
REVIEW OF WELCH SUGGS'S
*A PLACE ON THE TEAM: THE TRIUMPH AND
TRAGEDY OF TITLE IX*

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INTRODUCTION

In *A Place on the Team: The Triumph and Tragedy of Title IX*,¹ Welch Suggs, senior editor for athletics at *The Chronicle of Higher Education*, adds another work to the recent series of books² exploring how Title IX of the Education Amendments of 1972³ has affected both positive and negative changes in collegiate and high school athletic programs. *A Place on the Team* has some important strengths, particularly in the way in which the book presents an interesting perspective on the history of the development of college and university sports, and on the social environment that ultimately created the need for a law to bring gender equity to all facets of educational programs. But when he moves beyond his vivid retelling of Title IX's history and into the realm of public policy, Mr. Suggs fails to achieve any sense of balance in his discussion of the strengths and weaknesses of the current scheme of Title IX enforcement in athletic programs.

Instead, Mr. Suggs, like so many other authors with a strong point of view about Title IX, casts his facts and arguments in a way that supports his core view that Title IX is a "silly and superfluous law"⁴ as applied to athletic programs sponsored by educational institutions.⁵ Mr. Suggs does acknowledge that a reader might conclude that he approaches his work with this obvious bias: "Some people will consider [the themes presented in the book] to be my personal opinions and will

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1. WELCH SUGGS, *A PLACE ON THE TEAM: THE TRIUMPH AND TRAGEDY OF TITLE IX* (2005).

2. See, e.g., KAREN BLUMENTHAL, *LET ME PLAY: THE STORY OF TITLE IX, THE LAW THAT CHANGED THE FUTURE OF GIRLS IN AMERICA* (2005); BRIAN L. PORTO, *A NEW SEASON: USING TITLE IX TO REFORM COLLEGE SPORTS* (2003); JESSICA GAVORA, *TILTING THE PLAYING FIELD: SCHOOLS, SPORTS, SEX AND TITLE IX* (2002).

3. 20 U.S.C. §§ 1681-88 (2000), amended by 20 U.S.C. § 1687 (Supp. II 2002).

4. SUGGS, *supra* note 1, at 197.

5. Mr. Suggs does at least acknowledge that the law "makes perfectly good sense in an educational context." *Id.* at 8.

accuse me of slanting my findings to fit them.”⁶ Yet, despite this apparently prophylactic observation, Mr. Suggs makes no attempt to explain either why he believes that his book presents anything other than his personal opinions or why he considers his work to be “fair and accurate.”⁷ In reality, his book presents simply one person’s view of one set of the problems attendant to a law of broad scope and general application.

Mr. Suggs’s viewpoint derives from his belief that Title IX has caused women’s sports to develop into the same unhealthy enterprise into which men’s athletic programs evolved over the last century. He states, “In mandating that women athletes be treated the same as men, the law [has] encouraged women’s sports to develop in the hypercompetitive, highly commercialized model that evolved in men’s sports over the past century and a half.”⁸ While he acknowledges that women, like men, play sports “[t]o have fun, to excel, to push themselves and their bodies to their limits,”⁹ he nevertheless faults the way in which the law has “radically transform[ed] the lives of millions of girls and women”¹⁰ by creating an environment that, among other evils, “forces high-school [girls] to make one of the most important decisions of their lives, where they go to college, based on how well they can kick a soccer ball.”¹¹

In his discussion of the ill effects of Title IX, Mr. Suggs completely ignores the fact that a wide variety of factors beyond the college and university admissions process influences whether a girl will choose to participate in sports, including: the interests of the girl herself, who may choose to participate in athletics to satisfy her own competitive nature¹² or to develop healthy lifestyle habits; her parents, who may see sports as a way for their daughter both to develop into a healthy and confident young woman and, perhaps, to secure a scholarship to college and university; and the collegiate administrators who, albeit because of Title IX, must offer athletic opportunities to women, and then decide, perhaps for reasons other than Title IX such as school pride or spirit, to recruit that girl to build the best

6. *Id.* at 197.

7. *Id.*

8. *Id.* at 3.

9. *Id.* at 2.

10. *Id.* at 4.

11. *Id.*

12. Senda Berenson of Smith College (Smith), who invented the women’s version of basketball around the same time that James Naismith developed the men’s version in 1892, found out quickly that girls and women do exhibit their competitive natures, given the chance. *Id.* at 21. Late nineteenth-century newspaper accounts recorded in vivid detail how female students at Smith showed enthusiastic support for their basketball teams in competition. *Id.* Ms. Berenson herself “thought that just a few students would come out to watch [the games], but the whole college with class colors and banners turned out. . . . The cheering and screaming was a high-pitched sound I do believe no one had ever heard before.” *Id.* (quoting *HER STORY IN SPORT: A HISTORICAL ANTHOLOGY OF WOMEN IN SPORT* (Reet Howell ed., 1982)) (internal alterations omitted).

In 1899, Ms. Berenson helped to found the National Women’s Basketball Committee, whose “stated purpose was to develop common rules for the sport of basketball.” *Id.* The committee also “took on the duty of controlling ‘unrestrained’ competition among college women.” *Id.* Obviously, these early female student-athletes exhibited a competitive spirit.

possible team in her sport. The law merely enables an individual decision to participate in sports—for reasons good or bad, with consequences beneficial or detrimental.

Ultimately, Mr. Suggs presents a history of Title IX and women's sports that both overstates and oversimplifies the role of the law in turning women's sports into a highly competitive enterprise. To summarize Mr. Suggs's view:

- Historically, women's sports developed differently from men's sports, emphasizing "the ideals of worthy citizenship even at the expense of fine technique."¹³ Women played "for the love of the game,"¹⁴ and "for fun,"¹⁵ while men played competitively, engaging in a "business enterprise"¹⁶ that fostered athletic competitions as "good excuses for a crowd to socialize, drink, and gamble."¹⁷
- The women's and men's models of sports happily co-existed, side-by-side, for nearly a century, beginning in the late 1800s, until Congress enacted Title IX in 1972.¹⁸
- Beginning in 1972, educational institutions and their athletic administrators, in the name of equality, began to alter the female model of sports participation, aligning it with the male model in all things—the benefits as well as the drawbacks.¹⁹
- At the start of the twenty-first century, female student-athletes must bear the consequences of this "tragic" quest for equality, as winning has become as important for girls and women as it has always been for boys and men.²⁰

This line of reasoning has obvious flaws. And, Mr. Suggs's own work actually brings forth some of the less obvious flaws in his own thesis, especially in the book's history-based discussion of the various forces that converged in 1972 to change women's sports. This history, in fact, points out how the early artificial suppression of women's competitive spirits actually forced women into an unnaturally uncompetitive athletic environment, and shows how Title IX released women's sports from a century of restraint.

13. *Id.* at 7 (quoting Mabel Lee, Dir. of Physical Educ., Univ. of Neb., Sports and Games—An Educational Dynamic Force, Paper Read at the Meeting of the Women's Division, N.A.A.F. (Jan. 3–5, 1929), <http://www.barnard.columbia.edu/amstud/resources/women/lee.htm>) (internal quotation marks omitted).

14. *Id.* at 13.

15. *Id.*

16. *Id.*

17. *Id.*

18. *See id.* at 13–31.

19. *See id.* at 57–65.

20. *See id.* at 175.

