that fixed
13 and the record will be correct.

14 ATTORNEY TRYON: Okay.

15 ---

16 (Whereupon, Exhibit 1, Report of Dr. Safer,
17 was marked for identification.)

18 (Whereupon, Exhibit 2, Rebuttal Report of
19 Dr. Safer, was marked for identification.)

20 ---

21 ATTORNEY BROOKS: And at the moment I'm
22 handing copies to the witness. And I would like to mark
23 as Safer Exhibit 3 a short article entitled Fairness for
24 Transgender People in Sport by Joshua Safer.

1 ATTORNEY WILKINSON: Tab 82.

2 - - -

3 (Whereupon, Exhibit 3, Fairness for
4 Transgender People in Sports Article, was
5 marked for identification.)

6 - - -

7 ATTORNEY BROOKS: And the court reporter
8 will hand the stamped copy to the witness; am I correct?

9 BY ATTORNEY BROOKS:

10 Q. And Doctor Safer, I will ask you questions if
11 you go about your expert reports but let me ask you now
12 to focus your attention on Exhibit Number 3. Am I right
13 that this is an article that you have just very recently
14 published?

15 A. Yes.

16 Q. When did this come out?

17 A. This came out within the past few weeks I think.

18 Q. And this is not a recording of the original
19 research. This is a two page piece simply explaining
20 current issues to the readership of this journal?

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: So this is not original
23 research, that's correct.

24 ATTORNEY BROOKS: Thank you.

1 BY ATTORNEY BROOKS:

2 Q. How would you describe the purpose of this
3 article?

4 A. The purpose of this article is to educate
5 endocrinologists, frame the issues and also serves a bit
6 as a charge to endocrinologists in terms of work that
7 needs to be done.

8 Q. Thank you. If you look at the first column of
9 the first page, in the third paragraph you will see it
10 begins a possible tension exists because of the
11 observation that on average cisgender boys and men have
12 better performance outcomes in athletics than do
13 cisgender girls and women. Do you see that language?

14 A. I do.

15 Q. And you are referring there to the general
16 observation that natal males have better average
17 athletic performance than natal females in a variety of
18 measures.

19 Correct?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: So I guess I need to be
22 more specific or I can clarify.

23 BY ATTORNEY BROOKS:

24 Q. If you would be more specific.

1 A. So cisgender men at a certain age have better
2 sports outcomes than cisgender women.

3 Q. But you wrote in this just published article
4 that cisgender boys and men have better performance
5 outcomes than the cisgender girls and women.

6 Correct?

7 A. That is correct.

8 Q. And what did you mean in that statement by your
9 reference to boys and girls?

10 A. Boys and girls who are basically --- it depends,
11 it's context I guess. So boys and girls who are
12 developed to that point.

13 Q. So those --- what you had in mind are boys and
14 girls, once the puberty process begins in males in
15 particular?

16 ATTORNEY BLOCK: Objection to form.

17 THE WITNESS: Yes, I guess I would say
18 that what we know is what is towards the end of puberty
19 and subsequent development beyond puberty.

20 BY ATTORNEY BROOKS:

21 Q. You say in the next sentence --- well, let me
22 just clarify, you accept as a scientific fact the
23 general observation that, on average, boys and men,
24 defining boys as you just did, have significantly

1 stronger athletic performance in a variety of metrics
2 than girls and women as you just defined girls; correct?

3 ATTORNEY BLOCK: Objection to form.

4 THE WITNESS: So I guess how I would say
5 that is I accept as fact that men and boys who are
6 appropriately developed have, yeah, have bad performance
7 outcomes in certain sports than do cisgender women and
8 cisgender girls again appropriately developed.

9 BY ATTORNEY BROOKS:

10 Q. And the next sentence reads the performance
11 difference has resulted in the establishment of female
12 only divisions for sport participation for girls and
13 women and safely compete in the live events, closed
14 quote. Do you see that language?

15 A. I do.

16 Q. And there you were, am I correct, explaining the
17 relationship of your observation about male performance
18 with the existence in our society of sex-separated
19 sports.

20 Correct?

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: So I guess --- I would
23 think the way I would say it myself is this is a ---
24 this is the reason why we have the carve-out for the

1 female category.

2 BY ATTORNEY BROOKS:

3 Q. And one reason is to give cisgender girls and
4 women an opportunity to, quote, reliably win events.

5 Correct?

6 ATTORNEY BLOCK: Objection.

7 COURT REPORTER: I'm sorry, Counsel, I
8 can't hear you.

9 BY ATTORNEY BROOKS:

10 Q. One reason, according to what you've written in
11 this article, that there have been a carve-out in a
12 separate female division is to provide girls and women
13 with opportunities to, quote, reliably win events,
14 closed quote.

15 Correct?

16 A. So I guess the way I would say it is if we are
17 going to be really careful with the language here that
18 it would be on average to reliably win events, that is
19 --- yeah, I will leave it at that.

20 Q. Certainly not every girl and women is going to
21 win events, as I know as a male who never won an event?

22 A. Exactly.

23 Q. And another reason, according to this sentence
24 that you wrote, for having a separate category for girls

1 and women is so that they can, quote, safely compete.

2 Correct?

3 A. The word safely in that context is kind of ---
4 accentuates reliably.

5 Q. And you wrote in the next sentence that, quote,
6 the female-only divisions are a major factor to
7 encourage greater participation of girls and women in
8 sports with a goal of equal participation rates.

9 Do you see that language?

10 A. I do.

11 Q. And can you explain to me what you understand or
12 what you were trying to explain as the relationship
13 between having a separate female category on the one
14 hand and encouraging greater participation by women and
15 girls on the other?

16 A. Some of the goals of the people who are in sport
17 who organize sport are to get as high fractions of the
18 population to participate as can be encouraged to do so
19 for sheer health of those individuals and then of
20 everybody. And so the purpose of the carve-out then in
21 these circumstances is to encourage girls and women to
22 participate in larger numbers than they might otherwise.

23 Q. And do you have an opinion, do you have an
24 expert opinion as to whether the existence of separate

1 categories for female sports has in fact been a, quote,
2 major factor in encouraging greater participation by
3 women and girls in sport?

4 A. I don't have an expert opinion.

5 Q. You don't know whether that is objectively true
6 or not?

7 ATTORNEY BLOCK: Objection to form.

8 THE WITNESS: I don't --- right, I can't
9 state as an expert on the details of that subject,
10 that's right.

11 BY ATTORNEY BROOKS:

12 Q. On the second column, in the --- the first full
13 sentence begins many hormone related. Do you see that?

14 A. Yes, I do.

15 Q. Let me read that sentence into the record.
16 Quote, many hormone-related physical characteristics
17 acquired during puberty are not reversed if hormone
18 levels are changed later in life. Can you tell us what
19 physical characteristics associated with typical male
20 development are in your opinion not reversed if hormone
21 levels are changed later in life?

22 A. Again, so I don't know that I would off the top
23 of my head give an exhaustive list but a classic would
24 be height.

1 Q. Would you --- I understand your list may not be
2 exhaustive, but let me ask you to tell us all the
3 examples as you're able to sit here thinking today of
4 physical characteristics acquired during male puberty
5 that are not reversed if hormone levels are changed
6 later in life.

7 ATTORNEY BLOCK: Objection to form.

8 THE WITNESS: I don't know that I could
9 --- I don't know that I would want to accidentally go
10 down that path and conjecture too much, but if I'm
11 expanding a bit on height and thinking about bone
12 characteristics, especially there might be modest change
13 but significant residual bone would be the biggest
14 example. And some other elements --- I can't even say I
15 was about to say a bit proportional, but it's more
16 complicated than that, so other --- other tissues partly
17 influenced by that fact.

18 BY ATTORNEY BROOKS:

19 Q. If we jump down to the next paragraph it begins,
20 quote, the questions arise most with transgender women
21 who began hormone treatment after puberty. And then it
22 continues, quote, the situation includes most
23 transfeminine people because it is most common to
24 undergo endogenous puberty prior to seeking medical

1 interventions appropriate to gender identity. Have I
2 read that correctly?

3 A. Yes.

4 Q. And is it consistent with your experience that
5 most natal males who seek what you refer to as gender
6 confirming treatment do so after experiencing at least
7 most of the ordinary male puberty?

8 ATTORNEY BLOCK: Objection to form.

9 THE WITNESS: Yes. So just terminology,
10 just to be clear, so people who are recorded male at
11 birth who are looking for gender affirming is the term
12 but gender confirming is fine. And sorry, the question
13 there?

14 BY ATTORNEY BROOKS:

15 Q. I will ask it again. Is it consistent with your
16 personal experience that most natal males who seek
17 gender affirming treatment present after undergoing at
18 least most of a natural male puberty?

19 ATTORNEY BLOCK: Same objection to
20 terminology.

21 THE WITNESS: Yes. So most transgender
22 women who come seeking medical treatment have gone
23 through a typical male puberty, that is correct, right
24 now.

1 BY ATTORNEY BROOKS:

2 Q. And in your clinic most of them have gone
3 through what you would consider to be a complete male
4 puberty process?

5 A. I can't answer that completely because we define
6 puberty in this narrow way with the Tanner stages, but
7 then people continue to have development even beyond
8 that to a significant degree.

9 Q. But they have experienced, in your professional
10 experience, at least the bulk of the pubertal changes?

11 A. Yes, I mean the --- I guess --- the way I would
12 say it is, is that most of the transgender women who are
13 coming or even girls who are coming for medical
14 attention have gone through the classic Tanner stages of
15 puberty through Tanner five, which is the last one, by
16 the time they have determined that they're interested in
17 gender-affirming treatment, yes.

18 Q. And let's go back to the very first paragraph of
19 your article in which you mention about five lines down,
20 quote, concern for possible residual athletic advantages
21 from a history of typical male puberty, closed quote.
22 Do you see that language?

23 A. Let me find it. Where is it?

24 Q. It's about five lines down on the very first

1 paragraph of the article.

2 A. Oh, the middle of the sentence, exactly.

3 Q. And so in your opinion, it is concern for
4 possible residual athletic advantages from a history of
5 typical male puberty that drives a great deal of concern
6 about how to address inclusion of natal males who
7 experience a female gender identity in female athletics.

8 Am I correct?

9 ATTORNEY BLOCK: Objection to form.

10 THE WITNESS: So the concern about the
11 residual impact of testosterone during puberty for
12 transgender women who went through a typical male
13 puberty is the source of --- right, is a source of
14 tension at a medical sensitive level, yes.

15 BY ATTORNEY BROOKS:

16 Q. And that's an issue that, for instance, you
17 engage in extensive discussions about in connection with
18 your service on the committee for the IAAF.

19 Am I correct?

20 A. So the --- right, the conversation at World
21 Athletics now, but formerly IAAF, has dealt and I'm sure
22 will continue to deal with that which is the question of
23 to what degree are some of those characteristics, a
24 cause for relevant athletic advantage.

1 Q. And in your opinion, concern about possible
2 residual athletic advantages resulting from a history of
3 typical male puberty is legitimate concern.

4 Right?

5 ATTORNEY BLOCK: Objection to form.

6 THE WITNESS: Right. I don't know that
7 I'm as an expert commenting on its legitimacy. My role
8 on the committee is talking about what is.

9 BY ATTORNEY BROOKS:

10 Q. Do you have any expert opinion as to whether
11 concern for possible residual athletic advantages from a
12 history of typical male puberty is a legitimate concern?

13 A. I'm sorry. Say that again.

14 Q. Do you have any expert opinion as to whether
15 concern for possible residual athletic advantage from a
16 history of a typical male puberty is a legitimate
17 concern?

18 A. I don't know that I would --- again, I don't
19 know that I'm an expert on what is legitimate or not. I
20 come into the room as the scientist talking about what
21 is true and what is not true, what do we know and what
22 do we not know.

23 Q. So on the question then after the science has
24 been put on the table as to how to balance that with

1 other considerations of fairness, of inclusion, that is
2 not your expertise is what you are telling me?

3 A. That is right, that is not my expertise.

4 Q. If we go to page two, in the first column, the
5 second full paragraph begins because testosterone. Do
6 you see that paragraph?

7 A. I do.

8 Q. And you discuss there World Athletic
9 requirements, that is the former IAAF I believe you just
10 testified?

11 A. Yes.

12 Q. And the World Athletics has adopted a
13 requirement to suppress testerone (sic) to five
14 nanomolar per liter testosterone.

15 Correct?

16 A. World Athletics threshold is five nanomolar per
17 liter for those sports where they have a threshold.
18 That's right, yes.

19 Q. And at least formally the International Olympic
20 Committee had a ten nanomolar threshold as part of what
21 you would call out in this paragraph.

22 Is that correct?

23 ATTORNEY BLOCK: Objection to form.

24 THE WITNESS: Yes. So it was the case

1 that the International Olympic Committee Medical Group
2 was trying to form a unified approach just for purposes
3 of organization. And at that time a ten nanomolar per
4 liter suggestion was put out. And that is about as far
5 as it got because it then was shifted to all of the
6 individual international federations.

7 BY ATTORNEY BROOKS:

8 Q. You say in the final sentence of that paragraph,
9 quote, such thresholds are considered to be fair to
10 transgender women because they are well above the 1.7
11 nanomolar per liter target testosterone threshold in
12 medical treatment guidelines, closed quote.

13 Do you see that language?

14 A. Yes.

15 Q. Am I correct that in your professional
16 understanding the 1.7 nanomolar per liter target is set
17 because that's generally believed to be at the upper
18 range of testosterone levels in normal, healthy females?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: So the 1.7 nanomolar per
21 liter target is the upper level for adults cisgender
22 women.

23 BY ATTORNEY BROOKS:

24 Q. And with that clarified, can you explain to me

1 what you meant by the sentence that I just read, what
2 the point is there?

3 A. The point of the sentence is to --- I guess
4 there are a couple of considerations in terms of
5 determining these numbers, but --- so part of the point
6 is to identify numbers that are feasible for transgender
7 women on their medical treatment.

8 Q. Is there some other point to this sentence in
9 your understanding as it is offered?

10 ATTORNEY BLOCK: Objection to form.

11 THE WITNESS: So the sentence references
12 that piece, but there is the additional context of
13 having a number that is fair to the greater female
14 committee cisgender and transgender too.

15 BY ATTORNEY BROOKS:

16 Q. So it's fair in your judgment to transgender
17 women because the threshold that is being set gives,
18 what should we say, plenty of buffer above what is
19 considered to be the upper range of normal female
20 testosterone levels?

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: Right. So I'm not taking a
23 position on what is fair to be clear.

24 BY ATTORNEY BROOKS:

1 Q. Thank you.

2 A. But the concept of those in the room making that
3 distinction felt that this cutoff would be fair because
4 there would be, indeed, create some buffer and,
5 therefore, people who weren't perfectly at goal would
6 still be included.

7 Q. So because this may be important, let me
8 clarify, when you wrote such thresholds are considered
9 to be fair, you were not offering a personal opinion
10 about fairness but explaining the judgment that had been
11 made by this committee about fairness?

12 A. That's correct.

13 Q. Thank you. And did it cause you personally any
14 concern that the threshold --- that because the
15 threshold that was set was more than three times higher
16 than the upper bounds of testosterone concentrations in
17 normal healthy women, that that might be unfair to the
18 broader population of cisgender women?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: So to be clear, I'm not
21 rendering an opinion as an expert on what is fair, but I
22 can interpret the considerations of people having these
23 conversations. And so while it is true that the
24 laboratory range for testosterone for healthy cisgender

1 women has an upper limit of 1.7 nanomolar per liter,
2 there are cisgender women who, for a variety of reasons,
3 have numbers higher than that and so that and --- so
4 that is part of the consideration.

5 BY ATTORNEY BROOKS:

6 Q. Let me take you to the two paragraphs below that
7 to the paragraph that begins the societal priorities.
8 Do you see that paragraph?

9 A. I do.

10 Q. The last sentence of that paragraph reads if
11 advantage from testosterone is demonstrated, does
12 society want to implement rules that may indirectly
13 coerce transgender children to begin medical regimens
14 prior to their being ready and that they might never
15 actually choose otherwise, closed quote.

16 Do you see that language?

17 A. I do.

18 Q. Would you explain to me the concern that you are
19 expressing there?

20 A. If a societal goal --- and again here recognize
21 I'm not acting as an expert in this space, but I'm
22 trying to explain to my colleagues what people are
23 discussing. And if our concern is increased
24 participation in sport by various people, then you can

1 envision a circumstance where some girls farther along
2 in puberty have a testosterone advantage that could be
3 demonstrated. Again, not that we even have at this
4 point. And then we would be faced with that question,
5 which is that competing goal of making those transgender
6 girls participate in sports and a recognition if they
7 are sufficiently far along in their development that
8 they may have an advantage if we demonstrate such an
9 advantage.

10 Q. Let me see if I can break that out. Were you
11 talking here about a concern about a hypothetical rule
12 that says to a natal male who identifies as female that
13 you may play if you have suppressed testosterone --- you
14 may play if you have taken puberty blockers at an early
15 age but you may not play if you have not taken puberty
16 blockers from an early stage? Is that the hypothetical
17 structure that you were addressing in this sentence?

18 ATTORNEY BLOCK: Objection to form.

19 THE WITNESS: So the --- it is a
20 hypothetical and it would be that if we make a specific
21 testosterone lowering rule at a scholastic level, might
22 we run into a circumstance where we are encouraging
23 somebody to make medication who might not otherwise take
24 that medication.

1 BY ATTORNEY BROOKS:

2 Q. And staying away from questions of fairness and
3 speaking from what I think is a medical ethics
4 perspective, would you think it raises ethical problems
5 if society were to adopt a rule that permitted certain
6 individuals to compete in female athletics if they had
7 taken puberty blockers but did not permit them to
8 compete with the athletic if they had not taken puberty
9 blockers?

10 ATTORNEY BLOCK: Objection to form.

11 THE WITNESS: I think that's beyond where
12 I'm commenting as an expert witness. Some of that
13 decision is a society decision or for other experts.

14 BY ATTORNEY BROOKS:

15 Q. Do you consider yourself to have some expertise
16 on medical ethics?

17 A. Not as an expert.

18 Q. And you don't feel able --- you don't have any
19 opinion as you sit here today as to whether a policy
20 that created incentives for children to begin medical
21 regimes relating to gender transition could raise
22 medical ethical concerns?

23 A. Not as a medical expert, that's right.

24 Q. In the next paragraph --- and I think we said

1 this is just out in the last couple of weeks, this
2 publication.

3 Right?

4 A. It's very fresh. Number five, so yes.

5 Q. I'm not playing memory games. It says at the
6 top advance access publication 17 March 2022?

7 A. Good.

8 Q. So very recent?

9 A. Yes.

10 Q. And you believe you are reasonably current in
11 the science of this area?

12 A. I am reasonably current, indeed.

13 Q. I didn't ask if you know it all because nobody
14 knows it all, but you say at the beginning of this
15 paragraph much remains unknown scientifically. And you
16 continue, quote, for example, at what point in puberty
17 is advantage from testosterone significant. Is there a
18 point where such advantage would outweigh a priority to
19 outweigh all participants --- all to participate in
20 sport of some sort, closed quote.

21 Do you see that language?

22 A. I do.

23 Q. And actually the point in writing the second
24 sentence there --- strike that.

1 Let me just ask this in general. Do you have
2 an opinion as to how much of a performance advantage
3 would count for those --- for natal males versus natal
4 females, how much of a performance advantage would be,
5 quote, significant?

6 ATTORNEY BLOCK: Objection to form.

7 THE WITNESS: I do not have an opinion.

8 BY ATTORNEY BROOKS:

9 Q. And in your view, is that even a scientific
10 question?

11 ATTORNEY BLOCK: Objection to form.

12 THE WITNESS: Let me think. No, that
13 isn't a scientific question.

14 BY ATTORNEY BROOKS:

15 Q. And you --- and the next sentence is there a
16 point where an advantage, such an advantage would
17 outweigh a priority to motivate all to participate. Am
18 I correct that you also don't consider that to be a
19 scientific question?

20 A. That is correct.

21 Q. That is a value judgment?

22 ATTORNEY BLOCK: Objection to form.

23 THE WITNESS: So it's not a scientific
24 question. I can go a little more in --- I can expand a

1 little bit there which is to say that we have various
2 advantages and degrees of unfairness. So what could be
3 a scientific question, if we knew the answers, would
4 include the degree of advantage for some circumstance
5 versus another circumstance where we are able to measure
6 those things.

7 BY ATTORNEY BROOKS:

8 Q. But the question of whether an advantage on the
9 one hand outweighs a desire to be inclusive on the other
10 hand is a value question, not a scientific question?

11 ATTORNEY BLOCK: Objection to form.

12 BY ATTORNEY BROOKS:

13 Q. In your opinion.

14 ATTORNEY BLOCK: Objection to form.

15 THE WITNESS: So I guess I would just go
16 back to saying how I said it, which is the scientific
17 question in there would be to provide that degree of
18 difference and show, for example, that this would be ---
19 this is small advantages versus someone that we are
20 already do in society as big advantage and that would be
21 how --- that would be the role of the scientist.

22 BY ATTORNEY BROOKS:

23 Q. I understand that's what you would like to say,
24 but my question for you is, in your opinion, is the next

1 step of deciding of whether that advantage which has now
2 been scientifically detailed outweighs a priority to
3 motivate all to participate is a value decision.

4 ATTORNEY BLOCK: Objection to form.

5 THE WITNESS: Yeah, I don't --- I guess I
6 can't as an expert say for certain that in all
7 circumstances that is a value to consider.

8 BY ATTORNEY BROOKS:

9 Q. You continue among your lists of things that
10 are, quote, unknown scientifically, quote, for those who
11 have completed puberty, what duration of
12 testosterone-lowering treatment is sufficient to create
13 a level playing field in a given sport, closed quote.

14 Do you see that?

15 A. Yes.

16 Q. And in your view, the question of what duration
17 of testosterone lowering treatment, if any, can be
18 sufficient to create a level playing field in a given
19 sport is currently unknown scientifically?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: It's unknown scientifically
22 across virtually all sports. What duration of
23 testosterone lowering raises what degree of advantage.
24 It's just at that level. To go to the level playing

1 field is a whole further tier.

2 BY ATTORNEY BROOKS:

3 Q. And in your final paragraph I think you said at
4 the beginning that, in part, this was a call to the
5 field of endocrinology for needed research. In the
6 final paragraph you say, quote, we in the endocrine
7 healthcare community have much work to do to create an
8 evidence base to help guide decision makers so the
9 choices for transgender women in sport are data driven,
10 closed quote.

11 Have I read that language correctly?

12 A. Yes.

13 Q. So it's your view as of 2002 that the data that
14 we have available today are insufficient to enable data
15 driven choices about transgender participation in female
16 athletics.

17 Correct?

18 ATTORNEY BLOCK: Objection to form.

19 THE WITNESS: I would say that in 2022 we
20 have insufficient data to --- how would I say this, we
21 have insufficient data to make rules for, let's say,
22 transgender women, mostly talking about older more
23 developed people, that would address these concerns for
24 participation.

1 BY ATTORNEY BROOKS:

2 Q. Let me ask you to find your initial expert
3 report, which is Exhibit-1, and there I will ask you to
4 turn to paragraph 58. At the beginning of paragraph 58
5 you wrote in this report executed on January 21, 2022,
6 which is two months prior to the publication date of the
7 article we just looked at --- and actually, let me pause
8 and ask you, when did you write the article that we just
9 looked at? And the process always grinds on for a
10 little while. When do you think you substantially
11 completed the task?

12 A. I honestly don't remember.

13 Q. Sorry. The question was when do you think you
14 substantially wrote the text in the article that you
15 just looked at?

16 A. I honestly don't remember the details. We can
17 talk in years, so it would be 2022 and back into 2021.

18 Q. Okay.

19 So about the same time that you were preparing
20 this expert report?

21 A. There certainly would be some overlap.

22 Q. You wrote in paragraph 58, quote, even if
23 evidence were eventually to show that on average
24 transgender women have some level of advantage compared

1 to average non-transgender women, closed quote.

2 Do you see that language?

3 A. I do.

4 Q. Now, in fact, you are aware of substantial
5 evidence that, on average, transgender women do have
6 some level of advantage compared to advantage
7 non-transgender women.

8 Correct?

9 ATTORNEY BLOCK: Objection to form.

10 THE WITNESS: No, I'm not. So that isn't
11 my statement.

12 BY ATTORNEY BROOKS:

13 Q. And is the question --- so you served on the
14 IAAF Committee discussing questions of testosterone
15 levels. And in that context you did not become
16 acquainted with data showing that on average transgender
17 women have some level of advantage compared to average
18 non-transgender women?

19 A. Not in --- so, no. In the context of specific
20 sports, no.

21 Q. Do you consider the question of how much
22 advantage natal males have over natal females in
23 particular sports to be within your professional
24 expertise?

1 ATTORNEY BLOCK: Objection to form.

2 THE WITNESS: So sorry --- so cisgender
3 men versus cisgender women, that difference at an adult
4 level, is at my expertise to know that degree of
5 difference? Is that the question?

6 BY ATTORNEY BROOKS:

7 Q. It is.

8 A. No, that is not my expertise.

9 Q. And is it within your expertise to know the
10 level of advantage enjoyed by natal males who have
11 transitioned to female gender identity over cisgender
12 women in any particular sport?

13 ATTORNEY BLOCK: Objection to form.

14 THE WITNESS: So in the --- so if we are
15 talking cisgender women versus transgender women, it
16 would be in my expertise to know what data we have on
17 this subject, which is different from knowing the degree
18 of difference because we don't have those data.

19 BY ATTORNEY BROOKS:

20 Q. You say in paragraph 60, let me find this,
21 quote, there is no inherent reason why transgender women
22 physiological characteristics related to athletic
23 performance should be treated as any more of an unfair
24 advantage than the advantages that already exist among

1 different women athletes. Do you see that language?

2 A. I do.

3 Q. Now, earlier you told me rather emphatically
4 that the question of fairness is outside your
5 professional expertise.

6 Correct?

7 ATTORNEY BLOCK: Objection to form.

8 THE WITNESS: It is outside my expertise.

9 BY ATTORNEY BROOKS:

10 Q. So why did you offer here an opinion about what
11 is fair or unfair?

12 ATTORNEY BLOCK: Objection to form.

13 THE WITNESS: Right. So I'm not
14 determining the fairness per se as an expert, but I'm
15 simply talking about the inputs where somebody who is
16 determining what is fair --- where somebody is
17 determining what is fair would consider.

18 ATTORNEY BROOKS: Let me mark as Safer
19 Exhibit 4 an article by Professor Handelsman entitled
20 Circulating Testosterone on a Hormonal Basis of Sex
21 Differences in Athletic Performance.

22 ---

23 (Whereupon, Exhibit 4, Professor Handelsman
24 Article, was marked for identification.)

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ATTORNEY WILKINSON: Tab 18.

VIDEOGRAPHER: I'm sorry, what tab is it?

ATTORNEY BROOKS: Tab 18.

BY ATTORNEY BROOKS:

Q. And Doctor Safer, am I correct this is an article that you read with some care?

A. This is an article that I read with some care.

Q. You cited in your expert report.

Correct?

A. I think so.

Q. I think so, too. It's not a memory test. I retract the question. We will come to it shortly.

Let me ask you to turn in --- and let me ask you, do you know Professor Handelsman personally?

A. I do not.

Q. Have you encountered him in any other actions?

A. I have.

Q. Once, more than once?

A. That is also a trick question for me. For sure once.

Q. Okay.

Do you consider him to have a high reputation in the field?

1 A. If that question is as an expert I can't --- I
2 won't comment, but he certainly has published widely and
3 we quote him.

4 Q. What do you mean by we in that answer?

5 A. The rest of us in the field and I certainly
6 quote him in an expert opinion.

7 Q. All right.

8 And this article in particular we note you
9 widely reference?

10 A. This article is --- yeah, I think that is
11 actually a fair thing to say. It is as widely
12 referenced as anything in a relatively small field.

13 Q. Let me ask you to turn to the second page of
14 this article where Professor Handelsman in the first
15 full paragraph --- the second full paragraph begins
16 nevertheless. He says, quote, fairness is an elusive
17 subjective concept with malleable boundaries that may
18 change over time as social concepts of fairness evolve.

19 Do you see that?

20 A. I do.

21 Q. Do you agree with that statement?

22 A. As an expert I can't comment.

23 Q. You don't purport to be able to give any
24 definition of fairness?

1 ATTORNEY BLOCK: Objection to form.

2 THE WITNESS: Yes, not as an expert.

3 BY ATTORNEY BROOKS:

4 Q. And you don't have any opinion as to whether
5 standards of fairness can change over time?

6 ATTORNEY BLOCK: Objection to form.

7 THE WITNESS: I'm aware of the
8 conversation on the subject, of course, but if you are
9 asking me to comment as an expert, then no.

10 BY ATTORNEY BROOKS:

11 Q. If the actual evidence shows that the actual
12 scientific data were to show that, quote, on average
13 transgender women have, closed quote, a very large
14 advantage compared to average non-transgender women,
15 would you then have any view as to whether permitting
16 non-transgender women to compete in female categories is
17 fair?

18 ATTORNEY BLOCK: Objection to form. I'm
19 sorry, what's the quotation?

20 BY ATTORNEY BROOKS:

21 Q. If actual data were to show that on average
22 transgender women have a very large advantage compared
23 to non-transgender women, then would you have any
24 opinion as to whether it is fair to permit the

1 transgender women to compete in the female category?

2 ATTORNEY BLOCK: Objection to form.

3 THE WITNESS: No, that would not change.

4 I would simply as an expert I would talk about those
5 degrees of difference as information.

6 BY ATTORNEY BROOKS:

7 Q. But you would offer no opinion as to whether
8 permitting the participation in the female category was
9 or was not appropriate?

10 A. I would not offer an expert opinion. That's
11 right.

12 Q. Now, you say in paragraph 60 of your expert
13 record that there is, quote, no inherent why transgender
14 women's physiological characteristics related to
15 athletic performance should be treated as any more of an
16 unfair advantage than the advantages that already exist
17 among different women athletes, close quote. We have
18 looked at that language.

19 Correct?

20 A. You are reading that correctly.

21 Q. Thank you.

22 A. Whatever the question is.

23 Q. No question beyond that so far. And your point
24 I take it is that for any given sport some women just

1 have substantially more favorable physiques than others?

2 ATTORNEY BLOCK: Objection to form.

3 THE WITNESS: Right. So for any given
4 sport some women have advantages relatively to others,
5 yes.

6 BY ATTORNEY BROOKS:

7 Q. And in basketball some are simply genetically
8 going to be substantially taller than others?

9 A. In basketball some are taller than others, yes.

10 Q. I'm not speaking for you, I, at 5'8", in my
11 shoes for instance was --- am just physiologically
12 disadvantaged for basketball compared to a man who is
13 6'10"?

14 ATTORNEY BLOCK: Objection to form.

15 THE WITNESS: So as an expert I actually
16 wouldn't go there because there are other
17 characteristics in basketball per se.

18 BY ATTORNEY BROOKS:

19 Q. That's true, although I have none of them. But
20 is it, in your view, equally true that there is no
21 inherent reason why cisgender men's physiological
22 characteristics related to athletic performance should
23 be treated as any more of an unfair advantage for
24 competing in the women's category than the advantages

1 that already exist among different women athletes?

2 A. So yeah, let's go through this more slowly a
3 second so I'm clear.

4 Q. All I did was substitute cisgender men for
5 transgender women in that sentence. And my question is
6 doesn't your argument as stated there apply exactly with
7 equal force to cisgender male?

8 A. No.

9 Q. Why is that?

10 A. When we talk about --- when we're talking about
11 a range of characteristics among a range of people
12 versus something that might be systematically true or
13 not and so it just --- so the answer just ends up being
14 more complex.

15 Q. Well, you have testified that most natal women
16 --- pardon me, you testified that most natal males with
17 female gender identity have undergone at least the
18 majority of male puberty before they present for gender
19 affirming treatment.

20 Correct?

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: So most cisgender women
23 when they come to medical attention have gone through a
24 significant puberty, the five Tanner stages.

1 BY ATTORNEY BROOKS:

2 Q. And just to clarify, to use your terms, in
3 giving that answer you said cisgender women. That is
4 not what you meant.

5 Correct?

6 A. That is not what I meant, thank you.
7 Transgender women.

8 Q. And therefore, they systematically have gone
9 through --- systematically gone through physiologic
10 changes associated with male puberty?

11 ATTORNEY BLOCK: Objection to form.

12 THE WITNESS: So the --- so they --- they
13 have gone through male puberty. And there is something
14 on average that may be true there, but whether that
15 relates to an advantage in a specific sport I can't go
16 there.

17 BY ATTORNEY BROOKS:

18 Q. Well, the example that you gave earlier of a
19 systematic difference resulting from male puberty that
20 these transgender women enjoy is height, that is you
21 mentioned that earlier.

22 Correct?

23 A. Uh-huh (yes).

24 Q. So again, let me ask, given that according to

1 your testimony and experience the substantial majority
2 of transgender women have undergone most of male
3 puberty, why is it not equally true that there is no
4 inherent reason why cisgender men's physiological
5 characteristics related to athletic performance should
6 be treated as any more of an unfair advantages than the
7 advantages that already exist among different women
8 athletes?

9 A. So if I'm following this correctly then it's ---
10 then the answer to the question why are cisgender men
11 different than transgender women?

12 Q. Why does this logic apply differently to the
13 cisgender men than to the transgender women?

14 A. So let's see. It actually doesn't. So if you
15 have a sport where that --- where the advantage or ---
16 for the --- where a known advantage for cisgender men
17 versus cisgender women was sufficiently modest, and
18 again, I wouldn't be the judge of that, but you could
19 envision that becoming a coed sport.

20 Q. Are you offering an opinion that either
21 government or leagues have an obligation to do an
22 individual by individual assessment as to whether a
23 particular natal male who experiences a female gender
24 identity does or does not enjoy a physiological

1 advantage in the sport they wish to play in as a result
2 of typical male development that they had gone through?

3 ATTORNEY BLOCK: Objection to form.

4 THE WITNESS: Right, I'm not offering an
5 opinion. It was a long question.

6 BY ATTORNEY BROOKS:

7 Q. Would you like to hear the question back?

8 A. Sure, but I'm not offering an opinion on several
9 aspects.

10 ATTORNEY BROOKS: Would you read that
11 question back, please?

12 ---

13 (COURT REPORTER READS BACK PREVIOUS QUESTION.)

14 ---

15 BY ATTORNEY BROOKS:

16 Q. And your answer is?

17 A. So I'm not offering an opinion. I should expand
18 a bit because how that question was phrased as an
19 individual by individual person and most of these rules
20 are across a group of sports.

21 Q. And my question was about an individual person.

22 A. Your question was an individual person, but ---.

23 Q. Right. Looking at your paragraph 60, again, do
24 you believe there is --- are you offering an opinion ---

1 let me start that again. Are you able to identify for
2 me any inherent reason why a relatively weak or small or
3 slow male --- strike that.

4 You referenced in your report and also the
5 article we just looked at the IAAF regulations that
6 excluded from the female category any individual who has
7 circulating testosterone higher than five nanomolar per
8 liter. Do you recall that?

9 ATTORNEY BLOCK: Objection to form.

10 THE WITNESS: So just to clarify, it is
11 not --- that rule for five nanomolars is not across all
12 sports.

13 BY ATTORNEY BROOKS:

14 Q. And which sports in your recollection did that
15 apply to?

16 A. Yeah, that's --- I don't remember off the top of
17 my head.

18 Q. At the very least it applied to track events.
19 Correct?

20 A. It does. But if you start to quiz me on the
21 specific distances, I won't get that.

22 Q. And nor will I so quiz you. And that
23 requirement as applied to track competition was, in
24 fact, the subject of a major international arbitration,

1 as you're aware.

2 Correct?

3 A. If we're referencing the Caster Semenya case,
4 yes.

5 Q. Did you yourself have any participation in that
6 arbitration?

7 A. I did not.

8 Q. Do you know whether Doctor Handelsman had any
9 participation in that?

10 ATTORNEY BLOCK: Objection.

11 THE WITNESS: I don't know off the top
12 off of my head.

13 BY ATTORNEY BROOKS:

14 Q. Have you ever read the arbitrarial decision in
15 that case?

16 A. I'm certain I read excerpts, but that is as much
17 as I could say.

18 Q. Okay.

19 You participated in developing on the --- a
20 member of the committee that developed the regulation
21 that you've referenced, the 7.5 nanomolar threshold?

22 A. I was on the committee that helped determine
23 that particular threshold conceptual, yes.

24 Q. And you're aware that in addition to individuals

1 such as Caster Semenya, who suffered of a disorder of
2 sexual development, that that rule would exclude some
3 transgender women from female athletics that were
4 subject to that IAAF rule.

5 Correct?

6 ATTORNEY BLOCK: Objection to the
7 terminology.

8 THE WITNESS: So I was aware that by
9 setting a threshold that there --- and even that
10 threshold in particular, that there would be transgender
11 women who would not achieve that threshold for whatever
12 reason.

13 BY ATTORNEY BROOKS:

14 Q. And did you nevertheless consider the regulation
15 to be reasonable?

16 A. If you are asking me as an expert, then again I
17 can't comment.

18 Q. Well, let me just ask you as Doctor Safer.

19 A. Am I allowed to ---?

20 ATTORNEY BLOCK: Objection to form.

21 BY ATTORNEY BROOKS:

22 Q. You are allowed.

23 A. Okay. So having a rule does make sense to me,
24 yes.

1 Q. And you thought that that rule was reasonable?

2 A. As with the data we have currently, yes,
3 personally.

4 Q. And what, in your opinion, is the inherent
5 reason that advantages conferred by testosterone levels
6 far outside the normal female range should be treated as
7 any more of an unfair advantage than the advantages that
8 already exist among different women athletes?

9 ATTORNEY BLOCK: Objection. I'm sorry.
10 Can you clarify as an expert or as an individual just
11 because you shifted back and forth?

12 BY ATTORNEY BROOKS:

13 Q. First as an expert.

14 A. So yes --- give me the question again. I'm
15 sorry.

16 Q. What, in your opinion, is the inherent reason
17 that advantages conferred by testosterone levels outside
18 the normal female range should be treated as any more of
19 an unfair advantage than the advantages that already
20 exist among different women athletes?

21 A. So to clarify we --- so, okay, let me go back.
22 Let me answer in pieces I guess or ask you to say it in
23 pieces. So what is different between typical male
24 levels of testosterone in an individual and some other

1 characteristics that are across the range of
2 characteristics of cisgender women? Is that the
3 question? Am I rephrasing that correctly?

4 Q. I'm actually referencing paragraph 60 of your
5 expert report, but my question --- and let's take for
6 instance, a natal male who has press testosterone but
7 only achieved six nanomolar per liter concentration, do
8 you have that concentration, do you have that in mind?

9 A. A transgender woman whose testosterone level is
10 six.

11 Q. Right. What in your opinion is the inherent
12 reason that advantages conferred by testosterone levels
13 above a threshold such as five nanomolars should be
14 treated as any more of an unfair advantage than the
15 advantages that already exist among different women
16 athletes?

17 ATTORNEY BLOCK: Objection to form.

18 THE WITNESS: So a couple of things.
19 First of all, I don't know that a testosterone level of
20 six is from a scientific perspective demonstratively
21 different than a testosterone level of five. It's just
22 a matter of affecting it overall. So I want to clarify
23 that. It's not that --- that that small degree is
24 necessarily relevant. And I can't even say that we

1 demonstrated advantage. It's still a theoretical with
2 regard to some of those higher testosterone levels. Let
3 me think about those for a second. Yes, so some of the
4 logic pattern for having a threshold is in order to be
5 able to limit the entire conversation to dealing with
6 transgender women or women with --- or intersex women or
7 women who for any reason have have elevated testosterone
8 levels and not to open the door at the elite level for a
9 participation by cisgender men posing as cisgender women
10 if that makes sense.

11 BY ATTORNEY BROOKS:

12 Q. Is there, in your judgment, any inherent reason
13 that advantages conferred by testosterone levels well
14 outside normal female ranges should be treated as any
15 more of an unfair advantage than the advantages that
16 already exist among different women athletes?

17 A. So I have to go back to that one. Is it my
18 opinion that male level testosterone levels ---?

19 Q. Let me --- my question is testosterone levels
20 significantly above normal female ranges?

21 A. Are --- then no, sorry. It took me a little
22 while to get there, but no.

23 Q. Because the question was complicated and the
24 answer was broken up I will ask you again, not to insult

1 you but so we have a clear record. I think I understood
2 your answer but is there, in your opinion, any reason
3 why advantages provided by testosterone level well
4 outside normal female ranges should be treated as any
5 more of an unfair advantage than the advantages that
6 already exist among different women athletes?

7 ATTORNEY BLOCK: Objection to form.

8 THE WITNESS: And as an expert I'm not
9 rendering an opinion there, that's right.

10 BY ATTORNEY BROOKS:

11 Q. Okay.

12 In paragraph 55 of your ---.

13 ATTORNEY BLOCK: Would now be a good time
14 for a break?

15 ATTORNEY BROOKS: Let me just ask this
16 one question and then yes.

17 BY ATTORNEY BROOKS:

18 Q. In paragraph 55 you cite a 2015 article by
19 Joanna Harper?

20 A. I do, yes.

21 Q. Have you ever met Joanna Harper?

22 A. I have.

23 Q. And have you collaborated with Joanna Harper in
24 any way?

1 ATTORNEY BLOCK: Objection to the form.

2 THE WITNESS: Yeah, I don't, but I guess
3 --- it's a complicated answer, so I need to know what
4 you mean by that.

5 BY ATTORNEY BROOKS:

6 Q. I mean it broadly. Have you worked with her on
7 any sorts of projects or committees?

8 A. Well, we were both in the working group for
9 World Athletics that helped develop this threshold.

10 Q. And do you consider Doctor Harper to be
11 knowledgeable in the field of sports physiology?

12 A. I do.

13 Q. And do you consider Doctor Harper to be
14 knowledgeable with regard to the impact of testosterone
15 suppression on athletic capabilities in male?

16 A. So do I consider her to be knowledgeable in the
17 field? I certainly do. For what it's worth, she is
18 still Ms. Harper. She's actually in the Ph.D. program
19 now.

20 Q. Oh, okay. I just gave her an honorary degree.

21 A. She occupies a prominent place in the field.

22 ATTORNEY BROOKS: Let's take that break.

23 VIDEOGRAPHER: Going off the record. The
24 current time is 10:25 a.m. Eastern Standard Time.

1 OFF VIDEOTAPE

2 ---

3 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

4 ---

5 ON VIDEOTAPE

6 VIDEOGRAPHER: We are back on the record.

7 Current time reads 10:39 a.m. Eastern Standard Time.

8 BY ATTORNEY BROOKS:

9 Q. Dr. Safer, let me ask you to go back to Exhibit
10 4 Professor Handelsman's article. And if you would turn
11 in that article to page 805, the first paragraph begins
12 the strongest classification in a league sport is that
13 after puberty men 20 times more testosterone than women.

14 Do you see that language?

15 A. I do.

16 Q. And he discusses a number of results and ends
17 his paragraph by saying in concert --- quote, in concert
18 these render women on average unable to compete
19 effectively against men in power based or endurance
20 based sports.

21 Do you see that?

22 A. I do.

23 Q. And do you consider yourself qualified to
24 evaluate Professor Handelman's assertion that women are

1 on average unable to compete effectively against men in
2 power based or endurance based sports?

3 A. No.

4 Q. Not qualified?

5 A. Not qualified, correct.

6 Q. Do you believe you have an understanding ---
7 well, let me ask you this. Do you consider yourself
8 qualified to offer any opinion as to why sports have
9 been separated by sex historically?

10 A. I guess I would say I'm aware of the history.

11 Q. And in your understanding what is the reason
12 that sports have been separated by sex historically?

13 A. The history is that at a certain point where
14 sufficient development has taken place there is a
15 differential in at least some sports between men and
16 women --- between cisgender men and cisgender women such
17 that in order for women to win those events reliably
18 there needs to be a carve-out.

19 Q. And as you sit here today can you identify for
20 me any sport in which you believe that cisgender men
21 after puberty do not enjoy a significant performance
22 advantage over cisgender women?

23 A. Yes.

24 Q. Please do.

1 A. Examples include --- well, I guess I better not
2 get too far and be the expert here, but I believe
3 riflery and others in the category of hand/eye
4 coordination. I think some of the equestrian sports are
5 examples.

6 Q. Okay.

7 You are not offering any opinion, are you, that
8 the reason for separation of sports by sex is to affirm
9 sex specific social roles or identities?

10 A. I'm not aware of that. I'm not an expert on
11 those pieces, but I'm not aware personally.

12 Q. And it is not your opinion, is it, that
13 separation of sport by sex is in general unfair?

14 ATTORNEY BLOCK: Objection to form.

15 THE WITNESS: So again, as an expert I'm
16 not commenting on fairness.

17 ATTORNEY BROOKS: I'm going to mark as
18 Safer Exhibit 5, a Decision in the arbitral award
19 delivered in the Court of Arbitration for Sport in
20 connection with the arbitration between Athletic South
21 Africa and the IAAF, a bulky document, unfortunately.

22 ---

23 (Whereupon, Exhibit 5, Court of Arbitration
24 for Sport Decision, was marked for

1 identification.)

2 ---

3 BY ATTORNEY BROOKS:

4 Q. And Doctor Safer, now that you have --- I asked
5 you earlier about whether you had seen the arbitration
6 decision and I think you said you might have read
7 excerpts of it. Looking at it today, do you believe
8 that you have ever seen a copy of the whole Decision?

9 A. I do not think I've read through the whole
10 Decision.

11 Q. Do you think you've ever held this whole
12 document in your hand before?

13 A. This is the first time that I held the whole
14 document.

15 Q. I'm going to ask you about a few quotations in
16 it, not to ask your opinions about the judgment but to
17 elicit your opinions about the science. So if you would
18 turn --- and the structure of the document is that
19 everything in it has a paragraph number which, thank
20 goodness, makes it easy to find things. So if you would
21 turn to paragraph 556. The first sentence of
22 paragraph 556 of this Decision reads there is no dispute
23 that ensuring fair competition in the female category of
24 elite competitive athletics is a legitimate objective

1 for the IAAF to pursue, closed quote. As a member of
2 the IAAF Committee that established the policy that was
3 challenged in this arbitration, do you agree or disagree
4 that there is no dispute that ensuring fair competition
5 in the female category is a legitimate objective for the
6 IAAF to pursue?

7 ATTORNEY BLOCK: Objection to form.

8 THE WITNESS: As an expert I do not have
9 an opinion.

10 BY ATTORNEY BROOKS:

11 Q. Okay.

12 Let me ask you to turn to paragraph 456. And
13 this arbitration, as you noted, deals with the case of
14 Caster Semenya and therefore with track events, not with
15 riflery or with equestrian events. So I will ask your
16 reaction to that context. In the middle of
17 paragraph 456, beginning halfway through the sixth line
18 the panel wrote, quote, suffice to say that post puberty
19 generally speaking males outperform female athletes ---
20 I'm sorry, male athletes outperform female athletes at
21 an elite level. This difference is insurmountable,
22 closed quote.

23 Do you see that?

24 A. I do.

1 Q. And do you believe it to be true, false or
2 outside of your expertise that male athletes outperform
3 female athletes at the elite level at a difference that
4 is insurmountable?

5 ATTORNEY BLOCK: Objection to form.

6 THE WITNESS: As a blanket statement, no,
7 I would say that is not my expertise.

8 BY ATTORNEY BROOKS:

9 Q. Let me ask you to turn to 576. I said 576. I
10 meant 577. I apologize. At the end of 577 the panel
11 has written, quote, ---.

12 ATTORNEY BROOKS: We just had static
13 here, so let me ask whether people outside the
14 conference room are hearing us? If somebody could
15 unmute.

16 ATTORNEY TRYON: I can hear you.

17 ATTORNEY BROOKS: We just had some static
18 that caused me concern.

19 BY ATTORNEY BROOKS:

20 Q. At the end of paragraph 577 the panel wrote,
21 quote, male athletes do not have to be elite to surpass
22 even the very best female athletes. Dr. Berman pointed
23 out that in a race such as the 800 meter, a 1.6 percent
24 advantage, as calculated in BG17, was sufficient to

1 determine first place by the region of nine meters,
2 closed quote.

3 Do you see that language?

4 A. Yes.

5 Q. And do you consider it to be true, false or
6 outside your expertise that male athletes do not even
7 have to be elite to surpass the very best female
8 athletes?

9 ATTORNEY BLOCK: Objection to form.

10 THE WITNESS: In a --- as a blanket
11 statement it is outside my expertise.

12 BY ATTORNEY BROOKS:

13 Q. And do you have an opinion as to whether a
14 1.6 percent advantage is a significant advantage or
15 insignificant advantage?

16 A. I think that's too complicated as phrased for me
17 to answer.

18 Q. That's actually one of the simpler questions
19 that I've asked today. Let me ask it again and ask you
20 to think. Do you have an opinion, and if you --- one
21 answer of course is I don't have an opinion or it is
22 outside of my expertise, but do you have an opinion as
23 to whether a 1.6 percent advantage in a track event is a
24 significant advantage?

1 ATTORNEY BLOCK: Objection to form.

2 THE WITNESS: So it depends on the event.

3 BY ATTORNEY BROOKS:

4 Q. Why does it depend on the event?

5 A. Well, there are events where we see --- as an
6 elite Olympic event where the runners are virtually
7 tied. And 1.6 percent then will be significant in the
8 moment because that will be described in that field.
9 And yet there are other events where people are far more
10 spread out and there's greater --- in every element,
11 then 1.6 percent advantage becomes lost in that noise.

12 Q. And --- well, let's take competitive high school
13 athletics, competitive high school track. Do you have
14 an opinion as to 1.6 percent advantage in that context
15 is significant or insignificant?

16 A. I do not have an opinion.

17 Q. So if I understand correctly, your point in some
18 context you know that 1.6 percent is significant but
19 that in other context you don't know one way or the
20 other?

21 ATTORNEY BLOCK: Objection to the form.

22 THE WITNESS: Yes, I guess I would say
23 that in some context I can see that 1.6 percent is
24 significant and then in other context I can see that 1.6

1 percent does not appear to be significant. And actually
2 even if you're asking as an expert, what even is
3 significant is outside my purview, but with that
4 understood I can still see that someone would say it one
5 way and not say it the other way.

6 BY ATTORNEY BROOKS:

7 Q. Let me ask you to turn to paragraph 357. And
8 first I will ask you to turn to page 88, paragraph 351,
9 just so you can see we're in a section summarizing the
10 testimony of Professor David Handelsman. That begins at
11 paragraph 351. And then I'm going to call your
12 attention to paragraph 357 and it puts you to the
13 statement there.

14 357 includes a number of bullet points. The
15 third bullet point, which is on page 91, reads --- and
16 again this is --- the paragraph begins, quote, Professor
17 Handelsman went on to explain in greater detail why the
18 sex difference in circulating testosterone is the cause
19 of the difference in athletic performance between men
20 and women, and then there are bullet points. The third
21 bullet point reads, on average, women have 50 to
22 60 percent of men's upper arm muscle cross-sectional
23 area, 65 to 70 percent of men's thigh muscle
24 cross-sectional area, 50 to 60 percent of men's limb

1 strength and 60 to 80 of men's leg strength. Do you see
2 that language?

3 ATTORNEY BLOCK: Objection to form.

4 THE WITNESS: I do.

5 BY ATTORNEY BROOKS:

6 Q. Do you have any knowledge as to whether those
7 statistics are on correct as given by Dr. Handelsman?

8 A. I do not.

9 Q. And do you have any expert knowledge as to how
10 those statistics do or do not change under the influence
11 of testosterone suppression in natal males who
12 experience a female gender identity?

