No. 24-43

In the Supreme Court of the United States

STATE OF WEST VIRGINIA, ET AL.,

v.

B.P.J., BY NEXT FRIEND AND MOTHER,
HEATHER JACKSON,

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX (VOLUME V OF X)

(Pages 1628-2115)

MICHAEL R. WILLIAMS
Solicitor General
Counsel of Record
OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
mwilliams@wvago.gov
(304) 558-2021

Counsel for Petitioners
West Virginia, et al.

JOSHUA A. BLOCK
Counsel of Record
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
125 Broad Street Floor 18
New York, NY 10004
jblock@aclu.org
(212) 549-2593

Counsel for Respondent
B.P.J.

[additional counsel listed on inside cover]

PETITION FOR WRIT OF CERTIORARI FILED: JULY 11, 2024
CERTIORARI GRANTED: JULY 3, 2025

(continued from front cover)

JOHN J. BURSCH
Counsel of Record
ALLIANCE DEFENDING FREEDOM
440 First Street, NW, Suite 600
Washington, DC 20001
jbursch@ADFlegal.org
(616) 450-4235
Co-Counsel for State of West Virginia and Counsel for Lainey Armistead

AMY M. SMITH
Counsel of Record
STEPTOE & JOHNSON PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330-4500
(304) 933-8000
amy.smith@steptoe-johnson.com

Counsel for Harrison County Board of Education and Dora Stutler

KELLY C. MORGAN
Counsel of Record
BAILEY & WYANT, PLLC
500 Virginia St. E., Suite 600
Charleston, WV 25301
(303) 345-4222
kmorgan@baileywyant.com

Counsel for West Virginia State Board of Education and W. Clayton Burch, State Superintendent

TABLE OF CONTENTS

Page

VOLUME I

Docket Entries,
B.P.J., et al. v. West Virginia State Board of Education, et al.,
No. 21-cv-00316 (S.D. W. Va.) 1

Docket Entries,
B.P.J. v. West Virginia State Board of Education,
No. 23-1078 (4th Cir.) 35

Supplemental Declaration of Katelyn Kang
(June 9, 2021) 56

B.P.J. First Amended Complaint
(July 16, 2021) 411

District Court Memorandum Opinion
Granting Plaintiff's Motion
for a Preliminary Injunction
(July 21, 2021) 438

Harrison County Board and County
Superintendent Stipulation of Uncontested
Facts (March 7, 2022) 455

West Virginia State Board of Education and
W. Clayton Burch Stipulation of
Uncontested Facts (March 30, 2022) 458

Lainey Armistead Declaration
(April 21, 2022) 460

Chelsea Mitchell Declaration (April 21, 2022) 469

Christina Mitchell Declaration (April 21, 2022) 482

TABLE OF CONTENTS
(continued)

Page

VOLUME II

Alanna Smith Declaration (April 21, 2022) 496

Selina Soule Declaration (April 21, 2022) 503

Darcy Aschoff Declaration (April 21, 2022) 513

Cynthia Monteleone Declaration (April 21, 2022) 518

Madison Kenyon Declaration (April 21, 2022) 523

Mary Marshall Declaration (April 21, 2022) 530

Haley Tanne Declaration (April 21, 2022) 535

Linnea Saltz Declaration (April 21, 2022) 541

Heather Jackson Declaration (April 21, 2022) 547

Redacted Gender Support Plan (April 21, 2022) 555

Redacted Preferred Name Request Form (April 21, 2022) 564

Pictures of B.P.J. (April 21, 2022) 575

B.P.J. Declaration (April 21, 2022) 578

Excerpts from West Virginia's Responses to Plaintiff's First Set of Interrogatories (April 21, 2022) 583

Excerpts from West Virginia's Responses to Plaintiff's Second Set of Requests for Admission (April 21, 2022) 586

TABLE OF CONTENTS
(continued)

Page

Excerpts from Dora Stutler's Responses and Objections to Plaintiff's Second Set of Requests for Admission (April 21, 2022).....591

Excerpts from Harrison County Board of Education's Responses and Objections to Plaintiff's Second Set of Requests for Admission (April 21, 2022).....596

Excerpts from West Virginia State Board of Education's Responses and Objections to Plaintiff's Second Set of Requests for Admission (April 21, 2022).....602

W. Clayton Burch's Responses and Objections to Plaintiff's Second Set of Requests for Admission (April 21, 2022).....606

Excerpts from WVSSAC's Responses to Second Set of Requests for Admission (April 21, 2022).....628

Excerpts from Lainey Armistead's Responses and Objections to Plaintiff's Second Set of Requests for Admission (April 21, 2022).....634

Redacted Deposition Transcript of B.P.J. dated January 21, 2022 (April 21, 2022).....639

Deposition Transcript of Heather Jackson dated January 19, 2022 (April 21, 2022).....750

Redacted Deposition Transcript of Heather Jackson dated January 20, 2022 (April 21, 2022).....801

TABLE OF CONTENTS
(continued)

Page

VOLUME III

Deposition Transcript of Bernard Dolan dated February 11, 2022 (April 21, 2022)..... 966

Redacted Deposition Transcript of Lainey Armistead dated March 11, 2022 (April 21, 2022)..... 1105

Declaration of Deanna Adkins, MD (April 21, 2022)..... 1245

VOLUME IV

Deposition Transcript of Deanna Adkins, MD dated March 16, 2022 (April 21, 2022)..... 1291

Expert Report and Declaration of Joshua D. Safer, MD, FACP, FACE (April 21, 2022)..... 1534

Rebuttal Expert Report and Declaration of Joshua D. Safer, MD, FACP, FACE (April 21, 2022)..... 1613

VOLUME V

Deposition Transcript of Joshua Safer, M.D. dated March 24, 2022 (April 21, 2022)..... 1628

Joshua Safer, MD Errata..... 1830

Expert Report and Declaration of Professor Mary D. Fry, PHD (April 21, 2022)..... 1836

Deposition Transcript of Mary D. Fry, PH.D. dated March 29, 2022 (April 21, 2022)..... 1913

Mary Fry Errata..... 2105

TABLE OF CONTENTS
(continued)

Page

VOLUME VI

Declaration of Gregory A. Brown, PH.D., FACSM (April 21, 2022) 2116

Deposition Transcript of Gregory A. Brown dated March 25, 2022 (April 21, 2022) 2233

Gregory Brown Errata 2439

Declaration of Dr. Chad. T. Carlson, M.D., FACSM (April 21, 2022) 2443

VOLUME VII

Deposition Transcript of Chad T, Carlson, M.D., FACSM dated March 28, 2022 (April 21, 2022) 2521

Chad Carlson Errata 2691

Mountain Hollar MS Invitational Official Team Scores (April 21, 2022) 2695

Doddridge Invitational Official Team Scores (April 21, 2022) 2699

Email Chain re Transgender Participation (April 21, 2022) 2705

Email Chain re Transgender Participation with attachment 2021 Green Book Summary (April 21, 2022) 2707

Excerpt of Email Chain re Transgender Participation (April 21, 2022) 2729

TABLE OF CONTENTS
(continued)

Page

Excerpt of West Virginia State Board of Education's Enrolled Bill Review Form for H.B. 3293 (April 21, 2022) 2735

Screen Capture of Jordan Bridges' Facebook Page (April 21, 2022) 2739

MSNBC Twitter, 4/30/21 Governor Justice Interview (April 21, 2022) 2746

NCAA Update to Transgender Policy (April 21, 2022) 2748

Plaintiff's Statement of Undisputed Facts (April 21, 2022) 2751

Lainey Armistead First Supplemental Disclosure (May 12, 2022) 2778

Expert Rebuttal Report and Declaration of Deanna Adkins, M.D (May 12, 2022) 2791

Rebuttal Expert Report and Declaration of Aron Janssen, M.D. (May 12, 2022) 2815

Declaration of James M. Cantor, PH.D. (May 12, 2022) 2866

VOLUME VIII

Declaration of Stephen B. Levine, MD (May 12, 2022) 3028

Memorandum by B.P.J. to Exclude Expert Testimony of Gregory A. Brown (May 12, 2022) 3165

TABLE OF CONTENTS
(continued)

Page

Expert Declaration of Gregory A. Brown, Ph.D. FACSM, *Hecox, et. al v. Little*, *et al.*, No. 20-cv-00184-DCN (D. Id.) (May 12, 2022) 3197

Deposition Transcript of James M. Cantor, PhD dated March 21, 2022 (May 12, 2022) 3324

VOLUME IX

Deposition Transcript of Aron Janssen, M.D. dated April 4, 2022 (May 12, 2022)..... 3563

Aron Janssen Errata..... 3771

Deposition Transcript of Stephen B. Levine, MD dated March 30, 2022 (May 12, 2022) 3773

Deposition Transcript of Stephen B. Levine, MD dated September 10, 2021 (May 12, 2022) 3990

Deposition Transcript of Stephen B. Levine, MD dated December 21, 2020 (May 12, 2022)..... 4030

WVSSAC Board of Directors Transgender Policy (May 12, 2022) 4039

VOLUME X

Memorandum by Lainey Armistead, State of West Virginia in response to Motion by B.P.J. to Exclude Expert Testimony of Gregory A. Brown (May 26, 2022) 4042

Plaintiff's Reply in Support of Statement of Undisputed Material Facts (May 26, 2022) 4074

TABLE OF CONTENTS
(continued)

Page

Email from Dr. Swartos to B. Dolan, May 6, 2019 (May 27, 2022) 4147

Circulating Testosterone as the Hormonal Basis of Sex Differences in Athletic Performance by David. J. Handelsman, et al. (2018) (May 27, 2022) 4150

Reply Memorandum of Law in Support of Motion to Exclude the Expert Testimony of Gregory A. Brown (June 3, 2022) 4245

Judgment Order (January 5, 2023) 4263

Declaration of B.P.J. in Support of Motion for Stay (January 20, 2023) 4265

Declaration of Heather Jackson in Support of Motion for Stay (January 20, 2023) 4269

Connect-Bridgeport Middle School Invitational Team Results, March 25, 2022 (January 20, 2023) 4274

2022 Charles Pointe Invitations, August 27, 2022 Team Results (January 20, 2023) 4308

Photos from B.P.J.'s 2022 Cross-Country Season 4334

Memorandum Opinion denying motion by B.P.J. to Stay Pending Appeal (February 7, 2023) 4341

Order of 4CCA Granting Motion for an Injunction Pending Appeal (February 22, 2023) 4347

TABLE OF CONTENTS
(continued)

Page

Appendix in Support of State of West Virginia and Lainey Armistead's Motion to Suspend the Injunction Pending Appeal (July 11, 2023) 4349

Heather Jackson Declaration (July 19, 2023) 4406

Order of 4CCA Denying Motion to Suspend Injunction (August 4, 2023) 4410

Order Vacating Order Granting Summary Judgment (May 16, 2024) 4418

Scheduling Order (May 20, 2024) 4421

Motion to Stay Proceedings Pending Resolution of Petition for Writ of Certiorari (May 21, 2024) 4424

Memorandum Opinion and Order granting Motion to Stay Proceedings Pending Resolution of Petition for Writ of Certiorari (June 7, 2024) 4426

Order Denying Defendants' Expedited Motion for Clarification (February 28, 2025) 4435

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. Case No. 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,
and DORA STUTLER in her official
capacity as Harrison County
Superintendent, PATRICK MORRISEY in
his official capacity as Attorney
General, and THE STATE OF WEST VIRGINIA,
Defendants

VIDEOTAPED DEPOSITION OF
JOSHUA SAFER, M.D.
March 24, 2022 [3]

VIDEOTAPED DEPOSITION OF JOSHUA SAFER, M.D., taken on behalf of the Intervenor 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 Commonwealth of Pennsylvania, taken via videoconference, on Wednesday, March 24, 2022 at 9:30 a.m.

***

[14]

EXAMINATION **[15]**

BY ATTORNEY BROOKS:

Q. Doctor Safer, good morning. I want to first put in front of you your expert report and your rebuttal report so that you have those if at any point you want to refer to them. It looks --- for convenience let's mark those as Exhibit 1 and 2 for the deposition.

ATTORNEY TRYON: Roger, one moment. I'm looking at the realtime, and it's recording you as Attorney Capehart. So I don't know if that needs to be corrected now. And it's showing me as Attorney Hartnett.

ATTORNEY BROOKS: She will get that fixed and the record will be correct.

ATTORNEY TRYON: Okay.

(Whereupon, Exhibit 1, Report of Dr. Safer, was marked for identification.)

(Whereupon, Exhibit 2, Rebuttal Report of Dr. Safer, was marked for identification.) ---

ATTORNEY BROOKS: And at the moment I'm handing copies to the witness. And I would like to mark as Safer Exhibit 3 a short article entitled Fairness for Transgender People in Sport by Joshua Safer. **[16]**

ATTORNEY WILKINSON: Tab 82.

(Whereupon, Exhibit 3, Fairness for Transgender People in Sports Article, was marked for identification.)

ATTORNEY BROOKS: And the court reporter will hand the stamped copy to the witness; am I correct?

BY ATTORNEY BROOKS:

Q. And Doctor Safer, I will ask you questions if you go about your expert reports but let me ask you now to focus your attention on Exhibit Number 3. Am I right that this is an article that you have just very recently published?

A. Yes.

Q. When did this come out?

A. This came out within the past few weeks I think.

Q. And this is not a recording of the original research. This is a two page piece simply explaining current issues to the readership of this journal?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So this is not original research, that's correct.

ATTORNEY BROOKS: Thank you. **[17]**

BY ATTORNEY BROOKS:

Q. How would you describe the purpose of this article?

A. The purpose of this article is to educate endocrinologists, frame the issues and also serves a bit as a charge to endocrinologists in terms of work that needs to be done.

Q. Thank you. If you look at the first column of the first page, in the third paragraph you will see it begins a possible tension exists because of the observation that on average cisgender boys and men have better performance outcomes in athletics than do cisgender girls and women. Do you see that language?

A. I do.

Q. And you are referring there to the general observation that natal males have better average athletic

performance than natal females in a variety of measures. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So I guess I need to be more specific or I can clarify.

BY ATTORNEY BROOKS:

Q. If you would be more specific. **[18]**

A. So cisgender men at a certain age have better sports outcomes than cisgender women.

Q. But you wrote in this just published article that cisgender boys and men have better performance outcomes than the cisgender girls and women. Correct?

A. That is correct.

Q. And what did you mean in that statement by your reference to boys and girls?

A. Boys and girls who are basically --- it depends, it's context I guess. So boys and girls who are developed to that point.

Q. So those --- what you had in mind are boys and girls, once the puberty process begins in males in particular?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Yes, I guess I would say that what we know is what is towards the end of puberty and subsequent development beyond puberty.

BY ATTORNEY BROOKS:

Q. You say in the next sentence --- well, let me just clarify, you accept as a scientific fact the general observation that, on average, boys and men, defining boys

as you just did, have significantly **[19]** stronger athletic performance in a variety of metrics than girls and women as you just defined girls; correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So I guess how I would say that is I accept as fact that men and boys who are appropriately developed have, yeah, have bad performance outcomes in certain sports than do cisgender women and cisgender girls again appropriately developed.

BY ATTORNEY BROOKS:

Q. And the next sentence reads the performance difference has resulted in the establishment of female only divisions for sport participation for girls and women and safely compete in the live events, closed quote. Do you see that language?

A. I do.

Q. And there you were, am I correct, explaining the relationship of your observation about male performance with the existence in our society of sex-separated sports.

Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So I guess --- I would think the way I would say it myself is this is a --- this is the reason why we have the carve-out for the **[20]** female category.

BY ATTORNEY BROOKS:

Q. And one reason is to give cisgender girls and women an opportunity to, quote, reliably win events.

Correct?

ATTORNEY BLOCK: Objection.

COURT REPORTER: I'm sorry, Counsel, I can't hear you.

BY ATTORNEY BROOKS:

Q. One reason, according to what you've written in this article, that there have been a carve-out in a separate female division is to provide girls and women with opportunities to, quote, reliably win events, closed quote.

Correct?

A. So I guess the way I would say it is if we are going to be really careful with the language here that it would be on average to reliably win events, that is --- yeah, I will leave it at that.

Q. Certainly not every girl and women is going to win events, as I know as a male who never won an event?

A. Exactly.

Q. And another reason, according to this sentence that you wrote, for having a separate category for girls **[21]** and women is so that they can, quote, safely compete. Correct?

A. The word safely in that context is kind of --- accentuates reliably.

Q. And you wrote in the next sentence that, quote, the female-only divisions are a major factor to encourage greater participation of girls and women in sports with a goal of equal participation rates. Do you see that language?

A. I do.

Q. And can you explain to me what you understand or what you were trying to explain as the relationship between having a separate female category on the one

hand and encouraging greater participation by women and girls on the other?

A. Some of the goals of the people who are in sport who organize sport are to get as high fractions of the population to participate as can be encouraged to do so for sheer health of those individuals and then of everybody. And so the purpose of the carve-out then in these circumstances is to encourage girls and women to participate in larger numbers than they might otherwise.

Q. And do you have an opinion, do you have an expert opinion as to whether the existence of separate **[22]** categories for female sports has in fact been a, quote, major factor in encouraging greater participation by women and girls in sport?

A. I don't have an expert opinion.

Q. You don't know whether that is objectively true or not?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I don't --- right, I can't state as an expert on the details of that subject, that's right.

BY ATTORNEY BROOKS:

Q. On the second column, in the --- the first full sentence begins many hormone related. Do you see that?

A. Yes, I do.

Q. Let me read that sentence into the record. Quote, many hormone-related physical characteristics acquired during puberty are not reversed if hormone levels are changed later in life. Can you tell us what physical characteristics associated with typical male development are in your opinion not reversed if hormone levels are changed later in life?

A. Again, so I don't know that I would off the top of my head give an exhaustive list but a classic would be height. **[23]**

Q. Would you --- I understand your list may not be exhaustive, but let me ask you to tell us all the examples as you're able to sit here thinking today of physical characteristics acquired during male puberty that are not reversed if hormone levels are changed later in life.

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I don't know that I could --- I don't know that I would want to accidentally go down that path and conjecture too much, but if I'm expanding a bit on height and thinking about bone characteristics, especially there might be modest change but significant residual bone would be the biggest example. And some other elements --- I can't even say I was about to say a bit proportional, but it's more complicated than that, so other --- other tissues partly influenced by that fact.

BY ATTORNEY BROOKS:

Q. If we jump down to the next paragraph it begins, quote, the questions arise most with transgender women who began hormone treatment after puberty. And then it continues, quote, the situation includes most transfeminine people because it is most common to undergo endogenous puberty prior to seeking medical **[24]** interventions appropriate to gender identity. Have I read that correctly?

A. Yes.

Q. And is it consistent with your experience that most natal males who seek what you refer to as gender confirming treatment do so after experiencing at least most of the ordinary male puberty?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Yes. So just terminology, just to be clear, so people who are recorded male at birth who are looking for gender affirming is the term but gender confirming is fine. And sorry, the question there?

BY ATTORNEY BROOKS:

Q. I will ask it again. Is it consistent with your personal experience that most natal males who seek gender affirming treatment present after undergoing at least most of a natural male puberty?

ATTORNEY BLOCK: Same objection to terminology.

THE WITNESS: Yes. So most transgender women who come seeking medical treatment have gone through a typical male puberty, that is correct, right now. **[25]**

BY ATTORNEY BROOKS:

Q. And in your clinic most of them have gone through what you would consider to be a complete male puberty process?

A. I can't answer that completely because we define puberty in this narrow way with the Tanner stages, but then people continue to have development even beyond that to a significant degree.

Q. But they have experienced, in your professional experience, at least the bulk of the pubertal changes?

A. Yes, I mean the --- I guess --- the way I would say it is, is that most of the transgender women who are coming or even girls who are coming for medical attention have gone through the classic Tanner stages of puberty through Tanner five, which is the last one, by the time they have determined that they're interested in gender-affirming treatment, yes.

Q. And let's go back to the very first paragraph of your article in which you mention about five lines down, quote, concern for possible residual athletic advantages from a history of typical male puberty, closed quote. Do you see that language?

A. Let me find it. Where is it?

Q. It's about five lines down on the very first **[26]** paragraph of the article.

A. Oh, the middle of the sentence, exactly.

Q. And so in your opinion, it is concern for possible residual athletic advantages from a history of typical male puberty that drives a great deal of concern about how to address inclusion of natal males who experience a female gender identity in female athletics. Am I correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the concern about the residual impact of testosterone during puberty for transgender women who went through a typical male puberty is the source of --- right, is a source of tension at a medical sensitive level, yes.

BY ATTORNEY BROOKS:

Q. And that's an issue that, for instance, you engage in extensive discussions about in connection with your service on the committee for the IAAF. Am I correct?

A. So the --- right, the conversation at World Athletics now, but formerly IAAF, has dealt and I'm sure will continue to deal with that which is the question of to what degree are some of those characteristics, a cause for relevant athletic advantage. **[27]**

Q. And in your opinion, concern about possible residual athletic advantages resulting from a history of typical male puberty is legitimate concern. Right?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Right. I don't know that I'm as an expert commenting on its legitimacy. My role on the committee is talking about what is.

BY ATTORNEY BROOKS:

Q. Do you have any expert opinion as to whether concern for possible residual athletic advantages from a history of typical male puberty is a legitimate concern?

A. I'm sorry. Say that again.

Q. Do you have any expert opinion as to whether concern for possible residual athletic advantage from a history of a typical male puberty is a legitimate concern?

A. I don't know that I would --- again, I don't know that I'm an expert on what is legitimate or not. I come into the room as the scientist talking about what is true and what is not true, what do we know and what do we not know.

Q. So on the question then after the science has been put on the table as to how to balance that with **[28]** other considerations of fairness, of inclusion, that is not your expertise is what you are telling me?

A. That is right, that is not my expertise.

Q. If we go to page two, in the first column, the second full paragraph begins because testosterone. Do you see that paragraph?

A. I do.

Q. And you discuss there World Athletic requirements, that is the former IAAF I believe you just testified?

A. Yes.

Q. And the World Athletics has adopted a requirement to suppress testerone (sic) to five nanomolar per liter testosterone. Correct?

A. World Athletics threshold is five nanomolar per liter for those sports where they have a threshold. That's right, yes.

Q. And at least formally the International Olympic Committee had a ten nanomolar threshold as part of what you would call out in this paragraph. Is that correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Yes. So it was the case **[29]** that the International Olympic Committee Medical Group was trying to form a unified approach just for purposes of organization. And at that time a ten nanomolar per liter suggestion was put out. And that is about as far as it got because it then was shifted to all of the individual international federations.

BY ATTORNEY BROOKS:

Q. You say in the final sentence of that paragraph, quote, such thresholds are considered to be fair to transgender women because they are well above the 1.7 nanomolar per liter target testosterone threshold in medical treatment guidelines, closed quote. Do you see that language?

A. Yes.

Q. Am I correct that in your professional understanding the 1.7 nanomolar per liter target is set

because that's generally believed to be at the upper range of testosterone levels in normal, healthy females?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the 1.7 nanomolar per liter target is the upper level for adults cisgender women.

BY ATTORNEY BROOKS:

Q. And with that clarified, can you explain to me **[30]** what you meant by the sentence that I just read, what the point is there?

A. The point of the sentence is to --- I guess there are a couple of considerations in terms of determining these numbers, but --- so part of the point is to identify numbers that are feasible for transgender women on their medical treatment.

Q. Is there some other point to this sentence in your understanding as it is offered?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the sentence references that piece, but there is the additional context of having a number that is fair to the greater female committee cisgender and transgender too.

BY ATTORNEY BROOKS:

Q. So it's fair in your judgment to transgender women because the threshold that is being set gives, what should we say, plenty of buffer above what is considered to be the upper range of normal female testosterone levels?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Right. So I'm not taking a position on what is fair to be clear.

BY ATTORNEY BROOKS: **[31]**

Q. Thank you.

A. But the concept of those in the room making that distinction felt that this cutoff would be fair because there would be, indeed, create some buffer and, therefore, people who weren't perfectly at goal would still be included.

Q. So because this may be important, let me clarify, when you wrote such thresholds are considered to be fair, you were not offering a personal opinion about fairness but explaining the judgment that had been made by this committee about fairness?

A. That's correct.

Q. Thank you. And did it cause you personally any concern that the threshold --- that because the threshold that was set was more than three times higher than the upper bounds of testosterone concentrations in normal healthy women, that that might be unfair to the broader population of cisgender women?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So to be clear, I'm not rendering an opinion as an expert on what is fair, but I can interpret the considerations of people having these conversations. And so while it is true that the laboratory range for testosterone for healthy cisgender **[32]** women has an upper limit of 1.7 nanomolar per liter, there are cisgender women who, for a variety of reasons, have numbers higher than that and so that and --- so that is part of the consideration.

BY ATTORNEY BROOKS:

Q. Let me take you to the two paragraphs below that

to the paragraph that begins the societal priorities. Do you see that paragraph?

A. I do.

Q. The last sentence of that paragraph reads if advantage from testosterone is demonstrated, does society want to implement rules that may indirectly coerce transgender children to begin medical regimens prior to their being ready and that they might never actually choose otherwise, closed quote. Do you see that language?

A. I do.

Q. Would you explain to me the concern that you are expressing there?

A. If a societal goal --- and again here recognize I'm not acting as an expert in this space, but I'm to explain to my colleagues what people are discussing. And if our concern is increased participation in sport by various people, then you can **[33]** envision a circumstance where some girls farther along in puberty have a testosterone advantage that could be demonstrated. Again, not that we even have at this point. And then we would be faced with that question, which is that competing goal of making those transgender girls participate in sports and a recognition if they are sufficiently far along in their development that they may have an advantage if we demonstrate such an advantage.

Q. Let me see if I can break that out. Were you talking here about a concern about a hypothetical rule that says to a natal male who identifies as female that you may play if you have suppressed testosterone --- you may play if you have taken puberty blockers at an early age but you may not play if you have not taken puberty blockers from an

early stage? Is that the hypothetical structure that you were addressing in this sentence?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the --- it is a hypothetical and it would be that if we make a specific testosterone lowering rule at a scholastic level, might we run into a circumstance where we are encouraging somebody to make medication who might not otherwise take that medication. **[34]**

BY ATTORNEY BROOKS:

Q. And staying away from questions of fairness and speaking from what I think is a medical ethics perspective, would you think it raises ethical problems if society were to adopt a rule that permitted certain individuals to compete in female athletics if they had taken puberty blockers but did not permit them to compete with the athletic if they had not taken puberty blockers?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I think that's beyond where I'm commenting as an expert witness. Some of that decision is a society decision or for other experts.

BY ATTORNEY BROOKS:

Q. Do you consider yourself to have some expertise on medical ethics?

A. Not as an expert.

Q. And you don't feel able --- you don't have any opinion as you sit here today as to whether a policy that created incentives for children to begin medical regimes relating to gender transition could raise medical ethical concerns?

A. Not as a medical expert, that's right.

Q. In the next paragraph --- and I think we said **[35]** this is just out in the last couple of weeks, this publication. Right?

A. It's very fresh. Number five, so yes.

Q. I'm not playing memory games. It says at the top advance access publication 17 March 2022?

A. Good.

Q. So very recent?

A. Yes.

Q. And you believe you are reasonably current in the science of this area?

A. I am reasonably current, indeed.

Q. I didn't ask if you know it all because nobody knows it all, but you say at the beginning of this paragraph much remains unknown scientifically. And you continue, quote, for example, at what point in puberty is advantage from testosterone significant. Is there a point where such advantage would outweigh a priority to outweigh all participants --- all to participate in sport of some sort, closed quote. Do you see that language?

A. I do.

Q. And actually the point in writing the second sentence there --- strike that. **[36]** Let me just ask this in general. Do you have an opinion as to how much of a performance advantage would count for those --- for natal males versus natal females, how much of a performance advantage would be, quote, significant?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I do not have an opinion.

BY ATTORNEY BROOKS:

Q. And in your view, is that even a scientific question?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Let me think. No, that isn't a scientific question.

BY ATTORNEY BROOKS:

Q. And you --- and the next sentence is there a point where an advantage, such an advantage would outweigh a priority to motivate all to participate. Am I correct that you also don't consider that to be a scientific question?

A. That is correct.

Q. That is a value judgment?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So it's not a scientific question. I can go a little more in --- I can expand a **[37]** little bit there which is to say that we have various advantages and degrees of unfairness. So what could be a scientific question, if we knew the answers, would include the degree of advantage for some circumstance versus another circumstance where we are able to measure those things.

BY ATTORNEY BROOKS:

Q. But the question of whether an advantage on the one hand outweighs a desire to be inclusive on the other hand is a value question, not a scientific question?

ATTORNEY BLOCK: Objection to form.

BY ATTORNEY BROOKS:

Q. In your opinion.

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So I guess I would just go back to saying how I said it, which is the scientific question in there would be to provide that degree of difference and show, for example, that this would be --- this is small advantages versus someone that we are already do in society as big advantage and that would be how --- that would be the role of the scientist.

BY ATTORNEY BROOKS:

Q. I understand that's what you would like to say, but my question for you is, in your opinion, is the next [38] step of deciding of whether that advantage which has now been scientifically detailed outweighs a priority to motivate all to participate is a value decision.

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Yeah, I don't --- I guess I can't as an expert say for certain that in all circumstances that is a value to consider.

BY ATTORNEY BROOKS:

Q. You continue among your lists of things that are, quote, unknown scientifically, quote, for those who have completed puberty, what duration of testosterone-lowering treatment is sufficient to create a level playing field in a given sport, closed quote. Do you see that?

A. Yes.

Q. And in your view, the question of what duration of testosterone lowering treatment, if any, can be sufficient to create a level playing field in a given sport is currently unknown scientifically?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: It's unknown scientifically across virtually all sports. What duration of testosterone

lowering raises what degree of advantage. It's just at that level. To go to the level playing **[39]** field is a whole further tier.

BY ATTORNEY BROOKS:

Q. And in your final paragraph I think you said at the beginning that, in part, this was a call to the field of endocrinology for needed research. In the final paragraph you say, quote, we in the endocrine healthcare community have much work to do to create an evidence base to help guide decision makers so the choices for transgender women in sport are data driven, closed quote. Have I read that language correctly?

A. Yes.

Q. So it's your view as of 2002 that the data that we have available today are insufficient to enable data driven choices about transgender participation in female athletics. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I would say that in 2022 we have insufficient data to --- how would I say this, we have insufficient data to make rules for, let's say, transgender women, mostly talking about older more developed people, that would address these concerns for participation. **[40]**

BY ATTORNEY BROOKS:

Q. Let me ask you to find your initial expert report, which is Exhibit-1, and there I will ask you to turn to paragraph 58. At the beginning of paragraph 58 you wrote in this report executed on January 21, 2022, which is two months prior to the publication date of the article we just looked at --- and actually, let me pause and ask you, when did you write the article that we just looked at? And the

process always grinds on for a little while. When do you think you substantially completed the task?

A. I honestly don't remember.

Q. Sorry. The question was when do you think you substantially wrote the text in the article that you just looked at?

A. I honestly don't remember the details. We can talk in years, so it would be 2022 and back into 2021.

Q. Okay. So about the same time that you were preparing this expert report?

A. There certainly would be some overlap.

Q. You wrote in paragraph 58, quote, even if evidence were eventually to show that on average transgender women have some level of advantage compared **[41]** to average non-transgender women, closed quote. Do you see that language?

A. I do.

Q. Now, in fact, you are aware of substantial evidence that, on average, transgender women do have some level of advantage compared to advantage non-transgender women. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: No, I'm not. So that isn't my statement.

BY ATTORNEY BROOKS:

Q. And is the question --- so you served on the IAAF Committee discussing questions of testosterone levels. And in that context you did not become acquainted with data showing that on average transgender women have

some level of advantage compared to average non-transgender women?

A. Not in --- so, no. In the context of specific sports, no.

Q. Do you consider the question of how much advantage natal males have over natal females in particular sports to be within your professional expertise? **[42]**

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So sorry --- so cisgender men versus cisgender women, that difference at an adult level, is at my expertise to know that degree of difference? Is that the question?

BY ATTORNEY BROOKS:

Q. It is.

A. No, that is not my expertise.

Q. And is it within your expertise to know the level of advantage enjoyed by natal males who have transitioned to female gender identity over cisgender women in any particular sport?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So in the --- so if we are talking cisgender women versus transgender women, it would be in my expertise to know what data we have on this subject, which is different from knowing the degree of difference because we don't have those data.

BY ATTORNEY BROOKS:

Q. You say in paragraph 60, let me find this, quote, there is no inherent reason why transgender women physiological characteristics related to athletic

performance should be treated as any more of an unfair advantage than the advantages that already exist among **[43]** different women athletes. Do you see that language?

A. I do.

Q. Now, earlier you told me rather emphatically that the question of fairness is outside your professional expertise. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: It is outside my expertise.

BY ATTORNEY BROOKS:

Q. So why did you offer here an opinion about what is fair or unfair?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Right. So I'm not determining the fairness per se as an expert, but I'm simply talking about the inputs where somebody who is determining what is fair --- where somebody is determining what is fair would consider.

ATTORNEY BROOKS: Let me mark as Safer Exhibit 4 an article by Professor Handelsman entitled Circulating Testosterone on a Hormonal Basis of Sex Differences in Athletic Performance.

(Whereupon, Exhibit 4, Professor Handelsman Article, was marked for identification.) **[44]**

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? **[45]**

A. If that question is as an expert I can't --- I won't comment, but he certainly has published widely and we quote him.

Q. What do you mean by we in that answer?

A. The rest of us in the field and I certainly quote him in an expert opinion.

Q. All right. And this article in particular we note you widely reference?

A. This article is --- yeah, I think that is actually a fair thing to say. It is as widely referenced as anything in a relatively small field.

Q. Let me ask you to turn to the second page of this article where Professor Handelsman in the first full paragraph --- the second full paragraph begins nevertheless. He says, quote, fairness is an elusive subjective concept with malleable boundaries that may change over time as social concepts of fairness evolve. Do you see that?

A. I do.

Q. Do you agree with that statement?

A. As an expert I can't comment.

Q. You don't purport to be able to give any definition of fairness? **[46]**

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Yes, not as an expert.

BY ATTORNEY BROOKS:

Q. And you don't have any opinion as to whether

standards of fairness can change over time?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I'm aware of the conversation on the subject, of course, but if you are asking me to comment as an expert, then no.

BY ATTORNEY BROOKS:

Q. If the actual evidence shows that the actual scientific data were to show that, quote, on average transgender women have, closed quote, a very large advantage compared to average non-transgender women, would you then have any view as to whether permitting non-transgender women to compete in female categories is fair?

ATTORNEY BLOCK: Objection to form. I'm sorry, what's the quotation?

BY ATTORNEY BROOKS:

Q. If actual data were to show that on average transgender women have a very large advantage compared to non-transgender women, then would you have any opinion as to whether it is fair to permit the **[47]** transgender women to compete in the female category?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: No, that would not change. I would simply as an expert I would talk about those degrees of difference as information.

BY ATTORNEY BROOKS:

Q. But you would offer no opinion as to whether permitting the participation in the female category was or was not appropriate?

A. I would not offer an expert opinion. That's right.

Q. Now, you say in paragraph 60 of your expert record that there is, quote, no inherent why transgender women's physiological characteristics related to athletic performance should be treated as any more of an unfair advantage than the advantages that already exist among different women athletes, close quote. We have looked at that language. Correct?

A. You are reading that correctly.

Q. Thank you.

A. Whatever the question is.

Q. No question beyond that so far. And your point I take it is that for any given sport some women just **[48]** have substantially more favorable physiques than others?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Right. So for any given sport some women have advantages relatively to others, yes.

BY ATTORNEY BROOKS:

Q. And in basketball some are simply genetically going to be substantially taller than others?

A. In basketball some are taller than others, yes.

Q. I'm not speaking for you, I, at 5'8", in my shoes for instance was --- am just physiologically disadvantaged for basketball compared to a man who is 6'10"?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So as an expert I actually wouldn't go there because there are other characteristics in basketball per se.

BY ATTORNEY BROOKS:

Q. That's true, although I have none of them. But is it, in your view, equally true that there is no inherent reason why cisgender men's physiological characteristics related to athletic performance should be treated as any more of an unfair advantage for competing in the women's category than the advantages **[49]** that already exist among different women athletes?

A. So yeah, let's go through this more slowly a second so I'm clear.

Q. All I did was substitute cisgender men for transgender women in that sentence. And my question is doesn't your argument as stated there apply exactly with equal force to cisgender male?

A. No.

Q. Why is that?

A. When we talk about --- when we're talking about a range of characteristics among a range of people versus something that might be systematically true or not and so it just --- so the answer just ends up being more complex.

Q. Well, you have testified that most natal women --- pardon me, you testified that most natal males with female gender identity have undergone at least the majority of male puberty before they present for gender affirming treatment. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So most cisgender women when they come to medical attention have gone through a significant puberty, the five Tanner stages. **[50]**

BY ATTORNEY BROOKS:

Q. And just to clarify, to use your terms, in giving that answer you said cisgender women. That is not what you meant. Correct?

A. That is not what I meant, thank you. Transgender women.

Q. And therefore, they systematically have gone through --- systematically gone through physiologic changes associated with male puberty?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the --- so they --- they have gone through male puberty. And there is something on average that may be true there, but whether that relates to an advantage in a specific sport I can't go there.

BY ATTORNEY BROOKS:

Q. Well, the example that you gave earlier of a systematic difference resulting from male puberty that

these transgender women enjoy is height, that is you mentioned that earlier. Correct?

A. Uh-huh (yes).

Q. So again, let me ask, given that according to **[51]** your testimony and experience the substantial majority of transgender women have undergone most of male puberty, why is it not equally true that there is no inherent reason why cisgender men's physiological characteristics related to athletic performance should be treated as any more of an unfair advantages than the advantages that already exist among different women athletes?

A. So if I'm following this correctly then it's --- 10 then the answer to the question why are cisgender men different than transgender women?

Q. Why does this logic apply differently to the cisgender men than to the transgender women?

A. So let's see. It actually doesn't. So if you have a sport where that --- where the advantage or --- for the --- where a known advantage for cisgender men versus cisgender women was sufficiently modest, and again, I wouldn't be the judge of that, but you could envision that becoming a coed sport.

Q. Are you offering an opinion that either government or leagues have an obligation to do an individual by individual assessment as to whether a particular natal male who experiences a female gender identity does or does not enjoy a physiological **[52]** advantage in the sport they wish to play in as a result of typical male development that they had gone through?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Right, I'm not offering an opinion. It was a long question.

BY ATTORNEY BROOKS:

Q. Would you like to hear the question back?

A. Sure, but I'm not offering an opinion on several aspects.

ATTORNEY BROOKS: Would you read that question back, please?

(COURT REPORTER READS BACK PREVIOUS QUESTION.)

BY ATTORNEY BROOKS:

Q. And your answer is?

A. So I'm not offering an opinion. I should expand a bit because how that question was phrased as an individual by individual person and most of these rules are across a group of sports.

Q. And my question was about an individual person.

A. Your question was an individual person, but - - -

Q. Right. Looking at your paragraph 60, again, do you believe there is --- are you offering an opinion --- **[53]** let me start that again. Are you able to identify for me any inherent reason why a relatively weak or small or slow male --- strike that. You referenced in your report and also the article we just looked at the IAAF regulations that excluded from the female category any individual who has circulating testosterone higher than five nanomolar per liter. Do you recall that?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So just to clarify, it is not --- that rule for five nanomolars is not across all sports.

BY ATTORNEY BROOKS:

Q. And which sports in your recollection did that apply to?

A. Yeah, that's --- I don't remember off the top of my head.

Q. At the very least it applied to track events. Correct?

A. It does. But if you start to quiz me on the specific distances, I won't get that.

Q. And nor will I so quiz you. And that requirement as applied to track competition was, in fact, the subject of a major international arbitration, **[54]** as you're aware. Correct?

A. If we're referencing the Caster Semenya case, yes.

Q. Did you yourself have any participation in that arbitration?

A. I did not.

Q. Do you know whether Doctor Handelsman had any participation in that?

ATTORNEY BLOCK: Objection.

THE WITNESS: I don't know off the top

off of my head.

BY ATTORNEY BROOKS:

Q. Have you ever read the arbitrarial decision in that case?

A. I'm certain I read excerpts, but that is as much as I could say.

Q. Okay. You participated in developing on the --- a member of the committee that developed the regulation that you've referenced, the 7.5 nanomolar threshold?

A. I was on the committee that helped determine that particular threshold conceptual, yes.

Q. And you're aware that in addition to individuals **[55]** such as Caster Semenya, who suffered of a disorder of sexual development, that that rule would exclude some transgender women from female athletics that were subject to that IAAF rule. Correct?

ATTORNEY BLOCK: Objection to the terminology.

THE WITNESS: So I was aware that by setting a threshold that there --- and even that threshold in particular, that there would be transgender women who would not achieve that threshold for whatever reason.

BY ATTORNEY BROOKS:

Q. And did you nevertheless consider the regulation to be reasonable?

A. If you are asking me as an expert, then again I can't comment.

Q. Well, let me just ask you as Doctor Safer.

A. Am I allowed to ---?

ATTORNEY BLOCK: Objection to form.

BY ATTORNEY BROOKS:

Q. You are allowed.

A. Okay. So having a rule does make sense to me, yes. **[56]**

Q. And you thought that that rule was reasonable?

A. As with the data we have currently, yes, personally.

Q. And what, in your opinion, is the inherent reason that advantages conferred by testosterone levels far outside the normal female range should be treated as any

more of an unfair advantage than the advantages that already exist among different women athletes?

ATTORNEY BLOCK: Objection. I'm sorry. Can you clarify as an expert or as an individual just because you shifted back and forth?

BY ATTORNEY BROOKS:

Q. First as an expert.

A. So yes --- give me the question again. I'm sorry.

Q. What, in your opinion, is the inherent reason that advantages conferred by testosterone levels outside the normal female range should be treated as any more of an unfair advantage than the advantages that already exist among different women athletes?

A. So to clarify we --- so, okay, let me go back. Let me answer in pieces I guess or ask you to say it in pieces. So what is different between typical male levels of testosterone in an individual and some other **[57]** characteristics that are across the range of characteristics of cisgender women? Is that the question? Am I rephrasing that correctly?

Q. I'm actually referencing paragraph 60 of your expert report, but my question --- and let's take for instance, a natal male who has press testosterone but only achieved six nanomolar per liter concentration, do you have that concentration, do you have that in mind?

A. A transgender woman whose testosterone level is six.

Q. Right. What in your opinion is the inherent reason that advantages conferred by testosterone levels above a threshold such as five nanomolars should be treated as

any more of an unfair advantage than the advantages that already exist among different women athletes?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So a couple of things. First of all, I don't know that a testosterone level of six is from a scientific perspective demonstratively different than a testosterone level of five. It's just a matter of affecting it overall. So I want to clarify that. It's not that --- that that small degree is necessarily relevant. And I can't even say that we [58] demonstrated advantage. It's still a theoretical with regard to some of those higher testosterone levels. Let me think about those for a second. Yes, so some of the logic pattern for having a threshold is in order to be able to limit the entire conversation to dealing with transgender women or women with --- or intersex women or women who for any reason have have elevated testosterone levels and not to open the door at the elite level for a participation by cisgender men posing as cisgender women if that makes sense.

BY ATTORNEY BROOKS:

Q. Is there, in your judgment, any inherent reason that advantages conferred by testosterone levels well outside normal female ranges should be treated as any more of an unfair advantage than the advantages that already exist among different women athletes?

A. So I have to go back to that one. Is it my opinion that male level testosterone levels ---?

Q. Let me --- my question is testosterone levels significantly above normal female ranges?

A. Are --- then no, sorry. It took me a little while to get there, but no.

Q. Because the question was complicated and the answer was broken up I will ask you again, not to insult **[59]** you but so we have a clear record. I think I understood your answer but is there, in your opinion, any reason why advantages provided by testosterone level well outside normal female ranges should be treated as any more of an unfair advantage than the advantages that already exist among different women athletes?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: And as an expert I'm not rendering an opinion there, that's right.

BY ATTORNEY BROOKS:

Q. Okay. In paragraph 55 of your ---.

ATTORNEY BLOCK: Would now be a good time

for a break?

ATTORNEY BROOKS: Let me just ask this

one question and then yes.

BY ATTORNEY BROOKS:

Q. In paragraph 55 you cite a 2015 article by Joanna Harper?

A. I do, yes.

Q. Have you ever met Joanna Harper?

A. I have.

Q. And have you collaborated with Joanna Harper in any way? **[60]**

ATTORNEY BLOCK: Objection to the form.

THE WITNESS: Yeah, I don't, but I guess --- it's a complicated answer, so I need to know what you mean by that.

BY ATTORNEY BROOKS:

Q. I mean it broadly. Have you worked with her on any sorts of projects or committees?

A. Well, we were both in the working group for World Athletics that helped develop this threshold.

Q. And do you consider Doctor Harper to be knowledgeable in the field of sports physiology?

A. I do.

Q. And do you consider Doctor Harper to be knowledgeable with regard to the impact of testosterone suppression on athletic capabilities in male?

A. So do I consider her to be knowledgeable in the field? I certainly do. For what it's worth, she is still Ms. Harper. She's actually in the Ph.D. program now.

Q. Oh, okay. I just gave her an honorary degree.

A. She occupies a prominent place in the field.

ATTORNEY BROOKS: Let's take that break.

VIDEOGRAPHER: Going off the record. The current time is 10:25 a.m. Eastern Standard Time. **[61]**

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record.

Current time reads 10:39 a.m. Eastern Standard Time.

BY ATTORNEY BROOKS:

Q. Dr. Safer, let me ask you to go back to Exhibit 4 Professor Handelsman's article. And if you would turn in that article to page 805, the first paragraph begins the strongest classification in a league sport is that after puberty men 20 times more testosterone than women.

Do you see that language?

A. I do.

Q. And he discusses a number of results and ends his paragraph by saying in concert --- quote, in concert these render women on average unable to compete effectively against men in power based or endurance based sports.

Do you see that?

A. I do.

Q. And do you consider yourself qualified to evaluate Professor Handelman's assertion that women are **[62]** on average unable to compete effectively against men in power based or endurance based sports?

A. No.

Q. Not qualified?

A. Not qualified, correct.

Q. Do you believe you have an understanding --well, let me ask you this. Do you consider yourself qualified to offer any opinion as to why sports have been separated by sex historically?

A. I guess I would say I'm aware of the history.

Q. And in your understanding what is the reason that sports have been separated by sex historically?

A. The history is that at a certain point where sufficient development has taken place there is a differential in at least some sports between men and

women --- between cisgender men and cisgender women such that in order for women to win those events reliably there needs to be a carve-out.

Q. And as you sit here today can you identify for me any sport in which you believe that cisgender men after puberty do not enjoy a significant performance advantage over cisgender women?

A. Yes.

Q. Please do. **[63]**

A. Examples include --- well, I guess I better not get too far and be the expert here, but I believe riflery and others in the category of hand/eye coordination. I think some of the equestrian sports are examples.

Q. Okay. You are not offering any opinion, are you, that

8 the reason for separation of sports by sex is to affirm sex specific social roles or identities?

A. I'm not aware of that. I'm not an expert on those pieces, but I'm not aware personally.

Q. And it is not your opinion, is it, that separation of sport by sex is in general unfair?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So again, as an expert I'm not commenting on fairness.

ATTORNEY BROOKS: I'm going to mark as Safer Exhibit 5, a Decision in the arbitral award delivered in the Court of Arbitration for Sport in connection with the arbitration between Athletic South Africa and the IAAF, a bulky document, unfortunately.

(Whereupon, Exhibit 5, Court of Arbitration for Sport Decision, was marked for **[64]** identification.)

BY ATTORNEY BROOKS:

Q. And Doctor Safer, now that you have --- I asked you earlier about whether you had seen the arbitration decision and I think you said you might have read excerpts of it. Looking at it today, do you believe that you have ever seen a copy of the whole Decision?

A. I do not think I've read through the whole Decision.

Q. Do you think you've ever held this whole document in your hand before?

A. This is the first time that I held the whole document.

Q. I'm going to ask you about a few quotations in it, not to ask your opinions about the judgment but to elicit your opinions about the science. So if you would turn --- and the structure of the document is that everything in it has a paragraph number which, thank goodness, makes it easy to find things. So if you would turn to paragraph 556. The first sentence of paragraph 556 of this Decision reads there is no dispute that ensuring fair competition in the female category of elite competitive athletics is a legitimate objective **[65]** for the IAAF to pursue, closed quote. As a member of the IAAF Committee that established the policy that was challenged in this arbitration, do you agree or disagree that there is no dispute that ensuring fair competition in the female category is a legitimate objective for the IAAF to pursue?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: As an expert I do not have an opinion.

BY ATTORNEY BROOKS:

Q. Okay. Let me ask you to turn to paragraph 456. And this arbitration, as you noted, deals with the case of Caster Semenya and therefore with track events, not with riflery or with equestrian events. So I will ask your reaction to that context. In the middle of paragraph 456, beginning halfway through the sixth line the panel wrote, quote, suffice to say that post puberty generally speaking males outperform female athletes --I'm sorry, male athletes outperform female athletes at an elite level. This difference is insurmountable, closed quote. Do you see that?

A. I do. **[66]**

Q. And do you believe it to be true, false or outside of your expertise that male athletes outperform female athletes at the elite level at a difference that is insurmountable?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: As a blanket statement, no, I would say that is not my expertise.

BY ATTORNEY BROOKS:

Q. Let me ask you to turn to 576. I said 576. I meant 577. I apologize. At the end of 577 the panel has written, quote, ---

ATTORNEY BROOKS: We just had static here, so let me ask whether people outside the conference room are hearing us? If somebody could unmute.

ATTORNEY TRYON: I can hear you.

ATTORNEY BROOKS: We just had some static that caused me concern.

BY ATTORNEY BROOKS:

Q. At the end of paragraph 577 the panel wrote, quote, male athletes do not have to be elite to surpass even the very best female athletes. Dr. Berman pointed out that in a race such as the 800 meter, a 1.6 percent advantage, as calculated in BG17, was sufficient to **[67]** determine first place by the region of nine meters, closed quote. Do you see that language?

A. Yes.

Q. And do you consider it to be true, false or outside your expertise that male athletes do not even have to be elite to surpass the very best female athletes?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: In a --- as a blanket statement it is outside my expertise.

BY ATTORNEY BROOKS:

Q. And do you have an opinion as to whether a 1.6 percent advantage is a significant advantage or insignificant advantage?

A. I think that's too complicated as phrased for me to answer.

Q. That's actually one of the simpler questions that I've asked today. Let me ask it again and ask you to think. Do you have an opinion, and if you --- one answer of course is I don't have an opinion or it is outside of my expertise, but do you have an opinion as to whether a 1.6 percent advantage in a track event is a significant advantage? **[68]**

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So it depends on the event.

BY ATTORNEY BROOKS:

Q. Why does it depend on the event?

A. Well, there are events where we see --- as an elite Olympic event where the runners are virtually tied. And 1.6 percent then will be significant in the moment because that will be described in that field. And yet there are other events where people are far more spread out and there's greater --- in every element, then 1.6 percent advantage becomes lost in that noise.

Q. And --- well, let's take competitive high school athletics, competitive high school track. Do you have an opinion as to 1.6 percent advantage in that context is significant or insignificant?

A. I do not have an opinion.

Q. So if I understand correctly, your point in some context you know that 1.6 percent is significant but that in other context you don't know one way or the other?

ATTORNEY BLOCK: Objection to the form.

THE WITNESS: Yes, I guess I would say that in some context I can see that 1.6 percent is significant and then in other context I can see that 1.6 **[69]** percent does not appear to be significant. And actually even if you're asking as an expert, what even is significant is outside my purview, but with that understood I can still see that someone would say it one way and not say it the other way.

BY ATTORNEY BROOKS:

Q. Let me ask you to turn to paragraph 357. And first I will ask you to turn to page 88, paragraph 351, just so you can see we're in a section summarizing the testimony of Professor David Handelsman. That begins at paragraph 351. And then I'm going to call your attention to paragraph 357 and it puts you to the statement there. 357 includes a number of bullet points. The third bullet

point, which is on page 91, reads --- and again this is --- the paragraph begins, quote, Professor Handelsman went on to explain in greater detail why the sex difference in circulating testosterone is the cause of the difference in athletic performance between men and women, and then there are bullet points. The third bullet point reads, on average, women have 50 to 60 percent of men's upper arm muscle cross-sectional area, 65 to 70 percent of men's thigh muscle cross-sectional area, 50 to 60 percent of men's limb **[70]** strength and 60 to 80 of men's leg strength. Do you see that language?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I do.

BY ATTORNEY BROOKS:

Q. Do you have any knowledge as to whether those statistics are on correct as given by Dr. Handelsman?

A. I do not.

Q. And do you have any expert knowledge as to how those statistics do or do not change under the influence of testosterone suppression in natal males who experience a female gender identity?

ATTORNEY BLOCK: Objection to terminology.

THE WITNESS: So I guess the --- I have no expert knowledge about these numbers, per se, but I do know as an expert that when testosterone levels are suppressed in transgender women and actually in cisgender men, anyone, that these numbers are decreased. And I can say that with confidence as an expert.

BY ATTORNEY BROOKS:

Q. But you're not able to quantify that decrease. Is that correct?

A. I cannot quantify that decrease. The data gets **[71]** murky when we start to get there.

Q. Have you ever met Professor Coleman at Duke University?

A. Doriane Coleman?

Q. Yes.

A. I have.

Q. And in what context have you interacted with Professor Coleman?

A. The --- a professional context.

Q. Can you describe the context?

A. We have served on some of these --- two of the same committees --- committee task force, whatever you call it, for World Athletics together.

Q. Was she, in fact, on the committee which you participated that set the five nanomolar standard for the IAAF?

A. I don't recall for sure but I think not.

Q. Then can you identify for me the two committees that you recall that you did sit on with Professor Coleman?

A. Subsequent to the initial group, and I don't know that it's two committees, it may be the same committee, they get renamed. Things like that happen. So it is --- I'm thinking forward to assisting other **[72]** international federations with their rule making.

Q. And do you consider Professor Coleman to be knowledgeable about the relative athletic capabilities and records of male and female athletes?

A. To me that's too vague a question. She's a lawyer.

Q. Are you aware also of her athletic background as a competitive athlete?

A. I am.

Q. And are you aware of her research and publications having to do with athletic records and capabilities of male and female athletes?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I'm aware of some of her publications where she has co-authored, but she's not usually the physiology expert in the group.

BY ATTORNEY BROOKS:

Q. Let me ask you to turn to paragraph 393. And if you look at the page you will see that this is within the tribunal summary of testimony of Professor Coleman. Let me ask you since you dealt personally with the professor, because I want the record to be respectful, does she in general use --- prefer to be referred to as Professor Lambelet-Coleman or simply Professor Coleman? **[73]**

A. I don't know the answer.

Q. Okay.

A. I prefer to her on a first name basis.

Q. All right. I will stick with the shorter version. In paragraph 393 the panel describing Professor Coleman's submission states, quote, Professor Lambelet-Coleman's report compared the lifetime best performance of three elite female athletes in the 400-meter event with the performance of male athletes in the same event during a single year, 2017, period. This showed not only that the elite females would have lost to the best men by a margin of about 12 percent but also that even at their absolute best the elite females would have lost to thousands of

other boys and men by a much smaller margin, closed quote. Do you see that language?

A. I do.

Q. And do you have any reason to doubt the accuracy of that summary of athletic performance statistics?

A. I can't render an expert opinion there.

Q. Do you as you sit here today have any reason to doubt the accuracy of those statistics?

A. Again, I cannot comment as an expert. I guess that's the bottom line. **[74]**

Q. If it is true that the most elite female athletes performing at their absolute best would lose to thousands of others boys and men. It is also true, would you not agree, that the very best female college athletes would lose to even a larger number of collegiate boys and men?

A. If I'm speaking as an expert, then I'm not rendering an opinion there.

Q. How about as a highly educated and intelligent professor?

A. Simply in that context, it would be true that --- that it would least be true at some level in the elite levels of college.

Q. And the very best female high school athletes would lose to an even larger number of high school boys. Correct?

A. So now I can render a little bit of an expert comment, which is that as you move down that line, the degree of difference falls because the degree of testosterone impact on body is evolving across those ages.

Q. If it's true that the world fastest female athletes would lose to thousands of boys and men then it is inevitably true, is it not, Doctor Safer, to say that **[75]** the very best female high school athletes would lose to even larger numbers of high school boys?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the --- it is the coils here. So it would be larger numbers of cisgender men in general, including people who are older than they are, but I'm not sure where that would be going.

BY ATTORNEY BROOKS:

Q. Let me take you back to your expert report, Exhibit 1, and take you to paragraph 48. Actually, let me have the Declaration, which is Tab 50.

ATTORNEY BROOKS: Let me mark as Safer Exhibit 6 a Declaration of Dr. Safer executed in May 10th, 2021.

(Whereupon, Exhibit 6, 5/10/21 Declaration of Dr. Safer, was marked for identification.)

BY ATTORNEY BROOKS:

Q. And I apologize, it's paragraph 50. Dr. Safer, did you, in fact, prepare and execute this Declaration in the time leading up to May 26, 2021?

A. Yes. **[76]**

Q. And you state in paragraph 48 that, quote, age, grade competitive sports records show minimal or no difference in athletic performance between non-transgender boys and non-transgender girls before puberty, and you cite Handelsman, the article that we have been looking at. Correct?

A. Yes.

Q. And what research did you do to arrive at the conclusion that age grade competitive sports records show minimal or no difference in athletic performance between non-transgender boys and non-transgender girls?

A. Is the question of original research on my part?

Q. No, what steps did you take to arrive at that conclusion?

A. Reading relevant literature.

Q. You cited only Professor Handelman's 2018 article. Did you read other literature that gave you comfort that is a true statement?

A. I have read other literature, but I would suggest that Doctor Handelsman gave --- Doctor Handelsman's paper is the best summary of the point.

Q. And again, in making this statement, what did you consider to be a minimal difference? **[77]**

A. When I'm thinking about this as a scientist it is a difference where I'm not sure if it is true or whether it is significant when defining the word minimum.

Q. You just defined minimal by using the work significant. You force me to ask you what do you mean by significant?

A. Sorry. So as a scientist --- well, there are two definitions of significant. So the one is that it is relevant for those --- for decision makers. And that actually gets outside of my expertise. And then we do use it as a term of art in science as well.

Q. You meant statistically significant?

A. The second would be statistically significant, that's right.

Q. Dr. Safer, you deleted that sentence from your expert report. Is that correct?

A. I have to look.

Q. I don't mean it to be a trick question. Let me ask you this. Do you recall removing that sentence as you revised your Declaration to create your expert report?

A. No. **[78]**

Q. All right.

A. I don't recall.

Q. We will just move on to the science and not ask you deleted the question. Let me take you to paragraph 44 of your expert report, Exhibit 1. And just to be sure, you are on the expert report now and not the Declaration? They are so similar that it is easy to get confused.

A. Yes.

Q. Paragraph 44 you say in the second sentence, increased testosterone begins to affect athletic performance at the beginning of puberty, but those effects continue to increase each year of puberty until about 18, with the full impact of puberty resulting from the cumulative effect of each year. Do you see that language?

A. I do.

Q. And just to clarify, in making this statement what do you refer to as, quote, the beginning of puberty? And we're talking about male typical puberty in this discussion so as to clarify. So what do you have in mind as the beginning of male puberty?

A. So the answer is complex. The typical male puberty is defined as beginning with what we label as **[79]** Tanner

2. And in terms of when you would see impact on athletic performance, per se, is not well established.

Q. And now stretching that in both directions, on the one hand Tanner Stage 2, if I'm correct, is essentially defined as certain first observable physical changes in a boy's body. Right?

A. Tanner 2 is specifically defined as specific observable changes in a person's body, yes.

Q. And therefore, testosterone levels have begun to increase even before the first observable changes that result. Correct?

A. The way it's understood in medicine is it is reflective of existing reality. So it is not necessarily --- you know, only in the absolute.

Q. Well, as a medical doctor, you would agree with me or would you not that testosterone levels must increase in the body before observable changes in the body caused by testosterone can be --- can come about?

ATTORNEY BLOCK: Objection to the form.

THE WITNESS: So it must be the case that the testosterone levels would have to rise prior to their having a noticeable effect, that is true. **[80]**

BY ATTORNEY BROOKS:

Q. Cause has to precede effect?

A. Cause in this case has to precede effect, exactly. But I caution that it is not clear that that's something that we could parse out medically in a given person in a reasonable way. That is I don't know that I could do a blood test and catch it as it were.

Q. Okay.Can you explain to me what you were referring to when you mentioned the cumulative effect of pubertal changes at the end of that sentence?

A. Where are we now?

Q. We are in the second sentence of paragraph 44 of Exhibit-1. And you say at the end with a full impact of puberty resulting from the cumulative effect of each year, and if you would explain for the Court what you meant by cumulative effect that would be helpful.

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the testosterone has impact on certain tissues, and then it continues to have impact on tissues. And I don't know that I have any greater explanation for the right cumulative impact.

BY ATTORNEY BROOKS:

Q. So your point is that by the age of 18 whatever **[81]** advantages in athletic performance a particular male has is due to body changes that have happened each year since puberty began, not due simply to the testosterone level of that individual at age 18?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: The meaning isn't as --- I guess I would be careful about overstating it, so there can --- there might be some impact earlier and then there might be additional impact over time, but --- and so in the absolute it would be true to say that all of the effect doesn't occur at Tanner 5, which is the defined end.

BY ATTORNEY BROOKS:

Q. Okay.The cumulative physiological changes that you are referring to here result from a multi-year history of male typical levels of testosterone by age 18. Correct?

A. Yes. Well, even that is --- there's complexity but yes.

Q. You say --- sorry, we are jumping back and forth.

A. Actually, just continuing a little bit further, it's also about age 18 is not a trivial word. [82]

Q. Understood. And I simply used that as a representative end marker and for some individuals it would be earlier and for some individuals it would be later. Correct?

A. That's right, even with the college athletes.

Q. You state at the beginning of paragraph 44 that, quote, the concerns that animated the World Athletics and prior IOC policies are even more attenuated for students in the middle of high school where athletes typically range from 11 to 18. Do you see that?

A. I do. Was this paragraph 44?

Q. It is. And by attenuated you mean the same in nature but smaller in scale. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Yeah, I can't even say that so --- yeah, I can't ---

BY ATTORNEY BROOKS:

Q. Isn't that what attenuated means?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Attenuated is both in scale and type in this case. [83]

BY ATTORNEY BROOKS:

Q. All right. You are not here or anywhere denying that the same type of concern, that is physiological advantages, exist at for instance age 15?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So sorry, say that again.

BY ATTORNEY BROOKS:

Q. You are not in this paragraph or anywhere offering an opinion that the same type of concerns, that is physiologic or in performance advantages, exist to some degree at, for instance, age 15?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I'm not offering an opinion there, that's right.

BY ATTORNEY BROOKS:

Q. And the same is true at age 13?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I'm not --- so I guess as we --- as you move along to the continuum, then ---.

BY ATTORNEY BROOKS:

Q. It gets more attenuated?

A. The opinion --- right, the opinion shifts because it depends on context. [84]

Q. In paragraph 49 of your expert report you write in the third full sentence, quote, West Virginia categorically prevents girls who are transgender from participating on girls teams regardless of whether they are prepubertal, receiving puberty blockers, or receiving gender-affirming hormone therapy, closed quoted. Do you see that?

A. I do.

Q. What in your opinion is the significance of that statement? What is your point?

ATTORNEY BLOCK: Objection. Could you just give him some time to read the context?

BY ATTORNEY BROOKS:

Q. Yes.

A. So I guess I maybe make the --- help me with where you're going with that question. I'm --- the rule as written includes all transgender girls.

Q. Are you --- did you mean to suggest that medical science would dictate that the West Virginia law should make an exception for natal males who have suppressed puberty?

ATTORNEY BLOCK: Object to form.

THE WITNESS: The context for the --- the context of different transgender girls with different [85] degrees of treatment and different stages of puberty are different. I guess that's as much I would say. I'm not expressing an opinion about what the --- I'm serving here just as a scientist in terms of what the --- what the --- what we know about athleticism.

BY ATTORNEY BROOKS:

Q. You are not offering an opinion that either science or reasonableness requires that West Virginia's laws make an exception for natal males who have suppressed puberty?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I'm not offering an opinion that that would be --- that would be a logical law for transgender girls in that circumstance.

BY ATTORNEY BROOKS:

Q. And in the article that we began today looking at you expressed concern about policies that would create incentives for children to begin puberty blockers, would you not?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So earlier in my --- I reference that as a concern. I want to be clear that as an expert I'm not suggesting that --- I'm not suggesting an expert opinion that these needs to be concerns. I'm **[86]** raising the issues that we are considering. BY ATTORNEY BROOKS:

Q. Well, what you wrote to educate your colleagues as an endocrinologist, you, Professor Safer, raise that as a concern?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: To be clear, I raised it as a concern of the community. I did not take an opinion in that article that it was a concern that I was offering as an expert.

