

<div>Page 54</div> <div><div>1Q. Was it a yearly training?</div><div>2A. No.</div><div>3Q. Was that the first time you ever received any</div><div>4type of IPRA training?</div><div>5A. Formal training.</div><div>6Q. And you were the athletics director for 11 years</div><div>7you said?</div><div>8A. Yes.</div><div>9Q. Was there a reason why you received this formal</div><div>10training? Like did you request the IPRA training?</div><div>11A. I don't recall how the training came about.</div><div>12Q. Were there any training materials, like were</div><div>13there handouts given to you in the training?</div><div>14A. I don't recall.</div><div>15Q. Did the individual or individuals giving the</div><div>16training use a PowerPoint presentation?</div><div>17A. I don't remember.</div><div>18Q. Who conducted the training?</div><div>19A. John Rodriguez.</div><div>20Q. Anybody else?</div><div>21A. I don't remember.</div><div>22Q. Who attended the training other than you?</div><div>23A. There were a number of people from the University</div><div>24in the meeting.</div><div>25Q. Was this just a University training that you</div></div>	<div>Page 56</div> <div><div>1A. No. I think it was a general understanding prior</div><div>2to that.</div><div>3Q. (By Mr. Hart) Can you -- when you said before</div><div>4"routine things, routine communications could get</div><div>5deleted," can you give an example of what you mean by</div><div>6that?</div><div>7MS. BELL: Form.</div><div>8A. Normal correspondence, it's my understanding that</div><div>9could be deleted.</div><div>10Q. (By Mr. Hart) What do you mean by "normal</div><div>11correspondence"?</div><div>12A. Routine correspondence.</div><div>13Q. With who?</div><div>14A. With anybody.</div><div>15Q. Discussing -- what are topics of discussion that</div><div>16you consider routine correspondence?</div><div>17MS. BELL: Objection. Form.</div><div>18A. I just -- what I would consider to be routine.</div><div>19Daily communication on a subject matter.</div><div>20MR. HART: Can we have a minute?</div><div>21MS. BELL: You want to go off the record?</div><div>22MR. HART: Can we go off the record a</div><div>23minute?</div><div>24(Off the record from 10:34 a.m. to 10:36 a.m.</div><div>25and testimony continued as follows:)</div></div>
<div>Page 55</div> <div><div>1attended?</div><div>2MS. BELL: Objection. Form.</div><div>3A. Yes.</div><div>4Q. (By Mr. Hart) Was it for the Athletics Department</div><div>5specifically?</div><div>6A. Not that I recall.</div><div>7Q. Was there any training during that -- was there</div><div>8any discussion during that training regarding the</div><div>9preservation of documents?</div><div>10A. I don't remember.</div><div>11Q. You stated before that your understanding of the</div><div>12obligations under IPRA to preserve public records are</div><div>13that routine, ordinary things could get deleted but</div><div>14important documents need to be preserved. Is that</div><div>15correct?</div><div>16MS. BELL: Form.</div><div>17A. I mean, you have my comments of what I said.</div><div>18Q. (By Mr. Hart) That's a correct characterization</div><div>19of your understanding of the obligation to preserve</div><div>20documents under IPRA; right?</div><div>21MS. BELL: Form.</div><div>22A. Sounds right.</div><div>23Q. (By Mr. Hart) Did you gain that understanding</div><div>24from the University's IPRA training that you attended?</div><div>25MS. BELL: Form.</div></div>	<div>Page 57</div> <div><div>1Q. (By Mr. Hart) Sorry about that. Let's come back</div><div>2on the record. Is your testimony that what -- that it's</div><div>3your -- to determine whether a communication is routine</div><div>4and could be deleted is basically up to you? Is that</div><div>5what you're testifying?</div><div>6MS. BELL: I'm going to object to form.</div><div>7A. I believe that based on what I know, I had no</div><div>8obligation to keep a routine correspondence.</div><div>9Q. (By Mr. Hart) Would an email from a donor saying</div><div>10"I want to give this contribution to the University's</div><div>11basketball program" be routine correspondence?</div><div>12A. I typically didn't get that kind of email.</div><div>13Q. If you did, would that be routine correspondence?</div><div>14A. I don't recall getting that kind of email. I'm</div><div>15not going to speculate on it. I don't recall getting</div><div>16emails like that.</div><div>17Q. If you received an email from any donor, would</div><div>18you consider those emails from donors to be routine</div><div>19correspondence that didn't have to be preserved?</div><div>20MS. BELL: Form.</div><div>21A. Depending upon the subject matter and the</div><div>22severity of the conversation, yes.</div><div>23Q. (By Mr. Hart) So explain to me your process, if</div><div>24you get an email from a donor in determining whether it</div><div>25is routine and could be deleted or is not routine and</div></div>