13 ATTORNEY BLOCK: Objection to
14 terminology.

15 THE WITNESS: So I guess the --- I have
16 no expert knowledge about these numbers, per se, but I
17 do know as an expert that when testosterone levels are
18 suppressed in transgender women and actually in
19 cisgender men, anyone, that these numbers are decreased.
20 And I can say that with confidence as an expert.

21 BY ATTORNEY BROOKS:

22 Q. But you're not able to quantify that decrease.
23 Is that correct?

24 A. I cannot quantify that decrease. The data gets

1 murky when we start to get there.

2 Q. Have you ever met Professor Coleman at Duke
3 University?

4 A. Doriane Coleman?

5 Q. Yes.

6 A. I have.

7 Q. And in what context have you interacted with
8 Professor Coleman?

9 A. The --- a professional context.

10 Q. Can you describe the context?

11 A. We have served on some of these --- two of the
12 same committees --- committee task force, whatever you
13 call it, for World Athletics together.

14 Q. Was she, in fact, on the committee which you
15 participated that set the five nanomolar standard for
16 the IAAF?

17 A. I don't recall for sure but I think not.

18 Q. Then can you identify for me the two committees
19 that you recall that you did sit on with Professor
20 Coleman?

21 A. Subsequent to the initial group, and I don't
22 know that it's two committees, it may be the same
23 committee, they get renamed. Things like that happen.
24 So it is --- I'm thinking forward to assisting other

1 international federations with their rule making.

2 Q. And do you consider Professor Coleman to be
3 knowledgeable about the relative athletic capabilities
4 and records of male and female athletes?

5 A. To me that's too vague a question. She's a
6 lawyer.

7 Q. Are you aware also of her athletic background as
8 a competitive athlete?

9 A. I am.

10 Q. And are you aware of her research and
11 publications having to do with athletic records and
12 capabilities of male and female athletes?

13 ATTORNEY BLOCK: Objection to form.

14 THE WITNESS: I'm aware of some of her
15 publications where she has co-authored, but she's not
16 usually the physiology expert in the group.

17 BY ATTORNEY BROOKS:

18 Q. Let me ask you to turn to paragraph 393. And if
19 you look at the page you will see that this is within
20 the tribunal summary of testimony of Professor Coleman.
21 Let me ask you since you dealt personally with the
22 professor, because I want the record to be respectful,
23 does she in general use --- prefer to be referred to as
24 Professor Lambelet-Coleman or simply Professor Coleman?

1 A. I don't know the answer.

2 Q. Okay.

3 A. I prefer to her on a first name basis.

4 Q. All right.

5 I will stick with the shorter version. In
6 paragraph 393 the panel describing Professor Coleman's
7 submission states, quote, Professor Lambelet-Coleman's
8 report compared the lifetime best performance of three
9 elite female athletes in the 400-meter event with the
10 performance of male athletes in the same event during a
11 single year, 2017, period. This showed not only that
12 the elite females would have lost to the best men by a
13 margin of about 12 percent but also that even at their
14 absolute best the elite females would have lost to
15 thousands of other boys and men by a much smaller
16 margin, closed quote. Do you see that language?

17 A. I do.

18 Q. And do you have any reason to doubt the accuracy
19 of that summary of athletic performance statistics?

20 A. I can't render an expert opinion there.

21 Q. Do you as you sit here today have any reason to
22 doubt the accuracy of those statistics?

23 A. Again, I cannot comment as an expert. I guess
24 that's the bottom line.

1 Q. If it is true that the most elite female
2 athletes performing at their absolute best would lose to
3 thousands of others boys and men. It is also true,
4 would you not agree, that the very best female college
5 athletes would lose to even a larger number of
6 collegiate boys and men?

7 A. If I'm speaking as an expert, then I'm not
8 rendering an opinion there.

9 Q. How about as a highly educated and intelligent
10 professor?

11 A. Simply in that context, it would be true that
12 --- that it would least be true at some level in the
13 elite levels of college.

14 Q. And the very best female high school athletes
15 would lose to an even larger number of high school boys.

16 Correct?

17 A. So now I can render a little bit of an expert
18 comment, which is that as you move down that line, the
19 degree of difference falls because the degree of
20 testosterone impact on body is evolving across those
21 ages.

22 Q. If it's true that the world fastest female
23 athletes would lose to thousands of boys and men then it
24 is inevitably true, is it not, Doctor Safer, to say that

1 the very best female high school athletes would lose to
2 even larger numbers of high school boys?

3 ATTORNEY BLOCK: Objection to form.

4 THE WITNESS: So the --- it is the coils
5 here. So it would be larger numbers of cisgender men in
6 general, including people who are older than they are,
7 but I'm not sure where that would be going.

8 BY ATTORNEY BROOKS:

9 Q. Let me take you back to your expert report,
10 Exhibit 1, and take you to paragraph 48. Actually, let
11 me have the Declaration, which is Tab 50.

12 ATTORNEY BROOKS: Let me mark as Safer
13 Exhibit 6 a Declaration of Dr. Safer executed in
14 May 10th, 2021.

15 ---
16 (Whereupon, Exhibit 6, 5/10/21 Declaration
17 of Dr. Safer, was marked for
18 identification.)

19 ---

20 BY ATTORNEY BROOKS:

21 Q. And I apologize, it's paragraph 50. Dr. Safer,
22 did you, in fact, prepare and execute this Declaration
23 in the time leading up to May 26, 2021?

24 A. Yes.

1 Q. And you state in paragraph 48 that, quote, age,
2 grade competitive sports records show minimal or no
3 difference in athletic performance between
4 non-transgender boys and non-transgender girls before
5 puberty, and you cite Handelsman, the article that we
6 have been looking at.

7 Correct?

8 A. Yes.

9 Q. And what research did you do to arrive at the
10 conclusion that age grade competitive sports records
11 show minimal or no difference in athletic performance
12 between non-transgender boys and non-transgender girls?

13 A. Is the question of original research on my part?

14 Q. No, what steps did you take to arrive at that
15 conclusion?

16 A. Reading relevant literature.

17 Q. You cited only Professor Handelman's 2018
18 article. Did you read other literature that gave you
19 comfort that is a true statement?

20 A. I have read other literature, but I would
21 suggest that Doctor Handelsman gave --- Doctor
22 Handelsman's paper is the best summary of the point.

23 Q. And again, in making this statement, what did
24 you consider to be a minimal difference?

1 A. When I'm thinking about this as a scientist it
2 is a difference where I'm not sure if it is true or
3 whether it is significant when defining the word
4 minimum.

5 Q. You just defined minimal by using the work
6 significant. You force me to ask you what do you mean
7 by significant?

8 A. Sorry. So as a scientist --- well, there are
9 two definitions of significant. So the one is that it
10 is relevant for those --- for decision makers. And that
11 actually gets outside of my expertise. And then we do
12 use it as a term of art in science as well.

13 Q. You meant statistically significant?

14 A. The second would be statistically significant,
15 that's right.

16 Q. Dr. Safer, you deleted that sentence from your
17 expert report.

18 Is that correct?

19 A. I have to look.

20 Q. I don't mean it to be a trick question. Let me
21 ask you this. Do you recall removing that sentence as
22 you revised your Declaration to create your expert
23 report?

24 A. No.

1 Q. All right.

2 A. I don't recall.

3 Q. We will just move on to the science and not ask
4 you deleted the question. Let me take you to paragraph
5 44 of your expert report, Exhibit 1. And just to be
6 sure, you are on the expert report now and not the
7 Declaration? They are so similar that it is easy to get
8 confused.

9 A. Yes.

10 Q. Paragraph 44 you say in the second sentence,
11 increased testosterone begins to affect athletic
12 performance at the beginning of puberty, but those
13 effects continue to increase each year of puberty until
14 about 18, with the full impact of puberty resulting from
15 the cumulative effect of each year. Do you see that
16 language?

17 A. I do.

18 Q. And just to clarify, in making this statement
19 what do you refer to as, quote, the beginning of
20 puberty? And we're talking about male typical puberty
21 in this discussion so as to clarify. So what do you
22 have in mind as the beginning of male puberty?

23 A. So the answer is complex. The typical male
24 puberty is defined as beginning with what we label as

1 Tanner 2. And in terms of when you would see impact on
2 athletic performance, per se, is not well established.

3 Q. And now stretching that in both directions, on
4 the one hand Tanner Stage 2, if I'm correct, is
5 essentially defined as certain first observable physical
6 changes in a boy's body.

7 Right?

8 A. Tanner 2 is specifically defined as specific
9 observable changes in a person's body, yes.

10 Q. And therefore, testosterone levels have begun to
11 increase even before the first observable changes that
12 result.

13 Correct?

14 A. The way it's understood in medicine is it is
15 reflective of existing reality. So it is not
16 necessarily --- you know, only in the absolute.

17 Q. Well, as a medical doctor, you would agree with
18 me or would you not that testosterone levels must
19 increase in the body before observable changes in the
20 body caused by testosterone can be --- can come about?

21 ATTORNEY BLOCK: Objection to the form.

22 THE WITNESS: So it must be the case that
23 the testosterone levels would have to rise prior to
24 their having a noticeable effect, that is true.

1 BY ATTORNEY BROOKS:

2 Q. Cause has to precede effect?

3 A. Cause in this case has to precede effect,
4 exactly. But I caution that it is not clear that that's
5 something that we could parse out medically in a given
6 person in a reasonable way. That is I don't know that I
7 could do a blood test and catch it as it were.

8 Q. Okay.

9 Can you explain to me what you were referring
10 to when you mentioned the cumulative effect of pubertal
11 changes at the end of that sentence?

12 A. Where are we now?

13 Q. We are in the second sentence of paragraph 44 of
14 Exhibit-1. And you say at the end with a full impact of
15 puberty resulting from the cumulative effect of each
16 year, and if you would explain for the Court what you
17 meant by cumulative effect that would be helpful.

18 ATTORNEY BLOCK: Objection to form.

19 THE WITNESS: So the testosterone has
20 impact on certain tissues, and then it continues to have
21 impact on tissues. And I don't know that I have any
22 greater explanation for the right cumulative impact.

23 BY ATTORNEY BROOKS:

24 Q. So your point is that by the age of 18 whatever

1 advantages in athletic performance a particular male has
2 is due to body changes that have happened each year
3 since puberty began, not due simply to the testosterone
4 level of that individual at age 18?

5 ATTORNEY BLOCK: Objection to form.

6 THE WITNESS: The meaning isn't as --- I
7 guess I would be careful about overstating it, so there
8 can --- there might be some impact earlier and then
9 there might be additional impact over time, but --- and
10 so in the absolute it would be true to say that all of
11 the effect doesn't occur at Tanner 5, which is the
12 defined end.

13 BY ATTORNEY BROOKS:

14 Q. Okay.

15 The cumulative physiological changes that you
16 are referring to here result from a multi-year history
17 of male typical levels of testosterone by age 18.

18 Correct?

19 A. Yes. Well, even that is --- there's complexity
20 but yes.

21 Q. You say --- sorry, we are jumping back and
22 forth.

23 A. Actually, just continuing a little bit further,
24 it's also about age 18 is not a trivial word.

1 Q. Understood. And I simply used that as a
2 representative end marker and for some individuals it
3 would be earlier and for some individuals it would be
4 later.

5 Correct?

6 A. That's right, even with the college athletes.

7 Q. You state at the beginning of paragraph 44 that,
8 quote, the concerns that animated the World Athletics
9 and prior IOC policies are even more attenuated for
10 students in the middle of high school where athletes
11 typically range from 11 to 18.

12 Do you see that?

13 A. I do. Was this paragraph 44?

14 Q. It is. And by attenuated you mean the same in
15 nature but smaller in scale.

16 Correct?

17 ATTORNEY BLOCK: Objection to form.

18 THE WITNESS: Yeah, I can't even say that
19 so --- yeah, I can't ---.

20 BY ATTORNEY BROOKS:

21 Q. Isn't that what attenuated means?

22 ATTORNEY BLOCK: Objection to form.

23 THE WITNESS: Attenuated is both in scale
24 and type in this case.

1 BY ATTORNEY BROOKS:

2 Q. All right.

3 You are not here or anywhere denying that the
4 same type of concern, that is physiological advantages,
5 exist at for instance age 15?

6 ATTORNEY BLOCK: Objection to form.

7 THE WITNESS: So sorry, say that again.

8 BY ATTORNEY BROOKS:

9 Q. You are not in this paragraph or anywhere
10 offering an opinion that the same type of concerns, that
11 is physiologic or in performance advantages, exist to
12 some degree at, for instance, age 15?

13 ATTORNEY BLOCK: Objection to form.

14 THE WITNESS: I'm not offering an opinion
15 there, that's right.

16 BY ATTORNEY BROOKS:

17 Q. And the same is true at age 13?

18 ATTORNEY BLOCK: Objection to form.

19 THE WITNESS: I'm not --- so I guess as
20 we --- as you move along to the continuum, then ---.

21 BY ATTORNEY BROOKS:

22 Q. It gets more attenuated?

23 A. The opinion --- right, the opinion shifts
24 because it depends on context.

1 Q. In paragraph 49 of your expert report you write
2 in the third full sentence, quote, West Virginia
3 categorically prevents girls who are transgender from
4 participating on girls teams regardless of whether they
5 are prepubertal, receiving puberty blockers, or
6 receiving gender-affirming hormone therapy, closed
7 quoted. Do you see that?

8 A. I do.

9 Q. What in your opinion is the significance of that
10 statement? What is your point?

11 ATTORNEY BLOCK: Objection. Could you
12 just give him some time to read the context?

13 BY ATTORNEY BROOKS:

14 Q. Yes.

15 A. So I guess I maybe make the --- help me with
16 where you're going with that question. I'm --- the rule
17 as written includes all transgender girls.

18 Q. Are you --- did you mean to suggest that medical
19 science would dictate that the West Virginia law should
20 make an exception for natal males who have
21 suppressed puberty?

22 ATTORNEY BLOCK: Object to form.

23 THE WITNESS: The context for the --- the
24 context of different transgender girls with different

1 degrees of treatment and different stages of puberty are
2 different. I guess that's as much I would say. I'm not
3 expressing an opinion about what the --- I'm serving
4 here just as a scientist in terms of what the --- what
5 the --- what we know about athleticism.

6 BY ATTORNEY BROOKS:

7 Q. You are not offering an opinion that either
8 science or reasonableness requires that West Virginia's
9 laws make an exception for natal males who have
10 suppressed puberty?

11 ATTORNEY BLOCK: Objection to form.

12 THE WITNESS: I'm not offering an opinion
13 that that would be --- that would be a logical law for
14 transgender girls in that circumstance.

15 BY ATTORNEY BROOKS:

16 Q. And in the article that we began today looking
17 at you expressed concern about policies that would
18 create incentives for children to begin puberty
19 blockers, would you not?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: So earlier in my --- I
22 reference that as a concern. I want to be clear that as
23 an expert I'm not suggesting that --- I'm not suggesting
24 an expert opinion that these needs to be concerns. I'm

1 raising the issues that we are considering.

2 BY ATTORNEY BROOKS:

3 Q. Well, what you wrote to educate your colleagues
4 as an endocrinologist, you, Professor Safer, raise that
5 as a concern?

6 ATTORNEY BLOCK: Objection to form.

7 THE WITNESS: To be clear, I raised it as
8 a concern of the community. I did not take an opinion
9 in that article that it was a concern that I was
10 offering as an expert.

11 BY ATTORNEY BROOKS:

12 Q. Well, let me ask you as a medical doctor sitting
13 here today, an endocrinologist, it would cause you
14 concern, would it not, that policies are adopted that
15 created incentives for children to start puberty
16 blockers when they might otherwise not choose to do so?

17 ATTORNEY BLOCK: Objection to form and to
18 scope.

19 THE WITNESS: It's too broad of a
20 question as you're asking it because there is certainly
21 --- in medicine it is certainly the case that we fear
22 coercing people to certain treatments and certain
23 circumstances but they are certainly alternate examples
24 where we very much coerce people to have certain medical

1 interventions. And so as an expert I have no opinion,
2 as we said already. And simply as somebody trying to be
3 logical and thoughtful I can come up with examples in
4 both certain circumstances.

5 BY ATTORNEY BROOKS:

6 Q. I'm going to ask you to take Exhibit-6 --- no,
7 Exhibit 4, the Handelsman article if you would.

8 A. Yes.

9 ATTORNEY TRYON: Roger, would you speak
10 up a little more, please? And Josh, when you shuffle
11 your papers, it really garbles the testimony. If you'd
12 be a little more careful about that, I'd appreciate it.

13 ATTORNEY BLOCK: Sorry.

14 ATTORNEY BROOKS: It's a crowded table
15 and we have papers bumping up against the mic. So just
16 call out if we do that wrong.

17 BY ATTORNEY BROOKS:

18 Q. So Dr. Safer, you pointed to the Handelsman
19 article as the best source on the proposition --- on the
20 question to what extent if any natal male has
21 physiological or I should say athletic performance
22 advantages over natal females before puberty.

23 Correct?

24 ATTORNEY BLOCK: Objection to

1 terminology?

2 THE WITNESS: And if I said the word best
3 maybe that's not the best way of saying it, but it's a
4 very clean, well-written summary of the circumstance.

5 BY ATTORNEY BROOKS:

6 Q. At any rate, it's the one that you chose to
7 cite?

8 A. And it is the one that I chose to cite.

9 Q. I'm going to give you a three by five card to
10 help read a chart that doesn't have grid lines on it so
11 you have a straight edge. And I want to take you in
12 Handelsman's 2018 article, Exhibit 4, to page 813 and
13 figure one. And you've familiar with this figure and
14 these curves, are you not?

15 A. I am, yes.

16 Q. When you studied this article carefully this is
17 part of what you studied.

18 Right?

19 A. It is.

20 Q. And these charts show percentage performance
21 advantage of males over females and just to simplify
22 terminology I believe there's nothing in here about
23 dealing with transgender individuals in these charts.
24 So with your permission I'll simply use male and female

1 to be the dare I say simple biological designations as
2 we had previous discussions. Is that acceptable?

3 A. I think so.

4 Q. If it's something that comes up ---.

5 A. I will mention it, yes.

6 Q. I don't think it will in this discussion. First
7 of all, would you agree with me that, generally
8 speaking, junior high contemplates grades 7 through 9
9 and commonly ages in the range of 12 to 15?

10 ATTORNEY BLOCK: Objection to form.

11 THE WITNESS: Junior high is grades 7
12 through 9. It used to be. Now there is Middle School.

13 BY ATTORNEY BROOKS:

14 Q. I know?

15 A. Exactly.

16 Q. Let's just work with you and I are of general
17 age. So Junior High is 7 to 9?

18 A. Okay.

19 Q. And in your general understanding, this is
20 layman's stuff, not expert stuff, that is ages 12 to
21 15-ish?

22 A. Let's see, seven --- let me think about this.
23 Right, 15 at about the max, right, because there is
24 about 14.

1 Q. And high school is 14, 15 through age 18-ish.
2 Some people graduate at age 17?

3 A. Yes. As a non-expert I would believe, yes.

4 Q. All right.

5 And this chart charts the percentage advantage
6 enjoyed --- on average enjoyed by males over females in
7 three different events at over --- on a year by year
8 basis from ages 10 up to 19.

9 Am I describing it correctly?

10 ATTORNEY BLOCK: Objection to form. Just
11 for the record, it's percentage differences, not
12 percentage advantages.

13 BY ATTORNEY BROOKS:

14 Q. Correct, it says --- it says gender difference
15 percentage to read the Y axis.

16 A. Clear, yes.

17 Q. Okay.

18 So let's look at running and you have your
19 straight edge if it is helpful to you. At age 12, what,
20 according to Dr. Handelsman, is the gender difference in
21 running performance?

22 A. So in this paper there is a range. But just to
23 help you get to your point faster I guess we can --- it
24 is about five percent of tab over.

1 Q. And for reasons best known to Professor
2 Handelsman, his arrow bars extend only upwards, correct,
3 in this chart?

4 A. Right. I will have to attribute that to
5 cleanliness of the figure.

6 Q. Or if he has chosen to fit his curve to the
7 bottom end of this error range possibly?

8 ATTORNEY BLOCK: Objection to form.

9 THE WITNESS: Yeah, I can't comment
10 there, but that wouldn't be usual.

11 BY ATTORNEY BROOKS:

12 Q. That would not be usual, I agree. And what
13 advantage --- what gender difference between male and
14 female does Professor Handelsman report at age ten
15 approximately?

16 A. At age ten in the particular figure that we are
17 referencing it is --- the average is --- well, actually,
18 so here it ranges from about two percent because that is
19 probably how the air bars are meant to be up to just a
20 little north to three percent.

21 Q. And going back to age 12, do you consider a five
22 percent difference between male and female performance
23 to be minimal?

24 ATTORNEY BLOCK: Objection to form.

1 THE WITNESS: So the problem here with
2 going right to this figure is it's including a range of
3 inputs, and so this is --- so these are what are called
4 cross-sectional studies, and so the --- if your question
5 is just in the narrow point of this five percent
6 minimal, well, even there I don't know that I can
7 comment because it depends on how broad the variation is
8 among the group.

9 BY ATTORNEY BROOKS:

10 Q. And what gender difference did Dr. Handelsman
11 report in running at age 15?

12 A. At age 15, a range that is hovering about 9 to
13 10 percent.

14 Q. And by age 15, according to his sample, the
15 gender difference is approached --- begins to level off.
16 In other words, it has --- most of the gender difference
17 has been achieved at age 15.

18 Correct?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: Among this data in this
21 study set, yes, I will agree with you it does level off.

22 BY ATTORNEY BROOKS:

23 Q. So let me ask you this. Do you have an
24 understanding of the physiological basis of what you

1 described as a two to three percent male advantage at
2 age ten in running?

3 ATTORNEY BLOCK: Objection to form.

4 BY ATTORNEY BROOKS:

5 Q. If any?

6 A. So speaking as an expert, there's no --- there
7 is no physiological --- there is no expectation of a
8 physiological explanation. And there is awareness of
9 other confounders in terms of experience, exposure to
10 sport and things like that.

11 Q. Let me ask you to look at jumping, at age ten.
12 And this is --- at age ten what performance of gender
13 difference advantage did Dr. Handelsman report for boys
14 in jumping?

15 A. So at age ten it would go on --- so at age ten
16 then the range ---.

17 Q. This by the way tells us that he cannot be
18 inclined in arrow bar --- a symmetrical arrow bar below.
19 Correct?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: So he can't. In fact, the
22 range that he's showing there goes from an advantage for
23 girls --- that is it goes below to an advantage --- for
24 boys. The range is included and it just --- for both

1 sexes.

2 BY ATTORNEY BROOKS:

3 Q. So what is the average advantage that he reports
4 at age ten for boys?

5 A. So in this dataset the average is about a six
6 percent average for boys, but it is important to
7 understand the data. And the data that --- the point
8 being that if we were to repeat the study you would
9 anticipate that that average would fall across those
10 entire --- the entire range shown so that in a different
11 day it might show a bigger advantage for boys, but a
12 different day it might also show an advantage for girls
13 about higher.

14 Q. Are you aware of any dataset that shows a
15 smaller advantage in jumping for girls at age ten?

16 A. Off the top of my head I cannot guide --- lead
17 you to a dataset.

18 Q. At age 12 what advantage in jumping --- well,
19 let me start over. At age 12 what advantage in jumping
20 does Dr. Handelsman report for boys?

21 A. So in this dataset at age 12 he shows the
22 advantage --- the average advantage to be of the less
23 than the average advantage for age ten, but this exactly
24 points to the caution that I was referencing, which is

1 that the range of possibilities that you might
2 anticipate based on this particular dataset at age 12
3 has a range of four to six percent advantage for boys.

4 Q. The arrow bar has tightened up a lot?

5 A. The arrow bar in that age range is tighter.

6 Q. And do you consider a six percent advantage to
7 be minimal?

8 ATTORNEY BLOCK: Objection to form.

9 THE WITNESS: As an expert I can't answer
10 that because it depends on context on the heterogeneity
11 of all these events.

12 BY ATTORNEY BROOKS:

13 Q. And at age 15 what average advantage in jumping
14 did Dr. Handelsman report for boys?

15 A. For age 15 he has a range or the average sits at
16 15 percent and the range runs from about 14 percent to
17 maybe 17 percent.

18 Q. Is there any context in your opinion, any
19 athletic endeavor that involves jumping in which a 15
20 percent advantage is in your view minimal?

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: Yes, I think as an expert I
23 can't answer that. If you're thinking at the scholastic
24 level where there is a wide range of --- where there's a

1 quite wide range of heterogeneity in development, body
2 type, et cetera, I certainly could envision a situation,
3 yes.

4 BY ATTORNEY BROOKS:

5 Q. Dr. Safer, in your Declaration filed in May you
6 stated that before puberty athletic advantage by boys
7 was minimal. Do you recall that language?

8 A. The way I would say it is the difference between
9 boys and girls before puberty is minimal or
10 non-existent. I don't know if I could be wiser than
11 that.

12 Q. All right. But now you are telling me when I
13 asked you questions about minimal that you as an expert
14 are not able to define minimal. How do you reconcile
15 those two?

16 ATTORNEY BLOCK: Objection to form.

17 THE WITNESS: So the definition of
18 minimal is in context. And so as we discussed it was
19 not a significant difference using both those
20 definitions that we already used were no different at
21 all.

22 BY ATTORNEY BROOKS:

23 Q. Your statement in your Declaration simply
24 asserted categorically in almost no context that the

1 difference in athletic capability of boys to girls were
2 both minimal. My question for you is using whatever
3 definition you had in mind when you wrote that do you
4 consider a --- I will look at jumping, a five percent
5 difference in capability to be minimum?

6 ATTORNEY BLOCK: Objection to form and
7 characterization of the report.

8 THE WITNESS: So it's a context. So in
9 the report the reference is to prepubertal children.
10 And there it is easier to be more categorical. Where
11 now we're moving into an area where there is --- where
12 things are more complex and so it is a harder context to
13 make that statement.

14 BY ATTORNEY BROOKS:

15 Q. That is a sample of ten-year old boys includes
16 some who are no longer prepubertal.

17 Correct?

18 A. No. I'm saying it more the other way, which is
19 a sample of ten-year-old boys would overwhelmingly be
20 prepubertal but a sample of 15-year-old boys would have
21 more of a range and have more heterogeneity. And
22 there's more to it even than that, which is the
23 definition of minimal also includes the context of the
24 entire population who participated in the sport.

1 Q. So focusing on ten-year-old boys and jumping you
2 said at age ten the large majority of boys are,
3 according to your definition, prepubertal. Referring
4 back to Declaration and the meaning that you ascribed to
5 the word minimal there, in your view, is a six-percent
6 difference in capability minimal or not minimal?

7 ATTORNEY BLOCK: Objection to form and to
8 talking about his Declaration without it being in front
9 of him.

10 ATTORNEY BROOKS: He has it in front of
11 him and we already looked at the language.

12 BY ATTORNEY BROOKS:

13 Q. You may answer.

14 A. So the graph that we are looking at includes
15 arrow bars that include the possibility that boys would
16 have --- that the girls would have a superior outcome,
17 and so the answer then becomes, yes. Where the data are
18 either small or are suspect or not significant, then all
19 of that collectively certainly is --- would be included
20 as minimal to non-existent.

21 ATTORNEY BROOKS: Let me mark as Exhibit
22 Safer 7 a paper by Emma Colton and Tommy Lundsburg
23 entitled Transgender Women in a Female Category of
24 Sport, from 2021, previously marked as Exhibit 13 at Dr.

1 Adkins's deposition.

2 ---

3 (Whereupon, Exhibit 7, Transgender Women In
4 a Female Category of Sport, was marked for
5 identification.)

6 ---

7 BY ATTORNEY BROOKS:

8 Q. And first, Professor Safer, let me ask whether
9 you're familiar with this paper published last year?

10 A. I am familiar.

11 Q. And have you interacted professionally with
12 either Dr. Colton or --- and I don't know his degree,
13 Mr. Lundsburg in any context?

14 A. Here I don't remember.

15 Q. Okay.

16 Do you believe that you became aware of this
17 paper soon after it was published?

18 A. I don't know if I can answer that cleanly
19 either, but I certainly have become aware of it
20 somewhere between then and now.

21 Q. And have you read it with some care?

22 A. I have read it with some care, yes.

23 Q. Let me ask you --- well, let me ask you this
24 first. Would you describe this paper as reporting

1 original research or as more of a literature review
2 paper?

3 A. I don't recall them reporting on their original
4 research, but I would have to look. It's mostly a
5 review paper.

6 Q. That is also my impression. I just didn't want
7 to create a different impression. Let me ask you to
8 turn to page 201, and there in the first column
9 beginning six lines down there is a sentence that begins
10 an extensive review. Let me ask you to find that.

11 A. I have it.

12 Q. And that --- I'll read it into the record.
13 Quote, an extensive review of fitness data from over
14 85,000 Australian children age 9 to 17 years old showed
15 that compared with nine-year-old females, nine-year-old
16 males were faster over short sprints, 9.8 percent, and
17 one mile, 16.6 percent, could jump 9.5 percent farther
18 from a standing start, which tested explosive power,
19 could complete 33 more push-ups in 30 seconds and have
20 13.8 percent stronger grip. Male advantage of a similar
21 magnitude was detected in a group study of children
22 where compared to a six-year old females six-year old
23 males competed 16.6 percent more shuttle runs in a given
24 time and could jump 9.7 percent further from a standing

1 position. Do you see that language?

2 A. I do.

3 Q. And on the Australian study, if you follow the
4 footnote you will see that it references a study by
5 Kaitlin Thompson. That's footnote 22. And my first
6 question is have you read the reference study by Kaitlin
7 Thompson?

8 A. I don't recall. I'm guessing yes.

9 Q. All right. All right.

10 Do you have any reason to doubt the accuracy of
11 this summary of the findings of Kaitlin Thompson
12 based on data from over 85,000 Australian children?

13 ATTORNEY BLOCK: Objection to form.

14 THE WITNESS: I think the important thing
15 to recognize when you look at these sorts of data are
16 recognizing the multiple inputs. So the larger these
17 groups --- these cross-sectional studies get the more
18 confounded they get by access and other social
19 explanations why there are boys participating in sports
20 to a greater degree.

21 BY ATTORNEY BROOKS:

22 Q. So putting aside causation, which might be
23 physiological and might be cultural, as you said there
24 could be various causes, do you have any reason to doubt

1 the accuracy of the findings of performance advantage
2 summarized here in the passage that I've just read?

3 ATTORNEY BLOCK: Objection to form and
4 terminology.

5 THE WITNESS: Putting aside causation, I
6 have no --- I can't offer an expert opinion I guess if
7 that's the bottom line. But if you're asking me just as
8 an individual, I'm not expecting that they're
9 fabricating that data. I am not expecting that.

10 BY ATTORNEY BROOKS:

11 Q. And you agree that advantages on a scale of 9
12 percent, 16 percent could provide a significant
13 advantage in athletic competition, do you not?

14 ATTORNEY BLOCK: Objection to
15 terminology.

16 THE WITNESS: So say that question again.

17 BY ATTORNEY BROOKS:

18 Q. You agree that advantages on the scale of
19 9.8 percent or 16.6 percent would provide a large
20 advantage in athletic competition, do you not?

21 ATTORNEY BLOCK: Same objection to
22 terminology.

23 THE WITNESS: In elite athletic
24 competition, yes.

1 BY ATTORNEY BROOKS:

2 Q. Did you play any sport in high school?

3 A. At a sophisticated level I did not.

4 Q. Your general knowledge permits you to say, does
5 it not, that at the high school level also a 9.8 percent
6 or a 16.6 percent advantage is a very large advantage?

7 ATTORNEY BLOCK: Objection to form and
8 terminology?

9 THE WITNESS: So there it gets more
10 diffuse, therefore, and I can't answer as an expert.

11 BY ATTORNEY BROOKS:

12 Q. Can you answer as an informed adult citizen?

13 ATTORNEY BLOCK: Same objection.

14 THE WITNESS: So as an expert for sure
15 not. As an informed adult, it falls back to the same
16 situation. When there is a wide range of athletes in a
17 certain context, then it is going to seem less relevant.
18 And obviously with the example I gave before with an
19 elite circumstance where that --- it describes the
20 entire field is more significant.

21 BY ATTORNEY BROOKS:

22 Q. Let me ask you to find your rebuttal report.

23 A. And actually --- do others need a break?

24 Q. Any time --- your concentration is most

1 important. So if you need a break, we'll take a break.

2 A. So I'm good.

3 ATTORNEY BROOKS: Well, obviously, if
4 anybody wants a break, we can take a break.

5 ATTORNEY BLOCK: Do you need a break?

6 ATTORNEY SWAMINATHAN: No.

7 ATTORNEY BLOCK: We are good.

8 THE WITNESS: So my rebuttal.

9 BY ATTORNEY BROOKS:

10 Q. Your rebuttal, which is Exhibit 2, so it's
11 probably at the bottom. And in that I'm going to draw
12 your attention to paragraph 11. And there you wrote
13 there is also no basis to confidently predict the
14 patterns about the athletic performance of prepubertal
15 cisgender boys will be the same for prepubertal
16 transgender girls, closed quote. Do you see that?

17 A. I do.

18 Q. And let me attempt to see if I understand the
19 point of this paragraph. And indeed, if you would like
20 to read the whole paragraph you should. But my
21 understanding of the point is that you're saying that
22 even if prepubertal boys have some performance, some
23 statistically significant performance advantage over
24 prepubertal girls, that you are not confident that the

1 athletic performance capabilities of natal males who
2 identify as females before puberty will be the same as
3 those of natal males who identified as male before
4 puberty?

5 ATTORNEY BLOCK: Objection to the
6 terminology.

7 THE WITNESS: So to the extent --- so
8 were differences to be determined between cisgender boys
9 and cisgender girls, it is correct to say that that
10 won't conclusively demonstrate that the same applies for
11 transgender girls. That's right.

12 BY ATTORNEY BROOKS:

13 Q. Now, elsewhere in your writings you have said
14 that it is well known that the majority of prepubertal
15 children who experience gender dysphoria do not persist
16 in that dysphoria into pubertal adolescence.

17 Correct?

18 ATTORNEY BLOCK: Objection.

19 THE WITNESS: No.

20 BY ATTORNEY BROOKS:

21 Q. Not correct?

22 A. Not correct.

23 Q. Then we will come back to that. In this
24 paragraph 11, you speculate a little farther down that,

1 quote, the experience of transgender girls might be more
2 similar to the experience of cisgender girls?

3 ATTORNEY BLOCK: Objection to the
4 characterization and speculative.

5 BY ATTORNEY BROOKS:

6 Q. Well, by using the word might you meant to
7 indicate, did you not, Dr. Safer, this is a hypothesis,
8 this is not a documented fact?

9 A. That if the question is do I know that the
10 experience of transgender girls is definitely in this
11 circumstance the same as cisgender girls, that's right,
12 I don't know that. It only might be true.

13 Q. And towards the end, in the last line, you refer
14 to potential biological underpinnings of gender
15 identity. Again, the word potential signaling that no
16 such specific underpinnings have yet been identified.

17 Correct?

18 A. Say that question again.

19 Q. In the last line, your reference to, quote,
20 potential biological underpinnings of gender identify,
21 by the word potential you are indicating that no
22 specific biological underpinning has yet been
23 identified.

24 Correct?

1 ATTORNEY BLOCK: Objection to form.

2 THE WITNESS: So it's --- so no,
3 potential in this context does reference that most of
4 this biology is unknown, so that part is true, but it
5 doesn't mean that there is nothing known.

6 BY ATTORNEY BROOKS:

7 Q. You do not propose to offer any opinion that
8 natal males --- let me strike that and start again.

9 You do not propose to offer any opinion, do
10 you, that prior to puberty natal males who identify as
11 female are less athletic capable on average than natal
12 males who identify as male?

13 ATTORNEY BLOCK: Objection to form.

14 THE WITNESS: I'm not offering an opinion
15 with regard to cisgender --- excuse me --- cisgender
16 boys versus transgender girls and their athleticism when
17 they are prepubertal. If that's what you are asking,
18 then yes, I'm not offering an opinion between those two
19 groups. I'm simply raising the possibility that
20 something like biology associated with transgender could
21 have influence into it.

22 BY ATTORNEY BROOKS:

23 Q. Let me ask you to turn to paragraph 22 of your
24 rebuttal report. And there you write Doctor Brown also

1 refers to widely publicized anecdotes about isolated
2 cases of transgender girls and women state championships
3 in high school sports or NCAA championships in college.

4 Do you see that?

5 A. I do.

6 Q. And you go on to write but transgender athletes
7 of women have been competing in NCAA and secondary
8 school athletics for many years at this point, closed
9 quote. Do you see that language?

10 A. I do.

11 Q. Let me ask you to name all instances of male
12 males known to you who have competed in women's division
13 varsity athletics in any athletic endeavor for any NCAA
14 member school?

15 ATTORNEY BLOCK: Objection to form and
16 scope.

17 THE WITNESS: Right, so I certainly can't
18 do that usefully off the top of my head, name
19 transgender women and all these context in such an
20 exhaustive way like that.

21 BY ATTORNEY BROOKS:

22 Q. Well, I asked you accused Doctor Brown of citing
23 isolated cases. Do you have any basis to assert that he
24 has done anything other than cite all cases in which

1 natal males have competed in NCAA athletics in the
2 female category?

3 A. So the --- if our focus is on the word isolated
4 then per se they are all --- these are all isolated
5 cases. These aren't systematic analyses of any cohort
6 of people.

7 Q. You are not accusing Doctor Brown of picking and
8 choosing?

9 ATTORNEY BLOCK: Objection to form.

10 THE WITNESS: So let me think about that.

11 By simply choosing individual cases that are in the
12 press then it is by its nature picking and choosing.

13 BY ATTORNEY BROOKS:

14 Q. What do you mean by that?

15 A. Well, these are simply individual cases that
16 have --- that have come to public attention, and so I
17 --- so --- and that's the basis of my statement as
18 opposed to some exhaustive attempt to identify
19 transgender people in a systematic fashion.

20 Q. As you sit here today, Dr. Safer, are you aware
21 of a single case not mentioned by Doctor Brown in his
22 report of a natal male who has competed in NCAA
23 athletics in the women's category?

24 ATTORNEY BLOCK: Objection to form.

1 THE WITNESS: Can I name somebody off the
2 top of my head? I cannot.

3 BY ATTORNEY BROOKS:

4 Q. Do you have any concrete --- leaving aside
5 whether you remember a precise name, do you have any
6 factual basis to know that Doctor Brown has omitted any
7 case of a natal male who has competed in the female
8 division of NCAA athletics?

9 ATTORNEY BLOCK: Objection to form.

10 THE WITNESS: So I guess if the question
11 is what can I do off the top of my head, then I cannot.

12 BY ATTORNEY BROOKS:

13 Q. Off the top of your head, you recall the case of
14 June Eastwood, do you not?

15 A. You have to remind me what that is.

16 Q. A runner in Montana?

17 A. I actually would need to be reminded of those
18 details.

19 Q. All right. Certainly you recall Lia Thomas
20 because none of us can mis Lia Thomas these days?

21 A. Lia Thomas is still in the news.

22 Q. Do you recall the case of CeCe Telfer?

23 A. Names are not my strength.

24 Q. All right. No more on that.

1 You say at the end of this paragraph, quote,
2 the occasional championship that has been widely
3 publicized do not come close to constituting the rates
4 one would expect if they, that is transgender athletes,
5 wanted rates that are proportional to their overall
6 percentage of the population, which is approximately one
7 percent. Do you see that language?

8 A. I do.

9 Q. Do you have any knowledge as to what --- first
10 of all, let me ask, what is your basis for believing
11 that the current student population in college and high
12 school level is approximately one percent transgender?

13 A. The statistic for the percentage of the
14 population who are transgender comes from surveys.

15 Q. And do you have any knowledge at all as to what
16 percentage of varsity athletes in America today at the
17 NCAA --- among NCAA member schools in the women's
18 division are transgender?

19 A. If the question is that a survey in that
20 population, I'm not aware of a survey that's been done.

21 Q. So you don't know whether the number of
22 victories of championships that have been taken in the
23 women's division by transgender competitors is higher or
24 lower than the percentage of athletes in those divisions

1 who are transgender?

2 ATTORNEY BLOCK: Objection to form.

3 THE WITNESS: That is correct. I do not
4 know the percentage that --- what we know is the
5 percentage of transgender people and then we know the
6 percentage of identified athletes winning competitions.
7 And even then we don't know that absolutely. We only
8 know the ones that are publicized. But, right, in the
9 in between, we don't have statistics. That's right.

10 ATTORNEY BROOKS: Counsel, I'm going to
11 suggest --- in my experience, if we break for lunch at
12 noon, it makes it a little long afternoon. So I would
13 suggest that we take a short break now and then keep
14 going until like 12:45 or something. It's seven hours
15 on the clock and I'm here just to tell you that the
16 afternoon gets long. So unless you are starving I'd
17 recommend ---?

18 THE WITNESS: No, I think that's a great
19 idea.

20 ATTORNEY BROOKS: Take a short break now.

21 THE WITNESS: So you don't know who is on
22 the phone so give them a break.

23 ATTORNEY BROOKS: Let's go off the
24 record.

1 VIDEOGRAPHER: Going off the record. The
2 current time reads 12:01:00 p.m. Eastern Standard Time.
3 OFF VIDEOTAPE

4 ---
5 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

6 ---
7 ON VIDEOTAPE

8 VIDEOGRAPHER: Back on the record.
9 Current time reads 12:14 p.m. Eastern Standard Time.

10 ATTORNEY BROOKS: Let me mark as Safer
11 Exhibit 8 the Endocrine --- Treatment of Gender
12 Dysphoric Gender Incongruent Persons, an Endocrine
13 Society Clinical Practice Guidelines from 2017
14 previously marked as Adkins Exhibit 4.

15 ATTORNEY WILKINSON: Tab 5.

16 ---
17 (Whereupon, Exhibit 8, Endocrine Society
18 Guidelines, was marked for identification.)

19 ---

20 BY ATTORNEY BROOKS:

21 Q. And Doctor Safer, am I correct you served the
22 committee that created this revised version of the
23 Endocrine Society's Guidelines?

24 A. Yes.

1 Q. And is it reasonable for me to assume therefore
2 that you are familiar with it in some detail?

3 A. I am familiar with it in some detail.

4 Q. They also pertain to your practice?

5 Am I correct.

6 A. And they do pertain to my practice, yes.

7 Q. Let me ask you to turn in Exhibit-5 to Page 3879
8 --- Exhibit 8, 3879. And there I will call your
9 attention to the specific recommendation that's numbered
10 1.4. And it says there we recommend against puberty
11 blocking and gender-affirming hormone treatment in
12 prepubertal children with GD/gender incongruence.

13 Do you see that?

14 A. I do.

15 Q. And then there is a section headed evidence,
16 right?

17 A. Yes.

18 Q. And the first statement in the sentence that is
19 --- in the section headed evidence is, quote, in most
20 children diagnosed with GD/gender incongruence it did
21 not persist into adolescence, closed quote.

22 Do you see that?

23 A. I do.

24 Q. Do you believe that to be a false statement?

1 A. I wouldn't --- I guess it depends on context
2 here too. So as of when this was written, the
3 literature being referenced had a broader diagnosis for
4 gender dysphoria and gender incongruence or really
5 gender dysphoria is the label that was being used and
6 still is. Gender incongruence is where we are headed.
7 And so with that broader definition, that included
8 gender expansive children who were not necessarily
9 transgender.

10 Q. The statement is I think fairly specific. And
11 as you are aware, the discussion cites various
12 references, but the introductory sentence states in most
13 children diagnosed with GD a gender dysphoria or gender
14 incongruence did not persist into adolescence. Do you
15 believe to be a true statement or false statement?

16 ATTORNEY BLOCK: Objection to form.

17 THE WITNESS: The problem is I can't
18 answer that quite that cleanly. The statement
19 references a circumstance that I just referenced where
20 children receiving that label have to --- for the most
21 part were not transgender. The only caution I want to
22 make is that as we grow more refined in our
23 understanding of gender identity and also in our
24 labeling, that we are more specific in identifying

1 transgender kids with these sorts of labels.

2 BY ATTORNEY BROOKS:

3 Q. Well, recommendation 1.4 says we recommend
4 against puberty blocking and a gender hormone treatment
5 in prepubertal children with gender dysphoria or gender
6 incongruence. Do you have an understanding of why these
7 Endocrine Society guidelines of which you're a co-author
8 recommended against puberty blocking in prepubertal
9 children?

10 A. Yes.

11 Q. Why?

12 A. They have no impact.

13 Q. Can you point me to anywhere in the evidence
14 discussion that suggests that is the reason for this
15 recommendation?

16 A. I don't know. Let me look.

17 Q. The evidence discussion is just two paragraphs.

18 ATTORNEY BLOCK: I just want to object to
19 the extent you're limiting his review to the evidence
20 section.

21 BY ATTORNEY BROOKS:

22 Q. My question pertains to the evidence section.

23 A. So those two paragraphs are both primarily
24 referencing 1.3 and not 1.4.

1 Q. Well, let me ask you to turn to page 3881. And
2 at the top of that first column on 3881 it reads we,
3 therefore, advise starting suppression in early puberty
4 to prevent irreversible development of undesirable
5 secondary sex characteristics. However, comma,
6 adolescents with gender dysphoria, slash, gender
7 incongruence should experience the first changes of
8 their endogenous puberty because their emotional
9 reaction to these first physical changes has diagnostic
10 value in establishing the persistence of gender
11 dysphoria/gender incongruence.

12 Do you see that language?

13 A. I do.

14 Q. And as a scientist and practitioner do you agree
15 with that statement?

16 A. I would say that the validity of that statement
17 is in evolution.

18 Q. In your practice, over time --- well, let me ask
19 you this. When this was drafted did you raise an
20 objection to the proposition that the child's emotional
21 reaction to the first physical changes of puberty had
22 important diagnostic value?

23 A. I cannot recall our specific conversations, but
24 if you're asking if my view has shifted since let's say

1 2015, 2016, 2017, no, the recognition that there is an
2 evolution was already part of my opinion.

3 Q. What do you mean the recognition that there is
4 an evolution about?

5 A. So the evolution is that whether there is a need
6 to start puberty as a diagnostic --- as a necessary
7 diagnostic circumstance.

8 Q. In your practice today do you prescribe puberty
9 blockers prior to Tanner Stage 2?

10 A. I --- so two things. My practice is with
11 adults. And although I will see older kids because I
12 don't have a hard threshold of age 18, but I don't
13 prescribe puberty blockers because I don't --- my
14 practice does not include those age children. But two,
15 it is still the guidance and so the pediatricians who
16 are part of my program do not prescribe puberty blockers
17 prior to Tanner 2 for the reason I stated initially.

18 Q. And according to these guidelines, by the time
19 you reach Tanner Stage 2 there have been sufficient
20 first pubertal --- stages of pubertal development to
21 give a chance to observe the child's reaction to
22 pubertal changes for diagnostic purposes.

23 Correct?

24 ATTORNEY BLOCK: Objection to form.

1 THE WITNESS: So the --- so I guess there
2 are kind of two pieces. The sentence is --- that
3 sentence is written, but that is the sentence that I'm
4 suggesting is an opinion that is in evolution, like I'm
5 saying, to whether that need really exists or not. The
6 reason why we still don't prescribe puberty blockers
7 before Tanner 2 is that there is no point, there is no
8 preventive element to puberty blockers and so there is
9 no point to give them before puberty begins and there is
10 no way to know that until there is an observable
11 objective finding.

12 Q. Has your own practice ever involved to a
13 significant extent treating prepubertal or early
14 pubertal stage children for gender dysphoria or gender
15 incongruence incongruence?

16 A. Have I personally cared for prepubertal children
17 who are transgender or otherwise? Actually, in the
18 subjects, no.

19 Q. And do physicians who do treat prepubertal
20 children report to you in connection with your position
21 at the clinic or the Mount Sinai Medical Hospital?

22 A. Yes.

23 Q. And do you know whether your clinic makes use of
24 children's emotional reactions to the first physical

1 changes of puberty as part of their process of
2 determining whether transgender hormonal therapies of
3 any sort are appropriate for that child?

4 A. Yeah, I can't give you give you an answer. I
5 would actually have to go survey my psychologists.

6 Q. Let me direct you to paragraph 17 of your
7 rebuttal report. And there you say in the second
8 sentence under current standards of care transgender
9 adolescents are eligible to receive puberty blockers
10 when they reach Tanner 2, not Tanner 3, which is early
11 enough to prevent endogenous puberty from taking place,
12 closed quote.

13 Do you see that?

14 A. I do.

15 Q. Now, just for context, you testified previously
16 that the large majority of minors I'll say who present
17 with gender incongruence or gender dysphoria are, in
18 fact, considerably older and have gone through at least
19 most of the Tanner stages.

20 Correct?

21 ATTORNEY BLOCK: Objection to
22 characterization.

23 THE WITNESS: Most of the people we are
24 seeing in clinical practice are coming to us at later

1 stages of development, yes.

2 BY ATTORNEY BROOKS:

3 Q. And so when we talk about prepubertal children,
4 we're talking about a small minority of the patients
5 coming in to ---?

6 A. I can't define small, but it is the minority,
7 that's correct.

8 Q. And do you believe that what your clinic is
9 seeing in that regard is typical of what's being seen
10 across the country these days?

11 A. So if I'm sitting here as an expert, I don't
12 have an expert survey to point to, to give you an answer
13 there.

14 Q. But you read the literature and you talk to
15 colleagues at other institutions.

16 Am I correct?

17 A. I certainly both read the literature and talk to
18 colleagues.

19 Q. And is it your current belief that what you are
20 seeing in terms of the breakdown of patient population
21 is similar to or quite different from what other major
22 gender clinics are experiencing?

23 A. So kind of separating, I'm living in my expert
24 role, I really want to point to data where I have any

1 confidence at all, and I have none. If you are asking
2 me in a more informal way among our conversations, then
3 I can answer that our experience seems similar to
4 others' experience.

5 Q. All right.

6 So in talking about prepubertal children ---
7 well, strike that. We've been through that.

8 In your rebuttal report when you said beginning
9 puberty blockers at Tanner stage 2 is early enough to
10 prevent endogenous puberty from taking place, let me ask
11 you, in consideration, do you believe it is accurate as
12 stated?

13 A. So Tanner 2 early enough to prevent endogenous
14 puberty from taking place, yes, that is accurate.

15 Q. You would agree with me, would you not, that the
16 endocrine guidelines of which you are a co-author
17 recommend to treat beginning puberty blockers at Tanner
18 Stage 2?

19 A. So to clarify, under the cited guidelines what
20 they say the recommendation is do not use puberty
21 blockers prior to puberty beginning, prior to Tanner 2.

22 Q. Let me direct you to recommendation 2.2 on
23 page 3880. Recommendation 2.2 reads we suggest the
24 clinicians begin pubertal hormone suppression after

1 girls and boys first exhibit physical changes of
2 puberty.

3 Do you see that?

4 A. I do.

5 Q. And then it says, paren, Tanner stages G2/B2
6 which is to say the girls Tanner 2 or boys Tanner 2,
7 correct?

8 A. That is what that means, yes.

9 Q. So the official recommendation from the
10 Endocrine Society is begin at or after Tanner Stage 2,
11 right?

12 ATTORNEY BLOCK: Objection to form.

13 THE WITNESS: That is a correct.

14 BY ATTORNEY BROOKS:

15 Q. And it says that Tanner Stage 2 is defined as
16 girls and boys first exhibiting physical changes of
17 puberty.

18 Correct?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: The definition of Tanner 2,
21 is where there is any objective evidence when puberty
22 has begun.

23 BY ATTORNEY BROOKS:

24 Q. So in fact, beginning puberty blockers at Tanner

1 Stage 2 does not categorically prevent endogenous
2 puberty from taking place but instead prevents a
3 substantial portion of endogenous puberty from taking
4 place.

