

GIRLS CAN PLAY, TOO: HAS THE LACK OF FEMALE LEADERSHIP IN NCAA ATHLETICS BECOME AN AFTERTHOUGHT?

*Bethany Swaton**

INTRODUCTION	2
II. THE FAILURE OF TITLE IX TO ACHIEVE GENDER	
EQUALITY	5
A. Where are the Women?	5
B. Title IX Is Not Working	8
C. Commercialization of College Athletics	15
D. Benefits of Female Leadership	18
III. THE MINORITY COACHING ISSUE	25
A. Racial Problem and Adoption of the Rooney Rule	25
B. NCAA	31
IV. PARALLELS BETWEEN THE RACIAL AND GENDER	
MINORITY PROBLEMS	33
V. SOLUTIONS: TITLE VII LAWSUITS OR LEGISLATION?	38
CONCLUSION	46

* Bethany Swaton is a 2009 graduate of the West Virginia University College of Law. Originally from Wheeling, West Virginia, Ms. Swaton graduated summa cum laude from West Virginia University in 2006 with a Bachelor of Science in Sport Management. Ms. Swaton served as the president of the Sports and Entertainment Law Society during her third year of law school and had the privilege of assisting in the organization of two sports and entertainment symposia during her second and third years of law school. To date, Ms. Swaton has served as an intern in The Ohio State University Department of Athletics for two summers, as a summer associate at Schrader, Byrd and Companion in Wheeling, West Virginia, and as a legal intern at CBS Broadcasting, Inc. in Los Angeles, California. Ms. Swaton spent her third year of law school working as the law clerk for the Pittsburgh Pirates, as a research assistant for Professor *andré douglas pond cummings*, and as a student-editor for the forthcoming book, [Reversing Field: Examining Issues of Commercialization, Race and Labor in 21st Century Sports Law](#). Currently, Ms. Swaton is clerking for the Honorable James E. Seibert, United States Magistrate Judge for the Northern District of West Virginia. She is licensed in Pennsylvania and hopes to continue to pursue a career in sports and entertainment law.

INTRODUCTION

In 2007, the National Collegiate Athletic Association (NCAA) measured the number of female student-athletes competing at the Division I level at 72,419.¹ Despite comprising nearly half (48.8%) of the total student-athlete population, women hold only sixty of the 367 (15.5%) Division I campus leadership positions, which includes presidents, athletic directors, and faculty athletic representatives.² Perhaps hidden by the laudable advancements of female participation rates in athletics under Title IX of the Education Amendments of 1972 ("Title IX"), little attention has focused on the disturbing lack of female leadership in the athletic sector of our nation's colleges and universities. The sporting world is thought to be a paradigm of the integrated society that the United States has become.³ Despite the integration of both racial minorities and females into the student-athlete population, upper-level management positions remain largely white and male.⁴ Notwithstanding

1. DENISE DEHASS, 1999-00 – 2006-07 NCAA STUDENT-ATHLETE RACE AND ETHNICITY REPORT (2008), *available at* http://www.ncaapublications.com/Uploads/PDF/Race-Ethnicity_2008bc054067-3afd-4d76-b1cc-c1e9422eca18.pdf.

2. *Id.*; *See also* RICHARD LAPCHICK, THE BUCK STOPS HERE: ASSESSING DIVERSITY AMONG CAMPUS AND CONFERENCE LEADERS FOR DIVISION IA SCHOOLS IN 2007-08 (2008), *available at* <http://www.bus.ucf.edu/sport/public/downloads/2007-08%20Div%20IA%20Demographics%20Study.pdf>. Campus leadership positions are confined to the positions of president, athletic director, and faculty athletic representative.

3. Brian W. Collins, *Tackling Unconscious Bias in Hiring Practices: The Plight of the Rooney Rule*, 82 N.Y.U. L. REV. 870, 873 (2007); *see also* Paul M. Anderson, *Racism in Sports: A Question of Ethics*, 6 MARQ. SPORTS L.J. 357, 357 (1996); Michael Corey Dawson, *A Change Must Come: All Racial Barriers Precluding Minority Representation in Managerial Positions on Professional Sports Teams Must be Eliminated*, 9 SETON HALL J. SPORT L. 551, 553-54 (1999).

4. In 2006-07 African-American males comprised 24.7% of Division I male student-athletes while African-American females comprised 15.7% of Division I female student-athletes. African-American males comprised the largest percentage of men's basketball student-athletes at 60.4% (compared to 32.5% white males). African-American females comprised the largest percentage of women's basketball student-athletes at 47.7% (compared to 44.4% white females). The overall percentage of white football student-athletes in all of Division I is slightly higher than the percentage of African-American football student-athletes at 47% to 45.9%. However, the percentage of African-American football student-athletes competing at the Division I Football Bowl Subdivision level was slightly higher than white football student-athletes at 46.4% to

female interest in athletic leadership careers, little effort is expended to integrate females into these leadership positions. Some argue that males are simply more qualified to lead; however, a more plausible explanation is longstanding, negative perceptions related to gender inferiority.⁵

Negative gender perceptions may very well be the cause for the lack of leadership opportunities for females.⁶ Employment in professional and collegiate sports thrives on connections and prior relationships. At the root of these connections and relationships is often the “old boy network,” a metaphor that captures the tendency of powerful individuals to associate with those similarly situated; this reinforces and limits the traditional power structure to those fortunate enough to belong to that network.⁷ The old boy network is predominantly composed of Caucasian males. Because of the tendency to recognize both intellect and creativity in the business setting in persons of one’s own sex and race, Caucasian males tend to hire other Caucasian males, thus excluding both racial minorities and women.⁸ In no other arena is this more prevalent than in the athletic realm. After the passage of Title IX in 1972, there was a 185% increase in the number of available coaching positions for female athletic teams. Despite the enormous increase in opportunities for female coaches, 98% of these coaching jobs were filled by men.⁹ Why the discrepancy? Until the passage of Title IX, few women had the opportunity to participate in sports – let alone coach or lead an athletic program.¹⁰ Thus, males, who historically competed in various athletic events, had a competitive advantage over females and were hired by their male comrades, who were without exception named as

46.3%. See DEHASS, *supra* note 1.

5. Collins, *supra* note 3, at 873; see also Deborah L. Rhode & Christopher J. Walker, *Gender Equity in College Athletics: Women Coaches as a Case Study*, 4 STAN. J. C.R. & C.L. 1 (2008).

6. Rhode & Walker, *supra* note 5, at 31 (stating their research revealed that the most frequent explanation survey participants offered for women’s underrepresentation in athletic administration is gender bias citing the “old boys club” and women’s inability to gain access to the exclusive group).

7. Collins, *supra* note 3, at 876.

8. *Id.* at 877; see also Rhode & Walker, *supra* note 5, at 23, 31.

9. Grace-Marie Mowery, *Creating Equal Opportunity for Female Coaches: Affirmative Action Under Title IX*, 66 U. CIN. L. REV. 283, 284 (1997).

10. Barbara Osborne & Marilyn V. Yarbrough, *Pay Equity for Coaches and Athletic Administrators: An Element of Title IX?*, 34 U. MICH. J.L. REFORM 231, 232 (2000).

athletic directors when the merger of the female and male athletic programs occurred.¹¹

Though many Americans would like to believe the days of racism and sexism are over, and racial and gender preconceptions in regard to hiring practices no longer exist, some scholars argue that discrimination is now simply more subtle and often subconscious.¹² However, executives deny the interplay of racial discrimination in hiring and other employment decisions. Therefore, to correctly identify racial and gender discrimination in the hiring process, reliable statistics, accompanied by anecdotal evidence, is necessary.¹³

Since female student-athlete participation rates have increased, discrimination attention has primarily turned to racial issues,¹⁴ and much of the discrimination discussion in the sports world is often tied to race and the lack of African-American football coaches among both the professional and Division I college ranks.¹⁵ However, similar evidence indicates that the issues regarding gender inequality are still as strong as in the 1970s. For centuries, sports has been tied to “maleness,” and, as a result, leadership positions in sports have always been held by those males presumably embodying

11. *Id.*; Mowery, *supra* note 9, at 285; *see also* Rhode & Walker, *supra* note 5, at 23, 30-32. For further discussion of merger of athletic programs *see infra* notes 29, 56-63 and accompanying text.

12. N. Jeremi Duru, *The Fritz Pollard Alliance, the Rooney Rule, and the Quest to “Level the Playing Field” in the National Football League*, 7 VA. SPORTS & ENT. L.J. 179, 188 (2008).

13. *Id.*

14. *Id.* at 189. The NFL instituted the Rooney Rule in 2002 to help alleviate the lack of African-American coaches among the National Football League. The NCAA has attempted to follow suit and fight the problem by recently enacting the NCAA best practice guidelines. *See infra* Part III.A-B.

15. Michael J. Nichols, *Time for a Hail Mary? With Bleak Prospects of Being Aided by a College Version of the NFL’s Rooney Rule, Should Minority College Football Coaches Turn Their Attention to Title VII Litigation?*, 8 VA. SPORTS & ENT. L.J. 147 (2008); *see also* Hannah Gordon, *The Robinson Rule: Models for Addressing Race Discrimination in the Hiring of NCAA Head Football Coaches*, 15 SPORTS LAW. J. 1, 5 (2008); Symposium Webcast: Reversing Field: Examining Commercialization, Labor & Race in 21st Century Sports Law, at Panel III: Professional Equality: The Rooney Rule (W.Va. Univ. Coll. of L. 2007) *available at* http://law.wvu.edu/reversingfield/reversing_field_webcasts; Mark Maske, *Expansion of ‘Rooney Rule’ Meets Resistance*, WASH. POST, Apr. 13, 2006, *available at* <http://washingtonpost.com/wp-dyn/content/blog/2006/04/13/BL200641300782.html> (hereinafter “Webcast: Reversing Field”)

the leadership qualities necessary to effectively lead a sports team or athletic department.¹⁶ However, with women becoming increasingly involved in the operations of Fortune 500 companies,¹⁷ and with Division I athletic programs now being run more like corporations,¹⁸ the question becomes: why has this trend not expanded into the world of athletic leadership? The number of female student-athletes has never been higher, yet these numbers do not translate into female athletic leadership positions.

This paper examines why women lack sufficient opportunities to hold leadership positions in collegiate athletics and what possible solutions exist to address this perplexing problem. Part II examines the crux of the problem, citing the dismal numbers among female athletic administrators, the failure of Title IX in achieving gender equality among administrative opportunities, the detrimental effects of this absence, and the benefits of employing women administrators. Part III parallels this gender problem to the African-American coaching problem. The section first details the arguments made by advocates of African-American coaches that led to the implementation of the National Football League's Rooney Rule and the Hiring Guidelines implemented by the NCAA; it then applies these arguments to the continuing gender problem. Part IV examines the possible solutions for achieving gender equality among the administrative ranks and assesses the possibility that these solutions might be adopted or implemented.

II. THE FAILURE OF TITLE IX TO ACHIEVE GENDER EQUALITY

A. *Where are the Women?*

Dr. Richard Lapchick,¹⁹ in his annual diversity report,

16. Rhode & Walker, *supra* note 5, at 34–35.

17. See *infra* notes 102-131 and accompanying text.

18. See *infra* notes 76-101 and accompanying text.

19. Dr. Richard Lapchick is the Chair of the DeVos Sport Business Management Graduate Program in the College of Business Administration at the University of Central Florida. Each year, Dr. Lapchick publishes an annual race and gender report card for the National Football League, National Basketball Association, Major League Baseball, Major League Soccer, Women's National Basketball Association, and the National Collegiate Athletic Association. Biography of Richard Lapchick, <http://www.bus.ucf.edu/sport/cgi->

reveals disheartening numbers when it comes to women in athletic leadership positions.²⁰ In the 2007-2008 academic year, only seventeen of the 120 NCAA Football Bowl Subdivision²¹ institutions employed women presidents,²² while only six of these institutions employed female athletic directors.²³ Out of the 124 Faculty Athletic Representatives²⁴ who oversee football, only thirty-four are women.²⁵ In addition, all of the eleven Division I-A athletic conference commissioners are white men.²⁶

R. Vivian Acosta and Linda Carpenter, two women who conduct an intercollegiate athletics gender study every two years, also reveal discouraging numbers.²⁷ In 1972, just after the passage of Title IX, 90% of athletic directors for women's programs were female. In 2008, thirty-six years since the enactment, the percentage of NCAA female athletic directors has fallen to 21.3% (just 224 out of 1054 athletic director positions).²⁸ Division I employs the fewest number of female

bin/site/sitew.cgi?page=/program/leadership/lapchick.htx (last visited Feb. 24, 2009).

20. See LAPCHICK, *supra* note 2. This study examines the race and gender of conference commissioners and campus leaders including college and university presidents, athletics directors, and faculty athletic representatives for all 120 Division I-A institutions.

21. Formerly Division I-A.

22. University of Alabama at Birmingham, Ball State University, University of Cincinnati, University of Hawaii at Manoa, University of Iowa, University of Memphis, University of Miami (FL), University of Michigan, Michigan State University, University of North Texas, Oklahoma State University, Purdue University, University of South Florida, University of Southern Mississippi, Syracuse University, Temple University, and University of Texas at El Paso.

23. LAPCHICK, *supra* note 2. The six institutions are Arizona State University, University of California at Berkeley, University of Maryland, University of Nevada, University of Pittsburgh (interim), and Western Michigan University. In addition to the six, three institutions have a female director of women athletics only: University of Arkansas Fayetteville, University of Tennessee, and University of Texas.

24. FAR: a member of the faculty; a liaison between athletics and the institution; and an official representative of the institution in NCAA affairs. NCAA Faculty Athletics Representatives Association, <http://www.farawebsite.org/> (last visited Feb. 24, 2009).