HISTORY OF WOMEN'S SPORTS

Chapters 1, 3, and 6 present perhaps the most interesting part of the book: a history of the development of women's sports, beginning in the late nineteenth century.²¹ Chapter 1 focuses on the differences between men's and women's sports from their inceptions. Mr. Suggs animates this discussion with the personal stories of a wide-ranging and diverse collection of individuals involved in athletic competition throughout this history, from President Theodore Roosevelt²² to the University of Tennessee's women's basketball coach, Pat Summitt.²³ More importantly, however, this part of the discussion proves to be the most intriguing because it raises a host of questions. Mr. Suggs, unfortunately, leaves those intriguing questions unanswered.

Beginning in the mid-nineteenth century, British theologians argued that the physical inactivity (or, perhaps more accurately, laziness) favored by gentlemen (and especially ladies) of the time put British society "at risk of being overrun by heathens."²⁴ At the same time, physicians "began to advocate mild physical activity, the pursuit of bodily well-being, and, of course, careful eugenics to keep the Anglo-Saxon race pure and free."²⁵ Similar trends emerged in the United States at around the same time.²⁶ "As a result, [physical] education became an integral part of daily life at most northeastern [U.S.] colleges at that time."²⁷

Initially, men's athletics developed as a way to build strong bodies and, in turn, strong minds and morals, and as a way to "develop[] manhood."²⁸ For physical educators of the time, "sport [was] a means to an end—developing one's body in concert with the mind, the ancient Greek ideal."²⁹ Then, on a fateful day in 1852, Harvard and Yale participated in a rowing contest—an event that featured questions about the eligibility of Harvard's coxswain, an eight-day party in the Adirondacks to promote rail travel to the host resort, gambling on the outcome, and a silver plate awarded to the winning Harvard team.³⁰ Mr. Suggs laments this development, of course, noting that "virtually all of the ills of college sports were present at the creation."³¹ Moreover, he notes that "the game was an end in itself. The intoxicants of winning and the cheering crowd drowned out the moralizing of

21. Chapter 9 includes a discussion of the development of girls' sports at the high school level. This discussion seems out of place, however, and really distracts from the threads of thought running throughout the book. *See id.* at 142–52.

22. *Id.* at 16–17, 27.

23. *Id.* at 45–47, 62, 65.

24. *Id.* at 14.

25. *Id.*

26. *See id.* at 15.

27. *Id.*

28. *Id.* at 16.

29. *Id.* at 19. Never mind that, in addition to promoting these ideals, some physical educators of the time also promoted participation in sport for less idealistic reasons, seeing sport as a way "to develop a strong race of white Anglo-Saxon Protestants to resist immigrants." *Id.*

30. *Id.* at 17.

31. *Id.* at 18.

physical educators.”³² The ruin of men’s sports, in his view, pre-dates the U.S. Civil War.

Mr. Suggs then traces the development of women’s sports. Women’s colleges and universities, too, recognized the importance of physical health to academic success. But women engaged in physical activity “strictly in moderation.”³³ As Mr. Suggs explains:

Two powerful social prejudices kept women from participating intensely in any sport or physical activity alongside their brothers. First, upper-class women were expected to be pale and dainty, and they often wore clothing like corsets that prevented them from breathing, much less running and jumping. Muscles and tans were marks of the lower classes. Second, a woman’s primary functions in society were to attract a man and bear children, and participating in sport was thought to impair the ability to do either. Until the middle of the twentieth century, a common myth was that being athletic could cause a woman’s uterus to fall out.³⁴

Women’s athletic programs developed under the direction of women, who kept competition “low key” for two reasons.³⁵ First, these early “teacher-coaches” sought to preserve the modesty and accommodate the “perceived daintiness” of young women.³⁶ Second, the teacher-coaches had a “general suspicion of competition, particularly as it was being practiced in men’s sports.”³⁷ As Mr. Suggs explains it, women’s sports purposely developed along a different path because of a belief among women’s coaches that “[t]he way men were conducting intercollegiate sports was inherently wrong,” in that men had “[lo]st sight of fair play and sportsmanship” in their pursuit of winning.³⁸

In Chapter 3, Mr. Suggs moves on to explain how, in the days following the passage of Title IX, a struggle for control of women’s sports began. On one side, the Association for Intercollegiate Athletics for Women (AIAW) sought to preserve the ideals of the early developers of women’s sports.³⁹ “AIAW officials . . . saw competition as desirable, but only within limits, so they built into rules safeguards to maintain the amateur, educational approach to sport.”⁴⁰ On the other

32. *Id.* at 19–20.

33. *Id.* at 20.

34. *Id.*

35. *Id.* at 23.

36. *Id.* Here, Mr. Suggs includes a 1928 quote from Ethel Perrin, a board member of the Women’s Division of the National Amateur Athletic Federation:

Girls are not suited for the same athletic program as boys Under prolonged and intense physical strain, a girl goes to pieces nervously. A boy may be physically so weak that he hasn’t the strength to smash a creampuff but he still has the “will” to play.

A girl is the opposite.

Id. (internal quotation marks omitted).

37. *Id.*

38. *Id.*

39. *Id.* at 47.

40. *Id.*

side, the National Collegiate Athletic Association (NCAA) fought for control of women's athletics. Cast in its most favorable light, the NCAA saw this effort as an easier way for member institutions that were trying to comply with Title IX to bring women's programs in line with men's programs.⁴¹ The AIAW, not surprisingly, saw the move merely as a way for the NCAA "to consolidate its power as a monopoly over amateur sports" and questioned how the NCAA might change women's sports.⁴²

This chapter points out the two very different forces at odds at the time. On the one hand, a committed group of women fought to keep women's sports under the control of an organization that sought to preserve the nineteenth-century values that formed the foundation of women's sports programs.⁴³ On the other hand, educational institutions found it extremely difficult to comply with Title IX when two different organizations, with two different sets of standards and rules, controlled the operation of their men's and women's athletic programs.⁴⁴

As an example of the problems that this arrangement presented, Mr. Suggs notes that, as early as 1973, female student-athletes in Florida sued the AIAW over its ban on scholarships.⁴⁵ Although the AIAW changed its scholarship rule in 1973, this change ultimately proved insufficient to stop the NCAA's efforts to control women's sports programs.⁴⁶ To Mr. Suggs and others, the AIAW's decision effected a "critical change [to] women's college sports,"⁴⁷ because it led to some of the same behaviors thought to have caused problems in men's sports: recruiting; the need to spend money to improve programs to attract recruits; bidding wars for coaches; and, above all, the desire to win.⁴⁸ Mr. Suggs fails to explain, however, how a college or university could treat its male and female student-athletes equally when the NCAA, with its competitive focus, allowed men to receive scholarships, while the AIAW, which eschewed NCAA-style competition, did not allow women to receive the same benefit.

Ultimately, whatever its initial motivations for entering into the fight to control women's sports, the NCAA won the battle when, in 1980, the organization voted to hold women's championships in several sports beginning in the 1981–82 academic year.⁴⁹ This step toward consolidating men's and women's sports under one organization, with the inevitable demise of the AIAW soon to follow, in Mr. Suggs's view, began an irreversible paradigm shift in women's sports—one that moved women closer and closer to the competitive men's sports model.

Mr. Suggs concludes his discussion of the history of women's sports in Chapter 6, where he explores how women's sports programs changed in the 1980s and

41. *See id.*

42. *Id.*

43. *See id.* at 57–59.

44. *See id.* at 59–62.

45. *Id.* at 60.

46. *Id.* at 62.

47. *Id.* at 61.

48. *See id.* at 61–63.