5 Correct?

6 ATTORNEY BLOCK: Objection to form.

7 THE WITNESS: So let me ---.

8 BY ATTORNEY BROOKS:

9 Q. It is in paragraph 17.

10 A. So the --- I guess the way this is understood is
11 --- I guess it depends on how extreme you want to take
12 things. It is back to our original conversation of that
13 cause has to take place before effect. So it's parsing
14 it to that degree.

15 In a biological context it really is the case
16 that we need some objective evidence before we begin
17 things so that we don't make the mistake of using a
18 medication prior to its having any impact. And then
19 it's also true that some of the hormone mediated changes
20 that we see do actually regress to that prepubertal
21 state when we --- when you use puberty blockers at
22 Tanner 2. So the statement as written --- as I wrote it
23 is accurate in the way we think of these things in
24 biology.

1 Q. Although the guidelines specifically state that
2 adolescents should --- before puberty blockers, quote,
3 should experience the first changes of their endogenous,
4 spontaneous puberty. And the recommendation calls for
5 beginning puberty blockers, quote, after girls and boys
6 first exhibit physical changes at puberty, paren, Tanner
7 stages 2, closed paren. I'm not misreading anything, am
8 I?

9 ATTORNEY BLOCK: Objection to just
10 reading an excerpt.

11 THE WITNESS: Right. I don't know --- I
12 don't know if those were are all direct quotes or not so
13 I won't comment on whether you're misreading or not, but
14 the first statement that you reference, as I've said, is
15 one where there is an evolving understanding of its
16 veracity or its applicability.

17 The statement 2.2 is simply using
18 alternate phrasing for saying Tanner 2, that is we need
19 to have objective evidence that puberty is genuinely
20 beginning. The focus and the purpose of these
21 statements is to avoid people using puberty blockers on
22 non-pubertal kids.

23 BY ATTORNEY BROOKS:

24 Q. Well, you would agree with me, would you not,

1 that if one administer puberty blockers in accordance
2 with Endocrine Society guidelines, then some stages of
3 endogenous male puberty will have occurred in natal male
4 patients?

5 ATTORNEY BLOCK: Objection the form.

6 THE WITNESS: So when we are ---
7 specifically we're referencing transgender girls here.
8 And although pre-pubertis gender boys, when we see
9 Tanner 2, then some --- some degree of development has
10 taken place. That part is true. So in the absolute
11 sense, then yes. But in a biological sense, like I said
12 already, the --- some interesting reality is that some
13 of that does regress.

14 BY ATTORNEY BROOKS:

15 Q. By the way, you, yourself, do not have any
16 knowledge as to what developments of endogenous male
17 puberty BPJ underwent prior to initiating puberty
18 blockers, do you?

19 A. I have had no physical contact with BPJ.

20 Q. Nor have you studied BPJ's chart sufficiently to
21 be feel that you know the answer to that question?

22 A. Right, I'm not expressing any opinion to the
23 specific medical terms, that's right.

24 Q. Have you, yourself, ever supervised any

1 research, clinical research, concerning treatment of
2 prepubertal children for gender dysphoria or gender
3 incongruence?

4 A. Have I supervised research on treatment of
5 prepubertal transgender girls? Let me think about that.
6 Nothing is coming to mind, but our program does do
7 research across an age span.

8 Q. Well, some of your colleagues might have done
9 such research, but my question is whether you have been
10 personally supervised or involved in such research?

11 A. I'm pretty involved actually, especially in our
12 research program, but I'm having a difficult time coming
13 up with an example.

14 Q. All right.

15 I just want to make sure I know about it if it
16 exists.

17 A. Yes.

18 ATTORNEY BROOKS: Let me mark as Safer
19 Exhibit 9 an article entitled --- an article or a
20 chapter or something entitled Care of the Transgender
21 Patient dated 2019 by Dr. Safer and by Doctor Vin
22 Tangpricha.

23 ---

24 (Whereupon, Exhibit 9, Care of the

1 Transgender Patient Article, was marked
2 for identification.)

3 ---

4 BY ATTORNEY BROOKS:

5 Q. Am I correct that this is --- well, you tell me,
6 is this an article or book chapter? How would you
7 describe this document?

8 A. This is a review article from the Annals of
9 Internal Medicine.

10 Q. And by review you mean it's not reporting on
11 original research but rather summarizing the state of
12 knowledge in a particular area?

13 A. That is correct.

14 Q. Okay.

15 And the pages may have ITC and a number, but
16 I'll just refer to the number if I may. On page three,
17 column two, is a statement that I think is just
18 repeating what you told me, that is most --- quote, most
19 transgender persons present to clinicians in late
20 adolescence or adulthood, closed quote. That is
21 consistent with what you testified earlier.

22 Correct?

23 A. That is, yes.

24 Q. And if you turn then to page five, column two,

1 you write in the first full sentence in column two,
2 prior effects of androgens on the skeleton height and
3 size and shape of the hands, feet, jaw and pelvis and
4 voice, including visibly --- visible laryngeal
5 prominence, will not be altered if treatment is
6 initiated after puberty.

7 Do you see that language?

8 A. I do.

9 Q. And is it consistent with your understanding
10 that at this stage also changes to the size of the heart
11 and the lungs will not be altered if testosterone is
12 commenced after the initiation of puberty?

13 A. Not quite.

14 Q. Explain that to me, please.

15 A. So transgender women, if they have gone through
16 a typical male puberty, are going to remain larger, but
17 the testosterone has action on certain tissues, so
18 specifically muscle, and that --- when those
19 testosterone levels shrink, then that muscle shrinks and
20 the heart muscle is --- well, the heart is a muscle, so
21 it will be --- there will be an impact from body size,
22 but there will also be impact from the lower level of
23 testosterone. So it will be kind of a mix of those two.

24 Q. The heart is a muscle but it has in it cavities

1 of a certain size in which blood flows, out of which
2 blood is pumped, correct? Do you have any knowledge,
3 are you aware of any literature that documents that
4 testosterone suppression reduces the heart's pumping
5 capacity?

6 ATTORNEY BLOCK: Objection to form.

7 THE WITNESS: So the --- so there is a
8 gap there of transgender research --- so no, that is
9 something that's not been studied.

10 BY ATTORNEY BROOKS:

11 Q. And the lungs are not muscle tissue. Are you
12 aware of any science that indicates or even suggests to
13 you as an expert that an individual who has gone through
14 typical male puberty, that individual's lungs reduce in
15 size if testosterone is suppressed?

16 A. So the answer with regard to lungs is going to
17 have some of those same inputs as heart or other tissues
18 actually where overall size of the individual is not ---
19 well, certainly height at least is not decreasing, and
20 so this person is larger. And so lung size matches that
21 to some degree. And testosterone has some impact on
22 surrounding muscle. And so to the degree that that
23 shrinks there might be lung shrinking too. And so you
24 hear that --- that is going to be a complex answer. And

1 in terms of interpreting it even, you then would also
2 have to interpret it in the context of the size of the
3 body if you want to consider function, and none of this
4 has been studied.

5 Q. Certainly you don't believe, do you, that an
6 individual who has been --- let me start that again. It
7 is not your opinion, is it, that testosterone
8 suppression by an individual who has been through a
9 typical male puberty reduces that individuals V02 mass
10 to typical female levels?

11 A. So the more we get into some of the subtler
12 physiology, I will take a step back and give you an
13 expert opinion, but I will --- in addition to that point
14 out that we don't even have studies on this. We're just
15 at a stage of beginning to look at that sort of thing.

16 ATTORNEY BLOCK: Roger, are you able to
17 speak up a little?

18 ATTORNEY BROOKS: I will try.

19 BY ATTORNEY BROOKS:

20 Q. You state that in paragraph 55 of your expert
21 report, Exhibit 1?

22 A. So paragraph 55.

23 Q. Fifty-five (55). You state that there are,
24 quote, only two studies examining the effect of

1 gender-affirming hormone therapy on athletic
2 performance, closed quote. Do you see that?

3 A. Yes.

4 Q. You are aware, are you not, that there are a
5 substantially larger number of studies that examine the
6 effect of testosterone suppression on strength or muscle
7 mass in natal males?

8 ATTORNEY BLOCK: Objection to form.

9 THE WITNESS: There are --- there are a
10 handful of studies on the impact of testosterone
11 lowering treatment on transgender women on some tissues,
12 yes.

13 BY ATTORNEY BROOKS:

14 Q. Well --- and not to get carried away with the
15 terminology, there are also studies that relate to
16 application of testosterone suppression to males who
17 don't identify as transgender, are there not?

18 A. To cisgender men in addition to transgender
19 women there are some studies --- yes, there are actually
20 some modest studies, yes, on cisgender men.

21 Q. And have you now taken some care to review
22 yourself all the peer-reviewed studies of that type that
23 were cited in Doctor Brown's report?

24 A. I have looked at papers that were cited by

1 Doctor Brown. The moment we use the word all I
2 hesitate, but certainly I've read through the papers
3 that were cited.

4 ATTORNEY BROOKS: Well, let's start with
5 one you referenced, article by Roberts, et al., from
6 2020, which I will mark as Exhibit --- Safer Exhibit-10.

7 COURT REPORTER: 10.

8 ATTORNEY WILKINSON: 10, Tab 60.

9 ---

10 (Whereupon, Exhibit 10, Roberts, et al,
11 Articles, was marked for
12 identification.)

13 BY ATTORNEY BROOKS:

14 Q. And in fact, this is one of only very few
15 articles that you cite in your expert report start to
16 finish.

17 Correct?

18 ATTORNEY BLOCK: Objection to form.

19 THE WITNESS: So this paper is referenced
20 to an expert report.

21 BY ATTORNEY BROOKS:

22 Q. Let me direct you to the last page of your
23 expert report where there is a bibliography. And other
24 than citing to your own writings as the entire basis of

1 your opinions you cited only six articles.

2 Correct?

3 ATTORNEY BLOCK: Objection to
4 characterization about its entire cases for his
5 opinions.

6 THE WITNESS: So the paper specifically
7 referenced two reviews and six papers but recognized
8 that some of these papers specifically are summaries of
9 the topic.

10 BY ATTORNEY BROOKS:

11 Q. You have studied the Roberts 2020 article with
12 some care.

13 Is that correct?

14 A. I have indeed, yes.

15 Q. And so far as you know it is the only
16 longitudinal study of the impact of testosterone
17 suppression in natal males and actual athletic
18 performance and in this case running.

19 Correct?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: So the Roberts study and
22 the Harper study are both studies of transgender women
23 with at least two time points.

24 BY ATTORNEY BROOKS:

1 Q. The Harper study is strictly retrospective, it
2 is not a prospective, longitudinal study?

3 A. The Harper study is --- that's a good question.
4 I actually don't know if it is --- it's probably mixed,
5 honestly.

6 Q. Well, we can look at it, but it is not mixed.
7 It is a one-time survey.

8 A. Well, to be clear, the way we phrase these
9 things sometimes are --- I'm trying to be --- are
10 according to certain conventions academically, so that
11 sometimes it will be framed that way because from an
12 academic perspective we'll use that context, but I think
13 some of the data was actually collected in both
14 collections.

15 Q. The Roberts study you understand to be a
16 prospective, longitudinal study, do you not?

17 A. Well, actually, you are testing me on that. Did
18 they set out at the beginning to do it or did they go
19 back and look? I'd have to see.

20 Q. Well, based on the method, I think the answer is
21 they went back and looked because it begins we reviewed?

22 A. Yes.

23 Q. Do you --- is it your opinion that amongst the
24 available data, the Roberts study is --- on the impact

1 of testosterone on athletic performance is some of the
2 strongest data that we have available?

3 ATTORNEY BLOCK: Objection to form.

4 THE WITNESS: It is my opinion that the
5 Roberts and Harper studies are the only two studies that
6 we have available.

7 BY ATTORNEY BROOKS:

8 Q. Is it your opinion as an expert, is it not, that
9 the structure of the Roberts study renders it --- and
10 the source of its data renders it far more reliable than
11 the Harper 2015 study?

12 ATTORNEY BLOCK: Objection to form.

13 THE WITNESS: I would not overstate that,
14 so no. If I'm being --- if I'm being professorial and
15 saying this is how to organize something, then in that
16 context I might say that, but in terms of simply
17 believability of data, I got two modest papers that are
18 the sum of the world literature on the subject.

19 BY ATTORNEY BROOKS:

20 Q. You say in paragraph 56 of your report that
21 Roberts found, quote, after two years of
22 gender-affirming hormone therapy transgender women
23 completed the 1.5 mile run 12 percent faster on average
24 than non-transgender women, closed quote. Do you see

1 that?

2 ATTORNEY BLOCK: I think he needs some
3 time to get ---.

4 THE WITNESS: Yeah, to actually find
5 the ---.

6 BY ATTORNEY BROOKS:

7 Q. Paragraph 56. And I will refer you to the third
8 sentence.

9 A. All right.

10 Sorry say that again.

11 Q. I'm simply calling your attention to the place
12 where you wrote at the Roberts report that after two
13 years of a gender-affirming hormone therapy transgender
14 women completed the 1.5 mile run 12 percent faster on
15 average than non-transgender women.

16 A. Yes.

17 Q. And two years, not a trick question here, twice
18 as long as the one year testosterone suppression
19 requirement that led to the NCAA rule.

20 Correct?

21 A. Two years is twice one year, yes.

22 Q. And you would agree with me that a 12 percent
23 faster in women's time is a substantial advantage?

24 ATTORNEY BLOCK: Objection to form.

1 THE WITNESS: So this is a bit --- this
2 is a bit of the same conversation. I guess I can't say
3 that in a blanket way. It depends on context.

4 BY ATTORNEY BROOKS:

5 Q. The context here is that that these are all Air
6 Force members, do you recall?

7 A. I believe they are all Air Force members, yes.

8 Q. All subject to Air Force physical fitness
9 requirements. So we are not talking about couch
10 potatoes?

11 A. I'm not rendering an opinion there as an expert.

12 Q. Generally you would accept that this is a
13 relatively fit population?

14 A. I can't even render an opinion there as an
15 expert.

16 Q. Do you have some unhealthy relative who's a
17 member of the armed forces?

18 A. I was in the National Guard, so I do have some
19 insight.

20 Q. Okay.

21 You would agree, would you not, that running
22 speed and endurance, per se, are relevant to quite a
23 number of sports?

24 A. Running speed and endurance are relevant to many

1 sports. I'm certain that is true. I'm not ---

2 Q. Well ---.

3 A. --- an expert again.

4 Q. I'm no sports fan, but we've all seen enough
5 sports to know there's a lot of running involved not
6 just in track but in basketball, soccer, lacrosse and
7 field hockey.

8 Correct?

9 A. I have observed that, yes. But again, I'm not
10 rendering an expert opinion there, but yes.

11 Q. And on page six of this paper ---.

12 A. This is Roberts.

13 Q. Yes, Roberts and Exhibit 10. Roberts and his
14 co-authors summarize in their conclusion by stating,
15 quote, in this study we confirm that the use of gender
16 affirming hormones are associated with changes in
17 athletic performance and demonstrated that the
18 pretreatment differences between a transgender and a
19 cisgender woman persist beyond the 12-month time
20 currently --- requirement currently being proposed for
21 athletic competition by the World Athletics and the IOC.
22 Do you see that?

23 A. This is the conclusion section?

24 Q. It is.

1 A. Yes, I see that.

2 Q. And you don't have any expert opinions that the
3 findings of Roberts are inaccurate or unreliable, do
4 you?

5 A. So the --- this is again a question of context.
6 So I have no reason to suspect that these data are
7 suspect. The only question then is what we conclude
8 when you do a study of --- for the transgender women I
9 think we are talking about 29 people, which I certainly
10 like a lot better than simply pointing to a random
11 individual, but I recognize as also simply 29
12 individuals in a certain circumstance that might or
13 might not be replicated as we do this again and increase
14 the numbers of people that we evaluate.

15 Q. You don't propose to offer any expert opinion
16 that the findings of Roberts as reported in this paper
17 of 2020 are inaccurate?

18 A. So, I guess the way I said it is how I said it
19 already, which is I'm not doubting Roberts' data, but I
20 wouldn't then over generalize to say that I know that
21 these would be the findings we would see in every
22 similar circumstance.

23 Q. And are you aware that one common track event or
24 cross-country event, I can never keep them straight, is

1 the 1600 meter, which is about a mile?

2 A. Actually, that is not my expertise. I believe
3 you.

4 Q. Are you aware that the 3,000 meter, a 1.8 mile
5 distance, is a standard event?

6 A. If you are meaning to quiz me on the standard
7 lengths these days and meters and all of that, no.

8 ATTORNEY BROOKS: Well, I can't complete
9 my next document in two minutes, we if we want to break
10 at 1:00 now or I can do one more document.

11 ATTORNEY BLOCK: I'm fine continuing if
12 you are.

13 THE WITNESS: My bias is to push.

14 ATTORNEY BROOKS: Folks online, we're
15 going to continue a little bit farther.

16 BY ATTORNEY BROOKS:

17 Q. You cited a paper by Harper from 2015. And that
18 paper also I take it you studied with some detail?

19 A. Yes.

20 Q. And how many individuals did Harper have in that
21 study?

22 A. I --- do we have her ---?

23 Q. Everything that you mention I have.

24 ATTORNEY BROOKS: Let me mark as Safer

1 Exhibit 11 ---

2 ATTORNEY WILKINSON: Yes.

3 ATTORNEY BROOKS: --- Harper's --- Harper
4 et al. or just Harper, article Race Times for
5 Transgender Athletes from 2015.

6 ATTORNEY WILKINSON: Tab 61.

7 ---

8 (Whereupon, Exhibit 11, Race Times for
9 Transgender Athletes Article, was marked for
10 identification.)

11 ---

12 THE WITNESS: Thank you.

13 BY ATTORNEY BROOKS:

14 Q. You say you have worked with Joanna Harper, you
15 are aware that Dr. Harper is both an athlete and
16 transgender?

17 ATTORNEY BLOCK: Objection to form.

18 THE WITNESS: I am aware. I am aware
19 that she is an athlete, and I'm aware that she is
20 transgender.

21 BY ATTORNEY BROOKS:

22 Q. Did you have after studying the paper end up
23 with an understanding of how many participants there
24 were?

1 A. There were eight participants. I'm looking at
2 Table 5.

3 Q. Did you have an understanding of how those
4 participants were recruited?

5 A. I do have some understanding of that, yes.

6 Q. How is that?

7 A. The --- how would I characterize this? It's
8 somewhat ad hoc in the sense that Ms. Harper is in the
9 category of these other participants, and so she was
10 able to identify others that met the criteria of being
11 both transgender and being sufficiently intense in their
12 middle distance running that they had race times that
13 they could identify that would allow for the --- for
14 these determinations of age based --- I don't know all
15 the terminology here, but their age-based grade
16 proportional to others in that same sex category.

17 Q. And it is consistent with your understanding, is
18 it not, that all of the information in this study about
19 what hormonal treatment these individuals had undergone
20 was self reported?

21 A. This is --- the entire study is self report,
22 that is she didn't have --- Ms. Harper did not have
23 access to people's individual records independently.

24 Q. So there was no independent confirmation of how

1 long that they had suppressed testosterone.

2 Correct?

3 A. There was no independent confirmation beyond Ms.
4 Harper and her dealing with other subjects directly.

5 Q. Well, in your view as a scientist, that's not
6 independent confirmation, is it?

7 ATTORNEY BLOCK: Objection to form.

8 THE WITNESS: So I'm not expressing an
9 opinion there because in a science --- you know, in a
10 scientific paper we would have --- we would have peer
11 review, but we don't --- that just --- ends up being a
12 little bit of a fuzzy realty.

13 BY ATTORNEY BROOKS:

14 Q. There is no information in this paper about what
15 testosterone levels were achieved by any of these
16 individuals as a result of suppression, is there?

17 A. I don't know. Let's --- I can look through that
18 a little bit because does she reference how many of them
19 have had surgery and such? It has been quite a while,
20 you know. So notably, there is some independent
21 confirmation of some of the data because some of this
22 was posted.

23 Q. Wait. Let me just be clear. Some of the times
24 were verified independently.

1 Correct?

2 A. That's correct.

3 Q. Nothing about the hormonal treatment?

4 A. Right.

5 ATTORNEY BLOCK: Do you want to give him
6 a chance to review it?

7 BY ATTORNEY BROOKS:

8 Q. Doctor Safer, let me just withdraw that question
9 and ask you another question.

10 A. Yeah, go ahead.

11 Q. Do you know whether Doctor Harper stands behind
12 the conclusions of her 2015 paper today?

13 A. If you ask me do I know it, that's too strong a
14 statement.

15 ATTORNEY BROOKS: Let me mark as Safer
16 Exhibit 12 an article by Joanna Harper and others from
17 2021 entitled How Does Hormone Transition in Transgender
18 Women Change Body Composition, Muscle Strength and
19 Hemoglobin.

20 ATTORNEY WILKINSON: Tab 21.

21 ---

22 (Whereupon, Exhibit 12, Joanna Harper
23 Article, was marked for identification.)

24 ---

1 BY ATTORNEY BROOKS:

2 Q. Dr. Safer, have we put that in front of you?

3 Yes, we have. Are you familiar with this article?

4 A. I am.

5 Q. And have you read it, reviewed it recently?

6 A. I have reviewed it relatively recently.

7 Q. And do you understand, and I didn't completely
8 read the title. The second sentence of the title says
9 Systematic Review with the Focus on Implications for
10 Sport Participation.

11 Do you see that?

12 A. I do.

13 Q. Can you tell me why when you cited Harper's 2015
14 paper that you just referred to as older science you
15 didn't cite Harper's 2021 publication?

16 A. So to be clear, I didn't use the older science.
17 I simply referenced Harper's paper as one of the only
18 two papers on the subject. And your question?

19 Q. Why didn't you cite Harper's 2021 paper on the
20 topic?

21 A. So this paper is more in the category of the
22 papers looking at impact on tissues of which there are
23 several papers as opposed to actually investigating a
24 specific activity, a person's activity. And does this

1 have primary data in it?

2 Q. Well, let me take you to page eight.

3 A. Yeah, I don't even think this has a final data
4 in it.

5 Q. Describing the Roberts study, Harper here on
6 page eight, column one, about halfway down, summarizes
7 as follows: Quote, trans women ran significantly faster
8 during the 1.5 mile fitness test than ciswomen. These
9 observations in trained transgender individuals are
10 consistent with the finding of the current review in
11 untrained individuals whereby 30 months of gender
12 affirming hormone therapy maybe sufficient to attenuate
13 some but all influencing factors associated with
14 muscular endurance and performance, closed quote.

15 Do you see that?

16 A. Yes. This is the end of the paragraph there?

17 Q. Yes.

18 A. We're starting with these observations, yes, I
19 see that.

20 Q. And do you propose to offer any expert opinion
21 inconsistent with Joanna Harper's summary of the data
22 here suggesting that 30 months of gender affirming
23 hormone therapy may be sufficient to attenuate some but
24 not all influencing factors associated with muscular

1 endurance and performance?

2 A. The statement here is too broad, so it's simply
3 raising questions.

4 Q. Well, Joanna Harper says here that the findings
5 of her current review were that 30 months of gender
6 affirming hormone therapy may be sufficient to attenuate
7 some but not all influencing factors associated with
8 muscular endurance and performance?

9 ATTORNEY BLOCK: Objection to leaving out
10 words of what you quoted.

11 BY ATTORNEY BROOKS:

12 Q. And my question for you is do you intend to
13 offer an expert opinion that you believe is inconsistent
14 with that statement?

15 ATTORNEY BLOCK: Same objection. It's
16 misquoting the document.

17 THE WITNESS: So the operative or
18 inoperative word here is may be sufficient, and so when
19 we're --- these are research questions as we try to
20 understand physiology and the relevance of certain
21 testosterone levels at certain endpoints and then not
22 just endpoints as surrogates, which is what most of the
23 papers to date still are, but endpoints in actual
24 athleticism and athletic competition. And so that's all

1 this is doing is putting out some questions or some
2 potential thoughts.

3 BY ATTORNEY BROOKS:

4 Q. Let me ask you to turn to page one and column
5 one.

6 A. Of this same paper?

7 Q. Of the same paper. In the conclusion of the
8 abstract the last sentence reads, quote, these findings
9 suggest the strength may be well be preserved in trans
10 women during the first three years of hormone therapy,
11 closed quote.

12 Do you see that?

13 A. I do.

14 Q. And having reviewed whatever literature you have
15 reviewed to date do you share Doctor Harper's
16 understanding that strength may well be preserved in
17 trans women during the first three years of hormone
18 therapy?

19 ATTORNEY BLOCK: Objection to misquoting
20 the document.

21 THE WITNESS: So I can't comment on Ms.
22 Harper's understanding, but if you're asking is that ---
23 you know, is the question a question, so the question is
24 a question. These findings suggest that strength may

1 and again an operative word is may.

2 BY ATTORNEY BROOKS:

3 Q. Yes.

4 A. And these are as I, a scientist, and she is a
5 scientist too, we are turning the earth, as it were, of
6 what we know looking for what questions we might want to
7 study and how we might want to frame studies going
8 forward.

9 Q. Let me take you back to page eight, if I may.
10 And the penultimate sentence of this paper at the bottom
11 of the first column of paragraph of page eight reads,
12 quote --- well, let me read --- yeah, I will just read
13 that, quote, whether transgender and cisgender women can
14 engage in meaningful sport even after gender affirming
15 hormone therapy is a highly debated question, closed
16 quote.

17 Do you see that language?

18 A. I do.

19 Q. You'll agree that up to the present that is a
20 highly debated question?

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: There's context there too.

23 So this is referencing a league sport and it's --- as
24 well there are a range of potential sports, and so the

1 question and the degree to which it is highly debated
2 even I'm not going to render an official opinion there.
3 So the --- whether transgender and cisgender women can
4 engage in meaningful sport depends on what sport we're
5 talking about, what treatment we're talking about, age
6 group, whether elite versus more of an intermural
7 setting. And so it's just a relatively simple statement
8 and to summarize a paper I guess.

9 BY ATTORNEY BROOKS:

10 Q. You agree that this --- that is the question of
11 whether transgender and cisgender women can engage in
12 meaningful sport even after gender affirming hormone
13 therapy is one on which reasonable scientists can
14 disagree and today are disagreeing?

15 ATTORNEY BLOCK: Objection to form.

16 THE WITNESS: So going back --- so is
17 your --- so are you asking me --- I guess help me
18 reframe what the question is there because there are a
19 bunch of things packed into that sentence actually. And
20 you heard me try to unpack them both.

21 BY ATTORNEY BROOKS:

22 Q. That may be a complex question, as debated
23 questions often are, but my question is do you agree
24 that the question of whether transgender and cisgender

1 women can engage in meaningful sport even after gender
2 affirming hormone therapy is one on which reasonable
3 scientists can differ and are differing today given the
4 possibility of data?

5 ATTORNEY BLOCK: Objection to form for
6 the same reasons.

7 THE WITNESS: So I'm sitting here as a
8 scientist talking about differences in athleticism and
9 such and whether --- and so moving onto meaningful sport
10 goes beyond my expertise. I'm only putting data
11 together in a --- that's my lane on this subject.

12 ATTORNEY BROOKS: Okay.

13 Let's break for lunch.

14 ATTORNEY BLOCK: Let's go off the record,
15 so 2:15.

16 ATTORNEY BROOKS: 2:15? Any dissent? No
17 dissent.

18 VIDEOGRAPHER: Going off the record. The
19 current time is 1:16 p.m. Eastern Standard Time.

20 OFF VIDEOTAPE

21 ---

22 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

23 ---

24 ON VIDEOTAPE

1 VIDEOGRAPHER: Back on the record. The
2 current time is 2:18 p.m. Eastern Standard Time.

3 BY ATTORNEY BROOKS:

4 Q. Good afternoon, Dr. Safer. Take you back into
5 context, I'm going to ask you to find your expert
6 report, Exhibit-1, and find paragraph 25, which we have
7 looked at before. And there in the third sentence it
8 reads based on current research comparing
9 non-transgender boys and men with non-transgender girls
10 and women before, during and after puberty the primary
11 known biological driver of these average group
12 differences is testosterone starting at puberty, and not
13 reproductive biology or genetics, period, closed quote.

14 Do you see that language?

15 A. Yes.

16 Q. And your one cite for that is the endocrine that
17 we've already looked at already.

18 Right?

19 ATTORNEY BLOCK: Objection to the form.

20 THE WITNESS: So the citation in that
21 paragraph is the Handelsman, yes.

22 BY ATTORNEY BROOKS:

23 Q. And do you recall our earlier discussion about
24 how the effects of testosterone are cumulative over time

1 rather than depending solely on the testosterone level
2 of an individual at a particular time, right? Do you
3 recall that discussion?

4 A. So the impact --- excuse me, the impact of
5 testosterone is cumulative. It depends what impacts
6 we're talking about. So there are impacts that are
7 cumulative, like height, and there are impacts that
8 really do reflect that point in time.

9 Q. Now, at the moment let me ask just based on your
10 recollection. The Handelsman article is Exhibit-4. Do
11 you have that? And I will ask you to find it in your
12 pile. I should have neated up your pile of exhibits
13 while you were out. That looks like it.

14 A. Got it, yes.

15 Q. The Handelsman article, as far as you recall,
16 does not contain any data or conclusions concerning the
17 effects of testosterone after the beginning of male
18 puberty, does it?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: Honestly, I would have to
21 go look carefully.

22 BY ATTORNEY BROOKS:

23 Q. Then I won't take time to do that.

24 A. Okay.

1 Q. It does or it doesn't. We will deal with that.

2 A. Yes.

3 Q. Do you know whether any other writing Professor
4 Handelsman has expressed any view as to whether
5 testosterone suppression after male puberty eliminates
6 sex-based physical advantages sufficiently to maintain
7 fairness in sports for women?

8 ATTORNEY BLOCK: Objection to the form.

9 THE WITNESS: So first of all, putting it
10 altogether that way isn't necessarily how I would say it
11 or how I would expect it to be said. It would be
12 testosterone suppression and whatever the scientific
13 finding at the moment would be. So we already know that
14 the data that relate to athleticism are just the Roberts
15 paper and the Harper paper, so I guess that is as much
16 as I can say in that particular context. And in terms
17 of --- so yes, I think that it wouldn't be --- I forgot
18 already how you phrased that.

19 BY ATTORNEY BROOKS:

20 Q. Let me just ask again.

21 A. Yes.

22 Q. So the first question is not a hard one.

23 A. Okay.

24 Q. Do you know whether Professor Handelsman has

1 himself in his publication expressed any view whether
2 testosterone suppression after male puberty eliminates
3 sex-based physical advantages sufficiently to maintain
4 fairness in sports for women?

5 ATTORNEY BLOCK: Objection to form.

6 THE WITNESS: So I don't know if he has
7 written something covering all those bases that you just
8 described, how you described it.

9 ATTORNEY BROOKS: All right. Let's look
10 at treatment variable. Let me mark as Exhibit 13 a
11 short article by Dr. Roberts with a subsequent comment
12 by David Handelsman.

13 ATTORNEY WILKINSON: Tab 62.

14 ATTORNEY BROOKS: And unfortunately, the
15 words were a little clipped on this. We will see how we
16 do.

17 ---

18 (Whereupon, Exhibit 13, Dr. Roberts Article, was
19 marked for identification.)

20 ---

21 ATTORNEY BLOCK: Thanks.

22 BY ATTORNEY BROOKS:

23 Q. And I think a fair description of what we have
24 here is a relatively popular press type piece by Dr.

1 Roberts first. And this document is dated December 16,
2 2020.

3 ATTORNEY BLOCK: Objection. Does it say
4 where it was published?

5 ATTORNEY BROOKS: No, it doesn't say on
6 its face where it was published. And as we sit here
7 right now I don't recall, though actually looking at it
8 I do recall that Kilio is an online publication of some
9 sort, and I've seen the brand came from the Kilio
10 website.

11 BY ATTORNEY BROOKS:

12 Q. At any rate, I see the date, I see the title.
13 It purports to be an article by Professor Roberts. I
14 just want to be clear in my description it does not ---
15 it does not have the appearance of a separate peer
16 review article since the summary taken off of the
17 article that we've already looked at. And then at the
18 end of it is a two-paragraph prospective on this offered
19 by Dr. Handelsman.

20 Do you see that?

21 A. I do.

22 Q. And he begins by making clear that he is
23 commenting on this study, that is Roberts study that is
24 discussed above. He is not introducing new science,

1 correct, is that consistent with your understanding?

2 ATTORNEY BLOCK: Objection. Give him a
3 chance to read it.

4 THE WITNESS: So that, yes, my
5 understanding, too, is that there is not new data here,
6 mostly a commentary within the context some of our
7 existing knowledge on the Roberts study.

8 BY ATTORNEY BROOKS:

9 Q. And in his comment to Dr. Handelsman states in
10 the second paragraph, as of 2020, quote, a major
11 question remains whether gender affirming hormone
12 treatment overcomes sex-based physical advantages
13 sufficiently to maintain fairness so that an exception
14 can be made for trans women, paren, natal males, closed
15 paren, treated with estrogen.

16 Do you see that language?

17 A. I do.

18 ATTORNEY BLOCK: Objection. I believe
19 that is what it says, but I just want to note for the
20 record that there is text cut off on the left.

21 ATTORNEY BROOKS: There is. And I'll get
22 better copies. I'm looking at a copy that's not cut off
23 I will represent.

24 BY ATTORNEY BROOKS:

1 Q. And do you have an expert opinion as to ---
2 well, do you propose to offer any opinion disagreeing
3 with Professor Handelsman that as of 2020 it remained a
4 major question whether gender affirming hormone
5 treatment to overcome sex-based physical advantages
6 sufficiently to maintain fairness so that an exception
7 could be made for trans women treated with estrogen?

8 A. So to me that's too broad a question if you're
9 asking me to render an expert opinion about his opinion.

10 Q. I'm asking whether you propose to offer an
11 expert opinion inconsistent with his view that remains a
12 major question as of 2020.

13 A. It's --- I might --- well, I would at least
14 phrase things differently in there --- we might have to
15 go through pieces of it because certainly where we lack
16 data I think we would agree, but in terms of those
17 statements that then go on to editorialize, I don't know
18 that we necessarily agree in how we would frame that.

19 Q. A little farther down, maybe two sentences down
20 it reads, quote, by contrast, trans women treated with
21 estrogens after completing male puberty experienced only
22 minimal declines in physical performance over 12 months,
23 substantially surpassing average female performance for
24 up to eight years, closed quote. Do you agree or

1 disagree with Professor Handelsman summary of the
2 findings of Roberts?

3 ATTORNEY BLOCK: Objection to form. I'm
4 just not sure it's all based on Roberts?

5 THE WITNESS: It is not clear to me that
6 it's --- that it is based on Roberts for what it's
7 worth. It's also somewhat simplistically written. And
8 an example is we don't --- the contention with regard to
9 athletic outcomes relates more to testosterone, and so
10 saying transgender women treated with estrogens wouldn't
11 be precisely how I would frame that either.

12 BY ATTORNEY BROOKS:

13 Q. He concludes --- Professor Handelsman concludes
14 by stating supporting federations should incorporate
15 these findings in the strategies for including trans
16 women in elite female competitions while maintaining
17 fairness and safety for other women. Dr. Safer, do you
18 agree that maintaining safety for cisgender women is a
19 legitimate and indeed important concern?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: As an expert I'm not going
22 to give an opinion.

23 BY ATTORNEY BROOKS:

24 Q. As Doctor Safer do you agree that ensuring

1 safety for cisgender women and girls is a legitimate
2 concern?

3 ATTORNEY BLOCK: Objection to form.

4 THE WITNESS: So if I'm simply speaking
5 not as an expert, just as an educated person in the
6 field, then it is true that safety is important, but I'm
7 not clear that --- I don't know that in most of these
8 athletic activities it's actually a concern.

9 ATTORNEY BROOKS: Let me mark as Safer
10 Exhibit 14 a document entitled Guidance with Transgender
11 Inclusion in Domestic Sport with symbols of a number of
12 UK sport governing bodies across the front and a
13 statement published September 2021.

14 ATTORNEY WILKINSON: Tab 22.

15 ---

16 (Whereupon, Exhibit 14, Guidance with
17 Transgender Inclusion in Domestic Sport,
18 marked for identification.)

19 ---

20 THE WITNESS: Thank you.

21 BY ATTORNEY BROOKS:

22 Q. And my first question for you, Dr. Safer, is
23 whether you have seen this document before?

24 A. I have seen this document before.

1 Q. And were you aware of it prior to its reference
2 in this litigation?

3 A. I don't know that I was.

4 Q. And are you familiar with the role of the
5 supporting body mentioned on the front page in
6 governance of sport within the United Kingdom?

7 A. By looking at all their logos, I cannot say that
8 I know them all, no.

9 Q. And do you have any knowledge as to whether
10 these are official government chartered --- chartered
11 sporting governing bodies?

12 A. I do not have that knowledge.

13 Q. Have you now studied this document with some
14 care?

15 A. I would say that I have only looked at this
16 document superficially. I'm certainly happy to look
17 through it.

18 Q. I will ask you just about a couple of passages.
19 Let me ask you to turn to page three of the document.
20 And towards the very bottom and the next to the last
21 paragraph this --- five organizations states, quote, our
22 work exploring the latest research, evidence and studies
23 made clear that there are retained differences in
24 strength, stamina and physique between the average women

1 compared with the average transgender women for
2 nonbinary person registered male at birth with or
3 without testosterone suppression.

4 Do you see that language?

5 A. I do.

6 Q. And do you disagree with the conclusion of these
7 UK sporting bodies that the latest research, evidence
8 and studies now make clear that there are retained
9 differences in strength, stamina and physique in
10 nonbinary --- in transgender women or nonbinary persons
11 registered male at birth with or without testosterone?

12 ATTORNEY BLOCK: Objection to referring
13 to this as something written by the governing bodies as
14 opposed to the quality council that makes
15 recommendations to the governing bodies.

16 THE WITNESS: To the statement written by
17 whoever actually wrote it that evidence and studies on
18 the subject of transgender people make clear anything, I
19 disagree.

20 BY ATTORNEY BROOKS:

21 Q. Let me ask you to turn to page six, under the
22 heading question review is recommending it states,
23 quote, as a result of what the review found the guidance
24 concludes that the inclusion of transgender people into

1 female sport cannot be balanced regarding transgender
2 inclusion, fairness and safety in gender affected sport
3 where there is meaningful competition, period, closed
4 quote.

5 Do you see that?

6 A. I do.

7 Q. And do you disagree with that conclusion of this
8 organization or these organizations?

9 A. So I really --- as we discussed earlier, I'm not
10 going to express as an expert --- I don't think I'd be
11 able to express as an expert fairness and so I can't
12 comment any further.

13 Q. Let me ask you to turn to page nine in your
14 expert report, paragraph 49.

15 A. Okay. Paragraph 49.

16 Q. At the end of paragraph 49 you state, quote, a
17 person's genetic makeup and internal and external
18 reproductive anatomy are not useful indicators of
19 athletic performance and have not been used in elite
20 competition for decades. In making that statement when
21 you refer to a person's genetic makeup were you
22 referring to the question of whether they had XX or XY
23 chromosomes?

24 A. So when I'm making the statement genetic makeup

1 I'm heavily referencing chromosomes. So I guess I would
2 say that is mostly correct with some --- with perhaps
3 some known genes, but mostly chromosomes.

4 Q. You would agree, would you not, that respected
5 voices in the field take the view that genetic sex it is
6 at least an important determinant of athletic
7 performance, do you not?

8 ATTORNEY BLOCK: Objection to form.

9 THE WITNESS: So that I'm supposed to
10 comment that there are people in the field who say that?
11 I guess what I would say is the consensus right now
12 among medical people advising elite athletic
13 organizations would be to move away from using that as a
14 surrogate. In the past it was. There were chromosome
15 tests and the problem is that people have --- there is
16 quite a bit of variety in biology and of course the
17 moment you make a rule you see the exceptions.

18 BY ATTORNEY BROOKS:

19 Q. The exceptions.

20 A. And so I would say that as an expert I can't
21 comment in terms of, you know, some study of everybody's
22 opinion or some survey. But as somebody who has been on
23 these committees I've observed that that was discarded.

24 Q. So if you put alongside individuals who suffer

1 from any condition that has been identified as a
2 disorder of sexual development, am I correct that you
3 consider yourself to have expertise in what constitutes
4 a disorder of sexual development?

5 A. I have some expertise. And the terminology is
6 actually differences of sexual development or sexual
7 differentiation or intersex are the terms that are more
8 popularly used.

9 Q. You would agree with me, would you not, that
10 many respective sources up to the present would continue
11 to refer to disorders of sexual development?

12 ATTORNEY BLOCK: Objection to form.

13 THE WITNESS: So there --- what I would
14 say there is that --- the newer terminology has not ---
15 has not yet permeated because there have not been
16 revisions to all the documents that have been created.

17 BY ATTORNEY BROOKS:

18 Q. How about if we say DSD?

19 A. DSD is a reasonably safe or DSD intersex is what
20 some people do, yes.

21 Q. Well, not all DSDs would be considered intersex
22 conditions.

23 Correct?

24 A. You are right that some people try to parse

1 those two terms even. And there is --- but I think
2 those kinds of distinctions might be on the scope of
3 what we are discussing.

4 Q. Probably so. If we put on side individuals who
5 suffer from anything that is characterized in the field
6 as a DSD you would agree, would you not, that genetic
7 makeup and specifically whether the individual possesses
8 XX or XY chromosomes is a statistically meaningful
9 indicator of athletic performance?

10 ATTORNEY BLOCK: Objection to form.

11 THE WITNESS: So no, and the --- it's ---
12 I guess it depends what you mean is what it comes down
13 to. So if you are --- if you are simply saying, well, a
14 certain fraction of people of these chromosomes are
15 going to be --- have this other characteristic, then
16 maybe there are those kinds of associations. But if you
17 are going to say that it's connected to the point where
18 you could actually use one of those let's say observing
19 a chromosome as an actual determination for a given
20 individual, then I would say no.

21 BY ATTORNEY BROOKS:

22 Q. Is it your opinion that a gender identity itself
23 is a --- or useful indicator of athletic performance?

24 A. It is my opinion that gender identity itself is

1 not a useful indicator of athletic performance.

2 Q. You say at paragraph 44 of your report --- I
3 will save that. I think that is a new Declaration and
4 we will not take time to do that.

5 Let me ask you to look at paragraph 24 of your
6 rebuttal report. You say in paragraph 24 that none of
7 Doctor Carlson's arguments support HB-3293 categorical
8 ban of all girls who are transgender from all girls
9 sports teams.

10 Do you see that?

11 A. I do.

12 Q. And I should continue. I'm sorry. Doctor
13 Carlson's safety argument relates solely to contact and
14 collision sports and the physical characteristics
15 developed during puberty, period. By referring to a
16 categorical ban let me ask this. Do you agree that
17 safety considerations could justify or may justify
18 excluding natal males who experienced all or significant
19 part of male typical pubertal development from
20 participating in female division of contact or collision
21 sports such as basketball and soccer?

22 ATTORNEY BLOCK: Objection to form.

23 THE WITNESS: So if the question is would
24 I anticipate as an expert that there would be a safety

1 explanation for banning transgender women from the
2 female category, then I would --- I wouldn't --- I
3 certainly --- let me think about which way to phrase it.
4 I would have a hard time coming up with an example where
5 I would use being transgender as a safety criterion as
6 opposed to body habitus size or some other more
7 objective criterion.

8 BY ATTORNEY BROOKS:

9 Q. Well, and I didn't say anything about gender
10 status. Let me ask again. Would you agree that safety
11 considerations could justify excluding natal males who
12 have experienced all or a significant part of male
13 typical pubertal development from participating in
14 female division contact and collision sports such as
15 basketball or soccer?

16 ATTORNEY BLOCK: Objection to form.

17 THE WITNESS: So you're saying that even
18 if we otherwise decided that it would be okay for
19 cisgender males to play with cisgender females, would I
20 envision there being a safety reason to ban those
21 cisgender males?

22 BY ATTORNEY BROOKS:

23 Q. All I asked had nothing to do with gender
24 identity. Do you agree that the introduction onto the

1 field or the court in or have been spoken of its contact
2 or collision sports in the female division of natal
3 males who have gone through all or a significant part of
4 male typical pubertal development could raise legitimate
5 concerns about safety for the natal females?

6 ATTORNEY BLOCK: Same objections as the
7 previous two questions.

8 THE WITNESS: So any person who's gone
9 through a male puberty would that, per se, make me
10 invoke a safety concern, if that's the question ---.

11 BY ATTORNEY BROOKS:

12 Q. Could that in your mind raise the given safety
13 concerns?

14 A. So I would not --- the word legitimate I'm not
15 addressing, but I'm not aware of that in and of itself
16 being a safety concern.

17 Q. You state in paragraph 22 of your rebuttal
18 report that, quote, transgender athletes and women have
19 been competing in NCAA and secondary school athletics
20 for many years at this point. Let me ask you if you are
21 aware of any instance in which natal males have competed
22 in the female category in any contact or collision sport
23 in either the NCAA or high school division?

24 ATTORNEY BLOCK: Objection to form.

1 THE WITNESS: So can I identify
2 transgender girls or women specifically and specific
3 instances of participation? I cannot.

4 BY ATTORNEY BROOKS:

5 Q. What was your basis for asserting that such
6 athletes have been competing in the NCAA and secondary
7 school athletics for many years?

8 ATTORNEY BLOCK: I'm sorry. Is the
9 question about collision sports? Because you are
10 quoting something that is not about collision sports.

11 ATTORNEY BROOKS: Let me break that out.
12 Thank you.

13 BY ATTORNEY BROOKS:

14 Q. Do you have a view as to whether --- I shouldn't
15 say a view. Do you have any information as to whether
16 transgender athletes have been competing in the women's
17 division of NCAA or secondary school athletics in any
18 contact or collision sports for many years?

19 A. That information on the validity is that they
20 have had access because there has not been a ban.

21 Q. But whether they have done so you do not have
22 any information?

23 A. But I cannot point to specific instances,
24 exactly.

1 Q. I apologize if I asked something early in the
2 morning, but it's faster than trying to dig back into
3 the transcript. Do you have any opinion as to whether
4 it is reasonable to exclude a natal male with a male
5 gender identity from a high school girls basketball
6 team?

7 ATTORNEY BLOCK: Objection to form.

8 THE WITNESS: So ask that again a little
9 bit slower.

10 BY ATTORNEY BROOKS:

11 Q. Do you have have any opinion as to whether it is
12 reasonable to exclude a natal male with a male gender
13 identity from participation in a girls high school
14 basketball team?

15 ATTORNEY BLOCK: Objection.

16 THE WITNESS: I do not have an expert
17 opinion on that subject.

18 BY ATTORNEY BROOKS:

19 Q. Do you have a personal view?

20 A. I don't know that I --- there it would get more
21 complicated depending on context.

22 Q. You don't have a simple yes or no personal view
23 on that question?

24 A. I don't.

1 Q. And do you have a view whether it is reasonable
2 to exclude a natal male with a female gender identity
3 from participation in a high school girls basketball
4 team?

5 ATTORNEY BLOCK: Objection to form.

6 THE WITNESS: So do I have a view on
7 participation of a cisgender girl in the girls category?
8 Sorry. Say it again.

9 BY ATTORNEY BROOKS:

10 Q. I said do you have a view on whether it is
11 reasonable to exclude a natal male with a female gender
12 identity from participation in the high school girls
13 basketball team?

14 ATTORNEY BLOCK: Objection to form.

15 THE WITNESS: So that is a transgender
16 girl, got it. So --- and the question is do I have a
17 view on --- I apologize. Go back.

18 BY ATTORNEY BROOKS:

19 Q. I can do it again.

20 A. Yes, do it again. Sorry.

21 Q. Do you have a view as to whether it is
22 reasonable to exclude a natal male with a transgender
23 identity from participation in the girls high school
24 basketball team?

1 ATTORNEY BLOCK: Objection to form.

2 THE WITNESS: And it is do I have a view
3 on excluding --- as an expert am I opining on that? I'm
4 not. I'm opining as a scientist on what the data are.

5 BY ATTORNEY BROOKS:

6 Q. Do you consider a policy that excludes natal
7 males with a male gender identity from the girls
8 basketball team to be, quote, discriminatory?

9 ATTORNEY BLOCK: Objection to form and
10 scope.

11 THE WITNESS: So as an expert I'm not
12 taking a position on excluding cisgender males from the
13 female category, if I answered that correctly.

14 BY ATTORNEY BROOKS:

15 Q. My question was simply do you consider such a
16 policy to be a discriminatory policy?

17 ATTORNEY BLOCK: Objection to form and
18 scope.

19 THE WITNESS: So are you asking me as an
20 expert to define discrimination?

21 BY ATTORNEY BROOKS:

22 Q. I will direct you to paragraph 27 of your
23 rebuttal report. And there you wrote Doctor Carlson has
24 not offered cogent explanation for why alleged safety

1 concerns based on average differences in size and
2 strength should be addressed within an across the board
3 exclusion of transgender women as opposed to tailored
4 nondiscriminatory policies.

5 Do you see that?

6 A. I do.

7 Q. So understanding discriminatory, however you did
8 understand it when you wrote that, do you consider a
9 policy that prohibits natal males with a male gender
10 identity from participating on the girls basketball team
11 to be a discriminatory policy?

12 ATTORNEY BLOCK: Same objections.

13 THE WITNESS: Right. So I'm not defining
14 --- I'm not defining discriminatory here. I'm ---
15 right. So if you are asking as an expert to define
16 discriminatory, that I can't do.

17 BY ATTORNEY BROOKS:

18 Q. Well, if you don't know what discriminatory
19 means, what do you mean when you referred to a tailored
20 nondiscriminatory policy?

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: I guess I have to circle
23 back initially to --- I mean we can do that for any word
24 here, right, where I could have like my own personal

1 definition or am I acting as an expert to define these
2 words, and I think we are kind of in that situation.

3 BY ATTORNEY BROOKS:

4 Q. But I'm asking you about your expert reports in
5 the litigation. You must have meant something. What
6 did you mean by nondiscriminatory when you submitted
7 this expert report?

8 ATTORNEY BLOCK: Objection to form.

9 THE WITNESS: So when I'm using the word
10 nondiscriminatory I am using it to mean something that
11 isn't using some other indicator --- well, I'm really
12 just using it in the broadest sense to something that is
13 including people.

14 BY ATTORNEY BROOKS:

15 Q. Using it in the broadest sense, discriminating
16 between one category and another is --- could be a good
17 thing or a bad thing.

18 Correct?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: As an expert I --- that is
21 way outside my scope. But simply as an English speaker,
22 yes, discrimination could be good or it can be bad, yes.

23 BY ATTORNEY BROOKS:

24 Q. And for instance, if you are --- well, you said

1 you don't prescribe to minors, so --- but if you are
2 dealing with a 19-year-old who says and you concluded I
3 need gender affirming hormone, and I will use the term
4 you prefer, if that individual's hormones and biology
5 are female then gender affirming hormones are going to
6 consist, among other things, perhaps of administering
7 testosterone.

8 Correct?

9 A. Yes, typically we would have have ---.

10 Q. And if that individual's biology and hormones
11 endogenous were male, then the gender affirming hormones
12 would include among other things estrogen or estrogen
13 analog.

14 Correct?

15 ATTORNEY BLOCK: Objection to form.

16 THE WITNESS: If that person had
17 typically --- typically a male hormone profile, right,
18 to move toward a more feminine profile that typically
19 would include estrogens or some other agents that were
20 other than testosterone, yes.

21 BY ATTORNEY BROOKS:

22 Q. So speaking scientifically and not in civil
23 rights terms, if I may, you as a scientist, as you
24 decide which regimen of hormones to administer to this

1 individual have to discriminate between those who are
2 endogenously male and those who are endogenously female
3 in deciding which regimen you prescribe.

