

# Archived Information

1 THE SECRETARY OF EDUCATION'S COMMISSION  
2 ON  
3 OPPORTUNITY IN ATHLETICS  
4 COLORADO SPRINGS TOWN HALL MEETING  
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1                   MR. LELAND: Welcome everyone  
2 to this third town hall meeting of the Secretary of  
3 Education's Commission on Opportunity in Athletics.  
4 My name is Ted Leland. I, with Cindy Cooper to my  
5 right, are the co-chairs of this Commission.

6                   We are very pleased to be here  
7 in Colorado Springs for the Commission's meeting.  
8 It is fitting that we are here since it is the home  
9 of the United States Olympic Committee and many  
10 other athletic governing boards and federations.

11                   At the outset, I want to thank  
12 Target and Jean Knutson, the group manager of  
13 community relations for Target marketing for  
14 sponsoring this town meeting. We could not pull it  
15 off without their assistance, and we truly  
16 appreciate it.

17                   I would like now just to start,  
18 if I could, with Bob Bowsby to my right and ask all  
19 the commissioners to introduce themselves, and just  
20 we'll work in this direction.

21                   MR. BOWLSBY: Thank you, Ted.  
22 My name is Bob Bowsby. I'm director of athletics  
23 at the University of Iowa.

24                   MS. MCGRAW: Muffet McGraw, head

1 women's basketball coach at the University of Notre  
2 Dame.

3 MS. GROTH: Cary Groth, director  
4 of athletics, Northern Illinois University.

5 MR. GRIFFITH: Tom Griffith,  
6 assistant to the president and general counsel at  
7 Brigham Young University.

8 MR. DeFILIPPO: I'm Gene  
9 deFilippo, athletic director and head of recreation  
10 at Boston College.

11 MS. COOPER: Cynthia Cooper,  
12 former coach of the WBA and player.

13 MR. LELAND: Ted Leland,  
14 director of athletics and recreation at Stanford  
15 University.

16 MS. PRICE: Debbie Price, and  
17 I'm the executive director of the Commission, and I  
18 am the senior advisor to the deputy secretary at the  
19 Department of Education.

20 MS. SIMON: I'm Rita Simon. I'm  
21 university professor at American University in  
22 Washington, D.C.

23 MR. SPANIER: I'm Graham  
24 Spanier, president of Penn State University.

1 MS. YOW: Debbie Yow, director  
2 of athletics, University of Maryland.

3 MS. STROUP: Sally Stroup,  
4 assistant secretary for post-secondary education at  
5 the U.S. Department of Education.

6 MR. LELAND: Just for the  
7 audiences, we have sign language interpreters  
8 available. We've asked for the interpretation to be  
9 done at the beginning of this meeting, and then we  
10 will cease those interpretations unless there's a  
11 request made at the back table. So if someone would  
12 like that service to continue, please do so.

13 And also, we would like everyone  
14 to speak into the microphones, if possible. We are  
15 transcribing all of these proceedings and want to  
16 make sure that our people have the chance to get  
17 your name and your correct information.

18 The U.S. Secretary of Education,  
19 Rod Paige, appointed the Commission to examine ways  
20 to strengthen Title IX and to expand opportunities  
21 to ensure fairness for all college and  
22 interscholastic athletes.

23 President Bush and Secretary  
24 Paige fully support Title IX and the tremendous

1 opportunities that have been followed since its  
2 passage. As Title IX reaches the milestone of its  
3 30th anniversary, it is appropriate to celebrate its  
4 achievements and to examine its effects.

5 The Commission's goal is to  
6 gather facts, listen to what the American people  
7 have to say, and find out how Title IX is serving  
8 our citizens.

9 Secretary Paige has charged the  
10 Commission with examining seven areas specifically,  
11 and they are:

12 1. Are Title IX standards for  
13 assessing equal opportunity in athletics working to  
14 promote opportunities for both male and female  
15 athletes?

16 2. Is there adequate Title IX  
17 guidance that enables colleges and school districts  
18 to know what is expected of them and to plan for  
19 their athletic programs in a way that effectively  
20 meets the needs and interests of their students?

21 3. Is further guidance or steps  
22 needed at the junior or senior high school levels  
23 where the availability or absence of opportunities  
24 critically affect the prospective interests and



1 abilities of student-athletes when they reach  
2 college age?

3 4. How should activities such  
4 as cheerleading and bowling factor into the analysis  
5 of equitable opportunities?

6 5. How do revenue-producing and  
7 large-roster teams affect equal opportunity in  
8 athletics?

9 6. In what ways do  
10 opportunities in other sports venues such as the  
11 Olympics, professional leagues, and community  
12 recreation programs interact with the obligation of  
13 colleges and schools districts to provide equal  
14 athletic opportunity?

15 7. Apart from Title IX  
16 enforcement, are there other efforts to promote  
17 athletic opportunities for both male and female  
18 students such as public/private partnerships to  
19 support these efforts of schools and colleges in our  
20 local area? Are these possible?

21 Our hearing today is the  
22 Commission's third of four scheduled town hall  
23 meetings. These events have enabled the Commission  
24 to quickly amass an impressive body of information.

1                   To date, we have heard from 27  
2 witnesses including our meetings in Atlanta and  
3 Chicago. We will hear from 12 other expert  
4 witnesses today. At our Atlanta hearing we heard  
5 from 62 people who spoke during our public comment  
6 period. In Chicago, we received comments from 40  
7 individuals during the public period. In addition  
8 to testimony and public comments, the Commission has  
9 received hundreds of letters, e-mails, and phone  
10 calls pointing us to various types of information.  
11 We truly appreciate this flow of information. It is  
12 helping us to fully understand the promise and the  
13 achievements of Title IX.

14                   I want to thank all of you for  
15 being here today. Now I'll turn to my co-chair,  
16 Cynthia Cooper, who will explain what our format is  
17 going to be for today.

18                   MS. COOPER: Thank you, Ted.  
19 Good morning. As Ted mentioned, the Commission's  
20 job is to analyze issues and obtain broad public  
21 input about Title IX. We will continue those tasks  
22 today. We will have three panels of witnesses this  
23 morning. The first panel will explore how our  
24 nation's Olympics Committee governing board and

1 sports organizations view implementation and  
2 enforcement issues.

3 Our second panel will be made up  
4 of four athletics directors who'll give us their  
5 views on the implementation of Title IX.

6 Our third and final panel will  
7 consist of university representatives who'll give us  
8 their views on the legal implications and  
9 application of Title IX.

10 This afternoon, we will have a  
11 public comment period from 2:00 to 5:00 p.m.  
12 Tomorrow, the Commission will then work until  
13 1:00 p.m. During that time, we will discuss the  
14 testimony we received today. We will also discuss  
15 the development of our report. We will not take  
16 questions or comments from the public during our  
17 meeting tomorrow.

18 I want to thank each panel  
19 member who has traveled here to provide testimony.  
20 I also want to thank each and every member of the  
21 public who is here with us today. All of you are  
22 helping us to learn what we can -- us to learn how  
23 we can do a better job for the sports community in  
24 America.

1                   We now open the third town hall  
2 hearing of the Secretary of Education's Commission  
3 on Opportunity in Athletics. Just a short note. It  
4 is great to be back in Colorado Springs. I've  
5 trained here so often. This is the best time for me  
6 to be here because I don't have to go out and work  
7 out --

8                   (Audience laughter.)

9                   MS. COOPER: -- because high  
10 altitude just gets to you. We'll start with panel  
11 one, Marty Mankamyer. Did I get it right?

12                  MS. MANKAMYER: Very good.

13                  MS. COOPER: Marty was elected  
14 president of the United States Olympic Committee  
15 August 15, 2002 -- 2002. That's what I meant. She  
16 served as USOC vice president secretariat from  
17 December 3, 2000 to August 15, 2002. Mankamyer has  
18 served since 1990 as a member of the USOC board of  
19 directors, where she formerly represented the U.S.  
20 Soccer Federation, and, as vice chair of the NGB  
21 Council, she was a member of the USOC Executive  
22 Committee from 1992 to 1996.

23                  MS. MANKAMYER: Thank you. Good  
24 morning, Chairwoman Cooper, Chairman Leland, and

1 Members of the Secretary's Commission on Opportunity  
2 in Athletics. I'm Marty Mankamyer, president of the  
3 United States Olympic Committee. On behalf of the  
4 USOC, I want to thank and commend all of you for  
5 agreeing to serve on this Commission, and I know  
6 that you are all extremely busy people engaged in  
7 very highly-demanding careers and that service on  
8 this blue-ribbon panel is requiring an extraordinary  
9 amount of whatever free time you have remaining.

10 I am also aware that some  
11 complex and sometimes contentious issues have arisen  
12 in your first two town hall meetings. I'm confident  
13 that you will ultimately resolve them in a manner  
14 that benefits all concerned. Doing so is of  
15 particular importance to the USOC, which has long  
16 been a stakeholder in the principal issues under  
17 discussion, Title IX and its implementation and  
18 enforcement.

19 I have followed the reports on  
20 your first two town hall meetings with great  
21 interest. My reaction has been a degree of dismay,  
22 laced with a dose of ambivalence and uncertainty.  
23 Let me briefly address both my interest and my  
24 varied reactions.

1                   First is the matter of the USOC  
2           interest. To the USOC, our principal interest is in  
3           Title IX's impact on collegiate sports programs.  
4           These are important and integral blocks in our  
5           nation's Olympic development and feeder system.  
6           Unlike many nations, such as those in Europe that  
7           rely on sports clubs for the development of their  
8           Olympic athletes, the USOC relies on development  
9           programs conducted by the national governing bodies,  
10          NGBs, for each of the sports on the program of the  
11          Olympic and Pan-American Games, and on a number of  
12          high school and college athletic programs, many of  
13          which were not available to girls and women until  
14          fairly recently.

15                   As a parent, as a former  
16          official of the governing body for soccer in the  
17          United States, as first a volunteer, and ultimately  
18          an officer of the United States Olympic Committee,  
19          as a reasonably observant adult who has been  
20          involved with sports continually since before  
21          Title IX was enacted, and as a woman, my experience  
22          has left me with little doubt about the beneficial  
23          effect of this legislation. I compare athletic  
24          opportunities for girls and women before and after

1 the enactment of Title IX and can only conclude that  
2 this legislation was largely responsible for the  
3 increases. And from the perspective of the American  
4 Olympic interests, the results are partly, although  
5 not entirely, measurable through the tabulation of  
6 medals captured by American women in recent summer  
7 and winter Olympic games.

8                   However, I hasten to add that  
9 the NGBs deserve the lion's share of the credit for  
10 these recent achievements, and they continue to  
11 devote an increasing share of resources to women's  
12 programs.

13                   Nevertheless, one cannot  
14 understate the importance of Title IX in encouraging  
15 the creation of effective and meaningful women's  
16 school programs that have become an important part  
17 of the Olympic feeder and development system. And  
18 while some of these programs might have developed  
19 through a voluntary, evolutionary process, I believe  
20 that, at the least, Title IX was the principal  
21 stimulus that persuaded school administrators to  
22 reevaluate their programs and develop increased  
23 athletic opportunities for women.

24                   But there's another area of

1 interest -- the threat to certain programs at the  
2 college level, particularly those for wrestling,  
3 men's gymnastics, and swimming, and for some women's  
4 emerging sports. Arguably, these programs have been  
5 the most important reason why Olympic -- American  
6 Olympic athletes have done so well in some of these  
7 sports for the last half-century, but if the program  
8 trend for elimination continues, we will suffer the  
9 consequences, as will be evidenced by the absence of  
10 American athletes at the medals podium at future  
11 Olympic games. Let me repeat that. If the current  
12 trend of program elimination continues, we will  
13 suffer the consequences, as will be evidenced by the  
14 absence of American athletes on the medals podium at  
15 future Olympic games.

16 Here's why I'm dismayed. The  
17 athletic community, of which we are all a part, is a  
18 family with common interests. From what I have seen  
19 and heard from the first two hearings, you have been  
20 subjected to a revised version of that old  
21 television show, "Family Feud," with brothers and  
22 sisters quibbling with one another over causes when  
23 they should be talking about solutions.

24 The reality is that before 1972



1 and the enactment the Title IX, athletic  
2 opportunities for girls and women in high school and  
3 college were a fraction of what they are today. I  
4 had to play half-court basketball. It was  
5 dreadful. I think there is little dispute that the  
6 implementation of this law played a major role in  
7 the increased participation. Further, despite  
8 progress, opportunities for girls and women have not  
9 yet caught up with those for boys and men. That is  
10 not fair, and it is not productive to deny it.

11 The other reality is that we are  
12 losing some significant sports programs, whatever  
13 the cause or causes. We are losing important men's  
14 athletics programs, and in the case of wrestling,  
15 for example, the decline has been dramatic,  
16 bordering on the catastrophic. Further, there is no  
17 doubt that the elimination of some -- not all, but  
18 some -- was influenced by Title IX compliance  
19 considerations. That is also not fair, and it is  
20 not productive to deny it. In the cruelest of  
21 ironies, we are also seeing some programs in women's  
22 emerging sports being threatened by the unintended  
23 consequences of Title IX.

24 I submit that it is unfair and

1 irrational to eliminate a program primarily serving  
2 one gender as a means for achieving equity for the  
3 other. If this is occurring, as some allege, then  
4 it should stop.

5 As one who deals with all  
6 parties to this issue, let me say unequivocally that  
7 I know of no one who has any interest in or  
8 intention of eliminating Title IX. It's not going  
9 to happen, and if there were any movement in that  
10 direction, I would be the first to march on  
11 Washington demanding remedial action. So let's end  
12 the scare tactics, because it's deceptive,  
13 counterproductive, and it won't work.

14 To those who attribute the  
15 elimination of certain men's athletic programs to a  
16 group of strident feminists, I can merely say "get  
17 real." It's only recently that financial resources  
18 have been allocated more equitably to women, and to  
19 deny the common sense desire by women to defend  
20 their recent gains is to deny human nature.

21 As I believe a number of you  
22 expressed at your Chicago meeting, you have heard  
23 enough about the problems and want to turn your  
24 attention to some solutions. I share that view, but

1 that's where I move into the realm of uncertainty  
2 and ambivalence.

3 I believe that many parties are  
4 responsible for solving this problem, and while I  
5 have not identified specific elements that will  
6 provide a resolution, I recommend some of the  
7 following for your examination:

8 First of all, there seems to be  
9 competing statistics vying with one another to  
10 define the scope of the entire issue. Is there a  
11 reliable set of numbers that we can all agree on?  
12 Someone should ensure that a reliable,  
13 consistently-formulated set of numbers with broad  
14 buy-in is established and used to discuss the  
15 issue;

16 Second, what constitutes  
17 equity? This is a policy question. Should it be  
18 the policy of the United States to serve existing  
19 interests or to effect a desired outcome? This may  
20 be the greatest challenge you will have to grapple  
21 with;

22 Third, in the measurement of  
23 Title IX compliance, is it possible that an uneven  
24 or even inconsistent standard is being applied by

1 the Office of Civil Rights compliance officers?  
2 Trying to word this as diplomatically as possible,  
3 has common sense occasionally given way to the  
4 application of an inflexible standard as the easy  
5 way out?

6                   And speaking of the easy way  
7 out, I offer another thought. How often have  
8 college administrators merely dumped certain  
9 programs in the interest of expediency, and perhaps  
10 security from lawsuit, rather than to apply the  
11 effort of creativity and prudent allocation of  
12 resources to achieve equity of opportunity?

13                   In addition, what about  
14 allocation of resources, particularly financial  
15 resources. I suspect that no two situations and no  
16 two schools have identical financial situations, but  
17 I also suspect that there are some that are in total  
18 compliance with Title IX's requirements, whatever  
19 they might be, and have done so without eliminating  
20 any programs. I recommend that you look to them for  
21 a guide to solving this problem.

22                   Another fact is the role of the  
23 NCAA as well as other beneficiaries of college  
24 athletic programs, one notable beneficiary being the

1 United States Olympic Committee. A few years ago we  
2 entered into a joint program with the NCAA to  
3 provide funding for certain Olympic-related athletic  
4 programs. We need to know whether our \$8 million  
5 contribution made any difference, and if it did,  
6 explore what more we can do affirmatively to assist  
7 in this area. We also need to forge a closer  
8 relationship with the NCAA itself, recognizing the  
9 important role it plays in the additional -- the  
10 Olympic development process.

11 An additional consideration is  
12 the possibility of seeking additional resources,  
13 perhaps from private sources.

14 Lastly, what role, if any, can  
15 and should the federal government play in this  
16 area? During the last year or so there was  
17 legislation provided -- proposed, and we want to  
18 know, is that an appropriate role for government?

19 I'm sorry what I've offered here  
20 are not solutions but simply areas to be examined,  
21 but what I do offer is the belief that while the  
22 issue has become polarized, both sides have valid  
23 points that must be recognized and respected. I  
24 recommend that we eradicate the division within this

1 family of ours and work together to accommodate our  
2 respective and mutual interests. From the  
3 perspective of the United States Olympic Committee,  
4 that will ultimately best serve the national  
5 interests.

6 Thank you.

7 MR. LELAND: Thank you. We  
8 neglected, Cynthia and I, to lay out the procedures  
9 here.

10 MS. MANKAMYER: That's okay.

11 MR. LELAND: You finished right  
12 under the wire. What we've done in the past, and we  
13 would like to stick to in order to make sure things  
14 are fair, is to ask the panelists to limit their  
15 comments to ten minutes. At the end of nine  
16 minutes, we will say something like "One minute,"  
17 and try to wrap it up at 10 minutes. That will give  
18 the commissioners time to ask questions at the end.  
19 Our intention is to go for an hour and ten minutes  
20 with each one of the panels this morning. So thank  
21 you. Your timing was --

22 MS. MANKAMYER: I skipped some.

23 MR. LELAND: You have a good  
24 sense of timing. Thank you

1                   MS. COOPER: Thank you. Gary  
2 Abbott, as director of special projects for U.S.A.  
3 Wrestling, directed a variety of important  
4 organizational projects for U.S.A. Wrestling. The  
5 major assignments include Title IX, the development  
6 of women's wrestling, and the Amateur Wrestling  
7 Alliance. In addition to these duties, Gary serves  
8 as publicist for U.S.A. Wrestling, the national  
9 governing body for amateur wrestling in the United  
10 States, and directs communication activities for  
11 135,000 member sports organizations.

12                   Gary?

13                   MR. ABBOTT: Welcome to Colorado  
14 Springs, the home of the Olympic family. This is  
15 where sports dreams come true. Think about it.  
16 What segment of the American sports scene has done  
17 the most for women's athletics, has provided our  
18 greatest women sports heroes and greatest moments?

19                   That's right. The Olympic  
20 games. And this celebration of women's athletic  
21 achievements have been reached without a rigid  
22 federal gender quota. It has been achieved with the  
23 Olympic spirit. It has not been easy, but it has  
24 happened, and we can all be very proud.

1                   One of the greatest days of my  
2                   career was September of 2001 when the IOC announced  
3                   that women's wrestling had been added to the Olympic  
4                   games. This is one of my assigned projects.  
5                   Suddenly, doors were opened and new opportunities  
6                   were available.

7                   The Olympic movement proves that  
8                   women's sports can grow without harming men's  
9                   sports. We can build the greatest Olympic women's  
10                  soccer team without shortchanging our successful  
11                  Olympic men's wrestling team.

12                  If you have the Olympic spirit,  
13                  you don't care if the athletes are men or women.  
14                  You don't care what sport they play. You applaud  
15                  our American heroes. If you can't get inspired by  
16                  the Olympics, you really shouldn't be in athletics.

17                  This Commission has heard many  
18                  people testify in public forums. 30 years ago, when  
19                  Title IX was passed, there were individuals in  
20                  sports who had not been given many opportunities.  
21                  They had been ignored, treated poorly, ridiculed,  
22                  and not given much opportunity. Change was needed.  
23                  We are talking about women athletes.

24                  30 years later, when Title IX is



1 being reviewed, there is a whole new class of sports  
2 individuals who have been down too long. They have  
3 had their rosters capped and, in way too many cases,  
4 their teams eliminated. This new class of victims  
5 are the athletes from men's Olympic sports.

6 You must have the courage to  
7 stand strong for both of these groups.

8 Title IX is a law which bans  
9 discrimination in education. It does not guarantee  
10 equal outcomes; it provides fair opportunity. And  
11 you -- and how you measure that discrimination is  
12 the most important thing that you can do.

13 I would like to share some of  
14 the new discrimination.

15 It is discrimination when the  
16 NCAA decides that women athletes are allowed more  
17 scholarships than men in the same sport. In  
18 gymnastics, men get 6.3 scholarships, but women get  
19 12. In volleyball, men get 4.5 scholarships, but  
20 women get 12. In swimming, men get 9.9, and women  
21 get 14. This happens in every single sport that  
22 have men and women except one. It's built-in  
23 discrimination.

24 It's discrimination when there

1 are far more total women's teams than men's in the  
2 NCAA. In 2001, there were 582 more women's sports  
3 teams in the NCAA than men in that same sport.

4 Consider basketball, 28 more  
5 women's teams than men's; bowling, 22 more; cross  
6 country, 57 more; equestrian, 32 more; fencing, 11  
7 more; gymnastics, 65 more; lacrosse, 27 more;  
8 rowing, 84 more; soccer, 114 more; swimming and  
9 diving, 84 more; tennis, 109 more; indoor track, 39  
10 more; outdoor track, 35 more; volleyball, 874 more  
11 women's teams.

12 It's discrimination when a  
13 college kicks the men out of the pool, like at the  
14 University of Nebraska, or the men off the track,  
15 like at Bowling Green, when the women's team  
16 remains. You already have the coaches, facilities,  
17 and resources for both teams, but the men are  
18 eliminated just to reach a quota. They are cut  
19 because they are men.

20 It's discrimination when you cut  
21 a men's track team and eliminate opportunity for so  
22 many African-American men and other minority  
23 student-athletes. And it's discrimination when you  
24 axe a wrestling team, a sport which offers the most

1 opportunity because it accommodates people with  
2 diverse heritage, especially since we're different  
3 sizes and weights, including Hispanic-American,  
4 Asian-American, and Native American ancestry.

5 It's truly discrimination when  
6 you cut these men's opportunities without even  
7 creating a new opportunity for women athletes just  
8 to meet the mathematical quota.

9 One of the positions of those  
10 attempting to resist change is to blame football.  
11 I'm holding the October 7 issue of Sports  
12 Illustrated, which rated all the Division 1 sports  
13 programs based upon their entire sports offerings.  
14 I would like to congratulate Chairperson Leland, as  
15 Stanford University is on the cover of this issue.  
16 It received a number two ranking. Many believe it  
17 is number one.

18 (Audience laughter.)

19 Of the top 100 sports programs,  
20 only four do not have a football team. The first  
21 without football is No. 50 Pepperdine University,  
22 followed by No. 73 Denver, No. 76 Boston U, and  
23 No. 100, Wichita State. It's said that my alma  
24 mater, Boston University, is even on the list of

1 non-football schools, because we had a football team  
2 when I was there, but it was cut for reasons that  
3 included Title IX compliance.

4           What this says is that schools  
5 that have successful football programs also have  
6 very successful programs in other sports, including  
7 and especially in women's athletics. These schools  
8 can raise the revenues to provide winning sports  
9 programs. Attacking football is like biting the  
10 hand that feeds you. It is nonsense.

11           I support the findings of the  
12 Knight Commission, which seeks a return to an  
13 academic focus for college athletics. However, a  
14 cutback in spending of the big-time sports will not  
15 solve our problems with dropped men's programs.  
16 Right now, there still needs to be a swing of  
17 between 60,000 and 70,000 athletes within the NCAA  
18 to reach complete proportionality. No matter how  
19 that difference is achieved, many more men will have  
20 to be cut. If cutting men is the only approach,  
21 many entire sports for men would have to be  
22 completely wiped out. And if the trends towards  
23 even a higher percentage of women college students  
24 over men continues throughout the decade, then the

1 number of women added or men cut will need to  
2 increase by many more thousands. Every men's sport  
3 will be devastated, except maybe basketball,  
4 especially at small colleges.

5 In June, the USOC held an  
6 historic conference in Indianapolis to discuss the  
7 effect of the loss of college sports programs on the  
8 future performance of the Olympic games. I  
9 presented a statistical study at this meeting, which  
10 we shared with the Commission members by mail a few  
11 weeks ago.

12 In short, the overwhelming  
13 position of the Olympic sports leaders from our  
14 governing bodies is that the loss of men's sports  
15 programs will result in the loss of Olympic medals  
16 for the U.S.A. in the future, perhaps not in 2004,  
17 but certainly by 2008 and 2012. The developmental  
18 programs on the men's side are being gutted in  
19 college, and the reason suggested and cited was  
20 proportionality.

21 College Olympic sports are  
22 important. Nearly every Olympic wrestling medalist  
23 has a college wrestling background, and we have won  
24 a ton: 116 total wrestling medals in the modern

1 Olympic games.

2                   The three sports that have the  
3 highest number of medal events and are the best  
4 performers for the United States in the summer  
5 Olympics are track and field, swimming, and  
6 wrestling, and these are the sports that are being  
7 dropped at alarming rates.

8                   Consider these Olympic heroes,  
9 whose college sport teams have since been gut:  
10 Mitch Gaylord, UCLA, gone; Greg Louganis, University  
11 of Miami, gone; Bruce Baumgartner, wrestling,  
12 Indiana State, gone; Tom Jager, swimming, UCLA,  
13 gone; Kurt Thomas, gymnastics, Indiana State, gone.

14                   A little about wrestling.  
15 There's some people that are trying to imply that  
16 wrestling is dying. Wrestling is actually a  
17 thriving sport on all levels except college. We  
18 show impressive growth in our youth and our high  
19 school programs. It is the number six sport for  
20 high school males.

21                   The problem is with the college  
22 sport system. There is only one NCAA college  
23 wrestling opportunity for every 41 high school  
24 wrestlers, one of the sports with the least college

1 opportunity based upon participation. Wrestling is  
2 very popular, but it's being strangled by college  
3 administrators and federal regulation.

4           And please don't buy into the  
5 story that this is just a wrestling issue. You're  
6 going to hear from other sports about this. We tend  
7 to talk a little louder, because we've been hurt  
8 probably the most.

9           Solutions. My first solution is  
10 to abolish the proportionality quota. Enrollment  
11 has nothing to do with participation in sports. All  
12 it measures is proven participation in higher  
13 education. You have selected the wrong population  
14 to study -- there is no direct correlation.

15           We all know it is wrong, and we  
16 have proven the damage that it has done, but we need  
17 the encourage to stand up against special interest  
18 groups and fear mongers. If you take away the  
19 quota, we will not return to the Stone Age. Nobody  
20 will permit that. It just won't happen. American  
21 society has truly changed. The soccer dads and  
22 wrestling moms will not allow it. They demand fair  
23 opportunity for all their kids.

24           Those who are spreading fear

1 have yet to show any solid proof that discrimination  
2 will return to women's athletics without this quote  
3 in place. We will not roll back to the 1970s. Read  
4 the testimony from the Atlanta and Chicago hearings,  
5 and there is not a shred of fact to justify that  
6 position. We need to move past the slogans and the  
7 cooked statistics and find a new way.

8                   No matter what we suggest for  
9 measurement, it will not be as easy to calculate as  
10 proportionality. Just because it was easy does not  
11 mean it is any good.

12                   I wish to focus on prong three,  
13 the famous interests and abilities test. Everybody  
14 knows that this prong is very weak and almost  
15 impossible to prove. To make this work, this  
16 Commission should throw out the words "interests and  
17 abilities."

18                   The word "interest" sounds like  
19 a value judgment. One gender does not care more  
20 about their sports than another. It is the most  
21 divisive phrase in the Title IX debate. Throw it  
22 out.

23                   "Abilities" is also a subjective  
24 term. Men and women athletes are physically



1 different, so how can you compare their abilities?  
2 It is like comparing apples and oranges. Again,  
3 this word is weak and confusing.

4 I would like to replace it with  
5 "proven participation." This is something that you  
6 can pinpoint, something you can quantify. We can  
7 show participation facts in sports completely.  
8 Those statistics exist on the high school level  
9 through the National Federation of State High  
10 Schools. For youth programs, our national governing  
11 bodies of sport can break down their membership by  
12 exact age and can pinpoint regions of the country.  
13 This is something we can work with. This is real.

14 Every college knows the region  
15 that it recruits its students from. Every college  
16 has an admissions department that can provide you  
17 those statistics. The recruiting region is the  
18 sports population that should be studied. If a  
19 school has mostly in-state students, they should  
20 study the in-state sports field. If it is a service  
21 academy that recruits nationally, then the national  
22 trends and statistics are important.

23 We are ignoring this simple idea  
24 in how we select sports today. Presidents and ADs

1 are picking teams based on what they like and don't  
2 like. How fair is that?

3                   There needs to be some  
4 flexibility in sports choices, outside of the proven  
5 participation statistics of the school's  
6 population. This is where student surveys and club  
7 program activities can be looked at for proven  
8 participation on that campus.

9                   I would also be in favor of  
10 colleges making its sports decisions to assist in  
11 the Olympic movement. Consider women's judo, an  
12 Olympic sport that is not a current NCAA Sport.  
13 What would be wrong if the Mountain West Conference  
14 decided to select that sport, and agree to recruit  
15 nationally in order to help the Olympic movement? I  
16 think this should be encouraged, and the NCAA should  
17 recognize all Olympic sports and allow colleges to  
18 build programs in them all.

19                   I'm asking this Commission to  
20 have the encourage and wisdom to make the changes in  
21 the way Title IX is enforced. If you change the  
22 rules, you will have achieved something very  
23 important.

24                   Thank you.

1                   MS. COOPER: Thank you. Carol  
2 Zaleski became involved -- I want to get your name  
3 right first -- became involved in the sport of  
4 swimming in the early 1970s when her older children  
5 were age-group competitors. Carol's relationship  
6 with the sport of swimming has ranged from being the  
7 president of the North Hills YMCA Swim Team in the  
8 early 1970s to being elected for four terms as the  
9 President of the United States Swimming.  
10 Additionally, Carol was named chairman of the USOC  
11 Delegation Review Committee in 2000.

12                   Carol's involvement in swimming  
13 reaches to the international community, as well.  
14 She was elected to three terms as the chairman of  
15 the International Swimming Rules Committee in  
16 Barcelona, in Atlanta, and for the Olympics in  
17 Sydney.

18                   Carol?

19                   MS. ZALESKI: Thank you. I was  
20 going to start by telling you a little bit about  
21 myself, but Cynthia kind of already has.

22                   I'm the parent of five children,  
23 two boys and three girls, and they've all  
24 participated in athletics at some level over the

1 years, so I've had a very personal interest in  
2 opportunities for both sexes in athletics over many  
3 years.

4 In my position as president of  
5 U.S. Swimming and as chairman of the FINA Technical  
6 Committee, I've had exposure to athletes at a  
7 variety of levels of ability and their concerns in  
8 sports. My greatest concern relative to the effects  
9 of Title IX, intended or otherwise, as several other  
10 speakers have indicated, is for our Olympic  
11 programs. Specifically, the loss of men's programs  
12 at the collegiate level is a very serious threat to  
13 the success of our men's Olympic swimming teams.

14 Birch Bayh, who introduced the  
15 education amendment, was quoted recently as saying,  
16 "I thought from the very beginning, the most  
17 valuable results of Title IX would come through  
18 academic equality. Only a small part of the student  
19 body has a chance to play athletics." Those who  
20 shaped and lobbied for the legislation were focused  
21 more in the classroom than on the playing field,  
22 and great strides have been made in that area of  
23 opportunity for women without apparent decline in  
24 opportunities for the men. The same cannot be said

1 in the area of athletics.

2 While there have been great  
3 strides made for the women in athletic opportunities  
4 at the collegiate level, it has seen a decline in  
5 many areas in men's programs. There are those who  
6 use the raw numbers of NCAA to say that the number  
7 of men participating in athletics has grown. This  
8 is true but doesn't reflect some important facts.  
9 The number of NCAA member institutions has grown by  
10 over 260 members, in large part because of transfer  
11 of affiliation from other organizations. The  
12 reality is that the number of male athletes per  
13 campus has decreased, and the number of men's teams  
14 in many sports, including swimming, has also  
15 decreased. Please pay careful attention to the  
16 statistics that Gary Abbott of U.S.A. Wrestling has  
17 provided for you. He's probably done more research  
18 in this area than anyone else and has looked at all  
19 of the data as it needs to be interpreted, not just  
20 the raw numbers.

21 I'm going to focus, of course,  
22 on how the numbers affect swimming. In the past 20  
23 years, 73 NCAA Division 1 schools have dropped  
24 swimming programs. This loss has occurred while the

1 overall number of male athlete members the United  
2 States Swimming has grown from 60,000-plus in 1989  
3 to 88,000 in 2001. There is interest in the sport.

4 Age-group participation has  
5 grown. The interesting side of that statistic is  
6 that of those 88,000 swimming members in 2001,  
7 64,000 have been 14 years of age and under. Why the  
8 dramatic drop-off in the older teen athletes?  
9 Obviously, there are many variables. Choices are  
10 made, but we know that one very important reason is  
11 the decline in opportunity for swimming at the  
12 collegiate level, the roster caps, as well as the  
13 loss of programs has diminished that opportunity for  
14 males.

15 In 1996 in Atlanta, there were  
16 24 men on the Olympic swimming team: Six were in  
17 college; 18 were postgraduates; and none were in  
18 high school. In the 2000 Sydney Olympics where  
19 swimming won 33 medals, the most by any sport, there  
20 were 24 men on the team. Those men collected 17 of  
21 the 33 medals. Of these, 11 athletes were in  
22 college; 11 were postgraduates; and two were in high  
23 school. I think this illustrates the importance of  
24 the men's NCAA programs to the Olympic sport of

1 swimming.

2                   Legendary swimming programs,  
3 such as UCLA, which produced at least 10 male  
4 Olympians, have been dropped. When that program was  
5 dropped, a group of alumni pledged endowment funds  
6 to continue the program. They were told that  
7 dollars were not the problem; proportionality was.  
8 Title IX imbalance was the difficulty. The same  
9 happened with wrestling at Princeton University and  
10 many, many others.

11                   I won't spend my time telling  
12 all of the many anecdotal tales. The detailed  
13 information is readily available. The unfortunate  
14 truth is that Title IX has evolved into something  
15 never intended. The act was intended to expand  
16 opportunity. The interpretation by the Office of  
17 Civil Rights and the evolved enforcement has turned  
18 into a quota program. Title IX is a good law with  
19 bad interpretation. Under the interpretation of the  
20 Office of Civil Rights, we are told that there are  
21 three measures for compliance. A review of history,  
22 however, clearly shows that proportionality is the  
23 measure that has been applied both by colleges and  
24 universities and most especially by the courts.

1 This may be because proportionate opportunity in  
2 relation to gender proportionate breakdown in  
3 enrollment is a pretty easy measurement. The second  
4 test of "progress toward equity" is extremely vague.  
5 The third test of "interest and ability" has been  
6 virtually ignored.

7 As this Commission sits for its  
8 third hearing, I'm sure you're looking for  
9 suggestions for solutions, and like Marty and Gary  
10 before me, I cannot offer you specific solutions,  
11 but some areas that I think we need to review. I  
12 thank you for your patience as I've repeated some of  
13 the problems that you've previously heard. One of  
14 the co-chairs was quoted after one of the hearings  
15 as "appreciating the arguments and feeling the  
16 emotion."

17 I believe that all of us, those  
18 who think that everything is fine and those who  
19 believe that a change in interpretation is essential  
20 to the future of sport, need to move past the  
21 emotions. There is no more time for misleading  
22 statistics or labels. We need to recognize that the  
23 application of proportionate opportunity to gender  
24 breakdown of enrollment simply doesn't work. We



1     need to find a better way to measure interest. One  
2     size does not fit all. We need to eliminate or  
3     change the current interpretation of the law. We  
4     need to find a way to ensure equal opportunity for  
5     both sexes.

6                     What are some of those  
7     possibilities?

8                     Gary mentioned past  
9     participation as a measurement. I think that's an  
10    area that we need to take a look at. Every student  
11    who makes an application to a college or university  
12    has made choices: The course of study; the campus  
13    environment; the extracurricular opportunities are  
14    all considerations. Acceptance also depends on  
15    measurement in many areas: High school grades; SAT  
16    scores; extracurricular activities; et cetera. We  
17    accept that equal opportunity does not mean that  
18    colleges must accept everyone who applies. There  
19    are criteria. We must do a better job of measuring  
20    the "interest and ability" criteria for athletic  
21    participation in this process. Although as Gary  
22    mentioned, I prefer past participation and ability  
23    as a truer measure.

24                     SAT information requests or

1 college applications could provide a better tool for  
2 measurement, in addition to the information that is  
3 available through the High School Federation.  
4 Specific questions such as "What sports have you  
5 participated in during your high school career?  
6 What sports do you plan to participate in in  
7 college?" could provide a better basis for  
8 recognizing whether or not a school is providing  
9 opportunity in a nondiscriminatory manner.

10                   It's not a perfect solution.  
11 There are students who'll find that the academic  
12 demands do not allow them to participate in the same  
13 level that they did in high school. There will be  
14 walk-ons, all the famous stories of the athletes who  
15 have arrived on campus as a walk-on and became a  
16 star. But some measurement of ability, past  
17 participation, and interest would be a fairer  
18 measure.

19                   We must move ahead to ensure  
20 opportunity for both men and women. We can't  
21 continue to sacrifice one for the other. Equal  
22 opportunity doesn't necessarily mean equal numbers,  
23 proportionality, or quotas. Equal opportunity  
24 doesn't necessarily mean equal programs. Equal

1 opportunity should mean the ability to participate  
2 based on criteria that can be fairly measured and  
3 judged.

4                   There should be a way to remove  
5 nontraditional students from the count, although not  
6 necessary if proportionality is not the measure  
7 used. The removal of proportionality also  
8 eliminates the problem of sports that uniquely and  
9 traditionally belong to only one sex. Under no  
10 circumstances should Title IX cause sports for  
11 either sex to be eliminated.

12                   I thank you for this opportunity  
13 to express the concerns of the swimming community.

14                   MS. COOPER: Thank you. You  
15 were great with time.

16                   (Audience laughter.)

17                   MS. COOPER: Bob Colarossi was  
18 appointed to the post of president of U.S.A.  
19 Gymnastics in the summer of 1998, following a  
20 nationwide search. Bob's background includes a term  
21 as president of the Massachusetts Sports Partnership  
22 where he successfully attracted and managed a number  
23 of major national sporting events ranging from the  
24 1996 Olympic Gymnastics Team Trials to the 2001 U.S.

1 Figure Skating Nationals. Come on, Bob, turn your  
2 cell phone off.

3 (Audience laughter.)

4 MS. COOPER: Great timing, by  
5 the way. Additionally, Bob has participated in  
6 gymnastics for over 30 years as a competitive  
7 gymnast, coach of a national champion, and as an  
8 active committee member of the U.S.A. Gymnastics.  
9 It doesn't have that on there, but it was supposed  
10 to have that on there, Bob.

11 MR. COLAROSSO: Thank you,  
12 Cynthia and Ted. Good morning, everyone. I would  
13 like to start by thanking the Commission just for  
14 the opportunity to present some perspective from  
15 gymnastics, some personal and some professional  
16 observations related to Title IX and the impact and,  
17 in our opinion, the unintended consequences from  
18 institutions seeking compliance have had on the  
19 sport of gymnastics in the United States.

20 I started training in gymnastics  
21 at the age of 13, and although I wasn't a great  
22 gymnast, I was good enough to walk onto a college  
23 team at the University of Lowell where I competed  
24 for a few years before I started coaching and chose

1 a different career path that leads me to sit here  
2 and testify before you today.

3 Title IX has been one of the  
4 great mandates in the United States related to equal  
5 opportunity, and no one can deny the many benefits  
6 that Title IX has bestowed to women's sports.

7 However, while barriers have  
8 been broken in many areas of collegiate athletics,  
9 Title IX has devastated men's and women's collegiate  
10 gymnastics programs in the United States. I believe  
11 that Title IX unfairly targets individual sports  
12 such as gymnastics. By way of example, between 1980  
13 and 2000, we have lost 100 women's collegiate  
14 gymnastics programs and 83 men's collegiate  
15 gymnastics programs. There are now less than 90  
16 women's programs and only 20 men's programs  
17 remaining in the United States, while when we  
18 competed in the '70s, there were 202 men's  
19 programs. These startling numbers indicate that  
20 men's collegiate gymnastics programs are bordering  
21 on extinction. These devastating statistics are a  
22 direct result of the way in which Title IX is  
23 enforced and the factors used in determining  
24 compliance.

1                   The drastic cut in the number of  
2     collegiate gymnastics programs affects gymnastics  
3     throughout the United States and the entire athlete  
4     development pipeline for U.S.A. Gymnastics. Our  
5     record show that overall participation in the sport  
6     has more than doubled from 1980 to 2000, and that's  
7     for both men and women. Currently, over a half  
8     million boys participate in the competitive and  
9     recreational gymnastics programs in private clubs  
10    across the United States. This year alone, 650 boys  
11    qualified to participate in the 2002 Junior Olympic  
12    Championships in San Diego. Of those 650  
13    competitors, 310 were college bound or within one  
14    year of entering college. The number of athletes  
15    participating in men's collegiate gymnastics has  
16    decreased from 1,367 participation opportunities in  
17    the 1981-82 season to only 367 remaining now in 2000  
18    and 2001. Only half of our elite athletes today are  
19    participating in a collegiate program. It's  
20    apparent that the NCAA member institutions are not  
21    meeting the needs of students who want to  
22    participate in gymnastics. The supply just does not  
23    meet the demand. The same is true for other Olympic  
24    nonrevenue-producing sports such as wrestling,

1 diving, track and field, tennis, and swimming.