BY ATTORNEY BROOKS:

Q. Well, let me ask you as a medical doctor sitting here today, an endocrinologist, it would cause you concern, would it not, that policies are adopted that created incentives for children to start puberty blockers when they might otherwise not choose to do so?

ATTORNEY BLOCK: Objection to form and to scope.

THE WITNESS: It's too broad of a question as you're asking it because there is certainly --- in medicine it is certainly the case that we fear coercing people to certain treatments and certain circumstances but they are certainly alternate examples where we very much coerce people to have certain medical **[87]** interventions. And so

as an expert I have no opinion, as we said already. And simply as somebody trying to be logical and thoughtful I can come up with examples in both certain circumstances.

BY ATTORNEY BROOKS:

Q. I'm going to ask you to take Exhibit-6 --- no, Exhibit 4, the Handelsman article if you would.

A. Yes.

ATTORNEY TRYON: Roger, would you speak up a little more, please? And Josh, when you shuffle your papers, it really garbles the testimony. If you'd be a little more careful about that, I'd appreciate it.

ATTORNEY BLOCK: Sorry.

ATTORNEY BROOKS: It's a crowded table and we have papers bumping up against the mic. So just call out if we do that wrong.

BY ATTORNEY BROOKS:

Q. So Dr. Safer, you pointed to the Handelsman article as the best source on the proposition --- on the question to what extent if any natal male has physiological or I should say athletic performance advantages over natal females before puberty. Correct?

ATTORNEY BLOCK: Objection to [88] terminology?

THE WITNESS: And if I said the word best maybe that's not the best way of saying it, but it's a very clean, well-written summary of the circumstance.

BY ATTORNEY BROOKS:

Q. At any rate, it's the one that you chose to cite?

A. And it is the one that I chose to cite.

Q. I'm going to give you a three by five card to help read a chart that doesn't have grid lines on it so you have a straight edge. And I want to take you in Handelsman's 2018 article, Exhibit 4, to page 813 and figure one. And you've familiar with this figure and these curves, are you not?

A. I am, yes.

Q. When you studied this article carefully this is

part of what you studied. Right?

A. It is.

Q. And these charts show percentage performance advantage of males over females and just to simplify terminology I believe there's nothing in here about dealing with transgender individuals in these charts. So with your permission I'll simply use male and female [89] to be the dare I say simple biological designations as we had previous discussions. Is that acceptable?

A. I think so.

Q. If it's something that comes up ---.

A. I will mention it, yes.

Q. I don't think it will in this discussion. First of all, would you agree with me that, generally speaking, junior high contemplates grades 7 through 9 and commonly ages in the range of 12 to 15?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Junior high is grades 7 through 9. It used to be. Now there is Middle School.

BY ATTORNEY BROOKS:

Q. I know?

A. Exactly.

Q. Let's just work with you and I are of general age. So Junior High is 7 to 9?

A. Okay.

Q. And in your general understanding, this is layman's stuff, not expert stuff, that is ages 12 to 15-ish?

A. Let's see, seven --- let me think about this. Right, 15 at about the max, right, because there is about 14. **[90]**

Q. And high school is 14, 15 through age 18-ish. Some people graduate at age 17?

A. Yes. As a non-expert I would believe, yes.

Q. All right. And this chart charts the percentage advantage enjoyed --- on average enjoyed by males over females in three different events at over --- on a year by year basis from ages 10 up to 19. Am I describing it correctly?

ATTORNEY BLOCK: Objection to form. Just for the record, it's percentage differences, not percentage advantages.

BY ATTORNEY BROOKS:

Q. Correct, it says --- it says gender difference percentage to read the Y axis.

A. Clear, yes.

Q. Okay. So let's look at running and you have your straight edge if it is helpful to you. At age 12, what, according to Dr. Handelsman, is the gender difference in running performance?

A. So in this paper there is a range. But just to help you get to your point faster I guess we can --- it is about five percent of tab over. **[91]**

Q. And for reasons best known to Professor Handelsman, his arrow bars extend only upwards, correct, in this chart?

A. Right. I will have to attribute that to cleanliness of the figure.

Q. Or if he has chosen to fit his curve to the bottom end of this error range possibly?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Yeah, I can't comment there, but that wouldn't be usual.

BY ATTORNEY BROOKS:

Q. That would not be usual, I agree. And what advantage --- what gender difference between male and female does Professor Handelsman report at age ten approximately?

A. At age ten in the particular figure that we are referencing it is --- the average is --- well, actually, so here it ranges from about two percent because that is probably how the air bars are meant to be up to just a little north to three percent.

Q. And going back to age 12, do you consider a five percent difference between male and female performance to be minimal?

ATTORNEY BLOCK: Objection to form. **[92]**

THE WITNESS: So the problem here with going right to this figure is it's including a range of inputs, and so this is --- so these are what are called cross-sectional studies, and so the --- if your question is just in the narrow point of this five percent minimal, well, even there I don't know that I can comment because it depends on how broad the variation is among the group.

BY ATTORNEY BROOKS:

Q. And what gender difference did Dr. Handelsman report in running at age 15?

A. At age 15, a range that is hovering about 9 to 10 percent.

Q. And by age 15, according to his sample, the gender difference is approached --- begins to level off. In other words, it has --- most of the gender difference has been achieved at age 15. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Among this data in this study set, yes, I will agree with you it does level off.

BY ATTORNEY BROOKS:

Q. So let me ask you this. Do you have an understanding of the physiological basis of what you **[93]** described as a two to three percent male advantage at age ten in running?

ATTORNEY BLOCK: Objection to form.

BY ATTORNEY BROOKS:

Q. If any?

A. So speaking as an expert, there's no --- there is no physiological --- there is no expectation of a physiological explanation. And there is awareness of other confounders in terms of experience, exposure to sport and things like that.

Q. Let me ask you to look at jumping, at age ten.

And this is --- at age ten what performance of gender difference advantage did Dr. Handelsman report for boys in jumping?

A. So at age ten it would go on --- so at age ten then the range ---.

Q. This by the way tells us that he cannot be inclined in arrow bar --- a symmetrical arrow bar below. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So he can't. In fact, the range that he's showing there goes from an advantage for girls --- that is it goes below to an advantage --- for boys. The range is included and it just --- for both **[94]** sexes.

BY ATTORNEY BROOKS:

Q. So what is the average advantage that he reports at age ten for boys?

A. So in this dataset the average is about a six percent average for boys, but it is important to understand the data. And the data that --- the point being that if we were to repeat the study you would anticipate that that average would fall across those entire --- the entire range shown so that in a different day it might show a bigger advantage for boys, but a different day it might also show an advantage for girls about higher.

Q. Are you aware of any dataset that shows a smaller advantage in jumping for girls at age ten?

A. Off the top of my head I cannot guide --- lead you to a dataset.

Q. At age 12 what advantage in jumping --- well, let me start over. At age 12 what advantage in jumping does Dr. Handelsman report for boys?

A. So in this dataset at age 12 he shows the advantage --- the average advantage to be of the less than the average advantage for age ten, but this exactly points to the caution that I was referencing, which is **[95]** that the

range of possibilities that you might anticipate based on this particular dataset at age 12 has a range of four to six percent advantage for boys.

Q. The arrow bar has tightened up a lot?

A. The arrow bar in that age range is tighter.

Q. And do you consider a six percent advantage to

be minimal?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: As an expert I can't answer

that because it depends on context on the heterogeneity of all these events.

BY ATTORNEY BROOKS:

Q. And at age 15 what average advantage in jumping did Dr. Handelsman report for boys?

A. For age 15 he has a range or the average sits at 15 percent and the range runs from about 14 percent to maybe 17 percent.

Q. Is there any context in your opinion, any athletic endeavor that involves jumping in which a 15 percent advantage is in your view minimal?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Yes, I think as an expert I can't answer that. If you're thinking at the scholastic level where there is a wide range of --- where there's a **[96]** quite wide range of heterogeneity in development, body type, et cetera, I certainly could envision a situation, yes.

BY ATTORNEY BROOKS:

Q. Dr. Safer, in your Declaration filed in May you stated that before puberty athletic advantage by boys was minimal. Do you recall that language?

A. The way I would say it is the difference between boys and girls before puberty is minimal or non-existent. I don't know if I could be wiser than that.

Q. All right. But now you are telling me when I asked you questions about minimal that you as an expert are not able to define minimal. How do you reconcile those two?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the definition of minimal is in context. And so as we discussed it was not a significant difference using both those definitions that we already used were no different at all.

BY ATTORNEY BROOKS:

Q. Your statement in your Declaration simply asserted categorically in almost no context that the **[97]** difference in athletic capability of boys to girls were both minimal. My question for you is using whatever definition you had in mind when you wrote that do you consider a --- I will look at jumping, a five percent difference in capability to be minimum?

ATTORNEY BLOCK: Objection to form and characterization of the report.

THE WITNESS: So it's a context. So in the report the reference is to prepubertal children. And there it is easier to be more categorical. Where now we're moving into an area where there is --- where things are more complex and so it is a harder context to make that statement.

BY ATTORNEY BROOKS:

Q. That is a sample of ten-year old boys includes some who are no longer prepubertal. Correct?

A. No. I'm saying it more the other way, which is a sample of ten-year-old boys would overwhelmingly be prepubertal but a sample of 15-year-old boys would have more of a range and have more heterogeneity. And there's more to it even than that, which is the definition of minimal also includes the context of the entire population who participated in the sport. **[98]**

Q. So focusing on ten-year-old boys and jumping you said at age ten the large majority of boys are, according to your definition, prepubertal. Referring back to Declaration and the meaning that you ascribed to the word minimal there, in your view, is a six-percent difference in capability minimal or not minimal?

ATTORNEY BLOCK: Objection to form and to talking about his Declaration without it being in front of him.

ATTORNEY BROOKS: He has it in front of him and we already looked at the language.

BY ATTORNEY BROOKS:

Q. You may answer.

A. So the graph that we are looking at includes arrow bars that include the possibility that boys would have --- that the girls would have a superior outcome, and so the answer then becomes, yes. Where the data are either small or are suspect or not significant, then all of that collectively certainly is --- would be included as minimal to non-existent.

ATTORNEY BROOKS: Let me mark as Exhibit Safer 7 a paper by Emma Colton and Tommy Lundsburg entitled Transgender Women in a Female Category of

Sport, from 2021, previously marked as Exhibit 13 at Dr. **[99]** Adkins's deposition.

(Whereupon, Exhibit 7, Transgender Women In a Female Category of Sport, was marked for identification.)

BY ATTORNEY BROOKS:

Q. And first, Professor Safer, let me ask whether you're familiar with this paper published last year?

A. I am familiar.

Q. And have you interacted professionally with either Dr. Colton or --- and I don't know his degree, Mr. Lundsburg in any context?

A. Here I don't remember.

Q. Okay. Do you believe that you became aware of this paper soon after it was published?

A. I don't know if I can answer that cleanly either, but I certainly have became aware of it somewhere between then and now.

Q. And have you read it with some care?

A. I have read it with some care, yes.

Q. Let me ask you --- well, let me ask you this first. Would you describe this paper as reporting **[100]** original research or as more of a literature review paper?

A. I don't recall them reporting on their original research, but I would have to look. It's mostly a review paper.

Q. That is also my impression. I just didn't want to create a different impression. Let me ask you to turn to page 201, and there in the first column beginning six lines down there is a sentence that begins an extensive review. Let me ask you to find that.

A. I have it.

Q. And that --- I'll read it into the record. Quote, an extensive review of fitness data from over 85,000 Australian children age 9 to 17 years old showed that compared with nine-year-old females, nine-year-old males were faster over short sprints, 9.8 percent, and one mile, 16.6 percent, could jump 9.5 percent farther from a standing start, which tested explosive power, could complete 33 more push-ups in 30 seconds and have 13.8 percent stronger grip. Male advantage of a similar magnitude was detected in a group study of children where compared to a six-year old females six-year old males competed 16.6 percent more shuttle runs in a given time and could jump 9.7 percent further from a standing **[101]** position. Do you see that language?

A. I do.

Q. And on the Australian study, if you follow the footnote you will see that it references a study by Kaitlin Thompkinson. That's footnote 22. And my first question is have you read the reference study by Kaitlin Thompkinson?

A. I don't recall. I'm guessing yes.

Q. All right. All right. Do you have any reason to doubt the accuracy of this summary of the findings of Kaitlin Thompkinson based on data from over 85,000 Australian children?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I think the important thing to recognize when you look at these sorts of data are recognizing the multiple inputs. So the larger these groups --- these cross-sectional studies get the more confounded they get by access and other social

explanations why there are boys participating in sports to a greater degree.

BY ATTORNEY BROOKS:

Q. So putting aside causation, which might be physiological and might be cultural, as you said there could be various causes, do you have any reason to doubt **[102]** the accuracy of the findings of performance advantage summarized here in the passage that I've just read?

ATTORNEY BLOCK: Objection to form and terminology.

THE WITNESS: Putting aside causation, I have no -- - I can't offer an expert opinion I guess if that's the bottom line. But if you're asking me just as an individual, I'm not expecting that they're fabricating that data. I am not expecting that.

BY ATTORNEY BROOKS:

Q. And you agree that advantages on a scale of 9 percent, 16 percent could provide a significant advantage in athletic competition, do you not?

ATTORNEY BLOCK: Objection to terminology.

THE WITNESS: So say that question again.

BY ATTORNEY BROOKS:

Q. You agree that advantages on the scale of 9.8 percent or 16.6 percent would provide a large advantage in athletic competition, do you not?

ATTORNEY BLOCK: Same objection to terminology.

THE WITNESS: In elite athletic competition, yes. **[103]**

BY ATTORNEY BROOKS:

Q. Did you play any sport in high school?

A. At a sophisticated level I did not.

Q. Your general knowledge permits you to say, does it not, that at the high school level also a 9.8 percent or a 16.6 percent advantage is a very large advantage?

ATTORNEY BLOCK: Objection to form and terminology?

THE WITNESS: So there it gets more diffuse, therefore, and I can't answer as an expert.

BY ATTORNEY BROOKS:

Q. Can you answer as an informed adult citizen? ATTORNEY BLOCK: Same objection.

THE WITNESS: So as an expert for sure not. As an informed adult, it falls back to the same situation. When there is a wide range of athletes in a certain context, then it is going to seem less relevant. And obviously with the example I gave before with an elite circumstance where that --- it describes the entire field is more significant.

BY ATTORNEY BROOKS:

Q. Let me ask you to find your rebuttal report.

A. And actually --- do others need a break?

Q. Any time --- your concentration is most **[104]** important. So if you need a break, we'll take a break.

A. So I'm good.

ATTORNEY BROOKS: Well, obviously, if anybody wants a break, we can take a break.

ATTORNEY BLOCK: Do you need a break?

ATTORNEY SWAMINATHAN: No.

ATTORNEY BLOCK: We are good.

THE WITNESS: So my rebuttal.

BY ATTORNEY BROOKS:

Q. Your rebuttal, which is Exhibit 2, so it's probably at the bottom. And in that I'm going to draw your attention to paragraph 11. And there you wrote there is also no basis to confidently predict the patterns about the athletic performance of prepubertal cisgender boys will be the same for prepubertal transgender girls, closed quote. Do you see that?

A. I do.

Q. And let me attempt to see if I understand the point of this paragraph. And indeed, if you would like to read the whole paragraph you should. But my understanding of the point is that you're saying that even if prepubertal boys have some performance, some statistically significant performance advantage over prepubertal girls, that you are not confident that the **[105]** athletic performance capabilities of natal males who identify as females before puberty will be the same as those of natal males who identified as male before puberty?

ATTORNEY BLOCK: Objection to the terminology.

THE WITNESS: So to the extent --- so were differences to be determined between cisgender boys and cisgender girls, it is correct to say that that won't conclusively demonstrate that the same applies for transgender girls. That's right.

BY ATTORNEY BROOKS:

Q. Now, elsewhere in your writings you have said that it is well known that the majority of prepubertal children

who experience gender dysphoria do not persist in that dysphoria into pubertal adolescence. Correct?

ATTORNEY BLOCK: Objection.

THE WITNESS: No.

BY ATTORNEY BROOKS:

Q. Not correct?

A. Not correct.

Q. Then we will come back to that. In this paragraph 11, you speculate a little farther down that, **[106]** quote, the experience of transgender girls might be more similar to the experience of cisgender girls?

ATTORNEY BLOCK: Objection to the characterization and speculative.

BY ATTORNEY BROOKS:

Q. Well, by using the word might you meant to indicate, did you not, Dr. Safer, this is a hypothesis, this is not a documented fact?

A. That if the question is do I know that the experience of transgender girls is definitely in this circumstance the same as cisgender girls, that's right, I don't know that. It only might be true.

Q. And towards the end, in the last line, you refer to potential biological underpinnings of gender identity. Again, the word potential signaling that no such specific underpinnings have yet been identified. Correct?

A. Say that question again.

Q. In the last line, your reference to, quote, potential biological underpinnings of gender identify, by the word potential you are indicating that no specific biological underpinning has yet been identified. Correct? **[107]**

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So it's --- so no, potential in this context does reference that most of this biology is unknown, so that part is true, but it doesn't mean that there is nothing known.

BY ATTORNEY BROOKS:

Q. You do not propose to offer any opinion that natal males --- let me strike that and start again.

You do not propose to offer any opinion, do you, that prior to puberty natal males who identify as female are less athletic capable on average than natal males who identify as male?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I'm not offering an opinion with regard to cisgender --- excuse me --- cisgender boys versus transgender girls and their athleticism when they are prepubertal. If that's what you are asking, then yes, I'm not offering an opinion between those two groups. I'm simply raising the possibility that something like biology associated with transgender could have influence into it.

BY ATTORNEY BROOKS:

Q. Let me ask you to turn to paragraph 22 of your rebuttal report. And there you write Doctor Brown also **[108]** refers to widely publicized anecdotes about isolated cases of transgender girls and women state championships in high school sports or NCAA championships in college. Do you see that?

A. I do.

Q. And you go on to write but transgender athletes of women have been competing in NCAA and secondary

school athletics for many years at this point, closed quote. Do you see that language?

A. I do.

Q. Let me ask you to name all instances of male males known to you who have competed in women's division varsity athletics in any athletic endeavor for any NCAA member school?

ATTORNEY BLOCK: Objection to form and scope.

THE WITNESS: Right, so I certainly can't do that usefully off the top of my head, name transgender women and all these context in such an exhaustive way like that.

BY ATTORNEY BROOKS:

Q. Well, I asked you accused Doctor Brown of citing isolated cases. Do you have any basis to assert that he has done anything other than cite all cases in which **[109]** natal males have competed in NCAA athletics in the female category?

A. So the --- if our focus is on the word isolated then per se they are all --- these are all isolated cases. These aren't systematic analyses of any cohort of people.

Q. You are not accusing Doctor Brown of picking and choosing?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So let me think about that. By simply choosing individual cases that are in the press then it is by its nature picking and choosing.

BY ATTORNEY BROOKS:

Q. What do you mean by that?

A. Well, these are simply individual cases that have --- that have come to public attention, and so I --- so --- and

that's the basis of my statement as opposed to some exhaustive attempt to identify transgender people in a systematic fashion.

Q. As you sit here today, Dr. Safer, are you aware of a single case not mentioned by Doctor Brown in his report of a natal male who has competed in NCAA athletics in the women's category?

ATTORNEY BLOCK: Objection to form. **[110]**

THE WITNESS: Can I name somebody off the top of my head? I cannot.

BY ATTORNEY BROOKS:

Q. Do you have any concrete --- leaving aside whether you remember a precise name, do you have any factual basis to know that Doctor Brown has omitted any case of a natal male who has competed in the female division of NCAA athletics?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So I guess if the question is what can I do off the top of my head, then I cannot.

BY ATTORNEY BROOKS:

Q. Off the top of your head, you recall the case of June Eastwood, do you not?

A. You have to remind me what that is.

Q. A runner in Montana?

A. I actually would need to be reminded of those details.

Q. All right. Certainly you recall Lia Thomas because none of us can miss Lia Thomas these days?

A. Lia Thomas is still in the news.

Q. Do you recall the case of CeCe Telfer?

A. Names are not my strength.

Q. All right. No more on that. **[111]** You say at the end of this paragraph, quote, the occasional championship that has been widely publicized do not come close to constituting the rates one would expect if they, that is transgender athletes, wanted rates that are proportional to their overall percentage of the population, which is approximately one percent. Do you see that language?

A. I do.

Q. Do you have any knowledge as to what --- first of all, let me ask, what is your basis for believing that the current student population in college and high school level is approximately one percent transgender?

A. The statistic for the percentage of the population who are transgender comes from surveys.

Q. And do you have any knowledge at all as to what percentage of varsity athletes in America today at the NCAA --- among NCAA member schools in the women's division are transgender?

A. If the question is that a survey in that population, I'm not aware of a survey that's been done.

Q. So you don't know whether the number of victories of championships that have been taken in the women's division by transgender competitors is higher or lower than the percentage of athletes in those divisions **[112]** who are transgender?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: That is correct. I do not know the percentage that --- what we know is the percentage of transgender people and then we know the percentage of

identified athletes winning competitions. And even then we don't know that absolutely. We only know the ones that are publicized. But, right, in the in between, we don't have statistics. That's right.

ATTORNEY BROOKS: Counsel, I'm going to suggest --- in my experience, if we break for lunch at noon, it makes it a little long afternoon. So I would suggest that we take a short break now and then keep going until like 12:45 or something. It's seven hours on the clock and I'm here just to tell you that the afternoon gets long. So unless you are starving I'd recommend ---?

THE WITNESS: No, I think that's a great idea.

ATTORNEY BROOKS: Take a short break now.

THE WITNESS: So you don't know who is on the phone so give them a break.

ATTORNEY BROOKS: Let's go off the record. **[113]**

VIDEOGRAPHER: Going off the record. The current time reads 12:01:00 p.m. Eastern Standard Time. OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: Back on the record. Current time reads 12:14 p.m. Eastern Standard Time.

ATTORNEY BROOKS: Let me mark as Safer Exhibit 8 the Endocrine --- Treatment of Gender Dysphoric Gender Incongruent Persons, an Endocrine Society Clinical Practice Guidelines from 2017 previously marked as Adkins Exhibit 4.

ATTORNEY WILKINSON: Tab 5.

(Whereupon, Exhibit 8, Endocrine Society Guidelines, was marked for identification.)

BY ATTORNEY BROOKS:

Q. And Doctor Safer, am I correct you served the committee that created this revised version of the Endocrine Society's Guidelines?

A. Yes. **[114]**

Q. And is it reasonable for me to assume therefore that you are familiar with it in some detail?

A. I am familiar with it in some detail.

Q. They also pertain to your practice? Am I correct.

A. And they do pertain to my practice, yes.

Q. Let me ask you to turn in Exhibit-5 to Page 3879 --- Exhibit 8, 3879. And there I will call your attention to the specific recommendation that's numbered 1.4. And it says there we recommend against puberty blocking and gender-affirming hormone treatment in prepubertal children with GD/gender incongruence. Do you see that?

A. I do.

Q. And then there is a section headed evidence, right?

A. Yes.

Q. And the first statement in the sentence that is --- in the section headed evidence is, quote, in most children diagnosed with GD/gender incongruence it did not persist into adolescence, closed quote. Do you see that?

A. I do.

Q. Do you believe that to be a false statement? **[115]**

A. I wouldn't --- I guess it depends on context here too. So as of when this was written, the literature being

referenced had a broader diagnosis for gender dysphoria and gender incongruence or really gender dysphoria is the label that was being used and still is. Gender incongruence is where we are headed. And so with that broader definition, that included gender expansive children who were not necessarily transgender.

Q. The statement is I think fairly specific. And as you are aware, the discussion cites various references, but the introductory sentence states in most children diagnosed with GD a gender dysphoria or gender incongruence did not persist into adolescence. Do you believe to be a true statement or false statement?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: The problem is I can't answer that quite that cleanly. The statement references a circumstance that I just referenced where children receiving that label have to --- for the most part were not transgender. The only caution I want to make is that as we grow more refined in our understanding of gender identity and also in our labeling, that we are more specific in identifying **[116]** transgender kids with these sorts of labels.

BY ATTORNEY BROOKS:

Q. Well, recommendation 1.4 says we recommend against puberty blocking and a gender hormone treatment in prepubertal children with gender dysphoria or gender incongruence. Do you have an understanding of why these Endocrine Society guidelines of which you're a co-author recommended against puberty blocking in prepubertal children?

A. Yes.

Q. Why?

A. They have no impact.

Q. Can you point me to anywhere in the evidence discussion that suggests that is the reason for this recommendation?

A. I don't know. Let me look.

Q. The evidence discussion is just two paragraphs.

ATTORNEY BLOCK: I just want to object to the extent you're limiting his review to the evidence section.

BY ATTORNEY BROOKS:

Q. My question pertains to the evidence section.

A. So those two paragraphs are both primarily referencing 1.3 and not 1.4. **[117]**

Q. Well, let me ask you to turn to page 3881. And at the top of that first column on 3881 it reads we, therefore, advise starting suppression in early puberty to prevent irreversible development of undesirable secondary sex characteristics. However, comma, adolescents with gender dysphoria, slash, gender incongruence should experience the first changes of their endogenous puberty because their emotional reaction to these first physical changes has diagnostic value in establishing the persistence of gender dysphoria/gender incongruence. Do you see that language?

A. I do.

Q. And as a scientist and practitioner do you agree with that statement?

A. I would say that the validity of that statement is in evolution.

Q. In your practice, over time --- well, let me ask you this. When this was drafted did you raise an objection to

the proposition that the child's emotional reaction to the first physical changes of puberty had important diagnostic value?

A. I cannot recall our specific conversations, but if you're asking if my view has shifted since let's say **[118]** 2015, 2016, 2017, no, the recognition that there is an evolution was already part of my opinion.

Q. What do you mean the recognition that there is an evolution about?

A. So the evolution is that whether there is a need to start puberty as a diagnostic --- as a necessary diagnostic circumstance.

Q. In your practice today do you prescribe puberty blockers prior to Tanner Stage 2?

A. I --- so two things. My practice is with adults. And although I will see older kids because I don't have a hard threshold of age 18, but I don't prescribe puberty blockers because I don't --- my practice does not include those age children. But two, it is still the guidance and so the pediatricians who are part of my program do not prescribe puberty blockers prior to Tanner 2 for the reason I stated initially.

Q. And according to these guidelines, by the time you reach Tanner Stage 2 there have been sufficient first pubertal --- stages of pubertal development to give a chance to observe the child's reaction to pubertal changes for diagnostic purposes. Correct?

ATTORNEY BLOCK: Objection to form. **[119]**

THE WITNESS: So the --- so I guess there are kind of two pieces. The sentence is --- that sentence is written, but that is the sentence that I'm suggesting is an opinion that is in evolution, like I'm saying, to whether that need really

exists or not. The reason why we still don't prescribe puberty blockers before Tanner 2 is that there is no point, there is no preventive element to puberty blockers and so there is no point to give them before puberty begins and there is no way to know that until there is an observable objective finding.

Q. Has your own practice ever involved to a significant extent treating prepubertal or early pubertal stage children for gender dysphoria or gender incongruence incongruence?

A. Have I personally cared for prepubertal children who are transgender or otherwise? Actually, in the subjects, no.

Q. And do physicians who do treat prepubertal children report to you in connection with your position at the clinic or the Mount Sinai Medical Hospital?

A. Yes.

Q. And do you know whether your clinic makes use of children's emotional reactions to the first physical **[120]** changes of puberty as part of their process of determining whether transgender hormonal therapies of any sort are appropriate for that child?

A. Yeah, I can't give you give you an answer. I would actually have to go survey my psychologists.

Q. Let me direct you to paragraph 17 of your rebuttal report. And there you say in the second sentence under current standards of care transgender adolescents are eligible to receive puberty blockers when they reach Tanner 2, not Tanner 3, which is early enough to prevent endogenous puberty from taking place, closed quote. Do you see that?

A. I do.

Q. Now, just for context, you testified previously that the large majority of minors I'll say who present with gender incongruence or gender dysphoria are, in fact, considerably older and have gone through at least most of the Tanner stages. Correct?

ATTORNEY BLOCK: Objection to characterization.

THE WITNESS: Most of the people we are seeing in clinical practice are coming to us at later **[121]** stages of development, yes.

BY ATTORNEY BROOKS:

Q. And so when we talk about prepubertal children, we're talking about a small minority of the patients coming in to ---?

A. I can't define small, but it is the minority, that's correct.

Q. And do you believe that what your clinic is seeing in that regard is typical of what's being seen across the country these days?

A. So if I'm sitting here as an expert, I don't have an expert survey to point to, to give you an answer there.

Q. But you read the literature and you talk to colleagues at other institutions. Am I correct?

A. I certainly both read the literature and talk to colleagues.

Q. And is it your current belief that what you are seeing in terms of the breakdown of patient population is similar to or quite different from what other major gender clinics are experiencing?

A. So kind of separating, I'm living in my expert role, I really want to point to data where I have any **[122]**

confidence at all, and I have none. If you are asking me in a more informal way among our conversations, then I can answer that our experience seems similar to others' experience.

Q. All right. So in talking about prepubertal children --- well, strike that. We've been through that. In your rebuttal report when you said beginning puberty blockers at Tanner stage 2 is early enough to prevent endogenous puberty from taking place, let me ask you, in consideration, do you believe it is accurate as stated?

A. So Tanner 2 early enough to prevent endogenous puberty from taking place, yes, that is accurate.

Q. You would agree with me, would you not, that the endocrine guidelines of which you are a co-author recommend to treat beginning puberty blockers at Tanner Stage 2?

A. So to clarify, under the cited guidelines what they say the recommendation is do not use puberty blockers prior to puberty beginning, prior to Tanner 2.

Q. Let me direct you to recommendation 2.2 on page 3880. Recommendation 2.2 reads we suggest the clinicians begin pubertal hormone suppression after **[123]** girls and boys first exhibit physical changes of puberty. Do you see that?

A. I do.

Q. And then it says, paren, Tanner stages G2/B2 which is to say the girls Tanner 2 or boys Tanner 2, correct?

A. That is what that means, yes.

Q. So the official recommendation from the Endocrine Society is begin at or after Tanner Stage 2, right?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: That is a correct.

BY ATTORNEY BROOKS:

Q. And it says that Tanner Stage 2 is defined as girls and boys first exhibiting physical changes of puberty. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: The definition of Tanner 2, is where there is any objective evidence when puberty has begun.

BY ATTORNEY BROOKS:

Q. So in fact, beginning puberty blockers at Tanner **[124]** Stage 2 does not categorically prevent endogenous puberty from taking place but instead prevents a substantial portion of endogenous puberty from taking place. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So let me ---.

BY ATTORNEY BROOKS:

Q. It is in paragraph 17.

A. So the --- I guess the way this is understood is --- I guess it depends on how extreme you want to take things. It is back to our original conversation of that cause has to take place before effect. So it's parsing it to that degree.

In a biological context it really is the case that we need some objective evidence before we begin things so that we don't make the mistake of using a medication prior to its having any impact. And then it's also true that some of the hormone mediated changes that we see do actually regress to that prepubertal state when we --- when you use puberty blockers at Tanner 2. So the statement as

written --- as I wrote it is accurate in the way we think of these things in biology. **[125]**

Q. Although the guidelines specifically state that adolescents should --- before puberty blockers, quote, should experience the first changes of their endogenous, spontaneous puberty. And the recommendation calls for beginning puberty blockers, quote, after girls and boys first exhibit physical changes at puberty, paren, Tanner stages 2, closed paren. I'm not misreading anything, am I?

ATTORNEY BLOCK: Objection to just reading an excerpt.

THE WITNESS: Right. I don't know --- I don't know if those were are all direct quotes or not so I won't comment on whether you're misreading or not, but the first statement that you reference, as I've said, is one where there is an evolving understanding of its veracity or its applicability. The statement 2.2 is simply using alternate phrasing for saying Tanner 2, that is we need to have objective evidence that puberty is genuinely beginning. The focus and the purpose of these statements is to avoid people using puberty blockers on non-pubertal kids.

BY ATTORNEY BROOKS:

Q. Well, you would agree with me, would you not, **[126]** that if one administer puberty blockers in accordance with Endocrine Society guidelines, then some stages of endogenous male puberty will have occurred in natal male patients?

ATTORNEY BLOCK: Objection the form.

THE WITNESS: So when we are --specifically we're referencing transgender girls here. And although pre-pubertis gender boys, when we see Tanner 2, then some -

-- some degree of development has taken place. That part is true. So in the absolute sense, then yes. But in a biological sense, like I said already, the --- some interesting reality is that some of that does regress.

BY ATTORNEY BROOKS:

Q. By the way, you, yourself, do not have any knowledge as to what developments of endogenous male puberty BPJ underwent prior to initiating puberty blockers, do you?

A. I have had no physical contact with BPJ.

Q. Nor have you studied BPJ's chart sufficiently to be feel that you know the answer to that question?

A. Right, I'm not expressing any opinion to the specific medical terms, that's right.

Q. Have you, yourself, ever supervised any **[127]** research, clinical research, concerning treatment of prepubertal children for gender dysphoria or gender incongruence?

A. Have I supervised research on treatment of prepubertal transgender girls? Let me think about that. Nothing is coming to mind, but our program does do research across an age span.

Q. Well, some of your colleagues might have done such research, but my question is whether you have been personally supervised or involved in such research?

A. I'm pretty involved actually, especially in our research program, but I'm having a difficult time coming up with an example.

Q. All right. I just want to make sure I know about it if it exists.

A. Yes.

ATTORNEY BROOKS: Let me mark as Safer Exhibit 9 an article entitled --- an article or a chapter or something entitled Care of the Transgender Patient dated 2019 by Dr. Safer and by Doctor Vin Tangpricha.

(Whereupon, Exhibit 9, Care of the **[128]** Transgender Patient Article, was marked for identification.)

BY ATTORNEY BROOKS:

Q. Am I correct that this is --- well, you tell me, is this an article or book chapter? How would you describe this document?

A. This is a review article from the Annals of Internal Medicine.

Q. And by review you mean it's not reporting on original research but rather summarizing the state of knowledge in a particular area?

A. That is correct.

Q. Okay. And the pages may have ITC and a number, but I'll just refer to the number if I may. On page three, column two, is a statement that I think is just repeating what you told me, that is most --- quote, most transgender persons present to clinicians in late adolescence or adulthood, closed quote. That is consistent with what you testified earlier. Correct?

A. That is, yes.

Q. And if you turn then to page five, column two, **[129]** you write in the first full sentence in column two, prior effects of androgens on the skeleton height and size and shape of the hands, feet, jaw and pelvis and voice, including visibly --- visible laryngeal prominence, will not

be altered if treatment is initiated after puberty. Do you see that language?

A. I do.

Q. And is it consistent with your understanding that at this stage also changes to the size of the heart and the lungs will not be altered if testosterone is commenced after the initiation of puberty?

A. Not quite.

Q. Explain that to me, please.

A. So transgender women, if they have gone through a typical male puberty, are going to remain larger, but the testosterone has action on certain tissues, so specifically muscle, and that --- when those testosterone levels shrink, then that muscle shrinks and the heart muscle is --- well, the heart is a muscle, so it will be --- there will be an impact from body size, but there will also be impact from the lower level of testosterone. So it will be kind of a mix of those two.

Q. The heart is a muscle but it has in it cavities **[130]** of a certain size in which blood flows, out of which blood is pumped, correct? Do you have any knowledge, are you aware or any literature that documents that testosterone suppression reduces the heart's pumping capacity?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the --- so there is a gap there of transgender research --- so no, that is something that's not been studied.

BY ATTORNEY BROOKS:

Q. And the lungs are not muscle tissue. Are you aware of any science that indicates or even suggests to you as an expert that an individual who has gone through typical

male puberty, that individual's lungs reduce in size if testosterone is suppressed?

A. So the answer with regard to lungs is going to have some of those same inputs as heart or other tissues actually where overall size of the individual is not --well, certainly height at least is not decreasing, and so this person is larger. And so lung size matches that to some degree. And testosterone has some impact on surrounding muscle. And so to the degree that that shrinks there might be lung shrinking too. And so you hear that --- that is going to be a complex answer. And **[131]** in terms of interpreting it even, you then would also have to interpret it in the context of the size of the body if you want to consider function, and none of this has been studied.

Q. Certainly you don't believe, do you, that an individual who has been --- let me start that again. It is not your opinion, is it, that testosterone suppression by an individual who has been through a typical male puberty reduces that individuals V02 mass to typical female levels?

A. So the more we get into some of the subtler physiology, I will take a step back and give you an expert opinion, but I will --- in addition to that point out that we don't even have studies on this. We're just at a stage of beginning to look at that sort of thing.

ATTORNEY BLOCK: Roger, are you able to speak up a little?

ATTORNEY BROOKS: I will try.

BY ATTORNEY BROOKS:

Q. You state that in paragraph 55 of your expert report, Exhibit 1?

A. So paragraph 55.

Q. Fifty-five (55). You state that there are, quote, only two studies examining the effect of **[132]** gender-affirming hormone therapy on athletic performance, closed quote. Do you see that?

A. Yes.

Q. You are aware, are you not, that there are a substantially larger number of studies that examine the effect of testosterone suppression on strength or muscle mass in natal males?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: There are --- there are a handful of studies on the impact of testosterone lowering treatment on transgender women on some tissues, yes.

BY ATTORNEY BROOKS:

Q. Well --- and not to get carried away with the terminology, there are also studies that relate to application of testosterone suppression to males who don't identify as transgender, are there not?

A. To cisgender men in addition to transgender women there are some studies --- yes, there are actually some modest studies, yes, on cisgender men.

Q. And have you now taken some care to review yourself all the peer-reviewed studies of that type that were cited in Doctor Brown's report?

A. I have looked at papers that were cited by **[133]** Doctor Brown. The moment we use the word all I hesitate, but certainly I've read through the papers that were cited.

ATTORNEY BROOKS: Well, let's start with one you referenced, article by Roberts, et al., from 2020, which I will mark as Exhibit --- Safer Exhibit-10.

COURT REPORTER: 10.

ATTORNEY WILKINSON: 10, Tab 60.

(Whereupon, Exhibit 10, Roberts, et al, Articles, was marked for identification.)

BY ATTORNEY BROOKS:

Q. And in fact, this is one of only very few

articles that you cite in your expert report start to

finish. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So this paper is referenced to an expert report.

BY ATTORNEY BROOKS:

Q. Let me direct you to the last page of your expert report where there is a bibliography. And other than citing to your own writings as the entire basis of **[134]** your opinions you cited only six articles. Correct?

ATTORNEY BLOCK: Objection to characterization about its entire cases for his opinions.

THE WITNESS: So the paper specifically referenced two reviews and six papers but recognized that some of these papers specifically are summaries of the topic.

BY ATTORNEY BROOKS:

Q. You have studied the Roberts 2020 article with some care. Is that correct?

A. I have indeed, yes.

Q. And so far as you know it is the only longitudinal study of the impact of testosterone suppression in natal

males and actual athletic performance and in this case running. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the Roberts study and the Harper study are both studies of transgender women with at least two time points.

BY ATTORNEY BROOKS: **[135]**

Q. The Harper study is strictly retrospective, it is not a prospective, longitudinal study?

A. The Harper study is --- that's a good question. I actually don't know if it is --- it's probably mixed, honestly.

Q. Well, we can look at it, but it is not mixed. It is a one-time survey.

A. Well, to be clear, the way we phrase these things sometimes are --- I'm trying to be --- are according to certain conventions academically, so that sometimes it will be framed that way because from an academic perspective we'll use that context, but I think some of the data was actually collected in both collections.

Q. The Roberts study you understand to be a prospective, longitudinal study, do you not?

A. Well, actually, you are testing me on that. Did they set out at the beginning to do it or did they go back and look? I'd have to see.

Q. Well, based on the method, I think the answer is they went back and looked because it begins we reviewed?

A. Yes.

Q. Do you --- is it your opinion that amongst the available data, the Roberts study is --- on the impact **[136]**

of testosterone on athletic performance is some of the strongest data that we have available?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: It is my opinion that the Roberts and Harper studies are the only two studies that we have available.

BY ATTORNEY BROOKS:

Q. Is it your opinion as an expert, is it not, that the structure of the Roberts study renders it --- and the source of its data renders it far more reliable than the Harper 2015 study?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I would not overstate that, so no. If I'm being --- if I'm being professorial and saying this is how to organize something, then in that context I might say that, but in terms of simply believability of data, I got two modest papers that are the sum of the world literature on the subject.

BY ATTORNEY BROOKS:

Q. You say in paragraph 56 of your report that Roberts found, quote, after two years of gender-affirming hormone therapy transgender women completed the 1.5 mile run 12 percent faster on average than non-transgender women, closed quote. Do you see **[137]** that?

ATTORNEY BLOCK: I think he needs some time to get ---

THE WITNESS: Yeah, to actually find the ---.

BY ATTORNEY BROOKS:

Q. Paragraph 56. And I will refer you to the third sentence.

A. All right. Sorry say that again.

Q. I'm simply calling your attention to the place where you wrote at the Roberts report that after two years of a gender-affirming hormone therapy transgender women completed the 1.5 mile run 12 percent faster on average than non-transgender women.

A. Yes.

Q. And two years, not a trick question here, twice as long as the one year testosterone suppression requirement that led to the NCAA rule. Correct?

A. Two years is twice one year, yes.

Q. And you would agree with me that a 12 percent faster in women's time is a substantial advantage?

ATTORNEY BLOCK: Objection to form. **[138]**

THE WITNESS: So this is a bit --- this is a bit of the same conversation. I guess I can't say that in a blanket way. It depends on context.

BY ATTORNEY BROOKS:

Q. The context here is that that these are all Air Force members, do you recall?

A. I believe they are all Air Force members, yes.

Q. All subject to Air Force physical fitness requirements. So we are not talking about couch potatoes?

A. I'm not rendering an opinion there as an expert.

Q. Generally you would accept that this is a relatively fit population?

A. I can't even render an opinion there as an expert.

Q. Do you have some unhealthy relative who's a member of the armed forces?

A. I was in the National Guard, so I do have some insight.

Q. Okay. You would agree, would you not, that running speed and endurance, per se, are relevant to quite a number of sports?

A. Running speed and endurance are relevant to many **[139]** sports. I'm certain that is true. I'm not --

Q. Well ---

A. --- an expert again.

Q. I'm no sports fan, but we've all seen enough sports to know there's a lot of running involved not just in track but in basketball, soccer, lacrosse and field hockey. Correct?

A. I have observed that, yes. But again, I'm not rendering an expert opinion there, but yes.

Q. And on page six of this paper ---.

A. This is Roberts.

Q. Yes, Roberts and Exhibit 10. Roberts and his co-authors summarize in their conclusion by stating, quote, in this study we confirm that the use of gender affirming hormones are associated with changes in athletic performance and demonstrated that the pretreatment differences between a transgender and a cisgender woman persist beyond the 12-month time currently --- requirement currently being proposed for athletic competition by the World Athletics and the IOC. Do you see that?

A. This is the conclusion section?

Q . It is. **[140]**

A. Yes, I see that.

Q. And you don't have any expert opinions that the findings of Roberts are inaccurate or unreliable, do you?

A. So the --- this is again a question of context. So I have no reason to suspect that these data are suspect. The only question then is what we conclude when you do a study of --- for the transgender women I think we are talking about 29 people, which I certainly like a lot better than simply pointing to a random individual, but I recognize as also simply 29 individuals in a certain circumstance that might or might not be replicated as we do this again and increase the numbers of people that we evaluate.

Q. You don't propose to offer any expert opinion that the findings of Roberts as reported in this paper of 2020 are inaccurate?

A. So, I guess the way I said it is how I said it already, which is I'm not doubting Roberts' data, but I wouldn't then over generalize to say that I know that these would be the findings we would see in every similar circumstance.

Q. And are you aware that one common track event or cross-country event, I can never keep them straight, is **[141]** the 1600 meter, which is about a mile?

A. Actually, that is not my expertise. I believe you.

Q. Are you aware that the 3,000 meter, a 1.8 mile distance, is a standard event?

A. If you are meaning to quiz me on the standard lengths these days and meters and all of that, no.

ATTORNEY BROOKS: Well, I can't complete my next document in two minutes, we if we want to break at 1:00 now or I can do one more document.

ATTORNEY BLOCK: I'm fine continuing if you are.

THE WITNESS: My bias is to push.

ATTORNEY BROOKS: Folks online, we're going to continue a little bit farther.

BY ATTORNEY BROOKS:

Q. You cited a paper by Harper from 2015. And that paper also I take it you studied with some detail?

A. Yes.

Q. And how many individuals did Harper have in that study?

A. I --- do we have her ---?

Q. Everything that you mention I have.

ATTORNEY BROOKS: Let me mark as Safer **[142]** Exhibit 11 ---

ATTORNEY WILKINSON: Yes.

ATTORNEY BROOKS: --- Harper's --- Harper et al. or just Harper, article Race Times for Transgender Athletes from 2015.

ATTORNEY WILKINSON: Tab 61.

(Whereupon, Exhibit 11, Race Times for Transgender Athletes Article, was marked for identification.)

THE WITNESS: Thank you.

BY ATTORNEY BROOKS:

Q. You say you have worked with Joanna Harper, you are aware that Dr. Harper is both an athlete and transgender?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I am aware. I am aware that she is an athlete, and I'm aware that she is transgender.

BY ATTORNEY BROOKS:

Q. Did you have after studying the paper end up with an understanding of how many participants there were? **[143]**

A. There were eight participants. I'm looking at Table 5.

Q. Did you have an understanding of how those participants were recruited?

A. I do have some understanding of that, yes.

Q. How is that?

A. The --- how would I characterize this? It's somewhat ad hoc in the sense that Ms. Harper is in the category of these other participants, and so she was able to identify others that met the criteria of being both transgender and being sufficiently intense in their middle distance running that they had race times that they could identify that would allow for the --- for these determinations of age based --- I don't know all the terminology here, but their age-based grade proportional to others in that same sex category.

Q. And it is consistent with your understanding, is it not, that all of the information in this study about what hormonal treatment these individuals had undergone was self reported?

A. This is --- the entire study is self report, that is she didn't have --- Ms. Harper did not have access to people's individual records independently.

Q. So there was no independent confirmation of how **[144]** long that they had suppressed testosterone. Correct?

A. There was no independent confirmation beyond Ms. Harper and her dealing with other subjects directly.

Q. Well, in your view as a scientist, that's not independent confirmation, is it?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So I'm not expressing an opinion there because in a science --- you know, in a scientific paper we would have --- we would have peer review, but we don't --- that just --- ends up being a little bit of a fuzzy realty.

BY ATTORNEY BROOKS:

Q. There is no information in this paper about what testosterone levels were achieved by any of these individuals as a result of suppression, is there?

A. I don't know. Let's --- I can look through that a little bit because does she reference how many of them have had surgery and such? It has been quite a while, you know. So notably, there is some independent confirmation of some of the data because some of this was posted.

Q. Wait. Let me just be clear. Some of the times were verified independently. **[145]** Correct?

A. That's correct.

Q. Nothing about the hormonal treatment?

A. Right.

ATTORNEY BLOCK: Do you want to give him a chance to review it?

BY ATTORNEY BROOKS:

Q. Doctor Safer, let me just withdraw that question and ask you another question.

A. Yeah, go ahead.

Q. Do you know whether Doctor Harper stands behind the conclusions of her 2015 paper today?

A. If you ask me do I know it, that's too strong a statement.

ATTORNEY BROOKS: Let me mark as Safer Exhibit 12 an article by Joanna Harper and others from 2021 entitled How Does Hormone Transition in Transgender Women Change Body Composition, Muscle Strength and Hemoglobin.

ATTORNEY WILKINSON: Tab 21.

(Whereupon, Exhibit 12, Joanna Harper Article, was marked for identification.) **[146]**

BY ATTORNEY BROOKS:

Q. Dr. Safer, have we put that in front of you? Yes, we have. Are you familiar with this article?

A. I am.

Q. And have you read it, reviewed it recently?

A. I have reviewed it relatively recently.

Q. And do you understand, and I didn't completely read the title. The second sentence of the title says Systematic Review with the Focus on Implications for Sport Participation.

Do you see that?

A. I do.

Q. Can you tell me why when you cited Harper's 2015 paper that you just referred to as older science you didn't cite Harper's 2021 publication?

A. So to be clear, I didn't use the older science. I simply referenced Harper's paper as one of the only two papers on the subject. And your question?

Q. Why didn't you cite Harper's 2021 paper on the topic?

A. So this paper is more in the category of the papers looking at impact on tissues of which there are several papers as opposed to actually investigating a specific activity, a person's activity. And does this **[147]** have primary data in it?

Q. Well, let me take you to page eight.

A. Yeah, I don't even think this has a final data in it.

Q. Describing the Roberts study, Harper here on page eight, column one, about halfway down, summarizes as follows: Quote, trans women ran significantly faster during the 1.5 mile fitness test than ciswomen. These observations in trained transgender individuals are consistent with the finding of the current review in untrained individuals whereby 30 months of gender affirming hormone therapy maybe sufficient to attenuate some but all influencing factors associated with muscular endurance and performance, closed quote. Do you see that?

A. Yes. This is the end of the paragraph there?

Q. Yes.

A. We're starting with these observations, yes, I see that.

Q. And do you propose to offer any expert opinion inconsistent with Joanna Harper's summary of the data here suggesting that 30 months of gender affirming hormone therapy may be sufficient to attenuate some but not all influencing factors associated with muscular **[148]** endurance and performance?

A. The statement here is too broad, so it's simply raising questions.

Q. Well, Joanna Harper says here that the findings of her current review were that 30 months of gender affirming hormone therapy may be sufficient to attenuate some but not all influencing factors associated with muscular endurance and performance?

ATTORNEY BLOCK: Objection to leaving out words of what you quoted.

BY ATTORNEY BROOKS:

Q. And my question for you is do you intend to offer an expert opinion that you believe is inconsistent with that statement?

ATTORNEY BLOCK: Same objection. It's misquoting the document.

THE WITNESS: So the operative or inoperative word here is may be sufficient, and so when we're --- these are research questions as we try to understand physiology and the relevance of certain testosterone levels at certain endpoints and then not just endpoints as surrogates, which is what most of the papers to date still are, but endpoints in actual athleticism and athletic competition. And so that's all **[149]** this is doing is putting out some questions or some potential thoughts.

BY ATTORNEY BROOKS:

Q. Let me ask you to turn to page one and column one.

A. Of this same paper?

Q. Of the same paper. In the conclusion of the abstract the last sentence reads, quote, these findings suggest the strength may be well be preserved in trans women during the first three years of hormone therapy, closed quote. Do you see that?

A. I do.

Q. And having reviewed whatever literature you have reviewed to date do you share Doctor Harper's understanding that strength may well be preserved in trans women during the first three years of hormone therapy?

ATTORNEY BLOCK: Objection to misquoting the document.

THE WITNESS: So I can't comment on Ms. Harper's understanding, but if you're asking is that --you know, is the question a question, so the question is a question. These findings suggest that strength may **[150]** and again an operative word is may.

BY ATTORNEY BROOKS:

Q. Yes.

A. And these are as I, a scientist, and she is a scientist too, we are turning the earth, as it were, of what we know looking for what questions we might want to study and how we might want to frame studies going forward.

Q. Let me take you back to page eight, if I may. And the penultimate sentence of this paper at the bottom of the first column of paragraph of page eight reads, quote --- well, let me read --- yeah, I will just read that, quote, whether transgender and cisgender women can engage in

meaningful sport even after gender affirming hormone therapy is a highly debated question, closed quote. Do you see that language?

A. I do.

Q. You'll agree that up to the present that is a highly debated question?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: There's context there too. So this is referencing a league sport and it's --- as well there are a range of potential sports, and so the **[151]** question and the degree to which it is highly debated even I'm not going to render an official opinion there. So the --- whether transgender and cisgender women can engage in meaningful sport depends on what sport we're talking about, what treatment we're talking about, age group, whether elite versus more of an intermural setting. And so it's just a relatively simple statement and to summarize a paper I guess.

BY ATTORNEY BROOKS:

Q. You agree that this --- that is the question of whether transgender and cisgender women can engage in meaningful sport even after gender affirming hormone therapy is one on which reasonable scientists can disagree and today are disagreeing?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So going back --- so is your --- so are you asking me --- I guess help me reframe what the question is there because there are a bunch of things packed into that sentence actually. And you heard me try to unpack them both.

BY ATTORNEY BROOKS:

Q. That may be a complex question, as debated questions often are, but my question is do you agree that the question of whether transgender and cisgender **[152]** women can engage in meaningful sport even after gender affirming hormone therapy is one on which reasonable scientists can differ and are differing today given the possibility of data?

ATTORNEY BLOCK: Objection to form for the same reasons.

THE WITNESS: So I'm sitting here as a scientist talking about differences in athleticism and such and whether --- and so moving onto meaningful sport goes beyond my expertise. I'm only putting data together in a --- that's my lane on this subject.

ATTORNEY BROOKS: Okay. Let's break for lunch.

ATTORNEY BLOCK: Let's go off the record, so 2:15.

ATTORNEY BROOKS: 2:15? Any dissent? No dissent.

VIDEOGRAPHER: Going off the record. The current time is 1:16 p.m. Eastern Standard Time.

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE **[153]**

VIDEOGRAPHER: Back on the record. The

current time is 2:18 p.m. Eastern Standard Time.

BY ATTORNEY BROOKS:

Q. Good afternoon, Dr. Safer. Take you back into context, I'm going to ask you to find your expert report, Exhibit-1, and find paragraph 25, which we have looked at before. And there in the third sentence it reads based on

current research comparing non-transgender boys and men with non-transgender girls and women before, during and after puberty the primary known biological driver of these average group differences is testosterone starting at puberty, and not reproductive biology or genetics, period, closed quote. Do you see that language?

A. Yes.

Q. And your one cite for that is the endocrine that we've already looked at already. Right?

ATTORNEY BLOCK: Objection to the form.

THE WITNESS: So the citation in that paragraph is the Handelsman, yes.

BY ATTORNEY BROOKS:

Q. And do you recall our earlier discussion about how the effects of testosterone are cumulative over time **[154]** rather than depending solely on the testosterone level of an individual at a particular time, right? Do you recall that discussion?

A. So the impact --- excuse me, the impact of testosterone is cumulative. It depends what impacts we're talking about. So there are impacts that are cumulative, like height, and there are impacts that really do reflect that point in time.

Q. Now, at the moment let me ask just based on your recollection. The Handelsman article is Exhibit-4. Do you have that? And I will ask you to find it in your pile. I should have neated up your pile of exhibits while you were out. That looks like it.

A. Got it, yes.

Q. The Handelsman article, as far as you recall, does not contain any data or conclusions concerning the effects

of testosterone after the beginning of male puberty, does it?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Honestly, I would have to go look carefully.

BY ATTORNEY BROOKS:

Q. Then I won't take time to do that.

A. Okay. **[155]**

Q. It does or it doesn't. We will deal with that.

A. Yes.

Q. Do you know whether any other writing Professor Handelsman has expressed any view as to whether testosterone suppression after male puberty eliminates sex-based physical advantages sufficiently to maintain fairness in sports for women?

ATTORNEY BLOCK: Objection to the form.

THE WITNESS: So first of all, putting it altogether that way isn't necessarily how I would say it or how I would expect it to be said. It would be testosterone suppression and whatever the scientific finding at the moment would be. So we already know that the data that relate to athleticism are just the Roberts paper and the Harper paper, so I guess that is as much as I can say in that particular context. And in terms of --- so yes, I think that it wouldn't be --- I forgot already how you phrased that.

BY ATTORNEY BROOKS:

Q. Let me just ask again.

A. Yes.

Q. So the first question is not a hard one.

A. Okay.

Q. Do you know whether Professor Handelsman has **[156]** himself in his publication expressed any view whether testosterone suppression after male puberty eliminates sex-based physical advantages sufficiently to maintain fairness in sports for women?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So I don't know if he has written something covering all those bases that you just described, how you described it.

ATTORNEY BROOKS: All right. Let's look at treatment variable. Let me mark as Exhibit 13 a short article by Dr. Roberts with a subsequent comment by David Handelsman.

ATTORNEY WILKINSON: Tab 62.

ATTORNEY BROOKS: And unfortunately, the words were a little clipped on this. We will see how we do.

(Whereupon, Exhibit 13, Dr. Roberts Article, was marked for identification.)

ATTORNEY BLOCK: Thanks.

BY ATTORNEY BROOKS:

Q. And I think a fair description of what we have here is a relatively popular press type piece by Dr. **[157]** Roberts first. And this document is dated December 16, 2020.

ATTORNEY BLOCK: Objection. Does it say where it was published?

ATTORNEY BROOKS: No, it doesn't say on its face where it was published. And as we sit here right now I

don't recall, though actually looking at it I do recall that Kilio is an online publication of some sort, and I've seen the brand came from the Kilio website.

BY ATTORNEY BROOKS:

Q. At any rate, I see the date, I see the title. It purports to be an article by Professor Roberts. I just want to be clear in my description it does not --it does not have the appearance of a separate peer review article since the summary taken off of the article that we've already looked at. And then at the end of it is a two-paragraph prospective on this offered by Dr. Handelsman. Do you see that?

A. I do.

Q. And he begins by making clear that he is commenting on this study, that is Roberts study that is discussed above. He is not introducing new science, [158] correct, is that consistent with your understanding?

ATTORNEY BLOCK: Objection. Give him a chance to read it.

THE WITNESS: So that, yes, my understanding, too, is that there is not new data here, mostly a commentary within the context some of our existing knowledge on the Roberts study.

BY ATTORNEY BROOKS:

Q. And in his comment to Dr. Handelsman states in the second paragraph, as of 2020, quote, a major question remains whether gender affirming hormone treatment overcomes sex-based physical advantages sufficiently to maintain fairness so that an exception can be made for trans women, paren, natal males, closed paren, treated with estrogen. Do you see that language?

A. I do.

ATTORNEY BLOCK: Objection. I believe that is what it says, but I just want to note for the record that there is text cut off on the left.

ATTORNEY BROOKS: There is. And I'll get better copies. I'm looking at a copy that's not cut off I will represent.

BY ATTORNEY BROOKS: **[159]**

Q. And do you have an expert opinion as to --- well, do you propose to offer any opinion disagreeing with Professor Handelsman that as of 2020 it remained a major question whether gender affirming hormone treatment to overcome sex-based physical advantages sufficiently to maintain fairness so that an exception could be made for trans women treated with estrogen?

A. So to me that's too broad a question if you're asking me to render an expert opinion about his opinion.

Q. I'm asking whether you propose to offer an expert opinion inconsistent with his view that remains a major question as of 2020.

A. It's --- I might --- well, I would at least phrase things differently in there --- we might have to go through pieces of it because certainly where we lack data I think we would agree, but in terms of those statements that then go on to editorialize, I don't know that we necessarily agree in how we would frame that.

Q. A little farther down, maybe two sentences down it reads, quote, by contrast, trans women treated with estrogens after completing male puberty experienced only minimal declines in physical performance over 12 months, substantially surpassing average female performance for up to eight years, closed quote. Do you agree or **[160]**

disagree with Professor Handelsman summary of the findings of Roberts?

ATTORNEY BLOCK: Objection to form. I'm just not sure it's all based on Roberts?

THE WITNESS: It is not clear to me that it's --- that it is based on Roberts for what it's worth. It's also somewhat simplistically written. And an example is we don't --- the contention with regard to athletic outcomes relates more to testosterone, and so saying transgender women treated with estrogens wouldn't be precisely how I would frame that either.

BY ATTORNEY BROOKS:

Q. He concludes --- Professor Handelsman concludes by stating supporting federations should incorporate these findings in the strategies for including trans women in elite female competitions while maintaining fairness and safety for other women. Dr. Safer, do you agree that maintaining safety for cisgender women is a legitimate and indeed important concern?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: As an expert I'm not going to give an opinion.

BY ATTORNEY BROOKS:

Q. As Doctor Safer do you agree that ensuring **[161]** safety for cisgender women and girls is a legitimate concern?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So if I'm simply speaking not as an expert, just as an educated person in the field, then it is true that safety is important, but I'm not clear that --- I

don't know that in most of these athletic activities it's actually a concern.

ATTORNEY BROOKS: Let me mark as Safer Exhibit 14 a document entitled Guidance with Transgender Inclusion in Domestic Sport with symbols of a number of UK sport governing bodies across the front and a statement published September 2021.

ATTORNEY WILKINSON: Tab 22.

(Whereupon, Exhibit 14, Guidance with Transgender Inclusion in Domestic Sport, marked for identification.)

THE WITNESS: Thank you.

BY ATTORNEY BROOKS:

Q. And my first question for you, Dr. Safer, is whether you have seen this document before?

A. I have seen this document before. **[162]**

Q. And were you aware of it prior to its reference in this litigation?

A. I don't know that I was.

Q. And are you familiar with the role of the supporting body mentioned on the front page in governance of sport within the United Kingdom?

A. By looking at all their logos, I cannot say that I know them all, no.

Q. And do you have any knowledge as to whether these are official government charted --- chartered sporting governing bodies?

A. I do not have that knowledge.

Q. Have you now studied this document with some care?

A. I would say that I have only looked at this document superficially. I'm certainly happy to look through it.

Q. I will ask you just about a couple of passages. Let me ask you to turn to page three of the document. And towards the very bottom and the next to the last paragraph this --- five organizations states, quote, our work exploring the latest research, evidence and studies made clear that there are retained differences in strength, stamina and physique between the average women **[163]** compared with the average transgender women for nonbinary person registered male at birth with or without testosterone suppression. Do you see that language?

A. I do.

Q. And do you disagree with the conclusion of these UK sporting bodies that the latest research, evidence and studies now make clear that there are retained differences in strength, stamina and physique in nonbinary --- in transgender women or nonbinary persons registered male at birth with or without testosterone?

ATTORNEY BLOCK: Objection to referring to this as something written by the governing bodies as opposed to the quality council that makes recommendations to the governing bodies.

THE WITNESS: To the statement written by whoever actually wrote it that evidence and studies on the subject of transgender people make clear anything, I disagree.

BY ATTORNEY BROOKS:

Q. Let me ask you to turn to page six, under the heading question review is recommending it states, quote, as a result of what the review found the guidance concludes that the inclusion of transgender people into

[164] female sport cannot be balanced regarding transgender inclusion, fairness and safety in gender affected sport where there is meaningful competition, period, closed quote. Do you see that?

A. I do.

Q. And do you disagree with that conclusion of this organization or these organizations?

A. So I really --- as we discussed earlier, I'm not going to express as an expert --- I don't think I'd be able to express as an expert fairness and so I can't comment any further.

Q. Let me ask you to turn to page nine in your expert report, paragraph 49.

A. Okay. Paragraph 49.

Q. At the end of paragraph 49 you state, quote, a person's genetic makeup and internal and external reproductive anatomy are not useful indicators of athletic performance and have not been used in elite competition for decades. In making that statement when you refer to a person's genetic makeup were you referring to the question of whether they had XX or XY chromosomes?

A. So when I'm making the statement genetic makeup **[165]** I'm heavily referencing chromosomes. So I guess I would say that is mostly correct with some --- with perhaps some known genes, but mostly chromosomes.

Q. You would agree, would you not, that respected voices in the field take the view that genetic sex it is at least an important determinant of athletic performance, do you not?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So that I'm supposed to comment that there are people in the field who say that? I guess what I would say is the consensus right now among medical people advising elite athletic organizations would be to move away from using that as a surrogate. In the past it was. There were chromosome tests and the problem is that people have --- there is quite a bit of variety in biology and of course the moment you make a rule you see the exceptions.

BY ATTORNEY BROOKS:

Q. The exceptions.

A. And so I would say that as an expert I can't comment in terms of, you know, some study of everybody's opinion or some survey. But as somebody who has been on these committees I've observed that that was discarded.

Q. So if you put alongside individuals who suffer **[166]** from any condition that has been identified as a disorder of sexual development, am I correct that you consider yourself to have expertise in what constitutes a disorder of sexual development?

A. I have some expertise. And the terminology is actually differences of sexual development or sexual differentiation or intersex are the terms that are more popularly used.

Q. You would agree with me, would you not, that many respective sources up to the present would continue to refer to disorders of sexual development?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So there --- what I would say there is that --- the newer terminology has not --- has not yet

permeated because there have not been revisions to all the documents that have been created.

BY ATTORNEY BROOKS:

Q. How about if we say DSD?

A. DSD is a reasonably safe or DSD intersex is what some people do, yes.

Q. Well, not all DSDs would be considered intersex conditions. Correct?

A. You are right that some people try to parse **[167]** those two terms even. And there is --- but I think those kinds of distinctions might be on the scope of what we are discussing.