4 Correct?

5 ATTORNEY BLOCK: Objection to the form.

6 THE WITNESS: We have to make a decision.

7 And so if you are trying to get me to say that
8 discrimination can be defined as making decisions, I'm
9 with you and yes.

10 BY ATTORNEY BROOKS:

11 Q. Okay.

12 Let me just run down a few items to make sure.
13 You have not personally engaged in any research
14 regarding sports physiology, have you?

15 A. I'm trying to think if there's anything. I
16 don't believe I have.

17 Q. You yourself haven't personally engaged in any
18 research or published any papers --- that's a compound
19 question. You, yourself, haven't engaged in any
20 research relating to sports medicine or sports injuries,
21 have you?

22 A. I have not engaged in any research with regard
23 to sports injuries. And the answer to the first part of
24 that gets a little muddled because some of the papers

1 that I have written about physiology and transgender
2 people could apply to sports medicine.

3 Q. Have you, yourself, ever participated in
4 devising any athletic training regimes for individuals
5 of either sex?

6 A. I've not been involved in devising any training
7 regimes.

8 Q. Have you done any research with related to male
9 physiology --- I'm sorry, male physiological advantages
10 relevant to athletics before, during or after puberty?

11 A. So there I have --- none of the research that I
12 have done to date has been specifically loopholed as ---
13 well, I can't even say that. So research that I have
14 done with regard to observing physiology among my
15 subjects can be applicable to sports medicine in some
16 context.

17 Q. On what publications, if any, of yours do you
18 believe relate to male physiological advantages in
19 athletics before, during or after puberty?

20 A. Well, just off the top of my head, without
21 looking at it exhaustively, I have a paper on
22 hematocrit, which is the oxygen-carrying cells in
23 people. In transgender people I have a paper on
24 testosterone levels with different treatments. So those

1 can have --- those actually can have a sports context.

2 Q. Have you done any research on the impact of
3 testosterone suppression on athletic performance or any
4 measurement of strength?

5 A. So the second piece of that is I have not done
6 any research that specifically used strength as an
7 endpoint in my own studies. To the second piece of
8 those --- I forgot what ---.

9 Q. Athletic performance?

10 A. Athletic performance, there it gets a muddled
11 thing. The research that I have done can be applicable
12 in that context.

13 Q. Well, that is if your endpoint is hematocrit
14 count, to use the right term, you're saying that might
15 have implications for athletic performance? Is that
16 your point?

17 A. That is correct, yes.

18 Q. But you have not done any research in which any
19 measurement of athletic performance is an endpoint?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: Again, I have to think
22 about how to say that because some of the --- part of
23 the problem is that papers that we're looking at include
24 quite a bit of literature on components that may be

1 applicable --- that may be applicable in sports
2 medicine, whether it is muscle strength and muscle size
3 or blood cell counts and such. And so that more
4 expansively than my research is in that category.
5 Whereas, if I'm trying to be focused and narrow, then
6 I've got those two studies, the one by Roberts and the
7 one by Harper. And my papers are not those.

8 BY ATTORNEY BROOKS:

9 Q. You don't have any information about numbers of
10 children in West Virginia who suffer from any DSD, do
11 you?

12 A. No, as --- I guess I have to say no there in
13 terms of actual surveys of kids in West Virginia, I know
14 some brought statistics. West Virginia is big enough
15 that you would predict that the statistics would
16 generally apply, but that is as smart as I could get on
17 the subject.

18 Q. And you are --- I think you effectively answered
19 this, but to be clear for the record you are not opining
20 that BPJ suffers from any DSD?

21 ATTORNEY BLOCK: Objection to the form.

22 THE WITNESS: So the --- here too we get
23 into --- into an evolving area of definitions where you
24 could envision if some of the specific genetics that are

1 associated with being transgender became identified,
2 would we in the medical world start to label those
3 instances as DSD? It's possible. So that is just ---.

4 BY ATTORNEY BROOKS:

5 Q. Thus far no such indicators have been
6 identified.

7 Correct?

8 A. I can't even --- I can't even say that
9 definitively. It is an area of active conversation in
10 terms of --- in terms of boarder setting in the medical
11 community right now.

12 Q. However, I think my question is easier. You're
13 not offering an opinion --- any opinion that BPJ suffers
14 from any DSD, are you?

15 A. So I don't have --- so to be clear first I don't
16 know the --- BPJ's specific medical condition. I wasn't
17 brought in to evaluate that and I have not. So I can't
18 actually render an opinion on any of the medical story
19 there.

20 Q. And you don't know whether any child or typical
21 XY chromosome --- pardon me, you don't know whether any
22 child with XY chromosomes who suffers from a DSD has
23 ever sought to compete in female athletics in West
24 Virginia up until the present?

1 ATTORNEY BLOCK: Objection to the form.

2 THE WITNESS: So the question is do I
3 know of an instance of a specific individual with XY
4 chromosomes and a DSD connected to that who has
5 specifically participated in sports in West Virginia?

6 BY ATTORNEY BROOKS:

7 Q. Who has sought to participate in female
8 athletics in West Virginia?

9 A. Right, so who has sought to participate in
10 female sports in West Virginia. I cannot give you a
11 specific instance, that is true. I can say, though,
12 knowing the percentage of people who have DSDs and the
13 size of the State of West Virginia that you would
14 predict it would be true, but that would be again as
15 smart as I could be on one subject.

16 ATTORNEY BROOKS: Let me mark as Safer
17 Exhibit 15 what was previously designated as Tab 53, an
18 article by Dr. Safer and others entitled the Mount Sinai
19 Patient Center Preoperative Criteria Meant to Optimize
20 Outcomes are Less of a Barrier to Care than WPATH SOC 7
21 Criteria Before Transgender Specific Surgery. And yes,
22 that is a mouthful.

23 ---

24 (Whereupon, Exhibit 15, Dr. Safer Article,

1 was marked for identification.)

2 ---

3 BY ATTORNEY BROOKS:

4 Q. Now, Dr. Safer, to be fair, I see that you are
5 the last listed author on a fairly lengthy list of
6 authors. And maybe that does and maybe that doesn't
7 have significance in terms of how in depth your
8 involvement in this paper was. Let me ask. Was this a
9 paper of which you had some significant input?

10 A. I had significant input. I can tell you that in
11 the medical and scientific community the first author
12 typically did the work and the last author is the senior
13 author and supervisor. And the middle authors are
14 actually the ones where you ---.

15 Q. Okay.

16 I was aware of the significance of the first.
17 I was not aware of the significance of the last. Okay.
18 That is helpful. All of the authors here, if I'm
19 correct, are colleagues within the Mount Sinai Clinic or
20 division that you supervise.

21 Am I correct?

22 A. All of the authors were in those positions at
23 some point, which is how we came together to write the
24 paper.

1 Q. And the paper I should say for the record is
2 dated 2020. And let me see if I correctly understood
3 what the paper is about. If we --- in this paper you
4 compare the eligibility of patients who are seeking
5 vaginoplasty under the WPATH Standard of Care 7 criteria
6 versus the criteria actually used by your clinic.

7 Am I correct?

8 A. Yes.

9 Q. And just so we're clear, vaginoplasty is a
10 surgery that is only done on biological male, natal male
11 individuals.

12 Correct?

13 ATTORNEY BLOCK: Objection to form.

14 THE WITNESS: So a vaginal plasty is the
15 genital reconstruction surgery to create a vagina in a
16 person. When we are using it as a gender affirming
17 surgery, then we are using it on people who have what
18 would be considered typically male anatomy in that
19 circumstance but the surgery could also be used on
20 somebody with typically female anatomy requiring
21 construction for whatever their circumstance may be.

22 BY ATTORNEY BROOKS:

23 Q. That said, the subjects discussed in this paper
24 are all individuals who are seeking the surgery for

1 gender affirming purposes rather than, for instance,
2 because of a severe DSD.

3 Correct?

4 A. The people in this circumstance are all people
5 seeking the surgery for gender affirming purposes and
6 not those for DSD or for other purposes, reconstruction
7 of vaginas for accidents and cancers. I mean there is
8 quite a range.

9 Q. And the result as summarized in the abstract is
10 that of 139 patients who were identified as subjects of
11 this study, 63 qualified for surgery immediately based
12 on the Mount Sinai criteria.

13 Correct?

14 A. Yes.

15 Q. Whereas only 21 of those would have qualified
16 based on the criteria set out in the WPATH Standard of
17 Care Version 7?

18 A. Yes.

19 Q. Three times as many individuals qualified for
20 immediate surgery under the standard used by your clinic
21 as opposed to the standards set out in the WPATH
22 Standard of Care?

23 A. That's correct.

24 Q. When did your clinic begin approving surgery for

1 patients who are not eligible under the WPATH Standard
2 of Care?

3 ATTORNEY BLOCK: Objection to form.

4 THE WITNESS: Yeah, so to be clear, the
5 patients in our program qualify by both criteria. The
6 paper is simply pointing out that our process is more
7 efficient and patient friendly, but it's not to say that
8 we were not informed by WPATH criteria also. And I
9 think I need to expand even a little bit further. Part
10 of the point of the paper is that it includes --- it
11 includes efforts to know benefit to the patient that end
12 up being time consuming and therefore are a waste of
13 energy in contrast to our approach, which is actually
14 more conservative than WPATH's approach. We actually
15 look at more things but we do so in a more efficient
16 fashion and that is actually the point of the paper.

17 BY ATTORNEY BROOKS:

18 Q. Well, let me clarify one thing you just said.
19 According to this paper, it is not the case, is it, that
20 every patient for whom your clinic approved surgery was
21 at that time qualified according to the WPATH criteria?

22 ATTORNEY BLOCK: Objection to form.

23 THE WITNESS: Wait. Say it again. Could
24 you repeat that?

1 BY ATTORNEY BROOKS:

2 Q. It is not the case, is it, that every patient
3 who was qualified for surgery by your clinic had been
4 demonstrated to satisfy the WPATH criteria for
5 eligibility?

6 A. It is --- so there were --- the patients just as
7 stated who qualified by our criteria but not by WPATH
8 criteria, there is such a group that existed, exactly,
9 yes.

10 Q. Okay.

11 And specifically, according to your criteria,
12 three times as many patients are eligible according to
13 WPATH criteria?

14 ATTORNEY BLOCK: Objection to form.

15 THE WITNESS: It's not so much the three
16 times. It is the pace. Some of this relates to pace
17 and efficiency.

18 BY ATTORNEY BROOKS:

19 Q. Dr. Safer, your clinic, according to this paper,
20 approved for surgery 42 patients who were at that time
21 not eligible according to WPATH criteria.

22 Correct?

23 ATTORNEY BLOCK: Objection to form.

24 THE WITNESS: No. So the reality is we

1 still live in the universe that everybody else lives in,
2 so we are --- so this paper proposes a more appropriate
3 and a more patient appropriate model, but it is not the
4 case that we actually sent people to surgery who would
5 not be approved by WPATH.

6 BY ATTORNEY BROOKS:

7 Q. Well, were you personally involved in developing
8 and approving Mount Sinai's criteria?

9 A. Let me look at the role here. Yes, I definitely
10 had a role in developing our criteria.

11 Q. Let me ask you to look at page 168, column one,
12 call your attention quite a bit to table one. And if I
13 understand correctly, table one is designed to help us
14 compare and contrast what is required by the WPATH
15 criteria for surgical readiness versus the Mount Sinai
16 criteria for surgical readiness.

17 Correct?

18 A. That is correct, yes.

19 Q. And the WPATH requires a letter of support from
20 the patient's hormone provider confirming the hormone
21 regimen and the length of time of hormone therapy.

22 Correct?

23 A. That is how it is written, yes.

24 Q. And farther down, under mental health it says

1 that it requires two letters of support from mental
2 health providers?

3 A. It does, yes.

4 Q. And it gives on page 157 a definition who is a
5 qualified mental health professional down towards the
6 bottom of the second column. I'm going to ask you to
7 find that language if you could?

8 A. Uh-huh (yes), yes.

9 Q. You say, many define licensed mental health
10 providers having one or more of the following
11 credentials, the LCSW, Licensed Clinical Social Worker.

12 Is that right?

13 A. LCSW is Licensed Clinical Social Worker, yes.

14 Q. And MD, DO that is a medical doctor, a doctor of
15 --- what does the O stand for?

16 A. Osteopathy.

17 Q. There we go. A psychiatrist, a Ph.D., yes, that
18 was surprising to me. Surely not just any Ph.D.?

19 A. Right, that's referring to a Ph.D. clinical
20 psychologist.

21 Q. Okay.

22 Or any Master's level for above counseling
23 degrees. But then you go on to say that in your
24 evaluation based on SOC-7 criteria. That's the WPATH

1 criteria?

2 A. That's the WPATH criteria, yes.

3 Q. We included the above degrees with the following
4 exclusions, mental health providers with lower than
5 Master's level training and unlicensed mental health
6 providers of any type, NPs and PAs without mental health
7 credentials, physicians who are not psychiatrists or
8 mental health providers who are still in training. Do
9 you see that language?

10 A. I do.

11 Q. So under the definition used in your clinic you,
12 yourself, do not qualify as a mental health
13 professional.

14 Correct?

15 A. That is correct.

16 Q. So at no point have you relied on your own
17 opinion for any mental health evaluation for
18 eligibility?

19 A. That's correct.

20 Q. Okay.

21 I just wanted to understand that clearly. So
22 back to mental health data. It says in the WPATH column
23 that two letters of support from mental health providers
24 are required. In this paper you state on the next page,

1 but I will quote it the most significant of the Mount
2 Sinai criteria is the removal of the requirement of two
3 independent psychiatric evaluations. And that is in
4 column two of page 169, at the end of the first full
5 paragraph. The first full paragraph, column two, the
6 final sentence.

7 A. I'm in which column? Sorry.

8 Q. Column two.

9 A. Oh, column two. Sorry.

10 Q. The first full paragraph, final sentence.

11 A. The most significant deletion from the Mount
12 Sinai criteria is the removal of --- yes, I see that.

13 Q. And you stated at the top of column one on the
14 same page that, quote, finding two mental health
15 providers to do independent evaluations is
16 time-consuming, expensive and difficult.

17 Right?

18 A. Just trying to find that exact wording. Yes.

19 Q. So in your own clinic's practice, while WPATH
20 calls for two letters from independent mental health
21 providers, you concluded that because it was hard to get
22 two independent evaluations your clinic would simply
23 dispense with the requirement of any independent mental
24 health review.

1 Correct?

2 ATTORNEY BLOCK: Objection to form.

3 THE WITNESS: No, that is not quite
4 correct. Part of the difference for our operation is
5 that we have --- we have expertise in-house and we have
6 --- if you notice, looking at the table, a longer list
7 of requirements actually than WPATH does, which includes
8 a social work component. And that actually is the ---
9 that's the source of actually yet a second pair of eyes,
10 as it were. And so it is not the case that we are ---
11 that we're providing less of a screen, we are actually
12 providing more of a screen. It's just that we are
13 operating in a more efficient manner for the patient.

14 BY ATTORNEY BROOKS:

15 Q. Let's flip back to column one. A few more lines
16 down it says for our analysis patients who otherwise met
17 WPATH SOC 7 criteria received one letter of support from
18 the CTMS mental health provider. Right? You would
19 agree with me, would you not, that the only letter of
20 support for a mental health provider required by your
21 protocols is from a mental health provider within your
22 employment?

23 ATTORNEY BLOCK: Objection to not reading
24 the complete sentence.

1 THE WITNESS: So yes. So maybe let me
2 just --- show me the wording again.

3 BY ATTORNEY BROOKS:

4 Q. Yes. For our analysis --- and I'm beginning at
5 perhaps eight lines down.

6 A. Our analysis, yes.

7 Q. Patients who otherwise met WPATH SOC 7 criteria
8 received one letter of support from the CTMS mental
9 health provider doing the assessment, period, closed
10 quoted.

11 Do you see that?

12 A. I do, yes.

13 Q. As the term is generally understood in your
14 field, a CTMS mental health provider is not independent
15 --- let me use the correct terminology, is not an
16 independent mental health provider?

17 A. So in a clinic setting I don't know that the
18 word independent actually has the same meaning as in
19 some other context. So even a WPATH requirement isn't
20 necessarily that it would be an unaffiliated person or I
21 don't know what you were thinking independent might mean
22 here, so I don't want to put words in your mouth or
23 conjecture too much. But when we say independent we
24 just mean two different people.

1 Q. But in fact, the letter of support from the CTMS
2 mental health provider that you refer to in this
3 paragraph at the top of column one of page 169 actually
4 plays no role in your determination as to whether this
5 patient is eligible for surgery.

6 Correct?

7 ATTORNEY BLOCK: Objection to form.

8 THE WITNESS: So yes. I'm confused by
9 the question.

10 BY ATTORNEY BROOKS:

11 Q. I'm confused by the text. The final paragraph
12 --- sentence in that paragraph reads these letters of
13 support were used to satisfy third payor requirements to
14 cover surgery and were not part of the CTMS assessment?

15 A. Oh, yeah, that's a good point. The literal
16 letter is because we are all in-house the opinion of the
17 person is, of course, important and so the screen takes
18 place. But the need to create --- the bureaucratic of
19 creating a specific letter is one of the burdens that we
20 are suggesting could be removed.

21 Q. In table one, let me find this. Under mental
22 health WPATH SOC-7 requires, quote, persistent, well
23 documented gender dysphoria.

24 Do you see that?

1 A. I do.

2 Q. And you understand well documented gender
3 dysphoria to be referring to a general diagnosis under
4 the DSM-V criteria?

5 A. So for WPATH's purposes I think they are
6 specifically referring to the DSM diagnosis.

7 Q. In your clinic you are willing to approve for
8 this --- I'm not sure how to actually say the word
9 vaginoplasty surgery, individuals who do not suffer from
10 persistent well documented gender dysphoria.

11 Correct?

12 ATTORNEY BLOCK: Objection to the form.

13 THE WITNESS: So if you look, the list of
14 the criteria for Mount Sinai, then the phrasing is a
15 confirmation that this person --- for all intents and
16 purposes, that this person is transgender and with the
17 language and evolution we use that word gender dysphoria
18 and we also use the new word that will replace gender
19 dysphoria, gender incongruence, as the terms I
20 referenced before, transgender.

21 BY ATTORNEY BROOKS:

22 Q. And the effect of that is you do not require a
23 diagnosis of gender dysphoria under the terms of DSM-V.

24 Correct?

1 ATTORNEY BLOCK: Objection to form.

2 THE WITNESS: So the --- yeah, if we had
3 our druthers, which is I think you are asking, and we
4 did not --- and we weren't simply satisfying a third
5 party payor, would we insist on that formal DSM-V
6 criteria for a person we otherwise know to be
7 transgender? We would not.

8 BY ATTORNEY BROOKS:

9 Q. And in fact, you do not.

10 Correct?

11 ATTORNEY BLOCK: Objection to form.

12 THE WITNESS: Well, as a practical
13 matter, like I said, we live in a universe where we end
14 up doing both what we suggest is the necessary approach
15 and we end up, because we still live in the universe
16 that we live in, satisfying the other approach even
17 though we're suggesting that it's cumbersome.

18 BY ATTORNEY BROOKS:

19 Q. Dr. Safer, you testified earlier that, in fact,
20 in 42 patients your clinic determined they were surgery
21 eligible even though they did not satisfy the SOC
22 criteria listed in column one of table one?

23 A. Right. So they are not --- so they would be ---
24 they theoretically would be eligible without having

1 satisfied the --- some of those specific WPATH criteria
2 that we discussed. But in practice nobody went to
3 surgery without covering both sets of criteria.

4 Q. Isn't the precise results reported by this paper
5 that 42 patients were deemed surgery approved who did
6 not qualify under WPATH criteria?

7 A. But I guess the bottom line of the paper is that
8 if we followed our --- our rules alone, we would
9 actually cover more details and be more conservative in
10 our approach if a longer list of criteria and we would
11 do so more quickly. That's all the paper says. It
12 doesn't say that we have --- that we have actively
13 defied the existing universe and sent people to surgery
14 without covering the criteria that are generally being
15 used by doctors.

16 Q. And by the way, the surgery we're talking about,
17 vaginoplasty, in the context where it is being used for
18 gender affirming purposes, invariably includes
19 castrating the individual.

20 Correct?

21 ATTORNEY BLOCK: Objection to form and
22 foundation.

23 THE WITNESS: So a vaginoplasty is a
24 genital reconstruction surgery, which in this context is

1 taking the existing typically --- typical male genitalia
2 and reconfiguring it into typically female genitalia.
3 And in that --- in the procedure the testes are removed.

4 BY ATTORNEY BROOKS:

5 Q. They're not reconfigured?

6 A. They are not reconfigured.

7 Q. Let me ask you 169, column one, it says about
8 two-thirds of the way down, at the end of the paragraph
9 that begins medical requirements for the Mount Sinai
10 CTMS? I want to direct your opinion --- your attention
11 to the final sentence.

12 A. So which paragraph, column one.

13 Q. Column one, the paragraph that begins halfway
14 down, medical requirements?

15 A. Yes.

16 Q. Now, let's jump to the end. The Mount Sinai
17 criteria also removed the 12-month continuous hormone
18 therapy requirement for the vaginoplasty which
19 complicates matters for people who have received hormone
20 therapy from non-medical providers.

21 Do you see that language?

22 A. I do.

23 Q. Explain to me the reference for people who have
24 received hormone therapy from non-medical providers?

1 A. Well, it is the circumstance that some people
2 more so outside of New York, some transgender people
3 still do not have access to care for --- to gender
4 affirming care and do get some of their treatment by
5 alternative means. And if there is an insistence on a
6 documented 12-month continuous hormone therapy
7 requirement, then those people might not be able to be
8 approved for surgery.

9 Q. I need to ask you to clarify what you mean by
10 obtaining by alternate means?

11 A. We have people getting hormones from internet
12 providers. We have people inappropriate --- well, I
13 apologize, I don't want to make a value judgment there,
14 but we have people getting hormones from friends or
15 connections of theirs, things outside the system.

16 Q. So you have some people come to you who have
17 effectively self-diagnosed and self-prescribed ---

18 ATTORNEY BLOCK: Objection.

19 BY ATTORNEY BROOKS:

20 Q. --- hormone therapies?

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: So when we are seeing
23 people for surgeries, then it is no longer a matter of
24 self-diagnosis because we see them ourselves with our

1 internal team. But there are people who have
2 self-prescribed their hormones or obtained them by
3 nonconventional means, that part, yes.

4 BY ATTORNEY BROOKS:

5 Q. And when people come in who have obtained
6 hormones by nonconventional means and taken them without
7 prescription necessarily, you chose to remove the
8 requirement for 12 months properly prescribed continuous
9 hormone therapy rather than insisting that the patients
10 undergo control of hormone therapy for 12 months before
11 you operate on them?

12 ATTORNEY BLOCK: Objection to form.

13 THE WITNESS: So to clarify, again, these
14 are --- we are proposing that this would be the
15 protocol. In practice, we have not been able to do
16 this, that is we have had to do both. But in our
17 experience, as a program we don't see any benefit to a
18 supervised --- a supervised regimen, that is we are not
19 --- I'll just leave it there.

20 BY ATTORNEY BROOKS:

21 Q. WPATH in table one requires that all psychiatric
22 symptoms be, quote, well controlled.

23 Correct?

24 A. They use that language, yes.

1 Q. And the language under the CTMS column is rather
2 different. Among other things it says no suicide
3 attempt in the last six months. Do you see that?

4 A. Let me find it. We're in the table, right?

5 Q. We are in the mental health section under CTMS
6 column?

7 A. Yes.

8 Q. No suicide attempt in the last six months. But
9 if the patient tried to commit suicide seven months ago,
10 that's okay?

11 ATTORNEY BLOCK: Objection to form.

12 THE WITNESS: So the point here and the
13 distinction is that the WPATH criteria are too vague,
14 and so what you are observing with the Mount Sinai
15 criteria is they're much more granular. And rather than
16 leaving something to some subjective interpretation we
17 define some of the specifics to make it clearer on what
18 the guidelines should be.

19 BY ATTORNEY BROOKS:

20 Q. You refer here in your guideline to no suicide
21 attempt in the last six months. If a patient has
22 entertained suicidal thoughts but made no attempt in the
23 last six months, did that patient potentially satisfy
24 the Mount Sinai criteria?

1 A. So that kind of decision would be at the
2 discretion of the reviewing mental health professional,
3 the psychiatrist or the psychologist, and so you can
4 certainly envision different circumstances. So even
5 going back to your example of seven months, you could
6 envision that something like that might be considered,
7 depending upon the person, too unstable even though they
8 technically met criteria. This isn't just a check box.
9 It is more a guideline. And similarly, to your point
10 about a suicidal ideation, there are different tiers of
11 them. And I won't claim to be an expert on the
12 specifics there, but my mental health professionals are
13 more concerned about some of those than others.

14 ATTORNEY BROOKS: Take a break.

15 VIDEOGRAPHER: The current time reads
16 3:35 p.m. Eastern Standard Time.

17 OFF VIDEOTAPE

18 - - -

19 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

20 - - -

21 ON VIDEOTAPE

22 VIDEOGRAPHER: We are back on the record.
23 The current time is 3:55 p.m. Eastern Standard Time.

24 BY ATTORNEY BROOKS:

1 Q. Dr. Safer, you testified earlier, and I think
2 I'm using the word that you used that if your clinic had
3 its druthers they would be following or making decisions
4 strictly based on the criteria that are laid out in this
5 paper, Exhibit 15, under the heading of Mount Sinai
6 CTMS.

7 Correct?

8 A. Yes.

9 Q. And can I infer from that that you, yourself,
10 don't view the WPATH SOC-7 as setting out scientifically
11 established best practices but rather recommendations on
12 which you use different?

13 ATTORNEY BLOCK: Objection to form.

14 THE WITNESS: No, I would not say that.
15 So SOC-7 sets out the guidelines as things were
16 understood in 2011 and 2012, and we have learned ---
17 we've learned and things have evolved since then in
18 terms of the care of transgender people.

19 BY ATTORNEY BROOKS:

20 Q. Did you have any participation in the
21 development of the SOC-7 guidelines?

22 A. I had very minimal participation. I helped
23 review some articles that informed those guidelines.

24 Q. Those guidelines --- did you have any

1 familiarity with the process of how they were being
2 drafted?

3 A. I'm trying to think if I can say things
4 usefully. I was not close enough to the process that we
5 would want --- that I would want to start commenting on.

6 Q. Do you know whether they addressed issues on
7 which opinions within the drafting committee differed?

8 A. I can't comment on SOC-7. We are literally
9 writing SOC-8 now.

10 Q. And on that are there issues that the SOC-8 is
11 addressing on which opinions significantly differ?

12 A. Yes.

13 Q. So it's not that every aspect of the guidelines
14 are unanimously agreed by every member?

15 ATTORNEY BLOCK: Objection to form.

16 THE WITNESS: So with medical guidelines
17 in general there isn't --- that unanimity wouldn't be a
18 thing. They're referred to as consensus documents
19 rather than unanimous documents.

20 BY ATTORNEY BROOKS:

21 Q. And what that tells us is that there is --- that
22 reasonable people differ on at least some aspects of
23 what is set forth in the document?

24 ATTORNEY BLOCK: Objection to form.

1 THE WITNESS: In all guidelines,
2 including these, members of the committee even differ in
3 terms of how things are framed and when consensus is
4 obtained, but not unanimity.

5 BY ATTORNEY BROOKS:

6 Q. How many gender performing surgeries or gender
7 affirming surgeries were performed in your clinic in
8 2021?

9 A. In 2021, all --- there were, according to the
10 New York Times, about 9,000 total surgeries performed at
11 Mount Sinai hospitals, including everything we do. So
12 that wouldn't just be vaginoplasty. That would include
13 chest reconstruction surgeries, revisions of older
14 surgeries, et cetera.

15 Q. Well, you quote the New York Times. Where did
16 they get the information?

17 A. I suppose the sources is us.

18 Q. You believe that number to be approximately
19 accurate?

20 A. I think that's right.

21 Q. I don't trust the New York Times, but you have a
22 pass. And now 2021 may or may not have been affected by
23 COVID in terms of patients presenting and wanting
24 surgery. Has there been a clear trend in numbers of

1 surgeries performed by your clinic over the last five
2 years?

3 ATTORNEY BLOCK: Objection to form.

4 THE WITNESS: So there is definitely an
5 increase in the number of surgeries at Mount Sinai over
6 the past five years. Unfortunately, expectation is the
7 challenge. We opened the program in 2016, so roughly
8 those five years. And certainly the first few years
9 were quieter as the reputation grew. In 2020, numbers
10 were down because we had to divert resources to taking
11 care of people with COVID. Our group, including myself,
12 literally dropped what we were doing for a period of
13 time to go become COVID hospital employees, and so there
14 was a dip there in 2021 as a little bit of a rebound
15 element to it.

16 BY ATTORNEY BROOKS:

17 Q. Are you able to give me any average total
18 receipts of your clinic or the hospital as a whole and
19 associated physicians from gender affirming surgeries
20 performed within 2021?

21 A. I'm sorry, say that again.

22 Q. Let me just ask this again. Do you have any
23 knowledge as the total --- as to the total receipts of
24 your clinic or the wider hospital and physicians

1 involved as a result of gender affirming surgeries
2 performed by your clinic in the last year?

3 A. So do I know some of the financial elements?

4 Q. Correct.

5 A. So I do know some of the financial elements, but
6 nothing that the hospital would allow me to share.

7 Q. Your counsel can designate it as confidential
8 later on, so it doesn't become public, but you are
9 obliged to answer the question.

10 ATTORNEY BLOCK: I'm not ---.

11 BY ATTORNEY BROOKS:

12 Q. I'm entitled to understand your financial
13 interest in the area of your testimony.

14 ATTORNEY BLOCK: We are not representing
15 him in the context of any legal dispute with Mount
16 Sinai.

17 ATTORNEY BROOKS: I am entitled to
18 understand the expert's financial interest. And I
19 suggest to you, Counsel, that you'd rather have me
20 questions asked here where you can designate it as
21 confidential than at trial in a public courtroom.

22 ATTORNEY BLOCK: It's not up to me.

23 ATTORNEY BROOKS: You can confer if you
24 want, because that would be the alternative. If you

1 want to step out and confer with your witness, you
2 should do so.

3 ATTORNEY BLOCK: It's not up to me to say
4 what he can and can't say in contravention with an
5 agreement with his employer, and so I think if you want
6 to like obtain like a Protective Order, you know, with
7 him.

8 ATTORNEY BROOKS: We have a Protective
9 Order in place, Counsel.

10 ATTORNEY BLOCK: I know, I'm not
11 representing him in that capacity, though. So if you
12 want to interface with his attorney through Mount Sinai
13 then you can, but I don't have an attorney/client
14 relationship with him for purposes of any employment
15 disputes.

16 ATTORNEY BROOKS: Are you instructing the
17 witness not to answer?

18 ATTORNEY BLOCK: No, I'm not.

19 ATTORNEY BROOKS: Are you refusing to
20 answer?

21 THE WITNESS: I wouldn't be able to
22 answer without including the hospital lawyers.

23 BY ATTORNEY BROOKS:

24 Q. Can you tell me ---?

1 ATTORNEY TRYON: This is Dave Tryon. I'm
2 sorry ---.

3 ATTORNEY BROOKS: Go ahead.

4 ATTORNEY TRYON: May I just also say that
5 I think if the witness is not willing to disclose his
6 financial interest here, that that would be grounds to
7 disqualify him as a witness, which on behalf of the
8 state I would likely pursue. So I would respectfully
9 request that he answer the question.

10 ATTORNEY BLOCK: Dave, on what basis is
11 that grounds to --- he has disclosed everything required
12 by the rules. You're asking for --- he has no financial
13 interest in this litigation.

14 ATTORNEY BROOKS: We don't need to argue
15 the motion right now. The motion seems likely, the
16 motion will be briefed, but we don't --- we got no Judge
17 here, we're not going to be deciding ---.

18 ATTORNEY BLOCK: If you want to file a
19 subpoena as a third-party subpoena for that information
20 with a Court Order, than you're free to do so. He is
21 appearing here as an expert witness on his expert
22 testimony. So you have plenty of discovery tools to
23 obtain that information. And we're not his counsel for
24 that.

1 ATTORNEY BROOKS: I do have discovery
2 tools, including asking him questions at this
3 deposition. I've attempted to do so. You have not
4 instructed him not to answer. The witness has refused
5 to answer. The record is clear.

6 BY ATTORNEY BROOKS:

7 Q. Let me ask you about personally. Does your own
8 income or any bonus you receive depend on any part of
9 the overall revenues of your plan?

10 A. It does not.

11 Q. And does your personal income consist strictly
12 of a salary or also a salary plus fees associated with
13 surgeries performed?

14 A. Exclusively a salary.

15 Q. And your income depends in no way on how many
16 surgeries, you yourself perform?

17 A. That --- well, I don't perform surgeries I'm not
18 an endocrinologist.

19 Q. Pardon me.

20 A. But that's right, it's not revenue based.

21 Q. It's not revenue based in any way?

22 A. In any way. That's right.

23 Q. That is helpful. Do you have any understanding
24 as to the average revenues per patient that your clinic

1 receives for patients who are seeking gender affirming
2 surgery in the clinic?

3 A. We don't characterize it that way. There's a
4 --- there's a wide range of reimbursements or lack of
5 reimbursements across medicine. And gender affirming
6 care includes quite that entire range actually, from
7 mental health, which is under reimbursed, to the
8 surgeries which are --- where there's more money.

9 Q. I've been waiting to hear the flip side of that.

10 A. So yes, so we have that, so I don't think I
11 could give --- I wouldn't --- even were I allowed by the
12 hospital to give you the specifics, I don't know that I
13 would be able to do that on a per patient basis.

14 Q. Can you tell me your total personal income in
15 2021 from --- in any way related to your work in
16 connection with your employment at Mount Sinai?

17 A. So is this something that I'm answering?

18 ATTORNEY BLOCK: I'm sorry, could you
19 restate the question?

20 THE WITNESS: He's asking for my ---
21 you're asking for my salary?

22 BY ATTORNEY BROOKS:

23 Q. I'm asking for your total income, in any way
24 --- in 2021 in any way associated with the clinic at

1 Mount Sinai?

2 A. So we're running into --- so I'm simply on
3 salary, but the specifics of that are also something
4 where I would need to include the Mount Sinai lawyers,
5 because that's part of their practice, and I would have
6 to defer to them.

7 Q. You decline to answer the question about your
8 own personal income?

9 A. Yes.

10 ATTORNEY BROOKS: I won't take time to
11 speak upon it, but I will object.

12 BY ATTORNEY BROOKS:

13 Q. I read in some document that your spouse is an
14 employee of Parexel --- if I'm pronouncing that company
15 correctly.

16 Is that still the case?

17 A. Yes.

18 Q. And does that company derive any revenues from
19 the sales, testing, clinical trials of any
20 pharmaceutical that is used to suppress puberty or is
21 used as a cross sex hormone?

22 A. I don't know the answer. Parexel is a very
23 large back office organization supporting clinical
24 research with many clients. And so you can envision

1 some connection buried in there, but I don't know
2 specifics.

3 Q. Fair enough.

4 ATTORNEY BROOKS: Let me have 54.

5 BY ATTORNEY BROOKS:

6 Q. Let me ask you to turn to paragraph 18 in your
7 expert report, and there in the first sentence you write
8 although the detailed mechanisms are unknown, there is a
9 medical consensus that there is a significant biologic
10 component underlying gender identity, closed quote.

11 Do you see that?

12 A. No, I might have pulled the wrong thing out.
13 Which ---?

14 Q. It's the expert report not the rebuttal?

15 A. Expert report. And it's which paragraph?

16 Q. Paragraph 18?

17 A. Oh, sorry.

18 Q. This is why lawyers number their paragraphs.

19 A. That is wise. All right. Paragraph 18.

20 Q. I'm just calling your attention --- and I have
21 read into the record the first sentence of that
22 paragraph.

23 A. I see it.

24 Q. And picking up on our earlier discussion about

1 consensus. When you say there is a medical consensus,
2 do you mean that all experts in the field agree or do
3 you mean that in your view this is a majority opinion?

4 ATTORNEY BLOCK: Objection to form.

5 THE WITNESS: So when I guess similar to
6 when we talked about guidelines if the question is, is
7 there unanimity, then there is never unanimity, so there
8 you go.

9 BY ATTORNEY BROOKS:

10 Q. Okay.

11 A. I can be a little stronger, though, because the
12 mainstream medical organizations have various statements
13 in this space. So for example, the endocrine society,
14 which is the largest international organization of
15 endocrinologists does actually have a statement where
16 the sum of the modeling for gender affirming care is
17 prefaced with statements that support this.

18 Q. In providing the basis for your opinion that
19 there is such a consensus, you cite only two papers and
20 those only papers that you had written yourself.

21 Did you consider those papers written by
22 yourself to adequately document the existence of the
23 medical consensus?

24 ATTORNEY BLOCK: Objection to form.

1 THE WITNESS: So both of the papers
2 reference reviews with larger bibliographies that
3 reference yet other papers that support the statement.
4 And when we're talking about what's informing the
5 statement, of course, is not limited to the specific
6 papers referenced, so that's part of the reason why I
7 gave that example, for example, the endocrine society's
8 formal statements on the project, which is a consensus
9 view of more people than myself, of course.

10 ATTORNEY BROOKS: Let me mark as
11 Exhibit 16, an article by Aruna Saraswat and others
12 entitled Evidence Supporting the Biological Nature of
13 Gender Identity from 2015 of which Dr. Safer is one of
14 the co-authors.

15 ATTORNEY WILKINSON: Tab 54.

16 | ---

17 (Whereupon, Exhibit 16, Aruna Saraswat
18 Article, was marked for identification.)

19 - - -

20 BY ATTORNEY BROOKS:

21 Q. And Dr. Safer, is that a paper that you --- I
22 guess I see by placement --- had supervisory
23 responsibility for?

24 | A. Yes.

1 Q. Let me --- I learned something in this
2 deposition, so that is good.

3 Let me call your attention to page two and
4 column two, and in the very bottom paragraph ---.

5 ATTORNEY BLOCK: I'm sorry, did you mean
6 200?

7 ATTORNEY BROOKS: I did mean 200. I
8 apologize. That is also the second page.

9 BY ATTORNEY BROOKS:

10 Q. In the bottom --- first column bottom paragraph
11 it states, quote, however it is important to note that
12 most transgender individuals develop a gender identity
13 that cannot be explained by atypical sexual
14 differentiation, closed quote.

15 A. So this is column two.

16 Q. Column one. If I misspoke I apologize.

17 A. I could have misunderstood at this hour.

18 Q. At the bottom paragraph?

19 A. However it is important to note, I'm there, yes.

20 Q. All right.

21 Can you explain to me what is meant by the
22 statement that most transgender individuals have a
23 gender identity that cannot be explained by atypical
24 transgender differentiation?

1 A. So that is referencing, in this context at the
2 time that this was written, the anatomy, genitals,
3 reproductive structures.

4 Q. And let me just --- for purposes of terminology,
5 you said at the time this was written. This is about
6 seven years ago, six years ago?

7 A. 2015, yes.

8 Q. And if you look at the page one, column one
9 abstract. This paper is using the term disorders, in
10 sexual development, and that DSD.

11 Do you see that?

12 A. I do.

13 Q. That was a term that you were comfortable with
14 most recently?

15 A. It was a terminology that I was using that
16 recently, yes.

17 Q. The point here, on page 200, column one, that we
18 were just looking at is, in fact, most transgender
19 individuals do not suffer from any identifiable DSD.

20 Is that what this is saying?

21 A. From a physically identifiable DSD, that is what
22 this is saying, yes.

23 Q. Physically, genetically, hormonally,
24 identifiable by any physical measurement.

1 Correct?

2 ATTORNEY BLOCK: Objection to form.

3 THE WITNESS: So you have to be careful
4 to be not too broad, and part of the reason is the line
5 there is actually blurring. So when I'm sitting here
6 and talking in 2022 I recognize that there is a
7 potential for some blurring in that line. But in 2015
8 it was certainly understood to be how you're saying it.

9 BY ATTORNEY BROOKS:

10 Q. Well, it remains true today, does it not, that
11 the overwhelming majority of transgender individuals do
12 not suffer from any identifiable atypicality
13 genetically, physically or hormonally.

14 Correct?

15 A. Well, that's not how I would say it, because
16 gender identity is a biological phenomenon and so one
17 would predict that as we identify certain correlates or
18 even explanations, than we will have things in that
19 space. But if we're talking about how things were
20 defined in 2015, being transgender was defined as
21 somebody where their gender identity was not aligned
22 with the rest of their biology, and there was no
23 apparent, physical variation either in terms of their
24 anatomy or their chromosomes in terms of their genitals,

1 in terms of their reproductive anatomy or in terms of
2 their chromosomes. So that is how it was defined at the
3 time.

4 Q. Well, today, and using identifiable to mean you,
5 Doctor safer, are able to identify it now, not
6 hypothetically in the future, it remains true that the
7 overwhelming majority of transgender individuals do not
8 suffer from any current identifiable, physical
9 chromosomal or hormonal irregularity.

10 Correct?

11 A. I would say that right now in 2022, it would be
12 true to say that a transgender person does not have an
13 identifiable genital difference almost by definition or
14 a --- or an internal reproductive organ difference
15 almost by definition. Chromosomal I can't say, because
16 we actually don't check. And hormonal gets even grayer
17 than that, because it could be the case that there are
18 hormonal exposures, for example, in utero that explain
19 at, least some people as being transgender.

20 Q. As you sit here today, you don't know of any
21 chromosomal test that can identify an individual as
22 transgender, do you?

23 A. Is there a --- there --- as I sit here today
24 there are no tests to identify somebody who is

1 transgender.

2 Q. And that includes genetic tests?

3 A. There's no scan and there are no blood tests and
4 there are no genetic tests.

5 Q. And no hormonal tests?

6 A. That's right. There are no hormonal tests right
7 now to identify a transgender person.

8 Q. As you sit here today and based on your whole
9 knowledge of the field, there is no biological test from
10 some mental professionals, as they can do, but there is
11 no biological test that will tell you in advance which
12 prepubertal child who is suffering from gender dysphoria
13 would persist and which would desist as they enter
14 adolescence?

15 A. So I would have to challenge how you're stating
16 that a little bit just so that we are cleaner in terms
17 of how we think. So we're thinking right now in terms
18 of identifying kids who are transgender. We use various
19 terminologies, so that --- we've have been using the
20 term gender dysphoria we're going to be shifting to more
21 gender incongruence, but we're trying to identify people
22 who are transgender and who may require intervention
23 later.

24 Recognizing further that only a subset of

1 transgender people would require a medical or surgical
2 intervention. And so if the question is can --- is
3 there a test now in 2022 to determine in an prepubescent
4 kid who says they're transgender or people who suspect
5 may be transgender on whatever they're saying, no, there
6 is no test to know that is true or not and to know if
7 they'll think that later or not, and to know if they'll
8 want treatment or not.

9 Q. So it is your opinion that there is consensus
10 that there is a biological basis for transgender
11 identification, but as of 2022 you don't know with any
12 confidence what that biological basis is.

13 Correct?

14 ATTORNEY BLOCK: Objection to form.

15 THE WITNESS: I would say that it is
16 complicated and there may even be more --- there might
17 be multiple explanations for people being transgender.
18 We see that with other biological entities like
19 diabetes, for example. So the idea that we don't know
20 what it is, is also a little too narrow.

21 BY ATTORNEY BROOKS:

22 Q. You don't know any one identifiable biological
23 cause with any confidence that state within a scientific
24 knowledge?

1 A. No. That's not quite true. We know that ---
2 and it's not even the biology of being transgender even
3 though that is how I just framed it. It is even one
4 step back which is the biology of gender identity. We
5 all have gender identity, and how is that determined and
6 what is that biology. And we know there --- and we know
7 then that some transgender people have that particular
8 biology not aligned with some of their other biology.

9 So going back to what you just asked, that we
10 don't know any mechanisms is not quite true. That is
11 people that looks to be true that exposure to androgen,
12 male hormones in utero can have some influence on some
13 people as to their identity.

14 Q. Well, if there is not yet any test that is
15 predictive of gender identity in a prepubescent child,
16 then as a matter of science it follows that you don't
17 actually know any causal relationship, any biological
18 basis, is that not true?

19 A. No, that wouldn't be quite sure. We can't test
20 for somebody deemed transgender, and we can't test
21 gender identity with a test. But like I said, that at
22 least in some circumstances the androgen exposure in
23 utero, in a mother's womb, could be part of the
24 explanation for some people. Maybe isn't all the

1 explanation for some people.

2 Q. It could be, but no science has been done to
3 prove that that is a fact, has it?

4 A. So it isn't really a hypothetical, that is we do
5 have --- we do have data that support it, but it doesn't
6 lead us to a test.

7 Q. If it is not testable, then it is a hypothesis,
8 not a fact, isn't it, not of science.

9 Correct?

10 ATTORNEY BLOCK: Objection to form.

11 THE WITNESS: No, that is using testing
12 two different ways. So in a scientific study, then a
13 hypothesis is something that you have based on a certain
14 --- based on certain data, but then you test to see how
15 true it might be. But when I was using the word test,
16 I'm talking about like a blood test or something that we
17 could actually do on a given individual to know their
18 circumstance with regard to their gender identity.

19 BY ATTORNEY BROOKS:

20 Q. Let me ask you to look at the paper that I've
21 marked as Exhibit 16, Evidence Supporting the Biological
22 Nature. Is that that which you have in front of you?

23 A. I do, yes.

24 Q. And on the first page you refer under the result

1 that begins by discussion of a seminal study by
2 Meyer-Bahlburg. Do you see that? Second column,
3 beginning of the results section.

4 A. Yes.

5 Q. And is it your contention that the
6 Meyer-Bahlburg study provides evidence of a biological
7 basis for transgender identification?

8 A. What the Meyer-Bahlburg study does is it
9 provides evidence of a biological basis for gender
10 identity.

11 Q. Well, specifically the study, the Meyer-Bahlburg
12 study --- let me have that so we are not shooting in the
13 dark. Exhibit 17 is a paper from 2005 from Professor
14 Heino Meyer-Bahlburg, entitled Gender Identity Outcome
15 in Female Raised 46, comma XY persons with penile
16 agenesis, and it continues. It's a long document?

17 ATTORNEY WILKINSON: Tab 14.

18 ---

19 (Whereupon, Exhibit 17, 2005 Paper by
20 Professor Heino Meyer-Bahlburg, was marked
21 for identification.)

22 ---

23 BY ATTORNEY BROOKS:

24 Q. I believe the level of questions that I will be

1 asking, however, are the ones that you will know off the
2 top of your head given the importance of this study in
3 the field. The study concerned exclusively children who
4 are born with what's referred to as a 46 XY condition.

5 Right?

6 A. Yes.

7 Q. And that is long recognized as a DSD?

8 A. No, 46 XY is the classic male chromosome
9 pattern.

10 Q. Yes. Pardon me. So these are individuals with
11 typical male pattern chromosomes?

12 A. Yes.

13 Q. Who, however, for some reason have had a
14 developmental disorder or defect affecting their
15 genitals?

16 A. Who have had some sort of alteration or
17 development of their genitals, exactly.

18 Q. And the study concerns the results of efforts to
19 raise such genetically male children as female in some
20 cases after surgical procedures to feminize them and in
21 some cases absent surgical procedures.

22 Correct?

23 A. The study really relates to the gender identity
24 of those where there is an attempt to raise them as

1 females.

2 Q. And the results, if I understand the study, were
3 mixed, that is that some of the individuals who were
4 raised as females nevertheless came to identify as male
5 and some of the individuals who were raised as females
6 came --- persisted in identifying as female.

7 Correct?

8 A. It is not actually as clean as you're saying it.
9 So we should look at some of the specifics and we might
10 need to point out to specific sentences, but this too is
11 a survey of --- a survey of studies, to be clear, it's
12 not its own isolated study, and then there --- in none
13 of these studies were they systematic or, you know, I
14 guess I will just use the word systematic in
15 ascertaining that all of the people who were being
16 raised female and ascertaining all of the gender
17 identity of those people. But what they are really
18 observing is that the numbers that they mention of the
19 people who they were trying to raise female who had male
20 gender identity were whatever the numbers were. I don't
21 know if that makes sense, but you'll follow as
22 necessary.

23 Q. If you turn to page 432 it begins under the
24 heading discussion. It begins, quote, the main findings

1 can be summarized as follows. One, the majority of 46
2 XY individuals with presumably normal male prenatal
3 hormonal milieu, comma, non-hormonal anatomic
4 abnormalities of the genitals, comma, and female gender
5 assignment at birth or in early childhood have not
6 changed gender to male. Do you see that?

7 A. I do see it.

8 Q. And one thing, and I understand the
9 qualifications that you've just described this is not
10 recording a carefully structured study performed by
11 Doctor Meyer-Bahlburg but rather a review of case
12 histories.

13 Right?

14 A. Exactly.

15 Q. But his conclusion from his review of those is
16 that the majority of genetically presumably normal male
17 individuals who were raised female, and I believe it's
18 fair to summarize in most cases after feminizing genital
19 surgery, adhered to a female gender identity at least to
20 the data we have?

21 A. Yes, so I don't know whether they actually all
22 had surgery or not.

23 Q. They did not all have surgery.

24 A. Right or even the larger number. I don't know.

1 I would have to go through.

2 Q. Fair enough.

3 A. But the --- and it was his opinion at the time
4 he was writing this that the majority who were reared
5 female were living as female, although we don't know
6 their gender --- but now this is me stepping out, saying
7 we don't know their gender identity, nobody asked. The
8 reason why this paper is interesting is even in the
9 circumstance where they were being so passive in how
10 they were collecting the data, such a large fraction of
11 these individuals were so clear in their male gender
12 identity that they actually identified themselves
13 against the protocols.

14 Q. And that seemed to be evidence that --- of a
15 biologic basis of gender identity congruent with their
16 male genetics.

17 Correct?

18 A. That --- for these people, that's right. That
19 is with or --- with their chromosomes.

20 Q. Right.

21 A. Which you would predict. If we think about ---
22 if we recognize --- if we think that by survey a half a
23 percent or even a full percent of people are transgender
24 that would mean that 99 percent of people are cisgender.

1 And so if you take a population of people with certain
2 chromosomes, 99 percent of them are going to be
3 cisgender and will have a gender identity incongruent
4 with their chromosomes.

5 Q. The study includes no individuals who were
6 raised with a gender identity inconsistent with their
7 male chromosomes who came to identify or later perceived
8 themselves as identifying as female.

9 Correct?

10 A. Well, we don't know that because they were ---
11 they're all XY individuals who were being raised female.
12 And somebody who had a female gender identity who is
13 transgender among them would never be identified as
14 transgender in this case.

15 Q. So my question was a little more specific. The
16 study simply doesn't include any individual who had male
17 chromosomes who was raised male who came to identify as
18 female?

19 A. That's correct. All of these people who are XY
20 chromosome people raised female.

21 Q. And you would agree with me, would you not, the
22 study provides some evidence that external forces such
23 as feminizing surgery or how their parents treat the
24 child can have some influence on the formation of gender

1 identity?

2 A. I can't say that because the study really
3 doesn't go there. The study is only passive observation
4 and all --- the only thing I would say with some
5 confidence is that some fraction of these individuals
6 who are so clear in their gender identity that despite
7 nobody even looking for that sort of thing, because that
8 wasn't even a consideration when these --- when these
9 cases occurred, they --- the individuals spontaneously
10 announced to the authorities around them, parents and
11 doctors, that they were wrong, that the parents and
12 doctors were wrong.

13 Q. And that, in your view, provides at least some
14 evidence of a genetic basis for gender identity
15 congruent with chromosomal sex?

16 ATTORNEY BLOCK: Objection to form.

17 THE WITNESS: No. It provides some
18 evidence of a biological basis for gender identity that
19 can't be manipulated externally.