2                   The lack of opportunities in  
3 collegiate gymnastics affects several other areas of  
4 our sports, as well. Without solid collegiate  
5 programs, the number of American athletes eligible  
6 for World and Olympic teams will decrease. The  
7 number of athletes who will want to go on to become  
8 coaches will be greatly reduced, eliminating the  
9 quality coaches needed to teach the America's youth  
10 in a safe and knowledgeable manner. This is  
11 devastating to U.S.A. Gymnastics. We have built a  
12 legacy and tradition of excellence in our sport,  
13 most recently displayed at the 2001 World  
14 Championships where our men's team won the silver  
15 medal and the women captured the bronze. This  
16 legacy and tradition would not have been possible  
17 without the great foundation provided by successful  
18 collegiate programs in the United States.

19                   The elimination of collegiate  
20 gymnastics programs is detrimental to the  
21 universities, as well. The graduation rates for  
22 gymnasts exceeds 90 percent, which is far above the  
23 all-student average of 52 percent. In 2000 and  
24 2001, over 35 percent of the gymnasts who graduated

1 that year finished with a 3.5 or higher grade point  
2 average. In the same year, 76 percent of all senior  
3 gymnasts finished their academic careers with a 3.0  
4 or higher. It is evident that gymnasts are a  
5 tremendous asset to their colleges and  
6 universities.

7                   Why just single out sports?  
8 Title IX was originally intended to aid both  
9 athletics and education. What if we started looking  
10 at proportionality in the classroom instead of on  
11 the playing field? This is another issue that we  
12 could discuss and address, but I'll stick to the  
13 issue at hand today.

14                   I have shown you today that the  
15 elimination of nonrevenue-producing sports, Olympic  
16 sports, is a serious problem at the collegiate  
17 level. Unless steps are taken by the Department of  
18 Education and the Office of Civil Rights, with  
19 increased responsibility to NCAA institutions to  
20 solve this problem, we will see many more programs  
21 eliminated to the point of extinction. Many of you  
22 probably remember Peter Vidmar, Tim Daggett, and  
23 Mitch Gaylord, members of the 1984 men's gold medal  
24 team. You might also remember world champion Kurt



1 Thomas, and it saddens me to report to you that none  
2 of those collegiate gymnastics programs that  
3 developed these Olympians still exist today. Half  
4 of our 2000 Olympic team was developed through the  
5 few remaining college programs. This demonstrates  
6 the importance of collegiate programs in developing  
7 our athletes for major international competitions.

8 I do not believe the intention  
9 of Title IX was to provide a law to motivate member  
10 institutions to eliminate men's sports, it is  
11 evident that this is one of the results that we have  
12 seen. The proportionality prong of Title IX  
13 compliance has resulted in the decision to drop  
14 programs being made in a vacuum, and there is no  
15 accountability for spending in place at NCAA  
16 institutions. You have a big job ahead of you in  
17 reviewing Title IX and making recommendations to the  
18 Department of Education.

19 I believe that there are some  
20 solutions to the Title IX problems we are facing,  
21 and I will cite a few.

22 The first would take endangered  
23 Olympic sports like men's gymnastics out of the  
24 formula for calculating compliance with Title IX.

1 While this might be out-of-the-box thinking for us,  
2 these are desperate times. Taking sports such as  
3 men's gymnastics out the equation forces NCAA  
4 institutions to focus on prudent spending on larger,  
5 more costly NCAA sports programs. These smaller  
6 individual sports deserve to be protected.

7 Another solution is to consider  
8 revising the compliance guidelines for NCAA member  
9 institutions. There are currently three guidelines,  
10 and I think a fourth should be presented. This new  
11 standard involves using the amount of interest in  
12 participation in certain sports instead of  
13 proportionality. There are several institutions in  
14 which there is interest for a sport such as  
15 gymnastics, but due to Title IX compliance, this  
16 interest is not taken into consideration. Let's  
17 look at the numbers for intramural programs, for  
18 example, or age ranges of enrollment to determine  
19 proportionality. Currently, all three compliance  
20 guidelines only guide an institution back to  
21 compliance based on proportionality, which does not  
22 provide an accurate measure of which sports students  
23 wish to participate in.

24 Another solution, and I know

1 this was brought forward in the '70s and declined,  
2 involves the exclusion of football players from the  
3 total number of male athletes at a school. While  
4 it's apparent that the revenues generated by college  
5 football teams are necessary for most athletic  
6 departments to fund other sports, there is no  
7 comparable women's team related to size. Without  
8 including the number of football players to the  
9 total of male athletes, it is much easier for  
10 schools to have a proportionate number of male and  
11 female athletes. This could help save several me's  
12 Olympic sports programs that are currently being  
13 eliminated. It is important to note that the  
14 revenues generated by the football teams should  
15 still go to the athletics departments to be  
16 distributed to other sports to help keep the base  
17 up.

18                   Of course, there are other  
19 possible solutions that should be directed to the  
20 NCAA, such as legislation that provide advance  
21 notice prior to the elimination of an Olympic  
22 sport. Many coaches do not learn of their program's  
23 elimination until they pick up the morning paper.

24                   Another solution would be to

1 have the NCAA require each institution be certified  
2 as Title IX educated to help them really understand  
3 what the different ways are that it can be enforced  
4 and to understand all three prongs, and perhaps an  
5 annual review to be certified in order to  
6 participate in any national championship.

7 Another suggestion would be to  
8 make sure that the colleges and universities are  
9 using the same guidelines as the Office of Civil  
10 Rights and that there truly is one standard across  
11 the board.

12 It is time to take  
13 responsibility for the preservation of men's and  
14 women's Olympic sports at the collegiate level. The  
15 athletes competing in collegiate athletic programs  
16 such as gymnastics are no less important than those  
17 participating in programs such as football and  
18 basketball. By eliminating such programs, we are  
19 diminishing the development of our next generation's  
20 leaders. We need to take a step back and look at  
21 the original goal of Title IX, which was to create  
22 equal opportunities without prejudice, and take the  
23 necessary measures to make sure that this goal is  
24 achieved.

1 Thank you.

2 MS. COOPER: Thank you, Bob.

3 We're going to open up for questions now.

4 MR. LELAND: I'd like to ask the  
5 first one. Marty, think of me as having totally  
6 memorized the written document you sent us, but  
7 that's not true. The staff noticed that when we  
8 asked -- when you hurried to finish in the time  
9 frame, you left out a paragraph that talked about  
10 some federal funding options that were being  
11 discussed, and I think many of us are interested in  
12 that as an option.

13 MS. MANKAMYER: May I go back?

14 MR. LELAND: Please. That's  
15 what I was asking you to do.

16 MS. MANKAMYER: Did you want me  
17 to go to additional resources or strictly the  
18 federal funding? I have both of those in there.

19 MR. LELAND: I think the second  
20 to last paragraph is what we're interested in.

21 MS. MANKAMYER: All right. What  
22 role, if any, can and should the federal government  
23 play in this area? During the last year or so,  
24 Senator Paul Wellstone and Congressman Jim Leach

1 each proposed legislation that would provide some  
2 funding to assist endangered college sports or  
3 college athletes participating in these sports,  
4 albeit in part through the United States Olympic  
5 Committee. Is that an appropriate role for  
6 government? Would their respective approaches work,  
7 and if not, what would? We, at the United States  
8 Olympic Committee, need to be clear about what our  
9 position is or should be on being recipients of  
10 federal assistance and whether we are an appropriate  
11 clearinghouse for distributing federal benefits in  
12 this area to various organizations.

13 And this covers, you know, other  
14 areas, as well.

15 MR. LELAND: Let me follow up.  
16 What's the status of that now? Both internal issues  
17 surrounding the U.S. Olympic Committee and whether  
18 it is the appropriate recipient of these funds, and  
19 also the federal level, is there still legislation  
20 pending?

21 MS. MANKAMYER: I don't know the  
22 answer on the federal level. On the U.S. Olympic  
23 Committee, we are doing an ongoing examination of  
24 resources, allocations, and sources of those

1 resources, and that is one that is being examined,  
2 but we've come to no conclusion.

3 MR. LELAND: Thank you.

4 MS. GROTH: Marty, also in your  
5 comments on page 3, I'm not sure you had a chance to  
6 say this either, but if you can, you indicate  
7 institutions are now allocating resources in a more  
8 equitable manner and attempting to be reactive and  
9 make more prudent allocations of their resources to  
10 achieve equal opportunity. Could you elaborate a  
11 little bit more on what you're thinking and where  
12 you're coming from?

13 MS. MANKAMYER: It's my  
14 understanding that there has been a move towards  
15 more funding in a more equitable manner towards the  
16 women's programs. And my friend on my left is a  
17 statistician, so I would lean to him to answer that  
18 if my answer is not adequate. It certainly is not  
19 statistically motivated. It is information that has  
20 come to us when we proposed this document.

21 MS. COOPER: Brian?

22 MR. JONES: I think first I  
23 should re-introduce myself for the record since I  
24 wasn't here at the beginning. I am Brian Jones, the

1 general counsel for the U.S. Department of  
2 Education.

3                   And Mr. Chairman, let me just  
4 first answer your question about the status of the  
5 federal legislation both by Senate Wellstone's bill  
6 and Congressman Leach's bill. They're both still  
7 pending, but I think that legislation actually begs  
8 a question that I would like to actually have all  
9 four of the panelists respond to, if they would, and  
10 that is the question of whether the issue of the  
11 allocation of resources, funding, et cetera, is all  
12 part -- I mean, is that an issue that you see sort  
13 of tied into this question about the department's  
14 compliance standards, or -- and Mr. Abbott, you sort  
15 of touched on this point in your testimony -- do you  
16 see them as being sort of separate and distinct  
17 issues?

18                   I've heard criticism in the  
19 past, and some have responded to the bills in  
20 Congress by saying that, "Well, those bills wouldn't  
21 really affect at all the department's three-part  
22 test so far as proportionality is seen as a major  
23 factor. The allocation of dollars doesn't really  
24 play into that." And I just want to get your sense



1 of whether you think that that's an accurate  
2 characterization, or whether you do see the  
3 allocation of funds as sort of part and parcel of  
4 the application of the three-part test.

5 MS. MANKAMYER: Did you want us  
6 to answer one by one, or you want to start with  
7 Gary?

8 MR. JONES: Why don't we start  
9 with Gary and then anyone who has a response.

10 MR. ABBOTT: I think, too, if  
11 the government gives more money for collegiate  
12 sports, that will offer up opportunities for people  
13 to do more. If you look strictly at  
14 proportionality, and we're most interested obviously  
15 in participation, because we're losing people, we're  
16 not losing coaches, salaries, travel budgets, or  
17 other things that are tied up in the Title IX issue,  
18 you need 70,000 more people to swing the  
19 proportionality, and you can't cut a few football  
20 scholarships or do a few other things with your  
21 finances to make that 70,000 swing.

22 So the proportionality quota has  
23 its greatest impact on your participation situation,  
24 and obviously, some of the financial challenges in

1 athletic departments is not just on that. They have  
2 to spend more money in order to be equitable in all  
3 the different categories of Title IX compliance. So  
4 when a school tells you it has a financial problem,  
5 you have to do a follow-up question and say, are  
6 some of those problems caused because you're  
7 using -- allocating money from some areas to new  
8 areas to provide opportunity and fair treatment to  
9 women?

10                   The federal government -- the  
11 USOC is going to have to conclude whether they're  
12 willing to accept money from the federal  
13 government. We're all privately funded. I think  
14 some of the people would be open to that, and, of  
15 course, we're looking at any way we can to provide  
16 opportunities in wrestling around the country.

17                   One of our biggest challenges  
18 will be our women's programs, and I anticipate a lot  
19 of you will be hearing about that from me in the  
20 future, because we're trying to get the colleges to  
21 pick that up.

22                   In my opinion, you have to look  
23 at the total picture, but in participation, it  
24 really has to do with the measurement, and

1 proportionality is really hurting the sports.

2 MS. GROTH: Question.

3 MS. ZALESKI: Smile and nod your  
4 head, and that's what I will do after Gary's  
5 comments.

6 MS. MANKAMYER: I think Gary  
7 touched on it exactly, but let me go just a little  
8 bit further from the United States Olympic  
9 Committee, and I want to remind you that the Ted  
10 Stevens Act also includes for us the responsibility  
11 of Paralympics. So we have a very large segment of  
12 the population that we just look to and decide how  
13 we are going to achieve the goals that we set for  
14 ourselves, and funding is obviously one of the biggest  
15 things. So this is part of a bigger picture for us,  
16 and we really still do not know what the  
17 implications are if we say yes.

18 We're trying to find out, what  
19 does that mean to us, staffing? What kind of  
20 reporting? What are the restrictions? Would there  
21 be people on our boards of directors? It's, at this  
22 point, still under consideration, but I did want to  
23 remind you that we have another segment of our  
24 Olympic family that we are also considering.

1                   MR. COLAROSSO: I want to say,  
2 we welcome any funds. We go out every day and fight  
3 for all the dollars we can get, and any additional  
4 support would be much appreciated and put to the  
5 highest use. Dollars absolutely play a role in it.  
6 And the reason is that in a sport like ours where  
7 you have a small team size with a single-use  
8 facility, athletic departments can take the dollars  
9 that it cost to fund a gymnastics program -- this  
10 has happened many, many times, and I've been told by  
11 athletic directors as I've gone in to try and save  
12 programs, what they're spending on gymnastics --  
13 they now can field two or three large women's  
14 sports, so the dollars absolutely play into it, and  
15 what we need to do is look at a way to allocate  
16 dollars to big team programs, rather than trying to  
17 save the gymnastics part, or vice versa.

18                   MS. SIMON: This question is  
19 directed to Gary. Gary, to the best of your  
20 knowledge, how long have high schools had data on  
21 participation? How many years do those data go  
22 back?

23                   MR. ABBOTT: I can't be exact.  
24 Probably -- the one document I didn't bring was the

1 National Federation statistics. They started in the  
2 early '70s, but they weren't reporting on an annual  
3 basis. They would go every two years. And then  
4 starting about late '70s, '80s, when I was  
5 competing, they did it on an annual basis.

6 Their breakdown is not only  
7 total athletes, men and women, but it breaks down  
8 every state, it breaks down every sport, it breaks  
9 down every sport in every state. So the National  
10 Federation can tell you exactly how many women  
11 wrestlers we have in California. Those statistics  
12 are out there.

13 I can tell you, they don't want  
14 to look at them; they want to make the decision  
15 based on what they think. At each of the governing  
16 bodies, we have databases. We keep people's  
17 addresses along with their birthday. We can tell  
18 you how many athletes we have in each sport  
19 everywhere in the country.

20 MS. SIMON: To the best of your  
21 knowledge, have any universities used those data to  
22 make decisions about --

23 MR. ABBOTT: I've never worked  
24 at an athletic program in a college. I've only

1 worked in the Olympic family. I know that a lot  
2 don't look at them. Florida is the top ten state  
3 for wrestlers. Washington has -- I guess they're  
4 number nine this year. They have no Division 1  
5 team. We just got our first wrestling team in Utah  
6 after we lost a bunch a few weeks ago, and there's a  
7 huge wrestling population in that state.

8                   Some of the decisions are being  
9 made not on what the kids in the high schools and  
10 the youth programs are doing; it's based on other  
11 factors. But I think you may want to ask athletic  
12 directors whether they pay attention to the  
13 statistics they have on their own when they make  
14 athletic decisions.

15                   MR. COLAROSSO: Can I have a --  
16 I think the high school statistic that -- the  
17 national governing body statistics that Gary alluded  
18 to is that some sports participation at a high  
19 school level is larger outside the high school than  
20 inside the high school. The population is still  
21 there pushing up, but because of equipment needs,  
22 and in our sport particularly you have a large group  
23 of people coming up through the system, but the high  
24 school statistics may not reflect that.

1                   MR. GRIFFITH: Marty, thank you  
2 very much. I enjoyed hearing about your distinct  
3 problems and the other things. I'm going to ask you  
4 a question that may be pinning you down a little  
5 bit.

6                   MS. MANKAMYER: I'm not a  
7 wrestler.

8                   (Audience laughter.)

9                   MR. GRIFFITH: I didn't intend  
10 that metaphor. It's pretty clear the other three  
11 panelists, maybe I shouldn't speak for them, but  
12 I've gotten the strong impression that none of them  
13 is in favor of the status quo. None of them is in  
14 favor of a continued interpretation of Title IX as  
15 it has been done in the past by the Office of Civil  
16 Rights. Can I pin you down on that? Are you in  
17 favor of the status quo, or do you think that this  
18 Commission should come up with some recommendations  
19 that would change -- that would recommend changing  
20 the way Title IX is being interpreted by the  
21 Department of Education?

22                   MS. MANKAMYER: I thought I had  
23 made it clear that listening to my family -- I'm the  
24 mother, this is the family -- that they really

1 believe that you need to look at how it's being  
2 administered. There are -- there must be other ways  
3 to do it, and we are hopeful that we can provide you  
4 with some suggestions that will lead you to it  
5 vis-a-vis the statistics.

6                   And you just asked the question,  
7 and I won't explore or aggrandize on what Bob said.  
8 Many of us have sports that have club programs, so  
9 the high-school-aged athletes, for a lot of reasons,  
10 are there participating, but they are not registered  
11 with the National Federation of High Schools. So  
12 you need to compile all of those, form a database  
13 that you believe is workable, and then move forward  
14 from that.

15                   But to answer your question  
16 directly, I don't want the law to go away. I would  
17 like for you to explore if we have evolved to a  
18 point that we need to look at a different way of  
19 enforcing it.

20                   MR. LELAND: It's Gene first  
21 and then Cary.

22                   MR. deFILIPPO: Thank you for  
23 those presentations, and we got a lot from it.

24                   Carol, this question is for you,



1 but I'd also like to hear from your distinguished  
2 colleague from that other school in Boston, Boston  
3 University. He seems to have a lot of statistics.  
4 You say that there are those who use the raw numbers  
5 of NCAA athletes to say that the number of men  
6 participating in athletics has grown. This is true,  
7 but doesn't reflect some important facts. The  
8 number of NCAA member institutions has increased by  
9 over 260 members, largely those coming from high  
10 schools and many others because of transfer  
11 affiliation from your organization. Now, we've been  
12 told in the past that that is not true. We've heard  
13 both sides of this. I would like to know where your  
14 documentation comes from, and, you know, if you can  
15 provide us with some sources for those numbers.

16 MR. COLAROSSO: Well I've taken  
17 some of my comments from the stats that Gary has  
18 provided, and he's got that big fat book over there,  
19 and this is --

20 MS. ZALESKI: We're looking at  
21 basically NCAA numbers for the most part as in fact  
22 the board of swimming and at the Olympic level. And  
23 when you look at the number of NCAA athletes, that  
24 number has grown. But again, the number of

1 affiliated organizations has grown, and it's the  
2 teams and the athletes per campus that have changed  
3 that, you know, that help to point out the problem.

4 MR. ABBOTT: If you're a high  
5 school senior, and you want to participate in a  
6 sport, you do not just look at the NCAA, like if  
7 there's an academic situation that requires junior  
8 college. College athletics is more than the NCAA.  
9 It includes the NAIA, the junior colleges, the  
10 National Christian Colleges, the California Junior  
11 Colleges. There have been some affiliations of  
12 small groups and small colleges in the past. If  
13 you're going to look at actual sports opportunities  
14 for an athlete who has more opportunities than just  
15 NCAA, you have to look at the whole picture.

16 Since 1982 to 2001, there's been  
17 an increase of colleges in the NCAA to 262. Now,  
18 where did they come from? I don't see a lot of  
19 colleges getting built out there in the country.  
20 These are colleges that existed. At the same time,  
21 the NAIA lost 187 programs. Those didn't go away  
22 either. They moved over into the NCAA. In  
23 addition, a number of junior colleges have gone from  
24 two- to four-year schools and joined the NCAA. The

1 numbers are from the NCAA documents.

2                   This participation study, which  
3 was given to us yesterday at the training center for  
4 the NCAA goes and breaks down from '82 to 2001. And  
5 I use this as the basis of some of the statistics  
6 that I put together for the Olympic committee. So  
7 really, we think you have to look at men on campus,  
8 and in pretty much every study you look at, the  
9 number of men in sports on campus have gone down.  
10 From the NCAA, the high was 238 men in 1984 -- I'm  
11 sorry, 253 in 1985. We're down to 199 men per  
12 campus at NCAA sports programs. And you can look at  
13 some of the other studies, as well. If you look at  
14 the gender equity report which was published by the  
15 NCAA, I find sometimes the press releases that go  
16 with them are a little misleading. If you look at  
17 the back, they do a nine-year comparison on every  
18 level and Division 1, 1-A, 2, 3. The number of men  
19 have dropped on every single level. So the  
20 statistics have to be looked at in a total thing,  
21 not just on the raw numbers of the NCAA.

22                   MS. GROTH: Carol, this question  
23 is for you, and any of the panelists, please feel  
24 welcome in answering it, as well. You stated in

1 your colleges that clearly the proportionality  
2 measure has been applied by more universities and  
3 courts, and I was rereading the GAO report on the  
4 plane on the way here, and that report indicates  
5 that two-thirds of the Title IX cases actually were  
6 met with the third prong, 49 of the 74, with only 4  
7 meeting in the second prong, at 21 less than half of  
8 the 49 the third prong, and with those statistics,  
9 and your comment, do you think that perhaps there's  
10 more work for us to do to better educate the public  
11 and the constituents about the flexibility of the  
12 law and prong three, prong two, prong one? I mean,  
13 do you think we're not doing a good enough job in  
14 that area? Clearly, in all of our hearings we keep  
15 coming back to proportionality, but statistics show  
16 that it's most of us, including Northern Illinois  
17 University, our institution, meet the Title IX  
18 standards through prong three.

19 MS. ZALESKI: I can only say  
20 that what has been provided for me in the reading  
21 that I've done, it seems that the court cases are  
22 turning on the proportionality based on gender  
23 enrollment, and that, you know, the other factors  
24 seem to be much more difficult to interpret, and

1 that's a relatively easy measure, and that's where,  
2 you know, the numbers that I've seen are coming  
3 from.

4 Now, I've not yet read the  
5 report that you just cited, and I certainly wouldn't  
6 say that this group is not doing a good job  
7 educating the public and others. We can always do  
8 better in that area.

9 While Gary was talking, I was  
10 chuckling to myself because when I was in school  
11 many, many years ago, the University of Pittsburgh  
12 offered a course there that was called "How To Lie  
13 With Statistics," and we've all, you know, run  
14 across that, I think, in the course of things. But  
15 I think, you know, we can look at specifics, sport  
16 by sport, and see the impact on individual sports,  
17 and it would certainly seem in the reviews and when  
18 people are interviewed as to why sports programs  
19 have been dropped, that the proportionality seems to  
20 be the big, big key that people are using and  
21 falling back on, and I think the elimination of, in  
22 some way, of that as the prime measure is part of  
23 the solution to this problem.

24 MR. ABBOTT: Could I answer?

1 MR. LELAND: Go.

2 MR. ABBOTT: I do have the GAO  
3 report in front of me, and on page 14 it says of the  
4 948 schools that added women's teams, 72 percent did  
5 so without discontinuing men's teams. That's not 72  
6 percent of all schools. That's only 72 percent of  
7 the 900 that added women's teams. So I think the  
8 number you keep hearing is not really accurate about  
9 the large group.

10 The other question is, are  
11 prongs two and three, what are they actually going  
12 towards? Prong two is, you know, pattern of adding  
13 opportunities towards reaching proportionality, and  
14 prong three basically has been reflecting interest  
15 and ability on the path to proportionality, so even  
16 those that are prong two and three, since compliance  
17 is a moving target, it's based on enrollment. You  
18 may have to be proportional down the road. You can  
19 get by on two and three at this point, but should  
20 there be a shift in your student enrollment and  
21 other patterns on your campus, you may not be in  
22 compliance two years from now or five years from  
23 now.

24 MR. LELAND: Last question,

1 because we're out of time.

2 Debbie?

3 MS. YOW: I think, Cary, in the  
4 response to the prong one situation, I think that  
5 it's anecdotal to a certain degree, but, you know,  
6 at Maryland, as an example, they were sued in 1992  
7 for Title IX violations, and I show up on the scene  
8 in August of '94, and we worked through this process  
9 over a certain number of years.

10 Legal staffs on various campuses  
11 are paid to keep universities out of trouble, and I  
12 don't think that our legal staff at the University  
13 of Maryland is that dissimilar from others, and as  
14 far as they're concerned, there is one prong only,  
15 prong one, proportionality. That is it. We would  
16 not be allowed, or are not allowed to vary from that  
17 in any way. In fact, we're still shooting for that  
18 1 percent. We're close. I think it's 2.3 at last  
19 count.

20 A couple of other comments to  
21 the panel. In terms of resource allocation, one of  
22 the painful parts of this whole discussion is the  
23 fact that so many of us, especially in Division 1-A,  
24 and Gary referenced the Sports Illustrated article

1 in the top programs in the country, are -- many of  
2 those are 1-A programs -- we're not -- unless  
3 there's a unilateral disarmament, we're going to  
4 take care of our coaches and our revenue sports,  
5 because that is where most of the money comes from,  
6 and we're not going to disadvantage our respective  
7 institutions by just singularly deciding, this is  
8 it, we're not going to pay market value for those  
9 individuals, and we're not getting into that more  
10 and more, and I'm part of that. If you want to look  
11 at that as a problem, I'm part of that problem as  
12 having bid and won the National Associated Press  
13 Coach of the Year last year, and proud of it that  
14 Brenda is with us instead of with someone else, but  
15 it's not logical -- we're talking about logic today.  
16 It's not logical to think that intercollegiate  
17 athletic programs, especially at the 1-A level, are  
18 just singularly going to decide they're not going to  
19 be in the game. We're all striving for excellence,  
20 and that means paying market value for the best  
21 people we can get.

22 The term "antitrust violation"  
23 strikes fear in our hearts because of another  
24 situation with the NCAA related to the restricted



1 earnings coaches. I don't see any light at the end  
2 of the tunnel in that regard. There might be in  
3 terms of resource allocation some possibilities if  
4 there were NCAA guidelines or rules in place for how  
5 you travel, you know, up to 300 miles you have to go  
6 on a bus. I really don't know. I don't harbor a  
7 lot of hope in that regard myself.

8                   But I just wanted to make that  
9 comment and another one, Gary, about the  
10 scholarships. It actually helps when we're allowed  
11 as intercollegiate administrators to provide a  
12 disproportionate number of scholarships to our women  
13 in the same sports as men. It actually helps  
14 because in the current setting it helps us come  
15 closer to meeting proportionality without having to  
16 incur the additional expense of coaches, travel  
17 budgets, recruiting budgets, equipment budgets.

18                   But adding new sports, and I  
19 personally see a need for that in the existing  
20 sports, especially those that are not head count  
21 sports but are equivalency sports where you can  
22 spread the money out over 30 women, many of whom I  
23 believe are deserving anyway, so I don't see that as  
24 a negative. I see it as a plus. I would like for

1 you to respond to that.

2 MR. ABBOTT: But we look at it  
3 in sport by sport, and what you're saying is that  
4 the value of women's programs and the number of  
5 scholarships are more valuable than the men's  
6 programs and the number of scholarships.

7 One of the reasons we can get by  
8 with that is because men are more willing to walk  
9 on. We are able to field teams with less  
10 scholarships because of walk-ons. I was a walk-on,  
11 and I earned a scholarship, but I was not recruited  
12 to wrestle there. The way it looks to a man looking  
13 to compete in college and sees there are a bunch  
14 more scholarships in the sports for women, he's not  
15 going to see that as fair. If you have roster caps  
16 and cut him and make all these other decisions,  
17 you're going to stop people from having an  
18 opportunity in college athletics. Just these are  
19 just little parts that people haven't really talked  
20 about, but, you know, you could -- I've had track  
21 coaches, NCAA championship coaches who have  
22 dissension on their team when they have more  
23 scholarships for the women than the men. They're  
24 all working out together. They know the work that's

1 put in by both teams.

2 MS. YOW: I want to think of  
3 scholarships for women as an example of a good  
4 thing, not a bad thing. Ironically, that could be  
5 one of the reasons at Maryland that we never have to  
6 drop wrestling, which would be good, wouldn't it?

7 MR. ABBOTT: Absolutely.

8 MR. LELAND: Let me draw this  
9 to a close. I absolutely want to thank the four of  
10 you and the people who helped you prepare for this.  
11 This was a great panel, and I think we learned a  
12 lot. I know the questions could go on and on.  
13 Thank you. We'll now take a 15-minute break and  
14 reconvene on time, please.

15 (Recess taken.)

16 MR. LELAND: If the  
17 commissioners could move to their seats, we could  
18 move on to the second panel of invited speakers.  
19 Let Donna get seated here. Another of our intrepid  
20 commissioners has made it on the scene, so Donna  
21 deVarona, welcome.

22 MS. deVARONA: Thank you. Nice  
23 to be here.

24 MR. LELAND: Thank you. We'll

1 follow the same format with these four invited  
2 speakers that we had before, which is ten-minute  
3 guest invited presentations. We will signal at  
4 approximately nine minutes of time to begin to wrap  
5 it up, and then we'll have a 20- to 25-minute  
6 question session at the end.

7                   And so our first panelist is  
8 Rick Taylor. Rick was named Northwestern  
9 University's director of athletics and recreation in  
10 January of 1994. In his eight-year tenure he has  
11 made vast improvements in the landscape of the  
12 department of athletics and recreation at  
13 Northwestern. He has been successful in increasing  
14 revenue for the athletics program and improving  
15 facilities and in moving to upgrade resources for  
16 scholarships, recruiting, and ensuring that by 2004  
17 all Northwestern's women's sports will be 100  
18 percent funded for grant-in-aid support at the NCAA  
19 limits.

20                   Prior to being at Northwestern,  
21 Rick was director of athletics at University of  
22 Cincinnati, and before his appointment at Cincinnati  
23 he was athletic director and head football coach at  
24 Boston University. And I also had the pleasure of,

1     when I was athletic director at Dartmouth College --  
2     I promised I wouldn't mention this -- his son was a  
3     member of our football team, and we yelled at a lot  
4     of referees when we were together during those  
5     years, but we've stopped that. We've grown out of  
6     that.

7                     Rick Taylor. Thank you.

8                     MR. TAYLOR: Thank you, Ted. I  
9     choose not to remember that last part of my life.  
10    Now I just yell at the Big 10 referees.

11                    Like others before, I support  
12    Title IX as it is written. I do not, however,  
13    support some of the applications and interpretations  
14    that have evolved over the years, and I see nothing  
15    wrong with examining all aspects of Title IX in its  
16    thirtieth anniversary year.

17                    I should like to preface my  
18    remarks by outlining Northwestern's recent history  
19    relative to Title IX compliance. Four women's  
20    sports, golf, soccer, cross-country, and lacrosse,  
21    have been added since 1992. This is at an annual  
22    cost for financial aid only of \$1.4 million per  
23    year. Significant improvements have been made  
24    across the board in such areas as salary, travel

1 mode, facilities, equipment, locker rooms, and  
2 financial aid.

3                   A couple of the earlier speakers  
4 on the earlier panel talked about the problems with  
5 money. At Northwestern it is not just a problem  
6 with money, although there is finite money. It is  
7 also a tremendous problem with space. We are  
8 landlocked on three sides with residences and the  
9 Lake Michigan is on our east coast, so we have no  
10 space.

11                   As we were actively considering  
12 adding our next women's sport in 1997, we were faced  
13 with an OCR complaint regarding water polo. In  
14 dealing with OCR we found out a great deal about the  
15 application of Title IX. Proportionality is the  
16 only safe harbor. Continuing expansion and meeting  
17 interests have no end point except to move you  
18 closer to prong one, proportionality, and in this  
19 context, proportionality is a quota. When is  
20 program expansion enough? When proportionality has  
21 been met. When have unmet interests been met? When  
22 proportionality has been reached.

23                   In dealing with OCR we asked  
24 questions but got no answers. In 1986, Northwestern

1 dropped a number of men's and women's sports in a  
2 campuswide cost-cutting initiative. We were told we  
3 could never meet prong two, continuing expansion,  
4 since we had once dropped a women's sport. We asked  
5 for the basis on which that statement was made, and  
6 we never got an answer. We pointed out that the  
7 period in which we dropped the women's sport was  
8 during the hiatus of Title IX enforcement between  
9 Grove City in 1984 and the Civil Rights Act of 1987.  
10 We were told, and I quote, It doesn't matter, you  
11 should have known Grove City would be reversed.

12 We demonstrated expanded  
13 opportunities for women athletes at Northwestern  
14 from 1992 through 2000 using this chart. In one  
15 meeting, a ranking OCR officer told us it appeared  
16 to meet prong two. The statement was retracted the  
17 next day without explanation. We asked why a more  
18 recent snapshot of continuing expansion would not  
19 suffice to meet prong two of Title IX, and on what  
20 basis they had made their decision. Essentially, we  
21 were told we would have to go to court for an  
22 explanation. When we asked why we -- when we were  
23 asked why we didn't consider adding crew, we  
24 explained that even if we could find a suitable body

1 of water, the cost of land for the boathouse and the  
2 actual building near Chicago would border on  
3 \$20 million. An OCR officer representative asked  
4 why we didn't row on lake Michigan. I simply said,  
5 "Waves."

6 (Audience laughter.)

7 Actually, I do not have a  
8 problem with basing prong one compliance on some  
9 proportionality basis. I may be different from a  
10 lot of people, but I don't see that basing it on  
11 something is not possible.

12 The basis, however, should not  
13 be the ratio of female to male athletes at each  
14 college or university, because that assumes equal  
15 levels of interest. The real question that has  
16 never been addressed properly is how do we define or  
17 measure interest. By any reasonable measure, men  
18 currently exhibit more interest in sports  
19 competition than women. You take TV demographics;  
20 more men watch televised sports than women. In  
21 fact, more men watch women's sports on TV than do  
22 women. In other media areas, such as subscriptions  
23 to magazines like ESPN, the magazine, Sports  
24 Illustrated, the great majority of their subscribers



1 are the male audience. Sports-related Internet hits  
2 such as ESPN.com and SportsPages also have a far  
3 higher incidence of men hits than women. And  
4 perhaps most telling of all, intramural sports, the  
5 purist of all athletic competitions, have a much  
6 higher level of male participants: 81 percent of  
7 the intramural participants are male versus 19  
8 percent for women at Northwestern. I think this is  
9 proof that the absence of any discriminatory  
10 policies. Men participate in athletics at a higher  
11 level than women.

12                   We are therefore manufacturing  
13 interest from the top down when the quota system of  
14 proportionality to undergraduate enrollment is  
15 used. We have created a system whereby bowling  
16 scholarships are offered over the Internet to woman  
17 who averages over 135, and we are picking women 5  
18 foot 9 or taller from class registration lines to  
19 participate in and receive athletic dollars for  
20 crew, and they have never pulled an oar. In effect,  
21 we are buying, not meeting, interest in athletics  
22 participations.

23                   There are ways, reasonable ways  
24 to establish fair levels of proportionality:

1     Require each college to match the level of high  
2     school athletic participation from its enrollment  
3     base, state, regional, or national. In 1999-2000,  
4     59 percent of the high school athletes were men; 41  
5     percent were women. According to the latest  
6     figures, which we received at Big Ten meetings last  
7     week, 2002-2003, the projection is 57 percent men  
8     versus 43 percent women. So more women are  
9     competing in the feeder base, and we should be able  
10    to match that. Or make each school match the  
11    four-year average of men and women in their earning  
12    class applied to the NCAA clearinghouse for initial  
13    eligibility. That's certainly an indication of  
14    interest on the college level.

15                    There may be other ways to  
16    determine real interest, but the key point is to  
17    utilize the level of interest demonstrated in our  
18    feeder system, the high schools, and not an  
19    artificial level established from the top down.

20                    In equal employment cases, the  
21    denominator is the qualified labor pool rather than  
22    the population in general. Therefore, in meeting  
23    proportionality of prong -- for proportionality  
24    prong of Title IX, the level of high school athletic

1 participation becomes the qualified labor pool  
2 rather than the general female population of a given  
3 college or university.

4           There are other problems in  
5 using a predetermined quota, such as the one we are  
6 now using. As an example exclusive of gender, two  
7 of Northwestern's undergraduate colleges have very  
8 small numbers of the student-athletes. Our renowned  
9 schools of journalism and music, both of which are  
10 nationally ranked, have a total of 14  
11 student-athletes out of 1,018 total students. Two  
12 schools that account for 13.6 percent of our  
13 undergraduate student body have a 1.3 percent rate  
14 of participation. In our school of education, 17.4  
15 percent of the men compete in intercollegiate  
16 athletics, while the number of women is 7.6. Women  
17 outnumber men 61 percent to 39 percent in the school  
18 of education, so until OCR mandates equal enrollment  
19 in undergraduate disciplines, it is unfair to  
20 mandate strict proportionality in athletics based on  
21 the undergraduate population.

22           Attempting to meet the quota of  
23 proportionality, many schools, including  
24 Northwestern, have capped the size of their men's

1 teams. I think it is philosophically impossible to  
2 defend preventing athletes of any gender to try out  
3 for a team, yet this is happening across the  
4 country. If this Committee does nothing else,  
5 eliminate walk-ons from counting. Keep the dream  
6 alive for tomorrow's would-be athletes of any  
7 gender.

8                                   One other aspect of  
9 proportionality which needs clarification is what  
10 constitutes substantial proportionality. Congress,  
11 and not OCR staff, needs to be the determining body  
12 to answer this question. As it now stands, there's  
13 not an athletics director in the country who can say  
14 with any real certainty that 1, 3, or 5 percent  
15 constitutes a substantial proportionality.

16                                   And finally, for those of you --  
17 for those who have zeroed in on football as the root  
18 of all evil, I urge you to be careful what you ask  
19 for. If we look at schools that have had great  
20 success across the board in their women's sports,  
21 the overwhelming majority have successful  
22 revenue-producing programs, football programs. In  
23 fact, 99.3 percent of Northwestern's athletic  
24 revenues can be traced directly back to football or

1 men's basketball. It is also a fact that that  
2 income supports our other 17 sports.

3 In closing, I should like to  
4 offer the following: If OCR ceased enforcement of  
5 Title IX tomorrow, I doubt we would see any  
6 substantial change in the level of support currently  
7 provided for women's athletics. In fact, I think  
8 you would see continued growth reflecting future  
9 interest in the generations to come.

10 MR. LELAND: Thank you, Rick.  
11 Our next invited speaker is Colonel Bill Walker.  
12 Colonel Walker serves as both a permanent professor  
13 and head of the department of physical education at  
14 the U.S. Air Force Academy, but also director of  
15 athletics at U.S. Air Force Academy. At the  
16 Academy, Colonel Walker is responsible for the  
17 physical education curriculum, intramural program,  
18 fitness testing, and evaluation process for the  
19 entire cadet wing. Additionally, as director of  
20 athletics program, he supervises all ten NCAA  
21 Division 1 athletic programs. Colonel Walker is  
22 also Dr. Walker. In 1996, he received his doctorate  
23 of education in physical education and sports  
24 administration from Northern Colorado University.

1 During his academic pursuits, he looked into an  
2 in-depth study of Title IX and this result was the  
3 basis of his dissertation.

4 Colonel Walker. Thank you.

5 COLONEL WALKER: Thank you. I  
6 would like to begin by thanking the Commission for  
7 providing me this opportunity to address you. I'm  
8 excited to be here.

9 I'll add that my presentation is  
10 comprised of my personal research and views and does  
11 not necessarily reflect the views of the United  
12 States Air Force Academy, the United States Air  
13 Force, or the Department of Defense.

14 I feel I come to this issue with  
15 a unique perspective, however. First, from a  
16 theoretical standpoint as a professor and scholar  
17 who has done extensive research on the judicial  
18 history of Title IX; secondly, as a current  
19 collegiate athletics administrator who has to be  
20 concerned with the practical applications of  
21 Title IX guidance; third, as a former collegiate  
22 wrestler and collegiate wrestling coach and current  
23 member of the NCAA Wrestling Committee; and lastly,  
24 and most importantly, as a father and soccer coach

1 of an only child who happens to be a nine-year-old  
2 girl who is a sports fanatic, and for whom I wish  
3 all the opportunities in the world. So I guess I  
4 fall into that soccer dad category that previous  
5 panelist Gary mentioned.

6                   As you very well know, there's  
7 great emotions swirling around this topic and spin  
8 put on different numbers and statistics making it  
9 difficult to know what is factual. Therefore, I  
10 would like to limit my discussion initially to  
11 important case law. I think it's imperative to  
12 highlight some implications of landmark Title IX  
13 court decisions in the early '90s which have shaped  
14 and defined many of the arguments we're having  
15 today. First, it is clear that the courts'  
16 deference to regulations and interpretations  
17 promulgated under the authority of Congress have had  
18 an insidious effect on what one court noted as the  
19 plain meaning of Title IX. The judicial  
20 interpretations have clearly transformed the statute  
21 from a nondiscrimination statute into an equal  
22 opportunity statute. One law journal went so far as  
23 to state that, quote, Instead of being simply an  
24 anti-discrimination statute, Title IX is being

1 transformed into a judicial mandate for affirmative  
2 action, end quote. Now, that may seem like an  
3 unfair characterization to some, but the U.S.  
4 District Court, Central District of Illinois, agreed  
5 stating, "Quite frankly, these interpretations have  
6 converted Title IX from a statute which prohibits  
7 discrimination on the basis of sex, defined as  
8 elimination or exclusion from participation  
9 opportunities, into a statute which provides equal  
10 opportunity for members of both sexes, in its  
11 opinion in the Kelley v. Board of Trustees,  
12 University of Illinois, 1993.

13 The next implication is a clear  
14 guidance, judicial guidance, that proportionality is  
15 the cornerstone of compliance. I've read  
16 transcripts from your previous panels where there  
17 has been debate on the primacy of proportionality,  
18 but several court rulings speak clearly to this  
19 issue. The U.S. Tenth Circuit Court of Appeals, in  
20 its Roberts v. Colorado State Board of Agriculture  
21 '93 decision stated, quote, In effect, substantial  
22 proportionality between athletic participation and  
23 undergraduate enrollment provides a safe harbor for  
24 recipients under Title IX, unquote.



1                   Additionally, and even more  
2     telling, was the U.S. First Circuit Court of  
3     Appeals, *Cohen v. Brown University*, '93 opinion  
4     which stated, quote, "Thus, a university which does  
5     not wish to engage in extensive compliance analysis  
6     may stay on the sunny side of Title IX simply by  
7     maintaining gender parity between its student body  
8     and its athletic lineup, end quote.