Q. Probably so. If we put on side individuals who suffer from anything that is characterized in the field as a DSD you would agree, would you not, that genetic makeup and specifically whether the individual possesses XX or XY chromosomes is a statistically meaningful indicator of athletic performance?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So no, and the --- it's --- I guess it depends what you mean is what it comes down to. So if you are --- if you are simply saying, well, a certain fraction of people of these chromosomes are going to be --- have this other characteristic, then maybe there are those kinds of associations. But if you are going to say that it's connected to the point where you could actually use one of those let's say observing a chromosome as an actual determination for a given individual, then I would say no.

BY ATTORNEY BROOKS:

Q. Is it your opinion that a gender identity itself is a --- or useful indicator of athletic performance?

A. It is my opinion that gender identity itself is **[168]** not a useful indicator of athletic performance.

Q. You say at paragraph 44 of your report --- I will save that. I think that is a new Declaration and we will not take time to do that. Let me ask you to look at paragraph 24 of your rebuttal report. You say in paragraph 24 that none of Doctor Carlson's arguments support HB-3293 categorical ban of all girls who are transgender from all girls sports teams. Do you see that?

A. I do.

Q. And I should continue. I'm sorry. Doctor Carlson's safety argument relates solely to contact and collision sports and the physical characteristics developed during puberty, period. By referring to a categorical ban let me ask this. Do you agree that safety considerations could justify or may justify excluding natal males who experienced all or significant part of male typical pubertal development from participating in female division of contact or collision sports such as basketball and soccer?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So if the question is would I anticipate as an expert that there would be a safety **[169]** explanation for banning transgender women from the female category, then I would --- I wouldn't --- I certainly --- let me think about which way to phrase it. I would have a hard time coming up with an example where I would use being transgender as a safety criterion as opposed to body habitus size or some other more objective criterion.

BY ATTORNEY BROOKS:

Q. Well, and I didn't say anything about gender status. Let me ask again. Would you agree that safety considerations could justify excluding natal males who

have experienced all or a significant part of male typical pubertal development from participating in female division contact and collision sports such as basketball or soccer?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So you're saying that even if we otherwise decided that it would be okay for cisgender males to play with cisgender females, would I envision there being a safety reason to ban those cisgender males?

BY ATTORNEY BROOKS:

Q. All I asked had nothing to do with gender identity. Do you agree that the introduction onto the **[170]** field or the court in or have been spoken of its contact or collision sports in the female division of natal males who have gone through all or a significant part of male typical pubertal development could raise legitimate concerns about safety for the natal females?

ATTORNEY BLOCK: Same objections as the previous two questions.

THE WITNESS: So any person who's gone through a male puberty would that, per se, make me invoke a safety concern, if that's the question ---.

BY ATTORNEY BROOKS:

Q. Could that in your mind raise the given safety concerns?

A. So I would not --- the word legitimate I'm not addressing, but I'm not aware of that in and of itself being a safety concern.

Q. You state in paragraph 22 of your rebuttal report that, quote, transgender athletes and women have been competing in NCAA and secondary school athletics for

many years at this point. Let me ask you if you are aware of any instance in which natal males have competed in the female category in any contact or collision sport in either the NCAA or high school division?

ATTORNEY BLOCK: Objection to form. **[171]**

THE WITNESS: So can I identify transgender girls or women specifically and specific instances of participation? I cannot.

BY ATTORNEY BROOKS:

Q. What was your basis for asserting that such athletes have been competing in the NCAA and secondary school athletics for many years?

ATTORNEY BLOCK: I'm sorry. Is the question about collision sports? Because you are

quoting something that is not about collision sports. ATTORNEY BROOKS: Let me break that out. Thank you.

BY ATTORNEY BROOKS:

Q. Do you have a view as to whether --- I shouldn't say a view. Do you have any information as to whether transgender athletes have been competing in the women's division of NCAA or secondary school athletics in any contact or collision sports for many years?

A. That information on the validity is that they have had access because there has not been a ban.

Q. But whether they have done so you do not have any information?

A. But I cannot point to specific instances, exactly. **[172]**

Q. I apologize if I asked something early in the morning, but it's faster than trying to dig back into the transcript. Do you have any opinion as to whether it is reasonable to exclude a natal male with a male gender identity from a high school girls basketball team?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So ask that again a little bit slower.

BY ATTORNEY BROOKS:

Q. Do you have have any opinion as to whether it is reasonable to exclude a natal male with a male gender identity from participation in a girls high school basketball team?

ATTORNEY BLOCK: Objection.

THE WITNESS: I do not have an expert opinion on that subject.

BY ATTORNEY BROOKS:

Q. Do you have a personal view?

A. I don't know that I --- there it would get more complicated depending on context.

Q. You don't have a simple yes or no personal view on that question?

A. I don't. **[173]**

Q. And do you have a view whether it is reasonable to exclude a natal male with a female gender identity from participation in a high school girls basketball team?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So do I have a view on participation of a cisgender girl in the girls category? Sorry. Say it again.

BY ATTORNEY BROOKS:

Q. I said do you have a view on whether it is reasonable to exclude a natal male with a female gender identity from participation in the high school girls basketball team?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So that is a transgender girl, got it. So --- and the question is do I have a view on --- I apologize. Go back.

BY ATTORNEY BROOKS:

Q. I can do it again.

A. Yes, do it again. Sorry.

Q. Do you have a view as to whether it is reasonable to exclude a natal male with a transgender identity from participation in the girls high school basketball team? **[174]**

ATTORNEY BLOCK: Objection to form.

THE WITNESS: And it is do I have a view on excluding --- as an expert am I opining on that? I'm not. I'm opining as a scientist on what the data are.

BY ATTORNEY BROOKS:

Q. Do you consider a policy that excludes natal males with a male gender identity from the girls basketball team to be, quote, discriminatory?

ATTORNEY BLOCK: Objection to form and

scope.

THE WITNESS: So as an expert I'm not taking a position on excluding cisgender males from the female category, if I answered that correctly.

BY ATTORNEY BROOKS:

Q. My question was simply do you consider such a policy to be a discriminatory policy?

ATTORNEY BLOCK: Objection to form and scope.

THE WITNESS: So are you asking me as an expert to define discrimination?

BY ATTORNEY BROOKS:

Q. I will direct you to paragraph 27 of your rebuttal report. And there you wrote Doctor Carlson has not offered cogent explanation for why alleged safety **[175]** concerns based on average differences in size and strength should be addressed within an across the board exclusion of transgender women as opposed to tailored nondiscriminatory policies. Do you see that?

A. I do.

Q. So understanding discriminatory, however you did understand it when you wrote that, do you consider a policy that prohibits natal males with a male gender identity from participating on the girls basketball team to be a discriminatory policy?

ATTORNEY BLOCK: Same objections.

THE WITNESS: Right. So I'm not defining --- I'm not defining discriminatory here. I'm --- right. So if you are asking as an expert to define discriminatory, that I can't do.

BY ATTORNEY BROOKS:

Q. Well, if you don't know what discriminatory means, what do you mean when you referred to a tailored nondiscriminatory policy?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I guess I have to circle back initially to --- I mean we can do that for any word here, right, where I could have like my own personal **[176]** definition or am I acting as an expert to define these words, and I think we are kind of in that situation.

BY ATTORNEY BROOKS:

Q. But I'm asking you about your expert reports in the litigation. You must have meant something. What did you mean by nondiscriminatory when you submitted this expert report?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So when I'm using the word nondiscriminatory I am using it to mean something that isn't using some other indicator --- well, I'm really just using it in the broadest sense to something that is including people.

BY ATTORNEY BROOKS:

Q. Using it in the broadest sense, discriminating between one category and another is --- could be a good thing or a bad thing. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: As an expert I --- that is way outside my scope. But simply as an English speaker, yes, discrimination could be good or it can be bad, yes.

BY ATTORNEY BROOKS:

Q. And for instance, if you are --- well, you said **[177]** you don't prescribe to minors, so --- but if you are dealing with a 19-year-old who says and you concluded I need gender affirming hormone, and I will use the term you prefer, if that individual's hormones and biology are female then gender affirming hormones are going to

consist, among other things, perhaps of administering testosterone. Correct?

A. Yes, typically we would have have ---.

Q. And if that individual's biology and hormones endogenous were male, then the gender affirming hormones would include among other things estrogen or estrogen analog. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: If that person had typically --- typically a male hormone profile, right, to move toward a more feminine profile that typically would include estrogens or some other agents that were other than testosterone, yes.

BY ATTORNEY BROOKS:

Q. So speaking scientifically and not in civil rights terms, if I may, you as a scientist, as you decide which regimen of hormones to administer to this **[178]** individual have to discriminate between those who are endogenously male and those who are endogenously female in deciding which regimen you prescribe. Correct?

ATTORNEY BLOCK: Objection to the form.

THE WITNESS: We have to make a decision. And so if you are trying to get me to say that discrimination can be defined as making decisions, I'm with you and yes.

BY ATTORNEY BROOKS:

Q. Okay. Let me just run down a few items to make sure.

You have not personally engaged in any research regarding sports physiology, have you?

A. I'm trying to think it there's anything. I don't believe I have.

Q. You yourself haven't personally engaged in any research or published any papers --- that's a compound question. You, yourself, haven't engaged in any research relating to sports medicine or sports injuries, have you?

A. I have not engaged in any research with regard to sports injuries. And the answer to the first part of that gets a little muddled because some of the papers **[179]** that I have written about physiology and transgender people could apply to sports medicine.

Q. Have you, yourself, ever participated in devising any athletic training regimes for individuals of either sex?

A. I've not been involved in devising any training regimes.

Q. Have you done any research with related to male physiology --- I'm sorry, male physiological advantages relevant to athletics before, during or after puberty?

A. So there I have --- none of the research that I have done to date has been specifically loopholed as --- well, I can't even say that. So research that I have done with regard to observing physiology among my subjects can be applicable to sports medicine in some context.

Q. On what publications, if any, of yours do you believe relate to male physiological advantages in athletics before, during or after puberty?

A. Well, just off the top of my head, without looking at it exhaustively, I have a paper on hematocrit, which is the oxygen-carrying cells in people. In transgender people I have a paper on testosterone levels with different treatments. So those **[180]** can have --- those actually can have a sports context.

Q. Have you done any research on the impact of testosterone suppression on athletic performance or any measurement of strength?

A. So the second piece of that is I have not done any research that specifically used strength as an endpoint in my own studies. To the second piece of those --- I forgot what --

Q . Athletic performance?

A. Athletic performance, there it gets a muddled thing. The research that I have done can be applicable in that context.

Q. Well, that is if your endpoint is hematocrit count, to use the right term, you're saying that might have implications for athletic performance? Is that your point?

A. That is correct, yes.

Q. But you have not done any research in which any measurement of athletic performance is an endpoint?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Again, I have to think about how to say that because some of the --- part of the problem is that papers that we're looking at include quite a bit of literature on components that may be **[181]** applicable --- that may be applicable in sports medicine, whether it is muscle strength and muscle size or blood cell counts and such. And so that more expansively than my research is in that category. Whereas, if I'm trying to be focused and narrow, then I've got those two studies, the one by Roberts and the one by Harper. And my papers are not those.

BY ATTORNEY BROOKS:

Q. You don't have any information about numbers of children in West Virginia who suffer from any DSD, do you?

A. No, as --- I guess I have to say no there in terms of actual surveys of kids in West Virginia, I know some brought statistics. West Virginia is big enough that you would predict that the statistics would generally apply, but that is as smart as I could get on the subject.

Q. And you are --- I think you effectively answered this, but to be clear for the record you are not opining that BPJ suffers from any DSD?

ATTORNEY BLOCK: Objection to the form.

THE WITNESS: So the --- here too we get into --- into an evolving area of definitions where you could envision if some of the specific genetics that are **[182]** associated with being transgender became identified, would we in the medical world start to label those instances as DSD? It's possible. So that is just –

BY ATTORNEY BROOKS:

Q. Thus far no such indicators have been

identified. Correct?

A. I can't even --- I can't even say that definitively. It is an area of active conversation in terms of --- in terms of boarder setting in the medical community right now.

Q. However, I think my question is easier. You're not offering an opinion --- any opinion that BPJ suffers from any DSD, are you?

A. So I don't have --- so to be clear first I don't know the --- BPJ's specific medical condition. I wasn't brought in to evaluate that and I have not. So I can't actually render an opinion on any of the medical story there.

Q. And you don't know whether any child or typical XY chromosome --- pardon me, you don't know whether any child with XY chromosomes who suffers from a DSD has ever sought to compete in female athletics in West Virginia up until the present? **[183]**

ATTORNEY BLOCK: Objection to the form.

THE WITNESS: So the question is do I know of an instance of a specific individual with XY chromosomes and a DSD connected to that who has specifically participated in sports in West Virginia?

BY ATTORNEY BROOKS:

Q. Who has sought to participate in female athletics in West Virginia?

A. Right, so who has sought to participate in female sports in West Virginia. I cannot give you a specific instance, that is true. I can say, though, knowing the percentage of people who have DSDs and the size of the State of West Virginia that you would predict it would be true, but that would be again as smart as I could be on one subject.

ATTORNEY BROOKS: Let me mark as Safer Exhibit 15 what was previously designated as Tab 53, an article by Dr. Safer and others entitled the Mount Sinai Patient Center Preoperative Criteria Meant to Optimize Outcomes are Less of a Barrier to Care than WPATH SOC 7 Criteria Before Transgender Specific Surgery. And yes, that is a mouthful.

(Whereupon, Exhibit 15, Dr. Safer Article, **[184]** was marked for identification.)

BY ATTORNEY BROOKS:

Q. Now, Dr. Safer, to be fair, I see that you are the last listed author on a fairly lengthy list of authors. And maybe that does and maybe that doesn't have significance in terms of how in depth your involvement in this paper was. Let me ask. Was this a paper of which you had some significant input?

A. I had significant input. I can tell you that in the medical and scientific community the first author typically did the work and the last author is the senior author and supervisor. And the middle authors are actually the ones where you ---.

Q. Okay. I was aware of the significance of the first. I was not aware of the significance of the last. Okay. That is helpful. All of the authors here, if I'm correct, are colleagues within the Mount Sinai Clinic or division that you supervise. Am I correct?

A. All of the authors were in those positions at some point, which is how we came together to write the paper. **[185]**

Q. And the paper I should say for the record is dated 2020. And let me see if I correctly understood what the paper is about. If we --- in this paper you compare the eligibility of patients who are seeking vaginoplasty under the WPATH Standard of Care 7 criteria versus the criteria actually used by your clinic. Am I correct?

A. Yes.

Q. And just so we're clear, vaginoplasty is a surgery that is only done on biological male, natal male individuals. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So a vaginal plasty is the genital reconstruction surgery to create a vagina in a person.

When we are using it as a gender affirming surgery, then we are using it on people who have what would be considered typically male anatomy in that circumstance but the surgery could also be used on somebody with typically female anatomy requiring construction for whatever their circumstance may be.

BY ATTORNEY BROOKS:

Q. That said, the subjects discussed in this paper are all individuals who are seeking the surgery for **[186]** gender affirming purposes rather than, for instance, because of a severe DSD. Correct?

A. The people in this circumstance are all people seeking the surgery for gender affirming purposes and not those for DSD or for other purposes, reconstruction of vaginas for accidents and cancers. I mean there is quite a range.

Q. And the result as summarized in the abstract is that of 139 patients who were identified as subjects of this study, 63 qualified for surgery immediately based on the Mount Sinai criteria. Correct?

A. Yes.

Q. Whereas only 21 of those would have qualified based on the criteria set out in the WPATH Standard of Care Version 7?

A. Yes.

Q. Three times as many individuals qualified for immediate surgery under the standard used by your clinic as opposed to the standards set out in the WPATH Standard of Care?

A. That's correct.

Q. When did your clinic begin approving surgery for [187] patients who are not eligible under the WPATH Standard of Care?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Yeah, so to be clear, the patients in our program qualify by both criteria. The paper is simply pointing out that our process is more efficient and patient friendly, but it's not to say that we were not informed by WPATH criteria also. And I think I need to expand even a little bit further. Part of the point of the paper is that it includes --- it includes efforts to know benefit to the patient that end up being time consuming and therefore are a waste of energy in contrast to our approach, which is actually more conservative than WPATH's approach. We actually look at more things but we do so in a more efficient fashion and that is actually the point of the paper.

BY ATTORNEY BROOKS:

Q. Well, let me clarify one thing you just said. According to this paper, it is not the case, is it, that every patient for whom your clinic approved surgery was at that time qualified according to the WPATH criteria?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Wait. Say it again. Could you repeat that? [188]

BY ATTORNEY BROOKS:

Q. It is not the case, is it, that every patient who was qualified for surgery by your clinic had been demonstrated to satisfy the WPATH criteria for eligibility?

A. It is --- so there were --- the patients just as stated who qualified by our criteria but not by WPATH criteria, there is such a group that existed, exactly, yes.

Q. Okay. And specifically, according to your criteria,

three times as many patients are eligible according to WPATH criteria?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: It's not so much the three times. It is the pace. Some of this relates to pace and efficiency.

BY ATTORNEY BROOKS:

Q. Dr. Safer, your clinic, according to this paper, approved for surgery 42 patients who were at that time not eligible according to WPATH criteria. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: No. So the reality is we **[189]** still live in the universe that everybody else lives in, so we are --- so this paper proposes a more appropriate and a more patient appropriate model, but it is not the case that we actually sent people to surgery who would not be approved by WPATH.

BY ATTORNEY BROOKS:

Q. Well, were you personally involved in developing and approving Mount Sinai's criteria?

A. Let me look at the role here. Yes, I definitely had a role in developing our criteria.

Q. Let me ask you to look at page 168, column one, call your attention quite a bit to table one. And if I understand correctly, table one is designed to help us compare and contrast what is required by the WPATH criteria for

surgical readiness versus the Mount Sinai criteria for surgical readiness. Correct?

A. That is correct, yes.

Q. And the WPATH requires a letter of support from the patient's hormone provider confirming the hormone regimen and the length of time of hormone therapy. Correct?

A. That is how it is written, yes.

Q. And farther down, under mental health it says **[190]** that it requires two letters of support from mental health providers?

A. It does, yes.

Q. And it gives on page 157 a definition who is a qualified mental health professional down towards the bottom of the second column. I'm going to ask you to find that language if you could?

A. Uh-huh (yes), yes.

Q. You say, many define licensed mental health providers having one or more of the following credentials, the LCSW, Licensed Clinical Social Worker. Is that right?

A. LCSW is Licensed Clinical Social Worker, yes.

Q. And MD, DO that is a medical doctor, a doctor of -- what does the O stand for?

A. Osteopathy.

Q. There we go. A psychiatrist, a Ph.D., yes, that was surprising to me. Surely not just any Ph.D.?

A. Right, that's referring to a Ph.D. clinical psychologist.

Q. Okay. Or any Master's level for above counseling degrees. But then you go on to say that in your evaluation based on SOC-7 criteria. That's the WPATH **[191]** criteria?

A. That's the WPATH criteria, yes.

Q. We included the above degrees with the following exclusions, mental health providers with lower than Master's level training and unlicensed mental health providers of any type, NPs and PAs without mental health credentials, physicians who are not psychiatrists or mental health providers who are still in training. Do you see that language?

A. I do.

Q. So under the definition used in your clinic you, yourself, do not qualify as a mental health professional. Correct?

A. That is correct.

Q. So at no point have you relied on your own opinion for any mental health evaluation for eligibility?

A. That's correct.

Q. Okay. I just wanted to understand that clearly. So back to mental health data. In says in the WPATH column that two letters of support from mental health providers are required. In this paper you state on the next page, **[192]** but I will quote it the most significant of the Mount Sinai criteria is the removal of the requirement of two independent psychiatric evaluations. And that is in column two of page 169, at the end of the first full paragraph. The first full paragraph, column two, the final sentence.

A. I'm in which column? Sorry.

Q. Column two.

A. Oh, column two. Sorry.

Q. The first full paragraph, final sentence.

A. The most significant deletion from the Mount Sinai criteria is the removal of --- yes, I see that.

Q. And you stated at the top of column one on the same page that, quote, finding two mental health providers to do independent evaluations is time-consuming, expensive and difficult. Right?

A. Just trying to find that exact wording. Yes.

Q. So in your own clinic's practice, while WPATH calls for two letters from independent mental health providers, you concluded that because it was hard to get two independent evaluations your clinic would simply dispense with the requirement of any independent mental health review. **[193]** Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: No, that is not quite correct. Part of the difference for our operation is that we have --- we have expertise in-house and we have --- if you notice, looking at the table, a longer list of requirements actually than WPATH does, which includes a social work component. And that actually is the --that's the source of actually yet a second pair of eyes, as it were. And so it is not the case that we are --that we're providing less of a screen, we are actually providing more of a screen. It's just that we are operating in a more efficient manner for the patient.

BY ATTORNEY BROOKS:

Q. Let's flip back to column one. A few more lines down it says for our analysis patients who otherwise met WPATH SOC 7 criteria received one letter of support from the CTMS mental health provider. Right? You would

agree with me, would you not, that the only letter of support for a mental health provider required by your protocols is from a mental health provider within your employment?

ATTORNEY BLOCK: Objection to not reading the complete sentence. **[194]**

THE WITNESS: So yes. So maybe let me just --- show me the wording again.

BY ATTORNEY BROOKS:

Q. Yes. For our analysis --- and I'm beginning at perhaps eight lines down.

A. Our analysis, yes.

Q. Patients who otherwise met WPATH SOC 7 criteria received one letter of support from the CTMS mental health provider doing the assessment, period, closed quoted. Do you see that?

A. I do, yes.

Q. As the term is generally understood in your field, a CTMS mental health provider is not independent --- let me use the correct terminology, is not an independent mental health provider?

A. So in a clinic setting I don't know that the word independent actually has the same meaning as in some other context. So even a WPATH requirement isn't necessarily that it would be an unaffiliated person or I don't know what you were thinking independent might mean here, so I don't want to put words in your mouth or conjecture too much. But when we say independent we just mean two different people. **[195]**

Q. But in fact, the letter of support from the CTMS mental health provider that you refer to in this paragraph

at the top of column one of page 169 actually plays no role in your determination as to whether this patient is eligible for surgery. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So yes. I'm confused by the question.

BY ATTORNEY BROOKS:

Q. I'm confused by the text. The final paragraph --- sentence in that paragraph reads these letters of support were used to satisfy third payor requirements to cover surgery and were not part of the CTMS assessment?

A. Oh, yeah, that's a good point. The literal letter is because we are all in-house the opinion of the person is, of course, important and so the screen takes place. But the need to create --- the bureaucratic of creating a specific letter is one of the burdens that we are suggesting could be removed.

Q. In table one, let me find this. Under mental health WPATH SOC-7 requires, quote, persistent, well documented gender dysphoria. Do you see that? **[196]**

A. I do.

Q. And you understand well documented gender dysphoria to be referring to a general diagnosis under the DSM-V criteria?

A. So for WPATH's purposes I think they are specifically referring to the DSM diagnosis.

Q. In your clinic you are willing to approve for this --- I'm not sure how to actually say the word vaginoplasty surgery, individuals who do not suffer from persistent well documented gender dysphoria. Correct?

ATTORNEY BLOCK: Objection to the form.

THE WITNESS: So if you look, the list of the criteria for Mount Sinai, then the phrasing is a confirmation that this person --- for all intents and purposes, that this person is transgender and with the language and evolution we use that word gender dysphoria and we also use the new word that will replace gender dysphoria, gender incongruence, as the terms I referenced before, transgender.

BY ATTORNEY BROOKS:

Q. And the effect of that is you do not require a diagnosis of gender dysphoria under the terms of DSM-V. Correct? **[197]**

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the --- yeah, if we had our druthers, which is I think you are asking, and we did not --- and we weren't simply satisfying a third party payor, would we insist on that formal DSM-V criteria for a person we otherwise know to be transgender? We would not.

BY ATTORNEY BROOKS:

Q. And in fact, you do not. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Well, as a practical matter, like I said, we live in a universe where we end up doing both what we suggest is the necessary approach and we end up, because we still live in the universe that we live in, satisfying the other approach even though we're suggesting that it's cumbersome.

BY ATTORNEY BROOKS:

Q. Dr. Safer, you testified earlier that, in fact, in 42 patients your clinic determined they were surgery eligible

even though they did not satisfy the SOC criteria listed in column one of table one?

A. Right. So they are not --- so they would be --they theoretically would be eligible without having **[198]** satisfied the --- some of those specific WPATH criteria that we discussed. But in practice nobody went to surgery without covering both sets of criteria.

Q. Isn't the precise results reported by this paper that 42 patients were deemed surgery approved who did not qualify under WPATH criteria?

A. But I guess the bottom line of the paper is that if we followed our --- our rules alone, we would actually cover more details and be more conservative in our approach if a longer list of criteria and we would do so more quickly. That's all the paper says. It doesn't say that we have --- that we have actively defied the existing universe and sent people to surgery without covering the criteria that are generally being used by doctors.

Q. And by the way, the surgery we're talking about, vaginoplasty, in the context where it is being used for gender affirming purposes, invariably includes castrating the individual. Correct?

ATTORNEY BLOCK: Objection to form and foundation.

THE WITNESS: So a vaginoplasty is a genital reconstruction surgery, which in this context is **[199]** taking the existing typically --- typical male genitalia and reconfiguring it into typically female genitalia. And in that --- in the procedure the testes are removed.

BY ATTORNEY BROOKS:

Q. They're not reconfigured?

A. They are not reconfigured.

Q. Let me ask you 169, column one, it says about two-thirds of the way down, at the end of the paragraph that begins medical requirements for the Mount Sinai CTMS? I want to direct your opinion --- your attention to the final sentence.

A. So which paragraph, column one.

Q. Column one, the paragraph that begins halfway down, medical requirements?

A. Yes.

Q. Now, let's jump to the end. The Mount Sinai criteria also removed the 12-month continuous hormone therapy requirement for the vaginoplasty which complicates matters for people who have received hormone therapy from non-medical providers. Do you see that language?

A. I do.

Q. Explain to me the reference for people who have received hormone therapy from non-medical providers? **[200]**

A.Well, it is the circumstance that some people more so outside of New York, some transgender people still do not have access to care for --- to gender affirming care and do get some of their treatment by alternative means. And if there is an insistence on a documented 12-month continuous hormone therapy requirement, then those people might not be able to be approved for surgery.

Q. I need to ask you to clarify what you mean by obtaining by alternate means?

A. We have people getting hormones from internet providers. We have people inappropriate --- well, I

apologize, I don't want to make a value judgment there, but we have people getting hormones from friends or connections of theirs, things outside the system.

Q. So you have some people come to you who have effectively self-diagnosed and self-prescribed ---

ATTORNEY BLOCK: Objection.

BY ATTORNEY BROOKS:

Q. --- hormone therapies?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So when we are seeing people for surgeries, then it is no longer a matter of self-diagnosis because we see them ourselves with our **[201]** internal team. But there are people who have self-prescribed their hormones or obtained them by nonconventional means, that part, yes.

BY ATTORNEY BROOKS:

Q. And when people come in who have obtained hormones by nonconventional means and taken them without prescription necessarily, you chose to remove the requirement for 12 months properly prescribed continuous hormone therapy rather than insisting that the patients undergo control of hormone therapy for 12 months before you operate on them?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So to clarify, again, these are --- we are proposing that this would be the protocol. In practice, we have not been able to do this, that is we have had to do both. But in our experience, as a program we don't see any benefit to a supervised --- a supervised regimen, that is we are not --- I'll just leave it there.

BY ATTORNEY BROOKS:

Q. WPATH in table one requires that all psychiatric symptoms be, quote, well controlled. Correct?

A. They use that language, yes. **[202]**

Q. And the language under the CTMS column is rather different. Among other things it says no suicide attempt in the last six months. Do you see that?

A. Let me find it. We're in the table, right?

Q. We are in the mental health section under CTMS column?

A. Yes.

Q. No suicide attempt in the last six months. But if the patient tried to commit suicide seven months ago, that's okay?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the point here and the distinction is that the WPATH criteria are too vague, and so what you are observing with the Mount Sinai criteria is they're much more granular. And rather than leaving something to some subjective interpretation we define some of the specifics to make it clearer on what the guidelines should be.

BY ATTORNEY BROOKS:

Q. You refer here in your guideline to no suicide attempt in the last six months. If a patient has entertained suicidal thoughts but made no attempt in the last six months, did that patient potentially satisfy the Mount Sinai criteria? **[203]**

A. So that kind of decision would be at the discretion of the reviewing mental health professional, the

psychiatrist or the psychologist, and so you can certainly envision different circumstances. So even going back to your example of seven months, you could envision that something like that might be considered, depending upon the person, too unstable even though they technically met criteria. This isn't just a check box. It is more a guideline. And similarly, to your point about a suicidal ideation, there are different tiers of them. And I won't claim to be an expert on the specifics there, but my mental health professionals are more concerned about some of those than others.

ATTORNEY BROOKS: Take a break.

VIDEOGRAPHER: The current time reads 3:35 p.m. Eastern Standard Time.

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record.

The current time is 3:55 p.m. Eastern Standard Time.

BY ATTORNEY BROOKS: **[204]**

Q. Dr. Safer, you testified earlier, and I think I'm using the word that you used that if your clinic had its druthers they would be following or making decisions strictly based on the criteria that are laid out in this paper, Exhibit 15, under the heading of Mount Sinai CTMS. Correct?

A. Yes.

Q. And can I infer from that that you, yourself, don't view the WPATH SOC-7 as setting out scientifically

established best practices but rather recommendations on which you use different?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: No, I would not say that. So SOC-7 sets out the guidelines as things were understood in 2011 and 2012, and we have learned --we've learned and things have evolved since then in terms of the care of transgender people.

BY ATTORNEY BROOKS:

Q. Did you have any participation in the development of the SOC-7 guidelines?

A. I had very minimal participation. I helped review some articles that informed those guidelines.

Q. Those guidelines --- did you have any **[205]** familiarity with the process of how they were being drafted?

A. I'm trying to think if I can say things usefully. I was not close enough to the process that we would want --- that I would want to start commenting on.

Q. Do you know whether they addressed issues on which opinions within the drafting committee differed?

A. I can't comment on SOC-7. We are literally writing SOC-8 now.

Q. And on that are there issues that the SOC-8 is addressing on which opinions significantly differ?

A. Yes.

Q. So it's not that every aspect of the guidelines are unanimously agreed by every member?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So with medical guidelines in general there isn't --- that unanimity wouldn't be a thing. They're referred to as consensus documents rather than unanimous documents.

BY ATTORNEY BROOKS:

Q. And what that tells us is that there is --- that reasonable people differ on at least some aspects of what is set forth in the document?

ATTORNEY BLOCK: Objection to form. **[206]**

THE WITNESS: In all guidelines, including these, members of the committee even differ in terms of how things are framed and when consensus is obtained, but not unanimity.

BY ATTORNEY BROOKS:

Q. How many gender performing surgeries or gender affirming surgeries were performed in your clinic in 2021?

A. In 2021, all --- there were, according to the New York Times, about 9,000 total surgeries performed at Mount Sinai hospitals, including everything we do. So that wouldn't just be vaginoplasty. That would include chest reconstruction surgeries, revisions of older surgeries, et cetera.

Q. Well, you quote the New York Times. Where did they get the information?

A. I suppose the sources is us.

Q. You believe that number to be approximately accurate?

A. I think that's right.

Q. I don't trust the New York Times, but you have a pass. And now 2021 may or may not have been affected by

COVID in terms of patients presenting and wanting surgery. Has there been a clear trend in numbers of **[207]** surgeries performed by your clinic over the last five years?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So there is definitely an increase in the number of surgeries at Mount Sinai over the past five years. Unfortunately, expectation is the challenge. We opened the program in 2016, so roughly those five years. And certainly the first few years were quieter as the reputation grew. In 2020, numbers were down because we had to divert resources to taking care of people with COVID. Our group, including myself, literally dropped what we were doing for a period of time to go become COVID hospital employees, and so there was a dip there in 2021 as a little bit of a rebound element to it.

BY ATTORNEY BROOKS:

Q. Are you able to give me any average total receipts of your clinic or the hospital as a whole and associated physicians from gender affirming surgeries performed within 2021?

A. I'm sorry, say that again.

Q. Let me just ask this again. Do you have any knowledge as the total --- as to the total receipts of your clinic or the wider hospital and physicians **[208]** involved as a result of gender affirming surgeries performed by your clinic in the last year?

A. So do I know some of the financial elements?

Q. Correct.

A. So I do know some of the financial elements, but nothing that the hospital would allow me to share.

Q. Your counsel can designate it as confidential later on, so it doesn't become public, but you are obliged to answer the question.

ATTORNEY BLOCK: I'm not --

BY ATTORNEY BROOKS:

Q. I'm entitled to understand your financial interest in the area of your testimony.

ATTORNEY BLOCK: We are not representing him in the context of any legal dispute with Mount Sinai.

ATTORNEY BROOKS: I am entitled to understand the expert's financial interest. And I suggest to you, Counsel, that you'd rather have me questions asked here where you can designate it as confidential than at trial in a public courtroom.

ATTORNEY BLOCK: It's not up to me.

ATTORNEY BROOKS: You can confer if you want, because that would be the alternative. If you **[209]** want to step out and confer with your witness, you should do so.

ATTORNEY BLOCK: It's not up to me to say what he can and can't say in contravention with an agreement with his employer, and so I think if you want to like obtain like a Protective Order, you know, with him.

ATTORNEY BROOKS: We have a Protective Order in place, Counsel.

ATTORNEY BLOCK: I know, I'm not representing him in that capacity, though. So if you want to interface with his attorney through Mount Sinai then you can, but I don't have an attorney/client relationship with him for purposes of any employment disputes.

ATTORNEY BROOKS: Are you instructing the witness not to answer?

ATTORNEY BLOCK: No, I'm not.

ATTORNEY BROOKS: Are you refusing to answer?

THE WITNESS: I wouldn't be able to answer without including the hospital lawyers.

BY ATTORNEY BROOKS:

Q. Can you tell me ---? **[210]**

ATTORNEY TRYON: This is Dave Tryon. I'm sorry ---.

ATTORNEY BROOKS: Go ahead.

ATTORNEY TRYON: May I just also say that I think if the witness is not willing to disclose his financial interest here, that that would be grounds to disqualify him as a witness, which on behalf of the state I would likely pursue. So I would respectfully request that he answer the question.

ATTORNEY BLOCK: Dave, on what basis is that grounds to --- he has disclosed everything required by the rules. You're asking for --- he has no financial interest in this litigation.

ATTORNEY BROOKS: We don't need to argue the motion right now. The motion seems likely, the motion will be briefed, but we don't --- we got no Judge here, we're not going to be deciding ---.

ATTORNEY BLOCK: If you want to file a subpoena as a third-party subpoena for that information with a Court Order, than you're free to do so. He is appearing here as an expert witness on his expert testimony. So you

have plenty of discovery tools to obtain that information. And we're not his counsel for that. **[211]**

ATTORNEY BROOKS: I do have discovery tools, including asking him questions at this deposition. I've attempted to do so. You have not instructed him not to answer. The witness has refused to answer. The record is clear.

BY ATTORNEY BROOKS:

Q. Let me ask you about personally. Does your own income or any bonus you receive depend on any part of the overall revenues of your plan?

A. It does not.

Q. And does your personal income consist strictly of a salary or also a salary plus fees associated with surgeries performed?

A. Exclusively a salary.

Q. And your income depends in no way on how many surgeries, you yourself perform?

A. That --- well, I don't perform surgeries I'm not an endocrinologist.

Q. Pardon me.

A. But that's right, it's not revenue based.

Q. It's not revenue based in any way?

A. In any way. That's right.

Q. That is helpful. Do you have any understanding as to the average revenues per patient that your clinic **[212]** receives for patients who are seeking gender affirming surgery in the clinic?

A. We don't characterize it that way. There's a --- there's a wide range of reimbursements or lack of reimbursements across medicine. And gender affirming care includes quite that entire range actually, from mental health, which is under reimbursed, to the surgeries which are --- where there's more money.

Q. I've been waiting to hear the flip side of that.

A. So yes, so we have that, so I don't think I could give --- I wouldn't --- even were I allowed by the hospital to give you the specifics, I don't know that I would be able to do that on a per patient basis.

Q. Can you tell me your total personal income in 2021 from --- in any way related to your work in connection with your employment at Mount Sinai?

A. So is this something that I'm answering?

ATTORNEY BLOCK: I'm sorry, could you restate the question?

THE WITNESS: He's asking for my --- you're asking for my salary?

BY ATTORNEY BROOKS:

Q. I'm asking for your total income, in any way --- in 2021 in any way associated with the clinic at **[213]** Mount Sinai?

A. So we're running into --- so I'm simply on salary, but the specifics of that are also something where I would need to include the Mount Sinai lawyers, because that's part of their practice, and I would have to defer to them.

Q. You decline to answer the question about your own personal income?

A. Yes.

ATTORNEY BROOKS: I won't take time to speak upon it, but I will object.

BY ATTORNEY BROOKS:

Q. I read in some document that your spouse is an employee of Parexel --- if I'm pronouncing that company correctly. Is that still the case?

A. Yes.

Q. And does that company derive any revenues from the sales, testing, clinical trials of any pharmaceutical that is used to suppress puberty or is used as a cross sex hormone?

A. I don't know the answer. Parexel is a very large back office organization supporting clinical research with many clients. And so you can envision **[214]** some connection buried in there, but I don't know specifics.

Q. Fair enough.

ATTORNEY BROOKS: Let me have 54.

BY ATTORNEY BROOKS:

Q. Let me ask you to turn to paragraph 18 in your expert report, and there in the first sentence you write although the detailed mechanisms are unknown, there is a medical consensus that there is a significant biologic component underlying gender identity, closed quote. Do you see that?

A. No, I might have pulled the wrong thing out. Which ---?

Q. It's the expert report not the rebuttal?

A. Expert report. And it's which paragraph?

Q. Paragraph 18?

A. Oh, sorry.

Q. This is why lawyers number their paragraphs.

A. That is wise. All right. Paragraph 18.

Q. I'm just calling your attention --- and I have read into the record the first sentence of that paragraph.

A. I see it.

Q. And picking up on our earlier discussion about **[215]** consensus. When you say there is a medical consensus, do you mean that all experts in the field agree or do you mean that in your view this is a majority opinion?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So when I guess similar to when we talked about guidelines if the question is, is there unanimity, then there is never unanimity, so there you go.

BY ATTORNEY BROOKS:

Q. Okay.

A. I can be a little stronger, though, because the mainstream medical organizations have various statements in this space. So for example, the endocrine society, which is the largest international organization of endocrinologists does actually have a statement where the sum of the modeling for gender affirming care is prefaced with statements that support this.

Q. In providing the basis for your opinion that there is such a consensus, you cite only two papers and those only papers that you had written yourself. Did you consider those papers written by yourself to adequately document the existence of the medical consensus?

ATTORNEY BLOCK: Objection to form. **[216]**

THE WITNESS: So both of the papers reference reviews with larger bibliographies that reference yet other papers that support the statement. And when we're talking about what's informing the statement, of course, is not limited to the specific papers referenced, so that's part of the reason why I gave that example, for example, the endocrine society's formal statements on the project, which is a consensus view of more people than myself, of course.

ATTORNEY BROOKS: Let me mark as Exhibit 16, an article by Aruna Saraswat and others entitled Evidence Supporting the Biological Nature of Gender Identity from 2015 of which Dr. Safer is one of the co-authors.

ATTORNEY WILKINSON: Tab 54.

(Whereupon, Exhibit 16, Aruna Saraswat Article, was marked for identification.)

BY ATTORNEY BROOKS:

Q. And Dr. Safer, is that a paper that you --- I guess I see by placement --- had supervisory responsibility for?

A. Yes. **[217]**

Q. Let me --- I learned something in this deposition, so that is good. Let me call your attention to page two and column two, and in the very bottom paragraph -- -.

ATTORNEY BLOCK: I'm sorry, did you mean 200?

ATTORNEY BROOKS: I did mean 200. I apologize. That is also the second page.

BY ATTORNEY BROOKS:

Q. In the bottom --- first column bottom paragraph it states, quote, however it is important to note that most transgender individuals develop a gender identity that

cannot be explained by atypical sexual differentiation, closed quote.

A. So this is column two.

Q. Column one. If I misspoke I apologize.

A. I could have misunderstood at this hour.

Q. At the bottom paragraph?

A. However it is important to note, I'm there, yes.

Q. All right. Can you explain to me what is meant by the statement that most transgender individuals have a gender identity that cannot be explained by atypical transgender differentiation? **[218]**

A. So that is referencing, in this context at the time that this was written, the anatomy, genitals, reproductive structures.

Q. And let me just --- for purposes of terminology, you said at the time this was written. This is about seven years ago, six years ago?

A. 2015, yes.

Q. And if you look at the page one, column one abstract. This paper is using the term disorders, in sexual development, and that DSD. Do you see that?

A. I do.

Q. That was a term that you were comfortable with most recently?

A. It was a terminology that I was using that recently, yes.

Q. The point here, on page 200, column one, that we were just looking at is, in fact, most transgender

individuals do not suffer from any identifiable DSD. Is that what this is saying?

A. From a physically identifiable DSD, that is what this is saying, yes.

Q. Physically, genetically, hormonally, identifiable by any physical measurement. **[219]** Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So you have to be careful to be not too broad, and part of the reason is the line there is actually blurring. So when I'm sitting here and talking in 2022 I recognize that there is a potential for some blurring in that line. But in 2015 it was certainly understood to be how you're saying it.

BY ATTORNEY BROOKS:

Q. Well, it remains true today, does it not, that the overwhelming majority of transgender individuals do not suffer from any identifiable atypicality genetically, physically or hormonally. Correct?

A. Well, that's not how I would say it, because gender identity is a biological phenomenon and so one would predict that as we identify certain correlates or even explanations, than we will have things in that space. But if we're talking about how things were defined in 2015, being transgender was defined as somebody where their gender identity was not aligned with the rest of their biology, and there was no apparent, physical variation either in terms of their anatomy or their chromosomes in terms of their genitals, **[220]** in terms of their reproductive anatomy or in terms of their chromosomes. So that is how it was defined at the time.

Q. Well, today, and using identifiable to mean you, Doctor safer, are able to identify it now, not hypothetically

in the future, it remains true that the overwhelming majority of transgender individuals do not suffer from any current identifiable, physical chromosomal or hormonal irregularity. Correct?

A. I would say that right now in 2022, it would be true to say that a transgender person does not have an identifiable genital difference almost by definition or a --- or an internal reproductive organ difference almost by definition. Chromosomal I can't say, because we actually don't check. And hormonal gets even grayer than that, because it could be the case that there are hormonal exposures, for example, in utero that explain at, least some people as being transgender.

Q. As you sit here today, you don't know of any chromosomal test that can identify an individual as transgender, do you?

A. Is there a --- there --- as I sit here today there are no tests to identify somebody who is **[221]** transgender.

Q. And that includes genetic tests?

A. There's no scan and there are no blood tests and there are no genetic tests.

Q. And no hormonal tests?

A. That's right. There are no hormonal tests right now to identify a transgender person.

Q. As you sit here today and based on your whole knowledge of the field, there is no biological test from some mental professionals, as they can do, but there is no biological test that will tell you in advance which prepubertal child who is suffering from gender dysphoria would persist and which would desist as they enter adolescence?

A. So I would have to challenge how you're stating that a little bit just so that we are cleaner in terms of how we think. So we're thinking right now in terms of identifying kids who are transgender. We use various terminologies, so that --- we've have been using the term gender dysphoria we're going to be shifting to more gender incongruence, but we're trying to identify people who are transgender and who may require intervention later. Recognizing further that only a subset of **[222]** transgender people would require a medical or surgical intervention. And so if the question is can --- is there a test now in 2022 to determine in an prepubescent kid who says they're transgender or people who suspect may be transgender on whatever they're saying, no, there is no test to know that is true or not and to know if they'll think that later or not, and to know if they'll want treatment or not.

Q. So it is your opinion that there is consensus that there is a biological basis for transgender identification, but as of 2022 you don't know with any confidence what that biological basis is. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I would say that it is complicated and there may even be more --- there might be multiple explanations for people being transgender. We see that with other biological entities like diabetes, for example. So the idea that we don't know what it is, is also a little too narrow.

BY ATTORNEY BROOKS:

Q. You don't know any one identifiable biological cause with any confidence that state within a scientific knowledge? **[223]**

A. No. That's not quite true. We know that -and it's not even the biology of being transgender even though that is how I just framed it. It is even one step back which is the biology of gender identity. We all have gender identity, and how is that determined and what is that biology. And we know there --- and we know then that some transgender people have that particular biology not aligned with some of their other biology.

So going back to what you just asked, that we don't know any mechanisms is not quite true. That is people that looks to be true that exposure to androgen, male hormones in utero can have some influence on some people as to their identity.

Q. Well, if there is not yet any test that is predictive of gender identity in a prepubescent child, then as a matter of science it follows that you don't actually know any causal relationship, any biological basis, is that not true?

A. No, that wouldn't be quite sure. We can't test for somebody deemed transgender, and we can't test gender identity with a test. But like I said, that at least in some circumstances the androgen exposure in utero, in a mother's womb, could be part of the explanation for some people. Maybe isn't all the **[224]** explanation for some people.

Q. It could be, but no science has been done to prove that that is a fact, has it?

A. So it isn't really a hypothetical, that is we do have -- we do have data that support it, but it doesn't lead us to a test.

Q. If it is not testable, then it is a hypothesis, not a fact, isn't it, not of science. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: No, that is using testing two different ways. So in a scientific study, then a hypothesis is something that you have based on a certain --- based on certain data, but then you test to see how true it might be. But when I was using the word test, I'm talking about like a blood test or something that we could actually do on a given individual to know their circumstance with regard to their gender identity.

BY ATTORNEY BROOKS:

Q. Let me ask you to look at the paper that I've marked as Exhibit 16, Evidence Supporting the Biological Nature. Is that that which you have in front of you?

A. I do, yes.

Q. And on the first page you refer under the result **[225]** that begins by discussion of a seminal study by Meyer-Bahlburg. Do you see that? Second column, beginning of the results section.

A. Yes.

Q. And is it your contention that the Meyer-Bahlburg study provides evidence of a biological basis for transgender identification?

A. What the Meyer-Bahlburg study does is it provides evidence of a biological basis for gender identity.

Q. Well, specifically the study, the Meyer-Bahlburg study --- let me have that so we are not shooting in the dark. Exhibit 17 is a paper from 2005 from Professor Heino Meyer-Bahlburg, entitled Gender Identity Outcome in Female Raised 46, comma XY persons with penile agenesis, and it continues. It's a long document?

ATTORNEY WILKINSON: Tab 14.

(Whereupon, Exhibit 17, 2005 Paper by Professor Heino Meyer-Bahlburg, was marked for identification.)

BY ATTORNEY BROOKS:

Q. I believe the level of questions that I will be **[226]** asking, however, are the ones that you will know off the top of your head given the importance of this study in the field. The study concerned exclusively children who are born with what's referred to as a 46 XY condition. Right?

A. Yes.

Q. And that is long recognized as a DSD?

A. No, 46 XY is the classic male chromosome pattern.

Q. Yes. Pardon me. So these are individuals with typical male pattern chromosomes?

A. Yes.

Q. Who, however, for some reason have had a developmental disorder or defect affecting their genitals?

A. Who have had some sort of alteration or development of their genitals, exactly.

Q. And the study concerns the results of efforts to raise such genetically male children as female in some cases after surgical procedures to feminize them and in some cases absent surgical procedures. Correct?

A. The study really relates to the gender identity of those where there is an attempt to raise them as **[227]** females.

Q. And the results, if I understand the study, were mixed, that is that some of the individuals who were raised as females nevertheless came to identify as male and some of the individuals who were raised as females came --- persisted in identifying as female. Correct?

A. It is not actually as clean as you're saying it. So we should look at some of the specifics and we might need to point out to specific sentences, but this too is a survey of --- a survey of studies, to be clear, it's not its own isolated study, and then there --- in none of these studies were they systematic or, you know, I guess I will just use the word systematic in ascertaining that all of the people who were being raised female and ascertaining all of the gender identity of those people. But what they are really observing is that the numbers that they mention of the people who they were trying to raise female who had male gender identity were whatever the numbers were. I don't know if that makes sense, but you'll follow as necessary.

Q. If you turn to page 432 it begins under the heading discussion. It begins, quote, the main findings **[228]** can be summarized as follows. One, the majority of 46 XY individuals with presumably normal male prenatal hormonal milieu, comma, non-hormonal anatomic abnormalities of the genitals, comma, and female gender assignment at birth or in early childhood have not changed gender to male. Do you see that?

A. I do see it.

Q. And one thing, and I understand the qualifications that you've just described this is not recording a carefully structured study performed by Doctor Meyer-Bahlburg but rather a review of case histories. Right?

A. Exactly.

Q. But his conclusion from his review of those is that the majority of genetically presumably normal male individuals who were raised female, and I believe it's fair to summarize in most cases after feminizing genital surgery, adhered to a female gender identity at least to the data we have?

A. Yes, so I don't know whether they actually all had surgery or not.

Q. They did not all have surgery.

A. Right or even the larger number. I don't know. **[229]** I would have to go through.

Q. Fair enough.

A. But the --- and it was his opinion at the time he was writing this that the majority who were reared female were living as female, although we don't know their gender --- but now this is me stepping out, saying we don't know their gender identity, nobody asked. The reason why this paper is interesting is even in the circumstance where they were being so passive in how they were collecting the data, such a large fraction of these individuals were so clear in their male gender identity that they actually identified themselves against the protocols.

Q. And that seemed to be evidence that --- of a biologic basis of gender identity congruent with their male genetics. Correct?

A. That --- for these people, that's right. That is with or --- with their chromosomes.

Q. Right.

A. Which you would predict. If we think about - if we recognize --- if we think that by survey a half a percent or even a full percent of people are transgender that would mean that 99 percent of people are cisgender. **[230]** And so if you take a population of people with certain chromosomes, 99 percent of them are going to be cisgender and will have a gender identity incongruent with their chromosomes.

Q. The study includes no individuals who were raised with a gender identity inconsistent with their male chromosomes who came to identify or later perceived themselves as identifying as female. Correct?

A. Well, we don't know that because they were --- they're all XY individuals who were being raised female. And somebody who had a female gender identity who is transgender among them would never be identified as transgender in this case.

Q. So my question was a little more specific. The study simply doesn't include any individual who had male chromosomes who was raised male who came to identify as female?

A. That's correct. All of these people who are XY chromosome people raised female.

Q. And you would agree with me, would you not, the study provides some evidence that external forces such as feminizing surgery or how their parents treat the child can have some influence on the formation of gender **[231]** identity?

A. I can't say that because the study really doesn't go there. The study is only passive observation and all --- the only thing I would say with some confidence is that some fraction of these individuals who are so clear in their gender identity that despite nobody even looking for that sort of thing, because that wasn't even a consideration when these --- when these cases occurred, they --- the individuals spontaneously announced to the authorities around them, parents and doctors, that they were wrong, that the parents and doctors were wrong.

Q. And that, in your view, provides at least some evidence of a genetic basis for gender identity congruent with chromosomal sex?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: No. It provides some evidence of a biological basis for gender identity that can't be manipulated externally.

BY ATTORNEY BROOKS:

Q. Well, considering that the study included no examples of any individual who adopted a transgender identity inconsistent with how they were raised, the study simply can't provide any information about **[232]** biologic basis of transgender identification, can it?

A. Wait. I think say that again.

Q. The study includes no individuals who adopted a gender identity, a transgender identity apart from social transition and, therefore, can provide no information one way or the other about whether there is or is not a biologic basis for transgender identification?

A. So not quite. So the --- because remember the point is that gender identity, period, universally, has a biological basis. It's not that we --- and to be clear, I don't even know that we won't find and some people even wonder if we will find a gene that associates a gene with transgender, per se. But I'm not even saying that. If there's --- I'm only saying that we will find let's say genes associated with gender identity and not everybody will have them aligned with the rest of their biology. So I just want to preface with that. And in this particular review, they're taking people who have XY chromosomes exclusively. So therefore, if one --- if a certain fraction of them were to have female gender identity despite assuming different development

they would have had male --- they **[233]** would have had other male biology, those are the people we would have categorized as transgender using current definitions. And those individuals would not have been apparent in this study they were being raised female anyway.

Q. And my point was that, therefore, that this study can't provide any information about whether there is or isn't a biological basis for transgender identification?

A. So yes. I guess how you are framing that is where I'm pushing back. So the point of this study is as evidence of there being a biological basis of gender identity period, having nothing --- not necessarily for being transgender. In fact, I don't even know if there --- yeah, I don't even know if that would be the model. The model would be somebody who has a certain gender identity, a certain other biology, and then that combination is what we are calling transgender.

Q. You also referenced a paper by Doctor Reiner. And let me have that.

ATTORNEY BROOKS: And I will mark that as Exhibit 18, 2004 Discordant Sexual in Some Genetic Males With Cloacal Exstrophy Assigned to Female Sex at Birth.

ATTORNEY WILKINSON: Tab 71. **[234]**

(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, **[235]** which I believe is this paper, he says, quote, it has serious methodological flaws. Do you agree with that statement?

A. Let's read what he is criticizing. All these papers have their weaknesses. All right. So the remainder of that --- so the remainder of the paragraph is --- details the complaints for Doctor Meyer-Bahlburg, where his --- which I focus as a social science researcher that they didn't do various assessments that would make it --- that would make standard people doing some of this research able to replicate some of the items in the paper. And I will --- so while Doctor Meyer-Bahlburg may be frustrated and be complaining about that, he is not actually attacking the veracity of their results.

Q. Well, the point was serious methodological flaws is you are not really able to evaluate the veracity of the results. Correct?

A. Not necessarily.

Q. Do you agree with Doctor Meyer-Bahlburg's evaluation that the methodology of the study reported by Reiner and Gearhart suffers from serious methodological flaws? **[236]**

A. No.

Q. So let's summarize this study if I may. I'm turning to page 334.

A. And extending that too, part of his frustration wouldn't be my frustration because I am not looking for those particular endpoints, that is for my purposes for determining whether gender identity is a biological basis Reiner and Gearhart's paper is actually quite strong.

Q. Let's look at the first page in the summary up front. It refers to this paper dealt with 16 --- under methods, 16 genetic males. Correct?

A. Yes.

Q. And these were all males who suffered from --- uses the word in the second line of the background as severe developmental disorders affecting their genitals. Correct?

A. That's how it is phrased here. Where am I seeing that?

Q. The second line of the background says severe.

A. Severe phallic inadequacy, yes, I see that.

Q. Which is to say not --- absent or severely disformed penis? **[237]**

A. That's what that means, yes.

Q. Okay. But these are individuals who are genetically male, and more than that, on page 334, column two, two-thirds of the way down it says the testes were histologically normal in all 14 when examined?

A. I'm on column two.

Q. It is column two.

A. I apologize.

Q. You can kind of see where my finger is pointing here.

A. And this is under ---.

Q. Under methods and the paragraph that begins parents to be educated?

A. Testes were histologically normal in all 14. I'm there, yes.

Q. So we had individuals who were genetically male that had normal testes and had severe deprivation of their penis or it was absent?

A. Yes.

Q. And what was done to these 14 subjects, looking just above that, is that they were assigned a female sex surgically by means of orchiectomy and construction of vulva. **[238]** Right?

A. Yes.

Q. And orchiectomy is another medical term for what the layman thinks of as castration?

A. As removing the testes.

Q. And construction of the vulvi is creating a --- I'm not sure what the right term is, a pseudo vagina?

A. It wouldn't be a pseudo vagina, but creating a vagina.

Q. It says that --- just immediately following the description of the surgery 14 of these 16 --- looking back at the results paragraph and the abstract, 14 of these 16

were assigned female but later declared themselves male despite the surgery, despite being raised as female. Right?

A. Right, 8 of the 14 who were assigned female.

Q. I'm sorry, I misread that. Thank you. Eight of the 14 who were assigned female nevertheless declared themselves male at some stage?

A. That's correct.

Q. And the two who had been raised as males, even though they suffered the same type of phallic developmental defect, remained identifying as males. **[239]** Correct?

A. Yes.

Q. There was an --- whatever assignment was made, this was made to infants. It wasn't made or based on any choice or reported sense on the part of the child?

A. That's exactly right, yes.

Q. So several of these individuals, specifically six, who were assigned female at least throughout the period identified by this study adhered to a female --- living out the female gender identity?

A. Actually it was five because one of the children refused to have contact with the surgeons when some of these conversations began to take place.

Q. So we know that five --- we don't know what that person was thinking, feeling or identifying --- but we know that five ---?

A. They were angry.

Q. They were angry. Whichever that came out, I'd be angry, so ---

A. Yes.

Q. --- so 5 of the 14 subjects who were assigned female and surgically transitioned and socially transitioned continued to at least physically identify as female? **[240]**

A. As of when they wrote the paper they were still identifying as female as far as I remember. That's right.

Q. And it would be your position that visibly identifying as female doesn't necessarily mean that they were generally transgender?

A. That --- we don't know that because that wasn't asked.

Q. Is it your view that if you had these children who were surgically transitioned, socially transitioned visibly identifying as female, that if you had simply asked them you would have found out the undoubted truth about their gender identity?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So it is true that as people develop and assuming that there are good language skills and that there aren't other developmental, mental developmental reasons or other mental health reasons why people would not be clear, that people are able to articulate their gender identity. Certainly adults do so apparently quite reliably and older teenagers the same, so depending on age. But yes, there would be a point in time when you could simply ascertain that by asking. **[241]**

BY ATTORNEY BROOKS:

Q. Dr. Safer is that fundamentally a medical question or a psychology/mental health question? The question of the reliability of a patient's self report?

A. I don't know that I separate it that way. I say that based on the data we slowly develop overtime of transgender people where we see that any absence of other confounding items along the lines that I said, people at a certain stage in maturity who tell you a certain thing about their gender identity are consistent in that regard.

Q. This study, the Reiner Gearhart study, Exhibit 18, concerns --- looks at the effect of trying to raise individuals in a gender identity discordant with their chromosomal sex. Correct?

A. It is discorded with quite a number of things, but yes, chromosomal is one of your hard data points.

Q. This study does not look at the question about whether and when or how any sort of intervention might encourage development of a gender identity consistent with one's genetics sex; does it? It simply does not look at this issue?

A. Say that again, sorry. **[242]**

Q. This study does not address the question of whether or how or at what developmental stage therapeutic interventions might encourage the development of a gender identity consistent with one's chromosomal sex?

A. The study is --- the way I'm interpreting the study is it's looking at our inability to manipulate gender identity. And it's just that. And I'm a little fuzzy on the rest of what you're asking me.

Q. Well, the study looks at efforts to manipulate gender identity away from chromosomal from the identity normally associated with one's chromosomal sex. In this case the male sex. Right?

A. It does.

Q. This study simply does not look at efforts to manipulate gender identity towards alignment with the identity normally associated with a subject's chromosomal sex?

A. I think I'm following you now. So you're suggesting that if we took a transgender person and tried to manipulate their gender identity to align with some of the rest of their biology?

Q. I'm not suggesting that I'm simply saying this **[243]** study.

A. That particular instance. Yes.

ATTORNEY BROOKS: 15. It is one of the previous marked ones, if that matters. All right.

I will not show you that document. Let me ask the court reporter how many --- how much time we have left on the clock.

COURT REPORTER: I have 5:52, five hours and 52 minutes.

ATTORNEY TRYON: I didn't hear that. Could you repeat that?

ATTORNEY BROOKS: We've got an hour and eight minutes according to the clock of the court reporter here, and I believe that our friend in the ether is calculating separately.

VIDEOGRAPHER: Correct. And it sounds like the same. I have to do the math.

ATTORNEY BROOKS: Okay.

BY ATTORNEY TRYON:

Q. Are you familiar Dr. Safer with a paper recently published by Lisa Littman of Brown University looking at

the surveying 100 teens or young adults --- actually surveying a hundred individuals who report having de-transitioned and gone from identifying as transgender **[244]** to identifying in a manner consistent with their genetic sex?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So I'm aware of Dr. Littman having written a second paper. But I'm not facile, I guess.

BY ATTORNEY BROOKS:

Q. You haven't read that paper?

A. I have not read the paper. I probably did read it, but I would not be able to be quizzed on it.

Q. Then I won't quiz you on it. I always tell witnesses I don't know is the easiest way out of a line of questioning.

Are you --- let me ask you this, does your clinic have any procedure in place to track outcomes on patients on whom you perform gender conforming surgery long term?

A. We're actually in the --- we have a couple of processes, so I guess the short answers are yes and we're going to be more rigorous going forward.

Q. Do you have any knowledge as to how many patients on whom your clinic has performed surgery have after that surgery committed suicide?

A. I don't off the top of my head know that. **[245]**

Q. Do you believe that your clinic possesses reasonably complete information on that question?

A. I actually don't think our information is sufficiently complete currently, and that actually is an area where we're going to develop more vigorously, because I would actually like to know that.

Q. Do you know whether any patients on whom your clinic has performed surgery has subsequently sought to de-transition and take on or revert to, whichever way you want to see it, a gender identity that's aligned with their chromosomal sex?

A. So it's a complicated question. And actually I just want to go back to the first part where you were talking about suicide. To be clear, the rigor I'm talking about is not suicide focused, because I actually am not anticipating that that is --- that that is happening or is happening more than with being seen in a general population, but for all encompassing that we do definitely need that. But back to your current question ---.

Q. Let me jump back to suicide for a moment. Are you aware of studies coming out of DeVry University and Amsterdam suggesting that post-surgical transgender populations continues to experience elevated rates of **[246]** complete suicides compared to controlled populations?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So I'm aware that transgender people have more mental health morbidity than other populations. Once corrections are made for other confounding factors I don't know that we would have --- that we're very clear yet on those data including ---.

BY ATTORNEY BROOKS:

Q. When I refer to a published study coming out of DeVry University of Amsterdam showing high rates of suicidality in postsurgical transgender patients, you believe you're familiar with that literature?

A. I guess it would fall in the same category as Littman's second paper.

Q. Okay.

A. Where I'm familiar with the fact that they're doing surveys and I'm familiar with the broad outlines, but could not ---

Q. Okay.

A. --- comment on specific studies without it being in front of me.

Q. And have any patients on whom your clinic has performed surgery subsequently decided to de-transition **[247]** and assume a gender identity aligned with their chromosomal sex?

A. I don't --- I don't know. There is absolutely the case that there are people who stop their treatment at different levels, so it has definitely been my experience that I have patients who I've put on hormone treatments who have stopped those hormone treatments. And there are also, among our patients --- I don't know if any of the patients where we performed the original surgery they actually were opting for a different surgery, but we definitely have patients who have come to us, who had a surgery done elsewhere who were looking for a degree basically what you're calling a reversal, to the degree that that's possible. So that such a thing does exist. So the point about saying that they have a different gender identity, that would --- that is not typically how the patients come saying it. They don't say, oh, it turns out my gender identity is not that. It's more often society is not treating me well, this isn't working out. That's the more --- that's the --- that's the typical scenario. I mean, yes, we definitely have seen that circumstance.

Q. Dave Tryon, who is with us remotely as Counsel for West Virginia, I have promised him an hour, so I **[248]**

have to stop, even though I have so many more interesting questions.

ATTORNEY BROOKS: So Dave, I will stop and I will turn the witness over to you.

ATTORNEY BLOCK: Could we take a break now?

ATTORNEY BROOKS: Of course, it is a good time for sure.

ATTORNEY BLOCK: Thanks. Can we go off the record?

VIDEOGRAPHER: The time is 5:03 p.m.

Eastern Standard Time.

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 5:25 p.m. Eastern standard Time.

ATTORNEY BLOCK: This is Josh Block on behalf of the Plaintiff. We have conferred off the record, including with counsel from Mount Sinai, and Doctor Safer can answer the two questions he declined to answer before provided that we mark those portions of **[249]** the deposition transcript confidential, and all counsel for Defendants have agreed with that.

ATTORNEY BROOKS: And this is Roger Brooks, and yes, I confirm that all counsel for Defendants have agreed to that.

CONFIDENTIAL PORTION BEGINS

***

CONFIDENTIAL PORTION ENDS **[253]**

EXAMINATION

BY ATTORNEY TRYON:

Q. Hello, Dr. Safer. Thanks for your time today. So I am David Tryon. I represent the State of Virginia. I'm appointed by the Attorney General's Office. And I wanted to start out by looking at --- asking you to take a look at your Rebuttal Report. I don't recall what exhibit number that is. If you could tell us what it is marked?

ATTORNEY WILKINSON: Exhibit 2.

ATTORNEY TRYON: Exhibit 2.

ATTORNEY WILKINSON: Tab 51.