25. Lapchick, *supra* note 2.

26. *Id.*

27. R. VIVIAN ACOSTA & LINDA JEAN CARPENTER, WOMEN IN INTERCOLLEGIATE SPORT: A LONGITUDINAL, NATIONAL STUDY THIRTY-ONE YEAR UPDATE 1977-2008 (2008), available at <http://www.acostacarpenter.org/2008%20Summary%20Final.pdf>.

28. *Id.* Prior to the passage of Title IX, universities operated separate athletic programs for males and females. Women's athletics were administered by female

athletic directors (29 out of 342), while Division III employs the largest (142 out of 449).²⁹ Perhaps more disappointing is that 11.6% of NCAA member institutions have no females in the administration.³⁰

These statistics support a troubling conclusion that sport leadership positions are properly associated with maleness and that women do not belong in these management roles. This disproportionately low presence of women in athletic leadership renders them as mere tokens in the world of sports.³¹ The underlying assumption linking sports expertise with masculinity subjects the few female tokens to gender stereotyping, which in turn suggests that these chosen few are simply for show and lack any real influence in the athletic department.³² This perception can have enormous negative effects on women athletes and those aspiring to enter the field of sport administration and leadership.³³

One consequence of this perception, which enhances male but hinders female leadership, is that female student-athletes may be more inclined to prefer male leaders.³⁴ Until the passage of Title IX in 1972, few women had the opportunity to participate in sports, thus placing them at a disadvantage when competing for leadership positions against men. Men have a traditional advantage when it comes to athletic experience because males could participate in athletics long before women.³⁵ These advantages tend to enhance the view that men are better equipped than women for athletic

executives at the university and were organized and run by women under the Association for Intercollegiate Athletics for Women (AIAW). As interest in women's athletics grew, the NCAA sought to gain control of women's athletics. With the NCAA's control over women's athletics, the separate governing of women's and men's athletic teams within an athletic department ceased, and the two were merged into one cohesive university athletic department. Unfortunately, with the merger, the female athletics director became an assistant; while the male athletics director gained control over the merged athletics department. See Cain, *infra* note 46, at 338; see also notes 55-63 and accompanying text.

29. *Id.*

30. *Id.*

31. Deborah Brake, *The Struggle for Sex Equality in Sport and the Theory Behind Title IX*, 34 U. MICH. J.L. REFORM 13, 88 (2000); see also Rhode & Walker, *supra* note 5, at 31.

32. Brake, *supra* note 31, at 88.

33. *Id.*

34. *Id.*

35. See generally Osborne & Yarbrough, *supra* note 10; see also Rhode & Walker, *supra* note 5.

leadership positions. Fortunately, this assumption may be losing its strength. With the adoption of Title IX and the increase in female participation rates in athletics, more and more females are gaining the needed experience in the *athletic* side of the university sports business.³⁶

As a further consequence of the perceived token status of women, female student-athletes may have a skewed view of their future in athletic leadership based on the assumption that males are more equipped to lead athletic departments.³⁷ The absence of women in leadership positions reinforces the idea that any successful female is simply a token and that the overwhelming majority of leadership positions are rightfully held by males.³⁸ In addition, the absence of female coaches and administrators poses the problem of having fewer role models in sports for female student-athletes.³⁹ The lack of role models may actually deter many female student-athletes, especially those with a desire to work in sports leadership and administration, from attempting to enter the ranks for fear of rejection and failure.⁴⁰

When Congress passed Title IX in the 1972 Educational Amendments, it hoped to address widespread discrimination against women at all levels of education, including athletics.⁴¹ While Title IX has successfully contributed to the increase in female athletic participation rates, it has not been an unbridled success.⁴² The Act failed to address discrimination in athletic leadership roles; therefore, many obstacles remain before women can attain true equal status in athletics.

B. Title IX Is Not Working

In 1972, Congress passed Title IX,⁴³ which was created to

36. See *infra* notes 102-140 and accompanying text.

37. See generally Brake, *supra* note 31.

38. *Id.* at 89.

39. *Id.*

40. Rhode & Walker, *supra* note 5, at 14; see also Brake, *supra* note 31, at 88-89.

41. Deborah Brake & Elizabeth Catlin, *The Path of Most Resistance: The Long Road Toward Gender Equity in Intercollegiate Athletics*, 3 DUKE J. GENDER L. & POL'Y 51, 53 (1996).

42. See generally *Id.*

43. Title IX of the Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235 (codified as amended at 20 U.S.C.A. § 1681 (West 2008)).

prohibit sex discrimination in educational institutions receiving federal funds.⁴⁴ Though originally covering only those areas of the institution actually receiving federal funding, the statute was later extended to cover athletics.⁴⁵ This idea of sex equality was not welcomed by many, and shortly after its implementation, Senator John Tower of Texas introduced a bill to exempt all athletic programs from Title IX.⁴⁶ The bill was unsuccessful; however, Senator Tower persisted by introducing a second bill, this time attempting to exempt all revenue-producing sports from Title IX.⁴⁷ Though this bill also failed, the NCAA supported Senator Tower's efforts and filed suit to challenge the application of Title IX to college athletics once it was adopted.⁴⁸

At the same time, the NCAA was plotting the takeover of women's sports from the Association for Intercollegiate Athletics for Women (AIAW).⁴⁹ Prior to the 1970s and the passage of Title IX, women's athletic programs functioned in their own capacity,⁵⁰ operated by associations primarily run

44. Patricia A. Cain, *Women, Race, and Sports: Life Before Title IX*, 4 J. GENDER RACE & JUST. 337, 337 (2001); see also Osborne & Yarbrough, *supra* note 10; Mowery, *supra* note 9; Jennifer R. Capasso, *Structure Versus Effect: Revealing the Unconstitutional Operation of Title IX's Athletics Provisions*, 46 B.C. L. REV. 825 (2005).

45. Cain, *supra* note 44, at 337.

46. *Id.*

47. *Id.*

48. *Id.* at 338.

49. *Id.*

50. Women's collegiate athletics were first nationally organized in 1941. After being administered by various organizations, the sports finally came to be controlled by the Commission on Intercollegiate Athletics for Women (CIAW). The CIAW had two primary functions: 1) provide the framework and organization for athletic opportunities and 2) sponsor national championships under the guidance of the Division for Girls' and Women's Sports (operating under the American Association for Health, Physical Education and Recreation). In recognizing the need for institutional membership and elected representation, the Association for Intercollegiate Athletics for Women (AIAW) developed from the CIAW on July 1, 1972, and initially included 280 member schools.

Upon its formation, the AIAW had little interest in merging with the NCAA, and vice versa. The NCAA was seen as being commercially driven and neglecting the meaning of the student-athlete. Additionally, the AIAW promoted free transfer and rejected the idea of offering scholarships and participating in off-campus recruiting so as to promote fairness.

The first signs of financial success were early in the organization's existence. The 1973 basketball tournament, which drew 3,000 fans to the championship game, earned over \$4,500 in profits. In 1975, the championship game was played in Madison Square Garden and drew over 12,000 fans. The AIAW immediately started to take advantage of corporate sponsorships and television payouts.

by women, such as the AIAW.⁵¹ However, with national interest in women's athletics increasing, the NCAA expanded to include women's teams. By the early 1980s, women's collegiate athletics and national championships were under the control of the NCAA.⁵²

The late 1970s saw membership at its highest, approaching nearly 1,000 member schools and offering 41 national championships in 19 sports in addition to various state competitions in select sports. At the same time, these schools recognized that women's sports could be profitable. Seeing the earning potential, the NCAA decided to offer women's championships. Initially, some Division I schools opposed the idea, and some schools elected to participate in the NCAA and the AIAW championship events. However, the AIAW ultimately lost much appeal and popularity when the NCAA hosted the first women's basketball tournament offering incentives, such as paying transportation costs, to the traditional women's basketball powerhouses (University of Tennessee, Old Dominion University, and Louisiana Tech). Schools also realized that under NCAA governance scholarships and budgets for travel and recruiting would increase further harming the AIAW. The AIAW ultimately ceased operations on June 30, 1983, upon NBC's cancellation of its television contract. Posting of Lauren Holway to Serendip, <http://serendip.brynmawr.edu/exchange/node/1744> (Jan. 8, 2008 10:56 EST); see also *Association for Intercollegiate Athletics for Women*, WIKIPEDIA, <http://en.wikipedia.org/wiki/AIAW> (last visited Feb. 25, 2009).

51. See Cain, *supra* note 44, at 338.

52. *Id.* Motivated primarily by the fear of illegal discrimination, various NCAA member institutions offered measures at the January 1978 NCAA Convention that would allow the NCAA to include women's championships. Such proposals were rejected. In October 1979, the NCAA's governing body authorized a Special Committee on NCAA Governance, Organization, and Services ("Committee") to examine and make recommendations with respect to sponsoring women's athletics in the NCAA. Before the Committee began, Divisions II and III both approved proposals by various individual institutions to establish NCAA championships for women in five sports in each division beginning in 1981-82.

In late January and again in June 1980, the Committee sent reports and recommendations to the NCAA membership. The following month, approximately 484 representatives from member institutions attended meetings, along with AIAW leaders, to discuss proposals for women's programs. A similar meeting held in September was attended by 27 chief executive officers of Division I member institutions. During these meetings, the AIAW continued to lobby member institutions to reject the sponsorship of women's athletics under the NCAA. Finally, in January 1981, despite an intense fight from the AIAW, all three NCAA divisions approved the sponsorship of women's championship events. The institutions also voted to adopt an overall governance plan for women's athletics.

The negative impact on the AIAW and the positive impact on the NCAA were felt immediately. AIAW lost membership dues of non-renewing members totaling \$124,000 in 1981-82, of which 49% was attributable to institutions' decisions to administer women's athletics under the NCAA, and lost participation in its championship events as many of the AIAW's Division I schools chose to participate in the NCAA Division I women's championships in lieu of the AIAW championships in the same sport. Additionally, AIAW's television income decreased from \$223,000 in 1980-81 to \$55,000

Along with this takeover came dramatic changes in the way women's athletics operated.⁵³ Prior to the takeover, many institutions operated separate men's and women's athletic departments; however, by 1983, only two short years after the takeover, approximately 80% of university athletic departments merged the two into one unified department.⁵⁴ In every merger, the men's athletic director was promoted to the overall athletic director of the combined program, with the female athletic director demoted to serving as an assistant.⁵⁵ Commentators argue that this perpetuated the "old boys network,"⁵⁶ leaving the women who retained any power in athletic departments as tokens in the athletic world.⁵⁷

In addition to the drastic disappearance of female administrators,⁵⁸ the percentage of women employed as the head coach of women's athletic teams severely dropped from 90% in 1972 to 42.8% in 2008, lower than at any time in history except for 2006 (42.4%).⁵⁹ Although 361 new coaching positions were created in women's athletics from 2000 to 2002, more than 90% of them were filled by men.⁶⁰ The share of male head coaches in women's athletics is now 57.2%, while the share of female head coaches in men's athletics is between 2-3%.⁶¹

in 1981-82, and the AIAW saw both the Broderick Company and the Eastman Kodak Company withdraw from multi-year agreements citing the reason for the withdrawal as participation losses. *Ass'n for Intercollegiate Athletics for Women v. Nat'l Collegiate Athletic Ass'n*, 735 F.2d 577, 579-82 (D.C. Cir. 1984).

53. See *supra* note 27 and accompanying text.

54. See Cain, *supra* note 44, at 338.

55. See Mowery, *supra* note 9, at 285-86.

56. *Id.* at 286; see also Rhode & Walker, *supra* note 5, at 31.

57. Deborah Brake, *Revisiting Title IX's Feminist Legacy: Moving Beyond the Three-Part Test*, 12 AM. U. J. GENDER SOC. POL'Y & L. 453, 461 (2004); see also Rhode & Walker, *supra* note 5, at 31.

58. See *supra* notes 20-28 and accompanying text.

59. ACOSTA & CARPENTER, *supra* note 27; see also Rhode & Walker, *supra* note 5, at 12.

60. See Brake, *supra* note 57, at 460.

61. See ACOSTA & CARPENTER, *supra* note 27. Jill Stephenson is currently in her 14th year as the head coach of the men's and women's swimming teams at Salisbury University in Salisbury, Maryland. Jill Stephenson Biography, http://www.suseagulls.com/sports/swim/coaches/stephenson_jill (last visited Feb. 25, 2009). Natalie Koukis is currently in her fifth year as head coach of the men's and women's swimming and diving programs at Wittenberg University in Springfield, Ohio. Natalie Koukis Biography, <http://www4.wittenberg.edu/news/athletics/mswimming/coach08-09.html> (last visited Feb. 25, 2009). Carrie McTierman was the head coach of the men's basketball team at

Despite Title IX's purpose, the athletic department merger had the opposite effect in the area of administration and coaching opportunities. Why has the statute failed to increase the number of women in these leadership positions? One reason is that "sport has been resilient in preserving male privilege in its deepest structures."⁶² The lack of women in coaching and leadership positions speaks to the strength of the underlying assumption connecting "sport expertise with masculinity and leadership with male superiority."⁶³ Females, traditionally viewed as "delicate, private, and passive creatures,"⁶⁴ are thought of as inexperienced and unable to lead in the sports context.⁶⁵ Therefore, sport leadership structures reserve the sport leadership positions, including coaches and administrators, for males.⁶⁶

One rationale for this resiliency in male dominance is known as "preservation through transformation."⁶⁷ This phenomenon allows institutions to resist new legal

Kingsborough Community College in Brooklyn, NY, for several years in the late 1990s. *Outside the Lines: Women Coaching Men* (ESPN television broadcast Oct. 14, 2001) available at <http://espn.go.com/page2/tvlistings/show81transcript.html>.