49. *See id.* at 64.

early 1990s. Here, he describes a new breed of women's sports advocates entirely different from those of just a decade earlier. As Mr. Suggs explains, this new breed of women's sports advocates pushed their programs to unprecedented successes once freed from the historical obsession with preserving femininity and daintiness and the prospects of marriage and children for female student-athletes, and even apparently freed from the need to preserve the apparent purity of the existing women's sports model.⁵⁰ In fact, as the number of women participating in intercollegiate athletics increased, "so did interest in and the intensity of women's sports. The coaches who had learned their skills in the late 1970s [after Title IX was enacted] began to develop a new ethos for making women into the best athletes they could possibly be."⁵¹

As an example of this new breed of women's coaches, Mr. Suggs identifies Anson Dorrance, coach of the University of North Carolina's (UNC) women's soccer team—the most successful program in NCAA history.⁵² He notes how "[Coach] Dorrance developed an approach to coaching unlike any of his competitors',"⁵³ in that it emphasized "aggressiveness, teamwork, and fitness."⁵⁴ He explains how Coach Dorrance, who coached both the men's and women's soccer teams at UNC for a decade, recognized that "[w]omen need more nurturing, and they need to learn the take-no-prisoners attitude that seems to come naturally to male athletes."⁵⁵

Enamored as he is with the historical purity of women's sports, Mr. Suggs fails to pursue one line of thought in his review of that history. At least as far back as 1892, it was evident that women enjoyed competition.⁵⁶ But to preserve Victorian notions of womanhood, early women's sports advocates artificially suppressed these competitive tendencies. Had women's sports instead been allowed to develop into a competitive enterprise more gradually and naturally, perhaps women would have found a way to make sports exciting and interesting but still healthy and sensible. After all, as Mr. Suggs explains, women do approach sports differently from men. For example, in describing the differences between coaching men and women, Coach Dorrance has noted that "women need a different approach from their coach. . . . Women desire a 'connectiveness' in a team setting in which players and coaches all have a relationship with each other."⁵⁷ He further explains that "women don't really enjoy competing with their friends."⁵⁸ This, then, is a key question that Mr. Suggs leaves unanswered: Absent the artificial suppression of competition that hampered the development of women's sports for eighty years, might women's sports have otherwise developed

50. *See id.* at 97–104.

51. *Id.* at 96.

52. *See id.* at 98, 101. The team won seventeen titles in the first twenty years of NCAA women's soccer championships. *Id.* at 101.

53. *Id.*

54. *Id.*

55. *Id.*

56. *See supra* note 12.

57. SUGGS, *supra* note 1, at 102.

58. *Id.* at 103.

into a model of healthy competition that men's sports might have tried to emulate?⁵⁹

THE LEGISLATIVE AND REGULATORY HISTORY OF TITLE IX

In Chapters 2, 4, and 5, Mr. Suggs presents a history of the enactment of Title IX and the development of its regulatory scheme. In these chapters, he shows how the civil rights movement of the 1960s created a new framework within which to evaluate and understand basic principles of equality, and describes the events that gradually led to “a general shift in federal civil rights enforcement away from a goal of procedural equality—making sure that a process was nondiscriminatory on its face—and toward a goal of substantive, or end-result, equality.”⁶⁰ He explains how this process also impacted the development of Title IX. Along the way, he makes some interesting observations that point out the origin of some of the difficulties with the current regulatory scheme.⁶¹

Chapter 2 recounts how Congress passed the Civil Rights Act of 1964, and discusses the regulatory scheme of two of its most influential provisions: Title VI,⁶² which prohibits discrimination on the basis of race in programs and activities, including educational programs and activities, that receive federal financial assistance, and Title VII,⁶³ which prohibits discrimination on the basis of race, color, religion, gender, or national origin in hiring and employment. Together, however, these laws still left women unprotected from discrimination in programs and activities that receive federal financial assistance, including educational programs and activities.⁶⁴

Mr. Suggs makes the point that, although Title VI and Title VII both forbid hiring or firing individuals to satisfy a quota, federal agencies took the equal-treatment goal of the law “to mean affirmative action, requiring companies and schools to make an effort to identify and recruit qualified minorities beyond the procedures they used to identify and recruit others.”⁶⁵ As a result of this interpretation of the law, “potential contractors on federal construction projects [had] to state in their bids how many members of minority groups they would hire if they won a particular contract.”⁶⁶ Mr. Suggs makes the interesting observation that the requirement “to hire a noticeable number of minorities,”⁶⁷ along with an overall approach to enforcement that “emphasiz[ed] compliance over punishments,”⁶⁸ “would show up later in the regulations published under Title

59. At least one other author has pursued the notion of women's sports becoming a model for a healthier collegiate athletic environment. See PORTO, *supra* note 2.

60. SUGGS, *supra* note 1, at 36.

61. *See id.* at 37–44.

62. 42 U.S.C. §§ 2000d-1 to -7 (2000).

63. 42 U.S.C. §§ 2000e-1 to -17 (2000).

64. *See* SUGGS, *supra* note 1, at 32–34.

65. *Id.* at 35.

66. *Id.*

67. *Id.*

68. *Id.* at 37.

IX.”⁶⁹

Mr. Suggs integrates into this discussion a history of the women’s rights movement, which, after essentially going dormant around 1920, when women received the right to vote, became active again in the mid-1960s with the 1963 publication of Betty Friedan’s *The Feminist Mystique*.⁷⁰ He explains how, in 1970, women began to file suits against colleges and universities to receive equal treatment in the faculty hiring process.⁷¹ This activism led Congress to pass Title IX, both to fill the gap in protection between Title VI and Title VII and to address the very real problem of discrimination against women in higher education that resulted from the fact that colleges and universities had denied that Title VII applied to faculty hiring.⁷²

Chapter 4 discusses the battles fought to develop the implementing regulations relevant to athletics, finally published in 1975—a process that took twice as long as usual for such an effort.⁷³ While most of the regulatory scheme proved straightforward—an observation borne out by the fact that the Department of Education has not had to issue clarification after clarification to explain equality in educational programs and activities other than athletics—athletics presented a tremendous challenge.⁷⁴ Divergent attitudes among the stakeholders in the collegiate athletic enterprise merely complicated matters. While women’s groups insisted on complete equality, with an ultimate goal of truly coeducational teams, they realized that the existing lack of skill and training among women at that time would hamper their efforts to join men’s teams, so instead opted for a “separate until equal” approach.⁷⁵ The AIAW, which had control of women’s sports in the way that the NCAA had control of men’s sports, lobbied for separate women’s programs to accommodate its philosophical approach to women’s athletics, but insisted on equal funding, which would provide more opportunities for women.⁷⁶ The NCAA and other men’s athletic organizations, along with the educational institutions themselves, insisted that Title IX did not apply to athletics.⁷⁷

Ultimately, the regulations released by the Department of Health, Education, and Welfare (HEW) in 1975 made it clear that Title IX did apply to athletics,⁷⁸ and also “put to rest the idea that athletics programs could satisfy gender-equity obligations simply by allowing women to try out for traditionally male teams.”⁷⁹ But, as Mr. Suggs points out, with the inclusion of items such as the provision of

69. *Id.* at 36.

70. *Id.* at 38.

71. *Id.* at 39.

72. *See id.* at 38–39.

73. *Id.* at 82. A typical regulatory process lasts about eighteen months, while the Title IX regulatory process required three years. *Id.*

74. *See id.* at 66–67.

75. *See id.* at 70.

76. *Id.*

77. *See id.* at 70–71.

78. 34 C.F.R. § 106 (2005).

79. SUGGS, *supra* note 1, at 72.

academic tutors,⁸⁰ “[t]he regulations seem to have been written with the idea of male athletes at a college like Penn State in mind, not female athletes at, say, Yale, or any athletes at the high school level.”⁸¹ Thus began the alignment of women’s collegiate sports programs with the competitive model of men’s sports.