<div>Page 58</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>should be preserved?</p><p><b>A. I typically did not -- I did not get emails from donors talking about large contributions. Those emails -- those are usually personal discussions or conversations that our Development staff dealt with donors. I typically did not receive those kind of emails.</b></p><p>Q. That's not answering my question. My question is: So you get an email. You received emails while you were athletics director from donors; correct?</p><p><b>A. Yes.</b></p><p>Q. When that email was in front of you, what is your criteria with an email to say "This is routine and I can delete it" or "This is not routine and needs to be preserved"? How do you make that determination?</p><p>MS. BELL: Form.</p><p><b>A. I made a judgment call based upon the content of the email.</b></p><p>Q. (By Mr. Hart) It's your subjective criteria for doing that; correct?</p><p>MS. BELL: Form.</p><p><b>A. If I got that kind of email but I typically didn't.</b></p><p>Q. (By Mr. Hart) Is there a University document that says "These types of communications are routine and</p></div>	<div>Page 60</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>did they involve communications from other University employees?</p><p>MS. BELL: Form.</p><p><b>A. Probably.</b></p><p>Q. (By Mr. Hart) Did they include communications from University of New Mexico Foundation employees?</p><p><b>A. Probably.</b></p><p>MS. BELL: Form.</p><p>Q. (By Mr. Hart) They included communications from donors; correct?</p><p>MS. BELL: Form.</p><p><b>A. Probably.</b></p><p>Q. (By Mr. Hart) And when you're saying that you deleted these emails or text messages, are you -- can you walk me through what you mean by that? Like are you just hitting "delete" in -- do you use Outlook at the University of New Mexico?</p><p><b>A. I think so.</b></p><p>Q. All right.</p><p><b>A. I'm not very computer savvy.</b></p><p>Q. When you are saying you are deleting an email, you are just hitting delete?</p><p><b>A. I'm hitting delete.</b></p><p>Q. Are you then going in and doing a permanent delete of those emails, like a permanent destruction of</p></div>
<div>Page 59</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>don't need to be preserved"?</p><p>MS. BELL: Form and foundation.</p><p><b>A. I don't know.</b></p><p>Q. (By Mr. Hart) If you received an email from a member of your staff talking about any issue whatsoever -- well, if you received an email from someone on your staff, did you ever consider some of those emails -- any of those emails routine and delete them?</p><p>MS. BELL: Form.</p><p>Q. (By Mr. Hart) I'm sorry. Let me ask these -- did you ever delete an email that you received from a donor because you felt it was routine?</p><p><b>A. Probably.</b></p><p>Q. Did you ever delete a text message from a donor because you felt it was routine?</p><p><b>A. I received -- I would guess I received over 200, 250 emails a day. I don't know how many texts a day. I routinely deleted emails and text messages that were not of consequence.</b></p><p>Q. When you say "not of consequence," that's by your subjective determination; right?</p><p><b>A. Yes.</b></p><p>Q. And those emails that you deleted because you subjectively determined they were not of consequence,</p></div>	<div>Page 61</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>those emails that you delete?</p><p>MS. BELL: Objection. Form and foundation.</p><p><b>A. Sometimes.</b></p><p>Q. (By Mr. Hart) Did you ever ask the IPRA officer in your Department -- you said it was -- IPRA officer in your Department what the criteria were for deleting or preserving records?</p><p>MS. BELL: Form.</p><p><b>A. I don't remember.</b></p><p>Q. (By Mr. Hart) Did you ever ask John Rodriguez?</p><p>MS. BELL: Form.</p><p><b>A. I don't -- I don't remember.</b></p><p>Q. (By Mr. Hart) Okay.</p><p><b>A. Possibly.</b></p><p>Q. Did you ever ask the University counsel's office what the process was or the criteria were for maintaining or deleting emails?</p><p>MS. BELL: I'm going to allow him to answer the question, but caution the witness not to get into detail about what the response was from the Office of University Counsel because that's subject to privilege. You can answer whether you asked the question.</p><p><b>A. Yes.</b></p><p>MR. HART: Can I just clarify? Is the University's position with that objection that</p></div>