In addition to the minimal amount of female head coaches in male college athletic programs, few females served as assistants in more popular sports. Stephanie Ready made history in fall 2001 as the first woman to coach a men's professional team, serving as an assistant coach for the now defunct Greenville Groove of the NBA's Developmental League. Ready coached the Groove from 2001-2003. Bernadette Lott-Maddox worked as an assistant coach on Rick Pitino's men's basketball staff from 1990-1994 at the University of Kentucky. *Id.*

62. See Brake, *supra* note 57, at 485.

63. See Brake, *supra* note 31, at 89; see also Rhode & Walker, *supra* note 5, at 3-4 (stating that athletic competition was inconsistent with the feminine ideal for most of the nation's history. Women's activities were defined to non-competitive, "sedate pastimes that could be pursued without acquiring an indelicate sweat . . . " Female athletes were deemed unattractive; further, physicians worried competition could damage "women's delicate nerves and physiques or drain the vital forces necessary for reproduction.").

64. See Brake and Catlin, *supra* note 41, at 52; see also Rhode & Walker, *supra* note 5, at 3-4.

65. See Brake, *supra* note 31, at 89; see also Rhode & Walker, *supra* note 5, at 34-35 (arguing that a barrier to women entering athletic administrative roles is the stereotypes associated with men and women regarding leadership traits. Men are more credited with leadership ability and are more accepted as leaders. Females are less authoritative and more emotional than their male counterparts, and female attempts to be authoritative lead to further stereotypes involving homosexuality).

66. *Id.*

67. See Brake, *supra* note 57, at 459.

philosophies by avoiding overt conflicts with the new ideology while preserving the original underlying structure of inequality.⁶⁸ For example, though Title IX has called for gender equality in athletics (the new ideology), institutions may preserve the male dominance in leadership (the underlying structure of inequality) simply by avoiding direct defiance of the new ideology through interviewing women but ultimately hiring men. How might this happen? As discussed *infra*, discrimination suits under Title VII require high burdens on plaintiffs; therefore, if the institution can provide a legitimate basis for hiring the traditional white male, a discrimination claim will likely fail to pass muster.⁶⁹

In addition to the “preservation through transformation” theory, Professor Deborah Brake argues that the blindness of the law also contributes to the overarching theme of male domination in athletics. Discrimination law does not address adequately the underrepresentation of women in leadership positions; however, this failure does not erase the real implications of gender inequality.⁷⁰

By linking leadership and competence in sports with maleness, sport’s leadership structure reinforces women’s marginal place in sports and reinserts a risk that the empowering potential of sports will be thwarted by gender dynamics that reinforce male dominance. Inequality in sport leadership shapes the aspirations and experiences of female athletes, reinforcing cultural and institutional norms that devalue female athleticism.⁷¹

With little help from the courts, female student-athletes will continue to associate athletic leadership with masculinity and internally devalue their position within the sports world.⁷²

That Title IX does very little to combat the prevalent gender hierarchy in athletics sits well with many;⁷³ however,

68. *Id.*

69. Currently, there is no legislation requiring NCAA member institutions to interview gender or racial minorities. Therefore, institutions may simply ignore female candidates for athletic administrative openings. Additionally, Title VII discrimination actions in the employment area are difficult to prove and may not afford an adequate remedy to effected female candidates. For further discussion regarding Title VII discrimination actions *see infra* Part V.

70. *See* Brake, *supra* note 57, at 461.

71. *Id.*

72. *Id.*

73. *See* Brake, *supra* note 31, at 20-21 (stating that new advocacy groups have arisen with the primary purpose of reversing Title IX interpretations. Additionally,

it is time for collegiate athletics to catch up to the ever-changing world. Currently, though numbers have seemed to plateau recently, females are sitting on corporate boards and occupying corporate offices.⁷⁴ With collegiate athletics now implementing more of a corporate structure,⁷⁵ one must wonder why the female power trend has not spread to educational institutions, where equal opportunity is a core value. Those clinging to the male dominated hierarchy may wonder what women can offer to collegiate athletic departments. By comparing the recent commercialization of collegiate athletic departments to corporations and women's success at the corporate level, the evidence is clear – women would bring benefits to collegiate athletic departments.⁷⁶

many conservative advocacy organizations and men's athletic associations are urging reversals or modifications of Title IX participation standards. Over the last decade, these organizations have increased efforts in lobbying Congress to amend Title IX and/or to pressure the Department of Education Office for Civil Rights, the enforcing agency, to retreat from original interpretations).

74. Colleen O'Connor-Grant, *Women Corporate Board Count: A New Benchmark for Profitability*, FINANCIAL PLANNING, July 25, 2008, available at <http://www.financial-planning.com/news/women-corporate-board-count-new-benchmark-631251-1.html>.

75. L. Jon Wertheim, *The Program*, SPORTS ILLUSTRATED, Mar. 5, 2007, at 55. A related area is the current commercialization of college athletics, which is a topic currently debated and contested. Though this is a topic in and of itself, this issue is outside the scope of this particular article.

76. In comparing college athletic departments to corporations, the benefits seen from having women on corporate boards can translate into benefits in the collegiate athletic department. This is not to say, however, that the few women athletic directors have not already benefited their individual institutions. Perhaps the most influential is Deborah Yow, the Director of Athletics at the University of Maryland. Now in her 15th year as the Terrapins' Athletic Director, Yow has seen her department win 16 national championships and increase graduation rates at a pace leading all Atlantic Coastal Conference (ACC) institutions. Yow has been honored as one of the 20 most influential people in intercollegiate athletics by Street & Smith's Sports Business Journal and was named as one of the "Ten Most Powerful People in College Athletics" in October 2007's Chronicle of Higher Education. Since taking over in 1994, Yow has increased the number of athletic teams to 27 totaling over 700 student-athletes, overseen \$250 million worth of facility renovations, and implemented a strategic management model. Yow has balanced all 14 of the department's annual budgets, which had not been balanced in the ten years preceding her hiring, reduced the debt from \$51 million to \$7.6 million, and increased private gift revenues over 350% and corporate sponsorship revenues over 300%. Academics has been a vastly improved area under Yow; the University's graduation rate for exhausted eligibility student-athletes reached 85%, and in the 2007-08 academic year, University of Maryland had the highest graduation rate among all ACC member institutions. Under Yow, the athletic program won the 2005-06 inaugural PRISM Award as best-managed Division I collegiate athletic program in

C. Commercialization of College Athletics

Big money has changed the way athletic departments are run. Athletic directors are often compared to CEOs of mid-size corporations.⁷⁷ In managing the nation's largest athletic department, The Ohio State University Director of Athletics, Gene Smith, oversees 300 employees, 377 acres of property, and 16.9 million square feet of buildings.⁷⁸ The Ohio State Athletic Department itself has 25 computer servers and a complex organizational chart.⁷⁹

The large athletic departments also generate millions of dollars in revenue. In 2006, The Ohio State University's Athletic Department generated \$104.7 million in revenue.⁸⁰ One source of this revenue is corporate sponsorships. Just as corporations enter into business transactions to help generate profits, college athletic departments are entering into corporate partnership deals.⁸¹ Additionally, in what can be

the nation, was recognized by U.S. News & World Report as one of the top 20 athletic programs in the nation for overall quality and competitive excellence, and received a national all-sports ranking in the upper 7% of all NCAA Division I institutions. Deborah Yow Biography, <http://umterps.cstv.com/school-bio/md-athtdir.html>.

77. See Wertheim, *supra* note 75 (examining the current big business of collegiate athletics, Gene Smith, the Director of Athletics at The Ohio State University is referred to as the CEO of a medium-sized corporation); see also "The Business of College Football" Part I - *Big Time Ball* (PBS television broadcast Nov. 12, 2007) (transcript available at <http://www.pbs.org/nbr/site/onair/transcripts/071112c/>) (stating that "[a] coach is a COO of a major multinational corporation. The athletic director is the CEO of that corporation").

78. See Wertheim, *supra* note 75.

79. *Id.*

80. *Id.* The Top 10 revenue producing athletic departments in 2006 in order: The Ohio State University - \$104.7 million, the University of Texas - \$97.8 million, the University of Virginia - \$92.7 million, the University of Michigan - \$85.5 million, the University of Florida - \$82.4 million, the University of Georgia - \$79.2 million, the University of Wisconsin - \$78.9 million, University of Notre Dame - \$78.2 million, Texas A&M University - \$70.9 million, and Penn State University - \$70.5 million. Brian O'Keefe, *How Florida Cashed in on College Football*, CNNMONEY.COM, Oct. 19, 2007, available *at*

http://money.cnn.com/2007/10/18/news/companies/florida_gators.fortune/index.htm.

While many large athletic departments generate large amounts of revenue, this is not the norm in college athletics. In fact, most institutional athletic departments operate at a deficit. See also Andrew Zimbalist, *College Athletic Budgets are Bulging but Their Profits are Slim to None*, STREET & SMITH'S SPORTS BUSINESS JOURNAL, June 18, 2007; Joseph McCafferty, *The Money Bowl: The Real Competition in Big-Time College Sports is Over who can Spend the Most*, CFO.COM, Aug. 1, 2006, available at <http://www.cfo.com/printable/article.cfm/7239613?f=options>.

81. See Wertheim, *supra* note 75 (noting the name of a department store, Value City, displayed on Ohio State's basketball court along with 22 other sponsors ringing

compared to corporate shareholders, athletic boosters are pumping more money into athletic departments than ever,⁸² and some are receiving significant perks.⁸³ The University of Florida relies primarily on high-earning alumni to fund its athletic program.⁸⁴ Just as corporate shareholders buy votes into a corporation, boosters buy control over the athletic departments with their donations,⁸⁵ which may ultimately lead to bigger returns on their investments. “Distinguished Directors,” those donating seven-figure amounts to the University of Florida’s Athletic Department, each received a national championship ring (worth \$18,000) when the University’s football team won the 2007 BCS National Championship Game and when the basketball team won back-to-back national championships in 2006 and 2007.⁸⁶ Additionally, upon T. Boone Pickens’s unprecedented donation to Oklahoma State University’s athletic program, Pickens received the right to voice his opinion in athletic department matters.⁸⁷

the perimeter of the arena); *see also* McCafferty, *supra* note 80 (stating that collegiate athletic departments are now selling sponsorship rights to professional sports marketing companies to increase sponsorship revenues).

82. *See* O’Keefe, *supra* note 79 (detailing Oklahoma State University alumnus T. Boone Pickens’ \$165 million donation to the University’s athletic department for facility improvements; Ben Hill Griffin II donated \$20 million to the University of Florida athletic department during the 1980s, which forever tied him to the football team. “The Swamp” to which the football field is predominantly referred is actually named the Ben Hill Griffin Stadium at Florida Field; Ben Hill Griffin III contributed further to his family’s legacy by donating \$2 million to triple the size of the weight room, the Ben Hill Griffin Training Center).

83. *Id.* (describing other popular perks – for those donating an unspecified amount – including the ability to stand on the field when the football team runs onto the field).

84. *Id.* (In 2007, \$38 million, more than one-third, of the athletic department’s revenue came from boosters).

85. *See id.* (explaining how Gordon Harris, one of the Gators’ biggest donors, has a three-pillar plan to increase the University’s endowment fund from an already impressive \$42 million to \$175 million, which would allow the athletic department to permanently endow every scholarship for every sport).

86. *See* O’Keefe, *supra* note 79.

87. Steve Wieberg, *Tycoon’s \$165M Gift to Oklahoma State Raises Both Hopes and Questions*, USA TODAY, Feb. 2, 2007, available at http://www.usatoday.com/sports/college/2006-08-15-pickens-oklahoma-state-donation_x.htm (when asked what he received in return for the massive donation, Pickens stated, “with a gift like that, of course, they’re going to be respectful and I’m going to be asked my opinion on things. It doesn’t mean I’m running anything.” Though Pickens appears modest in his influence, it seems less than coincidental that

One such example of this control and return on investment is the coaching carousel,⁸⁸ which follows every major collegiate sport's playing season. Prominent and powerful boosters to athletic departments expect to see results from their donations – the biggest facilities and the best coaches, which ultimately lead to better student-athletes and more wins. However, when their beloved team does not perform as expected, some boosters place blame on coaches, and may threaten to pull funds if a change is not made,⁸⁹ just as shareholders may dismiss underperforming boards and vote a new board or front office into power upon poor corporate performance.

Even more telling of the athletic department's current corporate structure is the possibility of governmental reaction. Concerned over the enormous amounts of revenue generated from college athletics, Iowa Senator Charles Grassley, the ranking Republican on the Senate Finance Committee, launched an investigation into whether athletics donations should remain tax-deductible after a recent study in the *Journal of Sport Management* revealed that athletic departments are receiving an increasing share of alumni donations.⁹⁰ As athletic department revenues increase, which in turn increases spending, Senator Grassley worries that

when it came time to replace the Oklahoma State Athletic Director, Pickens' long-time friend, and quail-hunting partner, Mike Holder, OSU's men's golf coach, received the job).

88. The term "coaching carousel" refers to the series of coaching changes that follows every sport's season. Athletic departments, dissatisfied with the team's performance and past season's results, fire the head coach in hopes of employing a coach who can produce a better record.

89. A University of Washington booster offered \$100,000 to the University's president for him to fire head football coach, Tyrone Willingham. Nick Perry, Bob Condotta & Ken Armstrong, *Huskies Booster Offered \$100K for Coach's Firing*, SEATTLE TIMES, Jan. 10, 2008, available at http://seattletimes.nwsourc.com/html/huskies/2004116851_uwemails10m.html. The President of University of Minnesota's Touchdown Club publicly stated his hope for a head coach who could take the football team to "a higher level" despite Men's Athletics Director Mark Dienhart's support for former head football coach, Glen Mason. Elizabeth Stawicki, *Search for New Gophers Football Coach Begins*, MINNESOTA PUBLIC RADIO, Jan. 1, 2007, available at <http://minnesota.publicradio.org/display/web/2007/01/01/gophercooachsearch/>.

University of Oregon boosters rooted for their basketball team to lose because a loss would allow the University to fire coach Ernie Kent. *Oregon Boosters Rooting for a Tank Job*, <http://s2nblog.wordpress.com/2008/02/25/oregon-boosters-rooting-for-a-tank-job/> (last visited Feb. 25, 2008).