Although HEW issued an intentionally vague set of regulations in an attempt to preserve institutional autonomy and to give educational institutions flexibility in their efforts to comply with the law, Mr. Suggs identifies this vagueness as one of the key problems with the enforcement scheme: “The regulations offered no singular statement or formula to define equal opportunity. Instead the rules left it up to HEW to decide whether an institution was in compliance.”⁸² The NCAA council complained that “the generality of the regulations has pushed colleges and universities to look for safest harbors and simplest routes to Title IX compliance, trying to find numbers and formulas to immunize themselves against lawsuits.”⁸³ Colleges and universities complained that the regulations breached institutional autonomy and academic freedom.⁸⁴

The 1975 regulations gave educational institutions three years, until July 21, 1978, to come into compliance with Title IX.⁸⁵ As that date approached, however, enforcement efforts stalled in anticipation of a new policy interpretation, on which HEW had begun work in 1978, to address the vagueness complaints.⁸⁶ Ironically, in clarifying the regulations, this 1979 Policy Interpretation also ended up restricting how the regulations could be interpreted and, thus, further limited institutional autonomy.⁸⁷ In fact, as Mr. Suggs points out later in the book, in 2002, while testifying before a federal commission reviewing Title IX, Brown University’s general counsel “argue[d] that the government ought to reverse the 1979 policy interpretation . . . to preserve institutional autonomy.”⁸⁸

In Chapter 5, Mr. Suggs discusses the lackluster approach to Title IX enforcement on the part of the Department of Education’s Office of Civil Rights (DED-OCR),⁸⁹ and the similarly lackluster approach to compliance that existed throughout much of the 1980s on the part of educational institutions. He includes brief discussions of some of the early Title IX cases, including *Cannon v.*

80. See 34 C.F.R. § 106.41(c)(5)–(6) (2005).

81. SUGGS, *supra* note 1, at 72.

82. *Id.* at 75.

83. *Id.*

84. *Id.* at 76–77.

85. 34 C.F.R. §§ 106.1, 106.41(d) (2005).

86. See SUGGS, *supra* note 1, at 81–83.

87. Title IX of the Education Amendments of 1972; A Policy Interpretation, 44 Fed. Reg. 71,413 (Dec. 11, 1979).

88. SUGGS, *supra* note 1, at 123.

89. In 1979, Congress split the Department of Health, Education, and Welfare (HEW) into the Department of Education (DED) and the Department of Health and Human Services, and gave Title IX enforcement authority to DED. Department of Education Organization Act of 1979, 20 U.S.C. § 3411 (2000). The DED adopted the original HEW policies as its own. 20 U.S.C. § 3505(a) (2000). See also Establishment of Title 34, 45 Fed. Reg. 30,802 (May 9, 1980) (establishing Title 34 of the C.F.R.).

University of Chicago,⁹⁰ which gave private plaintiffs the right to sue to enforce Title IX,⁹¹ and *Grove City College v. Bell*,⁹² which made Title IX applicable only to educational programs and activities that directly received federal funds and, consequently, also effectively gutted Title IX with regard to athletics.⁹³ Within weeks of the 1984 *Grove City* decision, DED-OCR “closed files on active investigations, including twenty-three involving large universities, and narrowed or reinterpreted twenty-four more.”⁹⁴ Members of both parties in Congress failed in their attempts to pass legislation to overturn the effects of *Grove City* at least three times, in 1984, 1985, and 1987, before finally succeeding in 1988 after overriding a presidential veto.⁹⁵ These judicial, legislative, and executive branch actions forestalled the application of Title IX to athletics for most of the 1980s.

Mr. Suggs also discusses how, during this same time, college and university sports itself underwent “seismic changes”⁹⁶ stemming from a number of events: a 1984 U.S. Supreme Court ruling that the NCAA could no longer exercise its decades-long monopoly over the television broadcast of college football games;⁹⁷ the advent of ESPN and other cable television channels that had money to pay colleges and universities to televise various sporting events twenty-four hours per day, seven days per week;⁹⁸ and a number of scandals within college athletics, including rules violations, recruiting violations, inadequate educational outcomes for student-athletes, and the first-ever NCAA “death penalty” imposed on Southern Methodist University’s football program in 1987.⁹⁹ With all of these events, plus President Reagan’s 1988 veto of the Civil Rights Restoration Act of 1987, “newspapers also started asking hard questions about whether schools had done enough to comply with Title IX.”¹⁰⁰ At the same time that the public became aware of the applicability of the law to athletics, “college presidents and NCAA officials began talking about the responsibilities they had toward female athletes.”¹⁰¹

In 1992, the NCAA published its first Gender Equity Report and formed a Gender Equity Task Force “to study the status of, and problems facing, women in college sports.”¹⁰² Through the work of this committee, the real problem with

90. 441 U.S. 677 (1979).

91. *Id.* at 689–708. See SUGGS, *supra* note 1, at 84.

92. 465 U.S. 555 (1984).

93. *Id.* at 570–75. See SUGGS, *supra* note 1, at 88–89.

94. SUGGS, *supra* note 1, at 89.

95. *Id.* at 90–92. See also Civil Rights Restoration Act of 1987, 20 U.S.C. §§ 1687–88 (2000) (making Title IX applicable to all of the programs and activities of a postsecondary institution when any part of the institution receives federal funds).

96. SUGGS, *supra* note 1, at 92.

97. Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85 (1984).

98. SUGGS, *supra* note 1, at 92–93.

99. See *id.* at 93.

100. *Id.*

101. *Id.*

102. *Id.* at 94.

achieving equity, in Mr. Suggs's view, became clear: "[T]he key issue was what to do about football and its ravenous appetite for equipment and personnel."¹⁰³ Despite the problems posed by the size and expense of a typical football team, the committee recommended that member institutions work toward proportionality. Because "[t]his goal threatened to foment a revolt among the larger football-playing institutions,"¹⁰⁴ however, the NCAA instead endorsed a principle that stated simply that "all colleges ought to comply with the government's gender-equity regulations."¹⁰⁵ The NCAA did not act on the committee's recommendation to increase scholarship limits for women's sports, but did agree to add "emerging sports"—including "rowing, ice hockey, team handball, water polo, synchronized swimming, archery, badminton, bowling, and squash"—for women.¹⁰⁶ Mr. Suggs notes, with some irony, that "many of these had been recognized as varsity sports during the AIAW era, but did not 'emerge' during the first decade of the NCAA's involvement in women's sports."¹⁰⁷ Again, this raises the question of what women's college and university sports might have developed into on their own had the AIAW not continued the historical suppression of competition in women's sports. Might interest have continued to develop in these sports, thus obviating the need to develop *new* interest in these particular sports today?

HISTORY OF LEGAL CHALLENGES TO TITLE IX

In Chapter 7, Mr. Suggs presents a history of the legal challenges to Title IX, briefly discussing some of the cases from the early 1990s, including: *Franklin v. Gwinnett County Public Schools*,¹⁰⁸ which held that a private plaintiff could sue for monetary damages, in addition to injunctive and declaratory relief, for a Title IX violation;¹⁰⁹ *Favia v. Indiana University of Pennsylvania*,¹¹⁰ one of the first lawsuits successfully brought by a female student-athlete whose team had been dropped;¹¹¹ and *Roberts v. Colorado State University*,¹¹² the first case in which a court had given the 1979 Policy Interpretation "great deference," even though the executive branch had not issued it through the normal rulemaking process.¹¹³ To lawyers familiar with the details of these cases, Mr. Suggs's discussion will seem rather inadequate, as he does not delve into the specific situations at each institution that caused the courts to side with the plaintiffs.