<div>Page 62</div> <div><div>1</div><div>discussions with whether Mr. Krebs had the ability to</div><div>2</div><div>delete or maintain public emails is -- extends to the</div><div>3</div><div>University's privilege with the University counsel?</div><div>4</div><div>MS. BELL: Well, I presume in your question</div><div>5</div><div>that what you're asking is whether Mr. Krebs sought a</div><div>6</div><div>legal interpretation or opinion from an attorney in the</div><div>7</div><div>Office of University Counsel, and in that regard, I</div><div>8</div><div>would assert that the University counsel's response, the</div><div>9</div><div>office's response would be privileged.</div><div>10</div><div>MR. HART: Okay.</div><div>11</div><div>Q. (By Mr. Hart) So putting aside what Ms. Bell just</div><div>12</div><div>talked about, which I agree is privileged, right, which</div><div>13</div><div>is you asking for a legal opinion, were there -- I asked</div><div>14</div><div>that earlier. When you received these IPRA -- when the</div><div>15</div><div>University Athletics Department received these IPRA</div><div>16</div><div>requests, what is your understanding -- sorry. Strike</div><div>17</div><div>that.</div><div>18</div><div>When the University Athletics Department received</div><div>19</div><div>IPRA requests, did the IPRA office perform an</div><div>20</div><div>independent search of the Athletics Department's records</div><div>21</div><div>to determine whether anything was responsive?</div><div>22</div><div>MS. BELL: Objection. Form and foundation.</div><div>23</div><div>A. I don't know.</div><div>24</div><div>Q. (By Mr. Hart) Did the University counsel's office</div><div>25</div><div>perform independent searches to determine whether or not</div></div>	<div>Page 64</div> <div><div>1</div><div>Q. (By Mr. Hart) Did you ever redact any documents</div><div>2</div><div>before turning them over?</div><div>3</div><div>A. No.</div><div>4</div><div>Q. Did anyone in the -- did Ms. Espindola, in her</div><div>5</div><div>role as your department -- as the Athletics Department</div><div>6</div><div>IPRA officer -- did she ever redact documents before</div><div>7</div><div>turning them over?</div><div>8</div><div>A. I don't know.</div><div>9</div><div>Q. Did you ever -- if there was a document where you</div><div>10</div><div>weren't sure if it needed to be turned over, did you</div><div>11</div><div>ever give it -- what is your process, you know, for</div><div>12</div><div>determining -- let me -- what is your process for</div><div>13</div><div>determining whether a document in your possession needs</div><div>14</div><div>to be turned over because of an IPRA request?</div><div>15</div><div>A. What is my process?</div><div>16</div><div>Q. When you got an IPRA request to yourself, what</div><div>17</div><div>was your process for determining whether a document</div><div>18</div><div>needed to be turned over?</div><div>19</div><div>A. If I had a request, I would contact Kaley or</div><div>20</div><div>contact John Rodriguez, typically John Rodriguez.</div><div>21</div><div>Q. What was your -- do you ever make an independent</div><div>22</div><div>determination that a document did not need to be</div><div>23</div><div>disclosed because of an IPRA request?</div><div>24</div><div>MS. BELL: Objection. Form.</div><div>25</div><div>A. I don't recall. The IPRA requests were typically</div></div>
<div>Page 63</div> <div><div>1</div><div>records were responsive to IPRA requests?</div><div>2</div><div>MS. BELL: Objection. Form and foundation.</div><div>3</div><div>A. I don't know.</div><div>4</div><div>Q. (By Mr. Hart) Did you ever consult with anybody</div><div>5</div><div>when you received the IPRA requests personally to</div><div>6</div><div>determine whether documents that you had in your</div><div>7</div><div>possession needed to be turned over under IPRA?</div><div>8</div><div>MS. BELL: Form.</div><div>9</div><div>A. I'm aware of communication with the University's</div><div>10</div><div>IPRA office seeking clarification on IPRA requests.</div><div>11</div><div>Q. (By Mr. Hart) Does the Athletics Department have</div><div>12</div><div>its own server, like its own computer system?</div><div>13</div><div>A. No.</div><div>14</div><div>MS. BELL: Form.</div><div>15</div><div>Q. (By Mr. Hart) It is part of the University's</div><div>16</div><div>system?</div><div>17</div><div>MS. BELL: Form and foundation.</div><div>18</div><div>A. That's my understanding.</div><div>19</div><div>Q. (By Mr. Hart) Did you ever make a determination</div><div>20</div><div>of whether a document -- email, text message,</div><div>21</div><div>whatever -- in your possession, which you are about to</div><div>22</div><div>give to the IPRA office to turn over, needed to be</div><div>23</div><div>redacted?</div><div>24</div><div>MS. BELL: Objection. Form and foundation.</div><div>25</div><div>A. No.</div></div>	<div>Page 65</div> <div><div>1</div><div>very broad.</div><div>2</div><div>Q. (By Mr. Hart) So when you received a broad IPRA</div><div>3</div><div>request, how did you go about identifying documents that</div><div>4</div><div>were subject to that request?</div><div>5</div><div>A. My experience was pretty self-explanatory in the</div><div>6</div><div>IPRA requests what they were asking for.</div><div>7</div><div>Q. So you're saying you did a search for what they</div><div>8</div><div>were asking for; right?</div><div>9</div><div>A. Either myself or my admin.</div><div>10</div><div>Q. And did either yourself or your admin ever come</div><div>11</div><div>across a document in your experience that you weren't</div><div>12</div><div>sure whether or not it was responsive to that IPRA</div><div>13</div><div>request?</div><div>14</div><div>MS. BELL: Form.</div><div>15</div><div>A. I don't remember anything like that.</div><div>16</div><div>Q. (By Mr. Hart) Did you ever have a document where</div><div>17</div><div>you weren't sure whether it was a private record or a</div><div>18</div><div>public record?</div><div>19</div><div>MS. BELL: I'm sorry. Can you repeat the</div><div>20</div><div>question? I didn't hear it.</div><div>21</div><div>MR. HART: No problem.</div><div>22</div><div>Q. (By Mr. Hart) Did you ever come across a document</div><div>23</div><div>when doing this search where you were not sure whether</div><div>24</div><div>it was a private record or a public record?</div><div>25</div><div>MS. BELL: Form.</div></div>