THE WITNESS: I have that in front of me.

BY ATTORNEY TRYON:

Q. Could you take a look at paragraph six, please? Do you have that in front of you?

A. Yes.

Q. Great. Now, in here it says in the second or maybe third sentence as reflected in the same source cited by Doctor Brown dimorphous sexual characteristics in men and women are produced by a combination of genes, prenatal androgen exposure to sex hormones. And I'd **[254]** like to focus on that particular clause. Can you explain what prenatal androgen exposure to sex hormones is?

A. Yes. That references --- I guess to me it's more or less exactly what it says, which is that the developing fetus is exposed to various hormones and other factors and androgen is specifically the male --is typically what we consider to be the male sex hormone, although everyone

has some. And then prenatal just means and in utero or in the mother's womb.

Q. So androgen for males is testosterone. Is that right?

A. Androgen in general is that category of hormones that we think of as typically male, even though, like I said, we all have them. And one of the androgens is testosterone. And with adults it is the one that we are talking about most of the time, of course.

Q. Okay.

So as I understand it, your suggestion is that that prenatal exposure to testosterone can have an impact even after birth.

Is that right?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So all factors --- well, I **[255]** don't want to overstate it, but factors that occur to which a fetus is exposed in the womb have impact on the development of that fetus, of that person when they are born, and so androgens, including testosterone, would be part of that, so yes.

BY ATTORNEY TRYON:

Q. So are you aware of studies addressing the impact of prenatal exposure to testosterone as it impacts people after their birth?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I think I need you to be specific about which studies.

BY ATTORNEY TRYON:

Q. Are you aware of any study that addresses the effect of prenatal testosterone upon boys after they're born?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the ---.

BY ATTORNEY TRYON:

Q. Or men?

A. So I can --- I guess --- I have to --- kind of two answers. Exposure to prenatal androgens, kind of generally because it is not always, testosterone explain the development of what we consider to be typically male **[256]** genitalia so that all babies born with what --- with a penis and with a urethra that is the part for which you urinate, that's up inside the penis and having the gonads, which would typically be testes in the scrotum, all of that happens in response to testosterone.

BY ATTORNEY TRYON:

Q. And then that also triggers a question I had. You had previously said in your original report a person's genetic makeup and internal and external reproductive anatomy are not useful indicators of athletic performance and have not been used in a league competition for decades. My question on that is, when you say a person's genetic makeup doesn't their genetic makeup trigger whether or not they are going to --- a person's genetic makeup will determine whether or not they're a boy or a girl, and therefore if they're a boy that would trigger their generation of more testosterone than a girl. Is that a fair statement?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Yeah, no, that's --- so I think I need to walk that back a little bit. Why don't we --- can we do it like piece by piece or have you restate parts? **[257]**

BY ATTORNEY TRYON:

Q. I will restate it. So when you say a person's genetic makeup, what does that mean?

A. Mostly in this context I'm referencing their chromosomes that's the specific that in the further past was actually being used to identify people which we no longer do. It's not sufficiently reliable.

Q. Does the --- you have an X Y chromosome that is typically considered to mean that you're a male. Correct?

A. The XY chromosome is typically considered to mean that you're a male, correct.

Q. And that would mean that you would be generating more testosterone than if you have an X chromosome. Right?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the presence alone of that XY pattern is insufficient to know with certainty that you're producing more testosterone and that is part of the point of I'm saying it is that biological sex is more complex, and you could have the gene for the testes that produce testosterone elsewhere, and then you wouldn't have that pattern and you still would be producing the testosterone or vice versa. **[258]**

BY ATTORNEY TRYON:

Q. Okay. Well, let's go back to prenatal testosterone. So you're not --- if I understood what you're saying before, you're not aware of any studies that show whether or not prenatal testosterone would have --- let me just start that

over again. Are you aware of any studies that address whether prenatal testosterone has impact on sporting, on athletics in children after birth?

A. Correct. That would be right to say that there are no studies of which I'm aware that can associate prenatal testosterone with athleticism. And I don't know what levels we're even talking. Like an adult level? What's your question there?

Q. My next question is, have you heard of the Journal of Sports Science and Medicine?

A. I guess you would have to show it to me.

Q. Okay. Have you ever heard the name Jim Goldby or Jennifer Mays?

A. No.

ATTORNEY TRYON: Jake, could you bring up the Exhibit that I sent to you today, which is the **[259]** General Sports Science and Medicine?

ATTORNEY WILKINSON: Do you see anything?

THE WITNESS: I don't see anything. Oh,that's too small. Okay. That's okay.

ATTORNEY TRYON: Okay. And this will be Exhibit --- what Exhibit are we on Jake, do you know?

VIDEOGRAPHER: This is 19.

(Whereupon, Exhibit 19, Article, was marked for identification.)

ATTORNEY TRYON: I'm sorry, 19?

VIDEOGRAPHER: Correct.

BY ATTORNEY TRYON:

Q. Okay. I take it from your earlier answers, you probably never seen it before. Is that right?

A. I certainly don't recall. I don't want to state definitively I've never seen it either, but it's certainly not a paper that I'm going to know off the top of my head.

Q. Well, let me ask you to take a look at the **[260]** conclusion on page 449?

A. So can we move the pictures because they're blocking.

Q. Can you see it?

A. We're getting there. And then is there a way to move that? Oh perfect. Yes.

Q. Okay. The conclusion says, current paper provides initial support from an association between prenatal testosterone levels and mental toughness, optimism, goal orientations, coping strategies and hostility, period. Findings tentatively suggest that the mentioned psychological characteristics may be partially biologically predetermined.

Do you see that?

A. I do see it, yes.

Q. Do you have any reason to believe whether that's true or not true?

ATTORNEY BLOCK: Objection. I just object to asking him about a conclusion when he just has a little snippet of that and hasn't reviewed the article. And I'm not even sure if it has been cited in the other expert reports.

THE WITNESS: I certainly can ---. **[261]**

BY ATTORNEY TRYON:

Q. Go ahead.

A. I certainly cannot say if that conclusion has any logic to it without knowing the study.

Q. Understood. Is it possible since this particular study suggests there is an impact on adults by prenatal testosterone? Is it that prenatal testosterone could also have a DSD explanation for why should boys at 11 years old have more athletic ability than girls?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So speaking --- yeah, speaking as an expert, I can't give you an expert comment there without seeing their study.

BY ATTORNEY TRYON:

Q. Okay. So you just can't say one way or the other. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I mostly wouldn't want to comment on their study. I will only make the observation that the data of which I am aware do not show differences for prepubertal children, if that was part of your question. **[262]**

BY ATTORNEY TRYON:

Q. And so the performance data that Dr. Handelsman pointed out showing that there are some damages given before puberty, you reject those?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So those broad cross-sectional studies don't get at input, whether they are referencing biological explanations versus societal explanations.

BY ATTORNEY TRYON:

Q. Okay.

Whether it's societal or biologic explanations, Handelsman still demonstrated that there is an advantage for pre-pubescent males over females in athletics. Right?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: No, neither Dr. Handelsman in his paper --- he doesn't actually say that. And if you --- I think we looked previously at one of the figures where specifically the range of outcomes, if you were to repeat the study, included the girls doing better than the boys.

BY ATTORNEY TRYON:

Q. Well, that was only one of them. That was not **[263]** it. That was one of the charts. The other chart showed that there was an advantage, right?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: The other --- yeah, let me think with that one. Right. We are not getting into what the causality is, then the other charts did show the boys doing better. And again, the caveat remains what is not --- what is not demonstrated there is that there is --- that that is a biological thing versus simply the very longstanding societal and cultural environments.

BY ATTORNEY TRYON:

Q. And you've contended that there's a biological component to gender identity. Correct?

A. Yes.

Q. Which we have not been able to identify in this deposition. Correct?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So it is not quite --- well I actually don't know what's been identified in the deposition. The data are included in my --- in the papers that I referenced that are what are convincing to **[264]** the medical community right now. The detailed explanations for the specific biology are not known if that's where you're going.

BY ATTORNEY TRYON:

Q. Assuming there is actually a biological component, as you say, to gender identity, that says nothing about whether a biological male identifying as a female should, as a public policy matter, be allowed to participate on a girls athletic team in high school and middle school. Right?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the way that I would say that is even if we recognize that there is a biological explanation for gender identity, that does not --- well, I don't know that then I can go on to make an expert statement, honestly, because that gets outside my purview and in terms of --- my lane is just simply to say that.

BY ATTORNEY TRYON:

Q. Got it. Can you look at your rebuttal report and look at page two?

A. I have my rebuttal in front of me and I'm on page two. **[265]**

Q. Paragraph 4B?

A. I have that in front of me.

Q. You say --- great. You say circulating testosterone is the primary known biological driver of average differences in athletic performance. Do you see that?

A. I do.

Q. You say it is primary so what are the other biological drivers of average differences in athletic performance?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So when I --- so we're talking about circulating testosterone --- let me just look at this. Right. The truth is, is that it may --that the only candidates that we have so far are testosterone at puberty and testosterone in the moment.

BY ATTORNEY TRYON:

Q. So it's --- according to you, it's testosterone at puberty and circulating testosterone are the only biological drivers of average differences in athletic performance.

Is that right?

A. So excuse me. I'm actually --- so this is the president of the hospital. **[266]**

ATTORNEY BLOCK: I'm sorry. Can we go off the record for a minute and take a break. The president of the hospital is returning his previous call.

VIDEOGRAPHER: Going off the record. The current time is 5:48 Eastern Standard Time.

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: Back on the record. The current time reads 5:54 p.m. Eastern Standard Time.

BY ATTORNEY TRYON:

Q. My last question was according --- according to you, testosterone at puberty and circulating testosterone are the only biological drivers of average differences in athletic performance. Is that right?

A. Right, they are the only ones that are known.

Q. And in paragraph 4C, looking on page three --let's move over to page three, at the top of the page, your statement is there is no basis to expect that transgender girls who receive puberty delaying **[267]** medication followed by gender affirming hormones would have an athletic advantage. There's a comma. But if we just put a period there, is that your opinion?

A. That is correct. Yes, that is my opinion.

Q. Let me ask you the converse. You say there is no basis to expect that transgender girls who receive puberty delaying medication followed by gender affirming hormones would not have an athletic advantage, period. Would you agree with that statement?

A. No.

Q. Do you have any --- excuse me, any performance data from an actual athletic event that support your opinion?

A. I do not have any data from an actual athletic performance study for that. No, I do not in that context, in that specific instance.

Q. Let me ask you to look at your report. Turn to paragraph 45.

A. So my report, paragraph 45. All right. I have that in front of me.

Q. Great. Finally, unlike elite international competition, schools and colleges often provide athletic

competition as part of a broader educational mission. In that context, when scholastic athletics are **[268]** components of the educational process, institutions may adopt policies designed to emphasize inclusion and to provide the most athletic opportunities to the greatest number of people. You see that.

Right?

A. I do.

Q. So these policies you referred to are designed to emphasize inclusion and to provide the most athletic opportunities to the greatest number of people, what's the source of that policy? Did you come up with that or did you see it someplace else?

ATTORNEY BLOCK: Objection to the form.

THE WITNESS: So the question is how am I aware? Yeah --- I apologize. You can hear that I'm confused on your question.

BY ATTORNEY TRYON:

Q. I'll try and do better. You said intuitions may adopt policies designed to emphasize inclusion and to provide the most athletic opportunities to embrace a number of people. And those policies that you're saying there, is that a policy that you read about somewhere or something you are just suggesting? What's the source of that?

ATTORNEY BLOCK: Objection to form. **[269]**

THE WITNESS: So an operative word in this is may adopt policies, so this isn't referencing a specific policy that I would give you right this moment, if that's what you are asking.

BY ATTORNEY TRYON:

Q. So right, just aside from education --- this whole paragraph is talking about education, but you're not an expert on education or teaching methodology, are you?

A. I certainly am not.

Q. And you don't have any degrees in education or training in teaching methodology, do you?

A. I do not.

Q. And you have no degrees or training in pedagogy?

A. I have no degree in pedagogy. I will be careful how absolutely I do not, because that's not my --- that's not where I am representing myself to be an expert. I am involved in some education, but at the scholastic level not, so let's just say no.

Q. And you have no expertise as to whether sports or how sports are used as part of educational systems. Right.

A. Correct. That is not the expertise. The how and my decisions among this are not my expertise. **[270]**

Q. Do you have any idea how many schools actually have sports programs?

ATTORNEY BLOCK: Objection. I couldn't hear the full question. You cut out.

BY ATTORNEY TRYON:

Q. Sorry. Do you have any idea how many schools have sports programs?

A. I could not give you a number, no.

Q. Are you aware that some colleges do not have athletic programs?

A. I guess I'm vaguely aware. If you're asking me as an expert than I wouldn't comment on that as an expert,

but as a human in society I certainly am aware that that is a thing.

Q. Okay. And do you have any idea what percentage of kids are in athletic programs in schools versus those that are not that are still students?

A. No, I would not be your source for that data point.

Q. So when you are expressing this opinion in paragraph 45 that's not an expert opinion there, is it?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So right, I guess it's a **[271]** bit confusing here, because it's not my expert opinion that --- well, I'm certainly aware as an individual that this is a priority and when I sit on --- when I sit on committees where we discuss relative priorities, there are experts present who discuss these priorities. But if I'm speaking to you as an expert, then I --- then I can't be the representative expert in that space.

BY ATTORNEY TRYON:

Q. Right. Well, I'm just asking, in paragraph 45, given your lack of expertise and education, you are not giving an expert opinion in paragraph 45. Is that a correct statement?

ATTORNEY BLOCK: Objection, asked and answered.

THE WITNESS: So I'm simply --- I'm raising all of the issues that we know exist, but then I'm not providing an expert opinion in terms of the relative priorities among these circumstances that exist.

BY ATTORNEY TRYON:

Q. Let me just ask you very clearly is paragraph 45 an expert opinion of yours?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: I don't think I'm even **[272]** expressing an opinion in paragraph 45, expert or otherwise. I'm simply stating the background situation.

BY ATTORNEY TRYON:

Q. Okay. But --- okay. I would ask you to turn to paragraph 37 of your report.

A. All right. I have that in front of me.

Q. This is talking about the International Olympics Committee. Right? Let me move back to paragraphs 35 and 36.

A. Yes, this is the International Olympic Committee. This relates to the International Olympic Committee.

Q. So this 2021 framework, do you believe that you understand this framework?

A. I think you'll have to ask more specific questions because I might understand parts and I might have questions about parts.

Q. Very good. First of all, it says the 2021 framework further provides that, quote, any restrictions arising from eligibility criteria should be based on robust and peer-reviewed research that, A, demonstrates a consistent, unfair, disproportionate competitive **[273]** advantage with performance and/or an unpreventable risk to the physical safety of other athletes. You see that part, right?

A. I do, yes.

Q. Do you understand what the word disproportionate means in this context?

A. To a degree.

Q. Okay. What do you understand it to mean when it says a disproportionate competitive advantage in performance?

A. The IOC is aware that there's quite a wide range of advantages with different body types and different biology, and so they use language like disproportionate when they want to talk about something that's --- that's --- that's systematically associated with one circumstance in a way that they think would violate the rules, whatever they might be, for a specific sport.

Q. That's pretty ambiguous. I have no idea what that means. Let me see if we can narrow it down. Is a disproportionate competitive advantage in performance --- would 20 percent be a disproportionate competitive advantage?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So that's --- I can't **[274]** answer that, because it depends on context, and I'm not the person who wrote the specific language in that document, so that is the quote from the document. But in terms of --- I don't --- I think we go someplace we don't want to go if we try to over define the specific word disproportionate.

BY ATTORNEY TRYON:

Q. So it's just not something that you or I could look at and reach any kind of conclusion to tell them what that means sitting here today. Is that right?

A. I think if we look at a specific sport, I think that if it was limited to just the two of us we might need more expertise to make a decision.

Q. Well, let's say if we talked about the one mile --- running one mile, is that something that we could then

determine what disproportionate competitive advantage and performance would mean?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: It would depend on context. And if we're talking about at the elite level which is what the IOC references and we limited --- even then if we limit it just to you and to myself, we would want more expertise. **[275]**

BY ATTORNEY TRYON:

Q. Right. Okay. So we don't know what the IOC meant by this in any particular context do we?

ATTORNEY BLOCK: Objection to form.

ATTORNEY TRYON: Actually, let me redraw this question.

BY ATTORNEY TRYON:

Q. You as an expert would not be able to give me an expert opinion on what disproportionate competitive advantage in performance of the one mile run would be; right? You could not give me an expert opinion on that.

Fair statement?

A. If you break the words out in that --- in that fashion then it does become difficult. If you ask me what the entire statement after the letter A is referencing, I can at least explain some of the thought process for the IOC there.

Q. Well, my question is simply, you as an expert, are you able to tell me what --- able to define for me what would be a consistent, unfair disproportionate competitive advantage in performance in a one mile run for the IOC?

ATTORNEY BLOCK: Objection to form. **[276]**

THE WITNESS: I, as an expert, cannot give you a blanket explanation of what would specifically consist of -

-- what would specifically meet that definition. When they wrote the statement they didn't actually even have specific guidance, that is simply the spirit of a guideline --- the spirit of what a specific guideline should consider when that guideline is made.

BY ATTORNEY TRYON:

Q. Do you know what they meant when they said unfair?

A. So the --- it's kind of the same circumstance. That is the purpose of this statement is to be global guidance for the experts in the specific sport when they might develop guidelines relevant to their specific sport. So for example, the group with expertise in that one mile run that you're referencing should think in this context. That's all this is doing.

Q. And some of the sporting organizations have come up with some very specific rules. Correct?

A. Some of the sporting federations have come up with specific rules, yes.

Q. And as I recall, some of them require a certain **[277]** level of circulating testosterone. Is that right?

A. Some of the sporting federations use a certain level of circulating hormone as part or all of their roles.

Q. And some of them use the level that you've mentioned that you were involved in setting, which was 5 Nmol --- say it for me. Nmol something.

A. Nmol/Ls per liter. Yes, some of them use that nmol/L per liter threshold.

Q. Did they --- where did they get that 5 nmol/L quantity, do you know?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So I do know where that number comes from originally for World Athletics, which is the first one to put that number out. And that number comes from studies of some Olympic athletes in some races where there was for at least certain distances a demonstrable difference between people who had --- and specifically people in the female category who had lower numbers of testosterone than that and higher numbers of testosterone than that.

BY ATTORNEY TRYON:

Q. You were on that committee. **[278]** Right?

A. I was on the group that wrote that World Athletics policy, yes. Not on the group that did that study.

Q. And so how did you finally come up with the number of five as opposed to four or six or three or seven?

A. The number five discriminates in terms --- in terms of there being some demonstrated advantage or improved outcome is really what it was, for those with higher numbers versus those with lower numbers. That was not true necessarily with a lower testosterone threshold. That is a difference was not as apparent and that's really the entire logic pattern there.

Q. Well, earlier you just said it could have been --- you didn't think there was that much difference between five and six. That was your testimony earlier as I recall. Right?

ATTORNEY BLOCK: Objection.

THE WITNESS: As an endocrinologist I can tell you that those difference --- that that's right that to --- the difference between five and six would be hard to demonstrate. **[279]**

BY ATTORNEY TRYON:

Q. So how did you settle on five instead of six or five or six instead of four?

A. So I guess the inputs are that there needed to be a line so that there's ability to enforce something. There needed to be a rule. And the choice of five, mostly, is what I've been saying already, which is --it's a clean number where there's at least some distances, there's a demonstrable difference in outcomes at that level --- above and below that level.

Q. So are you saying that there is a value of having a hard rule?

ATTORNEY BLOCK: Objection to form.

BY ATTORNEY TRYON:

Q. Maybe I should say having a clean rule?

A. So as an expert I'm not --- that wasn't my role on the committee to determine that there needed to be a rule, but that is certainly the logic pattern of the committee that there ought to be a rule. That is not my expert opinion.

Q. Okay. But different organizations are free to come up with different conclusions of about what their rules ought to be. **[280]** Right?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So the different

International Athletic Federations were to make use of data such as it exists to make their own rules for participation in their sports.BY ATTORNEY TRYON:

Q. And different organizations came up with very different rules. Right?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So most of the international federations still do not have rules, actually. And honestly, that's mostly a logistics situation where some of these organizations are too small to put the data together or the committees together to make rules.

BY ATTORNEY TRYON:

Q. Those that do have rules have different rules. Correct?

A. Those that do have rules have had different conversations in the space. I don't know that I could systematically go through all of them, but there is some variation, yes. **[281]**

Q. Some require --- have a Level 5 nanomoles per liter and some still have ten. Right?

A. So I'd have to go back and look. You would have to show me. World Athletics has five for sure. And that's the one where I'm most familiar because I was actually sitting in the room helping draft that. The IOC in the past had used ten as a line, but that just sits there right now as a --- as a number someone might adopt. I actually don't know off the top of my head if anybody has adopted that for their formal rules.

Q. What was the scientific basis for the ten nanomoles per liter?

A. The logic for ten at the time is it is the bottom of the male range. That's its history.

Q. Okay. So it sounds to me like there is room for reasonable discussion about what the appropriate rule ought to be?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: The way I would say it is as different athletic organizations obtain data, they might use those data to determine differences, including if the --- if our best measure is testosterone, **[282]** different thresholds of testosterone.

BY ATTORNEY TRYON:

Q. Would it be appropriate to use performance data as well to make those decisions?

A. The best data in my opinion are actual outcomes within a given sport.

Q. What do you mean by outcomes, performance? Are we saying the same thing?

A. I don't know if we're saying the same thing. So the studies that I reference are the Roberts study and the Harper study, where they actually look at specific athletic endeavors and measure those as opposed to the studies where they're simply sitting in a physiology lab measuring somebody move an arm back and forth and thinking that it might associate with some actual athletic performance.

Q. Somebody moving their arm back and forth with weights, that's not athletic?

A. It's --- again, it would --- right, that's --- that's only --- that's what we would call a surrogate endpoint where you are simply looking at something that might correlate with what you want, but --- but you don't know it until you test it. It ends up being what we call hypothesis generating. That is how we would say **[283]** it in a scientific way.

Q. And the same would hold true with the level of circulating testosterone, you would want to actually test that in real life to see how people's circulating testosterone

actually translates into performance of an actual athletic contest. Right?

A. That's right. So the data that were used to determine the five nanomole per liter cut point are passively collected data. And if somebody did a study looking at that threshold and found that there was, let's say, no difference, then that rule might be discarded.

Q. And so far, other than Roberts and Harper, if I recall correctly, those are the only two that you know of. Right?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Those are the only two studies that have gone that extra step and looked at an actual athletic activity with an outcome that is part of that athletic activity and not what I was just referencing, as a surrogate endpoint.

BY ATTORNEY TRYON: **[284]**

Q. In those two studies did they check the circulating testosterone in the individuals in these studies?

A. I'd have to look. I think we did look earlier today with regard to the Harper study, and I don't think she's referencing testosterone levels at all. Again, I'd have to go back and look to be sure. We were talking about whether they were self-reported. And the --- with the Robert study I would have to go back and look at that one, too. I'm feeling like the answer is no, but we can look there if you want.

Q. Yeah, we don't need to. I'm pretty sure that we just talked about how long they had been in the therapy rather than actual measurements. Well, let me move on. I know we don't have a lot of time left. So you said you're familiar

in your expert report you are familiar with HB-3293. Is that right?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So yes, I'm somewhat familiar.

BY ATTORNEY TRYON:

Q. Have you read the whole thing? **[285]**

A. I don't think I've read the whole thing, no.

Q. When did you first hear of HB-3293?

A. I probably first heard of it when the --- when I received contact from the ACLU to serve as an expert witness.

Q. Do you recall if that was before or after it was passed?

A. I don't recall. I would have to speculate that it would be after, because that would --- I mean that would make sense that that is true, but I don't recall, so I wouldn't be able to answer that.

Q. Okay. So we would refer to this as State Women's Sports Law and there's other types of laws like this throughout the country. Are you aware of that?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: So I'm aware that there are attempts at legislation and some actual legislation passed to block transgender athletes in various permeations, including transgender women in several states. I'm aware of that, yes.

BY ATTORNEY TRYON:

Q. Are you aware then House Bill 3293 the word **[286]** transgender does not appear at all?

A. House Bill --- that's this one?

Q. That is this one.

A. I was not aware that the word transgender does not appear at all.

Q. Are you tracking the other bills out there that are similar to House Bill 3293?

A. I am not personally tracking the other bills, no.

Q. Can you take a look at the Handelsman report that you have in front of you. I don't recall the exhibit number.

ATTORNEY WILKINSON: I think Exhibit 13 --- oh, sorry, it's Exhibit 4, I think.

THE WITNESS: I don't see.

ATTORNEY WILKINSON: I can give you that.

THE WITNESS: The stack got big.

ATTORNEY TRYON: We can just bring it --if you can't find it we can bring it up on the screen?

THE WITNESS: Okay. I was given another copy, so we're good. I have it in front of me.

BY ATTORNEY TRYON:

Q. Okay. **[287]** On the second page?

A. On the second page.

Q. Okay. Under fairness and segregation in sports. Do you see that section?

A. I do.

Q. In the third full paragraph underneath there --oh the formatting there is a little different than the copy that I have. Let's see. There's a paragraph that starts the terms sex and gender. There it is. The terms sex and

gender are often confused as interchangeable. Now, I want you to focus on this next sentence. Sex is an objective specific biological state, a term with distinct fixed facets notably genetic, chromosomal, gonadal, hormonal and phenotypic including genital sex, each of which has a characteristic defined binary form. Did I read that correctly?

A. You read that correctly, yes.

Q. Do you agree with that statement?

A. I don't agree with that statement completely, no.

Q. What specifically do you find objectionable.

A. It's missing some components of sex, including, **[288]** for example gender identity. And the phrasing characteristic defined binary form is not necessarily true for each component of biological sex.

Q. So you disagree with the statement in the Handelsman report, is that --- did I state that fairly?

A. Right. I would characterize the statement as not exhaustive.

ATTORNEY TRYON: Let me ask the court reporter if I have any time.

COURT REPORTER: I have six minutes and 58 --- six hours and 58 minutes.

ATTORNEY TRYON: Well, I guess with my last two minutes I'll just say thank you for your time and I appreciate it. And I don't have any other questions. I don't know if any of the other Defendants do. I doubt it. But go ahead. If they do, go ahead. Kelly?

ATTORNEY MORGAN: This is Kelly Morgan. I don't have any questions. Thank you so much.

ATTORNEY TRYON: Roberta? Susan, you're

next.

ATTORNEY GREEN: This is Roberta Green on the behalf of the SSAC. No questions. Thank you.

ATTORNEY DENIKER: Dr. Safer, this is **[289]** Susan Deniker. I have no questions. Thank you for your time today.

ATTORNEY TRYON: We are finished.

VIDEOGRAPHER: This concludes this deposition. The current time reads 6:31 p.m. Eastern Standard Time.

VIDEOTAPED DEPOSITION CONCLUDED AT 6:31 P.M.

ERRATA SHEET

AFFIDAVIT
STATE OF PENNSYLVANIA
County of _____

I, Joshua Safer, MD, certify under oath or affirmation that I have read the transcript of my testimony dated 3/24/2022 and that the transcript of my testimony is accurate with the following corrections:

Page	Line	Error	Correction	Reason
19	6	bad	better	
26	14	sensitive	scientific	
29	21	adults	adult	
30	14	committee	community	
33	1	farther	further	
33	3	at	that at	
33	23	make	take	
53	11	nanomolars	nanomolar	
54	21	7.5	5	
57	6	press	suppressed	
68	8	will be described in that	will describe the	
68	24	context	contexts	
72	3	prefer	refer	
74	12	least	at least	

74	20	body	the body	
75	4	the coils here	——	

Are there additional corrections on a following page

__ NO X Yes

Signature of Deponent/Affiant _____

Sworn to and subscribed before me, a Notary Public, on this ____ day of _____, 20_____.

_____

Notary Public

Additional Corrections to the Testimony of Jushua Safer, MD

Page	Line	Error	Correction	Reason
80	22	right	——	
85	24	needs	need	
86	23	they	there	
90	24	of tab	——	
91	19	air	error	
94	13	about higher	——	
94	22	of the	——	
96	20	were	or	
111	19	that	there	
126	8	pre-pubertis gender	pre-pubertal cisgender	
127	7	an	the	
134	7	recognized	recognize	
135	14	collections	directions	
136	17	I got	I've got	
140	11	as	is	
150	23	a league	elite	
151	6	intermural	intramural	
157	8	kilio	Healio	
157	9	kilio	Healio	

163	1	for	or	
167	2	on	beyond	
178	15	it	if	
179	12	loopholed	—	
181	4	than	then,	
181	14	brought	broad	
185	14	vaginal plasty	vaginoplasty	
185	21	construction	reconstruction	

Are there additional corrections on a following page

__ NO X Yes

Deponent's / Affiant's Name: _____

Initials: _____

Additional Corrections to the Testimony of Joshua Safer, MD

Page	Line	Error	Correction	Reason
187	11	know	no	
197	3	is I	is what I	
198	10	if	with	
207	6	expectation	explanation	
207	14	there in 2021 as	there. In 2021 has	
211	17	not	—	
215	16	the sum	some	
216	5	is	it's	
215	13	endocrine society	Endocrine Society	
216	7	endocrine society	Endocrine Society	
216	8	project	subject	
223	13	identity	gender identity	
230	3	incongruent	congruent	
241	6	overtime	over time	
241	7	any absence of	absent	
241	17	discorded	discordant	
250	19	is to	is not to	

268	17	intuitions	institutions	
285	21	permeations	permutations	

Are there additional corrections on a following page

_X_ NO ___ Yes

Deponent's / Affiant's Name: _____

Initials: _____

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

CHARLESTON DIVISION

B. P. J., et al.,

Plaintiffs,

v. CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION, et al.,

Defendants,

and

LAINEY ARMISTEAD,

Defendant-Intervenor.

EXPERT REPORT AND DECLARATION OF PROFESSOR MARY D. FRY, PHD

1. I have been retained by counsel for Plaintiff as an expert in connection with the above-captioned litigation.

2. The purpose of this expert report and declaration is to offer my expert opinion on: (1) the psychological and behavioral benefits of sports for youth and young adults (including collegiate athletes); and (2) the conditions that lend themselves to youth and young adults participating

in athletics and accessing those benefits when they do participate.

3. I have knowledge of the matters stated in this expert report and declaration. I have collected and cite to relevant literature concerning the issues that arise in this litigation in the body of this expert report and declaration and in the attached bibliography.

4. In preparing this expert report and declaration, I reviewed West Virginia H.B. 3293, the bill at issue in this litigation.

5. In preparing this expert report and declaration, I relied on my education and training, my professional and research experience, and my knowledge of the literature in the pertinent fields. The materials I have relied upon in preparing this expert report and declaration are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject. I may wish to supplement these opinions or the bases for them as a result of new research or publications or in response to statements and issues that may arise in my area of expertise.

PROFESSIONAL BACKGROUND

6. I am a Professor in the Department of Health, Sport & Exercise Sciences at the University of Kansas in Lawrence, Kansas. A true and correct copy of my Curriculum Vitae is attached hereto as Exhibit A.

7. In 1984, I graduated from Texas Wesleyan University in Fort Worth, Texas with a Bachelor of Science in Physical Education. After graduating, I spent about five years teaching physical education and coaching tennis at schools and summer camps in Texas and North Carolina.

8. I graduated with a Master of Science in Sport Psychology/Pedagogy from the University of North Carolina in Greensboro, North Carolina in 1990. Then, in 1994, I graduated with a doctorate in Sport & Exercise Psychology from Purdue University in West Lafayette, Indiana. From 1994 to 1999, I served as an Assistant Professor in the University of Memphis's Department of Human Movement Sciences and Education. I continued at the same institution from 1999 to 2007 as an Associate Professor in the Department of Human & Sport Sciences. I joined the faculty of the University of Kansas in 2007, where I continue to teach and research as a Professor today.

9. I have authored or coauthored 69 papers in peer-reviewed journals, including many studies in sport psychology and youth athlete motivation. I have coauthored seven book chapters and one book, titled *A Coach's Guide to Maximizing the Youth Sport Experience: Work Hard and Be Kind.* I have also given 118 presentations on my research at both international and national conferences, as well as dozens of local and regional presentations.

10. I have taught and/or developed six undergraduate level courses and 12 graduate level courses in sport and exercise psychology. The courses I developed include Psychosocial Aspects of Sport, Applied Sport Psychology, Developmental Perspectives in Youth Sport, and Special Course: Sport Psychology Within Youth Sport.

11. On a national level, I have served with the Association of Applied Sport Psychology ("AASP") as a member of the Program Review Committee (2008-present), a Subject Matter Expert for the Certification Exam Committee (2018), and a member of the Ad-Hoc Future of AASP Committee (2012-2015). For the AASP, I

have served as an Executive Board Member (2004-2006), two three-year terms as a member of the Social Psychology Section Committee (1996-99; 2001-2003), and as a member of the Dissertation Award Committee (1998; 2002). I have also served on the Editorial Board for *Physical Activity Today* (1997-2001) and on the Program Review Committee for the American Alliance of Health, Physical Education, Recreation & Dance (2009-2017), in addition to chairing the Committee in 2010. I also serve on the National Advisory Board for the Positive Coaching Alliance.

12. I have undertaken editorial roles on professional journals within my field, including as Associate Editor (2009-2012) and Editorial Board Member (2000-2009; 2013-present) for the *Journal of Applied Sport Psychology;* Associate Editor (2008-present) for the *Journal of Sport Psychology in Action;* Section Editor (2003-2006) and Reviewer (1994-present) for the *Research Quarterly for Exercise and Sport;* and Editorial Board Member (2011-present) for *Sport, Exercise, and Performance Psychology.*

13. I have served on the Kansas University Certificate in Sport Committee (2017-2018), and the Kansas University Center for Undergraduate Research, Advisory Board (2016-2018), among other roles at the University.

14. I am, or have been, a member of several professional organizations, including the American Psychological Association (2017-present), the Kansas Alliance for Health, Physical Education, Recreation, & Dance (2008-present), the American Alliance for Health, Physical Education, Recreation, and Dance (1988-2017), and the North American Society for the Psychology of Sport and Physical Activity (1988-2000).

15. I also have experience applying sport psychology in the field, which include mental skills interventions for various athletes and teams, including with high school and university athletes (2000-present), a high school baseball team (2013-2018), a youth baseball team (2009-2011), a Division I collegiate volleyball team (2008-2010), a high school basketball team (20062007), and a Division I cross-country team (2006).

16. I have not previously testified as an expert witness in either deposition or at trial.

17. I am being compensated at an hourly rate of $250 per hour. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

FOCUSING SOLELY ON PERFORMANCE OUTCOMES UNDERMINES THE BENEFITS OF SPORT FOR YOUTH AND YOUNG ADULT ATHLETES

18. For youth and young adult student-athletes, athletics serve a different purpose than for athletes who participate in professional athletics or world elite competition. A myopic focus on winning in youth and young adult athletics ignores the other important benefits that school athletics offer young athletes, such as teamwork and camaraderie, which are advanced when all athletes have the opportunity to play the sport they love and reap the benefits of such participation.

19. The National Collegiate Athletic Association (NCAA) estimates that there are eight million high school

student-athletes in the United States.[1] Of those millions of athletes, only about 6% go on to compete at the college level in any division (with only about 2% earning an athletic scholarship).[2] By the numbers alone, the primary purpose of high school sports is not about preparing youth for college sports. For the 93% of high school athletes who do not compete in college as well as for those who do, youth sport creates a myriad of benefits unrelated to preparing athletes to compete in college.

20. Then for collegiate athletics, most athletes do not go on to have athletic careers beyond college in an elite sports context. According to the NCAA: "Fewer than two percent of NCAA student-athletes go on to be professional athletes."[3] That percentage does not include National Association of Intercollegiate Athletics (for small college sports) and junior college student-athletes, who are less likely to have professional sports careers. Accordingly, among total numbers of collegiate athletes in the United States, the total percentage of athletes who go on to participate in elite, professional athletics after college is even lower than two percent.

21. There are many benefits to young people from participating in athletic activities, discussed further herein. But understanding what motivates youth and young adults to participate in athletics in the first place is essential for understanding how they can access these benefits. One critical way to increase participation in athletics is to understand the factors that motivate individuals to stay engaged at different ages and in

---

[1] https://www.ncaa.org/abouthesources/research/estimated-probability-competing-college-athletics

[2] *Id.*; https://www.ncaa.org/student-athletes/future/scholarships

[3] https://www.nfhs.org/media/886012/recruiting-fact-sheet-web.pdf

different contexts. Understanding motivation also helps to explain how the benefits youth and young adults derive from participating in sport translate to other aspects of their lives.

22. In simple terms, motivation is the desire to do activities. More formally, it is defined as "the process that influences initiation, direction, magnitude, perseverance, continuation, and quality of goal-directed behavior" (Maehr & Zusho, 2009). Motivation is about why, how, when, and in what circumstances people employ their resources.

23. One of the most-researched motivational theories in the field of sport psychology is achievement goal perspective theory, which was developed to address how motivation could be heightened and sustained over time (Nicholls 1984, 1989). Achievement goal perspective theory includes three components that together can work to optimize motivation among all individuals, including youth and young adults participating in sports.

24. First is the developmental component of achievement goal perspective theory. Young children are incapable of accurately comparing their ability to others, overestimate their ability, and are naturally focused on their effort as a marker of success. By the time they enter adolescence, however, they are able to distinguish the concepts of effort, luck, and ability.

25. Second, around 12 years of age, children achieve a mature understanding of the concept of ability and at that time adopt their own personal definitions of success, or "goal orientations." The primary goal orientations are task and ego. Individuals with a "high task orientation" define success based on their effort, improvement, and mastery of tasks over time. In contrast, a high ego

orientation occurs when individuals define success in normative terms, only feeling successful when they outperform others. Individuals are to some degree both task- and ego-oriented; in fact, they can be high and/or low in both orientations.

26. Third, motivations are shaped by outside factors, which can reinforce a task orientation as opposed to an ego orientation. Specifically, athletes can perceive the environment that is created by coaches (but can also be influenced by parents and teammates) (Ames, 1992a, 1992b; Nicholls, 1984, 1989) as a task-involving or ego-involving climate. When the environment created by coaches and others is a caring environment, athletes are more likely to perceive the overall climate as task-involving. A caring environment is one where athletes feel safe, welcome, comfortable, and valued, and are treated with kindness and respect by all in the sport setting (Newton et al., 2007). A climate that is both task-involving and caring is one in which coaches do the following: recognize and reward effort and improvement; foster cooperation among teammates; make everyone feel they play an important role on the team; treat mistakes as part of the learning process; and encourage an atmosphere where everyone is treated with mutual kindness and respect.

27. A high task orientation, described above in Paragraph 25 is the key to optimizing motivation over time because effort and improvement — the keys to task orientation — are variables that individuals can more easily control. High task orientation results in athletes being more likely to seek challenge, exert high effort, and persist over time (Maehr & Zusho, 2009).

28. Perhaps the strongest finding within the goal orientation research links task orientation with high

enjoyment. Throughout childhood and adolescence, and across a range of sports, athletes who define success based on their personal effort and improvement have more fun playing their sport than those high in ego orientation (Schneider, Harrington, & Tobar, 2017; Seifriz, Duda, & Chi, 1992; Stephens, 1998; Stuntz & Weiss, 2009; van de Pol & Kavussanu, 2011). Importantly, goal orientations are also associated with the sources of enjoyment athletes identify. For example, youth athletes with a high task orientation more often report experiencing enjoyment from learning and having positive team interactions. In contrast, athletes high in ego orientation more often report experiencing enjoyment as a result of winning and having high perceived competence (Lochbaum & Roberts, 1993).

29. Another benefit of high task orientation in youth athletes is the strong and positive association with interpersonal and team dynamics (Balaguer, Duda, & Crespo, 1999; Ommundsen, Roberts, Lemyre, & Miller, 2005). Task orientation is positively correlated with peer acceptance, less conflict with peers, and greater satisfaction with the coach.

30. Athletes high in task orientation also report greater confidence and perceived ability, and task orientation has been correlated with both self and team efficacy and greater perceived competence (Magyar & Feltz, 2003; Seifriz et al., 1992; Stuntz & Weiss, 2009). Further, athletes high in task orientation report utilizing more adaptive coping strategies (Kim, Duda, & Gano-Overway, 2011; McCarthy, 2011). These adaptive outcomes have been found for middle school, high school, and collegiate athletes.

31. By contrast, ego orientation (i.e., the non-pejorative, descriptive term for defining success based on

ability and performance outcomes), is not correlated with perceived ability in general. Confidence of athletes high in ego orientation was more often based on their perceptions of ability and having a strong physical presence, whereas athletes high in task orientation based their perceptions of confidence on their sense of feeling well prepared and mentally strong (Magyar and Feltz, 2003).

32. Athletes high in ego orientation report lower companionship and greater conflict with teammates (Balaguer et al., 1999), and there is no evidence to suggest they reap the benefits of enhanced social relationships that athletes with high task orientation do (Ommundsen et al., 2005). Despite the ego-involving climate's emphasis on performance outcomes, results across studies suggest that the benefits of a task-involving climate may have a direct impact on athletic performance and ultimately improve performance outcomes (Jackson & Roberts, 1992; McDonald, Cote, & Deakin, 2011). By contrast, no evidence currently points to an ego-involving climate leading to greater performance outcomes with young athletes.

33. There is also a consistently significant relationship between ego orientation and anxiety (Lochbaum et al., 2016). Young athletes with high ego orientation participating in a variety of sports have reported higher trait and state cognitive and somatic anxiety, as well as greater concentration disruption, maladaptive perfectionism, and concern over making mistakes (Grossbard, Cumming, Standage, Smith, & Smoll, 2007; Hall, Kerr, & Matthews, 1998; Ommundsen & Pedersen, 1999; Ommundsen et al., 2005; White & Zellner, 1996).

34. Even for athletes who are themselves highly ego-oriented, and who prioritize winning and external rewards, a task-involving and caring climate is preferable.

Such a climate encourages young athletes to orient themselves toward a task-involved model for motivation and away from the stress-inducing ego-orientation, which will in turn garner the young person the benefits associated with a task-orientation. For example, Division I college athletes who perceived a task-involving climate on their teams reported having stronger mental skills including their use of goal setting, ability to concentrate, remain worry free, cope with adversity and peak under pressure, act with confidence, and be open to receiving feedback from coaches (Fry, Iwasaki, & Hogue, 2021). These findings would suggest that athletes with strong mental skills might also perform better. Further, perceptions of an ego-involving climate have been linked to higher salivary cortisol responses (Hogue, Fry, & Fry, 2017). Cortisol is an important and necessary hormone, but in excess it can break down muscle tissue and interfere with the immune system.

35. Thus, the benefits associated with youth and young adult sport are not limited to whether athletes are winning competitions, where they are ranked in their sport, or what level of publicity they are getting. In fact, a focus exclusively on those things not only undermines an athlete's success in those areas but can compromise the holistic range of benefits derived from youth and young adult sport. Ultimately, athletes are more likely to reap the positive benefits associated with youth and young adult sports if they are task-involved, which places greater emphasis on effort, than if they are ego-involved, which would put greater emphasis on trappings of individual success.

36. It should be noted that the research findings described above, which highlight the relationships between goal orientations and numerous outcome

variables, have been consistent for both boys and girls. In other words, within the body of research on athletes' goal orientations, results across studies reveal that task orientation is more often positively correlated with adaptive outcomes (e.g., intrinsic motivation), and ego orientation is more often negatively associated with maladaptive outcomes (e.g., worry) for both boys and girls (Fry & Moore, 2019; Roberts, 2012; Roberts, Nerstad, & Lemyre, 2018).

EXCLUDING TRANSGENDER STUDENTS FROM PARTICIPATING IN YOUTH AND YOUNG ADULT ATHLETICS WOULD DEPRIVE THEM AND THEIR TEAMMATES OF A WIDE RANGE OF BENEFITS

37. A goal of youth sport is to help young athletes have positive experiences across sport. This includes creating space for athletes to have fun, develop skills, make friends, increase their levels of physical activity, continue their participation over time, and learn valuable life lessons (Thompson, 2010). If transgender students are arbitrarily excluded from youth sports, they are, in turn, deprived of those positive experiences and outcomes and their teammates are deprived of a genuinely optimal sport experience.

38. Athletes who participate in high school sport are more likely to fmish college, and more likely to be actively engaged in planning for their future after their sport career ends (Chamberlin & Fry, 2020; Troutman & Defur, 2007). Many of the benefits to youth who participate in athletics are documented throughout life. For example, women who participated in high school sport see greater success in the business world (ESPNW & EY, 2017; Sasaki, 2020). When athletes are excluded from participating in sport, or are in a climate where they do

not feel accepted or respected, they do not have the opportunity to reap these benefits.

39. In addition, arbitrarily excluding transgender students from teams undermines a task-involving climate, which, in turn, diminishes the positive outcomes for all youth and collegiate athletes. (Balaguer, Duda, & Crespo, 1999; Ommundsen, Roberts, Lemyre, & Miller, 2005). Fostering task orientation positively correlates with peer acceptance, less conflict with peers, and greater satisfaction with the coach. These outcomes help athletes have a sport experience that make them want to keep playing sport. Because these positive benefits are fostered in a task-involving environment, arbitrary exclusions can cause harm not only to the athletes who are excluded, but also to the other athletes on the team.

40. When a team, league, or organization adopts an ego-promoting philosophy, and cares only about performance outcomes, the broader benefits of sport are diminished for all involved (both with regard to their future athletic careers and lives outside of sport). As noted above, the overwhelming majority of high school athletes will never go on to compete in college, and the overwhelming majority of college athletes will never go on to compete on professional teams. Focusing only on the highest-performing athletes or post-graduate elite athletics compromises the other critical benefits of sports for youth and young adults.

41. The climate of youth sport must be geared to include all participants, so that teams are more likely to help every athlete maximize their potential. From an educational perspective, it is optimal to encourage all athletes to do the best that they can, and to help all athletes enjoy the sport that they love.

42. For coaches of youth and young adult athletes, one important message is that, for the overwhelming majority of people, the period of time that a person participates in organized athletics is short and maximizing the benefits of that participation is essential. As Jim Thompson, Founder and former-CEO of the Positive Coaching Alliance notes: "Here's the bottom line for parents. Your child's experience with youth sports will come to an end, and it may happen suddenly. If you are like me, you will look back and think, `I wish I had enjoyed it more. I wish I hadn't obsessed so much about how well my child was performing, or the team's record, or whether he or she was playing as much as I wanted, or why the coach didn't play him or her in the right position. I wish I had just enjoyed the experience more.' Because the youth sports experience is so intense, we tend to forget how short it is and what a small amount of time parents and children get to spend together over the course of life."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 24, 2022 /s/ Mary D. Fry
Professor Mary D. Fry, PhD

BIBLIOGRAPHY

Allen, J., Taylor, J., Dimeo, P, Dixon, S., & Robinson, L. (2015). Predicting elite Scottish athletes' attitudes towards doping: Examining the contribution of achievement goals and motivational climate. *Journal of Sports Sciences,* 33, 899-906.

Ames, C. (1992a). Achievement goals, motivational climate, and motivational processes. In *Motivation in sport and exercise* (pp. 161-176). Champaign, IL: Human Kinetics.

Ames, C. (1992b). Classrooms: Goals, Structures, and Student Motivation. *Journal of Educational Psychology,* 84(3), 261-271. https://doi.org/10.1037/0022-0663.84.3.261

Balaguer, I., Duda, J. L., & Crespe, M. (1999). Motivational climate and goal orientations as predictors of perceptions of improvement, satisfaction, and coach ratings among tennis players. *Scandinavian Journal of Medicine and Science in Sports, 9,* 381-388.

Boixados, M., Cruz, J., Torregrosa, M., & Valiente, L. (2004). Relationships among motivational climate, satisfaction, perceived ability, and fair play attitudes in young soccer players. *Journal of Applied Sport Psychology, 16(4),* 301-317. https://doi.org/10.1080/10413200490517977

Boyce, B. A., Gano-Overway, L. a., & Campbell, A. L. (2009). Perceived motivational climate's influence on goal orientations, perceived competence, and practice strategies across the athletic season. *Journal of Applied Sport Psychology, 21(January),* 381-394. https://doi.org/10.1080/10413200903204887

Boyd, M., Kim, M., Ensari, N. & Yin, Z. (2014). Perceived motivational team climate in relation to task and social cohesion among male college athletes. *Journal of Applied Social Psychology, 44,* 115-123.

Cumming, S. P., Smoll, F. L., Smith, R. E., & Grossbard, J. R. (2007). Is winning everything? The relative contributions of motivational climate and won-lost percentage in youth sports. *Journal of Applied Sport Psychology, 19(3),* 322-336. https://doi.org/10.1080/10413200701342640

Duda, J. L. (2013). The conceptual and empirical foundations of Empowering Coaching TM: Setting the stage for the PAPA project. *International Journal of Sport and Exercise Psychology, 11(4),* 311-318. https://doi.org/10.1080/1612197X.2013.839414

Duda, J. L., & Nicholls, J. G. (1992). Dimensions of achievement motivation in schoolwork and sport. *Journal of Educational Psychology, 84(3),* 290-299. https://doi.org/10.1037/0022-0663.84.3.290

Fry, M. D., & Hogue, C. M. (2018). Psychological considerations for children and adolescents in sport and performance. Oxford Research Encyclopedia of Psychology.

Fry, M., & Moore, E. (2018). Motivation in sport: Theory and application. In M. H. Anshel (Ed.), T.Petrie, E. Labbe, S. Petruzello, & J. Steinfeldt (Assoc. Eds.), APA Handbook of Sport and Exercise Psychology. Vol 1. Sport Psychology (pp. 273-299). Sport psychology. Washington DC: American Psychological Association.

Fry, M. D., & Newton, M. (2003). Application of Achievement Goal Theory in an urban youth tennis

setting. *Journal of Applied Sport Psychology, 15(1),* 50-66. https://doi.org/10.1080/10413200305399

Fry, M. D., Gano-Overway, L., Guivernau, M., Kim, M., & Newton, M. (2020). A coach's guide to maximizing the youth sport experience: Work hard, be kind. New York: Routledge.

Fry, M. D., & Gano-Overway, L. A. (2010). Exploring the contribution of the caring climate to the youth sport experience. *Journal of Applied Sport Psychology,* 22(3), 294-304.

Fry, M. D., Iwasaki, S., & Hogue, C. (2021). The relationship between the perceived

motivational climate in elite collegiate sport and athlete psychological coping skills. *Journal of Clinical Sport Psychology,* 15(4), 334-350.

Gano-Overway, L. A., Newton, M., Magyar, T. M., Fry, M. D., Kim, M.-S., & Guivernau, M. R. (2009). Influence of caring youth sport contexts on efficacy-related beliefs and social behaviors. *Developmental Psychology,* 45(2), 329-340. https://doi.org/10.1037/a0014067.

Grossbard, J. R., Cumming, S. P., Standage, M., Smith, R. E., & Smoll, F. L. (2007). Social desirability and relations between goal orientations and competitive trait anxiety in young athletes. *Psychology of Sport and Exercise,* 8(4), 491-505. https://doi.org/10.1016/j .psychsport.2006.07 .009

Hall, H. K., Kerr, A. W., & Matthews, J. (1998). Precompetitive anxiety in sport: The contribution of achievement goals and perfectionism. *Journal of Sport & Exercise Psychology, 20(2),* 194-217.

Harwood, C. G., Keegan, R. **J.,** Smith, J. M. J., & Raine, A. S. (2015). A systematic review of the intrapersonal

correlates of motivational climate perceptions in sport and physical activity. *Psychology of Sport and Exercise, 18,* 9-25. https://doi.org/10.1016/j.psychsport.2014.11.005

Hogue, C. M., Fry, M. D., & Fry, A. C. (2017). The differential impact of motivational climate on adolescents' psychological and physiological stress responses. *Psychology of Sport and Exercise, 30,118-127.* https://doi.org/10.1016/j.psychsport.2017.02.004

Iwasaki, S., & Fry, M. D. (2016). Female adolescent soccer players' perceived motivational climate, goal orientations, and mindful engagement. *Psychology of Sport and Exercise, 27,* 222-231. https://doi.org/10.1016/j.psychsport.2016.09.002

Jackson, S. A., & Roberts, G. C. (1992). Positive performance states of athletes: Toward a conceptual understanding of peak performance. *Sport Psychologist, 6(2),* 156-171.

Kavussanu, M., & Roberts, G. C. (2001). Moral functioning in sport: An achievement goal perspective. *Journal of Sport & Exercise Psychology,* 23(1), 37-54.

Kim, M., Duda, J. L., & Gano-Overway (2011). Predicting occurrence of and responses to psychological difficulties: The interplay between achievement goals, perceived ability and motivational climates among Korean athletes. *International Journal of Sport and Exercise Psychology, 9,* 31-47.

Lochbaum, M., Cetinkalp, Z. K., Graham, K., Wright, T., & Zazo, R. (2016). Task and ego goal orientations in competitive sport: A quantitative review of the literature from 1989 to 2016. *Kinesiology,* 48, 3-29.

Maehr, M. L., & Zusho, A. (2009). Achievement goal theory: The past, present, and future. In K.R. Wentzel & A. Wigfield (Eds.), Handbook of motivation at school (pp. 77-104). New York, NY: Routledge.

Magyar & Feltz (2003). The influence of dispositional and situational tendencies on adolescent girls' sport confidence sources. *Psychology of Sport and Exercise, 4,* 175-190.

McCarthy, J. J. (2011). Exploring the Relationship Between Goal Achievement Orientation and Mindfulness in Collegiate Athletics. *Journal of Clinical Sport Psychology,* 5(1), 44-57.

MacDonald, D. J., Cote, J., Eys, M., Deakin, J. (2011). The role of enjoyment and motivational climate in relation to the personal development of team sport athletes. *Sport Psychologist, 25,* 32-46.

Newton, M., Duda, J. L., & Yin, Z. (2000). Examination of the psychometric properties of the perceived motivational climate in sport questionnaire-2 in a sample of female athletes. *Journal of Sports Sciences,* 18(4), 275-290. https://doi.org/10.1080/026404100365018

Newton, M., Fry, **M. D.,** Watson, D. L., Gano-Overway, L. A., Kim, M., Magyar, T. M., & Guivernau, M. R. (2007). Psychometric properties of the Caring Climate Scale in a physical activity setting. *Revista de Psicologia Del Deporte, 16,* 67-84. Retrieved from file:///ClUsers/zar4559/Downloads/22-22-1-PB.pdf

Nicholls, J. G. (1984). Achievement motivation: Conceptions of ability, subjective experience, task choice, and performance. *Psychological Review, 91(3),* 328-346. https://doi.org/10.1037/0033-295X.91.3.328

Nicholls, J. G. (1989). *The competitive ethos and democratic education.* Cambridge, MA: Harvard University Press.

Olympiou, A., Jowett, S., & Duda, J. L. (2008). The psychological interface between the coach-created motivational Climate and the coach-athlete relationship in team sports. *Sport Psychologist, 22(4),* 423-438. Retrieved from http://search.ebscohost.com/login.aspx?direct=true&db=s3h&AN=35719365&lang=es&site=ehost-live&scope=site

Ommundsen, Y & Petersen, B.H. (1999). The role of achievement goal orientations and perceived ability upon somatic and cognitive indices of sport competition trait and anxiety. *Scandinavian Journal of Medicine and Science in Sports, 9,* 333-343.

Ommundsen, Y., Roberts, G. C., Lemyre, P.-N., & Miller, B. W. (2006). Parental and coach support or pressure on psychosocial outcomes of pediatric athletes in soccer. *Clinical Journal of Sport Medicine: Official Journal of the Canadian Academy of Sport Medicine, 16(6),* 522526. https://doi.org/10.1097/01.jsm.0000248845.39498.56

Poux, K. N., & Fry, M. D. (2015). Athletes' perceptions of their team motivational climate, career exploration and engagement, and athletic identity. *Journal of Clinical Sport Psychology,* 9(4), 360-372. https://doi.org/10.1123/jcsp.2014-0050

Roberts, G. C. (2013). Advances in motivation and sport exercise. In D. C. Roberts, G. C. & Treasure (Ed.), *Advances in motivation in sport and exercise* (3rd Ed), pp. 5-58. Champaign, IL: Human Kinetics.

Roberts, G. C., Nerstad, G. L., & Lemyre, P. N. (2018). Motivation in sport and performance. In 0. Braddick (Ed.), Oxford Research Encyclopedia of Psychology (pp. 1-46). Oxford University Press.

Sarrazin, P., Roberts, G. C., Cury, F., Biddle, S., & Famose, J.-P. (2002). Exerted effort and performance in climbing among boys: The influence. *Research Quarterly for Exercise and Sport,* 73(4).

Sasaki, J. (2020). How can winning on the playing field prepare you for success in the boardroom? EY: Building a better world. https://www.ey.com/engl/women-fast-forward/how-can-winning-on-the-playing-field-prepare-you-for-success-in-the-boardroom

Schneider, R. A. Y., Harrington, M., & Tobar, D. (2017). Goal orientation and how a task or ego mentality can affect the enjoyment for college hockey players. *College Student Journal,* 51(1), 57-62.

Seifriz, J. J., Duda, J. L., & Chi, L. (1992). The relationship of perceived motivational climate to intrinsic motivation and beliefs about success in basketball. *Journal of Sport & Exercise Psychology, 14,* 375-391.

Stephens, D. E., & Kavanagh, B. (2003). Aggression in Canadian youth ice hockey: The role of moral atmosphere. *International Sports Journal, 7,* 109-119.

Stuntz & Weiss (2009). Achievement goal orientations and motivational outcomes in youth sport: The role of social orientations. *Psychology of Sport and Exercise, 10,* 255-262.

Theeboom, M., Knop, P. De, & Weiss, M. R. (1995). Motivational climate, psychological responses, and motor skill development in children's sport: A field-

based intervention study. *Journal of Sport & Exercise, 17,* 294-311.

Thompson, J. (2010). Positive coaching: Building character and self-esteem through sports. New York: Brown & Benchmark.

Troutman, K., & Dufur, M. (2007). From high school jocks to college grads: Assessing the longterm effects of high school sport participation on females' educational attainment. Youth & Society, 38(4), 443-462. doi:10.1177/0044118X06290651

Tudor, M. L., & Ridpath, B. D. (2018). Does the perceived motivational climate significantly predict academic and/or athletic motivation among NCAA Division I college athletes. *Journal of Contemporary Athletics, 12(4),* 291-307.

van De Pol, P. K. C., Kavussanu, M., (2011). Acheivement goals and motivational responses in tennis: Does the context matter? *Psychology of Sport & Exercise, 12,* 176-183.

White, S., & Zellner (1996). The relationship between goal orientation, beliefs about the causes of sport success, and trait anxiety among high school, intercollegiate, and recreational sport participants. *Sport Psychologist, 10,* 58-72.

Xiang, P., Bruene, A., & McBride, R. E. (2004). Using achievement goal theory to assess an elementary physical education running program. *Journal of School Health,* 74,220-225.

EXHIBIT A

CURRICULUM VITAE

NAME: Mary D. Fry (Previously Mary D. Walling before 8/95)

DEPARTMENT: Health, Sport & Exercise Sciences

RANK: Professor

DEPARTMENT ADDRESS:

Department, of Health, Sport & Exercise Sciences

Robinson Center, Room 161F

1301 Sunnyside Ave.

University of Kansas

Lawrence, KS 66045

(785) 864-1862(0); mfry@lcu.edu (email)

EDUCATION

DEGREE	DISCIPLINE	INSTITUTION	YEAR
BS	Physical Education	Texas Wesleyan University	1984
MS	Sport Psychology / Pedagogy	University of North Carolina – Greensboro	1990
PhD	Sport & Exercise Psychology	Purdue University	1994

EXPERIENCE

Rank / Position	**Department / Division**	**Institution / Org.**	**Period**
Professor	Health, Sport & Exercise Sci	University of Kansas	2019
Associate Professor	Health, Sport & Exercise Sci	University of Kansas	2007-2019
Associate Professor	Human & Sport Sciences	University of Memphis	1999-2007
Associate Professor	Human Movement Sciences & Education	University of Memphis	1994-1999
Editorial Assistant	Journal of Applied Sport Psychology		1992-1994
Associate Investigator	Indiana Youth Risk Behavior	Indiana Dept. of Education / Centers Study for Disease Control	1992
Research Consultant	Grant to Study Youth Sports	National Institute for Fitness & Sport 1991	1991

		Indianapolis, IN	
Teaching Assistant	Health, Kinesiology & Leisure Studies	Purdue University	1990-1992
Teaching Assistant	Sport & Exercise Science	U. North Carolina-Greensboro	1989-1990

Rank / Position	**Department / Division**	**Institution / Org.**	**Period**
Middle School Teacher	Physical Education	Allen Middle School Greensboro, NC	1988-89
High School Teacher	Physical Education / English & Head Tennis Coach	Martin High School Arlington, TX	1987-88
High School Teacher	Physical Education / English & Head Tennis Coach	Richland High School Fort Worth, TX	1984-87
Instructor	University of Texas - Austin	Summer Tennis Camps	1988 & 1989

Certification. Secondary Teacher Certification in English and Physical Education in the State of Texas, 1984.

HONORS/AWARDS:

Coleman Griffith Lecture, Association of Applied Sport Psychology (2021)

Del Shankel Teaching Excellence Award (Recipient 2021; Finalist 2018, 2919)

Budig Teaching Professorship, University of Kansas (2018)

Outstanding Mentor, McNair Scholars Program (2017)

KU Woman of Distinction, (2014-2015)

Joyce Elaine Pauls Morgan HSES Teaching Award (2013)

Budig Teaching Professorship, Nominee (2012)

Bird Outstanding Mentor Award, Nominee (2011)

Service Award, School of Education, University of Kansas, Nominee (2011)

KU Keeler Professorship, University of Kansas (2010).

Fellow, Association of Applied Sport Psychology (2009).

Outstanding Research Article published in *Research Quarterly for Exercise & Sport* (1997).

> Presented by the Research Consortium of the American Alliance of Health, Physical Education, Recreation, & Dance.

Outstanding Doctoral Dissertation, North American Society for the Psychology of Physical Activity (1994).

Student Representative, CIC Big Ten Conference "Capstone of Knowledge" hosted by Michigan University, December, 1992.

RESEARCH PUBLICATIONS

Refereed Journal Publications

Easton, L., Fry, M. D. Hogue, C. M., & Iwasaki, S. (in press). Goal orientations predict exercisers' effort and enjoyment while engaged in exercise and reasons for using a fitness tracker. Acta Facultatis Educationis Physicae Universitatis Comenianae.

Fry, M. D., Iwasaki, S., & Hogue, C. M. (in press). The relationship between the perceived motivational climate in elite collegiate sport and athlete psychological coping skills. *Journal of Clinical Sport Psychology.*

Hogue, C. M., Fry, M. D., & Fry, A. C. (in press). The protective impact of learning to juggle in a caring, task-involving climate versus and ego-involving climate on participants' inflammation, cortisol, and psychological responses. *International Journal of Sport and Exercise Psychology.*

Iwasaki, S., Fry, M. D., & Hogue, C.M. (in press). The relationship among male high school athletes' perceptions of the motivational climate, mindful engagement, and coachability. *Journal of Clinical Sport Psychology.*

Scott, C., Fry, M.D., Wineinger, T., & Iwasaki, S., & Fry, M. D. (in press). Creating an optimal motivational team climate to help collegiate athletes thrive during the COVID-19 pandemic. *Journal of Sport Psychology in Action.*

Scott, C., Fry, M. D., Weingartner, H., & Wineinger, T. (in press). Collegiate sport club athletes' psychological well-being and perceptions of their team climate. *Recreational Sports Journal.*

Wineinger, T., Fry, M. D., & Moore, E. W. (2021). Validation of climate and motivational measures for use in the biology laboratory setting. *Journal of Biological Education.*

Brown, T. C., Fry, M. D., Breske, M., Iwasaki, S., & Wilkinson, T. (2019). Motivational climate and athletes' likelihood of reporting concussions in a youth competitive soccer league. *Journal of Sport Behavior, 42(1),* 29-47.

Fry, M. D., Reid, C., Iwasaki, S., & Thompson, J. (2019). Bridging theory, research, and practice in youth sports: Sport Psychology's Partnership with Positive Coaching Alliance to enhance youth sport. *Journal of Sport Psychology in Action, 10,* 1-10.

Hogue, C. M. Fry, M. D., & Iwasaki, S. (2019). The impact of the perceived motivational climate in physical education on adolescent greater life stress, coping appraisals, and experience of shame. *Sport, Exercise, & Performance Psychology, 8,* 273-289.

Glover, K., & Fry, M. D. (2018). Helping WIN provide a winning environment for girls in their summer camps. *Journal of Sport Psychology in Action, 9,* 1-12.