103. *Id.*

104. *Id.* at 95.

105. *Id.*

106. *Id.*

107. *Id.*

108. 503 U.S. 60 (1992).

109. *Id.* at 76. See SUGGS, *supra* note 1, at 105–06.

110. 812 F. Supp. 578 (W.D. Pa. 1993), *aff'd*, 7 F.3d 332 (3d Cir. 1993).

111. See SUGGS, *supra* note 1, at 106–08.

112. 814 F. Supp. 1507 (D. Colo. 1993), *aff'd in part, rev'd in part sub nom.* Roberts v. Colo. State Bd. of Agric., 998 F.2d 824 (10th Cir. 1993).

113. *Roberts*, 814 F. Supp. at 1510. See SUGGS, *supra* note 1, at 107–08.

Although he provides more detail in his discussion of the most seminal Title IX case of the decade, *Cohen v. Brown University*,¹¹⁴ Mr. Suggs puzzlingly omits any exploration of the litigants' motivations, which would have added an enlightening dimension to the discussion.¹¹⁵ He leaves a number of questions unanswered, including:

- Why sue Brown University (Brown), of all possible defendants?¹¹⁶ Mr. Suggs explains that "45 percent of Brown athletes were female. That was well in excess of the national average, [although] short of the undergraduate population at Brown, which was 51 percent female."¹¹⁷ In fact, at the time, Brown offered "an exemplary array of sports opportunities for

114. 809 F. Supp. 978 (D.R.I. 1992), *aff'd*, 991 F.2d 888 (1st Cir. 1993) (preliminary injunction), and 879 F. Supp. 185 (D.R.I. 1995), *aff'd in part, rev'd in part*, 101 F.3d 155 (1st Cir. 1996) (trial on the merits), *cert. denied*, 520 U.S. 1186 (1997). See SUGGS, *supra* note 1, at 108–24.

In *Cohen*, Brown University (Brown) had demoted two women's teams and two men's teams from university-funded varsity status to donor-funded varsity status as a cost-saving measure. The female student-athletes on the affected teams sued Brown to have their teams restored to university-funded varsity status. In applying the three-part test for effective accommodation, the federal courts determined that Brown failed to satisfy any of the three criteria. First, Brown did not satisfy Title IX on the basis of substantial proportionality because, at the time, women comprised 46.7% of the student body, but only 36.7% of student-athletes before the cutbacks and 36.6% after the cutbacks. Second, the courts concluded that Brown did not exhibit a continuing history of program expansion as described by the second prong because it had added only one women's varsity sport in the fifteen years preceding the lawsuit, despite the fact that, during this period, women had consistently comprised 48% to 49% of Brown's undergraduates, but no more than 39% of Brown's student-athletes. Finally, in cutting viable teams, the courts determined that Brown did not satisfy the interests and abilities of its female student-athletes, as described by the third prong. Thus, the courts ordered Brown to develop a Title IX compliance plan. See *generally* 809 F. Supp. at 991–93 (describing the federal district court's analysis of Brown's athletic program with regard to the three-part test for effective accommodation).

115. Jessica Gavora, for example, describes Brown as the unfortunate, but deliberate, target of attorneys and women's sports advocates who had hoped simply to pressure the university into settling the plaintiffs' claims and ultimately reaping for themselves hefty fees in the process. Brown, on the other hand, sought to maintain its institutional autonomy in the face of challenges brought by carpetbagging litigators. GAVORA, *supra* note 2, at 74.

116. Obviously, the plaintiffs, as Brown students, could sue only their university. But why did other women's advocacy groups jump in wholeheartedly to support them, taking direct aim at Brown, rather than directing their energies at more egregious violators of the law? In Jessica Gavora's view, "the targeting of Brown had been no accident." *Id.* at 75. Those supporting the student-athlete plaintiffs, including attorneys who had made careers out of pressuring educational institutions into making accommodations for female student-athletes in exchange for a promise not to sue, and a Brown alumna who served as director of advocacy of the Women's Sports Foundation, together "set out to make Brown an example of a new regime of Title IX enforcement." *Id.* at 71.

117. SUGGS, *supra* note 1, at 115. This percentage of female student-athletes includes university-funded and unfunded varsity teams for women and one unfunded coed varsity team. Here, Mr. Suggs also points out some facts missing from the courts' opinions, and accuses the district court judge of "creative accounting" when he calculated that women comprised only 37% of Brown's student-athletes. *Id.* at 111–12 & n.22.

its female students,”¹¹⁸ second only to the women’s athletic program at Harvard University.¹¹⁹ Brown, as a member of the Ivy League, did not offer athletic scholarships and did not have a Division I-A football program to attack.¹²⁰ Brown simply did not seem a likely target for a major test of Title IX.

- Why did Brown litigate the case as it did? By arguing key issues and developing a thorough record at the preliminary injunction phase of the case, which has a lower threshold for finding in favor of maintaining the *status quo* (i.e., restoring the teams to their original status), Brown effectively foreclosed its ability to develop the record further at the trial on the merits, or to include new arguments in later stages of the case.¹²¹
- Why didn’t Brown merely restore the downgraded teams to their prior status pending trial? Although that move would have cost Brown the money that it had intended to save by downgrading the teams, that cost could not have exceeded the legal costs of its preliminary injunction activities.
- Why, before the trial on the merits, did Brown settle the “equal treatment” issues in the case,¹²² leaving for trial only the “effective accommodation” issue,¹²³ thereby foreclosing the court from evaluating the entirety of Brown’s athletic program as the DED-OCR investigator’s manual requires?¹²⁴ Did Brown think that the equal-treatment issues would merely strengthen the plaintiffs’ contention that the university discriminated against women in its athletic program?

Mr. Suggs devotes much of his discussion of this case to the idea proffered by Brown at trial that women have less interest in sports than men, so the university could, within the bounds of the law, offer fewer participation opportunities to

118. GAVORA, *supra* note 2, at 73.

119. *Id.* See also SUGGS, *supra* note 1, at 108–10.

120. SUGGS, *supra* note 1, at 108.

121. See, e.g., Catherine Pieronek, *Title IX and Intercollegiate Athletics in the Federal Appellate Courts: Myth vs. Reality*, 27 J.C. & U.L. 447, 477–78 (2000) (discussing Brown’s strategy in litigating the case).

122. “Equal treatment” issues involve a so-called “laundry list” of nine benefits attendant to athletics participation, listed at 34 C.F.R. § 106.41(c)(2)–(10) (2005), plus athletic financial assistance, listed at 34 C.F.R. § 106.37(c) (2005).

123. “Effective accommodation” issues involve the rates of participation of male and female student-athletes. 34 C.F.R. § 106.41(c)(1) (2005).