9                   The case law also demonstrates  
10    the tremendous difficulty for universities to  
11    satisfy the second and third prongs of the  
12    three-prong test of compliance. Once it was  
13    determined that an institution failed the  
14    proportionality test, it was virtually impossible to  
15    pass either of the next two tests. In an era of  
16    declining revenues and budget cuts, it was, and is,  
17    very difficult for the schools to demonstrate a  
18    history of women's program expansion. Even if a  
19    defendant institution was able to demonstrate a  
20    history of program expansion, it could not  
21    reasonably demonstrate a continuing practice of  
22    expansion as evident by the fact that it had  
23    recently eliminated or failed to elevate a program  
24    which led to the current litigation.

1                   Likewise, the universities  
2 weren't able to satisfy the third prong of the test.  
3 When a viable program with healthy participation is  
4 eliminated, and the affected student-athletes  
5 protest its elimination, it is readily apparent that  
6 the athletic interests and abilities of those  
7 students have not been fully and effectively  
8 accommodated.

9                   From the cases in the early  
10 '90s, it became clear that an institution in  
11 violation of Title IX have limited options in  
12 attempting to restructure its athletic program.  
13 Reaching proportionality and doing it quickly was  
14 truly the only sure way to comply. The U.S.  
15 District Court of Rhode Island summarized an  
16 institution's options concisely in the '95 Cohen  
17 case when it stated that Brown may, quote, eliminate  
18 its athletic program altogether; may elevate or  
19 create the requisite number of women's positions; it  
20 may demote or eliminate the requisite number of  
21 men's positions; or it may implement a combination  
22 of these remedies, end quote.

23                   This reinforced the First  
24 Circuit Court of Appeal's opinion in '93 stating

1 that an institution can reach proportionality by,  
2 quote, reducing the opportunities for the  
3 overrepresented gender while keeping opportunities  
4 stable for the underrepresented gender, unquote.

5           So it's very clear what the body  
6 of judicial data suggests about the interpretation  
7 of the statute. First, Title IX has been  
8 transformed from a nondiscrimination statute into an  
9 equal opportunity statute; second, proportionality  
10 is key to compliance; and third, elimination of  
11 men's teams alone is an accepted method for reaching  
12 proportionality. Now, one could debate legislators'  
13 original intent when drafting this piece of  
14 legislation, but I'm personally convinced we've  
15 strayed from that original intent, not to mention  
16 the specific language of Title IX, which expressly  
17 prohibits discrimination based on gender.

18           Additionally, the  
19 interpretations highlighted above did little to  
20 achieve what is in the best interest of either men  
21 or women. It is more than a bit ironic to note that  
22 while the spirit of Title IX, as applied to  
23 athletics, is to increase participation  
24 opportunities for women and eliminate

1 discrimination, the legal application in the  
2 majority of the cases in the early '90s led to  
3 decreased opportunities for men, with no  
4 corresponding increase in women's opportunities.  
5 While this approach clearly allows an institution to  
6 move closer to Title IX compliance, it serves  
7 neither the female student-athletes who have limited  
8 participation opportunities, nor the male  
9 student-athletes who lose theirs. There's little  
10 evidence to suggest that when an institution  
11 eliminates a men's programs simply to satisfy  
12 proportionality, the savings are used to establish a  
13 women's program. In fact, the only positive result  
14 from Title IX litigation forwarded by students in  
15 '90 to '95 was the protection or reinstatement of  
16 women's varsity programs which had previously  
17 existed. No men's programs were protected from  
18 elimination, nor were any new women's programs or  
19 opportunities added.

20 Today, athletics departments are  
21 constantly in a state of fiscal constraint, and as  
22 long as proportionality, by whatever means it's  
23 achieved, continues to be safe harbor, men's teams  
24 will continue to be targeted for cuts unless,

1 contrary to what the Cohen court stated, we force  
2 universities to engage in extensive compliance  
3 analysis.

4                   We have some of the brightest  
5 minds in the world at our universities, so certainly  
6 a less simplistic approach than straight  
7 proportionality can be developed. I feel there may  
8 be fertile ground in the second and third prongs for  
9 solutions, and it's not as though that was  
10 reinforced by much of the testimony you heard in  
11 Chicago.

12                   Student interest must be added  
13 to the equation in some way. I understand the  
14 argument that females' interests may be less because  
15 of limited opportunities as young girls. That's why  
16 the focus of opportunity should be pushed down to  
17 the lowest level. This will ensure over time an  
18 accurate measure of interest will be able to be  
19 determined at the collegiate level.

20                   Collegiate level athletics  
21 should not, for the most part, be an entry-level  
22 endeavor, especially at the expense of opportunities  
23 for athletes who have demonstrated decade-long  
24 interest and dedication to their particular sport.

1 As I stated, this task will require substantial  
2 thought, research, effort, and systemic change.

3 At the Air Force Academy, we  
4 offer 27 Division 1 sports with an enrollment of  
5 less than 4,400 students. Our mission is to build  
6 leaders of character for our nation, and we feel  
7 athletics is a fundamental cornerstone upon which  
8 that character is built. Our female enrollment  
9 comprises approximately 16 percent of our cadet  
10 wing, and our female cadet athletes make up 24  
11 percent of all our athletes. Approximately 38  
12 percent of all our female athletes are -- or of all  
13 our female cadets are intercollegiate athletes.  
14 That's a number for which we're quite proud.

15 There's no doubt the benefits gained from athletics  
16 is just as important to our female cadets as it is  
17 to our male cadets. I would hope everyone in this  
18 room would agree that holds true for all students.

19 The point we should all remember  
20 is the fact that we all have one important  
21 characteristic in common, and that is our love of  
22 sports and our belief in its role in building  
23 character in young adults. That's why it's  
24 imperative -- possibly the most important duty we

1 have collectively in this room to our society -- to  
2 work together to maximize opportunities for all  
3 those interested in participating. We must be  
4 creative in finding ways to expand opportunities for  
5 those who have been discriminated against in the  
6 past, while at the same time not creating a new  
7 legacy of discrimination. Simply stated, this is  
8 one game everyone has got to win.

9 Thank you.

10 MR. LELAND: Thank you. Colonel  
11 Walker, let me clear up one thing. In our present  
12 state of heightene sensitivity over resumes, I think  
13 I inadvertently mistakenly introduced you as the  
14 athletics director, and that was -- apparently,  
15 you're the director of athletics programs, and you  
16 oversee 10 of the 27 sports at --

17 COLONEL WALKER: Yes, sir.

18 MR. LELAND: Okay. Thank you.

19 COLONEL WALKER: I'm sure my  
20 boss would appreciate that.

21 MR. LELAND: I know.

22 COLONEL WALKER: Thank you.

23 MR. LELAND: All right. Well,  
24 thank you for letting me clear that up.

1                   Our next invited presenter is  
2 Margaret "Peg" Bradley-Doppes. As athletic director  
3 at the University of North Carolina, Peg  
4 Bradley-Doppes is only the third person in the  
5 history of the school to serve as athletic director  
6 and has brought both regional and national attention  
7 to UNC Wilmington. An energetic leader in college  
8 athletics as a student-athlete, head coach, and  
9 senior administrator, Peg came to UNC Wilmington  
10 after serving as senior associate athletic director  
11 and senior women's administrator at the University  
12 of Michigan, Ann Arbor. Peg is also a member of the  
13 NCAA Division 1 Volleyball Committee, the Big Ten  
14 Conference Television Committee, the Big Ten  
15 Conference Principles, Priorities and Guidelines  
16 Committee. Peg is currently serving as president of  
17 the National Association of Collegiate Women's  
18 Athletic Administrators.

19                   Peg, thank you.

20                   MS. BRADLEY-DOPPES: Thank you.  
21 Over the past several years I've had many  
22 opportunities speak on Title IX and gender equity.  
23 I have spoken at national conventions, at NCAA  
24 Title IX seminars, the United States Senate, the



1 Knight Commission, and I am here today to speak with  
2 this distinguished group to share the same message;  
3 that message is that Title IX is federal law. It is  
4 good, fair legislation, and most importantly, it  
5 should be enforced.

6 Title IX does not drop men's  
7 sports program. Title IX is about equal  
8 opportunities. Title IX is about the importance in  
9 value of equal treatment for both men and women.  
10 The basis of the law and the courts' consistent  
11 interpretation of Title IX have been, and continue  
12 to be, fair.

13 I speak as an individual who  
14 benefited firsthand from the implementation of  
15 Title IX. I was an athletic scholarship recipient,  
16 a successful Division 1 head coach, a women's  
17 athletics director, a senior associate athletic  
18 director, and today I'm a Division 1 director of  
19 athletics. Over the last 27 years, these varied  
20 experiences in intercollegiate athletics has  
21 afforded me a unique perspective on this complex  
22 issue called Title IX.

23 As the women's athletic director  
24 and senior associate athletic director at the

1 University of Michigan, we made a decision to  
2 embrace the opportunity to create athletic  
3 opportunities for both new teams, for men and women.  
4 It's from these ten years at Michigan that some of  
5 the following remarks were made.

6 Not to oversimplify this complex  
7 issue, but I truly believe it is as simple as  
8 deciding that being in compliance with Title IX is  
9 the right thing to do. Once that decision is made,  
10 consensus building starts to take place, and at  
11 Michigan over a ten-year period, the task was  
12 accomplished.

13 In 1993, the university had to  
14 decided to drop men's gymnastics. The once  
15 prominent program had been struggling competitively  
16 and being shadowed by the possibility of adding the  
17 growing sport of men's soccer. Instead of making  
18 the simple decision, although a bad decision, to  
19 drop men's gymnastics, instead, a national search  
20 was conducted to find a top coach whose leadership  
21 and vision would restore the program back to  
22 national prominence. This added to the challenge of  
23 finding a solution so that the men of men's soccer  
24 could also be added while making sure that we were

1 in compliance, and making sure that we were adding  
2 an opportunity for both men and women, so that we  
3 decided we would add men's soccer with the addition  
4 of three or four new women's varsity sport  
5 programs.

6 A gender equity task force was  
7 created and empowered. Its membership included  
8 coaches, athletes, faculty, staff, and alumni. This  
9 task force looked at the issue at hand, how more  
10 athletic opportunities could be created for both men  
11 and women student-athletes without increasing the  
12 athletic department's operational budget. The task  
13 force determined that every sport program and every  
14 department would have to do -- would have to do more  
15 with less, and that every coach and every department  
16 head was involved in the deciding process on what  
17 reductions would be made in their operational  
18 budget.

19 A global look at the entire  
20 athletic department was taken, every expenditure  
21 critiqued, and a decision was made that all existing  
22 departmental budgets would be reduced to create  
23 money for our new sports programs. The entire  
24 department was involved in this process, and in

1 essence we tightened our belts and we trimmed the  
2 fat.

3 After much analysis and careful  
4 consideration, Michigan reinstated men's gymnastics,  
5 added the sport of men's soccer, while adding three  
6 new women's sports, soccer, crew, water polo. The  
7 budget restrictions were difficult but necessary in  
8 order for us to meet our goal. The reality is that  
9 this process strengthened and unified the  
10 department, and its effects were that the overall  
11 success of the department was at an all-time high.

12 A decision was made, the  
13 university administration took an active leadership  
14 role, and gender equity was achieved. No male  
15 opportunities were lost. In fact, more were created  
16 while at the same time three new women's sports  
17 programs were also added.

18 All of these new women's sports  
19 programs have been great additions to the  
20 university's mission and have had tremendous success  
21 by winning conference titles or being in the top  
22 four in the country. This certainly was a win-win  
23 for the institution and the student-athletes alike.

24 The message is clear, gender

1 equity and compliance with Title IX is an attainable  
2 and necessary goal. As I step away from my Michigan  
3 experiences and consider my new experiences as a  
4 Division 1-AAA athletic director, the same  
5 philosophy applies. Decisions must be compliant  
6 with Title IX, combined with a determined leadership  
7 to achieve gender equity.

8 I would ask the Commission to  
9 consider prohibiting institutions from dropping  
10 men's sports programs because of Title IX, and  
11 instead demand that each institution outline in  
12 writing why any sport program was eliminated, be it  
13 for financial, facility, safety, competitive, or  
14 other reasons.

15 Focusing the blame on Title IX  
16 is not fair, and it's not appropriate. Title IX is  
17 not the reason or justification for dropping men's  
18 sports, but rather a lack of leadership or poor  
19 fiscal management might very well be. Reducing or  
20 cutting any male opportunity should only be a last  
21 resort, but if it was, and is, a last resort, public  
22 opinion tells us that support of Title IX is  
23 overwhelming.

24 In June 2000, the Wall Street

1 Journal and NBC News conducted a poll. The results  
2 show that 79 percent approved of Title IX, and only  
3 14 percent disapproved. Quote, Cutting back on  
4 men's athletics to ensure equivalent athletic  
5 opportunities for women, closed quoted, was  
6 supported by 76 percent. If cutting men's sports  
7 was necessary, and I don't think it ever is, over 70  
8 percent of Republicans, Democrats, women, and men  
9 would approve of these actions to achieve equity.  
10 The dropping of any men's sports program should be  
11 the last viable option.

12 A better clarification in  
13 education regarding the third prong should be a high  
14 consideration for this Commission. The third prong  
15 is a viable option. If an institution is not in  
16 compliance with Title IX, they can look to the third  
17 prong to justify why they do not meet  
18 proportionality. Many do not understand the impact  
19 of this third prong or the fact that any of the  
20 three prongs can't stand alone to achieve  
21 compliance. The fact is, the third prong is  
22 available to institutions as they search for  
23 alternatives in achieving gender equity.

24 Our member institutions have

1 informed us of their challenges as they try to  
2 increase opportunities. Some of these challenges  
3 are: An older female population; a population of  
4 high percentage of single working mothers; an  
5 institution that has a small population that lives  
6 on campus; inadequate competition and talent  
7 limitations; as well as a high percentage of  
8 part-time students. All of these are reasons and  
9 justifications for why these institutions should  
10 consider the other two prongs of Title IX other than  
11 the proportionality of prong one. In this manner,  
12 the third prong can be looked at as a possible  
13 answer to meeting Title IX requirements.

14                   Nothing is wrong with Title IX  
15 as it stands today. It is, in my opinion, our lack  
16 of understanding and education as well as  
17 implementation of the law that has caused confusion  
18 and misrepresentation of Title IX.

19                   There have been generations of  
20 females that were denied opportunities in  
21 educational programs prior to Title IX. Female  
22 athletic participation opportunities are only at 42  
23 percent. Title IX is not the problem. Enforcement  
24 of Title IX is the solution.

1                   As recommended by the Knight  
2 Commission Report, I too support an exemption to the  
3 antitrust laws from Congress in order to reduce the  
4 excessive escalating expenditures to stop the arms  
5 race that is plaguing the world of intercollegiate  
6 athletics. There is much fat that can be trimmed  
7 from many athletic departments in the country, and  
8 that excess could easily afford additional  
9 opportunities for young women and men alike.

10                   What is most frustrating is the  
11 fact that we are so close to being in compliance.  
12 We're almost there. We can't retreat now. In a  
13 study that compared female athletic participation to  
14 female undergraduate population in the institutions  
15 of the Big Ten Conference, Pac Ten Conference, and  
16 Big 12 Conference, years 2000-2001, nine  
17 institutions choosing the first prong were already  
18 within three points of compliance to their  
19 undergraduate population. Five of these  
20 institutions in the Big Ten were within two points,  
21 Purdue, Michigan, Wisconsin, Michigan State, and  
22 Pennsylvania State. The other four institutions  
23 were Washington State, USC, Kansas State,  
24 Texas A&M. Another 15 institutions were within



1 seven percentage points. They include, Minnesota,  
2 Illinois, Ohio State, Northwestern, Washington,  
3 Stanford, Arizona, Berkeley, Oregon, Oklahoma State,  
4 Colorado, Kansas, Texas Tech, Texas, Iowa State. In  
5 these three conferences, 73 percent of the  
6 institutions are within 7 percent of their  
7 undergraduate population. With two exceptions, the  
8 remaining schools are within 12 percent. These are  
9 nationally-respected athletic programs with big-time  
10 football and wrestling.

11 We need to stay the course. We  
12 need to expect compliance as well as good  
13 leadership. Again, it's a question of doing what's  
14 right.

15 Here are some critical  
16 solutions: More education at all levels about the  
17 law; consistent interpretation of the law by the  
18 Office of Civil Rights' regional offices; stronger  
19 enforcement of the law; greater understanding of the  
20 flexibility of the three-prong test; and greater  
21 awareness and understanding that each prong of the  
22 three-prong test stands alone as a viable compliance  
23 tool; fiscal responsibility in expenditures to  
24 maximize use of resources.

1                   Your leadership is critical and  
2                   is needed at this juncture in our history if we are  
3                   to return to an educationally sound and fiscally  
4                   responsible athletics system where the welfare of  
5                   our student-athletes in all sports is truly the  
6                   highest priority. I trust that each of you will  
7                   continue to value the equal treatment in our society  
8                   and recommit to the unconditional support of equal  
9                   access and equitable experiences for males and  
10                  females in educational sports.

11                  I thank you for your time, your  
12                  interest, and support in the continued  
13                  implementation of Title IX.

14                  MR. LELAND: Thank you, Peg.  
15                  Our next invited presenter is Rondo Fehlberg. He is  
16                  currently executive director of Olympic Aid USA,  
17                  where he is responsible for directing United States  
18                  operations of this international Olympic committee  
19                  affiliated humanitarian charity. Formerly, he was  
20                  director of athletics and assistant vice president  
21                  at Brigham Young University. Gary directed one of  
22                  the country's most respected intercollegiate  
23                  athletic programs. He is also a founding member and  
24                  vice chairman of the Utah Sports Commission. He

1 received his bachelor degree from Brigham Young  
2 University and then went on to receive his JD degree  
3 from BYU in 1979.

4 Rhondo, thank you.

5 MR. FEHLBERG: Thank you, Ted,  
6 Cynthia. I'm delighted to be with you this morning,  
7 and I'm impressed just to sit with these panelists  
8 and with you. I know many of you personally and all  
9 of you by reputation. You're an impressive group.  
10 I'm confident, as other panelists have said, that  
11 the findings of this Commission will result in good  
12 things for the use of our country.

13 By way of personal Title IX  
14 background, I competed in wrestling while a student  
15 at BYU in the late '60s and early '70s. I have sons  
16 who wrestle. As athletic director, I was directed  
17 to eliminate men's gymnastics and wrestling at BYU.  
18 I know the pain. At the same time, I recruited  
19 aggressively for women's athletics; I watched with  
20 pride as our teams have steadily gained national  
21 prominence; and I worked to implement BYU 's initial  
22 OCR compliance plan, which resulted in the  
23 successful -- or in the addition of two very  
24 successful women's teams in four years.

1                   I've read with interest much of  
2 the transcripts of prior panelists, and I am  
3 satisfied, as other panelists have said, that you  
4 have seen and heard all you need to about the  
5 intended and unintended effects of Title IX. You've  
6 got a lot of statistical information. Like others  
7 have mentioned, it's often been said there are lies,  
8 damn lies, and statistics, and I wish you luck in  
9 working your way through that. But I believe there  
10 are really sound, defensible answers in those  
11 statistics, and I look to you to get there.

12                   When I -- when I first came to  
13 BYU, we were already well into the initial OCR  
14 compliance plan, and I think if there's anything I  
15 can bring to this debate and to this discussion  
16 today, it's to perhaps share with you some of our  
17 experiences as we worked at BYU to implement the  
18 interests and abilities prong of this test. The  
19 reason we focused on interests and abilities is  
20 pretty obvious. We clearly couldn't meet the strict  
21 proportionality at that time, and we didn't have the  
22 track record we needed to have at that time of  
23 continual improvement. I'm glad to say that  
24 happened over the time I was at BYU, and it

1 continues to happen at BYU, and I think that we have  
2 a great track record of opportunity for our women.

3 But during that time, it was  
4 also interesting to me to see that there really  
5 weren't a lot of people finding statistical  
6 information about this whole Title IX phenomenon,  
7 and so we had to go back and really dig deep to find  
8 that defensible statistical basis that everyone was  
9 looking for.

10 One of the things that we found  
11 that was really important to us was that, as we were  
12 gathering our interests and abilities information,  
13 we found the American College Testing Service, which  
14 is the basis for entrance criteria at BYU, provided  
15 some excellent data for us that had already been  
16 collected over a number of years. All of our  
17 incoming freshman students, and therefore our entire  
18 student body, had answered three key questions as  
19 part of the American -- or the ACT testing process.  
20 Question No. 109 asked them whether they had  
21 competed in high school athletics. Question No. 158  
22 had asked them if they earned at least one varsity  
23 letter, and question No. 50 asked them if they were  
24 interested in competing in collegiate athletics

1 following high school.

2 As a result of that, we found  
3 that approximately 38 percent of our male students  
4 and approximately 26 percent of our female students  
5 had earned varsity letters in high school. Of  
6 those, 60 percent of the young men wanted to compete  
7 in collegiate athletics, and 40 percent of the young  
8 women wanted to compete further.

9 Clearly, as has been stated by  
10 others, there may be some historical reasons for  
11 some of that interest relating to the lack of  
12 opportunities for the underrepresented gender. We  
13 recognize the needed to collect this data over time  
14 because of that. Also, others have mentioned that  
15 there may be pressures unique to the college  
16 environment and people's lifetime goals that might  
17 change their interest in collegiate athletics, both  
18 male and female.

19 But what it meant to us was that  
20 approximately one-fifth of our young men, 23  
21 percent, and 11 percent of our women were interested  
22 in competing in varsity athletics at the college  
23 level. Further extensive surveys of our student  
24 body directed by the BYU department of institutional

1 studies statistically validated the numbers received  
2 on these ACT tests. We found the numbers to be  
3 remarkably consistent with data collected by other  
4 universities who were making this effort and  
5 national organizations that were doing so. Some of  
6 the statistics you've heard from other panelists  
7 today. In addition, we found that these numbers did  
8 not change appreciably when we repeated the process  
9 on the three-year cycle that we had committed to OCR  
10 to do so.

11 We also found that the  
12 phenomenon that others have talked about at other  
13 town hall meetings here today existed on our  
14 campus. Very few women are willing to walk on and  
15 face the prospect of sitting on the end of the  
16 bench, while large numbers of men are not only  
17 willing to do it, they seek aggressively and  
18 creatively opportunities to do it.

19 When I was AD, we were capping  
20 our men's teams like many other schools were, and  
21 one of the things I could count on was every week I  
22 was at BYU being visited by young men, their  
23 friends, their parents, their ex-coaches, and many  
24 other people on behalf of just an opportunity to

1 live the "Rudy" dream. And we also found that our  
2 women's coaches were much less willing to endure the  
3 complexity and additional burden of having large  
4 numbers of walk-on women's athletes; partially, I  
5 suppose, because they hadn't seen the kind of  
6 periodic successes that we as men's athletes had  
7 seen with some walk-ons succeeding.

8 In any event, we felt that our  
9 careful collection and monitoring of interests and  
10 abilities data, which had been endorsed by the OCR,  
11 and our success in women's athletics would continue  
12 to serve us well as we were evaluated relative to  
13 the so-called three-part test for compliance.

14 Two things changed all that.  
15 First, as has been noted by others today, we  
16 observed a dramatic shift in emphasis at OCR from  
17 what I would have called a balanced reliance on the  
18 three prongs of the three-part test to a clear  
19 preference for strict proportionality, and the  
20 interests and abilities and continual improvement  
21 prongs were being de-emphasized and even ignored.  
22 It was made clear to us that until we reached the  
23 so-called safe harbor of proportionality, we would  
24 be continually under suspicion and pressure.



1                   We were continued to -- we  
2 continued to be found in compliance, but we were  
3 told, as was mentioned by Rick earlier, it was a  
4 never-ending process until you get to the safe  
5 harbor. We were, in effect, told that our detailed  
6 and extensive and very expensive interests and  
7 abilities tracking was interesting but not  
8 particularly relevant.

9                   Second, it became apparent to us  
10 that other universities were being allowed to  
11 totally ignore the interests and abilities of their  
12 male athletes entirely, slashing programs right and  
13 left to reach the safe harbor of proportionality.  
14 For us at BYU, this had never been a consideration.  
15 However, in 1998 when we were organizing the new  
16 Mountain West Conference, we were informed by the  
17 conference that they would not be able to sponsor  
18 men's championships in men's wrestling and  
19 gymnastics since so few schools in our conference  
20 continue to sponsor those teams. We were faced with  
21 the problem of having to find new conferences for  
22 those teams or go it alone as independents, and all  
23 of you who are administrators know that meant our  
24 costs were going to go up at a time when we, like

1     you, were suffering the same financial pressures  
2     that we all face in an athletic department.

3                     Accordingly, despite our strong  
4     objections in the athletic department, the lure of  
5     the easy fix was just too great. I was directed to  
6     put all of our efforts to raise endowment money for  
7     Olympic sports and to add women's sports, and I  
8     might add anecdotally that we had looked not just to  
9     add additional women's sports, we ultimately added  
10    softball and soccer, but we also were looking to add  
11    women's water polo, field hockey, and others, and we  
12    had the dream of adding some men's sports, as well,  
13    as we completed this endowment program, but I was  
14    told to put it on hold and eliminate the sports of  
15    men's gymnastics and wrestling.

16                    I'm convinced that had the  
17    second and third prongs of the three-part test not  
18    been effectively eliminated by federal  
19    administrative practice, BYU and many other schools  
20    would never have eliminated men's teams to reach the  
21    Holy Grail of proportionality. BYU, like many other  
22    schools, was well aware of the profound negative  
23    effect these new restrictions were placing on men's  
24    teams.

1                   Our women's athletic director  
2           and many of our women's coaches were among our most  
3           aggressive supporters. They told me, we know what  
4           it's like to be locked outside the gym. We would  
5           never want to impose that on anyone else. But we  
6           felt we had had the gun put to our head. And yet no  
7           one's been able to tell us or explain to me  
8           adequately why other educational programs,  
9           supposedly governed by Title IX, do not follow the  
10          same kinds of guidelines or restrictions.

11                   On our campus, our cheerleading  
12          and our dance, some of our dance programs have been  
13          put in the athletic department. They receive  
14          scholarships; they have coaches; we have training  
15          rooms for them. They are athletes, but we ignore  
16          proportionality altogether.

17                   One last point. There's been  
18          testimony to the effect that if your  
19          student-athletes sue you on the basis of Title IX,  
20          by definition you somehow fail to meet the  
21          proportionality -- or, I mean, the interests and  
22          abilities test. I really don't think that's the  
23          case. We don't offer intercollegiate athletes to  
24          all of our interested students. We have thousands

1 of students on our campus who dream about being  
2 collegiate and professional athletes, but only a few  
3 hundred have these opportunities.

4 MR. LELAND: Okay. Time.

5 MR. FEHLBERG: I think we had  
6 gone a long way at BYU to establish this interests  
7 and abilities prong. I wish we would have been  
8 allowed to continue.

9 Thank you.

10 MR. LELAND: Thank you. Now we  
11 will have about 20, 25 minutes for questions. Let's  
12 open up.

13 MS. MCGRAW: Peggy, we've heard  
14 a lot about how the safe harbor, prong one, is the  
15 key, and yet you seem to think that there is a way  
16 to use the interests and abilities. Could you  
17 address that a little bit more and see, is there a  
18 way to better educate colleges, or maybe it seems to  
19 me that the OCR is the one that needs to be educated  
20 if everybody can't even get an answer from them, so  
21 could you address that a little bit more?

22 MS. BRADLEY-DOPPES: Certainly.  
23 I think there's a shared frustration with all  
24 panelists regarding the different interpretations

1 from the regional offices of OCR and that is an  
2 issue that needs to be addressed because the rules  
3 of the game aren't the same across the country, so  
4 there's frustration there because you don't know.  
5 It depends on your geographic location what the  
6 ruling will be.

7 In regards to interests with  
8 prong three, I think better education and  
9 explanation regarding the fact that examples that  
10 institutions can use to justify the challenges that  
11 they're faced are the fact that if you're at an  
12 institution that has a low percentage of  
13 student-athletes that live on campus, if you're an  
14 institution that has a very, very high percentage of  
15 nontraditional female students, that are older  
16 students, an institution that has a high percentage  
17 of single working mothers, an institution in a rural  
18 setting. These are all legal ways that you can look  
19 at, look at your population and say, we are trying,  
20 based on where we're at, the limitations of our  
21 university.

22 Of course, you can use your  
23 geographic location. Everyone uses ice hockey in  
24 New Mexico. Rick mentions, you know, crew on Lake

1 Michigan, difficult. But I would say that look at  
2 your institution, look at your geographic location,  
3 look at the undergraduate population, the makeup of  
4 that, and then look to the other two prongs.

5 MS. deVARONA: Peggy, the focus  
6 has been all the way through these town hall  
7 meetings the proportionality test and the measure of  
8 interest, and the reality is we are seeing Olympic  
9 sports cut. Some interpret the reason as  
10 proportionality. You feel that there's a way to  
11 meet all these tests and accommodate the needs and  
12 interests of the students. In schools that don't  
13 have the will to do this or take the other way out  
14 by capping men's sports or dropping men's sports to  
15 meet the standards, how can -- what would you  
16 suggest, and how can we, as a Commission, look at  
17 preventing this?

18 MS. BRADLEY-DOPPES: That's a  
19 good question. I think what we need to do is make  
20 sure that the education on Title IX, in compliance  
21 with Title IX is very clear and deliberate.

22 I also think we need to hold  
23 institution athletic directors accountable for the  
24 decisions that we make on our campuses; that if we

1 do drop men's or women's programs, that we have to  
2 put in writing a justification why. It has become  
3 very fashionable to blame other things, Title IX. I  
4 would say that we're not serving our institutions  
5 well if we're not providing equal access and  
6 opportunity.

7 I think it's important to note  
8 that at Michigan we did reinstate men's gymnastics;  
9 we did add men's soccer; we added three women's  
10 programs. The truth of the matter is if money  
11 wasn't an issue, I would have added five or six  
12 women's programs. It wasn't a question of  
13 interest. On the table was women's ice hockey,  
14 synchronized swimming, women's lacrosse. It goes on  
15 and on. So that I think it's -- you have a certain  
16 amount of money; how can you spend that money to  
17 best represent your institution, men and women  
18 alike.

19 MR. LELAND: Graham?

20 MR. SPANIER: I want to thank  
21 you for recognizing Penn State as one of the five  
22 institutions that does even meet the strict  
23 proportionality standard. But in all -- and it's  
24 something we're very proud of and have worked very

1 hard at and invested heavily in.

2 But what wasn't mentioned is  
3 that in order to get there, we've had to engage in a  
4 rather serious program of roster management, and we  
5 have -- we are denying, perhaps, as many as 100,  
6 maybe 200 male athletes the opportunity to walk on  
7 to some of our teams, and we also have targets in  
8 some of our women's sports, too, for the coaches to  
9 encourage walk-ons. I would like you to reflect on  
10 that, but I also would like to ask our athletic  
11 directors to reflect on this issue from their  
12 experience. I would not want to hold Penn State out  
13 as the model of the only school that is having to  
14 deal with the roster management program;  
15 Northwestern was also mentioned somewhere on your  
16 list, and Rick might have a comment on that. So I  
17 guess I would like to ask the athletic directors if  
18 they would comment on that from their perspective,  
19 because in the hundred-and-some people that have  
20 come forward to testify so far, this has been one of  
21 the big issues on the table, and we really haven't  
22 had any good discussion of solutions, other than  
23 some people saying, "Don't do it. You can get there  
24 without it," and others saying, "We're going to have



1 deal with the walk-on roster management situation,"  
2 but without specifics of how we get from here to  
3 there.

4 So maybe, Rick, if you would  
5 start.

6 MR. TAYLOR: With all due  
7 respect to my colleague who was at Michigan, that's  
8 a different place. They put 110,000 people in their  
9 stadium on seven Saturdays in the fall. They  
10 probably make more in parking than I make in a gate  
11 from a game.

12 I can answer a lot of problems  
13 with money. Money is finite. Graham, I would  
14 imagine on your campus money is finite. You cannot  
15 be all things to all people. We have the additional  
16 problem of space.

17 I will tell you categorically  
18 that athletic directors do not make these decisions  
19 in a vacuum. Our board of trustees, the executive  
20 committee of the board of trustees and the president  
21 are the ones who make the decisions, and I will tell  
22 you also categorically that if -- right now we're  
23 3.6 percent within proportionality. If we are told  
24 that we have to offer another women's sport, we will

1 cut a man's sport. That's an absolute. Because we  
2 do not have space.

3 So it's -- you have to -- you  
4 cannot say that, well, because it works at Michigan,  
5 it works at Northwestern, or it works at Penn State,  
6 or it works at Air Force, or it works at BYU. I  
7 think it is indefensible that I have to tell a young  
8 man who is paying \$37,000 a year to attend my  
9 university that he cannot try out for a sport. I  
10 think that's indefensible.

11 So there are problems. There  
12 are different problems at different schools. And I  
13 think we need to recognize that, and as I stated  
14 earlier, I think let's tie proportionality up to the  
15 feeder system. As the feeder system grows, let's  
16 let proportionality at our institutions grow. I  
17 think that's a great way to solve the problem.

18 MR. FEHLBERG: At BYU we also  
19 engaged in aggressive roster management on our men's  
20 teams and set targets for our women's teams to try  
21 to -- to reach closer to proportionality. During  
22 all the time I was at BYU, we never once filled all  
23 of our women's scholarships that were available,  
24 because of some of the phenomena that have been

1 discussed already about the difference between men  
2 and women and their willingness or lack of  
3 willingness to sit on the end of the bench.

4                   We -- we had to cap aggressively  
5 all of our men's teams, and it has been very  
6 challenging for us. The place where it is most  
7 dramatically obvious is in our men's and women's  
8 track and field, where it is easier for us to add  
9 women athletes and find places to do it and give  
10 them a broad variety of opportunities to compete.

11                   We have had to cut our men's  
12 team down so that if we have one injury, it  
13 decimates our men's team and could jeopardize their  
14 chances even to be competitive if they have one  
15 injury; whereas we're stacked six and seven deep in  
16 most of our women. And at the same time, our women  
17 have thrived under that environment, and it has been  
18 one of the greatest things that's ever happened to  
19 us in terms of opportunities for our women. We  
20 still don't fill all of our women's scholarships.

21                   MS. BRADLEY-DOPPES: Rick makes  
22 some great points. At Michigan people could say  
23 that it was easy to do. As someone who led the  
24 charge in that, I can tell you it was not easy to

1 do. We were fortunate that our men's football  
2 program carried a squad size that was fairly small.  
3 There was no roster management for men's football.  
4 It was what the coaches felt comfortable with. So  
5 our men's football team carried 117 in comparison to  
6 some other football programs in the Big 10 at that  
7 time that were at 147, 152.

8 Michigan also has the sports of  
9 wrestling, ice hockey, that are high participation  
10 numbers. Those sports also equaled into the  
11 equation.

12 Capping programs are difficult.  
13 I believe that in making the assumption that sports  
14 have to have X amount, because that's what the  
15 administration says, is not the right way to go  
16 about this, but rather, there's a balancing, you  
17 know. I think we need to remember that Title IX is  
18 federal law. It's civil rights law, and right now  
19 we're only at 42 percent, so we're not even there  
20 yet.

21 Be that as it may, as an  
22 institution, as an athletic department, if this is  
23 important to you, and that's all I ask, if this is  
24 important to you, if this is something you want to

1     strive for, then it's something that should be  
2     talked about.

3                     At UNC Wilmington right now  
4     there is constant discussion between our coaches,  
5     you know, we're building some great programs. Men's  
6     and women's basketball, men's and women's golf,  
7     going to be regionally and nationally recognized.  
8     With that, everybody understands that this is  
9     something that we're taking pride in. So there is a  
10    balance.

11                    There are times where coaches  
12    will say, "I can carry more. I want to carry more."  
13    As an administrator we put more money into media  
14    guides, into marketing promotions, into travel  
15    budgets, so the sports look the same.

16                    I would argue that history, lack  
17    of participation, is not our women's athletes'  
18    problem. Our responsibility is to give them the  
19    opportunity, to present the opportunity, let them  
20    take advantage of it.

21                    Athletics changed my life  
22    forever. I just want women to have the same effect,  
23    same chance that I had.

24                    MR. LELAND: Okay. Donna?

1 MS. deVARONA: I was going to  
2 ask you, and I think you answered this question, but  
3 you might go into more detail. The kind of cuts you  
4 had to make to find the funding to support the  
5 programs, and if you had any space limitations, how  
6 you accommodated those differences, as well.

7 MS. BRADLEY-DOPPES: We  
8 certainly had space limitations. If you look at the  
9 overall success of the men's and women's swimming  
10 program, diving program at Michigan, we have Olympic  
11 diving coach Jon Urbanchek, which, you know, that  
12 facility has always had complete use to itself.  
13 We're brought in women's water polo and said at the  
14 onset that this is a varsity program, and it is  
15 important, and that we will share the facility. It  
16 was a decision that was made when we entered the  
17 sport.

18 Where we tightened our belt? We  
19 looked at everything. This gender equity test for  
20 us looked at providing free coffee at work. We  
21 looked at the number of people that went on boat  
22 trips. We looked at our travel squad sizes. We  
23 looked at how much money we were spending on  
24 equipment, be it part of a Nike agreement or not.

1 We looked across the board on cost and expenditure  
2 per student-athlete, gender neutral, and many of  
3 those things.

4 Did we have to have a 200-page  
5 football media guide? We're not having any problem  
6 getting 111,000 people into the stadium. I think it  
7 was something that we could cut back on.

8 And there was a global look on  
9 what we could do, what we were willing to do. As  
10 Debbie Yow said earlier, we're all in this field.  
11 It's very competitive. But we also looked at, was  
12 it important to have a pianist playing for official  
13 visits on a Friday night? Probably not. Probably  
14 not. So those cuts, you know, some hurt us, some  
15 did not, but it was something that it took us  
16 several years to go through the process.

17 I am proud of the leadership  
18 that President Deuderstadt and our athletic  
19 directors took in this, because it was really a team  
20 effort. But we considered everything. Nothing was  
21 sacred.

22 MR. LELAND: Brian then Cary.

23 MR. JONES: Ms. Bradley-Doppes  
24 and Mr. Fehlberg both have made mention of prong

1 three, the interest and ability prong. And, you  
2 know, speaking as someone from the Department of  
3 Education, in particular whose role is in part to  
4 work with OCR, just sort of advise OCR on sort of  
5 the law as it relates to these compliance issues,  
6 I'm curious whether as athletic directors, and this  
7 is really a question for all of you, whether it's  
8 your practical working sense that as OCR applies  
9 prong three, that you have a clear sense of how it  
10 is that that prong is to be applied, and in  
11 particular, what I'm trying to get at is whether  
12 there is clear direction for institutions about, you  
13 know, what the appropriate population to measure is,  
14 for example. You know, courts have really looked  
15 with a jaundiced eye at an institution's simply  
16 measuring the interest and ability as it stands on  
17 its campus on a given day. So sort of acknowledging  
18 the sense that, in some ways, interest and ability  
19 could be a reflection of, you know, existing  
20 opportunity, and if that's, you know, a result of a  
21 past discrimination, we don't want to sort of freeze  
22 that landscape into place.

23 So if that's off the table, if  
24 just measuring interest and ability of the current



1 population is off the table, I mean, what is the  
2 appropriate population? Ms. Bradley-Doppes, you  
3 talked about some of the complexity of modern, you  
4 know, populations and that sort of thing. So in  
5 light of those two things, I mean, do you really  
6 have a sense in a practical way that you know how to  
7 apply prong three, or is there room for some  
8 clarification or some, you know, some adjustment of  
9 the standard as far as the department is concerned?

10 MR. FEHLBERG: At BYU, the  
11 initial process for the interests and abilities  
12 testing, let me just say first, Brian, that we don't  
13 get any comfort from the Office of Civil Rights  
14 regional office -- in our case it was Denver -- but  
15 we got no comfort that prong three really was going  
16 to be viewed as anything more than a way station.  
17 It was very clear to us that we had to get to the  
18 safe harbor or we were going to be under continual  
19 pressure.

20 In the process of doing our  
21 interests and abilities work, our initial starting  
22 point was all of those people who applied at BYU.  
23 Now, this happened, the initial pool that we were  
24 looking at had taken the ACT test in the late '80s

1 and early '90s, and so clearly those people had  
2 taken the test prior to a time when the  
3 proportionality had received the kind of exposure  
4 that it had had during the mid-'90s, and so we doubt  
5 that it could have affected the kind of -- the way  
6 that a student would have answered those questions.  
7 But that was our initial work.

8                                 Then we went and did extensive  
9 surveys of all of our student populations. We  
10 picked two survey groups, one of our student  
11 population at large, and the second of all of those  
12 who had competed in high school athletics and who  
13 had lettered, and therefore, we defined that as sort  
14 of the abilities group.

15                                 In addition to that, then there  
16 were other focus groups that were done on campus.  
17 All of the polling was done by third parties outside  
18 the university, all the data was collected, and the  
19 methodology was set up by the department of  
20 institutional studies.

21                                 It was submitted to the Office  
22 of Civil Rights. They reviewed it. They reviewed  
23 all of the survey forms, and everything was approved  
24 before we went forward. And then it was to go on a

1 rolling three-year basis, so that we could take into  
2 account the changing landscape as more and more  
3 opportunities came to us and changed the demographic  
4 from the bottom up.

5 And that was really the plan  
6 until, of course, I believe it was the Cantu letter  
7 that sort of changed all of that.

8 MS. BRADLEY-DOPPES: I think I  
9 speak for all athletic directors that talk about the  
10 challenges that we face regarding the changing  
11 demographics on our campuses, the shift from male  
12 dominant population now to, many of our campuses,  
13 female dominant populations.

14 I would only ask that through  
15 either better clarification or consistent  
16 interpretation through OCR, that we look at both  
17 populations very carefully, and the makeup of those  
18 populations. Because I think with that, the numbers  
19 are important, but I think it's also very important  
20 that we let other institutions know, look to see.  
21 At UNCW, 20 percent of our kids live on campus.  
22 That's the fact. So it does have an effect on the  
23 interest.