20 BY ATTORNEY BROOKS:

21 Q. Well, considering that the study included no
22 examples of any individual who adopted a transgender
23 identity inconsistent with how they were raised, the
24 study simply can't provide any information about

1 biologic basis of transgender identification, can it?

2 A. Wait. I think say that again.

3 Q. The study includes no individuals who adopted a
4 gender identity, a transgender identity apart from
5 social transition and, therefore, can provide no
6 information one way or the other about whether there is
7 or is not a biologic basis for transgender
8 identification?

9 A. So not quite. So the --- because remember the
10 point is that gender identity, period, universally, has
11 a biological basis. It's not that we --- and to be
12 clear, I don't even know that we won't find and some
13 people even wonder if we will find a gene that
14 associates a gene with transgender, per se. But I'm not
15 even saying that. If there's --- I'm only saying that
16 we will find let's say genes associated with gender
17 identity and not everybody will have them aligned with
18 the rest of their biology. So I just want to preface
19 with that.

20 And in this particular review, they're taking
21 people who have XY chromosomes exclusively. So
22 therefore, if one --- if a certain fraction of them were
23 to have female gender identity despite assuming
24 different development they would have had male --- they

1 would have had other male biology, those are the people
2 we would have categorized as transgender using current
3 definitions. And those individuals would not have been
4 apparent in this study they were being raised female
5 anyway.

6 Q. And my point was that, therefore, that this
7 study can't provide any information about whether there
8 is or isn't a biological basis for transgender
9 identification?

10 A. So yes. I guess how you are framing that is
11 where I'm pushing back. So the point of this study is
12 as evidence of there being a biological basis of gender
13 identity period, having nothing --- not necessarily for
14 being transgender. In fact, I don't even know if there
15 --- yeah, I don't even know if that would be the model.
16 The model would be somebody who has a certain gender
17 identity, a certain other biology, and then that
18 combination is what we are calling transgender.

19 Q. You also referenced a paper by Doctor Reiner.
20 And let me have that.

21 ATTORNEY BROOKS: And I will mark that as
22 Exhibit 18, 2004 Discordant Sexual in Some Genetic Males
23 With Cloacal Exstrophy Assigned to Female Sex at Birth.

24 ATTORNEY WILKINSON: Tab 71.

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(Whereupon, Exhibit 18, Paper by Doctor
Reiner, was marked for identification.)

BY ATTORNEY BROOKS:

Q. And Dr. Safer, you are well familiar with this
paper.

Am I correct?

A. I am, yes.

Q. And this is the only other paper that you cite
for the assertion that gender identity has a biological
basis.

Am I correct?

A. No, there are a range of categories of papers,
but these are two of my favorite papers in the first
category, which is the category of attempting to
manipulate gender identity externally.

Q. Dr. Bahlburg in his paper, on page 433 of
Exhibit 14, in column one ---.

A. Yes. Let me get there.

Q. Yes. 433, column one.

A. 433, column one.

Q. He says about two inches off the bottom,
referring to the Reiner and Gearhart paper of 2004,

1 which I believe is this paper, he says, quote, it has
2 serious methodological flaws. Do you agree with that
3 statement?

4 A. Let's read what he is criticizing. All these
5 papers have their weaknesses. All right. So the
6 remainder of that --- so the remainder of the paragraph
7 is --- details the complaints for Doctor Meyer-Bahlburg,
8 where his --- which I focus as a social science
9 researcher that they didn't do various assessments that
10 would make it --- that would make standard people doing
11 some of this research able to replicate some of the
12 items in the paper. And I will --- so while Doctor
13 Meyer-Bahlburg may be frustrated and be complaining
14 about that, he is not actually attacking the veracity of
15 their results.

16 Q. Well, the point was serious methodological flaws
17 is you are not really able to evaluate the veracity of
18 the results.

19 Correct?

20 A. Not necessarily.

21 Q. Do you agree with Doctor Meyer-Bahlburg's
22 evaluation that the methodology of the study reported by
23 Reiner and Gearhart suffers from serious methodological
24 flaws?

1 A. No.

2 Q. So let's summarize this study if I may. I'm
3 turning to page 334.

4 A. And extending that too, part of his frustration
5 wouldn't be my frustration because I am not looking for
6 those particular endpoints, that is for my purposes for
7 determining whether gender identity is a biological
8 basis Reiner and Gearhart's paper is actually quite
9 strong.

10 Q. Let's look at the first page in the summary up
11 front. It refers to this paper dealt with 16 --- under
12 methods, 16 genetic males.

13 Correct?

14 A. Yes.

15 Q. And these were all males who suffered from ---
16 uses the word in the second line of the background as
17 severe developmental disorders affecting their genitals.

18 Correct?

19 A. That's how it is phrased here. Where am I
20 seeing that?

21 Q. The second line of the background says severe.

22 A. Severe phallic inadequacy, yes, I see that.

23 Q. Which is to say not --- absent or severely
24 disformed penis?

1 A. That's what that means, yes.

2 Q. Okay.

3 But these are individuals who are genetically
4 male, and more than that, on page 334, column two,
5 two-thirds of the way down it says the testes were
6 histologically normal in all 14 when examined?

7 A. I'm on column two.

8 Q. It is column two.

9 A. I apologize.

10 Q. You can kind of see where my finger is pointing
11 here.

12 A. And this is under ---.

13 Q. Under methods and the paragraph that begins
14 parents to be educated?

15 A. Testes were histologically normal in all 14.
16 I'm there, yes.

17 Q. So we had individuals who were genetically male
18 that had normal testes and had severe deprivation of
19 their penis or it was absent?

20 A. Yes.

21 Q. And what was done to these 14 subjects, looking
22 just above that, is that they were assigned a female sex
23 surgically by means of orchiectomy and construction of
24 vulva.

1 Right?

2 A. Yes.

3 Q. And orchiectomy is another medical term for what
4 the layman thinks of as castration?

5 A. As removing the testes.

6 Q. And construction of the vulvi is creating a ---
7 I'm not sure what the right term is, a pseudo vagina?

8 A. It wouldn't be a pseudo vagina, but creating a
9 vagina.

10 Q. It says that --- just immediately following the
11 description of the surgery 14 of these 16 --- looking
12 back at the results paragraph and the abstract, 14 of
13 these 16 were assigned female but later declared
14 themselves male despite the surgery, despite being
15 raised as female.

16 Right?

17 A. Right, 8 of the 14 who were assigned female.

18 Q. I'm sorry, I misread that. Thank you. Eight of
19 the 14 who were assigned female nevertheless declared
20 themselves male at some stage?

21 A. That's correct.

22 Q. And the two who had been raised as males, even
23 though they suffered the same type of phallic
24 developmental defect, remained identifying as males.

1 Correct?

2 A. Yes.

3 Q. There was an --- whatever assignment was made,
4 this was made to infants. It wasn't made or based on
5 any choice or reported sense on the part of the child?

6 A. That's exactly right, yes.

7 Q. So several of these individuals, specifically
8 six, who were assigned female at least throughout the
9 period identified by this study adhered to a female ---
10 living out the female gender identity?

11 A. Actually it was five because one of the children
12 refused to have contact with the surgeons when some of
13 these conversations began to take place.

14 Q. So we know that five --- we don't know what that
15 person was thinking, feeling or identifying --- but we
16 know that five ---?

17 A. They were angry.

18 Q. They were angry. Whichever that came out, I'd
19 be angry, so ---

20 A. Yes.

21 Q. --- so 5 of the 14 subjects who were assigned
22 female and surgically transitioned and socially
23 transitioned continued to at least physically identify
24 as female?

1 A. As of when they wrote the paper they were still
2 identifying as female as far as I remember. That's
3 right.

4 Q. And it would be your position that visibly
5 identifying as female doesn't necessarily mean that they
6 were generally transgender?

7 A. That --- we don't know that because that wasn't
8 asked.

9 Q. Is it your view that if you had these children
10 who were surgically transitioned, socially transitioned
11 visibly identifying as female, that if you had simply
12 asked them you would have found out the undoubted truth
13 about their gender identity?

14 ATTORNEY BLOCK: Objection to form.

15 THE WITNESS: So it is true that as
16 people develop and assuming that there are good language
17 skills and that there aren't other developmental, mental
18 developmental reasons or other mental health reasons why
19 people would not be clear, that people are able to
20 articulate their gender identity. Certainly adults do
21 so apparently quite reliably and older teenagers the
22 same, so depending on age. But yes, there would be a
23 point in time when you could simply ascertain that by
24 asking.

1 BY ATTORNEY BROOKS:

2 Q. Dr. Safer is that fundamentally a medical
3 question or a psychology/mental health question? The
4 question of the reliability of a patient's self report?

5 A. I don't know that I separate it that way. I say
6 that based on the data we slowly develop overtime of
7 transgender people where we see that any absence of
8 other confounding items along the lines that I said,
9 people at a certain stage in maturity who tell you a
10 certain thing about their gender identity are consistent
11 in that regard.

12 Q. This study, the Reiner Gearhart study,
13 Exhibit 18, concerns --- looks at the effect of trying
14 to raise individuals in a gender identity discordant
15 with their chromosomal sex.

16 Correct?

17 A. It is discorded with quite a number of things,
18 but yes, chromosomal is one of your hard data points.

19 Q. This study does not look at the question about
20 whether and when or how any sort of intervention might
21 encourage development of a gender identity consistent
22 with one's genetics sex; does it? It simply does not
23 look at this issue?

24 A. Say that again, sorry.

1 Q. This study does not address the question of
2 whether or how or at what developmental stage
3 therapeutic interventions might encourage the
4 development of a gender identity consistent with one's
5 chromosomal sex?

6 A. The study is --- the way I'm interpreting the
7 study is it's looking at our inability to manipulate
8 gender identity. And it's just that. And I'm a little
9 fuzzy on the rest of what you're asking me.

10 Q. Well, the study looks at efforts to manipulate
11 gender identity away from chromosomal from the identity
12 normally associated with one's chromosomal sex. In this
13 case the male sex.

14 Right?

15 A. It does.

16 Q. This study simply does not look at efforts to
17 manipulate gender identity towards alignment with the
18 identity normally associated with a subject's
19 chromosomal sex?

20 A. I think I'm following you now. So you're
21 suggesting that if we took a transgender person and
22 tried to manipulate their gender identity to align with
23 some of the rest of their biology?

24 Q. I'm not suggesting that I'm simply saying this

1 study.

2 A. That particular instance. Yes.

3 ATTORNEY BROOKS: 15. It is one of the
4 previous marked ones, if that matters. All right.

5 I will not show you that document. Let
6 me ask the court reporter how many --- how much time we
7 have left on the clock.

8 COURT REPORTER: I have 5:52, five hours
9 and 52 minutes.

10 ATTORNEY TRYON: I didn't hear that.
11 Could you repeat that?

12 ATTORNEY BROOKS: We've got an hour and
13 eight minutes according to the clock of the court
14 reporter here, and I believe that our friend in the
15 ether is calculating separately.

16 VIDEOGRAPHER: Correct. And it sounds
17 like the same. I have to do the math.

18 ATTORNEY BROOKS: Okay.

19 BY ATTORNEY TRYON:

20 Q. Are you familiar Dr. Safer with a paper recently
21 published by Lisa Littman of Brown University looking at
22 the surveying 100 teens or young adults --- actually
23 surveying a hundred individuals who report having
24 de-transitioned and gone from identifying as transgender

1 to identifying in a manner consistent with their genetic
2 sex?

3 ATTORNEY BLOCK: Objection to form.

4 THE WITNESS: So I'm aware of Dr. Littman
5 having written a second paper. But I'm not facile, I
6 guess.

7 BY ATTORNEY BROOKS:

8 Q. You haven't read that paper?

9 A. I have not read the paper. I probably did read
10 it, but I would not be able to be quizzed on it.

11 Q. Then I won't quiz you on it. I always tell
12 witnesses I don't know is the easiest way out of a line
13 of questioning.

14 Are you --- let me ask you this, does your
15 clinic have any procedure in place to track outcomes on
16 patients on whom you perform gender conforming surgery
17 long term?

18 A. We're actually in the --- we have a couple of
19 processes, so I guess the short answers are yes and
20 we're going to be more rigorous going forward.

21 Q. Do you have any knowledge as to how many
22 patients on whom your clinic has performed surgery have
23 after that surgery committed suicide?

24 A. I don't off the top of my head know that.

1 Q. Do you believe that your clinic possesses
2 reasonably complete information on that question?

3 A. I actually don't think our information is
4 sufficiently complete currently, and that actually is an
5 area where we're going to develop more vigorously,
6 because I would actually like to know that.

7 Q. Do you know whether any patients on whom your
8 clinic has performed surgery has subsequently sought to
9 de-transition and take on or revert to, whichever way
10 you want to see it, a gender identity that's aligned
11 with their chromosomal sex?

12 A. So it's a complicated question. And actually I
13 just want to go back to the first part where you were
14 talking about suicide.

15 To be clear, the rigor I'm talking about is not
16 suicide focused, because I actually am not anticipating
17 that that is --- that that is happening or is happening
18 more than with being seen in a general population, but
19 for all encompassing that we do definitely need that.

20 But back to your current question ---.

21 Q. Let me jump back to suicide for a moment. Are
22 you aware of studies coming out of DeVry University and
23 Amsterdam suggesting that post-surgical transgender
24 populations continues to experience elevated rates of

1 complete suicides compared to controlled populations?

2 ATTORNEY BLOCK: Objection to form.

3 THE WITNESS: So I'm aware that
4 transgender people have more mental health morbidity
5 than other populations. Once corrections are made for
6 other confounding factors I don't know that we would
7 have --- that we're very clear yet on those data
8 including ---.

9 BY ATTORNEY BROOKS:

10 Q. When I refer to a published study coming out of
11 DeVry University of Amsterdam showing high rates of
12 suicidality in postsurgical transgender patients, you
13 believe you're familiar with that literature?

14 A. I guess it would fall in the same category as
15 Littman's second paper.

16 Q. Okay.

17 A. Where I'm familiar with the fact that they're
18 doing surveys and I'm familiar with the broad outlines,
19 but could not ---

20 Q. Okay.

21 A. --- comment on specific studies without it being
22 in front of me.

23 Q. And have any patients on whom your clinic has
24 performed surgery subsequently decided to de-transition

1 and assume a gender identity aligned with their
2 chromosomal sex?

3 A. I don't --- I don't know. There is absolutely
4 the case that there are people who stop their treatment
5 at different levels, so it has definitely been my
6 experience that I have patients who I've put on hormone
7 treatments who have stopped those hormone treatments.
8 And there are also, among our patients --- I don't know
9 if any of the patients where we performed the original
10 surgery they actually were opting for a different
11 surgery, but we definitely have patients who have come
12 to us, who had a surgery done elsewhere who were looking
13 for a degree basically what you're calling a reversal,
14 to the degree that that's possible. So that such a
15 thing does exist. So the point about saying that they
16 have a different gender identity, that would --- that is
17 not typically how the patients come saying it. They
18 don't say, oh, it turns out my gender identity is not
19 that. It's more often society is not treating me well,
20 this isn't working out. That's the more --- that's the
21 --- that's the typical scenario. I mean, yes, we
22 definitely have seen that circumstance.

23 Q. Dave Tryon, who is with us remotely as Counsel
24 for West Virginia, I have promised him an hour, so I

1 have to stop, even though I have so many more
2 interesting questions.

3 ATTORNEY BROOKS: So Dave, I will stop
4 and I will turn the witness over to you.

5 ATTORNEY BLOCK: Could we take a break
6 now?

7 ATTORNEY BROOKS: Of course, it is a good
8 time for sure.

9 ATTORNEY BLOCK: Thanks. Can we go off
10 the record?

11 VIDEOGRAPHER: The time is 5:03 p.m.
12 Eastern Standard Time.

13 OFF VIDEOTAPE

14 ---

15 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

16 ---

17 ON VIDEOTAPE

18 VIDEOGRAPHER: We are back on the record.
19 The current time reads 5:25 p.m. Eastern standard Time.

20 ATTORNEY BLOCK: This is Josh Block on
21 behalf of the Plaintiff. We have conferred off the
22 record, including with counsel from Mount Sinai, and
23 Doctor Safer can answer the two questions he declined to
24 answer before provided that we mark those portions of

1 the deposition transcript confidential, and all counsel
2 for Defendants have agreed with that.

3 ATTORNEY BROOKS: And this is Roger
4 Brooks, and yes, I confirm that all counsel for
5 Defendants have agreed to that.

6 CONFIDENTIAL PORTION BEGINS

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EXAMINATION

3

4

BY ATTORNEY TRYON:

5

Q. Hello, Dr. Safer. Thanks for your time today.

6

So I am David Tryon. I represent the State of Virginia.

7

I'm appointed by the Attorney General's Office. And I

8

wanted to start out by looking at --- asking you to take

9

a look at your Rebuttal Report. I don't recall what

10

exhibit number that is. If you could tell us what it is

11

marked?

12

ATTORNEY WILKINSON: Exhibit 2.

13

ATTORNEY TRYON: Exhibit 2.

14

ATTORNEY WILKINSON: Tab 51.

15

THE WITNESS: I have that in front of me.

16

BY ATTORNEY TRYON:

17

Q. Could you take a look at paragraph six, please?

18

Do you have that in front of you?

19

A. Yes.

20

Q. Great. Now, in here it says in the second or

21

maybe third sentence as reflected in the same source

22

cited by Doctor Brown dimorphous sexual characteristics

23

in men and women are produced by a combination of genes,

24

prenatal androgen exposure to sex hormones. And I'd

1 like to focus on that particular clause. Can you
2 explain what prenatal androgen exposure to sex hormones
3 is?

4 A. Yes. That references --- I guess to me it's
5 more or less exactly what it says, which is that the
6 developing fetus is exposed to various hormones and
7 other factors and androgen is specifically the male ---
8 is typically what we consider to be the male sex
9 hormone, although everyone has some. And then prenatal
10 just means and in utero or in the mother's womb.

11 Q. So androgen for males is testosterone.
12 Is that right?

13 A. Androgen in general is that category of hormones
14 that we think of as typically male, even though, like I
15 said, we all have them. And one of the androgens is
16 testosterone. And with adults it is the one that we are
17 talking about most of the time, of course.

18 Q. Okay.
19 So as I understand it, your suggestion is that
20 that prenatal exposure to testosterone can have an
21 impact even after birth.

22 Is that right?

23 ATTORNEY BLOCK: Objection to form.

24 THE WITNESS: So all factors --- well, I

1 don't want to overstate it, but factors that occur to
2 which a fetus is exposed in the womb have impact on the
3 development of that fetus, of that person when they are
4 born, and so androgens, including testosterone, would be
5 part of that, so yes.

6 BY ATTORNEY TRYON:

7 Q. So are you aware of studies addressing the
8 impact of prenatal exposure to testosterone as it
9 impacts people after their birth?

10 ATTORNEY BLOCK: Objection to form.

11 THE WITNESS: I think I need you to be
12 specific about which studies.

13 BY ATTORNEY TRYON:

14 Q. Are you aware of any study that addresses the
15 effect of prenatal testosterone upon boys after they're
16 born?

17 ATTORNEY BLOCK: Objection to form.

18 THE WITNESS: So the ---.

19 BY ATTORNEY TRYON:

20 Q. Or men?

21 A. So I can --- I guess --- I have to --- kind of
22 two answers. Exposure to prenatal androgens, kind of
23 generally because it is not always, testosterone explain
24 the development of what we consider to be typically male

1 genitalia so that all babies born with what --- with a
2 penis and with a urethra that is the part for which you
3 urinate, that's up inside the penis and having the
4 gonads, which would typically be testes in the scrotum,
5 all of that happens in response to testosterone.

6 BY ATTORNEY TRYON:

7 Q. And then that also triggers a question I had.
8 You had previously said in your original report a
9 person's genetic makeup and internal and external
10 reproductive anatomy are not useful indicators of
11 athletic performance and have not been used in a league
12 competition for decades.

13 My question on that is, when you say a person's
14 genetic makeup doesn't their genetic makeup trigger
15 whether or not they are going to --- a person's genetic
16 makeup will determine whether or not they're a boy or a
17 girl, and therefore if they're a boy that would trigger
18 their generation of more testosterone than a girl.

19 Is that a fair statement?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: Yeah, no, that's --- so I
22 think I need to walk that back a little bit. Why don't
23 we --- can we do it like piece by piece or have you
24 restate parts?

1 BY ATTORNEY TRYON:

2 Q. I will restate it. So when you say a person's
3 genetic makeup, what does that mean?

4 A. Mostly in this context I'm referencing their
5 chromosomes that's the specific that in the further past
6 was actually being used to identify people which we no
7 longer do. It's not sufficiently reliable.

8 Q. Does the --- you have an X Y chromosome that is
9 typically considered to mean that you're a male.

10 Correct?

11 A. The XY chromosome is typically considered to
12 mean that you're a male, correct.

13 Q. And that would mean that you would be generating
14 more testosterone than if you have an X chromosome.

15 Right?

16 ATTORNEY BLOCK: Objection to form.

17 THE WITNESS: So the presence alone of
18 that XY pattern is insufficient to know with certainty
19 that you're producing more testosterone and that is part
20 of the point of I'm saying it is that biological sex is
21 more complex, and you could have the gene for the testes
22 that produce testosterone elsewhere, and then you
23 wouldn't have that pattern and you still would be
24 producing the testosterone or vice versa.

1 BY ATTORNEY TRYON:

2 Q. Okay.

3 Well, let's go back to prenatal testosterone.
4 So you're not --- if I understood what you're saying
5 before, you're not aware of any studies that show
6 whether or not prenatal testosterone would have --- let
7 me just start that over again.

8 Are you aware of any studies that address
9 whether prenatal testosterone has impact on sporting, on
10 athletics in children after birth?

11 A. Correct. That would be right to say that there
12 are no studies of which I'm aware that can associate
13 prenatal testosterone with athleticism. And I don't
14 know what levels we're even talking. Like an adult
15 level? What's your question there?

16 Q. My next question is, have you heard of the
17 Journal of Sports Science and Medicine?

18 A. I guess you would have to show it to me.

19 Q. Okay.

20 Have you ever heard the name Jim Goldby or
21 Jennifer Mays?

22 A. No.

23 ATTORNEY TRYON: Jake, could you bring up
24 the Exhibit that I sent to you today, which is the

1 General Sports Science and Medicine?

2 ATTORNEY WILKINSON: Do you see anything?

3 THE WITNESS: I don't see anything. Oh,
4 that's too small. Okay. That's okay.

5 ATTORNEY TRYON: Okay.

6 And this will be Exhibit --- what Exhibit
7 are we on Jake, do you know?

8 VIDEOGRAPHER: This is 19.

9 ---

10 (Whereupon, Exhibit 19, Article, was
11 marked for identification.)

12 ---

13 ATTORNEY TRYON: I'm sorry, 19?

14 VIDEOGRAPHER: Correct.

15 BY ATTORNEY TRYON:

16 Q. Okay.

17 I take it from your earlier answers, you
18 probably never seen it before.

19 Is that right?

20 A. I certainly don't recall. I don't want to state
21 definitively I've never seen it either, but it's
22 certainly not a paper that I'm going to know off the top
23 of my head.

24 Q. Well, let me ask you to take a look at the

1 conclusion on page 449?

2 A. So can we move the pictures because they're
3 blocking.

4 Q. Can you see it?

5 A. We're getting there. And then is there a way to
6 move that? Oh perfect. Yes.

7 Q. Okay.

8 The conclusion says, current paper provides
9 initial support from an association between prenatal
10 testosterone levels and mental toughness, optimism, goal
11 orientations, coping strategies and hostility, period.
12 Findings tentatively suggest that the mentioned
13 psychological characteristics may be partially
14 biologically predetermined.

15 Do you see that?

16 A. I do see it, yes.

17 Q. Do you have any reason to believe whether that's
18 true or not true?

19 ATTORNEY BLOCK: Objection. I just
20 object to asking him about a conclusion when he just has
21 a little snippet of that and hasn't reviewed the
22 article. And I'm not even sure if it has been cited in
23 the other expert reports.

24 THE WITNESS: I certainly can ---.

1 BY ATTORNEY TRYON:

2 Q. Go ahead.

3 A. I certainly cannot say if that conclusion has
4 any logic to it without knowing the study.

5 Q. Understood. Is it possible since this
6 particular study suggests there is an impact on adults
7 by prenatal testosterone? Is it that prenatal
8 testosterone could also have a DSD explanation for why
9 should boys at 11 years old have more athletic ability
10 than girls?

11 ATTORNEY BLOCK: Objection to form.

12 THE WITNESS: So speaking --- yeah,
13 speaking as an expert, I can't give you an expert
14 comment there without seeing their study.

15 BY ATTORNEY TRYON:

16 Q. Okay.

17 So you just can't say one way or the other.

18 Correct?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: I mostly wouldn't want to
21 comment on their study. I will only make the
22 observation that the data of which I am aware do not
23 show differences for prepubertal children, if that was
24 part of your question.

1 BY ATTORNEY TRYON:

2 Q. And so the performance data that Dr. Handelsman
3 pointed out showing that there are some damages given
4 before puberty, you reject those?

5 ATTORNEY BLOCK: Objection to form.

6 THE WITNESS: So those broad
7 cross-sectional studies don't get at input, whether they
8 are referencing biological explanations versus societal
9 explanations.

10 BY ATTORNEY TRYON:

11 Q. Okay.

12 Whether it's societal or biologic explanations,
13 Handelsman still demonstrated that there is an advantage
14 for pre-pubescent males over females in athletics.

15 Right?

16 ATTORNEY BLOCK: Objection to form.

17 THE WITNESS: No, neither Dr. Handelsman
18 in his paper --- he doesn't actually say that. And if
19 you --- I think we looked previously at one of the
20 figures where specifically the range of outcomes, if you
21 were to repeat the study, included the girls doing
22 better than the boys.

23 BY ATTORNEY TRYON:

24 Q. Well, that was only one of them. That was not

1 it. That was one of the charts. The other chart showed
2 that there was an advantage, right?

3 ATTORNEY BLOCK: Objection to form.

4 THE WITNESS: The other --- yeah, let me
5 think with that one. Right. We are not getting into
6 what the causality is, then the other charts did show
7 the boys doing better. And again, the caveat remains
8 what is not --- what is not demonstrated there is that
9 there is --- that that is a biological thing versus
10 simply the very longstanding societal and cultural
11 environments.

12 BY ATTORNEY TRYON:

13 Q. And you've contended that there's a biological
14 component to gender identity.

15 Correct?

16 A. Yes.

17 Q. Which we have not been able to identify in this
18 deposition.

19 Correct?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: So it is not quite --- well
22 I actually don't know what's been identified in the
23 deposition. The data are included in my --- in the
24 papers that I referenced that are what are convincing to

1 the medical community right now. The detailed
2 explanations for the specific biology are not known if
3 that's where you're going.

4 BY ATTORNEY TRYON:

5 Q. Assuming there is actually a biological
6 component, as you say, to gender identity, that says
7 nothing about whether a biological male identifying as a
8 female should, as a public policy matter, be allowed to
9 participate on a girls athletic team in high school and
10 middle school.

11 Right?

12 ATTORNEY BLOCK: Objection to form.

13 THE WITNESS: So the way that I would say
14 that is even if we recognize that there is a biological
15 explanation for gender identity, that does not --- well,
16 I don't know that then I can go on to make an expert
17 statement, honestly, because that gets outside my
18 purview and in terms of --- my lane is just simply to
19 say that.

20 BY ATTORNEY TRYON:

21 Q. Got it. Can you look at your rebuttal report
22 and look at page two?

23 A. I have my rebuttal in front of me and I'm on
24 page two.

1 Q. Paragraph 4B?

2 A. I have that in front of me.

3 Q. You say --- great. You say circulating
4 testosterone is the primary known biological driver of
5 average differences in athletic performance. Do you see
6 that?

7 A. I do.

8 Q. You say it is primary so what are the other
9 biological drivers of average differences in athletic
10 performance?

11 ATTORNEY BLOCK: Objection to form.

12 THE WITNESS: So when I --- so we're
13 talking about circulating testosterone --- let me just
14 look at this. Right. The truth is, is that it may ---
15 that the only candidates that we have so far are
16 testosterone at puberty and testosterone in the moment.

17 BY ATTORNEY TRYON:

18 Q. So it's --- according to you, it's testosterone
19 at puberty and circulating testosterone are the only
20 biological drivers of average differences in athletic
21 performance.

22 Is that right?

23 A. So excuse me. I'm actually --- so this is the
24 president of the hospital.

1 ATTORNEY BLOCK: I'm sorry. Can we go
2 off the record for a minute and take a break. The
3 president of the hospital is returning his previous
4 call.

5 VIDEOGRAPHER: Going off the record. The
6 current time is 5:48 Eastern Standard Time.

7 OFF VIDEOTAPE

8 - - -

9 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

10 - - -

11 ON VIDEOTAPE

12 VIDEOGRAPHER: Back on the record. The
13 current time reads 5:54 p.m. Eastern Standard Time.

14 BY ATTORNEY TRYON:

15 Q. My last question was according --- according to
16 you, testosterone at puberty and circulating
17 testosterone are the only biological drivers of average
18 differences in athletic performance.

19 Is that right?

20 A. Right, they are the only ones that are known.

21 Q. And in paragraph 4C, looking on page three ---
22 let's move over to page three, at the top of the page,
23 your statement is there is no basis to expect that
24 transgender girls who receive puberty delaying

1 medication followed by gender affirming hormones would
2 have an athletic advantage. There's a comma. But if we
3 just put a period there, is that your opinion?

4 A. That is correct. Yes, that is my opinion.

5 Q. Let me ask you the converse. You say there is
6 no basis to expect that transgender girls who receive
7 puberty delaying medication followed by gender affirming
8 hormones would not have an athletic advantage, period.
9 Would you agree with that statement?

10 A. No.

11 Q. Do you have any --- excuse me, any performance
12 data from an actual athletic event that support your
13 opinion?

14 A. I do not have any data from an actual athletic
15 performance study for that. No, I do not in that
16 context, in that specific instance.

17 Q. Let me ask you to look at your report. Turn to
18 paragraph 45.

19 A. So my report, paragraph 45. All right. I have
20 that in front of me.

21 Q. Great. Finally, unlike elite international
22 competition, schools and colleges often provide athletic
23 competition as part of a broader educational mission.
24 In that context, when scholastic athletics are

1 components of the educational process, institutions may
2 adopt policies designed to emphasize inclusion and to
3 provide the most athletic opportunities to the greatest
4 number of people. You see that.

5 Right?

6 A. I do.

7 Q. So these policies you referred to are designed
8 to emphasize inclusion and to provide the most athletic
9 opportunities to the greatest number of people, what's
10 the source of that policy? Did you come up with that or
11 did you see it someplace else?

12 ATTORNEY BLOCK: Objection to the form.

13 THE WITNESS: So the question is how am I
14 aware? Yeah --- I apologize. You can hear that I'm
15 confused on your question.

16 BY ATTORNEY TRYON:

17 Q. I'll try and do better. You said intuitions may
18 adopt policies designed to emphasize inclusion and to
19 provide the most athletic opportunities to embrace a
20 number of people. And those policies that you're saying
21 there, is that a policy that you read about somewhere or
22 something you are just suggesting? What's the source of
23 that?

24 ATTORNEY BLOCK: Objection to form.

1 THE WITNESS: So an operative word in
2 this is may adopt policies, so this isn't referencing a
3 specific policy that I would give you right this moment,
4 if that's what you are asking.

5 BY ATTORNEY TRYON:

6 Q. So right, just aside from education --- this
7 whole paragraph is talking about education, but you're
8 not an expert on education or teaching methodology, are
9 you?

10 A. I certainly am not.

11 Q. And you don't have any degrees in education or
12 training in teaching methodology, do you?

13 A. I do not.

14 Q. And you have no degrees or training in pedagogy?

15 A. I have no degree in pedagogy. I will be careful
16 how absolutely I do not, because that's not my ---
17 that's not where I am representing myself to be an
18 expert. I am involved in some education, but at the
19 scholastic level not, so let's just say no.

20 Q. And you have no expertise as to whether sports
21 or how sports are used as part of educational systems.

22 Right.

23 A. Correct. That is not the expertise. The how
24 and my decisions among this are not my expertise.

1 Q. Do you have any idea how many schools actually
2 have sports programs?

3 ATTORNEY BLOCK: Objection. I couldn't
4 hear the full question. You cut out.

5 BY ATTORNEY TRYON:

6 Q. Sorry. Do you have any idea how many schools
7 have sports programs?

8 A. I could not give you a number, no.

9 Q. Are you aware that some colleges do not have
10 athletic programs?

11 A. I guess I'm vaguely aware. If you're asking me
12 as an expert than I wouldn't comment on that as an
13 expert, but as a human in society I certainly am aware
14 that that is a thing.

15 Q. Okay.

16 And do you have any idea what percentage of
17 kids are in athletic programs in schools versus those
18 that are not that are still students?

19 A. No, I would not be your source for that data
20 point.

21 Q. So when you are expressing this opinion in
22 paragraph 45 that's not an expert opinion there, is it?

23 ATTORNEY BLOCK: Objection to form.

24 THE WITNESS: So right, I guess it's a

1 bit confusing here, because it's not my expert opinion
2 that --- well, I'm certainly aware as an individual that
3 this is a priority and when I sit on --- when I sit on
4 committees where we discuss relative priorities, there
5 are experts present who discuss these priorities. But
6 if I'm speaking to you as an expert, then I --- then I
7 can't be the representative expert in that space.

8 BY ATTORNEY TRYON:

9 Q. Right. Well, I'm just asking, in paragraph 45,
10 given your lack of expertise and education, you are not
11 giving an expert opinion in paragraph 45.

12 Is that a correct statement?

13 ATTORNEY BLOCK: Objection, asked and
14 answered.

15 THE WITNESS: So I'm simply --- I'm
16 raising all of the issues that we know exist, but then
17 I'm not providing an expert opinion in terms of the
18 relative priorities among these circumstances that
19 exist.

20 BY ATTORNEY TRYON:

21 Q. Let me just ask you very clearly is paragraph 45
22 an expert opinion of yours?

23 ATTORNEY BLOCK: Objection to form.

24 THE WITNESS: I don't think I'm even

1 expressing an opinion in paragraph 45, expert or
2 otherwise. I'm simply stating the background situation.

3 BY ATTORNEY TRYON:

4 Q. Okay.

5 But --- okay. I would ask you to turn to
6 paragraph 37 of your report.

7 A. All right.

8 I have that in front of me.

9 Q. This is talking about the International Olympics
10 Committee. Right? Let me move back to paragraphs 35
11 and 36.

12 A. Yes, this is the International Olympic
13 Committee. This relates to the International Olympic
14 Committee.

15 Q. So this 2021 framework, do you believe that you
16 understand this framework?

17 A. I think you'll have to ask more specific
18 questions because I might understand parts and I might
19 have questions about parts.

20 Q. Very good. First of all, it says the 2021
21 framework further provides that, quote, any restrictions
22 arising from eligibility criteria should be based on
23 robust and peer-reviewed research that, A, demonstrates
24 a consistent, unfair, disproportionate competitive

1 advantage with performance and/or an unpreventable risk
2 to the physical safety of other athletes. You see that
3 part, right?

4 A. I do, yes.

5 Q. Do you understand what the word disproportionate
6 means in this context?

7 A. To a degree.

8 Q. Okay.

9 What do you understand it to mean when it says
10 a disproportionate competitive advantage in performance?

11 A. The IOC is aware that there's quite a wide range
12 of advantages with different body types and different
13 biology, and so they use language like disproportionate
14 when they want to talk about something that's --- that's
15 --- that's systematically associated with one
16 circumstance in a way that they think would violate the
17 rules, whatever they might be, for a specific sport.

18 Q. That's pretty ambiguous. I have no idea what
19 that means. Let me see if we can narrow it down. Is a
20 disproportionate competitive advantage in performance
21 --- would 20 percent be a disproportionate competitive
22 advantage?

23 ATTORNEY BLOCK: Objection to form.

24 THE WITNESS: So that's --- I can't

1 answer that, because it depends on context, and I'm not
2 the person who wrote the specific language in that
3 document, so that is the quote from the document. But
4 in terms of --- I don't --- I think we go someplace we
5 don't want to go if we try to over define the specific
6 word disproportionate.

7 BY ATTORNEY TRYON:

8 Q. So it's just not something that you or I could
9 look at and reach any kind of conclusion to tell them
10 what that means sitting here today.

11 Is that right?

12 A. I think if we look at a specific sport, I think
13 that if it was limited to just the two of us we might
14 need more expertise to make a decision.

15 Q. Well, let's say if we talked about the one mile
16 --- running one mile, is that something that we could
17 then determine what disproportionate competitive
18 advantage and performance would mean?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: It would depend on context.
21 And if we're talking about at the elite level which is
22 what the IOC references and we limited --- even then if
23 we limit it just to you and to myself, we would want
24 more expertise.

1 BY ATTORNEY TRYON:

2 Q. Right. Okay.

3 So we don't know what the IOC meant by this in
4 any particular context do we?

5 ATTORNEY BLOCK: Objection to form.

6 ATTORNEY TRYON: Actually, let me redraw
7 this question.

8 BY ATTORNEY TRYON:

9 Q. You as an expert would not be able to give me an
10 expert opinion on what disproportionate competitive
11 advantage in performance of the one mile run would be;
12 right? You could not give me an expert opinion on that.

13 Fair statement?

14 A. If you break the words out in that --- in that
15 fashion then it does become difficult. If you ask me
16 what the entire statement after the letter A is
17 referencing, I can at least explain some of the thought
18 process for the IOC there.

19 Q. Well, my question is simply, you as an expert,
20 are you able to tell me what --- able to define for me
21 what would be a consistent, unfair disproportionate
22 competitive advantage in performance in a one mile run
23 for the IOC?

24 ATTORNEY BLOCK: Objection to form.

1 THE WITNESS: I, as an expert, cannot
2 give you a blanket explanation of what would
3 specifically consist of --- what would specifically meet
4 that definition. When they wrote the statement they
5 didn't actually even have specific guidance, that is
6 simply the spirit of a guideline --- the spirit of what
7 a specific guideline should consider when that guideline
8 is made.

9 BY ATTORNEY TRYON:

10 Q. Do you know what they meant when they said
11 unfair?

12 A. So the --- it's kind of the same circumstance.
13 That is the purpose of this statement is to be global
14 guidance for the experts in the specific sport when they
15 might develop guidelines relevant to their specific
16 sport. So for example, the group with expertise in that
17 one mile run that you're referencing should think in
18 this context. That's all this is doing.

19 Q. And some of the sporting organizations have come
20 up with some very specific rules.

21 Correct?

22 A. Some of the sporting federations have come up
23 with specific rules, yes.

24 Q. And as I recall, some of them require a certain

1 level of circulating testosterone.

2 Is that right?

3 A. Some of the sporting federations use a certain
4 level of circulating hormone as part or all of their
5 roles.

6 Q. And some of them use the level that you've
7 mentioned that you were involved in setting, which was 5
8 Nmole --- say it for me. Nmole something.

9 A. Nmole/Ls per liter. Yes, some of them use that
10 nmole/L per liter threshold.

11 Q. Did they --- where did they get that 5 nmole/L
12 quantity, do you know?

13 ATTORNEY BLOCK: Objection to form.

14 THE WITNESS: So I do know where that
15 number comes from originally for World Athletics, which
16 is the first one to put that number out. And that
17 number comes from studies of some Olympic athletes in
18 some races where there was for at least certain
19 distances a demonstrable difference between people who
20 had --- and specifically people in the female category
21 who had lower numbers of testosterone than that and
22 higher numbers of testosterone than that.

23 BY ATTORNEY TRYON:

24 Q. You were on that committee.

1 Right?

2 A. I was on the group that wrote that World
3 Athletics policy, yes. Not on the group that did that
4 study.

5 Q. And so how did you finally come up with the
6 number of five as opposed to four or six or three or
7 seven?

8 A. The number five discriminates in terms --- in
9 terms of there being some demonstrated advantage or
10 improved outcome is really what it was, for those with
11 higher numbers versus those with lower numbers. That
12 was not true necessarily with a lower testosterone
13 threshold. That is a difference was not as apparent and
14 that's really the entire logic pattern there.

15 Q. Well, earlier you just said it could have been
16 --- you didn't think there was that much difference
17 between five and six. That was your testimony earlier
18 as I recall.

19 Right?

20 ATTORNEY BLOCK: Objection.

21 THE WITNESS: As an endocrinologist I can
22 tell you that those difference --- that that's right
23 that to --- the difference between five and six would be
24 hard to demonstrate.

1 BY ATTORNEY TRYON:

2 Q. So how did you settle on five instead of six or
3 five or six instead of four?

4 A. So I guess the inputs are that there needed to
5 be a line so that there's ability to enforce something.
6 There needed to be a rule. And the choice of five,
7 mostly, is what I've been saying already, which is ---
8 it's a clean number where there's at least some
9 distances, there's a demonstrable difference in outcomes
10 at that level --- above and below that level.

11 Q. So are you saying that there is a value of
12 having a hard rule?

13 ATTORNEY BLOCK: Objection to form.

14 BY ATTORNEY TRYON:

15 Q. Maybe I should say having a clean rule?

16 A. So as an expert I'm not --- that wasn't my role
17 on the committee to determine that there needed to be a
18 rule, but that is certainly the logic pattern of the
19 committee that there ought to be a rule. That is not my
20 expert opinion.

21 Q. Okay.

22 But different organizations are free to come up
23 with different conclusions of about what their rules
24 ought to be.

1 Right?

2 ATTORNEY BLOCK: Objection to form.

3 THE WITNESS: So the different
4 International Athletic Federations were to make use of
5 data such as it exists to make their own rules for
6 participation in their sports.

7 BY ATTORNEY TRYON:

8 Q. And different organizations came up with very
9 different rules.

10 Right?

11 ATTORNEY BLOCK: Objection to form.

12 THE WITNESS: So most of the
13 international federations still do not have rules,
14 actually. And honestly, that's mostly a logistics
15 situation where some of these organizations are too
16 small to put the data together or the committees
17 together to make rules.

18 BY ATTORNEY TRYON:

19 Q. Those that do have rules have different rules.

20 Correct?

21 A. Those that do have rules have had different
22 conversations in the space. I don't know that I could
23 systematically go through all of them, but there is some
24 variation, yes.

1 Q. Some require --- have a Level 5 nanomoles per
2 liter and some still have ten.

3 Right?

4 A. So I'd have to go back and look. You would have
5 to show me. World Athletics has five for sure. And
6 that's the one where I'm most familiar because I was
7 actually sitting in the room helping draft that. The
8 IOC in the past had used ten as a line, but that just
9 sits there right now as a --- as a number someone might
10 adopt. I actually don't know off the top of my head if
11 anybody has adopted that for their formal rules.

12 Q. What was the scientific basis for the ten
13 nanomoles per liter?

14 A. The logic for ten at the time is it is the
15 bottom of the male range. That's its history.

16 Q. Okay.

17 So it sounds to me like there is room for
18 reasonable discussion about what the appropriate rule
19 ought to be?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: The way I would say it is
22 as different athletic organizations obtain data, they
23 might use those data to determine differences, including
24 if the --- if our best measure is testosterone,

1 different thresholds of testosterone.

2 BY ATTORNEY TRYON:

3 Q. Would it be appropriate to use performance data
4 as well to make those decisions?

5 A. The best data in my opinion are actual outcomes
6 within a given sport.

7 Q. What do you mean by outcomes, performance? Are
8 we saying the same thing?

9 A. I don't know if we're saying the same thing. So
10 the studies that I reference are the Roberts study and
11 the Harper study, where they actually look at specific
12 athletic endeavors and measure those as opposed to the
13 studies where they're simply sitting in a physiology lab
14 measuring somebody move an arm back and forth and
15 thinking that it might associate with some actual
16 athletic performance.

17 Q. Somebody moving their arm back and forth with
18 weights, that's not athletic?

19 A. It's --- again, it would --- right, that's ---
20 that's only --- that's what we would call a surrogate
21 endpoint where you are simply looking at something that
22 might correlate with what you want, but --- but you
23 don't know it until you test it. It ends up being what
24 we call hypothesis generating. That is how we would say

1 it in a scientific way.

2 Q. And the same would hold true with the level of
3 circulating testosterone, you would want to actually
4 test that in real life to see how people's circulating
5 testosterone actually translates into performance of an
6 actual athletic contest.

7 Right?

8 A. That's right. So the data that were used to
9 determine the five nanomole per liter cut point are
10 passively collected data. And if somebody did a study
11 looking at that threshold and found that there was,
12 let's say, no difference, then that rule might be
13 discarded.

14 Q. And so far, other than Roberts and Harper, if I
15 recall correctly, those are the only two that you know
16 of.

17 Right?

18 ATTORNEY BLOCK: Objection to form.

19 THE WITNESS: Those are the only two
20 studies that have gone that extra step and looked at an
21 actual athletic activity with an outcome that is part of
22 that athletic activity and not what I was just
23 referencing, as a surrogate endpoint.

24 BY ATTORNEY TRYON:

1 Q. In those two studies did they check the
2 circulating testosterone in the individuals in these
3 studies?

4 A. I'd have to look. I think we did look earlier
5 today with regard to the Harper study, and I don't think
6 she's referencing testosterone levels at all. Again,
7 I'd have to go back and look to be sure. We were
8 talking about whether they were self-reported. And the
9 --- with the Robert study I would have to go back and
10 look at that one, too. I'm feeling like the answer is
11 no, but we can look there if you want.

12 Q. Yeah, we don't need to. I'm pretty sure that we
13 just talked about how long they had been in the therapy
14 rather than actual measurements.

15 Well, let me move on. I know we don't have a
16 lot of time left.

17 So you said you're familiar in your expert
18 report you are familiar with HB-3293.

19 Is that right?

20 ATTORNEY BLOCK: Objection to form.

21 THE WITNESS: So yes, I'm somewhat
22 familiar.

23 BY ATTORNEY TRYON:

24 Q. Have you read the whole thing?

1 A. I don't think I've read the whole thing, no.

2 Q. When did you first hear of HB-3293?

3 A. I probably first heard of it when the --- when I
4 received contact from the ACLU to serve as an expert
5 witness.

6 Q. Do you recall if that was before or after it was
7 passed?

8 A. I don't recall. I would have to speculate that
9 it would be after, because that would --- I mean that
10 would make sense that that is true, but I don't recall,
11 so I wouldn't be able to answer that.

12 Q. Okay.

13 So we would refer to this as State Women's
14 Sports Law and there's other types of laws like this
15 throughout the country.

16 Are you aware of that?

17 ATTORNEY BLOCK: Objection to form.

18 THE WITNESS: So I'm aware that there are
19 attempts at legislation and some actual legislation
20 passed to block transgender athletes in various
21 permeations, including transgender women in several
22 states. I'm aware of that, yes.

23 BY ATTORNEY TRYON:

24 Q. Are you aware then House Bill 3293 the word

1 transgender does not appear at all?

2 A. House Bill --- that's this one?

3 Q. That is this one.

4 A. I was not aware that the word transgender does
5 not appear at all.

6 Q. Are you tracking the other bills out there that
7 are similar to House Bill 3293?

8 A. I am not personally tracking the other bills,
9 no.

10 Q. Can you take a look at the Handelsman report
11 that you have in front of you. I don't recall the
12 exhibit number.

13 ATTORNEY WILKINSON: I think Exhibit 13
14 --- oh, sorry, it's Exhibit 4, I think.

15 THE WITNESS: I don't see.

16 ATTORNEY WILKINSON: I can give you that.

17 THE WITNESS: The stack got big.

18 ATTORNEY TRYON: We can just bring it ---
19 if you can't find it we can bring it up on the screen?

20 THE WITNESS: Okay.

21 I was given another copy, so we're good.
22 I have it in front of me.

23 BY ATTORNEY TRYON:

24 Q. Okay.

1 On the second page?

2 A. On the second page.

3 Q. Okay.

4 Under fairness and segregation in sports.

5 Do you see that section?

6 A. I do.

7 Q. In the third full paragraph underneath there ---
8 oh the formatting there is a little different than the
9 copy that I have. Let's see. There's a paragraph that
10 starts the terms sex and gender. There it is. The
11 terms sex and gender are often confused as
12 interchangeable. Now, I want you to focus on this next
13 sentence. Sex is an objective specific biological
14 state, a term with distinct fixed facets notably
15 genetic, chromosomal, gonadal, hormonal and phenotypic
16 including genital sex, each of which has a
17 characteristic defined binary form. Did I read that
18 correctly?

19 A. You read that correctly, yes.

20 Q. Do you agree with that statement?

21 A. I don't agree with that statement completely,
22 no.

23 Q. What specifically do you find objectionable.

24 A. It's missing some components of sex, including,

1 for example gender identity. And the phrasing
2 characteristic defined binary form is not necessarily
3 true for each component of biological sex.

4 Q. So you disagree with the statement in the
5 Handelsman report, is that --- did I state that fairly?

6 A. Right. I would characterize the statement as
7 not exhaustive.

8 ATTORNEY TRYON: Let me ask the court
9 reporter if I have any time.

10 COURT REPORTER: I have six minutes and
11 58 --- six hours and 58 minutes.

12 ATTORNEY TRYON: Well, I guess with my
13 last two minutes I'll just say thank you for your time
14 and I appreciate it. And I don't have any other
15 questions. I don't know if any of the other Defendants
16 do. I doubt it. But go ahead. If they do, go ahead.
17 Kelly?

18 ATTORNEY MORGAN: This is Kelly Morgan.
19 I don't have any questions. Thank you so much.

20 ATTORNEY TRYON: Roberta? Susan, you're
21 next.

22 ATTORNEY GREEN: This is Roberta Green on
23 the behalf of the SSAC. No questions. Thank you.

24 ATTORNEY DENIKER: Dr. Safer, this is

1 Susan Deniker. I have no questions. Thank you for your
2 time today.

3 ATTORNEY TRYON: We are finished.

4 VIDEOGRAPHER: This concludes this
5 deposition. The current time reads 6:31 p.m. Eastern
6 Standard Time.

7 * * * * *

8 VIDEOTAPED DEPOSITION CONCLUDED AT 6:31 P.M.

9 * * * * *

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STATE OF WEST VIRGINIA)

CERTIFICATE

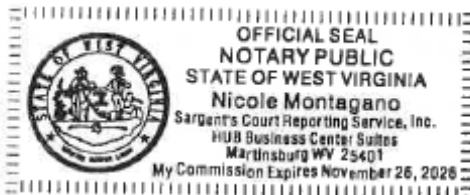
I, Nicole Montagano, a Notary Public in
and for the State of West Virginia, do hereby
certify:

That the witness whose testimony appears
in the foregoing deposition, was duly sworn by me
on said date, and that the transcribed deposition
of said witness is a true record of the testimony
given by said witness;

That the proceeding is herein recorded
fully and accurately;

That I am neither attorney nor counsel
for, nor related to any of the parties to the
action in which these depositions were taken, and
further that I am not a relative of any attorney
or counsel employed by the parties hereto, or
financially interested in this action.

I certify that the attached transcript
meets the requirements set forth within article
twenty-seven, chapter forty-seven of the West
Virginia.



Nicole Montagano
Nicole Montagano,
Court Reporter

Exhibit 9

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J. by her next friend and)
mother, HEATHER JACKSON,)
Plaintiff,)
vs.) Case No.
WEST VIRGINIA STATE BOARD OF) 2:21-cv-00316
EDUCATION, HARRISON COUNTY)
BOARD OF EDUCATION, WEST)
VIRGINIA SECONDARY SCHOOL)
ACTIVITIES COMMISSION, W.)
CLAYTON BURCH in his official)
capacity as State)
Superintendent, DORA STUTLER,)
in her official capacity as)
Harrison County)
Superintendent, and THE STATE)
OF WEST VIRGINIA,)
Defendants,)
LAINEY ARMISTEAD,)
Defendant-Intervenor.)