90. See O'Keefe, *supra* note 79.

athletics may soon overshadow academic integrity.⁹¹ According to Senator Grassley, federal tax incentives are supposed to give Americans access to higher education;⁹² however, increasing amounts of alumni donations are used to help pay escalating coaches' salaries, costly chartered travel, and state-of-the-art facilities, leaving some to wonder why the federal government should continue to provide tax subsidies to the athletic activities of educational institutions.⁹³ Lawmakers are also calling upon university presidents and boards of trustees to more accurately monitor use of alumni donations.⁹⁴

As intercollegiate athletic departments become more like corporate boardrooms, the argument that men are more suited to run an athletic department becomes ever more strained. As indicated below, females are continuing to climb the corporate ladder and are having success in doing so. If women are fit to make decisions for Fortune 500 companies, they are able to run intercollegiate athletics.

D. Benefits of Female Leadership

For years, the typical woman was seen as running the household – packing school lunches, caravanning the children off to extra-curriculars, maintaining the household, and spending time in the kitchen – while men were seen as the breadwinners. However, the dramatic impact of both legislation⁹⁵ and women's advocacy groups led to changes involving women in corporate America in the 1960s.⁹⁶ Some analysts now even argue that firms with female leaders may

91. Tom Witosky, *Grassley: Do College-Athletic Donations Merit Tax Deductions?*, DES MOINES REGISTER, Jan. 18, 2007, available at <http://www.nicholasjohnson.org/BlogStuf/regents/twdr0118.html>.

92. *Id.*

93. Elia Powers, *The NCAA Responds*, INSIDE HIGHER ED., Nov. 16, 2006, available at <http://insidehighered.com/news/2006/11/16/ncaa>.

94. See Witosky, *supra* note 91 (“We expect the boards to make decisions that are responsible and in accordance with the intention of the exemptions they receive. It is no different for universities than any other charity or non-profit organization.”).

95. Harriet Rubin, *Sexism*, CONDÉ NAST PORTFOLIO, Apr. 2008, at 92 (citing the Equal Pay Act, Civil Rights Act of 1964, Title IX, and the Pregnancy Discrimination Act as advances in gender equality).

96. See generally *id.*

be better off than those without.⁹⁷ A November 2001 study reported that the 25 Fortune 500 firms with the best record for promoting women to senior positions “post returns on assets 18% higher, and returns on investment 69% higher, than the Fortune 500 median of their industry.”⁹⁸ Similarly, a 2007 study conducted by Catalyst, Inc. revealed that Fortune 500 companies with the greatest numbers of women on their corporate board performed better financially than those companies with fewer female board members.⁹⁹ Other studies show that boards with higher numbers of women have increased use of non-financial performance measures, such as customer and employee satisfaction reports, improved community relations, and innovation and connection to a wider customer-base.¹⁰⁰ Women are good for business and can bring many benefits to their firms.

First, women offer a different perspective when advising and counseling.¹⁰¹ Specifically, each gender possesses different norms, attitudes, beliefs, and perspectives, and this diversity can spark creativity within the group, benefitting the firm.¹⁰² Society in general places a “value in diversity” and believes there are more positives than negatives associated with a diverse board.¹⁰³ When all board members are similar, lacking diversity and differing views, boards can be ineffective and hinder breakthrough ideas.¹⁰⁴ Diversity, on the other hand, can lead to constructive dissent and debate, encouraging due diligence in decision making and ensuring the identification of the full range of risks facing the organization.¹⁰⁵

Secondly, women have connections to other constituencies

97. Knowledge @ W.P. Carey, *They're Few and Far Between, but Female Executives Benefit the Firms They Work For*, Knowledge @ W.P. CAREY, Oct. 10, 2007, available at <http://knowledge.wpcarey.asu.edu/article.cfm?articleid=1482>; see also Colleen O'Connor-Grant, *Women Corporate Board Count: A New Benchmark for Profitability*, FINANCIAL PLANNING, July 25, 2008, available at <http://www.financial-planning.com/asset/article-print/631251/printPage.html>.

98. Jane Allen, *Women on Boards: Why would you do it?*, CEO FORUM, July 2006, available at <http://www.womenonboards.org.au/pubs/2006/0607ceo>.

99. See Knowledge, *supra* note 97.

100. See Allen, *supra* note 98.

101. See Knowledge, *supra* note 97.

102. *Id.*

103. *Id.*

104. See Allen, *supra* note 98.

105. *Id.*

by virtue of their experiences, beliefs, and perspectives.¹⁰⁶ Research shows that women are responsible for 88% of purchases in America and control 50% of households with more than \$500,000 in assets.¹⁰⁷ Because of women's powerful positions as purchasers, women addressing consumer segments on corporate boards are given great weight and deference in making decisions.¹⁰⁸

In fact, women are thought to be performing so well in the corporate world that current Wall Street trends are actually following that of a woman.¹⁰⁹ In light of the colossal failures of Enron and Tyco (companies perfectly exemplifying male aggressiveness and its ability to destroy a company),¹¹⁰ estrogen appears to be the drug of choice these days.¹¹¹ Women were long scrutinized for being too emotional to lead successfully;¹¹² however, these days emotional intelligence is at the forefront of investing. *Warren Buffet Invests Like a Girl* is direct evidence of this trend.¹¹³ The article focuses on

106. See Knowledge, *supra* note 97.

107. *Id.*

108. *Id.*

109. See Rubin, *supra* note 95, at 146.

110. Enron was the envy of corporate America but collapsed in 2002 due to management "mishaps." Congressional reports detail that the Enron Board of Directors knew of Enron's "high-risk accounting and off-the-books deceptions" and witnessed numerous indications of questionable practices by Enron management (Jeff Skillings, Kenneth Lay and other white males) but chose to ignore them to the detriment of Enron shareholders, employees, and business associates. Further reports indicated that Enron executives collected more than \$300 million in cash payments and sold stock immediately prior to the collapse. Enron executives actions were "intrepid and reckless deceptions," which, "in a complex hybrid of subsidiary creation, partnership alliance, and energy derivatives trading, was able to deceive the investing public, and its employees, to the tune of billions of dollars of nonexistent value." andre douglas pond cummings, "Ain't No Glory in Pain": *How the 1994 Republican Revolution and the Private Securities Litigation Reform Act Contributed to the Collapse of the United States Capital Markets*, 83 NEB. L. REV. 979, 1044-47; see also Joel Roberts, *Corporate Crime Colossus: Cohen: Ebbers (WorldCom) Fraud Trial Dwarfs Tyco, Martha, Enron*, CBS NEWS, Jan. 18, 2005, available at <http://www.cbsnews.com/stories/2005/01/18/opinion/courtwatch/main667562.shtml> (describing Tyco and Enron as cases of "corporate greed and excess; a confluence of questionable accounting, Wall Street pressure, poor governmental regulation, snake-oil industries, enormous egos and salaries and suspicious motives and referring to the collapse of Enron, WorldCom, and Arthur Andersen as complete self-destructions).

111. See Rubin, *supra* note 95, at 146.

112. See Rhode & Walker, *supra* note 5, at 35.

113. LouAnn DiCosmo, *Warren Buffett Invests Like a Girl*, THE MOTLEY FOOL, Mar.

Warren Buffet, the era's most successful investor, and compares his trading patterns to that of a female.

Men are manic and aggressive traders who transact 45 percent more trades than women; meanwhile, Buffett . . . creates fortunes by making as few trades as possible. He puts a lot of time and effort into researching each one, studying the characters of the founders and creating relationships that will last for years.¹¹⁴

Studies show that women spend more time researching their investment choices and focusing on companies they feel good about personally and ethically.¹¹⁵ The result is that women's portfolios gain 1.4% more than men's and portfolios for single women earn 2.3% greater gains than those of single men.¹¹⁶

Despite the benefits of women on corporate boards and the evidence of success, the trend has yet to catch on in the world of sports and has received little help from Title IX. Currently, out of the 122 professional franchises in Major League Baseball, the National Basketball Association, the National Football League, and the National Hockey League (the "Big 4 Leagues"), only 10.8% of vice president positions or higher are filled by females, and removing the women in non-revenue-producing departments (media/community relations, special events, human resources, and legal), which do not make decisions affecting the team, the number is even smaller (6.2%).¹¹⁷

These small numbers are partially a result of lingering doubts about a woman's place in sports.¹¹⁸ People assume

20, 2008, available at <http://www.fool.com/investing/value/2008/03/20/warren-buffett-invests-like-a-girl.aspx>; see also Rubin, *supra* note 97.

114. DiCosmo, *supra* note 113.

115. *Id.*; see also, Uma Shashikant, *Start Investing, Woman!*, OUTLOOK MONEY, June 17, 2003, available at <http://www.outlookmoney.com/scripts/IIH021C1.asp?sectionid=1&categoryid=6&articleid=4251&NoCache=4%2F9%2F2008+7%3A37%3A41+AM> (citing a National Association of Investors Corporation study indicating that "women investors outpaced men, earning 2.7 percentage points more over a 10-year period").

116. DiCosmo, *supra* note 113; see also Shashikant, *supra* note 115 (detailing three reasons for women's superior investing performance: "women look beyond the numbers and ask more questions about the company in which they invest; they don't churn their portfolios as often as men, and therefore save on transaction cost; they don't trade on tips, but take their time on choices").

117. Shira Springer, *Facing a Power Struggle: Women Executives Still Struggling to Reach Top with Sports Teams*, BOSTON GLOBE, Jan. 18, 2008, available at http://www.boston.com/sports/articles/2008/01/18/facing_a_power_shortage?mode=PF.

118. *Id.*; see also Rhode & Walker, *supra* note 5, at 3 (detailing that "for most of the

that because the Big 4 Leagues are restricted to male participants, that men must also run these teams.¹¹⁹ The longstanding perception is that men participating in college and professional athletics acquired the necessary skills to manage the franchise; therefore, there remains a lingering doubt about a woman's ability to do the job.¹²⁰ However, while men may have made connections in the "old boy network," there is no gene that enables one to recognize a talented athlete.¹²¹

Despite these underlying perceptions and the disheartening numbers, some speculate (perhaps too optimistically) that as professional franchises grow to mirror that of a corporation, more opportunities may become available to women in the industry.¹²² The benefits of female leadership are clear,¹²³ and as professional and collegiate sports entities operate more like corporations, teams and athletic departments should be looking to hire executives with business experience.¹²⁴

Apparently, some professional athletes have already

nation's history, athletic competition appeared inconsistent with the feminine ideal"); *Outside the Lines: Women Coaching Men*, *supra* note 61 (arguing that most males playing sports today grow up in single mother households and these young men need a "male role model, a male mentor, a male coach" and female coaches cannot be that male role model. Moreover, coaches such as Larry Brown and P.J. Carlesimo had problems with Allen Iverson and Latrell Sprewell, respectively, and these problems would have been greater had there been female coaches. Furthermore, females simply cannot motivate male players to win and be successful).

119. Tim Brown, *Can Kim Ng Break the Gender Barrier?*, YAHOO! SPORTS, July 3, 2008, <http://sports.yahoo.com/mlb/news?slug=ti-femalegm070308&prov=yahoo&type=lgns> (explaining that baseball front offices mirror the demographic of their clubhouses housing men "doing what men do and talking about what men talk about in a sports culture, areas a former player and current team executive called, 'the most male-dominated, narrow-minded, testosterone-filled, non-feminine-traits places in the world'").

120. See Springer, *supra* note 117; see also Brown, *supra* note 119 (noting that the days of ex-players accepting management positions upon retirement from their playing days is nearing an end as "more bright Ivy-League types" are coming to dominate the business-side of the industry).

121. See Springer, *supra* note 117.; see also Brown, *supra* note 119 (noting that the biggest challenge facing aspiring female executives is that they did not play at sports highest level).

122. See Springer, *supra* note 117.

123. See *supra* notes 95-115 and accompanying text.

124. See Springer, *supra* note 117.

recognized the trends of female success in corporate leadership roles. Molly Fletcher, Senior Vice President of Client Representation at Career Sports and Entertainment, and Kristen Kuliga, President and CEO of K Sports & Entertainment, are among a handful of females registered as agents in the Big 4 Leagues.¹²⁵ Though few in number, these female agents possess valuable characteristics, which translate into clear advantages for their male clients.

Doug Flutie, currently a college football analyst for ABC Sports, opted to sign with Kuliga rather than the typical “Jerry Maguire” male agent because of Kuliga’s trustworthiness.¹²⁶ Rather than acting like an agent “is supposed to act,” according to Flutie, Kuliga is “not shady, out to cut corners, or makes [sic] promises that can’t get delivered [sic].”¹²⁷

Another advantage to employing females as agents is their nurturing ability.¹²⁸ This characteristic can in turn make

125. Other registered female agents include Sharon Creer, who represents NBA players, including former star Daryl Dawkins. Sean Drakes, *She’s Got Game: Sports Agent Sharon Creer*, BLACK ENTERPRISE, Apr. 1, 2005, available at http://findarticles.com/p/articles/mi_m1365/is_9_35/ai_n13813004; Darcy Bouzeos, former agent of Oprah Winfrey, is one of the most celebrated agents in Chicago. In addition to representing members of the Chicago Bears football team, Bouzeos represented the late Harry Carey. Brian McCormick, *Pushing Media Deals to Brink and Beyond; WBBM Standoff Latest Twist for Agent Bouzeos*, CRAIN’S CHICAGO BUSINESS, Mar. 18, 2002, available at http://goliath.ecnext.com/coms2/gi_0199-1501191/Pushing-media-deals-to-brink.html; Ellen M. Zavian, who became the first female to represent NFL players, has represented more than 40 NFL players since gaining her start in the profession. Ellen M. Zavian Biography, <http://www.law.udc.edu/?page=EZavian> (last visited Feb. 26, 2009); Lisa Masteralexis, who is a partner in the Diamond Management Group (“DMG”), represents over 20 major and minor league baseball players through DMG. George O’Brien, *Experts in Their Field*, BUSINESS WEST ONLINE, May 1, 2004, <http://www.business.west.com/details.asp?id=113>.