24 With the return of many women to

1 the work force and single working mothers, they are  
2 women that count in the demographics. They, because  
3 of necessity, may not be potential athletes. And I  
4 think that clarification, it's not that difficult.

5 MR. LELAND: Okay. Cary, Bob,  
6 and then President Spanier.

7 MS. GROTH: Peg, you talked a  
8 little bit about the antitrust exemption, and, you  
9 know, the arms race we're all facing as athletic  
10 directors is unbelievable, and I recall a Division  
11 1-A athletic directors meetings last February, one  
12 of our colleagues got up and suggested that we all  
13 need to take a better look at what we're spending  
14 our money on and what priorities we have as athletic  
15 directors, and do we need to spend the night before  
16 a game at a hotel, and so on and so forth. And it's  
17 an issue we all deal with on a daily basis. It  
18 doesn't matter if you're a Division 1-A school or if  
19 you're a Division 3 school.

20 But you mentioned the antitrust  
21 exemption, and I know Debbie mentioned it just a  
22 little while ago, and it was in the Knight  
23 Commission Report and they suggested that we pursue  
24 and antitrust exemption for coaches' salaries. They

1 also said we must bring the facilities and arms race  
2 to an end. Is this possible? And what are your  
3 thoughts, Rick and Peg and anyone else from the  
4 panel, but is this -- is this attainable, and what  
5 difference will it --

6 MR. TAYLOR: No. Absolutely  
7 not. You know, it's a dream. I mean, I fight it as  
8 much -- I mean, as a private school, and in the Big  
9 Ten, our coaches' salaries are usually tenth or  
10 eleventh out of eleven right across the board. My  
11 salary is tenth or eleventh right across the board.  
12 We fight it, but it's not going to stop.

13 And you take it one step  
14 further. Can we have an antitrust exemption for  
15 salaries on faculty, presidents? No. You can't  
16 have it. Okay. It's never-never land to think  
17 about that.

18 MS. BRADLEY-DOPPES: I don't  
19 know if I agree that it's never-never land. I think  
20 it's a challenge that we all face. But I think the  
21 discussion must take place. I applaud the Knight  
22 Commission for thinking outside the box.

23 The arms race is out of  
24 control. It makes us all make decisions that we

1 regret. Maybe not the moment we make it, but five  
2 years from now, six years from now. When is it  
3 going to stop? All we're asking for is discussion.  
4 Why? Why not? Why can't we slow things down? What  
5 are we doing?

6 MR. TAYLOR: I should just like  
7 to point out some of the hypocrisy of the Knight  
8 Commission in that the president of the University  
9 of Florida, I believe, was on the Knight Commission,  
10 and they're the ones that are paying the coach  
11 \$2 million. So let's get real, Knight Commission.

12 MR. LELAND: Okay. Bob?

13 MR. SLIVE: My question is  
14 really along the same lines as Cary's. I think many  
15 of us in the business, and I've been involved as a  
16 director of athletics for almost 25 years, believe  
17 that we're headed for a financial train wreck down  
18 the road. And it may be due to the arms race. It  
19 may be due to increased tuition that's happening at  
20 exorbitant rates all over the country. And I do  
21 think Rick's comments are somewhat on target, with  
22 all due respect, Peggy. There are a few  
23 institutions around the country that are quite  
24 different than the rest, but most of us are driven

1 by football revenues, but there are few that are in  
2 a class by themselves, and Michigan happens to be  
3 one of them. It does solve a lot of problems.

4           As we look prospectively, and as  
5 -- if we can accept my hypothetical position, that  
6 we are going to have very significant broad-based  
7 financial difficulties in intercollegiate athletics  
8 in the years ahead. We've talked about in the past  
9 how Title IX may or may not have an influence on  
10 discontinued programs. I think there's a time  
11 coming when many, many institutions will be  
12 assessing whether or not they continue to offer the  
13 kind of breadth of program, if they can continue to  
14 afford the kind of breadth of program that we have  
15 in the past.

16           As institutions consider those  
17 decisions about dropping sports, it would be my  
18 belief, I think, that Title IX might have an awful  
19 lot to say about how those program reductions are  
20 managed. It would be nice to think we could all add  
21 programs to make that happen, but more realistically  
22 there may come a time when that's necessary.

23           I had an athletics director talk  
24 with me recently about the fact that he had an

1 80-year-old swimming facility that was at the point  
2 of nonserviceability, and no tennis facilities,  
3 indoors or outdoors, for that institution's tennis.  
4 He said, you know, normally I think all of my staff  
5 would gravitate around a decision to discontinue  
6 men's and women's swimming and men's and women's  
7 tennis, because financially we just can't afford it.  
8 It isn't a statement of anything other than we've  
9 got to do without some things, and it's going to  
10 cost us 15 to 20 million dollars to build a new  
11 swimming facility, and whatever to build a new  
12 tennis facility. That makes sense to this person  
13 and to his staff.

14 Title IX as it's currently  
15 interpreted, I believe, would challenge that, as an  
16 administrative procedure if that institution wasn't  
17 fully in compliance on the front side and fully in  
18 compliance on the back side. This is for all of  
19 you. What direction do you give to us as people  
20 that are going to try and suggest how we operate  
21 prospectively in the decades ahead if we can all  
22 grant that financial difficulties are on the  
23 horizon, and current practice won't allow  
24 administrative -- administrations on campus to have



1 broad latitude to solve each institutions's own  
2 problems.

3 MS. BRADLEY-DOPPES: I think  
4 it's ironic that we start off the conversation  
5 saying that there is an arms race, and we're not  
6 going to stop it, and we can't stop it, and that  
7 it's crazy to even think about stopping it, and  
8 we're going to a train wreck. But now that we've  
9 accepted those first two assumptions, then how can  
10 we drop our opportunity and not accept any  
11 responsibility?

12 I think our challenge on the  
13 front end is to say, those two assumptions aren't  
14 okay, and I think college and university presidents,  
15 faculty, need to look to see if, in fact, athletics  
16 is representing their university mission.

17 MR. SLIVE: I probably should  
18 have better expressed that I think regardless of  
19 broad-based reductions, we're still headed for  
20 problems down the road because of some of the things  
21 we rely on for revenue.

22 MR. LELAND: Anyone else want to  
23 respond to that? Rondo?

24 MR. FEHLBERG: If we take as a

1 given the fact that over the last 20 or 30 years  
2 sports has become a secular religion in our country,  
3 and the universities, many of them, have become the  
4 shrines of that religion, that contributes then to  
5 the arms race that you talk about, and it makes it  
6 very hard for people to make courageous decisions,  
7 because you, as athletic directors, on that side of  
8 the panel would love to have someone else step up  
9 and be the brave one so that you then could manage  
10 in a fiscally responsible way. But until they do,  
11 you're going to have to keep chugging ahead, and  
12 that's the problem. It's a problem that I think  
13 requires extraordinary encourage, and someone has to  
14 step up.

15                                   You have an opportunity as a  
16 panel to make some recommendations that can take the  
17 first step through the Department of Education.  
18 That won't be easy. But if the recommendations come  
19 in a way that give universities enough ability to  
20 say, okay, courage, creativity, outside-the-box  
21 thinking, and when I say courage, I mean courage in  
22 managing opportunities for women without destroying  
23 dreams of men. That's what I mean by courage. And  
24 if you can create even some encouraging words that

1 allow administrators to say, okay, I'm not going to  
2 be pilloried by the 15 publics that I answer to by  
3 taking a courageous decision. That's -- right now,  
4 as an athletic director, I just felt so lonely, and  
5 when I went to my colleagues as athletic directors,  
6 they said, yeah, it's lonely. But that was about as  
7 far as we get into it, because we all know that  
8 we're going to go right out there and try to find  
9 the best coach and beat that guy's brains out  
10 tomorrow, and we'll pay whatever we have to do to  
11 get it.

12 MR. LELAND: Okay. Colonel  
13 Walker?

14 COLONEL WALKER: I think that  
15 was a perfect illustration of some of the boxes that  
16 you're put into, because no matter if that athletic  
17 director had to eliminate the tennis and swimming,  
18 no matter how honorable his or her intentions, just  
19 because of facility problems, if the  
20 underrepresented gender was one of the teams  
21 eliminated, and they were challenged in court,  
22 there's absolutely no doubt that they would win, and  
23 that puts institutions in a tremendous difficulty  
24 and financial hardships when they have to look at

1 that as the reason for having to build the  
2 multimillion-dollar facilities that they really  
3 can't afford at the time.

4 MS. BRADLEY-DOPPES: I do think  
5 it's important that we also consider the arms race  
6 and our competitive nature. We want to be  
7 competitive in broad-based, many sports, nationally  
8 competitive in every sport. If finances is really  
9 an issue, then I think gender-neutral tiering has to  
10 be considered. We're going to have these programs,  
11 and we're going to be competitive on a regional  
12 level, and that's our expectation, and this is how  
13 much money we're going to spend.

14 But I think part of more is not  
15 enough, and we're trying to create something that is  
16 just out of everyone's ability. We don't have the  
17 money. We don't have the talent. We're spending  
18 money to send teams across the country to get their  
19 brains beat in in the sake of what? So I think --

20 MR. LELAND: Thank you, Peg.  
21 President Spanier, and then we'll have one more from  
22 Donna, and we'll be done with this segment. Thank  
23 you guys for your patience.

24 MR. SPANIER: Well, I think this

1 discussion highlights a dilemma that everyone in  
2 this room shares, in that we absolutely must do what  
3 is right with regard to Title IX, and we should do  
4 that without any consideration of finances. Yet as  
5 Bob pointed out, there is a train wreck ahead, and  
6 any of the ADs or presidents would understand that.  
7 I mean, that is quite factual. And I say that as a  
8 person who owns the second biggest stadium in the  
9 country, which is full every Saturday, and I can  
10 attest to the train wreck that's ahead for all of  
11 us.

12 Antitrust exemption is probably  
13 not very realistic. I was just one of the lead  
14 witnesses in the big NCAA antitrust case, because I  
15 was the chairman of the Division 1 board of  
16 directors at the time, and it's hard to see that as  
17 a way out of this, as well.

18 I have a different question  
19 altogether for Colonel Walker. As coincidence would  
20 have it, before you were athletic director at the  
21 Air Force Academy, I led the NCAA certification  
22 review of the Academy, and I would like to get your  
23 view on an issue that we speculated about then,  
24 which is about eight years ago, which I suspect is a

1 more relevant consideration now.

2                   As with all NCAA certification  
3 reviews, we had a gender equity specialist on the  
4 team of four reviewers. It was very interesting  
5 about the review of the Air Force, an experience  
6 none of us had really had with other institutions,  
7 is that the Air Force Academy was actually way ahead  
8 of the curve on dealing with gender equity issues,  
9 because I can't remember the exact percentages at  
10 the time, but something like 15 percent of the  
11 students were women, yet virtually all the women at  
12 the Air Force Academy were on athletic teams by  
13 choice. There seemed to be a high correlation  
14 between interest in military service and  
15 participation in intercollegiate athletics, so it  
16 really was a model program in that respect, and that  
17 was not an issue in the certification.

18                   But there was speculation at the  
19 time that the percentage of women at the Air Force  
20 Academy would be increasing steadily over the next  
21 decade, and you could then be put in that same zone  
22 that other universities already were with something  
23 of an imbalance, and that's an issue that's  
24 tangentially come up, that in all of our

1 institutions, we are shooting at a moving target  
2 here as the percentage of women in the student body  
3 increases. I'm guessing that it's increasing more  
4 rapidly at your institution than any other, but I  
5 want to ask you about that, and see if that's an  
6 issue that you're dealing with right now.

7 COLONEL WALKER: Sir, it is  
8 increasing but not as rapidly as you may think.  
9 Like I said, our percentage of women right now is  
10 approximately 16 percent, and that fluctuates  
11 anywhere from 14 to 17, I think, in recent years,  
12 and it's really not based on any admissions caps or  
13 anything like that. That's based on just our -- the  
14 applications that we get to the Academy, and how we  
15 bring them.

16 Actually, I think and I don't  
17 want to speak out of turn, but I believe Army-Navy  
18 are about the same as us, as well, and so that -- I  
19 don't -- and I'm just guessing. I don't really see  
20 that as moving up too dramatically. Obviously, I'm  
21 not in admissions, so I feel you could get better  
22 data from them.

23 But as far as our compliance  
24 issues go, we're still well ahead of the game, as

1 you said, well ahead of the curve. About 24 percent  
2 of our athletes are females. As I stated earlier,  
3 38 percent, approximately, of our female cadets are  
4 intercollegiate athletes, and that will vary from  
5 time to time, and from times throughout the year, as  
6 well, you know, when you're looking at rosters and  
7 later in the year when females will quit their  
8 sports, or injuries take them off, or for academic  
9 reasons, whatever the case may be, that could vary.

10 But for the most part, we have a  
11 very high percentage, in that 38 percent range, of  
12 cadet-athletes that are -- of the female cadets that  
13 are athletes.

14 I think part of it may be the  
15 draw that we have at the Academy, and the physical  
16 rigor that we put all cadets through throughout  
17 their time there, just beginning with basic cadet  
18 training when they get there in the summer, and we  
19 have a robust intramural program, club program, and  
20 physical fitness program. We emphasize the athletic  
21 pillar of the Academy constantly throughout their  
22 cadet career, and obviously intercollegiate  
23 athletics is a tremendous portion of that and plays  
24 into that perfectly in making partly that cadet



1 career into an intercollegiate cadet career fairly  
2 easily.

3 MR. LELAND: Okay. Donna last.

4 MS. deVARONA: Yeah, I have a  
5 two-part question.

6 MR. LELAND: Well, ask two  
7 questions.

8 MS. deVARONA: Well, the  
9 question is, implicit in some of the messages I'm  
10 hearing is that somehow we're valuing the male sport  
11 experience from the female sport experience. Peggy,  
12 I was glad to hear you talk about neutral, and we're  
13 hearing about the train wreck that we're headed to,  
14 and we're hearing about minor sports like tennis and  
15 swimming being cut regardless of gender because of  
16 this train wreck we're headed to.

17 If proportionality was taken  
18 away as a prong, is it possible that we could see an  
19 environment where we see football players and  
20 basketball players and we see a continuing  
21 diminishment of all Olympic sports on the college  
22 campuses because of this arms race?

23 MR. FEHLBERG: At BYU, I doubt  
24 that would happen. It's so much a part of what BYU

1 is all about that I think support for women's  
2 athletics is there, it's permanent, and it would  
3 continue, as other panelists have said.

4                   Would it cause some unusual  
5 things to happen if we completely eliminated, not  
6 just proportionality, but perhaps even turned away  
7 altogether and said, okay, universities, go do your  
8 thing? I think there may be some problems that  
9 would surface in some places, but I think at BYU,  
10 others have said the genie is out of the bottle  
11 you'll never get it back, and I agree.

12                   I believe we believe in women's  
13 athletics far too strongly. I believe we can't deny  
14 the engines that run the NCAA, which are men's  
15 football and men's basketball, by and large. There  
16 are certain exceptions to that, but there are a lot  
17 of deficit programs also in those same sports. But  
18 I believe that women's athletics is here to stay,  
19 and gender equity is here to stay across the board  
20 in this country. I just -- I don't see anything on  
21 our campus that would ever take us any other  
22 direction.

23                   MS. deVARONA: Thank you.

24                   MR. LELAND: Rick?

1                   MR. TAYLOR: I yield to the  
2 woman from Wilmington.

3                   MS. BRADLEY-DOPPES: My concern  
4 is if the proportionality prong is removed, that  
5 there would be a decrease in women's opportunities.  
6 Even the first panelist this morning, you would see,  
7 if there were no roster caps, if there were no  
8 accountability proportionality, the reality is I  
9 think there would be a decrease in women's  
10 opportunities.

11                   COLONEL WALKER: Yeah, I agree.  
12 I think that too many people would take the easy way  
13 out if there was nothing tied to some level of  
14 participation and proportionality, but I think also  
15 that what Rondo said is very true. We are so  
16 ingrained in women's athletics at this point, and we  
17 all go back to 1972 and 2002, and it may not have  
18 been fast enough, but look at the differences and  
19 the number of teams and the number of participations  
20 and the recruiting and the television and things  
21 like that, and the change has been unbelievable.

22                   I think basically, we need to  
23 have some incentive there for the participation to  
24 continue. I just don't know that that incentive is

1 participation tied to enrollment.

2 MR. LELAND: Okay. Thank you.  
3 Again, a fabulous presentation. We do appreciate  
4 your time and your willingness to answer all of our  
5 questions. You've helped move us along. We'll now  
6 take a 15-minute break and reconvene at 11:15,  
7 thank you, with our next panelists. 12:15. I'm  
8 still on California time. 12:15. Sorry.

9 (Recess taken.)

10 MR. LELAND: Hello. If we could  
11 begin moving towards your tables, please. Hello,  
12 hello. If our next panelists could please move to  
13 the front, and the commissioners please move to  
14 their seats. I think the panelists will probably  
15 see this is good news, but we will move through  
16 our -- have the invited presentation, limit them to  
17 10 minutes, and then we will have 10 or 15 minutes  
18 of questioning at the end. I apologize. I've  
19 neglected to change my watch to Mountain Time, so I  
20 was sitting here thinking we were a half-hour ahead,  
21 and all of my commissioners knew we were a half-hour  
22 behind, so I apologize. The Commission's has been a  
23 little out of control, anyway. Just kidding. So  
24 let's move ahead now.

1 Cynthia?

2 MS. COOPER: Brian Snow, as the  
3 general counsel to the Board of Governors of the  
4 Colorado State University system, Brian Snow is the  
5 principal advisor and spokesman on all legal matters  
6 concerning the university, the board, and other  
7 entities in the Colorado State University system,  
8 including the Ft. Lewis College and the University  
9 of Southern Colorado. Brian's duties include broad  
10 coverage of substantive law application to  
11 governance and operation of institutions of higher  
12 education.

13 In addition, Brian is an  
14 assistant professor responsible for teaching a  
15 graduate course in higher education law. Brian is a  
16 member of the Program Committee for the National  
17 Association of College and University Attorneys.  
18 Brian received his juris doctorate from Duke  
19 University School of Law. Thank you.

20 MR. SNOW: Thank you. I  
21 couldn't ask to be introduced by someone I admire  
22 any more than you.

23 MS. COOPER: Thank you.

24 MR. SNOW: And I paid a lot of

1 money for your autograph. It indeed is an honor.

2 With respect to Title IX, I have  
3 several comments I want to make today. The time  
4 limitation is going to make -- require me to limit  
5 it to two or three.

6 I want to first state, as others  
7 have stated, that the comments I make are my own,  
8 and are not to be -- shouldn't be attributed  
9 necessarily to Colorado State University and the  
10 Board of Governors which I serve, or the Attorney  
11 General of the State Colorado, with which I am  
12 affiliated.

13 And with that done, I want to --  
14 I want to point out a couple things, a little  
15 different about Title IX that have been the subject  
16 of some discussion, and I have some different  
17 perspectives.

18 First thing I want to advise you  
19 is I do have "Title IX" on my automobile license  
20 plates. And the reason I do this is twofold:  
21 Number one, I want to evidence my commitment to  
22 Title IX, to the prohibition of discrimination based  
23 on sex. And particularly in athletics, it's been --  
24 it has had a stormy and turbulent and unhappy

1 history with respect to particularly its treatment  
2 of women, and that's something we should never  
3 forget.

4 I mean, I could -- if I had  
5 time, I could list all of the indignities, the  
6 depreciation, the problems that women have faced in  
7 athletics throughout the history of athletics in  
8 this country, and I only need to start with road  
9 trips and sandwiches made out of potato chips and  
10 peanut butter and driving old vans while our male  
11 counterparts are out there flying in the friendly  
12 skies. You know, it's been -- it's been tragic, and  
13 we should never, ever forget that when we talk about  
14 Title IX.

15 Title IX is much broader than  
16 athletics. It's unfortunate that it has not been  
17 used in more effective ways to address the problems  
18 of women throughout educational programs that are  
19 federally subsidized in this country. It is  
20 unfortunate. Athletics should be one of the smaller  
21 issues that's concerned. It should deal with  
22 programs in universities and high schools. It  
23 should deal with employees, a lot of things.

24 Now, having said that, and

1     having affirmed my commitment to the statute and  
2     Title IX, I do want to point out some perspectives  
3     that I have with respect to the regulations, the  
4     guidelines, the directives, and so forth. Too  
5     often, it is my view, and it's been expressed by  
6     others today, the OCR's positions have been done by  
7     Dear Colleague letters and by clarifications,  
8     unitary directions.

9                     In our country, usually laws,  
10    regulations are -- ample notice is given to all  
11    people, those who may be deeply affected, and  
12    they're given an opportunity to comment, to debate,  
13    to dissent, and later to find out what comments were  
14    made and what issues were raised.

15                    I think that in the future, it's  
16    very important that any guidelines that are picked  
17    up by the courts, and treated as if it were law by  
18    promulgations by the OCR, be accorded the dignity  
19    and formality that is accorded all regulations, and  
20    that they be adopted in accordance with formal  
21    procedures. I think that otherwise, it causes  
22    people to lose faith in the process, to feel  
23    cheated, to feel that they have been ignored. They  
24    haven't had a voice.



1                   Second point I want to make, and  
2 I only have two or three, I want to talk about the  
3 first participation test. You know, it's  
4 interesting that this is what it's come to, that  
5 we're talking about participation tests. We've got  
6 so many problems in athletics that all we're talking  
7 about is participation. I mean -- I mean, think  
8 about gym time; think about medical facilities;  
9 think about coaches. How many men's teams have  
10 female coaches? How many women's teams have women  
11 coaches? You know, I mean, this is of the climate  
12 we must look at the big picture in Title IX, and we  
13 tend to get narrowed in looking at substantial  
14 proportionality, or part one, part two, part three.

15                   As long as I'm talking about  
16 that, though, I might as well talk about the  
17 three-part test. Number one, first prong -- and  
18 I'll call it "prongs" instead of "parts." First  
19 prong has a problem. Its reference points is the  
20 enrollment of the institution when we're talking  
21 about colleges and universities. How did they come  
22 up with that? Why do they make the reference, the  
23 people in the institutions? I've always wondered  
24 the history of that. Who sat down and said, you

1 know, "The way we're going to devise this, we're  
2 going to look at the enrollment"? Does the  
3 enrollment really reflect very much except people  
4 want to go to school there? Does it reflect an  
5 interest and ability? Anything? I mean, think  
6 about it.

7                   5 percent of the student body  
8 generally is -- are people, only 5 percent  
9 participate in intercollegiate athletics. 95  
10 percent of the students are spectators, or they're  
11 busy, like my brother, lettering in English. He  
12 actually has a letter sweater from high school that  
13 has a big letter on it and it says "English," which  
14 you would never wear to school, despite my  
15 encouragement of him to do so, because it is not  
16 cool. We love our athletes.

17                   So I have trouble, and I'm a  
18 lawyer because I don't have any mathematical skills,  
19 and I have trouble, you know, making the logical  
20 jump to say why is the enrollment and why is the  
21 proportion that men and women represent in that  
22 compare to their participation in athletics? Why  
23 would you do that? What's the data that supports  
24 that? I don't know. I need help.

1                   Secondly, two -- the second part  
2 test and the third part test. Heard a lot about it  
3 today. I sit there and shake my head. Let me tell  
4 you what my concern is with those two tests. There  
5 is no question -- I agree with the statement that's  
6 made by Ms. Yow. The only test is No. 1. And  
7 here's why. My peers are very clever at using two  
8 and three as a way of not complying with substantial  
9 proportionality. It's a way to defer and delay what  
10 you say, maybe, and maybe not all people do this,  
11 but you can say, "I'm going to use prong three, and  
12 I'm going to engage in an expansion of programs,  
13 when it's necessary, in two or three years." Prong  
14 three, you say, "When somebody comes in here and  
15 says they're interested and able, I'll consider  
16 it." No, no, I won't do just that. I will wait  
17 until somebody says they're going to sue me. Oh,  
18 no, no, I'm going to wait until somebody sues me,  
19 and then I'm going to say, I will accommodate your  
20 interests and abilities. It's a prong that lends  
21 itself, unfortunately, to deferral and to delay in  
22 accomplishing the goals of Title IX.

23                   I am a firm believer in  
24 Title IX. I don't like goals that can be used as

1 mechanisms for avoidance of compliance.

2                   The other thing I want to talk  
3 about is the -- is the two factors that are most  
4 often used by the Office of Civil Rights in  
5 evaluating a program. They don't care anymore  
6 whether you're in compliance with participation  
7 proportionality. You've got to be in compliance  
8 with participation proportionality and financial  
9 aid. You've got to meet that formula, too.

10                   Our affirmative action officer,  
11 who's also our Title IX coordinator, recently  
12 reviewed the Chronicle on Higher Education's report  
13 of this. Looked at all the Division 1-A schools,  
14 because that's what we are. We didn't go to other  
15 divisions. We examined every single Division 1-A  
16 school in the country and said, how many of them  
17 comply with both participation proportionality and  
18 financial aid proportionality? How many do you  
19 think we got? We got one. We got one school. I'm  
20 not even going to name it. And they have worked  
21 very hard.

22                   Now, to make it happen they had  
23 to not give all the male scholarships that are  
24 permitted, and that's been brought out here by the

1 NCAA. So to some extent the males took a little bit  
2 of a hit. But I commend that institution.

3 We have had every mathematical  
4 expert working on the ability to comply with both  
5 proportionality and participation and financial aid,  
6 and we've concluded that it's near logically  
7 impossible. We have nobody that can do that.

8 Finally, I want to make a  
9 recommendation. I really believe that the ultimate  
10 test should be one of discrimination. That's what  
11 it's all about. Let's call it what it is. Let's  
12 have a test that really puts the onus on an  
13 institution not to discriminate, and let's hold them  
14 accountable for discrimination. And by that, I mean  
15 that we should act -- make institutions, if somebody  
16 says, "I've been treated unequally," that should put  
17 the burden on the institution to prove it is a valid  
18 justification for that activity. And otherwise, it  
19 will be liable for that activity. That's something  
20 that's going to scare a lot of institutions a lot  
21 more than the proportionality test.

22 Thank you very much.

23 MS. COOPER: Thank you. George  
24 Shur has been in the position of general counsel at

1 Northern Illinois University for nearly 20 years.  
2 Prior to joining NIU, George was a private -- was in  
3 private practice in Portland, Maine. He has been  
4 involved in higher education law for almost his  
5 entire career. George received his undergraduate  
6 degree from Colby College, and he received his juris  
7 doctorate from Boston College of Law. George is a  
8 member and former president of the National  
9 Association of College and University Attorneys.

10 George?

11 MR. SHUR: Thank you. I would  
12 begin by expressing my thanks for being invited here  
13 today, and also to repeat the now familiar caveat  
14 that I'm here representing my own views and not  
15 necessarily the views of Northern Illinois  
16 University or its administration or staff.

17 When I was in high school, half  
18 the members of our girls basketball team were not  
19 even allowed to shoot. Now, as a season ticket  
20 holder, I watch our NIU Huskies women's basketball  
21 program provide as much action and excitement as I  
22 can possibly handle.

23 The startling changes over the  
24 years are due in large measure to the spirit of

1 Title IX. It has made a difference in not only the  
2 way women's athletes and athletics are viewed, but  
3 also the way women are treated in general and how  
4 they are viewed in our society. The over 2 million  
5 young women who are now participating in high school  
6 athletics, and a similar boom at the intercollegiate  
7 level, convince me that Title IX works.

8 I have worked closely with the  
9 Office for Civil Rights staff on many issues and for  
10 many years. You have a dedicated and overworked  
11 group of folks there, but often I sense they are  
12 restrained in their exercise of common sense by  
13 being forced to count shower heads and to do  
14 everything on the basis of numbers, by the  
15 enforcement regulations rather than the law itself,  
16 and occasionally by someone feeling that he or she  
17 knows more about higher education administration  
18 than does the entire university hierarchy.

19 Just because it has been  
20 effective doesn't mean that Title IX has not been  
21 without problems. To me, one persistent problem has  
22 been what appears to be the creation of a  
23 presumption that anything, anything that conceivably  
24 remotely adversely affects women, is a violation of

1 law or OCR interpretations. And to be fair, we  
2 often hear the same presumptive argument of reverse  
3 discrimination from proponents of men's sports,  
4 which have been eliminated due to financial or  
5 programmatic considerations.

6                   Sometimes decisions designed to  
7 provide more or better opportunities for women are  
8 deemed discriminatory. As an example, about ten  
9 years ago NIU decided that field hockey was no  
10 longer a viable program. There are many reasons for  
11 that. Our then conference had no field hockey  
12 program. Only 10 or 12 Illinois high schools even  
13 offered the sport. We were forced to recruit  
14 student-athletes from the East Coast and from  
15 Europe, neither, obviously, remotely part of our  
16 service region. There were few competition  
17 opportunities within that region. We began  
18 defaulting matches because we didn't have enough  
19 athletes. We couldn't recruit athletes, even though  
20 we tried.

21                   At the same time, girls soccer  
22 was booming in Illinois, and as was our women's club  
23 team at NIU. They clamored for the recognition of  
24 their soccer program, and after months of study it



1 was decided to replace the moribund field hockey  
2 program with a soccer program, a decision which  
3 incidentally immediately increased opportunities for  
4 women athletes.

5 Under Illinois law, we're not  
6 allowed to use state funds for intercollegiate  
7 athletics, and like most athletic programs, our  
8 offerings are funded in large part by student fees.  
9 Therefore, there are finite resources, and we have  
10 to make programmatic choices. We did. We chose  
11 soccer over field hockey.

12 At the final athletic board  
13 meeting, two field hockey players appeared before  
14 the athletic board, and almost 20 soccer players.  
15 Soon thereafter, because one parent of one field  
16 hockey player sent a letter, we began over four  
17 years of investigations, negotiations,  
18 frustrations. I suspect those frustrations were  
19 mutual with the Office of Civil Rights.

20 One letter costing less than 30  
21 cents to mail taxed the resources of a state and  
22 federal agency for over four years. And we also  
23 recognize that there are a lot of institutions out  
24 there who have not yet received such a letter, or

1     against whom such a letter has not been filed. Does  
2     that mean they are in compliance simply because no  
3     one has complained?

4                     I was troubled by the immediate  
5     OCR response, an assumption that Northern's decision  
6     had been discriminatory. The neutral reasons for  
7     our decision were deemed irrelevant because we could  
8     not at that time, at least in OCR's opinion, meet  
9     any of the three prongs.

10                    The simple elimination of a  
11     dying program, we were told, made us ineligible for  
12     the second prong. Our Division 1-A program made it  
13     difficult, if not impossible, to meet prong one, and  
14     we had already decided not to eliminate any men's  
15     programs. OCR would not agree to our using prong  
16     three unless we either reinstated field hockey or  
17     created a new and expensive program in women's  
18     track, a demand made even before we conducted an  
19     interest survey.

20                    For years I've been involved  
21     with the enforcement of Title VI, Title VII, and  
22     Title IX. In all but Title IX, there is a deference  
23     paid to programmatic decisions made by college  
24     administrations. For example, a school might decide

1 to eliminate an academic program with predominantly  
2 female faculty and a predominantly female student  
3 body. This decision might be based on lack of  
4 finances, lack of student interest, state planning  
5 considerations, or a simple recognition that in  
6 times of financial restraints, the university has to  
7 make choices. I hope we can agree that such a  
8 curricula decision would not likely be subjected to  
9 challenge by a federal agency.

10                   Also keep in mind, I'm sure you  
11 all know this, most decisions in higher education go  
12 through the crucible of a shared governance system.  
13 The process is faculty dominant, and no component  
14 makes a programmatic decision either to add or  
15 subtract a particular program without going through  
16 it. This is every bit as true for athletics as it  
17 is for our academic colleges. Still, the  
18 presumption we were faced with, and I believe most  
19 respondents are faced with, is that there is and has  
20 been discrimination.

21                   Title IX, the government itself,  
22 is the moving party, often bringing its immense  
23 power to bear because of one letter of complaint,  
24 and we are not allowed to argue good faith or

1 neutral reasons. I know you've heard the phrase  
2 "level playing field." Title IX has not created a  
3 level playing field, because its enforcement seems  
4 to depend mainly on someone filing a letter of  
5 complaint.

6 Yes, across-the-board  
7 enforcement of Title IX as it may be changed and  
8 strengthened as a result of these Commission  
9 hearings will be very expensive, but it will also be  
10 far more fair. All institutions will be held to the  
11 same standards.

12 Title IX also applies to other  
13 curricular and co-curricular programs, as Brian has  
14 mentioned. I think all here will agree that along  
15 with academic offerings, intercollegiate athletics,  
16 club and recreational sports, student organizations  
17 and clubs, et cetera, are all integral parts of the  
18 overall college experience.

19 Can we also agree that a college  
20 or university cannot possibly be all things to all  
21 students? There are financial realities. Resources  
22 are finite, and from time to time programs must  
23 evolve or change, and all must be subject to a  
24 review process to assure that the student body and,

1 not incidentally, the service region of the school  
2 is best served.

3                   Although I share the thrill of  
4 watching the Stars and Stripes raised at Olympic  
5 games and other international competitions, I do not  
6 believe that a university's mission or service area  
7 necessarily includes furnishing athletes for  
8 international or professional competition. And I  
9 would respectfully suggest that that also is not the  
10 mission of the United States Department of  
11 Education.

12                   As it makes sense regularly to  
13 consider reallocations of resources within the  
14 academic areas, indeed accreditation groups normally  
15 require this, in the co-curricular area Title IX  
16 exposes such decisions, such routine management  
17 decisions, to costly federal investigations.

18                   Since these programmatic  
19 decisions affecting all areas of higher education  
20 are interrelated, and all are ultimately controlled  
21 by the administration and governing board, why is  
22 there such governmental reluctance, even a refusal,  
23 to presume good faith in administrative decisions in  
24 areas other than academics? Why shouldn't we have a

1 level playing field, so we all have to comply with a  
2 new and improved Title IX, not just those  
3 institutions who have the misfortune to anger as few  
4 as one person who knows how to write a letter?

5                   Why should those of us who try  
6 to meet prong three live in fear that a small group  
7 of students will petition OCR claiming that their  
8 interests and abilities are not being met, and then  
9 worrying that OCR will ignore the financial and  
10 programmatic realities?

11                   These are questions, I hope you  
12 will keep in your minds when reviewing not only the  
13 language of Title IX, but also its interpretation  
14 and enforcement.

15                   Finally, my suggestions may be  
16 simple. You might even think they're simplistic.  
17 First, I think we have to acknowledge that many  
18 institutions have a strong commitment to Title IX  
19 and really try to comply. There's a reason for  
20 that. We are in a business like any other  
21 business. We want to attract consumers to our  
22 businesses.

23                   A lack of commitment to Title IX  
24 will mean we will have trouble attracting female

1 students, and we all know that the majority in the  
2 applicant pool now are students. So it's our own  
3 self-interest to follow Title IX.

4           Secondly, I think we should try  
5 to provide a good-faith defense based upon the  
6 realities, and to create a level playing field by  
7 holding everyone to the same standards. Please try  
8 to apply the Title IX standards and philosophy, not  
9 only to the institutions, but also to the governing  
10 board, such as the NAIA and the NCAA, which by its  
11 scholarship and competition policies make compliance  
12 very difficult, especially in institutions with  
13 disparate resources to fund intercollegiate  
14 athletics.

15           Once again, thank you very much  
16 for inviting me here to speak with you today. I'm  
17 look forward to answering any questions you may  
18 have.

19           MS. COOPER: Thank you, George.

20           Bob Chichester is stuck in  
21 California, and so Matt Becker will read his  
22 comments. Matt is the deputy director of this  
23 Commission, so Matt.

24           MR. BECKER: Thank you. Can you

1 hear me? I can't hear myself.

2 "Since October 14, 2002, I have  
3 been in the position of director of athletics and  
4 campus recreation at the University of California,  
5 Irvine. Prior to my appointment to my current  
6 position, and for the past seven years, I have  
7 worked at the University of Colorado at Boulder  
8 where I held positions as an attorney in the Office  
9 of the University Counsel and as senior associate  
10 athletic director in the Department of  
11 Intercollegiate Athletics."

12 MS. COOPER: Could you pull the  
13 mike closer to you?

14 MR. BECKER: Sure.

15 "During my time at the  
16 University of Colorado, I was given the opportunity  
17 to provide primary assistance on the handling of the  
18 university's athletically related Title IX issues.  
19 A significant number of the Title IX issues related  
20 to two athletic department cases monitored by the  
21 Office of Civil Rights, regional office in Denver.  
22 One of the two cases was associated with a  
23 corrective action agreement entered into between the  
24 university and OCR in 1994, which required the



1 university to address approximately 22 areas of  
2 concern over a period of time from 1994 until 2001.

3 "The second case was associated  
4 with a complaint filed by the National Women's Law  
5 Center against the university and 24 other  
6 institutions in 1997, in conjunction with the 25th  
7 anniversary of Title IX regarding the award --

8 (Fire alarm.)

9 MS. COOPER: Those are some  
10 powerful comments.

11 (Pause in the proceedings.)

12 MR. LELAND: We'll have one of  
13 our staff people check and tell us if we need to  
14 run. We apologize for the interruption. Let's come  
15 back to order and continue reading Bob's statement,  
16 if you would.

17 MR. BECKER: I'm going to start  
18 at the last sentence, the start of the last  
19 sentence.

20 "The second case was associated  
21 with a complaint filed by the National Women's Law  
22 Center against the university and 24 other  
23 institutions in 1997 in conjunction with the 25th  
24 anniversary of Title IX regarding the award of

1     athletically related financial aid to the  
2     university's male and female student-athletes.

3                     "As a result of my opportunities  
4     to work on a number of Title IX issues on behalf of  
5     the University of Colorado, and opportunities to  
6     interact with the number of colleagues who have been  
7     and are involved in intercollegiate athletics and  
8     Title IX issues from around the country, I would  
9     encourage members of the Commission on Opportunity  
10    in Athletics to consider several issues relating to  
11    this important subject.

12                    "Title IX has directly assisted  
13    in providing increased opportunities for young women  
14    to not only participate in intercollegiate athletics  
15    but also in gaining opportunities to pursue a  
16    college education and degree that they might not  
17    have otherwise had, but for their participation in  
18    athletics. Intercollegiate athletics should be  
19    recognized for the contributions with athletics can,  
20    and should, be making as part of the academic and  
21    educational process for young men and women.

22                    "The OCR's enforcement of  
23    Title IX is flawed. The OCR's enforcement of  
24    Title IX on an individual complaint basis only is

1     flawed and has resulted in inequitable, selective,  
2     and discriminatory enforcement of the law. The  
3     OCR's bureaucratic application of mathematical  
4     formulas with regards to proportionality for  
5     participation rates, award of financial aid, and  
6     recruiting budgets has provided bases for  
7     institutions to focus on compliance with such  
8     formulas by reducing athletic opportunities for both  
9     young men and women. The OCR's enforcement approach  
10    has allowed some institutions to publicly claim  
11    compliance with Title IX while failing to provide  
12    enhanced athletic opportunities for either women or  
13    men. The OCR's flawed enforcement of Title IX has  
14    failed to take into account the economic and  
15    financial realities of intercollegiate athletics.

16                   "Because of such realities, I  
17    would encourage the Commission to strongly recommend  
18    to the Secretary of Education in January that there  
19    is a dire need to address the economic and financial  
20    realities of the intercollegiate athletics,  
21    particularly at the Division 1 level, which the  
22    leadership of the NCAA and many of its member  
23    institutions, as well as legislators and  
24    administrators at the federal and state levels, have

1     been unwilling to do. I would encourage the  
2     Commission to emphasize to the Secretary of  
3     Education the difficult economic and financial  
4     realities of intercollegiate athletics. These  
5     realities currently place limitations on  
6     opportunities for young men and women to participate  
7     in intercollegiate athletics as part of the college  
8     experience and how increasing emphasis has instead  
9     been placed again on the pure entertainment value of  
10    intercollegiate athletics and the financial gain of  
11    certain individuals and corporate interests,  
12    especially those benefiting from the escalating and  
13    excessive expenditures most frequently associated  
14    with college football and basketball.

15                                 "I would encourage the  
16    Commission to emphasize to the Secretary of  
17    Education the need to establish a position, perhaps  
18    against much pressure, and address the reality that  
19    the current economic and financial model for  
20    intercollegiate athletics that exists at an  
21    increasing number of institutions around the country  
22    does not work to viably support intercollegiate  
23    athletics and the goals of Title IX in providing  
24    enhanced opportunities for young men and women to

1 participate in intercollegiate athletics as part of  
2 their college experience. Institutions cannot  
3 continue to try to rely upon expending excessive  
4 funds in one or two revenue-producing athletics  
5 programs in the hope that one or two of these  
6 revenue-producing programs can financially support  
7 all the other non-revenue-producing athletic  
8 programs.

9 "If the recognition of the  
10 benefits of enhancing opportunities for young men  
11 and women to participate in intercollegiate  
12 athletics, as part of the academic and educational  
13 experience, is truly genuine, the leadership of the  
14 NCAA and its member institutions, as well as  
15 legislators and administrators at the federal and  
16 the state levels, must address the economic and  
17 financial realities of intercollegiate athletics.  
18 Athletic programs cannot be viewed as  
19 self-sustaining, but instead thoughtful guidelines  
20 and/or rules for funding and expenditures should be  
21 considered for the future support of such programs.

22 "Consideration should be given  
23 to revising the implementation and enforcement of  
24 Title IX to require the leadership of the NCAA and

1 its member institutions, as well as legislators and  
2 administrators at federal and state levels, to  
3 establish economic and financial guidelines and  
4 rules to support the enhancement of opportunities  
5 for young men and women to participate in  
6 intercollegiate athletics as part of the academic  
7 and educational experience, even though such  
8 economic and financial guidelines may have some  
9 adverse effects on the financial gain of certain  
10 individuals and corporate interests."