REMOTE VIDEOTAPED DEPOSITION OF
LAINEY ARMISTEAD
Friday, March 11, 2022
Volume I

Reported by:
ALEXIS KAGAY, CSR No. 13795
Job No. 5082427
PAGES 1 - 175

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
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B.P.J. by her next friend and)
mother, HEATHER JACKSON,)
Plaintiff,)
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WEST VIRGINIA STATE BOARD OF) 2:21-cv-00316
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BOARD OF EDUCATION, WEST)
VIRGINIA SECONDARY SCHOOL)
ACTIVITIES COMMISSION, W.)
CLAYTON BURCH in his official)
capacity as State)
Superintendent, DORA STUTLER,)
in her official capacity as)
Harrison County)
Superintendent, and THE STATE)
OF WEST VIRGINIA,)
Defendants,)
LAINEY ARMISTEAD,)
Defendant-Intervenor.)
_____)

Videotaped deposition of LAINEY ARMISTEAD,
Volume I, taken on behalf of Plaintiff, with all
participants appearing remotely, beginning at
12:03 p.m. and ending at 5:03 p.m. on Friday,
March 11, 2022, before ALEXIS KAGAY, Certified
Shorthand Reporter No. 13795.

1 APPEARANCES (via Zoom Videoconference):

2

3 For the Intervenor:

4 ALLIANCE DEFENDING FREEDOM

5 BY: CATIE KELLEY

6 BY: JONATHAN SCRUGGS

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Page 6

1 APPEARANCES (Continued):

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3 For The Plaintiff, B.P.J.:

4 COOLEY

5 BY: KATHLEEN HARTNETT

6 BY: ELIZABETH REINHARDT

7 BY: KATELYN KANG

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11

12 Also Present:

13 MITCH REISBORD - VERITEXT CONCIERGE

14

15 Videographer:

16 DAVE HALVORSON

17

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WITNESS

EXAMINATION

LAINY ARMISTEAD

Volume I

BY MR. BARR

14

EXHIBITS

NUMBER

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PREVIOUSLY MARKED EXHIBITS

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1 Friday, March 11, 2022

2 12:03 p.m.

3 THE VIDEOGRAPHER: Okay. Good afternoon.

4 We are on the record at 12:04 p.m. on

5 March 11th, 2022. This is media unit 1 in the 12:03:44

6 video-recorded deposition of Lainey Armistead in the

7 matter of B.P.J. by Heather Jackson versus

8 West Virginia State Board of Education, et al.

9 It's filed in the U.S. District Court for the

10 Southern District of West Virginia in the Charleston 12:04:04

11 Division. The case number is 2:21-cv-00316.

12 This deposition is being held virtually. My

13 name is Dave Halvorson. I'm the videographer here from

14 Veritext. And I'm here with the court reporter,

15 Alexis Kagay, also from Veritext. 12:04:25

16 Counsel, can you please all identify

17 yourselves so the witness can be sworn in.

18 MR. BARR: Yes. Good afternoon.

19 This is Andrew Barr from the law firm

20 Cooley, LLP. I'll have the rest of my co-counsel 12:04:37

21 introduce themselves before defense and intervenor

22 counsel.

23 THE VIDEOGRAPHER: Okay.

24 MS. HARTNETT: Hi. This is Kathleen Hartnett

25 from Cooley for the plaintiffs. 12:04:48

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1 MS. VEROFF: This is Julie --

2 MS. KANG: This is --

3 MS. VEROFF: Oh, sorry, Katelyn, go ahead.

4 MS. KANG: Hi. This is Katelyn Kang from
5 Cooley on behalf of the plaintiff.

6 MS. VEROFF: This is Julie Veroff from Cooley,
7 LLP, on behalf of the plaintiff.

8 MS. REINHARDT: This is Elizabeth Reinhardt
9 with Cooley, LLP, for the plaintiff.

10 MS. SWAMINATHAN: This is Sruti --

11 MR. BLOCK: Josh --

12 MS. SWAMINATHAN: -- Swaminathan -- sorry,
13 Josh, go ahead.

14 MR. BLOCK: No, no, you go ahead.

15 MS. SWAMINATHAN: This is Sruti Swaminathan
16 from Lambda Legal on behalf of the plaintiff.

17 MR. BLOCK: Josh Block from the ACLU on behalf
18 of plaintiff.

19 MS. HOLCOMB: If that's everyone from
20 Plaintiff, this is Christiana Holcomb with Alliance 12:05:29
21 Defending Freedom on behalf of the intervenor,
22 Lainey Armistead.

23 And with me, we also have my colleague
24 Hal Frampton, Jonathan Scruggs, Catie Kelley,
25 Rachel Csutoros and Timothy Ducar. 12:05:42

1 MS. DENIKER: Good afternoon.

2 This is Susan Deniker, counsel for defendants
3 Harrison County Board of Education and Superintendent
4 Dora Stutler.

5 MS. MORGAN: Kelly Morgan on behalf of the 12:05:56
6 West Virginia Board of Education and
7 Superintendent Burch.

8 MS. ROGERS: This is Shannon Rogers on behalf
9 of the West Virginia Secondary School Activities
10 Commission. And I believe Roberta Green is on Zoom on 12:06:07
11 behalf of the SSAC as well.

12 MS. GREEN: I am. Thank you.

13 MR. TRYON: This is David Tryon from the West
14 Virginia Attorney General's Office on behalf of the
15 State of West Virginia. 12:06:21

16 THE VIDEOGRAPHER: Is that everyone? Last
17 chance.

18 All right. Go ahead, let's swear in the
19 witness, please.

20 (Witness sworn.) 12:06:34

21 THE VIDEOGRAPHER: Please proceed.

22 MR. BARR: Before we get started, I just
23 wanted to memorialize for the record that the parties
24 have agreed that objections to form will preserve all
25 objections other than privilege and that there will be 12:06:58

Page 13

1 no speaking objections on the record.

2 And, Attorney Holcomb, if you could confirm
3 that.

4 MS. HOLCOMB: I concur. Thank you.

5 MR. BARR: Would the rest of defense counsel 12:07:08
6 please also concur.

7 MS. DENIKER: This is Susan Deniker. I'm in
8 agreement with that.

9 MS. MORGAN: This is Kelly Morgan. I'm in
10 agreement. 12:07:22

11 MS. ROGERS: This is Shannon Rogers. I'm in
12 agreement.

13 MR. TRYON: That's fine.

14 MR. BARR: Okay. I believe that's all defense
15 counsel. 12:07:38

16
17 LAINEY ARMISTEAD,
18 having been administered an oath, was examined and
19 testified as follows:

20
21 EXAMINATION

22 BY MR. BARR:

23 Q Good afternoon. My name is Andrew Barr. I'm
24 with the law firm of Cooley, LLP. I'm located in
25 Denver. I use the pronouns of he and him, and I'm 12:07:40

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1 representing the plaintiff B.P.J. in this case.

2 Would you please state your name and spell it
3 for the record.

4 A Lainey Armistead, L A-I-N-E-Y

5 A-R-M-I-S-T-E-A-D. 12:08:01

6 Q And which pronouns do you use?

7 A She/her.

8 Q Is it okay with you -- is it okay with you if

9 I refer to you as "Ms. Armistead" today?

10 A That's okay. 12:08:14

11 Q Am I pronouncing your name correctly?

12 A Yes.

13 Q So before we get started, I want to discuss a
14 few things about the process for today.

15 The oath you've taken is the same oath you 12:08:28
16 would take in a court of -- courtroom.

17 Do you understand that?

18 A Yes.

19 Q That means you must testify truthfully and not
20 leave out any important facts. 12:08:36

21 Is there any reason you cannot testify
22 truthfully today?

23 A No.

24 Q Okay. Please give verbal answers to my

25 questions. Nonverbal answers, such as nodding or 12:08:45

Page 15

1 shaking your head, can't be reflected in the
2 transcript; and, therefore, I need you to answer
3 verbally.

4 Do you understand?

5 A Yes. 12:08:54

6 Q If you don't understand a question that I ask,
7 I promise you it isn't a trick question; I probably
8 just worded it poorly. So just ask me to ask again,
9 okay?

10 A Okay. 12:09:07

11 Q And what that does mean is if you do not ask
12 me to reword it, I'll assume you understood the
13 question, okay?

14 A Okay.

15 Q At no point today am I asking about the 12:09:17
16 substance of communications that you've had with your
17 attorneys. So if I ask a question and you think that's
18 what I'm asking you, please do not give me any
19 information you have, based on conversation with your
20 attorney, okay? 12:09:32

21 A Got it.

22 Q We're obviously on the -- the Zoom platform,
23 which makes it very important we don't speak over each
24 other. So let me finish my question, and I will let
25 you finish your answer. Understood? 12:09:47

Page 16

1 A Got it.

2 Q And then we're here today talking about
3 House Bill 3293 that's been codified at West Virginia
4 Code 18-2-25d. I'm going to refer to that just as

5 "H.B. 3923" -- or "3293." Is that okay? 12:10:09

6 A Yes.

7 Q I'm also certainly going to mess those numbers
8 up and perhaps call it 3923 or something else.

9 Do you understand that if I talk about
10 House Bill 3293 or a similar set of numbers, I'm 12:10:23
11 actually talking about House Bill 3293?

12 A Yes.

13 Q Okay. There's a couple of words we're going
14 to be using today that I just want to explain to you
15 what I mean by those words so that we have -- we all 12:10:31
16 have a similar understanding about what I'm asking.

17 When I say the word "cisgender," I mean
18 someone whose gender identity matches the sex they were
19 assigned at birth.

20 Do you understand what that means? 12:10:52

21 MS. HOLCOMB: Objection to form.

22 MR. TRYON: Objection.

23 MR. BARR: And, defense counsel, I'm willing
24 to give you a standing objection to terminology
25 throughout this because I feel like we've established, 12:10:58

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1 over the past couple of weeks, we're just going to have
2 a fundamental disagreement on terminology, and I don't
3 think there's a reason you should have to object every
4 single time I say the word "transgender" or
5 "cisgender." 12:11:11

6 MR. TRYON: I'm objecting -- I'm objecting to
7 your definitional actions -- instructions. Excuse me.

8 MR. BARR: Understood.

9 BY MR. BARR:

10 Q Ms. Armistead, do you know what I mean when I 12:11:23
11 say the word "cisgender"?

12 A I understand what you are referring to.

13 Q Okay. Just to be clear, what am I referring
14 to?

15 A You are talking about a biological male. 12:11:36

16 Q Well, let's -- let's make sure we're all
17 talking about the same thing here.

18 When I say "cisgender," I'm saying someone
19 whose gender identity matches the sex they were
20 assigned at birth. 12:11:52

21 Is that something that you are able to
22 understand moving forward in this deposition?

23 MR. TRYON: Objection.

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: I understand what you are 12:12:04

1 referring to.

2 MR. BARR: Okay. Hold on. My lights just
3 turned off for some reason.

4 I apologize. In making an effort to be
5 environmentally friendly, my lights turn off every 47 12:12:29
6 minutes, so I'll try to avoid that.

7 BY MR. BARR:

8 Q Same thing, Ms. Armistead, when I say
9 "transgender," what I'm referring to is someone whose
10 gender identity does not match the sex they were 12:12:41
11 assigned at birth.

12 Do you understand that?

13 MR. TRYON: Objection.

14 MS. HOLCOMB: Same objection.

15 THE WITNESS: I understand what you are 12:12:48
16 referring to.

17 BY MR. BARR:

18 Q So when I say the word "cisgender" or
19 "transgender" today, those are the definitions I am
20 using. 12:12:54

21 A Okay.

22 Q When I say "B.P.J.," I'm referring to the
23 plaintiff in this case.

24 Do you understand that?

25 A Yes. 12:13:06

1 Q Did you prepare for this deposition?

2 A Yes.

3 Q How?

4 MS. HOLCOMB: And I'll just object to the
5 extent that it calls for any privileged attorney-client 12:13:23
6 communications, but, Lainey, you can answer.

7 THE WITNESS: I prepared with my attorneys.

8 BY MR. BARR:

9 Q Other than speaking with your attorneys, did
10 you do anything else to prepare for this deposition? 12:13:33

11 A No.

12 Q Did you review any documents?

13 A When I was speaking to my attorneys.

14 Q Okay. Which documents were those?

15 A Documents that have already been turned over 12:13:56
16 to the plaintiff, such as my declaration.

17 Q Other than your declaration, what documents
18 did you review?

19 A I reviewed documents that we turned over to
20 the plaintiff. 12:14:18

21 Q I understand. I'm asking which ones.

22 A I don't recall all the documents that we
23 reviewed or turned over to the plaintiff.

24 Q Well, let's just work on identifying some of
25 those. 12:14:34

Page 20

1 So you said the declaration. Beyond the
2 declaration, what did you review to prepare for this
3 deposition?

4 A I reviewed scholarship information. I
5 reviewed text messages with my mom and my declaration. 12:14:52

6 Q Is that it?

7 A I don't recall all of the documents that I
8 reviewed.

9 Q When did you review these?

10 A Within the last week. 12:15:10

11 Q But the only thing you remember looking at was
12 your declaration, some text messages and scholarship
13 information.

14 Did I understand that correctly?

15 A Yes. 12:15:26

16 Q Have you ever had your deposition taken
17 before?

18 A No.

19 Q Have you ever testified at trial?

20 A No. 12:15:41

21 Q Did you bring anything with you today?

22 A My laptop.

23 Q Are you referring to your laptop during this
24 deposition?

25 A What do you mean? 12:15:58

1 Q So explain to me why you brought your laptop
2 to the deposition.

3 A So I could be in the deposition via Zoom.

4 Q Is there anyone else in the room with you?

5 A Yes. 12:16:20

6 Q Who else is in the room?

7 A Christiana and Catie.

8 Q And by "Christiana" and "Catie," you're
9 referring to your attorneys?

10 A Yes. 12:16:39

11 Q Other than your laptop, did you bring anything
12 else with you today?

13 A I brought water, snacks, a book bag, a laptop
14 charger.

15 Q Any documents? 12:17:02

16 A No.

17 Q Have you ever been a party to a lawsuit?

18 A No.

19 Q Other than this case, have you ever intervened
20 in a lawsuit? 12:17:21

21 A No.

22 Q Did you know what an intervenor was prior to
23 this lawsuit?

24 A Kind of.

25 Q What is your understanding of an intervenor? 12:17:39

1 A My understanding is that it's someone who can
2 intervene for a certain side that they support and
3 hopefully maintain the bill or law and keep it in
4 place.

5 Q And was that your understanding before or 12:18:02
6 after you intervened in this case?

7 A After.

8 Q What was your understanding of an intervenor
9 before this case?

10 A It was a vague understanding that I had heard 12:18:16
11 from a TV show or something. It wasn't a clear
12 understanding.

13 Q So what was that vague understanding?

14 A Someone who supports a bill or law.

15 Q Why did you decide to intervene in this case? 12:18:40

16 A Because I care about women's sports and the
17 sport that I play, and I think that it's a good law.

18 Q How did you decide to actually intervene?

19 I understand you support the bill, but it
20 sounds like you didn't really understand what an 12:19:10
21 intervenor was prior to this lawsuit, so I'm trying to
22 understand how you actually intervened in this case.

23 MS. HOLCOMB: And I'll just object to the
24 extent it calls for any communications between Lainey
25 and myself. 12:19:23

1 THE WITNESS: I don't know how to answer that
2 question without divulging privileged information.

3 BY MR. BARR:

4 Q Let me ask it a different way.

5 Prior to discussing this case with the ADF, 12:19:32
6 were you interested in intervening?

7 And by "ADF," I mean your attorneys.

8 A No.

9 Q Was intervening an easy decision?

10 A No. 12:19:53

11 Q Why not?

12 A Because it's not always easy standing up for
13 what you believe when you know other people do not also
14 believe in that, and it's a public thing, and I was
15 nervous about it. 12:20:21

16 Q Did you talk with anyone about the decision
17 prior to making it?

18 MS. HOLCOMB: Same objection.

19 BY MR. BARR:

20 Q Other than your attorneys. 12:20:34

21 A Yes.

22 Q Who?

23 A My parents, my coach and my siblings.

24 Q Anyone else?

25 A I may have talked about it with my best friend 12:20:56

1 before I chose to intervene.

2 Q Explain to me those discussions with your
3 parents.

4 A I asked them what they thought about the law
5 and how they -- if they thought that intervening would 12:21:28
6 be a good decision on my part, and they supported me.

7 Q Did you approach your parents about
8 intervening, or did your parents approach you about
9 intervening?

10 A I approached my parents. 12:21:48

11 Q And you said your parents supported your
12 decision; is that right?

13 A Yes.

14 Q Did they explain why they supported your
15 decision? 12:22:10

16 A Soccer is a huge deal in my family, and it's
17 something that I grew up with, and my dad grew up
18 coaching me and other female athletes and male
19 athletes, and he thinks that it was a good -- he thinks
20 that it's a good law because he's seeing the 12:22:34
21 differences, and he encouraged me.

22 Q What about your mom?

23 A My mom is supportive in all that I do.

24 Q There's nothing you have done your mom doesn't
25 support? 12:22:56

1 A She is supportive with everything that I do.

2 Q When did you reach out to your attorneys, ADF?

3 MS. HOLCOMB: Again, objection to the extent

4 it calls for communications, Lainey, between your

5 attorneys and you. 12:23:22

6 MR. BARR: I'm just asking about the initial

7 reach-out. There certainly wouldn't have been a

8 relationship between client and attorney at that point.

9 THE WITNESS: I don't recall the exact time

10 when I first got in contact with ADF. 12:23:34

11 BY MR. BARR:

12 Q Was it before or after the bill had been
13 passed?

14 A After.

15 Q So are -- are we thinking June timeframe of 12:23:48
16 last year?

17 A I don't recall an exact date.

18 Q Just give me a -- a timeframe. I'm trying to
19 understand the sequence of events.

20 A I would say it was sometime in 2021. 12:24:21

21 Q So you don't recall even time of year that you
22 had reached out to them?

23 A I don't remember the first conversation I had
24 with her, no.

25 Q And who is "her" in that sentence? 12:24:40

1 A My attorney, Christiana.

2 Q How did you find ADF when you decided you
3 wanted to intervene?

4 A My mom has a friend who works for ADF.

5 Q Who is that friend? 12:25:08

6 A Jamie Metzger.

7 Q Did your mom speak with Jamie about this case?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I can't comment on the
10 conversations that my mom has with other people. 12:25:25

11 BY MR. BARR:

12 Q I didn't ask for the substance. I'm just
13 asking if your mom reached out to her friend regarding
14 this case.

15 MS. HOLCOMB: Again, object to form. 12:25:40

16 THE WITNESS: I'm not sure if my mom reached
17 out to her or not.

18 BY MR. BARR:

19 Q So you spoke to your parents about
20 intervening, your mom happened to have a friend at ADF, 12:25:50
21 and that's how you got connected with ADF. Am I
22 understanding that correctly?

23 A No.

24 Q So what happened?

25 A I don't know how to answer that question 12:26:11

1 without giving privileged information -- information
2 with my attorney and I.

3 Q I certainly don't want privileged information.

4 Would it be fair to say that the first time
5 you thought about intervening in this case was in 12:26:20
6 connection with the discussion with your attorneys?

7 A Yes.

8 Q And you don't recall when that was?

9 A It was sometime last year.

10 Q Was it your -- your mom's friend Jamie who 12:26:42
11 encouraged you to join as an intervenor?

12 A No.

13 Q Who encouraged you to join as an intervenor?

14 MR. TRYON: Objection.

15 THE WITNESS: I made the decision after 12:27:12
16 talking with my -- I made the decision after a lot of
17 thought, prayer and then communications with my
18 parents.

19 BY MR. BARR:

20 Q What's Jamie's last name? 12:27:33

21 A Metzger.

22 Q Do you know what Jamie Metzger does at ADF?

23 A I do not.

24 Q How does your mom know Jamie?

25 MS. HOLCOMB: Object to form. 12:27:51

1 THE WITNESS: My -- through my mom's adoption
2 agency.

3 BY MR. BARR:

4 Q Could you explain that with a little more
5 detail, please? 12:28:05

6 A I'm not sure exactly how they know each other,
7 but I do believe that it was from my mom's adoption
8 agency, and Jamie writes articles about adoption.

9 Q Help me understand. Your mom knows Jamie
10 because of articles that Jamie has written that pertain 12:28:37
11 to adoptions?

12 A I believe so.

13 Q What's the nature of these articles?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: It's about adoption. 12:28:55

16 BY MR. BARR:

17 Q But specifically, what is -- what -- is
18 Jamie -- what is Jamie saying in these articles about
19 adoption?

20 MS. HOLCOMB: Object to form. 12:29:08

21 THE WITNESS: I don't know. You'd have to
22 read them.

23 BY MR. BARR:

24 Q Have you read them?

25 A I might have read one of them. I don't really 12:29:17

1 recall. It was a long time ago.

2 Q Would you consider your mom friends with Jamie
3 or just happens to read Jamie's articles?

4 A I'm not sure on their relationship. I can't
5 speculate on that. 12:29:47

6 Q What's your understanding?

7 A I believe Jamie has interviewed my mom for
8 adoption purposes.

9 Q Did Jamie reach out to your mom regarding this
10 case? 12:30:02

11 MS. HOLCOMB: Object to form.

12 MR. TRYON: Objection.

13 THE WITNESS: No.

14 BY MR. BARR:

15 Q So your mom reached out to Jamie; is that 12:30:12
16 right?

17 A No.

18 MS. HOLCOMB: Object to form.

19 BY MR. BARR:

20 Q So explain to me what happened. 12:30:21

21 A What happened with what?

22 Q Well, you -- you told me that you found ADF
23 because your mom was friends with Jamie. Did I get
24 that right?

25 A Yes. 12:30:43

1 Q You also told me that Jamie didn't reach out
2 to your mom and your mom didn't reach out to Jamie;
3 right?

4 A Regarding this case.

5 Q Well, that's -- that's what I'm trying to 12:30:59
6 understand.

7 How did you get connected with ADF for this
8 case?

9 A I don't know how to answer that question
10 without giving privileged information. 12:31:09

11 Q Okay. What did your siblings think about you
12 intervening in the case?

13 A They were supportive.

14 Q Explain to me those discussions you had with
15 them. 12:31:31

16 A I asked them what their opinion was on the
17 law, and they agreed with the substance of the law, and
18 they said that I would be brave to participate in the
19 case.

20 Q What do you think they meant when they said 12:31:54
21 you would be brave?

22 MS. HOLCOMB: Object to form.

23 THE WITNESS: I don't know -- I can't
24 speculate on what they were thinking.

25 BY MR. BARR: 12:32:07

1 Q You know what the word "brave" means; right?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: I have an understanding of the
4 word "brave."

5 BY MR. BARR: 12:32:24

6 Q So why would your siblings describe you as
7 brave for intervening in a lawsuit?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I don't know exactly what they
10 were thinking whenever they described me as brave. 12:32:39

11 BY MR. BARR:

12 Q What did your coach think when you talked
13 about intervening?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: I don't know what my coach was 12:32:49
16 thinking.

17 BY MR. BARR:

18 Q What did your coach say to you in response to
19 you telling your coach you might intervene in this
20 case? 12:32:57

21 A She told me that she would be supportive,
22 although she wasn't sure if she would want, herself, to
23 get involved with the case, but she was supportive of
24 my decision to get involved in the case.

25 Q Why didn't any of your teammates try to 12:33:20

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1 intervene with you?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: I don't know why they did not
4 decide to, but at least one of them was interested.

5 BY MR. BARR: 12:33:40

6 Q Who is that?

7 MS. HOLCOMB: And I will just object to the
8 extent that this calls for communication in
9 anticipation of litigation, but, Lainey, you may
10 answer. 12:33:50

11 THE WITNESS: Sinead.

12 BY MR. BARR:

13 Q Could you say that name again, please?

14 A Sinead.

15 Q How do you spell that? 12:33:58

16 A S-I-N-E-A-D.

17 Q What's Sinead's last name?

18 A Samarczuk.

19 Q That's going to take a minute, so bear with us
20 as we try to spell that one. 12:34:23

21 Go ahead, please.

22 A S-A-M-A-R-C-Z-U-K.

23 Q Do you mind if I just refer to your teammate
24 as "Sinead" because the last name I'm certainly going
25 to mess up? 12:34:46

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1 A That is fine.

2 Q Why did Sinead ultimately decide not to
3 intervene?

4 MS. HOLCOMB: Object to form and to the extent
5 it calls for privileged communications with counsel. 12:34:57

6 THE WITNESS: I don't know how to answer that
7 without divulging confidential information --
8 privileged information.

9 BY MR. BARR:

10 Q You said Sinead's on your team; right? 12:35:09

11 A Yes.

12 Q You never discussed this with Sinead?

13 A Discussed it when with Sinead?

14 Q Well, let's start at the beginning.

15 Tell me about the first discussion you had 12:35:36
16 with Sinead about intervening in this lawsuit.

17 A I asked her if she would want to intervene
18 with me.

19 Q You approached Sinead about interviewing. Did
20 I get that right? 12:35:59

21 A Yes.

22 Q How did you get the idea to approach Sinead?

23 MS. HOLCOMB: Again, objection, to the extent
24 it calls for privileged communications.

25 BY MR. BARR: 12:36:07

1 Q I'll rephrase.

2 Other than a discussion with your attorney,
3 why did you approach Sinead to intervene in this case?

4 A She and I are very close friends.

5 Q Did you approach anyone else on your team? 12:36:27

6 A Yes.

7 Q Who?

8 A Brooklyn.

9 Q What's Brooklyn's last name?

10 A Pritt. 12:36:43

11 Q Anyone else?

12 A No, I did not approach anyone else on my team
13 to intervene for this case.

14 Q Why didn't you ask your entire team, if this
15 is an important lawsuit to protect women's sports? 12:37:07

16 A I'm not as close with all of my teammates for
17 something that was such a big deal. They -- I'm
18 very -- I love my teammates, we are close, but this is
19 something that I was nervous about, intervening, and it
20 was a big decision to make, so I just wanted to see 12:37:33
21 what Brooklyn and Sinead thought about it.

22 Q Did you discuss that with Sinead and Brooklyn?

23 A Discuss what?

24 Q Did you invite them to intervene in the case?

25 A I asked them if they would be interested in 12:37:56

1 doing so.

2 Q And, presumably, they said no; right?

3 A By the time they had reached a decision, it
4 was too late for other people to intervene, is my
5 understanding. 12:38:17

6 Q Well, what decision did they reach?

7 A Both of them wanted to get involved in some
8 type of way, but it was too late for Sinead, and
9 Brooklyn is very, very busy with school and work and
10 other things, so she just didn't have the time. 12:38:49

11 Q I asked a -- a little bit of a different
12 question.

13 They ultimately both decided not to intervene;
14 right?

15 A That wasn't their decision. It was too late 12:38:57
16 for Sinead.

17 Q Had it not been too late, would Sinead have
18 joined?

19 A I believe so, but I can't answer that for
20 certain. 12:39:17

21 Q Is Sinead still a student at West Virginia
22 State University?

23 A She is currently in England.

24 Q Is she still a student at West Virginia State
25 University? 12:39:33

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1 A I believe she's still enrolled, yes.

2 Q Is she still on your team?

3 A I believe she's still on the team. She's just
4 taking a semester off, but -- she might return; she
5 might not.

12:39:48

6 Q Is Brooklyn still a student at West Virginia
7 State?

8 A Yes.

9 Q Is Brooklyn still on your team?

10 A Yes.

12:40:02

11 Q Are there any other of your teammates who you
12 believe might be -- let me rephrase that.

13 Are there any other of your teammates that you
14 believe would have intervened but for a timing issue?

15 A It's possible.

12:40:19

16 Q A lot of things are possible. I'm asking if
17 there's any specific names you have of someone you
18 believe you would like to have intervened.

19 A I can't speculate on what other people want.

20 Q So you have no reason to think that there's
21 another one of your teammates who would have liked to
22 intervene?

12:40:42

23 MR. TRYON: Objection.

24 THE WITNESS: Again, I can't speculate on what
25 other people want.

12:40:59

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1 BY MR. BARR:

2 Q I'm not asking you to speculate.

3 Do you have reason to believe that any of your
4 other teammates wanted to intervene in this case?

5 MS. HOLCOMB: Object to form. 12:41:06

6 MR. TRYON: Objection.

7 THE WITNESS: I don't know.

8 BY MR. BARR:

9 Q Can you provide me with the name of one of
10 your teammates, other than Sinead and Brooklyn, who 12:41:20
11 wanted to intervene in this case?

12 MR. TRYON: Objection.

13 MS. HOLCOMB: Object to form.

14 The witness: I don't know what my teammates
15 would have wanted to do. 12:41:37

16 BY MR. BARR:

17 Q Where are you from?

18 A Owensboro, Kentucky.

19 Q What's the closest big city to Owensboro, just
20 so I can understand geography? 12:42:02

21 A Louisville, Kentucky.

22 Q Did you grew up a Cardinals fan?

23 A No.

24 Q Does that make you a UK fan?

25 A Yes. 12:42:20

1 Q How old are you?

2 A 21.

3 Q Did you grow up in the same house as your
4 parents?

5 A Yes. 12:42:43

6 Q You mentioned siblings. How many siblings do
7 you have?

8 A I have two biological brothers.

9 Q Only because of the way you phrased that, do
10 you have a sibling that you wouldn't consider 12:43:07
11 biological?

12 A I have two adopted siblings, but,
13 unfortunately, I am not in contact with them anymore.

14 Q How old are your -- are -- are your adopted
15 siblings also brothers? 12:43:26

16 A They are siblings, a brother and sister.

17 Q As you described it, your biological siblings,
18 what are their names?

19 A Kyler and Declan.

20 Q Did you say Kyler, with a K? 12:43:47

21 A Yes.

22 Q What does Kyler do?

23 A Kyler works at UPS.

24 Q And what about Declan?

25 A He is a student athlete in university. 12:44:02

1 Q And where does Kyler live?

2 A Louisville, Kentucky.

3 Q And what school does Declan attend?

4 A Brescia University.

5 Q I'm sorry, what's it called? 12:44:23

6 A Brescia.

7 Q Where is that located?

8 A In Owensboro, Kentucky.

9 Q It's close to home.

10 What is your adopted brother's name? 12:44:39

11 A David.

12 Q What does David do?

13 A I'm not sure.

14 Q When is the last time you spoke with David?

15 A When I was 16. 12:44:52

16 Q Where does David live?

17 A I have no idea. I'm not sure.

18 Q What's your adopted sister's name?

19 A Gabby.

20 Q Are Gabby and David biological siblings? 12:45:19

21 A Yes.

22 Q When is the last time you spoke with Gabby?

23 A I'm not sure.

24 Q Was it around the last time you spoke to David

25 or some other time? 12:45:47

1 Q Okay. What do you currently do?

2 A I am a student athlete.

3 MS. HOLCOMB: Just -- may I jump in here for a
4 moment, Andrew?

5 MR. BARR: Yes. 12:47:26

6 MS. HOLCOMB: Do you need a break?

7 I -- I understand you may be moving to a
8 different line of questioning.

9 Do you need a break? Okay.

10 Andrew, would you be amenable to -- 12:47:32

11 MR. BARR: No worries. We'll take a break.

12 How about we come back at 1:00? Does that
13 work for you?

14 MS. HOLCOMB: That works great. Thank you.

15 THE VIDEOGRAPHER: Okay. We are going off the 12:47:43

16 record -- sorry. We're going off the record. The time
17 is 12:48 p.m., and this is the end of Media Unit No. 1.

18 (Recess.)

19 THE VIDEOGRAPHER: All right. We are back on
20 the record at 1:00 p.m., and this is the beginning of 01:00:18
21 Media Unit No. 2.

22 Go ahead, please.

23 BY MR. BARR:

24 Q Ms. Armistead, you stated you were a student
25 at West Virginia State University; is that right? 01:00:26

1 A Yes.

2 Q Are you employed anywhere?

3 A Yes.

4 Q Where do you work?

5 A I work as a work-study student, and I work at 01:00:37
6 Red Lobster.

7 Q What's a work-study student?

8 A I work in the Dean's office of my college.

9 Q And what do you do there?

10 A I answer the phone, run errands, talk to 01:00:56
11 professors.

12 Q Largely administrative tasks, am I
13 understanding that correctly?

14 A Yes.

15 Q And what do you do at Red Lobster? 01:01:17

16 A I'm a server.

17 Q Any other jobs at the moment?

18 A If you consider soccer a job, then sure.

19 Q Do you consider soccer a job?

20 A I love it, but I have to show up, and I'm 01:01:36
21 getting a scholarship for it, so...

22 Q Let's talk about soccer separately.

23 Other than Red Lobster and the Dean's office,
24 do you have any other jobs?

25 A No. 01:01:50

1 Q Where is West Virginia State University?

2 A Like, the address?

3 Q The city.

4 A Dunbar.

5 Q If I call it "West Virginia State," will that 01:02:10
6 be okay with you?

7 A Yes.

8 Q Did you grow up rooting for West Virginia
9 State?

10 A No. 01:02:26

11 Q You mentioned UK earlier. Was that your team
12 growing up?

13 A Sure.

14 Q You tell me. I'm just asking.

15 A I like it. I wouldn't say I necessarily had a 01:02:39
16 team growing up.

17 Q What conference is West Virginia State in?

18 A The Mountain East Conference.

19 Q How many teams are in that conference?

20 A I'm not sure. 01:02:57

21 Q Is it closer to ten or closer to 20?

22 A Closer to ten.

23 Q Are those schools all located within
24 West Virginia?

25 A I don't think so, but I'm not sure where 01:03:20

1 they're all located.

2 Q Are you aware that the NCAA has divisions?

3 A Yes.

4 Q What division is West Virginia State in for

5 girls' soccer? 01:03:36

6 A Division II.

7 Q How many NCAA divisions are there?

8 A Three.

9 Q What is your understanding of the difference
10 between Division I, II and III? 01:03:54

11 A I believe it's based off of school size and
12 the ability for D-I and D-II to give athletic aid and
13 scholarship.

14 Q Is one division generally thought to be more
15 competitive than another? 01:04:16

16 A Division I is usually thought to be more
17 competitive, but I think all three are very
18 competitive. We're college athletes.

19 Q Do you think Division I is more competitive?

20 A I think -- 01:04:34

21 MR. TRYON: Objection.

22 THE WITNESS: I think that we're all very
23 competitive.

24 BY MR. BARR:

25 Q I don't take issue with that. I'm -- I'm sure 01:04:56

1 you're right there. I'm just asking if you believe
2 Division I is more competitive than Division II.

3 MS. HOLCOMB: Object to form.

4 MR. TRYON: Objection.

5 THE WITNESS: What do you mean by 01:05:13
6 "competitive"?

7 BY MR. BARR:

8 Q As a general matter, if a Division I women's
9 soccer team played a Division II women's soccer team,
10 who would you expect to win? 01:05:16

11 MS. HOLCOMB: Objection.

12 THE WITNESS: Generally, we would expect the
13 Division I team to win.

14 BY MR. BARR:

15 Q How big is West Virginia State, in terms of 01:05:33
16 student size?

17 A Couldn't tell you.

18 Q How did you pick West Virginia State?

19 A There were a myriad of reasons.

20 Q What -- what was the primary reason? 01:05:51

21 A Because of the opportunity that West Virginia
22 State gave me.

23 Q What opportunity is that?

24 A To play soccer -- to play soccer and have a
25 very good scholarship. 01:06:15

1 Q Did you consider going to any other colleges?

2 A Yes.

3 Q How many?

4 A How many did I visit or consider? What do you

5 mean? 01:06:43

6 Q Let's start with, how many other colleges did
7 you consider attending?

8 A I'm not sure.

9 Q Less than 20?

10 A Less than 20. 01:06:57

11 Q Less than ten?

12 A Seriously considered, yes, less than ten.

13 Q Less than five?

14 A Probably about five.

15 Q What -- what were the five colleges you 01:07:14
16 seriously considered attending?

17 MS. HOLCOMB: Object to form.

18 MR. TRYON: I also object.

19 THE WITNESS: I didn't say that it was

20 definitely five. 01:07:34

21 BY MR. BARR:

22 Q I'll rephrase. I'm not trying to put words in
23 your mouth.

24 Tell me the colleges you seriously considered
25 attending. 01:07:41

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1 A West Virginia State, Austin Peay,
2 Transylvania, Kentucky Wesleyan. And that's all of the
3 ones that I seriously considered.

4 Q Other than West Virginia State, did you have
5 an opportunity to play soccer at those schools? 01:08:17

6 A Yes.

7 Q Which ones?

8 A Kentucky Wesleyan and Transylvania.

9 Q Did Kentucky Wesleyan offer you a scholarship?

10 A For what? 01:08:47

11 Q For soccer.

12 A I had communications with their coach, but
13 there was nothing official for an athletic scholarship.

14 Q To make sure I'm clear, there was no official
15 offer of an athletic scholarship at Kentucky Wesleyan? 01:09:11

16 A I don't believe so.

17 Q Same question for Transylvania, were you
18 offered an athletic scholarship for Transylvania?

19 A Transylvania is a D-III school, so they can't
20 give athletic scholarship. 01:09:32

21 Q Were you offered an athletic scholarship for
22 any school other than West Virginia State?

23 A Yes.

24 Q What school is that?

25 A Brescia University. 01:09:46

1 Q I'm sorry, you cut out. Could you repeat
2 that?

3 A Brescia.

4 Q Is that the same school that your brother goes
5 to? 01:09:59

6 A Indeed.

7 Q But you weren't seriously considering
8 attending that school, were you?

9 A No.

10 Q Any other schools offer you an athletic 01:10:14
11 scholarship?

12 A Many schools e-mailed me saying that they
13 would give me scholarships, but I never really
14 conversed with any others ones, no.

15 Q So no formal offers for athletic scholarships 01:10:33
16 other than the two we just discussed?

17 A No formal offers, correct.

18 Q Is Kentucky Wesleyan a Division I or
19 Division II school?

20 A Division II. 01:10:52

21 Q What do you study at West Virginia State?

22 A Political science.

23 Q Anything else?

24 A What do you mean?

25 Q Let me ask it a different way. What's your 01:11:20

1 major, currently?

2 A Political science.

3 Q Do you have a minor?

4 A I am on track to get a minor in psychology.

5 Q What year are you, in terms of freshman, 01:11:48
6 sophomore, etcetera?

7 A I -- this will be my third year of college.

8 Q And when you say "this," as we sit here today,
9 in March, you're a junior, or you are saying the
10 upcoming school year that starts in August, you'll be a 01:12:06
11 junior?

12 A What do you mean?

13 Q I'm trying to understand if you've been
14 attending West Virginia State for four semesters or
15 6 semesters. 01:12:22

16 A I have attended it for six semesters, I think.
17 Since fall of 2019, and I have continuously studied at
18 West Virginia State.

19 Q Thank you. That's helpful. And that answers
20 the question. 01:12:44

21 Are you on track to graduate at the end of
22 next school year?

23 A I am not sure of my exact graduation plans
24 yet.

25 Q What do you mean by that? 01:12:57

1 A I mean that I could graduate this May,
2 tentatively, but I definitely want to utilize my NCAA
3 eligibility and possibly continue playing and studying
4 at West Virginia State.

5 Q I think I read you have two years of 01:13:25
6 eligibility left; is that right?

7 A If I graduate in May, I'll actually have three
8 years of eligibility left.

9	Q	If you graduate in May, do you plan on using	
10		that eligibility either at West Virginia State or some	01:13:43
11		other institution?	

12	A I would love to.

13	Q Do you have any current plans to do that?

14	A	My plans aren't set in stone yet. I had	
15		health concerns this past semester. So as long as I	01:14:01
16		can figure that out and my body allows it, I would	
17		definitely want to continue playing soccer.	

18 Q I certainly don't want to get into your health
19 concerns at all. I am curious if they impact your
20 ability to play soccer. 01:14:20

21	A	They - -

22 MR. TRYON: Objection.

23 THE WITNESS: They don't actually affect my
24 abilities to play.

25	///

1 BY MR. BARR:

2 Q So help me understand how that impacts your
3 decision on graduation.

4 A Because I have to decide if I want to take
5 medicine that would impair me to play, but as it 01:15:01
6 currently is, I can play.

7 Q So I'm not a doctor, I don't understand how
8 any of that works, but what I hear you saying is if you
9 do whatever the doctors are saying is an option, you'd
10 have to stop playing soccer; is that right? 01:15:22

11 MR. TRYON: Objection.

12 MS. HOLCOMB: Object to form.

13 THE WITNESS: I'm not my doctor either. I
14 just know the options, and I'm weighing them carefully
15 to decide what my next step will be, and I'm not sure 01:15:35
16 yet, but I would love to stay in West Virginia and play
17 soccer. And I am still currently on the team, so...

18 BY MR. BARR:

19 Q Were you in with the roster for -- the season
20 is over right now; right? 01:15:54

21 A We are in a spring semester, but yes, it is a
22 fall sport.

23 Q So, currently, there's no practices or games;
24 right?

25 A We are in the spring semester, so there is 01:16:07

1 practices, it's just not for our season.

2 Q I don't -- I don't understand. What do you
3 mean?

4 A So, typically, in collegiate sports, you have
5 a season, and right now, we're in our offseason, but we 01:16:28
6 are still allowed to practice and play scrimmage games,
7 according to NCAA rules.

8 Q And those are official practices and official
9 scrimmages?

10 A With our coach in West Virginia, yes, 01:16:43
11 West Virginia State.

12 Q Are you still participating in those practices
13 and scrimmages?

14 A Yes.

15 Q As we sit here today, do you expect to be on 01:16:52
16 the team next fall?

17 A I would love to be.

18 Q Slightly different question.

19 Do you expect to be?

20 A I am not sure what the future holds yet 01:17:12
21 because of the health concerns, and I have to carefully
22 see and weigh the options.

23 Q I understand that.

24 When do you think you'll have to make that
25 decision? I assume your coach is interested. 01:17:37

1 A She hasn't given me a specific time to make
2 the decision yet.

3 Q Do you have an expectation of when that
4 timeframe will be?

5 A I don't make the rules. 01:17:54

6 Q Just asking if you have an expectation of when
7 that timeframe will be, if you need to decide if you're
8 going to play or not.

9 MS. HOLCOMB: Objection.

10	THE WITNESS: I don't have an expectation.	01:18:10

11 BY MR. BARR:

12	Q	When is scholarship awarded for next school
13		year?

14	A For whom?

15	Q For you.	01:18:27

16 A Typically, we re-sign the paper in the spring,
17 stating our scholarship, but my coach can decide when
18 to allow us to sign the papers. Some people sign in
19 June, July, August. It's up to our coach.

20	Q	When did you sign last year?	01:19:04

21 A Sometime in the spring.

22	Q	February?

23 A I think that's winter.

24 Q Okay. When -- what month did you sign your
25 scholarship award last year?

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1 A I'm not sure.

2 Q Where would we have to go to find that date
3 out?

4 A I don't know. I don't have any papers on it.

5 Q It sounds like you signed a paper, and I'm 01:19:44
6 just trying to figure out when.

7 MS. HOLCOMB: Object to form.

8 THE WITNESS: I'm not sure of the exact date.
9 It was sometime in 2021.

10 BY MR. BARR: 01:19:59

11 Q So what is the spring to you, if it doesn't
12 include February?

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: Maybe March through June.

15 BY MR. BARR: 01:20:17

16 Q So as you sit here today, you believe that you
17 would have signed your scholarship award package
18 sometime between March and June of last year; is that
19 right?

20 A Yes. 01:20:28

21 Q Do you expect that that same timeframe would
22 apply to this year?

23 A I don't know.

24 Q Do you have any reason to think it won't?

25 MR. TRYON: Objection. 01:20:55

1 THE WITNESS: My coach is very patient. And
2 seeing as I'm a captain and a starter, I'm sure that
3 she would give me as much time as she could to keep me
4 on the team.

5 BY MR. BARR: 01:21:08

6 Q What is your coach's name?

7 A Lisa Mann.

8 Q How do you spell your coach's last name?

9 A M-A-N-N.

10 Q Have you had discussions with Coach Mann about 01:21:22
11 the possibility of you not playing next year?

12 A Yes.

13 Q Explain -- when was the first conversation you
14 had with Coach Mann regarding the possibility you don't
15 play next year? 01:21:38

16 A Sometime in February.

17 Q How many discussions have you had with
18 Coach Mann regarding the possibility you don't play
19 next year?

20 A I'm not sure. 01:21:56

21 Q More than five?

22 A I'm not sure.

23 Q More than ten?

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: I don't know. 01:22:17

1 BY MR. BARR:

2 Q More than 20?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I don't recall saying it was

5 more than ten either. 01:22:24

6 BY MR. BARR:

7 Q It sounds like you're not sure. I'm just

8 trying to get a range here.

9 A More than one, less than 20, probably.

10 Q And that's the closest estimate you can give 01:22:37

11 on the number of discussions you've had with Coach Mann

12 about this?

13 A Yes.

14 MR. TRYON: Objection.

15 BY MR. BARR: 01:22:50

16 Q What -- what was Coach Mann's response?

17 A She wants me to do what's best for me.

18 Q Did she say anything else?

19 A She would love for me to stay on the team.

20 Q Did she also say that she would like to use 01:23:07

21 that scholarship award for a different player if you're

22 not going to come back?

23 A She did not tell me that.

24 Q What else did she say?

25 A To keep her updated. 01:23:25

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1 Q Have you kept her updated?

2 A As much as I possibly can, because I'm not
3 sure what my future holds yet.

4 Q So what did you tell her in your first update?

5 A I don't recall what I told her on the first 01:23:47
6 update.

7 Q So you've updated your coach at least once,
8 but you have no recollection of what you told
9 Coach Mann?

10 A I didn't say that. You asked what I said on 01:24:07
11 my first update. I'm not sure. There's been a couple
12 conversations, more than one, like I said.

13 Q Okay. If we take all the update meetings
14 together, what have -- what have you conveyed to
15 Coach Mann? 01:24:23

16 A I've conveyed that I am still wanting to
17 practice and be a part of the team, and I'm not sure
18 what my plans are for the fall.

19 Q At no point Coach Mann said, hey, it would be
20 really nice to know by X date? 01:24:46

21 A She would like to know, but she's never given
22 me an exact date, no.

23 Q Did she give you a timeframe?

24 A No.

25 Q If you graduate in May, can you still play on 01:24:57

1 the team?

2 A Yes.

3 Q How?

4 A Because I am interested in possibly getting a
5 Master's degree at West Virginia State, and I still 01:25:20
6 have three years of NCAA eligibility, which would mean
7 I can continue playing in the fall.

8 Q So you would play as a graduate student; is
9 that right?

10 A That is what I'm saying. 01:25:36

11 Q What Master's are you interested in pursuing?

12 A Master's of Public Administration.

13 Q When's the application due for that?

14 A I'm not sure. I'd have to ask the professor.

15 Q Have you looked into it? 01:25:56

16 A I see the chair of the department or of the
17 Master's of Public Administration a couple times a
18 week, and yes, we have discussed it.

19 Q How long of a program is that?

20 A It depends on the -- how many hours you take, 01:26:15
21 but I would expect a year and a half.

22 Q Why are you interested in getting a Master's
23 of Public Administration?

24 A It would mean continuing my academic career
25 and athletic career, which are both things that I love. 01:26:48

1 Q Did I read somewhere you want to be a lawyer?

2 A Yes.

3 Q Does West Virginia State have a law school?

4 A No.

5 Q Have you considered, upon graduation, going to 01:27:07
6 law school?

7 A Yes.

8 Q Did you take the LSAT?

9 A Yes.

10 Q Have you applied to law school? 01:27:17

11 A Yes.

12 Q Where did you apply?

13 A I applied to University of Florida, FSU and
14 ASU.

15 Q Warm states. Totally understand. 01:27:41
16 Any other schools?

17 A I don't think I've sent in my official
18 applications to any other schools, no.

19 Q What other schools are you planning to send an
20 official application to? 01:27:59

21 A Possibly the University of Houston.

22 Q Any others?

23 A I haven't really considered it because I'm not
24 sure if I'm even going to be going to law school in the
25 fall. 01:28:15

1 Q You've applied to three programs; is that
2 right? FSU, UF and ASU?

3 A Yes.

4 Q Have you been admitted?

5 A I haven't gotten any decisions. 01:28:28

6 Q When do you expect to hear back?

7 A Hopefully soon.

8 Q If you get in, will you go?

9 A I don't know, because I would still love to
10 continue playing soccer. I'm not ready to give it up 01:28:56
11 yet.

12 Q Is there any reason you can't play soccer at
13 FSU or UF or ASU?

14 A I'm not sure if I would be able to play soccer
15 and do law school. 01:29:13

16 Q So it's not an eligibility concern; it's just
17 a timing concern?

18 A Yes.

19 Q Do you think you'd make the team at FSU?

20 MS. HOLCOMB: Object to form. 01:29:29

21 MR. TRYON: Objection.

22 THE WITNESS: I would hope so. That would be
23 cool.

24 BY MR. BARR:

25 Q Am I mistaken? Didn't Florida State win the 01:29:42

1 national championship a couple of years ago for women's
2 soccer?

3 A They could have. I don't keep up with FSU
4 sports.

5 Q Do you expect you'd make the team at 01:29:54
6 University of Florida?

7 MS. HOLCOMB: Object to form.

8 MR. TRYON: Objection.

9 THE WITNESS: I don't know.

10 BY MR. BARR: 01:30:09

11 Q I presume you don't know if you would make the
12 team at Arizona State either?

13 MS. HOLCOMB: Same objection.

14 THE WITNESS: I don't make the decisions for
15 those coaches. 01:30:20

16 BY MR. BARR:

17 Q If you get into law school, are you going to
18 try out for the team, or that's the end of soccer?

19 MR. TRYON: Objection.

20 MS. HOLCOMB: Object to form. 01:30:28

21 THE WITNESS: I don't know. I definitely
22 don't think that I said if I get into law school, I'm
23 definitely -- it's definitely the end of law school --
24 or soccer, I mean.

25 ///

1 BY MR. BARR:

2 Q Have you reached out to the coaches at any of
3 those programs?

4 A No. That would be illegal to do because I'm
5 not in the transfer portal. 01:30:54

6 Q You're not transferring; you're graduating;
7 right?

8 A I still --

9 MS. HOLCOMB: Object to the form.

10 MR. BARR: I'm sorry, could you repeat that? 01:31:04

11 That got --

12 MS. HOLCOMB: I would like to put my objection
13 back on the record, please.

14 You can go.

15 THE WITNESS: I still can't reach out to those 01:31:12
16 schools.

17 BY MR. BARR:

18 Q When are you able to reach out to those
19 schools?

20 A I haven't looked into that because I really 01:31:17
21 love playing at West Virginia State University.

22 Q But if I understand you correctly, there's a
23 possibility you end up in law school, come the fall;
24 right?

25 MS. HOLCOMB: Object to form. 01:31:41

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1 MR. TRYON: Objection.

2 THE WITNESS: As you said earlier, a lot of
3 things are possible.

4 BY MR. BARR:

5 Q Well, you've applied to three of them, and 01:31:52
6 you're waiting to hear back; right?

7 MR. TRYON: Objection.

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I want to play soccer at
10 West Virginia State. 01:32:05

11 BY MR. BARR:

12 Q But you couldn't do that if you were in law
13 school; right?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: I could not do that if I was in 01:32:13
16 law school, correct.

17 BY MR. BARR:

18 Q Is the only interest you have in the Master's
19 of Public Administration to play soccer?

20 A That's not the only reason. 01:32:32

21 Q What other reasons are there?

22 A I would be learning and getting a better
23 education while I was playing soccer and cultivating
24 relationships and learning important school skills.