124. Note, though, that the DED-OCR Title IX investigator’s manual states that “[a]n investigation may be limited to less than [the entirety of an athletic program] where unique circumstances justify limiting a particular investigation” DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, TITLE IX ATHLETICS INVESTIGATOR’S MANUAL 7 (Valerie M. Bonnette & Lamar Daniel eds., 1990).

women.¹²⁵ Unfortunately, this entire discussion fails to make one point critical to understanding the result of the case: that is, that Brown had on its campus women interested in and capable of participating in athletics at the varsity level and, by downgrading their teams in the absence of proportionality between the percentage of female student-athletes and female undergraduates, Brown could not claim that it had fully and effectively accommodated the interests and abilities of its female students.¹²⁶ Here, Mr. Suggs misses an opportunity to explore why Brown thought “that it was satisfying the interests and abilities of women more than adequately,” given the obvious examples of unmet interest existing on its campus at the time it downgraded the teams.¹²⁷

Mr. Suggs focuses his analysis in this section on the quest for proportional representation of women among student-athletes. His discussion emphasizes the facts and the legal analyses that lead to the (absolutely incorrect) conclusion that Title IX *requires* proportionality. By omitting the facts and legal analyses by which the courts in *Favia*, *Roberts*, and *Cohen* had determined that the educational institution defendants had failed to meet either the “history of continuing program expansion”¹²⁸ test or the “full and effective accommodation of interests and abilities”¹²⁹ test, Mr. Suggs leaves the absolutely incorrect impression that the courts emphasized “substantial proportionality” over the other two tests.¹³⁰ He reinforces this theme in the paragraphs that conclude Chapter 7:

Does the [1979] policy interpretation and the First Circuit’s understanding of it mandate quotas? By any measure it gives colleges powerful incentives to structure their [athletic] programs so that women get a high percentage of slots on varsity teams.

But if Brown officials were correct, and women truly are less interested in sports than men, then any college in the country ought to be able to accommodate the interests of female students by adding roster spots. And they should be able to stop long before they reach the proportionality standard.

If they cannot, that would prove Brown wrong at the outset, because it would demonstrate that women *are* as interested in sports as men.¹³¹

This nonsensical conclusion evidences either a thorough misunderstanding of the law, or a bias so deep that it prevents Mr. Suggs from seeing that the courts in

125. SUGGS, *supra* note 1, at 112–17.

126. *See generally* Cohen v. Brown Univ., 809 F. Supp. 978, 991–93 (D.R.I. 1992). The federal district court explained that Brown failed the interests and abilities prong of the three-part test for effective accommodation because the university had “cut[] off varsity opportunities where there is great interest and talent, [while the university] still ha[d] an imbalance between men and women varsity athletes in relation to their undergraduate enrollments.” *Id.* at 992.

127. SUGGS, *supra* note 1, at 113.

128. Title IX of the Education Amendments of 1972; A Policy Interpretation, 44 Fed. Reg. 71,413, 71,418 (Dec. 11, 1979).

129. *Id.*

130. *See* SUGGS, *supra* note 1, at 105–24.

131. *Id.* at 124.

these cases actually did undertake a thorough analysis of the facts and actually did weigh those facts against the law before arriving at their conclusions that, in the absence of proportionality, the defendant institutions could not cut women's teams. While an issue does exist regarding *whether* the courts should have relied so heavily on the three-part test contained in the 1979 Policy Interpretation, it cannot be doubted that the courts have attempted to apply that test properly and fairly.

THE POLITICS OF TITLE IX ENFORCEMENT

Mr. Suggs discusses Title IX enforcement and compliance efforts during the Clinton Administration in Chapter 8, and during the second Bush Administration in Chapter 10. Taken together, these chapters show that, three decades after Congress enacted Title IX, enforcement and compliance issues still raise questions and create controversy. Enforcement now has become a matter of politics more than anything else.

Mr. Suggs points out that “[t]he briefs submitted in the [*Cohen*] case show that a coalition of the angry was forming [in the early-to-mid 1990s]. Coaches, athletes, and a variety of new players were enraged by what they saw as a law penalizing individual men as a means of appeasing a group of women.”¹³² And, even though Congress had settled the question of the applicability of Title IX to athletics with the passage of the Civil Rights Restoration Act of 1987, DED-OCR “had been extraordinarily passive on Title IX issues in athletics.”¹³³ The mid-to-late 1990s also saw the first cases filed by men, who sued their educational institutions for reverse discrimination when their teams were cut: *Kelley v. Board of Trustees of the University of Illinois*,¹³⁴ *Neal v. Board of Trustees of California State University*,¹³⁵ and *Miami University Wrestling Club v. Miami University*.¹³⁶ The results of these cases, uniformly decided in favor of the educational institutions, “attracted the attention of conservative groups who previously had had nothing to do with sports.”¹³⁷ And, by appointing Mexican American Legal Defense and Education Fund attorney Norma V. Cantu as assistant secretary of education for civil rights in 1993, and then stepping up Title IX enforcement efforts, President Bill Clinton merely “[f]ann[ed] the flames for conservatives.”¹³⁸

Mr. Suggs recounts the many events that occurred during the Clinton Administration that altered the Title IX enforcement scheme. In 1994, Congress

132. *Id.* at 126.

133. *Id.* at 128.

134. 832 F. Supp. 237 (C.D. Ill. 1993), *aff'd*, 35 F.3d 265 (7th Cir. 1994). See SUGGS, *supra* note 1, at 126.

135. No. CV-F-97-5009 REC, 1999 WL 1569047 (E.D. Cal. Feb. 22, 1999), *rev'd*, 198 F.3d 763 (9th Cir. 1999). In 2002, citing the law of the case doctrine, the Ninth Circuit denied the plaintiffs' appeal of a grant of summary judgment in favor of the defendant university. *Neal v. Bd. of Trustees of the Cal. State Univ.*, 51 Fed. Appx. 736 (9th Cir. 2002), *cert. denied*, 540 U.S. 874 (2003). See SUGGS, *supra* note 1, at 136–37.

136. 195 F. Supp. 2d 1010 (S.D. Ohio 2001), *aff'd*, 302 F.3d 608 (6th Cir. 2002). See SUGGS, *supra* note 1, at 135–36.

137. SUGGS, *supra* note 1, at 126–27.

138. *Id.* at 127.

passed the Equity in Athletics Disclosure Act (EADA),¹³⁹ thus requiring colleges and universities to report various statistics relevant to their men's and women's athletic programs.¹⁴⁰ In 1996, DED-OCR issued yet another Title IX clarification, ostensibly to help educational institutions find ways to comply with the law, but actually frustrating parties on all sides of the issue.¹⁴¹ In 1997, to mark the twenty-fifth anniversary of Title IX, the National Women's Law Center accused twenty-five colleges and universities, representing a cross-section of NCAA Division I institutions, of failing to meet Title IX scholarship requirements—complaints that, although based on flawed data, nevertheless resulted in twenty-five DED-OCR investigations.¹⁴² Also that year, the Equal Employment Opportunity Commission published guidelines on coaches' compensation.¹⁴³ In this part of his discussion, Mr. Suggs makes it clear that the scope of governmental regulation had expanded tremendously—and, concomitantly, institutional autonomy had decreased substantially—in the time since HEW issued that first set of “intentionally vague” regulations in 1975.¹⁴⁴

In the discussion that concludes Chapter 8, Mr. Suggs catalogs the most common complaints about Title IX at the close of the twentieth century. He correctly takes issue with the popularly accepted notion that Title IX caused a drop in the total number of male college and university student-athletes, pointing out how sources disagree as to the actual effect of Title IX on men's participation opportunities.¹⁴⁵ He does point out, however, that NCAA Division I educational institutions, which have dropped an average of more than twenty male student-athletes per institution, have experienced the greatest losses of male student-athletes, compared to an average loss of only one participation opportunity per Division II or III institution.¹⁴⁶

In the last paragraphs of the chapter, however, Mr. Suggs again reveals his biases. He identifies a “common complaint among athletics officials and Title IX opponents [about] the way colleges choose to add women's sports.”¹⁴⁷ He argues that men who have trained for years to participate in their sports lose opportunities to participate or to earn scholarships in college or university because educational institutions have opted instead to create women's teams in sports such as rowing, and then find women, perhaps with no prior experience in the sport, to fill out a roster.¹⁴⁸ Mr. Suggs neglects to mention, however, that creating these opportunities for women in colleges or universities has, in turn, created a demand for sports such as rowing at the high school level, leading to a new generation of

139. Pub. L. No. 103-382, § 360B, 108 Stat. 3518, 3969 (codified in scattered sections of 20 U.S.C.).

140. SUGGS, *supra* note 1, at 132.

141. *See id.* at 129–32.