126. Eleanor Hong, *Female Agents a Rarity in Team Sports*, ESPN.COM, June 12, 2005, <http://sports.espn.go.com/espn/print?id=2079652&type=story>.

127. *Id.*

128. *Id.* A woman’s nurturing power brings with it an innate sense of emotional intelligence, which in turn nurtures the people around them leaving them more calm and collected during the negotiations. Roger Desmarais, *Where are all the Women Executives?*, SAN FRANCISCO BUSINESS TIMES, Nov. 16, 2007, available at <http://sanfrancisco.bizjournals.com/eastbay/stories/2007/11/19/smallb3.html>.

Estrogen, the female hormone, is also the source of the nurturing ability of females. Girls grow up in a “win-win” world. They swap information freely, listen more freely, and give more praise and support. Women also tend to work interactively more than men. Women’s people skills also stem from estrogen. Women are better equipped to pick up on nuances of posture and gesture, read emotions in faces, and hear slight

females valuable commodities as agents, considering agents make decisions impacting athletes' lives. Though every agent does (or should) have the client's best interests at heart, adding finesse and eliminating aggressiveness is beneficial in negotiations.¹²⁹ According to Fletcher, negotiating contracts is only a small part of agent responsibilities.¹³⁰ Agents are responsible for managing the lives of the athletes once negotiations are completed, and women understand that the athlete's family is impacted as much, if not more, than the individual athlete.¹³¹ Perhaps because women can empathize with the wives of the male athletes, women are more likely to consider the effects of the male athlete's career on wives, children, and extended family. Additionally, while many agents are interested in perfecting the optimal deal with maximum salary and benefits, women take into account additional important considerations. Contract negotiations may affect children's schooling and relationships built within a community, and women are more apt to consider such contingencies.¹³²

changes in a tone of voice.

These abilities, all stemming from estrogen, leave women well-endowed for negotiations. Their ability to bring compassion, patience, team-playing, and a broader perspective allow for more open-ended conversations and results favorable to both parties. Helen Fisher, *The Female Mind: The Natural Talents of Women*, JUMP, July 9, 2008, available at <http://www.blogjump.eu/index.php?2008/07/09/636-the-female-mind-the-natural-talents-of-women>.

129. See Hong, *supra* note 126; see also Desmarais, *supra* note 128.

130. See Hong, *supra* note 126.

131. *Id.*

132. Tennessee Titans Scouting Coordinator, Blake Beddingfield, speaks highly of Kelli Masters, an Oklahoma-based sports agent. Unlike the typical method of "shoving [her] clients down the throats of NFL scouts, Masters uses a more subtle approach." Beddingfield appreciates Masters easygoing demeanor and her ability to "really take care of her clients" and "take a personal interest in their lives." Masters has also developed a relationship with former Dallas Cowboys, and current Fox analyst, Barry Switzer. Switzer is protective of Masters often questioning whether she really wants to "swim with these sharks," (referring to the prototypical agent found in professional sports leagues). John Rohde, *Mastering Challenges: Past Pageant Queen Evolves into a Sports Agent*, NEWSOK.COM, Apr. 24, 2008, <http://newsok.com/article/3234157/1209005631>. Alicia Boston, sister and agent of former NFL wide receiver David Boston, believes women have an advantage in representing athletes as a lot of them "are from single parent-homes where the mother has raised the children. . . . [T]hey identify with me and feel that I am going to take care of them." Lee Steinberg, a widely-famous NFL agent, agrees with Alicia, stating

Though individual *professional* athletes have realized these benefits, this realization has yet to find traction in professional and collegiate sports management. Perhaps biases regarding sports and maleness are to blame, or perhaps it is pure ignorance of the problem. However, one need not look far for guidance in attempting to equalize opportunities for females in sport administration.

In 2002, another class distinction rocked the sports world – that of minority coaches. With the help of Cyrus Mehri, “the rising superstar in the class action race discrimination realm,” and the celebrated attorney Johnnie Cochran, the NFL instituted a rule mandating an interview of at least one minority candidate for every head coaching vacancy.¹³³ Realizing that more than 70% of players in the NFL were minorities, yet only 6% of coaches were minorities, Cochran and Mehri demanded the NFL change its hiring practices, or they would turn to Title VII lawsuits. These same arguments made by Cochran and Mehri in their fight for racial equality among the NFL coaching ranks apply with equal force to the lack of female administrators in colleges and universities. The numbers of females participating in sports has never been higher, yet females are virtually closed off from sport leadership positions. If a similar problem has been addressed previously and the solution implemented successfully, what is stopping the transition into the gender minority problem?

III. THE MINORITY COACHING ISSUE

A. Racial Problem and Adoption of the Rooney Rule

The disproportionate number of minority coaches is well-publicized, especially in football where just under 46% of Division I-A student-athletes¹³⁴ and 66% of professional

that “players find women easier to talk to.” Women are also a welcome change; at the 1999 NFL Combine, Alicia, who accompanied David, was approached by NFL head coaches rather than being avoided, as is the typical relationship between NFL coaches and agents. Jeff Bradley, *IX to Watch*, ESPN THE MAGAZINE, June 24, 2002, available at <http://espn.go.com/magazine/vol5no13watch.html>; Curtis Eichelberger, *Women Find a Way to NFL: League has 33 Female Agents Representing Players*, MILWAUKEE JOURNAL SENTINEL, Apr. 29, 2001, at C8.

133. andré douglas pond cummings, *Pushing Weight*, 33 T. MARSHALL L. REV. 95, 117-20 (2008).

134. DEHASS, *supra* note 1.

football players¹³⁵ are African-American. Despite the large percentage of athletes, until 1989, only one African-American, Fritz Pollard, had been a head coach in the NFL,¹³⁶ and since 1990, only twelve others have found themselves among the head coaches' ranks.¹³⁷ Recognizing this disparity, in 2002, civil rights attorneys Johnnie Cochran and Cyrus Mehri commissioned Dr. Janice Madden to analyze the success of African-American coaches compared to their Caucasian counterparts.¹³⁸ Studying a fifteen-year span, Dr. Madden concluded that the five African-American head coaches outperformed the eighty-six white head coaches in every category.¹³⁹

Armed with Dr. Madden's conclusions, Cochran and Mehri drafted a report entitled *Black Coaches in the National Football League: Superior Performance, Inferior Opportunities*,¹⁴⁰ which served as the proof of discrimination needed to institute change in the NFL.¹⁴¹ In response to the report, the NFL created the Workplace Diversity Committee,

135. Sports Business Daily, *NFL Maintains a "B+" in Annual Diversity Report*, SPORTS BUSINESS DAILY, Aug. 29, 2008, available at <http://www.sportsbusinessdaily.com/article/123636>.

136. Bram A. Maravent, *Is the Rooney Rule Affirmative Action*, 13 SPORTS LAW J. 233, 236 (2006); see also Webcast: Reversing Field, *supra* note 15.

137. Art Shell was the first to be hired, by the then Los Angeles Raiders in 1989; Dennis Green, Minnesota Vikings, 1992; Ray Rhodes, Philadelphia Eagles, 1995; Tony Dungy, Tampa Bay Buccaneers, 1996; Herm Edwards, New York Jets, 2001, Marvin Lewis, Cincinnati Bengals, 2003; Lovie Smith, Chicago Bears, 2004; Romeo Crennel, Cleveland Browns, 2005; Mike Tomlin, Pittsburgh Steelers, 2007; Jim Caldwell, Indianapolis Colts, 2009; Raheem Morris, Tampa Bay Buccaneers, 2009; and Terry Robiskie who served as the interim head coach for the Washington Redskins in 2000 and the Cleveland Browns in 2004. J.A. Adande, *Super News is Tomlin, not Historic Matchup*, L.A. TIMES, Jan. 28, 2007, at D-8, available at <http://articles.latimes.com/2007/jan/28/sports/sp-adande28>; Jarrett Bell, *Coaches Chasing Super Bowl - and History*, USA TODAY, Jan. 17, 2007, available at http://www.usatoday.com/sports/football/nfl/2007-01-16-dungy-lovie_x.htm; Associated Press, *Dungy Retires After 7 Seasons with Colts*, ESPN.COM, Jan. 12, 2009, <http://sports.espn.go.com/nfl/news/story?id=3827058>; Associated Press, *Morris is Bucs' New Coach; Dominik GM*, ESPN.COM, Jan. 18, 2009, <http://sports.espn.go.com/nfl/news/story?id=3840530>.

138. Duru, *supra* note 12, at 6; see also Webcast: Reversing Field, *supra* note 15.

139. Duru, *supra* note 12, at 6.

140. JOHNNIE L. COCHRAN, JR. & CYRUS MEHRI, BLACK COACHES IN THE NATIONAL FOOTBALL LEAGUE: SUPERIOR PERFORMANCE, INFERIOR OPPORTUNITIES (2002), available at <http://www.findjustice.com/sub/b-coaches.jsp>.

141. Duru, *supra* note 12, at 187-88.

consisting of several NFL teams' owners, to consider the Report's recommendations.¹⁴² The most notable recommendation, and the one eventually christened the "Rooney Rule," called for a mandatory interview of a minority candidate when filling a head coaching vacancy.¹⁴³ Believing racial undertones, whether conscious or unconscious, were to blame for the disproportionate lack of black head coaches, Cochran and Mehri argued that, given the opportunity through a meaningful interview, African-American candidates could enlighten team decision-makers of their preparedness and ability to lead the team.¹⁴⁴ The Workplace Diversity Committee approved the rule and then recommended it to a large group of NFL owners, who agreed to implement the rule.¹⁴⁵ As of December 2002, at least one minority candidate must be granted a meaningful interview for each open head coaching position in the NFL. After that, if the team decides not to hire the minority candidate, that is the team's decision to make.¹⁴⁶ Thus, the Rooney Rule was born.

Though the League's owners supported the mandatory minority interview, the Rule received harsh criticism from NFL insiders.¹⁴⁷ First, the investigation and the Report were conducted by NFL outsiders, and many believed that, if the NFL needed to enlist help to eliminate the minority coaching problem, that help should come from within the football community.¹⁴⁸ Second, the Rooney Rule imposed no penalty, so there was an ongoing concern that teams would not comply.¹⁴⁹ Finally, because the Rule called for merely an interview, with no obligation to hire the coach, the Rule was believed to encourage sham interviews.¹⁵⁰

142. *Id.* at 188-89.

143. *Id.* at 189.

144. *Id.*

145. *Id.*

146. *Id.*

147. *cummings, supra* note 133, at 127.

148. *Duru, supra* note 12, at 190.

149. *Id.*; *see also* *Collins, supra* note 3, at 871. Despite lacking a penalty at its outset in 2002, the Detroit Lions were slapped with a \$200,000 fine in 2003 after failing to interview one minority candidate upon hiring Steve Mariucci as head coach. *cummings, supra* note 133, at 124.

150. *Duru, supra* note 12, at 190; *see also* *Collins, supra* note 3, at 902; *cummings, supra* note 133, at 129 (detailing that owners who had a specific white candidate in mind would engage in sham interviews simply to avoid a fine by the NFL and citing to critics referring to minority candidates as "show ponies" being "trotted out" to comply

In the years preceding the Rooney Rule, Title VII employment discrimination lawsuits were threatened against the NFL, and this threat was renewed in 2002 after the report detailing the dismal record of minority hiring was released.¹⁵¹ However, by mandating minority interviews, the Rule sought to eliminate the underlying racial prejudices, conscious or unconscious, which had previously influenced hiring decisions.¹⁵² Part of the Rule's focus was aimed at integrating minorities into the traditional "old boy network," thereby expanding it, by ensuring that every team is exposed to minority candidates who might otherwise not receive an interview.¹⁵³ This was deemed imperative because sitting down together and discussing a common topic helps to eliminate racial stereotypes and preconceptions that might otherwise cloud judgment.¹⁵⁴ In this scenario, even decision-makers harboring unconscious biases are forced to confront their own partiality by meeting face-to-face with someone they previously would have failed to consider.¹⁵⁵ Even if the minority candidate is not hired, the candidate received an opportunity to make a good impression in front of actual decision-makers, which is sometimes just as valuable for minority candidates seeking to join the head coaching ranks.¹⁵⁶ The sports world operates differently than most businesses; jobs are not freely posted for candidates to apply, but they depend on the existence of prior relationships, and a potential candidate must usually be close to an existing network member to obtain an interview.¹⁵⁷ Therefore, once a

with the Rule).

151. Collins, *supra* note 3, at 884.

152. *Id.* at 904-05.

153. *Id.* at 905.

154. Duru, *supra* note 12, at 195; *see generally* Cummings, *supra* note 133, at 129-32 (describing that the Rooney Rule did not mandate hiring of a minority candidate or assign a "plus factor" to minority candidates who receive an interview. Rather, the Rule was intended to expose racial minorities, who would otherwise not receive a chance, to NFL owners and executives so that they, too, may be considered for head coaching positions. "The Rooney Rule focuses on best practices, an inclusive process ensuring fairer competition and removing barriers such that the best and most uniquely qualified rise to the top").

155. Collins, *supra* note 3, at 906.

156. *Id.*

157. *Id.* at 904-05.

minority candidate receives a meaningful interview, he has the opportunity to present his ability to succeed as a head coach and is more likely to be considered for later vacancies if he is impressive.

The Rooney Rule has proven successful in providing a greater opportunity for African-American coaches to gain head coaching jobs. Take, for example, Mike Tomlin.¹⁵⁸ Upon the retirement of Bill Cowher in 2007, Dan Rooney, the owner of the Pittsburgh Steelers and champion of the Rooney Rule, found himself with an opportunity to follow the Rule, which he helped to create.¹⁵⁹ Shortly after Cowher's announcement, early speculation surrounded Steelers' offensive coordinator Ken Wisenhunt and offensive line coach Russ Grimm.¹⁶⁰ However, Rooney followed his rule and interviewed Tomlin, then the defensive coordinator for the Minnesota Vikings, whose name was included on a list of viable minority coaching candidates compiled by the Fritz Pollard Alliance.¹⁶¹ Rooney, extremely impressed with the young and aggressive Tomlin, offered the head coaching position to him almost immediately.¹⁶² Without the Rooney Rule, it is highly unlikely that Tomlin would have received the opportunity.¹⁶³

158. At age 34, Tomlin became the third head coach of the Pittsburgh Steelers in 38 years and the first black head coach in the franchise's 74-year history. cummings, *supra* note 133, at 123.