11 Thank you.

12 MS. COOPER: Thank you, Matt.

13 Since 1998, Josephine Potuto --  
14 did I get that right?

15 MS. POTUTO: Yes.

16 MS. COOPER: That's important.

17 -- has been a professor of law at the University of  
18 Nebraska College of Law. In addition to that  
19 position, she is also the graduate faculty fellow  
20 and chair in Constitutional law and a faculty member  
21 of the UNL Center on Children, Families, and the  
22 Law. Josephine -- they have "Jo," but I don't feel  
23 comfortable calling you Jo.

24 MS. POTUTO: Well, you could.

1 MS. COOPER: Okay, Jo. Jo is  
2 the University of Nebraska faculty athletics  
3 representative to the NCAA and Big 12 Conference,  
4 and she is a member of the NCAA Division 1 Committee  
5 on Infractions. Jo received her undergraduate  
6 degree from Douglas University, her master's from  
7 Seton Hall University, and her juris doctorate from  
8 Rutgers Law College.

9 Josephine?

10 MS. POTUTO: Thank you.  
11 Chairman Cooper, Chairman Leland, members of the  
12 Commission. Usually it's a strategic place to speak  
13 last, but after the number of really extraordinary  
14 and impressive presentations, I feel like the poet,  
15 that I run the risk of ending these hearings not  
16 with a bang but with a whimper.

17 I also am not going to start  
18 with the common disclaimer here, because I think no  
19 reasonable person would ever expect that when a  
20 member of the faculty speaks, she speaks for the  
21 university.

22 (Audience laughter.)

23 At the risk of overstating the  
24 obvious, if there were enough money to do everything

1 for everyone, we would have no problem with Title IX  
2 either in its language in the statute or in any test  
3 for compliance.

4                   And also, if we had -- and we  
5 were absolutely confident as to the interest of  
6 women in athletics, unfettered by historical  
7 discrimination, we would have no problem with a  
8 proportionality test. In fact, it would be  
9 constitutionally compelled. But neither of those  
10 things are true.

11                   In particular, with respect to  
12 budget issues, we have no -- we are in a zero-sum  
13 game, and as everyone knows, every university in  
14 this country is facing extraordinary budget problems  
15 today.

16                   I was interested earlier in  
17 Athletics Director Bradley-Doppes' comments about  
18 what they did at Michigan, and I actually talked to  
19 her on a break. I found her presentation really  
20 impressive, and I asked her, because I thought I  
21 heard her say that they would have added three more  
22 women's sports because the interest was there, but  
23 they didn't because of the money. And I asked her  
24 then how she met prong three, and she said that



1 Michigan at the time was meeting prong one,  
2 proportionality.

3                   And that's a statement of the  
4 problem. No matter how committed and how active one  
5 would be to try to meet prong three, that the  
6 problem with prong three is you have to have the  
7 money to continue to be able to do it.

8                   I think there are some really  
9 major issues with the current three-prong test, and  
10 I know you've heard them before, and I don't want  
11 to -- I don't want to restate too much here. But  
12 focusing on actual participation, when male athletes  
13 will walk on, and presently women athletes don't, is  
14 not only, I think, unfair to opportunities for male  
15 athletes, but in many respects it seems to me it's  
16 an odd place for universities with regard to revenue  
17 interest to be, because some of those male athletes,  
18 at least, are bringing -- certainly they're paying  
19 tuition, and some of the time their tuition is going  
20 to be more than the costs of their participation on  
21 a team when they're not getting scholarships.

22                   Also, we -- the particular test  
23 focusing on actual participants prevents some  
24 creative problem-solving. Like, for example tiering

1 sports. If institutions were interested in tiering,  
2 and if there were enough influence to persuade the  
3 NCAA to change legislation so it could be done, and  
4 one example would be having some sports where you  
5 didn't give scholarships, but they were still  
6 variety sports and they got all the other support  
7 that a varsity sport would get.

8                   The proportionality test  
9 focusing on actual participants would not resolve  
10 the problem for an institution that had too many  
11 male athletes, and at the same time, under current  
12 case law, probably would not permit tiering of a  
13 woman's support because it would be moving it from  
14 full support down to some other level.

15                   Proportionality is a moving  
16 target with women's enrollment going up. My fear is  
17 that at some point, particularly with colleges now  
18 starting to encourage males to come to universities,  
19 that the test will turn on itself. The numbers of  
20 males coming back to the universities will start to  
21 increase; proportionality then will force cutting  
22 women participation because the male numbers will be  
23 up; and there's even a risk that the male  
24 student-athlete will turn out to be the

1 underrepresented gender for purposes of the test.  
2 So it's not simply a moving target, but it's a  
3 target that has the potential of looping on itself  
4 in a way I think would be extraordinarily  
5 unfortunate.

6 Other problems, I think, are  
7 with emerging sports, equestrian, synchronized  
8 swimming, water polo, squash, badminton, among  
9 others. A majority of those are sports that not  
10 only are not played by minority women athletes, but  
11 they're also not played by those women athletes  
12 coming from underprivileged or disadvantaged  
13 economic background.

14 We have, I think, a peculiar  
15 social policy at work. Surely and certainly there's  
16 been historical discrimination against women. And  
17 surely and certainly there are historical preference  
18 patterns, but they're not unique to athletics.  
19 Women do not go into the hard sciences in the  
20 numbers that one might predict. Men don't go into  
21 literature and the arts in the numbers that their  
22 population numbers might predict. It seems to me to  
23 be peculiar social policy that the only place where  
24 we tinker with the numbers on an assumption that,

1 had there been no historical discrimination, women  
2 and men would gravitate in the same numbers as  
3 reflected in their population, is in athletics.

4 Further, I don't think those  
5 assumptions bear fruit. We're not unwilling to say  
6 that women solve problems differently from men, and  
7 we're not unwilling to say that women in  
8 interpersonal relations have a different way of  
9 reacting and interacting, but there seems to be some  
10 unwillingness to admit that those gender differences  
11 might also predict some interest in athletics.

12 I'm not interested in social  
13 engineering, but frankly, if I were going to be a  
14 social engineer, and I wanted to push women in the  
15 numbers that their numbers in the population would  
16 suggest, I would start with the hard sciences or  
17 engineering, however much I think that athletics  
18 provide incredible benefits to students, and  
19 particularly I think to women students in terms of  
20 enhanced self-image and esteem.

21 We have examples of crew being  
22 added at Arizona State, and I heard the athletics  
23 director from Northwestern saying there's no water  
24 near where he is at Northwestern. Well, I spent a

1 semester at the University of Arizona in Tucson, and  
2 I know there's no water in Arizona.

3                   One could say that adding crew  
4 is a real benefit, because we have generated an  
5 interest in women student-athletes that wouldn't  
6 have been there before, and I think that's true.  
7 But I wonder what those women students might have  
8 done with their time had it not been crew, and  
9 whether those preferences might have been, in my  
10 mind, better in terms of societal progress, or even  
11 if silly, why those preferences were pushed in a  
12 particular direction.

13                   Budget issues that come out of  
14 here. I mentioned tiering, which might be a  
15 sensible way to solve some of what's going on here,  
16 which focus on actual participations makes not  
17 possible.

18                   Swimming, as another example. I  
19 understand that building a new swimming pool is very  
20 expensive, and the athletics directors here would  
21 know better than I what those numbers were. But if  
22 you had to build a new swimming pool and were faced  
23 with substantial budget issues, you could not  
24 eliminate men's and women's swimming to get there

1 without having to meet prong one, proportionality.  
2 Now, I'm not suggesting that eliminating men's and  
3 women's swimming is the appropriate solution. It's  
4 simply that it's off the table under this test.

5 I have some suggestions, at  
6 least that I think others may have mentioned also  
7 that I would urge you to at least think about. I  
8 don't think cutting scholarships in football, I  
9 didn't hear it mentioned here today, is an  
10 appropriate solution.

11 I provided in my written  
12 submission some numbers on minority and  
13 African-American student participation in football,  
14 and when I did it, I was extrapolating from  
15 participation numbers. I since have found numbers  
16 for scholarship student-athletes in Division 1 and  
17 Division 1-A, and this is based on 115 1-A schools.  
18 There are now 117. But 51 percent of the  
19 scholarships in Division 1-A go to African-American  
20 student-athletes, and 59 percent go to minorities in  
21 general. If you were to reduce scholarships in  
22 football from 86 to 65, I think that would be a 24  
23 percent reduction. That would lead to 1,117 fewer  
24 scholarships.

1                   I think you should look at  
2     summer school scholarships. Critically, I think you  
3     should look for a different population to deal with,  
4     and there are all kinds of interest figures you can  
5     look at in terms of interest and ability, and I'd  
6     look for a national number to hear.

7                   Also, I would look at  
8     scholarships, not actual participation, and I think  
9     there should be some pressure on the NCAA to add  
10    scholarships to existing sports. Currently, there  
11    are -- well, three years ago, about 585,000 girls in  
12    track and field in high school. And I heard  
13    Commissioner Yow earlier today to say it would be a  
14    whole lot less expensive to be doing that than  
15    adding another sport, but we've got scholarship caps  
16    there that make it not possible.

17                   And finally, I think that there  
18    would be not much interest in cutting back on  
19    women's opportunities, but to the extent that's an  
20    issue, then whatever is proposed should be an easy  
21    test, easy to follow, and easy to monitor.

22                   Thank you.

23                   MS. COOPER: Thank you. Gene.

24    We have about 15 minutes for questions, so let's

1 make it quick.

2 MR. deFILIPPO: Yes. This will  
3 be for anybody on the panel. Brian, I would like  
4 for you to start, if you could. If your president,  
5 Albert Yates, at Colorado State University were to  
6 take you aside and say, "Brian, I would like to be  
7 sure that in case we have a lawsuit, not dealing  
8 with OCR, but in case we were to get a lawsuit,  
9 which of the three prongs would you feel that we are  
10 defensible in, knowing the intricacies of our  
11 athletic department at Colorado State? Are two and  
12 three defensible in court, in your opinion?" and  
13 what would be your answer to your president,  
14 Dr. Yates?

15 MR. SNOW: Well, I would tell  
16 him that we couldn't comply with two as a practical  
17 matter because I know the facts. But let's assume  
18 those facts aren't there. Can you defend on prong  
19 two? I think you can, but it's temporary. You have  
20 to keep expanding. And it doesn't just provide for  
21 a history of continuous -- a history of expansion,  
22 but it has to be continuous. So there's never any  
23 end to it. So I would tell Dr. Yates we're going to  
24 have to keep expanding until eventually we end up



1 meeting the first prong.

2                   As to the other one, it's a  
3 little more difficult. I think my direct answer to  
4 your question, yes. I would tell him there are ways  
5 to do it if we don't have a history of having  
6 eliminated a winning sport.

7                   The second -- the third prong,  
8 the trouble with that is it's -- as the LSU case  
9 pointed out, the court gets to define the universe,  
10 Peterson versus LSU, and the court there, and it's  
11 true that LSU is located where there aren't a lot of  
12 sports other than the college sports, but they took  
13 a universe of not only high school sports but  
14 everybody that was involved in softball, women's  
15 softball, all kinds of teams, club teams, local  
16 teams, supermarket teams, that sort of thing, and so  
17 the universe became very broad. And I think it  
18 depends, one, if you get a request under three of a  
19 group that says, "We would like to be accommodated,"  
20 particularly of an underrepresented group, then if  
21 you meet that, I think you can defend it. That's  
22 the first leg. But to say, can we defend it without  
23 satisfying a specific group? I think it's much more  
24 abstract.

1                   MR. SHUR: I would only add to  
2 Dr. Yates that his counsel had just given him very  
3 good advice.

4                   MS. COOPER: Debbie?

5                   MS. YOW: I have a scenario I  
6 would like to propose to each of you, just as  
7 someone who might have an idea. This has probably  
8 happened to every athletic director in the country  
9 at least once. I'll use my own situation to make it  
10 specific. Have all our -- all 13 women's teams are  
11 fully scholarshipped, 12 men's teams, of which only  
12 four are fully scholarshipped. One of those men's  
13 teams that is not fully scholarshipped is tennis.  
14 We have one-half of one scholarship, which is not  
15 the way to go in the ACC, pretty strong tennis  
16 competition.

17                   I had a booster approach me who  
18 is a fan of men's tennis, realizing our budgetary  
19 constraints related to what we were trying to  
20 achieve in prong one of Title IX, and understanding  
21 we would like to, but we can't, he suggested that he  
22 give us a half a million dollars. This truly  
23 happened to me. He stood in front of me, I knew he  
24 had the wherewithal to do this, and said, "I just

1 want to help you. I understand where you're coming  
2 from, and let me give you a half a million dollars.  
3 You can, A, spend it all, or B, create some  
4 endowment and spend -- use the money to spin off and  
5 pay."

6 That was not allowed because the  
7 money is money, and money comes in, it's earmarked  
8 for men's tennis, we spend it, now we're out of  
9 compliance with Title IX. Is there a place in these  
10 discussions for us to find somewhere, somehow,  
11 especially with the budget constraints that  
12 institutions of higher education are facing in  
13 all -- in so many areas, to have the ability and to  
14 utilize good common sense, how do we do this, to let  
15 us take people's money when they offer it to us?

16 MR. SNOW: I've dealt with that  
17 situation several times, not as much as 500, but  
18 I've dealt with it in various amounts.

19 First thing I think tell our  
20 athletic director, who you know well, is, "Jeff, let  
21 me tell you something. I want you to go meet with  
22 this person and talk with him about women's  
23 sports." Because I am a strong believer that one of  
24 the things we do in women's sports, we don't promote

1     them enough. We're already seeing enormous increase  
2     in women's basketball and tennis. We don't put  
3     enough pressure on TV and radio, which is where the  
4     real money is, and this is a money game. I mean,  
5     bottom line, what we're talking about today is  
6     money, dirty, filthy money, and let's don't -- let's  
7     don't get bogged down in all these tests.

8                     So I would say let's talk to the  
9     person first. Let's educate the person about our  
10    problems.

11                    Secondly, I would say, "Jeff, if  
12    you take that money, you're going to have to find a  
13    way to accommodate the women's sports in an equal  
14    amount, and let's see if we can find some donors who  
15    will do that, or let's see if you have the funds to  
16    accommodate it, but you're going to throw -- if you  
17    take the money, and you don't do one of the two  
18    things, and there's some third and fourth  
19    alternatives, then you're going to have an imbalance  
20    in the scholarship thing, and OCR is going to drive  
21    us crazy." That's what I have advised.

22                    MR. LELAND: Tom?

23                    MR. GRIFFITH: Brian, in your  
24    presentation, you made a distinction between the

1 statute, Title IX, and the regulations that were  
2 lawfully promulgated pursuant to the command of  
3 Congress that HEW, Department of Education  
4 promulgated those statutes, and then what you call  
5 Dear Colleague letters and policy interpretations.  
6 Now, without getting into a discussion of sort of  
7 civics 101, why did you make that distinction?

8 MR. SNOW: Because I am such a  
9 strong believer that regulations that supplement or  
10 enhance or clarify and explain statutes or  
11 regulations or other things in our nation typically  
12 go through a formal process so everybody has an  
13 opportunity to comment, and they are adopted, you  
14 know, after comments that all people feel they've  
15 been consulted in a way. We do that in our  
16 university all the time. And instead, gotten  
17 directives that we've never known were coming, we've  
18 never had a chance to comment on them, and it has  
19 been sort of a -- one, tests are done without  
20 explanation. Like the prong one, somebody mentioned  
21 earlier, we've never known what is an acceptable  
22 standard, although the director, Norma Cantu, tried  
23 to explain that in a '96 release. Still, you have  
24 courts recognizing promulgations by OCR that don't

1 have the normal protections of law being considered  
2 to be law by the courts, and that's my concerns.

3 MR. GRIFFITH: Thank you.

4 MR. LELAND: Okay. Muffet?

5 MS. MCGRAW: Just at the end of  
6 your presentation you were talking about some  
7 solutions for us in terms of looking at scholarships  
8 rather than participation. Could you expand on that  
9 a little bit more?

10 MS. POTUTO: Yeah. I think  
11 actual participant numbers really take away  
12 opportunities, and as I said, some of those  
13 opportunities are really revenue producing for the  
14 institution.

15 But scholarships, I mean, if you  
16 had a real -- if we had a number in terms of  
17 interest that we felt comfortable with, and I think  
18 there were panelists all day today who suggested  
19 ways to get at that, then I see no reason why the  
20 scholarships offered to women related to that  
21 interest number shouldn't be very close or on-line  
22 with it. I mean, there wouldn't be any argument  
23 that I could think of why you weren't providing  
24 scholarships if you were confident with the interest

1 level that you were talking about, and that's what I  
2 was suggesting, to get at that number.

3                   If you started with an interest  
4 level, and I think if we had a better fix on an  
5 interest number that people were more comfortable  
6 with, I think there would be a lot of support on  
7 this scholarship, because I think what happens here  
8 is we're not comfortable -- certainly nobody can say  
9 that the enrolled student population reflects  
10 interest. I mean, I was completely uncoordinated in  
11 college, and they would have counted me, and now I'm  
12 fat and old and uncoordinated, and if I went to an  
13 undergraduate school, they would count me again. I  
14 mean, that's just silly. We use it because we're  
15 not sure we can get at any number of interest, you  
16 know, a number reflecting interest that we can feel  
17 reflects genuine interest, not encumbered by, you  
18 know, substantial vestiges of historical  
19 discrimination.

20                   MR. LELAND: Donna?

21                   MS. deVARONA: Just a point of  
22 clarification on the crew issue about creating  
23 interest and they will come. Crew traditionally has  
24 recruited on a collegiate level because so many high

1 schools don't provide those opportunities, and they  
2 recruit them from football players and other  
3 student-athletes that want to change sports.

4                   Secondly, your interest in  
5 knowing if a particular person would pick that  
6 sport, and what they might have chosen to do in  
7 their life that would have made them better  
8 citizens, I guess. I would like to point to the  
9 example of Anita DeFrantz who was recruited on a  
10 crew team before the first crew was introduced to  
11 the Olympics. In 1976, she came home with a silver  
12 medal. She used that opportunity to go to law  
13 school. She's now on the International Olympic  
14 Committee, and she runs the Athletic Foundation in  
15 Los Angeles. So, I mean, she's one example, but I  
16 think we could look at a lot of those athletes that  
17 participate in crew and look favorably on what has  
18 become of them.

19                   Also, you did mention the  
20 scholarships opportunities for minorities in  
21 football. Have you -- do you have any statistics on  
22 their graduation rates and how they perform out of  
23 the four-year institution?

24                   MS. POTUTO: With me, no. I



1 know there are graduation rate statistics available.

2 MS. deVARONA: Would you suggest  
3 maybe as a Commission we look into that when we look  
4 at the number of scholarships, the football  
5 scholarships that are offered and the minority issue  
6 as it relates to whether we consider cutting or  
7 suggesting a diminishment in football scholarships?

8 MS. POTUTO: I think you should  
9 look at anything you think is relevant to deciding  
10 what is the best way to provide equal opportunity.  
11 There is always attention between providing  
12 opportunities to underpredictors in college and then  
13 graduation rates. If you provide opportunities to  
14 underpredictors, it's going to have an impact on  
15 graduation rates. If you restrict those  
16 opportunities, your graduation rates will go up, and  
17 it's clearly a social -- predominantly a social  
18 policy interest as to how you want to handle that.

19 MR. LELAND: Okay.

20 MS. SIMON: Josephine, I was  
21 curious. You suggested, and I was wondering if you  
22 have some data that, in fact, we will soon be seeing  
23 a turnaround in the proportion of undergraduate men  
24 who are now attending universities. Have you looked

1 or seen data on a lowering of dropout rates at high  
2 schools among boys and girls or any indication that  
3 the turnaround is beginning to happen?

4 MS. POTUTO: No. And if I  
5 sounded as though I was suggesting the turnaround is  
6 beginning, I have -- I have no information. I'm  
7 speaking from an instinct that at some point,  
8 because there are programs now to start encouraging  
9 high school young men to go to college, that at some  
10 point you might expect that to happen, and if that  
11 happens, then all these numbers are going to be  
12 turned on their head, and it's a worry.

13 MS. SIMON: Absolutely. But  
14 there's no sign of that, because I have been looking  
15 at the data, and I haven't seen any sign there. I  
16 was wondering if you --

17 MS. POTUTO: Yeah. Whether  
18 there's a sign or not, I don't know.

19 MS. SIMON: No, I don't think  
20 there is. Thank you.

21 MR. SNOW: I would like to add  
22 to that, I hope that she's right, I really do,  
23 because one of the problems that we're struggling  
24 with in higher education is the precipitous decline

1 in male enrollment. Nobody has a full explanation  
2 for it as to why this is occurring. I do have data  
3 that shows that the demographics project that the  
4 female enrollment by 2007, and we know who those  
5 people are because they've been born and are going  
6 to school, will be 57 to 58 percent. Some people  
7 have predicted, and I don't have data for this, as  
8 much as 60, so if you deal with a 57 percent  
9 universe in your determinations of proportionality  
10 test, as was stated earlier, we're going to be  
11 dealing -- to addressing men as a minority group in  
12 terms of educational opportunities. And that's a  
13 challenge, it seems to me, to this committee as to  
14 what recommendations you might make.

15 MS. SIMON: I just might add  
16 that if you look at data, there is even now an  
17 increasing number of women who earn bachelor's  
18 degrees over men. That number is increasing, and  
19 master's degrees. It doesn't go as far as the  
20 doctorate level, but more women, and increasingly a  
21 higher percentage of women are earning both  
22 bachelor's and master's degrees than men.

23 MR. LELAND: Okay. Other  
24 comments?

1 MS. deVARONA: I just want to  
2 ask one more question to Josephine. At your  
3 university, have you had cuts in men's sports most  
4 recently?

5 MS. POTUTO: Yes, men's  
6 swimming.

7 MS. deVARONA: And what was the  
8 reason for that?

9 MS. POTUTO: It was a  
10 combination of reasons. Officially, as we reported,  
11 it was budget constraints driven by a recent  
12 infractions history in swimming, and so it caused us  
13 to look directly at swimming. But we did not look  
14 at women's swimming at the same time, because of  
15 Title IX. So it was a combination.

16 MS. deVARONA: So the focus  
17 was -- the blame was placed on Title IX?

18 MS. POTUTO: No, the blame was  
19 placed on budget concerns, accelerated by an  
20 infractions case that was going to create major -- a  
21 major scholarship hit in men's swimming in addition.

22 MS. deVARONA: But at the same  
23 time, didn't the university build a new football  
24 facility?

1 MS. POTUTO: At the same time,  
2 no.

3 MS. deVARONA: When did they do  
4 that?

5 MS. POTUTO: Not a new facility,  
6 but the sky box addition to the football stadium, do  
7 you know when -- what --

8 MS. KEEGAN: A couple years  
9 earlier.

10 MS. POTUTO: Yeah, it was maybe  
11 1997, maybe 1996, and the cut to men's swimming was  
12 2001.

13 MR. LELAND: Okay. George, do  
14 you want to respond to anything?

15 MR. SHUR: Just briefly. At  
16 Northern, we had to make the very difficult decision  
17 this year, and of course our athletic director, Cary  
18 Groth, is right there, and please correct me if I'm  
19 wrong. We were getting some significant complaints  
20 from other members of our conference about the  
21 quality of our pool, the safety in our pool. People  
22 had been injured. It was not a good pool for times  
23 or competition. It was also very old. I also  
24 suspected leaks. I know it rusts, because I can see

1 it from the outside of the building.

2 The decision was made to  
3 eliminate both men's and women's swimming, and  
4 someone said, someone brighter than I, said that it  
5 would not make a heck of a lot of sense to eliminate  
6 men's swimming on the basis of safety concerns and  
7 adequacy of facility concerns, and allow women to  
8 continue to compete in the same inadequate  
9 facility.

10 If someone had stepped up -- as  
11 I said, under Illinois law we're not allowed to use  
12 state funds for the construction of these types of  
13 facilities. Had someone stepped up and donated a  
14 facility, or had the student body risen as one and  
15 said, We, as students, want to increase our fees by  
16 whatever it would take, a few hundred bucks a year  
17 per student to fund this, I think we would have had  
18 a different approach to it. It was very, very sad,  
19 but it was a necessary decision. Cary, am I  
20 misrepresenting it?

21 MS. deVARONA: May I follow up  
22 on it? If we can think outside the box, is there a  
23 facility near the university that's a  
24 community-owned facility that maybe could have been

1 used to facilitate the team's training and, you  
2 know, as we look at these questions, can we think  
3 outside the box so that we may be able to take our  
4 teams to these facilities and accommodate --

5 MR. SHUR: I'm really glad you  
6 -- I'm really glad you asked that question, because  
7 we did look, and there was nothing, I believe, in  
8 the immediate vicinity. And indeed, when dealing  
9 with OCR in our field hockey investigation, and the  
10 issue of track came up, we have no track. There was  
11 no track anywhere within the 30 or 40 miles which  
12 meets NCAA competition standards, not even the  
13 proper length. And yet we were told, "Build a  
14 track."

15 We have, through some, I think,  
16 very creative financing and planning, we have built  
17 an indoor track now as part of a facility. It's not  
18 a great track, but it's an adequate track. We're  
19 looking to get assistance to build an outdoor track  
20 so we can meet our promises to OCR under women's  
21 track and field program.

22 Facilities is a very, very tough  
23 issue, especially if you have a campus which is --  
24 which infrastructure is starting to decay. And I

1 think that's unfortunately a lot of us. I sometimes  
2 really wish we were the Air Force or the Army or the  
3 Navy, because, you know -- but we're not.

4 And dealing with the realities  
5 of having to bus students, sometimes as far as 20 or  
6 30 or 40 miles, another example, I might say, if  
7 somebody came to us at Northern and said, "We want  
8 you to have crew," great sport, the nearest river  
9 that we could even remotely use is 40 miles away.

10 Now, there are some who would  
11 suggest that in order to satisfy Title IX, that we  
12 ought to make provisions for bussing our athletes a  
13 total of 80 miles each day to enable them to  
14 participate in this wonderful program. And there  
15 are many others who would feel that's irresponsible  
16 because of the time it takes away from what the  
17 students should be at the university for, and that's  
18 for their academics.

19 It's -- I don't know where -- I  
20 don't know, Ms. DeVarona, where the facilities issue  
21 begins and ends. Is 10 miles okay? Okay. Maybe I  
22 can agree on that. But 40 miles, no. I don't know  
23 where the -- I don't know where the line is drawn.

24 MS. deVARONA: Thank you.



1 MR. LELAND: Okay. I think  
2 we've -- you've answered all the questions. Again,  
3 thank you very much. Matt, thank you for sitting  
4 in.

5 MS. COOPER: Thank you.

6 MR. SNOW: Can I make one  
7 statement before you end?

8 MR. LELAND: Yes.

9 MR. SNOW: One of the things I  
10 would encourage the committee that I didn't have  
11 time to talk about is to look at the NCAA and its  
12 exception from being subject -- you cut off my  
13 mike -- to be subject to Title IX. It's been very  
14 deft in not being subject to Title IX in case after  
15 case, and it's held to be a private entity. That  
16 doesn't matter, really. That's one of the reasons  
17 it's not subject to equal protection standards. But  
18 I think the question ought to be raised, because the  
19 equivalency head-count conundrum is the problem with  
20 the scholarship compliance, so why isn't the NCAA --  
21 we're all in the NCAA. We're subject to the  
22 Title IX. Why isn't the NCAA subject to it?

23 MR. LELAND: Great. All right.  
24 We will reconvene at 2:15 to give everybody a chance

1 to ameliorate their appetite. So thank you. 2:15.

2 (Lunch recess taken from  
3 1:17 p.m to 2:15 p.m.)

4 MS. COOPER: We want to get  
5 started. Everyone take their seats and come to  
6 order. Do you guys want me to be louder?

7 MR. LELAND: Mary, if you could  
8 -- we'll ask the speakers in groups of four to come  
9 and sit in the front row up here. Stay there. But  
10 it's Mary Kvamme, Dennis Francois, M. Dianne Murphy,  
11 and Doug Moss. Those are the first four speakers.  
12 If they could come to the front. Dennis, Dianne,  
13 and Doug. I know Mary is here.

14 AUDIENCE MEMBER: Is it Moss or  
15 Moses?

16 MR. LELAND: Moses, correct.  
17 All right. Sorry. I think we have three of the  
18 four, right. Here's the process that we use  
19 throughout the afternoon, and because we started a  
20 little bit late, our intention is to go until 5:15,  
21 and it's a period for public comment. And I want to  
22 thank all of you for being here today.

23 As in all sports, we have a few  
24 ground rules we would like to explain. In an effort

1 to accommodate as many people as possible during  
2 this time, we've asked you to keep your statements  
3 to three minutes but no longer than five minutes.

4 Out of respect for speakers, we  
5 will be strict on this time. So in effect, what  
6 we'll do is we have some lights here at the front.  
7 When you begin your statements, there will be a  
8 green light. At four minutes in, Cynthia or I will  
9 say "One minute." At four and a half minutes, a  
10 yellow light will go on. At five minutes a red  
11 light will go on, and the microphone will be turned  
12 off. So we are a little Draconian in our efforts to  
13 be organized here, but there is so much public  
14 comment that we have difficulty accommodating all of  
15 it.

16 If we are not able to get to  
17 each person who speaks today, please be aware that  
18 you may submit written statements for the record,  
19 and it will be given to each of the commissioners.

20 We will ask four names to come  
21 to the front. And when you give your statement,  
22 please try to remember to give your name and speak  
23 directly into the microphone.

24 So I think our -- at least three

1 of our four first -- I won't say contestants, but  
2 speakers are here. So Mary, if you would begin,  
3 please, and state your name clearly.

4 MS. KVAMME: Thank you. Members  
5 of the Commission, good afternoon. My name is Mary  
6 Kvamme. I taught and coached in Colorado at the  
7 high school level for 30 years beginning in 1964.  
8 My coaching career began with the GAA intramurals  
9 and extramurals and finished with high-level  
10 interscholastic athletics.

11 Thank goodness for Title IX. In  
12 1972, sex discrimination was finally outlawed in all  
13 areas of education. Did we need Title IX? An  
14 emphatic yes. Before Title IX, fewer than 32,000  
15 women participated in college sports. Today, over  
16 150,000 female athletes compete for their college  
17 and university teams. Before Title IX, one in 22  
18 girls played high school sports. Now, the ratio is  
19 one out of every 2.5. Interest does indeed follow  
20 opportunity.

21 When I used to talk about lack  
22 of administrative support and discrimination against  
23 girls' programs, my sister, a Ph.D. mathematician,  
24 would say she had the same problem in her field. My

1 sister-in-law, a Ph.D. biochemist would say that  
2 she, too, had to fight an uphill battle. After  
3 President Nixon signed Title IX into law in 1972,  
4 girls could no longer be discouraged from taking  
5 math or science. Law schools and medical schools  
6 were forced to stop using quotas limiting the number  
7 of women students. Title IX litigation has  
8 addressed fairness and testing and scholarships and  
9 employment discrimination. We've come so far in 30  
10 years, and yet we have still far to go.

11                   So why are we here today? This  
12 commission must decide if the current Title IX  
13 standards are working to promote equal opportunities  
14 in athletics. I say yes, they are working, but  
15 progress has been slow. Why? It is because there  
16 is essentially no enforcement. It seems strange to  
17 me that the law is not followed unless there is a  
18 perceived or real threat. Only when there is an OCR  
19 complaint or threat of a lawsuit do educational  
20 institutions get serious about compliance.

21                   Fortunately, the legal processes  
22 do work. The OCR has provided excellent leadership  
23 and resources to individuals, groups, or  
24 institutions who ask for guidance. Schools which do

1 not choose to comply have not made appropriate  
2 budgetary and athletic program choices. The problem  
3 is we are asking for voluntary compliance, really  
4 just asking institutions to do what is morally right  
5 and lawful. One would think that that would work.  
6 But history shows that it hasn't. Until  
7 institutions actually lose federal funding for  
8 noncompliance, there will be no real threat and  
9 compliance won't happen across the country. My fear  
10 is that my grandchildren will have to fight the same  
11 tiresome but necessary sex discrimination battles as  
12 my contemporaries and I.

13                                   After the Atlanta Town Hall  
14 Meeting, Christine Brennan wrote the following in  
15 the August 29 issue of USA Today: I quote,  
16 President Bush and Secretary of Education Rod Paige  
17 say they support Title IX . . . If the  
18 administration supports Title IX, why is it holding  
19 these hearings? . . . why not just tell naysayers  
20 to take a hike and beef up enforcement of the law?  
21 Look at this another way. If . . . (this were) the  
22 issue of a woman's right to vote, the scenario would  
23 be something like this: There would be separate  
24 polling places for women, and . . . women's polls

1 would be open fewer hours than men's. If women's  
2 groups screamed that this was unfair, their  
3 opponents would say women weren't as interested in  
4 voting as men anyhow, end quote.

5                   If President Bush weakens  
6 Title IX, it would be a great disservice to both  
7 genders. Title IX ensures that schools and colleges  
8 are places where students of both genders can pursue  
9 chosen courses of study, play on teams they wish,  
10 and be rewarded on an equitable basis for good  
11 scholarship. The need for the law is still  
12 apparent. In the year 2000, the Department of  
13 Education received 396 complaints of sex  
14 discrimination alleging a violation of Title IX,  
15 but only 21 of the complaints alleged discrimination  
16 in athletics. The law is good; it works; it is  
17 fair; it needs enforcement.

18                   Thank you very much.

19                   MR. LELAND: Thank you, Mary.

20                   (Audience applause.)

21                   MR. LELAND: Dennis?

22                   MR. FRANCOIS: Hello. Thank  
23 you, Panel. My name is Dennis Francois. I'm an  
24 assistant professor at New Mexico Highlands

1 University as well as the interim athletic director.  
2 I'm from the great state of Iowa, so you can imagine  
3 what sport I'm here to defend.

4 This is an article that I had  
5 recently had published. I would like to read you  
6 excerpts from it. Congress passed public law in  
7 '92, 318, better known as Title IX, on July 1, 1972  
8 as part of the Education Amendments Act of 1972.  
9 Title IX, subsection A, reads "No person in the  
10 United States shall, on the basis of sex, be  
11 excluded from participating in, be denied benefits  
12 of, or subjected to discrimination under any  
13 educational program or activity receiving federal  
14 financial assistance."

15 Skipping a paragraph here.  
16 There are a plethora of reasons why the law was  
17 initially passed, and many are valid with regard to  
18 athletics. For example, in 1971 there were  
19 approximately 294,000 females participating in high  
20 school athletics and approximately 30,000 females  
21 participating at college level. Although female  
22 athletics still represent a minority, today these  
23 numbers have increased to approximately 2.6 million  
24 high school and 148,000 college female athletes.



1 Moreover, according to a recent U.S. -- United  
2 States General Accounting Office report, female  
3 athletic teams at the NCAA and NAIA level now  
4 outnumber the teams -- male teams by 330.

5                   Based on these data, the  
6 benefits of Title IX are quit evident. To be  
7 consistent, however, one must analyze what has  
8 occurred in men's Olympic sports programs at the  
9 intercollegiate level during that same time period.  
10 Since 1972, over 390 college wrestling programs have  
11 been eliminated. According to the 1999 report  
12 conducted by the GAO, 89 NCNA Wrestling programs  
13 were dropped between 1985 and 1997, which resulted  
14 in a decrease of 2,628 participants, 33 percent of  
15 the total participants in wrestling.

16                   Some argue that this is because  
17 of lack of interest, but the average roster size of  
18 these teams is over 29 participants. Moreover, the  
19 number of males and females participating in  
20 wrestling at the high school level continues to  
21 increase. The report of the GAO also revealed the  
22 following decreases in other NCAA men's programs:  
23 Gymnastics, 53 percent; rifle, 45 percent; water  
24 polo, 23 percent; and skiing, 16. Moreover -- or

1     furthermore, a 12 percent drop in the total number  
2     of male participants in all sports was disclosed in  
3     the GAO report in addition to a 10 percent drop in  
4     the maximum number of scholarships allowed for males  
5     at the Division 1 level, and a 9 percent drop in the  
6     Division 2 level.

7                     Most individuals would agree  
8     that the source of the problem with regard to the  
9     underrepresentation of women's opportunities in  
10    athletics is due to not only past biases and  
11    practices in intercollegiate athletics, but perhaps  
12    biases in all facets of society; therefore, the  
13    overrepresentation of men in athletics is also a  
14    symptom of bias.  If one accepts this logic, then it  
15    is only rational to conclude that in order to  
16    correct the problem, we must correct the source of  
17    the problem and not a symptom.

18                    When collegiate -- wen college  
19    administrators choose to eliminate programs or cap  
20    opportunities for men in order to comply with  
21    proportionality, they are merely treating the  
22    symptom of a problem, not the cause.  The current  
23    lack of female interest and ability to participate  
24    in intercollegiate athletics is also due to the lack

1 of opportunities provided to females at all levels  
2 of sport. However, with the continued growth in  
3 popularity of girls in sport at a younger age, the  
4 equal interest and ability of females to compete at  
5 the college level may some day come to fruition.

6                   The reality, however, is college  
7 administrators choose to use the current  
8 interpretation and enforcement of Title IX as an  
9 excuse to make undesirable decisions to eliminate or  
10 cap programs. This practice is -- this practice  
11 decreases the number of sports and opportunities  
12 available for athletes to participate in the college  
13 level. When limited budgets for intercollegiate  
14 athletics are taken into consideration, it is  
15 conceivable that many of the decisions to eliminate  
16 or cap programs are based on the lack of funding  
17 available to continue offering existing programs  
18 while simultaneously adding programs to comply with  
19 the law.

20                   We must not, however, stand by  
21 idly and allow administrators to merely lower the  
22 glass ceiling by eliminating or capping men's  
23 programs to comply with the proportionality test,  
24 very similar to Mr. Taylor's manufacturing interest

1 from the top down.

2                   What most individuals fail to  
3 realize is every time a men's sport program is  
4 dropped or capped, it is actually inhibiting the  
5 potential expansion for women in athletics. By  
6 eliminating or capping men's programs, an  
7 institution's proportionality appears better  
8 balanced, but what this actually does is prevent  
9 women from seeking the same number of opportunities  
10 that were once present for men, i.e., lowering the  
11 glass ceiling instead of eliminating it.

12                   Once again, by eliminating the  
13 proportionality test from the policy interpretation,  
14 institutions would be forced to make the morally  
15 correct decision to eliminate discrimination based  
16 on sex by expanding opportunities for women and men  
17 where there is a legitimate interest, time, and  
18 ability to participate, the true spirit and intent  
19 of Title IX.

20                   MR. LELAND: Thank you.

21                   (Audience applause.)

22                   MR. LELAND: Dianne?

23                   MS. MURPHY: I speak to you  
24 today as not as a director of athletics at the

1 University of Denver, but as the president of the  
2 National Association of Collegiate Women Athletics  
3 Administrators, an organization that has almost  
4 1,500 female athletics administrators from all over  
5 this nation.

6 Most of our members have read  
7 the proceedings in Atlanta and in Chicago, and many  
8 are greatly disturbed by the claims of some  
9 presenters that Title IX has been significantly  
10 reducing the participation opportunities for male  
11 student-athletes at the collegiate level.

12 I urge you to hear and absorb  
13 the facts and to reject this claim, because none of  
14 these facts support it. This is, indeed, a critical  
15 element in this entire debate.

16 While it is unquestionably true,  
17 and most unfortunate, that the number of wrestling  
18 and gymnastics teams have been declining over the  
19 past 20 years, research proves that the majority of  
20 these teams were lost in the 1980s and early '90s  
21 when Title IX was either not being enforced or was  
22 not in effect.

23 You will recall that Title IX  
24 was eviscerated in the Grove City lawsuit in 1984

1 and was not resurrected until 1988. In the other  
2 years between 1980 and 1992, Title IX was simply not  
3 enforced; thus, the team losses were not the result  
4 of Title IX. This is a fact.

5                   When institutions, for whatever  
6 reasons, eliminate a sport, this causes a domino  
7 effect because of a decline in nearby competitive  
8 teams. Additionally, the number of teams in the  
9 athletic conference may drop below the required  
10 number to have a championship, and that fact  
11 influences the decisions of the remainder in the  
12 conference.

13                   Understandably, those who have  
14 lost sports are distraught. But focus must be  
15 centered on research results, especially on women  
16 who have never had their fair share of  
17 opportunities.

18                   The NCAA has reported annually  
19 the number of male and female participants. Their  
20 research figures show that men's participation  
21 numbers have increased slowly but steadily over the  
22 years. This is a fact. Yet these figures have been  
23 challenged as inaccurate because critics claim that  
24 the NAIA schools that have joined the NCAA recently

1 have caused the increase in the participation  
2 figures for men.

3                   These same critics fail to  
4 mention that these NAIA schools have joined not only  
5 with their men's teams, but also with their women's  
6 teams, thereby negating, to a large extent, the male  
7 increase. This has been confirmed today by the  
8 NCAA, and only a handful of two-year institutions  
9 reclassified as four-year. Nevertheless, when the  
10 General Accounting Office did their research, they  
11 designed the study to control for this NAIA factor.

12                   The 2001 GAO report also found  
13 that the number of participation slots for men has  
14 increased over the last two decades. Between 1981  
15 and 1999, the combined participation figures for men  
16 in the NCAA and the NAIA had increased by nearly  
17 12,000 slots. This is a fact. And not only have  
18 the participation figures for men increased, but the  
19 number of men's teams has also increased.

20                   Yes, the number of wrestling,  
21 gymnastics, tennis, and other men's teams have  
22 declined, but a greater number of men's teams have  
23 been added over that 18-year period, especially in  
24 soccer, baseball, basketball, and golf. In all, men

1 have gained 36 additional teams. This is a fact,  
2 and that fact is being lost in the emotional outcry  
3 for male gymnasts and wrestlers.

4 Another aspect being ignored is  
5 the fact that while 56 men's gymnastics teams were  
6 eliminated in that era, women's gymnastics teams  
7 lost 100 teams in that same time frame, almost twice  
8 the number.

9 So the research is clear. Men's  
10 participation in team numbers have not declined in  
11 the past two decades. Men's participation in teams  
12 numbers have actually increased. These are the  
13 facts.