Miller, S., & Fry, M. D. (2018). Relationship between climate to body esteem and social physique anxiety within college physical activity classes. *Journal of Clinical Sport Psychology,12, 525-543.*

Wineinger, T. 0. & Fry, M. D. (2018). The power of a caring/task-involving climate to help students find

their life's passion. *Kansas Association for Health, Physical Education, Recreation, & Dance Journal, 90* (1), 49-56.

Breske, M. P., Fry, M. D., Fry, A. C., & Hogue, C. M. (2017). The effects of goal priming on cortisol responses in an ego-involving climate. *Psychology of Sport and Exercise, 32,* 7482.

Brown, T. C., Fry, M. D., & Moore, E. W. G. (2017). A motivational climate intervention and exercise-related outcomes: A longitudinal perspective. *Motivation Science,* 3, 337-353

Chamberlin, J. & Fry, M. D. (2017). High school athletes' perceptions of the motivational climate in their off-season training programs. *Journal of Strength and Conditioning Research, 31,* 736-742.

Fontana, M. S., & Fry, M. D. (2017). Creating and validating the shame in sport questionnaire. *Journal of Sport Behavior, 40,* 278-296.

Hogue, C. M., Fry, M. D., & Fry, A. C. (2017). The differential impact of motivational climates on adolescents' psychological and physiological stress responses. *Psychology of Sport and Exercise,* 30, 118-127. http://dx.doi.org/10.1016/j.psychsport.2017.02.004

Fontana, M. S., Fry, M. D., & Cramer, E. (2017). Exploring the relationship between athletes' perceptions of the motivational climate to their compassion, self-compassion, shame, and pride in adult recreational sport. *Measurement in Physical Education and Exercise Science, 21,101-111.*

Moore, E. W., G, & Fry, M. D. (2017). National franchise members' perceptions of the exercise psychosocial

environment, ownership, and satisfaction. *Sport, Exercise, & Performance Psychology,* 6, 188-198.

Moore, E. G. W., & Fry, M. D. (2017). Physical education students' ownership, empowerment, and satisfaction with PE and physical activity. *Research Quarterly for Exercise and Sport,* 88,468-478. https://doi.org/10.1080/02701367.2017.1372557

Iwasaki, S., & Fry, M. D. (2016). Female adolescent soccer players' perceived motivational climate, goal orientations, and mindful engagement. *Psychology of Sport & Exercise,* 27, 222-231. http://dx.doi.org/10.1016/j.psychsport.2016.09.002.

Claunch, J., & Fry, M. D. (2016). Native American football coaches' experience of a a motivational climate collaboration with sport psychology researchers. *International Journal of Sport Science & Coaching, 11,* 482-495. DOI: 10.1177/1747954116655047

Brown, T. C., & Fry, M. D. (2015). Effects of an intervention with recreation center staff to foster a caring, task-involving climate. *Journal of Clinical Sport Psychology, 9,* 41-58.

Fontana, M., Bass, J., & Fry, M. D. (2015). From Smith Center to Coney Island: Examining the coaching climate in the United States sporting culture. *Journal of Contemporary Athletics, 9,* 211-226.

Fry, M. D., & Brown, T. C. (2015). A caring/task-involving climate intervention for youth sport camp leaders. *Kansas Association for Health, Physical Education, and Recreation Journal.*

Moore, E. W. G., Brown, T. C., & Fry, M. D. (2015). Psychometric Properties of the Abbreviated Perceived Motivational Climate in Exercise Questionnaire.

Measurement in Physical Education and Exercise Science, 19(4), 186-199.

Poux, K., & Fry, M. D. (2015). Athletes' perceptions of their team motivational climate, career exploration and engagement, and athletic identity. *Journal of Clinical Sport Psychology,9,* 360-372. http://dx.doi.Org/10,1123/jcsp.2014-0050

Brown, T. C. & Fry, M. D. (2014). College exercise class climates, physical self concept, and psychological well-being. *Journal of Clinical Sport Psychology, 8, 299-313.*

Brown, T. C. & Fry, M. D. (2014). Motivational climate, staff and members' behaviors, and members' psychological well-being at a large national fitness franchise. *Research Quarterly for Exercise and Sport, 85, 208-217.*

Moore, W. E. G, & Fry, M. D. (2014). Psychometric support for the Ownership in Exercise and Empowerment in Exercise Scales. *Measurement in Physical Education and exercise Science, 18,* 1-17.

Brown, T. C., & Fry, M. D. (2014). Evaluating the pilot of Strong Girls: A life skills/physical activity program for third and fourth grade girls. *Journal of Applied Sport Psychology. 26,* 52-65.

Brown, T. C. & Fry, M. D. (2013). Association between females' perceptions of college aerobic class motivational climates and their responses. *Women & Health, 58, 843-857.* Brown, T. C., Fry, M. D., & Little, T. (2013). The psychometric properties of the Perceived

Motivational Climate in Exercise Questionnaire. *Measurement in Physical Education and Exercise Science 17(1), 17-39.*

Hogue, C. M., Pornprasertmanit, S., Fry, M. D., Rhemtulla, M., & Little, T. (2013). Planned missing data designs for spline growth models in salivary cortisol research. *Measurement in Physical Education and Exercise Science, 17, 310-325.*

Iwasaki, S., & Fry, M. D. (2013). Evaluations of youth sport programs requested by sport administrators. *The Sport Psychologist, 27, 360-371.*

Hogue, C.M., Fry, M. D., Fry, A.C., Pressman, S. D. (2013). The influence of a motivational climate intervention on participants' salivary cortisol and psychological responses. *Journal of Sport and Exercise Psychology, 35, 85-97.*

Fry, M. D., Guivernau, M., Kim, M., Newton, M., Gano-Overway, L, & Magyar, M. (2012).

Youth perceptions of a caring climate, emotional regulation, and psychological wellbeing. *Sport, Exercise, & Performance Psychology, 1(1),* 44-57.

Huddleston, H., Fry, M. D., & Brown, T. C. (2012). Corporate fitness members' perceptions of the environment and their intrinsic motivation. *Ravista de Psiocologia del Deporte.* 21(1),15-23.

Brown, T.C., & Fry, M. D. (2011). Helping members commit to exercise: Specific strategies to impact the climate at fitness centers. *Journal of Sport Psychology in Action, 2,* 70-80.

Brown, T. C., & Fry, M. D. (2011). Strong Girls: A physical activity/life skills intervention for girls transitioning to

junior high. *Journal of Sport Psychology in Action, 2,* 57-69.

Fry, M. D. (2010). Creating a positive climate for young athletes from day 1. *Journal of Sport Psychology in Action, 1(1), 33-41.*

Fry, M. D., & Gano-Overway, L. (2010). Exploring the contribution of the caring climate to the youth sport experience. *Journal of Applied Sport Psychology, 22(3),* 294-304.

Dodd, R., Brown, T., & Fry, M. D. (2010). Young athlete's perceptions of their coaches' and teammates' caring and uncaring behaviors. *Kansas Association of Health Physical Education Recreation and Dance Journal, 83(1),* 38-45.

Binkley, S. E., Fry, M. D., & Brown, T.C. (2009). The relationship of college students' perceptions of their BMI and weight status to their physical self-concept. *American Journal of Health Education, 40, 139-145.*

Gano-Overway, L. A., Magyar, T. M., Kim, M., Newton, M., Fry, M. D., & Guivernau, M. R. (2009). Influence of caring youth sport contexts on efficacy-related beliefs and social behaviors. *Developmental Psychology, 45, 329-340.*

Newton, M., Fry, M.D., Gano-Overway, L., Kim, M., Watson, D., & Givernau, M. (2007). Psychometric properties of the Contextual Caring Scale in a physical activity setting. *Revista de Psicologia del Deporte, 16,* 67-84.

Newton, M., Watson, D., Fry, M., Gano-Overway, L, Kim, M., & Givernau, M. (2007). The impact of caring in physical activity. *Urban Review, 39, 281-299.*

Haneishi, K., Fry A.C., Moore C.A., Schilling B.K., Li Y., and Fry M.D. (2007). Cortisol and stress responses during a game and practice in female collegiate soccer

players". *Journal of Strength and Conditioning Research, 21,* 583-588.

Magyar, M., Kim, M., Givernau, M., Gano-Overway, L., Newton, M., & Fry, M. (2007). The influence of leader efficacy and emotional intelligence on personal caring. *Journal of Teaching in Physical Education, 26,* 310-319.

Bone, J., & Fry, M.D. (2006). The influence of injured athletes' perceptions of social support from ATCs on athletes' beliefs about rehabilitation. *Journal of Sport*

Rehabilitation, 15, 156-167. Fry, A.C., Ciroslan D., Fry M.D., LeRoux C.D., Schilling B.K., and Chiu L.Z.F. (2006), Anthropometric and performance variables discriminating elite junior weightlifters. *Journal of Strength and Conditioning Research, 20, 861-866.*

Smith, S., Fry, M. D., Ethington, C., & Li, Y. (2005). The effects of athletes' perceptions of their coaching behaviors on their perceptions of the motivational climate. *Journal of Applied Sport Psychology, 17, 1-8.*

Fry, M. D., & Newton, M. (2003). Application of achievement goal theory in an urban youth tennis setting. *Journal of Applied Sport Psychology 15, 50-66.*

Abma, C. L.,Fry, M. D., Li, Y., & Relyea, G. (2002). Differences in imagery content and imagery ability between high and low confident track and field athletes. *Journal of Applied Sport Psychology, 13,* 341-349.

Walling, M. D., Duda, J. L., & Crawford, T. (2002). Goal orientations, outcome, and responses to youth sport

competition among high/low perceived ability athletes. *International Journal of Sport Psychology, 14,* 140-156.

Fry, M. D. [2000). A developmental examination of children's understanding of task difficulty in the physical domain. *Journal of Applied Sport Psychology, 12,* 180-202.

Fry, M. D. (2000). A developmental analysis of children's and adolescents' understanding of luck and ability in the physical domain. *Journal of Sport and Exercise Psychology, 22,* 145-166.

Fry, A.C., Webber, J. M., Weiss, L.W., Fry, M. D., & Li, Y. (2000). Impaired performances with excessive high-intensity free-weight training. *Journal of Strength and Conditioning Research, 14,* 54-61.

Fry, M. D., & Lattimore, D. (2000). Fostering a positive motivational climate in physical education. *Tennessee Educational Leadership Journal, 27,* 39-43.

Fry, M. D., & Fry, A. C. (1999). Goal perspectives and motivational responses of elite junior weightlifters. *Journal of Strength and Conditioning Research, 13,* 311-317.

Newton, M., & Fry, M. D. (1998). Senior Olympians achievement goals and beliefs concerning success. *Journal of Aging and Physical Activity, 6,* 256-270.

Fry, M. D. (1998). Al Oerter: An Olympian's views as seen from a sport psychology perspective. *Strength and Conditioning, 20,* 7-14.

Fry, M. D. & Duda, J. L. (1997). A developmental examination of children's understanding of effort and ability in the physical and academic domains. *Research Quarterly for Exercise and Sport, 66,* 331-344.

Walling, M. D., & Duda, J. L. (1995). Goals and their associations with beliefs about success in and perceptions of the purpose of physical education. *Journal of Teaching in Physical Education, 14,* 140-156.

Walling, M. D., & Duda, J. L. (1995). Motivating kids: Balance learning and fun. *Sport Psychology Training Bulletin, 4,* 1-8.

Duda, J. L., Chi, L., Newton, M. L., Walling, M. D., & Catley, D. (1995). Task and ego orientation and intrinsic motivation in sport. *International Journal of Sport Psychology, 26,* 40-63.

Walling, M. D., & Martinek, T. (1995). Learned helplessness in a sixth-grade physical education student: A case study. *Journal of Teaching in Physical Education, 14,* 454-466.

Walling, M. D., Duda, J. L., & Chi, L. (1993). The perceived motivational climate in sport questionnaire: Construct and predictive validity. *Journal of Sport and Exercise Psychology, 15,* 172-183.

Invited Book Chapters

Gano-Overway, L., & Fry, M. D. (in press). Caring climates. In L. Davis, R. Keegan, & S. Jowett (Eds.), *Social Psychology of Sport* (Second Edition). Champaign, IL: Human Kinetics.

Fry, M. D., & Fontana, M. (in press). Did you hear the one about the hilarious professor? Yeah, me neither: Incorporating humor in sport psychology to enhance motivation and relieve stress. In K. Vaidya (Ed.), *Teach Exercise & Sport With a Sense of Humor: Why and How to Be a Funnier and More Effective Exercise*

& Sport Teacher and Laugh All the Way to Your Classroom? Curious Academic Publishing.

Fry, M. D., & Hogue, C. M. (2021). Foundational psychological theories, models, and constructs. *Certified Mental Performance Consultant Essentials Resource Guide.* Association for Applied Sport Psychology.

Fry, M. D., & Moore, E. W. G. (2019). *Motivation in sport: Theory to application.* In M. H. Anshel (Ed.), T. Petrie, E. Labbe, S. Petruzello, & J. Steinfeldt (Assoc. Eds.), APA *handbook of sport and exercise psychology: Vol. 1. Sport psychology.* Washington DC: American Psychological Association.

Fry, M. D., & Hogue, C. M. (2018). Psychological considerations for children in sport and performance. In Oliver Braddick (Ed.), *Oxford Research Encyclopedia of Psychology.* New York: Oxford University Press.

Fry, M. D. (2014). Sport and Exercise Psychology as a Venue to Develop "Difference Makers". In K. Vaidya (Ed.), *Exercise and Sports for the Curious: Why Study Exercise and Sports.* Curious Academic Publishing.

Fry, M. D. (2001). The development of motivation in children. In G. Roberts (Ed.), *Motivation in sport and exercise (2"[1] Ed.),* pp. 51-78, Champaign, IL: Human Kinetics.

Book

Fry, M. D., Gano-Overway, L., Guivernau, M., Kim, M., & Newton, M. (2020). *A Coach's Guide to Maximizing the Youth Sport Experience: Work Hard and Be Kind.* NY: Routledge.

PRESENTATIONS

Invited International Presentations

Fry, M. D. (2019). *Achievement goal perspective theory as a framework for interventions in sport and physical activity.* Autonomous University of Baja California; Ensenada, Mexico.

Fry, M. D. (2019). *Utilizing goal orientations as a lens to optimize athletes' motivation.* Autonomous University of Baja California; Ensenada, Mexico.

Fry, M. D. (2019). *Building a caring and task-involving climate in sport through words, activities, and core values.* Autonomous University of Baja California; Ensenada, Mexico.

Fry, M. D. (2019). *Team building to foster positive relationships on sport teams.* Autonomous University of Baja California; Ensenada, Mexico.

Fry, M. D. (2016). *The power of a caring and task-involving climate in sport.* Children International; Guatemala City, Guatemala/.

Fry, M. D. (2005, March). *Creating a positive motivational climate in physical activity settings.* Sao Paulo, Brazil.

Duda, J. L., & Walling, M. D. (1993, November). *Toward a developmental theory of motivation in sport.* University of Barcelona, Barcelona, *Spain.*

Walling, M. D. (1993, November). *The examination of Nicholls' developmental theory of motivation in the physical domain.* University of Valencia, Valencia, Spain.

Walling, M. D. (1993, November). *Motivational aspects in physical education for school-age Children.* National Physical Education Institute, Lleida, Spain.

Duda, J. L., & Walling, M. D. (1993, November). *A conceptual and empirical examination of the motivational climate created by coaches.* University of Barcelona, Barcelona, Spain.

Refereed Presentations at National Conferences

Scott, C., Fry, M. D., Wineinger, T. 0., & Iwasaki, S. (2021). *Staying positive during the COVID-19 Pandemic: The impact of collegiate team climate.* Association for Applied Sport Psychology, Virtual.

Wineinger, T. 0., Rosen, D., & Fry, M. D. (2021). *The influence of a motivational intervention on participants 'physiological measures of effort and muscle performance.* Association for Applied Sport Psychology, Virtual.

Scott, C., Fry, M. D., Wineinger, T., & Weingartner, H. (2020). *Collegiate sport club athletes' perceptions of the climate on their teams and indices of their psychological well-being.* Association for Applied Sport Psychology, Virtual.

Wineinger, T. 0., & Fry, M. D. (2020). *A sport psychology lab partners with the Women's Intersport Network (WIN) to optimize young girls' sport camp experiences.* Association for Applied Sport Psychology, Virtual.

Fry, M. D., Claunch, J., Hogue, C. M., Iwasaki, S., & Peynetsa, I. (2019). *A coaching education collaboration for American Indian Youth Sport Coaches on the Zuni Reservation.* Association for Applied Sport Psychology. Portland, OR.

Moore, E. W. G., & Fry, M. D. (2018). *Elementary physical education students' motivational climate perceptions predict goal orientations and physical*

education satisfaction. International Society of Behavioral Nutrition and Physical Activity. Hong Kong.

Pan, T. Y., Davis, A. M., Atchley, R. A., Forbush, K. T., Wallace, D. P., Savage, C. R., & Fry, M.D. (2018). *The longitudinal relationship between obesity and depression in children.* American Psychological Association, San Francisco, CA.

Warlick, C., Krieshok, T., Frey, B., Kerr, B., . . . & Fry, M. D. (2018). *Does hope matter? Examining a popular positive psychology construct in a DBT intensive-outpatient community health population.* Association for Behavioral and Cognitive Therapies.

Breske, M., Fry, M. D., A., & Hogue, C. M. (2017). *The effects of goal priming on cortisol responses in an ego-involving climate.* Association for Applied Sport Psychology, Orlando, FL.

Chamberlin, J., Fry, M. D., & Iwasaki, S. (2017). *The influence of high school athletes' perceptions of the motivational climate on athletic identity and academic endeavors.* Association for Applied Sport Psychology, Orlando, FL.

Easton, L., Fry, M. D., & Iwasaki, S. (2017). *The relationship of fitness center members ' goal orientations and perceptions of the motivational climate to variables related to wellbeing and motivational responses.* Association for Applied Sport Psychology, Orlando, FL.

Fontana, M. & Fry, M. D. (2017). *Exploring the relationship between motivational climate and shame.* Association for Applied Sport Psychology, Orlando, FL.

Fry, M. D., Thompson, J., Iwasaki, S., & Reid, C. (2017). *Bridging theory, research, and practice in youth sports: sport psychology s partnership with positive coaching alliance to enhance youth sport.* Association for Applied Sport Psychology, Orlando, FL.

Glover, K., Fry, M. D., & Weingartner, H. (2017). *Helping a women's intersport network provide a winning experience for girls in their summer sport camps,* Association for Applied Sport Psychology, Orlando, FL.

Iwasaki, S., & Fry, M. D. (2017). *An exploration of the relationship among female adolescent athletes 'perceptions of the motivational climate, goal orientation, refocusing, and peak ability.* International Society of Sport Psychology 14th World Congress, Sevilla, Spain.

Tyler, E., Warlick, C., Cole, B., & Fry, M. D. (2017). *Collegiate student-athletes 'perceptions of their sport team climate and level of hope.* Association for Applied Sport Psychology, Orlando, FL.

Tyler, E., Warlick, C., Cole, B., & Fry, M. D. (2017). *Relationship among student-athletes' perceptions of the climate, locker room talk, and sexual behaviors.* Association for Applied Sport Psychology, Orlando, FL.

Hogue, C. M., Fry, M. D., & Fry, A. C. (2017). *Adolescents' Physiological Stress Responses to Motivational Climate in a Physical Education Setting.* Society for Physical Education and Health, Boston, MA.

Claunch, J. & Fry, M. D. (2016). *Setting the stage for a motivational climate collaboration.* Association for Applied Sport Psychology, Phoenix, AZ.

Chamberlin, J., Fry, M. D., & Iwasaki, S. (2016). *High school athletes' perceptions of the motivational climate in their off-season Training Programs.* Association for Applied Sport Psychology, Phoenix, AZ.

Easton, L., Iwasaki, S., & Fry, M. D. (2016). *The relationship of members' perceptions of the motivational climate to their Psychological well-being at a university medical center fitness facility.* Association for Applied Sport Psychology, Phoenix, AZ.

Fry, M. D., Iwasaki, S., Vanorsby, H., & Breske, M. (2016). *Masters' swimmers 'perceptions of the climate in their training facilities and their motivational responses.* Association for Applied Sport Psychology, Phoenix, AZ.

Fry, M. D., Solomon, G., Iwasaki, S., Madeson, M., Vanorsby, **H.,** Meisinger, R., & Haberer, J. (2016). *Division I athletes 'perceptions of their team climate, mental skills, and mindfulness.* Association for Applied Sport Psychology, Phoenix, AZ.

Hogue, C. M., Fry, M. D., & Fry, A. C. (2016). *Physiological and psychological stress responses to a motivational climate intervention.* Association for Applied Sport Psychology, Phoenix, AZ.

Fontana, M., & Fry, M. D. (2016). *Creating and validating the Shame in Sport Questionnaire.* Association for Applied Sport Psychology, Phoenix, AZ.

Hogue, C. M., & Fry, M. D. (2016). *Leader observations of participant behaviors during a motivational climate intervention: A qualitative investigation.* Association for Applied Sport Psychology, Phoenix, AZ.

Iwasaki, S., & Fry, M. D. (2016). *Male High School Athletes' Perceptions of Their Team Climate and Mindful Engagement.* Association for Applied Sport Psychology, Phoenix, AZ.

Iwasaki, S., Fry, M. D., Vanorsby, H., Breske, M. (2016). *Master swimmers' perceptions of the climate in their training facilities and their motivational responses.* Association for Applied Sport Psychology, Phoenix, AZ.

Brown, T. C., M. S., Fry, M. D., Breske, M., Iwasaki, S., & Wilkinson, T. (2015). *High school athletes 'perceptions of their sport team climate and their willingness to report concussion symptoms.* Association for Applied Sport Psychology, Indianapolis, IN.

Fry, M. D., Brown, T. C., Iwasaki, S., Breske, M., & Wilkinson, T. (2015). *Middle school athletes 'perceptions of their sport team climate and their willingness to report concussion symptoms.* Association for Applied Sport Psychology, Indianapolis, IN.

Fry, M. D., & Easton, L. (2015). *Health in Action: Helping students design creative interventions onsite.* Kansas Alliance for Physical Education, Health, Recreation, & Dance, Wichita, KS.

Fontana, M. S., Iwasaki, S., Hogue, C., Claunch, J., Poux, K., & Fry, M. D. (2014). *Initiating mental skills training with a high school freshman baseball.* Association for Applied Sport Psychology, Las Vegas, NE.

Fry, A.C., Fry, M. D., Sterczala, A. J., Chiu, L. Z. F., Schilling, B., & Weiss, L. W. (2014). *High power resistance exercise overreaching can be monitored*

with a training questionnaire. National Strength and Conditioning Association, Las Vegas, NE.

Medina, R, Fry, M. D., & Iwasaki, S. (2014). *Youngsters 'perceptions of the climate and their experiences in recreational exercise classes.* Association for Applied Sport Psychology, Las Vegas, NE.

Rosen, D., & Fry, M. D. (2014). *Motivational climate and seniors' experiences in group exercise classes.* Association for Applied Sport Psychology, Las Vegas, NE.

Hogue, C. M., & Fry, M. D. (2013). *A qualitative examination of participant reactions to a motivational climate intervention.* Association for Applied Sport Psychology, New Orleans, LA.

Kwon, S., & Fry, M. D. (2013). *Mediational role of interest and intrinsic motivation between perceived caring climate and satisfaction and attitudes among physical education students.* Association for Applied Sport Psychology, New Orleans, LA.

Moore, E. W. G., & Fry, M. D. (2013). *PE teachers 'perspective on a motivational climate professional development session.* Association for Applied Sport Psychology, New Orleans, LA.

Claunch, J. & Fry, M. D. (2013). *Transformative learning experience: Collegiate football coaches ' perceptions of participating in a motivational climate intervention.* Association for Applied Sport Psychology, New Orleans, LA.

Moore, E. W. G., & Fry, M. D. (2012). *Goal orientations, motivational climate, and outcomes in physical education across one semester.* Association for Applied Sport Psychology to held in Atlanta, GA.

Kwon, S., & Fry, M. D. (2012). *The change of physical educators' enjoyment and intrinsic motivation of track and field through PST.* Association for Applied Sport Psychology, Atlanta, GA.

Iwasaki, S., & Fry, M. D. (2012). *Physical education students 'perceptions of the climate and their psychological well-being.* Association for Applied Sport Psychology, Atlanta, GA.

Hogue, CM., Fry, M.D., Fry, A.C., & Pressman, S. D. (2012). *Participant salivary cortisol and psychological responses to a motivational climate intervention.* Association for Applied Sport Psychology, Atlanta, GA.

Fry, M. D., Brown, T. C., & Iwasaki, S. (2012). *Girls' self perceptions after participating in a positive life skills/physical activity program.* Association for Applied Sport Psychology, Atlanta, GA.

Brown, T. C., & Fry, M. D. (2012). *Results of a caring, task-involving climate intervention at a recreation center.* Association for Applied Sport Psychology, Atlanta, GA.

Kwon, S., & Fry, M. D. (2011). *The effects of athletes' self-management on their self-confidence.* Association for Applied Sport Psychology, Honolulu, HI.

Andre, M. J., Fry, A.C., Gallagher, P. M., Vardiman, P., Fry, M. D. Kudrna, B., Gandy-Moody, N., & McCartney, M. (2011). *The effects of a pre-workout caffeine supplement on endogenous growth hormone levels.* A presentation made at the meeting of the National Strength and Conditioning Association, Las Vegas, NE.

Hogue, C. M., Iwasaki, S., & Fry, M. D. (2011). *A case study of a physical activity/mental skills training*

intervention with a young athlete. Association for Applied Sport Psychology, Honolulu, HI.

Iwasaki, S., & Fry, M. D. (2011). *The exploration of motivational climate in a youth sport basketball camp.* Association for Applied Sport Psychology, Honolulu, HI.

Fry, M. D. (2011). *From the Strong Girls' viewpoints: Research results from semester 1.* Association for Applied Sport Psychology, Honolulu, HI.

Fry, M. D. (2011). *The exercise climate: An introduction to the research on examining task-involving and caring climates in the exercise domain.* Association for Applied Sport Psychology, Honolulu, HI.

Fry, M. D., Hogue, C. M., Sauer, S. (2011). *Using digital storytelling as a creative tool in health.* American Alliance of Health, Physical Education, Recreation, & Dance, San Diego, CA.

Kwon, S., & Fry, M. D. (2010). *Relationship of exercisers 'perceptions of the motivational climate to their flow experience.* Association of Applied Sport Psychology, Providence, RI.

Iwasaki, S., Merczek, K., & Fry, M. D. (2010). *Young athletes' experiences in a volleyball camp.* Association of Applied Sport Psychology, Providence, RI.

Iwasaki, S., Sogabe, A., Fry, M. D., & Christensen, E. (2010, June). *Differences in aggression and social skills among judo and non judo practitioners.* American College of Sports Medicine, Baltimore, MD.

Hogue, C. M., Fry, M. D., & Brown, T. C. (2010). *Incorporating team building activities in a summer day camp for children: Lessons learned.* Association of Applied Sport Psychology, Providence, RI.

Brown, T. C., & Fry, M. D. (2010). *Caring climate intervention for sport skills and fitness camp leaders.* Association of Applied Sport Psychology, Providence, RI.

Brown, T. C., & Fry, M. D. (2010). *Teaching life skills in a physical activity after-school program.* American School Health Association, Kansas City, MO.

Moore, E. W., & Fry, M. D. (2009). *The effect of a caring and task-involving climate on student empowerment and ownership in physical activity classes.* Association for Applied Sport Psychology, Salt Lake City, UT.

Kwon, S., & Fry, M. D. (2009). *Members 'perceptions of their fitness club climate and their exercise flow.* Association for Applied Sport Psychology, Salt Lake City, UT.

Hogue, C. M., Fry, M. D., & Dodd, R. (2009). *Athletes 'perceptions of the climate at their training centers and their motivational responses.* Association for Applied Sport Psychology, Salt Lake City, UT.

Fry, M. D. (2009). *From theory to practice: Creating positive and caring environments in the real world.* Association for Applied Sport Psychology, Salt Lake City, UT.

Brown, T. C., & Fry, M. D. (2009). *Students 'perceptions of their exercise class environment and their psychological well-being.* Association for Applied Sport Psychology, Salt Lake City, UT.

Marshall, K., Stephens, L., Grindle, V., Fry, M. D., & Li, Y. (2009). *Mental imagery and EEG activity in elite and novice collegiate soccer players.* Association for Applied Sport Psychology to be, Tampa, FL.

Brown, T. C., & Fry, M. D. (2009). *Participants ' perceptions of a caring and positive climate in their exercise classes.* American Alliance of Health, Physical Education, Recreation, & Dance, Tampa, FL.

Fry, M. D., Dodd, R. K., & Brown, T. C. (2008). *Young athletes 'perceptions of their coaches' and teammates' caring and uncaring behaviors.* Association for Applied Sport Psychology, St. Louis, MO.

Binkley, S.E., & Fry, M. D. (2007). *The relationship of college students 'perceptions of their BMI and weight status to their physical self-concept.* Association for Applied Sport Psychology, Louisville, KY.

Smith, H., Fry, M.D., Li, Y., & Weiss, L. (2006). *The relationship of anxiety and self-confidence to treadmill exercise tolerance tests performance by sedentary obese women.* Association for the Advancement of Applied Sport Psychology, Miami, FL.

McCarty, L., Fry, M.D., & Curly, C. (2006). *The relationship of a caring climate to motivational responses and psychological well-being in youth baseball.* Association for the Advancement of Applied Sport Psychology, Miami, FL.

Gano-Overway, L. A., Newton, M., Magyar, AM., Fry, M. D., Kim, M., & Guivernau, M. (2006). *Caring, self-regulatory efficacy, empathic efficacy, and prosocial/antisocial behaviors in a physical activity setting.* Association for the Advancement of Applied Sport Psychology, Miami, FL.

Fry, A.C., Haneishi, K., Moore, C.A., Schilling, B.K., Li, Y., & Fry, M.D. (2006). *Cortisol and stress responses during a game and practice in female collegiate soccer*

players. National Conference on Student Assessment, Washington, D.C.

Bricker, J. B., & Fry, M. D. (2005). *The influence of injured athletes 'perceptions of social support from their certified athletic trainers on athletes' beliefs about rehabilitation.* Association for the Advancement of Applied Sport Psychology, Vancouver, British Columbia, Canada.

Magyar, M., Guivemau, M., Gano-Overway, L., Newton, M., Fry, M.D., Kim, M., & Watson, D. (2005). *Exploring the relationship between the caring climate and achievement goal theory among underserved youth in physical activity.* American Alliance of Health, Physical Education, Recreation & Dance, Chicago,

Fry, M.D., & Newton, M. (2004, September). *The development of the Caring Climate Questionnaire.* Association for the Advancement of Applied Sport Psychology, Minneapolis, MN.

Smith, S., Fry, M.D., & Ethington, C. (2004, September). *The effect of female athletes' perceptions of their coaches' behaviors on their perceptions of the motivational climate.* Association for the Advancement of Applied Sport Psychology, Minneapolis, MN.

McCay, K., & Fry, MD. (2004, September). *The examination of goal perspective theory in relationship to measures of psychological well-being.* Association for the Advancement of Applied Sport Psychology, Minneapolis, MN.

McCay, K., & Fry, M.D. (2004, March). *Predictors of adolescent depression: The role of physical activity*

and body image. Society of Behavioral Medicine, Baltimore, MD. Henry, H., & Fry, M.D. (2003, October). *Corporate fitness members' perceptions of the motivational climate, their intrinsic motivation, and perceptions of being valued by their employer.* Association for the Advancement of Applied Sport Psychology, Philadelphia, PA.

Fry, M.D., Pittman, L., McCay, K., & Wendell, M. (2003, October). *A qualitative examination of underserved 4th grade girls' views about physical education.* Association for the Advancement of Applied Sport Psychology, Philidelphia, PA.

Fry, M. D., Abma, C., Wood, J., & Melland, B. (2002, October). *The effects of an after-school physical activity and life skills program on 4th graders' self concept, motivational perspectives, and fitness levels.* Association for the Advancement of Applied Sport Psychology, Tucson, AZ.

Abma, C., & Fry, M. D. (2002, October)._The *effects of an imagery intervention on the trait confidence levels of female college volleyball players.* Association for the Advancement of Applied Sport Psychology, Tucson, AZ.

Duda, J.L., Smith, M., & Fry, M. D. (2002, June). *An examination of learned helpless responses among young children engaged in physical tasks.* North American Society for the Psychology of Sport and Physical Activity, Baltimore, MD.

Newton, M., Fry, M.D., & Bernhardt, P. (2001, October). *Examination of the interactive relationship of goal orientations, perceptions of the motivational climate, and perceived ability in youth tennis players.*

Association for the Advancement of Applied Sport Psychology, Orlando, FL.

Abma, C. & Fry., M. D. (2001, May). *A qualitative examination of underserved 8th grade female students' attitudes about physical education.10th* World Congress of Sport Psychology held in Skiathos, Greece.

Lattimore, D., Fry, M. D., & Balas, C. (2000, October). *Students' perceptions of the motivational climate and their motivational responses in physical education.* Association for the Advancement of Applied Sport Psychology, Nashville, TN.

Fry, M. D., Lattimore, D., & Balas, C. (2000, October). *A developmental examination of children's accuracy in judging their physical ability in physical education.* Association for the Advancement of Applied Sport Psychology, Nashville, TN.

Fry, M.D., & Newton, M. (1999, September). *Goal orientations, perceptions of the motivational climate, and motivational responses of urban youth tennis players.* Association for the Advancement of Applied Sport Psychology, Banff, Canada.

Fry, M. D., Lattimore, D., & Balas, C. (1999, September). *A developmental analysis of conceptions of effort and physical ability among underserved youth.* Association for the Advancement of Applied Sport Psychology, Banff, Canada.

Harber, M. P., Fry, M. D., & Fry, A. C. (1998). *Sources of stress identified by elite collegiate weightlifters.* A paper presented at the annual meeting of the National Strength and Conditioning Association, Nashville, TN.

Fry, M. D., Fry, A. C., & Newton, M. (1997, September). *Sources of stress identified by elite junior weightlifters.* Association for the Advancement of Applied Sport Psychology, San Diego, CA.

Newton, M., Fry, M. D., & Sandberg, J. (1997). *Goal orientations and purposes of sport and beliefs concerning success among senior Olympians.* North American Society for the Psychology of Sport and Physical Activity, Denver, CO.

Fry, M. D. (1997, March). *Symposium: Goal perspectives in physical education and sport: Theory into practice.* American Alliance for Health, Physical Education, Recreation, and Dance, St. Louis, MO.

Fry, M. D. (1996, October). *Children's understanding of luck and ability: A developmental analysis.* Association for the Advancement of Applied Sport Psychology, Williamsburg, VA.

Fry, M. D. (1996, October). *The motivational climate in sport and physical education: An introduction to theory and research.* Association for the Advancement of Applied Sport Psychology, Williamsburg, VA.

Fry, M. D., & Fry, A. C. (1996, June). *Goal perspectives and motivational responses of elite junior weightlifters.* National Strength and Conditioning Association, Atlanta, GA.

Fry, M. D., & Alexander, C. (1996, June). *Children's understanding of task difficulty: A developmental analysis.* North American Society for the Psychology of Sport and Physical Activity, Cleveland's House, Canada.

Duda, J. L., & Walling, M. D. (1995, October). *Views about the Motivational climate and their*

selfperceptions/affective correlates: The case for young elite female gymnasts. Association for the Advancement of Applied Sport Psychology, New Orleans, LA.

Newton, M. L., & Walling, M. D. (1995, October). Goal orientations and beliefs about the causes of success among senior Olympic games participants. North American Society for the Psychology of Sport and Physical Activity, Asilomar, CA.

Walling, M. D. (1994, October). *Developmental differences in children's views regarding physical competence.* Association for the Advancement of Applied Sport Psychology, Lake Tahoe, NV.

Walling, M. D., & Duda, J. L. (1994, June). *Children's understanding of effort and ability in the physical domain.* North American Society for the Psychology of Sport and Physical Activity, Clearwater Beach, FL.

Walling, M. D., Duda, J. L., Newton, M., & White, S. (1993, October). *The Task and Ego Orientation in Sport Questionnaire: Further analysis with youth sport participants.* Association for the Advancement of Applied Sport Psychology, Montreal, CANADA.

Walling, M. D., & Duda, J. L. (1993, March). *Goals and their associations with beliefs about success in and perceptions of the purpose of physical education.* American Alliance for Health, Physical Education, Recreation, and Dance, Washington, DC.

Walling, M. D. (1993, February). *Children's conceptions of effort and ability in the physical domain: A dissertation in progress.* Midwest Sport Psychology Symposium, Miami University, Oxford, OH.

Walling, M. D., Duda, J. L., & Crawford, T. (1992, October). *The relationship between goal orientations and positive attitudes toward sport and exercise among young athletes.* Association for the Advancement of Applied Sport Psychology, Colorado Springs, CO.

Walling, M. D., Duda, J. L., & Crawford, T. (1992, June). *The psychometric properties of the perceived motivational climate in sport questionnaire: Further investigation.* North American Society for the Psychology of Sport and Physical Activity, Pittsburgh, PA.

Walling, M. D., Crawford, T., Duda, J. L., & Wigglesworth, J. (1992, April). *Are we having fun yet and will we want to play again?: The interrelationships between goal perspectives and other motivational variables in youth sport athletes.* American Alliance for Health, Physical Education, Recreation, and Dance, Indianapolis, IN.

Walling, M. D., & Catley, D. (1992, April). *Jack and Jill in physical education class: Do they think their instructor treats them differently?* American Alliance for Health, Physical Education, Recreation, and Dance, Indianapolis,

Walling, M. D., & Catley, D. (1992, February). *Sex role stereotyping among college instructors and students' perceptions of instructor gender bias.* Midwest Sport Psychology Symposium, Purdue University, West Lafayette, IN.

Walling, M. D., Catley, D., & Taylor, A. (1991, June). *The interrelationships between goal perspectives, perceived competence, and indices of intrinsic motivation.* North American Society for the

Psychology of Sport and Physical Activity, Asilomar, CA.

Walling, M. D. (1991, April). *Learned helplessness: A case study of a sixth-grade physical education student.* American Alliance for Health, Physical Education, Recreation and Dance, San Francisco, CA.

Webinar

Fry, M. D., & Hogue, C. M. (2019). *Theories and Models in Sport Psychology: A Review.*

Association for the Advancement of Applied Sport Psychology.

State/Regional Presentations

Gray, R., & Fry, M. D. (2020). *Employing a buddy system to foster physical activity among college students with a physical disability.* Midwest Sport Psychology Symposium, Illinois State University.

Wineinger, T., & Fry, M. D. (2020). A collaboration between a sport psychology lab with a youth sport organization: Helping WIN create an optimal sport experience. Midwest Sport Psychology Symposium, Illinois State University.

Fry, M. D. (2018). *Three ideas for incorporating sport psychology into practice and competition.* Greenbush Coaches' Workshop.

Fry, M. D. (2018). *Three more ideas for incorporating sport psychology into practice and competition.* Greenbush Coaches' Workshop.

Fry, M. D. (2017). *Sport Psychology: Setting a Positive Tone for the Team* (Sessions A & B, repeated). Greenbush Fall Coaches' Workshop.

Fry, M. D. (2016). *KU Graduate Programs in Health, Sport & Exercise Science.* Morehouse College Graduate Program Fair (February, 2016).

Fry, M. D. (2016, Fall). *Keys to Helping Athletes Develop Strong Mental Skills: The Role of Sport Psychology.* Keynote for Greenbush Coaching Conference, Eudora, KS. Fry, M. D. (2016, Spring). *Working with and bringing out the best in difficult athletes.* Greenbush Coaching Conference, Eudora, KS.

Fry, M. D. (2015). *Bringing out the Best in Every Swimmer: The Contribution of Sport Psychology.* Keynote delivered to US Master Swim at their National Conference; Kansas City, KS.

Fry, M. D. (2015). *Caring Climates for Physical Activity Settings.* University of Milwaukee, Wisconsin.

Fry, M. D. (2015). *Creating a Caring Climate to Maximize Athletes ' Potential On and Off the Field.* Keynote presented at the Positive Coaching Alliance Trainers' Institute.

Fry, M. D. (2015). *Maximizing Athletes ' Potential On and Off the Field.* Keynote delivered to X's and O's Coaching Education Workshop, Emporia State University, Emporia, KS. Fry, M. D. (2015). *Setting the Stage for Coaches to Optimize Athletes' Motivation.* Big XII invited lecture at Texas Christian University; Fort Worth, TX.

Fry, M. D., Moore, E., W., G., Iwasaki, S., Fontana, M., Hogue, C., Claunch, J., & McGhee, R. (2012). *Building Mentally Strong Athletes: Ideas for Incorporating*

Mental Skills Training with Sport Teams. Kansas Alliance for Health, Physical Education, Recreation, & Dance in Lawrence, KS.

Fry, M. D. (2012). *Strong Girls: Hearing About the Benefits of a Physical Activity/Positive Life Skills Program from the Leaders and Kids.* Kansas Alliance for Health, Physical Education, Recreation, & Dance in Lawrence, KS.

Moore, E. W., & Fry, M. D. (2010). *Kids don't care what you know until they know that you care: Tips for building caring environments.* Kansas Alliance for Health, Physical Education, Recreation & Dance, Wichita, KS.

Brown, T., Fry, M. D., & Hogue, C. (2010). *Positive life skills for every walk of life.* Kansas Alliance for Health, Physical Education, Recreation & Dance, Wichita, KS.

Fry, M. D., Brown, T., Moore, E. W., Hogue, C., Sauer, S., & Beyer, J. (2010). *Team time: Team building activities for any group to use and process.* Kansas Alliance for Health, Physical Education, Recreation & Dance, Wichita, KS.

Williamson, K., & Fry, M. D. (2009). *Bringing out the best in your athletes: Making sport fun again while enhancing your team's competitive edge.* Kansas Alliance for Health, Physical Education, Recreation & Dance, Pittsburg, KS.

Moore, W. E., & Fry, M. D. (2009). *Are we building character or characters?: Strategies for promoting integrity among young athletes.* Kansas Alliance for Health, Physical Education, Recreation & Dance held in Pittsburg, KS.

Brown, T. C., & Fry, M. D. (2009). *Ideas to implement in a youth physical activity life skills program.* Kansas Alliance for Health, Physical Education, Recreation and Dance held in Pittsburg, KS.

Fry, M. D., Dodd, R., Brown, T. C. (2008). *Getting them interested and coming back: Creating a positive and caring environment in exercise settings.* Kansas Association of Health, Physical Education, Recreation and Dance, Emporia, KS.

Fry, M. D. (2005). *Creating a Positive Climate and Optimizing Motivation in Physical Education & on Sport Teams.* An invited presentation for the Lutheran Schools Midsouthern Regional Conference held in Memphis, TN.

SUPPORT

External Funding	**Agency / Source**	**Amount**	**Period**
Creating Optimal Climate for Youth With Congenital Heart Disease	American Council on Exercise	$2400	2021-2022
Climate Free Throw Intervention	Association for Applied Sport Psychology	$4980	2021-2022
Strong Girls	Association for Applied Sport Psychology	$4625	2019-2020

Rock Chalk, Zuni	Running Strong for American Indian Youth	$5000	2017-2018
KU PCA Initiative	Positive Coaching Alliance / David and Margaret Shirk Physical Education Programs Fund	$75,000	2017-2020
Strong Girls: A positive life skills intervention for 3rd-5th girls	Kohl's Cares for Kids	$4000	2011
Students' salivary stress responses when juggling in two distinct motivational climates	Association of Applied Sport Psychology	$2800	2010-11
Effects of resistance exercise and a Pre-workout	Labrada	$5000	2010

dietary supplement on Physiological adaptions			
Strong Girls: A positive life skills physical activity intervention for elementary school girls	Association of Applied Sport Psychology	$3220	2009-10
Fostering & maintaining motivation among urban youth tennis players	United States Tennis Association	$10,000	1997-98

EXTERNAL PROPOSALS NOT FUNDED	**AGENCY / SOURCE**	**AMOUNT**	**PERIOD**
Children's International Guatemala & US Collaboration	ASportsUnited: International Sports Programming Initiative	$224,953	2012
Dare to Care: Tackling Childhood Obesity	Albert Foundation	$46,000	2013

Strong Girls: A positive life skills/physical activity program	Live-Well Lawrence-Kansas Health Foundation	$5000	2011
Strong Girls: A positive life skills/physical activity program for girls	Payless Foundation	$15,000	2011
Strong Girls: A positive life skills/physical activity program for girls	Sprint Foundation	$168,000	2011

SUPPORT

INTERNAL FUNDING	**AGENCY / SOURCE**	**AMOUNT**	**PERIOD**
Research Excellence Initiative" A Collaboration to Train Biology Lab Instructors to Create a Caring	University of Kansas; College of Liberal Arts & Sciences	$30,000 (under review)	2019-2020

& Task Involving Climate			
Strong Girls: A community life skills/physical activity research and service project for elementary girls in Lawrence.	University of Kansas $8000 2011 KU SOE Academic Year Research Support	$8000	2011
Examining the motivational climate in a national fitness company.	University of Kansas Faculty Research Grant	$5000	2010
Strong Girls: A physical activity and life skills intervention for faculty adolescent girls.	University of Kansas Research Grant	$6000	2009
A team building/mental skills intervention for children enrolled in a summer camp.	University of Kansas New Faculty Research Grant	$8000	2008

The relationship between young athletes' perceptions of a caring climate on their sport teams to their motivational responses	University of Memphis Faculty Research Grant	$6000	2005
Effect of a strength training intervention for underserved elementary students	University of Memphis Faculty Research Grant	$4000	2000-02
An examination of black females' perceptions of physical activity	Center for Research on Educational Policy, University of Memphis	$5000	2000
Children's perceptions of ability and their motivational responses in physical education class	Center for Research on Educational Policy, University of Memphis	$3800	1999

The motivational implications of students' understanding of effort and ability in the physical domain.	University of Memphis Faculty Research Grant	$4000	1995
Children's understanding of luck and ability, and task difficulty.	University of Memphis Faculty Research Grant	$3000	1994
Developmental differences in children's conceptions of ability, effort, and task difficulty in the physical domain.	Purdue Foundation Grant	$9,900 (per year for two years)	1992-94

Memberships in Professional Organizations

American Psychological Association (2017-present)

American Alliance for Health, Physical Education, Recreation, and Dance (1988-2017).

Association for Applied Sport Psychology, Member (1991-present).

Kansas Alliance for Health, Physical Education, Recreation, & Dance (2008-present).

North American Society for the Psychology of Sport and Physical Activity, Member (1988-2000).

Indiana Association for Health, Physical Education, Recreation, and Dance, Member (1993-1994).

Tennessee Association for Health, Physical Education, Recreation, and Dance, Member (1994-2000).

Teaching Responsibilities:

Undergraduate

EXSS 3307	Psychosocial Aspects of Sport [UMemphis]
EXSS 3450	Psychological Aspects of Exercise [UMemphis]*
EXSS 4605	Internship in Exercise & Sport Science [UMemphis]
EXSS 4999	Senior Project in Health, Physical Education, & Recreation [UMemphis]*
HSES 385	Psychological Aspects of Exercise [KansasU]*
HSES 440	Applied Sport Psychology [KansasU]*

Graduate

EXSS 7173	Sport and Exercise Psychology [UMemphis]*
EXSS 6903	Developmental Perspectives in Youth Sport [UMemphis]*

EXSS 7133	Current Readings: Motivation in Physical Activity Settings [UMemphis]*
EXSS 7907	Special Topics: Applied Sport Psychology [UMemphis]*
HSES 798	Special Course: Creating a Positive Environment in Physical Activity Settings [KansasU]*
HSES 798	Special Course: Sport Psychology Within Youth Sport [KansasU]*
HSES 798	Special Course: Advanced Sport Psychology [KansasU]**
HSES 804	Sport Psychology [KansasU]**
HSES 806	Stress Management [KansasU]*
HSES 823	Behavior Modification [KansasU]
HSES 892	Psychological Foundations of Sport and Physical Activity [KansasU] *
HSES 982	Research Ethics [KansasU]

*Courses I developed.

Community Presentations

Fry, M. D. (November, 2017). *Lead campus participation in celebration of World Kindness Day.*

Fry, M. D. (June, 2016). *Mental Skills: A Key Ingredient for Excellence in Cross* Country. Workshop for Eudora High School Cross Country Team; Eudora, KS.

Fry, M. D. (2016). *Creating a Caring and Task-Involving Climate in CI's Game On Program.* A presentation for CI Employees at the International Headquarters Office in Kansas City, KS.

Fry, M. D. (2016). *Team Building: The Potential for Children International.* Workshop for Children International Employees at the National Headquarters office in Kansas City, KS.

Fry, M. D. (2015). *Activities and Strategies to Help Children and Adolescents Thrive in Physical Activity Settings.* Topeka Parks and Recreation Conference; Topeka, KS.

Fry, M. D. (2015). *Fostering Wellness at the Worksite.* Live Well Lawrence; Lawrence, KS. Fry, M. D. (2011, Nov.). Guest panelist for KU Alternative Breaks, University of KS

Fry, M. D. (2011, Nov.). Guest speaker for Multicultural Education, University of KS.

Fry, M. D. (2011, Nov.). Guest speaker for Coaching Football Class, University of KS. Fry, M. D. (2011, Oct.). Guest speaker for KU Bowling Team, University of KS.

Fry, M. D. (2011, April). Guest speaker for Positive Psychology Class, University of KS. Fry, M. D. (2011, March). Guest speaker for Coaching Softball Class, University of KS.

Fry, M.D. (2011, Feb.). Guest speaker for Coaches Meeting for Sunflower Soccer Association, Topeka, KS.

Fry, M. D. (2010). Guest speaker for Healthy Musicians Class (2-hour workshop), University of KS.

Fry, M. D. (2009). Guest speaker for Life Skills Class at Atchison Community High School, KS. Fry, M. D. (2005, Feb.). Caring communities within physical activity settings. An invited presentation to a Memphis

Chapter of the Philanthropic Educational Organization.

Fry, M. D. (2001-present). Coordinate mental skills and physical activities for youngsters (i.e., cancer patients & their siblings) at Target House in Memphis, TN. Have conducted approximately 12 1.5-2 hour sessions.

Fry, M. D. (2002, July 17th). The role of sport psychology in the prevention of and rehabilitation after injury. A presentation for coaches attending the Memphis Interscholastic Athletic Association Conference.

Fry, M. D. (May, 2002). Presented stress management session for Cancer Support Group at Pentecostal Church in Memphis, TN.

Fry, M. D. (2001-present). Coordinate mental skills and physical activities for youngsters (i.e., cancer patients & their siblings).

Fry, M. D. (2000 & 2001, March-April). Coordinator for Short Putts to Spring Workshops for the MidSouth Junior Golf Association. Presenter for 2 of the 5 workshops on team building skills.

Fry, M. D. (1996). Optimizing arousal levels in tennis. A presentation to the Women's tennis team at The University of Memphis.

Fry, M. D. (1995, October). *Mental skills training in track and field.* A presentation to the Women's track and cross country teams at The University of Memphis.

Walling, M. D. (1995, February). *Maximizing your children's motivation in swimming: An educational sport psychology perspective.* A presentation to the Booster Club parents of the University of Memphis Swim Club.

Walling, M. D. (1995, February). *Fostering effort and enjoyment with your tennis players: A sport psychology perspective.* An invited talk which was part of a workshop sponsored by the USTA, the National Umpires Association and the Memphis City Schools for high school tennis coaches.

Walling, M. D. (1994). *Sport psychology with a developmental twist.* An invited presentation to the Sport Psychology Colloquium, Department of Psychology, University of Memphis.

Walling, M. D. (1993, October). *The influence of parents on young gymnasts' levels of stress and motivation.* An invited presentation sponsored by the United States Gymnastics Federation, Indianapolis, IN.

Walling, M. D.(1992, October). *The mechanics of sport psychology: What we do and how it impacts you and your family.* Presentation to the Purdue Mechanical Engineering Advisory Board Spouses.

Walling, M. D. (1991, July). *Stress Management.* Invited presentation sponsored by the National Institute for Fitness and Sport.

Walling, M. D., & Newton, M. (1991, October). *Sport Psychology for the Weekend Athlete.* Invited presentation sponsored by the Eli Lilly Corporation, Indianapolis, IN.

Departmental/University Service

KU Faculty Research Grant Review Committee (2021-2023)

Wolfe Teaching Award, School of Education (2021)

KU Title IX Committee (2020)

Kansas Women's Leadership Institute, Net-Walk Mentor Participant (2016-2017).

KU Certificate in Sport Committee (2017-2018).

KU Center for Undergraduate Research, Advisory Board (2016-2018).

KU Calendar Committee (2016-2018; Chair, 2017-2019).

SOE Scholarship & Awards Committee (2013-2019).

SOE Convocation Volunteer (2009-present).

HSES Faculty Search Committees (2009, 2010, 2012, 2013, 2014, 2015).

HSES Scholarship & Awards Committee (2010-2013), University of Kansas.

HSES Personnel Committee (2011-present), University of Kansas.

HSES Graduate Curriculum Committee (2008-2014), University of Kansas.

SOE Diversity Committee (2013-2016), University of Kansas.

SOE Technology Committee (2011-2013), University of Kansas.

SOE Governance Committee (2011-2013), University of Kansas.

SOE Personnel Committee (2007-2010), University of Kansas.

University of Kansas, Dean of the School of Education 5-year Review Committee (2014).

President's Tenure & Promotions Appeal Committee. (2007-2009). The University of Memphis.

HSS Community Affairs Committee (2004-2006). The University of Memphis.

Coordinator of Achievement Motivation Seminar (2003). The University of Memphis, Dept. HMSE.

PETE Unit Head, Dept. of HMSE, University of Memphis (2001-2003).

HMSE Tenure and Promotion Committee (1999-2000; Chair 2000-2001), The University of Memphis.

HMSE Coordinator for the Science Olympiad sponsored by The University of Memphis for high school honor science students in the Western portion of TN (1995-1999).

Dean's Council for Teacher Education (1994-1995), University of Memphis.

HMSE Material Resources Committee (1994-1995; 1998-2000, 2002; 2000-2001, Chair), University of Memphis.

HMSE Ad Hoc Committee on Internships (1994-1995), University of Memphis.

HMSE Recruitment Committee (1995-1996).

HMSE Physical Education Teacher Education Unit (1994-present; Unit Head-2001-2002), University of Memphis.

HMSE Ad Hoc Committee on Proposing a PhD Program (1995-1997).

HMSE Undergraduate Council (1994-95 & 1997-1998)

HMSE Academic Council (1996-1998).

HMSE Graduate Studies and Research Council (1995-2001; chair from 1996-1998)

College of Education Graduate Council (1996-1998).

Graduate Coordinator for the Department of Human Movement Sciences and Education, (1996-1998).

Service to National Organizations

Creating a Caring Climate Within and Across an Athletic Program, Positive Coaching Alliance Workshop (2020).

Subject Matter Expert for the Certification Exam Committee, Association of Applied Sport Psychology (2018).

Member of Ad-Hoc Committee to Study Future of AASP, Association of Applied Sport Psychology (2012-2015).

Member of the Social Psychology Section Committee, Association for the Advancement of Applied Sport Psychology (AAASP). Appointed for a 3-year-term, 1996-99; 2001-2003.

Member of AAASP Dissertation Award Committee (1998 & 2002).

Member of Editorial Board for *Physical Activity Today* (American Alliance for Health, Physical Education, Recreation and Dance publication), 1997-2001.

Member of Sport Psychology Program Area Review Committee for the 1996 Annual Meeting of the North American Society for the Psychology of Sport and Physical Activity (NASPSPA).

Executive Board Member, Association for the Advancement of Applied Sport Psychology, (2004-2006).

Member of Program Review Committee, American Alliance of Health, Physical Education, Recreation & Dance (2009- 2017); Chaired committee in 2010.

Member of Program Review Committee, Association for Applied Sport Psychology (2008-present).

Reviewing/Editing Responsibilities

Associate Editor (2009-2012); Editorial Board Member (2000-2009; 2013-present) and Reviewer (1992-1999). *Journal of Applied Sport Psychology.*

Associate Editor. *Sport Psychology in Action* (2008-present).

Editorial Board Member. *Sport, Exercise, and Performance Psychology* (2011-present; American Psychological Association Journal).

Sport & Exercise Psychology Section Editor (2003-2006) and Reviewer (1994-present). *Research Quarterly for Exercise and Sport.*

Co-editor with David R. Black of Abstracts Column. *Peer Facilitator Quarterly* (1993-1994).

Reviewer. *Education and Treatment of Children* (1993-1995).

Reviewer. *Journal of Health Education* (1993-1995).

Reviewer. *The Sports Psychologist* (1997-present).

Reviewer. *International Journal of Sport Psychology.* (1997-present).

Reviewer. *Journal of Sport and Exercise Psychology* (1993-present).

Reviewer. *Journal of Strength and Conditioning* (1998-present).

Reviewer & Editorial Board Member. *Journal of Strength and Conditioning Research* (Reviewer, 1996-present; Editorial Board Member, 1996-1998).

Contributor to Community/National Forum

Fry, M. D., & Brown, T. C. (2021-present). Co-Directors of Strong Girls, an after-school physical activity and lifeskill program for adolescent girls. University of Kansas.

Fry, M. D. (Fall, 2017). *Participating in a Positive Sport Climate Reaps Many Benefits for Young People.* Column written for the National Dropout Prevention Coalition-Newsletter.

Fry. M. D. (2017). *The Power of the Positive.* Contributor to the Positive Coaching Alliance Video.

DeAngelis, T. (2016) *Psychologists' research points ways to keep youth athletes in sports.* American Psychological Association Monitor Newsletter [KU Sport & Exercise Psychology Lab featured]

Fry, M.D. (2003). *Coaches' rant can bench kids for life.* Invited guest column in the Viewpoint Section of the Commercial Appeal, April 7, 2003.

Fry, M.D. (2003, March). *Strategies for creating a task-involving climate with underserved youth.* An invited presentation to the Dept. of EXSS at the University of Mississippi. Fry, M.D. (2002). Presenter of workshop entitled: *The Climate Counts: Techniques and Strategies for Fostering a Task-Involving Motivational Climate.*

Fry, M. D., & Newton, M. L. (1997, December). *TARGETing success in volleyball: Creating a positive motivational climate.* Invited speaker at the American Volleyball Coaches Association (AVCA) National Convention preceding the NCAA Final Four Tournament in Spokane, WA.

Fry, M. D. (1996, April). Invited speaker at Colonial Junior High's Career Day.

Fry, M. D. (February, 1995 & October, 1996). Invited guest on Eddie Cantler's talk-show, "The Trainer's Corner" seen on the Library Channel, Memphis, TN.

Walling, M. D. (1995). Choosing quality youth sport programs for children: The critical role of parents. *Journal of Kinetic Arts, 1* (5).

Applied Sport Psychology Experiences

Fry, M. D. (2008-present). Mental Skills Interventions with high school & university athletes.

Fry, M. D. (2013-2018). Mental Skills Intervention with a high school baseball team.

Fry, M. D. (2009-2011). Mental Skills Intervention with a youth baseball team.

Fry, M. D. (2008-2010). Mental Skills Intervention with a Division 1 collegiate volleyball team.

Fry, M.D. (2006-2007). Mental Skills Intervention with a high school basketball team.

Fry, M. D. (2006). Mental Skills Intervention with a Division 1 cross country team.

Fry, M.D. (2005-2006). Mental Skills activities with a high school golfer.

Fry, M.D. (2003). Mental Skills Activities provided to the Dolphins, a youth synchronized swim program in Memphis.

Fry, M.D. (2001-2007). Mental Skills Games and Activities Sessions provided to residents of Target House (i.e., long-term treatment patients at St. Jude Hospital).

Fry, M. D. (2001, Spring). The Strength Club. An after-school mental skills training program for elementary-aged children.

Fry, M. D. (1996, Spring). Consultation with members of a Division 1 collegiate Track and Field Team.

Walling, M. D. (1994, December). Member of Sport Psychology Coaching Staff for the Talent Opportunity Program (TOP) Camp sponsored by the United States Gymnastics

Federation (USGF). Tulsa, OK

Walling, M. D. (1992, October). *Effective Goal Setting in Volleyball.* Presentation to the West Lafayette High School Volleyball Team.

Walling, M. D. (1992, April). *Stress Management in Sport.* Presentation to the Women's Crew Team, Purdue University.

Walling, M. D. (1992). Consultation with High School Tennis Player Over a Season.

Chair, Graduate Student Advisory Council, Department of Health, Kinesiology, and Leisure Studies at Purdue University, 1991-1992.

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. Case No. 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, and DORA STUTLER in her official capacity as Harrison County Superintendent, PATRICK MORRISEY in *** his official capacity as Attorney General, and THE STATE OF WEST VIRGINIA,

Defendants

***

[10]

MARY D. FRY, PH.D.,

CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS FOLLOWS:

***

[14]

EXAMINATION

BY ATTORNEY TRYON:

Q. Hello, Professor Fry. How are you?

A. Doing well. Thank you.

Q. Do you prefer calling you Professor Green --- excuse me Professor Fry? Does that work?

A. Sure.

Q. Okay.

Can you state your full name for the record please?

A. Mary Diane Fry.

Q. Are you represented by counsel this morning?

A. Yes.

Q. And who is your --- primarily representing you today?

A. Julie, Julie Veroff.

Q. Great. And have you been deposed before?

A. I have not. **[15]**

Q. Have you testified in court before?

A. One time.

Q. Tell me about that.

A. Years ago my husband and I returned from our honeymoon and we found out we had been robbed. And a neighbor had seen three guys crawling out of our bedroom window, and so I appeared in court to share what was missing when we returned.

Q. Well, I'm sorry. That doesn't sound like a great way to end a honeymoon. So any other times you testified at trial?

A. No.

Q. And when we're speaking, you know, since we're in a deposition, this is a communication privilege unlike any other, but one of the things that we need to make to make it easier for the court reporter to understand what we're doing. So when I ask you a question please make sure you answer verbally as opposed to just nodding your head.

Okay?

A. Okay.

Q. If you don't understand a question that I ask you, tell me and I'll try and rephrase.

All right? **[16]**

A. Sounds good.

Q. And if you answer I'll have to assume that you understood the question. Do you understand that?

A. Yes.

Q. And as we stated off the record, if you need a break at any time, let us know. We will break for you and the only caveat on that is once I ask a question you have to wait until you finish your answer before we can take a break.

All right?

A. Okay. Thank you.

Q. Do you have any questions about this proceeding before we get started?

A. No.

Q. Okay.

Well, just for the record, this deposition is being conducted as on Cross Examination. And Professor Fry, did you bring any documents to the deposition today?

A. Yes.

Q. What did you bring?

A. I have before me my Declaration, the House Bill, my expert report and my Vitae.

Q. And when you talk --- mention your Declaration, **[17]** is this the first one that was filed in the case? Is that what you mean?

A. Yes.

Q. Is there anyone else in the room with you at this point?

A. No.

Q. What documents did you review in preparation for your deposition today?

A. I reviewed my statement and my Vitae and some of the Court documents, the Complaint and a cursory review of some of the other statements. I reviewed the Plaintiff's statement and her mother's statement.

Q. Any other Court documents besides the Complaint and the statement with the Plaintiff and the mother?

A. A cursory review of other expert witnesses and, yeah, any of the case documents, a cursory review.

Q. Which expert reports did you look at?

A. I couldn't call them all by name but the expert witnesses that are medical experts.

Q. The Plaintiff's experts or Defendants' or both?

A. Both.

Q. So there is a total of, now including yours, eight expert reports. Have you seen all of those?

A. You know, I'm not positive. There was a report [18] from two on each side and then a response, and so I --- and again I didn't read these in detail, but I did have a look at them.

Q. Okay.

Was there anything in particular that you were looking for when you looked through those expert reports?

A. No, just trying to get a sense of the case. I kept a focus on my purpose here today.

Q. And so are you aware of this case? Do you know who BPJ is?

A. Yes.

Q. And who is BPJ?

A. She is a young athlete in West Virginia who is a transathlete and wanted to play sports in her school.

Q. And you understand BPJ is the Plaintiff.

Is that right?

A. Yes.

Q. Do you know who Heather Jackson is?

A. Her mother.

Q. Have you ever spoken to either one of them?

A. I have not.

Q. So I presume by the same rationale you have not met either one of them either.

[19] Correct?

A. I have not.

Q. When did you first hear about BPJ?

A. About a year ago I was contacted by Plaintiff's Counsel in late April.

Q. And of course, don't tell me anything that your counsel --- any discussions you had after you were retained by counsel, but prior to being retained by counsel --- well, let me back up.