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1 **A. I had been informed that anything that was done**  
2 **related to the University in my capacity was a public**  
3 **record.**

4 Q. (By Mr. Hart) We talked about two email accounts  
5 before: The University email account and the personal  
6 gmail account. Do you have any other -- do you  
7 currently have any other email accounts?

8 **A. I have another personal email account.**

9 Q. Is it also through gmail?

10 **A. No.**

11 Q. What --

12 **A. It is through AOL.**

13 Q. Do you still use your University email account?

14 **A. My understanding is that as a retiree of the**  
15 **University, that's a benefit to me. I typically only**  
16 **use it for -- if I get information on my benefits and**  
17 **some personnel information that comes my way. I**  
18 **typically don't use it.**

19 Q. Did you have any other email accounts other than  
20 the three we have now talked about during your tenure as  
21 athletics director?

22 **A. No.**

23 Q. Were you given the privilege to continue use of  
24 your Bowling Green State email account when you left?

25 **A. I don't recall.**

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1 Q. So you didn't conduct -- you didn't use your  
2 Bowling Green State University email account after you  
3 left Bowling Green State University?

4 **A. No.**

5 Q. Do you keep paper files in your house?

6 MS. BELL: Form.

7 **A. Taxes.**

8 Q. (By Mr. Hart) Do you keep paper files related to  
9 work in your house?

10 **A. No.**

11 Q. But do you keep paper files in the Athletics  
12 Department?

13 **A. My administrative assistant did and I had limited**  
14 **files.**

15 Q. When you conducted the searches we've been  
16 talking about, that included searching these paper  
17 files?

18 **A. I asked her to search the paper files, yes,**  
19 **because she had the paper files.**

20 Q. Are you aware whether the University has a policy  
21 for the preservation, maintenance, or destruction of  
22 public records?