142. *Id.* at 132–33.

143. *Id.* at 134.

144. *See id.* at 135–41.

145. *See id.*

146. *Id.* at 139.

147. *Id.* at 140.

148. *Id.*

young women arriving at their colleges and universities with developed skills and interest in a previously unpopular sport.¹⁴⁹

In Chapter 10, Mr. Suggs explores how the current Bush Administration has made some attempts to scale back the negative side-effects of stepped-up Title IX enforcement, particularly in the cuts to men's teams. In the 2000 election, nearly all of the presidential candidates of both parties supported the idea of equal opportunities for women in athletics, although the Republican candidates expressed the hope that women could achieve equality without reducing opportunities for men. During this time, the National Wrestling Coaches' Association (NWCA) filed suit against DED-OCR to challenge its policy interpretations,¹⁵⁰ and the Secretary of Education convened a presidential commission to seek public comment on, and develop recommendations for, reforming the legal and regulatory framework of Title IX.¹⁵¹

As with most of his case summaries, Mr. Suggs discusses the failed NWCA lawsuit only briefly. He mentions it merely as the apparent catalyst in the Bush Administration's decision to revisit the Title IX regulatory scheme. Mr. Suggs nevertheless does include comments from women's advocates who expressed displeasure at the administration's decision not to give "even a passing reference to underlying support for the regulations and policies" in the administration's legal briefs in the case.¹⁵² Again, in failing to explore the parties' motivations for litigating the case as they did, Mr. Suggs misses an opportunity to provide some balance.¹⁵³

Mr. Suggs devotes the vast majority of this chapter to the work of the blue-ribbon panel convened by DED in 2002 to review Title IX, strengthen compliance, and ensure fairness in enforcement.¹⁵⁴ He explores how controversy, once again, surrounded the commission's work. Women's groups contended that "[t]he very existence of the commission . . . was evidence of the [Bush] administration's lack of commitment to upholding the law."¹⁵⁵ Other groups complained about the

149. "In fact, the growth at the collegiate level for women's rowing also has resulted in a concomitant growth among high schools participating in women's rowing." Bill Jurgens, *Rowing is Stroke of Genius for Schools*, NCAA NEWS ONLINE, May 23, 2005, http://www2.ncaa.org/media_and_events/association_news/ncaa_news_online/2005/05_23_05/editorial/4211n05.html. This, then, presents an example of how creating opportunities for women at the collegiate level can create interest and increase participation numbers for girls at the high school level.

150. *Nat'l Wrestling Coaches Ass'n v. U.S. Dep't. of Ed.*, 263 F. Supp. 2d 82 (D.D.C. 2003), *aff'd*, 366 F.3d 930 (D.C. Cir. 2004), *rehearing and rehearing en banc denied*, 383 F.3d 1047 (D.C. Cir. 2004), *cert. denied*, 125 S. Ct. 2537 (2005).

151. SUGGS, *supra* note 1, at 157-74.

152. *Id.* at 157.

153. Undoubtedly, the Bush Administration chose to litigate the case on procedural, rather than substantive, grounds as a safer way of having the case dismissed with minimum disruption to the existing legal framework. Support, or lack thereof, for the law and the current enforcement scheme should not have played any role at this stage of the litigation.

154. *See* SUGGS, *supra* note 1, at 158-74.

155. *Id.* at 158.

composition of the commission.¹⁵⁶ Mr. Suggs, however, takes issue with the commission's work. He criticizes DED for the "curious" list of questions presented to the commission for study.¹⁵⁷ He derides the manner in which the commission operated: "It was an interesting way to make policy: [sic] Athletics officials, lawyers, and academics flinging ideas at each other around a circle of tables in a dim hotel conference room, while an audience of advocates, reporters, and more lawyers looked on from the peanut gallery."¹⁵⁸ He provides select snippets of the commissioners' discussions and debates.¹⁵⁹ He characterizes the commission's final meeting as "a circus,"¹⁶⁰ and uses terms such as "sparring" and "arguing" to describe conversations, along with words like "heated" and "confused" to describe the atmosphere.¹⁶¹ He paints a picture of discord far different from the civil, measured tone that emerged in the commission's final report.¹⁶² Clearly, Mr. Suggs appreciated neither the process nor the result of this effort, and concludes his discussion with a brief recap of the "swirl of controversy"¹⁶³ that the report caused—a not altogether unpredictable outcome of yet another attempt to find a way to make the complex and controversial regulatory scheme work.

THE TRAGEDY AND TRIUMPH OF TITLE IX

Finally, in Chapters 11 and 12, Mr. Suggs arrives at the theme of his book. In Chapter 11, he discusses the "tragedy" of Title IX: that female student-athletes have been "sucked into" the mess of the "nakedly commercial" college and university sports enterprise.¹⁶⁴ In Chapter 12, he questions whether the law has resulted in any triumphs at all, before making only a passing reference to how the law has actually given women and girls the opportunity to participate in athletics on the same terms as men—the actual goal of Title IX and its athletic regulatory scheme.¹⁶⁵

In discussing the "tragedy" of Title IX, Mr. Suggs presents a list of the ills that have since befallen women's sports and female student-athletes, including: physiological and emotional problems such as eating disorders, amenorrhea, early-onset osteoporosis, and knee-ligament damage;¹⁶⁶ graduation rates that, while still

156. *See id.*

157. *See id.* at 159–60.

158. *Id.* at 161.

159. *See id.* at 161–63.

160. *Id.* at 165.

161. *Id.* at 167, 169.

162. U.S. DEP'T OF EDUC., SECRETARY'S COMM'N ON OPPORTUNITY IN ATHLETICS, OPEN TO ALL: TITLE IX AT THIRTY (2003).

163. SUGGS, *supra* note 1, at 171.

164. *Id.* at 175.

165. *See id.* at 195.

166. *Id.* at 177, 185–86. Yet, eating disorders, for example, are hardly a phenomenon unique to college and university sports. In fact, "[a]norexia or bulimia in florid or subclinical form now afflicts 40 percent of [all] women at some time in their college career." Hara Estroff Marano, *A Nation of Wimps*, PSYCHOLOGY TODAY, Nov 1, 2004, at 62.

higher than those of male student-athletes and female non-athletes, do not meet some other, higher standard that he does not define;¹⁶⁷ a growing shortage of athletic participation opportunities for women of color;¹⁶⁸ and, worst of all, intense and troublesome competition.¹⁶⁹

He then repeats the arguments presented in earlier chapters that the intense competition has given rise to a number of new and objectionable trends in girls' and women's sports: recruiters pressuring high school girls to make college and university decisions earlier and earlier in high school; girls competing year-round on club teams; girls competing for athletic scholarships; and girls specializing in one sport too early.¹⁷⁰ He discusses at great length two major "dangerous trends" identified by unidentified "coaches and outside critics of college sports"¹⁷¹—namely, "the prioritization of skill development at the expense of academic and social development, and the steady whitening of the sports population."¹⁷² However, Mr. Suggs offers no credible evidence that directly ties these trends to Title IX and, in fact, completely ignores other possible causes of these trends.¹⁷³

In discussing how young men and women sacrifice academic development for athletic development, Mr. Suggs presents statistics that show an academic achievement gap between student-athletes and the overall undergraduate population.¹⁷⁴ Yet, he neglects to explore other possible explanations for this achievement gap, including perhaps intense competition among colleges and universities to recruit a student body with the highest possible credentials to improve their position in various competitive rankings. Colleges and universities face a complex and intense set of pressures to excel not only on the playing field, but also in the pages of *U.S. News and World Report*, *The Princeton Review*, and other publications that, for commercial purposes, attempt to rank academic institutions on the basis of somewhat artificial criteria. Furthermore, any student

167. SUGGS, *supra* note 1, at 177.

168. *Id.*

169. *Id.*

170. *Id.* And yet again, the responsibility for this unhealthy trend should be laid at the feet, not of Title IX, but of those most responsible for it—the parents. See Marano, *supra* note 166, at 70 (arguing that parents "have micromanaged their kids' lives because they've hitched their measurement of success to a single event whose value to life and paycheck they have frantically overestimated"—that is, admission to a prestigious college or university).