At one point you were retained by counsel to be an expert in this case.

Right?

A. Right.

Q. When was that?

A. Late April, early May, I believe.

Q. And what were you first told about the case before you were retained?

A. That this case involved a young athlete who was headed to Middle School and really wanted to be able to play sports.

Q. Were you told which sport?

A. I think so at the time.

Q. So at this point in time do you know which sports BPJ wanted to participate in at the time that BPJ **[20]** filed the lawsuit?

A. You know, it's hard to recall. There's quite a bit of water under the bridge. I know now that she wanted to do cheerleading and run track, and I'm not sure I could tell you the exact date I knew either one of those.

Q. Okay.

Let me rephrase my question because I'm not asking what the date was, I'm asking if you now know what --- at this time what sport BPJ participated in?

A. Yes.

Q. And which one?

A. She participated in cheerleading and now track.

Q. And so it was cross-country is that the same thing as track?

A. Sorry, cross-country. It's a different season, cross-country.

Q. Is that part of track and field or is it different?

A. It's a different season, yeah. I mean, usually it's grouped together, track and cross-country, but I should have said cross-country. That is what I meant.

Q. Okay.

[21] At the time that you were retained had you already prepared any report similar to what was ultimately filed in this case on your behalf?

A. Yes.

Q. So tell me about that.

A. Okay.

Q. So let me make sure we are communicating. So before you were contacted by counsel for BPJ, had you already prepared something that what was filed as your Declaration?

A. Yes.

Q. Okay.

Tell me about that.

A. Okay.

In the spring of 2020 I was contacted to see if I would be willing to be an expert witness first in the Connecticut case, transathlete case and then in Idaho. And those sort of overlapped in the spring of 2020 a little bit, but I've been involved in providing expert reports for both of those.

Q. Okay.

So you did serve as an expert witness in the Connecticut case.

Is that right? **[22]**

A. Yes.

Q. Was something that you prepared filed in the Connecticut case?

A. Yes.

Q. Same thing in the Idaho case?

A. Yes.

Q. Have you served as an expert witness in any other cases besides those two?

A. I'm serving as an expert witness in the Florida case as well.

Q. But you, to date, have not testified in any of those cases.

Right?

A. That's correct.

Q. And you haven't been deposed in those cases either I take it.

Right?

A. That's right. I have not.

Q. Have you actually prepared an expert report for Florida at this point?

A. Yes.

Q. Has that been submitted to court yet?

A. I believe so.

ATTORNEY TRYON: At this point your **[23]** initial report that was filed with the court, the initial Declaration. Let's mark that as Exhibit-1 and I will ask the court reporter to bring that up.

(Whereupon, Exhibit 1, Declaration, marked for identification.)

BY ATTORNEY TRYON:

Q. And feel free to look at your hard copy as we are discussing these exhibits, okay, Professor?

A. Okay.

ATTORNEY VEROFF: Sorry. I think this is the expert report and I think you were asking for the Declaration.

ATTORNEY TRYON: Yes, right.

VIDEOGRAPHER: My apologies.

ATTORNEY TRYON: It should have the Court stamp on the left at the top as I recall.

VIDEOGRAPHER: I see that. My apologies.

BY ATTORNEY TRYON:

Q. So first of all, I want to establish that this is the Declaration that you first prepared for this case.

Is that right? **[24]**

A. Yes.

ATTORNEY TRYON: And Jake, do you have that marked as Exhibit-1? Are you able to do that?

VIDEOGRAPHER: I don't have it marked with a sticker at the moment, but I can mark them if you want me to.

ATTORNEY TRYON: Yes. That would be great.

VIDEOGRAPHER: Okay.

ATTORNEY TRYON: And what I would like to do, the expert report, which is the one that you previously brought up, Jake, that would be Exhibit-2. So if you could bring that up and make sure we all understand what Exhibit-2 is.

(Whereupon, Exhibit 2, Expert Report of Dr. Fry, was marked for identification.)

ATTORNEY TRYON: Will you be able to mark these while we are in this proceeding, Jake.

VIDEOGRAPHER: I have it on my computer but I'm not on my computer at the moment. I don't think I can unless we could go off record for me to do so.

ATTORNEY TRYON: We will keep on going **[25]** and ask if you recognize what they are and then maybe during a break you can do that.

VIDEOGRAPHER: That works for me.

ATTORNEY TRYON: And for the record we will be looking at the statute, which we will be marking as Exhibit-3 to this deposition.

(Whereupon, Exhibit 3, HB-3293, was marked for identification.)

BY ATTORNEY TRYON:

Q. So now let's go to Exhibit-2, which is your current expert report. I'm going to try to manipulate my page so I can see you, Professor, at the same time. I can switch this over to another screen, but it's not working. Let's try this. All right. So looking at Number 4 --- let me back up, paragraph number three, you say you have knowledge of the matters stated in this expert report and Declaration. I have collected and cite to relevant literature concerning the issues that arise in this litigation. Do you see that?

A. Yes.

Q. So what are the issues that arise in this litigation as you understand it?

[26] ATTORNEY VEROFF: I'm sorry. I'll just object to the extent that complete paragraph three wasn't read.

ATTORNEY TRYON: Okay.

BY ATTORNEY TRYON:

Q. Okay.

Feel free to read the entire paragraph if you want but I'm just asking about that specific clause.

A. The issues that are relevant are that there's a categorical exclusion of transathletes. And that is of

concern because of the many benefits that athletes reap from having the opportunity to participate in sports.

Q. Any other issues that arise in this litigation?

A. Nothing comes to mind at the moment.

Q. So that's what you refer to when you say issues arise in this litigation, and you said the categorical exclusion of transgender athletes because of benefits athletes receive from sport. Is that about right? It's not exactly what you said, but that is about right?

A. Yeah, because of the categorical exclusion of transgender athletes in sports that prevent them from having opportunities to reap all the benefits in sport.

Q. You have said already on the record and you also say in paragraph four that in preparing this expert **[27]** report and Declaration I reviewed West Virginia HB-3293, the bill at issue in this litigation.

Right?

A. Yes.

Q. So how --- did you read the entire thing?

A. The entire bill?

Q. That's my question.

A. Yes, yes.

Q. What did the legislature say the purpose is?

A. Well, to prevent transgender females from participating in a sport in West Virginia.

Q. The bill does not use the word transgender at all, does it?

ATTORNEY VEROFF: Sorry. Mr. Tryon, I'm going to object. If you're going to ask the witness about the bill,

if you could please put it up on the screen so she could have it in front of her.

ATTORNEY TRYON: We will do it in a moment. I think she's looking at it anyway, so it's been put up on the screen.

ATTORNEY VEROFF: Is that right, Professor Fry? Do you have a hard copy of the bill in front of you?

THE WITNESS: Yes.

[28] ATTORNEY TRYON: So that would be Exhibit-3. Are you finding that, Jake? You're muted.

VIDEOGRAPHER: I'm looking in my folder. I just had it this morning. It might be on my other computer. Counsel, if you want to go off the record I can grab that and then get the software to mark these for you.

ATTORNEY TRYON: Okay. How long would that take?

VIDEOGRAPHER: Three minutes.

ATTORNEY TRYON: Okay. Let's do that.

VIDEOGRAPHER: Okay. I apologize truly. Going off the record. The current time reads 10:30 a.m.

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 10:34 a.m. Eastern Standard Time.

ATTORNEY TRYON: And Jake, if you could bring up Exhibit-3 now, please, which is the HB-3293. **[29]** So this has previously been marked but for this deposition we will mark it as Exhibit-3.

BY ATTORNEY TRYON:

Q. So this is the House Bill that you --- the law that you reviewed, Professor Fry?

A. Yes.

Q. Excuse me. And nowhere in here does it use the word transgender, does it?

A. No.

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. Take a look at paragraph one --- excuse me, page one, under 18-2-25(e), line 1A, it starts A, legislature hereby finds there are inherent differences between biological males and biological females and that these differences are cause for celebration as determined by the Supreme Court of the United States in United States versus Virginia 1996, in parentheses. Do you see that?

A. Yes.

Q. Do you agree with that statement?

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. Go ahead.

[30] A. Yes.

Q. Number two in parentheses says, these inherent differences are not a valid justification for sex-based classifications that make overbroad generalizations or

perpetuate the legal, social and economic inferiority of either sex. Rather these inherent differences are a valid justification for sex-based classifications when they realistically reflect the fact that the sexes are not similarly situated in certain circumstances, as recognized by the Supreme Court of the United States in Michael V. Sonoma County Association of Intercollegiate Athletics, and NIA in parentheses or National Junior College Athletic Association. I goofed that. Sorry. I skipped a page. So continuing it said in Michael M. v. Sonoma County Superior Court 1981, in parentheses, and Supreme Court of Appeals in West Virginia in Israel v. Secondary Schools Commission in 1989 in parentheses. Other than the citations of those cases do you agree with that statement?

ATTORNEY VEROFF: Objection.

THE WITNESS: I believe that it's more complex than just to have a binary understanding of males and females.

BY ATTORNEY TRYON: **[31]**

Q. So let me restrict my question to this part. It says these inherent differences are a valid justification for sex-based classifications when they realistically reflect the fact that sexes are not similarly situated in certain circumstances. That clause, do you agree with or disagree with?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I would just say that it's all --- more complex than just saying that we have males and females.

BY ATTORNEY TRYON:

Q. Okay.

I'm sorry, what did you say last?

A. Yeah, that it's more complex than just considering them --- everyone fits tightly into a male or female category.

Q. And so you would disagree with that statement?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I would agree with the first sentence, that we shouldn't use these to discriminate.

BY ATTORNEY TRYON:

Q. Does that specific clause, you don't agree with that, is that a fair statement? **[32]**

ATTORNEY VEROFF: Objection.

THE WITNESS: The first sentence of number two?

BY ATTORNEY TRYON:

Q. I'm sorry. Let me make sure we're clear on the record. The phrase that says these inherent differences are a valid justification for sex-based classifications when they realistically reflect the fact that sexes are not similarly situated in certain circumstances, that clause, as I understand your testimony, you do not agree with in its entirety. Is that true?

ATTORNEY VEROFF: Sorry, Mr. Tryon. Objection.

THE WITNESS: Right, that's true.

BY ATTORNEY TRYON:

Q. Okay.

Number three, it says in the context of sports involving competitive stellar contact --- actually, strike that.

Let's move down. I want to make sure I understand. These are using terms that are defined below, so I want to see if we have a mutual agreement on the meaning of these

terms. And on line 25, as shown on the left-hand side, it defines, quote, biological sex, **[33]** closed quote, means an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth. Do you see that?

A. Yes, I see that.

Q. Is that a fair definition of biological sex?

ATTORNEY VEROFF: Objection.

THE WITNESS: I disagree. I think it is more complex than that.

BY ATTORNEY TRYON:

Q. Okay.

How would you define biological sex?

ATTORNEY VEROFF: Objection.

THE WITNESS: Based on multiple factors besides just the reproductive biology in genetics at birth.

BY ATTORNEY TRYON:

Q. Okay.

And what would your definition be?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm not sure.

BY ATTORNEY TRYON:

Q. Okay.

Well, the reason I ask is because we are **[34]** probably using these terms throughout this deposition today, so I'm trying to make sure we have a mutual understanding of what biological sex means. So I don't want to try and

impose upon you a definition that you are uncomfortable with.

A. Okay.

Q. So if you could give me something that you would be comfortable with, I would appreciate it.

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I would feel more comfortable --- yeah, I'm not sure, to be honest.

BY ATTORNEY TRYON:

Q. All right.

So I assume that the definition of female in here you're also uncomfortable with. Is that a fair statement?

A. Yes.

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. How about the definition of male, can we reach an agreement that male means an individual whose biological sex determined at birth is male?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes, I would not agree with **[35]** that.

BY ATTORNEY TRYON:

Q. You would not agree with that. Does the word male have a meaning to you?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes. I feel like it's related to how people see themselves in terms of male or female.

BY ATTORNEY TRYON:

Q. So it's only --- the term male only means how somebody sees him or herself?

ATTORNEY VEROFF: Objection.

THE WITNESS: They view their identity as male and female, I think that's the critical thing.

BY ATTORNEY TRYON:

Q. And does biology have any importance at all?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes, it does. It's just not the only factor.

BY ATTORNEY TRYON:

Q. So how about this, how about if we will refer to male today, male or boy, we mean someone whose birth --- on whose Birth Certificate it designates them as male or as male?

[36] ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. Can we use that as a definition today?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think it's more appropriate to use the term to refer to people who identify as male.

BY ATTORNEY TRYON:

Q. So you don't think there is such a thing as a biological male? Is that what you are telling me?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think term biological male is a complex term, that a lot goes into that.

BY ATTORNEY TRYON:

Q. You're familiar with the term cismale, right?

A. Yes.

Q. What does that mean?

A. Well, first is somebody whose identity aligns with their birth characteristics.

Q. Okay.

What birth characteristics are those?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think the male, female category works in general, but there is people who fall **[37]** in between and may not be from a biological perspective nice and tightly categorized into either of those categories. So when I say it is complex, it is is not just the way somebody was born or one particular, you know, physical characteristic or so.

BY ATTORNEY TRYON:

Q. Well, I'm just try to understand the term you just gave me. You said that cisgender is someone that identifies in the same --- identifies with the sex that corresponds with their birth characteristics. And I'm asking what you meant when you said birth characteristics.

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I feel like there's medical terms that go beyond my expertise. But in my understanding, someone can be born and have characteristics of cross gender. So using just a binary system where we categorize and put everyone in either a male or female category is limiting and not helpful.

BY ATTORNEY TRYON:

Q. So then what is a cisgender person?

ATTORNEY VEROFF: Objection.

THE WITNESS: Someone who may align physically at birth with one of the genders. And also **[38]** when I say align, those match up with how they perceive themselves along with their birth characteristics.

BY ATTORNEY TRYON:

Q. Again you use that term birth characteristics. I need to know what you mean by that.

ATTORNEY VEROFF: Objection.

THE WITNESS: Again, using this in --- in --- from my perspective, I would listen to the doctors who study this and say that we can't just classify people tightly into these categories. And some people may share characteristics of either gender at birth and so it may be more complicated.

BY ATTORNEY TRYON:

Q. So we still don't even have a definition of cisgender from you.

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. So you don't know what birth characteristics are? Is that what you are telling me?

ATTORNEY VEROFF: Objection, asked and answered?

THE WITNESS: Yeah, I think some people are born and they fit nicely into these categories of male and female. I'm just acknowledging that not **[39]** everyone does. And if they do fit nicely into those, nicely just meaning that they are --- they, you know, are considered male at birth and they also perceive that they are than ---

or the other way is female, then that would be a cisgender person.

ATTORNEY TRYON: Jake, how do I get to the live feed?

VIDEOGRAPHER: You mean like the video feed or like the real time?

ATTORNEY TRYON: Yes.

VIDEOGRAPHER: Give me one sec, I'll repost the link.

ATTORNEY TRYON: Are you going to put that in the chat room?

VIDEOGRAPHER: It should be visible now.

BY ATTORNEY TRYON:

Q. When you --- you used the term now considered male at birth. Can you tell me what you mean by that?

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. I'm not trying to trick you. I'm just trying to establish some definition so we can communicate properly today.

A. Yeah.

[40] ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I think a medical professional says that a baby has all the characteristics of a male, right. I'm just simply saying that everyone doesn't fit nice and tightly into that male or female, that there's two cross overs that the doctors seem to agree on.

BY ATTORNEY TRYON:

Q. And what the doctors seem to agree on is what they put on the Birth Certificate, right, at least initially? Fair statement?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah. I'd say in general doctors choose one or the other that's closest.

BY ATTORNEY TRYON:

Q. So at least for purposes of today, when I say male or boy can we agree that I'm referring to someone who on the Birth Certificate, the original Birth Certificate, it is stated that that person is male?

A. I can agree to proceed that way.

Q. Okay.

And the same thing with respect to female or girl.

Right? **[41]**

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes. Can we also agree that if I -- that I can use the term transfemale to refer to someone who may share characteristics across gender and may identify as a female?

BY ATTORNEY TRYON:

Q. Let's be clear on that. Please tell me what your definition of trans --- let's first cite what does transgender mean?

ATTORNEY VEROFF: Objection.

THE WITNESS: Transgender refers to someone who may have been classified as birth as one gender but identifies as the other gender.

BY ATTORNEY TRYON:

Q. And then transgender girl, can you give me your definition of that?

A. Yes, someone who may have been assigned the male sex at birth and identifies as female.

Q. And then transgender boy?

A. Someone who may have been assigned female --- assigned a female gender at birth but perceives --- identifies with a male sex, male gender.

Q. Now, when I asked you about transgender you said someone classified at birth. And then when I asked you **[42]** about transgender girl you said assigned. Is there a difference between classified and assigned in your mind?

ATTORNEY VEROFF: Objection.

THE WITNESS: No, there wasn't a distinction there.

BY ATTORNEY TRYON:

Q. Okay.

And could that sex of a child be assigned before birth?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, possibly.

BY ATTORNEY TRYON:

Q. Going back to the bill itself, on line 12, on page two, in the context of sports involving competitive skill or contact biological males and biological females are not, in fact, similarly situated. Do you agree with that statement?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm not sure what that statement means by the fact similarly situated.

BY ATTORNEY TRYON:

Q. Okay.

Let's go to the next sentence. Biological males would displace females to a substantial extent if **[43]** permitted to compete on teams designated for biological females and then it cites a case. Do you agree with that statement?

ATTORNEY VEROFF: Objection.

THE WITNESS: I believe there can be a fair playing ground for people who are born male and who receive treatment, follow the rules and play the sport for them to be able to participate as females.

BY ATTORNEY TRYON:

Q. So I take it you do not fully agree with that statement.

Is that a fair statement?

A. Yeah.

ATTORNEY VEROFF: Objection.

THE WITNESS: I do not.

BY ATTORNEY TRYON:

Q. Item Number 5, line 21 says, classification of teams according to biological sex is necessary to promote equal athletic opportunities for the female sex. Do you agree with that statement?

ATTORNEY VEROFF: Objection.

THE WITNESS: Not if it means excluding transgender athletes.

BY ATTORNEY TRYON: **[44]**

Q. Okay.

I need to apologize at this point. On the floor where I'm at they are doing construction, so periodically you may hear pounding or other noise, and I'm sorry about that.

Let me ask you about the definition of another word that appears periodically, the word arbitrary. And I looked that up in a dictionary, an online dictionary, Cambridge.org, and the definition it gave me was based on chance rather than being planned or based on reason. Is that a fair definition of arbitrary?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm not sure.

BY ATTORNEY TRYON:

Q. Okay.

What is your definition of arbitrary?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm not sure.

BY ATTORNEY TRYON:

Q. You have a Bachelor's Degree.

Right?

A. I do.

Q. And a Master's Degree.

Right? **[45]**

A. Yes.

Q. So I recall you also have a Ph.D.

Is that right?

A. That is right.

Q. And you can't define for me what arbitrary means?

ATTORNEY VEROFF: Objection.

THE WITNESS: No, not at the moment.

BY ATTORNEY TRYON:

Q. You used the word arbitrary in this report, yet you don't know what it means?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah. Do you want to go to where I used it?

BY ATTORNEY TRYON:

Q. No. I want to know if you, in fact, don't know what arbitrary means?

ATTORNEY VEROFF: Objection. I think the witness has asked to see where term is used in her report. And it would be helpful to show it to her for context.

ATTORNEY TRYON: Thank you, Counsel. I would like the witness to tell me how she doesn't know --- since she has a Ph.D., she can't tell me what **[46]** arbitrary means. And then you won't even agree with the definition that I found in the Cambridge.org Dictionary.

ATTORNEY VEROFF: Objection.

THE WITNESS: Can you repeat that definition again?

BY ATTORNEY TRYON:

Q. Based on chance rather than being planned or based on reason.

A. Okay.

I'm going to go back and accept that.

Q. Okay.

In paragraph seven of your report --- we can go back to the report now. This is Exhibit-2. In paragraph seven that is on the screen or you can look at your hard copy, you mention that you spent five years teaching physical education and coaching tennis at schools and summer camps. Tell me a little bit about your coaching tennis.

A. Yes, I was the head coach of both the boys and the girls team, high school. And the --- we had a varsity and a junior varsity team. They competed in the fall season. That was a team competition. And then the individual in spring, so it is a year-round sport in Texas. **[47]**

Q. So why did they divide it between varsity and junior varsity?

A. Because some of the kids are --- because it gives the more advanced athletes a chance to compete at the varsity level and can be very inclusive and give a lot of kids an opportunity to play also as well with a junior varsity.

Q. And you had no problem with that, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: That's right.

BY ATTORNEY TRYON:

Q. And then you said they divided it into boys and girls teams. Why did they do that?

ATTORNEY VEROFF: Objection.

THE WITNESS: Because, in general, that classification works, but there are exceptions to it.

BY ATTORNEY TRYON:

Q. And when you said boys, what did you mean by boys?

A. I mean those who may have been classified as a male in their lives and also identify that way.

Q. So the team, the tennis team was based on those who were born, classified as males and also identified that way? **[48]**

A. Again, I can't speak for every athlete.

Q. And then when you said there was a girls team, what did that mean? What did you have to be to be on the girls team?

A. Yeah. And in general, they are females and see that classification as appropriate and participate as females.

Q. And why is that classification appropriate for tennis?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think it's in general appropriate to have --- to let males and females compete separately.

BY ATTORNEY TRYON:

Q. Is that because in general males are better at tennis?

ATTORNEY VEROFF: Objection.

THE WITNESS: I wouldn't agree with that.

BY ATTORNEY TRYON:

Q. Then why is it appropriate to let them compete separately?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I think males would, in general, due to, you know, their physical **[49]** characteristics would have a --- could have an advantage.

BY ATTORNEY TRYON:

Q. What kind of advantage?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, greater --- greater testosterone levels, which can lead to --- which can impact muscle mass and size.

BY ATTORNEY TRYON:

Q. As the coach, did you actually observe that there was a difference, performance difference between boys and girls teams?

A. I would ---.

Q. I'm sorry. Let me rephrase that. As the coach, did you actually observe that there was a performance difference between boys and girls?

A. Yes.

ATTORNEY VEROFF: Objection.

THE WITNESS: I think if you compare the mean level of ability across the two, then there is a moderate difference, but there was --- there was big differences within each gender. I had some very talented males and some males that were not very talented. And the same with females. Ability levels **[50]** really varied. And I had females across my years coaching high school that were stronger than males. So it is not a --- you have to be careful to say that every male out performs every female because that has not been my experience.

BY ATTORNEY TRYON:

Q. Understood. On the average, though, is it safe to say that the boys out perform the females?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right, if we just look at a mean across the gender, yes.

BY ATTORNEY TRYON:

Q. Okay.

You used the word mean instead of average. Can you explain?

A. Yes, on average.

Q. Okay.

I just want to make sure we are communicating correctly.

A. Sure.

Q. Have you ever done --- looked at the standard deviation, the bell curve for each of those groups?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm familiar with the bell **[51]** curve. Do you mean ---?

BY ATTORNEY TRYON:

Q. Okay. Have you looked at the bell curve for performance between those two groups of tennis players, boys versus girls?

ATTORNEY VEROFF: Objection.

THE WITNESS: Okay. I have been --- I haven't collected data that I could share from when I coached high school. What I could say is that, if we took any skill, let's say their ability to serve accurately or hit a crisp volley or hit a solid backhand across the court, that their --- those bell curves are very close to each other, but overall for just looking at the two groups the boys could have a slight advantage. But those two bell curves, if we are looking at

the bottom of those, you're going to say there is tremendous variability with the males and females. And so it is easy to get kind of focused on this small mean difference across gender when there is huge differences across, you know, each gender as well.

BY ATTORNEY TRYON:

Q. Understood. As far as the first standard **[52]** deviation, do you know if the first standard deviation would overlap between two groups?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think so in high school tennis, right.

BY ATTORNEY TRYON:

Q. Okay. Have you actually --- that's from just your generalized experience, but have you actually done a data compilation to determine that?

ATTORNEY VEROFF: Objection.

THE WITNESS: No.

BY ATTORNEY TRYON:

Q. Do you know of such a thing, any studies that do that?

A. I couldn't identify specifically studies, but when I see these things like if I --- if I pick up the Kansas City paper or after the marathon I see males and females interspersed all the way through with their times, right. So it's not a thing where every male that ran the marathon out performed every female that ran the marathon. So I think it's pretty consistent that those differences are smaller, too, if we are not talking about the elite of elite athletes. **[53]**

Q. When you were coaching, how long did you coach?

A. I coached four years full time and then my graduate program at Greensboro I was --- I had an assistantship at a Middle School to teach --- to assist teachers with teaching physical education.

Q. In paragraph eight of your report it says that you graduated with a Master of Science in sports psychology/pedagogy from the University of North Carolina in Greensboro, North Carolina, in 1990. During that did you take any classes in sports biomechanics?

A. I believe I took one.

Q. What is sports biomechanics?

A. Sports biomechanics looks at the study of movement and how to optimize skills and movement patterns.

Q. And is it fair to say that the biomechanics of males and females are different?

ATTORNEY VEROFF: Objection.

THE WITNESS: With regard to everything across the board, like walking?

BY ATTORNEY TRYON:

Q. In athletics --- well, we'll talk about in walking. Is it different in walking?

ATTORNEY VEROFF: Objection. **[54]**

THE WITNESS: I would say there is more similarity across the genders, more variability with age than across genders on most movements.

BY ATTORNEY TRYON:

Q. Okay. So you don't think there is a difference between males and females in the context of biomechanics?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I think I just need something more specific, right, if males in general can generate more power or something in a particular movement, that may be the case. It is not my area of expertise.

BY ATTORNEY TRYON:

Q. Okay. Fair enough. Are you a psychologist?

A. I am not.

Q. Are you a psychiatrist?

A. No.

Q. Have you had any clinical experience seeing any patients?

A. Not clinical experience, no.

Q. Other types of experience seeing patients?

A. No. **[55]**

Q. And so I a presume you never treated any patients?

A. That's correct.

Q. Have you ever worked as a counselor or social worker?

A. No.

Q. Have you ever counseled with kids on either a formal basis or informal basis on mental health issues?

A. I'm on the educational side of sports psychology and so I might provide educational information, right, about how to develop strong mental skills, right, that are going to help you enjoy your sport better and perform better, right. It's all on the educational side, so not on a diagnosis side or treatment of mental health. That would

be beyond my credentials and I would refer athletes to someone else.

Q. Okay. Have you ever counseled with kids on gender dysphoria issues?

A. I have not.

Q. Have you counseled with kids or young adults on transgender issues?

A. I have not. To say that would be beyond my expertise and training. **[56]**

Q. Fair enough.

ATTORNEY TRYON: Well, we've been going a little over an hour. I'm happy to keep on going. But if you need a break, let me know.

ATTORNEY VEROFF: I think it would be good to take a short break.

VIDEOGRAPHER: Going off the record. The current time reads 11:15 Eastern Standard Time.

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 11:27 Eastern Standard Time.

BY ATTORNEY TRYON:

Q. In paragraph nine of your report you refer to a Coacher's Guide of Maximizing Youth Sport Experience. And did you write that whole book?

A. With colleagues, we did.

Q. Does that book address transgender athletes at all?

A. It addresses how to create an environment that can be inclusive and help all athletes have a great **[57]** experience. It's not specifically written --- you know, it's not about about transgender athletes overall. What I would say they're included in the sense that it is beneficial to be inclusive in sport.

Q. Is the term transgender, does it appear in the book at all?

A. Beyond -- I'm not sure.

Q. When was that book written?

A. It was released in 2020.

Q. When was the first time that you became aware of the issue of transgender girls participating in girls sports?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm not sure. Years ago. I take conferences regularly, or sports psychology conference, and there has been sessions for a long time.

ATTORNEY TRYON: Let me ask you to take a look at some documents. Jake, if you can pull up the document Cortisole and Stress Response during the Game and Practice in Female Collegiate Soccer Players.

VIDEOGRAPHER: Do you want that marked?

ATTORNEY TRYON: Yes, this would be Number 4.

---

[58] (Whereupon, Exhibit 4, Article by Dr. Fry, was marked for identification.)

ATTORNEY TRYON: And just for the court reporter, my name is spelled T-R-Y-O-N.

BY ATTORNEY TRYON:

Q. Okay. This is a document, an article that you wrote, correct, Professor Fry?

A. This was a Master's thesis from one of our students and I served on her committee.

Q. I see. Who is Andrew Fry?

A. He's my husband.

Q. Okay. Why did this document only focus on female soccer players?

A. Typically, in a Master's thesis you kind of can keep things smaller and tighter, and it's not like a doctoral dissertation I think would be one of the key reasons. There's probably been less research with females and cortisol because it's a little more complicated with menstrual cycles and all that, too. And I think this athlete --- I'm sorry, this student was very interested in any female student to the literature.

[59] Q. Is there a difference in cortisol and stress responses between male and female soccer players?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, you know, this is --- I would need to review this. And again, it's beyond my expertise in looking at gender differences in cortisol.

BY ATTORNEY TRYON:

Q. So I'm a little puzzled. You said that you're on the committee to review the students' work. Did I get that about right?

A. I helped with this project, but this was her thesis research, and she also had some I think psychological measures. This has been a while. It was published in 2007, but she was --- I'm not even sure I could tell you what year she graduated or if this was right over, but you know, quite a bit of time has passed. I would have to go back and review this and it is not my primary area of expertise, but I was an author on this paper.

Q. So when you say you're an author, does that mean you wrote portions of it or just supervised it?

A. You know, it varies and I would have to go back to this one. Honestly, in reviewing it, I haven't looked at this in a long time.

[60] Q. Do you know how the student identified if someone was a female?

A. I think she used a female collegiate soccer team and so those were female athletes on the team.

Q. Do you know if any of those female athletes were transfemales?

A. No, I don't.

Q. Would that have made a difference for the study if some were transfemales and others were what I would call biological females?

ATTORNEY VEROFF: Objection.

THE WITNESS: I don't know. And I think it would depend on where the transathletes were.

BY ATTORNEY TRYON:

Q. Where they were? What do you mean?

A. I'm sorry, where they --- I'm sorry, Dana just came in with cords and I got distracted for a second. With where they were in the transitioning process.

ATTORNEY TRYON: Okay. If you could bring up the next document, Examination of the Psychometric Properties of Perceived Motivational Climate in Sports Questionnaire.

VIDEOGRAPHER: I'm sorry. Can you repeat that title?

[61] ATTORNEY TRYON: Yes. Examination of the Psychometric Properties of the Perceived Motivational Climate in Sports Questionnaire.

VIDEOGRAPHER: Okay. Just give me one moment?

THE WITNESS: You may want to take this home for bedtime reading tonight, right.

ATTORNEY TRYON: This is now marked as Exhibit-5, I believe.

(Whereupon, Exhibit 5, Article, was marked for identification.)

BY ATTORNEY TRYON:

Q. Have you seen this document before?

A. I have. It's been a while since I looked at it, but, yeah, I have.

Q. And what is the purpose of this document?

A. So there was a measure, a perceived motivational climate of sports questionnaire. And Maria Newton in her dissertation, she wanted to expand on the measure and

create little subscales within what we call task in ego involving climates. And I think she ran it with a couple of samples here just to be able to test the **[62]** psychometrics of the measure.

Q. Why was this one limited to female athletes?

A. It's a good question. Why does any researcher includes females, males and/or both? Maria had access to, as I remember, a massive tournament, volleyball tournament, and could get the group onboard and be able to access a lot of teams because research is hard to do. You really need to be able to access a number of teams and she was able to do that with this study.

Q. So you don't know why it would be separated to be only for female athletes?

A. I think she was only interested in volleyball and in particular females.

Q. Is there a difference in volleyball between female and male athletes?

ATTORNEY VEROFF: Objection.

THE WITNESS: A difference in what sense?

BY ATTORNEY TRYON:

Q. In psychometric properties, the perceived motivational climate?

A. Okay.

So while she didn't look at that in the study because she only had females, so we just have to look at the broader literature, right. And the theory **[63]** predictions hold up in that athletes can perceive the climate as very task involving or ego involving, right. And in some samples athletes, you know, males or females may see it one way

or another more, but the predictions just align consistently that if you perceive the task involving climate at least to good things. Like people have more fun and try harder, they're more committed to their sports, they have better relationships with others, those kind of things.

Q. All right.

ATTORNEY TRYON: I'm finished with that exhibit then. Let me then ask you some other questions.

BY ATTORNEY TRYON:

Q. Is your expertise limited to sports psychology?

A. Sports psychology is a broad term, you know, but yes, I would say that is my expertise. I don't know if you would consider youth sport as a part of that.

Q. I'm sorry. I missed what you said.

A. The youth sport.

Q. Oh, youth support?

A. Yes, in particular within sports psychology my focus has been on youth.

Q. Okay.

A. Not exclusively.

[64] Q. So just to be clear, you are not an exercise physiologist, right?

A. I am not.

Q. And you are not a medical doctor. Correct?

A. That's correct.

Q. And you don't have expertise in the science of performance advantage, do you?

A. No.

Q. And you have no expertise in sports safety. Is that true?

A. Yes, true.

Q. And do you have any expertise in concussion management?

A. No.

Q. Do you have any expertise in ACL injuries?

A. No.

Q. Have you done any research studies or papers regarding transgender females in sports?

A. No.

Q. Have you taught any classes on that?

A. Not like a complete course, but it's a topic that we can cover in our undergraduate score psychology class.

[65] Q. And so is that a class that you teach?

A. Yes.

Q. And what exactly have you covered with regard to transgender females in that class?

A. So late this semester I'm teaching the class and later in April we have a trans --- a transfemale who is a retired athlete and coach coming in for that day and we will probably take a partial class before that just to have some discussions and lay some groundwork. It is an educational session where we just --- we have students who may be well informed and passionate about transathletes in sport and we have had other students who have had very little exposure. So it's not a big --- it's not a big chunk of the class, right, it's a class or two that we touch on it.

Q. Aside from any research, have you attended any seminars or classes on transgender females in sports?

A. Yes. Typically at our national conference, the Association of Applied Sports Psychology, you know, that's a jampacked schedule, and probably most conferences I'll sit in on a session. Sometimes they --- they will do a webinar, things like that. So over the years, yes, I have participated in those.

Q. Have you reviewed any literature on transgender **[66]** participation in sports to prepare your opinion in this case?

A. Like over the last two years I've read some. I couldn't point or identify, hey, this is exactly the literature I've read. Just someone who's reading often in my --- you know, within sports psychology.

Q. Your bibliography doesn't include any papers studying transgender athletes, does it?

A. No.

Q. And have you done any studies or papers regarding the harm to motivation on females when biological boys or trans/transgender girls are allowed to compete on girls teams?

ATTORNEY VEROFF: Objection.

THE WITNESS: I have.

BY ATTORNEY TRYON:

Q. Do you mean have not?

A. I'm sorry, have not.

Q. Have you taught any classes on that topic?

ATTORNEY VEROFF: Objection.

THE WITNESS: I have not.

BY ATTORNEY TRYON:

Q. Have you attended any seminars or classes on that topic?

[67] ATTORNEY VEROFF: Objection.

THE WITNESS: I have not.

BY ATTORNEY TRYON:

Q. Have you prepared any papers regarding differences for motivation between males and females?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. Okay. Well, what are those?

A. Okay.

I think in, oh, gosh --- in --- sometimes in papers we, you know, we see if there were gender differences in terms of motivation. When there are differences they're slight and we are back to that bell curve mean thing that there might be a slight difference but they don't impact the hypotheses in the sense that --- in the sense that someone has a high task orientation and/or perceives a task involving climate or caring climate, whether you are male or female those predictions hold up in terms of the outcomes.

Q. Are there papers in your bibliography that would show that to be the case that it's the same for boys and girls. Feel free to take a look at it. You have got it **[68]** there.

VIDEOGRAPHER: I would note that we gained another participant. If they would identify themselves for the record.

ATTORNEY PELET: Good morning. My name is Valeria Pelet del Toro for Cooley, LP, for Plaintiff BPJ.

THE WITNESS: Thank you for that time. The Hogue, Fry and Fry 2017, I have to review that paper. I can't remember if there were any gender differences. These were Middle School kids who were ---.

BY ATTORNEY TRYON:

Q. Let me stop you for just a second. Can you tell me what page that's on?

A. Yes, page 14, the second from the last reference.

Q. And which one is it again?

A. The Hogue Fry and Fry, 2017.

Q. Page 14 you said?

A. Yes, page 14, the second reference from the bottom of the page.

Q. I'm seeing Walling, M.D.

A. Okay. Sorry.

[69] Q. Maybe the pagination is different on your copy.

A. I'm sorry. Are you looking at the expert report and Declaration?

Q. Yes, I am.

A. Okay. It should be the same. If you go in alphabetical order, Hogue with an H, H-O-G-U-E.

Q. Okay. Here is the issue. I see. Hogue, et cetera.

A. Yes.

Q. There's two by Hogue. Which year? They're both 2013.

A. The 2017.

Q. What is the title?

A. The title is the Differential Impact of Motivational Climate on Adolescents Psychological and Physiological Stress Responses.

ATTORNEY TRYON: It is on page three. Can you bring that up, Jake? It is under 14.

VIDEOGRAPHER: I was trying to look for it too.

ATTORNEY VEROFF: I think there is two page 14s. So there is a bibliography that directly follows the expert report and then there is the **[70]** citations that are encompassed in Exhibit A, the first page 14.

ATTORNEY TRYON: Thank you, Julie, for helping us out with that. I see it now. I'm sorry for that confusion.

BY ATTORNEY TRYON:

Q. You were going to explain that paper.

A. I'm sorry. Did you ask me to explain the paper?

Q. Yes. You were starting to talk about that, so I would appreciate if you could talk about that?

A. So in this study Middle School kids are recruited to participate in an intervention. They come in and they learn an activity. And they're assigned --- randomly assigned to either caring task involving climate or an ego involving climate. And as they participate across the interventions, their cortisol is measured. Cortisol is a stress hormone and it can indicate that people are experiencing higher stress. And so in this study we found that athletes in the

caring task environment climate, their cortisol levels actually decreased, right, suggesting that they were not stressed. In addition they had more fun, they indicated they tried harder, they made more progress learning the activity, they experienced, you know, less shame, less **[71]** embarrassment, less anxiety. That is what I'm recalling from memory, okay. There are probably a couple of other things.

And if they participated in an ego involving climate you got to flip all of those. They didn't have as much fun, didn't indicate that they wanted to continue with the activity and their cortisol levels were significantly higher than those in the other group. And the results were consistent for males and females. What I would have to go back and check is were there any --- going back to these slight mean differences, were there any differences between the males and females in the other variables. And that I couldn't tell you without reviewing it. But in general, the purpose of the study was to see how this environment affects kids and the results were similar for males and females.

Q. And what age group was that?

A. This was Middle School, so six, seven and eight graders. I think it leaned heavier on the six grade, seven grade participants, but the mean age was probably 12.

Q. Any other papers in your bibliography talking about whether or not there is a difference between males and females and how they are motivated, if there is any **[72]** difference between them that is?

A. Yeah. I think with any of these studies, honestly, I just have to go back and see if there were any minor little differences between gender, but across gender the results are consistent.

Q. Okay. All right. Let me ask you, have you prepared any papers regarding motivations for biological boys identifying as girls?

A. I have not.

Q. Have you prepared any papers regarding transgender girls?

A. I have not.

Q. Have you studied that issue?

A. No.

Q. Would that be something worth studying?

A. It could --- I'm sorry. Could you repeat that?

Q. Motivation regarding transgender girls?

A. Yes, it could be valuable.

Q. As far as you know, has anyone studied that?

A. Yeah, I --- you know, I hear people saying, you know, that there is just going to be more and more research coming out. I think there is isolated papers out there probably that people have had a look at or --- **[73]** but I couldn't name them right now for you.

Q. Have you prepared any papers regarding coaching transgender girls versus biological girls?

A. I have not.

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. Are you aware of any studies that do address that?

ATTORNEY VEROFF: Objection.

THE WITNESS: No.

BY ATTORNEY TRYON:

Q. Have you prepared any papers regarding the opportunity for collegiate athletic scholarships motivates student athletes?

A. Have I prepared any papers?

Q. That is my question.

A. No.

Q. Would you agree that the opportunity for collegiate athletic scholarships does, in fact, motivate the student athletes?

A. Some student athletes.

Q. Now, you qualify that as some. Any idea what that percentage might be?

A. No.

[74] Q. Are you familiar with Title 9?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes, to some degree.

BY ATTORNEY TRYON:

Q. Tell me what your understanding of Title 9 is in the context of girls sports.

ATTORNEY VEROFF: Objection.

THE WITNESS: More opportunities are provided to girls to the same degree as boys and that fairness is given across other aspects of resources and so on, facilities and things like that.

BY ATTORNEY TRYON:

Q. Have you ever written any papers on Title 9?

A. No.

Q. Have you written any papers on college scholarships for girls?

A. On college scholarships for girls?

Q. Yes.

A. No.

Q. So you wouldn't be an expert on that, would you?

A. No.

Q. Have you submitted any comments to the Department of Education on proposed rules or regulations under Title 9?

[75] A. No.

Q. Let me ask you a question a little bit different than the one earlier. Can the opportunity for scholarships for girls collegiate sports be a motivator for girls to compete in girls sports?

A. It can be for some athletes.

Q. So in paragraph 11 of your expert report, which is Exhibit-2, it says on the national level I've served with the Association of Applied Sports --- Sport Psychology, AASP, as a member of the Program Review Committee. That is correct, isn't it?

A. Yes.

Q. It's my understanding that the purpose of that organization is primarily to help train coaches. Is that fair?

A. No, that would be not accurate.

Q. Tell me the purpose of it.

A. Okay.

It is an organization of professionals that work in the area of sport and exercise psychology and to say there's probably two aims, that these professionals are trying to help people, a wide variety of people across the lifespan reap off the benefits from participation in physical activity and also help people perform up to **[76]** their potential or help them perform better. It is a mix of the organization. There are people who are faculty members and people that are involved in the team, are involved in programs but there's also people that are trained on the clinical side or that are more focused on sort of counseling aspects of sports psychology.

Q. Are you actually a member of the organization?

A. Yes, I am.

Q. Now, on the website it said that there is 2900 members in 50 countries. Is that about right to your knowledge?

A. That sounds right.

Q. So I divided that out. That would be 58 per country. That doesn't sound very big per country. So let me ask you, do you know how many of those are members are in the United States?

A. I don't know. I would guess it's heavily weighted in the U.S. I would say over half. I think there's a lot of countries that might have one person or so. So even though 50 countries are represented, you know, some of them are small and may have a really small participation, right.

Q. Okay. Fair enough.

[77] So you mention in this paragraph the certification exam. So there is a certification exam. Is that right?

A. Yes. It's pretty new. There has been a certification. The fact that it is exam based is a new direction over the last few years.

Q. What is the purpose or meaning of that certification?

A. It's called CMPC, Certified Medical Performance Consultant, and it is good for the field because the people who have that credential, it designates sort of, you know, acceptable level of competence to go out and to work with athletes and coaches. So there is a number of courses people have to have. They have to have hours of training working directly with athletes. And then when they complete all those requirements they take --- they take an exam.

Q. Have you taken the exam?

A. I'm --- I'm about to in the coming months. A little back story on this is that the certification originally came out as I was wrapping up my doctoral training, and I would have needed to stay another year to get the other requirements that I was missing and my doctoral advisor at the time said, you know, yeah, I'd [78] just go and graduate and get rolling in your career. And she wasn't sure if this would take off or how big a deal it would be, and so over the years it has been sort of slow to take off. I have, for example, people come and say do you have this AASP Certification until the last year or two. So I think the public is becoming, you know, more aware of it.

I was asked to write the chapter in the Essentials Text, which is really the text for people to prepare for the exam. And so I was asked to write the motivation chapter, a key chapter on motivation theories. And so there's this double blind system on writing one of the chapters that I needed to wait longer to actually take the exam. But currently I'm

an approved mentor to train students who are seeking the certification.

Q. But you don't have the certification at this point.

Correct?

A. Right. Just as a mentor. I have --- I received all the thumbs up on every --- on --- you know, you submit a packet of materials showing you have all the credentials and all. So I've done that. I just need now to sit for the exam. And I haven't done that yet. **[79]** I will probably do it once the semester is over.

Q. Do you consider yourself an athlete?

A. I'm smiling. I do.

Q. Okay.

A. I work closely with the Women's Inner Sport Network in Kansas City and they say that should be the mantrA. Every female should say I'm an athlete. I'm not currently competing.

Q. Okay. What sports have you participated in?

A. Tennis and softball were my primary sports.

Q. And when did you compete in or participate in those?

A. Softball was kind of a Middle School thing and I transitioned to tennis as I hit high school and competed through high school and college and then probably through my 20s still competing in tournaments around the state.

Q. So after college were you still competing in some fashion?

A. I was, yeah. Just one of the nice things about teaching and you have that summer break. And my friends

enjoyed playing so we would play in tournaments around the state.

[80] Q. Did you want to win?

A. I did.

Q. And so were you --- let's go back to the terms you already mentioned, like ego oriented and task oriented, right?

A. Uh-huh (yes), yes.

Q. And so tell me just in layman's terms what those mean.

A. Okay.

They were developed in a theory by a guy named John Nicholls and he said --- what he was really --- the question he was trying to address is what should we be doing if we are trying to help every athlete reach their own potential. And so his theory it has three facets to it. One is the goal orientation and those refer to your personal definition of success. And so some people --- he identified two, task orientation and ego. And people who have a high task orientation, they really feel most successful when they can walk away knowing they gave their best effort and they're focused on their improvement over time. But that is where genuine feelings of success come.

In contrast, some people have a strong ego orientation and they're more focused on how they compare [81] to everyone or are they winning. And they may say, yeah, good for me, I tried hard, who cares. What I care about is how did I compare to everyone. Did I demonstrate confidence? Did I look better than others, did I win?

Q. And can somebody have both an ego orientation and a task orientation?

A. Yes. They can be high in both, high in one and low in another.

Q. And when you were playing tennis, were you --- which one were you? Ego oriented or task oriented?

A. I think I've always had a high task orientation. I just loved sport and the chance to complete, and I would say I had a moderate ego orientation.

Q. Is one better than the other?

A. It depends what your aim is. If we want athletes to have fun and to keep playing and to try hard to have good relationships with others and to be good sports, then we should try to promote task orientation because ego orientation is not related to those things pretty consistently.

Q. And under your theory then should we try to suppress ego orientation?

A. No. I think the second part of the theory is **[82]** what kind of environment we create for our athletes, and so the research is very strong in this area suggesting many benefits when we can create a task and a caring climate for athletes. So the problem with the climate for a coach is that you really need to pick what am I going to do because you can't do both or it becomes a wash or a neutral environment. So those features of each of the climates, they're really in direct contrast with one another.

Q. When you say you are an athlete, what does that mean to be an athlete?

A. You know, for me it means someone who just loves having the opportunity to do their best and to try and improve and to walk away on one --- you know, today I'm going to go out there, I'm going to give my best and tomorrow I'm going to get up and go do it again whatever

happened, right, because there is just so much fun and joy that comes from having that opportunity.

Q. So just as I recall you said you do like to win, right?

A. I do.

Q. And you can like to win and want to win whether you are personally ego oriented or task oriented, right?

A. Absolutely. I mean, who plays sports and [83] doesn't want to win. I mean, that's just sort of a given. What does winning mean for us, right? Is it a chance for me to kind of put my chest out and say I'm better than you, I beat you, or is it kind of a celebration of me being able to say, boy, I've worked hard and I can see I'm improving, right.

Q. Right. But if you are in an environment where you basically are prevented from winning, that would be very discouraging. Right?

A. I'm not aware of any of those environments where you are prevented from winning.

Q. Well, what if the coach doesn't let you play?

A. Does that mean like you're not a starter or --- is that what you're referring to?

Q. Well, if you are just a bench warmer, would that be discouraging to some people?

A. You know, this comes back to the climate. If a coach is saying you're an important part of this team which is one of the features of a task and caring climate, right, you're valuable, you push everybody, your opportunities are going to be coming. And what it's really about is let's do all we can to help you keep developing, right. If we are just like, hey, [84] please stay out of the way, go sit at the end of the bench, go down to the end of the court because

I'm working with these few star athletes I've got here, then yeah, it would be discouraging.

Q. Would you agree that rules are important in sports?

A. Yes.

Q. So you mentioned you have played tennis and softball. And what other sports are you familiar with?

A. Played a little bit of volleyball going through --- yeah, you know, I grew up in Texas and tennis is just a year-round sport, right.

Q. Right.

A. So that is a lot of my experience. My son is a baseball player, so I've watched an awful lot of baseball as well.

Q. Are you familiar with track and cross-country even though you haven't done it?

A. Yeah, yes.

Q. Are you familiar with football?

A. Yes.

Q. So how about basketball?

A. Yes.

Q. Who is going to go on in the final four?

[85] A. Absolutely. A little excitement here in town.

Q. Yes. So do sports have to be athletic to be sports?

ATTORNEY VEROFF: Objection.

THE WITNESS: Do they have to be athletic?

BY ATTORNEY TRYON:

Q. That is my question.

A. Okay. I think it just depends on how you define athletic.

Q. Well that's what I'm wondering. So for example, are video games sports?

A. You know, some universities are considering those. They have sports teams and they are considering that part of the athletics. It's not my particular area of interest.

Q. Okay. So some sports are solo and some are with teams. Is that a fair statement?

A. Yes and no. Again, I would say it is how you define it, right. If you are going to say a track team with the best individual, I would say there is relays **[86]** and it depends how the coach approaches it. Are we just a lot of individuals doing our thing out here, are we a team working together?

Q. Well, when you --- so that may be in high school there is teams. But outside of high school or college there are sports you participate in that, for example, a marathon, you could be on a marathon and simply you're participating as an individual, right?

A. Uh-huh (yes), I agree.

Q. And but --- so some athletic events can be done without being on a team. Are there others that you can think of besides marathons?

A. Sure. As people graduate and they can run races, yeah, they can participate in weightlifting.

Q. And a lot of these things ---?

A. They could have ---.

Q. Sorry to interrupt you. Go ahead.

A. I'm sorry. They could swim. I'm just throwing out another one.

Q. Yeah. So swimming is both --- you do it as a sole --- as an individual but also as part of a team in high school and college, right?

A. Right.

Q. And both cases you, as an individual, want to [87] win in these sports but also you're trying to help your team win. Is that a fair statement?

A. Yes, at its best.

Q. And there is sometimes when you feel like running, it can be something you just like to run. You don't have to be on a team or you can compete, you just run on your own, right?

A. That's true.

Q. I see little kids, why walk when you can run. So that's something that you can do alone or you can do with your family, right?

A. Uh-huh (yes).

Q. Is that a yes?

A. Yes, sorry.

Q. Thanks. And it's something you can do either competitively or not competitively, right?

A. Yes,

Q. Now when you're on a team, for example, a track team, you're competing against other people on your team. Is that right?

A. Again, I would just say --- I would just check --- that is not how I would phrase it if I were a coach, that

we're competing against each other. I would say we [88] are a team and we are working together to bring out the best in each one of us, but the goal is every athlete reach their potential.

Q. But every one of those kids on a track team still wants to be the best on the track team as a general rule, right?

A. I don't know that that is necessarily true, but I think they want to compete and they want to do well. I would agree with that.

Q. I probably overstated that, but many of them --- at least some of them want to be the best on the team, the fastest on the team, right?

A. Yes.

Q. So those are the people that are comparing themselves to others and just want to be --- so they would be ego centered, ego oriented. Is that right? But not necessarily?

A. Yeah, not necessarily.

Q. Okay.

A. Do you want me to comment on it?

Q. Sure.

A. Okay. If I could just use an example. Like a track athlete, Al Oerter was an athlete in the '50s and '60s, [89] he won four gold medals consecutively across four Olympics, it's crazy, throwing the discus. And he said --- a reporter asked him how did you beat the world, how were you so great, how were you better than everybody else these four Olympics, and he said --- his response was like that's nonsense. It is never about being better than somebody else. It's about being the best that you can be,

right. And so what if is just good enough. What if I beat you, good, but maybe I can be so much better than that. So for my sights to be set on just being better than you it is limiting, right. And if you are so much better than me and so much less talented, why don't I just focus every day on being the best that I can be, right. So Al Oreter, you think four time Olympic gold medalist, he's got to be high on ego orientation. He's somebody who's really high in task and would have been lower. But we could look at other athletes that would be the flip and definitely. So when you say athletes who want to win that doesn't distinguish the task and ego aspect of it.

Q. So task and ego orientation doesn't affect somebody's desire to win. Desire to win is separate from the ego versus task orientation, that's what you're saying, right?

[90] A. I think it comes down more to what does winning mean.

Q. All sports have rules, we've established that, right?

A. Uh-huh (yes).

Q. Is that a yes?

A. Yes.

Q. The purposes of the rules is, one, tells you how to play the game, right?

A. Yes.

Q. Another is for safety. You have rules for safety, is that right?

A. Yes.

Q. And you have rules to make things fair, right?

A. Yes.

Q. What other reasons do we have rules in sports? Does that cover it?

A. Nothing else comes to mind right now.

Q. Who generally makes rules for sports?

A. The leagues and sports organizations per se.

Q. Would it be fair to say that the participants rely on the rules?

A. Rely on the rules?

Q. Yes.

[91] A. Fair to say that participants when they join a league or, you know, their understanding that there are rules that they need to abide by.

Q. And they expect that others have to abide by those same rules; right?

A. Yes.

Q. And it is important to have consistent rules, rules that don't change periodically, right?

A. I think rules change all the time in sports.

Q. Why do they change?

A. I think they change because they are recognizing those things that you mentioned that maybe something would be safer or something would be more fair or more inclusive.

Q. And sometimes those changes are made in anticipation of problems, not waiting for problems to happen. Is that fair?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I'm not sure.

BY ATTORNEY TRYON:

Q. Okay. What about safety, rules for safety, do sometimes safety rules anticipate problems and sometimes **[92]** they react to problems that have already occurred?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. Is that a yes?

A. Yes.

Q. And then how about fairness, we have rules designed for fairness and those are sometimes set in motion because of something that has happened, right?

A. Uh-huh (yes).

Q. Yes?

A. Yes.

Q. And other times it's in anticipation of problems that we see might come down the road but we want to set rules for fairness, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. And in all sports there is scoring, right?

A. Yes.

Q. That is part of the rules, right?

A. Uh-huh (yes), yes.

Q. And those scores decide who wins, right?

A. Yes.

[93] Q. Would you say scoring is a motivator?

A. For some athletes.

Q. When an athlete perceives something as being unfair, that's a de-motivator, would you agree?

ATTORNEY VEROFF: Objection.

THE WITNESS: In some cases.

BY ATTORNEY TRYON:

Q. So sports also have rankings, individual rankings and team rankings, right?

A. That's right.

Q. And for some athletes those rankings are motivators, right?

A. Yes, for some.

Q. And sports, you give out trophies for winners, right?

A. I'm sorry. You broke up.

Q. In sports we give out --- at least in some cases we give out trophies to winners, right?

A. In some cases.

Q. So let me see if I understand. Are you advocating that sports should eliminate scoring?

ATTORNEY VEROFF: Objection.

THE WITNESS: No.

BY ATTORNEY TRYON:

[94] Q. Are you advocating that they should eliminate rankings?

A. I don't think it would hurt at lower levels. I don't think we need to have have a focus on that when you're five or six years old, on rankings, and we ought to be focused just on learning the game and having fun, but in general I'm not opposed to us having --- identifying winners and ranking teams and so on.

Q. And sports teams, the coaches decide who plays in different positions in different games. Is that right?

A. That's right.

Q. And should how good the student athlete is have anything to do with when, where and how to play according to the coach?

ATTORNEY VEROFF: Objection.

THE WITNESS: Should the athlete's talent have something to do with how much playing time they get?

BY ATTORNEY TRYON:

Q. That would be a fair way to characterize my question, yes. What is your answer?

A. I would agree with that particularly as we move up in levels. I really like the rules that some youth **[95]** sport leagues have that we have eight-year-olds and we're not just going to say, hey, Julie, you're on the bench because you're not as good so you don't get any playing time. I like the rules that say everybody gets in there a few innings and gets some playing time or gets to bat, or whatever the sport might be. So I think it really varies on what sport we are talking about.

Q. Let's look back at your report, Exhibit-2. Look at paragraph 35. Do you see that?

A. Yes, I do.

Q. The first sentence says, thus the benefits associated with youth and young adult sport are not limited to whether athletes are winning competitions, where they are ranked in their sport or what level of publicity they are getting. Do you see that?

A. Yes.

Q. So you would agree with me that one of the benefits is the opportunity to win competitions. Right?

A. I would probably word it one of the benefits is the opportunity to compete.

Q. Well, here you say winning. You say it is not limited to whether athletes are winning, which suggests **[96]** that winning competitions is one of the benefits. Correct?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah. I think what I mean by that is if only --- if you have to win to have a great experience in sports, then half of our teams are not going to have a good experience, right. So what I'm suggesting here is that and as the data backs this up that if you are in a good climate, then you can go out there and have fun and try hard and maybe your team didn't end up with a winning record, but you can still reap the benefits. And so it is not the case that only winning teams reap these benefits that come along with sports.

BY ATTORNEY TRYON:

Q. So you are saying winning is not a benefit?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm going to say winning can be a benefit. It's not a primary one in my mind in sport, but yes, winning can help us see our improvement and, you know, winning has its place for sure.

BY ATTORNEY TRYON:

Q. And you see athletes when they win, they are pretty excited, aren't they?

[97] A. Many of them are.

Q. Well, have you ever seen anybody disappointed about winning?

A. Maybe not disappointed, but if --- let's just say you are really skilled in tennis and you come and you know, you leave me behind, you beat me 6061, there might not be a lot of joy for you in beating me, right, but for some athletes it might be, hey, it's another win for me and I'm super excited about that. So that is what I mean.

Q. And where they're ranked in their sport, that is one of the benefits. Right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I think we may have a different view on benefits. With benefits I'm just thinking what's going to help us long term. And it reminds me of this Olympic gold medalist who said her kid was going through kind of a junk drawer and found her gold medal, right. So winning --- she's a gold medalist, didn't mean as much as all the experience and just reflecting on the ability to give your best effort and to build these relationships and to push yourself so hard. Those seem like benefits more than, you know, the **[98]** trophy or something winning. I'm not disputing that winning, yeah, can be fun and it is definitely part of sport.

BY ATTORNEY TRYON:

Q. Yeah. And so all those things you just mentioned certainly are benefits to sports. I'm not trying to suggest that's not the case. I just want to understand when you say

in this paragraph, thus benefits associated with youth and young adult sports are not limited to whether athletes are winning competitions, where they are ranked in their sport or what level of publicity they are getting, it's not limited to that, but it does include those three things, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm going to give you that those are benefits. I'm just going to put them down lower on what we value.

BY ATTORNEY TRYON:

Q. Okay.

A. Or more important benefits.

Q. Is the opportunity to get a college scholarship also a benefit in youth sports?

A. For a very small proportion of children in youth --- in our youth sport world are able to secure college **[99]** scholarships and go on, and so our youth sport world shouldn't be centered around that I believe.

Q. But for those that want to and can get college scholarships, that is a big benefit for them, right?

A. Yes, that's very cool.

Q. And it can be worth tens of thousands of dollars, right?

A. Yes, it can.

Q. And even just being recruited to play on a college team, that's a big benefit for high schoolers, right?

A. Yes, for some.

Q. Well, right, for some. And in order to get there you need to be able to --- have the opportunity to --- well, strike that.

And for obviously a smaller minority still the opportunity to ultimately go on and play professional sports, that is another benefit, right?

A. Yeah, it's a benefit for such a small proportion that, again, I would just say that's not how we should set up our sports world, for those few.

Q. I understand that, but nonetheless there are many who never get to that place, but that's what they strive for and that's one of the reasons why they are in **[100]** sports, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think there could be people like that for sure.

BY ATTORNEY TRYON:

Q. And same thing with scholarships, there are a lot of kids that want to get scholarships, they may not get them, but they're in sports because they want to get that scholarship and they think they'll be able to. Fair statement?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I'm not sure what the percentages are. There are probably a lot more who would like to have a college scholarship who don't receive them because of the small proportion who do, right. But definitely. That's called extrinsic motivation. If I'm just playing a sport because that's the --- that's what I'm going for is a scholarship, yeah, there could definitely be athletes focused along those lines.

BY ATTORNEY TRYON:

Q. And would you agree that colleges generally select scholarship athletes from the pool of people that are actually playing high school athletics? That is a **[101]** correct statement, right?

A. I would say the majority have played high school athletics, yes.

Q. And those that are seeking that scholarship are athletes who use their high school performance to compete for college scholarships, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes, probably many do.

BY ATTORNEY TRYON:

Q. And the market for athletic scholarships is, in fact, competitive, right?

A. Many schools it is. Definitely not all schools, though.

Q. Okay.

What would it be otherwise?

A. I think some of the --- some smaller schools just will --- we have a local college that will give students like $8,000 or $10,000 a year towards their tuition fees if they participate on a sport team. And of course, you know, there has to be some level of skill there, but I wouldn't --- it is a good place for people who want to continue to play a sport but may not have the highest skill levels and definitely aren't being recruited at the division --- for the most part, a **[102]** Division I level or something like that.

Q. But they still compete for that scholarship, fair enough?

A. Yes.

ATTORNEY VEROFF: We've been going for a little over an hour. I just wanted to check in see, David, if you have a sense of when you are wrapping up this module. Maybe it would be a good time to take a break.

ATTORNEY TRYON: Yes, give me another five minutes and we can break if anybody wants to.

ATTORNEY VEROFF: Great.

ATTORNEY TRYON: Well, we can break right now. I'll leave it up to the witness. I'm not going to force it upon the witness or Plaintiff's Counsel. Would you like a short break?

THE WITNESS: That would be great. Thank you. ATTORNEY TRYON: Let's go back how about 20 till. Does that work?

VIDEOGRAPHER: Going off the record. The current time reads 12:32:00 p.m. Eastern Standard Time.

OFF VIDEOTAPE

---

[103]

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 12:41 Eastern Standard Time.

BY ATTORNEY TRYON:

Q. So let me then ask you, Professor Fry, have you heard of the International View for Sociology of Sport?

A. That journal?

Q. Yes.

A. Yes, I've heard of it.

Q. Okay. Are you familiar with Warren Whisenant?

A. No.

Q. Okay.

How about Jeremy S. Jordan?

A. No.

Q. Okay. Fair enough. Let me show you Exhibit --- if we could mark this, I guess we're at Exhibit 6, Fairness and Enjoyment in School Sponsored Youth Sports. If you could bring that up, Jacob.

(Whereupon, Exhibit 6, Fairness and Enjoyment in School Sponsored Youth **[104]** Sports, was marked for identification.)

ATTORNEY TRYON: Jacob, if you could just put --- I think we've done this before. Put this in a PDF in the chat box, can you do that?

VIDEOGRAPHER: Yes, I just have to do that while it is not being shared and then I can share it again.

ATTORNEY TRYON: Okay.

Well I think we can just share it for now and then we can put it in there. If not, then if we need to, we can do it.

VIDEOGRAPHER: Okay.

I mean, I already have it dragged in.

ATTORNEY TRYON: Great. It doesn't take long at all. Great.

BY ATTORNEY TRYON:

Q. So have you ever seen this article before?

A. I haven't. Can you enlarge it a little bit? And what year was this at the top?

Q. It looks like 2008.

A. Thank you.

ATTORNEY VEROFF: If you give the witness a minute if she wants to scroll and get a sense of what **[105]** this is.

BY ATTORNEY TRYON:

Q. Well, before I ask you any questions about this let me just ask you some questions overall. Would you agree that fairness in sports is an important value?

A. Yes.

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. And have you done any research on the issue of fairness and sports?

A. No. I'm just hesitating because we have included measures of sportspersonship, being a good sport. So if you include that then, yes. But in general, just fairness, I would say no.

Q. Okay.

Have you read any papers that specifically focus on fairness in sports?

A. You know, probably, but I couldn't name them.

Q. Okay.

Let's go down to --- I really only have one question here, which we'll look at and then if you want to review more of the article you are certainly welcome to do that. But if you go to what is labeled as page 97 at the top.

[106] A. Could I just read the abstract first? Do you mind?

Q. Yes.

VIDEOGRAPHER: If you need that made bigger, let me know.

THE WITNESS: Maybe one more notch up. Thank you.

VIDEOGRAPHER: You're welcome.

THE WITNESS: Okay.

BY ATTORNEY TRYON:

Q. If you turn to 97, and the third full paragraph on that page it says an organizational climate embracing fairness is a critical factor influencing student athletes' attitude towards the sport they participate in and their desire to continue participation. Do you agree with that statement?