25 Q Why do you think you could play soccer in the 01:33:07

1 Master's program, but not during a law school program?

2 A I don't know if a Master's program is as
3 vigorous as law school will be.

4 Q When do you intend to apply for the Master's
5 program? 01:33:30

6 MS. HOLCOMB: Object to form.

7 THE WITNESS: As I said earlier, I still don't
8 know what I'm going to be doing yet.

9 BY MR. BARR:

10 Q Would you say it's more likely than not that 01:33:42
11 you graduate this May?

12 MR. TRYON: Objection.

13 THE WITNESS: I'm not sure.

14 BY MR. BARR:

15 Q What's your expectation, sitting here today? 01:33:54

16 MS. HOLCOMB: Object to form.

17 THE WITNESS: It's really not set in stone
18 yet.

19 BY MR. BARR:

20 Q I'm not asking if it's set in stone. I'm just 01:34:09
21 saying today, March 11th, are you expecting to graduate
22 in May?

23 MS. HOLCOMB: Object to form.

24 MR. TRYON: Objection.

25 THE WITNESS: It's possible. 01:34:24

1 BY MR. BARR:

2 Q Ms. Armistead, do you plan on graduating in
3 May? It's two months away. It's a fairly
4 straightforward question.

5 MS. HOLCOMB: Andrew, I don't mean to provide 01:34:38
6 a speaking objection, but I do think this is getting a
7 little bit excessive and harassing. That has been
8 asked and answered. I suggest that you move on.

9 MR. BARR: Attorney Holcomb, I'm asking a very
10 simple question that hasn't been answered. I'm just 01:34:50
11 asking what her expectation is for two months from
12 today, that's it.

13 MS. HOLCOMB: And she has told you multiple
14 times that she does not yet know. That is asked and
15 answered. Please proceed. 01:35:01

16 MR. BARR: Well, the question stands.

17 THE WITNESS: I am not sure, but if I do, I
18 would still like to continue my education at
19 West Virginia State.

20 BY MR. BARR: 01:35:21

21 Q When do you expect that you'll know if you're
22 going to graduate in May?

23 MS. HOLCOMB: Object to form.

24 THE WITNESS: I don't know. Hopefully before
25 May. 01:35:43

1 BY MR. BARR:

2 Q Has Coach Mann talked to you about graduation?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: What do you mean?

5 BY MR. BARR: 01:36:03

6 Q When -- in one or more of those updates you've
7 had with Coach Mann, have you talked about graduation
8 with her?

9 A I think, yes.

10 Q What did Coach Mann say? 01:36:31

11 A She wants me to get my Master's degree at
12 State, if I chose to graduate this May, or she would
13 want me to not graduate and just get two Bachelor's
14 degrees so I could continue on in the fall without
15 graduating. 01:36:58

16 Q What other Bachelor degree are you
17 considering?

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: It's not -- I'm not certain. I
20 would be interested in psychology. 01:37:13

21 BY MR. BARR:

22 Q Did you file a form to graduate in May?

23 A Yes.

24 Q When did you file that form?

25 A Sometime before the due date. 01:37:28

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1 MR. BARR: Attorney Holcomb, can you produce
2 that because that's certainly relevant to your
3 discovery request?

4 MS. HOLCOMB: We can certainly see if we can
5 obtain that. 01:37:52

6 MR. BARR: Thank you.

7 While we're at it, if you could obtain the
8 scholarship agreements that happened in the last two
9 years and their date of signature, that would also
10 clearly fall within our discovery request. 01:38:02

11 MS. HOLCOMB: Yeah, we don't have access to
12 those, Lainey does not have them in her possession, but
13 we can see if we can obtain them.

14 MR. BARR: Thank you.

15 BY MR. BARR: 01:38:11

16 Q Do you have any plans to withdraw the form
17 you've already filed to graduate in two months?

18 A Filing the form doesn't automatically mean
19 that I graduate.

20 Q I'm just asking if you have any plans to 01:38:27
21 withdraw the form.

22 A I don't know what my plans are yet.

23 Q But sitting here today, you have no plans to
24 do that?

25 MS. HOLCOMB: Object to form. 01:38:35

1 THE WITNESS: Sitting here today, I am not
2 sure what my future holds yet.

3 BY MR. BARR:

4 Q I understand that. But your future for the
5 two -- next two months, do you plan on withdrawing that 01:38:48
6 form?

7 MS. HOLCOMB: Objection to form.

8 MR. TRYON: Objection.

9 THE WITNESS: I'm not sure.

10 BY MR. BARR: 01:39:07

11 Q Have you talked to your parents about
12 graduating?

13 A Yes.

14 Q Explain to me those discussions.

15 A We have talked about all of the different 01:39:19
16 options that I have, one being which I could graduate,
17 another where I continue without graduating and get
18 another Bachelor's degree, another where I get a
19 Master's degree at State or go to law school.

20 But as I said earlier, there are a lot of 01:39:48
21 options that I have to weigh carefully, but I would
22 definitely love to be at West Virginia State.

23 Q What would your dad like you to do?

24 A What?

25 MS. HOLCOMB: I'm sorry, could you please 01:40:03

1 restate the question?

2 MR. BARR: Yes, absolutely.

3 BY MR. BARR:

4 Q In having those discussions you just
5 described, what is your understanding of what your dad 01:40:09
6 would like you to do?

7 A He wants me to decide for myself, and he said
8 that he would support my decision.

9 Q He has no preference?

10 MS. HOLCOMB: Object to form. 01:40:28

11 THE WITNESS: I don't know what my dad's
12 preference is.

13 BY MR. BARR:

14 Q So you've had these discussions with your
15 parents and your dad just stated whatever you decide is 01:40:39
16 fine with him?

17 MR. TRYON: Objection.

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: He wants me to do what I deem
20 best for myself. I'm the one who is going to be 01:40:54
21 graduating or staying or playing soccer. So,
22 ultimately, both of my parents want me to decide to do
23 what's best for me.

24 Would he love to continue seeing me play
25 because I've been playing since I was little? I'm -- I 01:41:13

1 would assume he would.

2 BY MR. BARR:

3 Q Does your mom have a preference for what you
4 do?

5 MS. HOLCOMB: Object to form. 01:41:23

6 THE WITNESS: She said that she would be
7 supportive.

8 BY MR. BARR:

9 Q I understand that. And I'm sure your parents
10 would be supportive. I'm just curious if your mom has 01:41:36
11 a preference for what decision you make for yourself.

12 MS. HOLCOMB: Object to form.

13 MR. TRYON: Objection.

14 THE WITNESS: I know she likes watching me
15 play soccer, but I can't answer on what she wants me to 01:41:52
16 do.

17 BY MR. BARR:

18 Q So you've had the discussions about graduating
19 with your parents, and as far as you can tell, they're
20 okay with whatever you choose? 01:42:02

21 MR. TRYON: Objection. Come on.

22 MS. HOLCOMB: Objection.

23 THE WITNESS: They'll be supportive, I
24 believe.

25 ///

1 BY MR. BARR:

2 Q Do your parents want you to go to law school?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I'm not sure exactly what they

5 want me to do with my life. 01:42:35

6 BY MR. BARR:

7 Q Have you talked to them about the Master's of
8 Public Administration?

9 A Yes.

10 Q What did they say about that? 01:42:47

11 A They told me that they would be supportive of
12 whatever I did. I believe my mom would like me to get
13 my MPA.

14 Q Do you believe your dad wants you to get your
15 MPA? 01:43:17

16 MS. HOLCOMB: Object to form.

17 MR. TRYON: Objection.

18 THE WITNESS: I don't know. My parents would
19 want me to do whatever I see fit.

20 BY MR. BARR: 01:43:30

21 Q But sitting here today, you're just not sure
22 what that is?

23 MS. HOLCOMB: Object to form.

24 MR. TRYON: Objection again.

25 THE WITNESS: I don't think that's what I 01:43:48

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1 said.

2 BY MR. BARR:

3 Q What did you say?

4 A They want me to do what I think is best for my
5 future. 01:43:56

6 Q Maybe my question wasn't clear, I'm sorry.

7 My question was, sitting here today, you don't
8 know what you think is best for your future?

9 MS. HOLCOMB: Object to form.

10 THE WITNESS: I know what I would love to do, 01:44:12
11 and that's to continue playing the sport that I love.

12 BY MR. BARR:

13 Q But it's uncertain whether that will happen or
14 not?

15 MS. HOLCOMB: Object to form. 01:44:23

16 MR. TRYON: I'm sorry, Mr. Barr, could you
17 repeat that? I couldn't hear it.

18 MR. BARR: Yes, I said, and it's uncertain
19 whether that will happen?

20 MS. HOLCOMB: Object to form. 01:44:34

21 THE WITNESS: I don't know yet.

22 BY MR. BARR:

23 Q Do you know who B.P.J. is?

24 A I know that that's the plaintiff.

25 Q What do you know about B.P.J.? 01:44:53

1 A There's nothing that I know for certain about
2 B.P.J. other than she's the plaintiff.

3 Q What do you mean there's nothing you know for
4 certain?

5 A You asked me what I knew about her. I don't 01:45:16
6 know who that is. I don't know who -- I know that
7 P.B. -- B.P.J. is the plaintiff.

8 Q You've never met or spoke with B.P.J. before?

9 A No.

10 Q Are you aware that B.P.J. is 11 years old? 01:45:32

11 A I don't know.

12 Q Are you aware that B.P.J. ran cross-country on
13 her middle school's girls' cross-country team last
14 year?

15 A I don't know. 01:45:51

16 Q You don't know that?

17 A (No response.)

18 Q I'm sorry, that was a question.

19 You -- you're not -- you're not aware that
20 B.P.J. ran on her middle school's girls' cross-country 01:46:02
21 team last fall?

22 A I don't know.

23 Q You don't know, or you're not aware of that?

24 MS. HOLCOMB: Objection.

25 THE WITNESS: I don't know. 01:46:28

1 BY MR. BARR:

2 Q Are you aware that B.P.J.'s middle school
3 supports her inclusion on the girls' team?

4 A I don't know.

5 Q Are you aware that B.P.J.'s school has a 01:46:54
6 transgender support plan for B.P.J.?

7 A I don't know.

8 Q Do you know anything about B.P.J.'s athletic
9 interests?

10 MS. HOLCOMB: Object to form. 01:47:31

11 THE WITNESS: I don't know.

12 BY MR. BARR:

13 Q Sitting here today, do you know anything about
14 B.P.J. at all other than the fact --

15 MS. HOLCOMB: Object to form. 01:47:47

16 BY MR. BARR:

17 Q -- that B.P.J. is the plaintiff?

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: I believe that B.P.J. doesn't
20 like the law from West Virginia. 01:47:59

21 BY MR. BARR:

22 Q What law is that?

23 A H.B. -- sorry, the numbers, I forget -- 3293.

24 Q You -- I get distracted with the numbers all
25 the time, so don't worry about that. 01:48:24

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1 So other than your understanding that

2 B.P.J. doesn't like H.B. 3293, do you know anything
3 else about B.P.J.?

4 A No.

5 Q Would you be surprised to learn that B.P.J.'s 01:48:48
6 school didn't have to cut any girls when they allowed
7 B.P.J. to play on the girls' team last year?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I don't know.

10 BY MR. BARR: 01:49:10

11 Q What is your understanding of how
12 B.P.J. placed in the cross-country events that she
13 participated in last year?

14 A I don't know.

15 Q Do you have any understanding at all? First? 01:49:26
16 Last? Middle of the pack?

17 A I don't know.

18 Q Do you know how many events B.P.J.
19 participated in last year for cross-country?

20 A No. 01:49:51

21 Q Did you run cross-country growing up?

22 A No. I would run races, but it wasn't
23 organized cross-country.

24 Q What kind of races?

25 A Just in elementary school, we would have races 01:50:13

1 once a year.

2 Q Explain -- explain that to me. Some sort
3 of -- everybody in the school goes down to the field
4 and runs a distance, something like that?

5 A Something like that, divided by grade and 01:50:35
6 gender.

7 Q Did you win?

8 A Yes.

9 Q Every time?

10 A Yes. 01:50:55

11 Q Were you first for everyone in your grade?

12 A For all the girls, yes.

13 Q What years is this?

14 A Kindergarten through fifth grade.

15 Q Have you been a part of any other organized or 01:51:13
16 semiorganized running events, other than that?

17 A No.

18 MR. BARR: Let's go off the record.

19 THE VIDEOGRAPHER: All right. I was on mute.

20 Okay. We're going off the record. The time 01:51:37
21 is 1:52 p.m., and this is the end of Media Unit
22 Number 2.

23 One moment.

24 (Recess.)

25 THE VIDEOGRAPHER: Okay. We are back on the 02:06:12

1 record at 2:06 p.m., and this is the beginning of Media
2 Unit No. 3.

3 Go ahead, please.

4 MR. BARR: Ms. Armistead, I just introduced to
5 you and your counsel what has been previously marked as 02:06:24
6 West Virginia Exhibit 34. Let me know you've got that
7 in front of you.

8 THE WITNESS: I have it in front of me.

9 BY MR. BARR:

10 Q Do you recognize this document? 02:06:34

11 A It looks like H.B. 3293.

12 Q Have you read this before?

13 A Sorry?

14 Q Have you read what is now Exhibit WV-34 prior
15 to seeing it now? 02:07:02

16 A I have read a little bit of it before, but not
17 the whole thing.

18 Q What part of it did you read before?

19 A The -- article 2, paragraph 1 and 2.

20 Q Did you read anything else? 02:07:29

21 A Not a full read, no.

22 Q So prior to today, article 2, section 1 and 2,
23 you've -- you've read, but everything else -- this will
24 be -- I'm just trying to gauge timing -- it will be new
25 for you? 02:07:56

1 A Yeah.

2 Q What is your understanding of the impact of
3 H.B. 3293?

4 A My understanding is that it will keep
5 biological women competing with biological women in 02:08:10
6 sports.

7 Q Where did you get that understanding?

8 MS. HOLCOMB: I'll just object to the extent
9 it calls for any communications with counsel, but
10 Lainey, you may answer. 02:08:28

11 THE WITNESS: Through conversations with my
12 attorney.

13 BY MR. BARR:

14 Q Other than in discussions with your attorney,
15 do you have any other reason to think that's what 02:08:42
16 H.B. 3293 does?

17 A I had heard that that's what they did too.

18 Q Who did you hear that from?

19 A I don't remember exactly.

20 Q Do you remember when you had that 02:09:25
21 conversation?

22 MS. HOLCOMB: Object to form.

23 THE WITNESS: I don't know how to answer that
24 question without giving privileged information.

25 ///

1 BY MR. BARR:

2 Q Let me ask it a different way.

3 Is your entire understanding of the impact of
4 H.B. 3293 based on discussions with your attorney?

5 A Yes. 02:09:43

6 Q Under this law, can B.P.J. play on a girls'
7 school sports team?

8 MS. HOLCOMB: Object to form.

9 MR. TRYON: Objection.

10 THE WITNESS: I can't make a legal 02:10:15
11 determination.

12 BY MR. BARR:

13 Q Is it your understanding that this law would
14 prohibit B.P.J. from playing on her school's girls'
15 team? 02:10:28

16 A I'm not sure.

17 Q So sitting here today, you don't know one way
18 or the other whether B.P.J. could play on the girls'
19 team based --

20 MS. HOLCOMB: Ob- -- 02:10:44

21 BY MR. BARR:

22 Q -- on this law?

23 MS. HOLCOMB: Sorry. Object to form.

24 THE WITNESS: I'm not sure because I'm not an
25 attorney. 02:10:54

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1 BY MR. BARR:

2 Q What is your understanding of what happens if
3 you win in this lawsuit?

4 A I'm not sure.

5 Q Why did you think it would be important to 02:11:11
6 intervene if you don't understand the impact of
7 intervening?

8 A I believe that keeping this law in place will
9 result in fair and equitable playing for women in -- in
10 sports. 02:11:37

11 MR. BARR: That wasn't my question.

12 Court Reporter, can you read back the
13 question, please.

14 (Record read.)

15 MS. HOLCOMB: I'll just object to form. 02:12:03

16 THE WITNESS: I understand that intervening
17 means that I think that the bill is a good step of
18 legislation, and I believe that it will help keep the
19 playing fields even and equal, and that's why I thought
20 it was so important to intervene. 02:12:38

21 BY MR. BARR:

22 Q That brings me back to -- maybe I just didn't
23 understand your answer before.

24 What happens if you win?

25 A I guess the law stays as it is. 02:12:57

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1 Q And what happens if you lose?

2 A I can't speculate on what will happen if I
3 lose. I'm not sure.

4 Q Do you have any understanding at all?

5 MS. HOLCOMB: Object to form. 02:13:21

6 MR. TRYON: Objection.

7 THE WITNESS: I don't know.

8 BY MR. BARR:

9 Q Why did you intervene in the lawsuit if you
10 don't know what happens if you win or lose? 02:13:39

11 MS. HOLCOMB: Object to form.

12 MR. TRYON: Objection.

13 THE WITNESS: Again, that's not what I said.

14 I understand that if -- if this law stays in
15 place, that women will be protected and it will keep 02:13:53
16 the playing field even and equitable for women in
17 sports.

18 BY MR. BARR:

19 Q Which women?

20 A Women -- 02:14:05

21 MR. TRYON: Objection.

22 THE WITNESS: I'm confused on your question.

23 BY MR. BARR:

24 Q Well, you said that the law will protect
25 women's sports, something along those lines, and I'm 02:14:25

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1 asking, which women is it protecting?

2 A Women.

3 Q All women?

4 A Biological women in sports.

5 Q When did you first become aware of this law? 02:14:43

6 MS. HOLCOMB: Object to form and also to the
7 extent that it calls for privileged information again.

8 MR. BARR: You know, Christiana, I would be
9 willing to just -- I'm not trying to get any privileged
10 information at all. And if the answer is that 02:15:03
11 Ms. Armistead didn't know about this law until she
12 spoke with your office, I'll -- I'll move on. I'm just
13 trying to understand.

14 MS. HOLCOMB: Sure. We've -- this is also
15 asked and answered a couple of times, which is in part 02:15:14
16 while I raised the objection again. But yes, I will
17 continue to maintain attorney-client privileged
18 objections.

19 BY MR. BARR:

20 Q Okay. So I'll ask again, when did you first 02:15:26
21 become aware of this law?

22 MS. HOLCOMB: Same objection.

23 THE WITNESS: I can't answer that without
24 divulging privileged information with my attorney.

25 BY MR. BARR: 02:15:37

1 Q Was Jamie Metzger part of that conversation?

2 A No.

3 Q I don't want to know anything that was said,

4 but who was at that -- who was present for that

5 conversation?

02:15:55

6 A Christiana.

7 Q Anyone else?

8 A No.

9 Q But you don't recall when that conversation

10 happened?

02:16:13

11 MS. HOLCOMB: Objection to form again.

12 THE WITNESS: Sometime in 2021.

13 BY MR. BARR:

14 Q Was it on the phone?

15 A I don't recall.

02:16:30

16 Q Was it in person?

17 A No.

18 Q So it was in some type of virtual format,

19 phone, computer, something like that?

20 A Yes.

02:17:01

21 Q Did Ms. Holcomb reach out to you, or did you

22 reach out to Ms. Holcomb?

23 MS. HOLCOMB: Again, objection to the extent

24 it calls for privileged information.

25 And I'm not sure why we're retreading ground

02:17:13

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1 that's already been covered, Counsel.

2 MR. BARR: I went back and looked at the
3 transcript, and I still don't fully understand, so I'm
4 just trying to make sure we have clarify on the record.

5 MS. HOLCOMB: I also want to just state my 02:17:24
6 objection to revisiting ground already trod.

7 MR. BARR: Noted.

8 THE WITNESS: I don't know how to give you an
9 answer without divulging attorney-client privileges.

10 BY MR. BARR: 02:17:38

11 Q Ms. Holcomb can certainly correct me, but the
12 manner in -- who -- who reached out to who wouldn't be
13 a privileged communication, I'm aware of, and I didn't
14 hear Ms. Holcomb direct you not to answer based on
15 privilege. So I'll ask the question again. 02:17:55

16 Did Ms. Holcomb reach out to you?

17 A Yes.

18 Q Does this law apply to club sports?

19 MR. TRYON: Objection.

20 MS. HOLCOMB: Object to form. 02:18:20

21 THE WITNESS: I don't know.

22 BY MR. BARR:

23 Q Does it apply to grade school sports?

24 MS. HOLCOMB: Objection to form.

25 MR. TRYON: Objection. 02:18:28

1 THE WITNESS: I don't know.

2 BY MR. BARR:

3 Q Does it apply to intramural sports at
4 West Virginia State?

5 MR. TRYON: Objection. 02:18:38

6 MS. HOLCOMB: Objection to form.

7 THE WITNESS: I don't know.

8 BY MR. BARR:

9 Q Does it apply to all the schools in your
10 conference? 02:18:48

11 MS. HOLCOMB: Objection.

12 MR. TRYON: Objection.

13 THE WITNESS: I don't know.

14 BY MR. BARR:

15 Q Does it apply to all school-sponsored sports 02:18:58
16 in West Virginia?

17 MS. HOLCOMB: Object to form.

18 MS. MORGAN: Object to form.

19 MR. TRYON: Objection.

20 THE WITNESS: I don't know. 02:19:08

21 BY MR. BARR:

22 Q Tell me what you do know about this law.

23 A I don't know anything because I'm not an
24 attorney.

25 Q So to the extent you've said things about this 02:19:22

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1 law in other contexts, you didn't have a basis to say
2 that?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: Can you repeat the question?

5 BY MR. BARR: 02:19:42

6 Q Sure. I understood your last answer to be
7 that you don't understand the scope or impact of this
8 law because you're not a lawyer. Did I say that
9 correctly?

10 MS. HOLCOMB: Object to form. 02:19:56

11 THE WITNESS: That's not what I said.

12 BY MR. BARR:

13 Q What did you say?

14 A I said I'm not going to make legal
15 commentation on something that I can't make legal 02:20:03
16 commentation on because I'm not an attorney.

17 Q And by "legal commentation," you mean whether
18 or not the law applies to a particular school or a
19 particular person; is that right?

20 MS. HOLCOMB: Object to form. 02:20:23

21 BY MR. BARR:

22 Q You tell me what you meant by "legal
23 commentation."

24 A Any legal commentary, I'm going to say I don't
25 know. 02:20:36

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1 Q And discussing the impact of this law would
2 fall in legal commentary, as far as you understand it?

3 A What do you mean, the impact?

4 Q Well, I asked if you knew if this law applied
5 to club sports. Is that something that you would 02:20:56
6 consider legal commentary?

7 A I don't know if it applies.

8 Q And then I asked if this law applied to every
9 school in your conference. Is that something you would
10 consider legal commentary? 02:21:20

11 A I said I don't know.

12 Q And then I said, tell me what you do know
13 about this law.

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: What my understanding is, is 02:21:26
16 that this will protect women in sports.

17 BY MR. BARR:

18 Q What do you mean by "protect"?

19 A Women are built different than biological men.
20 Biological men are stronger, fitter, faster, have a 02:22:09
21 bigger stature, in general, than women. So this law,
22 it was put into place to protect women, women's safety
23 and their interests.

24 Q Is this law accomplishing what you just said
25 by excluding transgender women? 02:22:28

1 MS. HOLCOMB: Object to form.

2 MR. TRYON: Objection.

3 THE WITNESS: Can you restate the question,
4 please?

5 MR. BARR: Is -- 02:22:45

6 Court Reporter, could you read the question
7 back, please.

8 (Record read.)

9 MS. HOLCOMB: Same objection.

10 THE WITNESS: Can you restate it in a 02:23:05
11 different way?

12 BY MR. BARR:

13 Q Is it that you don't understand the question?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: I just would like you to restate 02:23:11
16 it in a different way.

17 BY MR. BARR:

18 Q You just told me a series of things that you
19 believe the law is accomplishing; is that right?

20 A Yes. 02:23:27

21 Q And you said fairness, and I believe you said
22 safety; is that right?

23 A Correct.

24 Q And my question to you is, how is this law
25 accomplishing those goals? 02:23:41

1 MS. HOLCOMB: Object to form.

2 THE WITNESS: By -- by protecting fairness and
3 safety for biological women in sports.

4 BY MR. BARR:

5 Q I understand that that's what you believe the 02:24:01
6 goal of the law to be. I'm asking how it does that.

7 MS. HOLCOMB: Object to form.

8 MR. TRYON: Objection.

9 THE WITNESS: That's not for me to interpret.

10 BY MR. BARR: 02:24:13

11 Q Well, you're intervening in this lawsuit to
12 protect the law. I'm trying to understand why.

13 What do you think this law is doing? How does
14 it accomplish those goals?

15 MS. HOLCOMB: Object to form. 02:24:22

16 MR. TRYON: Objection.

17 THE WITNESS: I don't know. I think I already
18 answered your question.

19 BY MR. BARR:

20 Q So you don't know how the law accomplishes 02:24:36
21 those goals; you're just aware that those are the goals
22 of the law?

23 MR. TRYON: Objection.

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: I'm aware that that's what, I 02:24:52

1 believe, the law would be doing if it's in effect, yes.

2 BY MR. BARR:

3 Q If the law is in effect, can B.P.J. play on a
4 girls' team?

5 MS. HOLCOMB: Object to form. 02:25:00

6 THE WITNESS: I don't know.

7 BY MR. BARR:

8 Q If the law is in effect, can a transgender
9 woman play on a girls' team?

10 MS. HOLCOMB: Object to form. 02:25:13

11 MR. TRYON: Objection.

12 THE WITNESS: I don't know.

13 BY MR. BARR:

14 Q Does this law apply to contact sports?

15 MS. HOLCOMB: Object to form. 02:25:40

16 THE WITNESS: I don't know.

17 BY MR. BARR:

18 Q Does this law apply to noncontact sports?

19 MS. HOLCOMB: Object to form.

20 THE WITNESS: I don't know. 02:25:57

21 BY MR. BARR:

22 Q Do you have any understanding what sports this
23 law applies to?

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: I don't know. 02:26:09

1 BY MR. BARR:

2 Q Do you know if this law applies to esports,
3 when people sit around and play video games on behalf
4 of their school?

5 MS. HOLCOMB: Object to form. 02:26:28

6 THE WITNESS: I don't know.

7 BY MR. BARR:

8 Q Do you know if this law is different than the
9 NCAA's policy regarding transgender women playing
10 school sports? 02:26:45

11 MS. HOLCOMB: Object to form.

12 THE WITNESS: I don't know.

13 BY MR. BARR:

14 Q You said it's your understanding this law will
15 protect women for safety and fairness reasons. Did I 02:27:02
16 understand that correctly?

17 A Yes.

18 Q Are there any other things that this law does?

19 MS. HOLCOMB: Object to form.

20 THE WITNESS: I told you what my understanding 02:27:15
21 was.

22 BY MR. BARR:

23 Q I'm just trying to make sure I'm comprehensive
24 in understanding what you told me. I heard "fairness
25 and safety." Is there anything else? 02:27:31

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1 MS. HOLCOMB: Object to form.

2 THE WITNESS: I don't know.

3 BY MR. BARR:

4 Q Would you be surprised to learn that this law
5 does not apply to every school in your conference? 02:28:01

6 MS. HOLCOMB: Objection.

7 MR. TRYON: Objection.

8 THE WITNESS: I don't know.

9 BY MR. BARR:

10 Q You don't know if you would be surprised, or 02:28:11
11 you didn't know that that was the case?

12 MS. HOLCOMB: Object to form.

13 MR. TRYON: Objection.

14 THE WITNESS: I just don't know.

15 BY MR. BARR: 02:28:24

16 Q I heard you. I'm trying to figure out what
17 you don't know.

18 Do you not know that the law doesn't apply to
19 every school in your conference?

20 MS. HOLCOMB: Object to form. 02:28:34

21 MR. TRYON: Objection.

22 THE WITNESS: I don't know. No, I don't know.

23 BY MR. BARR:

24 Q Is this law changing things from the way they
25 were before? 02:29:00

1 MS. HOLCOMB: Object to form.

2 MR. TRYON: Objection.

3 THE WITNESS: I don't know.

4 BY MR. BARR:

5 Q Would you expect that if a law is passed, it's 02:29:15
6 meant to change things?

7 MS. HOLCOMB: Object to form.

8 MR. TRYON: Objection.

9 THE WITNESS: I don't know.

10 BY MR. BARR: 02:29:25

11 Q Do you know any transgender people?

12 MR. TRYON: Objection.

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: I have an -- had an acquaintance
15 a few years ago, that there are rumors that they have 02:29:55
16 transitioned or started a transition or something, but
17 I'm really not certain.

18 BY MR. BARR:

19 Q Who is that person?

20 A I don't know the name they currently go by. 02:30:09

21 Q Well, I appreciate you not using their former
22 name.

23 Other than that person, do you know any
24 transgender people?

25 MS. HOLCOMB: Object to form. 02:30:29

1 THE WITNESS: Not to my knowledge, but I don't
2 know.

3 BY MR. BARR:

4 Q Have you ever competed in a soccer game with
5 or against someone who's transgender? 02:30:44

6 A I'm not sure. I don't know.

7 Q Are there any transgender women playing on a
8 team in the Mountain East Conference.

9 MR. TRYON: Objection.

10 THE WITNESS: I don't know. 02:31:05

11 BY MR. BARR:

12 Q Have you ever heard of the phrase "inner sense
13 of self"?

14 A No.

15 Q If I asked you to tell me what that phrase 02:31:20
16 means, would you be able to do that?

17 MR. TRYON: Objection.

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: No.

20 BY MR. BARR: 02:31:27

21 Q Have you ever seen that phrase written on a
22 piece of paper?

23 A It's possible. I do a lot of reading.

24 Q But nothing specific comes to mind?

25 A Correct. 02:31:42

1 Q What do you know about puberty blockers?

2 MR. TRYON: Objection.

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I don't know.

5 BY MR. BARR: 02:32:11

6 Q Have you ever heard of puberty blockers?

7 A I've heard of that.

8 Q What is your understanding of what puberty
9 blockers are?

10 MR. TRYON: Objection. 02:32:27

11 MS. HOLCOMB: Same objection.

12 THE WITNESS: I don't know.

13 BY MR. BARR:

14 Q So you've heard of it, but you don't have an
15 understanding of what it means? 02:32:33

16 A Correct.

17 Q Have you ever heard of hormone replacement
18 therapy?

19 A Yes.

20 Q Do you have an understanding of what that is? 02:32:46

21 MS. HOLCOMB: Object to form.

22 THE WITNESS: I don't know.

23 BY MR. BARR:

24 Q I'm sorry, I didn't hear you.

25 A I don't know. 02:32:56

1 Q Do you have any thoughts about what happens to
2 someone who starts puberty blockers before going
3 through puberty?

4 A I don't know.

5 Q Have you ever read anything that describes 02:33:22
6 what might happen to someone who takes puberty blockers
7 before going through puberty?

8 A I'm not sure.

9 Q Do you think transgender girls are faster than
10 you? 02:33:50

11 MR. TRYON: Objection.

12 A I think in general, biological males are
13 stronger, fitter, faster and have a bigger stature than
14 women do.

15 BY MR. BARR: 02:34:11

16 Q My question was, do you think transgender
17 girls are faster than you?

18 MR. TRYON: Objection.

19 MS. HOLCOMB: Objection; form.

20 THE WITNESS: I think in general, biological 02:34:18
21 males are faster than me, yes.

22 BY MR. BARR:

23 Q So if I'm hearing you correctly, and I'm not
24 trying to put words in your mouth, your response was
25 that all biological males are faster than you? 02:34:44

1 MR. TRYON: Objection.

2 MS. HOLCOMB: Objection.

3 BY MR. BARR:

4 Q Is that what you said?

5 A I believe I said in general. 02:34:57

6 Q Do you believe that all transgender girls --
7 let me rephrase it.

8 Do you believe, in general, transgender girls
9 are faster than you?

10 MS. HOLCOMB: Objection -- 02:35:12

11 MR. TRYON: Objection; asked and answered.

12 THE WITNESS: I already answered that.

13 BY MR. BARR:

14 Q You answered about biological males. I'm
15 asking about transgender girls. 02:35:24

16 MS. HOLCOMB: Object to form.

17 MR. TRYON: Objection.

18 THE WITNESS: I believe biological males are
19 in gen- -- are generally faster than females.

20 BY MR. BARR: 02:35:36

21 Q Every time that I ask about a transgender girl
22 and you respond with "biological males," are we, from
23 your perspective, talking about the same thing, the
24 same group of people?

25 A Yes. 02:35:47

1 Q So if I ask a question and you respond saying
2 "biological males," I can understand you to be, from my
3 perspective, my definition, meaning a transgender girl;
4 is that right?

5 MS. HOLCOMB: Object to form. 02:36:02

6 MR. TRYON: Objection.

7 THE WITNESS: I'm just going to answer the
8 questions how I know to answer the questions.

9 BY MR. BARR:

10 Q I understand, but I'm just trying to speed 02:36:14
11 this up for both of us. If I can understand that when
12 I say "transgender girl" and you respond with
13 "biological male," if we're -- if you're answering the
14 question I'm asking, and we're all talking about the
15 same group of people with our understood difference of 02:36:27
16 opinion there, it's going to allow us to run through
17 the next set of questions faster, but I'm happy to not
18 do that if you don't want to.

19 MS. HOLCOMB: Object to form.

20 MR. TRYON: Objection. 02:36:40

21 THE WITNESS: I'm still going to answer how
22 I've been answering.

23 BY MR. BARR:

24 Q Okay. Do you believe that transgender girls
25 are bigger than you? 02:37:04

1 MS. HOLCOMB: I'm sorry, Andrew, we didn't
2 fully hear your question.

3 MR. BARR: I asked if it was her belief that
4 transgender girls are bigger than her.

5 THE WITNESS: In general, biological men are 02:37:20
6 bigger than women, yes.

7 BY MR. BARR:

8 Q Where did you form that opinion?

9 A Observation.

10 Q Is that it? 02:37:40

11 A Yes. Looking around, in everyday life, I can
12 see that biological men are typically bigger than me.

13 Q Do you recognize there's a difference between
14 transgender women and biological men?

15 MS. HOLCOMB: Object to form. 02:38:11

16 THE WITNESS: I don't know.

17 BY MR. BARR:

18 Q Why do you keep using the phrase "biological
19 male"?

20 MS. HOLCOMB: Object to form. 02:38:24

21 THE WITNESS: Because that's my vocabulary.

22 BY MR. BARR:

23 Q Why don't you also say "biological female,"
24 then?

25 MS. HOLCOMB: Object to form. 02:38:51

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1 MR. TRYON: Objection.

2 THE WITNESS: I don't know.

3 BY MR. BARR:

4 Q So a typical conversation, you'll say "women"

5 and "biological males"? 02:39:01

6 MS. HOLCOMB: Object to form.

7 THE WITNESS: I don't know. Probably not.

8 BY MR. BARR:

9 Q So why do you keep saying that today?

10 MS. HOLCOMB: Object to form. 02:39:14

11 MR. TRYON: Objection.

12 THE WITNESS: Because I'm choosing to.

13 BY MR. BARR:

14 Q Why are you making that decision?

15 MS. HOLCOMB: Object to form. 02:39:26

16 THE WITNESS: That's how I'm choosing to

17 answer your questions.

18 BY MR. BARR:

19 Q Okay. Well, let me -- help me. What is a

20 biological male? 02:39:41

21 MS. HOLCOMB: Object to form.

22 THE WITNESS: Someone who -- I believe someone

23 whose gender is male, assigned male at birth and is a

24 male.

25 BY MR. BARR: 02:40:09

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1 Q That's a biological male?

2 A Yes.

3 Q What word do you describe someone who was
4 assigned male at birth, but their gender identity is
5 female? 02:40:25

6 MS. HOLCOMB: Object to form.

7 THE WITNESS: I would say "biological male."

8 BY MR. BARR:

9 Q So explain to me the difference between what I
10 ask and what you're saying for biological male. 02:40:43

11 MR. TRYON: Objection.

12 MS. HOLCOMB: Object to form.

13 THE WITNESS: I'm sorry?

14 BY MR. BARR:

15 Q If I heard you correctly, you said a 02:40:58
16 biological male is someone who is assigned the sex of
17 male at birth, has a gener -- gender identity of male.
18 Did I get that correct?

19 MS. HOLCOMB: Object to form.

20 THE WITNESS: I'm not sure. I'm not a doctor. 02:41:13

21 BY MR. BARR:

22 Q Okay. Let's -- let's start over. I must have
23 misheard you.

24 What is your understanding of what a
25 biological male is? 02:41:22

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1 A I'm not a doctor.

2 Q I -- I understand that you're not a doctor.

3 What is your understanding of what a

4 biological male is?

5 A I don't know. 02:41:32

6 Q The court reporter could tell us, but I bet
7 you used the word -- the phrase "biological male" more
8 than 30 times. What does it mean?

9 MS. HOLCOMB: Object to form.

10 MR. TRYON: I'm just going to object. Asked 02:42:17
11 and answered.

12 THE WITNESS: Someone who was -- I think
13 someone who was assigned male at birth and identifies
14 as a male.

15 BY MR. BARR: 02:42:41

16 Q Okay. That's what I heard you say the first
17 time, so I appreciate you clarifying that.

18 What do you call someone who was assigned male
19 at birth but identifies as a female?

20 MS. HOLCOMB: Object to form. 02:42:52

21 THE WITNESS: Biological male.

22 BY MR. BARR:

23 Q So regardless how the person identifies, you
24 would call them a biological male?

25 MR. TRYON: Objection. 02:43:09

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1 THE WITNESS: I didn't say what I would call
2 them. That's just how I'm referring to what you're
3 asking today, biological males.

4 BY MR. BARR:

5 Q So if it wasn't today, what would you refer to 02:43:22
6 them as?

7 MS. HOLCOMB: Object to form.

8 MR. TRYON: Objection.

9 THE WITNESS: I would think it's someone who's
10 a biological male. 02:43:42

11 MR. BARR: Court Reporter, could you read the
12 answer prior to the last answer, please.

13 (Record read.)

14 BY MR. BARR:

15 Q So what would you call them? 02:44:05

16 MS. HOLCOMB: Object to form.

17 THE WITNESS: If someone asks me to call them
18 by a certain name, then I would, but that doesn't mean
19 that it changes what I am considering a biological
20 male. 02:44:22

21 BY MR. BARR:

22 Q Could you explain that? Because that doesn't
23 make any sense to me.

24 A I would respect what someone would want their
25 name to be called. 02:44:36

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1 Q So if somebody walked up and said, I'm a
2 transgender female, you would refer to them as a
3 transgender female?

4 A I --

5 MS. HOLCOMB: Object to form. 02:44:52

6 MR. TRYON: Objection.

7 THE WITNESS: If someone asked me to call them
8 by "Joe," then I would call them by their name -- by
9 what name that they told me that they wanted to be
10 called, which would be "Joe," "Michael," whatever it 02:45:04
11 would be, but that doesn't change my answer of
12 biological male.

13 BY MR. BARR:

14 Q I think I understand what you're -- you are
15 saying that you would respect the name that they would 02:45:18
16 like to be called, but regardless, you would still
17 consider someone who was assigned male at birth a
18 biological male?

19 A Yes.

20 Q Where did you learn that phrase? 02:45:37

21 That's not how most people talk in day-to-day
22 conversation, so I'm trying to understand why you're
23 choosing to use it today.

24 A I thought it would clarify the conversation so
25 you would know what I was talking about. 02:46:01

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1 Q And why did you think that?

2 A Because of your terms that you've been using.

3 Q I don't -- I don't understand. The terms that

4 I'm using have led -- let you to use the term

5 "biological male"? 02:46:30

6 MR. TRYON: Objection.

7 MS. HOLCOMB: Object to form.

8 THE WITNESS: I think it's -- it's clarifying

9 the conversation, but I will just refer to all

10 biological males as "males" from now on, if you would 02:46:42

11 prefer.

12 BY MR. BARR:

13 Q No, you should answer however you feel most

14 comfortable. I'm just trying to make sure I

15 understand. 02:46:52

16 When did you first use the phrase "biological

17 male"?

18 A I couldn't tell you.

19 Q You've been using it your whole life?

20 A I might have said it a long time ago at some 02:47:04

21 point. I'm not sure.

22 Q If you were to introduce me to your brother,

23 would you say, This is Declan, a biological male?

24 MR. TRYON: Objection; harassment.

25 MS. HOLCOMB: Object to form. 02:47:22

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1 THE WITNESS: No.

2 BY MR. BARR:

3 Q How would you introduce me to Declan?

4 A "This is Declan."

5 Q So what changed that you want to use the 02:47:38
6 phrase "biological male" today if you don't use it in
7 common speak?

8 MR. TRYON: Objection; asked and answered
9 about three times now.

10 MS. HOLCOMB: Object to form. 02:47:53

11 THE WITNESS: I think I answered that.

12 BY MR. BARR:

13 Q Just give me a moment.

14 Did I hear you say earlier that you're not
15 aware of having been on a team with a transgender girl? 02:48:35

16 A I'm not aware of that, no.

17 Q Have you ever been injured by a transgender
18 girl?

19 A Not to my knowledge.

20 Q Have you ever been harmed by a transgender 02:48:55
21 girl?

22 MR. TRYON: Objection.

23 MS. HOLCOMB: Object to form.

24 THE WITNESS: Not to my knowledge.

25 ///

1 BY MR. BARR:

2 Q Do you play any sports at West Virginia State
3 other than soccer?

4 A No.

5 Q Do you have plans to play any other sports at 02:49:31
6 West Virginia State other than soccer?

7 A No.

8 Q Do you believe that H.B. 3293 applies to the
9 West Virginia women's soccer team?

10 MS. HOLCOMB: Object to form. 02:49:48

11 THE WITNESS: I'm not sure.

12 BY MR. BARR:

13 Q What position do you play?

14 A Left center back.

15 Q Have you always played that position? 02:50:03

16 A No.

17 Q What position did you play before that?

18 A I've played in many different positions on the
19 soccer field.

20 Q And when did you become a left center back as 02:50:24
21 a regular position?

22 A My sophomore year of college.

23 Q What position were you your freshman year of
24 college?

25 A Left wingback or left center back. 02:50:41

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1 Q Why did you change?

2 A I was needed for the left center back
3 position.

4 Q Your choice or the coach's choice?

5 MS. HOLCOMB: Object to form. 02:51:11

6 THE WITNESS: My coach's choice.

7 BY MR. BARR:

8 Q You don't seem happy with that choice; is that
9 right?

10 MS. HOLCOMB: Object to form. 02:51:22

11 THE WITNESS: I love both positions probably
12 equally.

13 BY MR. BARR:

14 Q Well, I was a wingback, and I loved running,
15 you know, the edges of the field, so I would understand 02:51:39
16 if you were a little upset about it, but in any event.

17 Is your team good?

18 A Yes.

19 Q How long has West Virginia State had a team, a
20 women's soccer team? 02:52:00

21 A Since fall of 2019.

22 Q You were on the inaugural team; right?

23 A Yes.

24 Q Did you play your freshman year?

25 A Yes. 02:52:21

1 Q Did you start?

2 A Yes.

3 Q Every game?

4 A I was injured, but other than that, yes.

5 Q How were you injured? 02:52:41

6 A I had to sit out one game for a fractured
7 foot, and I think that's it for my freshman year.

8 Q What was your record freshman year?

9 A I don't recall. Good. It was good, though.

10 Q More wins than losses? 02:53:15

11 A Yes.

12 Q Did you go to the conference tournament that
13 year?

14 A Since it was an inaugural season, no.

15 Q The conference didn't allow you to play? 02:53:41

16 Explain that.

17 A For first-year teams, although we were playing
18 games and competing, it was not for the title. That is
19 how I still have an extra year of NCAA eligibility and
20 one of the reasons that I decided to come to 02:54:03
21 West Virginia State.

22 Q I understood the part about eligibility.

23 Why did that encourage you to attend
24 West Virginia State?

25 A Because it would let me play soccer for 02:54:15

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1 longer.

2 Q What was your team's record last year, 2020?

3 A I'm not sure of the record, but we qualified
4 for the tournament.

5 Q Did you win the tournament? 02:54:36

6 A No.

7 Q Did you make it to the finals?

8 A No.

9 Q How did you guys do?

10 A We lost in the first round. 02:54:51

11 Q What about this year, 2021?

12 A Oh, I was answering for this last season,
13 sorry.

14 Q No, that's okay.

15 So in 2021, this year, you qualified for the 02:55:14
16 tournament, but didn't make it past the first round; is
17 that right?

18 A Yes.

19 Q What happened in 2020, last year?

20 I imagine COVID impacted your season or 02:55:23
21 something, but I'm still curious how you-all did.

22 A Yes, COVID impacted it. So instead of the
23 fall, we played a shorter spring season. And I don't
24 remember how we did, but we didn't get into the
25 tournament. 02:55:41

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1 Q I imagine it was a big step to -- to qualify
2 this year.

3 A Yes. It was impressive for our first official
4 season in the NCAA.

5 Q Over the last three years, have you played a 02:55:59
6 college called "Notre Dame"? And I'm not talking about
7 the Fighting Irish. I'm talking about the Notre Dame
8 in your conference.

9 A Yes.

10 Q Did you play the Fighting Irish? 02:56:13

11 A No, we didn't.

12 Q So if I -- if I talk about Notre Dame, you'll
13 understand I'm talking about the Notre Dame in your
14 conference?

15 A Yes. 02:56:23

16 Q Do you know where Notre Dame is located?

17 A I'm not sure.

18 Q Would it surprise you to find out it is not in
19 West Virginia?

20 MS. HOLCOMB: Object to -- object to form. 02:56:36

21 THE WITNESS: That wouldn't surprise me.

22 BY MR. BARR:

23 Q How about a school called "Frostburg"?

24 A What about it?

25 Q Have you played a game against Frostburg? 02:56:53

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1 A Yes.

2 Q Do you know where Frostburg is located?

3 A Not in West Virginia.

4 Q I'm asking you.

5 A I don't know. It was a guess. 02:57:06

6 Q Would you be surprised to find out it's not in
7 West Virginia?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: No.

10 BY MR. BARR: 02:57:15

11 Q Do you have any understanding of whether
12 H.B. 3293 applies to Notre Dame?

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: I don't know.

15 BY MR. BARR: 02:57:28

16 Q The same question for Frostburg.

17 MS. HOLCOMB: Same objection.

18 MR. TRYON: Objection.

19 THE WITNESS: I don't know.

20 BY MR. BARR: 02:57:40

21 Q If you end up playing on the team next year,
22 do you anticipate you'll play against Notre Dame?

23 MS. HOLCOMB: Object to form.

24 THE WITNESS: Most likely.

25 ///

1 BY MR. BARR:

2 Q And you say most likely because they're one of
3 the schools in your conference; right?

4 A Right.

5 Q Do you also expect that if you were to play on 02:58:02
6 the team next year, you would play against Frostburg,
7 given that Frostburg is in your conference?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: It's likely.

10 BY MR. BARR: 02:58:17

11 Q Do you have any understanding whether a
12 transgender woman can play on Frostburg or Notre Dame's
13 team?

14 MR. TRYON: Objection.

15 MS. HOLCOMB: Object to form. 02:58:37

16 THE WITNESS: I don't know.

17 BY MR. BARR:

18 Q If you found out that a transgender woman was
19 on Notre Dame or Frostburg's team, what would you do?

20 MR. TRYON: Objection. 02:58:46

21 MS. HOLCOMB: Object to form.

22 THE WITNESS: I would play a soccer game.

23 BY MR. BARR:

24 Q I understand you have a medical concern that
25 may impact soccer, but assuming that everything goes 02:59:19

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1 well for you and that doesn't impact your game, do you
2 plan on playing competitive soccer after college?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: What kind of competitive soccer?

5 BY MR. BARR: 02:59:35

6 Q Do you have -- fair. I'll ask a different
7 question.

8 Do you have any plans to play soccer
9 postgraduation, of any kind?

10 A If the opportunity arises, I would love to 02:59:50
11 continue playing soccer.

12 Q What type of opportunities are you aware of
13 for playing soccer postgraduation?

14 A I'm sure in many cities there are women's
15 teams that I could join for things like that. 03:00:26

16 Q So some type of recreational, fun league is
17 what you're referencing?

18 A Yes.

19 Q Any plans of trying out or trying to join the
20 U.S. women's national team? 03:00:47

21 A No.

22 Q Do you know anybody on that team?

23 A No.

24 Q Would you agree with me they're probably the
25 best players in the country, if not the world, when it 03:01:10

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1 comes to women's soccer?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: I think that they are amazing
4 athletes.

5 BY MR. BARR: 03:01:30

6 Q What was your reaction when you saw that they
7 recently got equal pay for women on the national team?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I was happy for them.

10 BY MR. BARR: 03:01:53

11 Q Did you happen to see their game last month in
12 Texas?

13 A I did not.

14 Q Did you see the team came out publicly
15 supporting transgender youth? 03:02:06

16 MR. TRYON: Objection.

17 MS. HOLCOMB: Object to form.

18 THE WITNESS: I did not see that.

19 MR. BARR: We can go off the record.

20 THE VIDEOGRAPHER: All right. We are going 03:02:28
21 off the record. The time is 3:03 p.m., and this is the
22 end of Media Unit No. 3.

23 (Recess.)

24 THE VIDEOGRAPHER: We where back on the record
25 at 3:13 p.m., and this is the beginning of Media Unit 03:13:03

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1 No. 4.

2 Go ahead, please.

3 BY MR. BARR:

4 Q Ms. Armistead, do you know what Title IX is?

5 A I -- I've heard of it before. 03:13:19

6 Q What is your understanding of Title IX?

7 A I believe it's to give equal opportunities to
8 women.

9 Q Do you have any other understandings about
10 Title IX? 03:13:46

11 A I don't know for certain.

12 Q So if I heard you correctly, Title IX is about
13 protecting women's rights; is that right?

14 MR. TRYON: Objection.

15 MS. HOLCOMB: Object to form. 03:14:14

16 THE WITNESS: In my opinion, yes.

17 BY MR. BARR:

18 Q How did you form that opinion?

19 A I believe we have to have Title IX trainings
20 to participate in collegiate athletics. 03:14:31

21 Q And those are annual, aren't they?

22 A Yes.

23 Q So at this point, you've attended three
24 Title IX trainings; is that right?

25 A I'm not sure about the third one yet. 03:14:45

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1 Q So you know you've attended two and possibly a
2 third; is that fair?

3 A I believe so, yes.

4 Q Who conducts that training?

5 A I think it might be online. I'm not for sure. 03:15:05

6 Q That wasn't a fair question, I'm sorry.

7 Is that put on by your school?

8 A Yes.

9 Q So as a student athlete, you're required to
10 sit through a Title IX training on some type of basis. 03:15:27
11 Is that accurate?

12 A Yes.

13 Q What did you learn at those trainings?

14 A I don't recall specifics.

15 Q Do you believe that your school complies with 03:15:50
16 Title IX?

17 MS. HOLCOMB: Object to form.

18 MR. TRYON: Objection.

19 THE WITNESS: I don't know.

20 BY MR. BARR: 03:16:09

21 Q Do you have any reason to think your school
22 doesn't comply with Title IX?

23 A I have no reason to think that, no.

24 Q Do women's rights include transgender women's
25 rights? 03:16:30

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1 MS. HOLCOMB: Object to form.

2 MR. TRYON: Objection.

3 THE WITNESS: I believe that women's --

4 whenever I am referring to women's rights, I'm

5 referring to biological women's rights. 03:16:48

6 BY MR. BARR:

7 Q Does that mean transgender women don't have
8 rights?

9 MR. TRYON: Objection.

10 MS. HOLCOMB: Object to form. 03:16:57

11 THE WITNESS: That's definitely not what I
12 said.

13 BY MR. BARR:

14 Q If Title IX protects women's rights, but not
15 transgender women's rights, what rights do transgender 03:17:14
16 women have?

17 MR. TRYON: Objection; asked and answered.

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: I don't know.