171. SUGGS, *supra* note 1, at 178.

172. *Id.* at 178–79.

173. At least one other author has identified one other significant reason for today's "sports culture run amok"—the adults. See, e.g., David Oliver Relin, *Who's Killing Kids' Sports?* PARADE MAGAZINE, Aug. 7, 2005, at 4. As the author states, "With pro scouts haunting the nation's playgrounds in search of the next LeBron [James] or Freddy [Adu], parents and coaches are conspiring to run youth-sports leagues like incubators for future professional athletes." *Id.* at 4. He continues, "Some adults . . . are pushing children toward unrealistic goals like college sports scholarships and pro contracts." *Id.* The article also goes on to discuss the "terrible imbalance between the needs kids have and the needs of the adults running their sports programs . . . Above all, kids need to have fun. Instead, adults are providing unrealistic expectations and crushing pressure." *Id.* at 4–5 (quoting Dr. Bruce Svare, director of the National Institute for Sports Reform) (internal quotation marks omitted).

174. See SUGGS, *supra* note 1, at 178–80.

who devotes a significant amount of time to any outside activity—whether athletics, extracurricular clubs and activities, or work—may earn lower grades in the classroom than students not similarly engaged (or distracted).

Similarly, the “whitening of sports” has not occurred simply because of Title IX. True, some of the emerging sports do attract more white students, but others attract more women of color.¹⁷⁵ The problem, as Mr. Suggs actually points out, results instead from socioeconomic differences.¹⁷⁶ Wealthier parents can better afford skills-building camps and resumé-building private (club) teams and, thus, can expose their children to the top recruiters, who focus their efforts not on school-by-school recruiting, but on club recruiting.¹⁷⁷

Importantly, however, these phenomena affect both male and female student-athletes. It is, therefore, unclear why Mr. Suggs chooses to blame Title IX. His concluding thought in this chapter might provide a clue:

Chronicling these problems is not supposed to be an indictment of women’s sports, or a suggestion that women should not be participating in athletics. Instead, in adapting to the highly competitive, often ethically questionable world of men’s scholastic sports, women face certain challenges that they did not during the era when women’s sports were controlled by physical-education departments. Does that mean something is wrong with women, or with the men’s system?¹⁷⁸

Clearly, Mr. Suggs intends his thesis to lead the reader to the conclusion that something is wrong with the men’s system, and women are worse off now that Title IX has allowed them to behave as badly as men.¹⁷⁹ But in his analysis, he fails to consider one other possibility: that, perhaps, the early women’s sports advocates, by artificially suppressing women’s natural desire to compete in athletics, also inhibited the ability of women to develop their own competitive, high-quality programs to meet their unique needs. Once faced with the Title IX mandate to remedy the legacy of these historical, forced, and artificial inequities, college and university administrators had limited options—the most obvious of which included either bringing men’s programs in line with women’s programs by dampening the hypercompetitive, commercial environment of college sports, or making women’s programs as similar as possible to men’s programs in all things, good and bad.

Finally, in Chapter 12, Mr. Suggs grudgingly admits that Title IX “has been extraordinarily but not completely successful.”¹⁸⁰ He then launches into a recap of the ills still plaguing college and university sports.¹⁸¹ For example, despite the growth in women’s sports spurred on by Title IX and other societal forces, women

175. *See id.* at 95.

176. *See id.* at 180–82.

177. *See id.* at 180–81.

178. *Id.* at 187.

179. For a work that explores this idea thoroughly and more persuasively, *see* PORTO, *supra* note 2.

180. SUGGS, *supra* note 1, at 188.

181. *See id.* at 188–95.

still do not enjoy equal status in collegiate athletic programs primarily because of the iconic status of football.¹⁸² Financial issues still affect decisions about what sports to field and how to compete successfully.¹⁸³ The NCAA continually struggles to improve the academic performances of student-athletes by adding more and more restrictions on academic eligibility.¹⁸⁴

Amazingly, in discussing how to fix the law, Mr. Suggs actually suggests that “[a] simpler process would be to issue a new policy interpretation, essentially overriding the 1979 interpretation.”¹⁸⁵ His own research should have convinced him of the impossibility of this task.¹⁸⁶ Chapters 8 and 10, in particular, give more examples than necessary to come to the conclusion that none of the groups that have an interest in the state of college and university athletics, at this point, will cede any ground in an effort to reform the Title IX regulatory framework. Prior efforts at reform have proved stunningly unsuccessful. With his years of reporting on the law and its impact on college and university athletics in particular, Mr. Suggs either should have found a workable solution or conceded the futility of any efforts at reform.

This entire discussion misses the point of Title IX, however—a point that Mr. Suggs finally states, clearly, at the end of his work:

Women now have a wealth of opportunities to find sports that best suit them and offer all the benefits of an athletic lifestyle. With only a modicum of talent, a female athlete can play soccer in recreational leagues as a child, compete on varsity teams in high school and college, and find adult leagues in most cities for the rest of her life. The same holds true for many other sports.

This is the triumph of Title IX. Parents now have the same expectations of their daughters as they do of their sons. In most cases, little girls have the chance to learn the same lessons, dream the same dreams, and shoot for the same goals as little boys.

And any girl who expresses a desire to play college sports, and shows the willingness to work hard to be an athlete, will find herself a place on the team.¹⁸⁷

Far from being a “triumph?” as Mr. Suggs titles his concluding chapter, this truly is a “triumph.”

CONCLUSION

Mr. Suggs has written a book that certainly adds to the story of Title IX, by presenting a historical overview of the development of women’s sports together with the political and legal wranglings over the development of the law and its

182. *See id.* at 188–89.

183. *See id.* at 191–93.

184. *See id.* at 194–95.

185. *Id.* at 190.

186. *See id.*

187. *Id.* at 195.

regulatory framework. His ideas inspire a deeper look into the societal and cultural factors that led to the enactment and enforcement of Title IX, and raise interesting, albeit unanswered, questions about the factors that influenced the development of collegiate sports programs over the last century and a half. But he misses the mark when he makes the case for his central theme, that Title IX has ruined women's sports. Over the last thirty years, women's sports certainly have moved closer to the commercialized, competitive model of men's sports, and these changes have altered the nature of women's sports. Realistically, however, the most for which Title IX can be blamed is enabling women to behave as badly as men. A host of other factors, which Mr. Suggs leaves largely unexplored, have also had a tremendous impact on the complex world of college and university sports.

Certainly, the law has brought about some important triumphs, in giving women the opportunity to compete in and excel at athletics. And, certainly, it has brought about some tragedies, particularly in the cuts to men's sports. But for an explanation of the other ills plaguing college and university sports, Mr. Suggs should look beyond Title IX.