23 MS. BELL: Form.

24 **A. I don't know if the University has a policy or**  
25 **not.**

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1 Q. (By Mr. Hart) Does the Athletics Department have  
2 a policy regarding the maintenance, preservation, or  
3 destruction of public records?

4 MS. BELL: Form.

5 **A. Not that I'm aware of.**

6 Q. (By Mr. Hart) Were you aware that the state of  
7 New Mexico has a policy regarding the preservation of  
8 public records?

9 MS. BELL: Form.

10 **A. No.**

11 Q. (By Mr. Hart) Were you aware that they also have  
12 a policy for the destruction -- regarding the  
13 destruction of public records?

14 MS. BELL: Form.

15 **A. No.**

16 Q. (By Mr. Hart) Were you aware that this policy  
17 requires that even routine communications must be  
18 maintained for a full calendar year after they are  
19 received or sent?

20 MS. BELL: Objection. Form and foundation.

21 **A. I believe I was following University policy.**

22 Q. (By Mr. Hart) Were you aware that the state of  
23 New Mexico has a policy that even routine communications  
24 may not be deleted for at least one calendar year after  
25 they are sent or received?

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1 MS. BELL: Objection. Form and foundation.

2 **A. No.**

3 Q. (By Mr. Hart) Have you ever directed any  
4 employees of the Athletics Department to delete public  
5 records?

6 MS. BELL: Form.

7 **A. Only -- I think our staff deletes routine**  
8 **correspondence given the volume they get.**

9 Q. (By Mr. Hart) My question was: Have you ever  
10 directed an employee of the Athletics Department to  
11 delete a public record?

12 MS. BELL: Form.

13 **A. No, not what I would consider a public record.**

14 Q. (By Mr. Hart) Would University -- would you  
15 consider, in this subjective criteria, a University  
16 press release to be a public record?

17 MS. BELL: Objection. Form.

18 **A. I would consider a press release to be public**  
19 **record.**

20 Q. (By Mr. Hart) Have you ever directed any employee  
21 of the University Athletics Department to delete emails  
22 containing University press releases?

23 MS. BELL: Objection. Form.

24 **A. Our press releases are on file, and I don't**  
25 **recall -- I don't recall that. I don't recall that. A**

18 (Pages 66 to 69)