20 BY MR. BARR: 03:17:34

21 Q Do you think transgender women should be
22 protected by the law?

23 MR. TRYON: Objection.

24 MS. HOLCOMB: Object to form.

25 By what law? 03:17:50

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1 BY MR. BARR:

2 Q Just any law.

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I believe that living in the
5 United States allows all people in the United States to 03:18:01
6 have rights and protections under the Constitution.

7 BY MR. BARR:

8 Q And that would include transgender women?

9 MR. TRYON: Objection.

10 THE WITNESS: That would include everyone. 03:18:19

11 BY MR. BARR:

12 Q Does West Virginia State do a good job of
13 protecting women's rights?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: I don't have any reason to think 03:18:39
16 that it doesn't.

17 BY MR. BARR:

18 Q Have any of your school's policies regarding
19 Title IX harmed you?

20 MS. HOLCOMB: Object to form. 03:18:53

21 THE WITNESS: I don't know what you're asking.

22 BY MR. BARR:

23 Q Has your school ever done something, on the
24 premise that Title IX requires them to do so, that you
25 disagree with? 03:19:16

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1	MS. HOLCOMB: Object to form.

2 THE WITNESS: Not to my knowledge.

3 BY MR. BARR:

4 [REDACTED]

[REDACTED] **[REDACTED]** **[REDACTED]**

[REDACTED] [REDACTED]

12 MR. BARR: Let's go off the record.

13 MS. HOLCOMB: Yeah, that sounds great.

14 THE VIDEOGRAPHER: Hang on. Hang on. Hang

15	on.	03:20:30

16 We're going off the record. The time is

17 | 3:21 p.m.

18	(Recess.)

19 THE VIDEOGRAPHER: All right. We are back on

20	the record at 3:29 p.m.	03:28:54

21	Go ahead, please.

22 (Lainey Armistead left the room.)

23

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14 (Lainey Armistead entered the room.)

15 MR. BARR: Ms. Armistead, I've introduced an 03:29:49

16 exhibit, Exhibit 43. Let me know when you've got it in

17 front of you.

18 (Exhibit 43 was marked for identification

19 by the court reporter and is attached hereto.)

20 THE WITNESS: Got it. 03:30:12

21 MS. HOLCOMB: If you'll hold for just one

22 moment, I don't.

23 Okay. You're good to proceed. Thank you.

24 BY MR. BARR:

25 Q Do you recognize the document, Ms. Armistead? 03:30:19

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1 A Um.

2 Q I can ask a different question.

3 Is this the policy that would have presented

4 to you on an annual basis as part of the Title IX

5 training at West Virginia State University?

03:30:42

6 A It could have been.

7 Q So this document, Exhib- -- Exhibit 43, is

8 entitled "Unlawful Discrimination and Harassment,

9 Sexual Harassment, Grievance Procedures, Child Abuse

10 and Neglect Reporting and Relationships."

03:31:14

11 Did I read that correctly, Ms. Armistead?

12 A Yes.

13 Q And this is published by the West Virginia

14 State University Board of Governors as BOG Policy

15 No. 14.

03:31:31

16 Did I read that correctly?

17 A Yes.

18 Q You have the right to read this whole policy,

19 if you would like; otherwise, I can direct you to

20 specific questions. You let me know what you prefer.

03:31:38

21 A You can direct me.

22 Q Okay. If you go to the bottom of page 1,

23 you'll see section 3.1. Tell me when you see that.

24 A Got it.

25 Q Cognoscente of the break we just had, I'm

03:31:58

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1 going to just pinpoint a couple of specific words and
2 phrases for you; however, if you would like to read the
3 whole paragraph, you're more than welcome to do so,
4 okay?

5 3.1 says (as read): 03:32:10

6 "Title IX of the Education
7 Amendments...and other state and
8 federal laws prohibit unlawful
9 discrimination on the basis of sex."

10 Do you see that? 03:32:23

11 A I do see that.

12 Q Did I read that correctly?

13 A Yes.

14 Q If you keep going, it says (as read):

15 "In accordance with The West Virginia 03:32:37

16 Higher Education Policy Commission and
17 Board of Governors Policy #17, the
18 University considers" --

19 And I'm going to skip through some of these.

20 (As read): 03:32:47

21 -- sex and gender and gender identity
22 as protected under federal, state and
23 local antidiscrimination laws as
24 protected characteristics and will not
25 permit unlawful discrimination or

03:33:00

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1 harassment.

2 Did you follow that?

3 A Yes.

4 Q What do you understand the phrase "basis of
5 sex" mean -- to mean? 03:33:15

6 A I believe that that is referring to the gender
7 of someone.

8 Q Do you have any reason to dispute your
9 school's statement that Title IX and other state and
10 federal laws prohibit unlawful discrimination on the 03:33:45
11 basis of sex?

12 MS. HOLCOMB: Object to form.

13 THE WITNESS: I don't know.

14 BY MR. BARR:

15 Q You don't know if you have a reason to dispute 03:33:59
16 it, or you just don't know if that's true?

17 MS. HOLCOMB: Object to form.

18 THE WITNESS: I don't know if I have a reason
19 to dispute it.

20 BY MR. BARR: 03:34:08

21 Q Does that mean you don't have a reason to
22 dispute it?

23 MS. HOLCOMB: Object to form.

24 THE WITNESS: I don't know.

25 ///

1 BY MR. BARR:

2 Q Okay. Scroll down and you'll go to
3 section 5.1. Are you there?

4 A Yes.

5 Q All right. The very first clause, and that's 03:34:28
6 where we'll stop, it says (as read):

7 "The University prohibits Protected
8 Class Discrimination and Harassment."
9 Did I read that correctly?

10 A Yes. 03:34:40

11 Q Do you know what discrimination is?

12 MS. HOLCOMB: Object to form.

13 THE WITNESS: I have heard that word before.

14 BY MR. BARR:

15 Q What is your understanding of the meaning of 03:34:57
16 the word "discrimination"?

17 MR. TRYON: Objection.

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: I think it's a broad word, and
20 it would be hard for your -- me to give you a 03:35:16
21 definition without looking it up.

22 BY MR. BARR:

23 Q Okay. How about harassment, do you know what
24 the word "harassment" means?

25 MS. HOLCOMB: Object to form. 03:35:26

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1 MR. TRYON: Objection.

2 THE WITNESS: I have a good idea of what the
3 word "harassment" means.

4 MR. BARR: Okay. Let's --

5 MR. TRYON: Excuse me, Andrew, can we excuse 03:35:41
6 the witness for a minute? I'd like to talk about
7 something on the record without -- without the witness.

8 MS. HOLCOMB: You can step out.

9 (Lainey Armistead left the room.)

10 MR. TRYON: Christiana, is she out of the 03:35:57
11 room?

12 MS. HOLCOMB: Yes, she is now.

13 MR. TRYON: So, you know, forgive me, but I
14 don't understand how this witness could possibly
15 provide any useful information about a school policy 03:36:06
16 that is full of legalisms, and if you want to depose
17 somebody on it, it ought -- ought to be the school,
18 about what the school -- school's view is on this form.

19 What her form -- her views on this form are
20 seem to me to be completely irrelevant, and I'm not 03:36:19
21 sure why we're going through this. I -- I suppose you
22 can -- can do this, but it seems like a waste of time.

23 And could you just kind of enlighten me how
24 you think this is in some way relevant, especially with
25 this witness? 03:36:33

1 MR. BARR: This is the Title IX policy in a
2 case about Title IX, and I'm just curious what the
3 witness's understanding of Title IX is.

4 MR. TRYON: But it doesn't matter what this
5 witness's understanding of Title IX is. That is in 03:36:45
6 fact the legal dispute across the country about what
7 Title IX means.

8 So how is this witness in any way relevant to
9 what Title IX --

10 MR. BARR: Mr. Tryon -- 03:36:56

11 MR. TRYON: -- actually means?

12 MR. BARR: Mr. Tryon, do you want to have this
13 discussion off the record, or no?

14 MR. TRYON: No, I wanted it on the record so I
15 can understand what you're doing -- 03:37:04

16 MR. BARR: Okay. And --

17 MR. TRYON: -- and why we're going to spend an
18 hour talking about a form that she just can't possibly
19 give a legal interpretation on.

20 MR. BARR: I'm not asking for a legal 03:37:13
21 interpretation. I have every right to ask about this,
22 as you acknowledged. So if we're going to stay on the
23 record, let's just keep going.

24 MR. TRYON: I didn't really acknowledge that,
25 but go ahead. So you're not -- you can't justify to me 03:37:18

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1 why we're doing this?

2 MR. BARR: I just told you why we're doing
3 this.

4 MR. TRYON: Yeah, but she can't -- she's not
5 competent -- she's not a competent witness to talk 03:37:27
6 about this policy. And anything you get from her is
7 going to be completely irrelevant at trial.

8 Can't we just cut this part out and move on?

9 MR. BARR: No, Mr. Tryon, we cannot.

10 MR. TRYON: All right. Well, I'm -- 03:37:43

11 MR. BARR: I recall there is --

12 MR. TRYON: -- making my objection on the
13 record for any further questions on this, for this
14 witness.

15 MS. HOLCOMB: I'll likewise object. 03:37:51

16 If we're ready, I'll have her brought back in.

17 MR. BARR: Thank you.

18 (Lainey Armistead entered the room.)

19 BY MR. BARR:

20 Q Sorry for all the up-and-down, Ms. Armistead. 03:38:44

21 If you could scroll down to section 23,
22 please. And inside 23, go to the definition of
23 Title IX. It's maybe four pages after the section
24 starts.

25 A Okay. 03:39:22

1 MR. TRYON: I'm sorry, where are we?

2 MR. BARR: Mr. Tryon, we are looking at the
3 definition of Title IX in section 23 of Exhibit 43.

4 BY MR. BARR:

5 Q Ms. Armistead -- 03:39:38

6 MR. TRYON: Thank you.

7 BY MR. BARR:

8 Q Ms. Armistead, do you see that it says (as
9 read):

10 "'Title IX' means Title IX of the 03:39:40

11 Education Amendments of 1972.

12 Title IX prohibits discrimination on
13 the basis of sex in education programs
14 or activities receiving federal
15 financial assistance"? 03:39:49

16 Did I read that correctly?

17 A Yes.

18 Q Okay. So let's stay in section 23. Scroll up
19 just a little bit, and you'll see a definition for on
20 the basis of sex. Tell me when you're there. 03:40:04

21 A Got it.

22 Q (As read):

23 "'On the Basis of Sex' or 'Based on
24 Sex' means gender, gender identity,
25 including transgender status, sexual 03:40:17

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1 orientation and/or stereotypical
2 notions of what is female/feminine
3 versus male/masculine or a failure to
4 conform to those gender stereotypes."

5 Did I read that correctly? 03:40:30

6 A Yes.

7 Q Scroll up just a little bit further and you'll
8 see a definition for education program or activity.
9 Tell me when you see that.

10 A Got it. 03:40:53

11 Q (As read):

12 "'Education Program or Activity'

13 includes locations, events, or

14 circumstances over which the

15 University exercises substantial 03:41:00

16 control" --

17 I'm going to skip through the next part and
18 then go to "athletic programs."

19 Do you see that?

20 A Yes. 03:41:10

21 Q Did I read that correctly, knowing that I
22 excerpted part of that definition?

23 A Yes.

24 Q So let's scroll back down to the definition of

25 Title IX, the first definition you looked at. 03:41:27

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1 Do you see that?

2 A Yes.

3 Q So according to this policy, Title IX
4 prohibits discrimination on the basis of sex.

5 We just looked at what the definition of basis 03:41:44
6 of sex is, and it includes transgender status, doesn't
7 it?

8 MS. HOLCOMB: Object to form.

9 MR. TRYON: Objection.

10 THE WITNESS: That was -- 03:41:52

11 BY MR. BARR:

12 Q We can scroll up -- I'm sorry, I didn't mean
13 to cut you off. What did you say?

14 A That was written on -- what I read, yes.

15 Q Okay. So according to this policy, on the 03:42:06
16 basis of sex includes transgender status; is that
17 correct?

18 A That is what I read.

19 Q And according to this policy, on the basis of
20 sex includes gender identity; right? 03:42:22

21 MR. TRYON: I'm objecting to any further
22 questions on this document for this witness. Will you
23 give me a standing objection for that, please?

24 MR. BARR: Noted.

25 THE WITNESS: I don't know. 03:42:46

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1 BY MR. BARR:

2 Q Do you want to go back up and look at the
3 definition on the basis of sex again?

4 A That's not necessary.

5 Q Do you agree with me that on the basis of sex, 03:42:54
6 as it relates to this policy, includes transgender
7 status and gender identity?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: That's what I read.

10 BY MR. BARR: 03:43:07

11 Q And that education programs or activities
12 includes school-sponsored athletics; right?

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: It could mean that.

15 BY MR. BARR: 03:43:22

16 Q We just looked at the definition of education
17 programs and activities, and it included
18 school-sponsored athletics; right?

19 MS. HOLCOMB: Object to form.

20 THE WITNESS: That was the definition that was 03:43:37
21 presented.

22 BY MR. BARR:

23 Q So using the definitions that were presented
24 in this policy, Title IX prohibits discrimination on
25 the basis of transgender status or gender identity and 03:43:55

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1 school-sponsored athletics receiving federal financial
2 assistance; right?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I'm not really sure exactly what
5 the policy is talking about. 03:44:17

6 BY MR. BARR:

7 Q Would you agree with me that I read that
8 correctly, using the definitions provided in the
9 policy?

10 A I heard what you said based on the document 03:44:23
11 that you presented.

12 Q Did I say it correctly based on the document
13 that I presented?

14 A Yes.

15 Q Isn't that exactly what you are seeking to do 03:44:43
16 in this lawsuit?

17 MS. HOLCOMB: Object to form.

18 MR. TRYON: Objection.

19 THE WITNESS: No.

20 BY MR. BARR: 03:45:10

21 Q How isn't it?

22 MS. HOLCOMB: Object to form.

23 MR. TRYON: Objection.

24 THE WITNESS: I don't know.

25 ///

1 BY MR. BARR:

2 Q If you win in this lawsuit, wouldn't that mean
3 that B.P.J. would be excluded on the basis of her
4 transgender status and gender identity from
5 participating on the school-sponsored girls' team? 03:45:48

6 MS. HOLCOMB: Object to form.

7 MR. TRYON: Objection.

8 THE WITNESS: I'm not a lawyer, so I can't
9 answer that.

10 BY MR. BARR: 03:46:05

11 Q In any of the discovery responses that you've
12 prepared for this case, did you acknowledge that
13 B.P.J. would be excluded from the girls' team at her
14 school because of H.B. 3293?

15 MS. HOLCOMB: Object to form. 03:46:24

16 THE WITNESS: I don't know.

17 BY MR. BARR:

18 Q Did you review the discovery responses before
19 they were sent over to us?

20 A Yes. 03:46:35

21 Q Do you recall any discovery responses
22 regarding whether B.P.J. would be excluded from her --
23 her school's girls' cross-country team?

24 A I don't recall.

25 Q Let's keep talking about B.P.J. We earlier 03:46:53

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1 discussed that B.P.J. participated in several
2 cross-country events in the fall of 2021.

3 Do you remember that?

4 A I remember what you said about that.

5 Q And if I remember what you said, you didn't 03:47:19
6 have a -- an understanding of whether B.P.J.
7 participated, how many times she participated or how
8 she did. Is that accurate?

9 A Correct.

10 Q And, in fact, you didn't have an understanding 03:47:35
11 of what B.P.J. had done at all as it relates to
12 athletics, if I understood you correctly?

13 A I don't know anything -- I don't really know
14 B.P.J., the plaintiff, so I can't comment on her
15 personal -- their personal successes or how they do in 03:47:58
16 events.

17 Q Okay. I'm not asking you to accept my
18 terminology here, okay?

19 Will you accept that B.P.J. is a transgender
20 girl who played on a girls' team, just for the purposes 03:48:17
21 of this question? I'm not asking you to understand or
22 agree with my terminology.

23 MS. HOLCOMB: Object to form.

24 MR. TRYON: Objection.

25 ///

1 BY MR. BARR:

2 Q I'll just ask the question. I'm not trying to
3 be tricky. I just want to make sure that you
4 understand what I'm asking.

5 Given that B.P.J. is a transgender girl, do 03:48:38
6 you expect that she won the events that she
7 participated in?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I --

10 MR. TRYON: Objection. 03:48:52

11 THE WITNESS: -- don't know.

12 BY MR. BARR:

13 Q What's your expectation based on what you told
14 me earlier about advantages?

15 MS. HOLCOMB: Same objection. 03:49:01

16 MR. TRYON: Objection.

17 THE WITNESS: I don't know how B.P.J.
18 performed, and I wouldn't be expected to know how
19 she -- they performed.

20 BY MR. BARR: 03:49:20

21 Q Would you be surprised if B.P.J. got last
22 place?

23 MR. TRYON: Objection.

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: I don't know. 03:49:32

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1 BY MR. BARR:

2 Q I realize you don't know how B.P.J. placed,
3 and I'm not asking that question.

4 My question is, would you be surprised if
5 B.P.J. got last? 03:49:48

6 A I understood your question, and again, I don't
7 know.

8 Q So you have no -- nothing would surprise you,
9 whether B.P.J. got first or last or something in
10 between? 03:50:00

11 MS. HOLCOMB: Object to form.

12 MR. TRYON: Objection.

13 THE WITNESS: That's not what I said.

14 BY MR. BARR:

15 Q Okay. What did you say? 03:50:38

16 A I just said I don't know, from your question.
17 In general, I would think that -- I believe that
18 biological males have advantages, but does that mean in
19 all cases that happens? Maybe; maybe not.

20 But I don't really know the specifics or what 03:51:00
21 to be expected from B.P.J. because I don't know that
22 person.

23 Q Okay. You raised a good question.

24 Do you expect that there might be exceptions
25 to these advantages that you've talked about? 03:51:13

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1 A I think that it's -- I'm bigger than some
2 biological males, but in general, biological males are
3 bigger, stronger, faster than me, and it should -- and
4 only biological women should be competing against me.

5 Q And that was for two reasons, fairness and 03:51:41
6 safety; right?

7	A Yes.

8	Q	What safety concern do you have with middle	
9		school cross-country and B.P.J. participating on the	
10		girls' team?	03:51:58

11	MS. HOLCOMB: Object to form.

12 THE WITNESS: I'm intervening for all women
13 athletes and sports, and that includes contact sports
14 that I'm a part of.

15 BY MR. BARR: 03:52:18

16 Q B.P.J. is the plaintiff here, and B.P.J.
17 doesn't play a contact sport. So I'm asking where the
18 safety issue comes up -- comes in on middle school
19 cross-country.

20	MS. HOLCOMB: Same objection.	03:52:35

21 MR. TRYON: Objection.

22 THE WITNESS: My concerns are fairness and
23 safety for all women athletes in all sports.

24 BY MR. BARR:

25	Q Understood. What is the safety concern for	03:52:47

1 middle school cross-country and B.P.J. participating on
2 the girls' team?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I don't know.

5 BY MR. BARR: 03:53:00

6 Q When it comes to fairness, what fairness are
7 you concerned about?

8 A In general, biological males are faster than
9 biological women.

10 Q So I'm not putting words in your mouth. 03:53:32

11 Is the concern that the transgender girl would
12 win the race to the detriment of the cisgender girl?

13 Is that the fairness concern?

14 MR. TRYON: Objection.

15 MS. HOLCOMB: Object to form. 03:53:44

16 THE WITNESS: That is not the only concern.

17 BY MR. BARR:

18 Q What are the other concerns?

19 A It's just not fair for biological males to
20 compete with biological women in any sports. 03:54:31

21 Q I heard you say that. I'm trying to
22 understand why you believe that.

23 MS. HOLCOMB: I'm sorry, was there a question?

24 MR. BARR: Yes.

25 ///

1 BY MR. BARR:

2 Q Why do you believe that?

3 A I believe I already answered that question.

4 Q Could you tell me it again because I certainly
5 didn't hear it. I'm trying to understand why you 03:55:03
6 believe that B.P.J. creates a fairness issue running
7 middle school cross-country on the girls' team?

8 MS. HOLCOMB: Objection to form.

9 MR. TRYON: Objection.

10 THE WITNESS: Because, in general, biological 03:55:23
11 males are stronger, fitter, faster than biological
12 women.

13 BY MR. BARR:

14 Q And if I understand you, the concern would be
15 that transgender girls would win and cisgender girls 03:55:38
16 would not because of these advantages you're talking
17 about; is that right?

18 MS. HOLCOMB: Objection to form.

19 THE WITNESS: I'm aware of my blessings and
20 opportunities that I was able to have because of the 03:55:57
21 fair playing that I have seen throughout my life, and I
22 want to make sure that I fight for that for other
23 women, to make sure that they are not having to compete
24 with biological males, in whatever sport that they do.

25 ///

1 BY MR. BARR:

2 Q I understand. And you've told me that you
3 want to do that for two reasons, safety and fairness;
4 is that right?

5 A Yes. 03:56:27

6 Q And we talked about safety with middle school
7 cross-country, and you stated you don't know what the
8 safety issue is with B.P.J. running cross-country on
9 the girls' team; right?

10 MS. HOLCOMB: Object to form. 03:56:49

11 THE WITNESS: I don't know.

12 BY MR. BARR:

13 Q Right. So the two things that you're
14 concerned about, safety and fairness, we've talked
15 about safety, and now I'm trying to understand what 03:57:04
16 would be unfair about B.P.J. running cross-country on
17 the girls' team at her middle school.

18 MR. TRYON: Objection.

19 MS. HOLCOMB: Objection to form.

20 THE WITNESS: H.B. 3293 is to promote equality 03:57:31
21 for all women in all sports, so I think that that
22 answers my -- your question.

23 BY MR. BARR:

24 Q Perhaps I'm just not following. I don't know
25 how that answers the question about what fairness issue 03:57:53

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1 arises with B.P.J. running on the girls' cross-country
2 team at her middle school.

3 MS. HOLCOMB: I'm going to object as asked and
4 answered multiple times.

5 MR. BARR: Attorney Holcomb, if you can tell 03:58:07
6 me what the answer is, I'll be happy to move on. I
7 haven't heard an answer yet.

8 MS. HOLCOMB: I think she's answered your
9 question at least three times to the best of her
10 ability. So it's asked and answered. 03:58:17

11 MR. BARR: I'll -- I'll try it a different
12 way.

13 BY MR. BARR:

14 Q Ms. Armistead, can you point to any specific
15 fairness issue you're concerned about as it relates to 03:58:25
16 B.P.J. running on the girls' cross-country team at her
17 middle school?

18 MS. HOLCOMB: Objection to form.

19 THE WITNESS: I am not certain for specifics
20 on her -- on B.P.J., but I do know that this law 03:59:04
21 promotes fairness and equality for all women, including
22 those who run cross-country at age 11 and college
23 athletes in a contact sport, such as myself.

24 BY MR. BARR:

25 Q Okay. Just to make sure that I've understood 03:59:26

1 you, you -- do not have a specific fairness issue to
2 point to based on my last question. Did I understand
3 that correctly?

4 MS. HOLCOMB: Object to form.

5 MR. TRYON: Objection. 03:59:37

6 THE WITNESS: That's not what I said. I just
7 said overall it's -- it wouldn't be fair for all women.

8 BY MR. BARR:

9 Q But specifics, there's no specific thing you
10 can point to for B.P.J.; right? 03:59:50

11 A I don't know.

12 MR. BARR: I -- I've introduced an exhibit.
13 It's actually previously marked as Exhibit 39. Let me
14 know when you have it.

15 THE WITNESS: Got it. 04:00:35

16 BY MR. BARR:

17 Q Have you ever heard of the Doddridge
18 Invitational cross-country meet?

19 A No.

20 Q If you would like to read the e-mail and look 04:00:45
21 at the exhibit, please let me know; otherwise, I'll
22 just ask my question. It's whatever is best for you.

23 A I read it.

24 Q Okay. If you could scroll down to page 2,
25 please, you'll see two tables. The table on the left 04:01:13

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1 says "BMS XC-Boys," and the table on the right says
2 "BMS XC-Girls."

3 Do you see that?

4 A Yes.

5 Q Do you know what BMS references? 04:01:32

6 A I do not.

7 Q I'll represent to you that it's Bridgeport
8 Middle School.

9 Have you ever heard of Bridgeport Middle
10 School? 04:01:46

11 A No.

12 Q Okay. And then on the table on the right, it
13 also says "BMS," which, again, is Bridgeport Middle
14 School.

15 Do you know what XC-Girls means? 04:01:56

16 A Yes.

17 Q What does that mean?

18 A Cross-country girls.

19 Q Okay. So let's focus on the table on the
20 right. 04:02:12

21 Do you see that there are approximately 20
22 names -- or 20 times listed? The names have been
23 redacted for privacy reasons. Do you see that?

24 A Yes.

25 Q And you see that one name has not been 04:02:29

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1 redacted, and that's B [REDACTED] P [REDACTED] -J [REDACTED].

2 Do you see that?

3 A Yes.

4 Q I'm going to represent to you that

5 B [REDACTED] P [REDACTED] -J [REDACTED] is B.P.J., the plaintiff in this 04:02:39
6 case, okay?

7 A Okay.

8 Q What do you think this table that is entitled
9 "BMS XC-Girls" is telling us?

10 MS. HOLCOMB: Object to form. 04:02:57

11 THE WITNESS: I don't know.

12 BY MR. BARR:

13 Q Does it look like it may be a listing of
14 individual students' times at the
15 Doddridge Invitational on Thursday, September 16th? 04:03:15

16 A Yes.

17 Q And if we look at that table on the right, it
18 has three columns, one for distance, one for actual
19 time and one for pace per mile.

20 Do you see that? 04:03:30

21 A Yes.

22 Q And this table on the right, we're just
23 talking about girls; right?

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: That is what the document says. 04:03:49

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1 BY MR. BARR:

2 Q Okay. How did B.P.J. do at the
3 Doddridge Invitational, according to this table?

4 A B.P.J. ran 1.9 miles in 21 minutes and
5 50 seconds. 04:04:18

6 Q B.P.J. finished towards the back of the
7 Bridgeport Middle School girls; right?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: B.P.J. wasn't in the lead, no.

10 BY MR. BARR: 04:04:46

11 Q In fact, B.P.J. finished in 13th of 16
12 finishes; right?

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: That might be what the table
15 shows. 04:05:13

16 BY MR. BARR:

17 Q Do you see on the table how a few of the times
18 are highlighted yellow and the rest are white?

19 A Yes.

20 Q What does that yellow highlighting mean? 04:05:29

21 MS. HOLCOMB: Object to form.

22 THE WITNESS: I don't know.

23 BY MR. BARR:

24 Q Do you know how middle school cross-country
25 team times are determined? 04:05:45

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1 A No.

2 Q Would you have any basis to state that

3 B.P.J. impacted the team time --

4 MS. HOLCOMB: Object to form.

5 Sorry, I didn't mean to cut you off. 04:06:05

6 THE WITNESS: I don't know.

7 BY MR. BARR:

8 Q You don't know how the team time is

9 determined?

10 A Correct. 04:06:18

11 Q And, therefore, you would have no basis to

12 state whether B.P.J.'s times impacted the

13 Bridgeport Middle School team time; correct?

14 A I don't know.

15 Q I just want to make sure we're clear on the 04:06:37

16 record.

17 You don't know what?

18 A What was your question again?

19 Q I'm asking if you have any basis to state

20 whether B.P.J. impacted the Bridgeport Middle School 04:06:54

21 team time at the Doddridge Invitational.

22 MS. HOLCOMB: Object to form.

23 THE WITNESS: I don't know.

24 BY MR. BARR:

25 Q You don't know whether B.P.J. did or didn't 04:07:15

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1 impact it?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: I don't know.

4 BY MR. BARR:

5 Q So you wouldn't be in a position to state that 04:07:31
6 B.P.J. led to some other student's time not being
7 included in the team time; right?

8 A Can you say that again, please?

9 Q Sure. You're not in a position to state one
10 way or the other whether B.P.J.'s time impacted another 04:07:56
11 student's time included on the team time at the
12 Doddridge Invitational?

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: Correct. I don't run
15 cross-country. I do know about soccer, though. 04:08:17

16 MR. BARR: I've introduced another exhibit.
17 It's previously been marked as Exhibit 40. Please let
18 me know when it appears.

19 THE WITNESS: Got it.

20 MS. HOLCOMB: I'm sorry, give me one moment. 04:09:02
21 Mine is still attempting to refresh.

22 MR. BARR: No problem. Tell me when you're
23 ready.

24 MS. HOLCOMB: All right. I'm ready. Thank
25 you. 04:09:22

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1 MR. BARR: Sure.

2 BY MR. BARR:

3 Q Ms. Armistead, Exhibit 40, do you see tables
4 similar to the tables we just saw on Exhibit 39?

5 A They look similar. 04:09:31

6 Q But in this case, the right-hand table says
7 "BMS," which we've discussed is Bridgeport Middle
8 School, "XC-Girls," cross-country girls, for the
9 Ritchie County event on Saturday, October 1st.

10 Do you see that? 04:09:53

11 A Yes.

12 Q Do you have any understanding of what the
13 highlighted parts of this table mean?

14 A No.

15 Q How did B.P.J. do in this event? 04:10:07

16 MS. HOLCOMB: Object to form.

17 THE WITNESS: According to the table, she
18 didn't place -- B.P.J. didn't place in the top half.

19 BY MR. BARR:

20 Q And I'm happy for you to look at the rest of 04:10:45
21 Exhibit 40, and you can take as much time as you would
22 like, but I'll represent to you that B.P.J. never has
23 times that are highlighted in this exhibit.

24 But my understanding is you don't have an
25 understanding whether the highlighting has some 04:11:03

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1 indication one way or the other; is that right?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: As stated, I am not a

4 cross-country runner, so no, I don't know.

5 BY MR. BARR: 04:11:27

6 Q If you could scroll to the last page of
7 Exhibit 40.

8 Are you there?

9 A Yes.

10 Q You'll see at the top it says "Time Trial 04:11:42
11 Comparison."

12 Did I read that correctly?

13 A You did.

14 Q And then in the two columns to the right of
15 that, there's the cross-country time trial at 04:11:56
16 Bridgeport City Park on October 7th, 2021, and the
17 column to the right of that is the cross-country time
18 trial, Bridgeport City Park, on August 24th, 2021.

19 Do you see that?

20 A Yes. 04:12:12

21 Q Inside those columns, on the far left side,
22 there's a subcolumn that says "TT Place."

23 Do you see that?

24 A Yes.

25 Q What do you think TT Place means? 04:12:27

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1 MR. TRYON: Objection.

2 MS. HOLCOMB: I'm going to object to form.

3 THE WITNESS: I have no idea.

4 BY MR. BARR:

5 Q If I told you it meant time trial place, would 04:12:43
6 you be willing to accept that for purposes of this
7 exhibit?

8 MS. HOLCOMB: Object to form.

9 MR. TRYON: Objection.

10 THE WITNESS: Yes. 04:12:54

11 BY MR. BARR:

12 Q On October 7th, 2021, what place did
13 B.P.J. earn?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: According to this document, 04:13:21
16 24th.

17 BY MR. BARR:

18 Q How many participants are indicated to have
19 participated, on this document?

20 A 28. 04:13:29

21 Q So on October 7, 2021, according to
22 Exhibit 40, B.P.J. got 24th of 28 participants; is that
23 right?

24 A That's what the document indicates.

25 Q And let's move over to August 24th. 04:13:52

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1 What place did B.P.J. get on August 24th?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: 30th.

4 BY MR. BARR:

5 Q And I'm not going to ask you the total 04:14:15
6 participants, because that column is very hard to
7 interpret and I don't want to be unfair, but you would
8 agree with me that B.P.J. was at the very low end of
9 that table as well?

10 A Lower than others. 04:14:34

11 Q Lower than almost everybody else; right?

12 MS. HOLCOMB: Object to form.

13 THE WITNESS: That is what the document
14 indicates.

15 BY MR. BARR: 04:14:54

16 Q Do you still think it's unfair for B.P.J. to
17 participate?

18 MS. HOLCOMB: Object to form.

19 MR. TRYON: Objection.

20 THE WITNESS: It also looks like B.P.J. was 04:15:06
21 competing against people in sixth, seventh and eighth
22 grade. So I don't know if sixth-graders are typically
23 in the top of their class.

24 BY MR. BARR:

25 Q Based on this document, do you still think 04:15:33

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1 it's unfair for B.P.J. to have participated?

2 MS. HOLCOMB: Object to form.

3 MR. TRYON: Objection.

4 THE WITNESS: Based on this document, I don't

5 know. 04:15:49

6 BY MR. BARR:

7 Q Do you still believe B.P.J. has superior speed
8 compared to her classmates, having seen these
9 documents?

10 MR. TRYON: Objection. 04:16:05

11 MS. HOLCOMB: Objection to form.

12 THE WITNESS: This document doesn't really
13 give a fair comparison.

14 BY MR. BARR:

15 Q Why not? 04:16:15

16 A As I said, B.P.J. is competing with people in
17 sixth, seventh and eighth grade. And in my experience,
18 whenever I was in sixth grade, playing soccer, I was
19 having difficulties against the seventh- and
20 eighth-graders. 04:16:40

21 MR. BARR: Attorney Holcomb, we've been going
22 for about an hour. Do you want a break, or do you want
23 to keep going?

24 MS. HOLCOMB: Would you like a break, Lainey?

25 THE WITNESS: Let's go. 04:17:01

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1 MS. HOLCOMB: Andrew, any estimate of how much
2 longer you plan to go?

3 MR. BARR: No, sorry. Some of these questions
4 that I expected to go quick have taken a little longer
5 than anticipated. So I would hate to give any false 04:17:18
6 expectations there.

7 MS. MORGAN: Andrew, this is Kelly Morgan.
8 I'm just asking because of family obligations again
9 here. Are we looking at an hour or two --

10 THE VIDEOGRAPHER: Are we going to go off -- 04:17:29

11 MR. BARR: Let's go off the record.

12 THE VIDEOGRAPHER: Are we going to --

13 MR. BARR: Yeah, let's go off the record.

14 THE VIDEOGRAPHER: Okay. One moment.

15 We're going off the record. The time is 04:17:34
16 4:18 p.m., and this is the end of Media Unit No. 4.

17 (Recess.)

18 THE VIDEOGRAPHER: All right. We are back on
19 the record at 4:37 p.m., and this is the beginning of
20 Media Unit No. 5. 04:37:25

21 Please go ahead.

22 BY MR. BARR:

23 Q Ms. Armistead, I was going through my notes
24 and realized I didn't ask you the question I thought
25 was most important, which is, what's your favorite 04:37:34

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1 soccer team? Do you have one?

2 A Chelsea.

3 Q Kind of going through some tough times with
4 ownership of Chelsea at the moment, but -- okay. So
5 you do follow professional soccer?

04:37:48

6 A A little bit, yes.

7 Q Do you -- do you follow any women's
8 professional teams?

9 A I keep up with the U.S. women's national team
10 a little bit.

04:38:01

11 Q But other than the national team?

12 A No.

13 Q I'm a Liverpool fan, so I had to ask.

14 Okay. So, clearly, you love soccer. I

15 understand all that. I want to understand why you love 04:38:19
16 soccer. And, specifically, what do you get out of it?

17 A I get an opportunity to compete and -- I get
18 so much out of soccer. It keeps me in shape. I have
19 the ability to make great friends and lasting
20 connections with my teammates. And I'm still friends 04:38:46
21 with teammates from high school and club teams. And
22 I've learned a lot about perseverance and teamwork,
23 cooperation. There's so much that soccer has taught me
24 throughout my life, and I wouldn't be the person I am
25 today without it.

04:39:06

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1 Q I know you focused on soccer, but do you think
2 that would be true of most athletes' experience, having
3 played sports in a -- you know, as a child or adult?

4 MS. HOLCOMB: Object to form.

5 THE WITNESS: I believe that a lot of people 04:39:29
6 probably have the same experiences as I do, but I can't
7 speak for sure on other people's experiences.

8 BY MR. BARR:

9 Q Understood. You said you played club -- club
10 soccer. Did I hear that right? 04:39:41

11 A Yes.

12 Q Do you still play club stocker?

13 A No. I'm unable to do so due to being a
14 college athlete.

15 Q When did you start playing club soccer? 04:39:57

16 A Probably around seven or eight years old.

17 Q Did your school offer a soccer team when you
18 were seven or eight years old?

19 A I don't believe so. I just played club until
20 I was able to play in middle school. 04:40:21

21 Q When did your stop playing club soccer?

22 A My senior year of high school.

23 Q Were you ever invited to an ODP program,
24 Olympic developmental program?

25 A Yes. 04:40:43

1 Q Did you attend?

2 A I attended for a little bit before moving
3 school -- or before moving across the state, so...

4 Q Where were you living before Owensboro?

5 A I am from Owensboro, and then I moved to 04:41:03
6 Louisville, Kentucky, and then I moved back to
7 Owensboro.

8 Q And those two cities are far enough apart you
9 had to change club teams as part of that move?

10 A Yes. 04:41:27

11 Q And did I understand that one of those teams
12 offered the ODP and the other one did not; is that
13 right?

14 A ODP is more of a state -- a state development
15 program. So I could have continued to do so, but where 04:41:40
16 I moved, it would have been three hours to drive
17 instead of just right beside my hometown.

18 Q How long did you participate in the ODP?

19 A I don't recall. Not long.

20 Q Not long? 04:42:08

21 Did you have the opportunity to do any
22 traveling for ODP?

23 A Not ODP, but I had the opportunity to travel
24 for my club team.

25 Q What -- what was the name of your club team? 04:42:21

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1 A Kentucky Fire.

2 Q Was that the -- did you have a different club
3 team when you moved and what was the name of that?

4 A Owensboro.

5 Q And it was when you were on Kentucky Fire that 04:42:39
6 you had the ODP opportunities; is that right?

7 A Yes.

8 Q How old were you when that happened?

9 A I don't remember.

10 Q I'm -- was it seven or eight when you started? 04:42:58
11 Was it when you were 18 as --

12 A Probably middle school.

13 Q Did you benefit from the ODP?

14 A I did not benefit from ODP, but I definitely
15 benefitted from club. 04:43:18

16 Q Did any of your schools offer a women's soccer
17 team before West Virginia State?

18 A High schools?

19 Q Sure. Did your high school have a women's
20 soccer team? 04:43:37

21 A Yes.

22 Q Did you play on it?

23 A I did.

24 Q Was your club team or your high school team
25 better? 04:43:54

1 MS. HOLCOMB: Object to form.

2 THE WITNESS: I would probably say my club
3 team was better.

4 BY MR. BARR:

5 Q That's generally true, right, the club team is 04:44:06
6 a more select group of athletes than any particular
7 school, as a general matter?

8 A In general, yes.

9 Q Any of your club teammates play college
10 soccer? 04:44:28

11 MS. HOLCOMB: Object to form.

12 THE WITNESS: Yes.

13 BY MR. BARR:

14 Q Any of them playing with or against you in
15 Mountain East Conference? 04:44:41

16 A No.

17 Q Do you think those athletes benefitted from
18 soccer similarly to the way you did?

19 MS. HOLCOMB: Object to form.

20 THE WITNESS: I can't speak on their 04:44:59
21 experiences.

22 MR. TRYON: Excuse me, sorry to interrupt, but
23 Kelly just texted me, and she said she's in the waiting
24 room trying to get in, if the court reporter could let
25 her in. 04:45:17

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1 THE REPORTER: Ms. Morgan, are you in?

2 MS. MORGAN: Yes, I am. Thank you.

3 THE REPORTER: Okay. Sorry about that.

4 BY MR. BARR:

5 Q Do you have any social media accounts? 04:45:47

6 A Yes.

7 Q I admittedly don't, so please bear with me in
8 clunky language, but what platforms do you have an
9 account with?

10 A I have an account with Twitter, Instagram, 04:46:02
11 Facebook, Snapchat. And those are the only ones that I
12 use.

13 BY MR. BARR:

14 Q Do you use them daily?

15 A Most days. 04:46:24

16 Q Have people ever reached out to you on those
17 platforms to talk about this law or your participation
18 in the lawsuit?

19 A Yes.

20 Q Does it happen regularly? 04:46:52

21 A No.

22 Q Has it happened one time? five times? ten
23 times?

24 A I'm not sure. Not very many times.

25 Q More than once, less than 20; is that fair? 04:47:12

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1 A Yes.

2 Q More than five times, less than 20?

3 A I would probably just say less than ten, and
4 that's as close as I would feel comfortable getting.

5 Q Do you remember if that was via Facebook or 04:47:30
6 one of the other platforms you described?

7 A I think it was on Facebook and Twitter.

8 Q Have you ever sent a message or reached out to
9 people about this lawsuit or the law using one of those
10 social media accounts? 04:48:02

11 A No.

12 Q Has anyone ever e-mailed you about this law,
13 other than your attorneys?

14 A I don't think so.

15 Q Have you ever e-mailed anyone about this law? 04:48:22

16 A I shared information with a friend who was
17 interested in intervening.

18 Q Is that one of the friends you told me about
19 earlier, Sinead or Brooklyn?

20 A Yes. Sinead. 04:48:55

21 Q Are you familiar with the NCAA's image and
22 likeness policy?

23 A I am.

24 Q What's your understanding of how the -- is it
25 okay if I call it the NIL policy? 04:49:13

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1 A Yes.

2 Q What's your understanding of the NIL policy?

3 A My understanding is that athletes can benefit
4 from their name; and, two, they are -- sign contracts
5 with companies and be a name for a -- for a brand and 04:49:37
6 get paid for doing so.

7 Q Is it okay with you if I reference what you
8 just described as an endorsement?

9 A If that's how you want to reference it, sure.

10 Q We can call it whatever you'd like. I just am 04:49:59
11 trying to use a faster word than that whole
12 description.

13 A That's fine.

14 Q Are you currently under an endorsement deal
15 with anyone? 04:50:13

16 A No.

17 Q Do you have any plans to be under an
18 endorsement deal?

19 A I'm not sure. I would like to try. That
20 would be something I would be interested in. Of 04:50:31
21 course, it was just a very recent law that was created,
22 a new -- a new policy, so I haven't really looked into
23 it too much yet.

24 Q Is it accurate to say you'd be interested in
25 it, but sitting here today, you don't have any specific 04:50:54

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1 plans to enter into an endorsement deal?

2 A Yes.

3 Q Have you ever been interviewed related to this
4 lawsuit by someone other than your attorney?

5 A No. 04:51:16

6 Q No reporters, TV appearances, anything like
7 that?

8 A No.

9 Q Do you know who Selina Soule is?

10 A No. 04:51:39

11 Q Do you know who Chelsea Mitchell is?

12 A No.

13 Q Do you know who Christina Mitchell is?

14 A No.

15 Q Do you know who Alanna Smith is? 04:52:00

16 A No.

17 Q Do you know who Lanay Sultz is?

18 A No.

19 Q Do you know who Margaret O'Neil is?

20 A No. 04:52:13

21 Q Do you know who Cynthia Monteleone is?

22 A No.

23 Q Do you know who Madison Kenyon is?

24 A No.

25 Q Do you know who Mary Kate Marshall is? 04:52:26

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1 A No.

2 Q Do you know who Darcy Ashoff is?

3 A No.

4 Q Do you know anyone on the University of

5 Pennsylvania's women's swimming or diving team? 04:52:41

6 A I do not.

7 Q Do you know who Haley Tan is?

8 A No.

9 Q And just to make sure I'm being fair with you,

10 there's a chance the last name is Tani. 04:53:00

11 So do you know anyone named Haley Tani?

12 A No.

13 Q Do you know anyone who claims to have been

14 harmed by a transgender girl or woman playing on a

15 girls' team, specifically? 04:53:17

16 MS. HOLCOMB: Object to form.

17 THE WITNESS: No, I don't know personally.

18 BY MR. BARR:

19 Q Have you spoken with any of the people I just

20 named? 04:53:30

21 A No, I don't think so. No.

22 Q I have a list of about 25 more people. I can

23 cut that short if I just understand that you haven't

24 spoken to anyone who's claimed to have been harmed by a

25 transgender woman's participation on a girls' team. Is 04:53:51

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1 that accurate?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: I don't -- I don't know the
4 names -- I don't know how to give you that information
5 without --

04:54:10

6 BY MR. BARR:

7 Q I'll just go through them. That's fine. I
8 was just trying to make this --

9 A I -- I wouldn't know the names. I've talked
10 to two girls that were clients of Christiana's, but I 04:54:18
11 don't know -- or recall their names.

12 Q Are those two girls a party to this lawsuit?

13 A No.

14 Q When did you speak to them?

15 A After I decided to intervene, probably. Maybe 04:54:40
16 before.

17 Q How did you locate these two girls?

18 MS. HOLCOMB: And I'll just object generally
19 to the extent it calls for attorney-client privileged
20 communications. 04:55:01

21 You may answer.

22 THE WITNESS: Just by Christiana.

23 BY MR. BARR:

24 Q What did you discuss with these two girls?

25 A They just told me about their experiences that 04:55:24

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1 they've had in their lawsuits, and that was the extent
2 of it.

3 Q Did you ask to speak with them, or did they
4 ask to speak with you?

5 MS. HOLCOMB: Object to form. 04:55:45

6 THE WITNESS: I don't know how to answer that
7 without divulging client-attorney privilege.

8 BY MR. BARR:

9 Q I'll -- I'll ask a different way because I
10 certainly don't want any privileged communications. 04:55:59

11 Did you ask to be put in touch with these two
12 girls?

13 A I could have. I don't recall.

14 Q You don't know their names?

15 A I do not recall their names. 04:56:23

16 Q And if I'm understanding correctly, you found
17 these two girls through your counsel?

18 A Yes.

19 Q Did these two girls encourage you to intervene
20 in this case? 04:56:51

21 A They just told me about their experiences.

22 Q What experiences are you talking about?

23 A Their experience with their lawsuits.

24 Q What did they tell you?

25 A I don't recall specifics of the conversation, 04:57:20

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1 but it was encouraging, what they told me. That's what
2 I remember from it.

3 Q What do you mean it was encouraging, what they
4 told you? Encouraging what?

5 A It wasn't encouraging anything specifically. 04:57:36
6 It was just encouraging to me what they were saying.

7 Q I understood. I misunderstood.

8 So you found the conversation encouraging.

9 I -- I feel like I might have misunderstood
10 that. 04:57:52

11 So is that what you're saying, you found the
12 conversation encouraging?

13 A Yes.

14 Q And you don't remember if this happened before
15 or after you decided to intervene? 04:58:02

16 MS. HOLCOMB: Objection to form.

17 THE WITNESS: I do not recall.

18 BY MR. BARR:

19 Q Was it before or after you were put in touch
20 with your attorney? 04:58:17

21 MS. HOLCOMB: Objection to form.

22 THE WITNESS: Well, I said -- I already
23 answered that.

24 BY MR. BARR:

25 Q Maybe I misunderstood. 04:58:32

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1 Your -- so your -- your attorney put you in
2 touch with these people; you just don't remember who
3 asked for the contact; is that correct?

4	A Yes.

5 Q Have you spoken with those two girls more than 04:58:49
6 once?

7	A	No.

8 Q Other than those two girls, have you spoken
9 with anyone else about this lawsuit beyond your family,
10 those two friends you told me about and your attorneys? 04:59:03

11	A Yes.

12	Q Who else?

13	A My best friend.

14	Q And who is that?

15	A Allison.	04:59:16

16 Q You might have told me that earlier, and I may
17 have forgotten, so I apologize if that's what happened.

18	What is Allison's last name?

19	A	Raymond.

20	Q	Is Allison a classmate of yours?	04:59:27

21 A No. She is a hometown friend. We went to
22 high school together.

23	Q Anyone else?

24 A Yes. Two other hometown friends.

25	0	Who -- who are those friends?	04:59:45

1 A Savanna and Haley.

2 Q Anyone else?

3 A My extended family, when they visited for the
4 holidays.

5 Q What was the nature of those discussions? 05:00:03

6 A I wanted to keep them updated on my life, and
7 I told them about H.B. -- the law -- 3293, and all of
8 my family was encouraging and supportive.

9 Q And just so you know, if you say "the law," I
10 understand you're talking about H.B. 3293. It's very 05:00:30
11 hard for me to remember the number, so I'm very
12 sympathetic to that.

13 Did you write an op-ed?

14 A I'm sorry?

15 Q Did you write an opinion piece for a 05:00:55
16 newspaper?

17 A I -- I don't know what you're talking about.

18 Q Okay. So sitting here today, everything we've
19 talked about, do you object to B.P.J. playing on the
20 Bridgeport Middle School girls' cross-country team? 05:01:15

21 MS. HOLCOMB: Objection to form.

22 THE WITNESS: I don't know.

23 MR. BARR: Okay. That's it for me. I'm happy
24 to turn it over to everyone else. I do want a couple
25 of minutes just to make sure that my notes are clean. 05:01:32

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1 So I do reserve that right, but I'm happy to pass it to
2 Mr. Tryon or whoever else is in line.

3 And -- and, Ms. Armistead, thank you for your
4 time today. I apologize for a long day on a Friday,
5 but hopefully you're able to make whatever -- whatever 05:01:47
6 plans you had tonight still.

7 THE WITNESS: Thank you.

8 MR. TRYON: Hello, Ms. Armistead. How are
9 you?

10 THE WITNESS: I'm good. How are you? 05:02:03

11 MR. TRYON: I'm good. So thank you so much
12 for your time. We always appreciate when deponents
13 come in and take their time to participate in these --
14 these situations.

15 And I have no questions, so thank you for your 05:02:14
16 time.

17 MS. DENIKER: This is Susan Deniker. I have
18 no questions. Thank you.

19 MS. MORGAN: This is Kelly Morgan. I don't
20 have any questions. Thank you, Lainey. 05:02:34

21 MS. ROGERS: This is Shannon Rogers. I don't
22 have any questions. Thank you.

23 MR. TRYON: So can we go off the record now?
24 Are we done?

25 MR. BARR: I believe Attorney Holcomb may or 05:02:59

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1 may not have questions. I just want to make sure that
2 it's clear.

3 MS. HOLCOMB: I do not have any questions.

4 Thank you. Just wanted to confirm there were no

5 further defendants. 05:03:09

6 MR. BARR: And with -- we -- we can go off the
7 record. And there's too many people on the same thing
8 to understand who is going to speak next, so I -- I
9 understand that.

10 THE VIDEOGRAPHER: So we -- are we done for 05:03:15
11 the day, then, or are we going to come back on?

12 MR. BARR: I -- I believe we're finished
13 unless I hear otherwise --

14 THE VIDEOGRAPHER: Okay.

15 MR. BARR: -- from counsel. 05:03:22

16 THE VIDEOGRAPHER: So I'm -- I'm going go
17 close the record then. All right?

18 Okay. We are off the record at 5:04 p.m., and
19 this ends today's testimony given by Lainey Armistead.

20 The total number of media used was five and 05:03:35
21 will be retained by Veritext Legal Solutions.

22 (TIME NOTED: 5:03 p.m.)

23

24

25

1 I, LAINEY ARMISTEAD, do hereby declare under
2 penalty of perjury that I have read the foregoing
3 transcript; that I have made any corrections as appear
4 noted, in ink, initialed by me, or attached hereto;
5 that my testimony as contained herein, as corrected, is
6 true and correct.

7 EXECUTED this ____ day of _____,
8 20____, at _____, _____.
9 (City) (State)

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15 LAINEY ARMISTEAD
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1 RE: BPJ vs. WEST VIRGINIA STATE BOARD OF EDUCATION
2 LAINEY ARMISTEAD (JOB NO. 5082427)

3

4 E R R A T A S H E E T

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LAINEY ARMISTEAD

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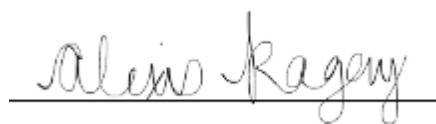
I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: March 25, 2022

A handwritten signature in cursive script, reading "Alexis Kagay", is written over a horizontal line.

ALEXIS KAGAY

CSR NO. 13795