159. *See id.* at 123-25.

160. *Id.* at 125.

161. *Id.* at 124-25.

162. *Id.* at 125.

163. *Id.* at 126-27 (Dan Rooney believed as much:

To be honest with you, before the interview he was just another guy who was an assistant coach. Once we interviewed him the first time, he just came through and we thought it was great. And we brought him back and talked to him on the phone and went through the process that we do, and he ended up winning the job. [The rule] wasn't the most important thing because he was the most important thing. Mike got the job because he showed us his ability and showed us what he could do, and we believed in him).

The decision to hire Tomlin paid immediate dividends for the Steelers, as Tomlin led the Steelers to a victory in Super Bowl XLIII in 2009 becoming the second African-American head coach (Tony Dungy of the Indianapolis Colts) to accomplish the feat. Along with Tomlin, 11 other African-American head coaches have the Rooney Rule to partially thank for their hiring. Sports Business Daily, *supra* note 137 and accompanying text. Another example of the Rooney Rule's success is that of the hiring of Marvin Lewis by the Cincinnati Bengals. In 2002, the Bengals began interviews for their head coaching vacancy. To some, it appeared that Marvin Lewis was interviewed to satisfy the requirements of the Rooney Rule; however, "Lewis knocked their socks off," and had it not been for the Rooney Rule, Lewis, who was ultimately hired, may

In 2004, based on its success in the NFL, the Fritz Pollard Alliance began its efforts to push the Workplace Diversity Committee to extend the Rule into the front office or the “positions that have significant decision-making authority.”¹⁶⁴ The Committee returned with a resounding “no,” believing the extension to be unnecessary and citing difficulties in carrying out the rule for front office positions.¹⁶⁵ Despite the unwillingness to extend the rule into front office openings, the NFL agreed, in 2006, to double their efforts to convince teams to voluntarily interview at least one minority candidate for front office vacancies and vowed to consider extending the Rooney Rule if teams failed to follow the instructions.¹⁶⁶ To “enforce” this mere suggestion of Rooney Rule extension, both the NFL and the Fritz Pollard Alliance planned to monitor teams’ interview practices.¹⁶⁷ It appears the NFL’s position of unnecessary expansion was partially correct: recent trends regarding front office minority hiring show the “reverse of a trickle-down effect.”¹⁶⁸ The Rooney Rule brought awareness to the lack of minority coaches among the NFL, and because of the attention given to the coaching landscape, the lack of diversity in NFL front offices has also seen an increase in positions for minorities.¹⁶⁹

never have been given the opportunity. Scott Brown, *Rooney Rule Helping Minority Coaching Candidates*, PITTS. TRIB.-REV., Jan. 11, 2007, available at http://www.pittsburghlive.com/x/pittsburghtrib/sports/steelers/print_488048.html.

164. Maravent, *supra* note 136, at 246.

165. *Id.* Committee Chairman Dan Rooney stated that the two areas (coaches and front office positions) are two completely different things; “with coaches, you can make lists and discuss people from all around the league. The front office is different. We tend to hire Pittsburgh people . . . or people from the Pittsburgh business community.”

166. Maske, *infra* note 178.

167. *Id.*

168. See Brown, *supra* note 163. A “trickle-down effect” is most often associated with economics, standing for the proposition that the top income earners invest more to the business infrastructure, which leads to the production of more goods at lower prices and creates more jobs for the lower-class population. A “reverse trickle-down effect” is investing more at lower levels with the impact felt at the higher levels. See Jessica Spies, *Kodak Layoffs have Wide-Reaching Effects*, GREECE POST, Feb. 6, 2009, available at <http://www.mpnnow.com/archive/x2143288769/Kodak-layoffs-have-wide-reaching-effects>.

169. Brown, *supra* note 163; see also Evan Grant, *Saga of NFL’s African-American Pioneers is an Untold Story*, DALLAS MORNING NEWS, Feb. 25, 2009, available at <http://www.dallasnews.com/sharedcontent/dws/spt/stories/022509dnsoblackfootball.3ce9ada.html>.

In addition to the push for minority hiring in the front office of NFL franchises, Rooney Rule supporters also urged the adoption of a similar rule for NCAA head football coaches.

B. NCAA

In 2008, only 4% of the head football coaches in Division I-A were African-American, while, 46% of the football student-athletes were black.¹⁷⁰ Frustrated by this disproportionate percentage, the Black Coaches & Administrators (“BCA”)¹⁷¹ has reluctantly turned to Title VII¹⁷² by recently retaining private counsel to encourage individual coaches to file Title VII racial discrimination lawsuits against offending universities. BCA counsel is also preparing to file discrimination suits on behalf of aggrieved coaches.¹⁷³ Despite

As of September 2008, five of the NFL’s 32 teams employed an African-American general manager: Ozzie Newsome, Baltimore Ravens; Rick Smith, Houston Texans; Jerry Reese, New York Giants; Rod Graves, Arizona Cardinals; and Martin Mayhew, Detroit Lions.

170. Richard Lapchick, *A Call to Civil Rights Action in College Football*, ESPN.COM, Dec. 8, 2008, http://sports.espn.go.com/nfl/columns/story?columnist=lapchick_richard&id=3755312.

171. The Black Coaches & Administrators (formerly the Black Coaches Association) is a non-profit organization “whose primary purpose is to foster the growth and development of ethnic minorities at all levels of sports both nationally and internationally.” The BCA mission statement cites three main areas of focus: (1) addressing issues pertaining to participation and employment of ethnic minorities in sport; (2) assisting ethnic minorities aspiring to have a career in athletics through educational and professional development programming and scholarships; and (3) providing youth and diverse communities opportunities to interact with the BCA. About the Black Coaches & Administrators (BCA), <http://bcasports.cstv.com/about/bca-about.html> (last visited Feb. 25, 2009).

172. See *infra* Part V.

173. Steve Wieberg, *Black Coaches Association Will Use Title VII as Tool*, USA TODAY, Sept. 5, 2006, available at http://www.usatoday.com/sports/college/football/2006-09-05-title7-ncaa_x.htm?POE=click-refer. As of December 2008, the number of African-American head coaches in the Division IA ranks was a mere 4 out of 1991. This led Floyd Keith, Executive Director of the BCA, to begin searching for a candidate to file a discrimination lawsuit. In early December 2008, the BCA opened a national hotline offering legal advice to coaches. The BCA is examining every call individually, and, according to Philadelphia area attorney, and former Howard University linebacker, Everette L. Scott, there have already been calls raising questions about possible antidiscrimination law violations. Though a potential plaintiff may severely harm his ability to obtain a coaching job in the future, Richard Lapchick believes that minority candidates will not hurt their chances as they only have a minimal chance of obtaining a job as it currently stands. Associated Press, *Black Coaches and Administrators Attempting to Take its Fight to Court*, SPORTS ILLUSTRATED, Dec. 18, 2008, available at

the possibility of using the Civil Rights Act, Cyrus Mehri viewed the Title VII threats as a last resort and instead urges individual universities and the NCAA to implement their own versions of the Rooney Rule.¹⁷⁴

The NCAA responded to these critics. After meetings held in October 2007 concerning the disproportionate number of minority head coaches in Division I football, the Division I-A Athletic Directors Association issued non-binding hiring guidelines mirroring the NFL's Rooney Rule.¹⁷⁵ The guidelines call for schools to interview one or more minority candidates for each head coaching vacancy.¹⁷⁶ While the NFL has disciplined teams for violating the Rooney Rule,¹⁷⁷ the NCAA hiring guidelines do not include a mechanism for punishing noncompliant institutions and serve only as a recommendation to member institutions.¹⁷⁸ Because an individual institution hires its head football coach, the NCAA has no authority to impose or enforce these guidelines.¹⁷⁹ Thus, any compliance with the hiring guidelines is merely voluntary.

In implementing the "Acceptable Standards," the Athletic Directors Association intended to "create prescribed and appropriate standards to administer the business of intercollegiate athletics, while addressing specific concerns

http://sportsillustrated.cnn.com/2008/football/ncaa/12/18/black.coaches.court.ap/index.html?eref=si_ncaaf; see also Associated Press, *BCA Considering Potential Lawsuit*, PITTSBURGHTRIBUNEONLINE, Dec. 19, 2008, http://pittsburghlive.com/x/pittsburghtrib/sports/college/s_603589.html; Lapchick, *supra* note 172.

174. *Id.*

175. Steve Wieberg, *Minority-Hiring Policy Stiffens for Major Football Programs*, USA TODAY, Jan. 15, 2008, available at http://www.usatoday.com/sports/college/football/2008-01-15-Minorityhiring_N.htm?loc=interstitialskip.

176. *Id.*; NCAA, NACWAA, AND BCA, BEST HIRING PRACTICES (2007), available at http://www.ncaa.org/wps/wcm/connect/resources/file/ebdaa9442b49a7c/best_hiring_practices.pdf?MOD=AJPERES&attachment=true. [hereinafter NCAA, NACWAA, AND BCA].

177. See Collins, *supra* note 3, at 871 and accompanying text; see also *supra* text accompanying note 151.

178. Mark Maske, *Diversity Rule Goes to College*, WASH. POST, Feb. 8, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/07/AR2008020704232.html>.

179. *Id.*

and trends”¹⁸⁰ First, the Acceptable Standards call for the on-going maintenance of a hiring list including minority candidates.¹⁸¹ The Athletic Directors Association lends its support in creating the diverse candidate pool by identifying potential head coach candidates, educating and training the candidates, building relationships with the candidates, and collaborating with other organizations to identify potential coaches.¹⁸² Second, the Acceptable Standards call for the institution to educate search firms on the Standards to ensure their compliance in the process. Third, the Acceptable Standards specify formal interview practices that would entail one or more minority candidates being interviewed for head coaching vacancies.¹⁸³ Last, the Acceptable Standards enumerate key items to consider during the process customarily included in hiring policies.¹⁸⁴ These policies include: drafting a clear job description, fully defining the head coaching position, reviewing current potential candidates’ information included on the minority list, reaching out to organizations to obtain resumes and references, preparing a search timeline, and keeping records describing the search process.¹⁸⁵

While the NCAA has attempted to address its minority coaching problem by adopting the Acceptable Standards, a similar problem in failing to hire qualified candidates continues to exist in connection with hiring women into the collegiate administrative ranks, and that concern has been brushed aside. Former NCAA President, the late Myles Brand referred to the scarcity of African-American coaches as an embarrassment.¹⁸⁶ The lack of women in administrative and leadership positions should be considered an embarrassment as well.

IV. PARALLELS BETWEEN THE RACIAL AND GENDER MINORITY PROBLEMS

African-Americans normally dominate among football

180. NCAA, NACWAA, and BCA, *supra* note 176.

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. Wieberg, *supra* note 175.

athletes; however, the high percentages do not translate to higher percentages of coaches and administrators.¹⁸⁷ Underlying this low representation among the coaching and administrative ranks is the idea that decision-makers, who are members of the exclusively white male “old boy network,” hold biases towards African-Americans.¹⁸⁸ Scholars argue that decision-makers in sports function in a largely non-diverse world where interaction with African-Americans is limited to those with athletic superiority.¹⁸⁹ Because African-Americans are stigmatized as being only physically superior, many decision-makers have viewed them in the past as not possessing the “faculties” necessary to effectively lead a team as either a coach or administrator.¹⁹⁰ The majority of the paying public for live sporting events is Caucasian, and recognizing this, decision-makers attempt to hire leaders who can identify with the paying public.¹⁹¹ Thus, because coaches are to be “faces of the franchise” among a predominantly white audience, this face most often looks like that of the paying public.¹⁹²

187. Collins, *supra* note 3, at 874.

188. *Id.*

189. *Id.* at 875; *see also* Anderson, *supra* note 3, at 362.

190. *See generally* Collins, *supra* note 3, at 875-84. This belief is best exemplified by the actions of three prominent sports figures. In a 1987 Nightline interview, Al Campanis, a former Los Angeles Dodgers executive, responded that there were no black managers in Major League Baseball because he “truly believe[d] that they may not have some of the necessities to be, let’s say, a field manager or perhaps a general manager.” Following Campanis’s comments, in 1988, Jimmy “the Greek” Snider, a CBS football commentator, stated that blacks are better athletes “to begin with because [they’ve] been bred that way because of thigh size and big size.” Snider continued that the lack of black coaches was because “all the players are black; the only thing whites control is the coaching jobs.” Finally, in 1992, former managing partner, president, and CEO of the Cincinnati Reds, Marge Schott, referred to black players as “million-dollar niggers” and stated she would “rather have a trained monkey working for me than a nigger.” Anderson, *supra* note 3, at 361-62.

191. *See* Collins, *supra* note 3, at 882-84; *see also* DAVID SHIELDS, BLACK PLANET: FACING RACE DURING AN NBA SEASON (Three Rivers Press 2000) (1999) (chronicling the makeup of the NBA fans); Derrick Z. Jackson, *NFL Athletes Let Down Rev. King*, BOSTON GLOBE, Jan. 14, 2005, available at http://www.boston.com/sports/football/articles/2005/01/14/nfl_athletes_let_down_rev_king/ (noting that NFL fans are predominantly white).

192. Collins, *supra*, note 3, at 883 (explaining that a team’s top player or head coach is thought to be the “face of the franchise.” In doing so, he is expected to maintain a commercial identity appealing to fans, and in particularly the playing public); *see also*

These realities have been recognized in connection with the lack of diversity among NFL and NCAA Division I-A football coaches. However, these same failures are equally problematic for women. This section will demonstrate the parallel applicability of the inferior opportunities that women face in attempting to compete in the athletic administrative ranks.