14 And that brings me to my final  
15 point. Title IX was passed 30 years ago, and  
16 women's participation in sports has exploded, but  
17 the bottom line is men enjoy 58 percent of all  
18 participation and attendance scholarship  
19 opportunities, while woman only have 42 percent.  
20 That fact should be emblazoned at the top of every  
21 report from this Commission. 42 percent compared to  
22 58 percent after 30 years of Title IX. There is  
23 little choice for this Commission but to recommend  
24 unanimously that Title IX be left intact and



1 strictly and consistently enforced. No fair-minded  
2 person could recommend otherwise.

3 Thank you.

4 (Audience applause.)

5 MR. LELAND: Doug, please state  
6 your name.

7 MR. MOSES: Okay. My name is  
8 Doug Moses, former wrestling coach at the University  
9 of Southern Colorado. I would like to take this  
10 opportunity to thank the members of the Commission  
11 on Opportunity in Athletics for giving me the time  
12 to speak.

13 I want to make it is clear that  
14 I'm not against the true intent of Title IX. I  
15 think it's very important to create opportunities  
16 for everyone, not to destroy opportunities for young  
17 people. It is my -- it is in my opinion that the  
18 current interpretations of Title IX are destroying  
19 opportunities.

20 Case in point, my experience at  
21 the University of Southern Colorado. In the spring  
22 of 2001, I was told that the wrestling team would  
23 have a cap number of 25 athletes. This means that  
24 if I had more than 25 athletes out for my team, I

1 would have to cut these young men. They call this  
2 roster management. I call it eliminating  
3 opportunities.

4 On May 15, 2001, USC president  
5 Tito Guerrero told me that the wrestling program was  
6 eliminated from the athletic department effective  
7 immediately. The president had taken a job the week  
8 before this decision and left a few weeks after it  
9 was made. The spring semester classes were out, and  
10 many of my athletes had left for the summer.

11 This decision had a negative  
12 effect on the athletes in my program. Many of them  
13 made quick and bad decisions concerning their  
14 future. Some of them quit school and are no longer  
15 working to obtain a college education. Simply put,  
16 they were confused. The reason given for the  
17 decision to eliminate the program was budgetary.  
18 However, the decision was also made because it  
19 helped the numbers game or quota system called  
20 proportionality based on student enrollment. But  
21 when you eliminate 25 male athletes, our numbers  
22 become closer to meeting this numbers game.

23 What happened in this situation  
24 is that these athletes lost their opportunity to

1 compete in their given sport. This wrestling  
2 program served as a vehicle for many of these  
3 student-athletes to obtain a college education that  
4 may not have had that opportunity.

5           Attempts to save the program  
6 were made by a community group. This group was  
7 willing to raise the funds to operate the program if  
8 money were the issue. However, this community group  
9 was told that they would have to raise a \$2 million  
10 endowment to finance the program on a long-term  
11 basis. Also, the community group would have to fund  
12 the addition of at least two women's sports. So as  
13 one can see, this is not just a question of money.

14           These student-athletes have lost  
15 their program and the opportunity to reach their  
16 goals. No student-athlete or program should have to  
17 experience this type of situation. It is one thing  
18 to have to fund your own program, but not to be able  
19 to exist even if you come up with the funding is  
20 another. And to be the only program in the athletic  
21 department to have to finance your whole program is  
22 not fair.

23           What kind of message are we  
24 sending the youth of America that are working hard

1 to develop their good skills in their chosen sport?  
2 Colorado is a very strong wrestling state.

3                   There are nearly 6,000 high  
4 school wrestlers in 228 high school programs in the  
5 state. The Colorado state tournament drew over  
6 47,000 fans in a three-day period, and over 21,000  
7 in the final session. If we eliminate a college  
8 program, we are taking away many dreams of competing  
9 at a higher level for these young athletes.

10                   If we -- if people are willing  
11 to fund programs from private money and give these  
12 athletes an opportunity, then money is not an issue,  
13 but the quota system is. Enrollment should have  
14 nothing to do with participation in sports or any  
15 other areas on campus. Students have a vast range  
16 of interests and should be given the opportunity to  
17 participate in an activity they have an interest  
18 in. We need to create opportunities, not destroy  
19 them.

20                   Colleges and universities are  
21 using proportionality as the primary method to  
22 enforce Title IX. This is an interpretation that I  
23 have a problem with concerning opportunities for  
24 young people. Colleges and universities are allowed

1 to cut men's programs and add no women's programs to  
2 reach the gender quota. Supposedly, there are three  
3 prongs of enforcement that they can use, but when  
4 they are using proportionality to enforce Title IX,  
5 which in my opinion is unsafe for male athletes, a  
6 long hard look needs to be taken in this area of  
7 enforcement.

8   Again, let's create  
9 opportunities for young people rather than destroy  
10 them.

11   (Audience applause.)

12   MS. COOPER: Thank you. Our  
13 Next four speakers, Lou Burkel, Barbara Shroeder,  
14 Ted -- I'm going to kill this name -- but Witulski,  
15 and Mitch Hull.

16   MR. LELAND: Would those four  
17 people please come up to the front so we can . . .

18   MS. COOPER: We'll start with  
19 Lou.

20   MR. BURKEL: Thank you for the  
21 opportunity to speak to you today. My name is Lou  
22 Burkel. I am the director of gymnastics at the  
23 United States Air Force Academy and have been  
24 teaching physical education and/or coaching

1 gymnastics there for 27 years.

2                   When I first was assigned to the  
3 athletic department at the Air Force Academy in  
4 1975, the cadet wing was 100 percent male. In 1976  
5 we welcomed the first female cadets and immediately  
6 started our women's intercollegiate program. In  
7 fact, 10 varsity teams competed in NCAA Division 2  
8 that first year. Our women's teams have long since  
9 moved to Division 1, and I am very proud that the  
10 Air Force Academy took such an aggressive approach  
11 in integrating women's intercollegiate athletics  
12 from the very beginning.

13                   Title IX is a good thing. But  
14 if there were no problems with Title IX, we would  
15 not be here today. Here are some of the  
16 ramifications of Title IX:

17                   Men's gymnastics has gone from  
18 107 programs in 1979 to 20 programs today.

19                   The average number of NCAA male  
20 athletes per campus has dropped from 253 in 1985 to  
21 199 in 2001.

22                   Roster management has turned  
23 away countless nonscholarship men, while coaches in  
24 some NCAA women's sports are finding it difficult to

1 fill their rosters.

2                   BYU dropped their Top Ten men's  
3 gymnastics team and their Top 10 -- or Top 40  
4 wrestling team.

5                   Guard Young, a BYU gymnast,  
6 recently helped the U.S.A. team deliver a silver  
7 medal in the World Championships.

8                   UCLA dropped their men's  
9 swimming and gymnastics programs, yet the 1984 men's  
10 gymnastics gold medal team was made up of three UCLA  
11 gymnasts, three Nebraska gymnasts, and one Oklahoma  
12 gymnast.

13                   In Colorado, we have gone from  
14 13 men's and women's gymnastics teams to three. As  
15 a result, our travel budget has increased  
16 tremendously. Today, our closest men's gymnastics  
17 competition is the University of Nebraska, a  
18 nine-hour bus trip away. All our away competitions  
19 require us to stay at least one, and usually two to  
20 three nights in a hotel. The same is true for those  
21 universities who come to compete at the Air Force  
22 Academy. It is a very expensive proposition, and  
23 each program lost increases the expense of filling  
24 out our schedule.

1 Title IX is a good thing, and it  
2 is wonderful to give more opportunities to women to  
3 compete in NCAA intercollegiate athletics. It is  
4 the enforcement of Title IX that causes the rub.  
5 Enforcing compliance with Title IX through  
6 proportionality is nothing more than a quota  
7 system. The equitable way to enforce compliance is  
8 by assessing interest. Men and women should be  
9 offered the opportunity to compete based on their  
10 interest, rather than the proportion of each gender  
11 in the student body. Is proportionality or a quota  
12 system used to determine the number of male and  
13 female applicants that will be admitted to the  
14 university or in the general makeup of the chemistry  
15 majors or in extracurricular activities?

16 Consider this: Gymnastics is  
17 growing at a 4 percent rate per year at the  
18 grassroots level. Why is this happening? Many  
19 parents are enrolling their children in gymnastics  
20 classes so they will be able to play other sports  
21 safely. Gymnastics teaches the fundamentals in  
22 kinesthetic awareness so important to many other  
23 team and individual sports. It, in effect, is  
24 teaching physical education to young children.



1 Those children who become hooked on gymnastics are  
2 left with extremely limited opportunities after high  
3 school. What will happen to these athletes and what  
4 will happen to our Olympic programs? When NCAA  
5 gymnastics scholarships disappear, the quality of  
6 our international teams will begin its downward  
7 spiral.

8                   The Air Force Academy does not  
9 award athletic grants; therefore, all our athletes  
10 are on rosters because they choose to be. When a  
11 cadet no longer wishes to compete for a team, they  
12 simply quit the team and do something else. Because  
13 we have a lot of walk-ons, most men's teams end up  
14 cutting players from the roster, but this is not the  
15 case with our women's teams. Each year we have  
16 women quit the gymnastics team for a variety of  
17 reasons, but most often because they're struggling  
18 to make the starting lineup. In 1995, I had a woman  
19 who was in our starting lineup, and she quit the  
20 team because she did not want to give up her spring  
21 break. I do not recall ever approaching the maximum  
22 roster size for a women's gymnastics team, let alone  
23 having to cut a woman from the team. In fact, we  
24 dropped our women's golf team several years ago

1 simply because we could not generate enough interest  
2 to field a team.

3 Interest is the only equitable  
4 way to measure compliance with Title IX. The  
5 proportionality test is nothing more than a quota.

6 MS. COOPER: Thank you.  
7 Barbara?

8 MS. SCHROEDER: Ladies and  
9 Gentlemen of the Commission, thank you for this  
10 opportunity to allow me to speak on my views of  
11 Title IX.

12 My name is Barbara Schroeder.  
13 I'm the director of athletics at Regis University in  
14 Denver, Colorado, a member of the NCAA Division 2.  
15 I have 25 years of experience in collegiate  
16 athletics as both a coach and administrator, and I  
17 am currently in my eighth year as director of  
18 athletics.

19 Years ago, the Regis University  
20 president, vice presidents, and myself made a  
21 commitment that Regis would be in compliance with  
22 Title IX. We have made the commitment to do  
23 everything we can to meet all three prongs of the  
24 three-part test to ensure nondiscrimination. Our

1 student body enrollment has been holding steady at  
2 60 percent female, 40 percent males for the past  
3 four years making the proportionality test the  
4 toughest of the three to meet.

5 As of last year, however, we are  
6 pleased to say that we have achieved gender equity  
7 and have done it by meeting all three prongs of the  
8 test. Because the commitment came from the top at  
9 our institution, we have succeeded in having our  
10 female athletic participation at 60 percent.

11 If you allow me to shift gears a  
12 bit, I was fortunate to have served as the chair of  
13 the Division 2 Championships Committee in the NCAA a  
14 few years ago when Division 2 made the commitment to  
15 sponsor equal championship opportunities for men and  
16 women. In other words, we wanted to give men and  
17 women the same number of championship participation  
18 opportunities so that the opportunities would be  
19 50-50. This required a considerable amount of  
20 budget reallocating to provide for increases in  
21 bracket sizes for women's championships to balance  
22 the opportunity numbers with football. Yes,  
23 football was a part of the equation. And with the  
24 support of the Division 2 presidents, we were able

1 to accomplish equal championship opportunities for  
2 men and women in Division 2. Simply put, the  
3 presidents of Division 2 institutions, like the  
4 president of Regis University, chose to do the right  
5 thing.

6 I say to the Commission that  
7 Title IX is not broken and should not be tweaked or  
8 watered down. What is broken, however, is the  
9 college football experience and the outrageous  
10 expenditures that are made in an attempt to win the  
11 arms raise. While I certainly acknowledge the value  
12 and the history of football at the Division 1-A  
13 level, I know that you are all aware of the millions  
14 of dollars that are spent week after week on college  
15 football.

16 The excesses in every area of  
17 the game from roster sizes to the size of coaching  
18 staffs to the outlandish travel arrangements and the  
19 piano players for the recruits, could all be  
20 combined to pay for several minor sports programs.  
21 If the presidents of football-playing institutions  
22 would step up and stop the excessive spending, not  
23 only would female athletes benefit, but so would all  
24 the so-called minor men's sports.

1                   In other words, the wrestling  
2 coaches have simply been barking up the wrong tree.  
3 If they want to blame someone for the lost  
4 opportunities in their sport, they need to turn  
5 their attention to football and let Title IX do what  
6 it was put in place to do.

7                   Thank you.

8                   (Audience applause.)

9                   MS. COOPER: Thank you, Barbara.  
10 Ted?

11                   MR. WITULSKI: My name is Ted  
12 Witulski. I want to thank you for your time, and  
13 please consider how sports helped my mother raise a  
14 family.

15                   My mother had a difficult job to  
16 do in 1969. She lost her husband to a heart attack  
17 on his 40th birthday. Eight months after my father  
18 died, I came along. I was born the last of seven  
19 kids. My mother was left with seven kids under the  
20 age of 10. She had no college degree and no job.  
21 To her credit, she persevered through difficult  
22 times, became a teacher, and raised seven children  
23 she could be proud of.

24                   Born out of the hardest of

1 times, my mother will be the first to admit that the  
2 successes of her family was not just hers alone. A  
3 community of caring individuals made a difference in  
4 my family's lives. To help raise her family, my  
5 mother used the resources of the community to take  
6 care of and teach her kids while she struggled to  
7 pay the bills. We are all involved with activities  
8 in some way or another, 4-H, the Boy Scouts, candy  
9 stripers, and the YMCA.

10 My mother saw the need for me to  
11 have someone in my life that would resemble a  
12 fatherly influence. When I was five years old, she  
13 took me to the YMCA and signed me up for youth  
14 wrestling. There, amongst the 50 or so kids running  
15 around, was a coach who was an unpaid volunteer  
16 giving freely of his spare time. Through him I  
17 learned about a sport.

18 Imbedded in the fabric of the  
19 sport of wrestling were the values that altered my  
20 life. Without that first step of my mother taking  
21 me to a wrestling practice, my life would have been  
22 much different. Although I was never a world-class  
23 athlete, my life was shaped by the sport of  
24 wrestling. When I went on to high school, and I was

1 the kid that was ready to walk down the wrong path  
2 in life, wrestling, or more specifically a coach,  
3 was there for me again to straighten me out and get  
4 me back on track.

5                   Thankfully, I learned to make  
6 better decisions, and this didn't happen by  
7 accident. It was the tough love of a coach that  
8 made a difference. Without those coaches that were  
9 real influences in my life, I would have been the  
10 kid in trouble, the one falling through the cracks.

11                   I know the members of the  
12 Commission have heard many reasons why the current  
13 interpretation of Title IX should be changed. I  
14 would like to add one more. When sports are cut at  
15 the collegiate level, you are not just cutting spots  
16 for athletes; rather, the cuts are really closing  
17 the training ground for future coaches.

18                   Athletes in colleges become  
19 coaches that volunteer selflessly and make an  
20 inordinately enormous impact on the lives of youth  
21 in America. Cut sports in college and you're really  
22 cutting the likelihood that people will be called to  
23 give back to their communities.

24                   It seems unreasonable but we

1 have reached a point where schools are forced into  
2 roster management, scholarships are capped, and  
3 walk-ons are denied spots on the team. All the  
4 while we've become fixated on satisfying a quota of  
5 proportionality.

6                   In the communities I know,  
7 volunteerism serves a critical function, especially  
8 when you consider the impact on the lives of kids.  
9 We cannot afford to have the interpretation of an  
10 important federal law dismantling the training  
11 ground of volunteers in this country.

12                   While we measure number of  
13 athletes on the team, who is measuring the community  
14 volunteers that come from these college teams?  
15 Those volunteers are there. They are critical to  
16 our society, but if we continue to axe collegiate  
17 sports programs, it is clear we will only be hurting  
18 the future of children in this country.

19                   From my high school wrestling  
20 team alone, four kids went on to wrestle in  
21 college. We all became high school teachers and  
22 coaches. We all made differences in kids' lives,  
23 not just through teaching but through sport.

24                   As a high school teacher for ten



1 years, I often felt the biggest impact I had on  
2 young people's lives was not just in the classroom,  
3 but in the practice room.

4 If wrestling was not available  
5 to me in college, I doubt I would have ever attended  
6 college to get my degree, and without that degree, I  
7 probably would not have made an influence on the  
8 youth that I came in contact with.

9 There needs to be a more  
10 reasoned interpretation for Title IX, not just  
11 because the current interpretation is unfair to  
12 athletes; rather, the current interpretation leads  
13 to the disintegration of the training of athletes  
14 that become coaches, who then in turn give back to  
15 their communities.

16 When I was born the last of  
17 seven kids to a single parent, my mother needed  
18 help. In my case, that help came from coaches  
19 trained in college wrestling programs. Thankfully,  
20 coaches like Dave Pethod, Dan Oliveras, and Milt  
21 Martin were exposed to college sports. Without  
22 their influence, my life would not be as good  
23 today.

24 Please change the interpretation

1 of Title IX so the kids who are born to difficult  
2 circumstances will have those community volunteers,  
3 those coaches, there for them. We can't afford to  
4 lose more college programs, because these programs  
5 repay our communities with coaches, coaches that  
6 make a difference.

7 MS. COOPER: Thank you.

8 (Audience applause.)

9 MS. COOPER: Mitch?

10 MR. HULL: My name is Mitch  
11 Hull. I'm a 45-year-old male. I have been involved  
12 in sports at the high school, college, an elite  
13 athlete, a college coach, a youth coach, and a  
14 parent over the 30 years of Title IX. I have two  
15 daughters and a son who are all active in sports.  
16 One of those daughters is here today to learn from  
17 this Commission and these hearings, and she asked me  
18 to get Cynthia's autograph before I leave.

19 I do not want to use this  
20 valuable time to recount the consequences of the  
21 current method of enforcement of Title IX. Instead,  
22 I would like to look at the opportunity that you  
23 have been entrusted with. My concern is that when  
24 these meetings are over, we will miss this

1 opportunity. My fear is that fear will prevent  
2 doing what is right; fear of recommending a change  
3 because of a backlash from certain groups, groups  
4 that are not concerned with doing what is right,  
5 just gaining more ground; fear of coming out and  
6 admitting that the goal that was once providing  
7 equal opportunity has been twisted into dictating  
8 outcomes through quotas; fear of admitting that, as  
9 groups, there can be a difference between boys and  
10 girls.

11 I have two daughters that are 20  
12 and 17 years old. They have had every opportunity  
13 as my son to participate in sports of their choice  
14 since they were little. I did not have to fight for  
15 this opportunity; however, I did have to volunteer.  
16 This is a generation that has been provided  
17 opportunity. If Title IX is enforced differently,  
18 this opportunity will not go away. No law made or  
19 continues to make the thousands of coaches, mostly  
20 male by the way, volunteer to coach our daughters.  
21 We volunteer because we believe in the value of  
22 sports for our daughters like we do our sons.

23 My wife was in high school in  
24 the early 1970s. She grew up in an era when society

1 had not yet recognized that females could derive  
2 great benefits from varsity athletics. I am  
3 grateful my daughters are growing up in a different  
4 world, but we, and I mean we, have settled that  
5 issue. No matter what happens to the enforcement of  
6 Title IX, it is wrong to instill a fear that we  
7 would end up back in the 1970s.

8 I, as a middle-aged white male,  
9 the enemy in some groups' eyes, am among the  
10 millions of fathers and mothers who would not let  
11 that happen to our daughters. What I strongly urge  
12 the Commission to do is recommend to the Department  
13 of Education, first, simply admit there's a problem  
14 with the current method of enforcement of Title IX.  
15 There's nothing wrong with the law's intent, simply  
16 a problem with the manner that the Department of  
17 Education is enforcing it.

18 Second, do not listen to false  
19 statistics. I respectfully submit that it's an  
20 outright lie to say there are more opportunities in  
21 college today for males than in 1985. The truth is  
22 there are significantly fewer opportunities per  
23 campus. This is a fact.

24 Third, work to find a method to

1 determine opportunity. Proportionality is arbitrary  
2 and improper.

3 Fourth, do not listen to  
4 individuals on either side who have agendas that are  
5 not directed towards serving the best interest of  
6 all student-athletes. There are many participants  
7 that fall into this -- in this debate that fall into  
8 this category. It is not the volume of what you  
9 hear; it is what is being said that matters.

10 Fifth, recommend at least a  
11 one-year notification by an NCAA institution before  
12 a program can be eliminated. If the NCAA fights  
13 this, you can tell them where to put it. I have  
14 seen -- the NCAA's actions so far have demonstrated  
15 they have not yet decided to be part of the  
16 solution.

17 Sixth, eliminate roster  
18 management. This is one of the most egregious  
19 things forced on programs. Gender equity should not  
20 have as an incentive to eliminate virtually  
21 costless, but talented and dedicated athletes who  
22 can contribute to a program's excellence. No female  
23 athletes benefit from the elimination of a male in a  
24 sport that want to participate and fully pay for

1     their education.

2                     I wish I had the time to expound  
3     on each of these points; however, if no  
4     recommendations come forth, I actually hope for the  
5     complete opposite. Go after the current method of  
6     Title IX enforcement with great fervor, go after  
7     high schools and middle schools with full force.  
8     It's when the grass roots of America experience and  
9     understand the current quota method of Title IX  
10    enforcement, we will see a change happen. At the  
11    grass roots is where Suzie's mom is also Jimmy's  
12    mom, and when Jimmy can't play because his sport was  
13    dropped or because of roster management, and Suzie  
14    and her friends already have as many or more sports  
15    offered than the boys, the backlash will take place.

16                    My hope is this Commission and  
17    the Department of Education will have the wisdom to  
18    enact common sense reforms to Title IX before any  
19    more opportunities are needlessly sacrificed.

20                    Thank you.

21                    (Audience applause.)

22                    MR. LELAND: Our next four  
23    presenters are Dennis Pursley, Daniel Flannery,  
24    Dr. Nancy Lough, and David Surofchek. If they could

1     come to the front. And Dennis, you're first, if  
2     that's okay. State your name, please.

3                   MR. PURSLEY: Dennis Pursley.  
4     I'm national team director for U.S.A. Swimming, and  
5     I'll dispense with much of my prepared comments and  
6     the introduction until the end if I have time to  
7     respond to some remarks made by earlier panelists.

8                   It was accurately pointed out  
9     that prior to Title IX, women were fighting many  
10    inequities and atrocities. In many cases, though,  
11    intended or not, Title IX has reversed that  
12    situation.

13                   My wife was one of the first  
14    beneficiaries of Title IX in the early '70s. While  
15    she and her teammates were training on Christmas  
16    holidays in the Bahamas, the men were training at  
17    home on campus. When they went on out-of-town  
18    swimming meets, my wife and her teammates received  
19    more money for meals than did the men.

20                   I agree also that it's not the  
21    mission of collegiate athletic departments to  
22    develop Olympic medalists, per se. I hope, though,  
23    that part of the mission is to provide all of the  
24    participants with the opportunity to pursue

1 excellence, to be the best that they can be, and for  
2 some that may mean representing their country in the  
3 Olympic games.

4 I would like to focus the rest  
5 of my comments on two points. The first point is  
6 that we're not just talking about collegiate  
7 athletics. This issue has a far-reaching impact.  
8 U.S.A. Swimming membership statistics only go back  
9 to 1988. At that time, female swimmers comprised 53  
10 percent of our membership, and male swimmers 47  
11 percent, and if my memory serves me correctly, prior  
12 to that our membership numbers slightly favored the  
13 boys.

14 Since then we have witnessed a  
15 steady decline in the percentage of male  
16 participants to the current numbers of 62 percent  
17 girls and 38 percent boys. Our sport is slowly  
18 transitioning from a healthy balance of participants  
19 to predominantly a girls' sport. Why? As a club  
20 coach for many years, I can tell you that the  
21 prospect of a collegiate swimming career is the  
22 single greatest incentive for participation at the  
23 advanced age group and high school level. As this  
24 incentive is increased or decreased, so is our level



1 of participation.

2 Any club coach will tell you,  
3 and my own family experience will confirm, that boys  
4 have to attain a much higher level of performance to  
5 attract the interest of a college recruiter than do  
6 the girls. When it becomes apparent to the boys  
7 that their goals are not attainable, they abandon  
8 their dreams.

9 Not only is participation at the  
10 developmental level impacted by collegiate  
11 opportunities or the lack thereof, but performance  
12 at the highest levels of our sport are affected, as  
13 well. In the sport of swimming, Olympic champions  
14 are not made overnight, but are nurtured over a  
15 period of many years.

16 The tradition of the U.S.A.  
17 Olympic Swimming team has been a source of pride and  
18 inspiration, not only for the members of U.S.A.  
19 Swimming, but for the country at large throughout  
20 the history of the modern Olympics. This success is  
21 totally dependent upon strong programs and  
22 participation at the developmental and collegiate  
23 level. As the current trends continue, this success  
24 will be gradually eroded.

1                   Second point, in my mind the  
2                   fundamental question is not whether Title IX has  
3                   hurt men's sports. The more relevant question is,  
4                   are men's sports in trouble today as women's sports  
5                   were 30 years ago, and if they are, what are we  
6                   doing to help them?

7                   As we all know, statistics can  
8                   be presented to support almost any position on any  
9                   issue, and we've seen that clearly today. It cannot  
10                  be denied, however, that during the past 30 years  
11                  certain men's sports have been devastated for  
12                  whatever reason, and others, including swimming, are  
13                  seriously threatened.

14                 Of course, the greatest tragedy  
15                 in this phenomenon is the loss of incentive and  
16                 personal development opportunities for thousands of  
17                 young boys at a time when our society is in  
18                 desperate need of these opportunities. This is  
19                 truly a grave matter that we are dealing with, just  
20                 as it was 30 years ago on the women's side.

21                 In some college campuses and  
22                 some sports, women have had no -- who have had no  
23                 experience in those sports have been offered  
24                 scholarships to fill the rosters. The opposite is

1 true for young men. In our sport, many young boys  
2 who have dedicated their lives to competitive  
3 swimming and have attained elite levels of  
4 performance have been denied the opportunity to  
5 pursue their dreams at a collegiate level because of  
6 severe program reductions.

7                   In the '70s it was determined  
8 that women's sports were floundering and were in  
9 needed of assistance. We responded with the  
10 implementation of Title IX, and I enthusiastically  
11 applaud the resulting benefits to women's sports.  
12 Not only my wife, my daughter is currently competing  
13 at the collegiate level and enjoying those  
14 benefits.

15                   In 2002, many men's sports are  
16 floundering and are in desperate need of a similar  
17 response. If we stick our heads in the sand, if we  
18 turn a blind eye to what has often been referred to  
19 as the unintended consequences of Title IX, if we  
20 are insensitive and unresponsive to the current  
21 crisis in men's sport, the bottom will soon fall  
22 out, and when it does, the inclination will be to  
23 throw the baby out with the bathwater and risk  
24 losing all that we have gained.

1                   My hope is that we will stop  
2 pointing the finger of blame and work together to  
3 effectively address the very real problems that  
4 currently threaten certain men's sports.

5                   Thank you.

6                   MR. LELAND: Thank you.

7                   (Audience applause.)

8                   MR. LELAND: David? Daniel?

9                   MR. FLANNERY: Yes. My name is  
10 Daniel Flannery, and I reside in Ames, Iowa. I'm an  
11 advocate for the sport of swimming. I'm here today  
12 to share with you how Title IX ha affected my life  
13 as a former student-athlete, educator, and coach.

14                   I'm concerned with the loss of  
15 the opportunity for male student-athletes in the  
16 sport of swimming. Over the past two years, I've  
17 witnessed many programs in the Midwest disappear,  
18 programs such as Nebraska, Kansas, Iowa State,  
19 Northern Iowa, Northern Illinois, Bradley, Butler  
20 have all been dropped. These programs consistently  
21 held some of the highest team GPAs and graduation  
22 rates in the country.

23                   As a former swimmer for the  
24 University of Iowa State from 1994 to 1998, I'm

1 still coping with the loss of such a prestigious  
2 program. I have incredible memories from my four  
3 years as a student-athlete. The bond we established  
4 as coaches and teammates are very special to me.

5 Beyond Iowa State our swimming  
6 alumni have accomplished careers such as doctors,  
7 lawyers, professors, engineers, and scholars. We  
8 symbolized what student-athletes should become.

9 Not only am I concerned with the  
10 loss of male swimming programs but the loss of  
11 athletic opportunities for male high school  
12 students. I'm a high school swimming coach and  
13 age-group swimming coach in Ames, Iowa. Due to the  
14 loss of competitive swimming programs in the  
15 Midwest, I'm struggling to find colleges for my high  
16 school male swimmers. Many of my seniors have been  
17 told that college rosters have a restricted limit  
18 for the number of athletes allowed. Since there are  
19 only five men's Division 1 swimming programs  
20 remaining in the Midwest, my seniors have to choose  
21 between giving up a sport they love or moving  
22 elsewhere to compete.

23 This has had a negative effect  
24 on the female swimming programs, as well. Many

1 female student-athletes are faced with limited  
2 collegiate programs that support both men's and  
3 women's swimming, a valuable recruiting tool.

4           Currently, our school board is  
5 voting for a new middle school and a possible  
6 aquatics facility. I fear my school district and  
7 many others around the Midwest may follow suit and  
8 choose not to support swimming.

9           Swimming has been one of the  
10 most decorated sports in Olympic history. The  
11 collegiate programs have been the feeders of our  
12 Olympic teams and to our Olympic success to a great  
13 degree. The demise of American swimming on the  
14 world scene is guaranteed if these cost-cutting  
15 trends continue.

16           The message being conveyed to  
17 our male youth today is that you must be able to  
18 carry a ball to have any success in Division 1  
19 athletics. Title IX has created many opportunities  
20 for female student-athletes, but achieving gender  
21 equity has come at the expense of limiting  
22 opportunities for male student-athletes.

23           The goals of the NCAA are to  
24 promote, protect, and provide, and prepare, an

1 athletic opportunity in an academic arena. I urge  
2 this Commission to make changes to Title IX and set  
3 a fair and realistic balance for male and female  
4 athletic opportunities.

5 Thank you for the opportunity to  
6 present my testimony to you today.

7 (Audience applause.)

8 MR. LELAND: Thank you, Daniel.  
9 Nancy?

10 MS. LOUGH: I'm Nancy Lough from  
11 the University of New Mexico.

12 To start off with, Title IX does  
13 not require a quota. This term has been misused  
14 because of the negative political ramifications and  
15 the media attention it gained from its use.

16 As a federal law, Title IX has  
17 far-reaching ramifications beyond athletics and  
18 sport. The scope of consideration needs to be  
19 broadened. Sports are just a fraction of the  
20 educational programs the law has shaped. Simply  
21 put, the problem with the administration's  
22 reconsideration of Title IX is that it focuses  
23 solely on the impact of the law on sports today but  
24 it jeopardizes other educational programs that

1 Title IX protects.

2                   What Title IX has done is  
3 ensured the schools are places where students of  
4 both genders can pursue courses of study, play on  
5 teams as they wish, be rewarded on an equitable  
6 basis for good scholarship and study without being  
7 harassed by teachers or peers. All reasonable  
8 goals, it seems, but the law is, nevertheless, under  
9 attack.

10                   The need for the law has not  
11 passed. In 2000, the Department of Education  
12 received 396 complaints of sex discrimination  
13 alleging a violation of Title IX. But only 21 of  
14 those complaints alleged discrimination in  
15 intercollegiate athletics. Without Title IX, these  
16 wrongs would be much harder to remedy.

17                   Title IX codified social  
18 change. Evidence can be found in the numbers of  
19 women lawyers, doctors, executives, professors, and  
20 scientists that have resulted from increased  
21 educational opportunities. Yet women continue to  
22 lag behind men in salaries for commensurate work and  
23 in representation among top decision and  
24 policy-making positions.



1                   Even in athletics, as the  
2 numbers of young women with experience as athletes  
3 has risen, the number of women in athletic  
4 administration and coaching has dropped.

5                   The social change that Title IX  
6 initiated has not reached the original level of  
7 aspiration. Discrimination continues today, whether  
8 we honestly acknowledge it or try to ignore it.  
9 Title IX simply must be enforced. Young men and  
10 young women deserve equal opportunities for  
11 education. You also -- they also deserve equal  
12 protection afforded by the law. The only needed  
13 change is real enforcement with serious  
14 ramifications imposed for those who fail to comply  
15 in all areas of education.

16                   Athletics do not operate as  
17 other academic departments and should not be  
18 compared, as they were previously. Athletics are  
19 allowed financial excesses that academics are simply  
20 not allowed. An example of a financial excess  
21 athletics are allowed includes the University of  
22 Georgia spending \$180,000 recruiting 525 honor  
23 students. In comparison, the University of Georgia  
24 spend \$470,000 recruiting 25 to 30 football

1 players.

2                   As far as wrestling goes, the  
3 greatest drop in men's wrestling teams occurred  
4 between 1982 and 1992 when the total fell from 363  
5 to 275 teams. The decline in interest was cited for  
6 the initial elimination of wrestling programs  
7 followed by allegiances shifting to the two most  
8 rapidly growing sports for men, soccer and  
9 football.

10                   Gymnastics during 1982 and 1992,  
11 men's teams decreased from 79 to 40, a loss of 39  
12 programs. Women's teams lost during this same  
13 period were more than double at 83. The concern for  
14 legal liability and decreasing interest were cited  
15 as reasons for dropping gymnastics.

16                   Title IX has only been effective  
17 since 1992. 10 years, not 30. Although passed in  
18 '72, the real turning point was 1992 with the  
19 verdict from the Gwinnett versus Franklin Public  
20 Schools case in which both punitive and compensatory  
21 damages were awarded under a Title IX lawsuit.

22                   Discrimination of women in  
23 athletics continues today. At the high school and  
24 college level women represent only 41 percent of

1 athletes overall. Title IX in athletics needs to be  
2 enforced, not abandoned or weakened.

3 If the precedent of the Equity  
4 in Athletics Disclosure Act were followed,  
5 enforcement would include financial penalties for  
6 noncompliance with Title IX each year that the  
7 institution failed to address the discrimination.

8 It is just as important to  
9 educate young women as it is young men. Athletics  
10 are an avenue to gain an education first and  
11 foremost.

12 Title IX needs to be enforced  
13 not abandoned or weakened. Thank you.

14 (Audience applause.)

15 MR. LELAND: Thank you, Nancy.  
16 David?

17 MR. SUROFCHEK: My name is Dave  
18 Surofchek, and I work for Smith Barney, but I'm a  
19 former wrestler. And I have very unprepared  
20 comments but emotional ones.

21 I'm hearing a lot of people  
22 today talk about the opportunities for women, and  
23 I've heard one person on this side say that we want  
24 to take it away.

1                   The reason I'm up here today is  
2 because an opportunity has been taken away from my  
3 college, okay? I went to Ferris State University in  
4 1988 to 1993. It was a prominent Division 2  
5 program. We had 55 guys on the lineup, five  
6 scholarships full. We sold candy bars to survive  
7 and keep the program going, 15-man vans or 20-man  
8 vans, but not once did I see a lack of interest in  
9 that team to be there.

10                   In 1994, not 1992, the program  
11 was dropped for Title IX reasons. Three women's  
12 programs were added, and we were dropped. The year  
13 before we took fourth in the country, Division 2.

14                   So all the facts that have been  
15 thrown around with interest, with numbers being cut,  
16 is not the issue. It's opportunities. Okay.  
17 They're fighting for an opportunity, and we're  
18 fighting for a lost opportunity, and we're just  
19 looking at you to look at this and say, there's a  
20 problem. It's broke. We're here today because it's  
21 broke, not because we're trying to preserve and take  
22 away something. We're trying to give something back  
23 and find a way of doing it. And, you know, that's  
24 what we're all here hoping this is going to, you

1 know, drive the solution.

2 If it wasn't for wrestling, I  
3 would not be here. I was an Olympic training center  
4 resident athlete for seven years. I took third in  
5 state in wrestling. 16,000 wrestlers in Michigan,  
6 okay. At that time, there was probably about, I'm  
7 not going to say it's a fact, but 65 full  
8 scholarships. I went to Ferris State first time  
9 four-time all-American, went on to train for  
10 Olympics, alternate two times. If it wasn't for the  
11 opportunity, I would not be here today, and that's  
12 all we're asking is to get that opportunity back.

13 Right now in Michigan there's  
14 16,000 wrestlers in high school. That is a fact.  
15 There's now only four programs -- Division 1  
16 programs, in Michigan. When I was there there was  
17 10. There's only 40 full-ride scholarships for  
18 16,000 wrestlers there. Where's the opportunity?  
19 We're looking for it. We're looking for it back,  
20 and we're here to fight. And we're the minority  
21 because the opportunity is not there for us,  
22 wrestlers, swimming, gymnastics.

23 This is not a football issue.  
24 This is not a women's sports issue. This is us,

1 here, talking to you, asking you to do something  
2 about it.

3 So I appreciate you taking the  
4 time. We fought hard to get this. We got it. We  
5 appreciate you doing something about it.

6 Thank you.

7 MS. COOPER: Thank you.

8 (Audience applause.)

9 MS. COOPER: Kitty DeKieffer? I  
10 hope I didn't ruin your name too much. Sara Levin,  
11 Betty Jaynes, and Karen Teja. And we will start  
12 with Kitty.

13 MS. DeKIEFFER: Actually, you  
14 did a pretty good job. I know it's hard. It's my  
15 husband's fault.

16 My name is Kitty DeKieffer, and  
17 in my past life I was an accountant, and in my  
18 current life, before coming -- becoming so  
19 permanently disabled, some days more so than others,  
20 I raise a lot of money for women and children's  
21 issues throughout the nation, but mostly in Boulder  
22 County, Colorado, on a volunteer basis. My husband  
23 and I are Republican caucus chairs, and this is my  
24 story around my experiences of Title IX through the

1 K through 12 age group.

2                   When I began this journey 14  
3 months ago, it was purely for selfish reasons. My  
4 best friend's daughter had been cut from the  
5 volleyball team in the Boulder Valley School  
6 District when there was still spots left on the  
7 team. As an ardent women's advocate, and I sit on  
8 many boards, including the Women's Foundation of  
9 Colorado, I soon realized that the problem was much  
10 bigger. The Boulder Valley School District was not  
11 in compliance with Title IX.

12                   We began at the very beginning,  
13 and all of the way up through the chain, everyone  
14 told us that the Boulder Valley School District was  
15 fine with Title IX. Of course, no statistics were  
16 available. The coach told us he would be more  
17 competitive with fewer girls playing, even though  
18 today he still loses most of his games.

19                   The high school athletic  
20 director gives us the impression time and again that  
21 he only cares about football and basketball, both  
22 for boys. The principal said he couldn't do  
23 anything about it. The Boulder Valley School  
24 District athletic director tells us to this day that

1 he has no direct reporting control over anyone at  
2 the high schools, and his hands are tied. And I'm  
3 not really confident that he even understands what  
4 Title IX is or means.

5                   The administration says that  
6 they stand by their coaches. One of the two school  
7 board members that we set up a meeting with did show  
8 up. She set up a meeting with the superintendent  
9 and the Boulder Valley School District athletic  
10 director. They also told us that we were wrong  
11 again, and thus set in motion many more meetings.

12                   Until we got to the Boulder  
13 Valley School District legal counsel, who agreed  
14 with our contention that they were out of  
15 compliance, no one would pay attention to us.

16                   And the sad thing was, we went  
17 into all of this asking for participation in sports  
18 for all of our kids. We did not want any more caps  
19 or cuts for anyone in sports. I have a 13-year-old  
20 son, and I want public tax dollars to support all  
21 kids, not just a selected few. No one, and I  
22 repeat, no one, in the entire chain of this  
23 bureaucracy command would listen to us until we  
24 started talking about Title IX. Title IX opened the



1 doors for the conversation that we could not have  
2 had otherwise.

3                   We have probably been the first  
4 school district in Colorado in the K through 12  
5 group to improve our situation without actually  
6 filing a lawsuit. We went into this and still  
7 believe that we want to be leaders in Colorado. We  
8 want -- we wanted to team with the school district,  
9 not bash them as we really could have easily done,  
10 and we wanted to go forward together.

11                   We won all that we asked for,  
12 and we created compromises. We had our first Jump  
13 For Girls sports day October 11 in which 400-plus  
14 girls had a full day of being exposed to sports, and  
15 to hearing from sports leaders throughout the state,  
16 and we are currently working on the implementation  
17 process and the education pieces that still need to  
18 be done and that are so very necessary.

19                   Hopefully, you read about us  
20 last Saturday in the Rocky Mountain News, and we  
21 have also been interviewed by Marsha Neville who was  
22 here earlier for Channel 4 for a program that will  
23 air in December.

24                   When you speak about even

1 thinking of tinkering with or removing Title IX, the  
2 irritation for me is far greater than my frustrating  
3 experiences these past 14 months. Title IX is about  
4 a woman's ability to participate in all educational  
5 opportunities. The interest is there in high school  
6 for girls. Taking away Title IX does not  
7 acknowledge women's rights to participate fully and  
8 equally. It does not allow us to have the  
9 conversations that need to take place, such as the  
10 true life story I've just related to you, and it  
11 does not allow my son to see how girls flourish when  
12 participating in sports.

13 We already do not have equal  
14 resources in the K through 12 age group, and taking  
15 away Title IX will not allow us to have any  
16 recourse.

17 We know that girls who are  
18 exposed to sports will be the leaders of tomorrow,  
19 just like the boys, and we know that girls who are  
20 engaged in sports will stay off the streets, won't  
21 do drugs, and will be more confident to say no to  
22 the wrong influences, just like boys, and we  
23 certainly know that girls who are experienced in  
24 sports will spread the word and bring in more girls

1 to participate, just like our boys.

2 Thank you, and please keep in  
3 mind that I am voting in Colorado in the next couple  
4 weeks with Title IX in mind when I vote at the  
5 polls. Thank you very much.

6 MS. COOPER: Thank you. Sara?  
7 Yeah, just pull it down.

8 MS. LEVIN: I'm not a basketball  
9 player.

10 MS. COOPER: You could be,  
11 though.

12 MS. LEVIN: Commission Members,  
13 thank you for your time today. My name is Sara  
14 Levin. I have been involved in athletics for most  
15 of my life and currently am a professional in the  
16 sports industry. I am not an expert on Title IX,  
17 but I have seen its impact. My goal here today, if  
18 I achieve nothing else, is to instill in you one  
19 message: Equal opportunity does not mean equal  
20 participation.