<div>Page 70</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>press release? No, I don't recall that.</p><p>MR. HART: We can mark this as Exhibit 1. (Exhibit 1 marked.)</p><p>Q. This is the exhibit. You obviously can review it. Please don't write on it. If you could, take a moment to read that email, please.</p><p>A. (Witness complies.)</p><p>Q. Do you recognize this email?</p><p>A. I do.</p><p>Q. Is it from your email address pkrebs@unm.edu?</p><p>A. It is.</p><p>Q. Is it to Kaley Espindola and Frank Mercogliano?</p><p>A. It is.</p><p>Q. And are Kaley Espindola and Frank Mercogliano University employees?</p><p>A. They are.</p><p>Q. And does this email include a statement from acting President Abdallah regarding the men's and women's ski teams of the University of New Mexico?</p><p>A. There's a statement at the bottom from President Abdallah, yes.</p><p>Q. If you look at this email, is it correct that it says -- that you emailed to Kaley Espindola and Frank Mercogliano, "Suggest you delete all texts and any emails related to reinstatement skiing"? Is that</p></div>	<div>Page 72</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>employees of your department to delete public records?</p><p>A. No.</p><p>MS. BELL: Form and foundation.</p><p>Q. (By Mr. Hart) So what makes that email routine, these top two lines?</p><p>MS. BELL: Object to form.</p><p>A. I thought there was some -- I thought in my mind there was some routine elements to it and some issues that we were working through that were highly sensitive and not ready for public consumption.</p><p>Q. (By Mr. Hart) What were the routine elements?</p><p>A. I thought it was an appropriate thing to do at the time.</p><p>Q. My question is: What were the routine elements?</p><p>A. I can't answer that right now. I don't know.</p><p>Q. So is it your opinion that looking at this email right now, that this is not a routine document?</p><p>MS. BELL: Form.</p><p>A. Potentially. Perhaps. It is easy in retrospect to say that.</p><p>Q. (By Mr. Hart) So does this email represent the type of communication that your understanding is you had the discretion to permanently delete?</p><p>A. No.</p><p>Q. But you instructed employees of the Athletics</p></div>
<div>Page 71</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>correct?</p><p>A. Yes.</p><p>Q. Is it also correct that you said "Delete this email"?</p><p>A. Yes.</p><p>Q. Is it your position that issues related to the reinstatement of a University sports team is not a public record?</p><p>MS. BELL: Form.</p><p>A. That public record existed. The president's -- we were not erasing the president's email. That was out there. It was readily available.</p><p>Q. (By Mr. Hart) Do you consider this email to be a routine email?</p><p>A. I consider this email, the top part of it to be somewhat routine, yes, knowing that there was some unresolved issues that were highly sensitive that had yet to be determined.</p><p>Q. Let's unpack that for a second. So the top part, which are these two paragraphs, these two lines, you're saying that that part is, in your view, a routine email?</p><p>MS. BELL: Form.</p><p>A. Potentially, yes.</p><p>Q. (By Mr. Hart) So is it your position that it's a routine email to instruct your other -- to instruct</p></div>	<div>Page 73</div> <div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div> <div><p>Department to delete it anyway?</p><p>MS. BELL: Form.</p><p>A. Those were my instructions, yes.</p><p>Q. (By Mr. Hart) You also said previously that there were sensitive things in here that you felt weren't ready for public consumption. Is that correct?</p><p>A. I just said that, yes.</p><p>(Mr. Boyd leaves the room.)</p><p>Q. What do you mean by "sensitive"?</p><p>A. This was a very unique -- there's nothing routine about this in some respects. This was very unique, and we were working through the issue of bringing back skiing. Not all decisions had been made yet, and we were waiting until we had all the answers before we released any information, and any draft, any premature information would have been very damaging to the ski program.</p><p>Q. But is it correct that when you say "sensitive," you don't mean that this wasn't a public record?</p><p>MS. BELL: Form.</p><p>A. I don't know.</p><p>Q. (By Mr. Hart) You also say in this "We just need to be prepared" -- and I'm -- I'm going to paraphrase -- for Libit to have this within 30 minutes. In your opinion, is this a public record?</p></div>