Prior to the birth of both the Rooney Rule and the Acceptable Standards, decision-makers employed hiring practices and networking systems that consistently avoided interaction with minorities.¹⁹³ Without substantial exposure to minorities, decision-makers relied on racial stereotypes associating African-Americans with academic inferiority, athletic superiority, and innate gifts of physical strength and speed.¹⁹⁴

A similar bias is held against women. Despite the recent advances of women in the corporate world, they are still viewed by sports decision-makers as being too feminine, embodying nurturing and gentle characteristics.¹⁹⁵ Women

Michael J. Frank, *Justifiable Discrimination in the News and Entertainment Industries: Does Title VII Need a Race or Color BFOQ?*, 35 U.S.F. L. REV. 473, 521-22 (2001) (arguing that most Americans are Caucasians, and they tend to watch entertainment programs featuring Caucasians; therefore, profits will increase by casting white actors). This analysis corresponds to that of a sports league's franchises: comparing production companies to league franchises, franchises recognize that their audience is primarily Caucasian and will hire Caucasian coaches ("faces of the franchise") to increase profitability. Collins, *supra* note 3, at n.70.

193. *Id.* at 872.

194. *Id.*; see also Anderson, *supra* note 3, at 363 (arguing that success of black athletes is attributed to physical abilities; while success of white athletes is attributed to their intellect and work ethic); Othello Harris, *African-American Predominance in Collegiate Sport*, in RACISM IN COLLEGE ATHLETICS 62-63 (Dana Brooks & Ronald Althouse eds., 1993) (noting that when describing two black basketball players versus two white players, the black players were described as "having the tools, but their intellect was questionable;" while, the white players were praised for prevailing "despite . . . their modest athletic endowment"); Jim Myers, *Race Still a Player*, USA TODAY, Dec. 16, 1991, at 01-A (citing results from a study conducted with both whites and blacks that coincide with the player descriptions. Respondents ranked whites highest in the area of leadership followed by thinking, instincts, strength, and speed. Respondents ranked blacks in the opposite order).

195. Rhode & Walker, *supra* note 5, at 35 (attributing women's underrepresentation in administrative positions to women's lack of assertiveness, competitiveness, and drive to obtain these positions and athletes preference of having male coaches because they are more authoritative and less emotional than females); see also Mary Jo Kane, *Leadership, Sport, and Gender*, WOMEN ON POWER: LEADERSHIP REDEFINED 125 (Jill Ker Conway et al. eds., Northeastern 2001); Brad Wolverton, *Women in Sport*, CHRON. HIGHER ED., July 28, 2006, at A29-31.

participating in athletics who exert traits of aggression, power, and leadership are often labeled “too masculine” or lesbian.¹⁹⁶ Therefore, women could potentially face an impossible decision: live according to gentle gender stereotypes and risk being labeled as too passive and emotional to effectively lead an athletic department (and losing the possibility of ever gaining leadership employment) or to pursue that dream while encountering obstacles and stereotypes.

Thus, a parallel unconscious bias can be drawn about women and being an inferior sex. These underlying stereotypes prevent decision-makers from engaging in neutral processes and employing the absolute best person for the job. The presumption that women do not possess the necessary characteristics to lead an effective athletic department prevents aspiring female administrators from being considered for these positions.

African-American men have been able to make small strides in gaining minimal inclusion based on their own efforts in the sporting environment.¹⁹⁷ However, the same cannot be said for females where, though numbers in participation have dramatically increased as a result of Title IX, the number of female coaches and administrators is declining.¹⁹⁸ Without women holding jobs in the administrative ranks, it is much more difficult for aspiring female administrators to gain access into this exclusive group.

In addition to occupying the decision-making positions in college athletic departments, the “old boy networks” also dominate the pool of athletic boosters, and in university

196. Rhode & Walker, *supra* note 5, at 35 (arguing that women’s attempts to act more authoritative and aggressive, like their male counterparts, may evoke homophobic biases, which may also generate negative stereotypes in the sports world).

197. *Id.* (arguing that the increase in African-American NBA coaches is largely attributable to the working environment. Smaller staffs allow coaches to develop relationships with assistants, which may lead to increased opportunities for those assistants).

198. Rhode & Walker, *supra* note 5, at 2-3 (stating that “as opportunities for female students have increased, opportunities for female professionals have declined.”); *see also* Brake, *supra* note 57, at 459 (arguing that Title IX has neglected to address the declining opportunities for female coaches and athletic administrators); Osborne & Yarbrough, *supra* note 10, at 231 (stating that participation rates have increased, yet “opportunities for women in athletics-related employment have actually decreased”).

settings, these contributors expect to have a hand in who is running their beloved university's athletic department.¹⁹⁹ Unfortunately, for women, this means members of the "old boy network" approved by the "deep-pocketed boosters and alumni with political influence."²⁰⁰ Therefore, universities with generous donors may have an additional incentive to exclude women from their administrative ranks.²⁰¹

Just as coaches are seen as a "face of the franchise," and are then often limited to Caucasians to ultimately identify with the paying public, college athletic administrators are also seen as figureheads for the university's athletic department and must also identify with the university's public.²⁰² Often, athletic administrators bear the responsibility and obligation to raise money and maintain relations with boosters for the athletic department. Again, and unfortunately for women, powerful alumni often prefer to deal with fellow members of the "old boy network."²⁰³ Therefore, college and university presidents and chancellors must learn to face these boosters "who sometimes hold the

199. See Collins, *supra* note 3, at 882-84.

200. Bob Hohler, *Few Minorities get the Reins in College Football*, DALLAS MORNING NEWS, Sept. 21, 2006, available at http://aspe.dallasnews.com/contest/2006/writing/over250/over250_project_second1.pdf; see also Rhode & Walker, *supra* note 5, at 32 (stating that a common assumption is that women are unable to work with the "good old boy" network of alumni donors).

201. Recently, in an ESPN Outside the Lines report, Pat Kilkenny, the University of Oregon Athletic Director, stated that the next time he considers hiring or firing a coach, he will speak to Phil Knight (founder of Nike) as well as other donors. "OTL" Examines Phil Knight's Role in Univ. of Oregon Athletics, STREET & SMITH'S SPORTS BUSINESS DAILY, Apr. 7, 2008, <http://www.sportsbusinessdaily.com/article/119839>.

In 2006, Auburn University was placed on probation after failing to prove the University president had ultimate control over its athletics program as well as proving the board of directors was not controlled by a minority of members. Prominent Alabama businessman, Bobby Lowder, donated over \$20 million to the University over the years and has been cited as working behind closed doors to get what he wants at Auburn by either going to the Director of Athletics directly or asking other members of the Board to seek out the Director of Athletics. Mike Fish, *A Tiger of a Trustee*, ESPN.COM, Jan. 13, 2006, <http://sports.espn.go.com/ncf/news/story?id=2285976>.

See also Wieberg, *supra* note 89 (discussing T. Boone Pickens' relationship with the Oklahoma State University's Athletic Department after his \$165 million donation to the athletic department).

202. See Collins, *supra* note 3, at 882-84.

203. Deborah F. Paul, *Put Paintbrushes in Diverse Hands*, NCAA, July 16, 2007, <http://www.ncaa.org/wps/ncaa?ContentID=11391> (arguing that boosters do not want faces of color in administrative positions, but will cheer for faces of color to lead their football and basketball teams).

purse strings and dictate the who, what, when, where, and why of an athletics department.”²⁰⁴

V. SOLUTIONS: TITLE VII LAWSUITS OR LEGISLATION?

Though many have identified the absence of female administrators, little has been done to rectify this absence.²⁰⁵ In 2006, the NCAA compiled a task force in an attempt to address the lack of women and minorities in coaching and administrative positions and to look for ways to enable female administrators and coaches to balance home and work responsibilities.²⁰⁶ Despite the NCAA’s efforts to promote diversity and inclusion and provide for the hiring of the best candidate, the task force identified no timetable or clear roadmap for expectations from the member institutions.²⁰⁷ Though the NCAA’s adoption of the task force has done little to address the absence of minority and women in coaching and administrative ranks, some remain optimistic that as sports business changes and resembles more of the corporate model so too will the hiring practices of colleges and professional sports franchises, and executives with greater business experience will be hired to run the intercollegiate athletic corporation.²⁰⁸ Still others believe that lasting institutional changes will only take place in response to lawsuits and public embarrassment.²⁰⁹

Though Title IX has helped level the playing field in terms of female athletic participation, the statute has done little to help bring about lasting institutional *administrative* changes.

204. *Id.*

205. See generally RitaSue Campbell & Debra Pace, *Mentoring Experiences of Female Athletic Administrators: Practical Mentoring Model for Future Women in Sport Industry*, 2007 NORTH AMERICAN SOCIETY FOR SPORT MANAGEMENT CONFERENCE, June 2, 2007, available at http://www.nassm.com/files/conf_abstracts/2007_1807.pdf; David Jones, *Female Athletic Directors Talk About Running BCS Programs*, USA TODAY, July 13, 2008, available at http://www.usatoday.com/sports/college/football/2008-07-13-bcs-women_N.htm.

206. Associated Press, *NCAA Makes Push for More Minority Hiring*, USA TODAY, Jan. 8, 2006, available at http://www.usatoday.com/sports/college/2006-01-08-minority-task-force_x.htm?POE=click-refer.

207. *Id.*

208. See Springer, *supra* note 117.

209. *Id.*

Therefore, women administrative advocates must turn their attention elsewhere to gain a meaningful opportunity for success. One such tool is the potential for a Title VII lawsuit. As used by Cyrus Mehri and Johnnie Cochran in their fight against the NFL's minority coaching practices, and more recently by Mehri in his talks with the NCAA, Title VII threatens a discrimination lawsuit against the employer.²¹⁰

To avoid the possibility of Title VII lawsuits, some employers engage in affirmative action plans. These plans are voluntary actions taken by employers not necessarily in violation of Title VII to create systems and procedures to eliminate and prevent past, present, and future discrimination against women and racial minorities.²¹¹ Though not required by Title VII, affirmative action plans are upheld if deemed valid under a three-part test.

210. Title VII makes it unlawful for an employer to fire, refuse to hire, or discriminate with respect to terms and conditions of employment because of race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1) (West 2008). An elaborate Title VII discussion is beyond the scope of this article; however, generally, discrimination theories under Title VII take one of three forms: disparate treatment, disparate impact, and pattern and practice discrimination. Kellyann Everly, *A Reasonable Burden: The Need for a Uniform Burden of Proof Scheme in Reasonable Accommodation Claims*, 29 U. DAYTON L. REV. 37, 57 (2003). Unfortunately for females initiating Title VII claims against institutions, succeeding under any of the three theories of discrimination is probably not likely. Prevailing under the disparate treatment theory is unlikely for three reasons: 1) not all conduct by an employer negatively affecting an employee constitutes an adverse employment action, *Davis v. Town of Lake Park*, 245 F.3d 1232, 1238 (11th Cir. 2001); 2) employers are permitted to assert subjective reasoning for not hiring an individual and need only assert a clear and reasonably specific factual basis for the subjective opinion, *Chapman v. AI Transp.*, 229 F.3d 1012, 1034 (11th Cir. 2000); and 3) NCAA member institutions are afforded great latitude when hiring athletic administrators, *See Bram Maravent and Ben Tario, Leveling the Playing Field: Can Title VII Work to Increase Minority Coaching Hires in NCAA Athletics?*, 81 – OCT FLA. B.J. 44, 47 (2007).

Similarly, prevailing under a disparate impact theory is unlikely because disparate impact actions generally involve class action claims and are most commonly used to challenge objective employment practices such as written examinations. Michael Ashley Stein & Michael E. Waterstone, *Disability, Disparate Impact, and Class Actions*, 56 DUKE L.J. 861 (2006). Finally, though at first glance appearing to be promising, female plaintiffs will have little success using the pattern and practice theory primarily because pattern and practice requires a showing through a combination of statistics and anecdotes that discrimination is the company's standard operating procedure. *Equal Employment Opportunity Comm'n v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1273 (11th Cir. 2000). This would prove daunting because an individual plaintiff asserting a claim against an institution would be unable to prove the institution-wide discrimination necessary, as it is merely the athletic department, as opposed to the entire institution, operating in a discriminatory fashion.

211. *See Mowery, supra* note 9, at 300-03.

Affirmative action programs are challenged, not by underrepresented parties, but by those who fall outside the scope of affirmative action plans, typically white males.²¹² Similar to the traditional Title VII framework,²¹³ the plaintiff asserting a Title VII claim based on an employer's affirmative action plan must first establish a prima facie case of race, or another protected classification, as factoring into an employer's decision. The burden then shifts to the defendant employer to articulate a nondiscriminatory reason, which may include the use of an affirmative action plan.²¹⁴ The burden then shifts back to the plaintiff to prove the plan is invalid and the employer's justification is mere pretext.²¹⁵ The employer may seek to avoid a pretext charge by articulating evidence demonstrating the validity of the affirmative action plan; however, proof of an affirmative action plan is not an affirmative defense.²¹⁶ To test the validity of an employer's affirmative action plan, the court undertakes three inquiries:

1. [W]hether there was a manifest imbalance that reflected underrepresentation of women in traditionally segregated job categories,
2. [W]hether the plan unnecessarily trammelled the rights of the male employees or created an absolute bar to advancement by males, and
3. [W]hether the agency intended to maintain a permanent sex balance in its work force.²¹⁷

Though it is likely a Title VII lawsuit would prove unsuccessful for female plaintiffs, there may be potential for success through either institutions implementing affirmative action programs following the standards announced in

212. Heather Nelson, "Fatal in Fact?": *An Examination of the Viability of Affirmative Action for Women in the Post-Adarand Era*, 21 WOMEN'S RTS. L. REP. 151, 151 (2000) (arguing that affirmative action plans instituted to remedy past discrimination against gender and racial minorities are constantly attacked and deemed controversial); see also Celia M. Ruiz, *Legal Standards Regarding Gender Equity and Affirmative Action*, 100 ED. LAW REP. 841, 842 (1995) (explaining that non-minorities and males are the plaintiffs in challenges to affirmative action plans).

213. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973).

214. *Johnson v. Transp. Agency*, 480 U.S. 616, 626 (1987).

215. *Id.*

216. *Id.* at 626-27.

217. See *id.* at 631-39.

Johnson or the NCAA and professional sports clubs adopting similar guidelines for women as adopted for racial minorities.²¹⁸ Under the three-part test, an affirmative action program could be upheld. First, athletic administrative roles call for a particularized skill set; therefore, the percentage of women actually occupying the role of an athletic administrator must be compared to those women in society possessing the skills necessary to serve as an athletic administrator. As discussed, college athletic departments are now being run similar to corporations where women have gained the educational background necessary to operate and succeed at running corporations.²¹⁹ Moreover, interest in working as an athletic administrator among women is growing. Therefore, a manifest imbalance is likely to be shown based on the numbers of women athletic administrators versus those who possess the necessary skills.²²⁰

Second, the plan will not unnecessarily trammel the rights of non-minorities and will be found valid provided it does not set aside a number of positions for females, consider sex as the only factor, or exclude females from competing with other qualified candidates.²²¹ NCAA member institutions and professional teams can successfully institute such plans. While recognizing the manifest imbalance, institutions and

218. See *supra* notes 174-185 and accompanying text.

219. See SCOTT ROSNER & KENNETH L. SHROPSHIRE, *THE BUSINESS OF SPORTS* 513 (Jones & Bartlett Publishers, Inc. 2004) available at http://books.google.com/books?id=0QrLjDDESawC&pg=PA513&dq=Big+Ten+Conference+bowl+revenue+distribution&source=web&ots=E61OQQcnAN&sig=y8_kcGaImOHXAR728xhn-RHCGHM&hl=en&sa=X&oi=book_result&resnum=5&ct=result; See also cummings, *supra* note 110; Rhode & Walker, *supra* note 5, at 3, 35; Fortune 500 Magazine, *Altria Group*, CNNMONEY.COM, Apr. 17, 2006, available at <http://money.cnn.com/magazines/fortune/fortune500/snapshots/1047.html>; Fortune 500 Magazine, *Fortune 500 Rankings – 2006*, CNNMONEY.COM, Apr. 17, 2006, available at http://money.cnn.com/magazines/fortune/fortune500/full_list/; Perry, Condotta & Armstrong, *supra* note 89; Powers, *supra* note 93; Shashikant, *supra* note 115; Springer, *supra* note 117; Weiberg, *supra* note 87; Wertheim, *supra* note 75; Witowsky, *supra* note 91; Zimbalist, *supra* note 80; Allen, *supra* note 98; Brown, *supra* note 119; DiCosmo, *supra* note 113; Knowledge, *supra* note 97; O'Connor-Grant, *supra* note 97; O'Keefe, *supra* note 79; *Outside the Lines: Women Coaching Men*, *supra* note 63; PBS, *supra* note 77; Roberts, *supra* note 110; Rubin, *supra* note 95, at 92, 146; Stawicki, *supra* note 89; *supra* text accompanying notes 76-123.

220. See *Johnson*, 480 U.S. at 631-39.

221. See *Id.*

professional teams may establish hiring practices, similar to the NFL's Rooney Rule, mandating an interview of one female for management openings. Men would not be excluded from competing from other qualified candidates; rather, similar to the plan in *Johnson*,²²² the hiring practice could allow for consideration to be given to the underrepresentation of females and the affirmative action policies.

Last, plans to integrate more females into athletic administrative positions need not be permanent. Institutions and professional teams could follow, or adopt, a similar structure to that found valid in *Johnson*. Recognizing that such a plan would undoubtedly require a gradual implementation because of the unique nature, and insignificant numbers, of such positions, the plan need not call for a permanent balance. Just as the Rooney Rule has not provided for an equal number of African-American coaches and white coaches, any gender minority rule would not have to provide for an equivalent amount, but merely an opportunity for females to gain admittance into these athletic administrative positions.

Additionally, the NCAA's Acceptable Standards implemented for African-American coaches are easily translatable into hiring practices for females. As called for in the Acceptable Standards, institutions should be required to maintain a hiring list including females working as assistants in athletics administration offices. Though keeping lists of qualified coaching candidates appears to be more feasible than a list of athletic administrators, the task is not, in actuality, that daunting. A list of females occupying "assistant director" or "director" roles²²³ at all NCAA member institutions can easily be maintained through a database by the NCAA. The NCAA has, in the Acceptable Standards, offered to assist athletic directors and member institutions in their search for head football coaches by identifying potential African-American candidates and through collaborating with the BCA and the NFL. Similarly, the NCAA could collaborate

222. *See Id.*

223. These assistant roles include Senior Woman Administrator, Sports Information Directors, Compliance Directors, Marketing Directors, Development Directors, Finance Directors, and Associate Athletic Directors.

with the National Association of Collegiate Women Athletics Administrators (NACWAA),²²⁴ the National Association for Girls & Women in Sport (NAGWS),²²⁵ and the Women's Sports Foundation²²⁶ to create a list of potential female candidates. This list could be distributed to athletic departments when hiring upper-level administrator positions and could also be distributed to search firms, as also required by the Acceptable Standards, when enlisted to help institutions conduct searches for new hires. Once a list of candidates is formulated, institutions will have a workable record of qualified female candidates to whom they can interview as detailed in the Acceptable Standards.

Second, similar to the Acceptable Standards provisions, member institutions and professional teams interviewing for athletic administrative positions should include one woman. As stated in the Acceptable Standards, it is important to support equal opportunity and fair hiring practices throughout the hiring process.²²⁷ In maintaining equal opportunities for racial minorities and women, employment-related decisionmaking should reduce reliance on the "old boys network."²²⁸ Similarly, athletic departments must become more inclusive and held accountable when failing to realize the benefits of diversity.²²⁹ Including racial minorities and women in the interview process will allow for not only equal opportunities and fair hiring practices but also finding the best candidate for the job.

Last, just as the Acceptable Standards enumerates items to consider during the process customarily included in hiring policies, these standards could maintain items to consider when filling an administrative vacancy. Such factors could include years of experience, previous institutions, and contributions made at the previous institutions. Including these considerations in the hiring practices also allows for an

224. National Association of Collegiate Women Athletics Administrators, http://www.nacwaa.org/about/about_historicalinfo.php (last visited Feb. 27, 2009).

225. National Association for Girls & Women in Sport, <http://www.aahperd.org/nagws/template.cfm?template=about.html> (last visited Feb. 27, 2009).

226. Women's Sports Foundation, <http://www.womenssportsfoundation.org/About-Us.aspx> (last visited Feb. 27, 2009).

227. NCAA, NACWAA, AND BCA, *supra* note 176.

228. Rhode & Walker, *supra* note 5, at 40.

229. *Id.* at 41-42.

examination of mentors and co-workers at previous institutions. Because women are usually cast into a role as the Senior Women Administrator, or as an assistant director, they are afforded an opportunity to work closely with the athletic director. Seeing that a female candidate has worked with a well-respected athletic director at a previous institution, hiring-institutions may associate the female candidate with that athletic director and gain the confidence needed to believe that the female applicant is qualified for the job.

Once a female is granted an interview through this new policy, she has the opportunity to eliminate preconceived gender-specific biases. The Rooney Rule and the Acceptable Standards were adopted to do just that for African-American coaches. Despite lax enforcement with regards to the Acceptable Standards, the Rooney Rule has proven to be successful as there are currently seven African-American coaches out of the NFL's 32 franchises. And while the debate continues as to just how successful the Acceptable Standards will prove to be, at least there is some progress to show for African-American coaches among the college ranks. However, females, to date, have received little assistance in eliminating preconceived biases in their efforts to gain employment within the athletic administrative ranks. Many oppose the implementation of any such affirmative action program or adoption of a version of the Acceptable Standards; however, realization of such plans is attainable.

One argument against the implementation of affirmative action programs or Acceptable Standards for female applicants is that because the NCAA is a member-driven institution that implements legislation only after a vote from all individual member institutions,²³⁰ the likelihood of a

230. The NCAA legislative process consists of a proposal by an NCAA Conference, the NCAA Management Council or Board of Directors, an NCAA Cabinet or Committee, an NCAA member institution, or an NCAA source. The proposal is first considered by the Management Council; if approved, the Management Council informs the member institutions of the proposal and provides for a 60-day comment period. Upon the expiration of the comment period, the Management Council reconsiders the proposal along with any comments made during the comment period. If the Management Council reaffirms the proposal, the proposal is then considered by the Board of Directors. If the Board approves the proposal, the proposal is rereleased for a second

predominantly white male pool either voting to implement an individual affirmative action plan or pass NCAA legislation resembling the recent hiring guidelines for racial minorities is relatively unlikely.²³¹ However, it is this very group of white males that promoted the Acceptable Standards for minority coaches. Because the membership was willing to adhere to some version of the NFL's Rooney Rule for interviewing minority coaching candidates, there is hope for the membership to agree to a similar version enacted to promote gender equality.²³²

Minority coaches have been assisted in their struggle against discrimination because affinity groups like the Fritz Pollard Alliance and the ability of that group to track the standards announced in the NFL's Rooney Rule. Women's advocacy groups can likewise assist in the process of jumpstarting gender equality gains just as the BCA and Fritz Pollard Alliance helped in gaining a recognition of, and potential solution to, the racial minority coaching problem. While women's advocacy groups may not be as powerful as the Fritz Pollard Alliance and the BCA, women's advocacy groups do exist.²³³ Moreover, with the help of successful women athletic administrators and figureheads such as Debbie Yow,²³⁴ Molly Fletcher,²³⁵ Kristen Kuliga,²³⁶ Kim Ng,²³⁷

60-day period this time for members disagreeing with the proposal to request membership override. If such a request is made and the membership votes by a 5/8s majority to override, the proposal is denied. If there is no request or the request does not attain a 5/8s majority, the proposal is approved and becomes legislation. Sean Hanlon & Ray Yasser, *'J.J. Morrison' and his Right of Publicity Lawsuit Against the NCAA*, 15 VILL. SPORTS & ENT. L.J. 241, 252-53 (2008).

231. Interview with Barbara Osborne, Associate Professor, Univ. of N.C., Chapel Hill (Oct. 10, 2007).

232. Though the NCAA member institutions voluntarily agreed to adhere to the Acceptable Standards, the NCAA national office maintains its position that it cannot pass legislation mandating an interview for at least one minority coaching candidate because the membership will not agree to it. However, there is precedent for a contrary position. In the 1980s, the NCAA resisted publishing graduation rates because the membership would not agree to it. Senator Bill Bradley and Representative Ed Towns passed/proposed? legislation requiring the publication of graduation rates that were both race and sport specific. In the face of Congressional interference, the NCAA passed the legislation. Lapchick, *supra* note 172.

233. See *supra* notes 225-27 and accompanying text.

234. See *supra* note 76.

235. See *supra* notes 125-32.

236. See *supra* notes 125-32.

237. Kim Ng is Vice President and Assistant General Manager for the Los Angeles Dodgers, is one of only two female executives to hold such a position in Major League

and Pat Summitt,²³⁸ just to name a few, these advocacy groups can gain strength and apply pressure for gender equality. The efforts of these powerful women along with the advocacy groups could establish outreach programs, similar to those implemented by the BCA, to provide for increased exposure for women to the athletics world. The NCAA has already showed it is amenable to listening to complaints regarding discrimination (i.e., drafting the Acceptable Standards); therefore, there is no reason for the NCAA not to be open to working with women's advocacy groups to draft and adopt similar standards. Nor would the NCAA have to reinvent the wheel to draft the standards. The Acceptable Standards are easily transferable between race and gender and could help to gain access for females to athletic administration roles.

Unconscious biases regarding women in the sports world must be defeated, and requiring interviews of qualified female candidates will begin to break down such biases.

CONCLUSION

Despite the enactment of Title IX in 1972, which was intended to promote equality and prohibit discrimination in educational settings, female athletic administration candidates continue to be subjected to unconscious gender biases. Masked behind the increase in female participation rates in sports, little attention is paid to the lack of progress, and, in certain areas, regress of women in athletic leadership roles. Similar problems exist in connection to racial minorities; however, at least among minority coaches, advocacy groups have successfully argued for implementation of affirmative action programs to help alleviate the

Baseball, and was the first woman to interview for a MLB general manager position when she did so with the Dodgers in 2005 (Ng was beat by Ned Colletti). Kim Ng Biography, <http://losangeles.dodgers.mlb.com/la/community/executives/ng.html> (last visited Feb. 27, 2009).

238. Pat Summitt is currently in her 34th season as the head coach of the storied University of Tennessee women's basketball team. Summitt made history in February 2009 by becoming the all-time winningest coach in NCAA history (men or women's basketball) with 983 victories. Pat Summitt Biography, http://www.utladyvols.com/sports/w-baskbl/mtt/summitt_patt00.html (last visited Feb. 27, 2009).

2010]

Girls Can Play, Too

47

disproportionate numbers of, and opportunities for, minority candidates. Despite the transferability of arguments against, and solutions for, the lack of minority coaches to the lack of female athletic administrators, thus far the NCAA and professional franchises have turned a blind eye to the lack of female opportunities. Title VII lawsuits may be a viable solution; however, it will take a Curt Flood like candidate, willing to tarnish her reputation and perhaps foreclose all future opportunities to take such a position. Women must band together, just like black coaches and administrators did in forming the BCA and the Fritz Pollard Alliance, to create equal opportunities. Until that happens, there is no telling how long women will remain on the outside looking in, hoping that someone, someday, will give them a chance to prove their worth in the athletic world.