21 I agree that women should have  
22 every opportunity to participate in athletics. A  
23 woman should never be denied her chance to  
24 participate in sports based on her gender. But

1 today's woman lives in a much different society than  
2 1972.

3                   At 28 years old, I was born two  
4 years after Title IX was created. Title IX was  
5 intended to protect me, but I never even knew  
6 Title IX existed until I worked for a predominantly  
7 men's sport.

8                   The current implementation of  
9 the law focuses solely on statistical  
10 proportionality, not on an institution's potential  
11 policy or acts. Consider, if you would, that women  
12 just don't want to participate in varsity athletics  
13 at the same level that men do.

14                   That's not to say women aren't  
15 athletic. Look at the aerobics classes at your  
16 local health club. There's certainly an  
17 unproportional number of women versus men. Look  
18 where participation is purely by choice. Women  
19 choose to participate in fitness activities more  
20 than men. Why then are we forcing institutions to  
21 create an equal environment in varsity athletics?  
22 Why is it so impossible to believe that women just  
23 might not want to participate at the same level of  
24 men in sports?

1                   Again, equal opportunity does  
2 not mean equal participation.

3                   I had every opportunity growing  
4 up to participate in sports. I tried soccer. I was  
5 asked to wrestle. I was a member of a swim club.  
6 But I never took my athletics to a higher level. It  
7 wasn't for a lack of opportunity. It was because I  
8 didn't want to. I chose to participate in a  
9 professional role. I have a dream to go to the  
10 Olympics, as an administrator. And I don't want the  
11 government to punish men because I choose not to  
12 participate in varsity sports. I am grateful for  
13 the opportunities, but not at the expense of men's  
14 sports.

15                   I choose not to play.

16                   It seems like such a  
17 contradiction that the athletic departments are  
18 forced to match university enrollment, but the other  
19 departments don't have to comply. No one seems to  
20 be upset that more women want to participate in  
21 theater, music, or spirit activities than men.  
22 According to the California State University Report  
23 under CSU/Cal-NOW Consent Decree in February of  
24 2000, from enrolled students in 1998 and '99, of

1 those interested in participating in intercollegiate  
2 athletics, 61 percent were male. One after another,  
3 surveys prove that men want to participate in  
4 varsity athletics more than women.

5           Again, equal opportunity does  
6 not mean equal participation.

7           We are now in a crisis. Because  
8 the current enforcement has skewed the issues so  
9 much, men are now fighting to keep the opportunities  
10 they once had. We are trying so hard to ensure that  
11 women get a fair shake that men are now suffering.

12           I think it is important to  
13 remember the intention of Title IX. How has it  
14 become morphed into the beast it is now? The words  
15 of the law don't ever mention sports. It speaks of  
16 equal opportunity. Title IX was designed to end  
17 gender discrimination in federally funded education  
18 programs. I contend that men now need the backing  
19 of Title IX. Because of large sports like football,  
20 men are losing opportunities at a dramatic rate when  
21 institutions are mandated to create  
22 proportionality.

23           We all know of the schools  
24 forced to cut men's programs in order to free up

1 funds to add women's programs, irrelevant of the  
2 actual demand. The tables have turned, and now it  
3 is the men that need protection. I beg you, stop  
4 the current method of enforcement of Title IX.

5 Equal opportunity does not mean  
6 equal participation.

7 Thank you.

8 MS. COOPER: Thank you.

9 (Audience applause.)

10 MS. COOPER: Betty Jaynes?

11 MS. JAYNES: My name is Betty  
12 Jaynes, and I'm the retired CEO of the Women's  
13 Basketball Coaches Association. I am a native  
14 Georgian, but speaking in Colorado. 14 years  
15 coaching collegiate basketball and 21 as the CEO of  
16 the Women's Basketball Coaches Association.

17 I have attended all of the town  
18 meetings. I have listened to every single panelist,  
19 and all the close to 100 speakers.

20 But I would like to share with  
21 you this afternoon an area of interest that I have  
22 researched, which is in basketball finances,  
23 specifically inequities in expenditures.

24 In general, as you know, there

1 are 162,000 women opportunities in college  
2 athletics, and in contrast 231 men have these same  
3 type of opportunities. Participation for men is 58  
4 percent and 42 percent for women. In general, total  
5 athletic scholarships are 58 percent for men and 43  
6 percent for women. Operating budgets for these  
7 participation rates are 64 percent men and 36  
8 percent women.

9 I want to share with you a  
10 survey that I did with our membership. Our  
11 membership, by the way, is right at 5,000, and we  
12 have very close to a 95 percent of the Division 1  
13 women's basketball head coaches as members, and we  
14 surveyed this group. The purpose of the study was  
15 to determine similarities and differences between  
16 men's and women's basketball programs. The  
17 following variables were assessed: The gender of  
18 the coach, salaries, budgets, program support.

19 I would like to give you a  
20 general summary of my findings. The base salary for  
21 Division 1 women's basketball coach is \$86,199. The  
22 base salary for a men's basketball coach is  
23 \$115,586, which means that the female basketball  
24 coach only makes 75 percent of what the male coach



1 makes, and when I surveyed our coaches in 1995, same  
2 result, exactly the same.

3 31 percent of the women's  
4 operating budgets are assessed at 18 percent. We  
5 have only -- or excuse me, we have 41 percent of our  
6 men's operating budgets that are over \$240,000, and  
7 we have only 18 percent of our women's that have  
8 that same number.

9 What's interesting to me, very  
10 curious, are these next two facts that I would like  
11 to share with you. When I assessed the recruiting  
12 budget, our men's basketball coaches spend \$20,000  
13 more on recruiting a male athlete than they do a  
14 female athlete. We've got the same recruiting  
15 window; we've got the same contact days; basically  
16 we've got the same rules. So why would they spend  
17 \$20,000 more?

18 Then when I looked at the travel  
19 of our coaches, I found that the men again spent  
20 \$20,000 more to travel than the women's basketball  
21 coach. Have pretty much the same schedule, pretty  
22 much the same season, pretty much the same starting  
23 and stopping date, pretty much the same mode of  
24 transportation and per diem.

1                   Generally, the WBCA survey shows  
2                   that the differences in spending based on gender  
3                   remains consistent in all categories. We have been  
4                   administering our survey since 1995. Still, the  
5                   same differences are conclusive.

6                   I hope these financial figures I  
7                   have shared revealed some of the inequities between  
8                   men's and women's basketball in only a few  
9                   categories. If I could have the rest of the day, I  
10                  would share the rest of the survey with you.

11                  Finally, in 2001, when the 2001  
12                  Daniel Fulks study is released, it will be shown  
13                  that the average expenses for men's basketball in  
14                  1-A is approximately \$2 million. And for the  
15                  women's basketball team, it is approximately  
16                  \$1 million. That is a million dollars difference.  
17                  One million dollars. This could fund one wrestling  
18                  team, one gymnastics team, and a golf team.

19                  Thank you.

20                  MS. COOPER: Thank you, Betty.

21                  (Audience applause.)

22                  MS. COOPER: Karen?

23                  MS. TEJA: Hi. My name is Karen  
24                  Teja, and I currently serve on the board of

1 education at a local school district here in  
2 Colorado Springs.

3                   The question now is whether the  
4 men's advocacy groups will succeed through the  
5 political appointments at the Department of  
6 Education where their attempts through Congress and  
7 the courts have failed thus far. As you are aware,  
8 9 of the 12 U.S. Courts of Appeals have received  
9 cases involving the three-part test, and none of the  
10 nine circuit courts have found the three-part test  
11 invalid.

12                   The U.S. Department of Education  
13 is the government entity responsible for enforcing  
14 Title IX. In an official 1996 document from the  
15 Office of Civil Rights, the assistant secretary for  
16 civil rights sent a policy clarifying to colleges  
17 the three-part test. The letter includes some of  
18 the following points, and I quote:

19                   "It is clear from the  
20 clarification that there are three different avenues  
21 of compliance. The institutions have flexibility in  
22 providing nondiscriminatory participation  
23 opportunities to their students, and OCR does not  
24 require quotas."

1                   Another quote: "OCR focuses on  
2 the interests and abilities of the unrepresented sex  
3 only if the institution provides proportionality,  
4 fewer athletic opportunities to members of one sex,  
5 and have failed to make a good faith effort to  
6 expand its programs for the underrepresented sex.

7                   "Nothing in the clarification  
8 requires that an institution cap or eliminate  
9 participation opportunities for men. Ultimately,  
10 Title IX provides institutions with flexibility and  
11 choice regarding how they will provide  
12 nondiscriminatory participation opportunities.

13                   "It has been the OCR's  
14 experience, however, that institutions committed to  
15 maintaining their men's programs have been able to  
16 do so -- and comply with Title IX -- notwithstanding  
17 limited athletic budgets. In other cases, OCR and  
18 these institutions have worked together to find  
19 creative solutions that ensure equal opportunities  
20 in intercollegiate athletics. OCR is similarly  
21 prepared to join with other institutions in  
22 assisting them to address their own situations."

23                   Ladies and Gentlemen, a  
24 comprehensive review of the three-part test was

1 already compiled. In 1995, OCR circulated 4,500  
2 interested parties a draft of the proposed  
3 clarification of the three-part test, soliciting  
4 comments and feedback, came out with their final  
5 document in 1996. The document answered some  
6 commonly asked questions regarding the law's  
7 regulations and applications.

8                                   Members of the Commission, and  
9 Current Administrators of the Department of  
10 Education, I would encourage you to reread that  
11 document and accompanying cover memo. This issue  
12 was already reviewed and addressed in 1996. The  
13 Bush administration's policies -- political  
14 appointees should listen to the members of Congress,  
15 should listen to the courts, and should listen to  
16 the previous administration of the U.S. Department  
17 of Education's Office of Civil Rights. The solution  
18 is simple -- uphold the law, the regulation, the  
19 interpretation, and the clarification. But also,  
20 put more efforts forth into educating all levels --  
21 high school, junior college, four-year colleges, and  
22 on the needs to provide equitable educational  
23 opportunities for both men and women, both boys and  
24 girls. It's the right thing to do.

1 Thank you for your time.

2 (Audience applause.)

3 MS. COOPER: Thank you.

4 MR. LELAND: Okay. Our next  
5 four speakers are Shaonia (sic), I think, Taylor.  
6 I'm not sure if I pronounced that right. Mark  
7 Entrekin, Beverly Brandon, and R. Wayne Baughman.  
8 If they could come forward, please. Okay. If  
9 Robert Boettner could come to the front, too.  
10 We'll -- Shaonia first?

11 MS. TAYLOR: My name is Shaoria  
12 Taylor, and I'm speaking on behalf of Girls  
13 Incorporated of Metro Denver. I'm a 14-year-old and  
14 a freshman at Denver University High School. Thank  
15 you for having me here today.

16 Before I came here, I struggled  
17 with what to say when it came to this subject. It  
18 wasn't because I didn't have enough to say; it was  
19 because there was so much to say. I have been in  
20 sports for as long as I can remember, starting with  
21 Taekwondo at the age of four. I started Taekwondo  
22 so that I could learn to defend myself and others,  
23 but as I grew and became more involved in sports, it  
24 was an outlet; a place where I was free to express

1 myself in any way I wished; a place where my body  
2 became a tool.

3 I've been doing Taekwondo for  
4 about 11 to 12 years, and in that time I received my  
5 black belt at the age of eight, and I'm a two-time  
6 state and national champion in the Junior Olympics.

7 Taekwondo has allowed me to do  
8 other sports that I am proud to say I have excelled  
9 in. For example, in track I was number one in the  
10 city for the long jump, 200-meter dash, 800-meter  
11 dash, relay. In soccer, I was voted number one  
12 defensive woman, and just this year I became the  
13 first freshman on the varsity team as well as the  
14 MVP of the team.

15 These sports have become a part  
16 of my life and an essential element to keep me  
17 relaxed and focused on school. If you ask me, or  
18 any of my friends, what we do to relax before a big  
19 exam, we probably say play soccer, kickboxing,  
20 basketball, Taekwondo, or volleyball because in our  
21 lives, sports are a stress reliever.

22 That's why Title IX is so  
23 important to us. Sports allow us to be who we are  
24 without barriers to stop us. In my life, barriers

1     were placed in my way to deter me from being the  
2     best in soccer. It was a coed team, but the boys  
3     received the playing time, so when I arrived, I did  
4     my best, but I became the best and received as much  
5     playing time as the boys. It wasn't given to me. I  
6     earned it. So now the coed team at my school is  
7     half and half, girls and boys. Isn't that great?

8                     If they take sports equality  
9     away, you're demoting girls, not promoting girls.  
10    Help me tell the president and the people in  
11    Washington, don't drop the ball, preserve Title IX.  
12    Girls like me depend on it. So I hope I helped you  
13    realize that girls in our communities need you to  
14    support Title IX in order to continue to make a  
15    difference in ours lives.

16                     Thank you.

17                     (Audience applause.)

18                     MS. COOPER: I just had a  
19    question. What happened to basketball? Just  
20    kidding. Just kidding.

21                     (Audience laughter.)

22                     MR. LELAND: Mark?

23                     MR. ENTREKIN: Hello. I am Mark  
24    Entrekin. I want to thank you, of course, first for



1 taking the time to be here and showing the support  
2 in the process.

3 A little about myself. I have a  
4 bachelor's degree in business information systems;  
5 master's degree in organizational management; I'm a  
6 candidate to the Colorado House of Representatives;  
7 and like many people in this room, very active in  
8 what's going on in our city, county, state and  
9 federal government, as well as active in some of the  
10 sports that you're here to talk about.

11 I focus my report in correlation  
12 with the report that I believe you have due in  
13 January. I think it's January 31.

14 First, yes, the standards for  
15 assessing equal opportunity in athletics is working,  
16 but it is not time to quit. I think we need to  
17 continue the strong guidance on how we turn the  
18 ideas that are received from the high-level  
19 statements that we received in the process to  
20 detailed solutions.

21 We need to share examples of how  
22 the successful schools are achieving their goals,  
23 with the others who may not be receiving the same  
24 success. We can do this inexpensively, through

1 e-mails, web pages, websites.

2 Yes, further guidance may be  
3 needed at all levels, sort of a familiar comfort  
4 level. We have a comfort level with Title IX, how  
5 to achieve the goals at all levels. We need to  
6 continue to work with what is working and share  
7 those successes with the other schools.

8 Yes, cheerleading, male and  
9 female, should factor into the equation. Strong  
10 team leadership and leadership training can be  
11 achieved through cheerleading. Bowling may not be a  
12 great spectator sport as people might desire, but  
13 yes, it too should be included.

14 Some sports may require more  
15 individual expenses than others, but schools can  
16 also work with endorsed bowling alleys to achieve  
17 the best cost possible. We need to reach outside  
18 the box to locate the different vehicles for  
19 funding.

20 As far as walk-ons, as in one of  
21 the bullets on your request, we all need to turn to  
22 the schools for accurate information. How many  
23 walk-ons do we have in the men's sports? How many  
24 do we have in the women's sports? How can we change

1 that? How can we improve that? If it's true, each  
2 school can be tasked with finding the solutions, not  
3 just putting the sports together, but bringing the  
4 school together to find solutions to each of these  
5 problems.

6                   We need to look within ourselves  
7 for many of these answers. How many women know that  
8 they can be a walk-on? We hear about the men's  
9 sports. What do we hear about the women's sports?  
10 What schools advertise to the women? How many  
11 schools have a true women's recruiting team?

12                   Instead of looking for ways to  
13 do opportunities in other sports venues and how they  
14 interact with obligation to other schools, maybe we  
15 should look at how do we want them to interact?  
16 What are the issues? What are we looking for?  
17 Let's define what we want before we -- and what we  
18 need before we ask how it works.

19                   My answer to the question on the  
20 bullet that says "Are there other efforts to promote  
21 athletic opportunities?" Of course. My question  
22 is, are there enough efforts to support school  
23 athletics? I think there are. We need to find  
24 these efforts throughout all of our schools,

1     develop forums over the web. There's inexpensive  
2     ways to do these things, reaching out to others to  
3     make sure that our kids have the same opportunities  
4     that we had when we were growing up.

5                     We need to work together to  
6     engage the successful schools with the lesser  
7     successful schools. We have answers out there if we  
8     just reach for them, not get caught up in the  
9     bureaucracy, but get caught up in the solutions.

10                    We need strong positive  
11    leadership to continue to our achieved stated goals  
12    in Title IX. Title IX helps us to achieve these  
13    goals.

14                    Again, thank you for your great  
15    efforts and achievement, and please, let's continue  
16    to work together as we continually improve school  
17    athletics, team building, and exercise. We can make  
18    sports part of the curriculum of learning, instead  
19    of just an external system.

20                    If I can help further after  
21    today, as I think many of the people who have spoken  
22    would say, please contact me. Thank you very much.  
23    That's all I have, but my number, address is on the  
24    sheets that I turned in. If I could do any more, I

1 would love to.

2                                   Again, thank you for your time,  
3 and thank you for being here.

4                                   MR. LELAND: Thank you.

5                                   (Audience applause.)

6                                   MR. LELAND: Beverly?

7                                   MS. BRANDON: Good afternoon.

8 My name is Bev Brandon, and I came all the way from  
9 Fort Worth, Texas, to have the privilege to stand  
10 before you to ask for regulations that protect our  
11 women without harming our men.

12                                   I'm not an expert. I've just  
13 come to share a personal story. I'm a stay-at-home  
14 mom of two girls and two boys. I'm a mom and a  
15 mouthpiece who has heard personally from over 500  
16 families who have -- concerning elimination of men's  
17 teams. 400 of those families were alumni and  
18 friends at the University of Nebraska. 100 of those  
19 families were parents and friends of men's teams  
20 canceled this past year. The consensus was their  
21 sons and their friends have been denied the  
22 opportunity that they trained a lifetime for.

23                                   My son is one of those men.

24 That's my story. Graduating from high school,

1 Barrett ranked first in his class. He received  
2 \$300,000 in academic scholarship offers. Barrett  
3 chose Nebraska, walked on the swim team, brought 12  
4 academic scholarships with him, and he was living  
5 his dream until March 26, 2001.

6 Barrett's freshman year, the  
7 athletic director of Nebraska canceled 80 years of  
8 men's swimming due to budgetary reasons and  
9 self-imposed sanctions on the very day one of the  
10 parents gave me a check for a quarter of a million  
11 dollars to save the team. Nebraska did not want the  
12 money. Nebraska even had an \$8 million athletic  
13 donation from ALLTEL at the same time that was  
14 disclosed later.

15 This is not about money.  
16 Stakeholders are being denied the opportunity to be  
17 a part of the solution. We volunteered to raise  
18 \$1 million to save the men's swim team. The  
19 chancellor said no, and almost the entire team  
20 transferred, including the women. We didn't have  
21 the money for our son to transfer. It was too late.  
22 He lost opportunity he once had.

23 Now, you know, I loved the movie  
24 Rudy, and you could say my son was kind of like a

1 modern-day Rudy. He was at the bottom of the  
2 pyramid in swimming, the bottom of the base, but you  
3 know you need a base for the pyramid to stand. And  
4 we're talking about athletes that are talented  
5 walk-ons who are just looking for opportunity.

6 Barrett gave up 15 years of  
7 swimming, switched to triathlon racing. In just one  
8 year he's at the top of that sport, qualifying for  
9 the ITA World Triathlon Championships in Cancun next  
10 month.

11 I queried the Office of Civil  
12 Rights. In our day and time, I don't understand,  
13 just as a mom, how a university can eliminate only a  
14 men's team for budget reasons or for sanctions which  
15 were committed by both men and women. The OCR  
16 office responded to me, and I quote, "We don't care  
17 if only the men's team was cut for sanctions because  
18 men are overrepresented at Nebraska. Whatever  
19 Nebraska needs to do to their men's team to achieve  
20 proportionality, they can do it, and we will let  
21 them."

22 And my response back to the OCR  
23 office in Kansas City was, to me, that's reverse  
24 discrimination.

1                   You hold in your hands the  
2 power to wield the authority to do what is right and  
3 to be fair to our men and our women. I represent  
4 hundreds of moms in the swim community. My  
5 husband's a high school track coach. He represents  
6 a track community where he was a nationally ranked  
7 athlete who had opportunity in college. We both  
8 have witnessed a growing consensus to free up  
9 Title IX from a gender quota from the people that  
10 we've heard from in the last 19 months since our  
11 cancellation.

12                   Our Olympic sports needs  
13 critical mass to choose from. Instead, athletic  
14 directors are training the Olympic pipeline by  
15 eliminating Olympic sports. We need to continue the  
16 rich tradition of the storied programs like Nebraska  
17 swimming and diving, and not let these men's teams  
18 die.

19                   Every day, I drive my  
20 11-year-old boy to swim practice on a U.S.A. swim  
21 team. He has a dream, and his dream is to swim  
22 Division 1 at an Ivy League school. My hope is that  
23 when he grows up, there will be Division 1 swim  
24 teams and track teams that he can walk on.



1 I came 1,000 miles just to ask  
2 for 21st century reform to one of the most powerful  
3 pieces of legislation for women that we've seen.  
4 Let our sons play.

5 Thank you. I appreciate the  
6 sacrifice each you have made to pull this Commission  
7 together, to think out of the box, and to make an  
8 indelible mark in athletic history, to implement  
9 Title IX for the greater good of all.

10 (Audience Applause.)

11 MR. LELAND: Wayne?

12 MR. BAUGHMAN: I'm Wayne  
13 Baughman. Distinguished Commission Members, I'll  
14 start off with a bold statement. I have, I think,  
15 been involved in more sports in a greater variety of  
16 capacities over an extended period of time than  
17 anyone in this room. That doesn't mean I'm smart.  
18 That just means I'm an old man, but I have been  
19 around a long time.

20 I do have two comments regarding  
21 Title IX, and again my comments represent only  
22 myself and not anybody that I might be associated  
23 with.

24 Interest in sports has recently

1     become a major topic of discussion; specifically,  
2     are women more or less interested in sports than  
3     men. The fact that there are few -- fewer women  
4     walk-ons, who attempt to walk on, on intercollegiate  
5     teams, and that there's little or no interest in  
6     intramural competition for or by women is in and of  
7     itself indicative of interest.

8                     Interest level dictates to what  
9     extent a person will pursue a desired object, goal,  
10    or opportunity. Conversely, how much a person  
11    pursues and even sacrifices to achieve or obtain a  
12    desired goal or opportunity is indicative of the  
13    level of interest.

14                    That men pursue competitive  
15    opportunities in far greater numbers than women is  
16    indicative of their interest, motivation, fixation,  
17    need, and even obsession to participate in  
18    competitive sports. The major overwhelming reason  
19    men do need, want, desire, and pursue or have a  
20    greater interest in competitive sports opportunities  
21    in far greater numbers than women is testosterone.

22                    Testosterone is a major  
23    influence -- or I'm sorry -- is a major contributor  
24    to both levels of aggression and muscle mass, both

1 of which influence the level of need for and also  
2 enhanced success in physical confrontation or  
3 competitions. The higher the level of testosterone,  
4 the more aggressive and competitive a person will be  
5 and the more muscle mass they can develop. This is  
6 true for both female and male athletes.

7                   The most competitive and  
8 successful female athletes, like our successful male  
9 counterparts, have greater levels of testosterone.  
10 That doesn't mean they're not feminine, attractive,  
11 or able to bear children. It does mean that they're  
12 likely to be more aggressive and confrontational and  
13 have greater muscle to weight ratios than their  
14 female counterparts.

15                   I'm very much for competitive  
16 sports opportunities for all to the greatest extent  
17 possible. I think there is a law of diminishing  
18 returns. To base proportionality strictly on  
19 numbers is not realistic, fair, consistent with the  
20 law as written or intended, and is reverse  
21 discrimination.

22                   Secondly, I think there's a very  
23 divisive, adversarial mentality which is obvious  
24 here today. I've always believed that women were

1 smarter than men where sports are concerned and in  
2 numerous other areas. In the case of sports, I  
3 think I'm wrong.

4 Women blame men for denying them  
5 competitive opportunities in athletic growth. In  
6 fact, it was women, specifically the AIAW along with  
7 mothers, that limited women's participation in  
8 athletic growth.

9 The AIAW was adamant that sports  
10 should be for fun, enjoyment, health benefits, and  
11 physical development. They believed that  
12 participation for participation's sake should be the  
13 goal without the emphasis on competition and  
14 winning. They ridiculed the  
15 winning-is-not-everything-it's-the-only thing  
16 mentality. They were very much against  
17 confrontational, in-your-face, destroy-your-opponent  
18 approach to competition that was obvious in men's  
19 sports programs.

20 They were also opposed to big  
21 business, the spend more, not just keep up with the  
22 Joneses, but get ahead and stay ahead of the Joneses  
23 demand and position. Overall, they were very  
24 critical of men's sports programs, and they were

1 right for both women's and men's programs.

2 The women's programs, however,  
3 as soon as they were given the opportunity, the  
4 women's programs quickly degenerated to the same  
5 level of decadence and emulated all the bad behavior  
6 that they have so severely criticized in men's  
7 athletics.

8 Thank you very much.

9 (Audience applause.)

10 MR. LELAND: I think we should  
11 invite the next four. First is Robert Boettner.

12 MS. COOPER: Is Robert here?  
13 Say that again? B-o-e-l-t-n-e-r.

14 AUDIENCE MEMBER: What number  
15 are you on, please?

16 MS. COOPER: Trente, 30, just  
17 kidding. (Sentence in Italian). Linda Hertz.

18 MS. HERTZ: Parlez-vous  
19 Francais?

20 MS. COOPER: Si. Parlez-vous  
21 Francais, oui. Norm Rider or Ridder and Diane  
22 Wendt, Wendt. Wendt. It's W-e-n-d-t, just going to  
23 spell it.

24 MR. BOETTNER: My name is Bob

1 Boettner. I'm the executive director of the College  
2 Swimming Coaches Association. I have been for the  
3 last ten years. I spent 27 years coaching, two  
4 years of high school at Rose High, and eight years  
5 at NC State University, and 17 years as the head  
6 coach at Clemson University where I coached men and  
7 women.

8 I appreciate the opportunity to  
9 represent the college swimming coaches and our  
10 concerns about opportunities in athletics on the  
11 collegiate level. As a coach of both men's and  
12 women's teams, I have been directly affected by the  
13 changes that were brought about by the Title IX, the  
14 law, and which our association is definitely in  
15 favor of. We are just having problems with some of  
16 the ways that it is being tested.

17 Changes were hard to come by,  
18 but they've been made. Title IX made it possible.  
19 It's changed the face of athletics, but after 30  
20 years not all the changes are positive. The most  
21 glaring problem is now we have been losing men's  
22 participation opportunities, or the elimination of  
23 programs.

24 We have to get away from the

1     mentality of one size fits all. The law was written  
2     with three prongs so that institutions could  
3     approach the problems more than one way. The law  
4     has become driven by politics, not by what is  
5     right.

6                     You have been inundated by  
7     statistics from all fronts. But the fact that I  
8     have to offer is there is a loss of men's programs  
9     and opportunities driven by administrators trying to  
10    come into compliance because of proportionality. We  
11    have quotas, roster management, and caps all being  
12    enacted in the name of equity. This is not a  
13    statistic. This is a fact. I talk to coaches every  
14    day about this problem. I don't really have any  
15    answers for them.

16                    How do we attack the problems?  
17    The Commission should make recommendations to the  
18    OCR and provide the tools so that all three prongs  
19    of the law can be used to satisfy compliance. The  
20    Commission has the opportunity to correct the  
21    practice of using proportionality as the driving  
22    force.

23                    I see the use of the terms  
24    "benefits and opportunities for all students"

1 written throughout the interpretations and  
2 clarifications of the law, as well as the wording of  
3 the law itself. Title IX was written to protect men  
4 and women. A fact, not statistics. Men are not  
5 being protected.

6                   Are we meeting the students'  
7 needs? That seems to me to be the most important  
8 part of the law that we need to satisfy. The  
9 Commission can develop tools that would measure all  
10 three tests of Title IX. We have to get away from  
11 using proportionality as the driving force. If we  
12 can do this, then the caps, quotas, and dropping of  
13 programs won't be necessary.

14                   The opposition should also be  
15 aware that the dropping of programs sets a poor  
16 precedent. Women's programs have already been  
17 dropped as administrators seek to satisfy the  
18 numbers. Most of these women's groups have managed  
19 to get their teams reinstated, but that's not  
20 necessarily going to continue as we see problems  
21 with finances on the collegiate level.

22                   We, all the coaches  
23 associations, are for opportunities for both sex.  
24 Changing our approach to satisfy the law as it was



1 written will not throw the women back to the 1970s.  
2 The Commission can see to that by its  
3 recommendations to the Board of Education on how it  
4 writes and interprets the compliance model. Let  
5 common sense become part of your decision-making.  
6 Filter through all the statistics, find the facts,  
7 and then please protect the men's opportunities with  
8 as much vigor as we protect women's opportunities.

9 (Audience applause.)

10 MS. COOPER: Thank you. Linda?

11 MS. HERTZ: Hello. My name is  
12 Linda Hertz, and I'm a parent from the Coronado High  
13 School area on the west side of Colorado Springs,  
14 and I also spent over 20 years in the electrical  
15 engineering industry in human resources. So in that  
16 industry, men still far outnumber women in  
17 engineering positions.

18 I'm not very familiar with  
19 Title IX and the details, and actually, I thought  
20 that this issue was not just about collegiate  
21 athletics, but also about athletics at the high  
22 school level, and what I'm hearing this afternoon is  
23 much more focused on the implementation of Title IX  
24 and the interpretation of Title IX, not -- at the

1 collegiate level, not at the high school level. So  
2 my remarks may be a little off from what you were  
3 expecting.

4                   However, I have done a lot of  
5 work with Title VII, which is equal opportunity in  
6 employment, and when I think back at the different  
7 journeys over the last 20-30 years in trying to  
8 implement affirmative action, equal opportunity,  
9 diversity, in the workplace, we've had a number of  
10 iterations and struggles with how to interpret, how  
11 to implement it in a way that did help us to grow  
12 our numbers of women and ethnic minorities and  
13 individuals with disabilities and other groups,  
14 without, in fact, appearing to be discriminating, or  
15 discriminating against men. So I understand some of  
16 the challenges.

17                   My gut feel is that it seems as  
18 though Title IX is a very, very good legislation,  
19 but the interpretation and implementation leaves a  
20 lot to be worked on. That's what I'm getting.

21                   So I would like to take some of  
22 you, those of you of my generation, back down memory  
23 lane, and actually the gentleman who spoke earlier,  
24 Mark, I was sitting there thinking, yes, yes, yes,

1     until he got to the part that mentioned, "Let's make  
2     sure that all of our students have the opportunities  
3     we had as children," and I thought, whoops, no, no,  
4     I can't go with you there, Mark, because I was -- I  
5     grew up pre-Title IX, and I can't remember Mark's --  
6     when Mark remembers all those opportunities that we  
7     had growing up.

8                     What I wanted to take you down  
9     memory lane is do you remember when girls sports was  
10    an oxymoron? Do you remember when being involved in  
11    high school athletics for girls meant acting as  
12    timekeeper at the boys swimming meet? Or being a  
13    cheerleader? Which, when I was growing up was  
14    achieved by only the few girls who could turn  
15    perfect cartwheels or who happened to date the  
16    captain of the football team.

17                    Well, there was a girls  
18    gymnastics team at the school I attended, beginning  
19    as a junior in suburban Minnesota, but not at the  
20    one I had come from in a small town in western New  
21    York, nor the one I had come from before that in a  
22    small town in Kansas. And 16 is not a good age to  
23    start competitive athletics or those jumps and  
24    splits on the balance beam.

1                   And what about the team skills  
2     and the ability to shake off setbacks and move  
3     forward with a new game plan, the types of skills  
4     that are needed in the workplace? What about  
5     developing self-confidence, learning to assess one's  
6     strengths and weaknesses, to accept and ask for  
7     feedback, to value all roles on the team? Boys  
8     started learning these skills in sports and later  
9     applied them in the workplace while we pre-Title IX  
10    women often had to learn them on the job, often at  
11    considerable personal or career cost.

12                   I can't imagine what it would be  
13    like if my son, but not my daughter, had the  
14    opportunity to be in high school sports. I am the  
15    mother of a 15-year-old girl who plays volleyball  
16    and a 17-year-old son who does cross-country  
17    running. I can only speculate about the difference  
18    in confidence my daughter might have as she  
19    participates in something like the superintendent's  
20    student sounding board, or as she faces off with her  
21    older, taller, mouthier brother and his friends,  
22    And in about ten years from now, I can't imagine  
23    watching my daughter go out to work in industry  
24    without being prepared for the types of challenges

1 she'll face. Playing sports will contribute to her  
2 preparation.

3 Thank you.

4 MS. COOPER: Thank you.

5 (Audience applause.)

6 MS. COOPER: Norm Ridder?

7 MR. RIDDER: I'm Norm Ridder.

8 I'm the superintendent of the local area school  
9 district here. I want to welcome you to God's  
10 country, and I know Notre Dame wants to claim God's  
11 country, but really, we have God's country here.

12 What wonderful experience the  
13 Notre Dame-Air Force game was. And by the way, you  
14 were mentioned at the pep rally as one of the role  
15 models so --

16 I want to keep that in front of  
17 you, because I think what we're struggling with is  
18 nature and what nature has to present and our  
19 struggle with nature. You can't beat the  
20 competition, the camaraderie, and the student  
21 participation of that game last Saturday. It was  
22 awesome. But we need Title IX to protect and make  
23 sure that that stays in place, but also to protect  
24 those who don't have that opportunity to experience

1       that type of wonderment.

2                               I have served as superintendent  
3       of public schools, Catholic schools, but the thing I  
4       want to stress is I've also served as superintendent  
5       and director of education at Boys Town, now  
6       currently called Girls and Boys Town, at risk  
7       schools, at risk kids. When we brought Title IX  
8       into that program -- when we brought girls into the  
9       program back in 1978, Title IX protected the girls,  
10      because I guarantee you, with the male testosterone  
11      and as we talked earlier that was present at Boys  
12      Town -- we talked about aggressive males. We had  
13      it. You could smell it everywhere. And we needed  
14      Title IX to protect the girls. And so in a natural  
15      way, we need Title IX to protect it.

16                              In my experiences, by the way,  
17      as a father, I have five children, all of them  
18      participated on a high school level, two boys and  
19      three girls. And my three oldest, the oldest one  
20      played football for Notre Dame; my daughter played  
21      volleyball for George Washington University; and my  
22      third daughter is competing in track at Colorado  
23      State University and is one of the leaders in the  
24      800 meters.

1                   I guarantee you, if it wouldn't  
2 be for Title IX, my two daughters would not have had  
3 the experience that they've had, and watching them  
4 in a family experience, they control my son a lot of  
5 times. That wouldn't be the case if it wouldn't be  
6 for the athletics that they experienced.

7                   I do have to say, though, that  
8 Title -- that collegiate competition has kind of  
9 taken over, and the fear of collegiate competition  
10 taking away the social life of the athlete, and I'm  
11 giving you a message here, my two youngest didn't  
12 want to do anything with it. They didn't like it.  
13 And I think that's what's happening in a lot as far  
14 as Title IX and as far as collegiate competition.

15                   The thing I want to protect more  
16 than anything, though, is the high school/middle  
17 school competition. This year, in School District  
18 11, we proudly did build new locker rooms for the  
19 girls at Palmer High School. Very excited about  
20 that, and the girls are excited about it. Believe  
21 it or not, the boys are too, because the girls were  
22 sharing the boys' locker room.

23                   So anyway, in closing, what I  
24 would like to say is that Title IX is really keeping

1 nature in check, I think, that if we did not have  
2 Title IX, I think the economics and nature will take  
3 over, and we will be back at square one, back in  
4 1972.

5 I do think adjustments are  
6 appropriate, though, and I do think there are ways  
7 and means to protect this, but when money gets in  
8 the way of kids, and if kids aren't first in what  
9 you're thinking about here, you're in trouble, and I  
10 think the whole system is in trouble.

11 So thank you.

12 MS. COOPER: Thank you.

13 (Audience applause.)

14 MS. COOPER: Diane?

15 MS. WENDT: My name is Diane  
16 Wendt, and I work in the Division of Intellectual  
17 Property and Events at the University of Denver, and  
18 I too want to welcome you to this great state, and  
19 thank you for your time and passion and interest in  
20 really addressing the issues.

21 I rise to applaud and celebrate  
22 the progress that has been made toward achieving  
23 educational equity in education throughout the  
24 United States as a direct result of the passage of



1 Title IX in 1972. As a former athletic  
2 administrator at the University of Denver for 25  
3 years, it has been my pleasure and privilege to  
4 witness firsthand the importance and value of  
5 creating an educational environment where men and  
6 women have equal access to educational benefits and  
7 opportunities.

8 We are proud of the Daniel L.  
9 Ritchie Center for Sports and Wellness on the  
10 University of Denver campus. This beautiful  
11 facility opened in 1999 and was among the first new  
12 college athletic facilities in the country that was  
13 constructed in compliance with Title IX  
14 regulations. The programs and the facilities at  
15 Denver are gender equitable and gender friendly.

16 As a result of the progress made  
17 at Denver to achieve Title IX compliance, the  
18 current intercollegiate athletic program makes it  
19 possible for men and women student-athletes to be  
20 full partners in their pursuit of academic and  
21 athletic excellence. This is the vision and the  
22 legacy of Title IX for athletics, and for all  
23 educational programs benefiting from federal  
24 assistance in this country. This vision is the big

1 picture, and we must not lose site of its value and  
2 importance when evaluating individual and team  
3 impacts or other expressed criticisms of this  
4 legislation.

5                   The current Title IX policies  
6 and guidelines provide secondary schools, colleges,  
7 and universities with viable pathways to achieve  
8 this vision. Institutions throughout the country  
9 like the University of Denver have benefitted from  
10 embracing and implementing Title IX policies early  
11 on, so that men and women student-athletes would  
12 become beneficiaries of an educational environment  
13 that is gender equitable.

14                   The three prongs, as defined in  
15 the Title IX athletics regulations, dictate a  
16 substantive standard for demonstrating Title IX  
17 compliance while providing institutions with  
18 sufficient latitude to accommodate varying degrees  
19 of interests and abilities. Without these specific  
20 standards, progress in this area would be  
21 significantly diminished. Any departure from the  
22 current policy will have a damaging and chilling  
23 effect on the momentum and progress under way in  
24 athletics as well as in all other educational

1 programs where there is a history of unequal access  
2 to educational benefits and opportunities.

3           While 30 years have passed since  
4 the passage of Title IX, there is still much that  
5 still needs to be done. One has only to look at the  
6 current national data summaries for athletic  
7 participation rates, scholarship support,  
8 recruiting, operating budgets, facilities, and other  
9 Title IX components to understand what has been  
10 accomplished to date and what other important work  
11 remains to be done.

12           In closing, I want to share with  
13 you that it's important for me to personally commend  
14 the Denver Office of Civil Rights in the work that  
15 they have done with the University of Denver.

16           Very early on, we invited them  
17 on the campus to work with us, consult with us.  
18 They met with our members of our administration,  
19 with our coaching staff, with members of our teams,  
20 and they were instrumental in helping us create  
21 very, very functional pathways for achieving gender  
22 equity.

23           And I think that, if anything,  
24 my strongest recommendation would be that the Office

1 of Civil Rights really is worthy of substantially  
2 increased resources in the form of personnel and  
3 resources to get out in the field and to work  
4 closely with colleges and schools.

5 Thank you for your  
6 considerations.

7 (Audience applause.)

8 MR. LELAND: Thank you, Diane.  
9 Next four are Kevin Bracken, Joan Powell, if they  
10 could move forward, Tommy Dodd, and Jessie F.  
11 Banks. If those four people could come forward.  
12 And we'll start off with Kevin.

13 MR. BRACKEN: God bless the  
14 short people.

15 My name is Kevin Bracken, 2000  
16 Olympian in Greco-Roman wrestling.

17 I am sickened by the history of  
18 sport to think that not so long ago women could not  
19 compete for fear of damaging their reproductive  
20 organs. I am embarrassed for the simplemindedness  
21 of the men and women of their time, for women being  
22 excluded and denied such a basic right of  
23 competition. To think that someone like Pat  
24 Summitt, who has many colleagues in here today,

1 would not have had the opportunity to give  
2 everything she had -- has had to basketball would  
3 truly be a crime. There is no doubt that the times  
4 have changed for the better, but not without  
5 consequence.

6                   Unfortunately, my athletic  
7 career is a negative result of the effects of  
8 Title IX. The future in the sport that I love is  
9 being taken away and is being given to women. In  
10 1995, Illinois State University dropped their  
11 wrestling program. I was a team member, and I was a  
12 team captain.

13                   Title IX, Section 106.41, which  
14 I'm sure you all are familiar with, Athletics reads,  
15 "No person shall, on the basis of sex, be excluded  
16 from participation in, be denied the benefits of, be  
17 treated differently from another person or otherwise  
18 be discriminated against . . . ." I believe that  
19 says "no person."

20                   I was stripped of my  
21 participation and denied benefits on the basis of  
22 sex. They ended my program and ended the soccer  
23 program at the university. What they did is they  
24 took the wrestling room and the wrestling mats and

1 they awarded the area to the female gymnastics  
2 team. What they did is they also took the soccer  
3 field and the soccer equipment and created a  
4 brand-new women's soccer program. I'm not sure that  
5 I could have been discriminated against more.

6                   What has happened to me should  
7 not be the result of why -- what has happened to me  
8 should not be the result of why the law was  
9 implemented. Title IX was implemented to create  
10 opportunity, not take it away.

11                   Because of the precedent  
12 Title IX has set, some people even at the Olympic  
13 level feel wrestling is expendable. Well, it's not  
14 true.

15                   As I said in my opening  
16 statement, I am sickened and embarrassed at the way  
17 that women were treated in the past. Please don't  
18 make the same mistake and deny men the same basic  
19 right as women once were.