ATTORNEY VEROFF: I will just remind the witness if she would find it helpful to read more context around that statement before you answer, you're welcome to do so.

THE WITNESS: Yes, I think it would be helpful to look at how they measure fairness and, you know, the methods used in the study, but in general I can imagine that, yeah, that this is true.

[107] BY ATTORNEY TRYON:

Q. Okay.

You don't --- just as a general statement you don't disagree with it?

A. Right.

Q. So I'm not going to ask you about any of their results or anything else, I just wanted to get your reaction on that statement. And you are not offering any expert opinion on fairness in sports.

Right?

A. That's right.

Q. Are you offering an expert opinion on whether or not HB-3293 is fair?

A. I'm --- I believe that the sport organizations at every level really value being inclusive and it would be harmful to exclude athletes where they wouldn't have an opportunity to reap the benefits of sport.

Q. And there are a lot of things that go into fairness, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. And it requires balancing of interests of various people and groups and values; right?

[108] ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. You have not attempted to do that balancing in connection with HB-3293, have you?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I think my expertise is to weigh in on all the benefits that athletes would not have an opportunity to reap if they weren't able to participate. But I think there are people who know a whole lot more more with any sport about how to keep making the rules fair for everyone.

BY ATTORNEY TRYON:

Q. Okay.

But just to be clear you have not attempted to do that balancing with HB-3293?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm not sure I understand the question.

BY ATTORNEY TRYON:

Q. Okay.

Let me try again. We established that fairness depends on balancing a lot of interests and views of different groups, different people, right? **[109]**

A. Yes.

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. And that balancing, you have not attempted to do with respect to 32 --- HB-3293.

Correct?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think it would be unfair to categorically exclude a group of athletes from having the

opportunity to participate. So I'm not sure if that --- if you interpret that as balancing or not balancing.

BY ATTORNEY TRYON:

Q. Have you balanced the interests --- have you looked at the interests of other people in that decision that went into 32, HB-3293?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes, I think this House Bill is not fair to transfemale athletes.

BY ATTORNEY TRYON:

Q. Okay.

We will move onto that in little bit then. What is your qualifications to determine fairness?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think I was called to be **[110]** an expert witness in this case to speak to the many benefits that come from participating in sports. And so from my experience as an athlete and a coach and a scholar in this area I think I have, you know, insight and can speak to the many benefits and how we should do all we can to prevent --- or all we can to not exclude athletes from having the opportunity to participate.

BY ATTORNEY TRYON:

Q. You said you are a tennis player, right?

A. Yes.

Q. When is the last time you played tennis?

A. I --- there's a wall right outside my office, and so I hit on a backboard. I haven't played a match in a little while. I'm not sure the last time was.

Q. And when you played --- the most recent time you played competitively, was that in a league or how does that work?

A. I haven't played leagues in a while. It was just for fun. I'd play with a couple of my friends, when we go to conferences, we bring our racquets and we get together and play. I've moved into, you know, other exercise forms now and I swim and hike and so on.

Q. And so when you were playing tennis, team, is that what it was, on a team? **[111]**

A. Uh-huh (yes), yes.

Q. What team was that?

A. I played USTA leagues. Those are for adults. And after college, you know, there is just like a circuit in Texas that you can sign up for tournaments all around the State and play and go for ranking.

Q. But in college you played, right?

A. Yes.

Q. And was that on a girls team or a mixed team or what? I don't know much about tennis so I'm just trying to understand that.

A. Okay.

There was a men's and women's team. We had a head coach for both and assistant. Maybe in the last year there were separate head coaches, but we worked out together. We traveled to tournaments together. When you add up the score you got to --- you got to --- the women had a score and the men had a score, so it wasn't a total team win like that.

Q. Okay.

So if you're on the women's team and you go up against some other team and they just said we're going to have boys, we're going to have men participate in the women's team against you, you wouldn't have thought that **[112]** was fair, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Well, I'm assuming you mean transfemales playing and ---?

BY ATTORNEY TRYON:

Q. I do not mean that. I meant exactly what I said. If you go to compete against another team and that team says we have two men, biological men, and they are going to compete against you, you would have said that is not fair, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: I would have said --- sorry.

ATTORNEY VEROFF: That is all right.

THE WITNESS: I think I would have said what are the rules, right. And if the rules are that somebody could play, then I would say bring them on, right. And if the rules are that they can't play, then I'd say, yeah, we probably shouldn't do it that way until the rules change, right.

BY ATTORNEY TRYON:

Q. So whatever the rules are by definition are fair, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: No, I didn't say that. I'm **[113]** sorry, Julie.

ATTORNEY VEROFF: No, that's quite all right.

THE WITNESS: I didn't say the rules are always fair, but I think we have to start somewhere and we have to acknowledge them and respect them.

BY ATTORNEY TRYON:

Q. Well, if they said we are going to have these men compete against you and they just changed the rules on you, wouldn't you object to the rules being changed?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah. You know, in the context of what is taking place that seems not like a very realistic example in my mind. So I'm not sure I'm thinking about it.

BY ATTORNEY TRYON:

Q. So you don't want to answer my question?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I think it's --- I think what we are talking about is just more complicated, right, and it is not just --- if we are talking about transfemale athletes, I think we are talking about a different ball game than you are.

BY ATTORNEY TRYON: **[114]**

Q. Yeah. Well, I was not talking about them, at least not yet. I'm just asking if suddenly men are allowed to compete against women in tennis, whether or not they identify as female, do you think that would be fair to the women?

ATTORNEY VEROFF: Objection.

THE WITNESS: Again, I would just go back to the rules. But just in general, that if I decide today, hey, I will go --- we have a really weak men's tennis team, so today I

think I'll go play on the males tennis team, yeah, I don't think that would be right, right, that I could switchover to win. Right. The point is can people be their genuine, authenticate self and play with a gender identity that they have.

BY ATTORNEY TRYON:

Q. So I mean you're answering your own question your own way, but so that's fine, but you have also said that you think HB-3293, which sets a rule, you think that rule is unfair, right?

A. Yes, I do.

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. But the legislature balanced a lot of different interests in making that rule, right? **[115]**

ATTORNEY VEROFF: Objection.

THE WITNESS: I don't know. I don't know that that is true.

BY ATTORNEY TRYON:

Q. You don't know one way or the other what interests they balanced, right?

A. I don't know what their ---.

ATTORNEY VEROFF: Objection.

THE WITNESS: --- I don't know what their knowledge base is or their real involvement. I don't know if they've taken a close look. It looks like in this situation, that PBJ (sic), that people close to it are saying, hey, let's let this child play, right, and, you know, the world is not going to end and kids can have good experiences and we can --- we can go. So yeah, I can't speak to what the

legislators have --- the background they've done or their mindset.

BY ATTORNEY TRYON:

Q. Do you think that the legislation, this legislation should be tailored to each individual?

ATTORNEY VEROFF: Objection.

THE WITNESS: No, no. I think the sport organizations at every level, from the Olympic Committee to the NCAA, all of them are saying we really value **[116]** being inclusive and let's do all we can to, you know, balance these things and make things fair but also being inclusive and not totally excluding a group of athletes.

BY ATTORNEY TRYON:

Q. So what would be the rule that you would set up for high school for transgender people --- let me rephrase that. What would be the rule that you would set up in high school sports for a male who expresses that he is now identifying as female should be allowed to participate in girls sports?

ATTORNEY VEROFF: Objection. Go ahead.

THE WITNESS: Yeah, I think we should rely on the experts and the medical doctors and the exercise physiologists who really study this and can say, hey, across these sports this is --- seems to create a fair playing ground. I think, you know, it sounds like our local weatherman, we have incoming data, right, but this is relatively new in the sport world and I think all of these researchers are gathering more data all the time that is going to help inform these decisions moving forward on how we create it. So you know, I'm not an expert to say, hey, what would those exact guidelines be, but just to have a blanket exclusion of all we set the stakes to do a lot of

harm, **[117]** and BPJ would be a recipient of that harm in my opinion.

BY ATTORNEY TRYON:

Q. So we should rely on experts about safety for one thing, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. And we should also rely upon experts in performance, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. So you keep focusing on BPJ, so if we are going to focus on each individual, we have to have in each sport an example of someone who is a male identifying as a female has to be individually evaluated to determine whether that person should be allowed to participate in whatever sport that person wants to be in?

ATTORNEY VEROFF: Objection.

THE WITNESS: No, I didn't say that. And it may be just we could have general guidelines at the high school level. I'm just saying I'm not --- that is not my expertise as on the performance and exercise physiology of it all to think what would be fair. I **[118]** think as we branch up and get to more elite levels, then that seems to be the direction that NCAA is going, that, hey, let's pull in these national governing bodies across the sport because they know the sport the best and are in the best position to maybe offer those guidelines.

BY ATTORNEY TRYON:

Q. Do you have an opinion about other --- well, we will get to that later. Let's go back to your report and if we could go to after paragraph 17. Well, that doesn't seem right. There we go. Okay. The title of this section on top of page five it says Focusing Solely on Performance Outcomes Undermines the Benefits of Sport for Youth and Young Adult Athletes. Do you see that?

A. Yes.

Q. Are you aware of any middle schools, elementary schools or high schools that focus primarily on outcomes?

ATTORNEY VEROFF: Objection.

THE WITNESS: No.

BY ATTORNEY TRYON:

Q. Are you aware of any surveys or studies of middle schools or high schools that find out if there are any schools that focus solely on performance **[119]** outcomes?

ATTORNEY VEROFF: Objection.

THE WITNESS: I would just say that it depends what we mean by solely focus on performance outcomes. I think there are coaches out there that absolutely that is their primary thing and they care less about the hollistic, you know, wellness and just the overall experience of their kids and they are just trying to put the team together that is going to give them the best chance to win.

BY ATTORNEY TRYON:

Q. What coaches are you aware of in high school that do that?

A. Just in my experience across years. I see --- I see coaches that are very focused on winning that use a lot of

punishment for mistakes and that seems to be what drives them.

Q. And so you believe there are coaches out there that focus solely on performance outcomes for youth and young adult athletes?

A. Yes, it just seems like a weird way to talk about it, that I'm not sure when --- I mean to put a percentage, if you're asking that, so are there coaches that 100 percent they're just focused on winning and **[120]** winning only, I'm not sure. I think there are probably coaches out there that are.

Q. Sorry. Go ahead.

A. Yeah, probably most, you know, it's not a 100 percent, but when we say primary that that's what's really driving the boat for them. I think there are coaches out there.

Q. Well, you didn't say primary. You said solely. Those are your words, right?

A. Right.

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. Do you now want to modify that in your opinion?

ATTORNEY VEROFF: I'm sorry, objection.

THE WITNESS: Sorry. I'm just going back to this wording that you're talking about. Are you saying ---?

BY ATTORNEY TRYON:

Q. At the heading. Right about paragraph 18.

A. Sorry. I was looking underneath. Yeah, I mean it in the sense that that seems to be what all the discussion is

about, that all were focused on just this isn't fair in terms of performance, and I'm saying that is missing a bigger picture of what youth sport can be. **[121]**

Q. What discussion is that? You said that discussions all about it. What discussions are you talking about?

ATTORNEY VEROFF: Objection.

THE WITNESS: The idea that it's not fair for transathletes to participate, right. And the only reason that we have any concern about this is from the performance issue. So in this case, I'm just saying if we think about BPJ and her being excluded from having the opportunity to play a sport, there's a lot at stake there as well as the other side is saying, hey, is this fair in terms of performance for athletes, right. That is what I meant by this.

BY ATTORNEY TRYON:

Q. So who is --- but you're not aware of any schools or colleges that have a policy of focusing solely on performance outcomes, right?

A. Right.

Q. But you think the statute, HB-3293 solely focuses on performance outcomes?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm not sure what leads me to say that, but I think the statute excludes a group of athletes and that that would be unfortunate that they **[122]** wouldn't have a chance to just reap these benefits that can come from being a sports team.

BY ATTORNEY TRYON:

Q. So you are not saying that you believe that HB-3293 focuses solely on performance outcomes, right?

A. Okay. I'm not saying that. I think performance outcomes is --- seems to be a piece in it.

Q. Is that an appropriate piece to consider?

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. Let me rephrase that. Is performance outcomes something that's an appropriate thing for a legislature or a school to focus on?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. Now, in paragraph 18 itself, you say, the second sentence, a myopic focus on winning in youth and young adult athletes ignore the other important benefits that school athletics offers young athletes such as teamwork and camaraderie which all advance when all athletes have the opportunity to play the sports they love and reap the benefits of such participation. Do you see that?

A. Yes. **[123]**

Q. When you say a myopic focus, you're not excluding an appropriate level of focus on winning. Right?

ATTORNEY VEROFF: Objection.

THE WITNESS: That's right.

BY ATTORNEY TRYON:

Q. Is there a reasonable variance of opinions in the sporting world --- sports world on what exactly the proper focus on winning ought to be versus the other benefits?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes, I think there is an agreement within our field of sport exercise psychology that at the youth sport level the focus should be on giving as many kids as possible a chance to participate in youth support, right. And then as athletes move up the levels, that there is more emphasis and importance placed on winning.

BY ATTORNEY TRYON:

Q. What do you mean by that, as athletes move up the levels?

A. That typically there's a greater focus in high school than middle school, greater focus in middle school than elementary school, not that they have **[124]** organized sports within their schools, but just compare that to Little League, that as you move up to college, the emphasis on winning may increase and so on.

Q. Thank you. Would you agree with me that there is nothing in HB-3293 that says there should be a sole or myopic focus on winning in any of the sports it covers?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes, I would agree.

BY ATTORNEY TRYON:

Q. And the law doesn't say anything anywhere that there are not other benefits to sports other than winning. Right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right.

ATTORNEY VEROFF: I think if we are going to have any questions about what the law says we should put it back up on the screen.

ATTORNEY TRYON: I don't have any more questions on that.

ATTORNEY VEROFF: Thank you.

BY ATTORNEY TRYON:

Q. Let's look at paragraph 21 in your report. You say there are many benefits to young people from **[125]** participating in athletic activities discussed further herein. Do you see that?

A. Yes.

Q. Is it possible that some young people are actually harmed by participation in athletic activities?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes, I think so.

BY ATTORNEY TRYON:

Q. What are some of those possible harms?

A. Some of those harms might be they have abusive coaches that push them too hard physically, that you know, don't treat them in a developmentally appropriate way, that there --- coaches allow like bullying to go on, that kids are made to feel shame if they don't perform well. Those kind of things.

Q. Outside the coaching, you mentioned bullying. So in sports that happens, right, some athletes bully other athletes, right?

A. It happens sometimes.

Q. And that can have long-term lasting negative impacts, right?

A. Yes.

Q. Are you aware that sometimes those who are athletes also belittle those who are not? **[126]**

A. Yes, I'm aware of that.

Q. Let's move onto paragraph number 23. In paragraph 23 you talked about achievement goal perspective theory, right?

A. Yes.

Q. Does this theory apply to outside sports, say for example, to academics?

A. Yes, John Nicholls actually started there in classroom research.

Q. So goal perspective theory is about goals, right?

A. Yes.

Q. And how to set goals and how to reach goals?

A. Not exactly. I would use sort of another area of goal setting, but goal perspective theory is more about what is our --- how do we define success and how are we kind of valuing what is important in life. Some people think of goal perspective is how we set goals, right, that they need to be specific measurable. That is sort of another part of the literature. And instead, Nicholls is just thinking how to understand people's perspective on what they are trying to get out of things, right. And if you have this task goal perspectives that you are moving through life thinking **[127]** how can I just give it my best and be the best that I can be. And if you are moving through life with an ego perspective, you are thinking, hey, how can I demonstrate my competent --- my competence and show other people I'm better.

Q. And that happens in all aspects of life, right, not just in academics?

A. Yes, it's a pretty relevant theory.

Q. You probably see it in faculty lounges and college boards and you will certainly see it lots of places in academia, right?

A. Right, academia from I'm guessing law firms and probably everywhere we go in the world.

Q. You bet. Absolutely you see it in law firms and pretty much every place, I agree with you.

Let me look at paragraph 24 with you. You say first is the developmental component of achievement goal perspective theory. Young children are incapable of accurately comparing their ability to others, overestimate their ability and are naturally focused on their effort as a marker of success. So I'm not saying that's wrong, but I don't see a source for that. Do you have a source for that statement?

A. I do. Nicholls 1989 and my dissertation. I **[128]** apologize for missing that.

Q. Your dissertation?

A. Yes, I did a --- this was my line of work. Early in my career I did a series of three studies kind of tapping into those, how children gain an understanding of the concepts of effort, luck and ability.

Q. They gain an understanding of concepts of effort, of luck and ability. Is that what you said?

A. Yes.

Q. What does that mean, luck and ability?

A. So when kids are really little those --- they don't clearly distinguish these. So they just think, hey, whoever tries hardest, they are going to do the best, right, and they

don't recognize ability in the same way that we do as we mature over time and that we understand, hey, gosh, you could run circles around me today, you were a much better, faster or stronger runner than I am, for example, right. And that doesn't mean that I can't try harder to improve but our ability levels are really different today.

So in these studies we set up scenarios and we show kids, and so there's kind of a contrast. Somebody didn't try hard at all actually outperformed somebody **[129]** who seems to be focused and concentrating, and we say, you know, what do we think is happening here. And so these concepts are just really blurred and kids are saying yeah, you know, this person is definitely trying harder. I don't know why they didn't perform very well. This person looks like they are not trying hard. But if they both do it again and they try hard then I think they will get the same score. So just this wide variety of scenarios. Kids don't distinguish like luck and ability. So you know, if you're around little kids, you know, they like games like Chutes and Ladders or Candyland. Those are a hundred percent luck games, right. There's no ---.

Q. Now I understand. I thought you said lock, L-O-C-K. You are saying luck, L-U-C-K?

A. Right, right.

Q. Thank you. I didn't mean to have you go on with that long explanation when I just misunderstood your one word. But thank you for that explanation. That helps me understand what you're saying here.

So my --- then I'm just interested in what is it that at some point little kids somehow realize that they have overestimated their ability, is that something that just naturally happens or is it something that other **[130]** people have to point out for them for them to realize it,

whether it be teachers or coaches or just the kids around them?

A. Okay.

So just a quick example. Nicholls would put a list of faces, you know, like generic smiley faces 1 to 30 and you go in with a class of five-year-olds and you interview them one at a time. And you say, okay, this is everybody in your class and they are listed by how good a reader they are, right. And so this person is the very best in your class, right, this person is just the worst reader, this person is the middle. Which one is you? And the mean for kids in kindergarten is like three, which tells us they're all saying well, that's me up there, high, right, I'm the best reader in the class. But as you move through those elementary school years, the mean shifts to like 15 by the time they're say in sixth grade, because when you ask six graders, all right, here's everybody in your class, where do you fit in, they are much more accurate. And when they ask the teachers, there's no correlation, right, with younger kids, because they are all over the place. But by the time you get to the upper elementary grades it correlates highly with what the teachers are saying in **[131]** terms of the kids' reading ability. And Nicholls said this is so key because it makes Middle School a very key developmental period as kids are gaining this understanding all of a sudden now there is a reason to try your hardest or withdraw effort because you don't want to look silly. You know that other people might be more skilled than you. And that's why he was so passionate about this theory. Even though we are capable of looking at the world that way, we all can choose to just stay focused on our effort and ability and being the best that we can be.

Q. So there are people that --- sorry.

A. That is the other piece of the climate, how do we train teachers and coaches to create that environment. That tells people keep that task involvement going.

Q. And there are people that continue to overestimate their abilities throughout life, right?

A. Yes.

Q. And that is exacerbated if those people are never corrected to let them know in some way that their abilities are not what they think they are, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I'd say our bigger **[132]** issue within education is not that kids are overestimating but they're --- you know, don't have as high self-esteem or confidence and those type of things. But are there people out there that could be overestimating? Absolutely.

BY ATTORNEY TRYON:

Q. So Nicholls did the study of academic. Did he do any study athletically?

A. That's where I picked it up and looked in the physical domain and made scenario specific to physical activity and conducted these three studies that looked at effort and luck and ability with kids aged 5 to 12 and sort of replicated his work, and we found that kids move through these same levels of understanding in the physical domain where things are a little bit more obvious for us to see, right. If we're sitting here working on math problems we not be able --- it might not be as evident that, hey, somebody is moving through these and they are stronger, right. But in the physical domain, when we see each other and move and we can see each other's skill levels, in some of these things move a tiny bit faster but it was the same sort of stages of development, if you will.

Q. Is your dissertation cited in your bibliography? **[133]**

A. No, it is not.

Q. Is it in your list of publications?

A. It's in my Vitae.

Q. You have a lot of publications. Can you direct me to it?

A. You're going to go back a ways. Okay. So the dissertation study is on 1997, it's on page six. Fry and Duda.

Q. I see Fry and Duda, 1997.

A. Yes, those are my dissertation studies. And I followed it up with two studies at the top of that page, Fry 2000. There are two different studies.

Q. Okay.

Let me move on to paragraph 25 of your report. I just goofed on my --- there we go. I lost all the pictures, so I couldn't see you anymore. Just one of the hazards of technology. Okay. So I'm looking at paragraph 25 and you talk about task. Here you talk about goal --- primary goal orientations are task and ego orientation, right?

A. Yes.

Q. So you're not saying --- I think you've said this before, but I just want to make sure I understand. You're not saying that ego orientation is bad from an **[134]** individual basis, are you? It just kind of sounds like it's a pejorative. You don't mean it that way, do you?

A. I think it depends on what your aim is and if you have --- if you want athletes to have fun and try hard and have good relationships and, you know, feel good about

themselves, have confidence, have empathy for others, things like that, then it's not something we would want to promote is the orientation because across a wide body of literature those just don't lead to what we call adaptive outcomes, right.

On the other hand, many elite athletes are high in task and ego orientation, right. And the big deal here is that people really need that high task orientation to sustain motivation over time with the ups and downs and overcoming injuries, with all of that, but ego orientation isn't necessarily a bad thing in this case. But it probably isn't great if you don't have that high task orientation to go with it.

Q. So let's move on to paragraph 26. Okay. So in the last sentence, I think it is the next to last sentence. Okay. The sentence that starts when the environment created by coaches and others is a caring environment, do you see that part?

A. Yes. **[135]**

Q. It continues, athletes are more likely to perceive the overall climate as task-involving. A caring environment is one where athletes feel safe, welcome, comfortable and valued and are treated with kindness and respect by all in the sports setting. You wrote that, right?

A. Yes.

Q. And that means a caring environment for all athletes, right?

A. Yes.

Q. And a caring environment also requires rules?

A. Yes.

Q. A caring environment still includes the coach --- let me rephrase that. A caring environment still includes the coach and officials and requires them to make calls that make --- that some athletes don't like and may even get upset, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right.

BY ATTORNEY TRYON:

Q. So how do you square that with a caring environment when the rules are going to make some athletes unhappy?

A. So this is about coaches kind of saying, yes, I **[136]** want to be intentional and I want to do everything I can to create this environment that is going to help bring out the best in my athletes, right, and I don't have total control over what my athletes perceive. I'm just going to do what I can to promote these features that are in the last sentence. I'm also going to get athletes, trying to get them to buy in so that they see how valuable this is if we create this caring task-involving climate. It doesn't in any way mean, you know, we're not going to get a bad call or things aren't going to happen, things don't go our way, somebody starts before I do. Right. All kinds of things. Those are just part of sports, right, but this refers to the coaches buying into this truckload of research that we have that shows how we can help all athletes have a good experience.

Q. You're not advocating for laws requiring a task oriented environment, are you?

A. No. That would be tempting. No. We're just saying if our goal is to help athletes reach their potential, then we have a lot of scholarship to guide --- to guide what we do. We know a lot about how to make that happen.

Q. Do you think coaches are unfair if they don't **[137]** adopt a task oriented approach?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think they do a lot of harm, right, and they set athletes up to experience all these negative aspects, right, and they don't have fun and they don't try as hard. They don't have as good a relationship, they experience shame. And all of that stuff just means that a lot of kids aren't going to stick with it and we are going to lose a lot. And that just has long-term implications for people living physically active lives, right. When you have bad experiences, you know, a lot of people are running back out there to keep participating.

BY ATTORNEY TRYON:

Q. Well, officials make calls all the time that upset athletes. Athletes think they're unfair or they're wrong. You're a tennis player. You remember John McEnroe?

A. I do.

Q. He yelled all the time. All the time is an exaggeration. He frequently claimed the calls the officials made were unfair, right?

A. Yes.

Q. Do you think that the umpires should have **[138]** changed their calls to satisfy him in order to provide a more caring environment for him?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think they should have taken him out of a few tournaments and I feel like that would have nipped it in the bud. But with respect to a caring and task-involving climate, what you're trying to say is we are trying to treat everyone with kindness and respect and

we're going to understand that officials are out there trying to do the best they can, and they're going to make mistakes just like all of us make mistakes. And so the goal would be for us to be respectful. And if we feel like bad calls are made we would deal with it in a respectful way, right, but we don't deal with it like Will Smith did, right, like when he --- we're trying to learn to control our emotions, right, and wow, it just makes sport a powerful arena when athletes can learn those terms.

BY ATTORNEY TRYON:

Q. Right. I understand that. And I'm just asking, so you got rules, you got calls by higher powers and you got to live by those rules. And if you think they're unfair then you should ask them to have them changed, right? **[139]**

A. Yes.

Q. But it is still a caring environment and just because you think it is unfair to you in particular doesn't make it uncaring.

Is that a fair statement?

ATTORNEY VEROFF: Objection.

THE WITNESS: You know, the way research is done is you're asking every athlete on the team to fill out a survey, right. So it doesn't mean that there is a 100 percent agreement, right. I may feel like the coach isn't fair, hasn't given me a fair shot, right, and somebody else may not feel that way. But in general, there's sort of a consensus on most teams, you know, that people are seeing it more similarly.

BY ATTORNEY TRYON:

Q. Yes, I guess I'm just asking specifically about rules. Rules by their very nature, they are not caring, they

don't care about individuals. They are just set there and you need to follow them, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah. Hopefully they have been established in a caring way, thinking about what is best for athletes, but there is just so many things across sports that are not necessarily fair, right, and **[140]** so we just kind of have to keep the focus on the rules. I had an athlete tell me that his teammate has been diagnosed with MS and that doesn't seem very fair, right, that a young person has to go through that, but I'm glad that they are part of a caring and task-involving team where they want this athlete to continue to be part of the team, right. And in more of an ego involving team, we might just say, hey, sorry, you are really going to impair our ability to win. That's our focus, that's why we are here, so you know, have a good life, right. And I mean, what's happening is they are just working with this athlete to still be a vital part of the team.

BY ATTORNEY TRYON:

Q. Do you think you need to be an athlete to have a fulfilling life?

A. No.

Q. I'm glad to hear you say that because I'm not much of an athlete.

ATTORNEY TRYON: Well, if people want to break for lunch now, I'm okay with that. I can take a break now or we can keep on going. Whatever Dr. Fry --- Professor Fry, whatever your preference is and other counsel? **[141]**

THE WITNESS: It might be nice to have a break at this point.

ATTORNEY TRYON: Okay. Do you want to go and get some lunch?

THE WITNESS: Yes, sounds good.

ATTORNEY TRYON: How long do you need? I don't know what your environment is around you, if you brought a lunch or there's a restaurant nearby. Is half an hour long enough? Do you need longer?

THE WITNESS: No, a half hour would be great.

ATTORNEY TRYON: Then why don't we take a break and come back at ten minutes after the hour?

THE WITNESS: Okay.

VIDEOGRAPHER: Going off the record. The current time reads 1:40 p.m. Eastern Standard Time.

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 2:11:00 p.m. Eastern Standard Time. **[142]**

BY ATTORNEY TRYON:

Q. Okay.

Let's go back to paragraph 30 of your report. It says athletes high in task orientation also report greater confidence and perceived ability and task orientation has been correlated with both self and team efficacy and greater perceived confidence --- competence, excuse me.

You are saying greater confidence and perceived ability. Perceived ability is different than reality, isn't it?

A. Yes.

Q. Are you saying that is a good thing?

A. In the psychology world it is pretty well accepted that perceptions are very important. So yeah, you are right in identifying that this is athletes' perceptions of their ability. And so athletes who have a high task orientation in turn, you know, seem to have more confidence and believe that they have higher ability.

Q. And then in paragraph 31 you say, by contrast, ego orientation, i.e. the non-pejorative descriptive term for defining success based on ability and performance outcomes is not correlated with perceived ability in general confidence of athletes high in ego **[143]** orientation was more of based on their perception of ability and having a strong physical presence. But in that first sentence it indicates --- it suggests that ego orientation is based on actual reality --- excuse, actual ability rather than perceived ability. Do I understand that indication correctly?

A. Where do you see that it is on actual ability?

Q. Okay.

Let me start that over. So in the sentence it says, by contrast, ego orientation i.e. the non-pejorative descriptive term for defining success based on ability and performance outcomes is not correlated with perceived ability in general. Does that mean it's correlated with actual ability rather than perceived ability?

A. Okay. I understand. No. No, what it means is that if you're --- if you're somebody who's high in task orientation, then you're feeling successful when you give

your best effort, when you see improvement, right. Those are things we have more control over. And so when you're focused that way you tend to have higher perceptions of ability, right, because that is your focus. If you are high in ego orientation, right, and so I'm feeling successful if I out perform others, if I **[144]** win, if I demonstrate competence, right, to a greater degree than other people, right, so if that doesn't happen but that is how I judge success, then chances are my perceptions of ability are going to be lower.

If I'm the star on the team and I judge success based on how I compare to others, then I probably get a lot of kudos and get reenforced for that. So that's why we will guess there is no correlation there in the way there is task, right. And that is why Nicholls was most concerned about people high in ego orientation who had lower perceptions of ability, because it makes us vulnerable. That's why I'm so focused and care about I'm not --- you know I'm not as good. Does that make sense?

Q. I'm processing it. I still want to understand it a little better. In paragraph 30, athletes high in task orientation also report greater confidence in perceived ability. Am I right that perceived ability is not actual ability?

A. Right, it's not. Items would just tap into I would be responding to a question like I'm really good at basketball or something, I'm very skilled in basketball or I'm not very skilled and I would be answering it on a quantitative scale, so it would be my **[145]** perception of it.

Q. Isn't it important that athletes understand their actual ability rather than just their perceived ability?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think it's important for coaches to share with athletes where they are and what they can do to keep improving. I'm not sure it's super beneficial that we need to go around and tell athletes, hey, you're not very good, this person is better than you, right, those are just kind of distractions, but helping people see where they are and what they can do to improve, yeah, would seem valuable.

BY ATTORNEY TRYON:

Q. In order for an athlete to improve doesn't the athlete need to understand where he or she is rather than just where he or she perceives him or herself to be?

A. Yes, we get into kind of --- are we talking like morbid ability, right, or --- and so in that sense do I need to tell --- I've got five athletes here. Do I need to make sure they all know where they rank between one and five, right, in my mine who's the best? Or do I just need to take each athlete aside, right, and make **[146]** sure that they understand here's some areas you could really improve on, and I care less about even having a conversation about who's the best right now, right, that this person is better than this person, right, it's moot. And that's where Nicholls was coming from. What if we as coaches did more just to focus people on, right, on what they could do to keep improving?

Q. And athletics it is certainly obvious, though, what your athletic ability is at least as far things involving racing times, for example, you get your times so you know what your ability is as compared to yourself or as compared to other people, right?

A. Right. I think there is just a lot in sport that's giving us feedback of how we compare to others. And also when we see these times it's --- that's information that we

can track how we're improving, right, and how we are doing.

Q. So why do we share with people --- well, strike that. I will move on.

Okay. Paragraph 32, please. Let me know when you see that.

A. I see it. Thanks.

Q. Athletes high in ego orientation report lower companionship and greater conflict with teammates. For **[147]** that phrase --- you can go ahead and read the whole sentence if you want, but I want to ask you a question about that phrase or that clause.

A. Okay.

Q. So for that clause you cite Balaguer in that study, right?

A. Yes, Balaguer (corrects pronunciation).

Q. Thank you for helping me pronounce that, Balaguer. And is there anything else on which you base that first clause?

A. Yes, there are other references. This paragraph in general is just referring to we have better relationships, right, when people are high in task orientation. They're really valuing that aspect of helping each other improve. And in an ego orientation, when, I'm just kind of zoned in on me and me wanting to show that I'm better than my teammates, right, it just sets things up to not having as good a relationship. This doesn't mean that every athlete out there that is high in orientation, it just means there's a tendency that this correlates --- that you're much more likely to see this when people have a high ego orientation.

Q. So I'm just --- my question is a little more precise. Thank you for that explanation. But the first **[148]** clause there you cite only to Balaguer. I'm asking if there are other sources for that contention that athletes high in ego orientation report lower companionship and greater conflict with teammates. And if there are other things, what are those other studies?

A. Like Smith and Small found that in youth sport athletes, you know, didn't like their coach as much, didn't think their coach knew as much about the sport, didn't like their teammates as much when they had like high ego orientation.

Q. Is there a reason why you didn't cite Smith and Small for that proposition?

A. Yes. Yeah, I think it crosses documents. We could have added another, you know, 150 references probably. Tried to keep it more manageable, which it's just consistent, that if that is something that you care about, the quality of relationships, then it doesn't come out often as --- you know, it comes out with the task orientation, not an ego.

Q. Well, the reason I'm asking this is I read that Balaguer report, and I did not see anything in there that supported this proposition of this first clause of this sentence. Are you confident that it's in there?

A. It would be good for me to review. **[149]**

Q. If I showed you the article would you be able to locate it without too much difficulty? A. I'm not sure. I'd probably just have to review it. But having ---.

ATTORNEY TRYON: Well, let's bring it up, and maybe I've just missed it. And so that would be --- the name of it is Motivational Climate and Goal Orientations

as Predictors of Perceptions of Improvement Satisfaction in Coach Ratings Among Tennis Players. Educators. So Jake, if you could find that and pull that up.

VIDEOGRAPHER: Do you want it marked?

ATTORNEY TRYON: Yes. I think we are on 8 now, right?

VIDEOGRAPHER: I think it's 7, unless I missed something.

ATTORNEY TRYON: Well, I will take your word for that.

(Whereupon, Exhibit 7, Article, was marked for identification.)

ATTORNEY TRYON: You know what, I should ask you, Jake, go ahead and put that in the chat room so **[150]** that Professor Fry can download it and look at it real quick.

VIDEOGRAPHER: Already did.

ATTORNEY TRYON: Great.

BY ATTORNEY TRYON:

Q. So Professor Fry, you can either look at this with me or it might be best if you just double check in the chat room and then it should download it and you should be able to bring it up and look through there at your --- I don't want to say leisure but how you would prefer to do it.

A. Okay. I may have to get help here because it's not appearing on my end.

Q. Do you see it in the chat room?

A. Yeah, I can click on it, but then it takes me to some case view net thing and it says I need a code and password. I'm using their system, so I'm guessing it's related to that.

VIDEOGRAPHER: Not the link. There should be a PDF document you can just click open.

THE WITNESS: Okay.

VIDEOGRAPHER: I don't know how it is on an iPad, so I will admit I'm at a loss.

THE WITNESS: Okay. **[151]**

BY ATTORNEY TRYON:

Q. Are you able to look at it now?

VIDEOGRAPHER: The document called 007 at the beginning?

THE WITNESS: When I click on the chat I'm just seeing one link listed.

BY ATTORNEY TRYON:

Q. Underneath the link there should be a PDF.

A. Okay. It's not showing up for me.

Q. Okay.

VIDEOGRAPHER: Alternatively, Counsel, I can give remote control of the document to her so that she can scroll on it herself.

ATTORNEY TRYON: Let's do that.

VIDEOGRAPHER: Okay.

THE WITNESS: Thank you.

VIDEOGRAPHER: You should have control if you just try to click on the screen and you just scroll it and move it. Perfect.

THE WITNESS: Okay. So how do I move the document?

VIDEOGRAPHER: So if you would move the cursor like over here and drag it.

THE WITNESS: Sorry. Can you say that [152] again?

VIDEOGRAPHER: You can control the mouse cursor right now, so you would have to move it over here and just drag it down or click on this down arrow down here?

THE WITNESS: So I don't really have a mouse, right, with this. It's just using my finger on the screen.

VIDEOGRAPHER: Right. If it works like normal iPad things, then you would --- to click something you would double tap it and then hold, which sounds convoluted.

ATTORNEY TRYON: Well, if you have any difficulties with it, why don't we let Jake take control and scroll down with it?

THE WITNESS: Okay. I think Dana is outside, if you want me to get her to help real quick to save time.

ATTORNEY TRYON: I'll tell you what, let's do this. This is not a critical point for me. I just wanted to try and understand this. So let's come back to this later. All right?

THE WITNESS: Okay.

ATTORNEY TRYON: We have time. **[153]**

BY ATTORNEY TRYON:

Q. In paragraph 32, you talked several times about the climate, right?

A. Yes.

Q. And in the sentence it says despite the ego involving climates emphasis on the performance outcomes

results across studies suggest the benefits of task involving climate may have a direct impact on athletic performance and ultimately improve performance outcomes. So that sentence is talking about the climate, not the individual's orientation, right?

A. That's correct.

Q. And you say it may have a direct impact. So by may that is not suggesting that it's probable, it is just saying that it might. Is that a fair statement?

A. Yes.

Q. Then let me move down to paragraph 33.

A. Can I just say on that point ---?

Q. Yes.

A. I think this is an area within our body of research that there is less support for, but the studies that are in place would suggest that perceptions of a task involving climate would lead to greater performance. So there is some evidence for that, but I **[154]** would agree it's not strong and that is why the wording is softer there, right, but there is no evidence suggesting that perceptions in an ego involving climate would lead to better performance. And so on the one hand people just might be thinking, wow, that's a no-brainer, right, if all you care about performance go with that ego involving climate, but for all these other reasons we would argue it makes sense, right. If people are having more fun and having better relationships and trying hard and so on, that it might lead to better performance.

Q. In paragraph 33 you talk about young athletes with a high ego orientation participating in a variety of sports have reported higher traits and state cognitive and somatic anxiety as well as greater concentration

dysfunction, maladaptive perfectionism and concern over making mistakes. Now, my question is, isn't that true for basically any endeavor, that there's going to be --- you're going to have anxiety in trying to succeed?

ATTORNEY VEROFF: Objection.

THE WITNESS: You know, definitely anxiety and stress is part of sport. With these climates though what we're seeing consistently is that athletes report **[155]** that when they perform their best they were less bothered by stress and anxiety. In fact, the kind of epitome of being --- what we call being in flow, right, you just --- you feel high confidence, you're concentrating well, you're not worried about distractions, you 're not stressed, right. And so consistently people would report a higher ego orientation, they just --- no matter how it's measured all this kind of bad stuff that we'd rather take out, right, and not have people worried about, young athletes worried about, they just experience it more. So the cognitive anxiety is what's going on up here, right, worry and doubt, and the somatic anxiety is I can't get a grip on my heart rate, my muscles feel tense, I have butterflies and those kinds of things. So we see that more with athletes high in ego orientation.

Q. Well, when you were going through college and getting your Ph.D., you were striving to do your very best and you were striving to succeed and get As to get your Ph.D. All of those things are something that requires you to succeed and to convince other people how good you are, right?

A. To succeed and make the world better.

Q. Right, but to get a Ph.D. that's a tough --- is **[156]** that an easy thing to do?

A. No, it is not.

Q. And it is based on what other people think of you and your work, right?

A. Yeah. I mean, there's requirements to complete a Ph.D. for sure that involve other people.

Q. And they're judging your work, right?

A. Right.

Q. And that creates, I presume, for most people it creates a lot of anxiety. Did it for you?

ATTORNEY VEROFF: Objection.

THE WITNESS: You know, at times it was stressful, but I enjoyed every minute of it. And so some of this comes back to anxiety is pretty typical and we're going to experience that, but what I'm feeling about it is helping people develop strong coping skills so that they can deal with that stress and anxiety. And that is, you know, another study that we recently published that people who perceived a caring task involving climate reported greater coping skills, right.

BY ATTORNEY TRYON:

Q. And to develop those coping skills you need to sometimes follow the rules of others like those on the Ph.D. committee, if that's the right terminology, rather **[157]** than saying, hey, committee you're wrong, I'm right, you have to do what I say, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm not sure that's related to coping skills, but what you said is true, it does take place when you're working on a Ph.D.

BY ATTORNEY TRYON:

Q. And pretty much every part of life you can't just say I don't like your rules, do it my way and get your way, you have to cope with the world as it is, not as you want it to be all the time, right?

A. Right.

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. And that's a hard thing, right?

A. It is.

Q. But it builds character, doesn't it?

A. It sure can.

Q. So let me move on then. I think I understand what you're saying in this paragraph. Looking at paragraph 35, okay, let me see if we addressed some of these things. Have you studied depression and mental health with athletes?

A. No, it's not my area. Yes, I've read some, but **[158]** no, it's not an area that I studied in depth.

Q. So you haven't written on it?

A. We might have a study where we include some parameters of psychological well-being, like studies with kids, looking at how the climate relates to a caring climate relating to reporting greater hope and happiness and less depression and sadness, but studying like depression is not a primary area for me.

Q. Have you looked at the issue for athletes between injuries and mental health or depression?

A. No, no.

Q. Are you aware that there are studies and papers on that issue?

A. Yes.

Q. Okay.

Let me ask you to take a look at --- well, before we go, have you heard of the American College of Sports Medicine?

A. I have.

Q. And are they well regarded?

A. Yes.

Q. Have you heard of Andrew Wolanin?

A. I have not.

ATTORNEY TRYON: Okay. **[159]**

Well, let's bring up this exhibit, which will be then Exhibit --- I think this will be --- well, I will just ask, Jake, help me out with numbers. The title is Depression and Athletes, Prevalence and Risk Factors.

VIDEOGRAPHER: I believe we're on Number 8 now.

ATTORNEY TRYON: Okay. Perfect.

VIDEOGRAPHER: Just give me one moment.

(Whereupon, Exhibit 8, Article, was marked for identification.)

BY ATTORNEY TRYON:

Q. Have you seen this document that I now marked as Exhibit-8 before?

A. No, I haven't. Jake, can you show the top again please?

VIDEOGRAPHER: That is as far up as it goes.

THE WITNESS: Okay.

BY ATTORNEY TRYON:

Q. Are you familiar with any of the three authors?

A. No. **[160]**

Q. So I am going to ask you about several parts in here, so it might be helpful to have --- try one more time to see if you can --- give you access to it, to give you control over the screen so you can scroll down. And you should be able to treat it just like anything else on your iPad, with your fingers or however you do it.

A. So when I click on control it has like a keyboard and then it has a question mark.

ATTORNEY TRYON: Jake, any input?

VIDEOGRAPHER: It sounds like it's just bringing up the iPad keyboard and there should be something that looks like a keyboard and that minimizes the keyboard itself so you can just get back to the screen.

ATTORNEY VEROFF: I'm sorry, Dr. Fry.

THE WITNESS: No, go ahead.

ATTORNEY VEROFF: I was just going to ask, Dave, is there any way to get in touch with Dana. Maybe we could send her the PDF and have her print them so that the witness could have hard copies. That might make this all work a little bit easier for any --- for this or any other studies that you would want her to look at. **[161]**

ATTORNEY TRYON: Yeah, except they're in a hotel room now. That's one of the --- is Dana outside the door did you say?

THE WITNESS: Yes, is it okay if I just check with her because I think she has a little business center set up maybe.

ATTORNEY VEROFF: If we can go off the record for a moment.

ATTORNEY TRYON: Great.

VIDEOGRAPHER: Going off the record. The current time reads 239 p.m. Eastern Standard Time.

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 2:42 p.m. Eastern Standard Time.

ATTORNEY TRYON: Okay. If you can now look at --- give me a moment. Let's look at your original report on page 12, that would be Exhibit-1.

VIDEOGRAPHER: Did you say page 12 or paragraph 12?

ATTORNEY TRYON: Page 12. **[162]**

VIDEOGRAPHER: Okay.

ATTORNEY TRYON: Okay, right there is great.

BY ATTORNEY TRYON:

Q. Okay.

Do you see that, Doctor Fry?

A. Yes.

Q. So the title you have here is Excluding Groups from Participating in High school Athletics would Deprive Them and Their Teammates of a Wide Range of Educational Benefits. Did you write that?

A. Yes.

Q. Okay.

Then I would like to compare that to the title that you have in your latest report, if you could bring that up, and that is on page ten. So here you change groups from to excluding transgender students. Why did you make that change?

A. I think just because it's specific to this case.

Q. Well, the specifics of this case were the same before as they are now, so do you have any better explanation?

ATTORNEY VEROFF: Objection.

THE WITNESS: You know, I edit everything **[163]** I write, and so if I see something that may clarify more or change a word, you know, that makes it better, then I would do that. I think that's what happened here.

BY ATTORNEY TRYON:

Q. Are you aware of any groups being excluded from participating in youth or adult athletics?

ATTORNEY VEROFF: Objection.

THE WITNESS: You know, I think a lot of times kids with disabilities are kept out. I think kids who have limited financial resources sometimes are limited. I think groups are --- so it may not be a rule that you cannot play, but you

know, there are other groups who miss out on the opportunities to play.

BY ATTORNEY TRYON:

Q. Other than that, can you think of any groups that are excluded by any rule or requirements from any athletic activities?

ATTORNEY VEROFF: Objection.

THE WITNESS: Not that's coming to mind that are, you know, like obvious or stated in the rules, but I think there's personal different ethnic, minority groups, for example, that might have less exposure to sport, things like that.

BY ATTORNEY TRYON: **[164]**

Q. Let me ask you about Special Olympics. Is the entrance into Special Olympics --- do you know anything about --- let me back up. You're aware of what Special Olympics is, right?

A. Yes, I'm aware of it.

Q. And do you know if there are specific requirements in order to be able to participate in Special Olympics?

A. I know there are. I couldn't tell you what they are across the different categories and all.

Q. Can able bodied athletes and able minded athletes participate in Special Olympics?

A. Special Olympics was created to give athletes --- okay. Dana said she hadn't received those. Just to double check, that it is Dana@midwestreporters.net. It's not .com.

VIDEOGRAPHER: I will double check it.

THE WITNESS: Thank you.

ATTORNEY TRYON: Sorry to interrupt your flow.

BY ATTORNEY TRYON:

Q. So my question was can able-bodied athletes and able-minded athletes participate in Special Olympics, and you started to say Special Olympics was created. **[165]**

A. Right. The answer is no, they can't participate.

Q. So that is an exclusion, right?

A. Yes.

Q. And it's a categorical exclusion, right?

A. Yes.

Q. Do you think it's a fair exclusion?

ATTORNEY VEROFF: Objection.

THE WITNESS: Sorry. Yes, in this case.

BY ATTORNEY TRYON:

Q. And why?

A. Because those able-bodied athletes have another area where they can compete.

Q. And so Special Olympics is especially designated for certain athletes who are not able to compete against able-bodied and able-minded athletes, right?

A. Uh-huh (yes), yes.

Q. So it's essentially a protected category, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes. I don't know if it is protection so much, as just provide an opportunity.

BY ATTORNEY TRYON:

Q. And that exclusion is of --- with respect to Special Olympics, you wouldn't call that arbitrary, **[166]** would you?

ATTORNEY VEROFF: Objection.

THE WITNESS: No.

BY ATTORNEY TRYON:

Q. Now, if we go down in paragraph 37, the second sentence says, if transgender students are arbitrarily excluded from youth sports they are, in turn, deprived of those positive experiences and outcomes and their teammates are deprived of a genuinely optimal sports experience.

Do you see that?

A. I do.

Q. If that exclusion is based on safety concerns or performance concerns then it would not be arbitrary.

Correct?

ATTORNEY VEROFF: Objection.

THE WITNESS: If there were strong evidence for those.

BY ATTORNEY TRYON:

Q. And just --- I think we covered this, but I just want to make sure I'm correct, you are not an expert on safety issues, right?

A. That's right.

Q. And you are also not an expert on performance **[167]** issues, right?

A. That's right.

Q. What would you call strong evidence?

ATTORNEY VEROFF: Objection.

THE WITNESS: I call it data that the experts come to agree that --- you know, how they can guide the rules for sport, right, and balance inclusion and fairness.

BY ATTORNEY TRYON:

Q. Would you agree with me that not all experts agree on everything, even with their own field, right?

A. That's right.

Q. Is there a minimum number of experts that would have to agree before it's strong evidence or is that sort of a --- I don't know how to say it. What do you think?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think with respect to this case, that organizations can, you know, weigh in on the evidence there to see --- I mean, there is just a lot of injury within sport that happens, right, it's just part of sport. So I think they would have to really consider the evidence to see if there are safety concerns for having transathletes participate. **[168]**

BY ATTORNEY TRYON:

Q. Do you think in high school that every sport should have a different rule of when transgender girls can participate in those specific girls sports?

ATTORNEY VEROFF: Objection.

THE WITNESS: You know, I just come back to my expertise and why I've been asked to be on this case is just to address the benefits that athletes receive from participating in sport. So I wouldn't perceive that they are at the high school level. There is different rules for every

sport, but I don't know where we will be down the road, right, as we just figure all this out and strive to include all athletes.

BY ATTORNEY TRYON:

Q. So you don't know what the rules should be?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right, I'm not the best person to make those decisions. I think we need people who are studying these issues, and that is beyond my expertise.

BY ATTORNEY TRYON:

Q. Fair enough. I don't want you to go beyond your expertise. Well, let me ask you just some related questions. And you may say the same thing on this, but **[169]** I'm going to ask you and we will see if you have any thoughts. You may have already answered this, but let me ask you these. On what teams should student athletes participate on if they are transgender? If they are a transgender girl, should they participate on boys or girls teams?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think it depends what the rules are, but, you know, over the last decade across organizations, organizations have found a way to allow transgender females to participate.

BY ATTORNEY TRYON:

Q. And those rules have changed over time, right?

A. They do.

Q. NCAA just changed its rules, right?

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. Did you answer?

A. You know, I'm not sure of the latest. I thought they were going to leave --- yeah, they're going to be looking at other options and getting feedback from the governing bodies is my understanding.

Q. Are you aware of what the Rugby Association says?
[170]

ATTORNEY VEROFF: Objection.

THE WITNESS: No.

BY ATTORNEY TRYON:

Q. Are you aware of USA Swimming, what their rules are?

ATTORNEY VEROFF: Objection.

THE WITNESS: I couldn't tell you all the details, but I know USA Swimming really is trying to find a way to be inclusive, and so I know at the youth levels that transgender youth are able to participate, right, and that they have allowed some rule changes for what swimsuit kids wear and things like that.

BY ATTORNEY TRYON:

Q. But those transgender girls have to --- or transgender women have to meet certain requirements before they can participate on a female team.

Right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. Are you aware of the specifics?

A. No. I've read some of this, but I'm not sure I've retained it and it's not something that I spent a long time on across sports. **[171]**

Q. Okay.

Let me ask you then if you have ever heard of the term nonbinary?

A. I have heard of that term.

Q. Is this a fair definition, that it is people who do not describe themselves or their genders as fitting in the category of man or woman? Does that sound like a fair definition?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. Should a biological male who identifies as nonbinary who is an athlete participate in high school on the boys or girls team?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think it depends on what the rules are. And I think the goal of the sport organizations seems to be how can we look at these issues and just still try to be as inclusive as possible.

BY ATTORNEY TRYON:

Q. What are the rules on that in high school?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right, it seems to vary **[172]** across states.

BY ATTORNEY TRYON:

Q. Do you know of any rule --- do you know of any rule that specifically addresses nonbinary athletes?

ATTORNEY VEROFF: Objection.

THE WITNESS: No.

BY ATTORNEY TRYON:

Q. Have you heard the term bigender?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. The definition that I have read is a person who identifies as bigender has two genders. Is that your understanding as well?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. And in high school the biological male identifies as bigender and wants to participate on a girls sports team, should that be allowed?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think greater context is needed. There's a --- you know, understand what's going on with that particular athlete. And again, I just want **[173]** to --- this is a little bit beyond my expertise and I'm here to just reenforce that there is a lot of benefits for all athletes to be able to participate.

BY ATTORNEY TRYON:

Q. What if a biological male wants to be on a girls team, even though he does not identify as a girl, should he be allowed to do so?

ATTORNEY VEROFF: Objection.

THE WITNESS: No.

BY ATTORNEY TRYON:

Q. And why not?

A. Because he's wanting to play on a --- on a female team and he doesn't --- hasn't transitioned and isn't identifying as a female.

Q. If a biological male wants to participate on a girls team and identifies as a female but has not transitioned in any way, should he be allowed to participate on the girls team?

ATTORNEY VEROFF: Objection.

THE WITNESS: In --- in general I would say no, but we're missing the context. What if this was --- yeah, I think we want that person to transition.

BY ATTORNEY TRYON:

Q. Okay. **[174]**

What transitioning would be necessary?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think that's out for debate, discussion, and to figure out at these different levels of sports what that criteria is going to be.

BY ATTORNEY TRYON:

Q. So in high school is it simply changing your name to a female name, would that --- for a male to change to a

female name, would that be adequate to then be allowed to play on the girls team?

ATTORNEY VEROFF: Objection.

THE WITNESS: No, I'd say in general that wouldn't be the case.

BY ATTORNEY TRYON:

Q. Okay.

If that person, in addition to changing his name to a female name and says I want to be addressed using female pronouns, is that adequate?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think that we've got this kind of continuum it sounds like, right, to what degree people are transitioning to know transitioning. And to just have a blanket statement that no one --- that no transathlete can ever participate in sport ever across **[175]** the universe is harmful for many athletes, right. And so these specifics of where we are going to go with what the criteria is for athletes, right, I think there's a lot of people studying these issues and weighing in and I'm not one of those individuals who's really studying this stuff in detail at that level, but I do know ---.

BY ATTORNEY TRYON:

Q. Sorry. Go ahead.

A. I do know that inclusion in sport has many benefits and that it would be a shame to not hold a category of athletes out to participate.

Q. So there would be nothing to stop a male athlete, a biological male athlete identifying as a female from participating on a boys team, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right. I did not state that. I'm not sure what that criteria should be, but it helps us balance, being inclusive and also being fair.

BY ATTORNEY TRYON:

Q. So it's not excluding that person from participating in sports, it's just excluding that person from participating on the team that person wants to participate on, right?

ATTORNEY VEROFF: Objection. **[176]**

THE WITNESS: If we understand that transathletes are identifying with a particular gender, so in this case transfemales, then no, that wouldn't be an option to go participate on a male team.

BY ATTORNEY TRYON:

Q. Well, why is that not an option?

A. Right, well, I just point to PBJ, right, who has identified as a girl for a long time and looks very much like a girl and is the --- I believe the principal said, you know, we're just creating problems. This little girl can be with her friends, can run cross-country, can reap all these benefits, right, and it's not an option to send her over to the boys team because she is a girl.

Q. Do you need to look like a girl to be on the girls team?

ATTORNEY VEROFF: Objection.

THE WITNESS: No, I'm not sure what that means.

BY ATTORNEY TRYON:

Q. Well, there are girls that look masculine that are girls and they, of course, want to be on the girls team. I

would presume you would agree they should be on the girls team, right?

ATTORNEY VEROFF: Objection. **[177]**

THE WITNESS: Right, there are --- you know, we may get into a debate about what is masculine or feminine if we're saying that --- you're describing somebody as more --- a female that's more masculine, but maybe other people see it that there's a feminine quality to whatever, being strong, yeah, having a solid build, those things.

BY ATTORNEY TRYON:

Q. Well, you're the one that pointed out that BPJ looks like a little girl and suggesting that that was one of the reasons that BPJ should be on the girls team. Did I understand that incorrectly?

A. What, I meant to emphasize is that she sees herself as a girl, and so we put her in a really uncomfortable spot to say you can't be with the girls and you have to go be with the boys even though in your heart of hearts you know you're a girl.

Q. Can that be uncomfortable for the biological girls on the girls team if biological boys who identify themselves as internally as being girls are allowed to participate on the girls team?

ATTORNEY VEROFF: Objection.

THE WITNESS: Could --- you know, could the fact that a transgender girl is participating in a **[178]** sport, on a team, could that make someone feel uncomfortable? Definitely it's possible.

BY ATTORNEY TRYON:

Q. Not only is it possible, but it happens, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes, I think it probably happens. It probably happens both ways, that there are also teammates that are very supportive.

BY ATTORNEY TRYON:

Q. But the feelings of the biological girls who are uncomfortable with a biological male identifying as a female or a transgender girl, as you have said, their feelings are important too, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: You know, pulling from my expertise, if we're trying to create this caring task involving climate, then yes, it would be very important for a coach to sit down with those athletes and talk and encourage them. If the transfemale athlete is playing by the rules and has done everything that has been asked and they are part of a team, then coaches should really talk with the athletes than help them understand, help them not let this be a distraction, help them embrace all their teammates, right. There is so much in the **[179]** sport that any of us on a team might like to change, right, or wish our teammates did other things, right, wish they worked harder or wish they used less recreational drugs or anything, right, but we are a team and we come together and we just support each other and we keep the focus on being the best we can be every day.

BY ATTORNEY TRYON:

Q. So biological girls just need to knuckle under and accept things the way that you want them to be. Is that what you are saying?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm saying being part of a team is challenging, and for some people having a teammate that is transgender may be one of those challenges they have to deal with. But everyone is dealing with challenges with the teams, right. And if that transgender athlete is there playing by the rules, right, and is allowed to be there, then yeah, I guess the others have to deal with it.

BY ATTORNEY TRYON:

Q. So on the other hand, you can tell that transgender female to participate on the boys team and the coach on the boys team would sit down with the boys and say you will not make fun of this child, you accept **[180]** this child as one of our own even though this child is a transgender female, this transgender female will be on the boys team and you will treat this transgender female with respect and be a full part of the team, right, that coach could do that?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes, the problem is that the transgender athlete is a female, right, and has the right to participate with the female team.

BY ATTORNEY TRYON:

Q. Where is that right found? You just said she has that right. Where is that right?

ATTORNEY VEROFF: Objection.

THE WITNESS: I mean as it comes within the rules, right. I'm sorry, Julie. I mean, as it falls within the rules, right.

BY ATTORNEY TRYON:

Q. Well, right now the rule is HB-3293, which says that that transgender girl must participate on the boys

team. And since that is the rule, following your --- your logic, you go to the boys team and the boys coach and you say this child is going to be participating in this team, you will welcome her with open arms onto our team just as we do on football, we open with --- welcome **[181]** with open arms girls who are playing on a boys football team, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: My understanding in this case is that the judge is --- has kind of looked at the evidence and said right now I think there is potential discrimination and so we're going to let BPJ continue to compete and all through this so ---.

BY ATTORNEY TRYON:

Q. That's right, the Judge did say that for now, but he did not say that for everything. But I'm asking for a more general rule. Putting aside BPJ, as a general rule, why would you say coach of the boys team, you will allow these transgender girls to come and play on your team and you will welcome them with open arms just as we do with our football teams that allow girls to play on them?

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. Because after all, as you said, the transgender girl is a girl and so should be allowed to play on the boys team if she chooses?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think football is a great **[182]** sport, and I wish they had male and female teams. Typically, it's just a male team, so a female who wants to play football doesn't have another option. But in this case BPJ and others who identify as a female and should be able to

compete with other females, their friend group and --- so I see that as an indifference.

BY ATTORNEY TRYON:

Q. Their friend group? So girls can't have boy friends?

A. No. I meant it --- sorry, I meant in this case BPJ is saying her closest friends are on the girls team. She is a girl and she --- and so it would be harmful, not fair to not let her compete with that team.

Q. How do you define fair? You told me before you are not an expert on fairness. Are you now saying that you do know what is fair?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm just keeping focused on what the rules are and the Judge has ruled right now that BPJ should be able to compete with the girls because she is a girl, and so from my perspective, that's where it stands right now.

BY ATTORNEY TRYON:

Q. Okay. **[183]**

That's just because that's what the Judge said then, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: No. I think the core issue is BPJ identifies as a girl, has lived the majority of her life as a girl and wants to be able to participate in her school activities as a girl, including cross-country.

BY ATTORNEY TRYON:

Q. So how long do you think a transgender girl has to live as a girl before participating on the girls team?

ATTORNEY VEROFF: Objection.

THE WITNESS: Again, I think I'm not the best person for that line of inquiry. I'm not sure, but I know others are studying that, those kind of issues, and can add greater insight to it.

BY ATTORNEY TRYON:

Q. Okay.

A. I'm just someone who would hate to see BPJ not be allowed to participate in her school activities, just to be told no, I'm sorry.

Q. On the girls team?

A. Right. **[184]**

Q. And of course, not all athletes compete on teams. Sometimes if they just love to run, if that is the key, they just love to run, they don't have to be on a team to run, right?

A. Right.

ATTORNEY TRYON: So we have gone for an hour. And I would like to get some documents printed since we're not able to easily look at them on your iPad. So why don't we go off the record to see if we can get that taken care of. Is that okay with you, Julie?

ATTORNEY VEROFF: That is great. Thank you.

VIDEOGRAPHER: Going off the record. The current time reads 3:15 p.m. Eastern Standard Time.

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time reads 3:37 p.m. Eastern Standard Time.

BY ATTORNEY TRYON:

Q. Professor Fry, thank you for helping us with **[185]** that technical issue.

A. No problem.

Q. I would like you to find the exhibit that says Depression in Athletes. It should be Exhibit-8, I believe.

A. I've got it.

Q. Okay.

I've lost you. There you are. Okay. Let me find the right page I'm outlining to. Okay. So Exhibit 8 is Depression in Athletes: Prevalence and Risk Factors by Andrew Wolanin and other authors, right?

A. Yes.

Q. So I wanted to ask you about a passage on the second page of this, which is page 57, under the title Sports Injuries and Depression at the bottom of the first column. So I will just read the passage that I have a question about and if you choose to read it, too, if you want to read it more --- in fact, did you already read the abstract on this earlier?

A. I just did.

Q. Okay.

So you've read the abstract. My question is on, as I said, under Sports Injuries and Depression. And I will just read into the record, Bruer and Petrie, **[186]** seven in parentheses, were among the first researchers to compare depression symptoms between athletes who had and had

not experienced injuries. In this retrospective study it was found that athletes who experienced an injury during the previous year reported significantly higher depression symptom scores than those reported by non-injured athletes, as measured by the Validated Center for Epidemiological Studies Depression, parentheses, CES-D scale. Do you see that?

A. I do.

Q. And my question is do you have any reason to dispute this or contest this finding in this statement?

A. No.

Q. Would it be fair to say that you agree with it?

A. You know, it's retrospective, so they're going back in time and asking, hey, when you were injured what was going on, but no, I would accept this is --- could be a legitimate finding.

Q. Okay.

Then in the next column, first full paragraph, there has been a recent surge of evidence suggesting that sports concussions can lead to changes in emotional state, parentheses, 14, closed paren, period. Furthermore, there is recent evidence to suggest that **[187]** sports concussions can have long-lasting emotional impact. And my question is, do you have any reason to contest this statement? And feel free to look at it and make sure I'm not reading it out of context.

A. No, I don't contest this.

Q. Then in the beginning of the last full paragraph on the page it says, while the relationship between concussion and depression may be significant there is also evidence to suggest that a concussion may have the same effect as

other injuries on mental health. For example, Main Wearing, et al., 18 in parentheses, conducted a study to examine the differences between emotional responses in athletes who had a concussion compared with anterior cruciate ligament, ACL, injury. They found that athletes with ACL injuries had more severe levels of depression and longer duration of depression compared to those athletes with concussion. Do you see that?

A. I do.

Q. And do you have any reason to contest that statement?

ATTORNEY VEROFF: I'll just object to the extent this statement relies on a study that is actually not before the witness. **[188]**

BY ATTORNEY TRYON:

Q. Go ahead, you may answer.

A. Okay.

You know, there is probably just a lot of background to this, so I agree. I haven't read this one but I would jus say ACL injuries can be extensive and last over months, right, and take an athlete out of sports for months. Whereas a concussion, you know, it varies in severity and somebody might be back relatively quickly in comparison. But, you know, both of --- both of these injuries are not fun for athletes to deal with and, yeah, can cause stress and depression.

Q. Okay.

So I think you would agree that it's important for athletes to avoid injuries where possible, right?

A. Right, right, and --- yeah.

Q. And would you agree that it is important to have rules in place to avoid injuries where possible?

A. Yes, I would agree.

Q. And would you agree that we don't need to wait for actual harm before putting rules in place to prevent harm if it's reasonably foreseeable?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, the keyword is **[189]** reasonably.

BY ATTORNEY TRYON:

Q. Right. So you agree with that but focusing on the word reasonably, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right.

BY ATTORNEY TRYON:

Q. Would you agree that segregation of male and female sports is at least in part to protect girls from injury, at least for some sports?

ATTORNEY VEROFF: Objection.