<div>Page 74</div> <div><div>1MS. BELL: Form.</div><div>2A. I don't know.</div><div>3(Mr. Boyd enters the room.)</div><div>4Q. (By Mr. Hart) Why didn't you want Mr. Libit to</div><div>5have this document?</div><div>6MS. BELL: Form. Foundation.</div><div>7A. I don't know. I don't remember.</div><div>8Q. (By Mr. Hart) Now, having looked at this</div><div>9document, are there any other times where you directed</div><div>10University employees to delete emails?</div><div>11A. I don't believe so.</div><div>12Q. Are there any other times that you instructed</div><div>13University employees to delete text messages?</div><div>14A. I don't believe so.</div><div>15Q. Were there any other times that you directed</div><div>16University employees to destroy public records?</div><div>17MS. BELL: Objection. Form and foundation.</div><div>18A. I don't recall ever directing anybody to destroy</div><div>19public records.</div><div>20Q. (By Mr. Hart) Did you delete as routine any</div><div>21emails related to the WisePies naming agreement?</div><div>22MS. BELL: Objection. Form.</div><div>23A. I think all the WisePies naming agreement</div><div>24documents have been submitted.</div><div>25MS. BELL: When you are done with the</div></div>	<div>Page 76</div> <div><div>1A. I would go through my emails and search for</div><div>2skiing, the topic "skiing."</div><div>3Q. (By Mr. Hart) So you go into your email folder</div><div>4and you type in "ski"?</div><div>5MS. BELL: Form.</div><div>6A. I would type in the subject matter that the</div><div>7request covered.</div><div>8Q. (By Mr. Hart) Okay.</div><div>9A. Or the request may cover names, emails between me</div><div>10and X.</div><div>11Q. And what was your process for paper records?</div><div>12MS. BELL: Form.</div><div>13A. My administrative assistant kept most of the</div><div>14paper files where I would -- if they were of significant</div><div>15nature, I would store them in my computer.</div><div>16Q. (By Mr. Hart) And what I'm asking is: What was</div><div>17the process that you had used to search those paper</div><div>18records, those records stored on your computer to find</div><div>19responsive documents?</div><div>20A. What was the process?</div><div>21Q. Yes.</div><div>22A. I would identify the subject matter in question</div><div>23and begin to search.</div><div>24Q. By "search," you mean just thumb through things?</div><div>25MS. BELL: Form.</div></div>
<div>Page 75</div> <div><div>1exhibit, can we take a break?</div><div>2MR. HART: Sure. Kim is asking if we can</div><div>3take a break. We can take one.</div><div>4MR. BOYD: Sure.</div><div>5MS. BELL: I wanted to make sure that the</div><div>6issues with the exhibit were dealt with.</div><div>7(Recess taken from 11:03 a.m. to 11:11 a.m.</div><div>8and testimony continued as follows:)</div><div>9Q. (By Mr. Hart) Let's come back on the record. I</div><div>10just want to clarify real quick a couple of things that</div><div>11we talked about. You testified that if an IPRA response</div><div>12is received by the University that deals with you,</div><div>13specifically, that it will get sent to you to look for</div><div>14documents responsive to that request. Correct?</div><div>15MS. BELL: Form.</div><div>16A. Yes. I believe that's what I said.</div><div>17Q. (By Mr. Hart) Okay. So --</div><div>18A. Now, it may go through Kaley to me through that</div><div>19route, but typically, that's my understanding, yeah.</div><div>20Q. So let's use a hypothetical. You get a request,</div><div>21and that request is for all communications that you sent</div><div>22or received relating to the ski program. Right? What</div><div>23is your process for searching your emails and text</div><div>24messages and records for responsive communications?</div><div>25MS. BELL: Form.</div></div>	<div>Page 77</div> <div><div>1A. On the paper -- if there were paper documents --</div><div>2I tended not to have a lot of paper documents. My</div><div>3administrative assistant would have paper documents or I</div><div>4would store files in my computer that -- to my</div><div>5knowledge, I didn't have a lot of paper documents.</div><div>6Q. (By Mr. Hart) Did you do the same thing for the</div><div>7files on your computer? Do you go in and just put in</div><div>8your search term?</div><div>9A. I tried, yes.</div><div>10Q. If nothing came up, did you do any other looking</div><div>11through those documents?</div><div>12MS. BELL: Form and foundation.</div><div>13A. Potentially. Depending upon the subject matter,</div><div>14yes.</div><div>15Q. (By Mr. Hart) What did your administrative</div><div>16assistant -- what was her process for going through your</div><div>17paper records?</div><div>18A. I don't know.</div><div>19MS. BELL: Form.</div><div>20Q. (By Mr. Hart) You testified before that you from</div><div>21time to time delete what are in your view routine</div><div>22communications from your emails. Correct?</div><div>23A. I believe I said that, yes.</div><div>24Q. Just to go through the process with that, when</div><div>25you say "delete," you are just hitting delete; correct?</div></div>