20                   You know, when I was in grade  
21 school, I didn't want to go to high school. When I  
22 was in high school, I didn't want to go to college.  
23 I have dyslexia, and I've always struggled with  
24 schoolwork, and if you ask somebody that knows about

1 dyslexia, a lot of times it takes twice as long to  
2 read something, twice as long to comprehend certain  
3 things. So suffering from dyslexia, it's been a  
4 very difficult struggle for me.

5 I went to college to wrestle.  
6 That's the only reason I went to college. And I  
7 will guarantee you that had I not wanted to wrestle,  
8 and had I not had the opportunity to wrestle in  
9 college, I would not have received a higher  
10 education. I would not have fell in love with  
11 academics where earlier in my career I didn't want  
12 anything to do with schoolwork. I didn't want to  
13 have anything to do with reading a book.

14 And so wrestling for me has  
15 opened up a whole world, a whole new life for  
16 education, a new love for education. So for me --  
17 and I'm proud to announce that I made the dean's  
18 list three times in college, graduating high school  
19 with a 2.0, and I'll guarantee you it's because of  
20 the study halls, and it was because of wrestling.

21 I also have -- I also have  
22 asthma, and I am consistently, on the national team  
23 for wrestling, one of the best people in shape that  
24 is on the team.

1                   Now, given these two struggles  
2                   and difficulties that I've had in my life, it does  
3                   not compare to the torment that I went through of  
4                   dropping of the wrestling program at Illinois State  
5                   University. And this is a fact: It was due to  
6                   Title IX. That's all I have to say.

7                   Thank you.

8                   (Audience applause.)

9                   MR. LELAND: Joan?

10                  MS. STALLMAN: Joan Powell is  
11                  the volleyball coach at Coronado High School in  
12                  Colorado Springs and asked if I would read her  
13                  statement.

14                  MR. LELAND: I was wondering.

15                  MS. STALLMAN: I'm Rosie  
16                  Stallman.

17                  MR. LELAND: I thought maybe you  
18                  had changed. It's like, gee, it looks a lot like  
19                  Rosie.

20                  MS. STALLMAN: I'll do my best  
21                  to represent Joan's point of view. It's regarding  
22                  walk-ons.

23                  "The Commission has heard from  
24                  some parties that whereas some men athletes will



1 walk onto intercollegiate teams without athletic  
2 financial aid and without having been recruited,  
3 women rarely do this. Is this accurate and, if so,  
4 what are the implications for Title IX analysis?

5 "A walk-on is just like any  
6 other opportunity. Walk-on is a term usually  
7 reserved for an athlete who is not a scholarship  
8 recipient or who has not been recruited by the  
9 coach. At highly competitive levels, a walk-on may  
10 have little chance to play or, if they do get put in  
11 a game, play only for a small amount of time. A  
12 walk-on participation opportunity is just like any  
13 other participation opportunity because it is  
14 impossible to determine, A, athletes who will  
15 definitely enter the game, or B, an athlete who will  
16 enter a game but play for a short amount of time, or  
17 an athlete who will play for more time." Sorry  
18 about that. "All of these athletes receive the  
19 benefits of coaching, practice, play uniforms,  
20 preferential course scheduling, if the school allows  
21 this, medical services, access to weight rooms,  
22 weight training coaches, et cetera. As such, they  
23 occupy participation opportunities and must be  
24 counted as such.

1                   "Historically, because the  
2           status and exceptional treatment of football players  
3           and other traditionally successful sports at some  
4           schools, male athletes are willing to walk onto a  
5           team because of these benefits. Society's long-term  
6           support of athletics for boys and men has resulted  
7           in males being enculturated into participating in a  
8           sport for the prestige of being a team member,  
9           whether or not they actually get to play, while  
10          women have participated for years with little or no  
11          encouragement or accolades, and in some situations  
12          being criticized for participating. Another reason  
13          for the lack of walk-ons in women's sports is that  
14          the operating expenses for women's teams are so low  
15          that a lack of budgetary resources becomes a  
16          deterrent for coaches to carry large teams for fear  
17          that further diluting limited resources on extra  
18          uniforms, travel parties, et cetera, will take away  
19          from the basic needs required for sport success.

20                   "Walk-on status has little  
21          implications for Title IX analysis. If male  
22          athletes are interested in walk-on opportunities,  
23          and schools are willing to provide such  
24          opportunities for them, instead of participation in

1 other sports, their participation is valid, whether  
2 or not they get a chance to play. They fill an  
3 institutionally provided and supported participation  
4 opportunity. However, Title IX does not require  
5 mirror image programs. If men are interested in  
6 playing or walking onto a football team, women do  
7 not have to play football or walk onto a football  
8 team. Women are entitled to have their  
9 participation opportunities met according to their  
10 interests and abilities. Until there are women's  
11 sports with the status and funding of football or  
12 similar men's sports, there is no reason to expect  
13 women to wish to be walk-ons and sit on a bench.  
14 It's more fun to play."

15 Thank you, and be healthy from  
16 Joan.

17 MR. LELAND: Thank you, Joan,  
18 Rosie.

19 (Audience applause.)

20 MR. LELAND: Tommy Dodd?

21 MR. DODD: My name is Tom Dodd.  
22 I'm currently the assistant principal at Aspen High  
23 School in Aspen, Colorado. I was formerly a history  
24 teacher and wrestling and football coach at Eagle

1 Valley High School, also up in the mountains, and a  
2 former graduate assistant wrestling coach at Adams  
3 State.

4 I would love to sit and speak  
5 with you briefly about my perceptions of Title IX  
6 and how it relates to public high schools and what I  
7 think is coming down the pike if it continues to be  
8 interpreted as it is, but I would rather speak  
9 briefly about my experience personally as a former  
10 high school and collegiate wrestler and a college  
11 and high school coach.

12 A lot of the proponents of  
13 Title IX believe that it hasn't had a direct effect  
14 on wrestling. I think it's obvious the perception  
15 in the wrestling community is it has.

16 I don't discount the idea that  
17 some programs might have been dropped in wrestling  
18 because of poor athletic director leadership or poor  
19 financial management or maybe interpersonal  
20 relationships with coaches, but my understanding is  
21 since 1972, roughly 430, I believe is the latest  
22 statistic, wrestling programs have been cut, and I  
23 find it hard to believe that Title IX hasn't had a  
24 major impact on a lot of those schools. And to me,

1 if one program is cut, it's a travesty.

2 I think the main point here is  
3 about opportunities, as the superintendent said  
4 earlier. I'm in public education, and what the big  
5 deal for me is every day is about kids, students,  
6 athletes, providing them opportunities, and I think  
7 if we lose sight of that, then that's a bigger  
8 travesty.

9 I'm for Title IX. I think it's  
10 a great idea. Everybody always throws out that  
11 disclaimer, especially former wrestlers and  
12 wrestling coaches, because we are. The reality is,  
13 for lack of a better way in saying it, you're  
14 robbing from Peter to pay Paul, or maybe I should  
15 say you're robbing from Peter to pay Paula. Because  
16 it seems to me that that's kind of what it is. It's  
17 success here at the detriment of something else.  
18 And I think that's really unfortunate.

19 I wasn't a Division 1 athlete.  
20 I would have struggled at the Division 2 level. I  
21 wrestled in a Division 3 school back in Pennsylvania  
22 which cut its program in '96. When I went into  
23 college in 19 -- and I know that there's not a lot  
24 of small college representation here, but when I

1     went into college in 1988, I went there, like  
2     Mr. Bracken did, to wrestle.

3                     And in 1988, the Middle Atlantic  
4     Conference -- Susquehanna University is where I  
5     wrestled at, down the road from Penn State, there  
6     were 20 teams in the Middle Atlantic Conference.  
7     Moravian College, Juniata College, Haverford  
8     College, Swarthmore College, Widener University, my  
9     alma mater, Susquehanna University, all those  
10    programs were dropped between 1996 and 2001, and I  
11    struggle with it.

12                    These are teams that, to my  
13    knowledge, Swarthmore was the only school that had,  
14    as their head coach, a professor at the university.  
15    My understanding is all the other universities I  
16    just named had part-time coaches making 4- to \$5,000  
17    a year, much like a high school coach, and had  
18    budgets maybe around a \$10,000, but they were cut.

19                    You might argue whether it was  
20    Title IX, whether it was other issues. The reality  
21    is over 400 teams have been lost in the last 30  
22    years, and my thinking is, the point of this whole  
23    Commission, and I'm really honored to have a chance  
24    for you guys to listen to me, and I appreciate that,

1 is to decide, is Title IX working? Does it need to  
2 be revised?

3 If that's the one thing that  
4 comes away from this, I think it's glaringly obvious  
5 that it does need to be revised, and I say that  
6 because of all the reasons from our outstanding  
7 speakers, panel, your distinguished -- all you  
8 distinguished commissioners, there's something  
9 that's not working. As the athletic director from  
10 Air Force Academy said, if it was working, we  
11 wouldn't all be here.

12 So thank you for the  
13 opportunity. My job is sometimes lonely, like a lot  
14 of the athletic directors, but I hope you'll make  
15 the hard calls and do what's right for opportunity,  
16 because that's what it's all about, kids getting an  
17 opportunity to compete.

18 Thank you.

19 MR. LELAND: Thank you. Jessie?

20 MS. BANKS: I'm Jessie Banks,  
21 professor emeriti from the University of Southern  
22 Colorado in Pueblo, Colorado. Welcome again to  
23 Southern Colorado. That's where you are.

24 I would like to kind of take you

1 on a little trip or give you a little glimpse of the  
2 past and the present in athletics.

3 I, like many women my age,  
4 didn't have the chance to play sports in college. I  
5 was fortunate, I think, that I grew up in a state  
6 that offered sports for girls and women in the high  
7 schools. I played basketball. I was good enough to  
8 make all-state, both my junior and senior year. My  
9 boyfriend also played basketball. He also made  
10 all-state his junior and senior year. Now, he was  
11 offered a number of scholarships for college. I was  
12 not. The lack of an offer had nothing to do with my  
13 ability. There simply were not the choices for  
14 women at the college level.

15 Was there opportunity to play  
16 basketball for me? Yes. But again, not in  
17 college. I had the choice of playing AAU basketball  
18 or playing professional basketball with the All  
19 American Red Heads. I chose the latter. If it had  
20 not been for the AAU and the All American Red Heads,  
21 hundreds and hundreds of women would not have played  
22 basketball or any other sport after high school.

23 What is my point? I know that  
24 without Title IX girls and women of today would be



1 in the same boat that I was in. They would not be  
2 playing sports in college. If any of you believe  
3 that eventually women would have been given the  
4 opportunity to compete without Title IX, think  
5 again. A large number of women tried many different  
6 avenues to provide women the opportunity to compete,  
7 and still nothing happened. Did the NCAA, the NAIA,  
8 NJC2-A offer any opportunities before Title IX?

9 No.

10 If you don't believe that  
11 Title IX is in trouble, let me give you some more  
12 information. I am aware that a Title IX complaint  
13 was filed against the University of Southern  
14 Colorado. Today, because of the current  
15 administration, all findings must go to Washington,  
16 D.C., prior to being issued. The complaint against  
17 the University of Southern Colorado is sitting in  
18 limbo somewhere in Washington, D.C., even though it  
19 has been approximately 18 months after the complaint  
20 was filed.

21 The fundamental role of the  
22 federal government is to vigorously enforce Title IX  
23 and its implementing regulations and policies to  
24 promote equal opportunity, not to protect the rights

1 of a few to play particular sports. The Department  
2 of Education's Office for Civil Rights, OCR, is the  
3 primary agency charged with making Title IX mandate  
4 a reality. OCR has the power to withhold federal  
5 funds from a school that refuses to comply with the  
6 law, although OCR has never used this powerful  
7 tool. Thus, it is not revision to the standards  
8 that have moved us toward equal opportunity, but  
9 rather the vigorous enforcement of Title IX and its  
10 implementing policies that ensures equal  
11 opportunities at every level of education.

12 So, Members of the Commission,  
13 since approximately 80 percent of colleges and  
14 universities are still out of compliance, I am  
15 asking you as a solution to strengthen the  
16 enforcement of Title IX so that our young women  
17 athletes of today will continue to have the  
18 opportunity that I did not have.

19 Thank you.

20 (Audience applause.)

21 MS. COOPER: Thank you. Our  
22 four next speakers, and I'll probably just name off  
23 five of them. Ann Gardner, just said your married  
24 name, because I don't want to ruin the other one.

1 Rhonda Green, Blanford-Green, Alicia -- Alicia --  
2 Alicia, anyway, McConnell, and Penny Graves. And  
3 Sarah Murray, you can come up, too.

4 MR. LELAND: We have an Ann --

5 MS. COOPER: Ann Oatman-Gardner.

6 MS. OATMAN-GARDNER: That's me.

7 MS. COOPER: Okay. There you  
8 go. See, I told you she was here.

9 MS. OATMAN-GARDNER: Those crazy  
10 hyphenated names. Thank you for the opportunity to  
11 speak today.

12 My name is Ann Oatman-Gardner,  
13 and I am a graduate of the Colorado College here in  
14 Colorado Springs and the mother of two daughters,  
15 Molly 11 and Rachel 13 years old.

16 I had the opportunity to play  
17 basketball, badminton, and tennis in high school,  
18 1972 to 1996 (sic), just as Title IX was beginning.  
19 As a high school student, I was only mildly aware of  
20 Title IX. I couldn't tell you what the programs at  
21 Dundee Community High School looked like before  
22 Title IX, but at that time athletics offered me a  
23 place within my school to connect with others who  
24 shared my interests. I learned many life lessons

1 about teamwork, my abilities, and losing, which we  
2 did a lot of when I was captain of the basketball  
3 team.

4 In 1996 (sic) I went on to play  
5 soccer at the Colorado College in the program's  
6 first years as a club team, now a Division 1 women's  
7 scholarship program. I also played ice hockey on  
8 the first club team for women. Today it remains a  
9 club team. I competed with men on the rink in  
10 intramural hockey, and after graduating enjoyed  
11 playing on a women's soccer club here in the  
12 Springs. I was personally motivated to play sports,  
13 enjoying the team camaraderie, and getting a great  
14 deal of personal pleasure from the athletics.

15 In those years of my life, I  
16 didn't think much about funding issues around those  
17 sports or my lack of access to scholarships or  
18 something more. Now, as a parent of two daughters,  
19 I'm here to share their stories and voice my  
20 family's support for continued vigilance for  
21 Title IX, because we still have so far to go.

22 Our family, my husband, myself,  
23 and two daughters, follow professional sports on  
24 television, almost exclusively watching male

1 athletes because of the ease of access to view those  
2 teams. We watch the Olympics with great joy and  
3 interest, and the World Cup posters of female track  
4 and field stars, professional male hockey players,  
5 and "Got Milk" athletes adorn their bedroom walls.  
6 My daughters have sport role models of both genders.  
7 My older daughter is passionate about playing  
8 soccer, and both girls just finished their middle  
9 school track season, bringing home ribbons and  
10 trophies with great pride.

11                   90 young women run for the North  
12 Middle School track team, and over 500 young women  
13 just finished three days of competition for the city  
14 meet, some as young as nine and ten. Five coaches,  
15 three men and two women, worked with the team for an  
16 eight-week session, training, motivating, and  
17 mentoring. No one has more pride in their school,  
18 themselves, and the team than those girls.

19                   In 1994, just eight years ago,  
20 and nearly 20 years after adoption of Title IX, my  
21 oldest daughter, at the age of 6 until 8, played ice  
22 hockey. She played two seasons on a coed team until  
23 they asked her to start dressing in the hallway, not  
24 in the locker room with the rest of the team. She

1 got the message real fast. She was different, and  
2 to a young kid, different doesn't mean special; it  
3 means not as good.

4 Now she plays soccer with the  
5 club program here in Colorado Springs. Neither of  
6 these programs receives tax dollars, and so we're  
7 not bound by Title IX. The hockey program allows  
8 girls access, but at what cost to the female athlete  
9 and her self-image?

10 There remain today barriers to  
11 acceptance and participation. Remind you of  
12 pre-Title IX? I can envision a girls' league, but  
13 it will be 20 to 30 years, the next generation, my  
14 granddaughters, who will benefit from, no doubt,  
15 great efforts to achieve success that will be waged  
16 between now and then, beneficiaries of what you are  
17 doing right now.

18 But what of access and  
19 self-image for my daughters and their future? My  
20 oldest has access to a wonderful soccer program.  
21 It's a club team, and it's a hefty individual cost  
22 to our family, so we can buy access.

23 She dreams of a North Carolina  
24 scholarship. She holds it out as a motivator and

1 inspiration. She just set the record for the mile  
2 in the city meet. She might have the opportunity  
3 for a track scholarship, but not if the programs are  
4 not there, and not if you don't remain their  
5 champions, because we just aren't there yet.

6                   Since learning about this  
7 Commission, I have been reading and listening to the  
8 dialogue about this issue, and my fears have been  
9 confirmed. We have not overcome the gender bias in  
10 our society with one law in 30 years.

11                   It is my parents' generation,  
12 the 60- to 85-year-old men, still in management,  
13 educational institutions, and elected and appointed  
14 leadership, who continue to call the shots. It is  
15 with them that this fixed Title IX message is  
16 resonating. Some of that generation were the  
17 Title IX advocates who educated and lobbied, but  
18 many didn't get it then, and they obviously don't  
19 get it now.

20                   I ask you to remain the  
21 champions. Can you be sure any tweaks and the  
22 process to achieve them won't damage this  
23 legislation and take us back when we still have so  
24 far to go? I ask those who are calling for reform

1 to look elsewhere for remedy, at least for another  
2 generation or two.

3 Thank you.

4 (Audience applause.)

5 MS. COOPER: Thank you. Rhonda?

6 MS. BLANFORD-GREEN: I'm going  
7 to start off today with two things I learned. One  
8 was that I shouldn't have aspired for anything more  
9 than a spot in an aerobics class, and also that I  
10 can maintain my femininity while controlling my high  
11 levels of testosterone.

12 I'm Rhonda Blanford-Green. I am  
13 the assistant commissioner for Colorado High School  
14 Athletics and also the Title IX and equity liaison.

15 I would like to begin with a  
16 quote: "I insisted, we must try and we must succeed  
17 or our children and grandchildren will one day  
18 rightfully ask us why, in the face of calamity, we  
19 did not give our best efforts. What shall we tell  
20 them and their mothers, in particular, if we don't  
21 measure up?" That's by Arthur Ashe, Days of Grace.

22 It's time to step up. The women  
23 of my generation and after take for granted that our  
24 opportunities in athletics are guaranteed, which is



1 no different than the minorities of my generation  
2 who take a drink from a fountain and forget that we  
3 were once relegated to the ones that were labeled  
4 "For Coloreds Only."

5 Title IX has stood as one of the  
6 only laws that have protected the rights of women  
7 and girls in athletics. As the saying goes, the  
8 mirror doesn't lie. I have only to look at my  
9 reflection to know the impact of its success.

10 To point out two phrases from  
11 the law, "no person" and "underrepresented" truly  
12 captures why this Commission has been formed. How  
13 does the Commission protect the civil rights of the  
14 underrepresented gender without infringing on the  
15 desires for intercollegiate and interscholastic  
16 competition for others?

17 You have heard the testimony and  
18 you've read the varying statistics, and even if you  
19 were to host 20 town hall meetings, the passionate  
20 dialogue would be the same, each side's perception  
21 having validity from the experiences of those who  
22 speak.

23 I don't envy this Commission  
24 their task, but I ask that you consider several

1 points when reaching your decision. Consider that  
2 the decisions you make for intercollegiate athletics  
3 will impact greater numbers of the interscholastic  
4 athletes who are participating in record numbers.  
5 Consider that any variation you make to the current  
6 law can, and will, result in decreased participation  
7 for the underrepresented gender. Without the law,  
8 and its accountability measures, equity and  
9 opportunities for women and girls will not happen.

10 I wanted to say sorry to  
11 Josephine. I think she left, but I am a 12-time  
12 all-American, and an NCAA champion from the  
13 University of Nebraska. I'm the first woman ever to  
14 win the Henry Schulte award given to -- the highest  
15 honor given to a woman athlete at Nebraska.

16 I had access to the nutritional  
17 table. I had the opportunity to receive quality  
18 medical help alongside of Heisman Trophy Mike  
19 Rozier. I had the opportunity to train and compete  
20 with first-class coaches and facilities.

21 Don't get me wrong. I am a  
22 Husker, but I'm not fool enough to think that those  
23 opportunities would have occurred for me without  
24 government enforcement. Husker track and field

1 would have been a club sport, and you would have  
2 seen maybe two or three of those practice fields and  
3 possibly a rotating sky box at the University of  
4 Nebraska.

5                   We all believe that this is the  
6 right thing to do, but without enforcement power,  
7 girls and women in athletics will be slowly stripped  
8 of their civil rights. Consider appropriating funds  
9 that promote the education of Title IX that includes  
10 reaching educators, coaches, and communities so that  
11 the equity rights and opportunities aren't debated  
12 at town hall meetings at the expense of  
13 student-athletes pitting sport against sport, and  
14 creating such a negative environment.

15                   Consider protecting the intent  
16 of Title IX and not allow it to be used as a  
17 scapegoat for uninformed and fiscally irresponsible  
18 administrators. I have faith that this Commission  
19 will do what is right by all student-athletes if  
20 political agendas and preset outcomes have not  
21 become a factor in your process.

22                   My generation has reaped the  
23 benefits of our predecessors before us, and we can  
24 not, for one moment, allow for those rights to be

1 taken. We haven't had to step in in the past, but  
2 we are fully prepared to uphold the intent of  
3 Title IX as it's equity for all participants. What  
4 we, meaning you and I, tell -- will we tell the next  
5 generation if we don't measure up and speak up for  
6 what is right?

7 Thank you.

8 (Audience applause.)

9 MS. COOPER: Thank you. Penny?  
10 Or Alicia. I'm sorry. Alicia. I'm sorry.

11 MS. McCONNELL: Hi. Thank you  
12 for giving us this time and certainly commend you  
13 for your efforts. This is a large undertaking.

14 I just wanted to look back a  
15 little in terms of as an athlete who's benefitted  
16 from Title IX. If you look back, when I was young,  
17 there weren't a lot of female role models. I'm a  
18 New Yorker. My role model's were Tom Seaver and the  
19 Mets. A lot of male role models as athletes.

20 And one of the things in terms  
21 of the discussion today is maybe things need to be  
22 looked at, but Title IX needs to be there. Women  
23 need opportunities. And if it goes away, I'm afraid  
24 that women will not have those opportunities. We

1     won't have the role models that we have today.  
2     Girls in almost any sport can see those role models  
3     today, posters. You can see women's sports on TV.  
4     I mean, that's, you know, way out of proportion;  
5     however, at least they're on TV today.

6                     We've come a long way, and I  
7     don't think when you come a long way that that's the  
8     time to turn back and question whether things -- you  
9     know, whether it was right or wrong or good or bad.  
10    I think if you look at the data, and certainly  
11    you've heard lots of data, however it's interpreted.  
12    The data, of course I'm going to interpret it right  
13    now, the data to me shows that great strides have  
14    been made and women have opportunities they never  
15    had.

16                    If you look at the corporate  
17    world today, 85 percent of female executives were  
18    student-athletes. They had the opportunity to play  
19    ball and to play sport. That makes a huge  
20    difference. If that's taken away, I just -- I just  
21    don't see equality coming along. Even if you take  
22    something like ERA, which I remember as a young  
23    child, issues come up, that's never been passed.  
24    There's never been -- that law has never passed in

1 terms of equal rights for women.

2                   So -- and just a couple of other  
3 things I wanted to comment on. In terms of, you  
4 know, you've heard a lot of views, and you've heard  
5 a lot of data, and I think right now you probably  
6 want to hear more solutions, which I don't have, but  
7 maybe a couple suggestions.

8                   One of the panel members today  
9 mentioned working together with not only the  
10 athletic director, the college or university staff,  
11 the football folks. We have to work together to  
12 figure out how we can -- how can we keep these  
13 opportunities for boys and girls, for men and  
14 women? It shouldn't be about who we're going to  
15 cut, because that has become the simple answer.  
16 We've got to work together. We've got to -- today  
17 in the corporate world, we talk so much about these  
18 cross-functional teams. We need to work together on  
19 these college campuses to figure out a solutions, as  
20 opposed to cutting sports and looking for the simple  
21 answer.

22                   So I would suggest no changes to  
23 Title IX standards as applied to athletics -- as  
24 applied to athletics are warranted or necessary.

1 The three-part test, including its proportionality,  
2 I know that's been said way too much today, and its  
3 proportionality prong is appropriate and necessary  
4 to implement the Title IX's requirement of  
5 equality.

6                   Vigorous federal enforcement of  
7 Title IX and its implementing policies at every  
8 level of education is needed.

9                   College budget choices should be  
10 no excuse for not obeying the law, and as well as  
11 college budget choices should really be looked at  
12 more closely. All the athletic budget should be  
13 looked as a whole to figure out solutions as opposed  
14 to quick fixes.

15                   Female athletes are not  
16 receiving equal treatment or opportunities to  
17 participate 30 years after passage of Title IX. So  
18 the question that if we change Title IX, would those  
19 opportunities still be there? That's a decision  
20 that you're going to be making, but I don't know  
21 that we would keep going forward as we have.

22                   The three-part test is flexible,  
23 lawful, and reflects fundamental principles of  
24 equality. Title IX has been wrongly blamed by its

1 critics for cuts to some men's sports teams at some  
2 educational institutions. Schools choose to  
3 support, eliminate, or reduce particular sports  
4 opportunities on both men's and women's specific  
5 teams for a variety of reasons, including varying  
6 interest in specific sports and choices about how to  
7 allocate budget resources among the sports team the  
8 school decides to sponsor or emphasize.

9           As is proved by the increase in  
10 women's participation in athletics since 1972, given  
11 the opportunity to the play women are just as  
12 interested in athletics as men. The remaining  
13 discrepancies in participation rates are the result  
14 of continuing discrimination in access to equal  
15 athletic opportunities.

16           Again, just rather than go on  
17 with more data, thank you very much and good luck  
18 with your process, and thank you for your time, and  
19 I hope you get to enjoy the mountains a little bit  
20 while you're here. Thanks.

21           MS. COOPER: Thank you.

22           (Audience applause.)

23           MS. COOPER: Penny?

24           MS. GRAVES: Another short one.



1 I'm Penny Graves. I'm the head softball coach at  
2 Adams State College here in Colorado. I was born in  
3 '63, so I kind of grew into this law. I started out  
4 playing baseball under the name Denny, not Penny,  
5 because they didn't let girls play, and I got to  
6 play one year. I played shortstop, and then the  
7 next year I got drafted, and one of the neighborhood  
8 boys said, "That's not a boy. That's a girl," so I  
9 had to leave. So I got to play one year of  
10 baseball.

11 In '73 they started a women's  
12 program, and so I finally got to play softball, so I  
13 was pretty excited about that. Somehow, that got me  
14 really excited about sports, and then they started  
15 adding it in the high school, and I was like,  
16 really, this is really neat, and so I got to play a  
17 lot, and somehow I grew into loving it and became a  
18 coach, and I'm been coaching now for 15 years at the  
19 collegiate level. In those 15 years I've seen a lot  
20 of effects of Title IX.

21 Part of what I want to share  
22 with you is as a coach at a collegiate level, seeing  
23 and dealing with the athletic directors, and dealing  
24 with -- I've been involved in three different

1 complaints, either one that I filed, or one that I  
2 happened to be there for, or one that was already in  
3 motion when I got there. So I've seen OCR, and I've  
4 seen the Title IX and the effects and the things  
5 that have happened.

6                   When I was at Coffeyville  
7 Community College, I was coaching basketball there  
8 and softball, and we traveled with the men, of  
9 course, and they told us that we had to sit in the  
10 back of the bus, bunched up, while the men sat in  
11 the front spread out, and I thought, something's  
12 wrong with this picture, you know. And so I started  
13 studying, and I called the National Softball Coaches  
14 Association at the time, and Rayla Allison told me,  
15 "Well, they can't do that." So we proceeded to  
16 start a complaint, Title IX complaint.

17                   Well, the athletic director, of  
18 course, found out that I was filing this complaint,  
19 and in May, my job was not renewed. Not in May, in  
20 April. Well, in April I still had a month left to  
21 coach. So I was out of a job because I filed a  
22 complaint. I had a perfect record, hadn't done  
23 anything wrong there. I stayed in my budget, did  
24 all the things I was supposed to, but because I

1 stuck my nose out, my nose was cut off.

2 And of course they told me I  
3 would never get another coaching job, but here I am  
4 ten years later, and I'm still coaching.

5 But what happened there is they  
6 ended up going in, and they found them in  
7 violation. I guess they don't really find them  
8 wrong, but OCR found them in violation in all ten  
9 components, so they had to rectify the situation.  
10 Of course, I still was without a job.

11 So I went to California, kind of  
12 disgruntled about what was going on, still in  
13 litigation with Coffeyville and, lo and behold, I  
14 end up at Claremont McKenna College, and the  
15 athletic director the first year I was there came in  
16 and said, "You know, I notice the baseball players  
17 are wearing new jackets. I think the softball  
18 players need new jackets," and I about fell on the  
19 floor, you know, because before I was fighting on  
20 just being able to travel in a new van. Now I'm  
21 getting new jackets and new shoes.

22 Two years later he came in and  
23 said, "The softball field doesn't look as nice as  
24 the baseball field. Why don't you draw up a new one



1 hasn't Title IX been enforced?"

2 "Well, we added soccer last  
3 year, so now because we added soccer, our  
4 administration believes that we are in compliance  
5 with Title IX."

6 But I'm here to tell you that  
7 Title IX is more than just the numbers. It's equal  
8 opportunity. It's being able not to eat  
9 sandwiches -- I laughed at Brian when he said we ate  
10 potato chip sandwiches. My girls were sitting back  
11 here and said, "What's he mean, back when we did  
12 that? We still do that." So it's not there yet,  
13 and there's still more work to be done, and there's  
14 still more programs that happen to raise money to  
15 fund their programs when other programs aren't  
16 having to do that.

17 I wish you the best of luck and  
18 hope that we get a little farther along. Thank you.

19 MS. COOPER: Thank you.

20 (Audience applause.)

21 MR. LELAND: Our next four are  
22 -- Sarah. Sarah, come on up.

23 MS. COOPER: You didn't like  
24 that microphone?

1 MS. MURRAY: Well, I refuse to  
2 believe it's an us-versus-them kind of conversation.  
3 So it feels like all the wrestling coaches and  
4 swimming coaches have talked over here, and the  
5 Title IX advocates spoken over there, so I wanted to  
6 come on over.

7 (Audience applause.)

8 MS. COOPER: I was just a little  
9 curious.

10 MS. MURRAY: That one was a  
11 little low for me anyway. I've got a lot of  
12 testosterone.

13 (Audience laughter.)

14 So I'm an athlete, and I'm here  
15 with a Title IX success story. I really do believe  
16 that Title IX, as it's written right now, and as  
17 it's being explained in the three-prong test can be  
18 effective for women's sports and men's sports and  
19 wrestling and swimming and gymnastics, too.

20 I graduated from college, a  
21 Division 3 college two years ago, where I played  
22 soccer and lacrosse. I was a walk-on in both, and  
23 when I left my senior year I was an all-American on  
24 the lacrosse team.

1                   And when I walked onto the team  
2 my freshman year, the soccer team, I was dismayed to  
3 find out that our coach had never coached soccer  
4 before, nor had he ever played, and he smoked  
5 cigarettes during practice. We had tattered  
6 uniforms that were reversible, and we didn't get any  
7 media attention; we didn't have a locker room to  
8 change in. And our men's team were national  
9 champions two years prior, and they had head-to-toe  
10 Adidas, nice, every year updated uniforms. We  
11 didn't even get their hand-me-downs. I was really  
12 dismayed.

13                   I'm a person that believes  
14 strongly in general principles of justice that I  
15 think we all believe in. When I went to walk onto  
16 the lacrosse team to play fall ball a couple weeks  
17 later, I was dismayed to hear that my coach wasn't  
18 there. She was the field hockey coach, as well, and  
19 she was a professor, so she didn't have time to be  
20 at our fall ball practices, so needless to say, the  
21 women's sports programs had very scant resources at  
22 my university.

23                   As the next two years went on, I  
24 became increasingly disgruntled about it and decided

1 that I needed to do something, so in my junior year  
2 I made a pact with myself to do my honors politics  
3 thesis as an analysis of Title IX and its history  
4 and its implications at my university.

5                   And when I -- the day before I  
6 graduated, I defended my thesis to the provost and  
7 the athletic director and the president and the head  
8 of my department, and I left them with a big fatty  
9 packet on each of their desks and hoped really that  
10 they would go through every page and understand my  
11 passion and find it in their hearts to start looking  
12 at this differently.

13                   And I got some rewards for that,  
14 which was nice when I graduated, but the biggest  
15 reward has come in bits and pieces since I've  
16 graduated. The women's team has a new locker room,  
17 and the women's team were national champions last  
18 year. And we didn't rank anywhere nationally when I  
19 was there, just, you know, three years ago. And the  
20 women's basketball team has been in the Final Four  
21 for the past two years, and both teams have new  
22 coaches, they have new facilities, and there's just  
23 a newfound commitment, and that pressure is, you  
24 know, some of what I did, and some of what a lot of



1 other people have done over the years.

2 None of this has come at the  
3 expense of men's sports. All of our men's sports  
4 are still intact. Our athletic administration and  
5 the board of trustees have decided to make a  
6 creative solution to the problem. They've taken a  
7 little bit from everybody. We don't have a hugely  
8 expanded football budget, and everybody gets a  
9 little something, and it kind of works out.

10 So I'm here to encourage you to  
11 protect the integrity of Title IX, both in spirit  
12 and in word, because the pressure of good faith  
13 didn't have much of effect on my school at all. It  
14 was when they actually saw the three prongs and  
15 understood what that meant that a difference was  
16 made.

17 And thanks for giving of  
18 yourselves and being here.

19 (Audience applause.)

20 MS. COOPER: Thank you.

21 MR. LELAND: I think we have  
22 time for four more speakers. Katherine McConnell,  
23 Denise Cohen, Carlyne Henry, and Jack Maughan.  
24 Would you come forward? Are they here?

1 MS. FLYNN: I'm actually  
2 speaking for Denise Cohen.

3 MR. LELAND: Okay.

4 MS. FLYNN: Denise had to leave  
5 early. She apologizes. She would have really  
6 enjoyed getting a chance to speak to you. I'm  
7 actually going to tell you a viewpoint from my  
8 story.

9 MR. LELAND: Could you give your  
10 name, please?

11 MS. FLYNN: I'm sorry. My name  
12 is Kathleen Flynn, and I've been in sports all my  
13 life. My sports career started as a nine-year-old  
14 as a volunteer for Arnold Palmer. He played in a  
15 golf tournament, in the TPC Sawgrass Golf  
16 Tournament. I was the standard-bearer, and those  
17 were my idols, Arnold Palmer and Lee Trevino and  
18 those golfers.

19 I didn't even know that the LPGA  
20 existed. I wish that I did know, but I didn't know  
21 because of lack of media coverage and a myriad of  
22 other reasons that I won't go into about lack of  
23 coverage in women's sports.

24 The point I want to make today



1 started a club team, knocked on doors, and begged  
2 people to let me come to their house at 4:30 in the  
3 morning so that we could borrow their dock to row.  
4 I sold candy bars, just like many of the wrestlers  
5 had to do. I became a certified coach at U.S.A.  
6 Rowing, so I was actually an athlete and a coach at  
7 the same exact time that I competed in college.

8                   And so something that I realize  
9 is happening is if men's teams are being dropped,  
10 that may mean men now are going to have to do what  
11 the women have had to do to compete. They're going  
12 to have, you know, maybe not as nice uniforms. The  
13 wrestlers may have to become club teams for there to  
14 be a quality in college sports, for there to be the  
15 same number of men's sports as women's sports based  
16 on the proportionality prong of Title IX.

17                   And I don't want men to have to  
18 go through what I went through. It wasn't any fun.  
19 I don't wish that on anybody. I would have loved to  
20 have been able to spend more time competing as an  
21 athlete. I would have loved to have had my own  
22 coach. I would have loved to have had college vans  
23 to use and other opportunities that are afforded  
24 people that have varsity status.

1                   That's going to happen -- that  
2 might happen with Title IX, and I think that a lot  
3 of my male colleagues and a lot of the wrestlers  
4 have said that they don't wish any ill will on the  
5 women, I don't wish ill will on them, but that may  
6 happen, and I think that that's fair, that there  
7 will be an equal number of women's teams and an  
8 equal number of men's teams.

9                   I mentioned briefly that I grew  
10 up volunteering in sports. I still do that. I was  
11 recently at the Women's U.S. Open held in Kansas,  
12 and there was a ten-year-old standard-bearer that  
13 was with me. I was working for NBC. We were  
14 following Julie Inkster, and she was asking me about  
15 what I do, and I said I work in sports. She was  
16 asking me about the athletes I've written stories  
17 on. I said Brandy Chastain, Chris Witty, Peekaboo  
18 Street. She knew who these athletes are. I thought  
19 that was so awesome, and these are role models that  
20 she has that I didn't have as a kid.

21                   And so I want Title IX to remain  
22 as it is written so that she will have the  
23 opportunities that I didn't have growing up, and  
24 that she won't have to sell candy bars, or she may

1 have the opportunity to have a real coach and be a  
2 part of a real team when she goes to college.

3 Thanks for letting me speak.

4 (Audience applause.)

5 MR. LELAND: Okay. Is Katherine  
6 McConnell here? Katherine McConnell here? So  
7 Carolyne Henry?

8 MS. McCONNELL: Hi, I'm  
9 Katherine McConnell, but I actually passed my number  
10 to someone else, and they spoke on my behalf. I  
11 just passed it to Alicia.

12 MR. LELAND: Okay.

13 MS. McCONNELL: We're not  
14 related, though.

15 MR. LELAND: We understood it  
16 was a flip, though. You don't -- do you care to  
17 speak?

18 MS. McCONNELL: She spoke on my  
19 behalf.

20 MR. LELAND: Oh, okay.

21 MS. McCONNELL: Thank you.

22 MR. LELAND: Okay. Carolyne  
23 Henry? Not here? Jack?

24 MR. MAUGHAN: I'm cleanup No. 65

1 here, so I'm it.

2 Thank you for giving me the  
3 opportunity to speak today. My name is Jack  
4 Maughan. I am the women's golf coach, wrestling  
5 coach, men's golf coach, and the president of the  
6 National Wrestling Coaches Association at the  
7 University of Northern Colorado in Greeley,  
8 Colorado, just up the road. It's a very  
9 nice-smelling place. You should go through that  
10 place on your way out of town.

11 I think I'm going to drop all of  
12 those. I listened to a report earlier from the  
13 basketball association, and I'm going to switch and  
14 go to either men's or women's basketball coach and  
15 do that salary thing they've got going.

16 (Audience laughter.)

17 Along those lines, I think UNC  
18 has an anti-trust exemption on multiple-sport  
19 coaches. I'm glad that was brought to my  
20 attention. I can turn them in up there.

21 I'm up here to be very brief and  
22 say that -- and make it very clear that wrestling  
23 coaches are not against Title IX. Wrestling coaches  
24 are not against Title IX, and neither is the women's

1 golf coach at UNC.

2 I believe, like so many people  
3 in this room, that athletics is a very important  
4 part of the educational process. That goes for  
5 wrestlers, women's golfers, men's golfers,  
6 everybody, and I truly believe that.

7 At the University of Northern  
8 Colorado our -- my situation is, in the men's golf  
9 program, we have no scholarships. We have 50 men  
10 try out, and we cut to eight people. The women's  
11 golf team has three scholarships, double the travel  
12 budget, and we have worked our way up to 13 women on  
13 the roster. We keep everybody of any ability on the  
14 women's golf team. We cut 42 men.

15 The men drive to Gothenburg,  
16 Nebraska, a place you shouldn't visit when you're  
17 out here. The women fly to Myrtle Beach. So it's a  
18 much better situation in that area.

19 In wrestling, we're currently at  
20 50 wrestlers interested in wrestling. I will soon  
21 cut 20 of those to get down to our cap of 30. I am  
22 the grim reaper of opportunity athletics at UNC. I  
23 will cut 62 male opportunities this year alone.  
24 These are nonscholarship people, many of them



1 first-generation university attendees.

2 So I know someone this morning  
3 mentioned that, or stated that perhaps the men's  
4 opportunities are more important than women's, and  
5 at UNC I know that's not true, and maybe the  
6 opposite is.

7 I really believe it's a great  
8 situation, a great university, and all of our  
9 opportunities are valued, but because of the  
10 situation with the quota, it's driving a big wedge  
11 at our university. Again, we're not against  
12 Title IX. We're against the quota. We want the  
13 opportunity in athletics.

14 I hope that the 11 speakers, the  
15 experts this morning, that their opinion has been  
16 heard, and make it clear to preserve Title IX and  
17 eliminate the quota.

18 Thank you.

19 (Audience applause.)

20 MS. COOPER: Okay. Thank you.

21 MR. LELAND: Well, we've now hit  
22 the hour of our adjournment, so I really want to  
23 thank everybody for coming. We will readjourn  
24 tomorrow morning at 9:00 for deliberations. There

1 will be public access to those deliberations, but  
2 not public comments. So thanks everybody for  
3 coming. We would love to see some of you come  
4 tomorrow as we struggle with these issues.

5 MS. COOPER: Thank you.

6 WHEREUPON, the within  
7 proceedings were adjourned at the approximate hour  
8 of 5:00 p.m. on the 22nd day of October, 2002.

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21 The Secretary of Education's Commission on  
22 Opportunity in Athletics 10/22/02 (tcm)

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REPORTER'S CERTIFICATE

STATE OF COLORADO                    )  
   )  ss.  
 CITY AND COUNTY OF DENVER )

I, TRACY C. MASUGA, Registered Professional Reporter and Notary Public, State of Colorado, do hereby certify that the within proceedings were taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form, consisting of 347 pages herein, and that the foregoing is a true transcript of the proceedings had.

IN WITNESS WHEREOF, I have affixed my signature this 30th day of October, 2002.

My commission expires April 24, 2004.