THE WITNESS: Possibly. I would just note that there is tremendous variability within each gender and if that were totally what was driving this then we really would be concerned about some, for example, not as strong males competing against bigger, stronger males and same with females. So the issue just transcend gender, you know, it's an issue within each gender.

BY ATTORNEY TRYON:

Q. Well, you said you had some familiarity with Title 9, right?

A. Yes.

Q. And Title 9 divides sports into boys --- male **[190]** and female sports in some instances, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. And in particular, with respect to contact sports, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. And would it be fair to say that those contact sports Title 9 does that specifically to --- for safety purposes?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think it's fair to say that that is a --- is a concern, yeah.

BY ATTORNEY TRYON:

Q. You wouldn't say that Title 9, the regulations for Title 9 that regulate that, do you think those are unfair or should be determined to be illegal?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right, no.

BY ATTORNEY TRYON:

Q. So let's go back to the study by --- I will say it wrong, in Balaguer? **[191]**

A. Yes, Balaguer.

Q. Balaguer, thank you. Do you speak French?

A. No, but she is one of my favorite people in the world.

Q. Oh, okay.

VIDEOGRAPHER: Counsel help me out here, which exhibit number is that?

THE WITNESS: Maybe 2.

ATTORNEY TRYON: No, the Balaguer.

VIDEOGRAPHER: If you can tell me the title I can tell you the number.

ATTORNEY TRYON: I'm sorry.

VIDEOGRAPHER: I said if you can tell me the title I can tell you the number.

ATTORNEY TRYON: Here it is. I think it is number 7, Motivational Climate and Goal Orientation as predictors of Perceptions.

VIDEOGRAPHER: Correct, that would be Number 7.

BY ATTORNEY TRYON:

Q. And is that printed out for you, Professor Fry?

A. Yes.

Q. And going back in the report --- let me see if I can find the right paragraph. Here we go, paragraph 32 **[192]** of your most recent report. Okay. So the first clause of that first sentence says athletes high in ego orientation report lower companionship and greater conflicts with teammates and you cite Balaguer for that proposition. I simply was not able to find that proposition in the Balaguer report. By the way, the University of Valencia, where is that? Is that in Spain?

A. It is.

Q. Then why does Elizabeth have a French name? I'm sorry. If you could just look through and tell me if you can see the language that supports your language in paragraph 32.

A. Yeah, yeah, just one more second. Yeah, okay. They give you this. I think this wasn't the best article. It was referring to the coach instead of the teammates with this one. But if you would look on --- or maybe --- 383, that paragraph in the middle of the first column. Yeah, just a little bit lower. But the wording in this paragraph on the left, yeah, if you can fit the whole thing in again. Right. So partway down it's just asking about --- to write your current coach or somebody that --- so one would be just doesn't coincide at all with the coach I would like to have **[193]** versus my ideal coach. So the lower rating on the coach is just --- that is not a good thing when you're going this is not the coach that I want, right, or all the way up to this is my ideal coach. So it supports the findings that relationships aren't that strong, but it is not the best study --- or you know, it shouldn't have been slotted there because it's just referring to the coach instead of the athletes. If you look at that table underneath where we're looking now, Table 2.

BY ATTORNEY TRYON:

Q. I'm looking at it.

A. Whoops, is that it. Under satisfaction and so the middle part on the left and the bottom one, satisfaction with the coach, you can just see that the more you perceive a task climate, the more you are thinking this is the ideal coach, I'd like to have, the more respect I have for the coach, or however you want to put that in your words and the more you perceive an ego climate the less and the more on the task orientation, you are more likely to just

say this is a coach I'm glad I have. And with the ego orientation, it's just not significant --- so anyway, it supports the results for saying overall, but that was not the best reference there. It shouldn't have been used right **[194]** there.

Q. So just to make sure I understand then, the Balaguer report does not actually support the idea that athletes high in ego orientation report lower companionship and greater conflict with teammates, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right.

BY ATTORNEY TRYON:

Q. Do you believe Smith and Small does?

A. Yeah. You know, a little while ago when we were looking at that passage, it just included like ten variables that were cognitive anxiety and worry and concentration disruption and I don't know, five other things, a lot of ways to measure stress. And so across these studies a lot of ways that these relationships with coaches and athletes, but it's not like everyone is using one uniform measure. Yeah, so there's probably more studies showing that you have better relationships when people perceive a task involving climate or have a task orientation and then it's kind of a mix on the ego side. So sometimes that comes out and sometimes it doesn't.

Q. Don't studies show that the best mix is a high **[195]** ego orientation and a high task orientation?

ATTORNEY VEROFF: Objection.

THE WITNESS: No, I wouldn't agree with that, that mixes --- it's not necessarily that that is harmful, right,

having a high task and high ego. But to say it is the best, no, I wouldn't say that.

BY ATTORNEY TRYON:

Q. Is Smith and Small cited in the bibliography?

A. One of their articles by Grossbar is, but that is looking more at the orientations in climate. That one, I lost that page. I was just trying to see if there was another one. There is one by Cummings, 2007, Is Winning Everything, the Contributions of Climate and ---.

Q. And that is going to tell me that --- is going to support the statement that ego orientation creates more conflict?

A. No, no. I'm not sure. I think I'd have to step back and review to tell you for sure what those are, but I can certainly do that.

Q. All right.

Well, let's move on. I don't want to keep you here any longer than we need to be here.

A. Thank you. I appreciate that. **[196]**

Q. You bet. So let me redirect your attention to paragraph 39. So in the last --- let's see, the sentence that says because these positive benefits are fostered in task involving environment, arbitrary exclusions can cause harm not only to the athletes who are excluded but also to the other athletes on the team. Can you tell me what harms it causes to other athletes on the team?

A. It could cause harm to athletes who aren't allowed to have their --- their friends participate, their friends who should be on the team, right, if --- BPJ was not allowed to participate and her friends really were looking forward to that being a part of the sport, right. The sport experience

is to share that together. That could be harmful. It is also just, you know, it could be a missed opportunity to --- for kids to learn and to grow and to become more familiar and to become more accepting, right.

Q. So if that's the case, couldn't the coach just say to them I know you would like to have your friend on the team, but that's not the way it works and help them work through that, just as you told me the coach can counsel kids who disagree with the decisions --- some other decisions? **[197]**

ATTORNEY VEROFF: Objection.

THE WITNESS: Okay.

Definitely a coach could do that, but that doesn't change the fact that --- that it could be harmful in the sense that knowing that other people you care about and evaluate are being excluded in an unfair way.

BY ATTORNEY TRYON:

Q. And that term, the unfair way, is something that you said that you are not an expert on what's fair and what's unfair, right?

A. Right. I said it's not a primary area of study, right.

Q. Yeah. Well, I want to ask you a question. I think you're referring to the Plaintiff as PBJ, with first letter being P.

Am I hearing you right?

A. I didn't think so. But it does --- but BPJ. Sorry.

Q. All right. I want to make sure we're all saying the correct initials.

VIDEOGRAPHER: Excuse me, Counsel. If I could interrupt for a second. If I could just ask the witness to

kind of sit up. You're starting to slouch **[198]** down and your head is getting cut off in the video. Thank you.

THE WITNESS: All right. Sorry about that.

BY ATTORNEY TRYON:

Q. You're not saying that any West Virginia sports organization or educational education has adopted an ego-promoting philosophy, are you?

A. I'm not.

Q. And you don't know of any coaches in West Virginia that have either, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: No.

BY ATTORNEY TRYON:

Q. And a team can build a task oriented climate with sports separated by sex, right?

A. That's right.

Q. Do you know if female teams are better at building task oriented climates than boys teams or vice versa?

A. Yeah. It's possible to build a strong task involving caring climate in both teams with males and females. There may be a slight tendency across some studies where those scores come out a little bit higher **[199]** for females than males, but it's not consistent, right, but females sometimes really value that --- those social aspects of the sport. Not that males don't, but maybe a slightly higher --- if we're looking at those bell curves again, they would be really close, but it's possible that for --- if we are looking at guys they might come out a little bit higher on the ego aspects of the climate and females the task.

BY ATTORNEY TRYON:

Q. Can we look at paragraph 41 of your report, please?

A. Yes.

Q. So you say the climate of youth sports must be geared to include all participants, so that teams are more likely to help every athlete maximize their potential. Now, the word must is a mandatory word, right?

A. Yeah. I think it means must in the sense that that's our aim, to maximize the potential of every athlete. If that's our aim, then it is pretty key to creating that climate.

Q. So who would be the --- what entity would be the one to enforce that?

ATTORNEY VEROFF: Objection. **[200]**

THE WITNESS: Right, I think it comes down to a matter of administrators in sport leagues and having a desire to provide coaching education, try to help coaches understand this research and to help foster caring and task involving climate.

BY ATTORNEY TRYON:

Q. Are you suggesting there should be a statewide or nation-wide rule on this?

A. No.

ATTORNEY VEROFF: Objection.

THE WITNESS: No, I'm not suggesting. I'm sorry, Julie.

ATTORNEY VEROFF: That is quite okay. Go ahead.

THE WITNESS: No, I'm not suggesting that, although I would just note that Canada has a basic coaching education for anyone who is going to work with even very young athletes, right, and then they have these

different levels that people need to go through this coaching education because they really value trying to help create inclusive environments that help kids focus on their effort and improvement and can be set up in a way to bring out the best in any child.

BY ATTORNEY TRYON: **[201]**

Q. So what you said in Canada, they have this, who has this?

A. I believe it kind of trickled down from the government, that they just said --- you know, in the States, in the U.S., our model is if you have a heartbeat, right, and you're willing, let's put you with a team because we just want --- want to have as many teams and neighborhoods where kids can participate. But in Canada they just set the bar higher and they said if you're going to work with kids, we want you to have some basic coaching education. And so it's just a rule across their sort of sporting government.

BY ATTORNEY TRYON:

Q. You say sporting government. Are you saying the national government is doing this or some sporting organization? I don't know much --- anything about Canada as far as that is concerned.

A. Yeah. You know, I would have to look at that more closely. Definitely their sporting organizations, but I'm not sure that doesn't trickle down from some of their government rules, but I won't say that for the record. For the record, I'll just say that they do require any use for a coach to have a basic introduction to coaching education, which would include some of these **[202]** concepts.

Q. But you're not advocating that for the United States, are you?

A. No.

Q. Okay.

Let's see, so my next question is you say so that teams are more likely to help every athlete --- I'm sorry, strike that.

Still that first clause. The climate of youth sport must be geared to include all participants. So who gets to participate? When you say all participants what do you mean by that?

A. Hopefully, we have an avenue for all young people to gain some exposure to youth sport, so all athletes who want to.

Q. Okay.

So in some sports and high school athletes and in college you have tryouts. And if you don't make the tryouts, you don't make the team.

Right?

A. That's right.

Q. And do you think that's okay or do you think that we should do away with tryouts and everybody should be on the team if they want to be on the team? **[203]**

ATTORNEY VEROFF: Objection.

THE WITNESS: I think there is a lot of benefits to looking at high school sports and including as many athletes as we can. But no, I wouldn't say that I'm against all --- everywhere we should have a no cut policy. But I think it's valuable to look and say, hey, are we including as many kids as we can. Because the evidence supports that kids feel more connected at school, you know, their attendance is better. There's a lot pluses when kids get that opportunity to participate.

BY ATTORNEY TRYON:

Q. Don't sports sometimes take kids away from their academics?

ATTORNEY VEROFF: Objection.

THE WITNESS: They sometimes do for some kids.

BY ATTORNEY TRYON:

Q. For a lot of kids, isn't it?

A. I'm not sure what the percentages are, but yeah, some kids may be less focused on academics.

Q. And that is why a lot of schools actually have rules on minimum academic scores that you are getting in order to be on a team, right? **[204]**

A. Probably so, yes.

Q. So going back to cutting kids off teams, that's a thing where kids, if they don't perform at a certain level, they're cut from the team or never allowed onto the team, right?

A. Right.

Q. And so if somebody does better than you on that team, then you are at a disadvantage, right?

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. If you are cut from the team?

A. Yes.

Q. Now, you say from an educational standpoint it is optimal to encourage all athletes to do the best they can and to help all athletes enjoy the sport they love, right?

A. Uh-huh (yes). Yes.

Q. So when you say from an educational perspective let me just ask you --- do you feel like you are an expert on education or teaching methodology?

A. It depends. When I say an educational perspective I mean from the sports psychology literature. And you know, it's not what I study in --- sorry, I'm just going to think for a second. **[205]**

Q. Take your time. I want to get an accurate answer from you. I'm not trying to fool you or anything.

A. Thank you. Yeah, I think this is building on achievement goal perspective theory that just as we should be helping all kids be the best that they can be, right, and if we're not doing that, then we're more likely setting it up to just focus on those kids who we think are going to be the best and the highest achievers, but to keep the focus on helping every athlete, every student, be the best that they can be I think is really a valuable aim.

Q. Do you know how many schools in West Virginia have sports programs?

A. I do not.

Q. Do you have any idea of what percentage of kids are in athletic programs in West Virginia schools?

A. I don't.

Q. Do you know about in any of the universities in West Virginia?

A. No, I don't know.

Q. Take a look at paragraph 42. Read that. I'm not going to read it all out loud, but I do have some questions for you about paragraph 42. **[206]**

A. Okay. Okay.

Q. As far as I can tell, this paragraph has nothing to do with House Bill 3293, does it?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think it takes a bigger picture perspective of just the youth sport world, and so what's true for parents, for this parent, Jim Thompson, who had a child who experienced so much negative, you know, interactions when he first signed up for sport, that Jim Thompson was like, wow, this is crazy, and he went on to start this organization to provide coaching education for --- you know, for coaches. He has materials for parents, for officials, but you know, reading it, it makes me think it would be healthy for all of us to step back and just say, hey, let's not get too, too over crazy about this, right. And in the case of BPJ, right, how cool if we can let her have the experience of running cross-country school and wouldn't it be a shame if we just had a blanket exclusion of kids based on their gender identity.

BY ATTORNEY TRYON:

Q. Okay.

But what does that have to do with HB-3293?

ATTORNEY VEROFF: Objection. **[207]**

THE WITNESS: You know, it's probably just a matter of how we interpret this, but if we --- if we have legislators just making a blanket decision that across our state no child in secondary education, no athletes in universities who are transathletes can participate, it feels like we are really doing a disadvantage to those athletes and not allowing them to participate and reap the benefits. And I think Jim Thompson here is just saying there is just so many benefits and what if we were all united and saying how can we come in and just make sport be all it can be.

Parents play a big role in that, but they're definitely not the only party that does.

BY ATTORNEY TRYON:

Q. Is it your position then that a child or youth, a young adult should be allowed to participate on whatever team that child identifies as being a gender associated with that team? That wasn't very artfully said, so let me try again. Is it your position that any child that identifies as a girl should be allowed to participate on a girls team or women's team as the case may be?

ATTORNEY VEROFF: Objection.

THE WITNESS: It's my position that when **[208]** I look at the sport organizations across this country and internationally that sport leaders are recognizing that we want to balance fairness with inclusion and that there has been success in that already and that that is something that we can do and that we don't have to just exclude all trans athletes from participating in sport.

BY ATTORNEY TRYON:

Q. So you have not answered my question directly. Is that because you don't want to or because you don't feel like you can?

ATTORNEY VEROFF: Objection.

THE WITNESS: I feel like it's more complex than what you're mapping it out. When we talk about transathletes and their gender identity and whether they may be transitioning and all these other factors, it's just a bigger picture than saying any male should be able to decide at any moment I want to compete as a female. No, we have to have guidelines in place that are fair and inclusive.

BY ATTORNEY TRYON:

Q. So if we just narrowed down the statute somewhat to imply with your views on that, then you think it would be okay to exclude some transgenders --- transgender girls from competing on girls teams but not **[209]** all?

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. Is that right?

A. Right. I think that's what's happening right now, right, there are like criteria within the NCAA, for example, and athletes have meet that criteria to participate as a transgender female.

Q. And so a statute that did that you would find okay?

ATTORNEY VEROFF: Objection.

THE WITNESS: I believe sport organizations and leaders are going to be able to find a way to balance inclusion and fairness, and what that may look like across sports or different levels, yeah, I'm not an expert on that and couldn't outline all that for you right now. I could just say it makes me sad when athletes are excluded and not given a chance to reap all these amazing benefits from being a part of sport.

BY ATTORNEY TRYON:

Q. I hear you, but I still want to know if you believe that there's a place for the State to pass laws to regulate that?

ATTORNEY VEROFF: Objection.

[210] THE WITNESS: Yeah, I don't think the State legislators in my view are the best position. I feel like the sport organizations and sport leaders and people really

invested and knowledgeable and involved in the sports at different levels should be making these calls.

BY ATTORNEY TRYON:

Q. So you don't believe that the State should pass any law whatsoever regulating participation of transgender girls in girls sports?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I'm not speaking to every possible law that could ever be invented, but with regard to this House Bill, right, I think it's unfortunate to have just a blanket exclusion for transathletes, for transfemales.

BY ATTORNEY TRYON:

Q. Fair enough. What about maybe a --- well, let me just ask this question. When kids are competing, is it their identity that's competing or is it their body that's competing?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm sorry. I wouldn't even know where to begin to address that question or what **[211]** even ---.

BY ATTORNEY TRYON:

Q. Let me see, you're not an expert on puberty blockers therapy for boys or young men who want to be on the girls teams, right?

A. I am not.

Q. And you're not an expert on testosterone suppression for boys or young men who wanted to be on a girls team, right?

A. That is correct.

Q. And you are not an expert on hormone therapy for boys or young men who want to compete on girls teams, right?

A. That's correct.

Q. Let's take a look at Exhibit-11.

ATTORNEY TRYON: Jake, if you could bring that up. Excuse me, Exhibit-9. I beg your pardon. I have to relabel some of these.

(Whereupon, Exhibit 9, Article on Lia Thomas, was marked for identification.)

BY ATTORNEY TRYON:

Q. So I'm sure you expected that I was going to ask **[212]** you some questions about Lia Thomas, didn't you?

A. I didn't know what to expect, honestly.

ATTORNEY VEROFF: Objection.

THE WITNESS: I didn't know what to expect.

BY ATTORNEY TRYON:

Q. Of course, the whole issue with Lia Thomas has been in the news a lot, and so I want to ask you about --- this is an article in Fox News. It says Penn Swimmer Slams School's Handling of Lia Thomas Saga. They Don't Actually Care about Women at All. So have you seen this article?

A. No.

Q. But you are aware of the Lia Thomas what I will call controversy, right?

A. Yes.

Q. So the first paragraph says a swimmer on University of Pennsylvania Women's team says she feels the school's decision to allow transgender swimmer Lia Thomas to compete has created an unfair balance within a sport that prioritizes Thomas's rights over that of biological female student athletes. A student who spoke to Fox New Digital on the condition of anonymity out of fear of retribution said she was hopeful after learning **[213]** the NCAA's decision last week to update its policies of allowing transgender girls to compete based on hormone levels. And then skipping down it says stuff like that, it's not just the difference between two girls and how one may have slightly larger lungs that gives them a slight advantage. These are monumental advantages that biological males just develop through puberty and it's not something that a year of hormone treatments, in brackets, can suppress because they still have all the muscle mass that they had for the last 20 years, closed quote. Do you believe that this swimmer is justified in her feelings about this being unfair?

ATTORNEY VEROFF: Objection.

THE WITNESS: I believe this swimmer has the right to her opinion, for sure.

BY ATTORNEY TRYON:

Q. Do you agree that it was unfair for Lia Thomas to compete with the girls on the team?

ATTORNEY VEROFF: Objection.

THE WITNESS: The NCAA has set these standards in place and Lia Thomas followed everything, she has followed the rules and so it's really unfortunate to see how much hate and lack of respect and lack of kindness has

been thrown her way. It's just **[214]** really hard stuff. I understand that athletes --- this is new and I think each sport will be just looking at the criteria they use and so, you know, they may tweak some things along the way. But I don't think we can take it out on Lia Thomas who has done everything that has been asked of her.

BY ATTORNEY TRYON:

Q. Is there anything that you are aware of --- this swimmer doesn't say I hate Lia Thomas. You just started out talking about hate. Where do you get that from?

ATTORNEY VEROFF: Objection.

THE WITNESS: From everything coming from social media. And so she fears retribution and wants to stay anonymous. Lia Thomas I feel has a lot of courage to put herself out there knowing that there is going to be a lot of people unhappy and a lot of pushback and, you know, kind of couple of things that she says is just referring to be who she is, ready to compete. And so I'm acknowledging this is a really difficult situation, right, for swimmers, for her teammates, but I think in this case we have to wait to see what the NCAA and what the USA Swim group decides to do and what they decide is fair. And they have ongoing studies about how to be inclusive and yet fair, and I'm confident that we can **[215]** keep pursuing that and there may be a learning curve for us, right, or it may be that this is determined with data over time that this is exactly what the criteria needs to be.

BY ATTORNEY TRYON:

Q. So let's turn to the third page underneath that picture, it says --- keep going down. I'm sorry. More please, below the next picture. There we go. And right --- so the paragraph, it says they are just proving, once again,

that they don't actually care about women athletes, the swimmer said of the University of Pennsylvania. They said they care and that they're here for our emotions, but why do we have to be gracious losers? Who are you you to tell me that I shouldn't want to win because I do want to win. I'm swimming. I'm dedicating more than 20 hours a week to the sport. And obviously I want to win. You can't just tell me that I should be happy with second place. I'm not. And these people in Penn's administrative department who just think that women should just roll over, it's disturbing and it's reminiscent of the 1970s when the are fighting for Title 9 and stuff like that. They don't actually care about women at all. What would you say to this swimmer?

[216] ATTORNEY VEROFF: Objection.

THE WITNESS: I'd say I just recognize that you're really frustrated with this and you don't agree with it and that we --- well, I think, you know when stuff is new and we don't have a lot of experience or exposure to it, you know, that is really hard. I just reflect back to my first semester at college and I was just having lunch at a long table with lots of women, and my roommate told me afterwards that every person that we had lunch with, which was a lot, that they were all gay. And I had no idea, never --- I grew up in Texas, never talked to anybody, never knew anybody that I knew was gay, was probably just naive.

And so down the road now, some people that I'm closest to and love in the world are gay and it is not anything that I give any thought to. It's like, you know, crazy that is what happens over time. And I see the same thing happening with transgender athletes. We're just going to --- who would want to have the courage to come out and just put your lives out there and your family and do everything

that they have to do, too, and so I think we'll all just grow and we'll learn more about what this experience is and we'll be able to see, right, that here is just another athlete like me.

[217] We have more in common than we don't. And I think over time a lot of views will change and we'll just keep working on trying to be as fair as we can on what the criteria should be. But with this athlete I would say nothing changes for you. What you are trying to do is be the absolute very best that you can be, right, and so let's keep working hard, let's keep seeing what you can do. In swimming, that's a nice sport to just be able to stay focused on your time and your performance and proving your technique.

BY ATTORNEY TRYON:

Q. And so you are saying that this girl should be a gracious loser, period, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: No. I'm saying if that suggests that every transgender female that ever competes in sports is going to be every female, right, and that's just crazy, so --- and you know, I'm not following it that closely, but Lia Thomas has lost races as well. So just to say that she is here.

BY ATTORNEY TRYON:

Q. Right.

A. And I'm just a big loser for now because I can never, you know, beat her, no, you just go out there and **[218]** compete because that's what sports is about.

Q. And that --- sorry, go ahead. I thought you were finished.

A. Sorry. It's just out of, you know, some of these rules are things that are just out of her control so she needs to stay focused on what she can focus on.

Q. Is it your view that these girls that are objecting to Lia Thomas being on the team are doing it because they hate Lia Thomas?

ATTORNEY VEROFF: Objection.

THE WITNESS: No, no, I don't know any of these athletes.

BY ATTORNEY TRYON:

Q. Let me ask you to take a look at Exhibit-11. Let me know when you have it.

A. Okay, I have it.

Q. This is the opening paragraph and this says Virginia Tech, fifth year Reka Gyorgy has released a letter to NCAA addressing her opinion on the organization's controversial transgender policy which allowed Penn fifth year Lia Thomas to compete at the NCAA championships last week. And if we can turn to the page we can see the actual letter written by this swimmer. It is in italics. And let me start with the **[219]** second paragraph. My name is Reka Gyorgy of Hungary. I am a 2016 Rio Olympian, represented Virginia Tech for the past five years, a two-time ACC champion, two time all-American and three-time honorable mention all-American. And then skipping down one paragraph she says, Micka, if I'm saying her name right, says I'm writing this letter right now in hopes that the NCAA will open their eyes and change these rules in the future. It doesn't promote our sport in a good way and I think it's disrespectful against the biologically female swimmers who are competing in the NCAA.

And then I want to skip down --- well, let's just continue on the next paragraph. I don't want to skip too much. I swam the 500 free at NCAA on March 17th, 2022, where I got 17th which means I didn't make it back to the finals and first alternate. I am a fifth-year senior. I have been top 16 and top 8 and I know how much a privilege it is to make finals at a big --- at a meet this big. This is my last college meet ever and I feel frustrated. It feels like that final spot was taken away from me because of the NCAA's decision to let someone who is not a biological female compete. I know you can say I had the opportunity to swim faster, make the top 16, but this situation makes **[220]** it a bit different and I can't help but be angry or sad. It hurts me, my team and other women in the pool. One spot was taken away from a girl that got 9th in the 500 free and didn't make it back to the A final, preventing her from being an all-American. Every event that transgender athletes competed in was one spot taken away from biological females throughout the meet. Do you disagree with Reka Gyorgy?

ATTORNEY VEROFF: Objection.

THE WITNESS: I recognize that she is very frustrated and feels that this decision wasn't fair. You know, if we're looking at a bigger picture I think sport organizations at the Olympic level, international level, national level, are all invested in keeping this value of inclusion, right, and trying to balance that with fairness, and so I think it's something these organizations are really going to keep working on and that ---.

BY ATTORNEY TRYON:

Q. Sorry. Go ahead.

A. And that they are going to be able to find a good spot that is somewhere --- somewhere in a place that can

be respectful, be it transfemale athletes and also the female athletes on these teams. **[221]**

Q. So you talk about a good spot. You don't know what that good spot is.

Is that right?

ATTORNEY VEROFF: Objection.

THE WITNESS: No, I don't --- sorry, Julie, but I'm confident that there are many people looking --- spending a lot of time and trying to figure out how to answer some of these questions. In response to this athlete, she's probably knocked out a lot of other female athletes because maybe she had more advantages along the way, right. Maybe her parents were able to put her in good programs or good coaching and things like that. So you know, it's just never like a --- we like to just think what a sweet, perfect world it is where everyone has the same opportunities and, you know, there's just a lot that's not fair out there, right, across for athletes, but I think we do the best we can, which is what the NCAA has tried to do at this point. And like I said, things may be changing, yeah, but then --- but just to go back to the other side, for the answer to be a blanket exclusion of all transgender athletes at every level is not helping us move forward.

BY ATTORNEY TRYON:

Q. But you think even Lia Thomas should have been **[222]** allowed to participate in this swim meet, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I don't think it matters what I think because I'm just not that emersed in the sport to know everything. So whether it's ten whatever it is nanomols per liter or whether, you know, that's going to change, I don't know, but I think she --- I respect her, she

did everything the sport has asked her to do. And she says she gets in the pool every day and gives it her best effort. And those are the kind of teammates I like to have, right, that are that way. So I think everybody can --- her teammates can look at this as maybe they can make each other better and grow as human beings and make the world better.

BY ATTORNEY TRYON:

Q. So again you think Lia Thomas's teammates should just knuckle under and be happy about it and be complete, is that right?

ATTORNEY VEROFF: Objection.

THE WITNESS: I feel sympathy and empathy for so many athletes that are dealing with difficult challenges, right, including these athletes, right, and I just acknowledge, yeah, it must be tough, right, **[223]** you've just been doing your thing in your sport for a long time and then you happen to be at the center stage of some of this taking place, but, you know, it's just a lot of challenges that athletes are dealing with on many levels and so I don't think they are unique in, you know, it's not like they are the only athletes that have challenges to deal with.

BY ATTORNEY TRYON:

Q. Do you think that --- are you equating the fact that this swimmer might have had some advantages in her life to the fact that Lia Thomas had been --- had gone through puberty and was maybe as much as a foot taller than the other swimmers, those are just the same thing?

A. No.

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm sorry. I'm not equating those. I'm just simply saying what I feel as the truth, that not everybody out there has all the same opportunities, right, and access and great coaching and facilities and everything else. So I think the NCAA is trying to do the best that they can and everybody is learning, right, so ---.

BY ATTORNEY TRYON:

Q. One of the things that we are learning that **[224]** these other girls, biological girls, are feeling very marginalized. Does that count for anything?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think there is a lot that our field of sports psychology can offer here in terms of helping people work through these things. But I would just go back to if we think the answer is to exclude all transgender female athletes from competing, then that's not right, and so we're going to have to maneuver this, we are all going to have to be involved in helping figure out how to move forward.

BY ATTORNEY TRYON:

Q. Let me just be clear, HB-3293 does not exclude any athletes from competing in sports, does it?

ATTORNEY VEROFF: Objection.

THE WITNESS: Okay.

From my perception it does because BPJ is a female and wants to compete with her female peers.

BY ATTORNEY TRYON:

Q. Okay.

A. So I don't see that as a good option for her to compete with the males.

Q. What about Lia Thomas? I mean, Lia Thomas looks like a male? **[225]**

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. And couldn't he compete on the male team as he had been for years and then the coach on that team simply say, yeah, Lia Thomas now goes by she, but Lia Thomas is going to compete on the boys teams and you guys just need to respect that?

ATTORNEY VEROFF: Objection.

THE WITNESS: As a cisgender female it's hard to fathom that you wake up and you just feel like you are in the wrong body, right. And the more I've read over the years and the more I've heard people share their stories, it must just be excruciatingly painful to go through life and feel like that's your situation, and so ---.

BY ATTORNEY TRYON:

Q. Right. And nobody is disagreeing with that, nobody is contesting that, just the question --- the right question is what's fair to everyone, not just to the transgender person, but also to the biological girls.

Isn't that the question?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right. I think the **[226]** question is how do we balance that inclusion and fairness.

BY ATTORNEY TRYON:

Q. I'm almost finished. I'm going to read you a series of statements and please tell me if you agree or disagree. Either one is fine. I just want to understand your position. Or you may say I don't know. That's fine too. The first

statement, there are physiological differences between natal males and natal females.

ATTORNEY VEROFF: Objection. Apologies, objection.

THE WITNESS: True.

ATTORNEY VEROFF: Sorry to --- Mr. Tryon, are these your documents or are these statements coming from a document somewhere.

ATTORNEY TRYON: No, these are my statements.

ATTORNEY VEROFF: Thank you for the clarification.

BY ATTORNEY TRYON:

Q. Second, there are physiological difference in natal males and natal females that result in males having a significant performance advantage over **[227]** similarly gifted age and trained females in nearly all athletic events after puberty?

ATTORNEY VEROFF: Objection.

BY ATTORNEY TRYON:

Q. Agree or disagree?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think there is exceptions to this, but as a general rule that is true.

BY ATTORNEY TRYON:

Q. Number three, there are physiological differences between males and females that result in males having a significant performance advantage over similarly gifted aged and trained females in nearly all athletic events

during puberty as opposed to after puberty. Do you agree or disagree?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, I think it --- I think that statement somewhat depends on what we define as significant.

BY ATTORNEY TRYON:

Q. Fair enough. Four, there are physiological differences between males and females that result in males having a significant performance advantage over similarly gifted aged and trained females in all **[228]** athletic events before puberty?

ATTORNEY VEROFF: Objection.

THE WITNESS: Disagree.

BY ATTORNEY TRYON:

Q. Okay.

Number five, there is not scientific evidence that any amount or duration of cross sex hormone therapy, puberty blockers, androgen inhibitors or cross sex hormones, eliminates all physiological advantages that result in males performing better than females in nearly all athletic events?

ATTORNEY VEROFF: Objection.

THE WITNESS: Okay.

And I'm just going to say that is beyond my expertise and knowledge of that literature.

BY ATTORNEY TRYON:

Q. Males who have recently --- excuse me, males who have received such therapy retain sufficient male

physiological traits that enhance athletic performance vis-à-vis similarly aged females from a physiological perspective more accurately characterized as male --- agree or disagree?

COURT REPORTER: I'm sorry, Counsel. Can you restate that question? I missed it.

[229] ATTORNEY TRYON: Sure.

BY ATTORNEY TRYON:

Q. Males who have received such therapy that I mentioned in question number five retain sufficient male physiological traits that enhance athletic performance vis-a-vis similarly aged females and are thus from a physiological perspective more accurately characterized as male and not female?

ATTORNEY VEROFF: Objection.

THE WITNESS: Again, I would say that exceeds my expertise.

ATTORNEY TRYON: Fair enough. Let me go off the record for just a few minutes. I think I've covered everything, but I just want to make sure, and then I will turn the time over to my co-Defendants if they have any questions. So just give me five minutes to go off the record. Is that all right with everyone?

ATTORNEY VEROFF: Thank you.

THE WITNESS: Yes.

VIDEOGRAPHER: Going off the record. The time reads 4:45 p.m. Eastern Standard Time.

OFF VIDEOTAPE

(WHEREUPON, A SHORT BREAK WAS TAKEN.)
[230]

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record. The current time is 4:53 p.m. Eastern Standard Time.

ATTORNEY VEROFF: Excellent. Thank you. Mr. Tryon, in our last exchange with Professor Fry you read a series of statements and I asked you if these statements were coming from any documents. You said, no, these are my statements. And I just want to put on the record that it appears that in some of those statements you were reading from portions of the report of Doctor Brown, one of Defendant's expert witnesses.

ATTORNEY TRYON: Well, in response, they were generated from that, but they are not his statements precisely, so --- and I think that I represented that correctly if you are suggesting that I misrepresented it.

ATTORNEY VEROFF: Thank you.

ATTORNEY TRYON: More over I don't think I need to reference the source of my questions, but I appreciate your statement.

ATTORNEY VEROFF: Thank you. I was just clarifying, I thought that the answer that you gave earlier was your statements and was inaccurate, and so I **[231]** just wanted to clarify that for the record.

ATTORNEY TRYON: Well, I believe it to be accurate, but we'll agree to disagree perhaps.

BY ATTORNEY TRYON:

Q. So back to my questions, Professor Fry, it seems that you have a specific view about transgender girls or women participating on girls or women's teams.

Is that a fair statement?

ATTORNEY VEROFF: Objection.

THE WITNESS: Can you be more specific?

BY ATTORNEY TRYON:

Q. So you indicated numerous times of your belief, generally, that trans --- that males who identify as females should be allowed to participate on girls teams. Right?

ATTORNEY VEROFF: Objection.

THE WITNESS: Again, I've stated that I'm opposed to having a blanket exclusion policy for all transfemale athletes.

BY ATTORNEY TRYON:

Q. When did you arrive at that position?

A. I'm not sure.

Q. Was it sometime in the past two years or somewhere before then? **[232]**

A. I'd say before then, but I'm not sure.

Q. Okay.

Do you have any idea at all what timeframe?

ATTORNEY VEROFF: Objection. Asked and answered.

THE WITNESS: I'm really not sure. You know, things just kind of blur over time.

BY ATTORNEY TRYON:

Q. Sure.

A. But I'm a fan of trying to let athletes participate. So I'm not sure. I definitely learned more over the last few years and may come from a more knowledgeable position but I think it's one I felt for sometime.

Q. For more than ten years?

ATTORNEY VEROFF: Objection.

THE WITNESS: You know, it's just hard to say. I don't remember this being part of the conversation so much ten years ago, so if someone had asked, yeah, I'm really not sure how to put a timeframe on it.

BY ATTORNEY TRYON:

Q. Do you know when the first time is you heard of the idea of transgender women participating or **[233]** transgender females participating on girls sports?

A. Again, I don't know. You know, I've been attending sports psychology conferences for the last 30 years, and I don't remember the first time I sat in on a session, or you know, began to learn more.

Q. Okay.

A. I really don't.

Q. Very good. What's the total compensation that you received or that you've charged for in this case so far?

A. In this case?

Q. Yes, in this case.

A. Yeah, I haven't turned in a bill, so I haven't received anything.

Q. So how much have you incurred so far as fees in this case?

A. Yeah, I've --- I think it's in the ballpark of eight to ten hours probably prior to today.

Q. And what is your hourly rate?

A. $250.

Q. And how about in the other three cases combined, how much have you --- how many hours have you expended?

A. Probably eight to ten hours for the Connecticut and Idaho cases together. **[234]**

Q. And Florida?

A. In Florida, four.

Q. So when you first ---?

A. Sorry.

Q. Sorry, go ahead.

A. Four to six, and I billed for four, though, so I received a thousand for Florida --- in the Florida case.

Q. Do I understand correctly then that the first report that you did was for Connecticut?

A. We started that one and then there was --- that's when COVID hit and the season was on hold. I would have to go back and look. But I think the first one that was filed ended up being Idaho even though we started on Connecticut --- or I was part of the Connecticut one.

Q. And you believe you are able to put this whole report together in eight to ten hours for Connecticut?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY TRYON:

Q. And your billing rate is the same for all of them?

A. That's correct.

ATTORNEY TRYON: I don't have any further **[235]** questions. And so thank you for your time. It is always stressful and so I appreciate it. I recognize that it was stressful and that I do appreciate your patience and your time. Thanks?

THE WITNESS: Thank you. Thanks very much.

ATTORNEY SCRUGGS: I guess I will jump in since none of the other Defendants want to.

ATTORNEY TRYON: Go ahead.

ATTORNEY SCRUGGS: Okay.

EXAMINATION

BY ATTORNEY SCRUGGS:

Q. Hello, Doctor Fry. How are you doing? Can you hear me okay?

A. I can. Doing well. Thank you.

Q. So my name is Johnathan Scruggs. I'm an attorney for the intervening Defendant, Lainey Armistead, in this case. So I'm just going to ask you a few questions. The good news is I won't ask many questions as the prior testimony, and I can't since we are limited in time. So I will try to go quick. But the most important question actually I have for you is **[236]** what is your favorite barbecue place in Memphis? That's the real question.

A. I guess I'd have to go with the Rendezvous. My husband and I had our first date there. That was kind of special.

Q. Well, I'm from there originally, so that's why I asked.

A. Where are you from?

Q. I'm from Memphis, the Memphis area originally.

A. Okay.

Q. I'm more partial to central barbecue places, but they're all good. So anyway, I want to turn a little bit to paragraph 38 of your expert report. It is Exhibit 2 there. And I want to turn you more toward the end of that paragraph where it says when athletes are excluded from participating in the sport or in a climate where they do not feel accepted or respected, they do not have the opportunity to reap these benefits. Now, what benefits are you talking about there?

A. The benefits of participating in sport and to --- yeah, sorry, let me read this one more time, this paragraph, please.

Q. Absolutely.

A. Yeah, so I was referring to the benefits **[237]** highlighted throughout this statement that come from having a chance to participate in a really positive climate. But in this particular paragraph saying that there's some advantages to females who are able to participate, right, and might be more likely to go on to college and those things.

Q. Let's just talk generally real quick. Can you outline, kind of, just as general benefit beyond that one specific one you mentioned?

ATTORNEY VEROFF: Objection. Asked and answered.

BY ATTORNEY SCRUGGS:

Q. You can answer the question.

A. Okay. Well, throughout the statement these benefits of being able to participate in sport, you know, in a caring climate that, you know, people can have fun, can have good experiences and good relationships with coaches and athletes. They can have --- just reap the physical benefits of being in better health and --- both psychologically and physically. They can express greater empathy for others, and you know, better sportspersonship, right, really evaluate being a respectful competitor and things like that.

Q. Now, in your last sentence in paragraph 38, you **[238]** don't have a timeframe mentioned in terms of when athletes are excluded from participating in sports they don't have the opportunity to reap these benefits. Do you mean when they don't have an opportunity for a substantial period of time or any type of loss of participation for any period of time?

A. So when athletes are excluded from sport --- I'm not sure I'm following you, but if they were excluded for a day or two, are you saying would that be a big deal or are they excluded for a whole season or they ---?

Q. Sure. Sure. I'm just wondering if you can put that in a timeframe?

A. No, but I would grant that if they're excluded for a day or something like that, we wouldn't be here talking about it probably, but yeah, on a bigger scale.

Q. But you would agree that if students were excluded from participating in high school sports for four years,

they would miss out on the opportunities for participating in youth sports?

A. Yes.

Q. And I assume the same is for a year.

Correct?

A. Yes. **[239]**

Q. Let's say there's a policy as far as males with female gender identities to undergo testosterone suppression for a year before they can participate on the girl's team, would that policy force at least some athletes to miss out on some opportunities associated with youth sports?

ATTORNEY VEROFF: Objection.

THE WITNESS: It could.

BY ATTORNEY SCRUGGS:

Q. Well, could you envision where it wouldn't?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm just thinking they might have other options or could play on a co-gender team that's maybe not part of their school, what they really wanted to do was on their school, but there could be another possibility.

BY ATTORNEY SCRUGGS:

Q. Yeah, so being a situation where they only wanted to be on their school and had to undergo testosterone suppression for a year to do so, they would lose out on those benefits for that year.

Correct?

ATTORNEY VEROFF: Objection.

THE WITNESS: Uh-huh (yes).

[240] BY ATTORNEY SCRUGGS:

Q. Now, earlier we discussed HB-3293 the law that is at issue in the case. Now, I don't want to retread a lot of old ground, but I just want to put it in your words. So what is the problem, in your opinion, with this law?

ATTORNEY VEROFF: Objection as to scope.

THE WITNESS: I think it's --- you know, provides a blanket of exclusion of transgender female athletes from participating in the secondary and college level, and that is unfortunate and harmful.

BY ATTORNEY SCRUGGS:

Q. Ma'am, I'm sorry your answer broke up there. I think my internet connection was a bit faulty. Can I ask the court reporter to read back that answer?

(WHEREUPON, COURT REPORTER READS BACK PREVIOUS ANSWER)

BY ATTORNEY SCRUGGS:

Q. And how harmful exactly?

ATTORNEY VEROFF: Objection.

THE WITNESS: It is harmful, because I think what school districts are trying to do is help every child reach their own potential and bring out **[241]** their best and but we have these activities available but we are telling a particular group of kids that you can't participate in these activities and these maybe very important to them and be extremely valuable part of their educational experience through the secondary schools.

BY ATTORNEY SCRUGGS:

Q. Got it. Got it. And now earlier in your testimony you mentioned you didn't think it's a problem if a male --- that would be a male that was excluded from, for example, the women's girl track team.

Do you remember that?

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm sorry, did you say a male who identifies as a male?

BY ATTORNEY SCRUGGS:

Q. Yes, yes. From the women's sports team?

A. Right. The team for the females is for the females, right, so I would agree.

Q. So you don't think HB-3293 is not problematic in that situation?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right.

BY ATTORNEY SCRUGGS: **[242]**

Q. And that's true even if that male loses out on an opportunity from participating on the girl's track team?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right. Right. But they're identifying as a male and can perform on a --- can participate on the male's team.

BY ATTORNEY SCRUGGS:

Q. So they can participate on the male's team and that is why they talk about it?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right.

BY ATTORNEY SCRUGGS:

Q. What if that male athlete is not fast enough to run on the male team?

ATTORNEY VEROFF: Objection.

THE WITNESS: In say cross-country or ---?

BY ATTORNEY SCRUGGS:

Q. Yes. On cross country is not fast enough for the male team, cannot run on the male team, should that male at least be able to participate on the female track team?

ATTORNEY VEROFF: Objection.

[243] THE WITNESS: Right, no, no. No people at tryouts do not make teams. But he is a male, identifying as a male then he should stick with that team.

BY ATTORNEY SCRUGGS:

Q. So in that situation, it doesn't matter, that male athlete doesn't have another option?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right.

BY ATTORNEY SCRUGGS:

Q. Okay.

Wouldn't it be more inclusive to allow the man to participate on the female track team?

ATTORNEY VEROFF: Objection.

THE WITNESS: I don't see it like that, right. There's a male track team and a male can try out for the that. And the good news is with cross-country they can handle a lot

of athletes so often there is not a cut policy in cross-country.

BY ATTORNEY SCRUGGS:

Q. Well, I think I can easily give a scenario where the male can't make the male track team, but there is an open slot on the female track team, so that males who identify as males, should that person be able to **[244]** participate on the female track team?

ATTORNEY VEROFF: Objection.

THE WITNESS: No. Sorry. No. No, I don't think so.

BY ATTORNEY SCRUGGS:

Q. Well, why doesn't --- why shouldn't we value their participation on an athletic team?

ATTORNEY VEROFF: Objection.

THE WITNESS: I don't think we're saying we wouldn't value that, right. That happens all the time.

BY ATTORNEY SCRUGGS:

Q. Yeah. I'm saying why don't we value --- why don't we promote their participation in athletics and allow them to participate on the female track team?

ATTORNEY VEROFF: Objection. And please let the witness finish her answer.

THE WITNESS: I think there's a team for this male athlete to at least try out for and go for and so I don't see the issue that we're not being inclusive and giving this athlete an opportunity to try out for that team. Across teams and across schools, many athletes try out for sports and don't make the team.

BY ATTORNEY SCRUGGS: **[245]**

Q. Well, BPJ can try out for the male track team.

Correct?

ATTORNEY VEROFF: Objection.

THE WITNESS: That doesn't seem to be a viable option since BPJ is a female.

BY ATTORNEY SCRUGGS:

Q. Gotcha. Okay. Let me turn you toward paragraph 37 in your expert report, again I'm going to ask you about the second question --- the second -- or the last sentence, excuse me, there, where it says if transgender students are arbitrarily excluded from these sports they are in turn deprived of this positive experience as an outcome and their teammates are deprived of a generally optimal sport experience. Did I read that correctly?

A. Yes, I think so.

Q. Now, would you agree that if we just said any student is excluded from youth sports, they are deprived of those positive experiences and outcomes and their teammates are deprived of a generally optimal sports experience?

A. Yeah, I'm not thinking of a situation where that is not the case right now.

Q. So would you agree that if it said if any **[246]** student, no matter their gender identity, were arbitrarily excluded from youth sports, they are deprived of those positive experiences and outcomes?

A. I would just add that based on their gender identity, right. So you could have a trans female athlete who tries out for a team and doesn't make it, right, we're not including that in the same ballpark here with just

having a blanket statement that transfemale athletes may not participate.

Q. I guess I'm not really following you. But again, you would agree that if any students are arbitrarily excluded, they reap the benefits from youth sports?

ATTORNEY VEROFF: Objection. Asked and answered.

THE WITNESS: No, I wouldn't agree with that. I would need the context of that because the example I'm giving is transgender female athlete tries out for a female team and doesn't make it, right, and so would be excluded for that reason, that they're --- this team is limited in how many positions they have and they --- particular, you know, some kids try and don't make the team.

BY ATTORNEY SCRUGGS: **[247]**

Q. Let me turn you to your Declaration, your initial expert Declaration, I think it's Exhibit 1, and then let me turn you to paragraph 44 and just read the second sentence, which says, if athletes are arbitrarily excluded from youth sports, they are, in turn, deprived of those positive experiences and outcomes and their teammates are deprived of a generally task involving and caring sports climate. Do you see that?

A. I do.

Q. And are you referring to all athletes there?

A. I think the point is arbitrarily there.

Q. Uh-huh (yes).

A. Right, then --- so if we're just saying we should have a cut policy because that's not fair, right, that's not what I'm insinuating here, right, just saying but to have this --- make this decision that as a blanket statement that

certain group of athletes can't participate, can't try out, can't participate, then, yes, I think the statement is true.

Q. Yes, I think we are saying the same thing. Let me ask it another way. Again, focusing on the arbitrarily, if all athletes --- if any athlete is arbitrarily excluded, that creates a problem in your mind?

[248] ATTORNEY VEROFF: Objection. Asked and answered.

THE WITNESS: Yes, I think it changes the meaning to say if any athletes, any athlete under any circumstances, but I just mean --- athletes here.

BY ATTORNEY SCRUGGS:

Q. Yeah, I'm not saying under any circumstances. I guess what I'm trying to figure out is what role does an athlete's gender identity play in that sentence. It says if athletes were arbitrarily excluded, so I assume there could be a male athlete who identifies as male. If that athlete is arbitrarily excluded, that creates a problem that you identify in that paragraph?

A. I'm not familiar with --- sorry, Julie.

ATTORNEY VEROFF: Objection.

THE WITNESS: I'm not familiar with that case where the male athlete is arbitrarily prevented from participating. I'm not sure what you're referring to there.

BY ATTORNEY SCRUGGS:

Q. Well, let's think about a situation on the sports team where a coach cuts an athlete, a female athlete who identifies as female and instead it favors the coach's own daughter, for example. You would **[249]** consider that an arbitrary exclusion, right?

ATTORNEY VEROFF: Objection.

THE WITNESS: No. We'd have to know a whole lot more about that situation.

BY ATTORNEY SCRUGGS:

Q. Okay.

A. Maybe the coach's daughter deserves to be on the team and if the team can only handle so many maybe that's how it had to be. But to make the assumption that because it was the coach's daughter that it wasn't a fair process --- .

Q. I'm assuming that was the only reason that the athletes have been chosen and someone else is excluded?

A. In other words, if a coach just says I don't like you, I don't want you on my team.

Q. Exactly.

A. It seems like there would be guidelines in place for someone to appeal that to the Athletic Director and so on, and yeah, that doesn't sound like it'd be very fair to not give someone a chance.

Q. Exactly. And that kind of principle applies regardless of someone's gender identity?

ATTORNEY VEROFF: Objection.

THE WITNESS: Okay. Yeah. If I'm **[250]** following you, yes, I think.

BY ATTORNEY SCRUGGS:

Q. Yeah. Now, switching gears slightly, you mentioned --- to go back --- let's go back actually to your expert report, paragraph 37. And again, that last sentence that transgender students are arbitrarily excluded, what is the situation when a transgender student is not

arbitrarily excluded from youth sports --- or let me strike that. Let me rephrase.

What is a situation, to use your term, transgender student doesn't make the sports team and that's not arbitrary? Did you hear that question?

A. Sorry, I thought the court reporter was asking for it to be repeated or something.

Q. No. I'm sorry.

A. No, that's okay. I lost something, okay. So you're saying, for example, a transfemale athlete tries out for a female athletic team and doesn't make it?.

Q. I'm asking is that an example of a non-arbitrary exclusion?

A. Yes. In general, I would say, yes, without having more details, all right, but it doesn't --- transathletes, right, would just have the right to try out, the right to, you know, potentially participate, **[251]** but it doesn't mean that everyone would make the team.

Q. Got it. So that situation where you have the male athlete who identifies as female, right, and just doesn't make the team, do they lose out on the experiences and opportunities associated with participating in sports?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yeah, it depends. You know, some might participate in another sport, right, or find another avenue, but the potential is there for that, yeah.

BY ATTORNEY SCRUGGS:

Q. So in a situation where there is no other opportunity or avenue, but we are saying that athlete just can't make that team because they just don't have that

athletic skill, in that situation they would lose out on the opportunity outcomes associated with participating on that team?

ATTORNEY VEROFF: Objection.

BY ATTORNEY SCRUGGS

Q. So the word arbitrary doesn't really determine whether someone benefits from the experience and outcomes of participating in youth sports?

ATTORNEY VEROFF: Objection. **[252]**

THE WITNESS: Right. Inherent within sports, unfortunately, particularly at the secondary level, is that not all schools are in a position to let every child participant who wants to, right, and so there is a cut policy. Personally, because of everything I've outlined today, I wish every school district was doing everything possible to include as many kids, as many athletes as they could, right, but that's not the reality. Boys and girls try out for teams and they get --- you know, they don't make it. I just saw this clip this weekend, Billy Mills, Olympic gold medalist, right, he was cut from his track team as a freshman, right. So that happens. And I'm distinguishing that from just arbitrarily saying this whole group of athletes, you don't have the right to even try out for the team.

BY ATTORNEY SCRUGGS:

Q. But in terms of taking advantage of the benefits associated with sports, it's not so much why someone is excluded but just the fact that they are excluded?

ATTORNEY VEROFF: Objection, asked and answered.

THE WITNESS: I would say it's important to consider why they are excluded. **[253]**

BY ATTORNEY SCRUGGS:

Q. Okay. And why is that important?

A. Because I believe it's harmful to just have a blanket exclusion of a group of athletes like transathletes to say you don't have the right to participate in your school activities, to try out, right, and to be part of these teams and activities.

Q. Well, I'm asking with respect to your expertise about benefiting from the outcome and advantages of participating in sports. It seems to me that any type of exclusion from sports was by definition maybe cannot take advantage of this opportunity to benefit. Isn't that correct?

ATTORNEY VEROFF: Objection. Asked and answered.

THE WITNESS: No. I'm speaking specifically about sport because that's what's on the table in this case, but you know, somebody else might really experience a caring task involving climate and have great opportunities in other activities of school that they're passionate about, like school or music, right. But if like BPJ, if her passion is sport, wanting to run track, right, then --- and there's just a **[254]** blanket statement saying you're not --- you can't, you can't try out for the women's track team, right, then that would prevent her from the potential benefits that she could be reaping, right, and just enhancing her school experience.

Q. Got it. Like the male that identifies as male and can't participate on either the males sports team or the female sports team?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right. The distinction is that he can participate on the male team. He can try out, right, just like the transgender female can try out for the women's team, but there's no guarantee that the athletes make the team.

BY ATTORNEY SCRUGGS:

Q. Exactly. So I mentioned to you that I represent Lainey Armistead. And I will represent to you that she is a female soccer player on the West Virginia State University soccer team. Now, I think earlier you mentioned that you reviewed some documents in the case. Did you happen to run across any documents mentioning Ms. Armistead?

A. Yes, I read her statement. It's been a little bit of time, so I might need to be refreshed on it, but **[255]** I did take a look at that.

Q. Okay. Well, let me go to Exhibit --- paragraph 41 of your expert report.

VIDEOGRAPHER: What number did you say, Counsel?

ATTORNEY SCRUGGS: Paragraph 41.

VIDEOGRAPHER: Thank you.

BY ATTORNEY SCRUGGS:

Q. And it says the climate of youth sport must be geared to include all participants so the teams are more likely to help every athlete maximize their potential. From an educational perspective it is optimal to encourage all athletes to do the best they can and to help all athletes enjoy the sport that they love.

Did I read that correctly?

A. Yes.

Q. So I assume that would include Ms. Armistead in your opinion. Correct?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think some of the ideas hold, but you know, we were referring here to the climate of youth sport. Typically in our field we **[256]** consider youth sport through high school and we would separate that from collegiate sport.

BY ATTORNEY SCRUGGS:

Q. Do you think it would be wrong to say that we should not --- you know, strike that. Do you think that we shouldn't gear athletic or college sports to include all participants?

ATTORNEY VEROFF: Objection.

THE WITNESS: You know, at a place like the University of Kansas where I am, we have different levels and so you have the D-1 sport, right, and then you have club sport where people who don't have the skill level or the experience to play a D-1 sport can try out for the club sport those --- I think there's like 40 teams or maybe more we have, and the skill level among those sport club teams really varies, right. You got some, that are not hit and giggle, you know, just everyone's welcome and they don't have --- you know, a cut policy. Others are pretty competitive and maybe competing at national levels.

But you have another level of intermurals that is open to every student on campus can sign up, because they want to play whatever it is basketball or indoor soccer or something. So I think ideally, you **[257]** know, universities

should offer lots of opportunities for people to participate in sport.

It is not realistic that every student on campus could participate in you know D-1 sport or whatever the level, you know, a school might have.

BY ATTORNEY SCRUGGS:

Q. So Doctor, if we had a male that identifies as female, it wouldn't be problematic to exclude that person from the female collegiate track team?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think it depends on what the rules are in place, but if this transgender female meets the criteria and participates, right, that that is great.

BY ATTORNEY SCRUGGS:

Q. Well, again, assuming the rules are --- the rules of West Virginia are in place and says we now require all natal males to participate on the male team rather than on the female team, why can't we just tell the male college athletes to identify as females, they can go play on the club sports club team?

ATTORNEY VEROFF: Objection.

THE WITNESS: I think the transgender female athlete should have the right to participate on **[258]** whichever of those levels that they want to participate on. Right. The female D-1 team the sports team, the intermural team, they should have the right to try out as long as they meet the criteria that's in place.

BY ATTORNEY SCRUGGS:

Q. Do you feel that Ms. Armistead should have the right to participate on the female women's soccer team?

ATTORNEY VEROFF: Objection.

THE WITNESS: Yes.

BY ATTORNEY SCRUGGS:

Q. Doctor Fry, you would agree that if Ms. Armistead lost her spot on the soccer team to a male soccer play who identifies as female, Ms. Armistead would be deprived of the positive experiences associated with participating on that soccer team?

ATTORNEY VEROFF: Objection.

THE WITNESS: Right. If the transgender female is meeting the criteria that's in place by the NCAA, right, and then --- and makes the team and someone else doesn't make the team, right, I would say that's --- that's part of sport just like Ms. Armistead, I think, right, if she tried out and she didn't make the team because there's other cisfemale athletes that had a better performance or made the team, but either way she **[259]** would be missing out on the benefits if she didn't make the team.

BY ATTORNEY SCRUGGS:

Q. And that's not my point. I understand your argument. I understand that, as a matter of fact, she would lose out on the benefits and opportunities for participating on the sports team.

ATTORNEY VEROFF: I'm going to object to Counsel testifying.

BY ATTORNEY SCRUGGS:

Q. I'm asking if you agree with that?

ATTORNEY VEROFF: Objection to the question.

THE WITNESS: Yeah, I'm agreeing that athletes try out for teams, and when they don't make it, it's hard for

them to reap the benefits of being part of their team if they, you know, don't participate and aren't part of that.

ATTORNEY SCRUGGS: I understand. I have no further questions. Thank you, Dr. Fry.

ATTORNEY CROPP: This is Jeffrey Cropp, Counsel for Defendant Harrison County Board of Education, and Superintendant Dora Stutler. I have no questions. **[260]**

ATTORNEY GREEN: This is Roberta Green on behalf of West Virginia Secondary School Activities Commission. I have no questions.

ATTORNEY MORGAN: This is Kelly Morgan on behalf of the West Virginia Board of Education and Superintendant Burch. I have no questions.

ATTORNEY TRYON: And this is Dave Tryon. I have no further questions, unless the Defense Counsel does. Excuse me, Plaintiff's Counsel.

ATTORNEY VEROFF: No, we don't have any further questions. The witness will read and sign later.

VIDEOGRAPHER: Okay.

If there's no further questions that concludes this deposition. The current time reads 5:38 p.m. Eastern Standard Time.

* * * * * * *

VIDEOTAPED DEPOSITION CONCLUDED AT 5:38 P.M.

* * * * * * *

ERRATA SHEET

AFFIDAVIT
STATE OF PENNSYLVANIA
County of _____

I, Mary Fry, PhD, certify under oath or affirmation that I have read the transcript of my testimony dated 3/29/2022 and that the transcript of my testimony is accurate with the following corrections:

Page	Line	Error	Correction	Reason
18	15	transathlete	trans athlete	transcription error
21	9	that what was	that was	transcription error
31	15	considering them	considering that	transcription error
35	14	male and female	male or female	transcription error
36	13	I think term	I think the term	transcription error
36	24	there is people	there are people	transcription error
37	3	it is is not	it is not	transcription error
39	4	than	then	transcription error

42	20	by the fact	by in fact	transcription error
49	21	there was big	there were big	transcription error
51	22	there is huge	there are huge	transcription error
52	16	specifically	specific	transcription error
61	22	task in	task and	transcription error
63	20	youth support	youth sport	transcription error
64	23	score psychology	sports psychology	transcription error
69	22	I think there is	I think there are	transcription error

Are there additional corrections on a following page?
___ NO _x_ YES

Signature of Deponent/Affiant __/s/ Mary Fry

Sworn to and subscribed before me, a Notary Public, on this 28th day of April, 2022.

/s/ Brittany Shawntey Goodman
Notary Public

Additional Corrections to the Testimony of Mary Fry, PhD

Page	Line	Error	Correction	Reason
72	23	there is isolated	there are isolated	transcription error
78	5	people come	people did not come	transcription error
81	13	chance to complete	chance to compete	transcription error
89	8	so what if it	so what if it's	transcription error
103	8	International View	International Review	transcription error
120	5	that that's what's	that's what's	transcription error
131	15	tells people	tells people to	transcription error
134	8	promote is the	promote as the	transcription error
154	6	care about performance	care about is performance	transcription error
174	22	transitioning to know transitioning	transitioning to not transitioning	transcription error
176	7	PBJ	BPJ	transcription error
181	13	why would you say	why wouldn't you say	transcription error

189	18	transcend gender	transgender	transcription error
198	7	educational education	educational institution	transcription error
217	17	going to be	going to beat	transcription error
222	4	emerse	immersed	transcription error
243	1	No people	Some people	transcription error
243	17	for the that	for that	transcription error
257	13	that that	that	transcription error

Are there additional corrections on a following page?

NO X YES

Deponent's / Affiant's Name: Mary Fry Initials: MF

Page	Line	Error	Correction	Reason
40	6	there's two cross overs	that there are two cross overs	transcription error
51	18	say	see	transcription error
57	2	about about	about	transcription error
57	3	say they're	say is they're	transcription error
57	15	I take	I attend	transcription error
58	24	in any female student	adding data with female athletes	transcription error
62	7	because research	because this research	transcription error
63	3	samples athletes	samples of athletes	transcription error
63	6	at least	it leads	transcription error
65	5	late	later	transcription error
66	5	Just someone	I'm just someone	transcription error
70	11	are	were	transcription error

70	14	either caring task involving	either a caring and task-involving	transcription error
71	18	six, seven and eight graders	six, seven, and eight graders	transcription error
75	20	to say	I would say	transcription error
75	23	reap off	reap all	transcription error
76	2	mix of	mix within	transcription error
76	3,4	the team	athletic teams	transcription error
77	9	Medical	Mental	transcription error
78	4,5	have, for example, people comme and say	I have not, for example, had people come up and	transcription error
81	4	confidence	competence	transcription error
81	17	hard	hard,	transcription error
82	14	one one	thinking	transcription error

85	24	with the best individual	is an individual sport	transcription error
89	8	is	I'm	transcription error
89	17	lower	lower in ego orientation	transcription error
89	19	win	win,	transcription error
91	2	their	they have an	transcription error
97	6	60 61	6-0, 6-1	transcription error
97	22	your	her	transcription error
111	6	ranking	rankings	transcription error

Are there additional corrections on the following page?

No ___ Yes _X_

Deponent's / Affiant's Name: __Mary Fry__ Initials: _MF_

116	24	stakes	stage	transcription error
117	24	think	know	transcription error
118	2	that NCAA	that the NCAA	transcription error
120	22	focused on just this	focused on, just that this	transcription error
122	2	sports team	being on a sports team	transcription error
123	13	sport exercise	sport and exercise	transcription error
125	13	there	their	transcription error
126	19	specific measurable	specific and measurable	transcription error
127	12	academia from, I'm	from academia, and I'm	transcription error
128	3,4	work. Early	work early	transcription error
128	24	Somebody didn't	Somebody who didn't	transcription error
129	2	know, what do we think is happening here.	know, "What do we think is happening here?"	transcription error

131	4	there is a reason to try your hardest	now there is a reason to not try your hardest	transcription error
131	15	tells	helps	transcription error
133	7	on 1997	in 1997	transcription error
133	10	those are my my dissertation studies	that was my dissertation study	transcription error
136	8	caring task-involving	caring and task-involving	transcription error
137	12	are running	are not running	transcription error
138	18	terms	skills	transcription error
144	9	is task	is for task	transcription error
145	20	morbid	normative	transcription error
145	9	far things	far as	transcription error
145	20	in orientation	in ego orientation	transcription error
148	6	Small	Smoll	transcription error

148	12	Small	Smoll	transcription error
148	13	crosses documents	the proposition crosses documents	transcription error
148	15	150 references probably. Tried	150 references probably, but we tried	transcription error
154	3	perceptions on an	perceptions of an	transcription error
154	14	traits	trait	transcription error
156	15, 16	but what I'm feeling about it is	but the feeling I prioritize is that helping people	transcription error
175	10	to not hold a category	to hold a category	transcription error
178	22	than	and	transcription error

Are there additional corrections on the following page?

No ___ Yes _X_

Deponent's / Affiant's Name: __Mary Fry__ Initials: _MF_

182	6	an indifference	a difference	transcription error
189	18	transcend gender	is not just transgender	transcription error
192	15	They	I	transcription error
192	22	write	rate	transcription error
197	6	evaluate	value	transcription error
201	23	in use for a	every	transcription error
210	2	are the best postion	are the best position	transcription error
220	23	be it	to both	transcription error
237	22	evaluate	demonstrate	transcription error

Are there additional corrections on the following page?

No _X_ Yes ____

Deponent's / Affiant's Name: __Mary Fry__ Initials: _MF_