<div>Page 78</div> <div><div>1MS. BELL: Form.</div><div>2A. I don't recall.</div><div>3Q. (By Mr. Hart) Like so if you are in your email --</div><div>4we talked before about the fact that there's a</div><div>5difference between just deleting an email and</div><div>6permanently deleting them out of the deleted box in your</div><div>7email. And you understand the difference, right,</div><div>8between just deleting an email and going through and</div><div>9permanently deleting it from the delete portion of your</div><div>10inbox? Right?</div><div>11MS. BELL: Form and foundation.</div><div>12A. I believe I understand the difference.</div><div>13Q. (By Mr. Hart) Okay. What's your understanding of</div><div>14that difference?</div><div>15A. Well, the delete goes to -- what you deleted goes</div><div>16to a delete file.</div><div>17Q. When you delete things from that larger delete</div><div>18file, a box pops up that says "You are going to</div><div>19permanently delete. Are you okay with that?" Right?</div><div>20It says "yes" or "no"?</div><div>21MS. BELL: Form and foundation.</div><div>22A. Yeah, sounds familiar.</div><div>23Q. (By Mr. Hart) Okay. So you do permanently delete</div><div>24some communications that you have decided are routine?</div><div>25MS. BELL: Form and foundation.</div></div>	<div>Page 80</div> <div><div>1A. I don't know how to answer that.</div><div>2Q. So you testified earlier regarding this exhibit</div><div>3that this included information that you didn't want</div><div>4public at the time?</div><div>5A. Let me be clear. The email from the president</div><div>6was not deleted. That was on our server, the</div><div>7president's server. That piece of it, what I was</div><div>8talking about, were those first two paragraphs. I</div><div>9viewed that as a draft of a document that was not ready</div><div>10for public consumption.</div><div>11Q. So is your view that this email -- that if any</div><div>12portion of an email chain includes a, in your view,</div><div>13routine email that can be deleted, that the entire email</div><div>14chain should be deleted?</div><div>15MS. BELL: Objection. Form and foundation.</div><div>16A. Yeah. I can't answer that. It's not -- every</div><div>17situation is different.</div><div>18Q. (By Mr. Hart) Is one of these criteria that you</div><div>19apply -- is one of the reasons why you delete something</div><div>20as routine because it's sensitive?</div><div>21A. I get -- I got hundreds of emails. In order to</div><div>22operate efficiently, I didn't need a lot of emails on my</div><div>23computer. If I didn't view it as critical, it</div><div>24potentially could be deleted.</div><div>25Q. So is the reinstatement of the ski program not a</div></div>
<div>Page 79</div> <div><div>1A. I delete communications. It seemed to be helpful</div><div>2to keep things neat and tidy.</div><div>3Q. (By Mr. Hart) You go into the delete box and do a</div><div>4permanent delete of some files; right?</div><div>5A. Yes.</div><div>6Q. Why do you permanently delete those files?</div><div>7A. That seems like the prudent thing to do.</div><div>8Q. And by the prudent thing to do, what do you mean?</div><div>9Like why are you making the decision to permanently</div><div>10delete an email that's in the delete box of your</div><div>11Outlook?</div><div>12MS. BELL: Form.</div><div>13A. It seemed appropriate to do. I'm not a computer</div><div>14expert.</div><div>15Q. (By Mr. Hart) Would you consider, say, an email</div><div>16from Kaley Espindola saying, "Paul, do you want to get</div><div>17lunch today" a routine communication that would get</div><div>18deleted?</div><div>19A. Yes.</div><div>20Q. And if you deleted that, would you then go into</div><div>21your delete inbox and permanently delete it?</div><div>22A. I might at times. Yeah.</div><div>23Q. Is there a reason why you do more than just</div><div>24delete and go into the permanent -- you go in and</div><div>25permanently delete a document?</div></div>	<div>Page 81</div> <div><div>1critical -- is the reinstatement of the ski program,</div><div>2which is the discussion of this email, not a critical</div><div>3issue in your view that the public has the right to know</div><div>4about?</div><div>5MS. BELL: Objection. Form and foundation.</div><div>6A. It is. It is a critical issue. That was a draft</div><div>7of the document to Frank Mercogliano.</div><div>8Q. (By Mr. Hart) And is it your understanding that</div><div>9drafts are not public records and can be deleted?</div><div>10MS. BELL: Form.</div><div>11A. I typically did not keep drafts. I kept the</div><div>12final document.</div><div>13Q. (By Mr. Hart) Is it also your view that a</div><div>14document that you subjectively believe is not ready for</div><div>15public consumption is a document that doesn't need to be</div><div>16preserved and can be deleted?</div><div>17MS. BELL: Form.</div><div>18A. That's a very open-ended question.</div><div>19Q. (By Mr. Hart) You testified that this email in</div><div>20Exhibit 1 was not ready for public consumption?</div><div>21A. I testified it was a draft.</div><div>22Q. And you also testified that before, in your view,</div><div>23it was sensitive and not ready for public consumption?</div><div>24MS. BELL: Form.</div><div>25A. Because it was a draft.</div></div>